

## India TaxHour

### Quarterly India tax updates

July – September 2022  
12 October 2022

# Subject matter experts

# We will discuss...

- **Economy/Regulatory/International tax updates**
- **Direct tax updates**
  - Refund of taxes
  - New reassessment regime - Update on controversy
  - CBDT Circulars / Notifications
    - Clarifications regarding TDS on business related benefits
    - Taxation of Virtual Digital Asset (VDA)
    - Compounding of prosecution / offences - Revised guidelines
    - Voluntary disallowance of education cess claimed in prior years
    - Electronic filing of Form 10F for claiming treaty benefit
    - Tax return in case of business reorganization - Extension of time
- **Indirect tax updates**
  - GST
    - Clarifications on specific transactions
    - Implementation of GST Council recommendations
    - Significant rate changes
    - Key Updates – Due dates extended
    - SOP regarding summons
  - SEZ regulations on WFH
- **Recent judicial pronouncements**

# Economy/Regulatory/International tax updates

- Economic indicators; Tax collections
- G20/OECD initiative to counter tax Base Erosion and Profit Shifting (BEPS) - Pillar 1 and Pillar 2 developments
- New Overseas Investment Regulations notified under FEMA Act

# Direct tax updates

# Refund of taxes

## **CBDT Notification for refund to payer of the withholding tax deposited on payments to a non-residents**

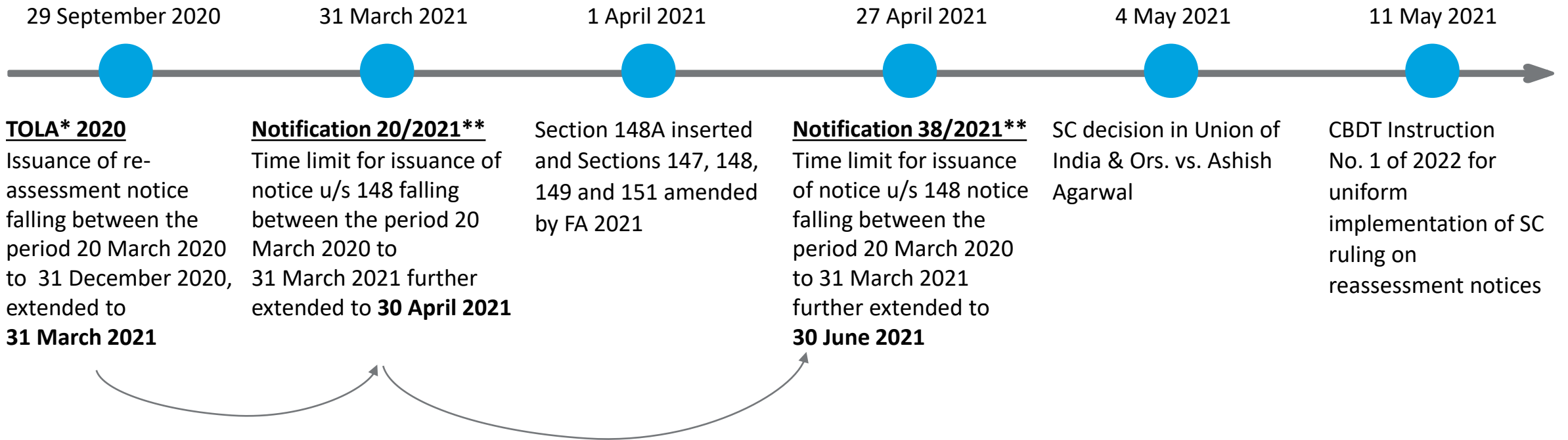
- Section 239A was inserted to enable Indian resident payers to claim refund of taxes deducted under Section 195 and borne by such payer who after paying such taxes realizes that no tax was required to be deducted.
- CBDT has now notified Form No. 29D for filing the claim for refund w.e.f. 17 August 2022.

## **Recent judicial update on credit of refund to non-residents bank account**

### **M. Tech Holdings PTE Limited**

- Karnataka HC allowed taxpayer's writ petition and directed the tax department to issue the refund along with applicable interest
- For the purpose of processing, it directed the taxpayer to open a virtual bank account within a period of 2 weeks.
- Upon receiving intimation of the virtual bank account, necessary steps should be taken by the income-tax department to validate the same within 2 weeks.
- Upon validation of the virtual bank account, the tax department shall ensure that the refund is credited , within the period of 2 weeks from the date of validation of virtual bank account.

# New reassessment regime - Update on controversy



**Controversy:** Post 1 April 2021, can notices under erstwhile section 148 be issued without following the mandatory procedure laid out u/s 148A?

