

India Tax Hour

Quarterly India tax updates
October – December 2022

6 January 2023

Subject matter experts

We will discuss...

- **Economy/Regulatory/International tax updates**
- **Direct tax updates**
 - CBDT Circulars / Notifications
 - Faceless Appeals – Journey So Far
 - Proposal to introduce a common Income Tax Return (ITR) form
 - Relaxation to non-residents in relation to electronic furnishing of information to claim treaty benefit
 - Form for E-application to notify a specified entity's zero-coupon bond now activated
- **Indirect tax updates**
 - GST
 - GST Council Meeting –17 Dec 2022 - Key Updates
 - Competition Commission of India notified as the new Anti Profiteering Authority
 - Discontinuation of exemption on export freight w.e.f. 01.10.2022
 - GST - Instructions regarding Appeal Pre –Deposit and Circular on furnishing of Input Tax Credit in GSTR 3B
 - Customs
 - DGFT amends FTP to permit exports receipt in INR
- **Recent judicial pronouncements**

Economy/Regulatory updates

Economy/International tax/Regulatory updates

- Indian Economy-Growth and Inflation indicators; Tax collections
- International Tax-
 - G20/OECD initiative to counter tax Base Erosion and Profit Shifting (BEPS) - Pillar 1 /Pillar 2 developments:
 - Pillar 1- OECD consultation document on
 - a draft multilateral convention (MLC) for removal of digital services taxes (DSTs)/other relevant similar measures
 - pricing of MNE baseline distribution activities (Amount B)
 - Pillar 2- OECD consultation document on
 - Global Anti-Base Erosion (GloBE) Information Return;
 - Tax Certainty for the GloBE Rules
 - Safe Harbours and Penalty Relief;
 - European Union (EU) Council agrees to implement the 15% global minimum tax
 - United Nations General Assembly (UNGA)- UNGA's finance committee votes to start discussions on international taxation standards
- Regulatory-
 - International Financial Services Centres Authority (IFSCA) releases Expert Committee Report on a Legal Framework for setting up Variable Capital Companies (VCCs) in IFSCs

Direct tax updates

Faceless Appeals – Journey So Far

1

September 2019 - CBDT notified E-Appeal scheme (other than for cases covered under central charge or international taxation charge)

2

E-Appeals handed by National Faceless Appeal Centre (NFAC) and subordinated by Regional Faceless Appeal Centre (RFAC) – It comprises of 1 unit namely: Appeal Unit

3

All communications in Faceless Appeal executed by electronic mode
CBDT is in the process of establishing facilities for video conferencing where virtual hearings can be requested

