

# GST Compendium

**A monthly guide**

April 2023





## Editor's Note

---

The Finance Bill 2023 has become an Act after it received the President's assent on 31 March 2023.

Several benefits have been provided to further promote the International Financial Service Centre (IFSC) as a global financial services hub, based in India.

The withholding tax rate for the payment of royalty and fees for technical services to a non-resident/foreign company has been increased to 20% (plus applicable surcharge and cess) from 1 April 2023. This change will bring back the focus on the Double Taxation Avoidance Agreements (tax treaties).

It has been provided that imported goods shall be deposited in a custom-bonded warehouse for manufacturing and other operations upon payment of the Integrated Goods and Services Tax (IGST) and compensation cess. Therefore, the withdrawal on the deferment of the IGST and compensation cess may significantly impact the importers' working capital, specifically those working under the Manufacturing & Other Operations in Warehouse Regulations (MOOWR) and Export Oriented Units/Software Technology Parks of India schemes.

The government has now announced the new Foreign Trade Policy 2023 (FTP) effective 1 April

2023 to provide policy continuity and a responsive framework. The new FTP focuses on greater trade facilitation through technology, automation and continuous process re-engineering. In addition, an amnesty scheme for the one-time settlement of the export obligation default by the Advance Authorisation and Export Promotion Capital Goods Scheme authorisation holders has been introduced.

On the judicial front, the Supreme Court (SC) has held that for claiming input tax credit (ITC), proving the genuineness of the transaction and actual physical movement of the goods are the essential conditions. Therefore, only production of the invoices and/or payment by cheque is not sufficient to prove the genuineness of transaction. Though the judgment has been delivered in the context of VAT laws, it is likely to have an impact under GST, as similar provisions exist under the GST laws.

In this edition, we have discussed the MOOWR Scheme under the Customs law.

To assist our readers in meeting their tax compliances, we present a tax compliance calendar for Financial Year 2023-24, which should act as a ready reckoner.

I hope you will find this edition an interesting read.

### Vikas Vasal

National Managing Partner, Tax  
Grant Thornton Bharat



# Contents

---

**01**

**Activities/steps to be undertaken before end of FY 2022-23 and upon commencement of FY 2023-24**

**06**

**Issues on your mind**

**02**

**Important amendments/updates**

**07**

**Important developments under direct taxes**

**03**

**Key judicial pronouncements**

**08**

**Compliance calendar for FY 2023-24**

**04**

**Decoding advance rulings under GST**

**09**

**Glossary**

**05**

**Experts' column**

# 01

## Activities/steps to be undertaken before end of FY 2022-23 and upon commencement of FY 2023-24

### Activities/steps to be undertaken before the end of FY 2022-23 and upon commencement of FY 2023-24

#### Summary

As the new FY is about to begin, it is imperative to have a look at various compliances that need to be taken into consideration before the ending of FY 2022-23, as well as upon the commencement of FY 2023-24. We have collated below the general compliances that need to be adhered to by the registered persons from an indirect tax perspective.

#### GST

- **LUT:** For FY 2023-24, the LUT needs to be furnished before 1 April 2023 to make exports of goods/services or supply to SEZ without the payment of IGST.
- **Composition scheme:** The specified regular taxpayers can opt for the composition scheme for FY 2023-24 on or before 31 March 2023.
- **New document series:** Starting from 1 April 2023 the taxpayers need to create a new/unique consecutive serial number for documents such as tax invoices, credit notes, debit notes, receipt vouchers, self invoices, payment vouchers, etc.
- **Applicability of e-invoicing:** W.e.f. 1 April 2023, any registered person whose aggregate turnover exceeded INR 10 crore in FY 2022-23 would be required to comply with the e-invoicing provisions.
- **Tracking of realisation of export proceeds:** In case of zero-rated supplies of goods and/or services without the payment of IGST under the LUT, the registered person is required to maintain a foreign inward remittance mapping to such export invoices and check if the export proceeds are realised within the specified time.
- **Annual calculation of ITC reversals:** All taxpayers engaged in affecting both taxable, as well as exempt supplies, are required to compute the annual amount of ITC reversals for the entire FY and make additional reversal/re-avail the excess ITC reversed.
- **Reporting of HSN code:** W.e.f. 1 April 2023, it is mandatory for taxpayers to mention the six-digit HSN codes for their outward supplies having AATO more than INR 5 crore in FY 2022-23.
- **Updating masters in accounting system:** Ensure that the accounting system is updated with the required fields to auto populate the data required for various existing and upcoming compliances.
- **Industry/taxpayer specific timelines:** Banking companies, financial institutions and NBFCs have an option to avail 50% of the eligible ITC on inward supplies. Such companies can re-evaluate the viability of the option exercised by them, as the option once exercised, cannot be withdrawn for the remaining part of the year.



• **Activities to ensure proper availment of ITC**

Reconciliation of ITC accounted for in the books of account, ITC availed in Form GSTR 3B and ITC appearing in Form GSTR 2B	Verification of the credit availed to ensure that only the eligible credit has been considered
Availment of ITC pending to be considered in GSTR-3B, but appearing in GSTR-2B, for which invoices have been received	Checking the creditors ageing report to identify cases where payment has not been made to vendors within 180 days from the invoice date and prepare workings for ITC reversal, along with interest, if any.
Communication with the vendors whose invoices are not reflecting in the GST returns (including whose payment is pending), but invoices have already been received	Reconciliation of the ECrL reflecting on the GST portal with the ledgers maintained in the books of account.

It is to be noted that any eligible unavailed credit in respect of inward supply invoices issued during FY 2022-23 should be identified and availed in the GST returns to be filed before **30 November 2023**.

• **Activities to ensure correct reporting of outward supply transactions**

Reconciliation of outward supplies reported in Form GSTR-1 with the details furnished in Form GSTR 3B	Calculation of the AATO and reconciliation with the turnover appearing in the books of accounts
Ensure capturing of all invoices raised during FY 2022-23 w.r.t. inter-branch/intra-branch transfers	Reconciliation of the electronic liability ledger and electronic cash ledger reflecting on the GST portal with the ledgers maintained in the books of account

- **Liability under RCM:** Ensure that the tax under RCM has been paid on all the transactions relating to FY 2022-23 and credit availment on the same, if eligible.
- **Filing of Form GST ITC-04:** It is a declaration form to be furnished by the registered persons (principal), showing the details of inputs or capital goods dispatched to or received from a job worker in an applicable tax period. The frequency to file this form depends upon the AATO of the preceding FY, which is as below:

AATO	Frequency
More than INR 5 crore	Half-yearly
Up to INR 5 crore	Yearly

- **QRMP scheme:** This scheme is applicable for the taxpayers to file their returns on a quarterly basis, while paying their tax dues on a monthly basis. The last day to opt in/out of the QRMP scheme is **30 April 2023** for the first quarter (April 2023-June 2023).

**Customs/FTP/SEZ**

Compliance	Timelines
Filing of SERFs	For March 2023, the due date for filing SERF by the STPI units will be <b>10 April 2023</b> .
Filing of MPR	For March 2023, the due date for filing MPR by the STPI units will be <b>10 April 2023</b> .
Filing of SOFTEX forms	For March 2023, the due date for filing SOFTEX by the exporters of software will be <b>30 April 2023</b> .
Filing of QPR for SEZ/EOU	The SEZ/EOU units are required to file the QPR for the quarter January 2023 to March 2023 within 30 days of the close of the quarter, i.e., by <b>30 April 2023</b> .
Annual updation of IEC	An IEC holder has to ensure the updation of IEC electronically every year, during the April-June period. The last date to update the IEC is <b>30 June 2023</b> .
Filing of APR for SEZ/EOU/STPI/ITES units	These units are required to file the APR for FY 2022-23 within 180 days from the end of the FY, i.e., by <b>30 September 2023</b> .

# 02

# Important amendments/updates

## A. Key updates under the GST and erstwhile indirect tax laws

### Key amendments to Finance Bill, 2023

#### Summary

The Finance Bill was introduced in the Lok Sabha by the Finance Minister on 1 February 2023. Based on inputs and representations received from various stakeholders, certain amendments (FBA 2023) were proposed to the Finance Bill. These amendments have been approved by the Lok Sabha and Rajya Sabha. Further, the Finance Bill received the President's assent on 31 March 2023.

The key amendments are:

#### Indirect tax

##### Changes in GST law

###### Persons not liable for registration

- The Finance Bill proposed that where the person is engaged exclusively in making exempt supplies or has been specifically exempted from obtaining registration through a notification, the provisions of compulsory registration will not apply.
- However, the FBA 2023 has replaced Section 23(2) of the CGST Act, not the entire Section 23. Accordingly, compulsory registration will not be required only in cases where the person is specifically exempted by the government to take registration.

###### Revocation of cancellation of registration

- At present, the time limit for filing an application for the revocation of cancellation of registration is 30 days from the date of service of the cancellation order. The FBA 2023 has removed the time limit of 30 days. The time and manner of filing such an application shall be prescribed.
- The FBA 2023 has omitted the proviso empowering the authorities to extend the time limit.

###### Assessment of non-filers of returns

- In the FBA 2023, the time limit to furnish a valid return by the registered person is extended from 30 days of the service of the assessment order to 60 days of the service of the assessment order in cases where the PO has assessed the tax liability on a best judgement assessment basis.
- In addition, a further 60-day extension is provided, subject to a late fee of INR 100 for each day of delay beyond 60 days of service of the said assessment order, if the registered person fails to file a return within such time limit.

###### Constitution of Appellate Tribunal and benches thereof and related amendments

- In the FBA 2023, the jurisdiction, powers and authority conferred on the Appellate Tribunal to be exercised by the Principal Bench and State Benches instead of the National Bench or State Bench of the GSTAT.
- Accordingly, the entire provisions pertaining to the constitution of the Appellate Tribunal, qualification, appointment, conditions of service of the President and members of the Appellate Tribunal, and the financial and administrative powers of the President over the Appellate Tribunal are substituted.

###### Place of supply of services of transportation of goods

- In case where the supplier or recipient is located outside India, the specific provision to determine the place of supply of goods transportation services is omitted by the FBA 2023. Accordingly, the place of supply shall be determined as per the general provisions, i.e., the location of the recipient of services.

###### Schedule to the Goods and Services Tax (Compensation to States) Act, 2017

- In FBA 2023, schedule pertaining to the maximum rate at which the compensation cess may be collected for items such as pan masala, tobacco, and manufactured tobacco substitutes, including tobacco products, has been amended.

## Changes in Customs law

New Section 65A inserted to provide for payment of certain taxes on goods to be deposited in warehouse for operations

- Currently, all customs duties on goods imported in a customs bonded warehouse under the MOOWR are deferred. Such duties are payable on clearance of goods from the warehouse for home consumption.
- In the FBA 2023, the deferment is to be restricted to duties other than IGST and compensation cess. In other words, IGST and Cess are payable on the import of goods under MOOWR.
- The amendment will not apply in respect of goods deposited or permitted to be removed for deposit in the warehouse before the effective date of the provision.
- The government also has the power to notify certain goods on which the new provisions will not apply.

### Other related amendments

- In the FBA 2023, amendments have been made in Section 157 (General powers to make regulation) and Section 159 (Rules, certain notifications, and orders to be laid before the parliament) to empower the Board to make regulations regarding the manner and conditions of payment of duty and the removal of goods u/s 65A.



## Our comments

The constitution of the GSTAT has been pending since the inception of the GST regime. In this regard, the amendments proposed in the FBA 2023 would provide a huge relief to the taxpayers, streamline the litigation process, and reduce unnecessary burden on the HCs.

Furthermore, the amendments related to the payment of IGST and compensation cess in case of deposit of goods in a custom-bonded warehouse for manufacturing and other operations are quite unexpected. In this scenario, the restriction on deferment of IGST and compensation cess (unlike other duties) will have a significant impact on the working capital of the importers.

## CBIC issues notifications to give effect to 49th GST Council meeting recommendations

The GST Council, in its 49th meeting held on 18 February 2023, had made various significant recommendations relating to trade facilitation measures, including the introduction of an amnesty scheme, rationalisation of late fees for filing the annual return, etc.