\* The Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020

\*\* Explanation inserted by CBDT to extend the operations of old provisions till 30 April 2021/ 30 June 2021

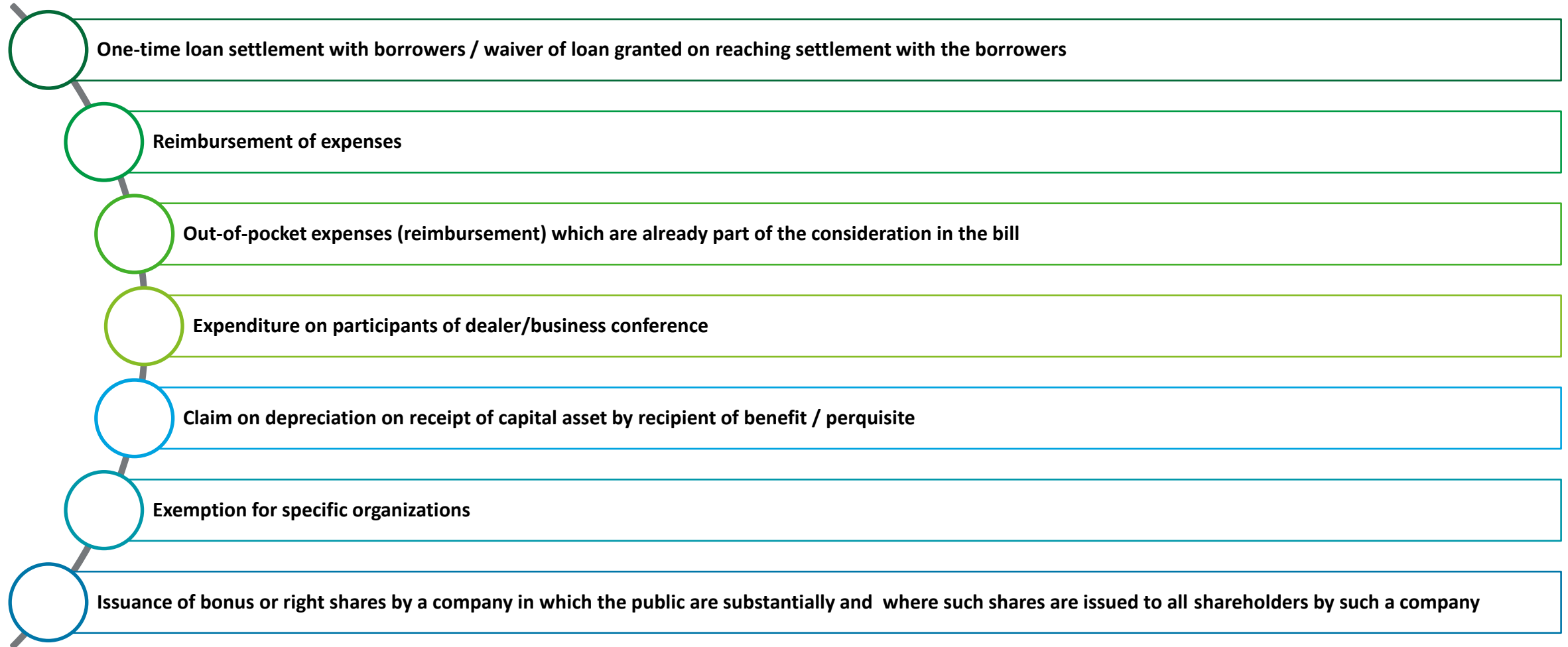
## Recent Judicial Update on the controversy:

Touchstone Holdings Private Limited (Delhi HC)

HC upheld the validity of reassessment notice issued on 29 June 2021, pursuant to the SC's judgement and the subsequent CBDT Instruction.

# Clarifications regarding TDS on business related benefits

CBDT has issued additional guidelines under section 194-R vide Circular No. 18 of 2022 dated 13 September 2022



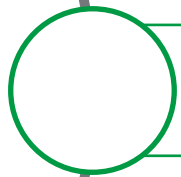


# Taxation of Virtual Digital Asset (VDA)

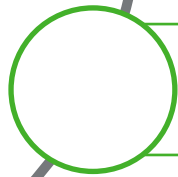
## Exclusion from the definition of VDA (Notification No. 74/2022)



