

## India Tax Hour

Quarterly India tax updates  
April – June 2023

5 July 2023

# Subject matter experts

## We will discuss...

- **Economy/International tax/Regulatory updates**
- **Direct tax updates**
  - Amendment to Tax Collection at Source (“TCS”) provisions on foreign remittances
  - Tax Compliance Updates
  - Taxation of share premiums-notification and draft Rule
  - Appeals to Joint Commissioner (Appeals)- new scheme notified
- **Indirect tax updates**
  - GST and Customs [Compliance updates]
  - Amnesty Scheme – Customs
  - Amnesty Schemes – State tax laws
  - Production Linked Incentive (PLI) Scheme for IT Hardware
- **Recent judicial pronouncements**

# Economy/International tax/Regulatory updates

- **Indian Economy - Growth and Inflation indicators; Tax collections**
- **International Tax**

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

European Commission issues report on Progress on Pillar 1 on 30<sup>th</sup> June:

On Pillar 1 - Supports OECD Secretariat's intention to finalise the Multilateral Convention (MLC) in July 2023

G7 Finance Ministers and Central Bank Governors Meeting at Niigata, Japan, issues Communiqué on 13 May 2023:

On Pillar 1- Committed to swift completion of negotiations so that the MLC can be ready for signature within the agreed timelines

On Pillar 2- Welcomes progresses in domestic legislation for implementing Pillar 2

- **Regulatory**

Ministry of Finance : Amendment and press releases regarding expenditure in foreign exchange under the Liberalised Remittance Scheme (LRS) of FEMA and on Tax Collection at Source (TCS) under the Income-tax Act

Ministry of Corporate Affairs (MCA): Amends the Companies (Indian Accounting Standards) Rules, 2015

w.e.f. 1 April 2023

# Direct tax updates

# Amendment to TCS provisions via Finance Act 2023 - Subsequent notification/press release/circular in May and June 2023 (1/3)

Changes in TCS rates from 01 October 2023 #

Sr. No.	Type of remittance	TCS rates upto 30 September 2023	TCS rates from 01 October 2023
(i)	Purpose – Any Education (loan amount being remitted out)	0.5% of the amount or the aggregate of amounts in excess of INR 7 Lakhs	No change
(ii)	Purpose – Any Education other than (i) or Purpose – Medical treatment	5 % of the amount or the aggregate of amounts in excess of INR 7 Lakhs	No change
(iii)	Overseas tour package	5% without any threshold limit	5 % of the amount or aggregate of amounts upto INR 7 Lakhs# 20 % of the amount or aggregate of amounts in excess of INR 7 Lakhs#
(iv)	Any other case	5 % of the amount or the aggregate of amounts in excess of INR 7 Lakhs	20 % of the amount or the aggregate of amounts in excess of INR 7 Lakhs#



MOF\* - Notification dt 16 May 2023 - Omitted exemption for international credit cards from LRS\*\*



MOF - Press Release dt 19 May 2023<sup>§</sup> - Payment using international debit/credit card up to 7 Lakhs p.a. excluded from LRS limits and not subject to TCS



MOF - Press Release dt 28 June 2023<sup>§#</sup> - The proposed amendments are as under:  
 Superseded the press release dt 19 May 2023  
 For LRS payments - Threshold of INR 7 Lakhs per individual per year restored  
 For overseas tour package – TCS 5% upto INR 7 Lakhs and 20% in excess of INR 7 Lakhs  
 Increased TCS rates to apply from 01 Oct 2023  
 Postponed the implementation of notification dt 16 May 2023: Transactions through international credit cards would not be counted as LRS and would not be subject to TCS

\*Ministry of Finance

\*\*Liberalized Remittance Scheme

#Legislative amendment shall be issued in due course

§The necessary changes to the Rules (Foreign Exchange Management (Current Account Transactions Rules), 2000) will be issued separately

## Amendment to TCS provisions via Finance Act 2023 - Subsequent notification/press release/circular in May and June 2023 (2/3)

Guidelines to remove difficulty in implementation of changes relating to TCS – CBDT Circular no. 10 dated 30 June 2023



