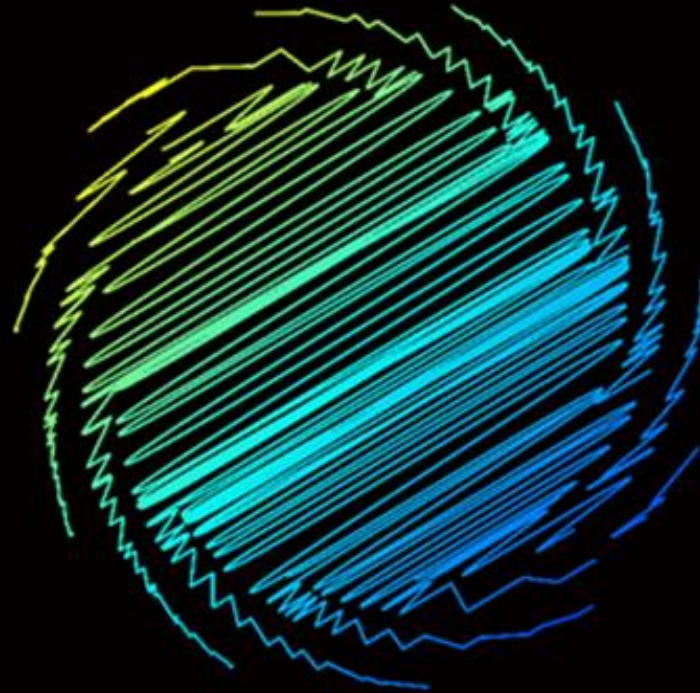


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India TaxHour
Quarterly India
tax updates

January – March 2022
6 April 2022

Subject matter experts

We will discuss...

- Economy/Regulatory updates
- Direct tax updates
- Indirect tax updates
- Recent judicial pronouncements
- Annexures

Economy/Regulatory updates

Economy/Regulatory/ International tax updates

- Tax collections for FY 2021-22
- Global Two-Pillar solution for taxing large digitalised businesses-Update
- International Financial Services Centres Authority (IFSCA) issues draft Fund Management Regulations for inputs

Direct tax updates

Key amendments to Finance Bill, 2022

1

Timeline for completing assessment proceedings

Timeline for completion of assessment proceedings for the AY 2020-21 extended to 18 months from the end of the assessment year as against 12 months

2

Deduction for surcharge and cess paid under the Act

Penalty to be levied for claim and allowance of deduction towards surcharge and cess paid under the Act. However, penalty will not be levied if the taxpayer makes an application to give up the claim and deposits the resultant taxes due.

3

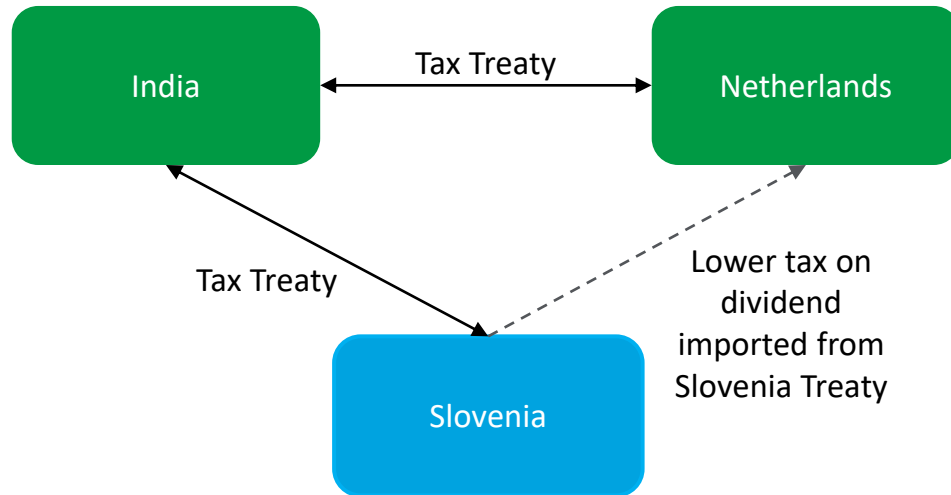
Taxation of Virtual Digital Assets (VDA)

Clarifications provided as regards taxation of VDA. Few significant amendments are as follows:

- Transfer subject to tax even if there is no cost of acquisition.
- Loss on transfer cannot be set off against gain on transfer of VDA.
- Person responsible for paying consideration in kind or in exchange for another VDA to ensure tax required to be deducted has been paid before release.

