October, 2023

TAX Bulletin

Volume - 146
17.10.2023

THE INSTITUTE OF COST ACCOUNTANTS OF INDIA

Statutory Body under an Act of Parliament

www.icmai.in

Headquarters: CMA Bhawan, 12, Sudder Street, Kolkata - 700016
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Delhi Office: CMA Bhawan, 3, Institutional Area, Lodhi Road, New Delhi - 110003
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"The Institute of Cost Accountants of India would be the preferred source of resources and professionals for the financial leadership of enterprises globally."

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1. Preparation of Suggestions and Analysis of various Tax matters for best Management Practices and for the professional development of the members of the Institute in the field of Taxation.
2. Conducting webinars, seminars and conferences etc. on various taxation related matters as per relevance to the profession and use by various stakeholders.
3. Submit representations to the Ministry from time to time for the betterment and financial inclusion of the Economy.
4. Evaluating opportunities for CMAs to make way for further development and sustenance of the opportunities.
5. Conducting and monitoring of Certificate Courses on Direct and Indirect Tax for members, practitioners and stake holders and also Crash Courses on GST for Colleges and Universities.

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1. Certificate Course on GST (CCGST)
2. Advanced Certificate Course on GST (ACCGST)
3. Advanced Certificate Course on GST Audit and Assessment Procedure (ACGAA)
4. Certificate Course on TDS (CCTDS)
5. Certificate Course on Filing of Returns (CCFOF)
6. Advanced Course on Income Tax Assessment and Appeals (ACIAA)
7. Certificate Course on International Trade (CCIT)

Admission Link - ***https://eicmai.in/advscc/DelegatesApplicationForm-new.aspx***

Modalities

Description	Course Name						
	CCGST	ACCGST	ACGAA	CCTDS	CCFOF	ACIAA	CCIT
Hours	72	40	30	30	30	30	50
Mode of Class	Offline/ Online	Online					
Course Fee* (₹)	10,000	14,000	12,000	10,000	10,000	12,000	10,000
Exam Fee* (₹)	1,000 per attempt						
Discounts	20% Discount for CMA Members, CMA Qualified and CMA Final Pursuing Students						

**18% GST is applicable on both Course fee and Exam fee*

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- Members of the Institute of Cost Accountants of India
- Other Professionals (CA, CS, MBA, M.Com, Lawyers)
- Executives from Industries and Tax Practitioners
- Students including CMA Qualified and CMA Pursuing

On passing the examination with 50% marks a Certificate would be awarded to the participant with the signature of the President of the Institute

Course Details

https://icmai.in/TaxationPortal/OnlineCourses/index.php

Courses for Colleges & Universities by the Tax Research Department

Eligibility

- B.Com/ BBA pursuing or completed
- M.Com/ MBA pursuing or completed

Modalities

Description	Courses for Colleges and Universities	
	GST Course	Income Tax
Batch Size	Minimum 50 Students per Batch per course	
Course Fee* (₹)	1,000	1,500
Exam Fee* (₹)	200	500
Duration (Hrs)	32	32

For enquiry about courses, mail at: ***trd@icmai.in***

**18% GST is applicable on both Course fee and Exam fee*

Behind every successful business decision, there is always a CMA

CMA (Dr.) V. Murali
Chairman
Direct Taxation Committee, ICMAI

FROM THE DESK OF CHAIRMAN

Esteemed Professional Colleague,

The Festive Season of Dussera will soon be with us and I pray that both Goddess Saraswathi and Lakshmi shower all our members and Students with their blessings in abundance. The Income Tax Department has notified that the timeline for filing of Form 10B / 10BB and Form ITR 7 for the AY 2023 -24 has been extended till 31st October, 2023 and 30th November, 2023 respectively.

POINT TO PONDER

Appreciative words are a powerful force and a morale booster that can brighten a person's day. Mother Teresa once said ***"Kind words can be short and easy to speak, but their echoes are truly endless."*** One should choose words with wisdom, care and caution because, ***"A careless word may kindle strife, a cruel word may wreak a life, a bitter word may instill hate, a brutal word may smite and kill, a gracious word may smooth the way, a joyous word may light the day, lively word can lessen stress and a loving word may heal and bless."***

ACTIVITIES AND PLAN OF ACTION

A brief note about the salient amendments in Form 10B / 10BB.
An important change in audit reporting for charitable institutions has been facilitated by Notification No. 7/2023 dated February 21, 2023, issued by the Central Board of Direct Taxes (CBDT), marking a substantial departure from the existing rules governing income tax compliance in India. The focus of this transformation centers on the audit reports required under Section 12A of the Income-tax Act, 1961, specifically affecting funds, trusts, institutions, universities, educational institutions, hospitals, and medical institutions.

Non-compliance of the provisions of Form 10B would mean significant repercussions for charitable or religious organizations including loss of tax exemption status. This means that the organization may become subject to income tax on its earnings, potentially resulting in a heavy financial burden. Additionally, non-compliance may result in the imposition of penalties and interest by tax authorities, further exacerbating the organization's financial and legal challenges. Therefore, it is essential for such organizations to diligently adhere to the Form 10B requirements to maintain their tax-exempt status and avoid these adverse outcomes.

Charitable institutions fulfilling the following criteria are required to furnish audit report in Form 10B:
(i) Having total income in excess of INR 5 Cr. before applying the exemption provisions; or
(ii) Having received foreign contribution; or
(iii) Having applied any part of their income outside India. The scope of the revised form has been substantially expanded, including introducing new reporting requirements.

Charitable institutions not covered by the above criteria are required to furnish audit report in Form 10BB which has limited disclosures as compared to Form 10B.

This form is important and a detailed article on this has been published in the Anniversary edition of the Tax Bulletin.

The activities of the department for this fortnight include (i) The conduct of Webinar on 'Form 6D' related to Section 142 (2A) of Income Tax Act on Oct 03, 2023, and (ii) the classes of the Taxation Courses are also being conducted.

WRAP UP POINT

Leo Buscaglia's words touched a chord in me and I would like to share them with you: "***Too often we underestimate the power of a touch, a smile, a kind word, a listening ear, an honest compliment or the smallest act of caring all of which have the potential to turn a life around."*** The potential to make someone's life a bit sweeter, happier and better, lies in each one of us. A life well lived is where one is in a position to extend help, offer solace, help others realize their dreams.

