

# India Tax Hour

Quarterly India tax updates  
January – March 2023

5 April 2023

# Subject matter experts

# We will discuss...

- **Economy/Regulatory/International tax updates**
- **Direct tax updates**
  - Key amendments to Finance Bill, 2023, now enacted as Finance Act, 2023 – Direct Tax
    - Change in tax rate for royalty and fees for technical services ('FTS') for non-residents
    - Taxation of gains on sale of units of Specified Mutual Fund ('SMF'), being debt funds
    - Relating to International Financial Services Centre (IFSC)
    - Relating to income of unitholder of business trust
  - Tax Compliance Updates
- **Indirect tax updates**
  - Key amendments to Finance Bill, 2023, now enacted as Finance Act, 2023 – GST
  - GST - Council meeting - 18 February 2023
  - Key amendments to Finance Bill, 2023, now enacted as Finance Act, 2023 – Customs
  - Customs (Assistance in Value Declaration of Identified Imported Goods) Rules, 2023 (CAVR, 2023)
- **Recent judicial pronouncements**

# Economy/Regulatory updates

# 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:

G20 Chair's Summary and Outcome Document - G20 Meeting Bengaluru, February 24-25, 2023 -

- On Pillar 1- IF to finalise remaining issues so that the Multilateral Convention can be signed in the first half of 2023
- On Pillar 2- Welcomes steps taken to implement the GloBE Rules ( IIR, QDMTT and UTPR);
  - IF to finalise negotiations on the Subject to Tax Rule (STTR) to for its implementation through a Multilateral Instrument



## Regulatory

Bar Council of India (BCI) notifies Rules allowing foreign law firms and lawyers to practice in India on a reciprocity basis.

Exchange and transfer of Virtual Digital Assets (VDA) to be regulated under the Prevention of Money Laundering Act (PMLA)

First foreign university gets approval from International Financial Services Centres Authority (IFSCA) to set up an International Branch Campus in at IFSC, GIFT City, Gujarat

# Direct tax updates

# Key amendments to Finance Bill, 2023, now enacted as Finance Act, 2023 – Direct Tax

## Change in tax rate for royalty and fees for technical services ('FTS') for non-residents



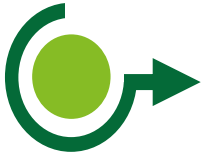
Tax rate for royalty and FTS increased from 10% to 20% (*plus* surcharge & cess)

Additional withholding tax – increase in tax cost for taxpayers

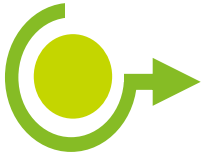
Additional compliance requirement for taxpayers, especially for tax treaty benefits

# Key amendments to Finance Bill, 2023, now enacted as Finance Act, 2023 – Direct Tax

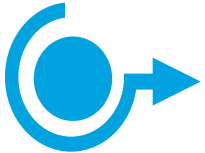
## Taxation of gains on sale of units of Specified Mutual Fund ('SMF'), being debt funds



SMF: Investment in equity shares of domestic companies not more than 35%



Gains on transfer of units of SMF taxable as short-term capital gains



Period of holding irrelevant for tax treatment



# Key amendments to Finance Bill, 2023, now enacted as Finance Act, 2023 – Direct Tax Relating to International Financial Services Centre (IFSC)

## IFSC units engaged in leasing of aircraft

- Capital gains and dividend income exempted for certain investors.

## Miscellaneous

- Dividend of non-resident from IFSC unit to be taxed at 10% instead of 20%.
- Eligible IFSC units can opt for tonnage tax scheme.

# Key amendments to Finance Bill, 2023, now enacted as Finance Act, 2023 – Direct Tax

## Relating to income of business trust and their unitholders

### Unitholders

- FB 2023 proposed to tax distribution\* as “income from other sources” (IFOS).
- New formula provided for computing income taxable as IFOS.
- Unitholders cost of acquisition to be reduced for certain receipts.

### Business trust

- Exception provided from TDS on certain interest payable by SPV to business trust.

