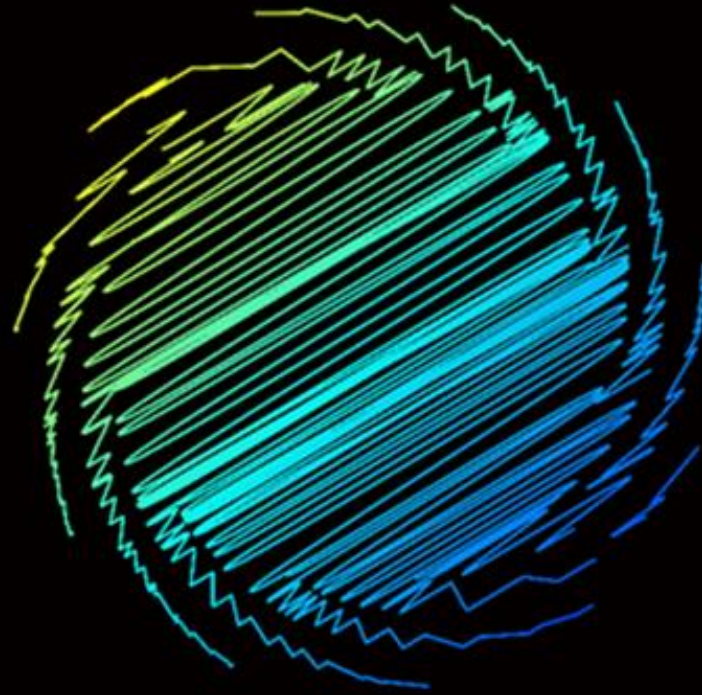


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India TaxHour

Quarterly India
tax updates

April– June 2022

6 July 2022

Subject matter experts

We will discuss...

- **Economy/Regulatory updates**
- **Direct tax updates**
 - Implementing new Tax Deduction at Source (TDS) provisions – guidance from tax authorities
 - Mutual Agreement Procedure (MAP) for resolving tax disputes on international transactions- new guidance
 - Controversy on reassessment proceedings
- **Indirect tax updates**
 - GST Council Meeting
 - GST- Evolving audit environment
- **Recent judicial pronouncements**

Economy/Regulatory/International tax updates

- Economic indicators; Import & Export cess/Excise duty on Gold/Petroleum; Tax collections
- Inclusive Framework (IF) to counter tax Base Erosion and Profit Shifting (BEPS) - Pillar 1 and Pillar 2 developments
- 12th World Trade Organisation (WTO) Ministerial Conference (MC 12) - taxation of electronic transmissions

Direct tax Updates

Tax deducted at source (TDS) guidelines

Section 194R – Guidelines for TDS on benefit or perquisite – Circular No. 12 of 2022

Benefit or perquisite need not be taxable in the hands of recipient	Benefit or perquisite can be wholly in kind / cash or partly in kind / cash	Benefit or perquisite can be in the form of a capital asset
No TDS on sales / cash discount, rebates and GST	Free samples subject to TDS – except items given free on purchase of X number of items	FMV valuation except: <ul style="list-style-type: none">• Purchase price if purchased• Price to customers if manufactured
Free products retained by social media influencers covered	TDS on reimbursements if invoice in the name of service provider	No TDS on conferences to educate dealers / customers – exclusions for leisure trips, select dealers, dealer families

Payer to ensure tax is deducted if cash component not enough

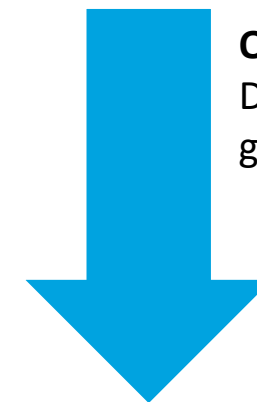
Option 1:

Seek declaration from recipient of tax payment with a copy of challan



Option 2:

Deduct tax on a gross-up basis



TDS guidelines

Section 194S – Guidelines on TDS on transfer of Virtual Digital Assets (VDA) – Circular No 13 of 2022