Wishing each and every one of you a Life filled with joy, professional fulfilment and prosperity. **Best wishes for Durga Puja and Navratri.**

With Warm Professional Regards,

Forever, yours in service,

CMA (Dr.) V Murali
Chairman
Direct Taxation Committee, ICMAI
17.10.2023

CMA Rajendra Singh Bhati
Chairman
Indirect Taxation Committee, ICMAI

FROM THE DESK OF CHAIRMAN

The most important event that occurred during this fortnight has been the conduct of the 52nd GST Council meeting, chaired by the Union Minister for Finance and Corporate Affairs, Smt. Nirmala Sitharaman and was held on October 7, 2023.

The key takeaways have been:

GST Rate changes on Services

- GST exempted on water supply services, public health, etc., supplied to the government authorities, including composite services with up to 25% of the above services.
- A conditional IGST exemption is given to a foreign flag and foreign going vessel when it converts to coastal run subject to its reconversion in six months.
- GST exempted on pure and composite services to Central/State/UT governments and local authorities for Panchayat/Municipality functions.
- Bus operator companies selling through e-commerce are excluded from CGST Section 9(5) to allow them to pay GST and avail ITC claims. All services provided by Indian Railways will be subjected to forward charge, with ITC available for discharging liabilities.

GST Rate changes on Goods

- Millet flour in powder form is blended with any other atta with 70% composition of millets under (HS1901) to attract 0% GST if sold loose and 5% GST if sold pre-packaged and labelled.
- GST on molasses has been reduced from 28% to 5%.
- GST on ENA for industrial use to attract 18% by a separate tariff HS code.
- 5% GST on imitation zari thread or yarn made out of metallised polyester film or plastic film (HS 5605) without refund due to inversion.
- Job work services to process barley into malt attract 5% GST and not 18%, being "job work in relation to food and food products".
- 18 states have passed the amendments to charge 28% GST on gaming companies w.e.f 1.10.2023 along with the GST Rules while 13 are yet to notify changes.

Other important changes are:

- **GST Amnesty Scheme to file appeals:**
  GST Amnesty Scheme to file appeals against orders passed u/s 73 or 74 of CGST Act, 2017 has been recommended for tax payers who got orders before 31.03.2023. Also for those tax payers whose appeals were rejected on the grounds that the appeal was not filed within stipulated period.

Such tax payers now can file appeals against said order by 31.01.2024. Said taxpayers has to deposit 12.5% of the tax under dispute, out of which 20% i.e 2.5% of tax amount must be paid by cash and rest of the amount can be adjusted from ITC.

- **CGST Rule 159(2) to be amended**: Automatic restoration of provisionally attached property after completion of one year. In other words, if tax payer's property is attached u/s 83 by the order of Commissioner in FORM DRC-22, the same shall be invalid after one year from the date of such order.

- **Taxability of Personal Guarantee of Directors in favour of Company:** Clarified that no GST would apply on personal guarantee offered by directors to the bank against the credit limits/loans sanctioned to the company if no consideration paid by the company.

- **Taxability of Corporate Guarantee**: Defined the taxable value for corporate guarantee provided between related persons (a holding company to its subsidiary) as 1% of the amount of such guarantee offered or the actual consideration, whichever is higher and such amount is subject to GST @18%.
  A sub-rule (2) in Rule 28 of CGST Rules, 2017, shall be inserted to provide taxable value of supply of corporate guarantee.

- **Allowing supplies to SEZ units/ developer for authorised operations for IGST refund route by amendment in Notification 01/2023-Integrated Tax dated 31.07.2023:** The Council has recommended to amend Notification No. 1/2023-Integrated Tax dated 31.07.2023 w.e.f. 01.10.2023 so as to allow the suppliers to a Special Economic Zone developer or a Special Economic Zone unit for authorised operations to make supply of goods or services (except the commodities like pan masala, tobacco, gutkha, etc. mentioned in the Notification No. 1/2023-Integrated Tax dated 31.07.2023) to the Special Economic Zone developer or the Special Economic Zone unit for authorised operations on payment of integrated tax and claim the refund of tax so paid.

I am optimistic that such regular adjustments made to the GST Laws would be beneficial to assessees and help them to tax compliant.

The activities of the department for this fortnight has been: (i) The conduct of Webinar on 'Form 6D' related to Section 142 (2A) of Income Tax Act on Oct 03, 2023, (ii) Another Workshop on An Insight to Input Tax Credit under GST Laws - Understanding, Legal issues and how to Address was conducted from 8th to 12th October. (iii) Exam on Chevalier T Thomas Elizabeth College for Women, Chennai, on 12th Oct 2023 and (iv) Quiz and the classes of the Taxation Courses are also being conducted.

My have my best wishes to the Tax Research Department for their dedication and sincere efforts. I also wish all the readers my best wishes for Durga Puja and Navratri.

Thank You.

CMA Rajendra Singh Bhati
Chairman
Indirect Tax Committee, ICMAI
17.10.2023

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Articles on the Topics of Direct and Indirect Taxation are invited from readers and authors. Along with the article please share a recent passport-sized photograph, a brief profile and the contact details. The articles should be the author's own original.
Please send the articles to

trd@icmai.in /trd.ad1@icmai.in

GST Electricity Charges Reimbursement

CMA Bhogavalli Mallikarjuna Gupta
SME, Speaker & Author, Policy Advocacy on Indian GST

It is more than six years since the implementation of GST, and still, we have some ambiguity as the law is not settled, and there are a lot of interpretation issues; one such issue is the applicability of GST on reimbursement of electricity charges paid along with rent to the landlord on actual for the electricity consumed by the tenant.

Is electrical energy a good or service?

This is the first question everyone will have in their mind, and the answer is electric energy is classified as good wide Notification No 2/2017, Central Tax Rates under serial number 104 as Electricity Energy with HSN Code 27160000.

What is the relevance of Exemption Notification 12/2017, Central Tax Rates?

There are two entries in the above notification; one is under serial numbers 10A & 25. Serial number 10A deals with *"Services supplied by electricity distribution utilities by way of construction, erection, commissioning, or installation of infrastructure for extending electricity distribution network upto the tube well of the farmer or agriculturist for agricultural use"* which is not related to us discussion and serial number 25 deals with *"Transmission or distribution of electricity by an electricity transmission or distribution utility."*

The Service provided by the landlord does not fall under any of the two exemptions, as the first one is related to services provided for agriculture, and the second is associated with the transmission or distribution of electricity.