CBDT issues clarifications regarding Most Favoured Nation (MFN) clause of tax treaties

Circular No. 03 of 2022 dated 3 February 2022



Protocol to India - Netherlands Treaty:

If, after this Treaty comes into force,

- India enters into a Treaty with a third Country which is a member of OECD
- India limit its taxation at source on dividends, interests, royalties, fees for technical services or payments for the use of equipment to a rate lower or a scope more restricted than the rate or scope provided for in this Treaty

then from the date on which the Treaty with the third Country comes into force, such reduced rate of tax or restricted scope shall apply to this Treaty.

- Recently, Netherlands / France issued a decree / bulletin that the tax rate on dividend specified in the treaty with India stands modified under the MFN clause considering the India-Slovenia treaty which provides for a lower rate of 5%. However, Slovenia became a member of OECD on 21 July 2020 whereas the India-Slovenia treaty came into force on 17 February 2005.
- Delhi High Court in April 2021* had held that by applying the MFN clause in the protocol to India-Netherlands treaty, the tax rate on dividend can be reduced to 5% by importing the favourable tax regime from India-Slovenia treaty.

**Concentrix Services Netherlands BV vs. DCIT*

CBDT issues clarifications regarding Most Favoured Nation (MFN) clause of tax treaties

Circular No. 03 of 2022 dated 3 February 2022

Clarifications issued by CBDT on applicability of MFN clause

- Unilateral decree / bulletin by any treaty partner do not represent shared understanding of India and the respective treaty partners on the applicability of MFN clause
- The applicability of MFN clause and benefit of lower rate / restricted scope of taxation rights as provided in India's treaty with the third State will be available to the first State only when the following conditions are satisfied:
 - Treaty with the third State is entered into after the signature / Entry into Force of the treaty between India and the first State;
 - The third State should be a member of the OECD at time of conclusion of its treaty with India and at the time of applicability of the MFN clause;
 - India limits its taxing rights in the second treaty in relation to rate or scope of taxation in respect of the relevant items of income; and
 - A separate notification is issued by India importing the benefits of the treaty with the third State.

Delhi High Court and recent Pune ITAT, has observed that on notification of tax treaty, the protocol containing MFN got automatically notified *pro tanto*

Condonation of delay in filing Form 10-IC (for claiming concessional tax regime) for AY 2020-21

Circular No. 06 of 2022 dated 17 March 2022

- Domestic companies can claim concessional tax regime under section 115BAA from AY 2020-21 subject to satisfaction of prescribed conditions
- One of the prescribed conditions is furnishing Form 10-IC within the due date of filing the tax return

Considering the hardships faced by taxpayers, CBDT has condoned the delay in filing Form 10-IC for AY 2020-21, subject to satisfaction of following conditions

01

The income tax return for AY 2020-21 has been filed within the due date u/s.139(1)

02

Option for taxation u/s.115BAA is availed in the tax return form i.e., ITR-6

03

Form 10-IC is filed electronically on or before 30 June 2022

Notifications / Circular on Taxation of ULIP

Notification Nos. 8/2022 and 9/2022 dated 18 January 2022 and Circular No. 2/2022 dated 19 January 2022

Background

- Finance Act 2021 introduced taxation of gain from amount received from (high premium) specified ULIPs issued on or after 1 February 2021 which was earlier exempt under section 10(10D), subject to conditions.
- Chapter VII was consequently amended to provide for levy of securities transaction tax (STT) on sale or surrender or redemption of a unit of an equity-oriented fund to the insurance company, on maturity or partial withdrawal, with respect to unit linked insurance policy issued by such insurance company on or after 1st February 2021.
- Computation methodology was pending to be prescribed.

