EY Tax and Regulatory Alert

August 2022

Prepared for ACMA

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INDIRECT TAX

Part A - Key Indirect Tax updates

Goods and Services Tax

This section summarizes the regulatory updates under GST for the month of August 2022

- **Notification No. 17/2022–Central Tax dated 05.07.2022** was issued by CBIC stating that with effect from 1st October, 2022, every registered taxable person whose aggregate annual turnover in any of the financial year since 2017-18 exceeds INR. 10 Crores, shall liable to issue an E-Invoice.

- Earlier, the limit for issuing e-invoice was INR. 20 Crores.

- The registered person who is required to issue E-Invoice shall upload its' tax invoice in json file on Invoice Registration Portal (IRP) in accordance with e-invoice schema in INV-01 and shall get back digitally signed json from IRP with IRN and QR Code.

- **Circular No. 02/2022–Central Tax dated 01.08.2022**: was issued by the Andhra Pradesh Government for implementing a system for electronic (digital) generation of a document identification number (DIN) for all communication sent by its officers to taxpayers and other concerned people.

- It is decided to implement a system generated document identification number (DIN) for all correspondence initiated by the officers of the department with taxpayers and other people under all subsumed acts, other acts administered by the department and also to the extent of process of communication not yet fully developed by the GSTN in BO portal. This measure will create a digital directory for maintaining a proper trial of communication and provide the recipient to ascertain the genuineness.

- Henceforth, no correspondence like notices, letters, mails, personal hearing notices etc., will be issued during any enquiry by any proper officer as defined under the acts on or after August l', 2022, without a computer-generated document identification number. The digital platform for generation of DIN is posted on the online portal of 'apct.gov.in'.

- Whereas DIN is a mandatory requirement, in exceptional circumstances as mentioned below ,communication may be issued without an auto generated DIN. However, this exception can be made only after recording the reasons in writing in the concerned file. Also, such communication explicitly state that it has been used without a DIN.

  - When there are technical difficulties in generating the electronic DIN.
  - When communication regarding investigation/ enquiry, verification etc., is required to issue at short notice or in urgent situations and the authorized officer is outside the office in discharge of his official duties.

- Any communication issued without an electronically generated DIN in the exigencies mentioned in para no 4 above shall be regularized within 24 hours of its issuance, by:

  - Obtaining the post facto approval of the immediate superior officers as regards the justification for issuing the communication without the electronically generated DIN.

- Generating the DIN after post facto approval; and
- Printing the electronically generated proforma bearing the DIN and filing it in concerned file.

- Any communication which does not bear the electronically generated DIN/Unique identification number shall be treated as invalid and shall be deemed to have never been issued.

- In order to implement this new facility of electronically generating the DIN, the following steps have to be followed.

  - Officers can login with APTIS credentials and in drop down menu select Act, document type etc., and doing so the system will automatically generate the DIN . By mentioning the system generated DIN on the document, it can he uploaded in system.
  - Recipient can check the document: in APGST portal by key in the DIN to know the genuineness of the document and download the document. iii. A separate help document will be issued for officers on process flow of generation of DIN through online.

- Regarding issue of all notices, proceedings and any correspondence under the GST Act shall be through Back Office portal of GSTN only. If any process flow for required correspondence is not available in Back Office portal of GSTN, the same has to be issued by generating DIN as discussed above.

- Any communication which does not bear the electronically generated DIN/Unique identification number generated through BO portal shall be treated as invalid and shall be deemed to have never been issued.

- **Circular No. 177/09/2022-TRU dated 03.08.2022** was issued by the CBIC clarifying applicable GST rates and exemptions on certain service registrations, they are summarized as follows:

- **Whether exemption under Sl. No. 9B of notification No. 12/2017-Central Tax (Rate)dated 28.06.2017 covers services associated with transit cargo both to and from Nepal and Bhutan:** GST on supply of services associated with transit cargo to Nepal and Bhutan was exempted w.e.f 29.09.2017 based on recommendations of the 20th GST Council Meeting.

- Accordingly, as recommended by the GST Council, it is clarified that exemption under Sl. No. 9B of Notification 12/2017-Central Tax (Rate) covers services associated with transit cargo both to and from Nepal and Bhutan.

- It is also clarified that movement of empty containers from Nepal and Bhutan, after delivery of goods there, is a service associated with the transit cargo to Nepal and Bhutan and is therefore covered by the exemption.

- **Whether the additional toll fees collected in the form of higher toll charges from vehicles not having Fastag is exempt from GST:** It is clarified that additional fee collected in the form of higher toll charges from vehicles not having Fastag is essentially payment of toll for allowing access to roads or bridges to such vehicles and may be given the same treatment as given to toll charges.

- Earlier, on a similar issue of collection of overloading charges in the form of a higher toll, it was clarified vide circular number 164/20/2021-GST dated 06.10.2021 that overloading charges at toll plazas would get the same treatment as given to toll charges.

- Additional Toll Tax is exempt From GST.

- **Situations in which corporate recipients are liable to pay GST on renting of motor vehicles designed to carry passengers:** Where the body corporate hires the motor vehicle for transport of employees etc. for a period of time, during which the motor vehicle shall be at the disposal of the body corporate, the service would fall under Heading 9966, and the body corporate shall be liable to pay GST on the same under RCM.

- On the other hand, where the body corporate avails the passenger transport service for specific journeys or voyages and does not take vehicle on

rent for any particular period of time, the service would fall under Heading 9964 and the body corporate shall not be liable to pay GST on the same under RCM.