From the above two questions, it is clear that the electrical energy provided by the landlord is a supply of goods and does not relate to the transmission or distribution of electricity.

A standard lease agreement covers the fixed monthly rent to be paid by the tenant to the landlord along with other charges like water, security services, maintenance charges provided and electricity consumed. On the rent, GST is applicable, and for the additional expenses like security services and maintenance charges, GST is applicable as they are treated as taxable services, and the applicable rate is 18%. Now, the question arises on the applicability of GST on the amount collected by the landlord towards water and electricity/electrical energy.

For the levy of GST on the charges collected on water and electrical energy, will it fall under composite supply? It will be considered by many as a composite supply as these charges are associated with the payment of rent, and if there is no rent, then the landlord does not collect the same. But technically, it is not composite supply as it is applicable only in case of supply of two or more taxable supplies as per Section 2(30) of the CGST Act 2017.

"composite supply" means a supply made by a taxable person to a recipient consisting of two or more taxable supplies of goods or services or both, or any combination thereof, which are naturally bundled and supplied in conjunction with each other in the ordinary course of business, one of which is a principal supply.

Illustration - Where goods are packed and transported

with insurance, the supply of goods, packing materials, transport and insurance is a composite supply and supply of goods is a principal supply;

From the above provisions, it is clear that it will not fall under the composition supply as electricity is exempted.

The water supplied by the landlord is not mineral water, and it falls under the HSN Code 2201, and the same is tax at nil rate serial number 99 of Notification No 2/2017 – Central Tax (Rates). *"Water [other than aerated, mineral, distilled, medicinal, ionic, battery, de-mineralized and water sold in sealed container]*

Each tenant will have a sub-meter, and the electricity charges are collected based on the units consumed for a given period. The landlord collects the electricity charges and deposits the same with the concerned agency; here, the landlord does not add any profit or service charges for collecting and making the payment. This will arise in cases where the landlords do not obtain separate meters for their tenants. The services provided by the Landlord towards the collection of Electricity charges can be classified as pure agent provided there is no profit element involved in it. Now, let us understand the valuation and concept of pure agent under GST.

Valuation of supply is determined under Rule 15 of the CGST Act 2017

(1) The value of a supply of goods or services or both shall be the transaction value, which is the price actually paid or payable for the said supply of goods or services or both where the supplier and the recipient of the supply are not related and the price is the sole consideration for the supply.

(2) The value of supply shall include–––

(a) any taxes, duties, cesses, fees and charges levied under any law for the time being in force other than this Act, the State Goods and Services Tax Act, the Union Territory Goods and Services Tax Act and the Goods and Services Tax (Compensation to States) Act, if charged separately by the supplier;

(b) any amount that the supplier is liable to pay in relation to such supply, but which has been incurred by the recipient of the supply and not included in the price actually paid or payable for the goods or services or both;

(c) incidental expenses, including commission and packing, charged by the supplier to the recipient of a supply and any amount charged for anything done by the supplier in respect of the supply of goods or services or both at the time of, or before delivery of goods or supply of services;

From the above, it is clear that the cost of electricity being paid by the tenant to the landlord should be defined in the contract, i.e., it should be a fixed amount, but in the case of electricity, it is purely based on the number of units of electricity consumed and which is known through the sub-meters. This means it cannot be part of the supply and has to be treated separately.

Now, let's understand the concept of pure agent.

Services offered by a Pure Agent are given in the Explanation to Rule 33 of the CGST Rules 2017,

Explanation.- For the purposes of this rule, the expression –pure agent means a person who

(a) enters into a contractual agreement with the recipient of supply to act as his pure agent to incur expenditure or costs in the course of supply of goods or services or both;

(b) neither intends to hold nor holds any title to the goods or services or both so procured or supplied as pure agent of the recipient of supply;

(c) does not use for his own interest such goods or services so procured; and

(d) receives only the actual amount incurred to procure such goods or services in addition to the amount received for supply he provides on his own account.

Value of supply of services in case of pure agent. –

Notwithstanding anything contained in the provisions of this Chapter, the expenditure or costs incurred by a supplier as a pure agent of the recipient of supply shall be excluded from the value of supply, if all the following

conditions are satisfied, namely,-

(i) *the supplier acts as a pure agent of the recipient of the supply, when he makes the payment to the third party on authorisation by such recipient;*

(ii) *the payment made by the pure agent on behalf of the recipient of supply has been separately indicated in the invoice issued by the pure agent to the recipient of service; and*

(iii) *the supplies procured by the pure agent from the third party as a pure agent* of the recipient of supply are in addition to the services he supplies on his own account.

From the above explanation, it is clear that the services offered by the landlord are of the pure agent as he is only collecting and paying the same, nor does he own the electricity or procure it for his use. It is part of a contractual agreement and is being collected in addition to the rent charged.

There are mixed rulings in the case of advance rulings on the taxability of electricity charges paid to the landlord. After carefully reviewing the advance rulings, it is clear that the taxability on electricity charges is based on the agreement. Now, let us understand the orders passed in different advance rulings.

In the advance ruling filed by the M/s Gujarat Narmada Valley Fertilizers & Chemicals Ltd., Narmada Nagar, Bharuch, Gujarat. With the Advance Ruling Authority of Gujarat, the bench has passed an order stating that GST is not applicable on the electricity charges collected as the rental agreement does not define the exact amount to be paid, which means that it is not known at the time of supply as per provisions of Section 15(2)(c) of the CGST Act 2017 and has stated that the same will be covered under Pure Agent Services as per Rule 33 of the CGST Rules 2017.

Question 1.

When landlord charges electricity or incidental charges in additional to rent as per Lease Agreement for immovable property rented to the tenant, is landlord liable to pay GST on electricity or incidental charges charged by it?

Answer : The facts of the present case infer that the electricity charges collected by the applicant is not covered under the provisions of Sec. 15(2)(c) of the CGST Act, 2017 and as such would not be includible in the value of supply.

Question 2.

Can electricity charges paid by landlord to Torrent Power Ltd. (the supplier of electricity) for electricity connection in the name of landlord and recovered based on sub meters from different tenants be considered as amount recovered as pure agent of the tenant when the legal liability to pay electricity bill to Torrent Power Ltd. is that of landlord?

