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## India TaxHour Quarterly India tax updates

July – September 2023

4 October 2023

# Subject matter experts

We will discuss...

- **Economy/International tax/Regulatory updates**
- **Direct tax updates**
  - Electronic filing for availing lower tax treaty rates
  - Amendments to rules regarding valuation of share premiums
  - Valuation of residential accommodation etc.
- **Indirect tax updates**
  - 50th GST Council meeting-circulars and notifications
  - Import curbs on IT-hardware etc.
- **Recent judicial pronouncements**

# Economy/International tax/Regulatory updates

## Indian Economy - Growth and Inflation indicators; Tax collections

### **G20 Leaders' Declaration, New Delhi, 9-10 September 2023**

#### **International Taxation:**

##### **Base Erosion and Profit Shifting ( BEPS) Project -Pillar 1 and Pillar 2) under G20/OECD Inclusive Framework (IF) :**

On Pillar 1 - G20/OECD Inclusive Framework (IF) to prepare Multilateral Convention ( MLC) for signature in the second half of 2023. Work on 'Amount B' (arm's-length return for in-scope transactions) to be completed by end of 2023.

On Pillar 2 - Acknowledges significant progress on development of the Subject to Tax Rule (STTR)

#### **Regime for Crypto-Assets and Foreign Assets:**

- Endorses regulation of crypto-assets activities and markets.
- Coordinated policy framework and implementation to address money laundering and terrorism financing risks.
- Implementation of Crypto-Asset Reporting Framework (CARF) and amendments to Common Reporting Standard (CRS); information exchanges by 2027

#### **Global Digital Public Infrastructure Repository ( GDPIR)**

- Welcomes India's plan to build and maintain a virtual repository of Digital Public Infrastructure for use by other countries

#### **India-Regulatory Updates**

- **Digital Personal Data Protection Bill 2023** passed by Parliament in August 2023
- Amendments to **Prevention of Money Laundering ( PML) (Maintenance of Records) Rules** broadens scope of 'beneficial owner' under PML Act

# Direct tax updates

# Claiming treaty benefits - Electronic filing of Form 10F w.e.f 1 October 2023

## Recent Updates

Form 10F to be now filed electronically from 1 October 2023.

Earlier option of manual filing (of Form 10F) in certain cases till 30 September 2023 not extended.

## Key considerations

Tax Authorities may deny benefit if not e-filed

Timing for filing Form 10F

## Existing Provisions

Non-resident to obtain Tax Residency Certificate (TRC) to avail the tax treaty benefit

Form 10F required where the TRC does not capture the prescribed details

Payer to ensure compliance

Special provisions for Significant Economic Presence cases

# Valuation of share premiums received by a closely held company – Rule 11UA amended on 25 September 2023

Excess share premium (above Fair Market Value - FMV) on shares issued to any person is taxed in the hands of the issuer closely held company

Existing valuation rule i.e. Rule 11UA of the Income-tax Rules now amended (25 September 2023)



## Main features of the amended Rule 11UA:

- Adjusted Net Asset Value (NAV) and Discounted Cash Flow (DCF) valuation methods retained
- 5 new valuation methods\* introduced for shares issued to non-residents
- Safe harbour of 10% over valuation price
- In case shares issued to specific classes of investors\*\* - Price & Consideration matching for issuances to other investors within 90 days
- Valuation of Compulsorily Convertible Preference Shares (CCPS) now linked to valuation of equity shares

\* Comparable Company Multiple Method, Probability Weighted Expected Return Method, Option Pricing Method, Milestone Analysis Method, Replacement Cost Method.

\*\* Investment in VCUs by VCFs/VCCs/specify funds, investment in approved Startup companies by any person, investment in any company by notified entities (i.e., Government related entities, banks/insurance companies, certain entities resident in 21 foreign countries).

# Other updates

## Residential accommodation provided by employer

- Amendment in Rule 3 of the Income-tax Rules notified on 18 August 2023; will come into force from 1 September 2023.
- Revises existing perquisite valuation for employer provided residential accommodation.



## Taxation of proceeds of non-ULIP life insurance policies

- Rule 11UACA of the Income-tax Rules and guidelines u/s 10(10D) of the ITA issued on 16 August 2023.
- Covers income computation in case of receipts from non-ULIP life insurance policies.



## Form for claiming deduction for certain preliminary expenses

- Form No. 3AF notified on 1 August 2023, will come into force from 1 April 2024.
- Taxpayers to provide details in the Form to claim deduction for preliminary expenditure under the ITA.