TCS shall not be applicable on expenditure through international credit card while being overseas till further order



Combined threshold of INR 7 Lakhs is applicable to determine TCS on LRS irrespective of the purpose of the remittance i.e education, health and others



The threshold of INR 7 Lakhs (for the TCS to become applicable on LRS), is applicable for the full financial year



The threshold of INR 7 Lakhs, is per remitter and not per authorized dealer



Thresholds of INR 7 Lakhs for LRS and overseas tour program package apply independently

# Amendment to TCS provisions via Finance Act 2023 - Subsequent notification/press release/circular in May and June 2023 (3/3)

Guidelines to remove difficulty in implementation of changes relating to TCS – CBDT Circular no. 10 dated 30 June 2023

 Purchase of overseas tour program package where the money remitted is classified under LRS - TCS provision for purchase of overseas tour program package shall apply and not TCS provisions for remittance under LRS

 Remittance for the purposes of medical treatment for person to be treated shall include - ticket expense of the person and his attendant from India to the overseas destination, his medical expense and other day to day expense required for such purpose

 Remittance for the purposes of education for person undertaking overseas studies shall include - ticket expense of the person from India to the overseas destination, tuition/other fees of the education institute and other day to day expense required for undertaking such studies

 Purchase on standalone basis of international travel ticket or hotel accommodation is not purchase of overseas tour program package

# Tax Compliance Updates



Cost Inflation Index (CII) notified as 348 for FY 2023-24 (effective from 01 April 2024) – Notification no 39 dated 12 June 2023



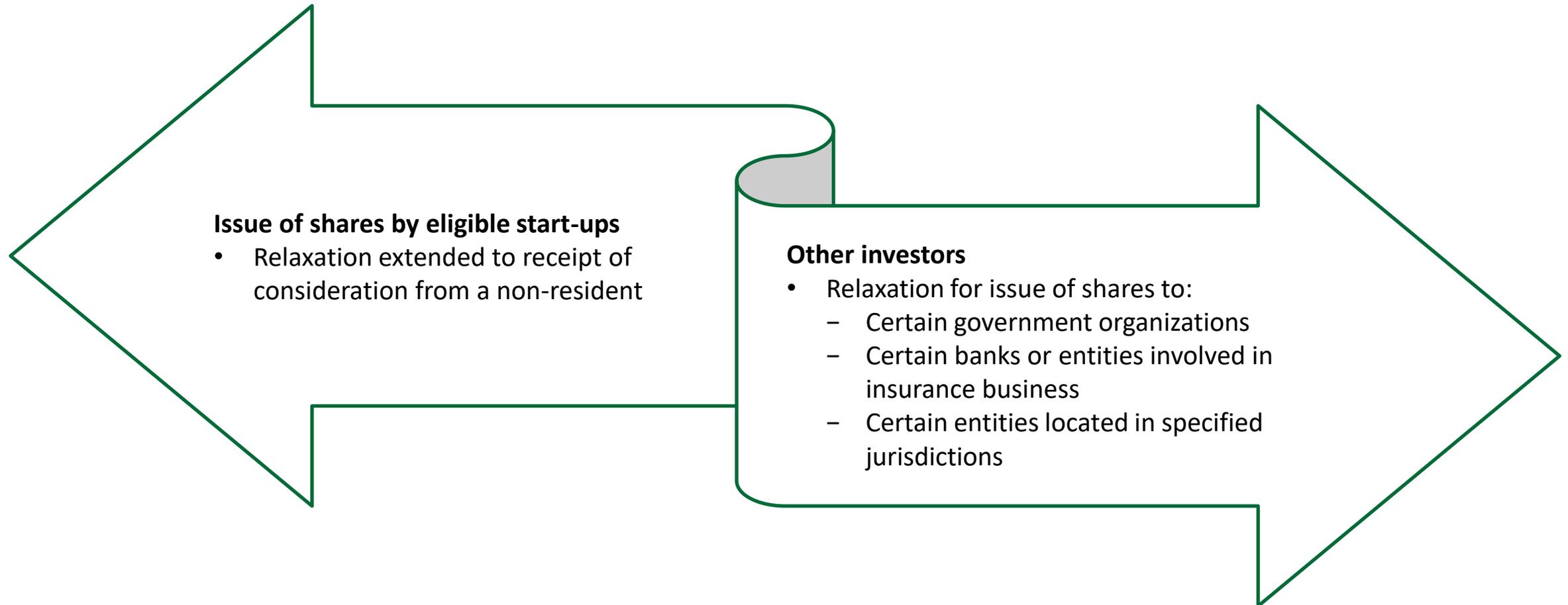
Revised monetary limits for condoning delay in filing return of income - Circular no 7 dated 31 May 2023