Answer : The electricity charges collected by the landlord from the Govt. of India at actuals based on the reading of the sub-meters is covered under the amount recovered as a pure agent in terms of the provisions of Rule 33 of the CGST Rules, 2017 in respect of the lessor viz. Govt. of India.

The advance ruling filed by M/s Harish Chand Modi with the Rajasthan Authority for Advance Roiling on the same issue has held that GST applies to the landlord's electricity charges. The bench has held that the landlord is not a pure agent as the applicant is paying for electricity in advance along with rent, which is being adjusted subsequently. Aggrieved by the Order, the applicant has approached the Appellate Authority for Advance Ruling and the Appellate Authority has upheld the order of the Advance Ruling Authority.

In the advance ruling of M/s. Duet India Hotels (Hyderabad) Private Limited by the Telangana Authority for Advance Ruling, a contradictory opinion is expressed by the honorable members.

The questions raised by the applicant are

1) Whether GST is applicable on electricity and water charges which are being collected at actual by the Lessor from the Lessee?

2) If answer to Q.No.1 is yes, then what is the nature of supply and applicable rate of GST?

The opinion expressed by Sri S.V. Kasi Visweswara Rao, Additional Commissioner (State Tax), on the issues raised by the applicant. Notification No. 02/2017 dated 28.06.2017 provides for exemption from tax under CGST Act, 2017 on water (other than aerated, mineral, purified, distilled, medicinal, ionic, battery, demineralized and water sold in sealed containers) at Serial No. 99 under Chapter heading

'2201'. Similarly, this notification also exempts electrical energy from tax under CGST Act, 2017 by enumerating the same in Serial No. 104 with Chapter heading '2716 00 00'.

The opinion expressed does not apply to the first question, and as a result, the tax rate does not arise.

The opinion expressed by Sri B. Raghu Kiran, Additional Commissioner, Central Tax, on the issues raised by the applicant.

Collection of electricity charges and for water does not qualify to be a pure agent as the "the application filed before the authority does not contain any mention about the details of the third party or the authorisation by the recipient. For this reason, it is opined that the applicant does not qualify as 'pure agent'."

The utility charges are considered as composite supply as they are bundled along with the principal supply of rent; the tax rate of the principal supply will be appliable to the water and electricity charges collected by the landlord.

The next question is, if GST is applicable, can the tenant take the input tax credit? This also has to be addressed; ideally, it can be claimed as it is classified as a composite supply. The input tax credit can be claimed only if the outward supplies are taxable. In some cases, like hospitals, diagnostic services or real estate players in few instances, the output is not taxable, and in such cases, the same has to be treated as cost.

From the above analysis, it is clear that the Leave and Licence agreement clauses will determine the taxability of the charges paid towards utilities, i.e., water and electricity. Again, this clearly states that GST is a business reform, not a tax reform.

The litigations in GST have not yet started in a full-fledged manner, and to avoid the cost of litigation, it is always worth reviewing the contracts and redrafting them in line with the GST provisions to avoid potential outflow tax liability, interest, penalty, or reversal of the input tax credit.

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Transforming Indian Tax Frontier in line with Global Tax Reform "The OECD Two Pillars approach"

CMA Mrityunjay Acharjee
General Manager (Finance), NRL

Backgroung

The aim of transfer pricing is to determine the appropriate prices at which goods, services, or intangible assets are transferred between these parties. By doing so, profits are allocated among multi-national companies (MNCs) global operations, considering factors such as market conditions, functions performed, and risks assumed.

History traces the first transfer pricing legislation to UK in 1915, with USA following suit in 1917. The main intention of the introduction of these provisions was to discourage companies to shift profit to overseas associate entities through under- pricing or over-pricing of cross border transactions. They had limited impact.

In the period after 1960, countries started laying emphasis on detailed rules to counter the devices for shifting profits from one legal jurisdiction to another with the object of reducing tax impact.

The period of 1970's saw many developed countries trying to develop expertise in transfer pricing matters and applied prevailing law to deal with transactions routed through tax heavens when simpler or conventional provisions could not be made applicable.

The Organisation for Economic Co-operation and Development (OECD) which was established in 1961 and now 34 countries are its members. OECD undertook an in-depth analysis of transfer pricing provisions and published a report on "Transfer Pricing and Multinational Enterprises" in 1979. It prescribed three standard methods of computing Arms' Length Price (ALP) namely Comparable Controlled Price, Resale Price and Cost Plus and mentioned the danger of using other bases for determining ALP. In 1984, OECD published its report which dealt with transfer pricing for intra group services and dealt with the treatment of intra-bank interest and other issues which could not be resolved under the tax treaties.

The United Kingdom in 1984 introduced a new anti-avoidance legislation called "The Controlled Foreign Corporation (CFC) rules". These rules provided that profits accumulated in off shore subsidiaries should be attributed back to the parent company. But the provisions did not include cases where offshore parent companies charged higher than ALP from their subsidiaries.

OECD reports published in 1987, 1988 and 1994 dealt with the problems relating to thin capitalization, the tax consequences of foreign exchange gains and losses and attribution of income to Permanent Establishment (PE).

The OECD Guidelines, published in 1995 represents a consensus among OECD Member countries, mostly developed countries, and have largely been followed in domestic transfer pricing regulations

This complex mechanism enables MNCs to manage their global tax liabilities, including those related to environmental, social and governance (ESG) factors, and potential tax reforms under the Organisation for Economic

Cooperation and Development's (OECD) Pillar 1 and Pillar 2 initiatives.

Transfer pricing and the 'two-pillar solution' comprised of pillar 1 and pillar 2.

Pillar 1 aims to ensure a fairer distribution of profits and taxing rights among countries with respect to the largest MNCs. It introduces the concept of the market jurisdiction and magnifies its relevance to transfer pricing analysis. Market jurisdictions are jurisdictions to which goods or services are supplied or where consumers or users are located.

Pillar 2 addresses the 'race to the bottom' competition on corporate income tax through the introduction of a global minimum corporate tax at a rate of 15% that countries can use to protect their tax bases (the GloBE rules).

Situation in India

The first Indian attempt at Transfer Pricing Regulations was in 2001, when the Finance Act amended the Income Tax Act, 1961 by the amendment of Section 92 and insertion of new sections 92A to 92F providing for determination of proper income arising from international transactions where either or both the parties involved happen to be non-resident(s).