Notifications / Circulars

- Method of computing Capital Gains prescribed under section 45(1B). Capitals Gains computed deemed to be capital gains on equity-oriented funds set up under ULIP scheme of insurance companies.
- Compliances with respect to filing of return of Taxable Securities Transactions for Insurance Company in respect of ULIPs prescribed.
- Guidelines alongwith examples issued for determining the threshold of Rs 250,000 premium for arriving at specified ULIP issued on or after 1 February 2021.

Notification on computation of income of specified fund attributable to investment division of Offshore Banking Unit (OBU) located in IFSC

Notification no.6/2022 dated 14 January 2022

- Finance Act 2021 provided for exemption under section 10(4D) of certain income of specified fund attributable to the investment division of offshore banking unit located IFSC while taxation of other income under section 115AD(IB) of the Act
- Rules have now been prescribed for computation of such exempt and taxable income of specified fund attributable to the investment division of offshore banking unit located IFSC. Refer [Annexure](#).
- Expenditure incurred for earning exempt income not deductible against other income.
- Conditions have been specified for claiming exemption.
- Annual statement to be furnished on or before return filing due date electronically under digital signature.

(Note - "Investment division of offshore banking unit" means an investment division of a banking unit of a non-resident located in an International Financial Services Centre, as referred to in section 80IA(1A) which is registered as Category 1 FPI and which has commenced its operations on or before the 31st day of March, 2024)