Direct transfer of VDA	On exchange transactions		In-kind consideration
<p>Buyer</p>	<p>VDA not owned by exchange</p> <ul style="list-style-type: none"> • Payment directly to seller: Exchange • Payment to seller through a broker: Exchange and broker; only broker subject to agreement • Exchange to file Form 26QF quarterly 	<p>VDA owned by exchange</p> <ul style="list-style-type: none"> • Primary responsibility on buyer / broker • Alternatively, on exchange, subject to written agreement • Exchange to file Form 26QF quarterly where Exchange pays tax • Buyer / broker not to be assessee in default 	<ul style="list-style-type: none"> • Payer to ensure tax paid • Exchange of VDAs: both parties • Exchanged on exchange: exchange on both legs subject to written agreement • Procedure notified for conversion of TDS in cash

No TDS under 194Q if TDS under 194S

No TDS on GST / charges

No TDS on Payment gateway if TDS by buyer

Threshold to be computed from 1 April 2022

Excludes consideration paid before 1 July 2022

Gift / rewards / loyalty points are excluded

Exclusion for NFT involving transfer of underlying tangible assets

Dispute resolution update – International transactions

Updated guidance dated 10 June 2022 for access to Mutual Agreement Procedure (MAP) in cases of Vivad se Vishwas Act 2020 (VSV)

Resident taxpayer

- Access to MAP for transfer pricing dispute for which VsV is accepted to be allowed
- Indian Competent Authority (CA) shall not deviate from VSV order
- CA of the other countries can accept MAP applications and notify the same to Indian CA
- Indian CA would request the CAs of the treaty partners to provide correlative relief



Non-resident taxpayer

- Indian CA will not provide access to MAP on the issues covered under VSV

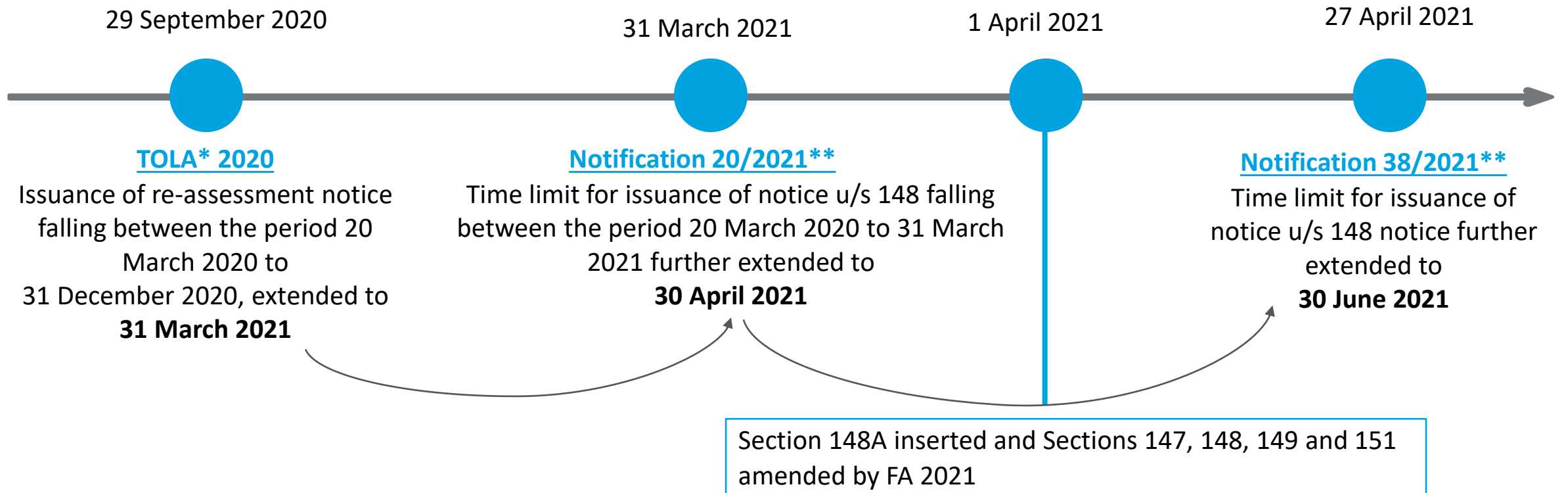


Applicant's responsibilities

- Provide all facts which have a material bearing on MAP negotiation process
- Notify Indian CA of any order passed by the ITAT during the pendency of MAP proceedings
- Disclosure in item (k) of the existing Form 34F read with Rule 44G of the Income-tax Rules, 1962



Re-assessment proceedings - 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

