

Quarterly India tax updates October – December 2020

We will discuss...

- **Economy/Regulatory updates**
- **Direct tax updates**
 - Income Tax compliance – Extensions in timelines;
 - Vivad se Vishwas Dispute Resolution Scheme – Extensions and Clarifications
 - Income Tax reporting - Disclosure of GST related information
 - Sovereign Wealth Funds – Notification of Income-tax Exemption
 - International Financial Service Center (IFSC) – Recent updates/ notifications
- **Indirect tax updates**
 - GST- Restrictions on using ITC for payment of GST liability
 - GST- Audit procedures
 - GST- E-invoicing Updates and other clarifications
 - Customs - Faceless Assessment
 - Customs - Facilitation measures for MSME as Authorised Economic Operator
- **Recent judicial pronouncements**
- **Annexures**

Economy/Regulatory updates

Economy/Regulatory updates

- **Indian economy and the Covid pandemic - GDP impact**
- **Production Linked Incentive (PLI) Schemes – New sectors.**
- **BPO and ITeS businesses- Relaxed operating guidelines**
- **International Trade and Tax Disputes**
 - International Arbitration panel rules against India's retrospective tax levy on indirect transfers
 - US Trade Representative (USTR) office holds India's digital tax (Equalisation Levy) discriminatory against US companies.

Direct tax updates

Extension of timelines for compliances

Income-tax Act, 1961 and Direct Tax Vivad se Vishwas Act,

Particulars	Original timeline	Extended timeline
Return of income		
Company; taxpayers liable to audit; partner of a firm liable to audit	31 October 2020	15 February 2021 [31 January 2021]
Taxpayers required to furnish form 3CEB	30 November 2020	
All other taxpayers	31 July 2020	10 January 2021 [31 December 2020]
Any audit report under the Income-tax Act		
	31 October 2020	15 January 2021 [31 December 2020]
Conclusion of TP assessment		
	20 March 2020 - 30 January 2021 [20 March 2020 – 31 December 2020]	31 January 2021
Conclusion of any other proceedings / action by tax authorities		
	20 March 2020 - 30 March 2021 [20 March 2020 – 31 December 2020]	31 March 2021
Any order under the DTVSV Act		
	20 March 2020 - 30 January 2021 [20 March 2020 – 30 December 2020]	31 January 2021 [31 December 2020]
Payment under the DTVSV Act[#]		
	within 15 days of order	31 March 2021
Payment of self-assessment tax for the limited purpose of computing 234A interest		
	Due date mentioned above	If amount of self-assessment tax is ≤ INR 100,000, revised dates mentioned above
		In all other cases, the original timelines

Notification No. 93/2020 dated 31 December 2020

#Circular No. 18/2020 dated 28 October 2020

Direct Tax Vivad se Vishwas Act, 2020 - Clarifications

- At the time of the Union Budget 2020, the Government introduced the Vivad se Vishwas Scheme – an amnesty scheme to settle pending litigation on income-tax matters
- Post this, the Direct Tax Vivad se Vishwas Act, 2020 was formally enacted on 17 March 2020
- While the scheme initially envisaged a short timeframe of 31 March 2020 and 30 June 2020 for making payments, these timelines were extended multiple times due to the advent of the COVID-19 pandemic
- The CBDT also issued clarifications on several aspects of the scheme. The CBDT has now issued certain additional clarifications vide Circular No. 21/2020 dated 4 December 2020. Some of the key clarifications are as under:



Eligible cases

- Appeal disposed post 31 Jan 2020 but before VSV application
- Enforceability of order stayed by HC / SC
- Appeal / writ against section 263 order containing specific directions and where income is quantifiable
- Belated appeals, subject to conditions
- Additional clarifications around identifying eligible cases vis-à-vis prosecution



Ineligible cases

- Proceedings before the Income-tax Settlement Commission
- Appeal against denial of registration to a Trust
- Order based on search in another taxpayer's case = 'search case'; threshold of INR 50 million applies
- TDS default cases where prosecution has been instituted
- Prosecution instituted for an assessment year, even if issues in appeal are not the subject matter of prosecution

Other key clarifications

- Any enhancement notice issued by Commissioner (Appeals) between 31 January 2020 to 4 December 2020 is required to be considered while computing disputed tax
- Even in case of separate orders for principal and interest on withholding tax liability, the taxpayer will be eligible for complete waiver of interest

Disclosure requirement under income-tax – relating to GST

Disclosure requirements in annual information statement (Form 26AS)

- A Central Board of Direct Taxes (CBDT) order# has recently been made public, whereby information related to GST will be updated in the Annual Information Statement [Form 26AS] within 3 months from the end of the month in which GST return is filed

PART H - Details of Turnover as per GSTR-3B						
Sr. No.	GSTIN	Application Reference Number (ARN)	Date of filing	Return Period	Taxable Turnover	Total Turnover
				Page 0 of 0		No Transactions Present
Notes:-						
1. The GSTIN data displayed above includes internal stock transfers as well						

Disclosure requirements in the tax audit report

44	Break-up of total expenditure of entities registered or not registered under the GST:(This Clause is kept in abeyance till 31st March, 2021)					
	S.No.	Total amount of Expenditure incurred during the year	Expenditure in respect of entities registered under GST Relating to goods or services exempt from GST	Relating to entities falling under composition scheme	Relating to other registered entities	Total payment to registered entities Expenditure relating to entities not registered under GST

Order F. No. 225/155/2020/ITA.II dated 29 September 2020

Exemption under section 10(23FE)

Notification of sovereign wealth fund

- From AY 2021-22, specified income of the following taxpayers is exempt from taxation:
 - Wholly-owned subsidiary of Abu Dhabi Investment Authority
 - Notified sovereign wealth fund
 - Notified pension fund
- The Central Government has now notified MIC Redwood 1 RSC Limited, Abu Dhabi, United Arab Emirates as the first sovereign wealth fund eligible for the aforementioned exemption, subject to conditions