- Motor vehicle is hired for a specific time and the manner of use is decided by the body corporate service would fall under Heading 9966.

- **Whether hiring of vehicles by firms for transportation of their employees to and from work is exempt under Sr. No. 15(b) of Notification No. 12/2017-Central Tax (Rate) transport of passengers by non-air conditioned contract carriage:** The exemption would apply to passenger transportation services by non-air conditioned contract carriages falling under Heading 9964 where transportation takes place over pre-determined route on a pre-determined schedule.

- The exemption shall not be applicable where contract carriage is hired for a period of time, during which the contract carriage is at the disposal of the service recipient and the recipient is free to decide the manner of usage (route and schedule) subject to conditions of agreement entered into with the service provider.

- GST would be applicable is non air conditioned contract carriages is hired for a particular time and renter decide the manner of usage.

- **Applicability of GST on tickets of private ferry used for passenger transportation:** It has been clarified that this exemption would apply to tickets purchased for transportation from one point to another irrespective of whether the ferry is owned or operated by a private sector enterprise or by a PSU/government.

- If ferry is used by public irrespective who own and operate it, it is exempted.

- It is important to mentioned that it should not be predominantly for tourism.

- **Circular No. 178/10/2022-TRU dated 03.08.2022** was issued by the CBIC clarifying applicable GST rates and exemptions on certain service registrations, they are summarized as follows:

- **Liquidated Damages:** Where the amount paid as 'liquidated damages' is an amount paid only to compensate for injury, loss or damage suffered by the aggrieved party due to breach of the contract and there is no agreement, express or implied, by the aggrieved party receiving the liquidated damages, to refrain from or tolerate an act or to do anything for the party paying the liquidated damages, in such cases liquidated damages are mere a flow of money from the party who causes breach of the contract to the party who suffers loss or damage due to such breach.

- Such payments do not constitute consideration for a supply and are not taxable.

- However, If a payment constitutes a consideration for a supply, then it is taxable irrespective of by what name it is called; it must be remembered that a "consideration" cannot be considered de hors an agreement/contract between two persons wherein one person does something for another and that other pays the first in return.

- **Cheque dishonor fine/ penalty:** The fine or penalty that the supplier or a banker imposes, for dishonor of a cheque, is a penalty imposed not for tolerating the act or situation but a fine, or penalty imposed for not tolerating, penalizing and thereby deterring and discouraging such an act or situation.

- Therefore, cheque dishonor fine or penalty is not a consideration for any service and not taxable.

- **Penalty imposed for violation of laws:** Fines and penalties paid for violation of provisions of law are not considerations as no service is received in lieu of payment of such fines and penalties. Accordingly, the same is not subject to GST.

- It was also clarified vide Circular No. 192/02/2016-Service Tax, dated 13.04.2016 that fines and penalty chargeable by Government or a local authority imposed for violation of a statute, bye-laws, rules or regulations are not leviable to Service Tax.

- **Forfeiture of salary or payment of bond amount in the event of the employee leaving the employment before the minimum agreed period:** Amounts are recovered by the employer not as a consideration for tolerating the act of such premature quitting of employment but as penalties for dissuading the non-serious employees from taking up employment and to discourage and deter such a situation. Further, the employee does not get anything in return from the employer against payment of such amounts.

- Therefore, such amounts recovered by the employer are not taxable as consideration for the service of agreeing to tolerate an act or a situation.

- **Late payment surcharge or fee:** It is ancillary to and naturally bundled with the principal supply such as of electricity, water, telecommunication, cooking gas, insurance etc. it should be assessed at the same rate as the principal supply.

- **Fixed Capacity charges for Power:** The price charged for electricity by the power generating companies from the State Electricity Boards (SEBs)/DISCOMS or by SEBs/DISCOMs from individual customers has two components, namely, a minimum fixed charge (or capacity charge) and variable per unit charge. Both charges are charged for sale of electricity and are thus not taxable as electricity is exempt from GST.

- **Cancellation charges:** Facilitation supply of allowing cancellation of an intended supply against payment of cancellation fee or retention or forfeiture of a part or whole of the consideration or security deposit should be assessed as the principal supply.

- **Circular No. 179/11/2022-TRU dated 03.08.2022** was issued by the CBIC clarifying applicable GST rates and exemptions on certain service registrations, they are summarized as follows:

- **Electric vehicles whether or not fitted with a battery pack:** It has been mentioned in the circular that the fitting of batteries cannot be considered as a concomitant factor for defining a vehicle as an electrically operated electric vehicle.

- Accordingly, it has been clarified that electrically operated vehicle is to be classified under HSN 8703 even if the battery is not fitted to such vehicle at the time of supply and thereby attract GST at the rate of 5% in terms of entry 242A of Schedule I of notification No. 1/2017-Central Tax (Rate).

- Electric vehicles whether or not fitted with a battery pack would attract GST rate of 5%.

Customs and Foreign Trade Policy (FTP)

This section summarizes the regulatory updates under Customs and FTP for the month of August 2022

- **CircularNo.11/2022-Customs dated 29.07.2022** was issue by the CBIC amending enabling the facility of 24×7 Customs clearance across numerous sea ports and air cargo complexes across the country. Presently, this facility is available at 20 sea ports and 17 airports.