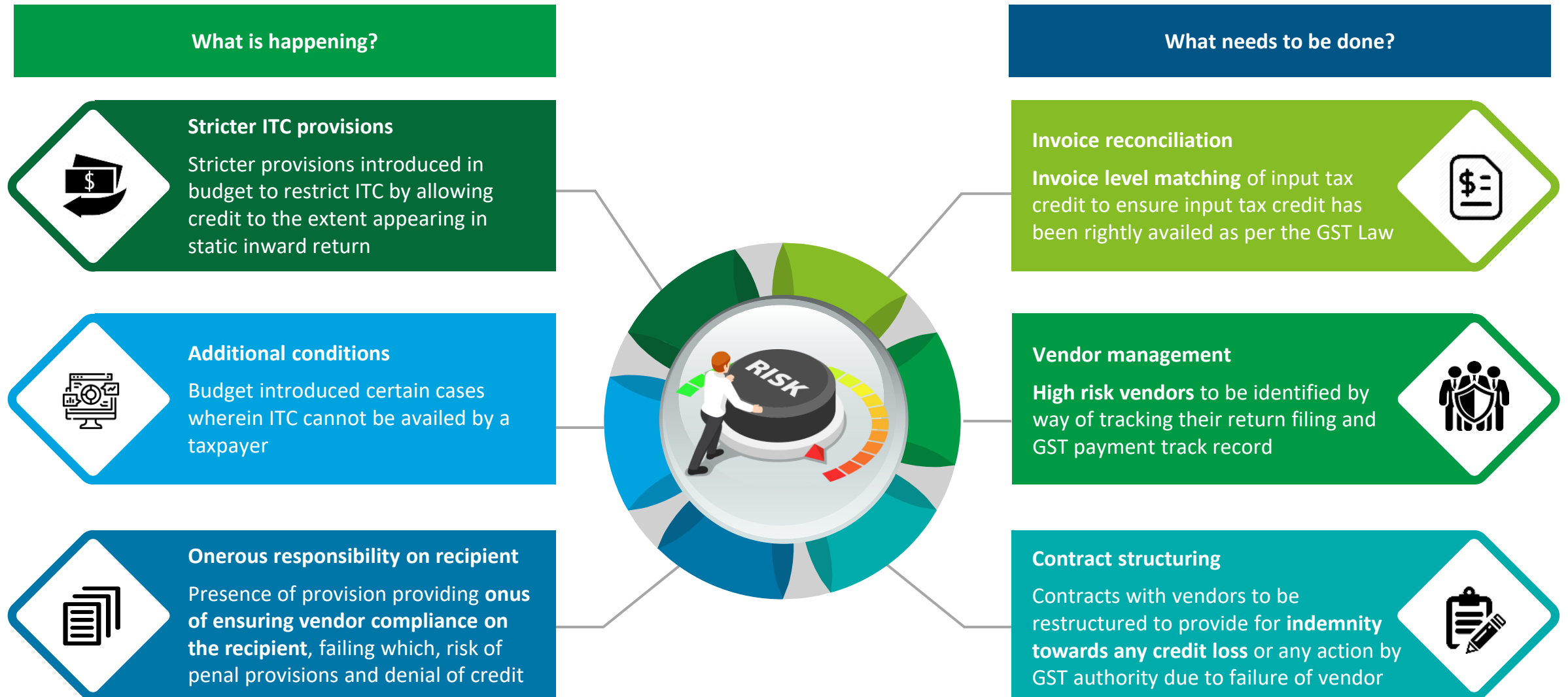
Other Key Notifications / Circular

- E-advance rulings Scheme, 2022 notified on 18 January 2022 under Income-tax Act, 1961*
- GAAR Panel has been notified *vide* notification dated 11 February 2022*
- Fees prescribed if linking of PAN with Aadhaar is not done by 31 March 2022 per CBDT notification dated 29 March 2022. Further, PAN to become inoperative after 1 April 2023 if such linking is not done as per Circular dated 30 March 2022.
- E-Assessment of Income Escaping Assessment Scheme, 2022 has been notified *vide* CBDT notification dated 29 March 2022 covering assessment, reassessment or recomputation under Section 147 and issuance of notice under Section 148.
- Faceless Inquiry or Valuation Scheme, 2022 notified on 30 March 2022 covering issuance of notice u/s 142(1), making inquiry before assessment u/s section 142(2), directing assessee to get his accounts audited under Section 142(2A) and estimating the value of any asset, property or investment by a Valuation Officer under section 142A of the Act.
- CBDT has notified new Income Tax Return (ITR) forms 1 to 6 for AY 2022-23 *vide* notification dated 30 March 2022.

**Refer Annexure 1 for details*

Indirect tax updates

Stricter ITC provisions introduced in the Finance Act, 2022 and need for vendor risk management





01 >

Expanding e-invoice coverage

The Government has made it mandatory for taxpayers with turnover more than INR 20 Cr to generate e-invoice for all B2B transactions from 1 April 2022 (Notification dated February 24, 2022)



02 >

Production Linked Incentives Scheme

- PLI scheme for drone industry opened for application (press release dated March 11, 2022)
- PLI scheme for white goods reopened for application (press release dated March 7, 2022)
- Companies selected for auto and food PLI (press release dated March 25, 2022)