## Monetary limits for condoning delay in filing return of income for claiming refund or carry forward of loss and setoff thereof

Sr. No.	Income Tax Authority	Old Limits upto 31 May 2023 (amount of claim)	New Limits from 01 June 2023 (amount of claim)
(i)	PCIT/CIT	<= Rs 10 lakh for any one AY	<= 50 Lakhs for any one AY.
(ii)	CCIT	> Rs.10 lakhs but <=Rs. 50 lakhs for any one AY	>50 Lakhs but <= 2 Crore for any one AY.
(iii)	PCCIT	> Rs.10 lakhs but <= Rs. 50 lakhs for any one AY	> 2 Crore but <= 3 Crore for any one AY
(iv)	CBDT	> 50 Lakhs	> 3 Crore

# Taxability of share premium received by closely-held Indian company

Relaxations from applicability – Notifications dated 24 May 2023



# Valuation of unquoted equity shares in certain cases- draft Income-tax Rule

CBDT Draft Notification dated 26 May 2023



Issue of shares to a non-resident – option available to consider five more valuation methods\* to determine FMV of shares



Issue of shares to any other investor – option available to consider FMV of shares issued by a VCU to a VCF/ VCC/ specified fund



Issue of shares to any other investor – option available to consider FMV of shares issued to notified entities



Option available to consider earlier valuation report of a merchant banker



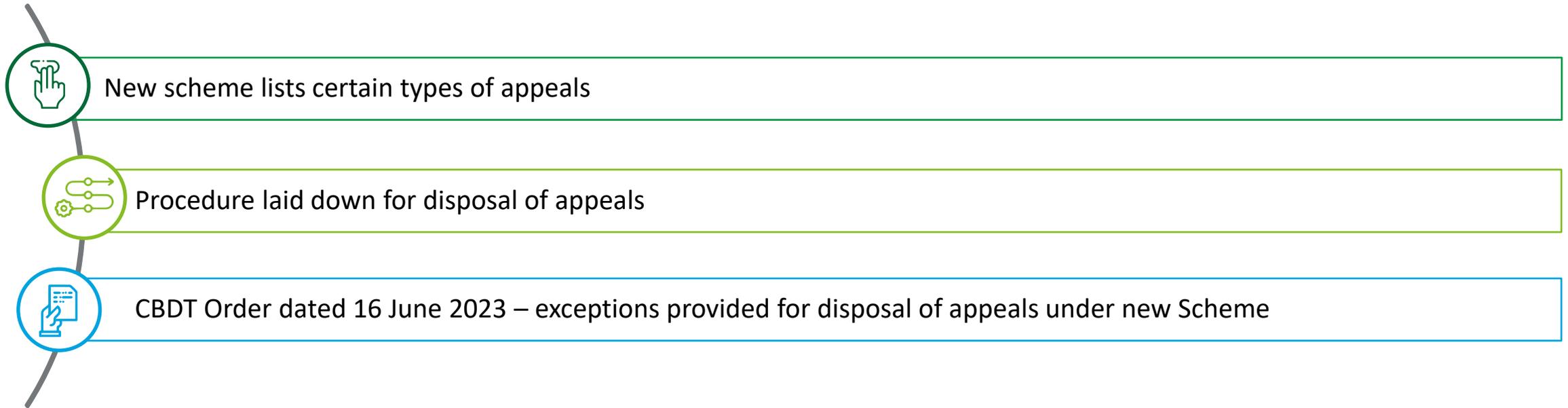
Safe harbour threshold of 10% provided to reckon FMV shares in certain scenarios



