

TAX NEWSLETTER

Issue: Quarter ending 31 March 2022

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THE ASSOCIATED CHAMBERS OF COMMERCE AND INDUSTRY OF INDIA

Foreword

January to March is the 'Budget' quarter, with the attention of the economy fixated on the Budget presented on the first day of February.

With a development-oriented Union Budget, the Government has laid the foundation for accelerated growth of the Indian economy. The recent push toward infrastructure development will help percolate growth across the economy through a multiplier effect. Significant aspects of the Budget and the related developments during this quarter stressed improving reach and compliances, specifically, voluntary compliances. A new provision has been inserted, allowing taxpayers to furnish updated tax returns upon payment of 25% or 50% as additional tax, depending on the timing of filing the updated return. Similarly, taxpayers are expected to themselves disallow the cess claimed as a deduction in the past on pains of penalty.

On Virtual Digital Assets, the 30% tax on the gain on transfer coupled with 1% TDS is somewhat of a dampener but has been justified on the ground that the Government needs to keep an alert vigil on crypto transactions.

The changes in customs duties are aligned primarily with the objective of domestic capacity creation, providing a level playing field to MSMEs, easing the raw material supply-side constraints, enhancing the ease of doing business and enabling policy initiatives such as PLIs and phased manufacturing plans. Around 350 customs exemptions are being withdrawn, and more than 40 customs exemptions relating to project imports and capital goods are proposed to be gradually phased out.

Reforms focusing on IT-driven customs administration of SEZs have also been proposed by a rehaul of the SEZ Act.

On the GST front, the two-way communication process in return filing (between outward and inward supplies) initially envisaged under GST law is now done away with, and conditions relating to availing ITC have become more stringent, making reliance on internal processes all the more critical. Certain ease of doing business measures towards allowing transfer of amount available in electronic cash ledger between GST registrations of the same legal entity and extension of time limit to avail input GST credit and issuance of credit notes from 30 September to 30 November of the following financial year to harmonise with other regulatory timelines have also been introduced.

We hope you find our quarterly newsletter insightful, and we look forward to your feedback!



Mr. Deepak Sood
Secretary General
ASSOCHAM

Part I – Direct Tax

New Faceless Appeal Scheme (Faceless Appeal Scheme, 2021) introduced

The key features of the Scheme include:

- a) the constitution of a National Faceless Appeal Centre (NFAC) to coordinate the appeal process; all communication among the assessing officer, CIT(A) and assessee will be through the NFAC.
- b) Request for personal hearing through video conferencing/ video telephony (not physical appearance) to be mandatorily allowed to the extent technologically feasible.

New advance ruling scheme introduced ('e-Advance Rulings Scheme, 2022')

The Finance Act, 2021, had substituted Board for Advance Ruling (BAR) for the Authority for Advance Ruling (AAR).

The Central Government has recently notified¹ the e-Advance Rulings Scheme, 2022 for obtaining advance rulings from the BAR.

Some of the key highlights of this Scheme are:

- a) **Scope of the Scheme:** The Scheme applies to applications of advance rulings filed before the BAR and applications transferred from the erstwhile AAR to the BAR.
- b) **Communications with the BAR:** All communications between the BAR and the applicant or PCIT/ CIT will be done electronically through mail.

- c) The applicant is not required to appear personally. The applicant may request for a hearing through video conferencing or video telephony to make its submission before the BAR.

Clarification by the Central Board of Direct Taxes (CBDT) on applicability of the Most Favoured Nation (MFN) clause in India's Double Taxation Avoidance Agreements (DTAAs)

The CBDT in a circular², stated its position on application of the MFN clause in DTAAs. Among other points, the circular states that:

- a) unilateral decree or bulletin issued by a foreign Government (referring to the cases of Netherlands, France and Switzerland) would not have any effect on the position adopted by CBDT.
- b) the third country (providing the restricted tax rate or scope) must be an Organisation for Economic Co-operation and Development (OECD) member, both at the time of conclusion of the DTAA with India and at the time of application of the MFN clause.
- c) the provision³ of the Income-tax Act, 1961 (the Act), mandates a separate notification for amendments in the DTAA. In the absence of the same, beneficial tax rate or scope under the DTAAs with Slovenia, Lithuania and Columbia cannot be imported into DTAAs with the Netherlands, France, Switzerland, etc.