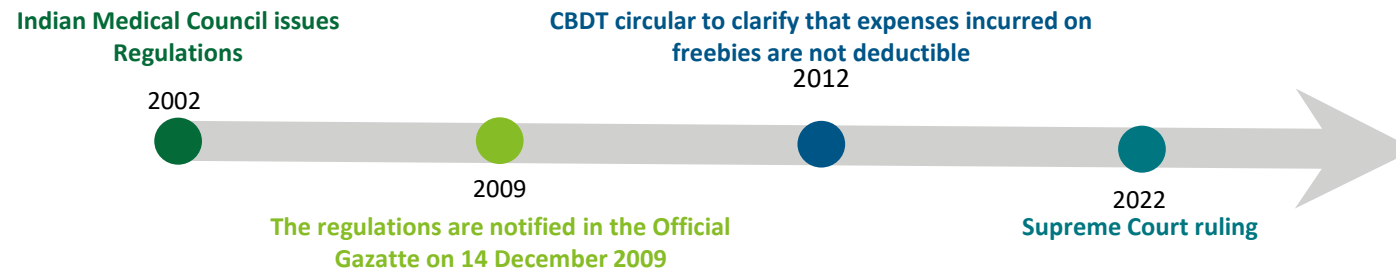
Judicial precedents - Direct tax

Apex Laboratories Private Limited

Supreme Court

Facts of the case

- The taxpayer is an Indian company engaged in the pharmaceutical business.
- The taxpayer incurred expenditure towards gifting freebies such as hospitality, conference fees, gold coins fridge, etc. to medical practitioners.



Issue before the Hon'ble Supreme Court – Whether the expenditure incurred towards freebies to medical practitioners is inadmissible?

Judgement

- The modified regulations imposed a prohibition on the medical practitioners from accepting any freebies. Although the restriction is not imposed on pharmaceutical companies, the activity of distributing freebies is well within the term 'prohibited by law' as provided under Explanation 1 to section 37.
- Accordingly, expenditure incurred by the taxpayer being a pharmaceutical company, would not be allowed under section 37(1) of the ITA.
- CBDT circular dated 1 August 2012 being clarificatory in nature, is in effect from 14 December 2009 i.e. date of implementation of the Regulations

Google Asia Pacific Pte Limited

Delhi High Court

Facts of the case

- The taxpayer is a company based in Singapore, engaged in the business of providing cloud services in India. The taxpayer was subjected to 2% equalization levy on the consideration received towards cloud services.
- The Indian customer of the taxpayer sought direction under section 195(2) to make payment to the taxpayer without deduction of tax at source
- The AO issued certificate under section 195 directing the Indian customer to deduct tax at 10% (+ surcharge and education cess) on payments made to the taxpayer

Before the Hon'ble Delhi High Court – The taxpayer filed writ petition before the Delhi High Court to direct the AO to permit its Indian customer to make payments without deduction of tax at source. As an interim measure, the taxpayer also claimed that, without prejudice, the deduction of tax should be restricted to 8% as the taxpayer was already subjected to equalization levy of 2%

Interim relief

- As the taxpayer is already subjected to 2% equalization levy on the payment received towards cloud services, it is held that purely as an interim measure the taxpayer was entitled to receive payment from its Indian customer, subject to WHT at 8%.
- Based on earlier rulings and FAQ issued by CBDT*, no additional surcharge or education cess was to be applied over the rate of 10% as per the treaty

*CBDT in the Taxpayer Information Series 44, under Chapter 8 [FAQs on Royalty and FTS and Related matters], issued by the Directorate of Income Tax dated July 19, 2013.

Tata Capital Financial Services Limited

(W.P. 546 of 2022) (Bombay High Court)

Facts of the case

- Petitioner, an NBFC, recognized the income of NPA on realization in accordance with RBI directions.
- The said fact was disclosed in financials as well as Tax Audit report and no addition was made in assessment
- The AO reopened the assessment by rejecting the objections raised by the Petitioner.

Bombay High Court observation and directions

Observations

- Petitioner's request for sharing of approval documents for re-opening dismissed as administrative.
- All submissions on objections were not dealt with before rejecting.
- Actual reasons had para suggesting change of opinion, was not part of the initial letter issued to the Petitioner.
- Despite several judgements same errors are repeated by the Department for which Writ are filed.

Directions to Revenue and CBDT to issue guidelines to avoid repeated errors

- Copy of the approval sought and provided by the Superior Officer to accompany communication on the reasons for re-opening.
- Document / letter / report referred in reasons should be enclosed to the reasons.
- Order disposing the objections should deal with each objection and give proper reasons for the conclusion.
- Personal hearing should be given with minimum seven working days advance notice of such hearing.
- Citation of the judgments/orders to be relied by the Assessing Officer should be provided along with notice for personal hearing to enable the assessee to deal with/distinguish them.