- Board hereby advises all the Pr. Chief / Chief Commissioners, having jurisdictions over Inland Container Depots (ICDs) to consider having the ICDs within their jurisdictions designated with extended facility of Customs clearance beyond normal working hours in any of the following ways, namely :-

  (a) The facility of Customs clearance may be made available on a 24×7 basis, similar to the current Board guidelines for Sea Ports and Air Cargos/Airports;

  (b) The facility of Customs clearance may be extended on all seven (7) days of the week (including holidays), with stipulated timings (say from 9 :30 AM to 6 :00 PM);

  (c) The facility of Customs clearance may be extended beyond normal working hours for specified days in a week and with specified timings.

- **Circular No. 12/2022-Customs dated 16.08.2022** was issued by the CBIC revising the threshold limits for the various category of cases for launching prosecution given under para 4.2.1.1 and para 4.2.1.2 of Circular No. 27/2015 Customs dated 23.10.2015**.** The revised threshold limits are as follows:

- **Baggage and Outright smuggling cases:**

  (i) Cases involving unauthorized importation in baggage/cases under Transfer of Residence Rules, where the market value of the goods involved is Rs. 50,00,000/-(Rupees Fifty Lakh) or more;

  (ii) Outright smuggling of high value goods such as precious metal, restricted items or prohibited items notified under section 11 of the Customs Act, 1962 or goods notified under section 123 of the Customs Act, 1962 or foreign currency where the market value of offending goods is Rs. 50,00,000/- (Rupees Fifty Lakh) or more;

- **Appraising Cases/ Commercial Frauds:**

  (i) In cases related to importation of trade goods (i.e. appraising cases) involving the below mentioned cases, the monetary limits has been increased from Rs. 1,00,00,000/- or more to Rs. 2.00,00,000/- or more . Further, the offending goods now will be valued on the basis of market value instead of CIF value.-

  (a) willful mis-declaration in value/description;

  (b) concealment of restricted goods or goods notified under section 11 of the Customs Act, 1962, where market value of the offending goods is Rs. 2,00,00,000/- (Rupees Two Crores) or more;

  (ii) In cases related to fraudulent evasion or attempt at evasion of duty under the Customs Act 1962, if the amount of duty evasion is Rs. 2,00,00,000/- (Rupees Two Crore) or more; The said clause has been newly inserted in order to widen the scope prosecution for offences under Customs Act.

  (iii) In cases related to fraudulent availment of drawback or attempt to avail of drawback or any exemption from duty provided under the Customs Act 1962, in connection with export of goods, if the amount of drawback or exemption from duty is Rs. 2,00,00,000/- (Rupees Two Crore) or more; The monetary limits has been increased from Rs. 1,00,00,000/- or more to Rs. 2,00,00,000/- or more . Further, the words 'in connection with export of goods' have been inserted in order to

clarify that such fraudulent attempt must be in relation to export of goods.

(iv) In cases related to exportation of trade goods (i.e. appraising cases) involving the following cases, the monetary limits has been increased from Rs. 1,00,00,000/- or more to Rs. 2.00,00,000/- or more . Further, the offending goods now will be valued on the basis of market value instead of FOB value.

(a) willful mis-declaration in value/description;

(b) concealment of restricted goods or goods notified under section 11 of the Customs Act, 1962, where market value of the offending goods is Rs. 2,00,00,000/- (Rupees Two Crore) or more.

(v) Obtaining an instrument from any authority by fraud, collusion, willful misstatement or suppression of facts and utilization of such instrument where the duty relatable to utilization of the instrument is Rs. 2,00,00,000/-(Rupees Two Crore) or more. The said clause has been newly inserted in order to widen the scope prosecution for offences under Customs Act.

- Further, in respect of cases involving non-declaration of foreign currency by foreign nationals and NRIs (normally visiting India for travel/business trips etc.) detected at the time of departure from India, exceeding the threshold limits of Rs 50 lakh as prescribed above, if it is claimed that the currency has been legally acquired and brought into India but not declared inadvertently, prosecution need not be considered as a routine

- **Circular No. 13/2022-Customs dated 16.08.2022** was issued by the CBIC for Arrest and Bail in relation to offences in punishable under the Customs Act,1962 amending para 2.3 of the existing guideline issued vide F. No. 394/68/2013-Cus (AS) dated 17.09.2013 as amended by Circular No. 28/2015 dated 23.10.2015 shall read as under:-

(a) Cases involving unauthorized importation in baggage/ cases under Transfer of Residence Rules, where the market value of the goods involved is Rs. 50,00,000/-(Rupees Fifty Lakh) or more; The monetary limits has been increased from Rs. 20,00,000/- or more to Rs. 50,00,000/- or more . Further, the goods now will be valued on the basis of market value instead of CIF value.

(b) Cases of outright smuggling of high value goods such as precious metal, restricted items or prohibited items or goods notified under section 123 of the Customs Act, 1962 or offence involving foreign currency where the value of offending goods is Rs. 50,00,000/- (Rupees Fifty Lakh) or more; The monetary limits has been increased from Rs. 20,00,000/- or more to Rs. 50,00,000/- or more.

(c) Cases related to importation of trade goods (i.e. appraising cases) involving willful mis-declaration in description of goods/concealment of goods/goods covered under section 123 of Customs Act, 1962 with a view to import restricted or prohibited items and where the market value of the offending goods is Rs. 2,00,00,000/- (Rupees Two Crore) or more; The monetary limits has been increased from Rs. 1,00,00,000/- or more to Rs. 2,00,00,000/- or more . Further, the goods now will be valued on the basis of market value instead of CIF value.