**New Faceless
Appeal Scheme
(Faceless Appeal
Scheme, 2021)
introduced**

GRI Renewable Industries S.L., v. ACIT (IT)⁴

After the issuance of the above circular, the Pune bench of the Income Tax Appellate Tribunal (ITAT) allowed the benefit of MFN clause under India-Spain tax treaty.

¹ Notification No. S.O. 248(E) dated 18 January 2022

² Circular No. 3/ 2022 dated 3 February 2022

³ Section 90(1)

⁴ ITA No. 202/ PUN/ 2021

The ITAT held that the Protocol is an integral part of the DTAA and, therefore, there is no requirement to separately notify a Protocol to make its provisions effective. The ITAT further held that the circular is not binding on the taxpayer or the ITAT or other appellate authorities and it cannot have retrospective effect unless specifically provided.

Reassessment notice time barred when digitally signed on the last day of limitation period but issued/ emailed on a later date – Allahabad High Court

Recently, in the case of Daujee Abhushan Bhandar Pvt. Ltd. v. UOI⁵, the Allahabad High Court held that a notice of reassessment that is digitally signed within the mandated limitation period but emailed later (post expiry of the statutory limitation period) will be considered time barred.

The High Court further held that the time when a digitally signed notice goes outside the control of the Revenue Authority will be considered as the date and time of issuance of the notice.

CBDT issues circular condoning delay in filing of Form 10-IC for assessment year 2020-21

An essential condition for claiming the beneficial tax rate of newly formed domestic manufacturing companies is that the company must file Form 10-IC declaring its intention to opt for the beneficial regime.

Many domestic companies which opted for the concessional tax regime through the return of income filed for assessment year 2020–21 missed filing Form 10-IC.

The CBDT has issued a circular⁶ condoning the delay in filing Form 10-IC by the domestic companies. These companies can file Form 10-IC on or before 30 June 2022 to regularise the non-compliance.

Finance Act, 2022

The Finance Bill, 2022 (Bill), received the President's assent on 30 March 2022.

Some of the key amendments passed by the Finance Act, 2022, are stated below:

a) Tax rates

- The maximum rate of surcharge on long-term capital gains is capped at 15%.
- The rate of surcharge is restricted to 15% for an AOP (consisting of only companies as members).
- The benefit of a lower rate of tax of 15% on dividend received by an Indian company from a foreign company in which it holds 26% or more of the equity share capital is not available after 1 April 2022.
- Income-tax rates (including surcharge, health and education cess) for companies (domestic and foreign), firms, LLPs and individuals remain unchanged. This includes rates for MAT and AMT.

b) Providing tax certainty

- Provisions relating to the taxation of virtual digital assets (VDAs) have been introduced. Salient features of the provisions are as follows:
 - VDA⁷ has been defined to mean any information or code or number or token (not being Indian currency or any foreign currency), generated through cryptographic means or otherwise. Non-fungible tokens are also included within the definition. It also provides that the government can notify any other digital asset as a virtual digital asset.
 - Income from the transfer of any VDA is taxable at 30% (plus surcharge and cess)
 - Tax should be deducted at 1% on payment to a resident on the transfer of VDAs
 - A gift of VDAs should be taxed in the hands of the recipient subject to prescribed conditions
 - No deduction is available in respect of any expenditure (other than the cost of acquisition, if any) or allowance or set off of any loss, in computing the income from transfer of a VDA



⁵ Writ Tax No. 78 of 2022

⁶ CBDT Circular No. 6/ 2022 dated 17 March 2022

- The loss from transfer of a VDA cannot be adjusted against any income (including income from the transfer of another VDA)

