



## Quarterly India tax updates July - September 2020

14 October 2020



# Subject matter experts

# We will discuss...

- **Economy/Regulatory updates**
- **Direct tax updates**
  - Platform for transparent taxation – Faceless Assessments/Appeals
  - New compliances – TDS/TCS
- **Indirect tax updates**
  - Rules of origin
  - Bonded warehouse manufacturing
  - Incentive schemes
- **Recent judicial pronouncements**
- **Annexures**





# **Economy/Regulatory updates**

# Economy/Regulatory updates

## **Labour Codes :**

- Three labour codes- Code on Social Security, Code on Industrial Relations, and Code on Occupational Safety, Health and Working Conditions enacted in September 2020. The Code on Wages 2019 was enacted in August 2019.
- Significant features- legal framework for fixed-term employment, single license for staffing firms to hire workers on contract across different locations, social security fund for the welfare of unorganised workers etc.

## **Amendments to Companies Law 2013 :**

- Many penalty provisions decriminalized by doing away with imprisonment
- Small companies, One Person Companies, Producer Companies and Start-ups subjected to lesser penalty
- Window of 30 days provided to make good (without levy of penalties) the default in filing annual returns and financial statements with the ROC
- Class of unlisted companies required to file periodical financial results with the ROC to be prescribed
- Companies which have spent towards CSR in excess of the requirement allowed to set-off such excess amount spent against CSR, for such number of succeeding financial years and in such manner as may be prescribed

## **Bilateral Netting of Qualified Financial Contracts Act, 2020:**

- Qualified financial institutions like Banks can now net-off bilateral contracts.
- Substantial savings for Banks- capital requirements will now be based on net basis instead of gross basis of the contracts.



# Direct tax updates

# Platform for transparent taxation – Faceless Assessments/Appeals

- The Government launched “Transparent Taxation - Honouring the Honest” Platform (Platform) on 13 August 2020
- The three main features / objectives of the platform are faceless assessment; faceless appeal; and Taxpayers’ Charter



**Faceless Assessment:** CBDT had launched e-assessment scheme in 2019 to eliminate personal interaction between the assessee and the income-tax department (ITD). Amendments to the existing e-assessment scheme 2019 have been made. Scheme also renamed as “*Faceless Assessment Scheme*”.  
Faceless Assessment has now been incorporated [new section 144B] under the Income Tax Act, 1961 (ITA) vide “The Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act 2020 w.e.f. 1 April 2021”



**Faceless Appeal :** CBDT has launched the Faceless Appeal Scheme, 2020 on 25 September 2020 for carrying out appeals in a faceless manner.



**Taxpayers’ Charter:** Taxpayers’ Charter is divided into two parts viz. the ITD’s commitment and expectations from the taxpayer (Details at *Appendix 1*)

# Platform for transparent taxation – Faceless Assessments/Appeals

**Objective:** To impart greater efficiency, transparency and accountability

**Key features:**

- Selection only through system using data analytics
- Dynamic Jurisdiction – abolition of territorial jurisdiction
- Automated Random Allocation of cases
- Central issuance of notices with documentation identification number
- No physical interface, no need to visit income tax office
- Team-based assessment and Team-based review.
- Draft Assessment order in one city, review in another city, and finalization in third city.
- Objective, fair and just order
- 2/3 of the manpower for faceless and balance for other functions

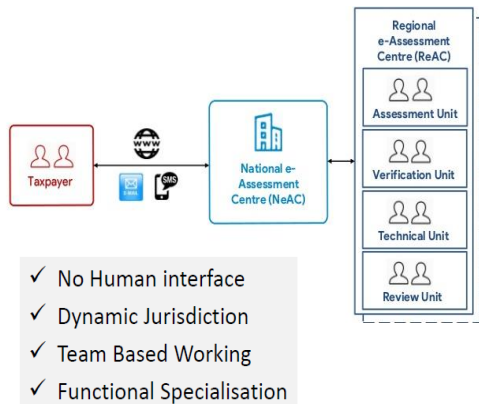
## Rationalisation of other provisions to make them faceless

In addition to regular assessment/ appeal proceedings, various sections/provisions have been inserted vide Amendment Act\* empowering the government to notify faceless schemes for transfer pricing proceedings, DRP proceedings, rectification proceedings, revisions, appeal effects, collection/ recovery of taxes, issuance of lower / NIL withholding tax certificates, TDS proceedings etc.

