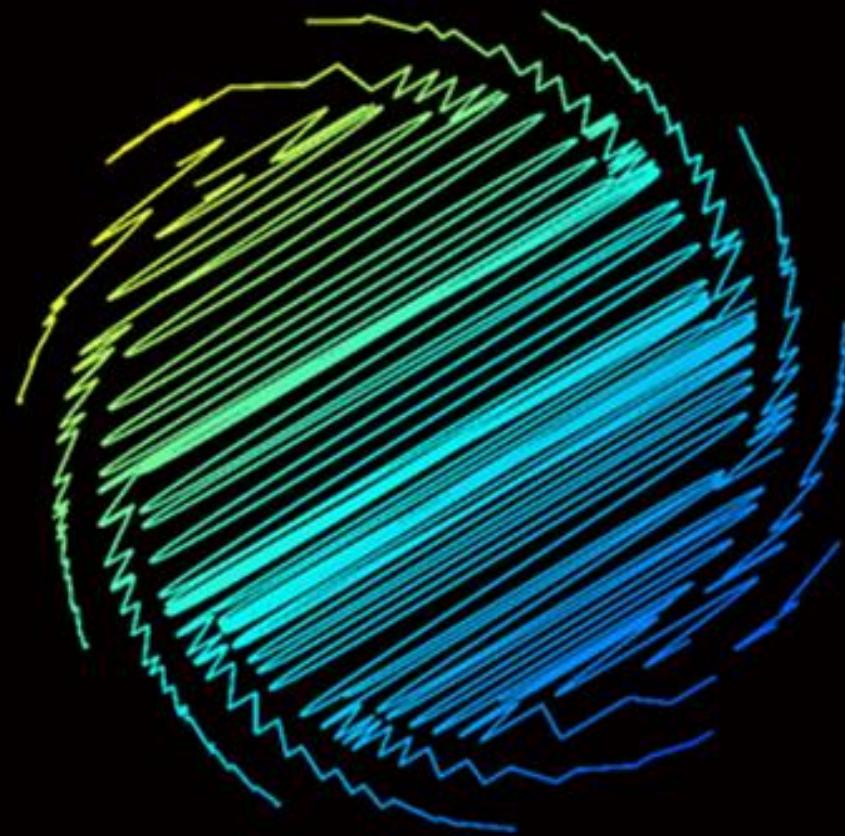


Deloitte.



India TaxHour

Quarterly India tax
updates
April – June 2021

8 July 2021

Subject matter experts

We will discuss...

- Economy/Regulatory updates
- Direct tax updates
 - Extension of time limits
 - New Income tax portal
 - CBDT notifies thresholds for Significant Economic Presence
 - Functionality for compliance check for Tax Deduction at Source / Tax Collection at Source
 - CBDT notifies Rule for computation of fair market value of capital asset in slump sale
- Indirect tax updates
 - Legislative and Compliance Updates
 - Make In India Initiative
- Recent judicial pronouncements
- Annexures

Economy/Regulatory updates

Indian economy and the Covid-19 pandemic – Economic Activity and Tax collections

Progress on a global consensus regarding taxation rights on profits of MNEs

Direct tax updates

Extension of Time Limits

Extension of Time limits - Circular No. 9 of 2021 dated 20th May 2021 & Circular No 12 of 2021 dated 25th June 2021