Pursuant to the above, the CBIC has now issued various notifications giving effect to certain recommendations:

### Key changes notified

- **Late fee waiver for a delay in filing Form GSTR-4 for the period July 2017 to March 2022:** Late fee in the case of a delay in filing Form GSTR-4 (composition dealer) for the period July 2017 to March 2022 is waived in following manner:
  - Nil return: Complete waiver
  - Other cases: Reduced to INR 500 (CGST+SGST)

Provided the said returns are filed between 1 April 2023 to 30 June 2023.

- **Amnesty scheme for filing an application for revocation of cancellation of registration:** The registered persons whose registrations have been cancelled on or before 31 December 2022 on account of the non-filing of GST returns may apply for revocation of cancellation of registrations up to 30 June 2023 post the filing of GST returns, along with the payment of tax, interest, penalty and late fees as payable. No further extension shall be provided for the filing of revocation of registration for such cases. Further, the persons whose appeal against the order of cancellation of registration or application has been rejected on a time-barred issue can also avail benefit under the scheme.
- **Compulsory Aadhaar authentication for GST registration:** Where an applicant opts for the authentication of an Aadhaar number, shall undergo the authentication of the Aadhaar number, and the date of submission of the application in such cases shall be the date of authentication of the Aadhaar number, or 15 days from the submission of the application in Part B of Form GST REG-01, whichever is earlier. In addition, the new rule provides for the biometric-based Aadhaar authentication of the identified applications based on data analyses and risk parameters.
- **Amnesty scheme for withdrawal of assessment order issued for non-submission of Form GSTR-3B and 10:** An assessment order issued on or before 28 February 2023, on account of non-filing of returns in Form GSTR-3B and GSTR-10, shall stand withdrawn, provided the registered person furnishes the said return on or before 30 June 2023, along with interest and late fee as applicable.



- **Waiver of late fee in case of delayed filing of Form GSTR- 9:** Late fee, in case of the delayed filing of Form GSTR-9 (annual return) from FY 2022-23 onwards, has been reduced in the case of a registered person whose aggregate turnover is equal to or less than INR 20 crores in the said FY. The revised late fee structure is tabulated below for ease of reference:

Aggregate turnover of a registered person in the relevant FY	Late fee
Up to INR 5 crore	INR 50 per day (CGST+SGST) subject to a maximum of 0.04% of turnover in the state or union territory.
More than INR 5 crore up to INR 20 crore	INR 100 per day (CGST+SGST) subject to a maximum of 0.04% of turnover in the state or union territory.

The late fees payable in the case of pending Form GSTR-9 of FY 2017-18, 2018-19, 2019-20, 2020-21, or 2021-22 have been restricted to INR 20,000 (CGST+SGST) per GSTIN if the said return is filed between 1 April 2023 to 30 June 2023.

- **Amnesty scheme for filing of GSTR-10 for the period July 2017 to March 2022:** The late fee for delay in furnishing return in Form GSTR-10, which is in excess of INR 1,000 (CGST+SGST), is waived if the return is furnished between the period 1 April 2023 and 30 June 2023.
- **Extension of time limit for issuance of an order under Section 73 of CGST Act:** The time limit specified under Section 73(10) for the issuance of the order for recovery of tax not paid or short paid or of ITC wrongly availed or utilised for any reason, other than the reason of fraud or any wilful misstatement or suppression of facts to evade tax, has been extended as below:

Tax period	Current due date	Extended due date
FY 2017-18	30 September 2023	31 December 2023
FY 2018-19	31 December 2023	31 March 2024
FY 2019-20	31 March 2024	30 June 2024

(Notification Nos. No. 02/2023 to 09/2023—Central Tax dated 31 March 2023)

## Implementation of HSN code reporting in e-Invoice on IRP portal

As per the Notification No. 78/2020 – Central Tax dated 15 October 2020 – it is mandatory for taxpayers to report a minimum of six-digit valid HSN code for their outward supplies having AATO of more than INR 5 crores in any previous FY.

The GSTN has already implemented this requirement in the GST system and is currently working with IRP partners to implement it at the IRP portal.

The GSTN has suggested that in cases where a valid six-digit HSN code is not available, a corresponding valid eight-digit HSN code should be reported instead of artificially creating a six-digit HSN code.

Furthermore, the GSTN intends to provide sufficient time for taxpayers and IRP partners to make necessary changes to comply with the requirement. Accordingly, the GSTN shall communicate the implementation date.

(GSTN advisory dated 22 March 2023)

## Rajasthan GST department issues guidelines regarding expediting the refund process within time limit

The Rajasthan GST department issued Order No F. 12(5)FD/Tax/ 2023-103 dated 10 February 2023 regarding the processing of refund within 21 days. In this respect, the department has issued the following guidelines:

- The PO is directed to decide the refund application and issue the final sanction/rejection order and the payment advice within 21 days of receipt of the refund application.
- All refund applications pending beyond 21 days of receipt date shall be disposed of within seven days of this order.
- If a taxpayer has been served with an SCN and the personal hearing/date of reply has been given beyond seven days, the PO shall decide the same within three days of the personal hearing/date of reply.
- The time limit of 21 days shall be counted from the date of filing of the refund claim, which is clearly indicated in the acknowledgement issued to the applicant. Therefore, the PO should issue the acknowledgement or deficiency memo at the earliest to have sufficient time to decide about the refund application.

(F.17(228) ACCT/GST/2023/8382 dated 10 March 2023)



## Rajasthan GST department issues guidelines for reimbursement of late fee payable and deposited by the registered taxable person for the period April 2021 to March 2022

The Rajasthan GST department issued Order No F.12 (15) FD/Tax/2023-102 dated 10 February 2023 regarding the reimbursement of late fee payable and deposited for the period April 2021 to March 2022 (specified period). In this respect, the department has issued the following guidelines for application and procedure of reimbursement of such late fee:

- The reimbursement of late fee payable and deposited for the specified period shall be available to the registered taxable persons who have furnished returns/details of outward supplies under Section 37 (GSTR 1), Section 39 (GSTR 3B, GSTR 4, GSTR 5, GSTR 6, GSTR 7), and Section 45 (GSTR 10) by 31 March 2023.
- The registered person shall first register on the Rajtax portal at <http://rajtax.gov.in/vatweb> for submitting the request of reimbursement of payable/deposited late fee.
- Thereafter, the registered person shall submit 'One time request for reimbursement of late fee' in the prescribed format.
- The registered person may submit request for updation of bank details. However, before proceeding for the same, it must be updated on the GST portal by way of an amendment application of registration.
- Before approving this request on the Rajtax portal, the jurisdictional PO must first verify the bank information on the GST portal.

- The registered taxpayer shall file a separate application for the reimbursement of late fee for each type of return.
- The registered person shall apply for reimbursement of late fee in Format-I, which may be a single application for more than one tax period.
- Upon submission, a task shall be created on the Rajvista ID of the respective jurisdictional PO.
- Post verification of the application, the PO shall issue sanction/partial sanction/rejection order for reimbursement in Format-2 and the order shall be forwarded to the CSDO, headquarter, Commercial Taxes department, Jaipur, for the payment of the reimbursement amount.
- The PO shall not reject any claim of reimbursement of late fee without providing reasonable opportunity of being heard to the taxpayer and shall pass a reasoned speaking order of rejection, if any.
- The CSDO shall estimate the budgetary requirement and request for budget to the headquarters. On receipt of the budget, the CSDO shall pass a payment order.

(Order No. F.17 (137) ACCT/GST/2017/8289 dated March 10, 2023)

## Government of Maharashtra announces the Maharashtra Settlement of Arrears of Tax, Interest, Penalty or the Late Fee Act, 2023

### Summary

The government of Maharashtra has announced an amnesty scheme, i.e., the Maharashtra Settlement of Arrears of Tax, Interest, Penalty or the Late Fee Act, 2023. This scheme has been introduced to provide for the settlement of arrears of tax, interest, penalty or late fee, which were levied, payable or imposed under various laws implemented by the State Tax department before the implementation of the GST law.

### Key features of the scheme

#### Duration

The scheme will be applicable from **1 May 2023 to 31 October 2023** for tax arrears pending as on **1 May 2023**.

### Benefits

Arrears	Settlement of arrears/waiver
Up to INR 2,00,000 or less	100%
Up to INR 50,00,000 or less as per the statutory order	80% (20% payable)

# Government of Himachal Pradesh notifies the Himachal Pradesh Sadhbhawana Legacy Cases Resolution Scheme, 2023

The government of Himachal Pradesh has notified the Himachal Pradesh Sadhbhawana Legacy Cases Resolution Scheme, 2023, for settling pending dues pertaining to the subsumed enactments, i.e., any act repealed u/s 173 of the HP GST Act and Section 64 of the HP VAT Act.

## Key features of the scheme

### Duration

The scheme is effective from 4 March 2023 and shall remain valid for a period of three months.

### Eligibility criteria

- Settlement of the additional demand pending related to the FY (s)/return period for which the assessment has been made.
- Settlement of any demand on account of tax, penalty and interest determined under the pending assessment under subsumed enactments (CST Act, HP VAT Act, HP Entry Tax Act, HP Luxuries Tax Act, HP Entertainment Duty Act, HP Entertainment Tax Act, and the HP Sales Tax Act).

## Computation of the settlement fee

Status of statutory form under subsumed enactments	Particulars	Settlement fees
<b>No pending statutory forms</b>	All periodical returns filed within the stipulated time, along with the tax due	No settlement fee
	Periodical returns filed after the stipulated time and tax dues paid as per such returns	10% of the tax paid after the due date of filing the return or payment of tax
	Periodical returns not filed, and taxes dues not paid	110% of the tax amount applicable on the taxable turnover of such FY or any return period as per the provisions of subsumed enactment and declared in the declaration under the scheme
<b>Pending statutory forms</b>	Based on statutory forms produced either at the time of assessment or not filed along with the declaration under the scheme	Higher of: 100% of the tax paid against the total turnover pertaining to statutory forms or 1% of the value of turnover pertaining to statutory forms not produced at the time of assessment or not filed, along with the declaration under the scheme.

### Other aspects

- The settlement fee shall not be paid through the ITC.
- No refund shall be given under any circumstances except in the case of excess deposit of settlement fee by the applicant or in case of rejection of the application by the designated committee.
- The settlement fee, shall not under the subsumed enactment, or under any other act -
  - Be taken as an ITC, or
  - Entitle any person to take the ITC, as a recipient, of the taxable goods, with respect to the matter and time period covered in the declaration.
- Pre-deposit/voluntary deposit/recovery proceeding > settlement fee: No refund of excess pre-deposit after the adjustment of the settlement fee.
- Pre-deposit/voluntary deposit/recovery proceeding < settlement fee: The remaining payment to be made in the government treasury in the relevant head of account of the subsumed enactment.



## B. Key updates under the Customs/FTP/SEZ laws

### CBIC initiates phase wise implementation of ECL in Customs effective from 1 April 2023

The ECL functionality is envisaged in Section 51A of the Customs Act which provides that the importer, exporter or any person liable to pay the duty, fees, etc., under the Customs Act has to make a non-interest-bearing deposit with the government for the purpose of payment effective from 1 June 2022. Further, the Customs (Electronic Cash Ledger) Regulations, 2022 notified vide No. 20/2022-Customs (N.T) dated 30 March 2022 govern the manner of operationalisation of ECL and related aspects.