(d) Cases involving fraudulent evasion or attempt at evasion of duty involving Rs 2,00,00,000/- (Rupees Two Crore) or more; The said clause has been newly inserted in line with the expansion guidelines for launching prosecution in relation to offences punishable under Customs Act, 1962.

(e) cases involving fraudulent availment of drawback or attempt to avail of drawback or any exemption from duty provided under the Customs Act, 1962, in connection with export of goods, if the amount of drawback or exemption from duty is Rs. 2,00,00,000/- (Rupees Two Crore) or more. In cases related to exportation of trade goods (i.e. appraising cases) involving

(i) willful mis-declaration in value / description ;

(ii) concealment of restricted goods or goods notified under section 11 of the Customs Act,

1962, where market value of the offending goods is Rs. 2,00,00,000/- (Rupees Two Crore) or more.

The monetary limits has been increased from Rs. 1,00,00,000/- or more to Rs. 2.00,00,000/- or more. The goods now will be valued on the basis of market value instead of FOB value.

Further, the words 'in connection with export of goods' have been inserted.

(f) Cases involving obtaining an instrument from any authority by fraud, collusion, willful misstatement or suppression of facts and utilization of such instrument where the duty relatable to such utilization of the instrument is Rs 2,00,00,000/- (Rupees Two Crore) or more. The said clause has been newly inserted in line with the expansion guidelines for launching prosecution in relation to offences punishable under Customs Act, 1962.

(g) The above criteria of value mentioned in sub para 2.3 (a) to 2.3 (f) would not apply in cases involving offences relating to items i.e. FICN, arms, ammunitions and explosives, antiques, art treasures, wild life items and endangered species of flora and fauna.

In such cases, arrest, if required, on the basis of facts and circumstances of the case, may be considered irrespective of value of offending goods involved."

- **Circular No 15/2022- Customs dated 23.08.2022** was issued by CBIC to clarify the changes in the guidelines for compounding of offences under the Customs Act, 1962. The salient features of the amendment are outlined as follows:
  - Satisfaction of compounding authority has been limited only to verify and be satisfied that the full and true disclosure of facts has been made by the applicant.
  - Offence under section 135AA (Protection Of Data) has also been made a compoundable. Further, Competent Authority has been mandated to grant immunity when offence is only of this type.

- **Notification No. 26/2015-DGFT 2020 dated 10.08.2022** was issued by the Central Government hereby amending the Policy condition No.03 (c) of Chapter- 74, and Policy Condition No. 01 (c) of Chapter-76 of Schedule-I (Import Policy) of ITC (HS), 2022:
- The requirement of advance registration of minimum 5 days from the expected date of arrival of import consignment under NFMIMS has been abolished/made zero.
- **Trade Notice No. 15/2022-2023-DGFT dated 07.07.2022** is issued by the DGFT informing that the transition period for mandatory filing of applications for Non-Preferential Certificate of Origin through the e-CoO Platform has been further extended till 31st March 2023.
- **Policy Circular No. 41/2015-20-DGFT dated 05.07.2022** was issued by the DGFT clarifying the query whether PIMS registration is required at Registration is required both at the point for import into Special Economic Zone ("SEZ")/ Free Trade and Warehousing Zones ("FTWZ") and at the time of Customs Clearance from SEZ to Domestic Tariff Area ("DTA") and also whether the registration is required for EOUs as well at the time of import by an EOU.
- It was clarified that PIMS Registration shall be required at the point of import by a Unit in SEZ/FTWZ or at the time of import by an EOU of the items covered under PIM and PIMS Registration shall not be required by the DTA Unit at the time of Customs Clearance from the SEZ/FTWZ/EOU to DTA if no processing has taken place of the item of paper that has already been registered under PIMS at the time of entry into a SEZ/FTWZJEOU.
- However, if processing has taken place in the SEZ/FTWZ/EOU with change in HS Code at 8-Digit level, then the importer in DTA will require to register under PIMS, if the processed item falls under any of the tariff lines covered under PIMS.
- **Policy Circular No. 43/2015-20-DGFT dated 27.07.2022** was issued by the DGFT relaxing the provision of submission of Bill of Exports as an evidence of export obligation discharge for

supplies made to SEZ units in case of EPCG Authorization.

- The issue was examined and in terms of Para 2.58 of the FTP 2015-2020 (extended up to 30.09.2022), it has been decided to relax the condition of requirement of submission of `Bill of Export' in case of exports made to SEZ units under EPCG Authorization, for all such supplies made prior to 01.04.2015.

- Accordingly, for the purpose of discharge of export obligation under EPCG Authorizations, in case of supplies made to SEZ units prior to 01.04.2015, the exporters can submit corroborative evidence in lieu of 'Bill of Exports' such as

  a. ARE-I form duly attested by jurisdictional Central Excise authorities of EPCG authorization holder.
  b. Evidence of receipt of the supplies by the recipient in the SEZ.

  c. Evidence of payment made by the SEZ, unit to the EPCG authorization holder.

- **(**https://dgft.gov.in**)** on an urgent basis so that services to the exporting community do not get impacted.

  In this regard **Help Manual** as well as **FAQs** have been made available to Bank Officials on the new portal after login. For any further assistance concerned Bank officials can send an email to the DGFT Helpdesk on **dgftedi@gov.in** with subject header as "Support on eBRC for……. Bank (Name of Bank)".