These provisions read with relevant rules 10A to 10T of the Income Tax Rules also stipulated the maintenance and keeping of information and documents by persons entering into an international transaction and furnishing report by an Accountant if the volume of transactions touches or crosses a prescribed threshold limit. With effect from 1st April 2013, the transfer pricing regulations were also extended to cover certain specified domestic transactions.

When is assessee required to comply with transfer pricing provisions?

An assessee is required to comply with TP provisions when:

(i) He has entered into an international transaction with his associated enterprise ; or

(ii) He enters into a transaction where one of the parties to the transaction is a person located in a notified jurisdictional area (NJA) or

(iii) He enters into a specified domestic transaction (SDT)

Comparison between applicability of transfer pricing provisions to international transactions and sdts

The following are the differences as regards the applicability of International Transactions and Specified Domestic transactions :

Sr No.	Applicability of TP provisions to International Transactions	Applicability of TP provisions to Specified Domestic Transactions
(1)	Applicable to all international transactions irrespective of amount involved.	Applicable to SDTs where aggregate SDTs exceed ₹ 20 crores in a financial year.
(2)	Sections 92 to 92F, except section 92BA, and section 94B are applicable to international transactions.	Sections 92, 92BA, 92C, 92CA, 92D, 92E and 92F applicable to SDTs.
(3)	Section 92CE dealing with secondary adjustment is applicable to ITs.	Section 92CE is not applicable to SDTs
(4)	Advance Pricing Agreements applicable to international transactions	Advance Pricing Agreements are not applicable to SDTs
(5)	Related parties for which TP provisions applicable to international transactions are AEs as defined in section 94A.	Related parties for which TP provisions applicable to SDTs will vary from SDT to SDT and shall be as defined in Rule 10A(a).
(6)	TPO can deal with any international transaction not referred to him by AO but which comes to his notice during the course of the proceedings before him as if the international transaction was referred to him by AO.	In respect of SDTs, TPO's powers under section 92CA are confined to SDTs referred to him by AO.

Sr No.	Applicability of TP provisions to International Transactions	Applicability of TP provisions to Specified Domestic Transactions
(7)	TPO can deal with any international transaction not reported in audit report under section 92E but which comes to his notice during the course of the proceedings before him as if the international transaction was referred to him by AO.	TPO cannot deal with any SDT not referred to him by AO notwithstanding that assessee did not report it in audit report under section 92E.
(8)	Where audit report under section 92E not furnished in respect of international transaction, income shall be deemed to have escaped assessment.	Where audit report under section 92E not furnished in respect of any SDT, there is no deeming provision whereby income shall be deemed to have escaped assessment.
(9)	Lending or borrowing money between two associated enterprises comes within the ambit of international transaction and whether the same is at arm's length price has to be considered	Lending or borrowing money between resident 'specified persons' or resident 'associated enterprises' is not SDT. Therefore, notional interest on money loaned by resident assessee to resident 'specified person' or resident 'associated enterprise' is not taxable in terms of transfer pricing provisions.
(10)	Thin capitalisation rules in section 94B apply to International Transactions.	Section 94B has no application to SDTs.

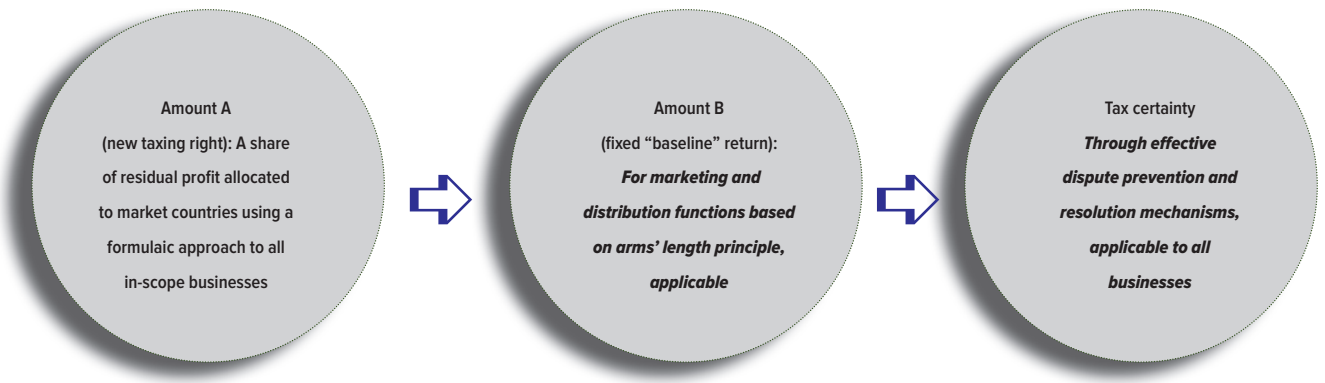
New Concept in Tax in line with OECD Guidelines

Pillar One: An overview

Pillar One seeks to adapt the international income tax system to new business models through changes to the profit allocation and nexus rules applicable to business profits. It expands the taxing rights of market jurisdictions where there is an active and sustained participation of a business in the economy of that jurisdiction through activities in, or remotely directed at, that jurisdiction.

The Amount is a critical component of Pillar One. While the work on Amount A updates the international taxation framework with respect to large and very profitable multinational enterprises (MNE), Amount simplifies the existing transfer pricing rules for all taxpayers. It is focused on the application of transfer pricing rules to so called baseline marketing and distribution activities, likely the most frequent fact pattern that MNEs encounter in the jurisdictions where they operate. Reports from some low-capacity jurisdictions estimate that transfer pricing disputes relating to distribution activities represent between 30% and 70% of all of their transfer pricing disputes. The Amount is intended to increase tax certainty, reduce compliance and administrative costs and in particular assist low-capacity jurisdictions that often suffer from the absence of local market comparable.

Pillar One applies to about 100 of the biggest and most profitable MNEs and distributes part of their profit to countries where they sell their products and provide their services.



The key elements of Pillar One can be grouped into three components:

Pillar One' focuses on allocating taxing rights among countries and seeks to undertake a coherent and concurrent review of the profit allocation and nexus rules. Even though this was originally planned to cover all digital companies, in its current form, it would cover only a few larger MNE groups (with a threshold of global revenue of $20 billion and profitability over 10%).

Leaving aside many of the technical aspects on which there is still a need to build consensus, there are many aspects of Pillar One that would come in the way of its effectiveness:

1) The allocation of taxing rights under the formulaic approach may not necessarily reflect the true economic activities or value creation in a market jurisdiction.