S.No	Particulars	Due Date	Extended due date as per circular No.9	Extended further as per circular No. 12*
1	TDS returns for Quarter 4 of FY 2020-21	31 May 2021	30 June 2021	15 July 2021
2	Statement of Financial Transaction	31 May 2021	30 June 2021	
3	Issuing Form 16 to Employees	15 June 2021	15 July 2021	31 July 2021
4	Equalization Levy Statement in Form No.1 for FY 2020-21	30 th June 2021	-	31 st July 2021
5	Last date of payment of amount under VSV (without additional amount)*	30 th June 2021		31 st August 2021
6	Time limit for passing Assessment order/ Penalty order (vide press release dated June 25 th , 2021)	30 th June 2021		30 th September 2021
7	Return of income for others AY 2021-22	31 July 2021	30 September 2021	
8	Tax Audit Report in Form 3CD for AY 2021-22	30 September 2021	31 October 2021	
9	Accountant's Report in Form No. 3CEB for AY 2021-22	31 October 2021	30 November 2021	
10	Return of income for AY 2021-22 (For every company and audit assessee's, not liable to TP)	31 October 2021	30 November 2021	
11	Master file requirements in Form No. 3CEAA (both Part A and B)	30 November 2021	31 December 2021	
12	Return of income for AY 2021-22 (For TP cases)	30 November 2021	31 December 2021	
13	Belated/ Revised return for AY 2021-22	31 December 2021	31 January 2022	

*Last date of payment of amount under Vivad se Vishwas (with additional amount) is 31st October 2021.

Clarification regarding the limitation time for filing of appeals before the CIT(Appeals) – Circular No.10 of 2021 dated 25th May

CIT(A)

CBDTs circular 8 of 2021 extended deadline for filing an appeal before the CIT(A) to the later as prescribed or 31 May 2021



DRP

Circular 9 of 2021 had no mention on filing objection before DRP

Circular 9 of 2021 extended timeline for filing appeal before CIT(A) till further order of the SC after the Apex court WP Order

Circular 12 of 2021: for Last date of filing objection falls on 1st June 2021 or thereafter → extended to 31st August 2021 or time provided in section (9months from draft order), whichever is later

The New Income Tax Portal

New Income Tax Portal

Press Release dated
20th May 2021

Launch of New e-filing Portal from 7th June 2021

Promises

- Single dashboard
- Chatbot
- New call center for taxpayer assistance
- Mobile App
- Online tax payment with new option



Issues Faced

- Trouble in DSC registration
- Difficulty in downloading ITR forms
- Unable to file TDS returns & 15CA/ 15CB
- E-proceeding tab not yet available.
- Grievances filed not available
- VSV tab not available
- Outstanding demand not yet updated
- Technical difficulty in registering new companies

Functionality for compliance check for Tax Deduction at Source / Tax Collection at Source



Background

Higher TDS / TCS for non-filers of income-tax returns (ITR) – Section 206AB / Section 206CCA

- New provisions for higher rate of TDS / TCS in case of 'specified persons'

Particulars	TDS	TCS
A] At twice the rate specified in the relevant provision	Higher of A or B or C	Higher of A or B
B] At five per cent		
C] At twice the rates in force		

- Specified person:
 - Person who has not filed ITR for two years immediately preceding the year in which tax is required be deducted / collected; and the time limit to file ITR under section 139(1) for the above period has expired;
 - Aggregate of TDS and TCS exceeds INR 50,000 in each of the two preceding years; and
 - Excludes non-resident not having a PE in India

- Amendment effective from 1 July 2021



Update

Functionality for compliance check for Sections 206AB and 206CCA

- This functionality is made available through **Reporting Portal** of the Income-tax Department
- The tax deductor / collector can feed the single PAN ('PAN search') or multiple PANs ('bulk search') of the deductee / collectee and can get a response from the functionality if such deductee or collectee is a specified person
- For PAN Search, response will be visible on the screen which can be downloaded in PDF format. For Bulk Search, response would be in the form of downloadable file which can be kept for record
- The deductor / collector may check the PAN in the functionality at the beginning of the financial year and then he is not required to check the PAN of non-specified person for the rest of the financial year
- PANs regarded as specified person should be rechecked at the time of each instance of making tax deduction / collection

- Circular No. 11 of 2021 dated 21 June 2021

Significant Economic Presence (1/3)

CBDT notifies thresholds



What are the prescribed thresholds?