Re-assessment proceedings - Controversy

SC decision in Union of India & Ors. vs. Ashish Agarwal [(2022) Civil Appeal No. 3005 TO 3017, 3019-3020 /2022]
Order dated 4 May 2022

Supreme Court Ruling

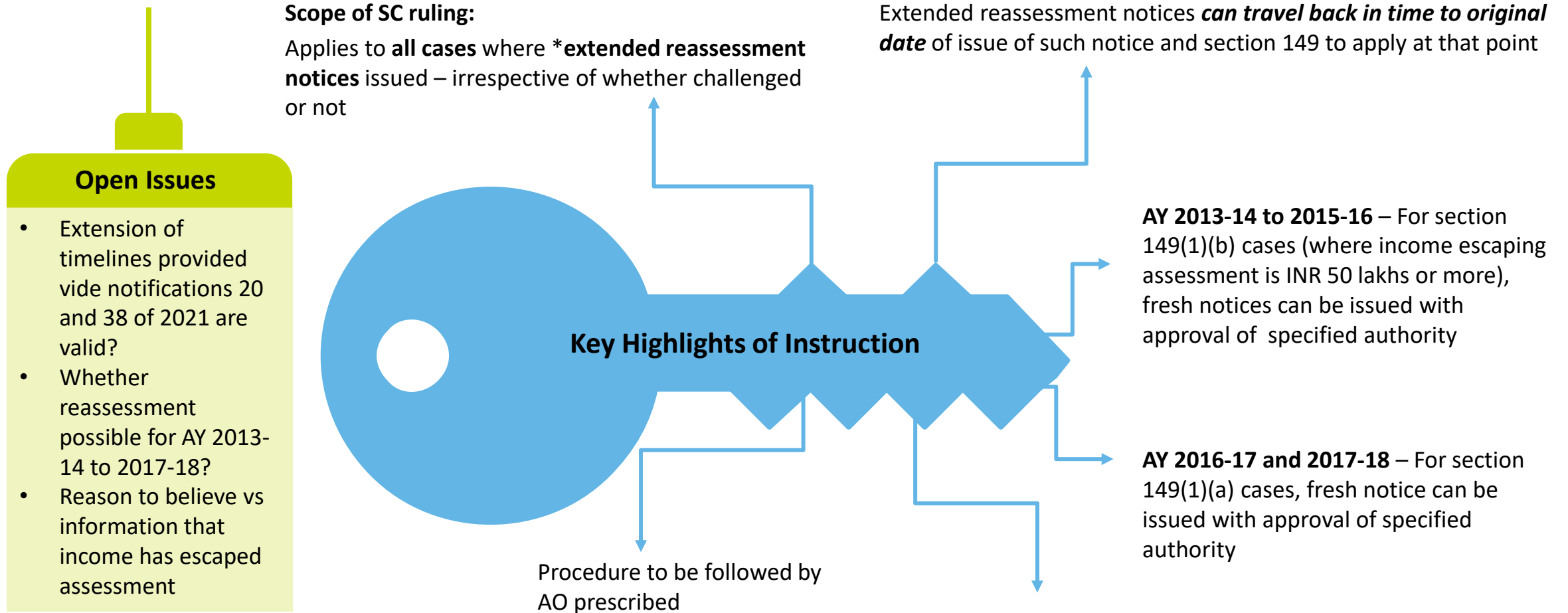
- Order issued by SC on validity of notices issued u/s 148 from 1 April 2021 to 30 June 2021 - by exercising its powers under Article 142 of the Constitution of India
- HC rightly held that the benefit of new provisions to be available in respect of past AYs' proceedings

Remedies provided

- Notices issued u/s 148 deemed to have been issued u/s 148A and treated to be show-cause notices u/s 148A(b)
- AO to provide information and material relied upon to assesseees within 30 days of pronouncement of SC order and assesseees to respond within 2 weeks
- Requirement of conducting enquiry as per section 148A(a) dispensed with as a one-time measure
- All the defenses available u/s 149 or under the FA, 2021 shall be made available to the assessee