Notice for reassessment was issued prior to 31 March 2021 and hence guidelines should apply to old provisions of reassessment

Observatoire d'Economie Appliquée (OBEA)

(Conseil d'Etat, 2 February 2022, n° 443018) (French Administrative Supreme Court)

Facts of the case

- The assessee, a French company, paid fees for services provided by a Tunisian company (not having PE in France) on which tax was not withheld pursuant to Article 11 of France-Tunisia tax treaty since taxable only in Tunisia on account of no PE.
- The Tunisian Company had benefitted from the “total export company” regime under its local law per which it was not taxable, for the first 10 tax years, on profits derived from the export of goods and services.
- It had not achieved any turnover on the local market and thus did not realize any domestic profit.
- As per the French Tax Authorities, Tunisian company was not a Tunisian resident for purposes of the treaty since it benefitted from beneficial regime.

Decision of the Supreme Court

- “Total export company” exemption only applied to profits derived from exports.
- The Tunisian Company was liable to corporate tax in Tunisia by reason of its activities, even if it did not pay tax in Tunisia in the relevant years.
- Company benefitting from temporary and partial corporate income tax exemption should be considered liable to tax and therefore tax treaty resident

Observation:

- Section 2(29A) of the Act *“liable to tax”, in relation to a person and with reference to a country, means that there is an income-tax liability on such person under the law of that country for the time being in force and shall include a person who has subsequently been exempted from such liability under the law of that country*

Judicial precedents - Indirect tax

Premier Sales Promotion Private Limited

Karnataka AAAR

Facts of the case

- The Appellant is mainly involved in the business of providing marketing services where the applicant is the third-party issuer of vouchers. The vouchers are redeemable by the beneficiaries for goods/ services from the specified merchants from whom the applicant has obtained the vouchers.
- Orders for supply of e-vouchers wherein the applicant sources e-vouchers for such customers as per the order received and acts as an intermediary for buying and supplying of e-vouchers. The Appellant provides three different types of vouchers i.e. gift vouchers, cash back vouchers, e-vouchers with multiple options.
- In the Appellant' case, AAR had previously held that supply of vouchers is taxable @ 18% and classifiable at 18%. Aggrieved by the ruling given by the AAR, the Appellant had filed an appeal before the AAAR.

Ruling

- The Appellant is buying vouchers from entities authorized to issue them and is selling the same to his clients. The nature of the transaction is different from the nature of the transaction by Sodexo in as much as the Appellant is clearly not the issuer of the vouchers nor is he authorized by RBI to issue vouchers. The decision of Supreme Court in case of Sodexo SVC India Pvt Ltd to drive home the contention that the vouchers are not 'goods' will not apply to the Appellant.
- The plea of the Appellants that the vouchers are akin to lottery tickets is not tenable. While the lottery tickets have no innate value, it is not so in the case of vouchers. Vouchers have a definitive value and are traded for a consideration.
- Having concluded that the vouchers traded by the Appellant are goods and not actionable claims, it was held that the supply of vouchers by the Appellant is a supply of goods in terms of Section 7 of the CGST Act.

Macquarie Global Services Private Limited

CESTAT Chandigarh

Facts of the case

- The Appellant had filed for refund claims for refund of unutilized CENVAT credit availed on input services used in providing taxable services ie, Business Support Services, Informational Technology Services and Management, Maintenance and Repair Services.
- The Appellant was also providing various back-office support services and IT and ITeS to its various Indian and overseas group entities on its own account, which qualify as 'export'.
- The refunds of the Appellant were rejected by adjudicating authority by holding that the services provided are “intermediary services” under Rule 9 of Place of Provision Rules, 2012.