*\*Distribution by business trust [i.e. Infrastructure Investment Trust (InvIT) and Real Estate Investment Trust (REIT)] to unitholders which is not in the nature of exempt income for business trust and not taxed in the hands of the business trust at Maximum Marginal Rates (MMR).*

## Other updates - compliances

Centralized Processing of Equalisation Levy (EQL) Statement Scheme, 2023 notified

CPC\* to process EQL statement

Reporting of interest income in Statement of Financial Transactions (SFT)

Limit of INR 5,000 abolished

Form 10F e-filing exemption for NRs without PAN and not required to have PAN

Timeline extended from 31 March 2023 to 30 September 2023

PAN and Aadhaar Linkage

Timeline extended from 31 March 2023 to 30 June 2023

*\*Centralised Processing Centre*

# Indirect tax updates

# Key amendments to Finance Bill, 2023, now enacted as Finance Act, 2023 – GST

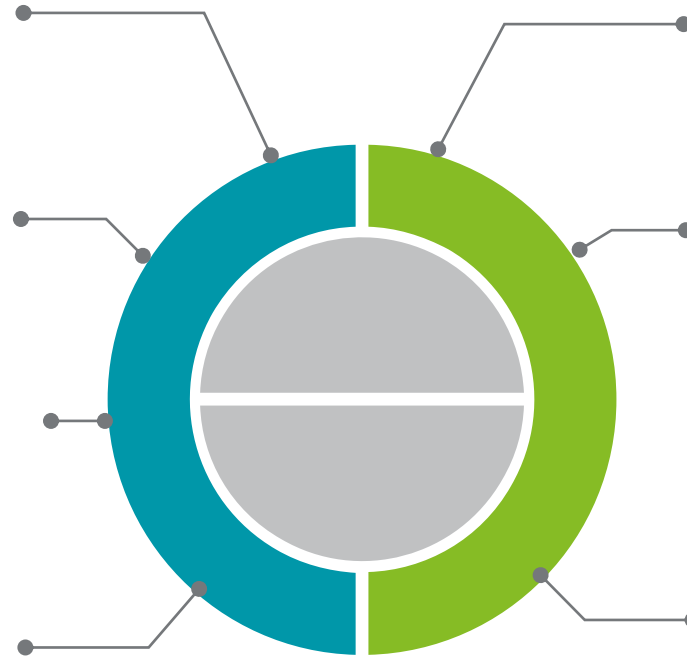
## GST appellate tribunal

Provisions relating to constitution and selection of tribunal members has been amended

Parity of share of members between Centre and State

Place of supply issues to be heard by principal bench only

Cases to a threshold limit are to be heard by single member bench



## Extension of time limits

30 days to time to be specified, filing of application for revocation of cancellation of GST registration

30 days to 60 days, filing returns after passing of best judgement order

## Trade facilitation measures

Where supplier or recipient is outside India, place of supply for transportation (goods) service shall be recipient location.



## One-time amnesty for past cases

- Filing of revocation application where cancellation of GST registration was on account of non-filing of returns
- Deemed withdrawal of assessment orders where relevant returns were filed after 30 days of assessment order for non-filer of returns
- Conditional waiver/reduction of late fees for filing composition return (GSTR 4), annual return (GSTR9) and final return (GSTR 10)



## Rationalization of provisions

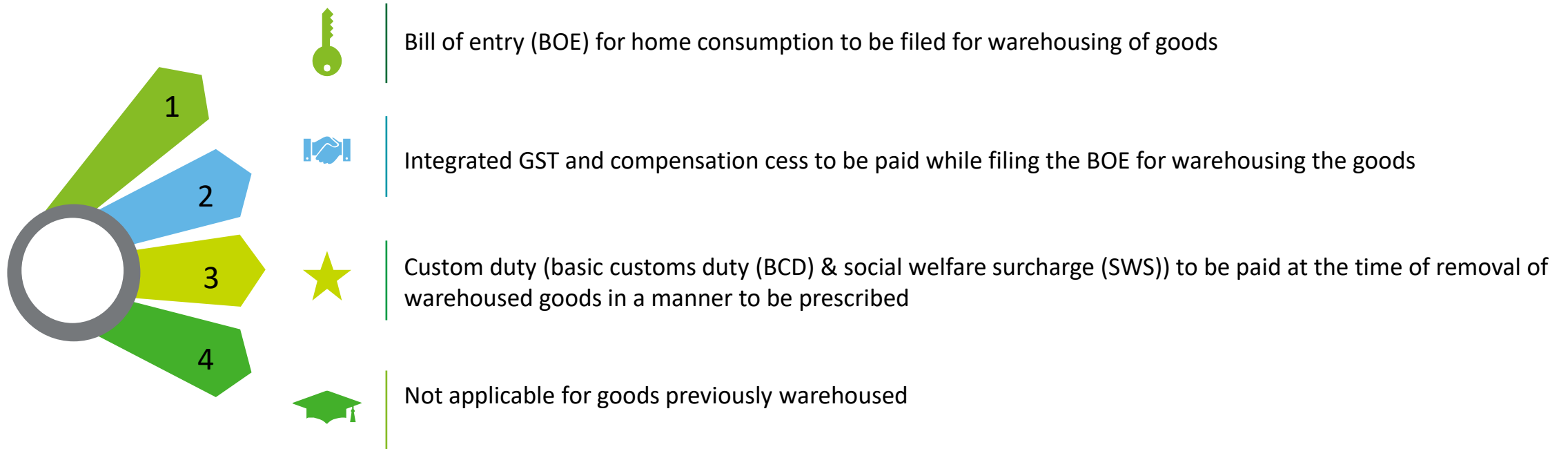
- Services by courts and tribunals to be taxed under reverse charge mechanism (RCM)
- Late fees rationalized for annual return from FY 22-23 onwards