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



# Platform for transparent taxation – Faceless Assessments/Appeals



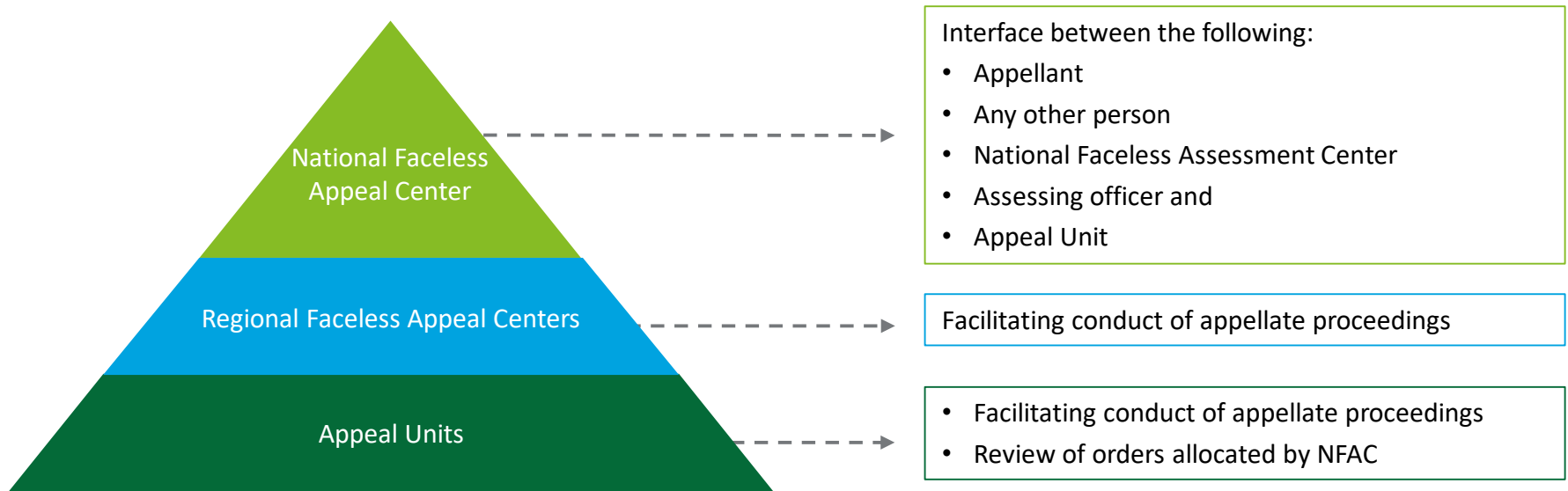
Assessment Units (AU)	Verification Units (VU)	Technical Units (TU)	Review Units (RU)
<p><b>To perform the function of</b></p> <ul style="list-style-type: none"> <li>• Conducting assessment proceedings u/s 143, 144, 148 read with 143(2)/ 142(1)</li> <li>• Identification of points or issues material for the determination of any liability or refund</li> <li>• Seeking information or clarification on points or issues identified</li> <li>• Analysis of the material furnished</li> <li>• Such other functions as may be required for the purposes of making assessment</li> </ul>	<p><b>To perform the function of</b></p> <ul style="list-style-type: none"> <li>• Conducting verification related to assessment which would include enquiry, cross verification, examination of books of accounts, examination of witnesses and recording of statements.</li> <li>• Conducting verification related to centralized dissemination of information by the Directorate of Systems</li> <li>• Such other functions as may be required for the purposes of verification</li> </ul>	<p><b>To perform the function of providing technical assistance</b> which includes assistance/advice on legal, accounting, forensic, IT, TP, valuation, audit, data analytics, management or any other technical matter required under the Scheme</p>	<p><b>To perform the function of review of draft assessment order which includes:</b></p> <ul style="list-style-type: none"> <li>• Checking whether the relevant material is brought on record</li> <li>• relevant points on facts and law have been incorporated</li> <li>• issues of disallowance have been discussed</li> <li>• whether application of judicial decisions have been considered and dealt with</li> <li>• Checking for arithmetical correctness or modification proposed, if any</li> </ul>

All pending assessments as on 13 August 2020 shall henceforth be undertaken by NeAC except in the following cases:

- Cases assigned to Central charges
- Cases assigned to International tax charges

# Platform for transparent taxation – Faceless Assessments/Appeals

- CBDT vide the notification dated 25 September 2020 introduced Faceless Appeal Scheme, 2020 to eliminate personal interaction between appellant and the Commissioner of Income-tax (Appeals)[‘CIT(A)’]
- CBDT has set up National Faceless Appeal Centre (NFAC), Regional Faceless Appeal Centres (RFAC) and Appeal Units.



- Exceptions under the faceless appeal ecosystem (not yet notified) – Appeals relating to serious frauds, major tax evasion, sensitive and search matters, International tax and black money Act
- As per data with CBDT, out of pending appeals (around 4.6 lakhs) at the level of CIT(A), 88% will be handled under the faceless appeal mechanism (*as per Press release of CBDT dated 25 September 2020*)