Public comments were invited by 5 June 2023

# Appeals to Joint Commissioner (Appeals)- new scheme notified

CBDT Notification dated 29 May 2023



# Indirect tax updates

# GST Compliance Update

## Offline Verification of document Reference Number (RFN)

[GSTIN Advisory dated 28.04.2023]

- Facility for generation of RFN
- For communications by State tax officer to taxpayer
- Verification of RFN by the tax payer



## E-invoice under GST

[Notification 10/2023- CT dated 10.05.2023]

- E-invoicing applicable for aggregate annual turnover > INR 5 Cr. [w.e.f. 01 August 2023]

## E-invoice verifier App

[GSTIN Advisory dated 08.06.2023]

- Application to verify authenticity of e-invoices.
- No login requirements
- Available on Google Play Store [yet to be made available for iOS].



## Time-limit for generation of e-invoice

[GSTIN Advisory dated 06.05.2023]

- No time restriction for e-invoices
- Deferment of proposed time limit of 7 days.

## Customs Compliance Update

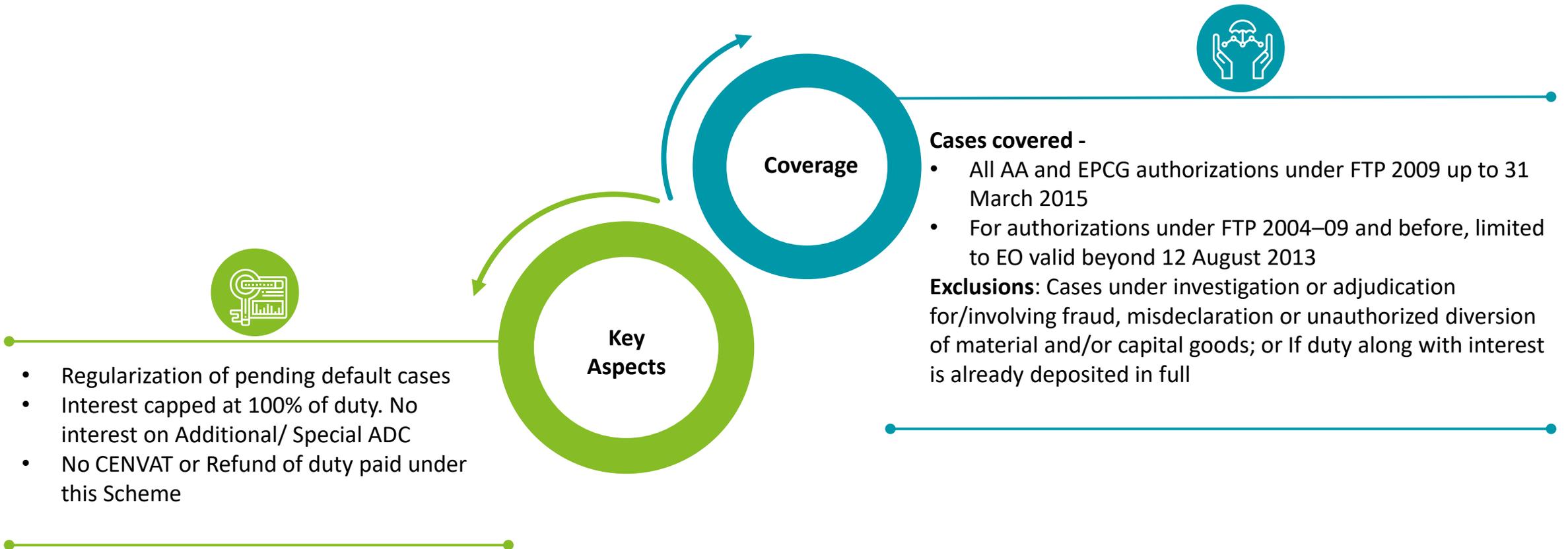
GST Input Tax Credit [Customs Circular No.16 dated 07.06.2023]

- Process for re-assessment of BOE where imports don't satisfy pre-import conditions in the case of AA & EPCG.
- Clarifies **TR-6 Challan is not prescribed document for GST credit.**