CBDT has notified Rule 11UD* whereby the thresholds for SEP are as under:

- **Aggregate payments of INR 20 Million** during the year under consideration arising from the specified transactions (in respect of goods, services or property, including the provision of download of data or software in India);
- **Three Lakh users** solicited for systematic and continuous business activities or engaged in interaction



Entities impacted

- The following may be impacted:
 - Non-treaty jurisdictions
 - Tax transparent entity
 - An entity that does not have a Tax Residency Certificate
 - An entity that may not qualify as a 'person/ resident' for tax treaty purposes, since they shall then be liable to tax under the domestic tax law and SEP may be applicable
- Cross border business profits to continue to be taxed as per existing treaty rules till the tax treaties are modified – however, India may re-negotiate existing tax treaties for inclusion of the new nexus rule

* Notification no. 41/2021 dated 3 May 2021

Significant Economic Presence (2/3)

Background

SCOPE & APPLICABILITY

- The concept of Significant Economic Presence ('SEP') was introduced in the Act vide the Finance Act, 2018 with effect from Assessment Year ('AY') 2019-20
- The applicability of these provisions was subsequently deferred vide Finance Act, 2020. **These provisions now apply from AY 2022-23 onwards**
- By virtue of the amended provisions, SEP in India shall result into a 'business connection' in India for the purpose of section 9(1)(i) of the Income-tax Act, 1961
- SEP is defined to mean:
 - **Transaction in respect of any goods, services or property** carried out by a non-resident with any person in India, including the provision of download of data or software in India, if **aggregate of payments** arising from such transaction(s) during the year **exceeds such amount as may be prescribed**; or
 - **Systematic and continuous soliciting** of business activities or engaging in interaction with **such number of users in India, as may be prescribed**

SEP to trigger irrespective of whether or not:

The agreement for transaction or activity has been entered in India

The non-resident has a residence or place of business in India

The non-resident renders services in India

Attribution - Only so much of income as is attributable to the specified transactions or activities is to be deemed to accrue or arise in India

Significant Economic Presence (3/3)

Attribution of profits

Illustration: Company A constitutes SEP in India and consequently, 'business connection' in India as a result of sale of goods to persons in India. However, Company A has neither any physical presence in India nor undertakes any activity in India to transact those sales. Assume, India sales of 100 out of global sales of 2000 and global profit margin of 20%

In this case, various possible mechanisms for attributing profits are discussed below:

Method	Implications	Numeric
Rule 10	Global profit margin of Company A may be applied to sales made by Company A to India and taxed accordingly – power in hands of tax officer	$100 * 20\% = 20$
FAR Analysis	Considering zero physical presence in India, it is likely that the FAR analysis of Company A would result in zero attribution – however, demand side factors are inherently not taken into account in this analysis	Nil
CBDT Report on Profit Attribution to Permanent Establishments dated 18 April 2019 ('Report')	Draft rule suggested in the Report gives weightage to demand related factors which are not currently factored by FAR As per this, profits derived from India may be apportioned by giving one-third weightage to sales revenue derived by Indian operations from sales in India vis-à-vis total sales revenue derived by Indian operations from sale in and outside India	$(100 * 20\%) * 1/3 * 100/100 = 6.67$

Representations shall have to be made before the Government of India to deliberate and discuss the appropriate profit attribution approach in case of SEP in India and issuance of rules

Rule 11UAE - Calculation of FMV in case of slump sale

Background

Finance Act 2021 : Amendment to section 2(42C) to include transfer of undertakings **by any means** under the definition of Slump sale

- Amendment to section 50B (applicable from AY 2021-22) : **full value of consideration** deemed to be the **fair market value (FMV)** of the capital assets, to be computed as prescribed/notified
- Rule for computation of FMV has now been prescribed/notified in May 2021**

CBDT vide notification 68 dated 24 May 2021 : Prescribed the rules for calculating the FMV

FMV of the capital asset = FMV1 or FMV2, whichever is higher

FMV1 = A+B+C+D-L

A Book value of all the assets of the undertaking transferred

(other than jewellery, artistic work, shares, securities and immovable property)

Less: income Tax paid less refund claimed & unamortized deferred exp

B Price of jewellery and artistic work

on the basis of the valuation report from a registered valuer.