- The definition of 'transfer' provided under the Act is to apply to a VDA, regardless of whether any VDA is considered as a capital asset

- Cess is paid along with income-tax and surcharge. Based on judgments of some High Courts many taxpayers had claimed cess as deductible revenue expenditure. The Act has been amended with retrospective effect from AY 2005-06 to provide that cess is not a permissible revenue deduction. Further, any deduction claimed and allowed from AY 2005-06 for surcharge or cess will be deemed as an under-reported income (for penalty purposes). The Assessing Officer is empowered to pass the necessary rectification order and to recompute the income of taxpayers in respect to such claims. The time limit of four years to process this rectification will begin from 1 April 2022.

However, no penalty is to be levied if the filing of an application in a prescribed form is initiated by the taxpayer for re-computation of income, without claiming deduction for surcharge or cess and on payment of appropriate taxes (if any) within the timeline prescribed by law.

- No deduction is allowed in respect of an expenditure which is an offence, or which is prohibited by law. The amended law has expended the scope of the term 'prohibited by law' to include (a) an offence or a prohibition under any law even outside India, (b) provision of any benefit or perquisite, acceptance of which by the recipient is in violation of any law, rule, regulations or guidelines governing such person and (c) compounding of any offence under any law in or outside India.

- Taxpayers must explain credits in the books of accounts, otherwise the credit is deemed to be income. So far, the requirement to explain the credit applied to share capital. It is now extended to loans and borrowing and the same shall be treated as explained only if the nature and source of such sum is also explained in the hands of the lender or creditor to the satisfaction of the tax authorities.

- Succession of business – the relevant provision has been amended to extend the validity of assessments or other proceedings to the successor (originally made on the predecessor) in case of 'business reorganisation'.

a) Ease of doing business

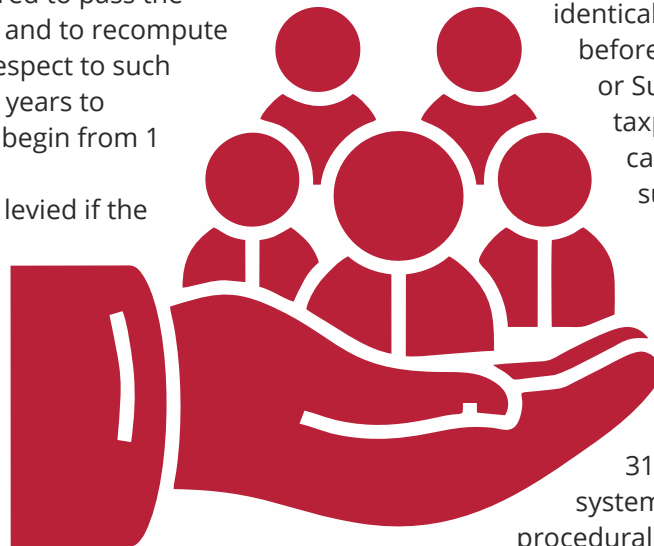
- To encourage voluntary tax compliance, a new provision has been inserted allowing taxpayers to furnish updated tax returns within 24 months from the end of the relevant assessment year upon payment of 25% or 50% as additional tax, depending on the timing of filing the updated return.

- As a measure to reduce litigation, tax authorities are now not to file appeals in respect of identical questions of law pending before the jurisdictional High Court or Supreme Court, whether in the taxpayer's own case or in the case of another taxpayer, subject to specified conditions.

- The timelines to introduce faceless schemes for proceedings before Transfer pricing authorities, Dispute Resolution Panel and the ITAT have been extended to 31 March 2024 to provide for IT system stabilisation and other procedural aspects.

- The provisions of reassessment proceedings are rationalised to remove redundancy in seeking approvals/ conducting inquiries by the tax authorities. Furthermore, it has been clarified that a reassessment notice may be served on the basis of information such as any audit objection, or any information received from a foreign jurisdiction under an agreement or directions contained in a court order, etc.