Direct Tax

Part-A Key Direct Tax updates

This section summarizes the Direct Tax updates under for the month of August 2022

1. CBDT extends the time allowed to file prescribed documents to claim foreign tax credit

Background

- The ITL provide for relief from juridical double taxation of income of Indian resident taxpayers through a Double Taxation Avoidance Agreement (DTAA) or, in the absence of a DTAA, through unilateral relief as specified in the ITL. Such relief is in the form of FTC.

- In this respect, the CBDT notified Rule 128 w.e.f. 1 April 2017 pertaining to the manner of computation of FTC as well as the procedural requirements in order to make such a claim.

- As per the Rule 128, such FTC is allowed in the year in which the income (corresponding to the foreign tax paid) is offered or assessed to tax in India.

- Further, every taxpayer desirous of claiming FTC is mandatorily required to furnish the following documents on or before the due date for filing of the ROI (i.e., "original ROI"):

  - Statement providing details of the foreign income, offered for tax for the TY, and foreign tax paid or deducted thereon in prescribed form (viz. Form 67); and

  - Certificate or statement specifying the nature of income and the amount of tax deducted or paid thereon.

- Here, it may be noted that, the ITL also allow a taxpayer to:

  - File a "belated ROI" beyond the statutory due date, but up to nine months from the end of the relevant TY.
  - As amended vide FA 2022, file an "updated ROI" within three years from the end of the TY to rectify errors or omissions in cases where additional income is to be offered. Such filing is, however, subject to payment of additional taxes to the tune of 25%-50% on additional income and interest thereon.

- However, the erstwhile Rule 128 expressly provided that the prescribed documents are required to be filed on or before the due date of filing original ROI. Hence, by implication, the tax authority did not consider the documents furnished after the due date for furnishing the original ROI.

- This resulted in genuine hardship where a taxpayer, who had actually paid taxes overseas and was legitimately entitled to claim FTC, was disentitled merely on account of administrative rules and procedures due to the delayed filing of the documents.

- Moreover, in many cases of taxpayers having foreign income taxed abroad, there was no clarity on the amount of tax paid/payable overseas within the time permitted for filing original return. By the time such clarity was available, the original

ROI filing date would have passed, leading to loss of FTC. The situation was especially compounded in respect of countries following a calendar year for tax purposes where the income for the period from January to March would be assessed to tax in the foreign country after the due date for filing original ROI in India has already expired. Further, many countries do not have the mechanism to pre-pay taxes or pay advance tax, so as to enable meeting the timelines of claiming FTC in India.

- Hence, stakeholders made representations to the CBDT requesting it to alleviate such hardship so as to avoid possible double taxation and/or cash-flow issues faced by taxpayers.

Amendment of Rule 128

In response to the various representations referred above, the CBDT has now issued a Notification amending Rule 128 as follows:

- The documents shall be furnished at any time before the expiry of one year from the end of the relevant TY. However, this is subject to the condition that the ROI for such TY is furnished within the statutory due date for filing original ROI or for filing a belated return within nine months from the end of the relevant TY.

- Further, taxpayers are now also permitted to furnish updated/revised documents w.r.t FTC claimed in respect of additional income offered to tax in the updated ROI. Such updated documents are to be filed on or before the furnishing of the updated ROI.

- While the Notification states that the amendment shall be deemed to have come into force from 1 April 2022, the Explanatory Memorandum to the Notification clarifies that the amended Rule 128 is effective from 1 April 2022 so that it applies to all the claims of FTC furnished during FY 2022-23. It is also certified that no person is being adversely affected by giving retrospective effect to the amended Rule.

- On an illustrative basis, following timelines can be noted for filing the documents to claim FTC in relation to income assessable to tax in TY 2022-23:

Nature of ROI	Due date for filing ROI	Erstwhile timeline for filing the documents to claim FTC	Extended timeline for filing the documents
Original ROI	As specified for different taxpayers - 31 October 2023 (for companies and taxpayers with tax audit) - 30 November 2023 (taxpayers subject to transfer pricing) - 31 July 2023 (for all other taxpayers)	On or before due date for furnishing the original ROI	Upto 31 March 2024, provided the original ROI is filed on or before its due date
Belated ROI	Before 31 December 2023 or before completion of assessment, whichever is earlier	On or before furnishing of original ROI. By implication, tax authority did not permit FTC where belated ROI was filed.	Upto 31 March 2024, provided the belated ROI is filed on or before its due date
Updated ROI	Before 31 March 2026	On or before furnishing of original ROI. There was ambiguity whether FTC could be claimed for first time or revised in updated ROI.	On or before the filing of updated ROI

2. CBDT notifies books of account and other documents to be maintained by charitable institutions

Background

- The Finance Act 2022 amended the enabling provisions for the charitable institutions to maintain books of account and other documents, and it is one of the pre-conditions for availing exemption under the ITL. Prior to the amendment, there was no specific provision under the ITL for maintenance of books of account by charitable institutions.
- This amendment was over and above the obligation to get the accounts audited by Chartered Accountant and furnishing a report in a prescribed form.
- The amendment is effective from tax year 2022-23.

Notification:

The new rule prescribes the books of account required to be maintained by charitable institutions which include cash books, ledger, journal, bills issued to / issued by the charitable institutions or any other book which explains the transactions and gives a true and fair view. Same set of books of accounts are prescribed even for charitable institutions which carry on business.