## No withholding on ship lease payment made to a unit located in IFSC\*\*

- New Form No. 1 (under the notification u/s 197A of the ITA) issued on 1 August 2023, will come into force from 1 September 2023.
- The Form prescribes format of statement-cum-declaration which the lessor will furnish to the lessee.
- Consequently, no TDS u/s 194-I on lease payments by lessee to lessor for lease of a ship.
- \*\*International Financial Services Centre



Increased rates of Tax Collection at Source (TCS) on foreign remittances applicable from 1 October 2023.

# Indirect tax updates

## **Amendment to Sch. III**

Amendments has been made to law to include online gaming and horse racing in schedule III as taxable actionable claims.

## **28% rate of tax**

Casino, Horse Racing and Online gaming to be taxed at the uniform rate of 28%.

## **Taxable value**

Specific rule has been inserted for valuation of such supplies - Tax will be applicable on the chips purchased in the case of casinos, on the full value of the bets placed with bookmaker/totalizator in the case of Horse Racing and on the full value of the bets placed in case of the Online Gaming

It's crucial to note that any amount returned or refunded to the player or any unused amount by the player cannot be deducted from the value.

# HC Karnataka | Whether offline/online games tantamount to gambling or betting'

Directorate General Of GST Intelligence Vs Gameskraft Technologies Pvt Ltd (2023-TIOL-130-SC-GST)



## Facts of the case

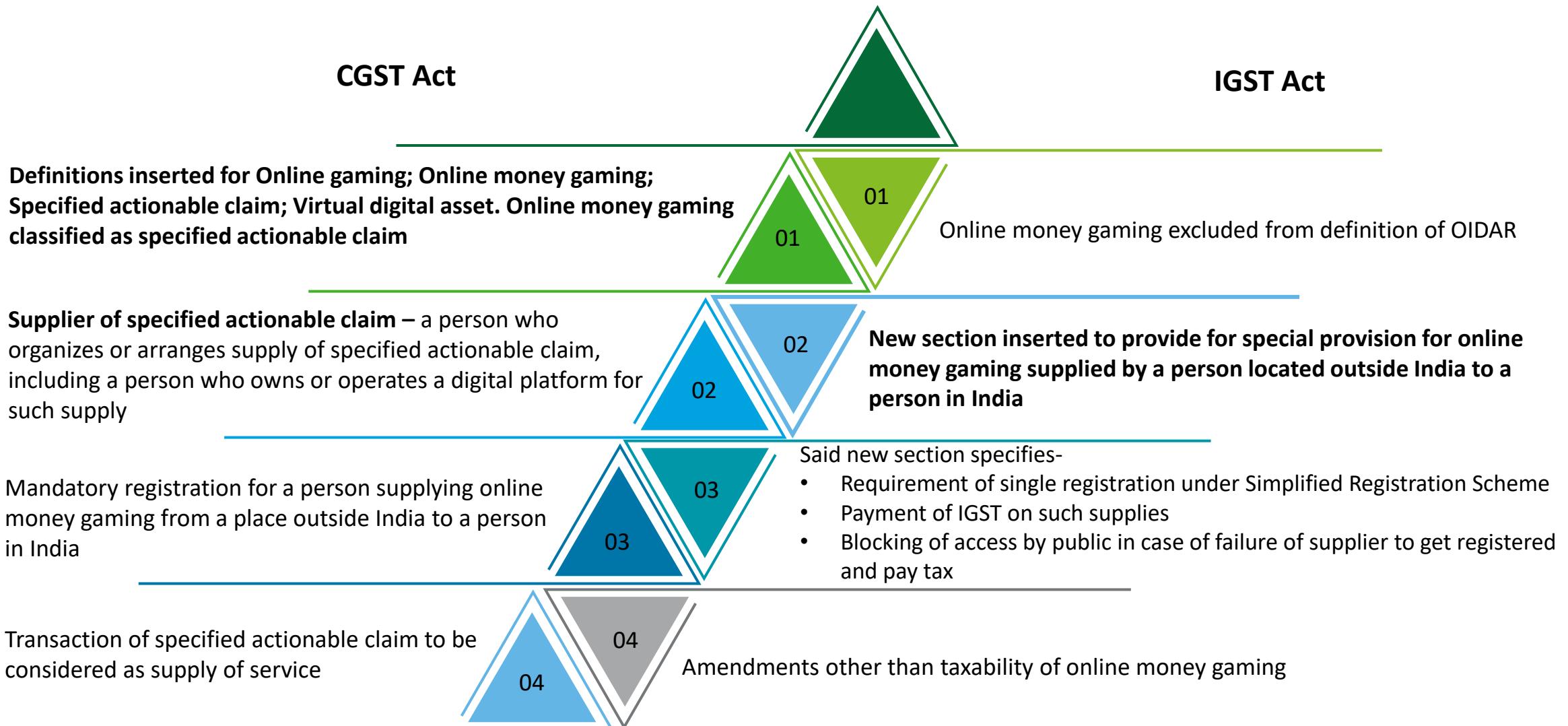
- Gameskraft - Online Intermediary Company incorporated in June 2017 runs technology platforms that allow users to play skill based online games against each other.
- Intimation Notice issued under Section 74(5) of the CGST Act with a demand of INR 21,000 crore.
- HC has allowed the petition basis –
  - ‘Betting’ and ‘Gambling’ contained in Entry 6 of Schedule III to the CGST Act are not applicable to Online/Electronic/Digital Rummy
  - The subject Online / Electronic / Digital Rummy game and other Online / Electronic / Digital games played on the Petitioners’ platforms are not taxable as ‘Betting’ and ‘Gambling’ as contended by the respondents
- **Issue** - Whether offline/online games such as Rummy which are mainly or preponderantly based on skill and not on chance, whether played with/without stakes tantamount to ‘gambling or betting’ as contemplated in Entry 6 of Schedule III of the CGST Act