4

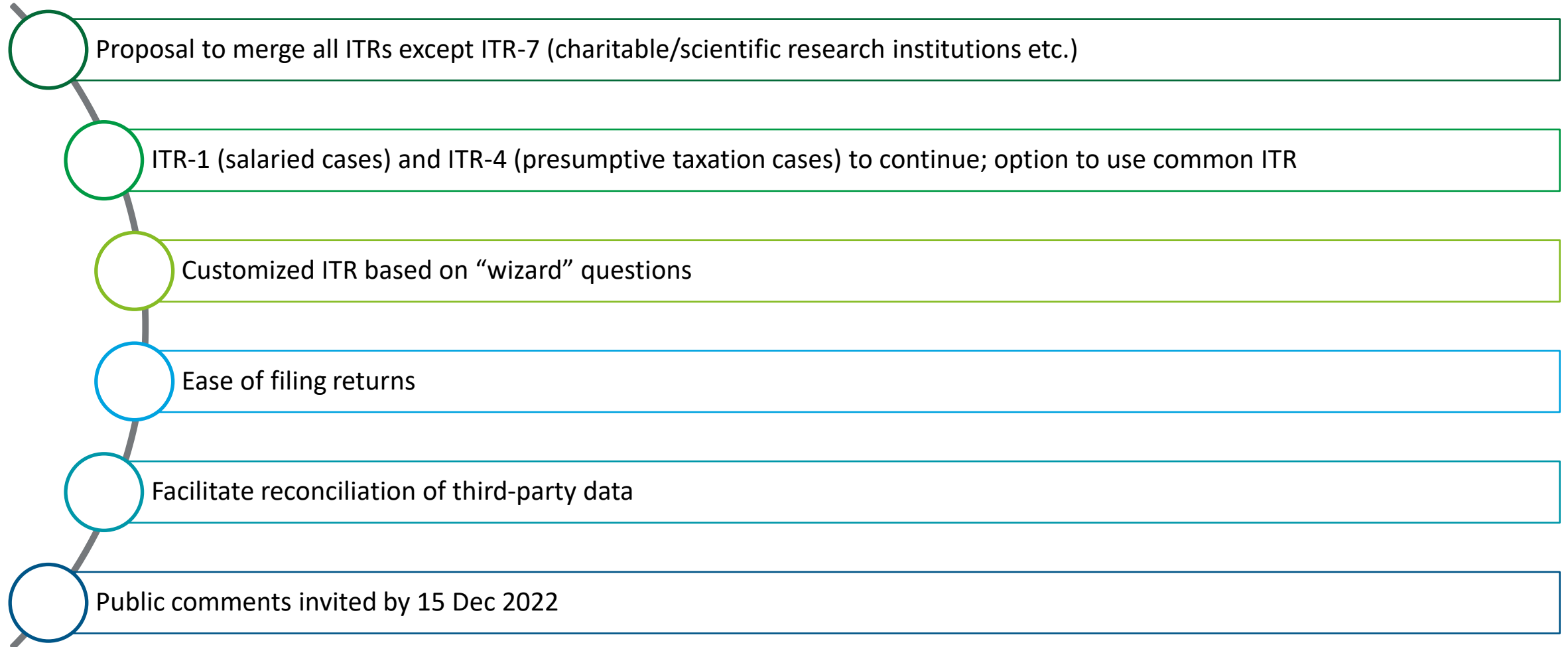
Since September 2019 till recently, the orders passed by NFAC are only in cases of appeal withdrawals on account of VsV or in cases of simple appeal matters

5

November 2022 - Taxpayers received notices about 'Enablement of Communication Window'

Proposal to introduce a common Income Tax Return (ITR) form

Notification dated 1 November 2022



Relaxation to non-residents in relation to electronic furnishing of information to claim treaty benefit

Notification dated 8 December 2022

Provisions under the Income-tax Act

Tax Residence Certificate ('TRC')- Pre-requisite for a non-resident to claim treaty benefit

Form 10F - to supplement information not contained in a TRC

July 2022 – Mandatory electronic filing of Form 10F



Update

Notification dated 8 December 2022 - Applies to non-residents who have not obtained PAN and are not required to obtain PAN

Exemption from online furnishing till 31 March 2023

Form 10F to be furnished manually

Form for E-application to notify a specified entity's zero-coupon bond now activated



Specified entities are eligible under section 2(48) to issue zero coupon bonds (ZCB)

Specified entity needs to apply for its ZCB issue to be notified

Application for such notification to be furnished electronically in Form 5B (effective 6 April 2022)

Online utility for such e-application made available on the income tax e-filing portal during the quarter ended December 2022

Indirect tax updates

GST - Council Meeting - 17 Dec 2022 - Key updates

- No GST payable on Residential dwelling rented to a registered person in his/her personal capacity.
- Higher rate of compensation cess of 22% is applicable to motor vehicle fulfilling specified conditions.
- Incentive paid to banks by Central Government under the scheme for promotion of RuPay Debit Cards and low value BHIM-UPI transactions are in the nature of subsidy and thus not taxable.
- New rule inserted to prescribe mechanism for reversal and re-availment of Input Tax Credit in case of non-payment of tax by supplier
- Clarification issued in relation to classification of Rab (rab-salawat) & Fryums
- GST Rate reduced on
 - Husk of pulses including chilka and concentrates including chuni/churi, khanda
 - Ethyl alcohol supplied to refineries for blending with motor spirit.