Due to the pending development of IT infrastructure and necessary integration with authorised banks and the RBI, all the deposit classes were exempted till 31 March 2023 from the provisions of Section 51A. However, considering the present state of development and integration, and based on confirmation from the RBI, the Pr.CCA and DG Systems, the CBIC has decided to enable the ECL in phases from 1 April 2023 as under:

Phase	Date	Particulars
<b>First phase</b>	<b>1 April 2023 to 30 April 2023</b>	<p>The exemption to deposit from the provisions of Section 51A shall be restricted to the following:</p> <ul style="list-style-type: none"><li>• Deposits with respect to goods imported or exported in Customs stations where the customs automated system is not in place;</li><li>• Deposits with respect to accompanied baggage;</li><li>• Deposits with respect to the goods imported or exported at international courier terminals;</li><li>• Deposits, other than those used for making electronic payment of any duty of customs, including cesses and surcharges levied as duties of customs; IGST; compensation cess; interest, penalty, fees or any other amount payable under the Customs Act or CTA.</li></ul>
<b>Second phase</b>	<b>From 1 May 2023 onwards</b>	<ul style="list-style-type: none"><li>• The exemptions cited above would continue, except for the deposits with respect to the goods imported or exported at international courier terminals.</li><li>• Payments relating to courier shipments would be required to be done through ECL from <b>1 May 2023</b> onwards.</li></ul>

The CBIC has further clarified that for electronic payment, the payment made through the TR-6 challan for various purposes through the authorised bank counter at the Customs locations would be exempted from the provisions of Section 51A till such activity is also migrated to the ECL in subsequent phases.

The phased introduction of ECL is aimed at leveraging technology and reforming the payment process, inter-alia related to the clearance of goods, as the deposit may be held in ECL by the trade for making subsequent transaction-wise payments of various types.

(Circular No.09 /2023-Customs dated 30 March 2023)

### Government announces new FTP 2023

After long-awaited expectations, the government announced the new FTP 2023 on 31 March 2023 to provide policy continuity and a responsive framework. The new FTP has no expiration date, and revisions will be made as needed. Some of the key highlights of the new FTP are:

#### Key highlights of the new FTP

- Digitisation of FTP applications to make them completely paperless and online.
- Rule-based automatic system-based approval of FTP applications using business analytics tools.
- Reduction in the processing time from the current 3-7 days to 1 day, as well as a reduction in the application fee for AA and EPCG schemes for MSMEs.
- Introduction of an amnesty scheme for one-time settlement of default in EO by the AA and EPCG authorisation holders, available up to 30 September 2023.
- Rationalisation of the export performance threshold to recognise exporters as status holders.
- Merchanting trade reform to boost merchant activities from India.
- Internalisation of the Indian rupee and extension of FTP benefits for rupee realisations through special Vostro accounts.
- All FTP benefits are to be extended to e-commerce exports. Designated hubs with warehousing facility to be notified to help e-commerce aggregators for easy stocking, customs clearance, and returns processing.
- Exemption to the dairy sector from maintaining the average EO.
- Eligibility to all types of battery electric vehicles and green technology products for reduced EO requirement under the EPCG scheme.
- The special AA scheme extended to the export of the apparel and clothing sector.
- Developing districts as export hubs to boost India's foreign trade by decentralising export promotion.



## Our comments

The new policy is based on a consultative mechanism that focuses on taking continuous feedback from trade and industry and helping resolve their issues on time. A significant initiative is that the new policy focuses on making the Indian rupee a global currency and facilitating international trade settlements in INR.

The automatic approval of various permissions under the policy is a move towards process simplification and digitisation, which will help in the ease of doing business.

In addition, the policy has extended all the benefits to exporters in the e-commerce sector, and guidelines are being formulated to streamline the processes that will help increase exports in this sector.

## CBIC issues clarifications with respect to implementation of origin procedures under the IndAus ECTA

The IndAus ECTA came into force from 29 December 2022. In this regard, the CBIC has issued certain clarifications in relation to the implementation of ROO and OCP under the IndAus ECTA.

### Key clarifications

- **e-COO shall be a valid document:** An e-COO, issued electronically in the prescribed format with the seal and signature of the issuing bodies of Australia, is a valid document to claim preferential benefit under the IndAus ECTA. The e-COO shall be mandatorily uploaded on e-Sanchit by the importer/customs broker for availing preferential benefit, and the e-COO particulars, such as the unique reference number and date and originating criteria, shall be carefully entered while filing the BOE. Affixing the QR code on the COO/e-COO is not required.

- **Overleaf notes:** The purpose of the overleaf notes is to provide guidance on how to fill specific entries in the COO format, and the overleaf notes per se are not a part of the COO format. Therefore, the absence of the overleaf notes on the COOs received from Australia may not be a ground for initiating verification or denial of preferential benefit.
- **Port of destination:** As long as the details on the COO and the transport documents match, putting any ports in India in the 'port of destination' field of the COO by the issuing bodies of Australia may not be a ground for initiating verification or denial of preferential benefit.

(Instruction No. 10 /2023- Customs dated 10 March 2023)

## CBIC issues instructions on acceptance of the e-COO issued under the India-Japan CEPA

The CBIC has issued certain instructions regarding the acceptance of the e-COO issued under the India-Japan CEPA as under:

- **e-COO is a valid document for claiming preferential benefit:** An e-COO, issued electronically by the issuing authority of Japan, is a valid document for the purpose of claiming preferential benefit under the India-Japan CEPA, provided that the e-COO has been issued in the prescribed format, bears seal and signatures of the authorised signatory of the issuing authority, and fulfils all other prescribed requirements.
- **Verification of e-COO:** The specimen seals and signatures, as well as the authenticity of the details mentioned in the e-COO, can be respectively verified through the relevant tab of the 'CO Reference System' of METI of Japan. The ID and password to access the CO Reference System, provided by METI of Japan, have already been circulated by the FTA cell. In case of doubt, the matter shall be referred to the FTA cell (under the Directorate of International Customs) for initiating the verification process with the issuing authority of the exporting country.

- **Submission on e-Sanchit:** The e-COO shall be mandatorily uploaded on e-Sanchit by the importer/customs broker for availing preferential benefit, and the e-COO particulars, such as the unique reference number and date, originating criteria etc., shall be carefully entered while filing the BOE.
- **Defacement:** For defacement purposes, a printed copy of the e-COO shall be presented to the Customs officer, who shall cross-check the unique reference number and other particulars entered in the bill of entry with the printed copy of the e-COO. This procedure will be in lieu of defacing the original hard copy of a COO. In this regard, it may be recalled that a check has already been introduced in the ICES to disallow the use of the same COO reference number in more than one BOE.

(Instruction No. 13/2023- Customs dated 31 March 2023)

## DGFT notifies amnesty scheme for one-time settlement of default in EO by AA and EPCG authorisation holders

The government announced the new FTP 2023 on 31 March 2023 to provide policy continuity and a responsive framework. The government also announced the issuance of an amnesty scheme to provide relief to the exporters who were unable to fulfil their EO under the AA and EPCG scheme.

In this regard, the DGFT has notified the 'Amnesty scheme for one-time settlement of default in EO by advance and EPCG authorisation holders.'

### Key features of the scheme

#### Coverage

- Authorisations issued under FTP 2009-2014 till 31 March 2015.
- Authorisations issued under FTP 2004-2009 and before, whose EO period was valid beyond 12 August 2013.

#### Benefits

- The EO default can be regularised on the payment of all customs duties exempted in proportion to the unfulfilled EO.
- Maximum interest is capped at 100% of such duties exempted.
- No interest is payable on the portion of additional customs duty and special additional customs duty.

#### Other aspects for consideration

- The defaulters interested in availing the scheme must register on the DGFT website and file a separate application before **30 June 2023**.
- The payment of exempted customs duties and interest should be made before **30 September 2023** for availing the scheme.
- Based on the evidence of payment, the concerned authority may issue a letter granting the EODC.
- The cases already adjudicated or pending adjudication, either original or in appeal, can also be regularised under the scheme.
- The cases under investigation or adjudicated for fraud, misdeclaration, or unauthorised diversion of material and/or capital goods, will not be eligible under the scheme.
- The CENVAT credit or refund of the above amounts paid will not be available.

(Public Notice No. 2/2023 dated 1 April 2023)

## Extension of last date for furnishing of non-preferential COO through common digital platform

The DGFT has further extended the period for mandatory filing of applications for the non-preferential COO through the Common Digital Platform (e-COO). It has been further extended from 31 March 2023 till **31 December 2023**.

Accordingly, the exporters and non-preferential COO issuing agencies as notified under Appendix-2E of the FTP would have the option to use the online system. It is not mandatory to use the online system till **31 December 2023** and the existing systems of processing the non-preferential COO applications in manual/paper mode shall be allowed till **31 December 2023**.

(Trade Notice No. 27/2022-2023 dated 28 March 2023)

## Export benefits under the RoDTEP scheme extended to certain textile items

Under the RoDTEP scheme, various central and state duties, taxes, and levies imposed on input products, among others, will be refunded to exporters. Recently, the DGFT extended the benefit of the scheme to certain textile items. The Appendix 4R under the RoDTEP scheme has been amended to include 18 tariff line items falling under HS Code 5208 for exports made from 28 March 2023. The items included *lungi, saari*, mull, etc.

(Notification No. 63/2015-2020 dated 25 March 2023)

## A. Key rulings under the GST and erstwhile indirect tax laws

### Proving genuineness of the transaction and actual physical movement of the goods are prerequisites for claiming the ITC - SC

#### Summary

The SC has allowed the Revenue's appeal and held that if the purchasing dealer fails to establish and prove the actual physical movement of the goods, it is not entitled to the ITC. The SC has further clarified that mere production of the invoices and/or payment by cheque is not sufficient and cannot be said to be proving the burden as per Section 70 of the KVAT Act. The SC has stated that for claiming the ITC, the genuineness of the transaction and actual physical movement of the goods are the *sine qua non*. This can be proved only by furnishing the name and address of the selling dealer, details of the vehicle that has delivered the goods, payment of freight charges, acknowledgement of taking delivery of goods, tax invoices, payment particulars, etc.

#### Facts of the case

- M/s Ecom Gill Coffee Trading Private Limited (the purchasing dealer) purchased green coffee beans from other dealers for the purpose of further sale in exports and in the domestic market.
- The AO found that the purchasing dealer had claimed the ITC from mainly 27 sellers, and out of the aforesaid 27 sellers, six were found to be de-registered, three had effected sales to the appellant but did not file returns and pay taxes, and six had outrightly denied turnover and did not pay taxes. Therefore, the first appellate authority confirmed the findings of the AO and disallowed the ITC to the extent of INR 10.52 lacs.
- However, the Tribunal allowed the second appeal on the ground that the purchasing dealer purchased the coffee beans from the registered dealer under genuine tax invoices and consequently allowed the ITC to be claimed. The Karnataka HC dismissed the revision applications preferred by the Revenue and allowed the ITC claimed by the appellant.
- Therefore, the Revenue filed appeals before the SC to decide upon the question of law with respect to the interpretation of Section 70 of the KVAT Act.

#### SC observations and ruling (Civil Appeal Diary No. 230 of 2023 order dated 13 March 2023)

- **Burden to prove the correctness of the ITC lies on the dealer claiming the ITC:** As per the provisions of Section 70 of the KVAT Act, the burden of proving that the ITC claim is correct lies upon the purchasing dealer claiming such ITC, and such dealer has to discharge the burden. Such a burden of proof cannot be shifted to the Revenue.
- **Dealer needs to prove actual transaction:** The dealer claiming the ITC has to prove beyond doubt the actual transaction, which can be proved by furnishing the name and address of the selling dealer, details of the vehicle that has delivered the goods, payment of freight charges, acknowledgement of taking delivery of goods, tax invoices, payment particulars, etc. The aforesaid information would be in addition to tax invoices, particulars of payment, etc.
- **Mere production of invoices or payment by cheque is not enough:** If a dealer claims the ITC on purchases, such dealer/purchaser shall have to prove and establish the actual physical movement of goods, along with the genuineness of transactions by furnishing the details mentioned above, and mere production of tax invoices would not be sufficient to claim the ITC. Mere production of the invoices or the payment made by cheques is not enough and cannot be said to be discharging the burden of proof cast under Section 70 of the KVAT Act. The genuineness of the transaction has to be proved as the burden to prove the genuineness of the transaction as per Section 70 of the KVAT Act would be upon the purchasing dealer.
- **ITC can be claimed only on genuine transactions:** The intention of Section 70 is that the ITC can be claimed only on genuine transactions of sale and purchase. If a dealer knowingly issues or produces a false tax invoice, credit or debit note, declaration, certificate or other documents with a view to support or make any claim that a transaction of sale or purchase effected by him or any other dealer is not liable to be taxed, liable to be taken at a lower rate or that a deduction of input tax is available, then such a dealer is liable to pay the penalty.