C FMV of shares & securities as under Rule 11UA(1)

D Immoveable property @ value adopted by Govt for stamp duty

L Book value of all the liabilities of the undertaking transferred

Excluding: Equity, Dividend, Reserves & Surplus, Provision of tax, Provision for unascertained liabilities & Contingent liabilities

Rule 11UAE - Calculation of FMV in case of slump sale

CBDT vide notification 68 dated 24 May 2021 : Prescribed the rules for calculating the FMY

FMV of the capital asset = FMV1 or FMV2, whichever is higher

$$\text{FMV2} = \text{E} + \text{F} + \text{G} + \text{H}$$

FMV of the consideration received or accruing as a result of transfer by way of slump sale

E **Value of Monetary consideration**
received or accruing as result of transfer

G **Price of non-monetary consideration for property other than in Rule 11UA**
On the basis of the valuation report from registered valuer

F **FMV of non-monetary consideration for Rule 11UA(1) property**
Manner prescribed under Rule 11UA(1)

H **Immoveable property @ value adopted by Govt for stamp duty**

FMV1 & FMV2 → Determined on the date of slump sale

Indirect Tax

Legislative and Compliance Updates

Legislative Updates

Key Recommendations made in the 43rd & 44th GST Council Meeting

COVID Relief Measures

- Based on recommendations of the GoM constituted during 43rd Council Meeting, GST reduced to 5% on identified items for COVID-19 relief upto 30th September 2021
- IGST exemption has been granted on import of COVID-19 related medical goods for free distribution to Government/relief agencies till 31 August 2021
- Amnesty Scheme announced for GST Late fees from July 2017 upto April 2021. Late fees for prospective periods also capped.



Relaxation in GST Compliance

- Extension in due dates for periodic compliances
- Relaxation from use of DSC for return filing till 31 Aug 2021
- Relaxation in requirement of CA certification for GST Annual Return (applicable for FY21)
- Cumulative application of Rule 36(4) for ITC availment for Apr and May 2021



Clarifications

- Levy of IGST only on repair value of goods, re-imported after repairs
- Service of supplying food to educational institution exempt from GST
- GST applicable on annuity payments received for construction of road