GST - Council Meeting - 17 Dec 2022 - Key updates

Trade facilitation measures

- Retrospective effect on clarification on high seas sales, supply of warehoused goods etc.
- GST Refund to Unregistered Persons
- Amendment to Act and Rules to facilitate E – commerce for Micro Enterprises
- Decriminalization under GST for cases

Clarifications Issued on the following

- Place of supply shall be destination of goods for transportation of goods to place outside India
- Procedure laid down for verification of mismatch in Input tax credit for FY 17-18 & 18-19
- Taxability of No claim Bonus offered by insurance companies
- Exemption from generation of E – invoices for specified entity/sectors

Measures for Streamlining Compliances

- Pilot conducted in State of Gujarat for Biometric-based Aadhaar authentication
- Specific rule inserted to deal with differences in GSTR 1 and GSTR 3B; restriction on furnishing of GSTR-1 to be imposed in specified situation
- Restriction on filing GST returns to a maximum period of three years from the due date

Agenda Items – Not covered

Agenda items which could not be covered in the meeting include **setting up of GST appellate Tribunal** and GST on online gaming and casinos.

GST -Competition Commission of India (CCI) notified as the new Anti Profiteering Authority

CCI as the new APA







- Central Government has notified Competition Commission of India (CCI) as the new Anti-Profiteering Authority to examine whether availment of Input Tax Credit or reduction in the tax rate have resulted in a commensurate reduction in the price of the goods or services supplied by a taxpayer w.e.f. effective from 01 December 2022.
- The extended tenure of Anti-Profiteering Authority was to end on 30.11.2022 but w.e.f. 01.12.2022 CCI will be the permanent authority for GST Anti – Profiteering henceforth.

GST - Discontinuation of exemption on export freight w.e.f. 01.10.2022

Export freight taxable from 1 October 2022

- S. No. 19A of the Notification No. 12/2017 – Central Tax, dated June 28, 2017 (as amended time to time) provided for exemption from payment of GST for the services of transportation of goods by vessel or aircraft, from any Indian Port / Airport to a foreign Port / Airport. This exemption was extended from time to time, but no such exemption has been made after 30.09.2022.
- **Transportation of export consignments by Vessel / Aircraft becomes liable to GST from 01.10.2022.** Therefore, if shipping lines / airlines are based in India, they will charge GST under forward charge.

GST - Instructions regarding Appeal Pre –Deposit and Circular on furnishing of Input Tax Credit in GSTR 3B

 Instruction regarding Pre-deposit for appeals pertaining to Pre – GST and GST regime		 Mandatory furnishing of ineligible/blocked ITC in GSTR3B	
 Pre – Deposit under erstwhile Regime	 Pre – Deposit under GST Regime	 Before	 After
<ul style="list-style-type: none"> • Payments through Form GST DRC-03 under the GST regime are not a valid mode of payment for making pre-deposits for service tax or excise matters. • The pre-deposit required for filing Service Tax/Excise appeals should be made through the portal "cbic-gst.gov.in". 	<ul style="list-style-type: none"> • CBIC instruction has clarified that cash/credit ledger can be used for payment of pre-deposit under GST litigations via filing of Form GST APL – 01 • Form DRC – 03 should not be used. 	<ul style="list-style-type: none"> • The provision of GST law envisages that the taxpayers should disclose Gross Input Tax Credit (ITC) and reversals from thereon. • It was observed that tax payers were disclosing net ITC after deducting ineligible ITC from the Gross ITC. • Non disclosure of gross ITC was leading to loss of revenue for the States. 	<ul style="list-style-type: none"> • The tax payers have been mandated to disclose Gross ITC and reversal therefrom in the monthly summary return going forward. • Non-compliance may attract imposition of penalty