- **Essential conditions to claim the ITC:** For claiming the ITC, the genuineness of the transaction and actual physical movement of the goods are the *sine qua non*. The aforesaid can be proved only by furnishing the name and address of the selling dealer, details of the vehicle that has delivered the goods, payment of freight charges, acknowledgement of taking delivery of goods, tax invoices, payment particulars, etc. The purchasing dealers have to prove the actual physical movement of the goods alleged to have been purchased from the respective dealers. If the purchasing dealer(s) fails to establish and prove the said important aspect of physical movement of the goods alleged to have been purchased by it from the concerned dealers and on which the ITC has been claimed, the AO is absolutely justified in rejecting such an ITC claim.
- **Dealer failing to prove the genuineness of the transaction not entitled to the ITC:** In the present case, the purchasing dealer has produced either the invoices or payment by cheque to claim the ITC. The dealer has not produced any further supporting material, as mentioned above. Therefore, it can be said that the concerned purchasing dealer failed to discharge the burden cast upon it under Section 70 of the KVAT Act. Unless and until the purchasing dealer discharges the burden cast under Section 70 of the KVAT Act and proves the genuineness of the transaction/purchase and sale by producing the aforesaid materials, such purchasing dealer shall not be entitled to the ITC.



## Our comments

This is a significant ruling and should help to control fake transactions and curb tax evasions or availment of fraudulent ITC by taxpayers.

Though the judgement has been delivered in the context of VAT laws, it is likely to have an impact under the GST laws as well, as similar provisions exist under the GST laws. Section 155 of the CGST Act provides that for any person claiming that they are eligible for the ITC, the burden of proving such a claim shall lie on such person.



# SCN is not required for recovery where order sanctioning the refund is set aside in review – SC

## Summary

The SC has allowed the Revenue's appeal and held that a SCN u/s 11A of the CEA, is not necessary for the recovery of the amount in case the refund of duty is reviewed u/s 35E of the CEA and found erroneous. The SC stated that once the order-in-original sanctioning the refund came to be set aside in a proceeding under Section 35E of the CEA and when such proceedings were initiated within the time prescribed, there is no question of any further notice under Section 11A of the CEA. Therefore, the SC has set aside the judgment of the Delhi HC and Tribunal and restored the order passed by the Commissioner (A).

## Facts of the case

- Morarjee Gokuldas Spg. & Wvg. Co.Ltd (appellant), engaged in manufacturing cotton yarn, applied for refund of duty paid on the removal of captively consumed cotton yarn in its composite mills for weaving of the fabric.
- The adjudicating authority set aside the SCN and directed refund of the entire amount, stating that the duty deposited was paid under protest, and accordingly, the time limit prescribed under Section 11B of the CEA does not apply.
- The Commissioner (A) allowed the appeal filed by the Revenue under Section 35E (2) of the CEA by upholding the grounds of unjust enrichment and the time barred under Section 11B of the Act.
- Aggrieved by the decision of the Assistant Commissioner, the respondent submitted an appeal before the Tribunal, wherein the Tribunal rejected the demand raised by the Revenue on the grounds that an SCN was not issued under Section 11A of the CEA.
- The HC had further upheld the CESTAT order relying on the judgment of Bajaj Auto Ltd. that the erroneous refund cannot be recovered by merely filing an application under Section 35E (2) of the Act, unless the notice under Section 11A of the Act is issued within the stipulated time.

## Issue before SC

Whether the notice under Section 11A of the CEA is necessary for the recovery of the amount when the refund granted is reviewed under Section 35E of the CEA, whether a separate notice under Section 11A of the CEA is to be issued within the time limit prescribed therein and before the proceedings under Section 35E of the CEA are initiated, and/or the notice under Section 11A of the CEA shall precede the proceedings under Section 35E of the CEA?

## SC observations and ruling [Civil Appeal No.3039 of 2011, judgement dated 24 March 2023]

- **No requirement of issuance of a SCN under 11A if proceeding already initiated under Section 35E:** Once the order-in-original sanctioning the refund came to be set aside in a proceeding under Section 35E of the CEA, there is no question of any further notice under Section 11A of the Act.
- **Error by HC:** The law laid down by this court in the case of Asian Paints (India) Ltd. as such was binding on the HC. The Revenue had pointed out the ruling of this court in the case of Asian Paints to the HC. However, despite this, the HC has ignored this ruling without giving any reasons as to how the same has been misplaced and relied on the ruling of Bajaj Auto Ltd. that was issued before the Asian Paints ruling.
- **Appeal allowed:** Therefore, the SC set aside the impugned judgment and order passed by the HC and that of the Tribunal, and restored the order passed by the Commissioner (Appeals).



## Our comments

Earlier, the apex court, in the case of Asian Paints (India) Ltd., had specifically negated and/or did not accept the submission on behalf of the assessee that the recovery of excise duty cannot be made pursuant to an appeal filed invoking the provisions of Section 35E if the time limit under Section 11A has expired. It had held that Sections 11A and 35E operate in different fields and are invoked for different purposes. Therefore, different time limits are set out therein. Accepting the assessee's submission would render Section 35E virtually ineffective, which would be impermissible.

The present ruling is in line with the ruling mentioned above and has again reiterated that once the refund sanctioning order is set aside in a review proceeding that was initiated within the time prescribed, there is no requirement for further notice for recovery of the same.



# SC upholds Rajasthan HC order allowing CENVAT credit on reinsurance premium paid by the insurance company

## Summary

The SC has upheld the Rajasthan HC's order allowing CENVAT credit on the reinsurance premium paid by the insurance company. The Rajasthan HC had noted that the Insurance Act makes it compulsory for every insurer to re-insure a certain percentage of the sum insured on each policy. Therefore, the re-insurance being a statutory obligation, the CENVAT credit of service tax paid on the re-insurance premium was allowed. The SC has dismissed the Revenue's SLP against the Rajasthan HC's order and stated that the HC's order does not call for an interference.

## Facts of the case

- Shriram General Insurance Company Limited (the appellant) is an insurance provider having a pool in agreement with other insurance companies for reinsuring its policies. The appellant paid service tax on the premium paid for re-insurance and claimed CENVAT credit of the tax paid.
- The Revenue believed the assessee cannot claim credit of such tax paid on re-insurance as an input service as defined under Rule 2(l) of the CCR.
- On appeal, the CESTAT noted the decision of the Karnataka HC in PNB Metlife and allowed the service tax paid on the re-insurance premium as input service.
- Aggrieved by the CESTAT's decision, the Revenue appealed before the Rajasthan HC.

## Rajasthan HC observations and ruling (Central/excise Appeal No. 4/2021 order dated 19 January 2023)

- **IRDA regulations:** In exercise of the powers granted to the IRDA, it has issued the reinsurance regulation for the re-insurance of general insurance business. One of the directions issued by the IRDA in exercise of powers conferred under Section 34 of the Insurance Act was for creation of an insurance pool. In pursuance of the said directions, all general insurance companies in India entered into an agreement for creating the insurance pool.
- **Statutory obligation:** Section 101A of the Insurance Act makes it compulsory for every insurer to re-insure, such percentage of the sum insured on each policy as may be specified by the authority with a previous approval of the CG.

These directives had statutory force and the act of the insurance companies to create such a pool was not a voluntary act. This pooling system is nothing but a form of re-insurance.

- **Situation is revenue neutral:** If the entire service tax that is collected by the insurer, while selling its insurance policies, has to be deposited without being given the credit of the tax that is paid by it while procuring a policy of reinsurance (as mandatorily required in law), the same would be against the ethos of the CENVAT credit policy, as this would amount to double taxation, which is not permissible in law. Since the entire situation is revenue-neutral, no question of law arises.
- **CENVAT credit allowed:** The transfer of a portion of the risk of the re-insurance has to be considered as having nexus with the output service, as the reinsurance is a statutory obligation and the same is co-terminus with the insurance policy. Therefore, the re-insurance being a statutory obligation, the CENVAT credit of service tax paid on the re-insurance premium was allowed.

## SC observations and ruling (SLP Civil Appeal Diary No. 4928/2023 order dated 27 February 2023)

- **Revenue's SLP dismissed:** The SC has dismissed the Revenue's SLP against the Rajasthan HC's order and stated that the HC's order does not call for interference.



## Our comments

On a similar issue earlier, the Karnataka HC, in the case of PNB Metlife India Insurance Co. Limited, had upheld the CESTAT Bangalore Bench's order and allowed the CENVAT credit of tax paid on reinsurance services availed from overseas companies by Indian companies. The HC stated that reinsurance is a statutory obligation and the same is co-terminus with the insurance policy issued by the assessee. Therefore, the transfer of a portion of the re-insurance risk must be considered as having nexus with output service.

This is a significant ruling and should settle the issue with respect to the availability of the CENVAT credit of service tax paid in case of re-insurance for the insurance sector.

# Professional consultancy services provided by an Indian entity to overseas entities do not qualify as intermediary services - Delhi HC

## Summary

The Delhi HC has held that professional consultancy services provided by an Indian branch office of M/s Ernst & Young Limited (the petitioner) to E&Y overseas entities would qualify as an export of services under the GST law. The HC has stated that even if it is agreed that the petitioner provided services on behalf of a third party, the provision of such services by the petitioner on behalf of its HO would not be tantamount to intermediary services. The HC has further ruled that the petitioner is the actual supplier of the professional services and has not arranged or facilitated the supply from any third party. Therefore, the HC has concluded the services rendered by the petitioner as an export of services and, accordingly, directed the adjudicating authority to process the refund.

## Delhi HC observations and ruling [W.P.(C) 8600/2022, judgement dated 23 March 2023]

- **A person who provides services is not an intermediary:** The HC noted that there is no doubt that the petitioner does not arrange or facilitate services from third parties for E&Y Limited group entities, rather it renders services to them. Further, the adjudicating authority's reasoning for rejecting the refund claim is fundamentally flawed. Therefore, the HC ruled that a person who provides services, as opposed to arranging or facilitating of goods from another supplier, is not an intermediary.
- **Interpretation of definition of 'intermediary':** The HC is of the view that the last limb of the definition of 'intermediary' merely clarifies that the definition is not to be read in an expansive manner and does not include a person who supplies goods, services, or securities on his own account. The HC further ruled that even if it is accepted that the petitioner has rendered services on behalf of a third party, it does not make the petitioner an 'intermediary', as it is the actual supplier of the professional services and has not arranged or facilitated the supply from any third party.
- **No change in the scope of intermediary services:** The Delhi HC observed that the definition of the term 'intermediary' under the Finance Act, is identical to the definition of the term 'intermediary' under Section 2(13) of the IGST Act. Further, the CBIC also acknowledged in Circular No. 159/15/2021-GST that there is broadly no change in the scope of intermediary services in the GST regime vis-à-vis the service tax regime.
- **Services covered under the definition of 'export of services':** The HC held that the services rendered by the petitioner does not fall under intermediary services. Accordingly, the place of supply of such services is required to be determined based on the location of the recipient of services, i.e., outside India. Therefore, the professional services rendered by the petitioner would fall within the scope of definition of 'export of services' in terms of Section 2(6) of the IGST Act.

## Facts of the case

- The petitioner is an Indian branch office of M/s Ernst & Young Limited, a company incorporated under the laws of the United Kingdom (E&Y Limited).
- In this respect, the adjudicating authority issued a SCN, rejecting the refund claim and asking an explanation as how the services would qualify as an export of services.
- The adjudicating authority acknowledged that the service recipients were located outside India, but it rejected the refund, contending that the services provided are intermediary services. The Appellate Authority also confirmed the decision passed by adjudicating authority.
- Therefore, the petitioner has filed the present writ petition, impugning the order-in-appeal and orders-in-original.
- The petitioner, on behalf of E&Y Limited, is providing professional consultancy services to various entities of the E&Y group on an arm's length basis and raising invoices to the respective group entities for such services.
- The petitioner applied for a refund claim of ITC of taxes paid in respect of export of services for the period from December 2017 to March 2020.