Additionally, the new rule also requires charitable institutions to maintain documents for maintaining records of on certain aspects including of income, application of income and details of specified persons. Key highlights of the requirements prescribed by the new rule are:

- In relation to income of charitable Institutions for given tax year:
    - Details of donors such as name, address, PAN (if available) and Aadhar number (if available) in respect of voluntary contribution, corpus donations and contribution received for renovation or repair of places of worship / other notified places
    - Income from property held under trust along with list of such properties.
- In relation to application of Income during the given tax year:
    - Details of the amount of application, name and address of person to whom any amount is paid or credited and object of such application. This record may be maintained for application of income in India or outside India.
    - Where amount is paid or credited to other charitable institutions, name, address, PAN of such entity and object for such application.
    - Additionally, where application is out of income of any preceding year, details about whether application is out of accumulated income or from different sources and where it is out of accumulated income, year of such accumulation.
    - Details of money invested or deposited in the specified forms or mode as also other than specified forms or modes. It also includes details about whether such investment or deposit is from relevant tax year or any preceding year.
- Records of loans and borrowings taken by charitable institution:
    - Details for name, address, PAN and Aadhar number (if available) of the lender
    - Amount and date of borrowing / repayment including details of application of such loan in preceding year but not claimed as application.

- Application made out of borrowed funds during the tax year or any preceding year with name and address of person to whom any amount is paid or credited out of such loan or borrowing and object for which such application is made

- Record of properties held by the charitable institutions:
  - In respect of immovable properties, details of its nature, address, cost of acquisition and registration documents
  - In case of transfer of such properties, the net consideration utilized in acquiring new capital asset
  - In respect of movable properties, details of its nature and cost of acquisition
- Record of specified persons:
  - Details such as name, address, PAN and Aadhar (if available)
  - Details of transactions undertaken by charitable institutions with such specified persons such as date, amount and nature of transaction
- Record of all projects and institutions run by the charitable institutions, including details such as their name, address and objectives.

The books of account are to be maintained at the registered office or at any other place in India as decided by the management of the charitable institutions by way of a resolution (to be intimated to the tax authorities) for a period of ten years. Further they may be kept in written form or in electronic / digital form etc.

In case where reassessment proceedings are initiated for any year, the books of account are to be maintained till the reopened assessment is finalized.

Foreign Exchange Management Act (FEMA)

Part-A Key FEMA updates

This section summarizes the FEMA updates under for the month of July 2022

1. Temporarily increase in borrowing limit for External Commercial Borrowings ('ECB')

- RBI has temporarily increased the limit of USD 750 million or equivalent per financial year available for eligible borrowers to USD 1500 million or equivalent for raising ECB under the automatic route.
- This relaxation is available for ECBs raised till 31 December 2022

2. RBI notifies new Overseas Investment Guidelines 2022.

The Government of India (GOI) in consultation with the RBI has revamped the Overseas Investment (OI) rules and regulations known as the Foreign Exchange Management (Overseas Investment) Rules and Regulations, 2022. The outbound investments from India were earlier governed by the Foreign Exchange Management (Transfer or Issue of any Foreign Security) Regulations, 2004 ("FEMA 120") and the Foreign Exchange Management (Acquisition and Transfer of Immovable Property Outside India) Regulations 2015, which have now been subsumed by the 2022 OI Rules and Regulations.

Some of the notifiable and key changes in the new guidelines are summarized below:

- The definition of "Overseas Direct Investment" or "ODI" now reads as "investment by way of acquisition of unlisted equity capital of a foreign entity, or subscription as a part of the memorandum of association of a foreign entity, or investment in ten per cent, or more of the paid-up equity capital of a listed foreign entity or investment with control where investment is less than ten per cent. of the paid-up equity capital of a listed foreign entity".
- The definition of "Overseas Portfolio Investment" or "OPI" is now defined as "investment, other than ODI, in foreign securities, but not in any unlisted debt instruments or any security issued by a person resident in India who is not in an IFSC". This new definition suggests that the portfolio investment is possible in unlisted foreign entities.
- A resident individual has been permitted to gift foreign securities to his relative resident in India. However, in case, a resident individuals acquire foreign securities by way of gift from a person resident outside India then it has to be in accordance with the Foreign Contribution (Regulation) Act, 2010 ('FCRA'). A gift of securities by Indian citizen resident outside India may be considered outside the purview of FCRA.
- Person resident in India shall not make financial commitments in a foreign entity that has invested or invests into India, at the time of making such financial investments or at any time thereafter, directly or indirectly resulting with more than 2 layers of subsidiaries; Therefore, it is suggesting that round tripping structures now do not require approval from the RBI, if the structure involves less than 2 levels of subsidiaries.
- The definition of 'Net-worth' has been expanded to include securities premium in the net worth calculation without RBI Approval.

- The definition of foreign entity now includes 'International Financial Services Centre' that has limited liability'. Further, a Loss making non-financial Indian entity can now make OI in IFSC.

- An Indian entity which is not engaged in financial sector services in India can now make OI in a foreign entity which is directly or indirectly engaged in financial services activities.

- The term Joint Venture (JV) and Wholly owned subsidiary (WoS) have been done away with and the term "foreign entity that is formed or registered or incorporated outside India" has been introduced. Making a notable transition from the earlier limitation on investment only in JV and WoS to a much broader scope in the new guidelines.

- Any OI in foreign start-ups should be made only from funds other than borrowed funds i.e. a resident individual can only use his own funds.

- Deferred Payment is now permissible without RBI approval subject to certain conditions.

- "Subsidiary" or "step down subsidiary" of a foreign entity now means an entity in which the foreign entity has 'control'. As per the new guidelines, "control" means the right to appoint majority of the directors or to control management or policy decisions exercisable by a person or persons acting individually or in concert, directly or indirectly, including by virtue of their shareholding or management rights or shareholders' agreements or voting agreements that entitle them to ten per cent. or more of voting rights or in any other manner in the entity.