## Observations by Supreme Court

- SLP has been filed before Supreme Court by Revenue.
- SC has provided stay on the HC ruling.

# GST Council recommendations - Amendment bill passed on August 11, 2023



# GST - Trade facilitation measures – July 2023

## Clarification through circular

### GSTAT

GSTAT (Appointment and Conditions of Service of President and Members) Rules, 2023 to notified

### ISD

Cir. 199/11/2023-GST - ISD mechanism is not mandatory per the present provisions of GST law

### ITC reversal

Cir. 195/04/2023-GST - No requirement for ITC reversal for replacement of parts and/ or repair service during warranty period

### TCS

Cir. 194/06/2023-GST - TCS liability where multiple ECO's are involved in a single transaction

### ECO/ OIDAR

Only name of the State of the recipient to be mentioned on the tax invoice for B2C supply of services

### Annual returns

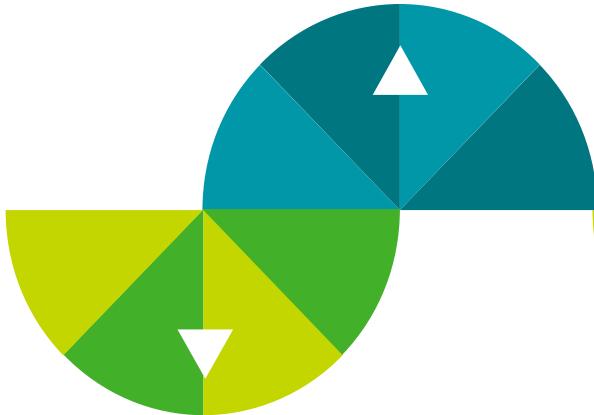
Relaxations provided in FY 2021-22 in respect of various tables of FORM GSTR-9/ 9C be continued for FY 2022-23

### GTA

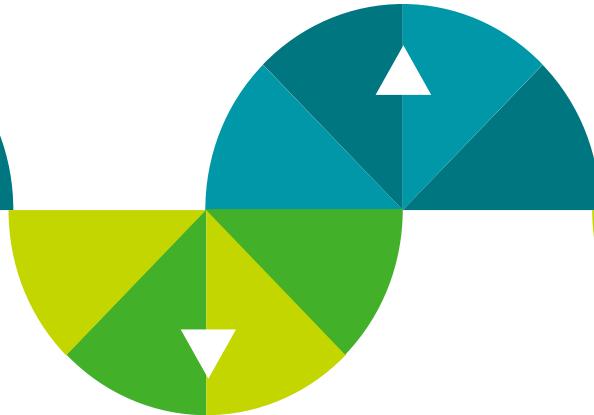
GTA will not be required to file declaration for opting to pay GST under forward charge every year. Last date to exercise option shall be 31<sup>st</sup> March of the preceding year