# Key amendments to Finance Bill, 2023, now enacted as Finance Act, 2023 – Customs

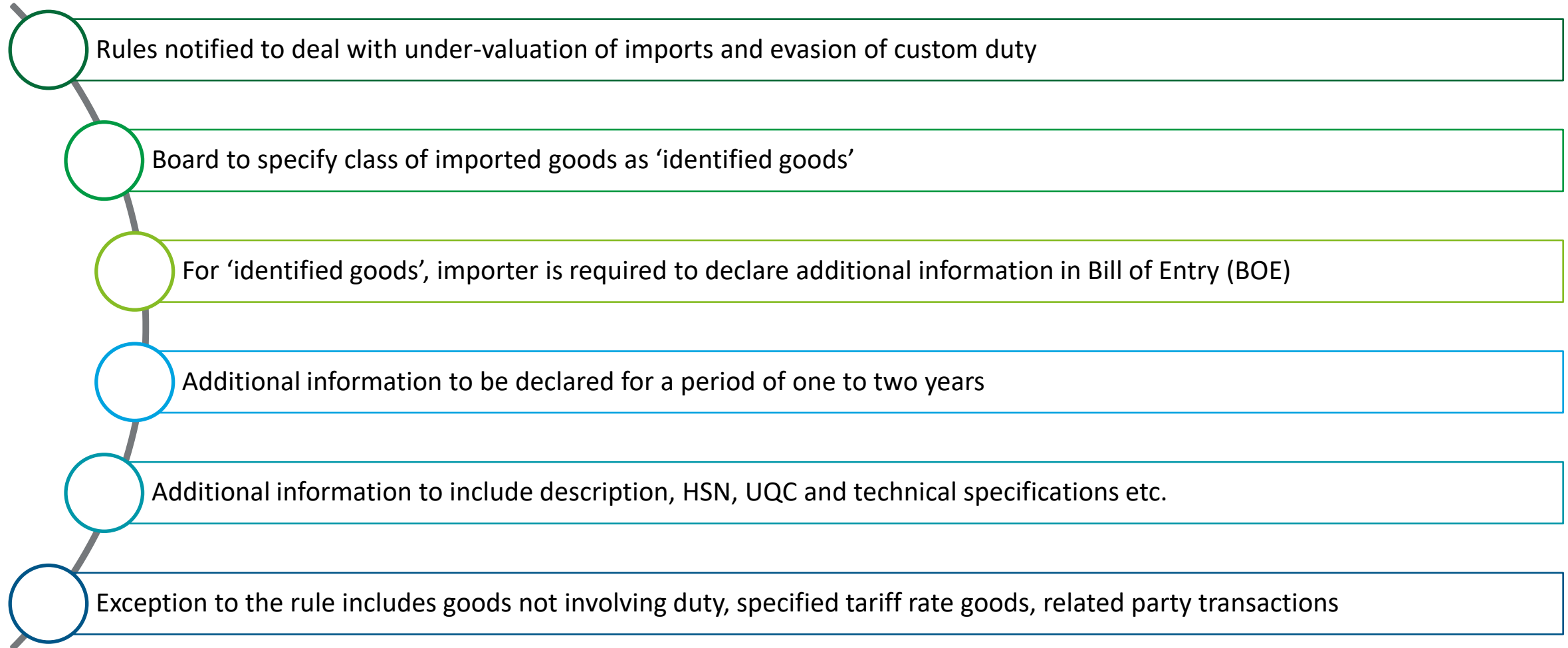
## Manufacturing & Other Operations In Warehouse (MOOWR)

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- Insertion of new Section
- Effective date to be notified



# Customs (Assistance in Value Declaration of Identified Imported Goods) Rules, 2023 (CAVR, 2023)





# Judicial pronouncements – Direct Tax

# Tax Residency Certificate sufficient for claiming tax treaty benefits

Blackstone Capital Partners (Singapore) VI FDI Three Pte Ltd v. ACIT (Delhi High Court) (30 January 2023)