## Our comments

The taxation of intermediary services was one of the complex and contentious issues under the service tax regime, which also continued under GST. Under GST, various refund claims filed for the export of services are being denied by tax authorities on the basis that the underlying supply is an intermediary service, which is taxable in India. To remove the ambiguity and resolve legal disputes in this regard, the CBIC issued a circular dated 20 September 2021 w.r.t. interpretation of the scope of intermediary services. The circular clarified that the concept of an 'intermediary' in GST was borrowed from the service tax regime. Furthermore, the circular acknowledged that there is broadly no change in the scope of intermediary services in the GST regime vis-à-vis the service tax regime, except the addition of supply of securities in the definition of an 'intermediary' in the GST law.

Even in the case of Genpact India Private Limited, the Punjab and Haryana HC held that the laws related to an intermediary remained unchanged in the pre-GST and GST era. The present ruling passed by the Bombay HC is also on similar lines. This positive and welcoming ruling would resolve pending litigations on this issue under GST and the service tax regime.

# Amount recovered during search proceedings without any preceding adjudication is violative of Article 265 – Karnataka HC

## Summary

The Karnataka HC has held that no recovery can be made unless the amount becomes payable in pursuance of the order passed by the adjudicating authority, or it otherwise becomes payable under the GST/customs law provisions. The HC further held that the Revenue did not have any jurisdiction or authority of law to make such recovery, which is clearly violative of Article 265 of the Constitution of India. Further, the HC stated that the subsequent issuance of a SCN by the Revenue could not legalise the fact that the original recovery was without jurisdiction or the authority of law.

## Facts of the case

- Suretex Prophylactics (India) Private Limited (the petitioner) is an 100% EOU engaged in the activity of manufacture and sale of rubber contraceptives.
- Due to a fire accident at the petitioner's factory, raw material and packing material got destroyed. Therefore, the petitioner filed and received an insurance claim that did not include the customs duties payable on the goods destroyed.
- Thereafter, the Revenue conducted search and recovery proceedings at the petitioner's premises and demanded an involuntary deposit of INR 1.5 crore under coercion as payment under protest.
- The petitioner, referring to the Board's Instruction No. 01/2022-23 (GST-Investigation) dated 25 May 2022 and CBIC Circular No. F.No.296/63/2020-CX9 dated 19 January 2022, has submitted that in the absence of adjudication or order for payment, the question of recovery of any money from the assessee does not arise. Basis the above, the petitioner has applied for a refund of the amount paid as payment under protest.
- The Revenue contended that the petitioner had not applied for remission of duty w.r.t destroyed goods. Accordingly, the petitioner is not entitled for the refund of the tax dues collected. A SCN was issued post completion of the search proceedings conducted.

## Karnataka HC observations and ruling [Writ Petition No. 2444 of 2022 (T-CUS) dated 27 February 2023]

- **Recovery cannot be conducted in absence of adjudication or any order:** The HC stated that in terms of the aforesaid mentioned circular and board instruction (supra), no recovery can be made unless the amount becomes payable in pursuance of the order passed by the adjudicating authority, or it otherwise becomes payable under the provisions of the GST Act, as well as under the provisions of the Customs Act. The circular clarifies that the amount in the case under investigation, unconfirmed demands, SCN, etc., and the order-in-original that has been set aside or remanded for de-novo adjudication by appellate authority, do not fall under the category of arrears.

- **Payment was made under protest:** The Revenue had accepted in their statement of objections that the petitioner did not voluntarily make the payment and that it was made under protest.
- **Revenue did not have any jurisdiction or authority of law:** Since the payment was made under protest and was not preceded by any order of adjudication, the Revenue did not have any jurisdiction or authority of law to recover from the petitioner. This is clearly violative of Article 265 of the Constitution.
- **Petitioner entitled for refund:** The SCN for the subject matter was issued consequent to the collection of the amount during search proceedings. The contention of the Revenue that the amount under deposit must be made subject to the outcome of the pending investigation cannot be accepted. Therefore, the amount collected from the petitioner is in violative of Articles 265 and 300A of the Constitution. Accordingly, the HC held that the petitioner is rightly entitled to claim the refund of the amount paid under protest.



## Our comments

It has become common for the authorities to undertake recovery during search proceedings using coercion. To address this, the CBIC has clarified that no recovery can be made unless the amount becomes payable after an order passed by the adjudicating authority, or it otherwise becomes payable under the law. Therefore, the tax officer should not make any recovery from the taxpayer during search, inspection, or investigation on account of any issue detected during such proceedings except for the circumstances mentioned above.

The higher judicial forums are coming heavily against such coercive recovery by the authorities during search proceedings without making any assessment or adjudication. On a similar issue, various HCs have held that in the absence of any material to establish that there was any order or adjudication made by the Revenue quantifying the amount of tax/duty payable by the assessee as on the date of collecting/recovering the same during investigation, the authorities were clearly not entitled to recover the same.

The present ruling is welcome and will likely set precedence in similar matters.

## Point of taxation for digitally downloaded software is the date of EULA, i.e., when the right to use is granted – CESTAT Chennai

### Summary

The CESTAT Chennai Bench has held that in the case of digitally downloaded software, the date of signing of the EULA would be the event when the right to use the software shall be said to be granted. Hence, this is the critical event on which the liability to pay tax would be triggered. Merely downloading the software onto a computer would not be of help unless the right to using it has been granted. In the present case, apart from downloading the software, all other major activities that facilitated the actual right to use the software took place only after the ITSS was brought under the tax net from 16 May 2008. Hence, the CESTAT held that the receipt of application software technology electronically from the overseas entity is subject to the levy and upheld the impugned order levying service tax, along with interest and penalty.

### Facts of the case

- M/s. United India insurance Co Limited (UIIC) (the appellant) is engaged in providing services under the category of general insurance services and insurance auxiliary service as defined under Clause 55 of Section 65 of the Finance Act.
- During audit, it was noticed that M/s. SSP Sirius Limited UK (SSPSL) had provided application software technology, i.e., 'Core Insurance Solution' for use in the business of the appellant. Since SSPSL was incorporated in the UK and has no permanent establishment in India, the appellant was found liable to pay service tax on the service provided by SSPSL, in view of Section 66A of the Finance Act. The appellant had paid the tax, along with interest, and claimed refund of the same, as according to it, no tax was payable on the supply, even before the introduction of the service in the Finance Act.
- Thereafter, an SCN was issued to the appellant, confirming the demand, along with a penalty.
- The appellant contended that the information technology software was supplied to them electronically from abroad by SSPSL and downloaded in December 2007 before the introduction of the service in the Finance Act. Hence, no tax could be levied on the subject supply. Therefore, the appellant filed the present appeal before the CESTAT.

### CESTAT Chennai observations and ruling (Service Tax Appeal No. 370 of 2012 order dated 22 February 2023)

- **Mere downloading of software is of no use unless having right to use it:** In the context of the ITSS, merely downloading the software onto a computer would not be of help unless it can be used. The taxable event of the service must be understood, from the point of view of the service being provided to any person by any other person, who is providing the right to use the information technology software supplied electronically.

- **Right to use occurred after signing of EULA:** The contract for the right to use the software, i.e., EULA, was entered into on 27 May 2008, although it was done with an earlier effective date as 1 January 2008. It is only after the signing of the EULA, i.e., on 27 August 2005, that the right to use the software can be said to have occurred. The right to use ITSS electronically would hence only commence at this point and is the critical event on which the liability to pay tax would get fastened as per the facts and circumstances of this agreement.
- **Right to use ITSS was granted after it was brought under tax net:** From the timeline of events in the present case, apart from downloading the software, all other major activities that facilitated the actual right to use the software took place only after the ITSS was brought under the tax net from 16 May 2008. Hence, such service is subject to levy.
- **Impugned order upheld:** The constitutional courts have held that appellate bodies cannot be unmindful of the great weight to be attached to the findings of facts of the original authority that has first-hand knowledge and is in a position to assess the facts and the credibility of circumstances from their own observations. The exception would be if the order is illogical or suffers from procedural impropriety. Otherwise, even if a superior appellate body feels that another view is possible, it is no ground for substitution of that view in exercise of its appellate power. There is also nothing disproportionate or shocking in the penalty imposed to call for modification or interference of the impugned order by this appellate forum.



### Our comments

Even generally while downloading any software online, an agreement window pops up that needs to be accepted by the user, and only then the software gets downloaded. Thus, when users accept the terms and conditions, they are granted the license to use the software.

The present ruling is in line with the generally accepted practices and should help provide clarity to taxpayers on similar issues.

## Delhi HC further lists the matter related to constitutional validity of proviso imposing condition on transition of credit in case of centralised registration

Matrix Cellular International Services Limited (the petitioner) has filed a writ petition challenging the constitutional validity of proviso imposing condition on transition of credit in the case of a centralised registration (first proviso to Section 140(8) of the CGST Act).

The petitioner has submitted that the proviso is violative of the Articles 14, 19(1)g and 300A of the Constitution of India. Furthermore, this proviso differentiates between taxpayers with centralised registration and those with normal registration. For the assesseees, there cannot be two regimes based on their registration.

In this respect, the Delhi HC has issued a notice and listed the next date of hearing on **21 April 2023**.

## B. Key rulings under the Customs/FTP/SEZ laws

### SC issues notice in Revenue's SLP against Delhi HC's order allowing SAD refund beyond the limitation period

Earlier, in the case of Sony India Limited, the SAD refund filed beyond one year was granted by the Delhi HC observing that the limitation period was inapplicable and if at all the limitation period is sought to be imposed on claim of the SAD refund, it must be introduced by legislation. Moreover, it was explained by the HC that essential legislative policy aspects cannot be formulated or prescribed by subordinate legislation.

Relying upon its coordinate bench's decision in Sony India Limited, Premier Timber Trading and Wilhelm Textiles India Private Limited, the HC had allowed the refund of the SAD

beyond the limitation period to the appellant (Fibre Bond Industries). The Revenue had filed an SLP against the Delhi HC's order.

Since a similar matter is pending for adjudication in the case of Wilhelm Textiles India Private Limited, the SC has issued a notice and tagged the case along with the Wilhelm Textiles India Private Limited.



# Decoding advance rulings under GST

## Supply of ready-made ice cream from eating outlets cannot be considered as supply of restaurant services – Gujarat AAR

### Summary

The Gujarat AAR has ruled that the supply of already manufactured/ready-made ice cream from the applicant's outlets would not fall under the ambit of 'restaurant services' and would amount to the supply of goods leviable to GST at 18%. The AAR further held that ice creams ordered and supplied with cooked or prepared food through the applicant's outlets would assume the character of composite supply and qualify as 'restaurant services' liable to GST at 5%.

### Facts of the case

- M/s. HRPL Restaurants Private Limited (the applicant) owns and operates a chain of restaurants/eating joints under two business divisions, i.e., company-owned restaurants and franchise restaurants.
- The applicant has sold its ice cream division to a South Korean latte confectionary. The applicant is supplying food that is prepared and cooked in the restaurant/eatery in addition to supplying the ice creams, which are not prepared/produced by it.
- The applicant contended that the supply of ice cream from its outlets would be classified under 'restaurant services' and it is liable to pay GST at 5% without availing ITC.
- The applicant sought an advance ruling on the issue of whether the supply of ice cream from any of the outlets should be considered as supply of 'restaurant services' or not, and applicable rate of tax thereof.

### Gujarat AAR observations and ruling [GUJ/GAAR/R/2023/8 dated 22 February 2023]

- **Supply of ice cream is not covered under 'restaurant services':** The AAR held that the outlets of the applicant selling already manufactured ice cream do not engage in any form of cooking. Furthermore, the supply of ice cream by the outlets of the applicant stands on a different footing than the restaurant service. Moreover, their activity entails supply of ice cream as goods and not as a service, even if certain ingredients of the service are present. Therefore, the sale of ice cream by the applicant's outlet would not fall within the ambit of 'restaurant service' and qualifies as the supply of goods, which would attract GST at the rate of 18%.