Gift card or vouchers



Mileage points, reward points or loyalty card

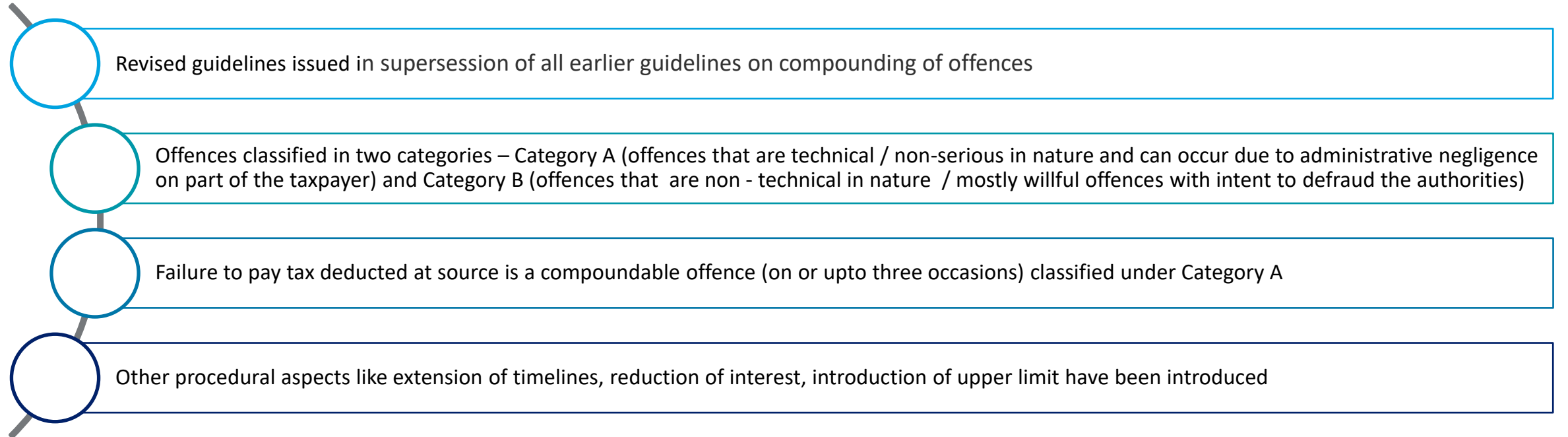


Subscription to websites / platforms / application

## Clarification with regard to Non-fungible token (Notification No. 75 /2022)

**A token which qualifies to be a VDA as NFT shall not include a non-fungible token whose transfer results in legally enforceable transfer of ownership of underlying tangible asset.**

# Compounding of prosecution / offences - Revised guidelines



# Voluntary disallowance of education cess claimed in prior years

- Section 155(18) was inserted to enable tax authorities to disallow the cess or surcharge claimed by taxpayer in preceding years, by passing rectification order.
- In cases where application to recompute and rectify the computation is made suo-moto by taxpayer, penal provisions shall not be attracted
- Form No. 69 notified for making online application with the tax officer to recompute the total income
- Tax officer to recompute income and pass an order for relevant assessment year as well as for subsequent years where re-computation leads to variation in carryforward of loss / allowance of unabsorbed depreciation / MAT credit.

# Electronic filing of Form 10F for claiming treaty benefit

## Provisions under the Income-tax Act

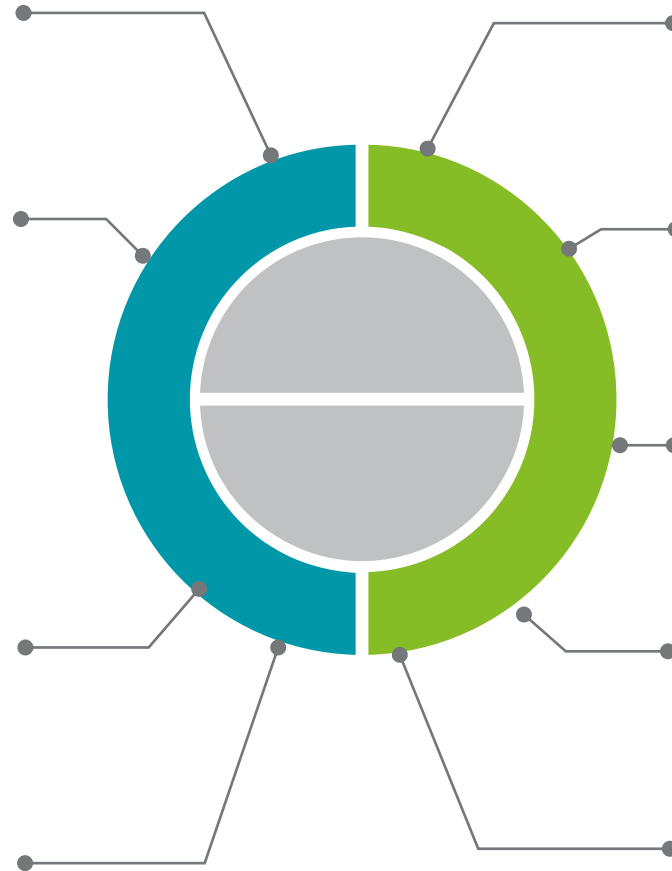
Section 90(4)/90A(4) require a non-resident, to obtain tax residency certificate (TRC) to avail the treaty benefit

Sections 90(5)/ 90A(5) require a non-resident, to provide certain information as prescribed in Rule 21AB by filing Form 10F

## Update

Rule 131(1) and (2) empower CBDT to prescribe forms required to be furnished electronically

List of forms mandated by CBDT to be filed electronically includes Form 10F



## Points to note

It is now mandatory to electronically file Form 10F i.e. form for claiming treaty benefit

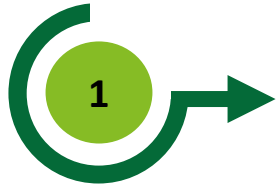
Income-tax portal provides for electronic filing facility for AY 2022-23 onwards

Tax Authorities may deny benefit claimed in the tax return if Form 10F has not been filed electronically

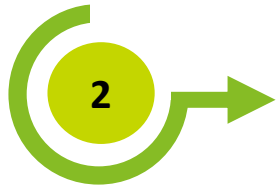
Advisable for non-residents earning income from India and claiming treaty benefits to file Form 10F on or before the due date of filing the tax return; if not then immediately thereafter

Payer to take note of whether the payee has furnished Form 10F before the date when the payer is required to withhold the taxes in case payee is availing treaty benefit