# Customs Amnesty Scheme

Public Notice 2/2023 dated 01.04.2023

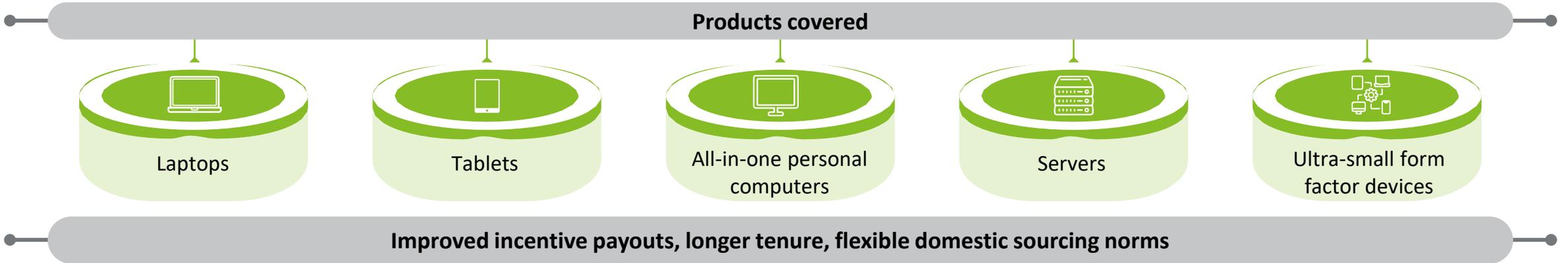
One-time facility for regularization of Export Obligation (EO) default for Advance Authorisation (AA) Scheme and Export Promotion Capital Goods (EPCG) Scheme



# Amnesty Schemes - State Tax Laws

Particulars	Maharashtra Amnesty Scheme 2023	Karnataka Karasamadhana Scheme 2023	Rajasthan Amnesty Scheme 2023
	Maharashtra Act No. XVIII of 2023 dated 06.04.2023	Karnataka State Budget 2023-24 dated 17.02.2023	Notification dated 10.02.2023
<b>Eligibility</b>	<ul style="list-style-type: none"> <li>All disputes (whether in appeal or not)</li> <li>Eligible even if availed benefits under previous schemes (not in respect to present matter)</li> </ul>	All except dealers penalized under section 10-A of the CST Act	All except tax demand for goods listed in Entry No. 54 of State list of seventh schedule to Constitution
<b>Due date for Application</b>	14 Nov 2023	31 October 2023	<ul style="list-style-type: none"> <li>Phase I: upto 30 June 2023</li> <li>Phase II: 01 July 2023 to 31 July 2023</li> <li>Phase III: 01 August 2023 to 30 September 2023</li> </ul>
<b>Benefit</b>	<ul style="list-style-type: none"> <li><b>Arrears ≤ INR 2 Lakh:</b> Full Waiver of arrears</li> <li><b>Arrears ≤ INR 50 lakhs:</b> Waiver of 80% of arrears (if opted for lump sum payment)</li> <li><b>Arrears &gt; INR 50 lakhs:</b> Waiver of 44-70% of tax, 85-90% Interest and 95% penalty</li> </ul>	Waiver of interest and penalty	<ul style="list-style-type: none"> <li><b>Arrears ≤ INR 1 Lakh:</b> Full waiver of arrears</li> <li><b>Arrears pertaining to declaration forms:</b> Invoice and payment proof submitted – full waiver of tax, interest and penalty Other cases – Waiver of 80-90% of tax, interest and penalty</li> <li><b>Arrears pertaining to interest &gt; INR 25 Crores:</b> Waiver of 60-70%</li> <li><b>Other Arrears:</b> Waiver of 70-80% of tax and interest and penalty</li> </ul>

# Production Linked Incentive (PLI) Scheme - Information Technology Hardware 2.0 [29 May 2023]



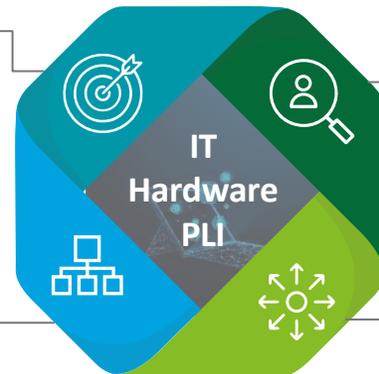
## Improved incentive payouts, longer tenure, flexible domestic sourcing norms