# GST - Other clarificatory updates (July 2023)

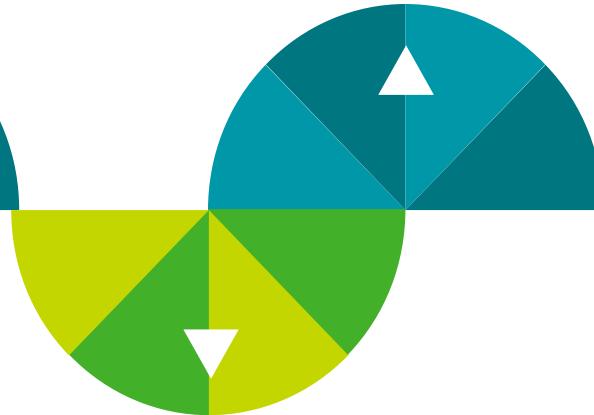
**E-invoice for supplies made to Govt. Dept**  
198/04/2023-GST  
Issue e-invoices for the supplies made to Govt Depts registered solely for the purpose of TDS



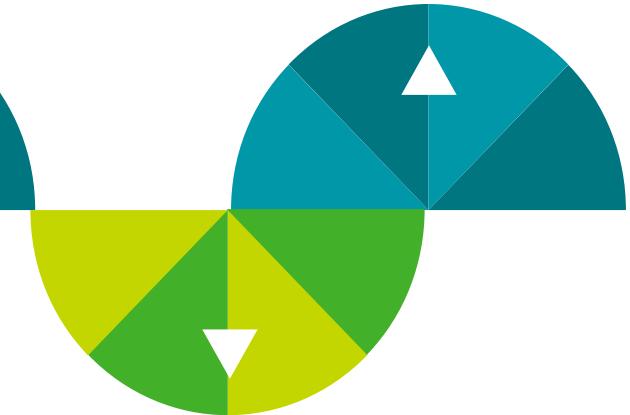
**Interest u/s 50(3) of CGST Act, 2017**  
192/04/2023-GST  
IGST, CGST and SGST balance in ECL to be taken together while calculating int. liability as per R.88B



**Mere holding of shares in holding company**  
196/04/2023-GST  
No supply between holding and subsidiary company on account of mere share holding



**Supplies by Director in their personal capacity**  
Services by way of renting of immovable property to the company or body corporate are not taxable under RCM



**ITC mis-matches between GSTR-3B vis-a-vis GSTR-2A**  
193/05/2023-GST  
Procedure to verify ITC differences during the period 01-Apr-19 to 31-Dec-21

**Manual filing of appeal against orders w.r.t TRAN-1/2**  
Manual filing of appeal against order w.r.t TRAN-1/2 pursuant to SC ruling in the case of UOI v/s Filco Trade Centre

**Extend the amnesty scheme till 31-Aug-23**  
Non-filing of GSTR-9/10/4, revocation of cancellation of registration and deemed withdrawal of assessment orders

**Manual filing of appeal - specified circumstances**  
Rule 108(1) and 109(1) to be amended to provide for manual filing of appeal under specified circumstances

# GST - Streamlining compliances

## FORM DRC-01D

Manner of **recovery of tax and interest in respect of difference between outward tax** disclosed in Form GSTR-1 vs. Form GSTR-3B which has not been paid and for which no satisfactory explanation has been furnished by the registered person *vide* insertion of Rule 142B

## FORM DRC-01C

Insertion of Rule 88D Form to explain the reasons for differences in ITC available in GSTR 2B and ITC availed in GSTR 3B and to take remedial actions in this regard *vide* insertion of Rule 142B

## FORM GSTR-3A

Provide for issuance of notice to the registered taxpayers for **failure to furnish Annual Return in FORM GSTR-9 or FORM GSTR-9A by due date.**

## FORM GSTR-5A

Rule 64 to be amended to require OIDAR service providers to provide the details of **supplies made to registered persons in India for tracking due payment on reverse charge basis.**

## Explanation 3 to be inserted after Rule 43

Rule 43 to be amended w.e.f. 01.10.2023 to provide for the requirement of reversal of ITC in case of supply of warehoused goods to any person before clearance for home consumption.