Notification no. 89/2020/ F. No. 370133/16/2020-TPL dated 2 November 2020

International Financial Services Centre @ GIFT City

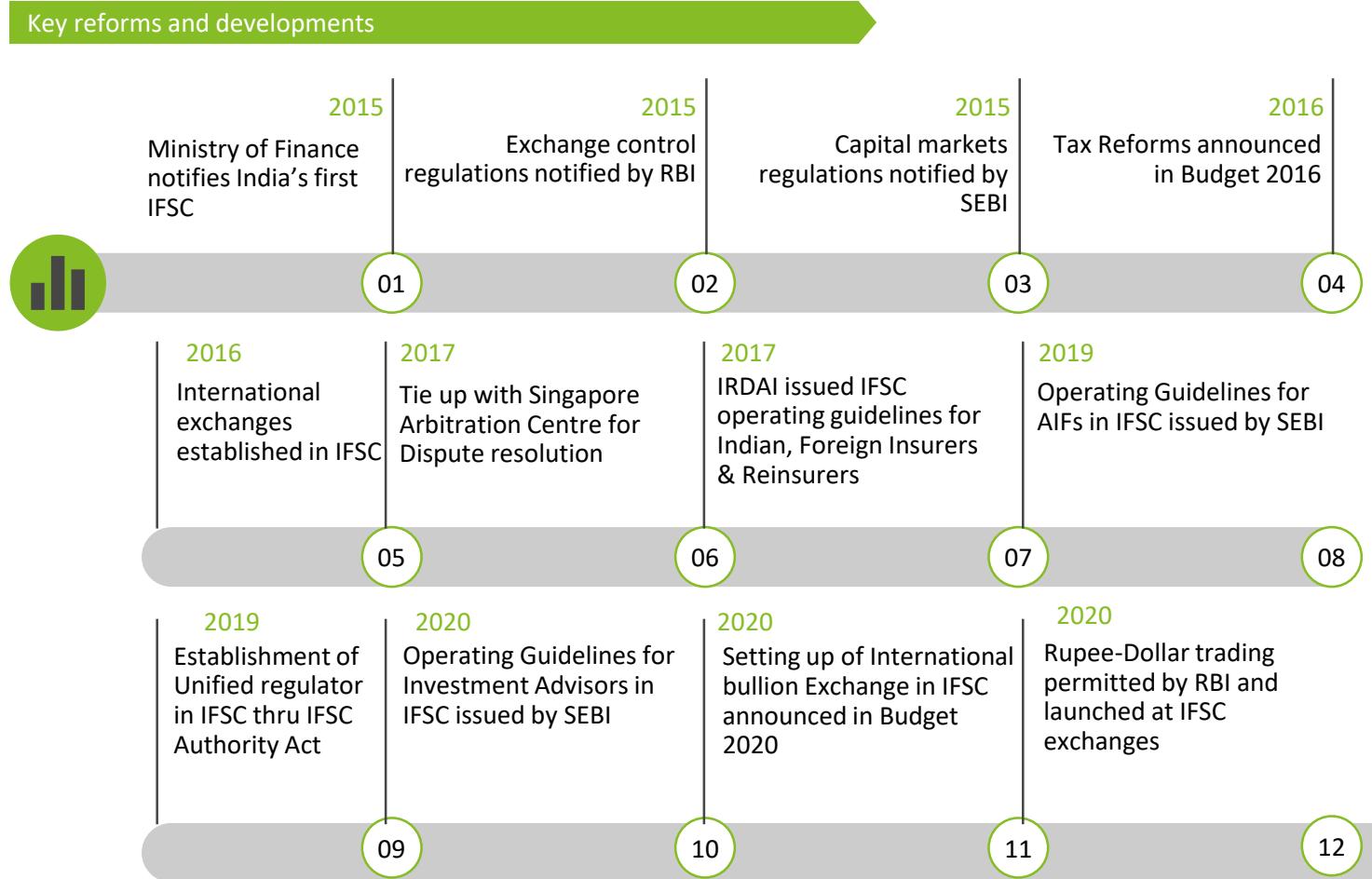
IFSC in India

- GIFT City approved as a Multi Services Special Economic Zone ('GIFT SEZ') under the Special Economic Zones Act, 2005 and also notified as India's IFSC.
- Launch of the IFSC at GIFT City is an important step towards bringing financial services transactions relatable to India, back to Indian shores.
- International Financial Services Centres Authority (IFSCA) established under the IFSCA Act, 2019 as a unified regulator for constituents in the IFSC.
- IFSC units are treated as non-residents for exchange control purposes.

Key activities in IFSC

Capital Markets	Offshore Banking	Offshore Insurance	Offshore Asset Management	Other Services
<ul style="list-style-type: none">• Stock Exchanges• Trading members• Segregated Nominee Account Providers• Clearing Corporations, Depositories, other intermediaries• Bullion exchanges and related services	<ul style="list-style-type: none">• Corporate Banking• ECB Lending• Servicing JV/WOS of Indian companies registered abroad• Factoring / Forfaiting of export receivables• Aircraft leasing	<ul style="list-style-type: none">• General / Life Insurance• Co-Insurance• Reinsurance• Captive Insurance etc.	<ul style="list-style-type: none">• Alternative Investment Funds• Mutual Funds• Portfolio Management Services etc.• Investment Advisors	<ul style="list-style-type: none">• Global-in-house centers• Fund Accounting• Legal, Accounting & Audit• Research & Analytics etc.• Risk Management etc.

IFSC Journey So Far



IFSC – Key income tax considerations

For units in IFSC

100% tax holiday under section 80LA, (even for units who opt for the concessional tax regime for domestic companies)

Prescribed documentation to be furnished, along with the return of income, to avail the tax holiday

Concessional rate of AMT and MAT of 9 percent (MAT not applicable if unit opts for the concessional tax regime for domestic companies)

For non-residents transacting remotely in IFSC exchanges

Exemption for capital gains realized on transfer of specified capital assets on an IFSC stock exchange; no STT

Exemption for interest income on deposits placed with an IBU / monies lent to an IFSC unit

Concessional tax rate of 4 percent for interest on specified bonds listed on IFSC stock exchange

For Alternative Investment Funds

Exemption for specified incomes of qualifying Category III AIFs

Exemption for unit holders of qualifying Category III AIFs for distributions from AIF and transfers of units of the AIF

Dispensation from certain tax compliances for non-resident investors in Category I and II AIFs located in an IFSC

IFSC – Recent initiatives

Global In-house Centres

Banking Regulations

International Bullion Exchange

Aircraft leasing

Relaxations provided to
AIFs

REITs and InvITs

Stock brokers and
clearing members

Listing of Depository
Receipts

Framework for
Regulatory Sandbox

Indirect tax updates

GST Updates

GST : Restriction on Payment of Tax via Input Tax credit

Rule 86B inserted w.e.f. 01 January 2021 to restrict the availment of ITC in certain cases

Provision

Restricts the use of ITC available in Electronic Credit Ledger to 99% of Output tax liability, where the value of taxable supply other than exempt supply and zero-rated supply, in a month, exceeds fifty lakh rupees.

Taxpayer or the Managing director or the Whole-Time Directors have paid Income Tax exceeding Rs. 1 lakh in each of the two preceding financial years

01

02

03

04

Exceptions

Taxpayer has received refund exceeding Rs. 1 lakhs u/s 54 of CGST Act 2017.

Taxpayer has discharged his liability towards output tax through the electronic cash ledger for an amount which is in excess of 1% of the total output tax liability, applied cumulatively, upto the said month in the current financial year

Where a person is a Government Department, Public Sector Undertaking (PSU), local authority or a statutory body.