- Delay in reporting OI related compliances including Annual Performance Report shall now attract Late Submission Fees and unless it is not regularized, new OI shall not be permissible.

- A resident individual making investments from RFC Account will not be subject to LRS limit.

Part B- Case Laws

Goods and Service Tax

1. Pradeep Goyal vs Union of India & Ors [WRIT PETITION (CIVIL) NO. 320 OF 2022 in Supreme Court of India]

Subject Matter: Ruling wherein the Hon'ble Supreme Court had held that a Document Identification Number (DIN) must be present for all communications sent by the State Tax Officers to taxpayers and other concerned persons

Background and Facts of the case

- The By way of a Writ Petition under Article 32 of the Constitution of India, the petitioner, a Chartered Accountant by profession, by way of present Public Interest Ligation has prayed for an appropriate writ, order or direction to the respondents – respective States and the GST Council to take all necessary steps to implement a system for electronic (digital) generation of a Document Identification Number (DIN) for all communications sent by the State Tax Officers to taxpayers and other concerned persons.

- It is also prayed to direct the GST Council to consider and take a policy decision in respect of implementation of the DIN system by all the States.

Discussions and findings of the case

- The petitioner also submitted that by implementing a system for electronic (digital) generation of a DIN, it will usher in transparency and accountability in the indirect tax administration.

- It is submitted that as such the same is the Government's objective. It is submitted that the same may prevent any abuse by the Departmental Officers of pre-dating communications and ratifying actions by authorizations subsequently made out in the files.

- It is averred that the Document Identification Number system, which will bring in transparency and accountability in the tax administration and, as on today, the same has been implemented only by two States, i.e., the States of Karnataka and Kerala.

- Therefore, when implementation of the DIN system is in the larger public interest and the objective to implement the DIN system is to bring in transparency and accountability in the indirect tax administration, it is prayed by the petitioner to direct the respondents – States to implement the DIN system.

- It is prayed to direct the Central Government / CBIC / GST Council to issue directions to the concerned States to implement the DIN system in respect of all communications sent by the State Tax Officers to assessees, taxpayers and other concerned persons.

- Further, the respondent agreed with the contentions of the petitioner and asserted that electronic (digital) generation of a DIN for all communications sent by the State Tax Officers to taxpayers and other concerned persons is concerned, the same is to be done and/or implemented by the concerned States.

- Basis the contentions, the Hon'ble Apex Court observed that implementing the system for electronic (digital) generation of a Document Identification Number (DIN) for all communications sent by the State Tax Officers to taxpayers and other concerned persons would be in the larger public interest and enhance good governance.

- It also observed that the GST Council can also issue advisories to the respective States for implementation of the DIN system, which shall be in the larger public interest and which may bring in transparency and accountability in the indirect tax administration.

Ruling

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

- The Hon'ble Supreme Court further impressed upon the concerned States to consider to implement the system for electronic (digital) generation of a DIN for all communications sent by the State Tax Officers to taxpayers and other concerned persons so as to bring in transparency and accountability in the indirect tax administration at the earliest.

2. M/s ANKUSH AUTO DEALS vs COMMISSIONER OF DGST & ANR [Delhi High Court- W.P.(C) 12233/2021 & CM APPL.4315/2022]

Subject Matter: Ruling wherein the Hon'ble Delhi High Court had held that the revenue could not have retained the refund beyond the period stipulated under Section 56 of the Act and thereby were directed to pay to the petitioner interest at the statutory rate on the refund amount retained beyond 60 days as prescribed in Section 56 of the Act.

Background and Facts of the case

- The petitioner had applied for refund of GST with the revenue authorities and as per the order received from the authorities, the refund already granted to the petitioner was INR.14,22,482 and the refund to be further allowed was INR 11,07,462. Hence, the concerned officer has not addressed the petitioner's grievance with regard to the payment of statutory interest.

- Further, the petitioner had informed the court that the grievance of the petitioner has been partially addressed, as the principal amount towards refund has already been remitted.

- In this regard, the revenue authorities submitted that the only reason the respondents/revenue have denied grant of statutory interest to the petitioner, is because Covid-19 was raging and there was delay in processing the petitioner's refund.

- Further, /revenue have relied upon various orders passed by the Supreme Court in Suo Motu W.P (C.) 3/2020 - 2021- VIL-54-SC and have also referred to the judgment of the Madras High Court dated 28.09.2022, passed in W.P (C) 18165/2021, titled M/s GNC Infra LLP v. Assistant Commissioner (circle) - 2021-VIL-856-MAD, in support of his submission that the period for processing refund claims stood extended.

- **Discussions and findings of the case**

- The petitioner contended that the principles enunciated in the orders/ judgement referred to by the revenue will not be applicable in the present case.

- The petitioner further argued that the refund application was filed by the petitioner on

20.07.2021 and thereafter, albeit in tranches, the refund was remitted to the petitioner. The revenue authorities were processing the petitioner's application for refund, albeit, in stages.

- It is thus contended by the petitioner, that when the revenue were doing so, they should have also granted statutory interest in accordance with provisions of Section 56 of the Central Goods and Services Tax Act, 2017 [hereafter referred to as the "Act".]

- Post considering the submissions made by the petitioner and the revenue, the Hon'ble High Court observed that the petitioner did file an application for refund on 20.07.2021, and as noted hereinabove, the principal amount towards refund was released in two tranches;

- The Court also discerned that the petitioner was correct in his submission that the respondents/revenue ought to have released the amount along with statutory rate of interest, as provided under Section 56 of the Act.