# Platform for transparent taxation – Faceless Assessments/Appeals

## Key aspects and challenges



### Key aspects

- **Ongoing assessments** – Notices will be issued by National e-Assessment Centre (NeAC) in due course
- **Penalty proceedings** – Penalty for non compliance for notice, directions and order during the course of proceedings vested with NeAC. Other penalties (under-reporting/misreporting) continue to be with jurisdictional assessing officer unless separately notified
- **TP proceedings** – Resident assessee, covered under NeAC; scheme to be notified. Non-resident assessee, continue to be with jurisdictional TP authorities unless notified
- **DRP proceedings** – Resident assessee, covered under NeAC; scheme to be notified. Non-resident assessee, continue to be with jurisdictional authorities unless notified
- **Reassessment proceedings** –
  - Matters where 148 notices already issued, would move to NeAC
  - Matters where fresh notices to be issued- to be initiated by jurisdictional assessing officer, until scheme is notified
- **Ongoing appeals before CIT(A)** – To be carried out in a faceless manner under the new scheme



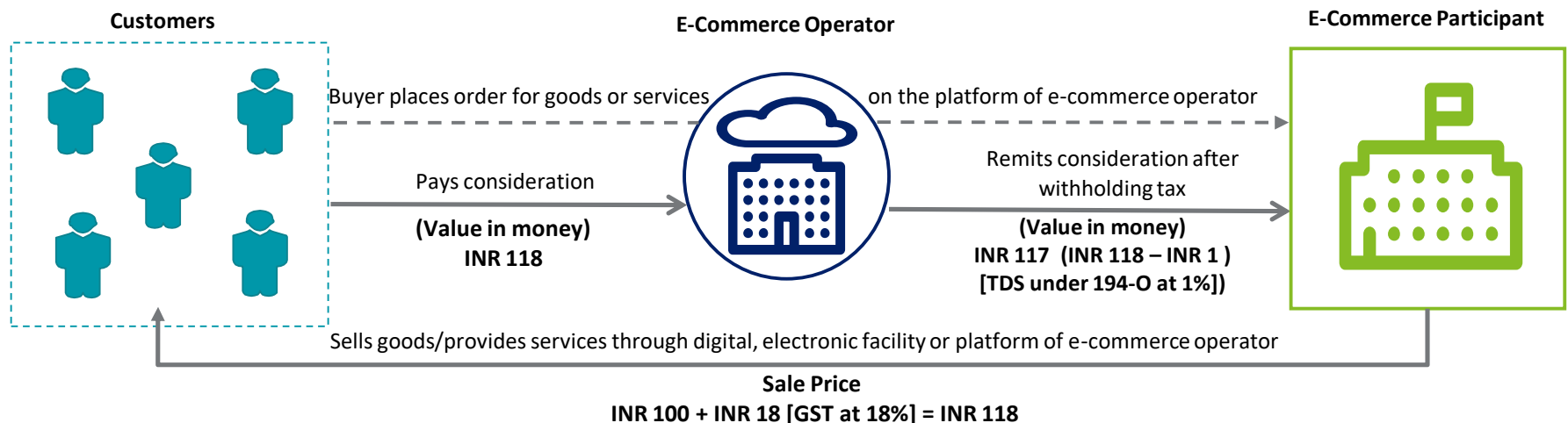
### Key challenges

- Emails sent to registered email id and text messages to registered mobile number to be checked vigilantly – *could lead to stressed timeline in responding to the respective notice*
- Technology issues – *due to size of the files, format of the files and capacity of the infrastructure of Tax Administration*
- Repeated adjournments (to be avoided) – *as behavior of the tax payer is purported to being mapped*
- Lack of opportunity to explain the case/ matter physically before the Income-tax/appellate authorities – *level of preparedness of the submissions would play a key role*
- Robust documentation/ records to be maintained on contemporaneous basis – *to substantiate the matter/issue*
- Stringent timelines to respond to notices/ information
- Impact under the new scheme of historical adjustments made by AO's

# New compliance – Withholding tax on e-commerce transactions

## Section 194-O of the IT Act

- Withholding tax at 1%\* is applicable on transaction carried out through e-commerce platform