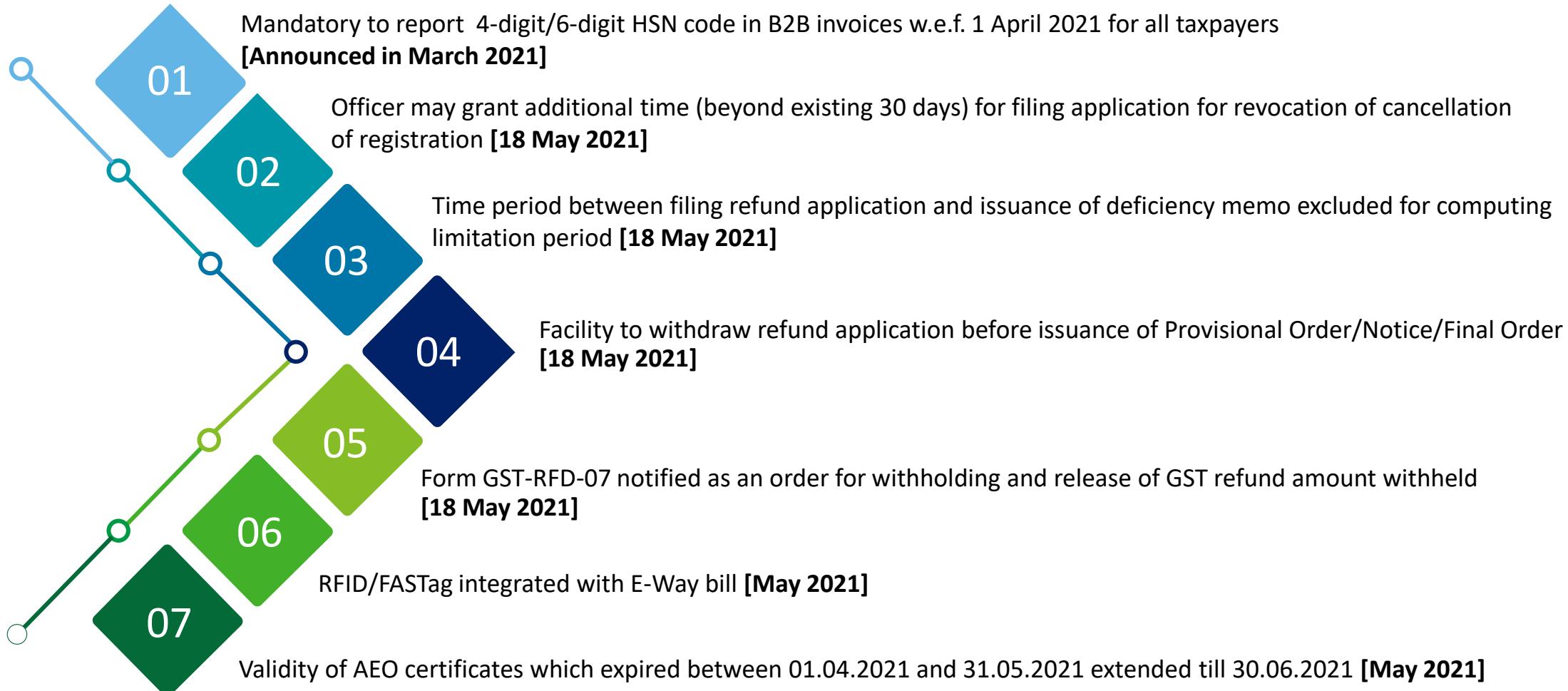


Other Recommendations

- Present system of filing GSTR-1 / 3B to be made default return filing system.
- Applicability of interest on net cash liability notified
- GST on MRO services in relation to ships / vessels to be reduced from 18% to 5%.
- POS of B2B MRO services to be recipient based.