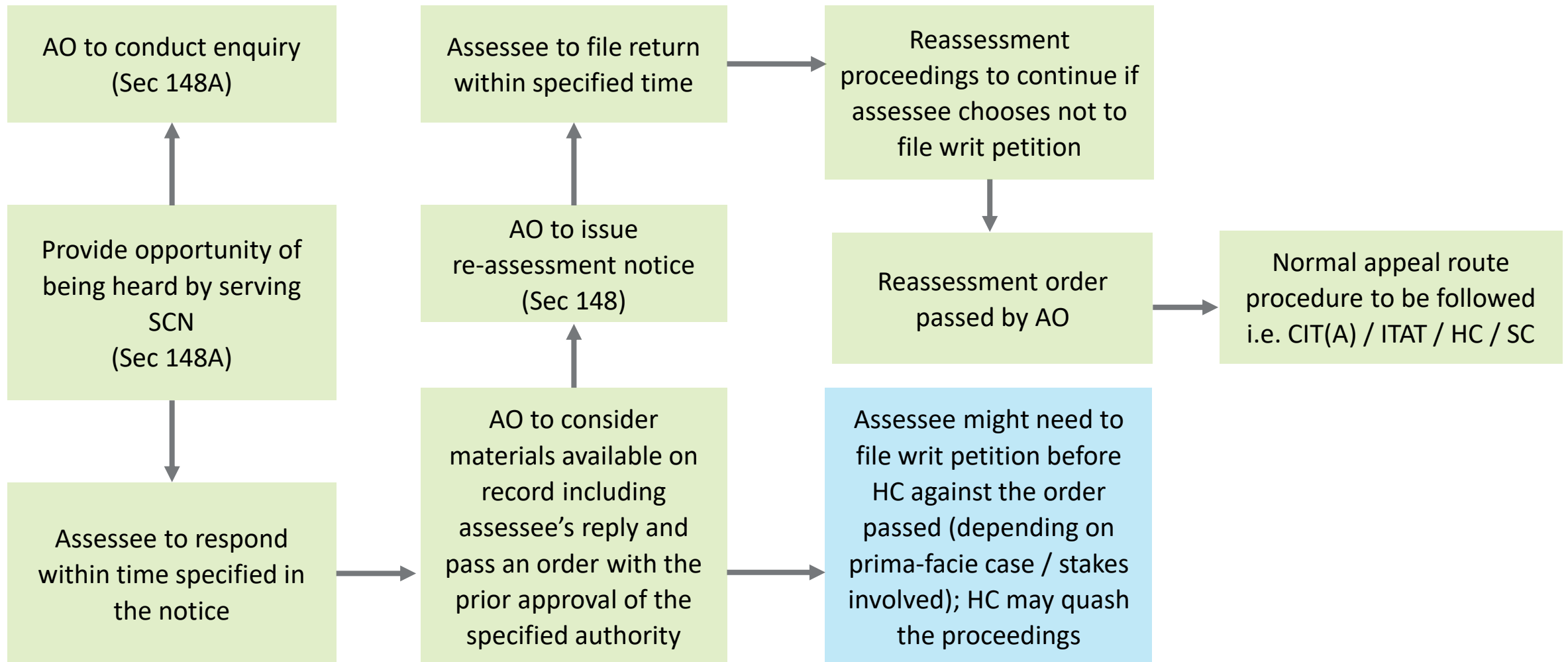
Re-assessment proceedings - Controversy

CBDT Instruction No. 1 of 2022 dated 11 May 2022: For uniform implementation of SC ruling on reassessment notices



* Notices issued during 1 April 2021 to 30 June 2021, with time extended by TOLA

Overview of re-assessment proceedings (Amended section 148 r.w.s.148A)



Application of new provisions of section 148A and relevant judicial ruling

First Solar India Private Limited (Del HC) W.P.(C) No. 7436/2022 – Order dated 26 May 2022