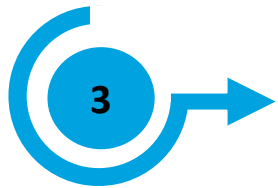
# Tax return in case of business reorganization - Extension of time



- Section 170A inserted with effect from 1<sup>st</sup> April 2022 relates to effect of order of tribunal/court in respect of business reorganization
- Entities going through business reorganization may furnish modified return of income within a period of six months from the end of the month in which such order of business reorganization was issued



- ITR-A notified by the CBDT comes into effect from 1<sup>st</sup> November 2022
- Where the order for business reorganization by competent authority was issued during 1<sup>st</sup> April 2022 and 30<sup>th</sup> September 2022, the time limit to furnish the tax return got reduced



- An order granting extension to such successor companies to file the modified returns till 31<sup>st</sup> March 2023 has now been issued.

# Indirect tax updates

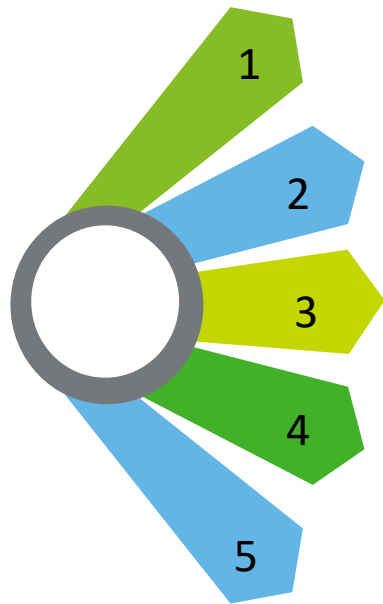
# GST - Clarifications on certain key transactions (1/2)



- **Agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act**
- Clarifications issued by CBIC on GST applicability on few transactions



CLARIFICATIONS ISSUED



Welcome circular in light of the rulings against the taxpayer, e.g., Sinagareni Collieries Company Ltd, Achampet Solar Pvt Ltd



Element of contractual relationship is essential element of supply



Express or implied agreement; oral or written, to exist



Mere 'events' in a contract does not mean that the parties are agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act



Independent payment for independent activity is a must, else, payments will not constitute 'consideration' and hence NO Supply

## GST - Clarifications on certain key transactions (2/2)



**NO GST /  
Exempt**

- **Forfeiture of salary or Payment of Bond amount**
  - Not a consideration
  - Is penalty to dissuade non-serious employees
  - No gain to employee against such payment
- **Liquidated Damages**
  - Mere flow of money
  - Simply compensation for damage suffered due to breach of the contract
- **Penalty imposed for violation of laws / Fine or Penalty paid for dishonor of cheque**
  - Not a consideration
  - No service received in lieu of payment
  - Is in the nature of fine/ penalty
- **Fixed Capacity charges for Power**
  - Minimum fixed charges collected by Electricity Boards are to be treated as charges for main supply



**Subject to  
GST**

- **Late Payment surcharge or fee / Cancellation charges**
  - Ancillary to principal supply
- **Fine or Penalty for delay in payment or forfeiture of contract of tour/ travel/ accommodation**
  - Amounts forfeited on cancellation of service by customer as contractually agreed constitutes to consideration



# Implementation of 47<sup>th</sup> GST Council recommendations : Clarifications



- ITC towards ‘Deemed Exports’ supplies not available to the recipient
- Full refund can claimed by recipient
- Credit Restrictions of Section 17 not applicable

- ITC eligibility for mandates by other laws i.e. F&B, health services, memberships etc. extended to all clauses
- Lease of vehicles to employees alone restricted
- ITC on other assets provided to employees available
- Perquisites not subject to GST

Supplies received by Body Corporate	GST	RCM
Renting of motor vehicles (air conditioned / non airconditioned)	✓	✓
Transport of passengers by non-airconditioned contract carriages (over pre-determined route on a pre-determined schedule)	×	×
Passenger transport service for specific journeys or voyages	✓	×

● Issues examined in 47th GST Council meeting held on 28/29 Jun 22  
■ Clarifications issued

### Others:

- Electronic credit ledger can be used for making payment of output tax only under the CGST Act / the IGST Act
- No reversal requirement of Common ITC for exempted supply of Duty Credit Scrips
- Taxpayers with Aggregate turnover < 2 crore exempted from filing Annual Return in FORM GSTR-9 for FY 2021-22

# Few significant rate changes



## RATE REDUCED

Renting of truck/goods carriage where cost of fuel is included  
18% to 12%

Transport of goods and passengers by ropeways (with ITC of services)  
18% to 5%

Orthopedic appliances  
12% to 5%

Ostomy Appliances  
12% to 5%



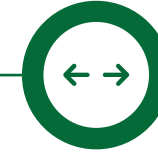
## RATE INCREASED

Services supplied by foreman to chit fund  
12% to 18%

E-Waste  
5% to 18%

Scientific and technical instruments to public funded research institutes  
5% to applicable rates