Ruling

- The Tribunal has restricted itself and passed the present order on the aspect of ‘intermediary’ without deliberating on the eligibility of the refund. It has held that:
 - For a person to be said to be intermediary, there should be two distinct services and three persons involved.
 - The intermediary should be the person who is facilitating the provision between the other two persons.
- In arriving at above conclusion, the Tribunal relied upon the latest Circular No 159/15/2021-GST dated September 20, 2021, issued under GST regime, to hold that the Company is not providing intermediary services.
- The Tribunal also relied on decision of Orange Business Solutions Pvt Ltd. [2019 (27) GSTL 523 (T-Chand)] and JFE Steel India Pvt Ltd [2021 (44) G.S.T.L. 292 (Tri. – Chan)], to conclude that the Company is not an intermediary.

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

Annexure

E-Advance Ruling Scheme 2022

Notification No. 7 of 2022 dated 18 January 2022

Advance Ruling under the Income Tax Act, 1961

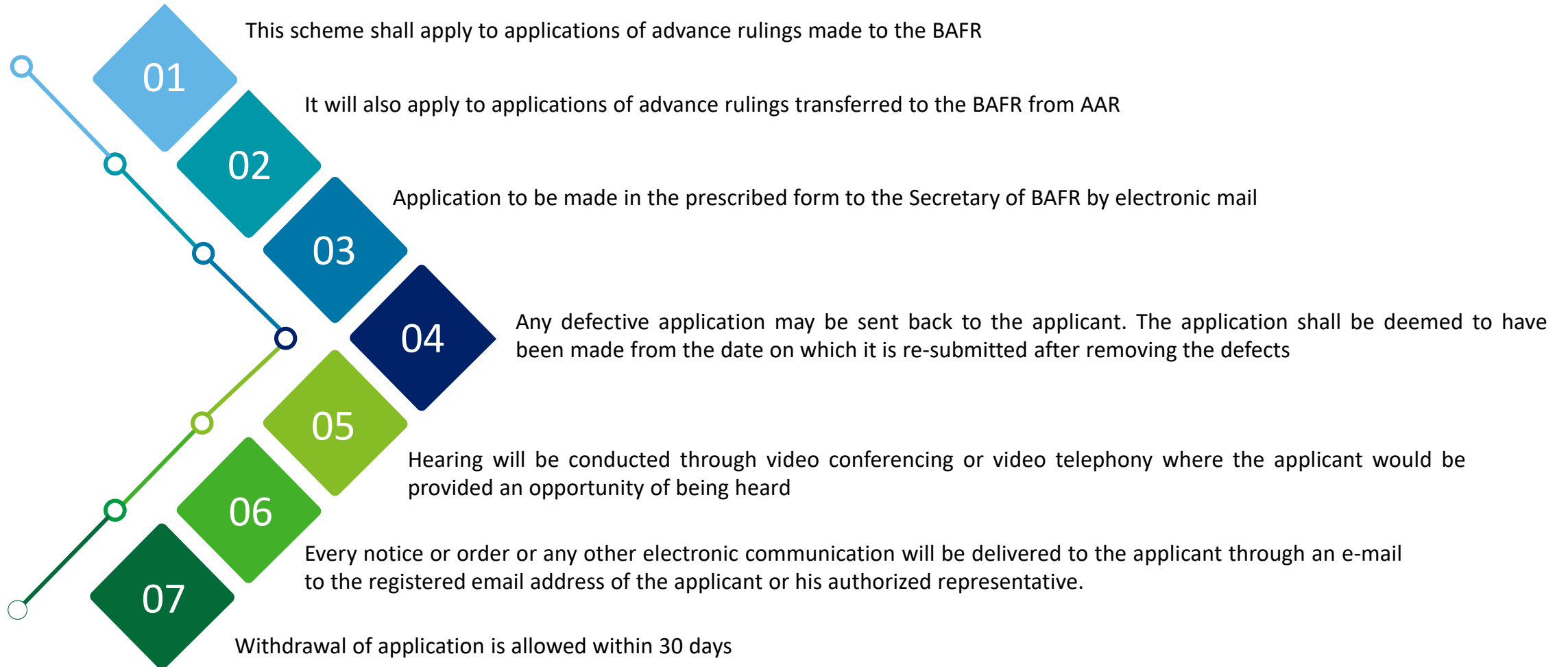
- Under the provisions of the ITA, a taxpayer can approach the Authority for Advance Ruling (AAR) under specified circumstances to obtain an advance ruling on the transaction undertaken / proposed to be undertaken.
- Finance Act, 2021 replaced the AAR with the Board for Advance Rulings (BAFR) with the intent to improve efficiency and to enable faster disposal of the applications.
- With effect from 1 September 2021, the Central Board of Direct Taxes ('CBDT') constituted BAFR-I and BAFR-II headquartered at Delhi and BAFR-III headquartered at Mumbai.