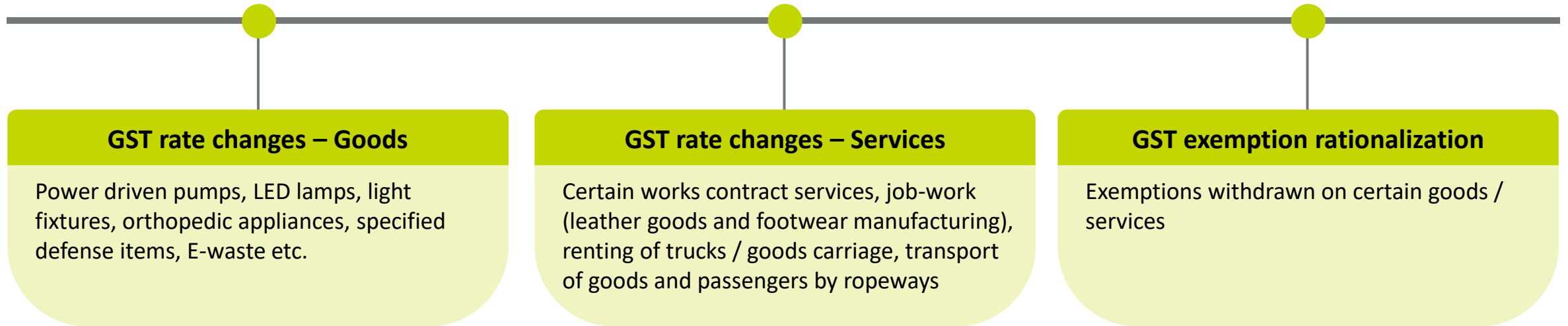
Reassessment notice u/s 148 and order u/s 148A(d) were quashed for being passed without considering assessee's response and request for personal hearing; Emphasises on mandate of section 148A and directs AO to pass a fresh reasoned order after considering assessee's reply

Key observations:

- 1 Reassessment notice was issued based on assessee' own return and records, without stating what was wrong in the said transactions or the points on which clarification was required
- 2 Reassessment was sought to be initiated merely for verification and nothing prevented the Revenue from conducting an enquiry with respect to the said information
- 3 By not considering the submissions of the assessee, AO has violated the mandate of section 148A(c)
- 4 HC opined that a progressive scheme of reassessment whose intent is laudatory has in its implementation being rendered nugatory

Indirect tax Updates

GST Council Meeting – 29 June 2022 - Key updates



Key clarifications

- Electric vehicles whether or not fitted with a battery pack, eligible for the concessional GST rate of 5%
- Services in the form of assisted reproductive technology / in-vitro fertilization covered under the definition of health care services (for GST exemption purposes)
- Renting of motor vehicles for transport of passengers to a body corporate for a period, taxable in the hands of body corporate under reverse charge
- Services provided by guest anchors to TV channels in lieu of honorarium to attract GST

GST Council Meeting – 29 June 2022 - Key updates

Proposals for trade facilitation

- Relaxations in compliance requirements for suppliers making supplies through ECOs
- Permissibility of Refund under inverted duty structure for ITC on input services as well
- Removal of requirement of reversal of ITC for exempted supply of duty credit scrips by exporters
- Continuance of exemption of IGST on import of goods under AA / EPCG / EOU scheme beyond 30 June 2022
- Exclusion of period - 1 March 2020 to 28 February 2022, from calculation of the limitation period for filing refund claim
- Comprehensive changes proposed to be brought into monthly tax return form GSTR-3B
- Exemption from filing annual return for FY21-22 to taxpayers with AATO up to INR 2 crore
- Rules providing for the manner of calculation of interest recommended for more clarity
- Certain provisions (as approved in Finance Act 2022) proposed to be notified at the earliest



Clarifications proposed

Clarifications proposed on:

- Various issues pertaining to interpretation of provisions relating to restriction on availment of ITC
- Issue of perquisites provided by an employer to employees
- Utilisation of amount available in the electronic credit ledger and the electronic cash ledger for payment of tax and other liabilities
- Mandatory furnishing of correct and proper information of inter-state supplies and amount of ineligible/blocked ITC and reversal thereof in return in Form GSTR-3B

Other proposals

- GoM proposed to be set up to address various concerns raised by states relating to constitution of GST Appellate Tribunal
- Option proposed to be given to GTA to pay GST at 5% or 12% under forward charge; RCM option also proposed to be continued
- For casino, racecourse, and online gaming, GoM to re-examine the issues in its terms of reference based on further inputs from states and submit its report within a short duration

GST – Evolving audit environment – Audit preparedness

- With GST completing 5 years, **authorities will dive deep and test (at a granular level) accuracy of tax positions and compliances by taxpayers**
- Tax administration system's effectiveness in detecting errors and frauds will also be put to test
- Directions have been issued for issuance of notices and timely completion of proceedings
- Period of limitation for 2017-18 is fast approaching