2) The amount to be reallocated ('Amount A'—25% of profits over 10%) may be too little. India may receive too little allocation in return for withdrawing the equalisation levy. On the contrary, it may reallocate some genuine profits out of India.

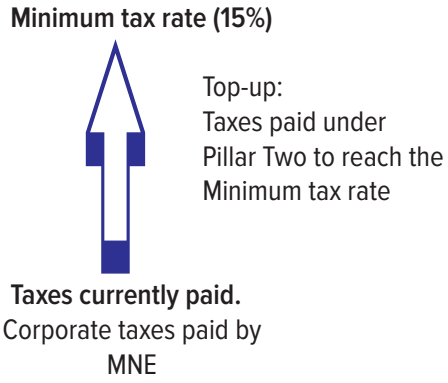
3) It may entail significant complexity and administrative burden for both tax authorities and MNEs and is a likely magnet for litigation as there are too many subjective parameters. The mandatory and binding dispute resolution mechanism may compromise India's sovereign right to (determine) tax.

Pillar Two: An overview

Many jurisdictions are engaged in tax competition (referred to as the race to bottom) by offering reduced taxation—and often zero taxation—to attract foreign direct investment. Further, growth of intangibles, like brands, copyright, and patents enhances the companies' ability to shift profits to jurisdictions that impose little or no tax. Pillar Two addresses remaining BEPS challenges and is

designed to ensure that large internationally operating businesses pay at least 15 percent tax, regardless of where they are headquartered or the jurisdictions they operate in.

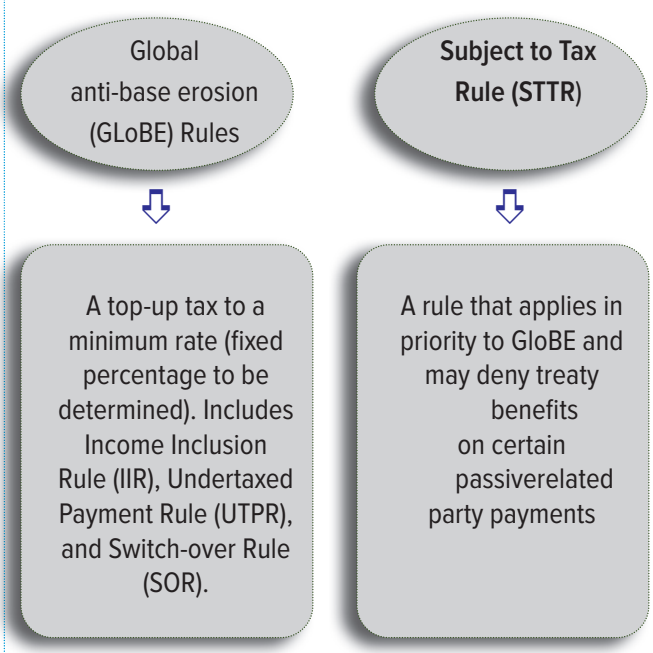
The below diagram explains this:



In a situation where the Effective Tax Rate (ETR) paid by an entity in a jurisdiction is less than 15 percent, the objective of Pillar Two is to recover the balance as top-up tax from the MNE group.

Assuming that the ETR of the MNE group in the jurisdiction is 10 percent, the Pillar Two rules aim to recover the balance 5 percent as top-up tax.

Pillar Two rules are divided into the following two parts:



Scope: Applicable to the MNE groups with total consolidated group revenue of €750 million or above, in the immediately preceding fiscal year. Countries are free to apply the IIR to MNEs headquartered in their country, even if they do not meet the threshold. The concepts

and thresholds are adopted from the Country by Country Reporting mechanism, prescribed BEPS Action 13. The consolidated group revenue threshold is appliedto all those Constituent Entities that are owned and controlled by the same Ultimate Parent Entity ('UPE').

Exclusions: Government entities, international organisations, non-profit organisations, pension funds, or investment funds that are UPEs of an MNE Group or any holding vehicles used

by such entities, organisations or funds, are not subject to the GloBE rules.

Income inclusion Rule (IIR) and Undertaxed Payment Rule (UTPR):

IIR is the principal mechanism to achieve GLoBE rulesoutcome with UTPR acting as the backstop. IIR operations are, in some respects, based on traditional Controlled Foreign Company (CFC) principles and trigger inclusion at the shareholder level, UPE or intermediate parent entity, where the income of a controlled foreign entity is taxed below the ETR. The UTPR is a secondary rule and only applies where a Constituent. Entity is not already subject to an IIR.

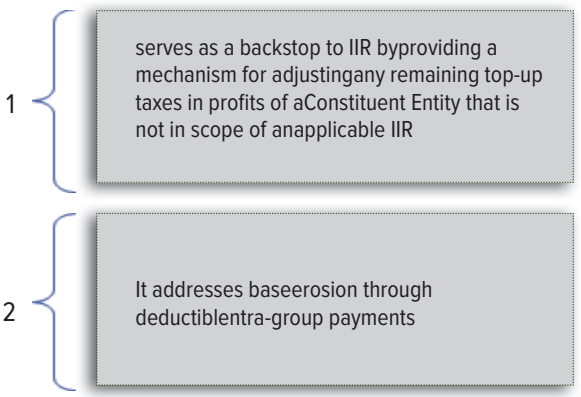
The starting point for determining the GloBE tax base (denominator) is the profit (or loss) before income tax, as determined using the financial accounting standard16 used by the parent in the preparation of its consolidated financial statements. A limited number of adjustments are then made to add or eliminate certain items to arrive at the GloBE tax base. Covered taxes (numerator) mean any tax on an entity's income or profits (including a tax on distributed profits), and includes any taxes imposed in lieu of a generally applicable income tax.

The ETR is calculated at a jurisdictional level. ETR computation also requires the assignment of the income and taxes amongst jurisdictions in which the MNE operates and to which it pays taxes. Further adjustments for substance carve-outs, carryforward of losses, and excess tax credits are to be made.

Top-up tax: Top-up tax is determined as the excess of the agreed minimum tax rate over the ETR, as calculated for a jurisdiction in the relevant period. This top-up tax is payable either by way of IIR or UTPR.