Recent Compliance Updates

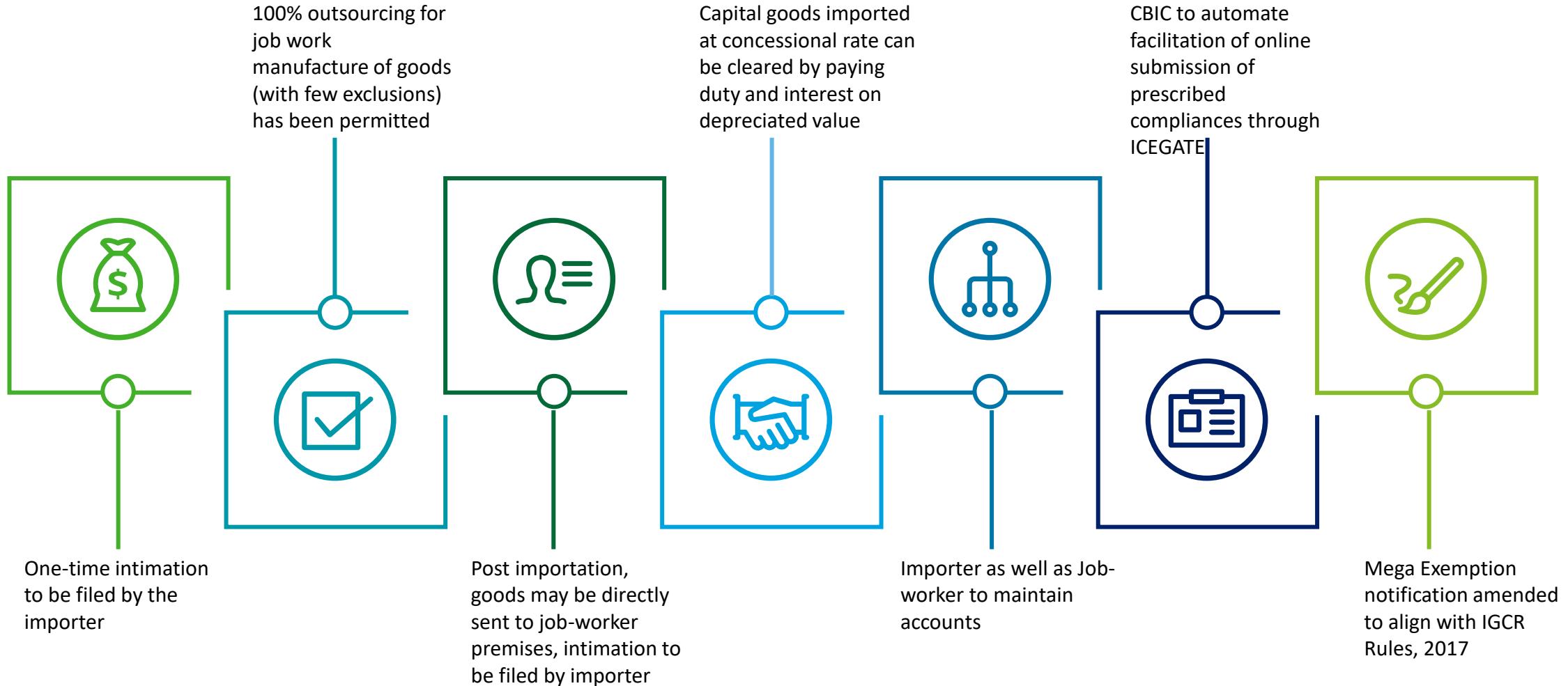


Indirect Tax

Make In India Initiative

Customs (Import of Goods at Concessional Rate of Duty) Amendment Rules, 2021

Avenues for manufacturing on outsourcing model



PLI Schemes – Coverage, benefits and opportunities

Key benefits

- Incentives in range of 5 to 20% on incremental sales of eligible products over base year (FY20)
- Domestic sales as well as exports eligible
- Benefits under other schemes or state industrial policies can be claimed
- No Geographic limits, No export obligation



Potential Beneficiaries

- Preference to companies with significant existing global sales
- Businesses intending to shift manufacturing facilities from other countries to India
- Expansion/ diversification plans for existing units



Recent Developments (Apr-June Qtr)

- PLI for food industry and white goods approved
- Last date for application under PLI for Food Industry and medical devices extended
- Cabinet approved 2 more schemes
- FAQs issued

13 Sectors

Application window closed

Mobile Manufacturing

Telecom & Networking Products

Pharma-KSM/API

Food Products

IT Hardware

Solar PV Modules

Application window open

White Goods
Last date:15.09.21

Pharmaceutical drugs
Last Date:31.07.21

Medical Devices
Last Date: 28.07.21

Cabinet Approved, Guidelines Awaited

Advance Chemical Cell/Battery

Specialty Steel

Cabinet Approval Awaited

Automobiles

Textiles

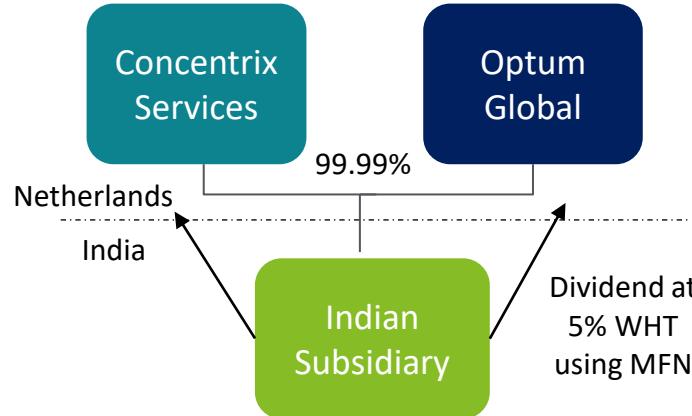
Recent judicial pronouncements

Direct Taxes

Concentrix Services Netherlands B.V. vs. ITO and
another
(Writ Petition No. 951 of 2020) (Delhi HC)