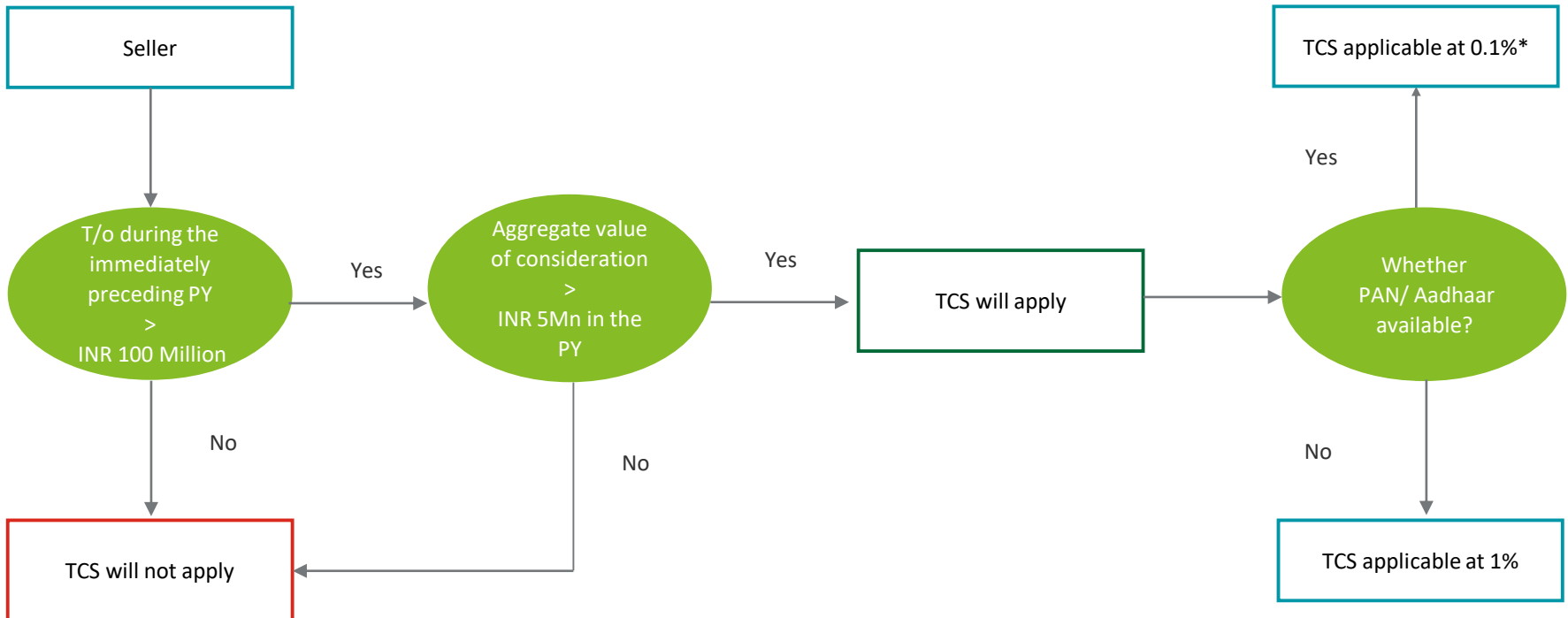


- Withholding tax rate would be 5% if e-commerce participant does not furnish PAN/Aadhaar
- Withholding tax is applicable on consideration payable to e-commerce participant at the time of credit or payment, whichever is earlier
- Payments not routed through e-commerce operator would also be subject to withholding under section 194-O
- Transactions covered under this provision shall not be subject to any other existing withholding tax provisions
- The CBDT vide Circular 17/2020 has issued certain guidelines for implementation of section 194-O

\*The rate of TDS shall be 0.75% for the period 1 October 2020 to 31 March 2021

# New compliance – Tax Collection at source on sale of goods

## Section 206C(1H) of the IT Act



### Exemption from TCS provisions:

1. If goods are exported out of India or imported into India
2. Goods liable to tax collection under other TCS provisions of the IT Act
3. If the buyer is liable to deduct tax at source under any other provisions of the IT Act on the said transaction

*\*The rate of TCS shall be 0.075% for the period 1 October 2020 to 31 March 2021*



# Indirect tax updates

# Rules of origin – Customs Administration of Rules of Origin under Trade Agreements Rules, 2020 (CAROTAR, 2020)

## Applicability of rules

- Brought into effect from 21 September 2020
- Applicable on import of goods in India where importer makes claim of preferential rate of duty in terms of trade agreement

## Objective

- Strict adherence to Rules of origin under Free Trade Agreement (FTA)
- Avoid dumping of a non-FTA product at preferential rate of duty or product by Non-FTA country through FTA route

## Preferential tariff claim

- To claim preferential rate of duty, importer or its agent has to submit the following, while filing Bill of Entry (BoE):
- Declaration that goods qualify as originating goods
  - Indicate tariff notification for preferential rate
  - Provide certificate of origin(CoO)
  - Enter requisite details in BoE as provided in the notification such as CoO number, originating criteria, transporting country

## Duties of Importer

- Possess information indicated in Form-I and submit if requested by proper officer
- Keep such documents for 5 years from date of filing of BoE

## Miscellaneous

- Proper officer may on request provisionally assess goods (being verified) subject to the importer furnishing a security amount equivalent to the duty differential
- In case of suppression of facts, willful mis-statement, importer would be denied the preferential tariff and applicable penalties would be imposed
- In case conflict between CAROTAR and applicable Rules of Origin, Rules of Origin would prevail

# Rules of origin – CAROTAR, 2020

## Requisition of information from importer

- Proper officer may seek information and supporting documents from importer if there is a reason to believe that origin criteria prescribed in Rules of origin not met
- If proper officer is satisfied on review of information that origin criteria is met, claim shall be accepted
- If importer fails to provide information or where information found unsatisfactory, proper officer shall forward a verification proposal to verification Authority in exporting country
- If sufficient evidence available that origin criteria is not met or importer relinquishes the claim, claim shall be disallowed