### Objective

- Boost domestic manufacturing
- Attract global manufacturers to shift production base to India
- Flexibility to approved applicants of IT Hardware PLI
- Focus on Localization

### Scheme Components

- Average incentives of 5% over 6 years subject to localization; to be linked with net incremental sales
- Better payouts for company locally procuring sub assemblies



### Target segment

- Global and Domestic manufacturers
- Hybrid manufacturers (Global/ Domestic)
- Existing PLI applicants – migration possible to PLI 2.0
  - Participate as a new applicant for 6 years
  - Participate from 2/3 year onwards; investment made in existing scheme to be counted

### Other aspects

- Budgetary outlay - INR 16,939 crore (US\$ 2.05 Bn)
- Incentive capped depending upon applicant company status
- FY 2021-22 will be considered for qualification criteria

**Scheme open for applications for a period of 45 days\* i.e., till 15 July 2023 unless extended**

# Judicial pronouncements – Direct Tax

# Failure to deposit Tax Deducted at Source (TDS) before the due date - not liable for penalty

US Technologies International Pvt. Ltd. & Others Vs CIT (SC) (Civil Appeal No. 7934 of 2011) (10 April 2023)



## Facts of the case

- Taxpayer engaged in the business of software development deducted TDS on salary payments, contract payments etc.
- Survey was conducted on the premises of taxpayer and revenue noted that the TDS deducted was deposited with a delay of 5 days to 10 months.
- Add CIT passed order u/s 271C levying penalty for failure to deduct/remit the TDS.
- The Kerala HC dismissed the appeal filed by the taxpayer and the taxpayer appealed before the SC
- Taxpayer contention - Section 271C would be applicable only in case of non-deduction of whole or any part of the tax and not in case of delayed deposit of TDS.
- Revenue contention - The object and purpose of insertion of Section 271C is over and above the prosecution, delay in payment of TDS shall also be liable to pay penalty.



## Decision of the Supreme Court

- Section 271C(1)(a) talks of only 'failure to deduct'.
- Fails to pay the whole or any part of the tax would be falling under Section 271C(1)(b) and it is limited to Section 115-O(2) and Section 194B.
- As per the cardinal principle of interpretation of statute and more particularly, the penal provision, the penal provisions are required to be read as they are.
- Consequences of non-payment and/or belated remittance/payment of the TDS in are already provided in Section 201(1A) (i.e. interest) and Section 276B (i.e. prosecution).
- Held "fails to deduct" cannot be read into "failure to deposit/pay the tax deducted".
- Held that 'fails to deduct' occurring in Section 271C(1)(a) would not include the payer who caused delay in remittance of TDS deducted by him.

# Dividend Distribution Tax ('DDT') – Lower rate on dividend under tax treaties not applicable to DDT

Total Oil India Pvt. Ltd. & Others (Mumbai ITAT Special Bench) (ITA NO.6997/MUM/2019) (20 April 2023)



## Facts of the case

- Assessee (Domestic Company) declared/paid dividend to its NR shareholder (tax resident of France) during AY 2016-17.
- Section 115-O prescribes for additional income tax (DDT) payable by Domestic Company on any amount declared, distributed or paid by way of dividend.
- Assessee Company took a stand that the DDT tax rate u/s.115-O cannot exceed the prescribed rate under the DTAA at which dividend can be taxed in the hands of the NR shareholder.
- Mumbai Tribunal expressed the view that this is a fit case for constitution of a Special Bench. Special Bench of the Income-tax Appellate Tribunal constituted on 24 November 2022
- Issue before the ITAT - whether DTAA rate restriction can be applied for dividend declared, distributed or paid by domestic company to NR.