**Value of supply of goods from duty free shops** at arrival terminal in int. airports to the inbound passengers to be included in the value of exempt supplies for the **purpose of reversal of ITC**



- GSTN has issued an advisory on the introduction of Electronic Credit Reversal and Re-claimed statement on the GST Common Portal.
- The government has notified changes in Form GSTR-3B to enable taxpayers to report correct information regarding ITC availed, reversal, re-claimed, and ineligible ITC.
- A new ledger named Electronic Credit and Re-claimed Statement is being introduced on the GST portal to help taxpayers track their ITC that has been reversed and subsequently re-claimed for each return period.
- Taxpayers can report their cumulative ITC reversal as an **opening balance until November 30, 2023**, and can amend it three times until that date.
- The portal will maintain a record of reversal and re-claimed amounts on a return period basis.
- A validation mechanism is incorporated into the GSTR-3B form to trigger a warning message if a taxpayer attempts to re-claim excess ITC than the available ITC reversal balance in the statement.
- **The warning message will commence appearing from the filing period covering August 2023 for monthly taxpayers and July to September 2023 for quarterly taxpayers.**

# GST - Invoice incentive Scheme - Mera Bill Mera Adhikaar

- **Objective:** - To bring a cultural and behavioral change in the general public to 'Ask for a Bill' as their right and entitlement
- **Date of Implementation – 1 September 2023**
- **Tenure of Pilot Scheme – 12 Months**

## States Covered:

Dealers situated in Assam, Haryana, Gujarat, Puducherry, Dadra & Nagar Haveli, Daman & Diu

## Eligibility

All B2C invoices having minimum value of INR 200 issued to residents of India irrespective of customer State.

Invoices with fake or inactive GSTIN of vendor will be rejected



## Requirements

- Invoices to be uploaded on mobile app Mera Bill Mera Adhikar
- Maximum 25 invoices can be uploaded in a month
- Invoices for a month can be uploaded upto 5<sup>th</sup> of Next month

## Winners Compliances

- Winner to keep original invoice handy
- Winner to provide additional details like PAN, Adhaar, Bank Account detail etc through app only

Frequency	No. of Prizes	Prize Money
Monthly	800	10,000
	10	10,00,000
Quarterly (Bumper)	2	1,00,00,000

# Customs - Restriction on import of laptops, computers, tablets and other specified products –

## Notification No. 23/2023 dated August 03, 2023

### Background

The import/export policies for all goods are indicated against each item in the ITC (HS):

- Schedule I of the ITC (HS) - import policy for goods
- Schedule II of the ITC (HS) - export policy for goods

Policy condition no. 4 introduced restricting import of **laptops, tablets, all-in-one PCs, ultra small form factors and servers**

### Exceptions to Policy Condition No. 4

- Imports under Baggage Rules
- Import of 1 quantity of any of the said products other than server, including those purchased from e-commerce portals, through post or courier
- Import for purpose of R&D, testing, benchmarking, evaluation, repair and re-export for upto 20 items per consignment provided said product should not be sold
- Re-import of goods repaired abroad
- Any of the said product which is essential part of a capital goods

### Import restriction introduced on goods under Chapter 84 of Schedule I

ITC (HS)	Item description
8471 3010	Personal Computer
8471 3090	Other
8471 4110	Micro computers
8471 4120	Large or main frame computer
8471 4190	Other
8471 4900	Other automatic data processing machines presented in form of systems
8471 5000	Processing systems other than sub-heading 8471.41 or 8471.49

### Effect of Notification

- Liberal transition arrangements provided for import of said products till 31.10.2023. Valid license would be required from 01.11.2023 onwards for import of said products

# Judicial pronouncements – Direct Tax

# Bombay HC | Timeline for final assessment is inclusive of time taken for DRP proceedings

## Shelf Drilling Ron Tappmeyer Limited (Bombay High Court) (WP No. 2340, 2661, 3059 AND 3060 OF 2021) (4 August 2023)



### Facts of the case

- ITAT remanded assessment back to the AO for fresh adjudication
- Due date to pass the assessment order in such case is within 12 months from the end of the year of passing of ITAT order
- AO passed the draft assessment order 2 days prior to due date
- Taxpayer filed objection before DRP as well as a writ before the HC on the ground that time limit to pass the order has expired



### Decision of the High Court

- No exclusion provided in the Act from the overall assessment timelines.
- The purpose of section 144C ( DRP proceedings) is to fast-track a particular type of assessment
- Section 153 which specifically outlines cases where assessment time limits are extended, does not extend it for DRP proceedings
- In case of 'remand' proceedings, the final assessment order is to be passed within the 12-month period, as prescribed
- Since no final assessment order be passed within this 12-month period, proceeding time barred



### Revenues SLP before SC

- Interim stay granted . The HC ruling will not be used as precedent by any Court during the period of Interim stay.