- **Composite supply of 'restaurant services':** The AAR stated that in the case where an ice cream is ordered as a desert along with cooked or prepared food, such supply would be deemed as naturally bundled wherein the ice cream is supplied in conjunction with the cooked food in the ordinary course of business. Thus, the AAR held that such supply takes on the character of a 'composite supply' and falls within the ambit of restaurant service.



### Our comments

The type of sale determines the applicable rate of GST on the sale of ice cream. In this regard, the CBIC issued Circular No. 164/20/2021-GST dated 6 October 2021 and clarified that where ice cream parlours sell already manufactured ice cream and do not cook/prepare ice cream for consumption, like a restaurant, it is the supply of ice cream as goods and not as a service, even if the supply has certain ingredients of service. Accordingly, ice cream sold by a parlour, or any similar outlet would attract GST at the rate of 18%.

Thereafter, the CBIC vide Circular No. 177/09/2022-TRU dated 3 August 2022 clarified that past cases of payment of GST on the supply of ice cream by ice cream parlours at 5% without ITC shall be treated as fully GST paid to avoid unnecessary litigation.

Therefore, it can be understood that ice cream, when ordered and supplied along with cooked or prepared food through the outlets, would assume the character of composite supply and would be taxable at 5%. However, in this scenario, the restaurants/outlets are not eligible to claim the credit of GST paid on the purchase of ice cream. On the other hand, the ice cream sold over the counter and not prepared in the outlet is considered as sale of ice cream from the parlour, which attracts GST at 18%. In the present case, the AAR ruling has provided suitable clarification and shall set precedence in similar matters.

# GST under RCM is applicable on services of renting residential premises used as guest house – Odisha AAR

## Summary

The Odisha AAR noted that the applicant has taken houses on rent that are in a residential area and are used by the applicant as the guest houses for its employees. In this respect, the AAR took reference of the Notification No. 05/2022 - Central Tax (Rate) dated 13 July 2022 and held that w.e.f. 18 July 2022, GST is applicable under RCM even if the residential property is rented out to a registered person. The AAR stated that the type or nature or purpose of use of a residential dwelling, i.e., for residence or otherwise by the recipient has not been a condition in the notification. Hence, the service of renting a residential dwelling to a registered person would attract RCM irrespective of the nature of the use.

## Facts of the case

- Indian Metals and Ferro Alloys Limited (the applicant) is registered under GST in Odisha. The applicant has taken certain premises on rent in New Delhi and Jajpur, which are in the residential area and are used by the applicant as guest houses for its employees.
- The applicant, in view of Serial No. 5A of the Notification No. 13/2017- Central Tax (Rate) dated 28 June 2017 submitted that renting out a residential dwelling to a registered person will be covered under the RCM.
- The applicant further submitted that since a guest house is not covered within the ambit of a residential dwelling, as provided in the CBIC's service tax education guide, the service provider at New Delhi charged GST on its invoice under FCM, which is paid by the applicant.
- The applicant sought an advance ruling on the issue of whether the service received by a registered person by way of renting of residential premises used as guest houses of the registered person is subject to GST under FCM or RCM.



## Odisha AAR observations and ruling [04/ODISHA-AAR/2021-22 dated 02 February 2023]

- **Services of renting of guest house is liable to GST under RCM:** The Odisha AAR noted that the dynamics of the renting of a residential property under GST has changed w.e.f. 18 July 2022 by partially removing the exemption and including the same under RCM services when provided to a registered person. Therefore, the liability to pay GST at 18% under RCM would arise on the recipient if he is a registered person. Furthermore, it may be noted that the type or nature/purpose of use of residential dwelling, i.e., for residence or otherwise by the recipient, has not been a condition in the said notification. Therefore, the AAR concluded that irrespective of the purpose of use, if the residential dwelling is rented to a registered person under GST, the tenant has to discharge the GST liability under RCM.



## Our comments

The services, by way of the renting of a residential dwelling, were covered under the negative list under the erstwhile service tax regime, which was continued to be exempted under the GST regime till 17 July 2022.

Post the amendment, there has been a significant change in the taxability of services of renting residential properties. W.e.f. 18 July 2022, such service is liable to tax under RCM if the customer is registered under GST. However, if the recipient of the service is unregistered under GST, the exemption benefit continues. Further, the service is taxable irrespective of the use of the property. Therefore, even if the residential property is used for business purposes, the recipient, who is a registered person, is responsible to discharge tax under RCM.

In the present case, the AAR has aptly held that the actual usage of a residential dwelling is not a determinative factor to attract GST under RCM. Furthermore, it is also relevant to note here reference to the ITC provisions, the recipient shall be eligible to take benefit of tax paid under RCM, subject to the fulfilment of the conditions prescribed.

# 05

## Experts' column

### MOOWR – Would the scheme lose its sheen?

The MOOWR scheme was introduced with the objective of deferring duties and taxes on imported goods that are used for the intended purposes of manufacture or carrying out other activities.

The scheme is aimed at transforming India into a competitive manufacturing location and an attractive investment destination. Keeping the above objective in mind, Section 65 of the Customs Act was introduced, which elaborates clear and transparent procedures, simplified compliance requirements, and digital account keeping.

The government went all guns blazing in the past to woo the industry to adopt the scheme and utilise the benefits of working capital that the scheme offered. The Commerce and Industries Minister endorsed the scheme as a practical, neat and simple solution to the problem that sometimes small exporters particularly face. The minister was obviously referring to the duty-free import benefits accorded under the scheme.

MOOWR allowed the manufacturer of goods to execute the manufacturing processes or other operations in a private warehouse, subject to such specific conditions like 'duty deferment or waiver of duty on the import of raw materials or capital goods by the licensee'.

Some of the features of the MOOWR Scheme 2019 are:

- Duties of Customs are deferred at the time of the import of capital goods/raw materials. No duty needs to be discharged if the final product is exported. If cleared for home consumption, duties that were deferred are required to be paid.
- There is no time limit for the storage of imported goods/DTA sourced materials, subject to use in the process of manufacture or other operations.
- Any existing business or new facility can be converted to a bonded premise with no specific eligibility criteria (product, investment).
- There is no export obligation in case of a bonded warehouse, unlike other schemes such as AA, SEZ, EOU, EPCG, etc.
- Another key feature of the scheme is the permit for job work. In the case where the manufacturer requires movement of the raw materials to the job worker, the scheme allows movement on a duty-free basis.

### Contributed by

**PS Krishnan**

Partner, Tax  
Grant Thornton Bharat

**N Mallikarjun**

Director, Tax  
Grant Thornton Bharat

**Nemish Zaveri**

Manager, Tax  
Grant Thornton Bharat

This scheme was well conceived to ensure that the businesses that are expanding or targeting the export market could use this to effectively to curb the blockage of working capital.

However, the government's tryst with destiny saw the introduction of the amendments to the Finance Bill by way of insertion of Section 65A to the Customs Act. Section 65A provides for the following:

- a. The IGST and compensation cess will have to be paid while depositing the goods in a warehouse for carrying out manufacturing and other operations as per Section 65 of the Customs Act.
- b. Any transfer of goods from one warehouse to another will require the manufacturer/importer to pay IGST/compensation cess.
- c. Section 65A is prospective in nature as the section comes into force the date it is notified, and it does not apply to the goods deposited before the date of notification.

Currently, the Customs Act allows the deposition of imported goods in a warehouse without the payment of duties of customs (including IGST and compensation cess). Such duties are payable on the clearance of goods from a warehouse for home consumption. For warehousing imported goods, the importer files into-bond BoE/BoE for warehousing. Furthermore, to clear such goods from a warehouse, an importer files ex-bond BoE /BoE for home consumption and discharges applicable duties of customs on such goods.





The insertion of Section 65A of the Customs Act is purportedly aimed at simplifying the process of levy and collection of the IGST and GST compensation cess on the deposited goods that are stored in Customs bonded warehouses and undergoing manufacturing or other operations.

By levying the IGST and GST compensation cess at the time of entry of goods to the warehouse, the government aims to ensure that tax liability is determined upfront and that the process of claiming ITC is streamlined. However, this proposal could take away the working capital benefit that is available currently. Without doubt, it is the most important feature that would woo the businesses towards the scheme albeit the compliances that may be bit tedious.

Hence, the government needs to ensure that the 'at source exemption of IGST/cess' continues for some more time until the process of refund under GST is fully streamlined.

### Conclusion

While the timing of the introduction of the amendments to the Finance Act, 2023, coincides with the release of the new FTP 2023-28, the manufacturers currently operating under the MOOWR regulations must now mandatorily analyse all further imports and decide if importing under other entitlement schemes (AA, EPCG, etc.) would benefit their business requirements.

Any domestic manufacturer not having 100% exports would benefit by continuing under the MOOWR scheme notwithstanding the amendment, as the option of claiming the refund of the IGST paid is open and feasible. Moreover, such a manufacturer will not have to follow the rigors and conditions mentioned under the advance authorisation/EPCG scheme.

Also contributed by Justin K, Consultant, Tax



# 06

## Issues on your mind



### Can registration as 'One Person Company' under GST be taken?

The GSTN has noticed that the option of choosing a 'One Person Company' is not there in the form notified by the CGST/SGST acts, and hence, not available on the GSTN portal also. Therefore, the GSTN has advised that in 'Part B' of the GST Registration Form 'REG-01', the applicant may select (Constitution of Business under 'Business Details' tab using dropdown list) the option 'Others', if the taxpayer wants to register for GST as a 'One Person Company'. After selecting the option as 'Others', the applicant shall also mention 'One Person Company' in the text field and follow the steps for a normal registration application to complete the process.

### How does unblocking take place in e-way bill system?

In case of the filing of GSTR 3B returns by taxpayers, resulting in reduction of their return filing default period of less than two tax periods, their return filing status will be updated on the e-way bill portal, and their GSTIN will be unblocked for the e-way bill generation facility the next day. The unblocking can be done by the jurisdictional officer online on the GST portal upon considering the manual representation received from such taxpayer.

### What methods of generation of the e-way bill are available to the taxpayer?

The e-way bill can be generated by the registered person in any of the following modes:

- Using web-based system
- Using SMS-based facility
- Using the Android app and iOS app
- Bulk generation facility
- Using site-to-site integration
- Using GSP

### What is the ECA Module-Customer portal on ICEGATE?

This module describes the various processes in respect of monitoring and tracking of cases who's the EO period is over and an EODC is not granted. DGFT officers consider such cases and notices are issued at regular intervals to the importer/exporter to issue an EODC from the DGFT. Despite of multiple notices (e.g., caution notice, demand notice, etc.), if the importer/exporter is unresponsive or have not issued an EODC from the DGFT, the DGFT officer will place IEC in DEL, and the DEL order is issued, denying any further issuance of authorisation to that exporter. In future course, there may be actions such as giving abeyance for certain period, issuing forfeiture orders and sending files to the ECA authority for recovery. Thus, a monitoring activity related to EO is performed after the issue of authorisation.

### What is the IEC GSTIN mapping service on the ICEGATE website?

The IEC GSTIN mapping service allows the trade to map their IEC with GSTIN in customs. The steps to be followed to map IEC with GSTIN in customs are:

- Step 1: The IEC GSTIN mapping functionality is available under the ICEGATE services on the ICEGATE home page. Click on **Services >> Registration >> For Matching IEC GSTIN link** to Map IEC and GSTIN in Custom.
- Step 2: To Map the IEC and GSTIN in custom, click on the link provided on screen.
- Step 3: Enter the IEC number and GSTIN number, which needs to be map in custom. After entering the IEC, GSTIN and Captcha, click on the 'Submit' button.
- Step 4: On successful submission, 'IEC GSTIN has been updated in the system. Please wait for 24 hours to reflect' message will appear.
- Step 5: If the GSTIN is not integrated with the custom, 'Your GSTIN is not available with customs, please integrate first' message will appear.