## Verification process

- Proper officer may request for verification of CoO from Verification authority (VA) if:
  - there is doubt on genuineness or authenticity of CoO (such as mismatch of signatures or seal),
  - reason to believe that country of origin criteria not met or claim for preferential duty invalid
  - random basis as a measure of due diligence
- Timeline prescribed for response from Verification Authority and completion of verification process
- Claim can be denied if Verification Authority fails to respond or provides incomplete information or information proves that goods do not satisfy origin criteria

## Identical goods

- If goods originating from particular exporter or producer fails to comply with rules of origin, the Pr. Comm./Comm. may reject other claims for preferential rate of duty filed prior or after such failure on identical goods made from the same exporter
- If claim is rejected on identical goods the authority shall:
  - inform the reasons for rejection
  - prospectively restore the tariff treatment if exporter or producer makes modification to satisfy rules of origin under FTA

In a recent amendment, CBIC made it clear that all class of importers including AEO certificate holder are required to deposit 100% of differential duty as security, if provisional assessment is requested by importer when inquiry is initiated under rules of CAROTAR 2020



# Rules of origin – CAROTAR, 2020

Information (illustrative list) to be possessed by importer before import of goods includes:



Description of production process undertaken in country of origin



Which originating criteria has been claimed



Whether originating material produced by exporter or procured from third party



Description of originating material or component used in production of good



Whether originating material or component manufactured or locally procured by producer



Has the consignment in question been directly shipped from country of origin



Has the CoO been issued retrospectively

# Bonded warehouse manufacturing – Manufacture and Other Operations in Special Warehouse Regulations, 2020 (MOOSWR, 2020)

Notified vide N/N 75/2020 – Customs (N.T.) dated 17 August 2020



## Background

- This enables manufacturing of specified goods in **special warehouse**
- Objective is **duty deferment** on import of specified goods used for manufacturing or other operations in bonded warehouse
- Notification lays down regulations and conditions relating to **grant and validity of permission**; transport and receipt of goods etc.
- CBIC has also issued a circular where it has laid down procedures to be followed **by proper officers for compliance** with regulations



## Eligibility

- Any **person** who has been granted **special warehouse license**
- Any person who applies for special warehouse license **along with permission for undertaking manufacturing in warehouse**

*Goods allowed to be deposited in special warehouse are:*

- *Gold, silver, other precious metals or articles thereof;*
- *Goods stored for the purpose of:*
  - *Supply to duty free shops*
  - *Supply as stores to vessels/aircrafts*
  - *Supply to foreign privileged persons*



## Benefits

- Where goods are imported for manufacturing or other operations and export - **no duty payable on import and export** of goods
- Where goods are imported for manufacturing or other operations and **domestic supply**, import duty and GST (on domestic supply) to be paid at the time of clearance
- Goods can be **moved between bonded warehouses** without duty
- **No export obligation**
- No restriction on the period of warehousing

# Incentive schemes – Central Government Schemes - update

01

Determination of ceiling rates for the RoDTEP scheme in progress; information relevant for rate determination collected from trade associations

02

MEIS benefit not available from 1 January 2021. Allocation of 2 crore per IEC is made for existing exporters (*LEO date falling within 01.09.2020 to 31.12.2020* )

03

Continuation of SEIS from FY 20-21 currently under deliberation; New PLI schemes to be introduced

Production linked schemes are expected to be announced for identified sectors\*



Automobile and components



White goods (ACs, LEDs etc.)



Electronics (laptop, server etc.)



Telecom and networking products



Food processing



Solar Equipment

\*Source: <https://auto.economictimes.indiatimes.com/news/auto-components/rs-3-lakh-crore-pli-scheme-for-10-sectors-to-boost-domestic-manufacturing/78376317>

# Incentive schemes – Recent developments under State industrial policies

In the recently announced state industrial policies, fiscal benefits getting de-linked from GST payments



Implemented  
by

- Gujarat
- Karnataka
- Uttar Pradesh
- Tamil Nadu



Reimbursement  
de-linked  
from GST

Turnover linked Incentives

Capital Subsidy linked to  
investment

## Key benefits of de-linking incentives from GST



Better certainty of potential reimbursements by way of capital subsidy instead of net SGST payments in future



Ease of filing reimbursement claims (no waiting period till completion of GST assessments, no certificate from GST commissioner etc.)



In case of net SGST reimbursements, enterprises are discouraged from local procurements due to overall lower net SGST payment



# Recent judicial pronouncements

# Direct taxes

# National Co-operative Development Corporation

vs. CIT [2020] 119 taxmann.com 137 (SC)

# National Co-operative Development Corporation vs. CIT

[2020] 119 taxmann.com 137 (SC)

## Facts of the case

- The taxpayer, a government corporation, was set up under the National Co-operative Development Corporation Act 1962 (“NCDC Act”) to
  - advance loans or grant subsidies to State Governments for financing cooperative societies and / or
  - provide loans and grants directly to the national level cooperative societies and state level cooperative societies.
- NCDC Act mandates the taxpayer to maintain a National Development Fund (Fund) which is credited with money received by way of grant and loans from Central government, interest on loans and fixed deposits, dividend, repayment of loans, etc. The fund money is applied for loans / grants
- Receipts in form of loans / grants from Central Government were treated as capital receipts and interest income was offered to tax as business income after claiming deduction of amounts disbursed as non refundable grants. Such claim was made for the first time in FY 1975-76

## Issue under consideration

- Whether the non refundable grants disbursed are eligible for deduction for determining the ‘taxable income i.e. interest income of the taxpayer.