Registered persons, who are covered under Rule 86B, shall not be allowed to furnish GSTR-1, if GSTR-3B has not been filed for preceding tax period

The allowed difference between matched eligible credit as per GSTR-2A and credit availed in returns has been reduced to 5% from existing 10%

GST Audits: Trade Circulars

Trade circulars issued in the States of Maharashtra and Karnataka to clarify the criteria and scope of GST Audits by the respective State GST officials

Maharashtra

- **Selection of cases for GST Audit:** On the basis of Tax Risk analysis from returns, annual returns filed and other statutory compliances made or not made, and / or simply by random selection of cases for audit.
- Officer has **power of a Municipal Court** to summon persons to give attendance and produce documents. However, to be used only if necessary and information requested is not being submitted.
- **27 documents/records have been listed** in the circular, which is to be kept ready by the dealer for verification.
- Among other things officer authorised to **verify stock of goods**, but cannot seize any Books of Accounts, Stock, Cash or other Documents. **Cannot carry out search during Audit.**

Karnataka

- **Selection of cases for GST Audit:** Two methods prescribed i.e. a) Wild Card Selection and b) Risk Based Scrutiny. Risk factors are also prescribed basis Turnover, ITC, Refund, Service Turnover, Transitional Credit availed etc.
- **Findings of Audit to be informed** to tax payer within **30 days** from conclusion of Audit
- **Audit to be completed with 3 months** from date of commencement. Power with Commissioner to extend time limit by a further period of not exceeding 6 months on request by the Officer.
- Among other things officer to **verify correctness of turnover**, exemptions, deductions, rate of tax applied, ITC availed & utilised, refund claimed and other relevant issues.

GST Audits picking momentum, other States to follow suit and issue instructions to clarify criteria, scope, rights and obligations of GST Auditors and Auditees to facilitate smooth conduct of Audits

GST E-invoicing – Updates and Key Issues Clarified via FAQs

E-INVOICE BASE EXPANDED	<ul style="list-style-type: none">E-invoicing for taxpayers having turnover exceeding INR 100 Crore applicable w.e.f 1 January 2021.Plans to further expand the base effective 1 April 2021	POINTS CLARIFIED UNDER FAQS <ul style="list-style-type: none">E-invoicing not applicable to NIL rated, wholly exempt supplies, high seas sales and Sale from Bonded warehousesFinancial/commercial credit notes not required to be reported to IRPPrinting of QR code on separate paper not allowed, printing QR code on invoice mandatoryPeriod of retention/storage/archival, in case of e-invoicing - 72 monthsE-invoice Offline utility, enabled to generate PDF copy of invoice (for save/print/e-mail etc.)E-invoicing to apply for Government Department if they are registered (Regular or TDS)Signature on E-invoicing and mandatory contents of invoice is governed by provisions of Rule 46 of CGST Rules
DYNAMIC QR CODE	<ul style="list-style-type: none">The requirement to print QR code by large tax payers (Turnover > Rs 500 cr.) in case of B2C supplies relaxed by virtue of waiving the levy of penalty (on non-printing of QR code upto 1 April 2021).	
E-INVOICING COMMON ERRORS	<ul style="list-style-type: none">Common errors while reporting invoices to Invoice Reference Portal (IRP) compiled and made available on e-invoice portal. Some errors listed:<ul style="list-style-type: none">Supplier is found to be of type ISD/NRTP/TCS/TDS/Composition TaxpayerDocument date is prior to effective date of registration or after effective date of cancellation of registration;Invoices reported as attracting "IGST on Intra-state supply" but without reverse charge;	
E-WAY Bill FOR E-INVOICES	<ul style="list-style-type: none">E-way Bills in case of transactions subject to E-invoicing to be mandatorily generated from E-invoice portal from 1 January 2021	
E-INVOICE & GSTR-1 LINKING	<ul style="list-style-type: none">Auto-population of details of invoices in GSTR-1 from e-invoicing portal from first week of December, 2020 on T+3 basis.	

Customs Updates

Customs: Recent Developments on Faceless Assessment

Circular No. 45/2020-Customs dated 12 October 2020 and 55/2020-Customs dated 17 December 2020- Clarifications to address issues impacting the pace of assessment and clearance of consignments

Faceless Assessment has been rolled out in a phased manner beginning June '20 and has been implemented across India from Oct'20

Grievance redressal - Turant Suvidha Kendra (TSK) at the port of import would act as Facilitation Helpdesk for any grievance related to clearances of the B/E filed in the port.

Certificate of origin (COO) - Submission of original hard copy of COO not required. To be uploaded on E-sanchit

Re-assessment procedure shall be in accordance with Principles of Natural Justice

Appeal shall lie before Commissioner (Appeals) having jurisdiction over the Port of Import, irrespective of the officers assessing the BoE

Continuous Assessment for prompt-clearances at all times. FAGs shall be working on all days (Except second Saturday)

Enhancement in the monetary limit for assessment by the Appraising Officers from existing limit of assessable value upto Rs. 1 lakh to Rs. 5 lakhs

Limited Resort to first check procedures such as:- In case of Old and used goods, Cases of re-import of goods, Articles of jewellery, precious metals etc.

Three routes prescribed for Re-assessment of BOE as under:

- Before out of charge(OOC) and impacts assessment
- Before OOC but would not impact assessment
- After OOC has been given under Section 47 of the Customs Act

No territorial jurisdiction assigned to Faceless Assessment Group (FAG). Each FAG will aim to ensure that assessment is undertaken in 5 hours

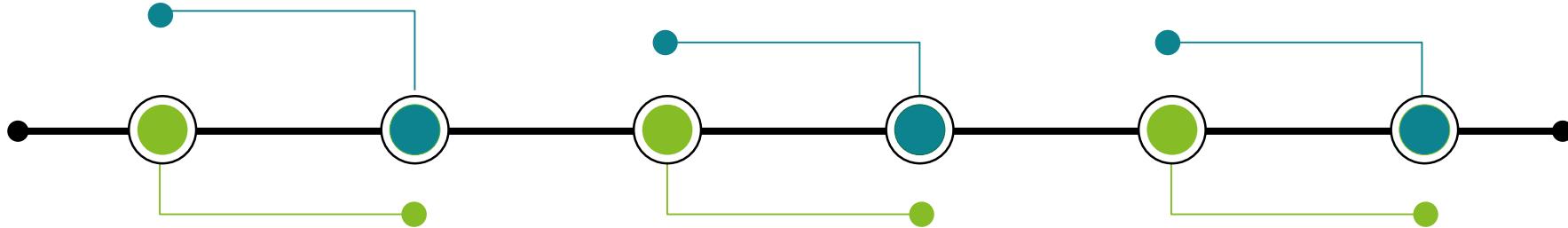
Customs : Special Measures for MSMEs under Authorized Economic Operator (AEO) scheme

Circular No. 54/2020-Customs dated 15 December 2020

Eligibility requirement of handling a minimum of 25 documents during the last financial year **relaxed to 10 documents subject to handling atleast 5 documents in each half year period of the preceding financial year**

- For AEO T1 certification only two annexures are required to be submitted by MSME and three annexures for AEO-T2.
- Annexures have been designed to simplify the application procedure with reduced documentation requirement

Time limit for processing of MSME AEO T1 & AEO T2 application has been reduced to 15 working days (*presently one month*) and 3 months (*presently 6 months*) respectively



Requirement for the applicant to have “business activities” for at least 3 years preceding the date of application **relaxed to 2 financial years.**

The qualifying period for legal and financial compliance has been reduced from the last 3 financial years to **last 2 financial years.**

Furnishing of bank guarantee by MSMEs has been relaxed from 50% to 25% for AEO T1 & from 25% to 10% for AEO T2-as against that required to be furnished by an importer/exporter who is not an AEO certificate holder.