Top-down approach: The primary mechanism for co-ordinating the application of the IIR in each jurisdiction is through the top-down approach. This approach prioritises the application of the IIR in the Constituent Entity's jurisdiction that is at or near the top of the ownership chain in the MNE group, starting with the UPE. In the event that the UPE is not located in a jurisdiction that has implemented the IIR, then responsibility for applying the IIR falls on the Constituent Entity that is directly owned and controlled by that UPE, and so on, down the chain of ownership.

UTPR: It has a hybrid purpose which is achieved through the following:



Where the UTPR applies, top-up tax is allocated proportionately amongst Constituent Entities applying UTPR in a co-ordinated way. First, to those entities making direct payments to the

low-tax Constituent Entity, and then, amongst all entities in the group that have net intra-group expenditure.

Subject to Tax Rule (STTR): It complements the GLoBE Rules. Itis a treaty-based rule that targets those cross-border structures that relate to intragroup payments exploiting certain provisions of the treaty to shift profits from source countries to payee jurisdictions, where those payments are subject to no or low rates of nominal taxation. In such circumstances, it reallocates taxing rights to source jurisdictions.

It applies to certain prescribed cross-border payments (known as covered payments interest, royalties, brokerage, marketing, procurement, agency or other intermediary services, etc.) between connected persons (defined in the Blueprint). It is triggered when a payment is subject to a nominal tax rate in the payee jurisdiction that

is below the minimum tax rate, after adjusting for certain permanent changes in the tax base that are directly linked to the payment or the entity receiving it. The minimum tax rate under STTR is from 7.5 percent to 9 percent

Rule order: The STTR applies even if the MNE Group is subject to the IIR or the UTPR. The taxes charged as a consequence of the STTR are taken into account in calculating the ETR of the payee. IIR applies in priority to the UTPR.

GILTI co-existence: It is agreed that Pillar Two will apply a minimum rate on a jurisdictional basis. In that context, consideration will be given to the conditions under which the US GILTI regime will co-exist with the GloBE rules, to ensure a level playing field.

Implementation: This would require changes to the domestic tax laws and bilateral tax treaties.

Impact of Two Pillar solution

The two Pillar solution represents a historic development and seeks to rewrite century-old tax laws and will affect all large groups. Both Indian headquartered groups with international operations (India outbound) and foreign headquartered groups (India inbound) with Indian operations, satisfying the threshold requirements, would be required to evaluate the impact of this in terms of additional tax outflow, as well as compliance burden. India outbound groups will have to determine whether the jurisdictions in which they operate qualify as low-tax jurisdictions and whether, additional tax is payable on that account. Similarly, analysis of applicability of STTR is also important for cross-border payments between connected persons (both for inbound and outbound).

Conclusion

While Pillar 1 mainly focuses on the re-allocation of profits to market jurisdictions, Pillar 2 is designed to ensure that large MNEs pay a minimum 15% of tax on their income arising in every jurisdiction where they operate. For outbound groups that cross the thresholds for Pillar One, the compliance and tax costs may increase. The Indian UPE will have to play the role of a co-ordinating entity. Per the OECD estimate, Pillar Two will generate additional annual tax revenue of US$150 billion and Pillar One will result in the tax reallocation to the extent of US$100 billion, in favour of market jurisdictions.

The current global transfer pricing (TP) regime allows multi-national enterprises (MNE) to account for only a routine profit in a 'market' or 'source' jurisdiction for tax purposes and park a substantial portion of their super-profits in low tax jurisdictions ('tax havens') using 'legitimate' and 'layered' structures. Over the last decade or so, the Organization for Economic Cooperation and Development (OECD)/G20 countries, under their base erosion and profit shifting (BEPS) project, have made a serious attempt to arrive at a framework to make the MNEs pay their fair share of taxes. During this decade, the digital economy also rapidly emerged as a mainstay business model, disrupting the global supply chain and mobility of resources. Globally, tax authorities endeavoured to adapt swiftly and stay in step with the evolving landscape. The OECD's Two Pillar approach emerged as the favoured means for navigating this new reality. India joined the Inclusive Framework of OECD and voiced the views of the Global South in these discussions. After many rounds of negotiations, the Two Pillars approach is on the brink of achieving a significant milestone in its journey.

TB

Press Releases

CBDT builds momentum to achieve Special Campaign 3.0 Swachhata targets

Swachhata campaigns at more than 175 sites across India with community participation on 2nd October 2023

DIRECT TAX

Posted On: 05 OCT 2023 7:41PM by PIB Delhi

The Central Board for Direct Taxes (CBDT) is conducting the Special Campaign 3.0 on Swachhata in the offices of Income tax Department located in various parts of the country. It started with a preparatory phase from 15th September, 2023 to identify targets to be achieved during the campaign period. The main campaign started from 2nd October, 2023 and will last up to 31st October, 2023. During the campaign, special focus is being given to enhance 'the public experience of the common public with Government offices'.

Under Swachhata Hi Seva Campaign concluded on 2nd October 2023, Chairman, CBDT, administered Swachhata pledge to officers/officials of the Income Tax Department to create a clean and garbage free India and Swachhata campaigns were conducted at more than 175 sites across India with community participation. Officers and officials of the CBDT enthusiastically participated in celebrating the campaign as a cleanliness festival. Swachhata Rally, Swachhata Rangoli, Swachhata Plantation and Swachhata Cyclothon were conducted in various offices of the CBDT. The momentum of the Swachhata Hi Seva campaign will be enhanced in the Special Campaign during this month too.

As envisaged by Department of Administrative Reforms and Public Grievances (DARPG), CBDT is aiming to achieve saturation of Swachhata in all offices. Since the beginning of the preparatory phase of the Special campaign, CBDT has identified around 505 sites across the country for conducting the cleanliness campaign. Further, the targets for weeding out of files, disposal of scrap, resolution of grievances and liquidation of pending references have also been identified. Progress of the campaign is being monitored on a daily basis and data is being uploaded on the SCPDM portal hosted by DARPG.

CBDT is using social media along with the conventional media to conduct outreach with public and highlight its efforts under the Swachhata campaigns. More than 700 posts have been posted/reposted on X by the official social media handles of the Income Tax Department, regional handles of Principal Chief Commissioner regions and the National Academy of Direct Taxes (NADT) to promote awareness for Swachhata campaigns. The campaign has also been amplified on other social media platforms of the Department.

The Special Campaign 3.0 is in full swing in CBDT and the Department is aiming to better its performance this year with respect to its achievement in earlier two Special Campaigns.