## Decisions of tax authorities

- Assessing Officer (AO) – **Disallowed**; Treated the non-refundable grants as capital expense and on the basis that no claim made in earlier years;
- CIT(A) – **Allowed**; Grants made by the taxpayer are interlinked / interconnected with its activities of advancing loans and grants;
- ITAT – **Disallowed**; Disbursement from single fund which pools the monies from loans and grants is capital nature as fund is a capital receipt;
- High Court – **Disallowed**; Monies advanced from the Fund cannot be distinctly identified as from interest income. Loans advanced by the taxpayer could not be claimed as an expenditure as the same did not leave the hands of the taxpayer irretrievably.



# National Co-operative Development Corporation vs. CIT

[2020] 119 taxmann.com 137 (SC)

## Decision of Hon'ble Supreme Court ('SC')

- Non-claim of deduction in previous year did not preclude the taxpayer's right to claim deduction in the year under consideration;
- The source of funds (i.e. corpus funds or interest income) from which the expenditure was made / incurred, was not relevant and **every application of income towards business objective of the taxpayer was a business expenditure**;
- Disbursement of grants was the core business activity of the taxpayer, any expenditure incurred in the course of business and for the purpose of the business was an allowable deduction.

### Postscript:

Hon'ble SC noted that the Indian legal system was reeling under docket explosion and was increasing. It wrote two postscripts on the hope that both the aspects meet consideration at an appropriate level. In summary,

#### A. Non-tax matters

Hon'ble SC opined to set up a committee of legal experts (presided by a retired judge) to act as a mediation / dispute resolution between the government authorities or government departments

#### B. Tax matters

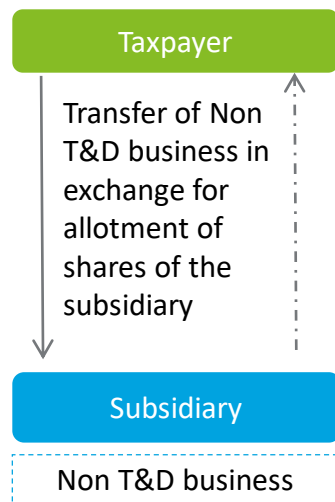
- Consider the efficacy of advance ruling system to make it more comprehensive as a tool for settlement of disputes rather than battling it through different tiers.
- SC opined that a *vibrant system of advance ruling* could go a long way to reduce tax litigation. The delay in pronouncing rulings is mainly due to large number of vacancies and delayed appointment of members in the authority for advance ruling. SC referred to ***Deloitte's Report on Advance Rulings in India "Delivering Greater Tax Certainty (Deloitte Tax Policy Paper 5, 2019)"***.
- SC noted the advance ruling mechanism under the **Swedish & New Zealand law** and recommended a council for Advance Tax Ruling based on their models.
- SC also opined that the limit of Rs.100 Cr set in for making an application by a resident to Authority for Advance Rulings is high and consider reducing the same

**Areva T&D India Ltd**

vs. CIT [2020] 119 taxmann.com 171  
(Madras HC)

# Areva T&D India Ltd vs. CIT

[2020] 119 taxmann.com 171 (Madras HC)



## Facts of the case

- The taxpayer (Areva T&D India Ltd) transferred its non transmission and distribution (“Non T & D”) business to its subsidiary in exchange for allotment of shares of the subsidiary at a certain premium. The transfer was undertaken under a court approval scheme.
- In the return of income for AY 2006-07, the taxpayer did not pay tax on capital gain earned from transfer of business, on the basis that the entire capital gain was to be invested in tax savings bonds notified under section 54EC of the Income-tax Act, 1961 (Act). However, due to the investment restriction limit (i.e. INR 5 million), the tax saving bond was not allotted to the taxpayer.
- During the course of the assessment proceedings, the taxpayer took an alternative plea that the such transfer was not “a sale of business” and accordingly did not qualify as slump sale to be charged to tax under the provisions of the Act. The taxpayer placed reliance on the decision of Mumbai Tribunal in the case of Avaya Global Connect Ltd.
- The taxpayer’s arguments were not accepted by the AO, CIT(A) and Tribunal

## Issue involved

- Whether there is any estoppel on taxpayer to make alternate claim before tax authorities/appellate authorities?
- Whether a slump exchange is subject to capital gains tax?