- In case of reassessment proceedings, the applicability of the extended timeline of ten years applies to cases where income escaping assessment exceeds INR 5m and is represented in the form of an asset. This has been further expanded to cover cases of expenditure in respect of a transaction/ event/ occasion or entry in the books of account exceeding INR 5m.



a) Addressing COVID Impact

- Expenses met by employer for treatment of COVID-19 of an employee or family members shall not be considered as a taxable benefit of the employee.
- Financial aid received by the family of a deceased person within 12 months from death on account of COVID-19 is not taxable according to the following rules:
 - Received from the employer of the deceased person: no limit
 - Received from any other person(s): INR 1m in aggregate

Part II – Indirect Tax

Finance Act, 2022

The Finance Bill, 2022 (Bill), received the President's assent on 30 March 2022.

Some of the key amendments passed by the Finance Act, 2022, are stated below:

a) Goods and Services Tax ('GST')

Input tax credit (ITC)

- Additional condition has been introduced for availment of ITC – availment basis an electronically generated statement classifying the ITC as available / not available
- The statement to classify ITC as not available under the following situations
 - Newly registered taxpayer
 - Vendor has continuously defaulted in tax payment (for specified period) or short-paid output tax (case of GSTR-1 and 3B mismatch)
 - Vendor has availed input tax credit in excess of the amount allowed
 - Breach of limit prescribed for payment of tax through input tax credit
 - Any other specific condition as may be notified for certain segments
- ITC to be reversed (along with interest, if applicable) in case supplier defaults in paying tax to the government. On payment tax by the supplier, ITC can be re-availed

- The time-period period to avail ITC has been extended to November 30 of subsequent financial year

GST returns

- Time limit for amendment/ rectification of error in GSTR-1/GSTR-3B has been extended till November 30 of the following financial year
- The concept of two-way communication of supplies as initially envisaged (GSTR-1/2/3 matching) has been eliminated
- GSTR-1 for a tax period cannot be filed unless GSTR-1 of the previous periods are filed
- GSTR-3B for a tax period cannot be filed if (a) GSTR-3B of previous period are not filed and (b) if GSTR-1 for the current tax period is not filed

Refund provisions

- The scope of withholding (of outstanding dues) from refunds has been extended to all the types of refunds (earlier this was restricted to refund on account of zero-rated supplies and inverted duty structure)
- The time period of (2) year for filing refund application is to be computed from the due date for filing of GSTR-3B of the month in which such supplies are reported in case of supplies made to the SEZ unit/developer

Interest provisions

- Applicability of interest on input tax credit incorrectly availed and utilized at 18% p.a. under Section 50(3) of CGST Act – this has been made effective retrospectively from July 1, 2017

Others

- Time-limit to issue credit notes in respect of supply made in a financial year has been extended to November 30 of the subsequent financial year
- Facility to transfer balance in electronic cash ledger (tax, interest, penalty, fees or any amount) within different registrations with a common PAN (IGST and CGST can be transferred for inter-state registrations); this benefit is available only in case of no outstanding tax liability
- Enabling provision for the government to prescribe (i) restriction on utilization of balance in electronic credit ledger and (ii) maximum output liability which can be discharged through electronic credit ledger

- Norms for cancellation of GST registration due to non-compliances (of return filing) to be prescribed

Customs

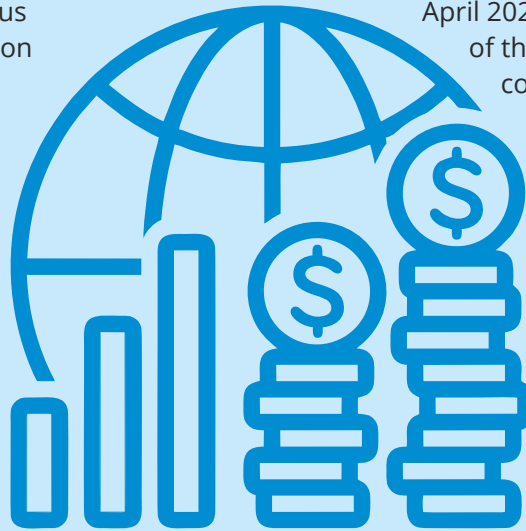
- Various amendments have been undertaken in the Customs law governing the administration of custom duties as well as amending the applicable custom duties on various goods imported into India (thrust on Make in India)