Cut and Polished diamonds  
0.25% to 1.50%



## EXEMPTION WITHDRAWN

Pre-packaged and labelled goods 5% on packages <= 25Kgs / 25 ltrs

Non-ICU hospital rooms having room rent in excess of Rs 5000/ day  
GST at 5%

Hotel accommodation priced up to Rs.1,000 per day – 12%

CETPs, common bio-medical waste treatment facilities for treatment or disposal of biomedical waste – 12%

Renting of residential dwelling to GST-registered businesses – now subject to RCM

# Key GST Updates – Due dates extended



**ITC availment** – earlier available upto the due date of filing GSTR-3B return of September following the FY (20 October)  
Extension applicable from FY 2021-22

**Issue of Credit notes** – earlier could be issued and disclosed upto return for September of following FY  
Extension applicable from FY 2021-22

**Rectification in GSTR-1** – Earlier rectification of error or omission available in returns upto September of following FY  
Extension applicable from FY 2021-22

**Rectification in GSTR-3B** – Earlier rectification of error or omission available in returns upto September of following FY  
Extension applicable from FY 2021-22

Press Release: No extension in filing returns for Oct 2022

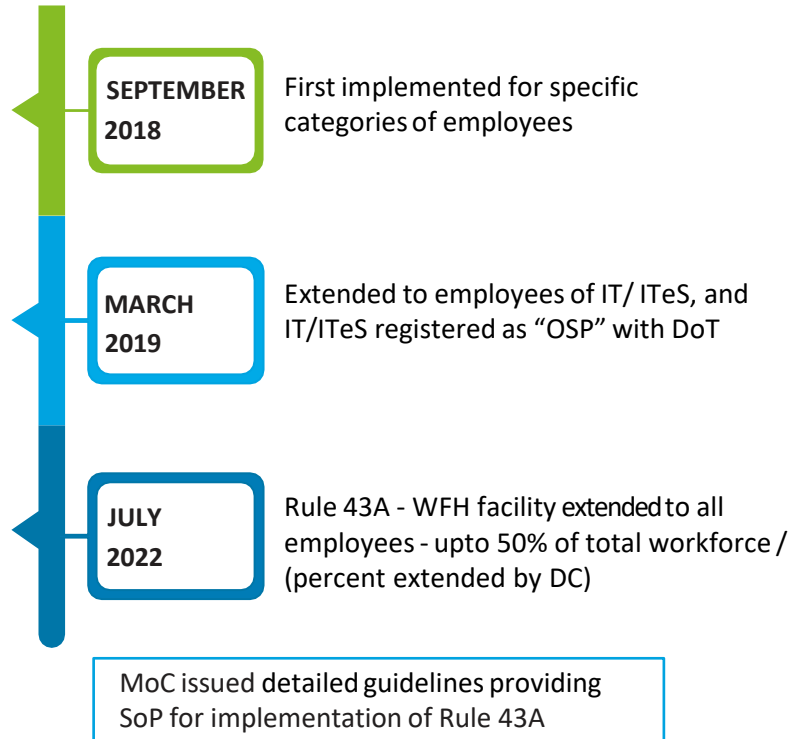
# Standard Operating Procedure - Summons

## Guidelines

- 1** Superintendent to issue summons after obtaining approval from AC/DC or higher rank officers
- 2** Issue to be avoided for statutory documents available on GST portal
- 3** Senior management officials (CMD / MD /CFO / CEO) not to be issued summons in first instance  
Should be summoned only in case of clear indications of their involvement, leading to loss of revenue
- 4** DIN mandatory
- 5** Summoning officer to be present, if not, summoned person to be informed in advance
- 6** Issue of repeated summons without ensuring service of summons to be avoided

# SEZ regulations on WFH

## WFH provision for SEZ units



## Overview of the guideline

### Eligible employees

- IT/ITeS
- Temporarily incapacitated
- Travelling
- Working offsite

### Assets to be provided to employee

- Laptop, computer, video projection system, other electronic equipment
- SO permit to remove goods temporarily without payment of duty

### Validity of permission

- 1 year, extendable on request
- **New hires/exits details to be informed to DC within 15 days**

### Aspects to be kept in mind

- Approved services
- Tag revenue with employee
- Employees ceases to be part of project
- Records of attendance to be maintained

### Calculation of percentage of employees

- Calculation of 50% or > 50% (if approved by DC) to be based on the previous month’s employee data
- If employees working on shifts - approved percent is based on shift-wise monthly employee data
- **Implementation of WFH facility - discretion of the unit to allow Hybrid work model**

## Other key clarification issued by Ministry of Commerce vide Instruction no. 110 dated 12 August 2022



**Permission in case of new employees:** Provisional permission for WFH may be availed on an immediate basis, which shall be regularised through an email application within 15 days



**Endorsement for assets:** The requirement of endorsement certificate by Specified Officer (SO) shall be implemented in such a manner to avoid any undue hardships to the employees currently WFH



**Revision of WFH scheme:** In case of revision of WFH scheme – same must be submitted at least 15 days advance with the Development Commissioner



**Records of assets:** Electronic asset removed should be duly accounted

# Judicial pronouncements – Direct Tax

# Deduction in respect of Bad debts covered by section 36, not deductible under section 37

PCIT vs Khyati Realtors Pvt Ltd (Supreme Court)