# Important developments under direct taxes

## Key amendments to Finance Bill, 2023

### Key amendments relating to the financial services sector

Non-applicability of surcharge and cess on certain incomes earned by specified funds in the IFSC

- As per the FBA 2023, surcharge and cess would not be applicable while computing advance tax on the prescribed income earned by the specified funds.

Taxability of dividend income received by non-resident from a unit in IFSC

- The FBA 2023 mandates that the dividend received by a NR/foreign company from a unit in the IFSC will be taxable at 10% (plus applicable surcharge and cess).

Expansion of definition of original fund in case of relocation to IFSC

- The FBA 2023 has extended the definition of 'Original Fund' to include an investment vehicle in which the ADIA is the direct or indirect sole shareholder or unitholder, or beneficiary or interest holder, and it is wholly owned and controlled directly or indirectly by the ADIA or the government of Abu Dhabi.
- Additionally, the original fund would also include any fund, as may be notified by the CG.

Relaxation of condition prescribed for tax exemption of ODI

- The Finance Bill proposed to exempt the income of NR as a result of distribution of income on ODIs, to the extent such income is chargeable to tax in the hands of the IBU registered as 'Foreign Portfolio Investor'.
- As per the FBA 2023, the condition of such income being chargeable to tax in the hands of the IBU has been removed.

Concessional tax rate on interest income on specified bonds listed on stock exchange in IFSC

- Currently, the interest income received by NR/foreign company from specified bonds issued before 1 July 2023 and which are listed on stock exchanges in the IFSC is taxed at 4%.
- As per the FBA 2023, interest income received by NR/foreign company on specified bonds issued on or after 1 July 2023 and listed on stock exchanges in the IFSC will be taxable at 9%.

Exemption on certain income of NR received in IFSC

- Currently, exemption is provided to NR on the income earned from the portfolio of securities managed by a portfolio manager in the IFSC that was accruing or arising outside India and is not deemed to accrue or arise in India and was received in an account maintained with the IBU.
- As per the FBA 2023, this exemption would be provided, if the prescribed activities are carried out by specified persons, as may be notified by the CG.

Tax holiday extension to OBU in SEZ

- Currently, tax deduction is provided to OBU in SEZ on their income to the extent of:
  - 100% of the income for 5 consecutive years from the year in which permission for the setup of the OBU was obtained; and
  - 50% of the income for the next 5 years.
- As per the FBA 2023, instead of 50%, deduction for 100% of profits would be provided to OBUs (i.e., for year 6 to 10) for AY commencing on or after 1 April 2023.

Exemption provided to aircraft leasing entities in IFSC

- As per the FBA 2023, the sale of equity shares of a domestic company being a IFSC unit engaged primarily in aircraft leasing to a NR or another IFSC unit engaged primarily in aircraft leasing would be exempt if:
  - Operations of such a company have commenced on or before 31 March 2026; and
  - Capital gains should have arisen within a period of 10 years from the year in which such company has commenced operations or AY 2034-35, whichever is later.
- Further, the dividend income received by a unit in the IFSC engaged primarily in aircraft leasing from another unit in the IFSC also engaged primarily in aircraft leasing would be exempt.

Ship leasing entities in the IFSC can opt for tonnage tax scheme

- The FBA 2023 stipulates that ship leasing entities in the IFSC can opt for tonnage tax scheme within a period of three months from the end of their tax holiday period.

### Taxation of sum received from business trust

- The Finance Bill had introduced provisions to the tax 'specified sum' received by a unit holder from a business trust.
- The FBA 2023 has now prescribed the formula of computing the specified sum.

### Capital gains

#### Units of business trust

- The FBA 2023 has provided that the cost of acquisition of a unit of a business trust shall be reduced by (and shall be deemed to always have been reduced by) any sum received by a unit holder from a business trust, except the income received under certain specified sections.

#### Market-linked debentures and specified mutual funds

- The Finance Bill had proposed to introduce a special provision for taxing capital gains on transfer / redemption / maturity of market-linked debenture.
  - Such gains would be deemed to be short-term capital gains.
  - The cost of acquisition and expenditure incurred for transfer / redemption / maturity would be allowed (except STT paid).
- The FBA 2023 has expanded the scope of these provisions and such provisions would now apply to the 'units of specified mutual funds' as well, if such units are acquired on or after 1 April 2023.
- A specified mutual fund means a mutual fund where not more than 35% of its total proceeds is invested in the equity shares of domestic companies.

### New tax regime (default regime)

- The Finance Bill 2023 had proposed to provide a rebate under the new tax regime for taxpayers having taxable income up to INR 7 lakh.
  - Amount of rebate: tax on total income or INR 25,000, whichever is lower.
- In order to make this regime more lucrative, the FBA 2023 has introduced a marginal relief provision for taxpayers in cases where tax on income exceeding INR 7 lakhs is more than the marginal income (i.e., the amount of tax > amount of income exceeding INR 7 lakh).

### Online gaming

#### Withholding tax on income from online gaming

- The Finance Bill introduced a special provision for withholding the tax on income from online gaming, which was proposed to be effective from 1 July 2023.
- These provisions would now be effective from 1 April 2023.

### Higher withholding tax rate for non-filers

- Currently, deductors are required to withhold tax at a higher rate for certain specified payments to taxpayers who have not filed the return of income.
- As per the FBA 2023, this provision would not apply in the case of withholding the tax on income from online gaming.

### TCS

#### LRS

- Under the existing provisions, tax is required to be collected by the authorised dealer on remitting funds outside India under the LRS. The term 'outside India' has been deleted from these provisions as per the FBA 2023.

#### Higher TCS in certain cases

- Currently, TCS is required to be collected at a higher rate in the following cases:
  - The payer fails to furnish PAN;
  - The payer has not filed income tax return for the FY immediately preceding the FY in which tax is required to be collected.
- As per the FBA 2023, a higher rate of TCS has been capped at 20% in such cases.

### Taxation of non-residents/foreign company

- As per the FBA 2023, withholding the tax rate for payment of royalty and FTS to a NR/foreign company has been increased to 20%, which was earlier 10%.



## Our comments

As a welcome move, several benefits have been provided for further promoting the IFSC, which is likely to provide a fillip to the financial services ecosystem in India.

An increase in withholding the tax rate for royalty and FTS payments to NRs / foreign companies to 20% (plus applicable surcharge and cess) will impact entities that are located in jurisdictions which do not have a tax treaty with India or where the treaty benefit is not available due to any other reason. Furthermore, Indian entities that are contractually bearing taxes in such cases may need to evaluate if the re-negotiation of contracts is required.

# Compliance calendar for FY 2023-24

## A. Direct tax

Frequency	Form name	Description	Due date
<b>TDS/TCS</b>			
Monthly		Payment of TDS/TCS	The 7th of the succeeding month in which tax was deducted/collected <sup>1</sup>
Quarterly	Form No. 24Q/26Q/27Q	Statement of deduction of tax	The 31st of the succeeding month from the end of the relevant quarter <sup>2</sup>
Quarterly	Form No. 27EQ	Statement of collection of tax	15 days from the end of the relevant quarter <sup>3</sup>
Annually	Form 16	Certificate of deduction of tax at source for salary or pension/interest income of the specified senior citizen.	15 days from the due date for furnishing the statement of TDS for the quarter ending Jan-March.
Quarterly	Form 16A	Certificate of deduction of tax at source for deduction other than the salary.	15 days from the due date for furnishing the statement of TDS.
Quarterly	Form No. 27D	Certificate of collection of tax at source.	15 days from the due date for furnishing the statement of tax collected at source.
Monthly	Form 26QB/Form 26QC/Form 26QD/Form 26QE	Furnishing of challan-cum-statement in respect of tax deducted under Section 194-IA / 194-IB / 194M / 194S.	30 days from the end of the month in which the deduction is made.
Monthly	Form 16B/Form 16C/Form 16D/Form 16E	The issue of the TDS certificate for tax deducted under Section 194-IA / 194-IB / 194M / 194S.	15 days from the due date for furnishing the challan-cum-statement.
<b>Income-tax return</b>			
Annually		Companies that are not required to furnish the TP study report	31 October of the following year
Annually		Assessees other than the companies that are required to get their accounts audited	31 October of the following year
Annually		Assessees that are required to furnish the TP study report	30 November of the following year
Annually		Assessees other than covered above	31 July of the following year
<b>Advance tax</b>			
Quarterly		First quarter (15% of the tax amount)	Up to 15 June
Quarterly		Second quarter (45% of the tax amount)	Up to 15 September
Quarterly		Third quarter (75% of the tax amount)	Up to 15 December
Quarterly		Fourth quarter (100% of the tax amount)	Up to 15 March
<b>Others</b>			
Annually	Form 3CA/3CB/3CD	Furnishing of the tax audit report	30 September of the following year
Annually	Form 3CEB	Furnishing of information for international transactions and specified domestic transactions	31 October of the following year
Annually	Form No. 49C	Submission of a statement to be filed by non-residents having liaison office(s) in India	60 days from the end of the relevant FY
Annually	Form No. 61B	e-filing of the annual statement of reportable accounts in pursuance to S. 285BA	31 May of the following year

<sup>1</sup> For the month of March, the due date for payment for TDS is 30 April