Concentrix Services Netherlands B.V. vs. ITO and another

(Writ Petition No. 951 of 2020) (Delhi HC)



- Concentrix Services Netherlands B.V. and Optum Global Solutions International, tax residents of Netherlands, applied for issuance of a withholding tax certificate for authorizing dividends paid by Indian subsidiary to be subject to a lower withholding rate of 5% based on the **Most Favored Nation clause** in India-Netherlands tax treaty, taking recourse of Slovenia, Lithuania and Columbia treaty
- Tax authorities issued certificate to withhold tax at 10% rate, on the basis of following:
 - Slovenia, Lithuania and Columbia **were not the members of OECD** on the date of signing of tax treaty with India
 - The word 'is' appearing in the Protocol (viz. '**which is a member of the OECD**'),
 - Amendments to India-Netherlands tax treaty which have been ratified by both the countries by issuing a notification.** Therefore, the beneficial rates of dividend for the India Slovenia, Lithuania and Columbia tax treaty could not be applied **in absence of any amendment / notification** to this effect

Decision of the Hon'ble Delhi HC

Quashed lower withholding certificate of 10% and directed Revenue to issue fresh certificates of 5% WHT on the dividend payments, based on following:

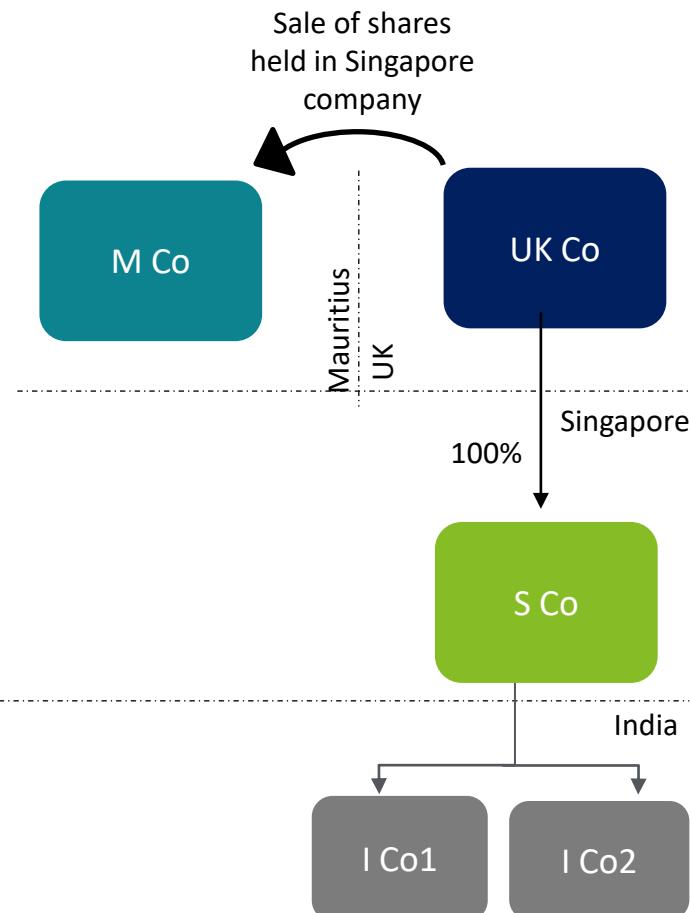
- Protocol to tax treaty is an integral part of a tax treaty; no separate notification is required to apply the provisions thereof - Steria India Limited [2016] 386 ITR 390 (Delhi)
- The word 'is' in "which is a member of the OECD" describes the **state of affairs when request for application under section 197 is made**, not at the time tax treaty was executed
- Applied the **principles of common interpretation** and adopted the **interpretation expressed in the decree** issued by Kingdom of Netherlands, and few other judgements of the foreign courts
- "while interpreting international treaties ...the rules of interpretation that apply to domestic or municipal law need not be applied" - Azadi Bachao Andolan [2004] (10 SCC 1) (SC)
- Function of a tax treaty is to **aid commercial relations and equitable distribution of tax revenues**