## Merits of the case

- Revenue cannot go behind the Tax Residency Certificate
- Beneficial ownership for capital gains
- Limitation of Benefit clause in the India-Singapore tax treaty
- Incorporation with minimum paid-up share capital

## Reassessment proceedings

- Understatement of income or claim of excessive loss / deduction
- Reassessment notice issued on borrowed satisfaction
- No live link between material and formation of belief
- Reasons recorded could not evolve or be allowed to grow with age and ingenuity

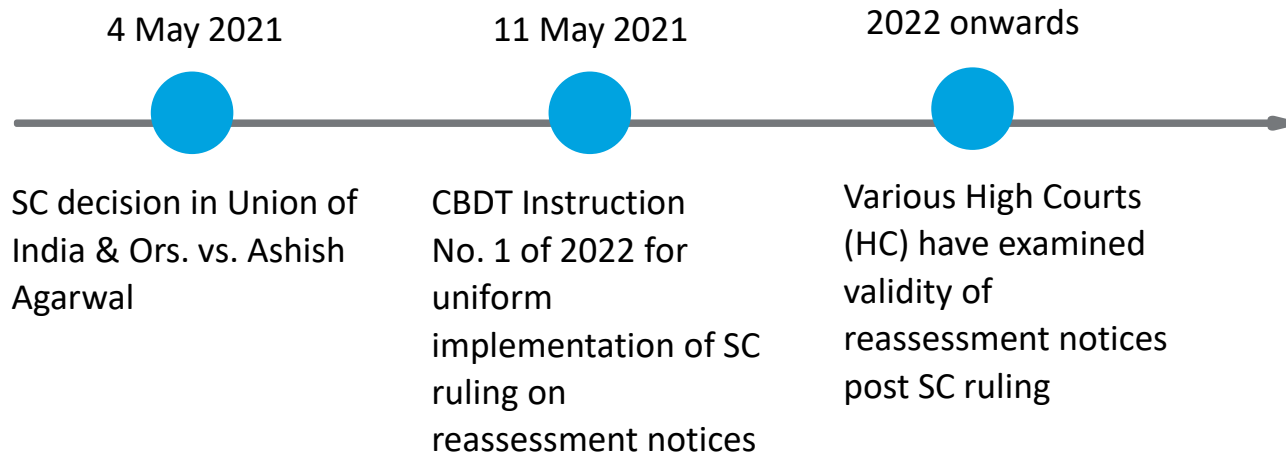
### Explanation 2 to section 147 (erstwhile)

*“For the purposes of this section, the following shall also be deemed to be cases where income chargeable to tax has escaped assessment, namely:—... (b) where a return of income has been furnished by the assessee but no assessment has been made and it is noticed by the Assessing Officer that the assessee has understated the income or has claimed excessive loss, deduction, allowance or relief in the return...”*

### Article 13(4A) of India-Singapore tax treaty

*“Gains from the alienation of shares acquired before 1 April 2017 in a company which is a resident of a Contracting State shall be taxable only in the Contracting State in which the alienator is a resident.”*

## New reassessment regime - Update on controversy



***Whether original reassessment notices issued during the extended period 1 April 2021 to 30 June 2021 (by TOLA\*) are valid pursuant to SC decision in case of Ashish Agarwal?***

- *Delhi High Court (HC) has upheld reassessment proceedings - rulings pronounced in September and October 2022*
- *Gujarat, Allahabad and other HC's have quashed reassessment proceedings as being time barred - rulings pronounced between March 2022 and February 2023*

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

# Judicial pronouncements – Indirect Tax

# Vouchers under GST law are neither goods nor services

M/s Premier Sales Promotion Private Limited | Karnataka HC (16 January 2023)

## Facts

- Petitioner engaged in trading of pre-paid payment instruments (PPIs)
- Clients issue voucher to employees for use as consideration for purchase of goods or services
- AAR held that vouchers are taxable supply of goods and same was affirmed by AAAR

## Decision

- Transaction between petitioner and their clients is procurement of printed forms
- Printed forms are like currency, the value printed on the form can be transacted only at the time of redemption of the voucher and not at the time of delivery
- Similar to pre-deposit
- Hence, neither goods nor services and cannot be taxed

### Section 2 of CGST Act, 2017

*“(118) "voucher" means an instrument where there is an obligation to accept it as consideration or part consideration for a supply of goods or services or both and where the goods or services or both to be supplied or the identities of their potential suppliers are either indicated on the instrument itself or in related documentation, including the terms and conditions of use of such instrument”*

**Thank you!**

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

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