Relaxation shall only apply to applicant having a valid MSME certificate from the line Ministry and approved MSME must ensure their continuous MSME status during the validity of its AEO accreditation

Recent judicial pronouncements

Direct taxes

Biocon Ltd.
[2020] 121 taxmann.com 351
(Kar. HC)

CIT v. Biocon Ltd.

[2020] 121 taxmann.com 351 (Kar. HC)

Facts of the case

- The taxpayer is a pharmaceutical company
- It introduced a scheme for Employees Stock Option Plans (ESOP) and constituted a Trust
- The shares of the taxpayer were transferred to the Trust at Face Value (FV)
- Employees were allowed to buy such shares within the time prescribed under the scheme
- The taxpayer claimed the difference between market price and allotment price as an expenditure under section 37

Issue under consideration

- Whether the ESOP expenses being the difference between the market price and allotment price is allowable as deduction in computing income under the head profit and gains of the business?

Decisions of tax authorities

Level	Decision	Rationale
AO	Disallowed	Difference between market price and allotment price not an “incurred” expenditure – held to be contingent in nature
CIT(A)	Disallowed	Dismissed the taxpayer’s appeal considering the AO’s contentions
ITAT	Allowed	Difference between the market value and the face value held to be part of remuneration / compensation for continuity of services, and not contingent

CIT v. Biocon Ltd.

[2020] 121 taxmann.com 351 (Kar. HC)

Decision of the Hon'ble Karnataka High Court

- The HC decided the issue in favor of the taxpayer:
- Deduction under section 37(1) is based on expenditure having been laid out or expended – a pay-out is not required
- Section 37 is not necessarily restricted to expenditure in cash
- On completion of the vesting period in the service of the company, the options vest with the employees – hence, liability is not contingent
[Bharat Earth Movers¹]
- The expression “expenditure” includes a “loss” – hence, issuance of shares at a discount is also an expenditure incurred
- Primary object is not to waste capital but to earn profits by securing consistent services – hence, not a short receipt of capital
- Deduction over the vesting period is in accordance with the books of account prepared in accordance with SEBI (ESOS and ESPS) Guidelines, 1999
- **Infosys Technologies Limited²** distinguished – question there was limited to withholding of taxes; subsequent amendment recognizes value of “real benefit” from ESOP in the hands of employees – perquisite taxation
- Agreement expressed with the views taken in **PVP Ventures Ltd.³** and **Lemon Tree Hotels Ltd.⁴** cases
- Based on **Radhasoami Satsang⁵**, deduction allowed in subsequent years considered to be relevant

¹ [2000] 245 ITR 428 (SC); ² [2008] 297 ITR 167 (SC); ³ [2012] 211 Taxman 554 (Mad. HC); ⁴ [2019] 104 taxmann.com 26 (Del. HC); ⁵ [1992] 193 ITR 321 (SC)

Giesecke & Devrient (India) Pvt. Ltd.
[2020] 120 taxmann.com 338
(Del. ITAT)

Addl. CIT v. Giesecke & Devrient (India) Pvt. Ltd.

[2020] 120 taxmann.com 338 (Del. ITAT)

Facts of the case

- The taxpayer is a subsidiary of a German entity, engaged in trading of currency verification and processing systems
- During the course of the appellate proceedings, the taxpayer filed additional grounds of appeal
- The taxpayer claimed that the lower dividend tax rate of 10% under the India-Germany tax treaty instead of the DDT of 15% plus surcharge and cess, under section 115-O of the Act

Decision of the ITAT

- DDT is a tax levied on the Indian company and not on shareholders; extensive reference to the Memorandum to Finance Bills 1997, 2003 and 2020
- Levy of DDT was merely for administrative convenience and the economic incidence of tax was always on the shareholders
- DDT is “tax” under the Act; its levy has genesis in the charging provision (section 4). The charging section itself is subject to section 90
- India-Germany tax treaty was notified on 29 November 1996 i.e. prior to the introduction of DDT regime by Finance Act, 1997
- Reference was made to New Skies Satellite BV1 – the rates specified in the tax treaty with respect to dividend would prevail over the DDT rate
- Conclusion: Levy of DDT on a company instead of shareholders would not restrict the applicability of the beneficial rate under the tax treat

¹ [2016] 382 ITR 114 (Delhi HC)

Redington (India) Limited

[2020] 122 taxmann.com 136 (Mad. HC)

PCIT v. Redington (India) Limited

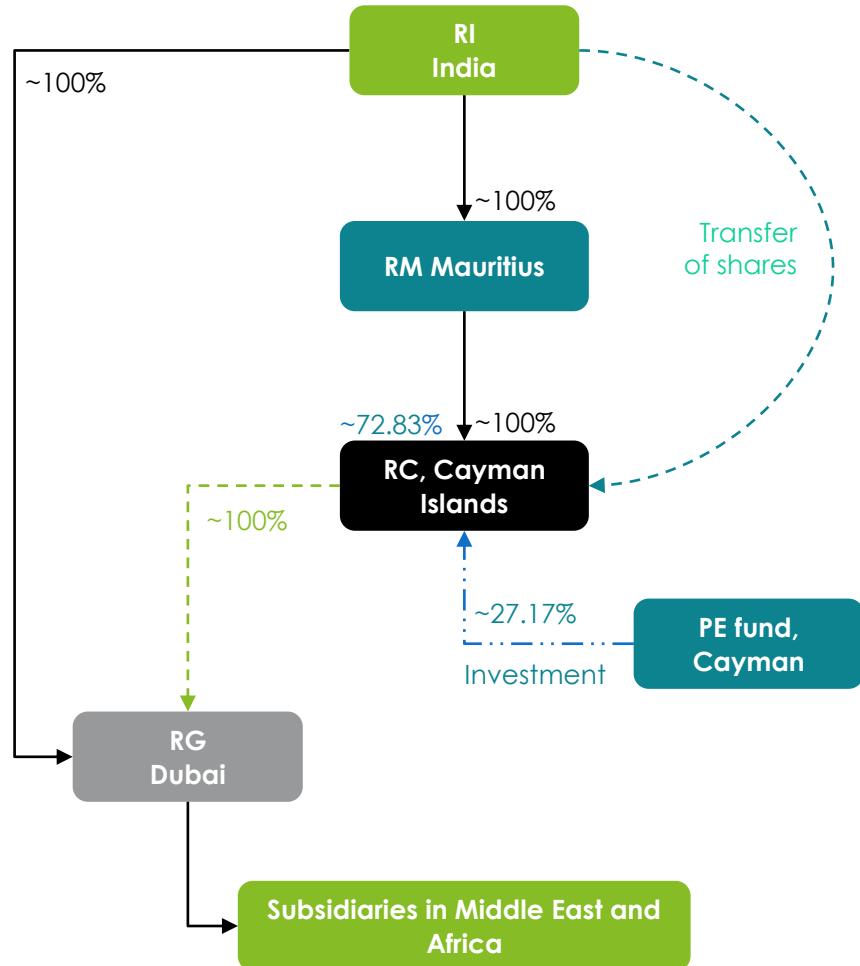
[2020] 122 taxmann.com 136 (Mad. HC)