# Areva T&D India Ltd vs. CIT

[2020] 119 taxmann.com 171 (Madras HC)

## Decision of High Court



### Estoppel on taxpayer to pursue an alternate claim

- High Court held that there shall be no estoppel on the part of the taxpayer to pursue its alternative claim :
  - Hon'ble Supreme Court in the case of National Thermal Power Co. Ltd- *no estoppel in taxation law from raising an alternative legal claim if the relevant facts are available in record*
  - Hon'ble Supreme Court in the case of Goetze (India) Ltd.- only limited the power of the assessing officer to accept the fresh claim during the assessment proceedings, doesn't impact the power of the CIT(A) and Tribunal
  - Alternative pleas can be raised and it can be even a plea, which is mutually contradictory to the earlier plea, as it is a question of law which requires consideration



### Taxability as slump sale

- High Court held that the transfer of taxpayer non T&D business to subsidiary company in exchange of allotment of equity shares was not slump sale exigible to tax under the provisions of the ITA:
  - In the absence of monetary consideration in the transaction, it was not possible to qualify the transaction within the definition of slump sale
  - Mere use of expression "consideration for transfer" cannot be said to be a transaction of a sale. One has to see the operative part of the transaction, whether there is exchange or sale by monetary consideration
  - Pursuant to approval of a scheme of arrangement, it ceases to operate as a mere agreement between the parties and becomes binding. It is no longer be a contractual transfer but a statutorily approved transfer and could not be brought within the definition of sale
  - Followed Bombay HC in Bharat Bijlee Ltd. [2014] (46 taxmann.com 257)-
    - *A transaction has to be a "sale" in the first place to be regarded as a "slump sale". A "slump exchange" is not regarded as a "sale" and therefore not taxable*

# Indirect taxes

# Recent case laws - GST

## VKC Footsteps India Pvt. Limited - Gujarat HC

### Facts of the case

- Applicant is engaged in business of manufacture and supply of footwear which attracts GST at the rate of 5%
- Majority of the inputs and input services attract GST at the rate of 12% or 18%
- Thus, GST paid by the Company on procurement of input is higher than the rate of tax payable on their outward supply of footwear, which has led to accumulation of unutilized credit in electronic credit ledger of the applicant

### Issue

- Whether amended Rule 89 (5) of the CGST Rules, 2017 restricting refund claimed under inverted duty structure of input tax credit is ultra-vires and accordingly, whether taxes paid on input services are eligible for refund

### Ruling

- High Court held that Explanation (a) to Rule 89 (5) which denies the refund of unutilized input tax paid on “input services” as part of “input tax credit” accumulated on account of inverted duty structure is ultra vires the provision of Section 54 (3) of the CGST Act, 2017
- High court allowed the claim of refund made by the Company considering the unutilized input tax credit of ‘input services’ as a part of Net ITC

# Recent case laws - GST

## Tvl. Transtonnelstroy Afcons Joint venture and 5 others - Madras HC

### Facts of the case

- Applicants use both inputs and input services for provision of output supplies. Rate of GST on input goods and particularly input services is higher than the rate of tax on output supplies. This led to accumulation of unutilized ITC in the electronic credit ledger

### Issue

- Ability to claim refund in light of Section 54(3)(ii) read with Rule 89 (5). Whether definition of the term Net ITC, in Rule 89(5), is liable to be read as encompassing both input goods and input services?

### Ruling

- Use of words “no” and “in cases other than” appearing in the first proviso to Section 54 results into a positive phrase that refund under is permissible only in two cases (i.e. export without payment of tax and inverted duty structure on account of accumulation of credit due to higher rate of GST on inputs) referred therein. Thus, the proviso performs the larger function of also **limiting the entitlement of refund to credit that accumulates as a result of the rate of tax on input goods being higher** than output supplies
- Refund is a statutory right and granting of refund only in case of unutilized credit accumulated due to rate of tax on input goods being higher than the rate of tax on output supplies **by excluding unutilized ITC accumulated on account of input services** is a valid classification and a valid exercise of legislative power. GST laws, goods and services are treated similarly in certain respects but differently in other respects such as refund
- Rule 89(5) of the CGST Rules, as amended, is in conformity with Section 54(3)(ii). Consequently, it is not necessary to interpret Rule 89(5) and, in particular, the definition of Net ITC therein so as to include the words input services

*This judgement is in contrast to the judgement of Gujarat HC in case of VKC Footsteps (supra)*

# Recent case laws - GST

## Commissioner of GST Vs Jian International | Delhi HC

### Facts of the case

- Assessee filed refund application within the statutory timeline. However, the Department neither issued any deficiency memo nor acknowledgement of acceptance within the stipulated period of 15 days from date of filing of refund application.

### Issue

- Whether breach of statutory timelines and delay in processing of refund claims is permitted as per the Rule 90 and 91 of the SGST Rules?