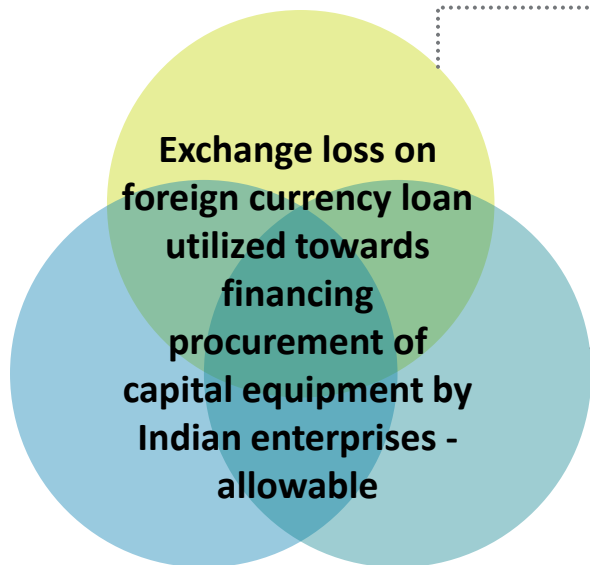
Need to look out for

- Multiple authorities, ie, State/ Central/ DGGI/ DRI
- Heightened scrutiny of tax credits, specifically state-wise credit availment & distribution
- Export revenue scrutiny
- Related party free of cost supplies and valuation
- Free benefits to employees



Judicial pronouncements - Direct tax

Wipro Finance Ltd. vs. CIT [2022] 137 taxmann.com 230 (Supreme Court)



Facts of the Case

- Assessee → company into business of financing
- Entered into a loan agreement with UK entity, for borrowing an amount in Sterling to carry on its project
- Project was to expand its primary business of leasing and hire purchase of capital equipment to existing Indian enterprises
- Assessee claimed foreign exchange loss incurred on repayment of foreign currency loan

SC judgement

- Allowed the entire claim of the assessee being revenue expenditure

SC observations

- Activity of financing of Indian enterprises for acquisition of plant, machinery and equipment was an independent transaction or activity, being the business of assessee
- The transaction with foreign institution was in nature of borrowing necessary for carrying out business and not towards creation/acquisition of asset
- If the advantage consists merely in facilitating the assessee's operations or enabling conduct of business more profitably while leaving the fixed capital untouched, expenditure would be on revenue account, even though the advantage may endure for an indefinite future
- Section 43A would not apply since assessee had not acquired any asset from outside India for business purpose

Judicial pronouncements – Indirect tax

Secondment arrangements – C.C.,C.E. & S.T. Bangalore vs Northern Operating Systems (P.) Ltd. – 19 May 2022

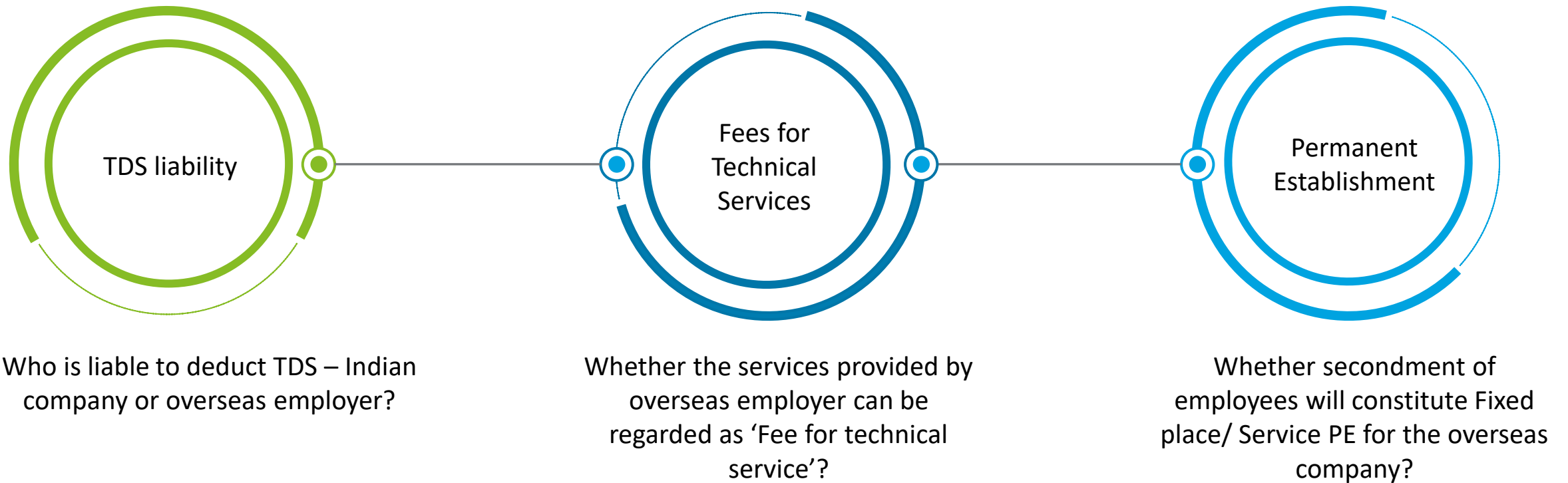
Service tax applicable on reimbursement of salary cost and other expenses by Indian company to foreign company under secondment agreement