## Facts of the case

- The taxpayer was a company engaged in real estate development business, trading in transferable development rights (TDR) and financing. During the Financial Year (FY) 2008-09, the taxpayer claimed deduction for bad debts written-off in its books of account
- The taxpayer contended that:
  - The amount was deposited with an Indian company (I Co) towards acquisition of commercial property/premises two years prior to the AY under consideration (i.e. in 2007).
  - The project did not appear to make any progress and hence, the taxpayer sought return of the amount from I Co. However, I Co did not respond and hence, the taxpayer's Board of Directors resolved to write-off the amount as bad debt in 2009
  - The Assessing Officer (AO) disallowed the deduction claimed by the taxpayer and in the course of appellate proceedings, the matter reached before the Supreme Court

## Decision of the Supreme Court

- Merely stating a bad and doubtful debt as an irrecoverable write-off without the appropriate treatment in the accounts, would not entitle the taxpayer to claim a deduction. The observations of the Court were as under:
  - There was no material to substantiate, in respect of payment of the amount, the time by which the constructed unit was to be given to the taxpayer, the area agreed to be purchased, etc.
  - It was nowhere established the duration of the advance, the terms and conditions applicable to it, interest payable, etc.
  - Nothing on record to suggest that the requirement of the law that the bad debt was written-off as irrecoverable in the taxpayer's accounts for the FY, was satisfied.
  - The money was given to I Co for acquiring immovable property – it was therefore in the nature of capital expenditure. It could not have been treated as a business expenditure.

# Benefit under India-Italy treaty available based on MFN clause in the India-Netherlands treaty

Koninklijke Philips N.V vs. DCIT (Kolkata-Trib.)

## Facts of the case

- The taxpayer, was a non-resident company incorporated under the laws of Netherlands
- For one of the Assessment Years, the Tax Officer determined income-tax refund due to the taxpayer including interest on such income-tax refund granted under section 244A of the ITA and deducted tax at source (TDS) on the interest portion
- The taxpayer contended that the interest on income-tax refund is not taxable in India and hence no TDS was required on such interest payment
- In the course of appeal proceedings, the matter reached before the Kolkata bench of the ITAT.

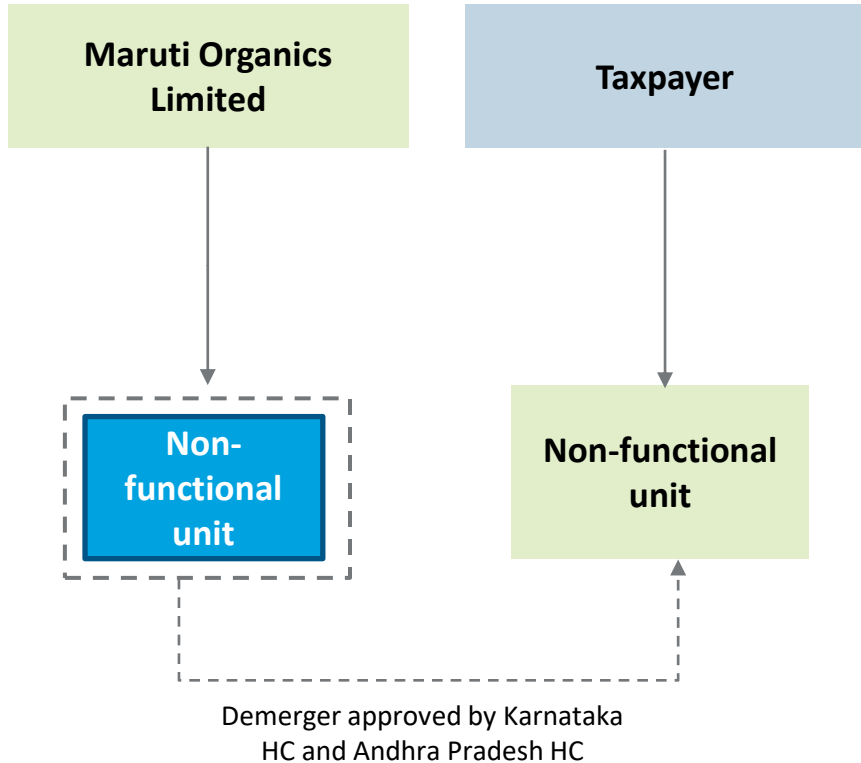
## Decision of the Kolkata Tribunal

- The taxpayer was covered by the India-Netherlands tax treaty
- By virtue of Protocol IV(2) of the India-Netherlands tax treaty, benefit of MFN clause was given to the taxpayer.
- As per the Protocol, if the provisions of a tax treaty entered into by India after signing of India-Netherlands tax treaty i.e. after 21 January 1989 with another OECD member country is more beneficial either in terms of its scope and coverage or tax rate vis-à-vis the India-Netherlands tax treaty then the said provisions shall also apply into the India-Netherlands tax treaty.
- The India-Italy tax treaty came into force on 23 November 1995 i.e, post 21 January 1989. Hence, the beneficial provisions under the India-Italy tax treaty on the aspect of taxability of interest will become available into the India-Netherlands tax treaty by virtue of MFN clause under the Protocol.
- Provisions of Article 12(3)(a) of the India-Italy tax treaty specify that interest earned by a resident of Italy will not be taxable in India where the payer of such interest is Government of India.
- Applying the provisions of India-Italy tax treaty read with the protocol of the India-Netherlands tax treaty, the restricted scope of taxability of interest becomes applicable in the current case.