Customs - DGFT amends Foreign Trade Policy to permit exports receipt in INR



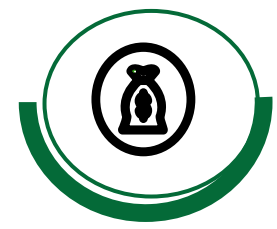
Import for Export



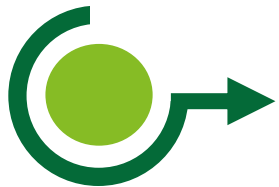
Recognition as Status Holder



Realization of Export Proceeds under AA and DFIA



Realization of Export proceeds under EPCG



- Amendment under Foreign Trade Policy are notified to permit export benefits/fulfillment of Export Obligations even if the exports are realized in INR from the balances in the designated Special Vostro account of the corresponding bank of the partner country for Invoicing, payment and settlement of exports and imports in INR.
- The amendment is made in line with RBI's Circular dated 11th July 2022 on International Trade Settlement in Indian Rupees

Judicial pronouncements – Direct Tax

Asset-revaluation credited to Partner's Capital account is a taxable transfer

M/s. Mansukh Dyeing and Printing Mills vs The Commissioner of Income Tax -23 (SC) – In favour of revenue

Facts of the case

- Taxpayer, a partnership firm originally consisted of four partners (all brothers)
- Partnership firm was reconstituted couple of times (last reconstitution in November 1992)- Few partners retired, and new partners admitted.
- January 1993 - Assets of the firm were revalued.;
- Amount was credited to respective partners' capital account in their profit-sharing ratio on revaluation. Two of the existing partners withdrew part of their capital.
- Taxpayer contention - Asset revaluation credited to partners capital account is not subject to capital gains u/s 45(4) unless there is dissolution of partnership firm or distributions of assets
- Revenue contention - As the firm effectively relinquished its interest in the assets and new partners immediately benefited, it is taxable transfer.

Decision of the Supreme Court

- Object and purpose of introducing old section 45(4) was to plug the loophole.
- Words “or otherwise” used in section 45(4) are very important.
- Credit of assets revaluation amount to capital accounts of partners, in effect is a distribution of assets revalued to the partners.
- **Assets so revalued and credited into capital accounts could be said to be 'transfer' which would fall in category of 'otherwise' under section 45(4).**

TDS upheld on Supplementary Commission paid to Airline Agents

Singapore Airlines Ltd vs CIT, Delhi (SC) – In favour of revenue

Facts of the case

- Taxpayer - a company engaged in airlines business.
- Taxpayer had executed passenger sales agency agreements with travel agents.
- Travel agents charged additional amount over and above net fare i.e., supplementary commission.
- Taxpayer contention - TDS is not deductible on supplementary commission, as charging of supplementary commission by travel agents is an independent transaction between travel agent and customer and such amount is payable by customer to travel agent and not airline
- Revenue contention – Taxpayer and travel agent established a principal agent relationship. The transaction of supplementary commission was not independent.

Decision of the Supreme Court

- There was no independent transaction between agent and the customer as the title in the air tickets did not pass to agents.
- Accretion of the Supplementary Commission to the travel agents is an accessory to the actual principal-agent relationship and such amount are held in a fiduciary capacity by agents for the Airline.
- Definition of “commission” under Income tax provisions is wide and it also covers indirect payment of commission to agents.
- No further recovery of the shortfall in TDS owed by the Assessee as travel agents have already paid income tax on Supplementary Commission.
- Interest may be levied under Section 201(1A) of the IT Act for the relevant period.
- Quashes penalty proceedings on the airlines under Section 271C.