Special Economic Zones ('SEZ')

- Announcement has also been made regarding revamping the SEZ law to facilitate the ease of doing business

Rate related updates

- The Central Board of Indirect Taxes and Customs (CBIC) has issued notifications, amending its previous notifications, to extend the exemption of Integrated Goods and Services Tax and Goods and Services Compensation Cess leviable under the Customs Tariff Act, 1975, on import of goods, in case of several schemes under the Foreign Trade Policy 2015-20 and otherwise to 30 June 2022/01 July 2022 respectively.⁷
- The Foreign Trade Policy 2015-2020 and the Handbook of Procedure 2015-2020, have been extended up to 30 September 2022.⁸



- The CBIC amends notification to give effect to 2nd tranche of tariff concessions as per India Mauritius Comprehensive Economic Cooperation and Partnership Agreement.⁹

- India and Australia signed a Comprehensive Economic Cooperation and Trade Agreement on 2 April 2022 which covers approximately 90% of the bilateral trade between the two countries.

- India and UAE signed a Comprehensive Economic Partnership Agreement covering approximately 90% of bilateral trade between the two countries.

Non-rate related updates

- To implement payments of customs duty, interest, penalty, fees, etc. through the Electronic Cash Ledger, the CBIC has notified the Customs (Electronic Cash Ledger) Regulations, 2022, with effect from 1 June 2022.¹⁰
- The CBIC has released an advisory relating to creation of an e-scrip account; generation of scrips; and transfer of scrips to any other importer-exporter code holder, to avail the benefit under the Remission of Duties and Taxes on Exported Products and Rebate of State and Central Taxes and Levies incentive schemes, which maybe useful for exporters.¹¹

⁷ Notification Nos. 18/ 2022-Customs and 19/ 2022-Customs dated 31 March 2022

⁸ Public Notification No. 53/ 2015-20 dated 31 March 2022 and Public Notice 53/ 2015-20 dated 31 March 2022

⁹ Notification No. 17/2022-Customs, F. No. 190354/49/2021-TRU, Dated, 31st March, 2022

¹⁰ Notification No. 20/2022-Customs (N.T.) dated 30 March 2022

¹¹ Advisory No. 06/2021 dated 21 March 2022

- The Directorate General of Foreign Trade has notified an updated Indian Trade Classification (Harmonised System) [ITC (HS)] 2022 to replace the earlier version and to align it with the revisions in the Customs Tariff as per the Finance Act, 2021.¹²
- The CBIC has notified the Shipping Bill (Post export conversion in relation to instrument based scheme) Regulations, 2022, laying down guidelines for the conversion of Shipping Bills or Bill of Export, as continued focus on the trade facilitation measure.¹³
- The last date for submission of the Merchandise Exports from India Scheme application for the exports made in the period April 1, 2020 to December 31, 2020 is extended till April 30, 2022.¹⁴
- The CBIC has issued a circular to explain and operationalise the changes relating to the term proper officer, power for assignment of functions as a proper officer to the Customs officers, clarification on jurisdiction in case of subsequent reassessment, adjudication, etc. arising due to subsequent investigation or inquiry with the enactment of the Finance Act, 2022, on 30 March 2022.¹⁵
- The CBIC notifies for appointment of common Adjudicating authority for adjudication of show cause notices issued by Directorate General of Goods and Services Tax Intelligence (DGGI)¹⁶. Also issued circular providing that the Central Tax officers of Audit commissionerate and DGGI shall exercise the powers only to issue show cause notices and that a show cause notice issued by them shall be adjudicated by the competent Central Tax officer depending on single or multiple locations.¹⁷