<sup>2</sup> For the quarter ending Jan-March, the due date is 31 May

<sup>3</sup> For the quarter ending Jan-March, the due date is 15 May

## B. Indirect tax

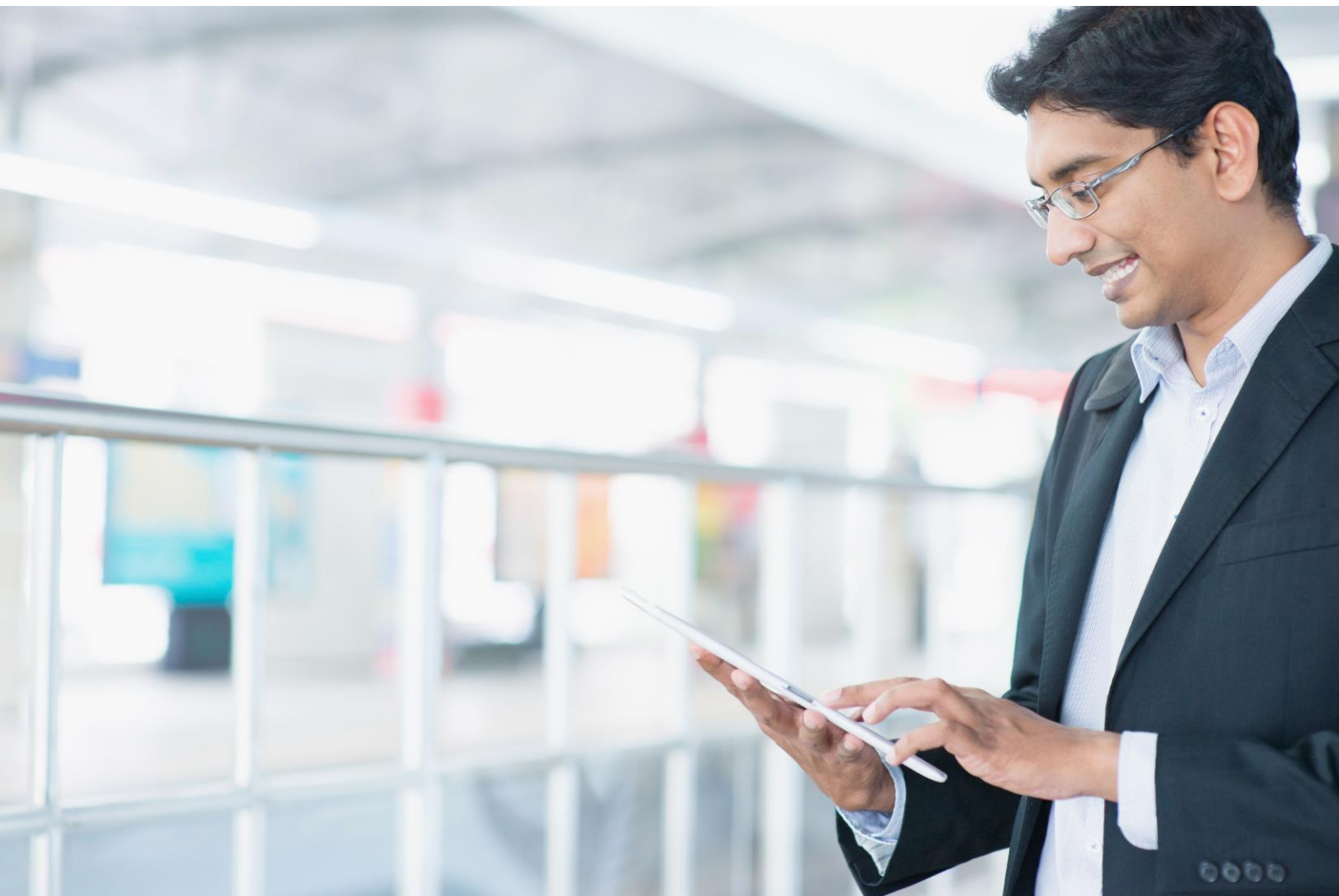
Frequency	Return type	Description on return	Due date
<b>Normal taxpayer</b>			
Monthly	GSTR 1	Details of outward supplies of taxable goods and/or services affected	11th of the month succeeding the tax period
Monthly	GSTR 3B	Summary of outward supplies and ITC, along with the payment of tax	20th of the month succeeding the tax period
<b>QRMP having aggregate turnover of up to INR 5 crore in the preceding FY</b>			
Quarterly	GSTR-1	Details of outward supplies of taxable goods and/or services affected	The 13th of the month succeeding such quarter
Monthly	GST Challan	Payment of liability in case of shortfall of ITC vide Challan-PMT-06	The 25th of the month succeeding the tax period for first two months of such quarter
Monthly	IFF (Optional)	IFF where quarterly filers can choose to upload their B2B invoices every month	The 13th of the month succeeding the tax period
Quarterly	GSTR 3B	Summary of outward supplies and ITC, along with the payment of tax	The 22nd of the month succeeding such quarter for A-list states such as Madhya Pradesh, Maharashtra, Kerala, Chhattisgarh, Karnataka, Tamil Nadu, Goa, Telangana, Gujarat, Andhra Pradesh, Puducherry, Daman Sandhu, Dadra Nagar, Haveli, Andaman Nicobar, and Lakshadweep
Quarterly	GSTR 3B	Summary of outward supplies and ITC, along with the payment of tax	The 24th of the month succeeding such quarter for B-list states such as Himachal Pradesh, Uttarakhand, Nagaland, Punjab, Tripura, Haryana, Assam, Rajasthan, Uttar Pradesh, Arunachal Pradesh, Bihar, Sikkim, Jharkhand, Manipur, Mizoram, Paschim Bengal, Odisha, Chandigarh, Jammu and Kashmir, Ladakh and New Delhi
<b>Composition dealers</b>			
Quarterly	CMP 08	Statement-cum-challan to make a tax payment by a taxpayer registered under the composition scheme under Section 10 of the CGST Act	The 18th of the month succeeding such quarter
Annual	GSTR-4	Return for FY of the registered person who has opted for composition levy	The 30th day of April following the end of such FY
<b>Others</b>			
Monthly	GSTR 5	Return for NR tax payers	The 13th of the month succeeding the tax period
Monthly	GSTR 5A	Summary return for reporting the outward taxable supplies and tax payable by the OIDAR service provider.	The 20th of the month succeeding the tax period
Monthly	GSTR 6	Return for ISD	The 13th of the month succeeding the tax period
Monthly	GSTR 7	Return for TDS	The 10th of the month succeeding the tax period
Monthly	GSTR 8	Return for TCS	The 10th of the month succeeding the tax period
Annual	GSTR 9 and 9C	Annual return and reconciliation statement for FY 2022-23	31 December 2023
Quarterly	ITC 04	Details of goods/capital goods sent to job workers and received back.	The 25th of the month succeeding such quarter
RFD-10	18 months after the end of the quarter for which the refund is to be claimed		

## 09

## Glossary

<b>AA</b>	Advance Authorisation	<b>EULA</b>	End User License Agreement
<b>AAR</b>	Authority for Advance Ruling	<b>Finance Act</b>	The Finance Act, 1994
<b>AAAR</b>	Appellate Authority for Advance Ruling	<b>FCM</b>	Forward Charge Mechanism
<b>ADIA</b>	Abu Dhabi Investment Authority	<b>FTP</b>	Foreign Trade Policy
<b>AATO</b>	Annual Aggregate Turnover	<b>FTS</b>	Fees for technical services
<b>AO</b>	Assessing Officer	<b>FY</b>	Financial Year
<b>AP</b>	Andhra Pradesh	<b>GOI</b>	Government of India
<b>APR</b>	Annual Performance Report	<b>GSP</b>	Goods and Services Tax Suidha Provider
<b>AT</b>	Aggregate Turnover	<b>GST</b>	Goods and Services Tax
<b>AY</b>	Assessment Year	<b>GST Compensation to States Act</b>	Goods and Services Tax (Compensation to States) Act, 2017
<b>BCD</b>	Basic Customs Duty	<b>GSTAT</b>	GST Appellate Tribunal
<b>BoE/BE</b>	Bill of Entry	<b>GSTIN</b>	Goods and Services Tax Identification Number
<b>BPO</b>	Business Process Outsourcing	<b>GSTN</b>	Goods and Services Tax Network
<b>BSS</b>	Business Support Services	<b>GSTR</b>	Goods and Services Tax Return
<b>B2B</b>	Business-to-business	<b>HC</b>	High Court
<b>CBIC</b>	Central Board of Indirect Taxes and Customs	<b>HO</b>	Head Office
<b>CCR</b>	CENVAT Credit Rules, 2004	<b>HP Entertainment Duty Act</b>	Himachal Pradesh Entertainment Duty Act, 1968
<b>CEA</b>	The Central Excise Act, 1956	<b>HP Entertainment Tax Act</b>	Himachal Pradesh Entertainments Tax (Cinematograph Shows) Act, 1968
<b>CEPA</b>	Comprehensive Economic Partnership Agreement	<b>HP Entry Tax Act</b>	Himachal Pradesh Tax on Entry of Goods into Local Area Act, 2010
<b>CESTAT</b>	Customs Excise and Services Tax Appellate Tribunal	<b>HP GST Act</b>	Himachal Pradesh GST Act, 2017
<b>CG</b>	Central Government	<b>HP Luxuries Tax Act</b>	Himachal Pradesh Tax on Luxuries (in Hotels and Lodging Houses) Act, 1979
<b>CGST</b>	Central Goods and Service Tax	<b>HP Sales Tax Act</b>	Himachal Pradesh Goods and Sales Tax Act, 1968
<b>CGST Act</b>	Central Goods and Service Tax Act, 2017	<b>HP VAT Act</b>	Himachal Pradesh VAT Act, 2005
<b>CGST Rules</b>	Central Goods and Service Tax Rules, 2017	<b>HS</b>	Harmonised Standard
<b>COO</b>	Certificate of Origin	<b>HSN</b>	Harmonised System of Nomenclature
<b>CPSE</b>	Central Public Sector Enterprises	<b>IBU</b>	offshore banking unit in the IFSC
<b>CST Act</b>	Central Sales Tax Act, 1956	<b>ICEGATE</b>	Indian Customs Electronic Data Interchange Gateway
<b>CTA</b>	Customs Tariff Act, 1975	<b>IGST Act</b>	The Integrated Goods and Services Tax Act, 2017
<b>Customs Act</b>	The Customs Act, 1962	<b>IGST</b>	Integrated Goods and Services Tax
<b>DGFT</b>	Directorate General of Foreign Trade	<b>IFF</b>	Invoice Furnishing Facility
<b>DGGSTI</b>	Director General of GST Intelligence	<b>IFSC</b>	International Financial Service Centre
<b>DTA</b>	Domestic Tariff Area	<b>Insurance Act</b>	Insurance Act, 1938
<b>ECA</b>	Enforcement cum Adjudication	<b>ITC</b>	Input Tax Credit
<b>ECL</b>	Electronic Cash Ledger	<b>ITSS</b>	Information Technology Software Service
<b>ECrL</b>	Electronic Credit Ledger	<b>IRDA</b>	Insurance Regulatory and Development Authority
<b>ECTA</b>	Economic Cooperation and Trade Agreement	<b>IRP</b>	Invoice Registration Portal
<b>E-COO</b>	Electronic Certificate of Origin	<b>ISD</b>	Input Service Distributor
<b>EO</b>	Export Obligation		
<b>EODC</b>	Export Obligation Discharge Certificate		
<b>EOU</b>	Export Oriented Units		
<b>EPCG</b>	Export Promotion Capital Goods		

<b>LRS</b>	Liberalised Remittance Scheme	<b>QRMP</b>	Quarterly Returns with Monthly Payment
<b>KVAT</b>	Karnataka Value Added Tax Act, 2003	<b>RCM</b>	Reverse charge mechanism
<b>LUT</b>	Letter of Undertaking	<b>ROO</b>	Rules of Origin
<b>METI</b>	Ministry of Economy, Trade and Industry	<b>SAD</b>	Special Additional Duty
<b>MOOWR</b>	Manufacture and Other Operations in Warehouse Regulations	<b>SC</b>	Supreme Court
<b>MPR</b>	Monthly Performance Report	<b>SCN</b>	Show Cause Notice
<b>NBFC</b>	Non-Banking Financial Company	<b>SERF</b>	Service Export Reporting Forms
<b>NR</b>	Non resident	<b>SEZ</b>	Special Economic Zone
<b>OBU</b>	Offshore Banking Unit	<b>SGST</b>	State Goods and Service Tax
<b>OIDAR</b>	Online Information and Database Access or Retrieval Services	<b>SLP</b>	Special Leave Petition
<b>OCP</b>	Operational Certificate Procedures	<b>SMS</b>	Short Message Service
<b>ODI</b>	Offshore Derivative Instruments	<b>STPI</b>	Software Technology Parks of India
<b>PO</b>	Proper Officer	<b>STT</b>	Securities Transaction Tax
<b>Pr.CCA</b>	Principal Chief Controller of Accounts	<b>TDS</b>	Tax Deducted at Source
<b>QR</b>	Quick Response	<b>TCS</b>	Tax Collected at Source
<b>QPR</b>	Quarterly Performance Report	<b>The Finance Bill</b>	The Finance Bill, 2023
		<b>VAT</b>	Value Added Tax





Great  
Place  
To  
Work®

Certified

NOV 2022 – NOV 2023

INDIA

We are

# Shaping a Vibrant Bharat

A member of Grant Thornton International Ltd, Grant Thornton Bharat is at the forefront of helping reshape the values in the profession. We are helping shape various industry ecosystems through our work across Assurance, Tax, Risk, Transactions, Technology and Consulting, and are going beyond to shape a more **#VibrantBharat**.

## Our offices in India

- Ahmedabad ● Bengaluru ● Chandigarh ● Chennai
- Dehradun ● Gurugram ● Hyderabad ● Kochi
- Kolkata ● Mumbai ● New Delhi ● Noida ● Pune



Scan QR code for office addresses

[www.grantthornton.in](http://www.grantthornton.in)

Connect  
with us



@GrantThorntonBharat



@GrantThorntonIN



@GrantThorntonBharat



@GrantThorntonBharatLLP



@Grantthornton\_bharat



Gtbharat@in.gt.com

© 2023 Grant Thornton Bharat LLP. All rights reserved.

"Grant Thornton Bharat" means Grant Thornton Advisory Private Limited, the sole member firm of Grant Thornton International Limited (UK) in India, and those legal entities which are its related parties as defined by the Companies Act, 2013, including Grant Thornton Bharat LLP.

Grant Thornton Bharat LLP, formerly Grant Thornton India LLP, is registered with limited liability with identity number AAA-7677 and has its registered office at L-41 Connaught Circus, New Delhi, 110001.

References to Grant Thornton are to Grant Thornton International Ltd. (Grant Thornton International) or its member firms. Grant Thornton International and the member firms are not a worldwide partnership. Services are delivered independently by the member firms.