Deposit of employees' contribution by employer beyond the due date under PF Act not deductible

Checkmate Services P. Ltd. vs CIT (Supreme Court) – In favour of revenue

Facts of the case

- Employees' Provident Fund ('PF') contribution deposited beyond the statutory due date in PF Act.
- Taxpayer claimed deduction for such sums and contended that:
 - Deduction on payment basis covers both employers' and employees' contribution
 - Employer liable to make composite payments under PF Act
 - Relied on Supreme Court in the case of Alom Extrusions Ltd.
 - If Revenue's view accepted, taxpayers would experience difficulties

Decision of the Supreme Court

- Employees' contribution deductible only if deposited within the due date stipulated in PF Act as:
 - Employers' contribution and employees' contribution are distinct.
 - Employees' contributions held in trust are deemed to be the employer's income and qualify for deduction only when paid by the statutory due date
 - Supreme Court ruling in the case of Alom Extrusions did not specifically consider employees' contributions.
 - Non-obstante clause under section 43B does not dilute employer's obligation to deposit employee contributions by statutory due date.

Dividend Distribution Tax ('DDT') rate reduction under tax treaties – A judicial update

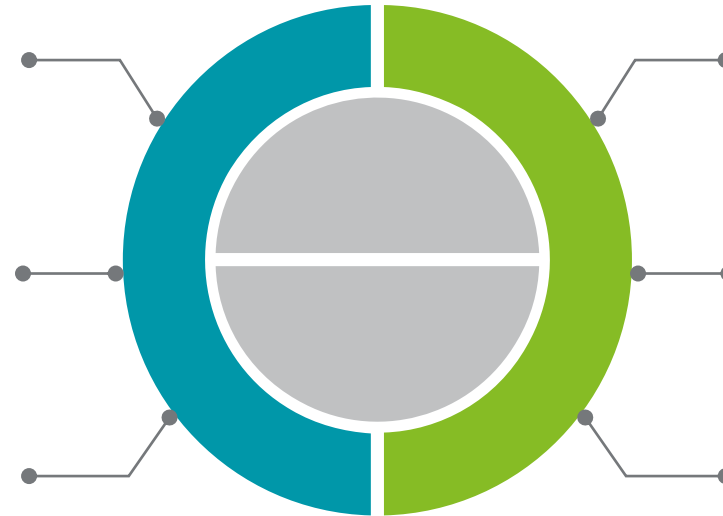
Special Bench of the Tribunal constituted on 24 November 2022 (as recommended in the Mumbai Tribunal case of Total Oil India Pvt. Ltd.) to decide on this issue

Journey so far

Till FY 2019-20, companies paid DDT, dividends exempt in the hands of shareholders.

From FY 202-21, DDT abolished; dividends taxable in the hands of shareholders

Several judicial precedents on the issue of whether DDT rate can be reduced to the tax rate applicable to dividend as per the relevant tax treaty



Update

Mumbai Tribunal in the case of Total Oil India (P.) Ltd. 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

Scheduled for hearing in February 2023

Judicial pronouncements – Indirect Tax

Supply of BPO services qualify as export of services and not as intermediary services under GST

M/s. Genpact India Pvt. Ltd. Vs Union Of India And Others

Writ Petition allowed by Hon'ble Punjab and Haryana High Court allowing GST refund treating supply of BPO services including maintaining vendor/ customer master data, bookkeeping, developing, licensing, and maintaining software, technical IT support services, data analysis etc., as export of services



The **definition of “intermediary”** under the service tax regime and GST is similar. Circular no. 159/15/2021-GST dated 20 September 2021 has also clarified that there is no change in the scope of intermediary services in the GST regime vis-à-vis service tax regime.



The following **three conditions** must be satisfied to qualify as an intermediary:

- Existence of principal-agent relationship
- Involvement in arrangement or facilitation of provision of service between two other parties
- Intermediary not to perform the main service



Revenue authorities cannot deviate from the view taken in service tax regime when there is no change in the definition of intermediary in the GST regime.

Principles of consistency apply in the case of the Petitioner as the department cannot take a differing view for different periods when there is no change in facts and law.

Decision of the High Court

- Circular dated September 20, 2021, in para 3.5 also clarifies that sub-contracting for a service is not an “intermediary” service
- Hence it was held that the order passed by the Appellate Authority be quashed and the refund granted

Thank you!

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

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