Direct Taxes

DCIT vs WNS Capital Investments Ltd, Mauritius
[TS-320-ITAT-2021(Mum)]

DCIT vs WNS Capital Investments Ltd, Mauritius

[TS-320-ITAT-2021(Mum)]



Facts of the case

- M Co, a Mauritius company purchased 100% equity shares of a Singapore company (S Co) which held two subsidiaries in India (I Co 1 & I Co2) and one subsidiary in Sri Lanka. The shares of S Co were purchased from a UK company (UK Co)
- Indirect transfer of shares was taxable & non resident was under obligation to WHT. (**Explanation 5 to 9(1)(i)** and **insertion of Explanation 2 to section 195** inserted by the Finance Act 2012, with retrospective effect)
- M Co was held assessee in default → demand was raised u/s 201(1) & 201(1A)
- CIT(A) : UK Co paid the Capital Gain tax on the transaction and deleted the demand. Revenue appealed before ITAT

Decision of the ITAT

Upheld the order of the CIT and held no demand u/s 201 rws 195 including 201 be sustained considering following:

- **Doctrine of impossibility**
 - **Lex non cogit ad impossibilia**, i.e., the law does not demand the impossible
 - **Impotentia excusat legem**, i.e., impossibility excuses law
- To perform the tax withholding obligations based on an **amendment in law, enacted on a date later than the date on which tax withholding obligations**, was expecting to do the impossible
- No default for non deducting tax at source as legal provisions not in existence when sale of shares took place

Indirect Taxes

M/S D.Y. Beathel Enterprises vs State Tax Officer – GST
Case
[2021-VIL-308-MAD]

M/S D.Y. Beathel Enterprises vs State Tax Officer [2021-VIL-308-MAD]

No denial of ITC to buyer for non-payment of GST by the seller



Facts of the case

- Petitioners are traders in raw rubber sheets.
- They purchased goods from Charles and his wife Shanthi (registered dealer under GST Law) and made payments through banking channels against GST invoice issued by the seller.
- However, based on scrutiny of returns, department noticed that Charles and his wife did not pay taxes and hence recovery proceedings were initiated against the buyer petitioner.
- It was alleged that ITC was availed without receipt of goods and hence demand was confirmed.
- Aggrieved assesses filed writ petition before the High Court.

Ruling

- The Madras High Court referred to the press release issued by the CBIC on 4 May 2018 wherein it was clarified that there shall not be any automatic reversal of input tax credit from the buyer on non-payment of tax by the seller. In case of default in payment of tax by seller, recovery shall be made from seller. However, reversal of credit from buyer **shall also be an option** available with revenue to address exceptional situations like missing dealer, closure of business by supplier or supplier not having adequate assets etc.
- However, the Court pointed out that impugned order suffers from fundamental flaw of non-examination of defaulting party ("seller") and non-initiation of recovery action against the seller.
- Court allowed petition by remanding matter back for fresh enquiry against Charles and his wife and directed the authorities to initiate recovery proceedings against the sellers.

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



India Iran Tax Treaty notified with protocol – w.e.f
1 April 2021

Key Highlights

- Construction PE – Threshold of 270 days
- Service PE – Threshold of 90 days within any 12 months period.
- Agency PE – BEPS provision not adopted. Additional condition of 'issuance of proforma invoice'
- Dividend @10%
- Interest, FTS, Royalty @ 10%
- Capital Gain – Anti abuse provision in MLI not provided
- Other Income – Source based



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