## Decision of the Mumbai ITAT (Special Bench)

- Section 115O is a code by itself for levy and collection of tax on distributed profits.
- The non obstante clause is an indication that the charge under the section is independent and divorced from the concept of “total income” under the act.
- If domestic company has to enter the domain of DTAA, the countries should have agreed specifically in the DTAA to that effect.
- Held that payment of DDT does not discharge the tax liability of the shareholders. It is a liability of the company and discharged by the company.
- Held that DDT is a tax on the Company's profit and not a charge in the hands of the shareholder.
- Held that tax treaty has to be considered from the recipient's taxability perspective.

# Assignment of loan is transfer of a capital asset – Short-Term Capital Loss allowed

M/S Siemens Nixdorf Information Systemse GMBH (SC) (SLP No 7350/2020) (11 April 2023)



## Facts of the case

- The taxpayer had lent an amount of 9 million Euros to one of its subsidiaries in India.
- The subsidiary company ran into financial troubles and was likely to be wound up.
- The taxpayer sold the debt to another company for 0.731 million Euros and claimed the difference amount as short-term capital loss.
- The AO disallowed the claim of capital loss.
- On appeal, the ITAT allowed the claim of capital loss by treating the same as transfer of a capital asset.
- On further appeal, High Court dismissed Revenue's appeal.
- Revenue filed an SLP with Supreme Court.



## Decision of the Supreme Court

- 'Capital asset' means property of any kind – there is no exclusion specifically provided for loan.
- SC held that loan is a 'capital asset' – therefore transfer of such asset is taxable under the head 'Capital Gains'.
- SC dismissed the SLP.

# Reassessment proceedings not valid where income threshold criterion not met

Mr. Sanath Kumar Murali (WP No. 7647 of 2023) (Karnataka High Court) (24 May 2023)



## Facts

- In AY 2016-17, Petitioner sold immovable property for INR 55.77 lakhs, and earned long-term capital gains of INR 33.85 lakhs.
- AO issued a reassessment Notice dated 21 March 2023 alleging that income chargeable to tax had escaped assessment.
- Petitioner challenged issue of Notice.



## Decision

- 'Income chargeable to tax' must be read in terms of 'income' as arising out of 'capital gains'.
- AO had not noticed legal position while deciding about applicability of extended period of limitation under section 149(1)(b).
- Notice issued under section 148 was set aside.

### Section 149 of Income-tax Act, 1961

“(1) No notice under section 148 shall be issued for the relevant assessment year,—

- a) if three years have elapsed from the end of the relevant assessment year, unless the case falls under clause (b);
- b) if three years, but not more than ten years, have elapsed from the end of the relevant assessment year unless the Assessing Officer has in his possession books of account or other documents or evidence which reveal that the **income chargeable to tax**, represented in the form of—
  - (i) .....  
which has **escaped assessment** amounts to or is likely to amount to **fifty lakh rupees or more**:

**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)



Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited, a UK private company limited by guarantee (“DTTL”), its network of member firms, and their related entities. DTTL and each of its member firms are legally separate and independent entities. DTTL (also referred to as “Deloitte Global”) does not provide services to clients. Please see [www.deloitte.com/about](http://www.deloitte.com/about) for a more detailed description of DTTL and its member firms.

This material is prepared by Deloitte Touche Tohmatsu India LLP (DTTILLP). This material (including any information contained in it) is intended to provide general information on a particular subject(s) and is not an exhaustive treatment of such subject(s) or a substitute to obtaining professional services or advice. This material may contain information sourced from publicly available information or other third party sources. DTTILLP does not independently verify any such sources and is not responsible for any loss whatsoever caused due to reliance placed on information sourced from such sources. None of DTTILLP, Deloitte Touche Tohmatsu Limited, its member firms, or their related entities (collectively, the “Deloitte Network”) is, by means of this material, rendering any kind of investment, legal or other professional advice or services. You should seek specific advice of the relevant professional(s) for these kind of services. This material or information is not intended to be relied upon as the sole basis for any decision which may affect you or your business. Before making any decision or taking any action that might affect your personal finances or business, you should consult a qualified professional adviser.

No entity in the Deloitte Network shall be responsible for any loss whatsoever sustained by any person or entity by reason of access to, use of or reliance on, this material. By using this material or any information contained in it, the user accepts this entire notice and terms of use.