# Bombay HC | Subscription services for advertising products on a website, not taxable

Alibaba.Com Singapore E-Commerce (P.) Ltd (Bombay High Court) (ITA NO. 212 OF 2018 ) (16 June 2023)



## Facts of the case

- Taxpayer provided website facility to Indian suppliers to do online business through a global trade marketplace.
- Subscription fees were charged by taxpayer from Indian suppliers



## HC Decision

- Tax Residency Certificate (TRC) is sufficient to determine the proof of residency
- Constant human endeavor/human intervention is an essential requirement for treating the services as 'technical'.
- A standard facility made available to public at large cannot be brought within the ambit of technical services under the Act

# Supreme Court | Tax sparing credit under the tax treaty allowed against exempt foreign sourced income

Pr. CIT vs. Krishak Bharati Cooperative Ltd. (TS-533-SC-2023)



## Facts of the case

- The Indian entity earned dividend from a company resident in Oman. Dividend was exempt under Oman's domestic tax law.
- Indian tax authorities did not allow tax sparing credit while including the dividend in the entity's total income.



## Decision of the Supreme Court

- Article 25(2) of India-Oman tax treaty allows tax credit to the extent of 'tax payable' in Oman.
- Article 25(4) clarifies that in case of a tax incentive granted by a State, 'tax payable' will include tax which would have otherwise been payable (i.e. tax sparing credit).
- Oman's domestic tax law generally taxes dividend, subject to an exemption.
- Letter issued by Oman's Ministry of Finance clarifying that this exemption was granted to promote economic development of Oman could be relied upon in India for allowing tax sparing credit.

# Judicial pronouncements – Indirect Tax

# HC Jharkhand | Invoking IPC sections on matters where a special law (GST) exists

Anupam Kumar Pathak v. State of Jharkhand [2023-VIL-420-JHR],



## Facts of the case

- The petitioner is registered in the state of Jharkhand and has made purchase from non-existing taxpayers during FY 2018-19.
- Proceeding was initiated for reversal of ITC and the petitioner was directed to produce the books of accounts and evidence with respect to payment and transport bill etc.
- The petitioner did not produce any of the document and registration was cancelled treating the activity of the trader as suspicious.
- A request was made by the department for institution of a criminal case under the Indian Penal Code, and other relevant GST provisions
- A writ petition was filed by the petitioner before the Jharkhand HC for quashing of the FIR.
- Department submitted that when criminality is made out, Special Law as well as IPC sections would be attracted



## Decision of High Court

- The High Court stated that the GST law is complete Code in itself. Section 132 states that any person who commits any of the offence would be liable to be punished.
- The High Court observed that in the FIR in instant case, sanction by the competent authority is granted and, thereafter, the FIR has been registered.
- The High Court followed the directions issued by the Supreme Court in the case of Jayant and others v. State of Madhya Pradesh [(2021) 2 SCC 670].
- Applying the rationale as per SC ruling, the instant petition was rejected by the High Court.

# Uttar Pradesh AAAR | Whether Advance Ruling can be filed by recipient of service

## M/S Uttar Pradesh Metro Rail Corporation Ltd [2023-VIL-35-AAAR],



### Facts of the case

- The appellant is engaged in construction, erection and commissioning of metro rail facility all over the state of Uttar Pradesh.
- Entire work of shifting of power lines is done by the appellant under the supervision of Kanpur Electricity Supply Company Limited (KESCO).
- The appellant pays supervision charges @15% to KESCO.
- KESCO has raised notice on the appellant for GST @18% on supervision charges.
- The appellant sought clarification before the Authority of Advance Ruling on the taxability of these charges in the hands of KESCO and whether benefit of exemption (related to transmission of electricity) is available to KESCO or not.



### Decision of AAAR

- Section 95(a) "Advance Ruling" means a decision provided by the Authority or the Appellate Authority or the National Appellate Authority **to an applicant** on matters or on questions specified in sub-section (2) of Section 97 or subsection (1) of section 100 **in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant**.
- Further, – as per Section 95(c) of the act '**applicant**' means **any person registered or desirous of obtaining registration under this Act**;
- As per existing legal provisions, advance ruling is applicable only on supplier and not on the recipient.
- AAAR has passed the order against the appellant.