Facts of the case

- The taxpayer (RI) is a company incorporated in India and has several overseas investments
- The overseas operation of the taxpayer in the Middle East and Africa were carried on through its wholly owned subsidiary (RG) in Jabel Ali Free Zone Authority (JAFZA), Dubai
- July 2008: The taxpayer set-up a subsidiary in Mauritius (RM) and a step-down subsidiary in Cayman Islands (RC)
- 13 November 2008: The taxpayer gifted its shareholding in RG to its step-down subsidiary RC
- 18 November 2008: A PE fund invested in RC for a stake of 27.17%

Assessment order

- The TPO made an adjustment to the price at which the shares were transferred (nil per the taxpayer, as it was a gift) on the basis that:
 - The transaction was an “international transaction” under section 92B
 - The transfer of shares to subsidiary was not a “gift” and hence, not exempt under section 47(iii) [which exempts transfer under a gift], but was rather not in line with the conditions under section 47(iv) [which exempts transfer of assets to a wholly owned Indian subsidiary]
- Certain other TP and non-TP adjustments were made in the order



PCIT v. Redington (India) Limited

[2020] 122 taxmann.com 136 (Mad. HC)

Decision of the Hon'ble Madras High Court

The HC observed as follows:

- The finding that as per the Transfer of Property Act (TOPA), even a company is entitled to execute a 'gift', is the correct legal position
- Essential elements of gift under TOPA: absence of consideration; donor; donee; voluntary; subject matter; transfer; and acceptance
- For a gift to be considered free & voluntary, the physical act of signing the deed should coincide with the intention to execute the gift
- Per the board resolution, the word "gift" was not used anywhere; the transfer of shares was towards "restructuring"; approval was accorded for transfer with or without consideration
- Based on the above, the HC inferred that the board did not contemplate a "gratuitous transfer", vitiating the "voluntary" nature of the transaction
- The sole intention was held to be a restructuring exercise to enable a third party investor to hold investments in RC (and indirectly in the RG); Cayman Islands being a tax haven
- Incorporation of companies in Mauritius and Cayman Islands just before the transfer held to be a means to avoid taxation in India. Hence, reliance on favorable judicial precedents was rejected on the basis that the transaction is one of avoidance

The HC inferred the absence of a voluntary element and the presence of consideration, the consequential failure to qualify as a valid gift under TOPA. Based on this, the transaction was held to be chargeable under the head 'capital gains'

This case represents yet another application of judicial anti-avoidance doctrine in the absence of specific legislation governing the identification and squaring off of purported tax avoidance transactions

Indirect taxes

Interglobe Aviation Ltd Vs Commissioner of Customs

2020-VIL-495-CESTAT-DEL-CU

Facts of the case

- Appellant is a scheduled airline operator engaged in the business of transportation of passengers and goods by air.
- Appellant imports the aircrafts and when parts of the aircrafts develop any defects, they are exported out of India for repairs.
- The repaired parts/ aircrafts are re-imported into India and at the time of re-import, these are assessed to basic Customs duty and IGST.
- Appellant claimed exemption at the time of re-import from payment of IGST under the Customs Exemption Notification No.45/2017-Customs dated 30 June 2017.

Issue

- Whether the phrase “duty of customs” used in the exemption notification would cover IGST or not, and thus help to determine whether exemption is available for IGST on re-import of such aircrafts.

Ruling

- The “duty of customs” appearing at SI No 2 of the Exemption Notification can have only that meaning which is assigned to it under section 2(15) of the Customs Act which would be the “duty” leviable under the Customs Act.
- Any other duty or tax which is not levied under the Customs Act, but levied under other enactments, cannot be treated as a “duty of customs” for the purpose of customs notification.
- Exemption shall be available w.r.t. IGST as the same is not “duty of customs”.

Thank you!

Kindly spare a minute to help us with your valuable feedback for today's session...

For any queries, please feel free to write to us at intax@deloitte.com

Annexures

Equalisation Levy (Amendment) Rules, 2020

- The scope 'Equalisation Levy' was expanded recently
- Under the expanded scope, online sale of goods, online provision of services or facilitation thereof or any combination thereof by non-residents is now liable to Equalization Levy @ 2% of the gross value
- In view of the aforesaid amendments, the Central Government has amended the Equalisation Levy Rules, 2016. These changes are procedural in nature, incorporating the expanded scope of the Levy under the Finance Act
- Corresponding changes have been notified in the following forms:
 - Form 1: Statement of Specified Services or E-Commerce Supply or Services
 - Form 3: Appeal to the Commissioner of Income-tax (Appeals)
 - Form 4: Form of Appeal to the Appellate Tribunal

Global In-House Centres in IFSC

Regulations and various circulars issued

- Global in-House Centres ('GIC') notified as a financial service – Notification s.o. 3653(E) dated October 16, 2020
- IFSCA notified the International Financial Services Centres Authority (Global In-House Centres) Regulations, 2020 – Notification IFSCA/2020-21/GN/REG 003 dated November 13, 2020
- IFSCA provided the format for making application and the post registration reporting requirements for GICs operating at IFSC – Circular F. No. 29/IFSCA/GIC/2020-21 dated November 18, 2020

Key announcements

- GICs can be set up in the IFSC for rendering support services to non-resident 'financial services groups' in FATF compliant jurisdictions for carrying out a financial service in respect of a financial product.
- Financial services groups include any entity which is regulated by a financial services regulator or any other competent body regulating financial services activities in its home jurisdiction and include its holding, subsidiary or associate companies, branch, or subsidiary of a holding company to which it is also a subsidiary.
- Clients of the GIC may include banks and non-banking financial companies, financial intermediaries, investment banks, insurance companies, re-insurance companies, actuaries, brokerage firms, funds, stock exchanges, clearing houses, depositories, and custodian
- GIC shall deal in freely convertible foreign currency only. However, GIC may pay administrative expenses in INR subject to maintenance of account of INR account as may be specified by IFSCA.
- Relocation of employees from an existing entity in the domestic area in India shall be permissible with respect to supervisory personnel only, which may be allowed with prior approval of the IFSCA up to a maximum of twenty percent of the strength in such category.