- The CBIC has issued Standard Operating Procedures via an instruction for the manual scrutiny process to ensure uniformity in the selection of returns for scrutiny and the process of scrutiny by the field formations. It is proposed as an interim measure, till the time the scrutiny module for the online scrutiny of returns is made available on the CBIC-GST application.¹⁸

Judicial updates

- The Supreme Court in the context of taxability of revenue sharing arrangements between cinematographic film exhibitors and distributors has affirmed the ruling of the Hyderabad bench of the Customs Excise and Service Tax Appellate Tribunal (CESTAT) to hold that such an arrangement does not necessarily imply the provision of services between the exhibitor and the distributor unless a service provider-service recipient relationship is established.¹⁹
- The Bombay High Court has held that the Supreme Court's order extending the time limit on account of the COVID-19 pandemic for all proceedings under general or special laws is also applicable to refund applications under GST.²⁰

The Madras High Court has held that service tax paid under the reverse charge mechanism (RCM) after the due date of Form GST TRAN-1 which would have otherwise been eligible as CENVAT Credit to a taxpayer can be considered transitioned as input tax credit (ITC) under the GST and invoked the doctrine of necessity by observing that the taxpayer should not be rendered remediless merely because the GST regime has come into effect.²¹ Contrasting, the New Delhi Bench of the CESTAT has held that service tax paid under RCM

¹² Notification No. 54/2015-20 dated 9 February 2022
¹³ Notification No.11/ 2022-Customs (N.T.) dated 22 February 2022
¹⁴ Notification no. 58/2015-2020 dated March 7, 2022
¹⁵ Circular No. 07/2022-Customs dated 31 March 2022
¹⁶ Notification No. 02/2022-Central Tax dated March 11,2022
¹⁷ Circular No. 169/01/2022-GST dated March 12, 2022
¹⁸ Instruction No. 02/2022-GST dated 22 March 2022
¹⁹ Civil Appeal No.1335 of 2022
²⁰ TS-04-HC(BOM)-2022-GST
²¹ TS-88-HCMAD-2022-GST

· paid is entitled to refund under the transitional provision since CENVAT Credit is not available owing to the implementation of GST with effect from 1 July 2017.²²

· The Bangalore Bench of CESTAT has held that customs did not have jurisdiction within Special Economic Zone established under SEZ scheme by the Ministry of Commerce, Government of India and proceedings initiated by the customs were beyond jurisdiction for the period under dispute.²³

· The Appellate Authority for Advance Ruling, Maharashtra has held that registration and compliance as an Input Service Distributor is mandatorily required to distribute ITC on common input services received by a unit on behalf of other units. It also partially modified the decision of the Authority for Advance Ruling to hold that incurring

the cost of common input services at the behest of branch offices or units will not attract GST, as these are incurred in the capacity of a pure agent of such branch offices or units.²⁴

· The Authority for Advance Ruling, Maharashtra held that recovery on account of transportation facility, notice pay recovery and canteen facility provided to employees shall not to be treated as a 'supply' transaction and no GST shall be payable.²⁵

· The Appellate Authority for Advance Ruling, Haryana disallows ITC of GST paid on demo car received on inter-state stock transfer basis, used for limited period of 12 months and thereafter sold to authorised dealer as 'old and used vehicles'.²⁶

· The Appellate Authority for Advance Ruling, Tamil Nadu disallows ITC of GST paid on goods/services procured for the sales promotional scheme.²⁷



²² [2021] 133 taxmann.com 328 (New Delhi - CESTAT)

²³ 2022 (2) TMI 746 - CESTAT Bangalore

²⁴ [2022] 134 taxmann.com 342 (AAAR-MAHARASHTRA)

²⁵ [2022] 134 taxmann.com 74 (AAR - MAHARASHTRA)

²⁶ [TS-772-AAAR(HAR)-2021-GST]

²⁷ [TS-128-AAAR(TN)-2022-GST]

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