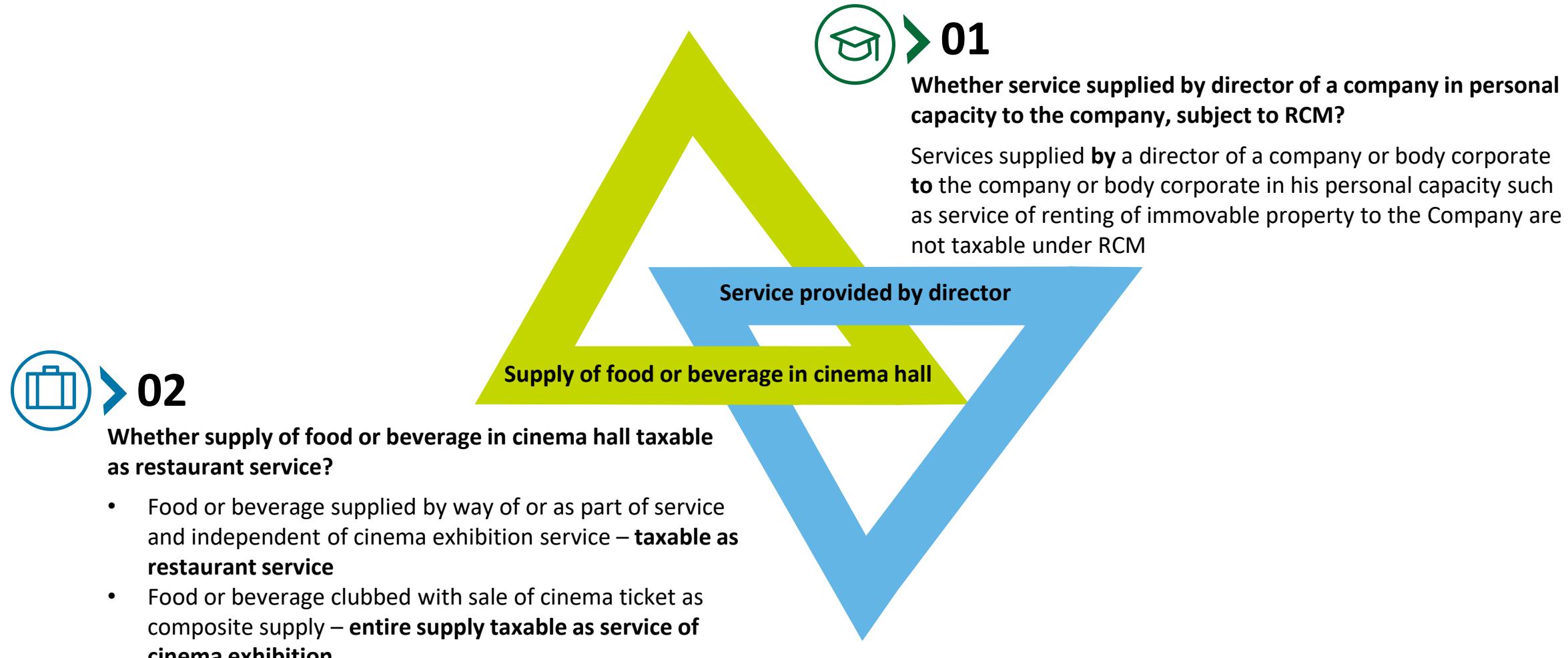
# Thank you!