Regulations and various circulars issued

- IFSCA notified the International Financial Services Centres Authority (Banking) Regulations, 2020 – Notification IFSCA/2020-21/GN/REG004 dated November 20, 2020
- Adoption of directions / circulars / guidelines issued by RBI under various statutes - Circular F.No.110/IFSCA/Banking Regulation/2020-21/1 dated December 4, 2020
- Adoption of comprehensive guidelines on derivatives issued by RBI, subject to certain modifications - Circular F.No.110/IFSCA/Banking Regulation/2020-21/2 dated December 4, 2020
- IFSCA issued International Financial Services Centres Authority (Deposits) Directions, 2020 - Circular F.No.110/IFSCA/Banking Regulation/2020-21/3 dated December 4, 2020
- IFSCA has issued directions on business in foreign currency at IFSC - Circular F.No.110/IFSCA/Banking Regulation/2020-21/4 dated December 4, 2020
- Prudential regulatory requirements prescribed for BUs in IFSC - Circular F.No.110/IFSCA/Banking Regulation/2020-21/5 dated December 4, 2020
- IFSCA issued guideline on determination of net worth of 'Qualified Individual' and 'Qualified Resident Individual' – Circular F.No.110-1/IFSCA/Banking Regulation/2020-21/6 dated December 11, 2020
- IFSCA issued instructions and clarifications on circulars issued under the IFSC (Banking) Regulations, 2020 – Circular F.No.110/IFSCA/Banking Regulation/2020-21/7 dated December 24, 2020
- Transfer of assets through loan participation agreement permitted – Circular F.No.110/IFSCA/Banking Regulation/2020-21/8 dated December 30, 2020

Eligibility criteria and requirements

- Indian banks – any bank incorporated or established under any Act, and includes a wholly owned subsidiary of a foreign bank incorporated in India, but does not include a co-operative bank.
- Foreign banks - a banking company incorporated or established outside India.
- Eligible banks can set-up only one BU in each IFSC, as a branch.

Licensing considerations

- Specific permission from the home country regulator to set-up BUs in IFSCs.
- BUs in IFSC will be treated at par with a foreign branch of an Indian bank.

Capital considerations

- Parent Bank to provide minimum capital of US\$ 20 million or equivalent in any foreign currency to its BU.
- Regulatory capital to be maintained on an unimpaired basis, at all times.
- The parent bank will also be required to provide an undertaking to provide liquidity to its BU, whenever needed. No liquidity support or LOLR support will be available to BUs.
- Need to comply with applicable prudential norms issued by RBI, unless otherwise specified by IFSCA.

Lending considerations

- The liabilities of the BU (other than deposits raised from qualified individuals ('QI') and qualified resident individuals (QRIs') (non-resident individual in case QIs and resident individuals in case of QRIs having net worth >= US\$ 1 million or equivalent in preceding FY, determined as per the prescribed guidelines), are exempt from both Cash Reserve Ratio (CRR) and Statutory Liquidity Ratio (SLR), requirements.
- BUs in IFSC to maintain Liquidity Coverage Ratio (LCR) of 90% till March 31, 2021 and of 100% from April 1, 2021 onwards, Leverage Ratio and Retail Deposit Reserve Ratio (RDRR). Net stable funding ratio(NSFR) shall not be applicable at present. Certain ratios could be maintained at the parent bank level, subject to requisite approvals.
- Credit concentration norms in case of BUs:
 - 5 percent of parent bank's Tier 1 capital for single borrower;
 - 10 percent of parent bank's Tier 1 capital for a borrower group.
- Deposits of BUs will not be eligible for centralized deposit insurance scheme.
- The BUs are required to maintain separate Nostro accounts with correspondent banks distinct from those of other branches in India.

Others

- Investment advisory services and wealth management services are not currently included in the list of permissible activities for BUs in IFSC.

Permissible activities

Source of funds

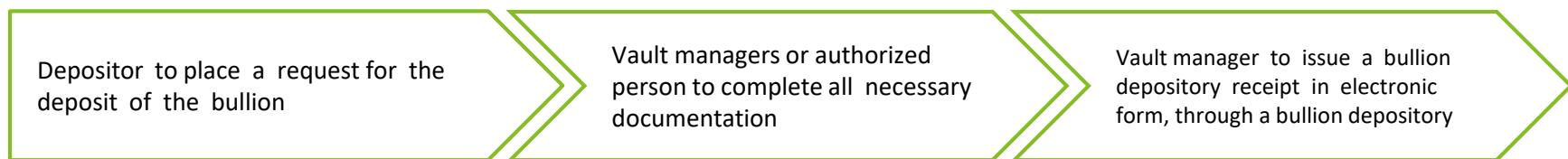
- Borrow funds, including in foreign currency, from its parent, domestic branches of Indian banks, overseas branches of Indian banks and a person resident outside India (including other BUs).
- Accept deposits from persons residents in India and persons residents outside India as per the provisions of the IFSCA (Deposit) Directions, 2020.

Application of funds: to resident and non-resident clients

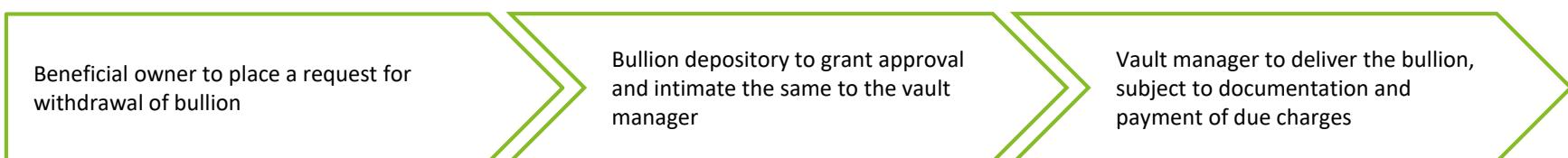
- Lend in the form of loans, trade finances and acceptances, commitments and guarantees, carry out credit enhancement, credit insurance, and sale and purchase of portfolios
- inter-bank borrowings and lending
- Undertake investments, including subscribing, acquiring, holding, underwriting or transferring securities, etc.
- Extend Post-Shipment Export Credit in foreign currency and factoring / forfaiting of export receivable
- Undertake equipment leasing, including aircraft leasing
- Participate in permissible derivative transactions
- Function as a trading member for trading in interest rate or currency derivatives or as a professional clearing member for clearing and settlements in any derivative segment
- Operate as a Foreign portfolio investor, subject to requisite approvals (detailed directions to be issued separately)
- Open foreign currency accounts, as may be permitted
- Lend INR denominated bonds