The CBDT has now notified the scheme for advance ruling under the provisions of section 245R

E-Advance Ruling Scheme 2022

Notification No. 7 of 2022 dated 18 January 2022

E-Advance Ruling Scheme, 2022 effective 18 January 2022



An appeal against an order for advance ruling passed by BAFR shall lie before the jurisdictional High Court.

GAAR Panel and GAAR Secretariat

Government notifications dated 11 February 2022

GAAR Panel

- Government notifies first GAAR Panel under chairmanship of Justice Chander Shekhar (Retd. Judge, Delhi High Court)
- Prof. Nigam Nuggehalli, (Registrar, National Law School of India University Bangalore) and Mr. Rajat Bansal (Pr. Chief CIT) will be its members

GAAR Secretariat

- Approving Panel has been constituted by DOR's office order no. 37/2022 dated 24 January 2022
- All references to Approving Panel under GAAR to be made to GAAR Secretariat:
 - Address: Sh. Tarun Jarwal, Secretary, GAAR Secretariat, Room No.337C, C.R. Building, I.P. Estate, New Delhi – 110002
 - e-mail: secy.approvingpanel@incometax.gov.in

Formula prescribed under Rules 21AJA and 21AJAA

Notification no.6/2022 dated 14 January 2022

Exempt income [10(4D)]

- Capital Gains on transfer of capital assets referred in section 47(viiab) held on recognized stock exchange located in IFSC where consideration in convertible foreign exchange.
- Capital gains on transfer of any securities (other than shares of Indian resident company).
- Income from securities issued by non-resident (not being PE in India) where such income otherwise does not accrue or arise in India.
- Income from securitization trust chargeable under “profits and gains of business or profession”.

01

02

Taxable income [115AD]

- Long-term capital gain referred in section 115AD(1)(b) on transfer of securities (including those referred in section 112A).
- Short-term capital gain referred in section 115AD(1)(b) on transfer of securities (including those referred in section 111A).
- Interest income from securities referred in section 115AD(1)(a) [including those referred in section 194LD].

[Back to main slide](#)

Extension of timelines for income tax returns and audit reports for AY 2021-22

Circular no. 1 of 2022 dated 11 January 2022

S. No.	Particulars	Earlier extended timeline (per circular 17/2021 dated 9 September 2021)	Revised timeline
1.	ITR for AY 2021-22 for which original due date was 31 October 2021	15 February 2022	15 March 2022
2.	ITR for AY 2021-22 for which original due date was 30 November 2021	28 February 2022	15 March 2022
3.	Audit report for AY 2021-22 for which original due date was 30 September 2021 in case of following taxpayers (other than sr. no. 4): a) Company b) Person other than Company whose accounts are required to be audited c) Partner of a firm whose accounts are required to be audited under the ITA or under any other law or the spouse of such partner(refer section 5A)	15 January 2022	15 February 2022
4.	Audit report for AY 2021-22 for which original due date was 31 October 2021 and transfer pricing report is required to be furnished	No mention	15 February 2022
5.	Transfer Pricing report where original due date was 31 October 2021	31 January 2022	15 February 2022

Notes

- Interest u/s 234A applicable where SA tax liability > Rs.1,00,000
- In case of senior citizen tax resident, tax paid u/s 140A of the Act without any timeline extensions shall be deemed to be advance tax



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