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

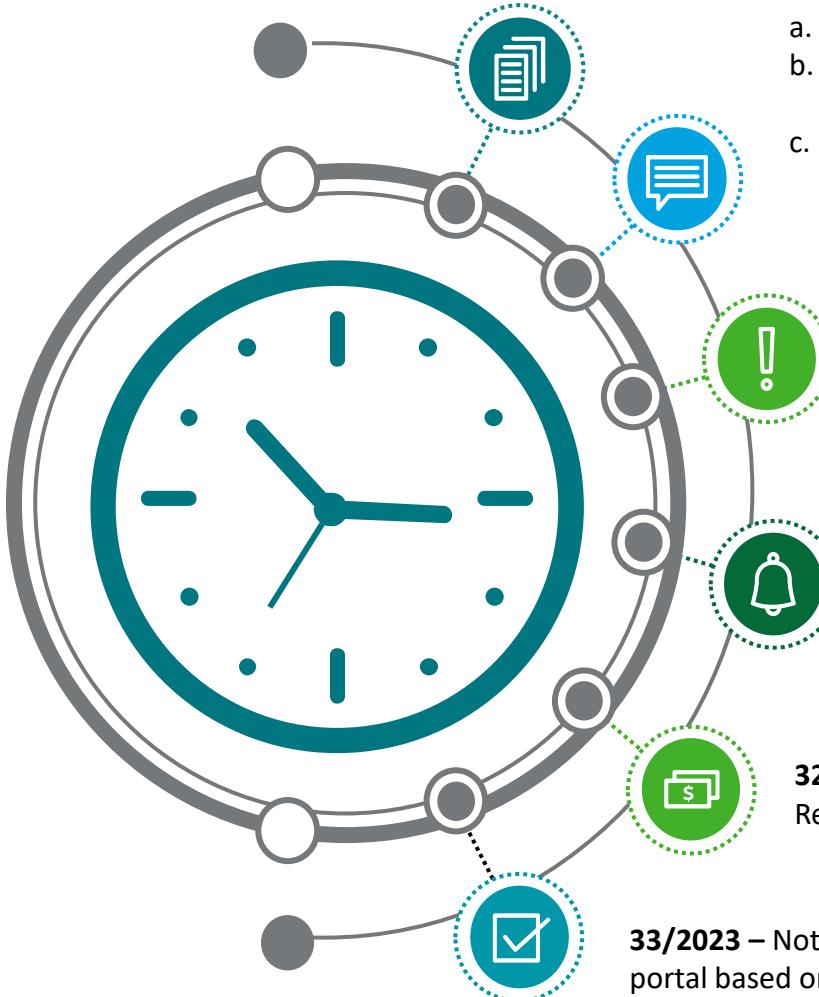
For any queries, please feel free to write to us at  
[intax@deloitte.com](mailto:intax@deloitte.com)

# Annexure

# Clarification regarding applicability of GST on certain services – CBIC Circular No. 201/13/2023-GST dated August 01, 2023



# Notifications dated July 31, 2023



**27/2023** – Amendments in IGST Act introduced *vide* Finance Act 2021, notified w.e.f. October 01, 2023

- a. Restricting zero-rated benefit in case of SEZ developer or units only in respect of authorized operations
- b. In case of non-realization of sale proceeds for supply of **goods** within the time limits prescribed under FEMA Act, **the refund amount already sanctioned to be deposited back along with interest**
- c. Government to specify class of persons who may make zero-rated supply and class of goods or services which may be exported on payment of IGST and claim refund thereafter

**28/2023** – Sections 149 to 154 (regarding constitution of Appellate Tribunal) of the Finance Act 2023 to be effective from August 1, 2023

All other amendments in CGST Act and IGST Act introduced *vide* the Finance Act 2023 to be effective from October 1, 2023.

**29/2023** – Procedure prescribed for a registered person or an officer who intends to file an appeal against order in respect of TRAN-1/ TRAN-2 claims filed in accordance with Circular No. 182/14/2022-GST dated 10th November 2022

**32/2023** – Exempts registered person whose aggregate turnover in FY 2022-23 is upto INR 2 Crores, from filing Annual Return for said FY

**33/2023** – Notifies “Account Aggregator” w.e.f. 01.10.2023 as the systems with which information may be shared by the common portal based on consent obtained from the supplier and the recipient

## Amendments related to OIDAR vide Notification No. 38/2023 – Central Tax dated 04.08.2023

**Rule 64 of the CGST Rules, 2017 is to be amended to include reporting of all OIDAR services in Form GSTR-5A provided by a person located in non-taxable territory to persons located in taxable territory.**

Consequent to this amendment, the OIDAR service providers will be required to report all the services provided by them to persons located in taxable territory irrespective of the fact that whether the services are provided in course of B2C or B2B supplies. This amendment is applicable w.e.f. 01.10.2023.

**Form GSTR 5A has been amended requiring the entity to report GSTIN of B2B customers along with taxable value of supplies made to such customers during the month.**

GSTIN of the customers in B2B transactions (which are liable to reverse charge) will be required to be reported from 01.10.2023 along with the total value of taxable supplies made to them. It is important to ensure that details of customer's GSTIN at transaction level are being mapped in the system to ensure details are available for reporting in returns from October 2023 onwards.

**Rule 46(f) of the CGST Rules, 2017 is amended to do away with the requirement to furnish name and address of the recipient along with its PIN code in tax invoice to be issued by the supplier of OIDAR services**

The supplier of OIDAR services are now required to furnish only the name of the state of the recipient in tax invoice for supplies made to unregistered customers where the value is < INR 50,000. This amendment is effective from 04.08.2023.



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