- The statutory rate of interest is pegged at 6%. The said interest gets triggered after the expiry of 60 days from the date of receipt of application for refund. Thus, the Court contended that interest is payable to the petitioner and the limitation extended by virtue of orders passed by the Supreme Court in Suo Motu W.P.(C.) 3/2020 is, completely misconceived.

Ruling

- In light of the above observations, the Hon'ble High Court held that statutory rate of interest provided under Section 56 of the Act is a compensation for use of money. Hence, the revenue could not have retained the money beyond the period stipulated under Section 56 of the Act.

- Thus, interest was payable to the petitioner and the writ petition is ought to have been disposed off.

Customs and FTP

2. M/s Volvo India Private Limited [Customs Authority for Advance Ruling- Ruling No CAAR/ Del/ Volvo Auto/08/2022]

Subject Matter: Ruling wherein the Customs Authority for Advance Ruling held that the Electric Vehicles kits in disassembled state and presented together as a kit merits classification under heading 8703 and the eligible rate of BCD thereon is 15%.

Background and Facts of the case

- The applicant plans to import Volvo passenger Electric Vehicle (EV) in knocked down condition from overseas manufacturing plant of Volvo Group. Different models of electric vehicle kits may be imported by the them, from time to time, which include front-wheel drive as well as all-wheel drive variants, along with rear-wheel drive variants that may be imported in due course of time. All major parts/sub-assemblies constituting one electric vehicle kit would be imported from a single plant.

- The Prior to import into India, the vehicles would be semi-assembled at Volvo plants located outside India for quality check purpose. However, the assembly is not completed at the said plant as certain parts and final operating software are not installed in the vehicle.

- Therefore, the vehicle remains unfinished and is not marketable and road worthy. Post quality check, the vehicles would be disassembled into various sub-assemblies for import into India.

- Thereafter, these disassembled vehicle kits comprising of various sub-assemblies would be shipped to India. The assessing officer had noticed that the goods were not declared under CTH 8708 even though the goods were meant for use in Motor Vehicles -Car i.e. Components of Motors Vehicles and hence contended it merit classification under CTH 8708.

- Post import to India, the applicant would undertake assembly of knocked down kits of electric vehicles into complete vehicles through a contract manufacturer. The locally assembled vehicles will thereafter be sold to customers.

- The applicant, vide the aforesaid application, has sought ruling by CAAR, New Delhi on the following questions:

- Whether the electric vehicle kits proposed to be imported are classifiable under tariff entry No 8703 of the First Schedule to Customs Tariff Act, 1975?

- Whether the electric vehicles kits proposed to be imported by the Applicant would be eligible for exemption under sub-category (a) of serial no 526A(1) of the Mega Exemption Notification and qualify for 15% BCD rate?

Discussions and findings of the case

- The applicant has contended that the customs duty rate on import is based on the classification of goods under the First Schedule to Customs Tariff Act, 1975. In terms of the said schedule, passenger motor vehicles(including electric vehicles) are classifiable under chapter 87 under the relevant tariff entry 8703.

- Further, it was pertinent to refer the Rule 2(a) of the General Rules of Interpretation to the First Schedule wherein it is provided that if an unassembled or disassembled articles exhibits the essential character of the finished article at the time of presentation to customs, the said article shall be classified as finished article.

- Further, the applicant also pointed out that the customs duty on import of motor vehicles in India varies on the level of breakdown/ disassembly at the time of import. In this regard, the Mega Exemption Notification, which extends concessional duty for import of various goods to extends concessional rate of BCD on electric vehicles classifiable under Chapter 8703.

- Moreover, the explanatory memorandum to Finance Bill 2022 ('the memorandum') also clarifies that if some components are missing in the electric vehicle kit, the benefit of the concessional rate of duty would still be available, provided that the kit as presented has the essential character of an electric vehicle.

- The applicant further submits that the graded slab of BCD rates based on the level of breakdown, have been prevalent for ICE vehicles for a long time, specifically mentioned in serial no 526 of the Mega Exemption Notification.

- Taking the above into consideration, the Customs Authority for Advance Ruling observed that the vehicle assembled abroad would have acquired the essential characteristics of passenger vehicles, though clearly not reached the complete stage to be road-worthy.

- Further, the Authority observed that the kits together have acquired the essential characteristics of a EV motor cars and based on Rule 2(a) of the General Rules of Interpretation, they would be classified under heading 8703 at four-digit level.

- In relation to the second question, the Authority perused the entry no 526A in notification no 50/2017-Customs and contended that the said entry covers all electric vehicles falling under heading 8703.

- Moreover, the Authority also found that the sub-categorization under (a) or (b) of S.No 1 of the aforesaid notification and eligibility for the lowest rate of 15% duty is based on the state of assembly.

- Basis the description of the CKD kits in the application submitted before the Authority, the Authority contended that the CKD kits will fall under sub-category 1(a) and attract the effective rate of BCD of 15%.

Ruling

- In light of the above, the Customs Authority for Advance Ruling held that the Electric Vehicle kits described by the Applicant in the disassembled state and presented together as kits merits classification under heading 8703 and

- The aforesaid Electric Vehicle kits are covered under S. NO 526A(1)(a) of notification 50/2022-Customs dated 30.06.2017 and therefore presently eligible for 15% rate of BCD applicable thereon.

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