- Ruling - reimbursement of salary cost and other expenses of overseas company's employees seconded to the Indian company would be treated as manpower services and service tax **would be payable under reverse charge**
- Observations of Supreme Court:
 - Examination must be based on a multitude of factors (substance over form approach)
 - All activities carried out by one person for another, for a consideration are **deemed to be services**
 - The Respondent had **operational or functional control** over the seconded employees and the employees were performing the tasks relating to the Respondent's activities and not in relation to the overseas employer
 - Previous rulings of the CESTAT on this issue ought to be **distinguished** as the same were not passed with an independent reasoning and thus, had no precedential value
 - The SC affirmed that overseas group company can be said to have provided **manpower supply service** and the Respondent was the service recipient for manpower recruitment and supply services
 - The Court took cognizance of the "vital fact" that the nature of business of the overseas group entities was to secure contracts which required highly trained and skilled personnel



While this is a judgment under the pre-GST service tax laws, the legal provisions analyzed in this judgment are similar under GST and to that extent, this judgment has the potential to reopen the pandoras box of service tax/GST issues on secondment/deputation of manpower, whether from outside India to India or within India

Implications under Income-tax



Ocean Freight - Union of India v. Mohit Minerals (P.) Ltd. – 19 May 2022

Imposition of IGST on ocean freight violative of GST law.

Supreme Court upholds Gujarat High Court ruling and holds that the payment of IGST on ocean freight by Indian importer as “recipient” is beyond the scope of definition provided under the GST law.

- Observations of Supreme Court:
 - Payment of IGST under RCM is envisaged on specific categories of supply of goods and / or services, as notified by the central government which is payable by the recipient of such goods and / or services.
 - The provision under the GST law does not empower the government to specify the recipient of the supply of goods and / or services.
 - Government has the power to specify categories of supply of goods and / or services on which the recipient is liable to pay GST under RCM upon recommendations of the GST Council.
 - Stipulation of the recipient in each of the categories (under relevant RCM notification) is only clarificatory.
 - A separate levy on the Indian importer for the ‘supply of services’ by the shipping line would be in violation of the GST law.



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

International Financial Services Centre (IFSC) Updates

Relaxation of conditions for investment funds and relaxation from TDS on aircraft lease rentals

Investment funds

Following conditions relating to participation by connected persons have been relaxed for eligible investment funds:

- The fund has **minimum of 25 members** who are, directly or indirectly, not connected persons
- Any member of the fund along with connected persons shall not have any **participation interest**, directly or indirectly, in the fund **exceeding 10%**
- **Aggregate participation** interest, directly or indirectly, of 10 or less members along with their connected persons in the fund, shall be **less than 50%**

Monitoring mechanism to protect investments including the right to **appoint directors or executive director** shall not be considered as participation in day-to-day operations

Eligible fund manager to be registered as a portfolio manager or an investment advisor in accordance with the IFSC regulations or any other regulations made under IFSC Act 2019

No TDS on lease rentals

No TDS under section 194I on lease / supplemental rent paid to a unit in IFSC for lease of aircraft subject to following conditions:

- **Seek Form 1** from lessor for each previous year relevant to the 10 consecutive assessment year opted for deduction under section 80LA(IA) read with 80LA(2) of the Act
- Lessee furnishes particulars of all payments to lessor on which tax is not deducted in quarterly **withholding tax statements**



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