### Ruling

- Court held that non issuance of the deficiency memo or acknowledgement within 15 days of date of filing refund application would lead to the presumption that the application is complete in all respects.
- It was also observed that if the Department is allowed to exercise its power of processing the application after the statutory timelines then it would not only delay the right of the taxpayer to obtain refund but also impair him from claiming interest on such delay
- Consequently, the Court directed the Revenue Authorities to pay the refund along with the interest in accordance with the law



# Recent case laws/Advance rulings - GST

## Karnataka AAAR | Volvo-Eicher Commercial Vehicles Ltd

### Facts of the case

- Applicant is in the business of selling Volvo branded trucks and providing after sale support services, including warranty services
- Volvo Sweden has appointed the applicant for the distribution of its products in India, including buses and trucks with a standard warranty
- Applicant is responsible for the servicing of warranty claims of its customers and the onus to reimburse such expenses incurred for discharging the warranty obligation lies with Volvo Sweden

### Issue

- Whether the supply made by the appellant to M/s Volvo Sweden is a supply of service. If yes, whether such supply of service would qualify as export of service

### Ruling

- Under the warranty contract, manufacturer's (i.e. Volvo Sweden) obligations were being discharged by the distributor (i.e. applicant) and for this, the distributor received a reimbursement of costs. Accordingly, recipient of supply of service by distributor would be manufacturer and not the customers in India
- Activities performed by the appellant with regard to repair and servicing for Indian customers during the warranty period is an activity amounting to a composite supply of goods and service with the principle supply being a supply of service. The recipient of the supply of service is the manufacturer
- However, the authority refrained from answering the question on whether the supply of services to Volvo Sweden amounts to export of services



# Annexures

# Platform for transparent taxation

## Taxpayer's charter

- The aim of introducing the Taxpayers' Charter is to enhance the trust between the taxpayer and the department. The Taxpayers' Charter provides for various rights and obligations of the taxpayers. The structure of the Charter contains 14 commitments from the department and 6 expectations from the taxpayer.

### The Taxpayer's charter commits the Income tax department to:

- To provide fair, courteous, and reasonable treatment
- To treat taxpayer as honest
- To provide mechanism for appeal and review
- To provide complete and accurate information
- To provide timely decisions
- To collect the correct amount of tax
- To respect privacy of taxpayer
- To maintain confidentiality
- To hold its authorities accountable
- To enable representative of choice
- To provide mechanism to lodge complaint
- To provide a fair & just system
- To publish service standards and report periodically
- To reduce cost of compliance

### The Taxpayer's charter expects the Tax payers to:

- Be honest and compliant
- Be informed
- Keep accurate records
- Know what the representative does on his behalf
- Respond in time
- Pay In time

# Other recent case laws - GST

## Other cases

Particulars	Issue under consideration	Ruling
HL Promoters Private Limited vs UOI High Court – Delhi	Extension of timeline to file revised TRAN-1 for the period April-June 2017 or manually accept the credit to be transitioned and update electronic cash ledger at the back end	Writ petition admitted. Decision to be taken post pronouncement of the judgment of the Hon'ble Supreme Court in Union of India vs Brand Equity Treaties Limited & Ors., whereby the timeline to file TRAN-1 under CGST rules was extended till 30 June 2020
Insitel Services Private Limited vs UOI High Court – Delhi	Challenged legality of Rule 90(3) of CGST Rules. It is submitted that the rectified application should not be treated as a fresh application for calculation of limitation period	Writ petition admitted on the grounds that issuance of a deficiency memo effectively results in rejection of the refund application without giving any opportunity of being heard and this leads to filing of a rectified refund application. Thus, rectification application should not be considered as a fresh application for limitation purposes Hearing scheduled for December 9, 2020
Bharat Oman Refiners Limited High Court - Gujarat	Levy of IGST on Ocean Freight	Held that the matter is no longer <i>res integra</i> . Court in the case of Mohit Minerals and allied petitions held levy of ocean freight as unconstitutional Respondents were directed to sanction the refund and pay the amount of IGST already paid on such transaction to the applicant.

# Other tax developments

## Other updates

1

**Relaxation of 30 days for obtaining IRN** on e-invoices in case of B2B supplies; valid for invoices issued upto 31 October 2020

2

Requirement of **dynamic QR code on B2C invoices** deferred till 01 December 2020

3

E-invoicing to be applicable to a taxpayer if the turnover has crossed INR 500 crores **in any financial year from 2017-18 onwards**. Further, e-invoicing to be applicable **on export invoices** in addition to B2B supplies

4

Facility for taxpayers to file **single refund claims for multiple financial years**

5

Exemption from levy of GST on ocean freight and air freight in case of outbound goods transportation, extended till 30 September 2021

6

Timeline to file **annual return** for FY 2018-19 has been **extended till 31 October 2020**

7

**Interest only** on **net cash GST liability** in case of delay in filing GSTR-3B w.e.f. 1 September 2020

8

**Auto populated GSTR-2B** introduced; **GSTR-2A** to display **details of import of goods and inward supplies** made from SEZ units/SEZ developers

9

CBIC made it mandatory for authorities like Comm.(Appeals), original adjudicating authorities and compounding authority to conduct **personal hearing** in respect of Customs, Excise, Service tax and GST **through video conferencing** (*Guidelines issued*)

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