# Demerger of non-functional business unit

KBD Sugars And Distilleries (Kar HC)

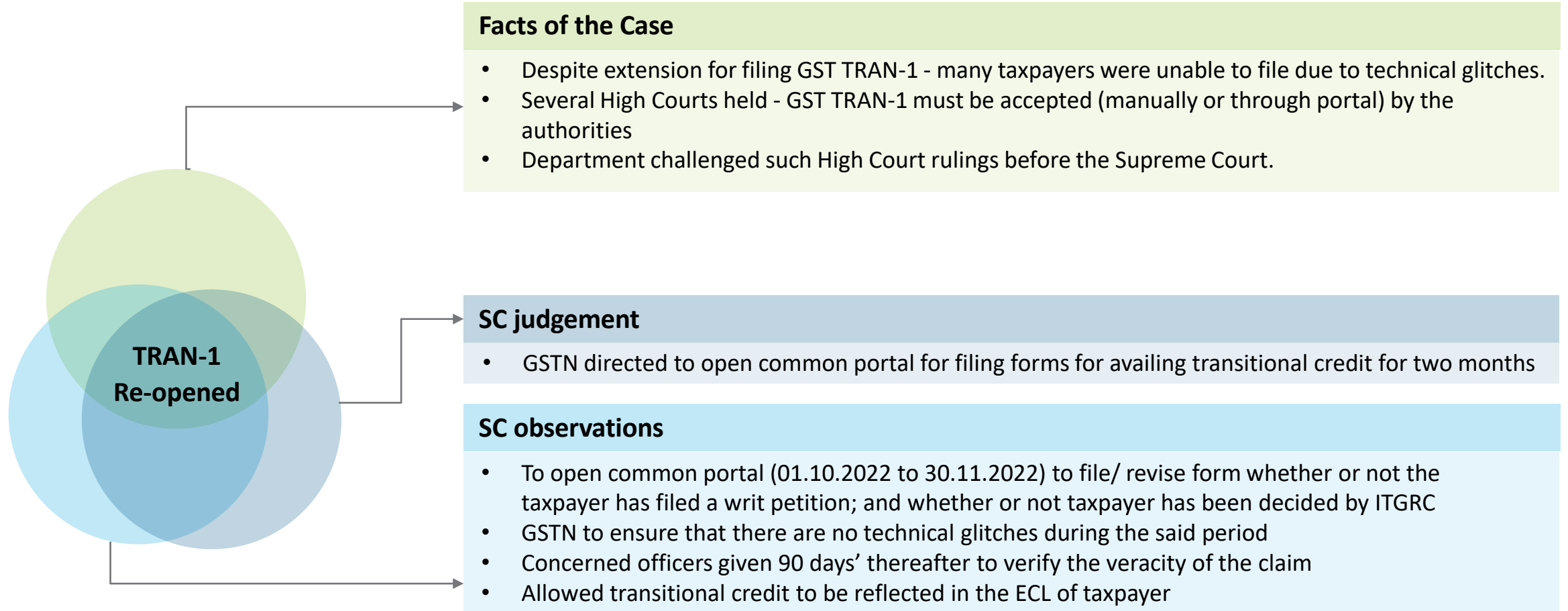


- With respect to benefit of set-off of brought forward losses, Karnataka HC observed that the scheme of demerger was approved by this Court as well as the Andhra Pradesh HC as per which the undertaking was demerged from MOL and was deemed to be transferred to and vested in the taxpayer on a going concern basis.
- Taxpayer eligible for set off of losses where court approved demerger of non-functional unit as 'going concern'. Opines that "it would be incongruous to construe sub-clause (vi) of section 2 (19AA) as to mean a running unit".

# Judicial pronouncements – Indirect Tax

# TRAN-1 Re-opened

Union of India Vs. Filco Trade Centre Pvt. Ltd. [22 July 2022]