IFSCA notified the International Financial Services Centres Authority (Bullion Exchange) Regulations,2020 – Notification IFSCA/2020-21/GN/REG005 dated December 11, 2020

- In August 2020, certain financial products and financial services related to bullion depository receipts and bullion spot delivery contracts were notified as financial services under the IFSCA Act, 2019, granting IFSCA the powers to regulate them.
- In December 2020, International Financial Services Centres Authority (Bullion Exchange) Regulations,2020 were notified, to operationalize the bullion exchange.
- The regulation, *inter alia*, covers the (a) bullion exchange, (b) bullion clearing corporation, (c) bullion depository, and (d) vault manager.
- Procedure for issuance of bullion depository receipts is as under:



- Procedure for withdrawal of depository receipts is as under:



- Key regulations in respect of the bullion exchanges in IFSC:

Bullion exchange and bullion clearing corporation	Company having net worth \geq US\$ 30 million, on a continuous basis	Fulfils other criteria (viz. infrastructure, etc.)	Prescribed limits for shareholding	Records of securities transactions to be preserved for atleast 8 years	Consumer Education and Protection Fund and Fund to guarantee settlement of trades
Bullion Depositories	Net worth \geq US\$ 15 million, on a continuous basis	Requisite infrastructure and controls	Adequate arrangements including insurance	Register and index of beneficial owners	Pledge or hypothecation of bullion
Vault managers	Manages the vault empanelled for carrying on the vaulting business	IFSCA to prescribe requirements (viz net worth, etc.)	Compensation for damage and insurance cover	Records and accounts of all transactions	Inspection of records and accounts
Other miscellaneous requirements	Application to IFSCA in prescribed form and manner	Maintenance of website	Annual submission of audited net worth certificate	Books of accounts, etc. to be preserved for atleast 5 years	Submission of returns, reports and accounts, etc. to be prescribed

- Regulation also provide for registration of intermediaries and persons associated with the bullion market.

Aircraft Leasing activities in IFSC

- Aircraft lease notified as a financial product – Notification s.o. 3652(E) dated October 16, 2020
- Consultation paper on proposed aircraft leasing regulations released for public comments – Circular issued on December 16, 2020
- Aircraft leasing to include operating and financial leases and any hybrid of operating or financial leases of aircraft or helicopter and engines of aircraft or helicopter or any parts thereof. Permitted aircraft leasing activities will also include sale and lease back, novation, transfer, assignment, securitization and such related transactions in relation to aircraft, helicopters, engines or any other part thereof;
- Interested lessors (and the entity who will control the IFSC unit) from FATF compliant jurisdictions may apply for registration as lessors; the IFSC unit must maintain minimum capital of US\$ 200,000 or its equivalent in freely convertible foreign currency at all times and meet additional capital adequacy prescriptions on an ongoing basis. Lessors may include a bank, a non-banking finance company, a leasing finance company or an operating lessor.

IFSCA permits eligible foreign entities to set up a branch office in IFSC and operate as stock brokers and clearing members – Circular F. No. 113/IFSCA/CMD-TMCM/2020-21 dated December 11, 2020

- Eligible foreign entities permitted to set up a branch office in IFSC and operate as stock brokers, clearing members and self clearing members, subject to approval by IFSCA.
- Key announcements, inter alia, include the following:
 - Entities should be from an FATF compliant Jurisdiction, regulated by the securities market regulator in its home jurisdiction and have adequately ring fenced the operational, technology and financial aspects of its branch in IFSC from its overseas operations
 - Trading servers of the entity shall be located within the IFSC
 - Branch office shall have a Designated Director/Compliance Officer for ensuring timely compliance and reporting
 - Net worth requirements for stock brokers, clearing members and self-clearing members shall be USD 135,000, USD 1,350,000 and USD 6,75,000 respectively.
 - Branch office shall at all times comply with net worth and reporting requirements prescribed by IFSCA / stock exchange / clearing corporation as applicable

IFSCA liberalises regulations governing Alternative Investment Funds (AIFs) in International Financial Services Centres (IFSCs) – Circular F. No. 81/IFSCA/AIFs/2020-21 dated December 9, 2020

- Relaxations provided w.r.t. leverage requirements, allows co-investments by segregated portfolio and investments, and exempts the applicability of investment diversification norms for AIFs set up in IFSCs, subject to prescribed disclosures.

IFSCA enacted the regulatory framework for listing of depository receipts in the IFSC – Circular F. No. 87/IFSCA/DRs/2020-21 dated October 28, 2020

- Indian company (outside IFSC) or a foreign company is eligible to make an issue of depository receipts, subject to the prescribed conditions with respect to listing in home jurisdiction, pari passu ranking, dematerialisation, eligibility conditions for the issuer, promoters, promoter group and directors, etc.

Others

- Guidelines for functioning of 'Regulatory Sandbox' – Circular F. No. 71/IFSCA/CMD-RS/2020-21 dated October 19, 2020
- Regulatory framework for Infrastructure Investment Trusts ('InvITs') and Real Estate Investment Trusts ('REITs') in IFSCs prescribed – Circular F. No. 41/IFSCA/SEBI/REITs-InvITs/2020-21 dated October 21, 2020

Other recent Advance Rulings/Case Laws - GST

Particulars	Issue under consideration	Ruling
M/s Page Industries Ltd. – Karnataka Advance Ruling Authorities	Whether input tax credit in relation to promotional/marketing items procured by the applicant and sent FOC to the point of purchase i.e. their own showrooms, showrooms of their distributors or dealer's is admissible	<ul style="list-style-type: none"> Credit is available in case of Non-distributable goods (where title is not transferred). However, reversal to be done at the time of disposal as per Rule 43 of CGST rules In case of Distributable Goods, when sent on FOC basis to franchisee/exclusive retailers, shall be treated as related party transaction as per Schedule I, as Franchisee/Exclusive retailers are sole distributors of the applicant. However, when such Distributable goods are sent to other retailers, the authorities have treated such goods as gifts. Thus ruled that ITC shall not be eligible on the same in terms of Sec 17 (5)

Particulars	Issue under consideration	Ruling	Status Update
VKC Footsteps India Pvt. Limited - Gujarat High Court	Whether amended Rule 89 (5) of the CGST Rules, 2017 restricting refund claimed under inverted duty structure of input tax credit is ultra-vires and accordingly, whether taxes paid on input services are eligible for refund	High court allowed the claim of refund made by the Company considering the unutilized input tax credit of 'input services' as a part of Net ITC	Government of India has challenged the Gujarat High Court's decision before the Hon'ble Supreme Court in November 2020
Mohit Minerals Pvt. Ltd. - Gujarat High Court	Legal Validity of taxability of Ocean freight for the services provided by a person located in a non-taxable territory by way of transportation of goods by a vessel from a place outside India upto the customs stations of clearance in India in hands of Importer	High court held that the instant provisions are ultra vires the IGST Act, 2017 on the ground that the same lacked legislative competency. It was held that relevant entries in both the notifications (i.e. 08/2017-IGST (Rate) and 10/2017-IGST) were unconstitutional. This was followed by favourable rulings in few other High Court matters	Government of India has challenged the Gujarat High Court's decision before the Hon'ble Supreme Court in October 2020.

Other GST Updates: Recent Advisories and Notifications

 <h2>Annual Compliance for FY 2019-20</h2> <ul style="list-style-type: none">Due date for filing GSTR-9 and GSTR-9C for FY 2019-20 extended to 28 February 2021GSTR-9 for FY 2019-20 has also been made optional for registered persons whose aggregate turnover in a financial year does not exceed INR 2 croreGSTR-9C for FY 2019-20 made optional for registered persons whose aggregate turnover in a financial year does not exceed INR 5 crore	 <h2>Recent Updates in GST Forms</h2> <p>Form GSTR-2A</p> <ul style="list-style-type: none">New tabs capturing details of import of goods from overseas and SEZ units/ developersB2B details shall also include Document type, RCM invoices, period of filing, period of amendment etc. <p>Form GSTR-1</p> <p>HSN wise summary of outward supplies (in Table-12) would now need to be furnished rate wise also</p> <p>Form GSTR-5</p> <p>Interest amount would now be required to be stated place of supply wise</p>	 <h2>Provisions of GST Act notified w.e.f. 01 January 2021</h2> <ul style="list-style-type: none">Time limit for availing input tax credit on debit notes relaxed by way of delinking date of debit note from the date of original invoice.Fraudulent availment of input tax credit without an invoice or bill is now prescribed to be cognizable and non-bailable offence.Scope of penal and prosecution provisions broadened to cover beneficiaries who gain benefits out of the specified offences and at whose instance such offences are conducted/committed	 <h2>Additional Power to the officers</h2> <ul style="list-style-type: none">Notice to be issued in REG-31 in case officers observes that there are significant deviation/anomalies indicating contravention of the provisions of the Act.No opportunity of being heard shall be given for suspension of GSTIN, where the officer has reasons to believe that the registration of person is liable to be cancelled.Registration related provisions tightened to include biometric based AADHAR authentication for certain specified applicants.	 <h2>Other GST Amendments</h2> <ul style="list-style-type: none">Auto-population of details in Form GSTR-3B on the basis of Form GSTR-1 & 2B for monthly tax payersMandatory to report HSN in the tax invoice w.e.f. 01 April, 2021 at 4/6/8 digit levelValidity of E-way bill changed to 1 day for every 200 Km instead of 100 Km w.e.f 1 January 2021.Late fee payable (during Nov'20 to Dec' 20) for delay in furnishing of Form GSTR 4 for FY 2019-20 for person located in the Ladakh has been waived off.
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Other GST Updates: Recent Advisories and Notifications

Amendments in relation to registration vide Notification no. 92/2020-CT and 94/2020 CT dated 22nd December, 2020

Area of Amendment	Amendment	Effective Date
Cancellation of Registration (Section 29)	Voluntarily registered persons are allowed to apply for cancellation of registration.	01/01/2021
Revocation of cancellation of Registration (Section 30)	Additional/Joint Commissioner, Commissioner empowered to extend the timelines for filing an application for revocation of cancellation of registration.	01/01/2021
GST Registration (Rule 8)	<p>Registration application in GST REG-01 shall be deemed to be complete only if, submission of application is followed by:-</p> <ul style="list-style-type: none"> a) Biometric based Aadhar Authentication and photograph taken of Authorised Signatory/Authorised Representative/Managing Director etc., b) If authentication of Aadhar Number not opted for then- the biometric information, photograph and other KYC Documents, <p>Shall be taken to the facilitation centre notified by the Commissioner.</p>	To be notified later
Approval of Registration application (Rule 9)	<ol style="list-style-type: none"> 1. Time limit for approval of application increased from 3 days to 7 days 2. Time limit for officer to seek clarifications on application increased from 3 days to 7 days 3. Time limit in both above cases increased to 30 days where Aadhar authentication/other KYC not done & requires physical inspection by officer. 	22/12/2020
Cancellation of Registration (Rule 21)	<p>Additional Grounds inserted where registration may be cancelled:-</p> <ol style="list-style-type: none"> 1. Availment of ITC in violation of Section 16 of CGST Act or Rules made thereunder. 2. Under reporting value of output supplies made in GSTR-3B vs GSTR-1 for one or more tax periods. 3. Does not pay at least 1% of tax liability in cash, where liable to be made. 	22/12/2020
Suspension of Registration (Rule 21A)	<p>Amendment made to remove the adherence to principle of natural justice for suspension of registration by removing portion in relation to “providing the registered person a reasonable opportunity of being heard”</p> <p>New instances added when officer can suspend registration.</p> <ol style="list-style-type: none"> 1. Significant differences in output supplies between GSTR-3B with GSTR-1 and input supplies with GSTR-3B and GSTR-2A/GSTR-2B 2. Any anomaly found as per any other analysis performed by the officers. 	22/12/2020

Other Indirect tax developments

- 1 **Blocking of E-way bill** for all taxpayers [irrespective of aggregate annual turnover] in case of non filing of return for two consecutive tax periods.
- 2 Proposals invited for formation of a dedicated Export Promotion Council (EPC) for Technical Textiles
- 3 **Electronic filing** and Issuance of Preferential **Certificate of Origin** (CoO) for India's Exports under GSP, GSTP, India-Malaysia CECA, India-Singapore CECA w.e.f. **15th October 2020**
- 4 Instruction issued for time bound processing of Duty Drawback claims. All remaining claims to be disposed of by 31 March, 2021 and target disposing time for future claims is set at 7 days.
- 5 Circular issued to address difficulties being faced with respect to verification requests made in terms of Rule 6 of CAROTAR 2020
- 6 Restriction on filing Form GSTR 1 if GSTR 3B for preceding two months not filed
- 7 The EVC facility for filing GSTR-1 and GSTR-3B for corporate tax payers provided in wake of Covid-19 has been withdrawn w.e.f. 23rd October, 2020
- 8 New Facility added on the GSTN Portal to view aggregate turnover slab for a taxpayer. Also, facility to communicate between the tax payers has been activated.
- 9 E-invoice enablement status can be searched on trial portal. The status is based on turnover in GSTR-3B which may contain exempt entities as well. If E-invoicing is applicable but not enabled, same can be requested
- 10 The government has extended the benefit of the Scheme for RoDTEP (Remission of Duties and Taxes on Exported Products) to all export goods with effect from 1st January, 2021.



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