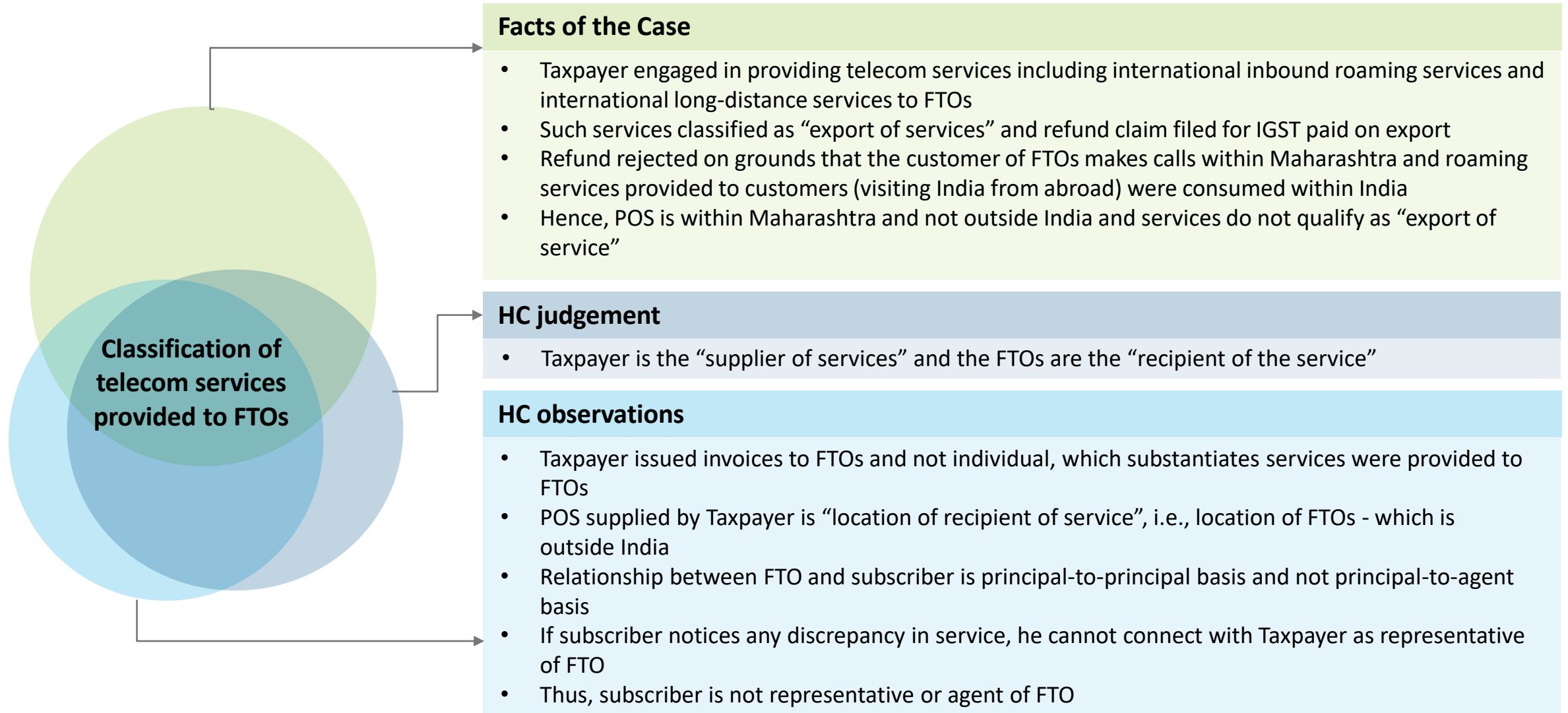


\* Guidelines issued by CBIC in this regard

\*\* Portal now activated

# Telecom services provided to FTOs are Export of Services

Vodafone Idea Ltd Vs. Union of India [4 July 2022]



**Thank you!**

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

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# Annexure

# Compounding of prosecution / offences - Revised guidelines

In supersession of all earlier guidelines on compounding of offences, CBDT has issued revised guidelines on 16.09.2022

## Key changes

- Pr. CCIT/ CCIT/ Pr. DGIT/ DGIT is now the sole competent authority to evaluate the compounding application. Further, to enable quicker disposal, the requirement of approaching a committee of three officers along with Pr. CCIT/ CCIT/ Pr. DGIT/ DGIT in cases where compounding charges are more than INR 1 million is now removed.
- Extension of timelines to file compounding application from 12 months to 24 months (subject to payment of 1.25 times of compounding charges) and further extension to 36 months (subject to payment of 1.5 times of compounding charges)
- Time for payment can be extended from 3 months to 6 months (upon written request from the applicant). For extension beyond 6 months and upto 12 months, approval of Pr. CCIT is required. Further, interest rate reduced to 1%/2% (from erstwhile 2%/3%) where compounding charges are paid beyond one month
- “Offences normally not to be compounded” has been amended to relax the scope of eligibility for compounding of cases. Any offence under direct tax law for which applicant is convicted earlier with imprisonment for less than two years (erstwhile non-compoundable offence), has now been made compoundable.
- Clarity provided on classification of offences – Technical nature caused by act of omission vs Non-technical offences attributed to act of commission (key issues tabulated below for ease of reference)

Category A (Act of omission) [Compoundable on or upto three occasions]	Category B (Act of commission) [Compoundable only once]	Non-compoundable offence
Failure to pay tax deducted at source / Failure to pay taxes deducted or collected or taxes under section 115-O	Removal, concealment, transfer or delivery of property to thwart tax recovery	Offence under Category A on more than three occasion and Offence under Category B, for subsequent offence.
Failure to file return of income	Failure to comply with liquidation process under section 178 of ITA	Offence where it is provided that a person has enabled others in tax evasion
Failure to furnish return of income in search cases in block assessment scheme	Willful attempt to evade tax or payment of tax /Failure to produce account and documents / Falsification of books of accounts or documents, etc	Offence by person involved in terrorist activities or anti-national activities/ Offence of undisclosed foreign bank account / assets.



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