Direct Tax Collections for F.Y. 2023-24 up to 9th October, 2023 show an increase over comparable period of last year

Gross Direct Tax Collection higher by 17.95%

Direct Tax Collection (net of refunds) higher by 21.82%

Refunds amounting to Rs. 1.50 lakh crore issued during 1st April, 2023 to 09th October 2023.

Posted On: 10 OCT 2023 5:35PM by PIB Delhi

The provisional figures of Direct Tax collections up to 09th October, 2023 continue to register steady growth,

with gross collections at Rs. 11.07 lakh crore, which is 17.95% higher than the gross collections for the comparable period of last year.

Direct Tax collection, net of refunds, stands at Rs. 9.57 lakh crore which is 21.82% higher than the net collections for the comparable period of last year. This collection is 52.50% of the total Budget Estimates of Direct Taxes for F.Y. 2023-24.

So far as the growth rate for Corporate Income Tax (CIT) and Personal Income Tax (PIT) in terms of gross revenue collections is concerned, the growth rate for CIT is 7.30% while that for PIT is 29.53% (PIT only)/ 29.08% (PIT including STT).

After adjustment of refunds, the net growth in CIT collections is 12.39% and that in PIT collections is 32.51% (PIT only)/ 31.85% (PIT including STT).

Refunds amounting to Rs. 1.50 lakh crore have been issued during 1st April, 2023 to 09th October 2023.

Government of India Ministry of Finance Department of Revenue Central Board of Direct Taxes

New Delhi, 11th October, 2023

Income Tax Department Conducts Search and Seizure Operation In Jammu and Kashmir Income Tax Department conducted a search and seizure operation in the Kashmir Valley on a prominent business group, engaged in various sectors namely, Cement, Steel, Glass, Plywood, Real Estate, Tourism, Textiles and Healthcare, etc. on 09.10.2023. More than 40 premises were covered in Srinagar, Sopore, Budgam, Sonmarg, Pulwama areas of Kashmir Valley and at Delhi.

During the search operation, incriminating documents, hand written diaries, and digital devices have been seized. Variation in stock has also been noticed in the various factories and retail outlets. Evidence of undisclosed investments in immovable properties located in Kashmir Valley of more than Rs. 50 crore has also been found from various premises.

Investigations so far made, has shown that the group has been suppressing its taxable income by grossly under-reporting its sales in the cement sector by more than Rs. 60 crore over the past several years. In this regard, evidence in the form of cash vouchers and sales invoices has been seized, which is found to have not been recorded in the books of account. Similarly, evidence of undisclosed sales in the books of account exceeding Rs. 50 crore in textile and plywood sectors has also been found.

In the real estate business of the group, being carried out in Kashmir and Delhi, documents evidencing the receipt of on-money have been recovered. The Such suppression of receipts in the books of account are estimated to be about Rs. 10 crore.

The key person of the group has admitted the above modus-operandi being followed for generation of undisclosed income.

The search action has resulted in seizure of unaccounted cash exceeding Rs.1.70 crore. In addition, unaccounted bullion worth Rs. 16 lakh has also been seized.

Further investigations are in progress.

(Surabhi Ahluwalia)

Pr. Commissioner of Income Tax (Media & Technical Policy) & Official Spokesperson, CBDT

Government of India Ministry of Finance Department of Revenue Central Board of Direct Taxes

New Delhi, 16th October, 2023

Income Tax Department conducts searches in Karnataka and AP&TS region

Income tax department conducted a search & seizure action in the case of some Government Contractors, Real

estate developers and their Associates on 12.10.2023. About 55 premises were covered during the search action in the State of Karnataka, AP, Telangana and New Delhi.

A large number of incriminating evidences in the form of loose sheets, hard copy of documents and digital data have been found and seized. The **modus-operandi** of tax evasion detected indicates that these contractors were involved in reducing their income by inflation of expenses by booking **bogus purchases, non-genuine claim of expenses with sub-contractors and claiming ineligible expenses.** The irregularities detected in utilization of contract receipts, has resulted in generation of huge unaccounted cash and creation of undisclosed assets.

Evidence indicating inflation of expenses in the form of discrepancies in Goods Receipt Note (GRN) validation have been unearthed during the search. Evidences of huge discrepancies in documentation related to purchases booked and actual physical transport of goods have also been unearthed, with regard to **bogus transactions with sub-contractors**, some of whom were also covered during the search. Further, these contractors were also involved in booking expenses for nonbusiness purposes. Evidences of claim of liaison expenses have also been found and seized.

Large scale unaccounted cash transactions, which are not found recorded in the books of account, have also been found during the search, from the premises of assessees, sub-contractors, and associates including certain cash handlers.

The search has resulted in seizure of unaccounted cash of approximately Rs.94 crore and gold and diamond jewellery of over Rs.8 crore, aggregating to more than Rs. 102 crore. Further, a cache of about 30 luxury wrist watches of foreign make were unearthed from the premises of a private salaried employee, not engaged in the business of wrist watches.

Further investigations are in process.

(Surabhi Ahluwalia)
Pr. Commissioner of Income Tax
(Media & Technical Policy) & Official Spokesperson, CBDT

INDIRECT TAX

Recommendations of 52nd GST Council Meeting

GST Council recommends amendments in conditions of appointment of President and Member of the proposed GST Appellate Tribunals regarding eligibility and age

GST Council recommends nil rate for food preparation of millet flour in powder form and containing at least 70% millets by weight when sold in loose form, and 5% if sold in pre-packaged and labelled form

GST Council recommends to keep Extra Neutral Alcohol (ENA) used for manufacture of alcoholic liquor for human consumption outside GST

GST Council recommends reducing GST on molasses from 28% to 5% in relief to cane farmers for faster clearance of dues and to reduce cost of manufacturing cattle feed

To promote tourism, GST Council recommends conditional and limited duration IGST exemption to foreign flag foreign going vessel when it converts to coastal run

Posted On: 07 OCT 2023 4:58PM by PIB Delhi

The 52nd GST Council met under the Chairpersonship of Union Minister for Finance & Corporate Affairs Smt. Nirmala Sitharaman in New Delhi today. The meeting was also attended by Union Minister of State for Finance Shri Pankaj Chaudhary, Chief Ministers of Goa and Meghalaya holding finance portfolio, besides Finance Ministers of States & UTs (with legislature) and senior officers of the Ministry of Finance & States/ UTs.

The GST Council inter-alia made the following recommendations relating to changes in GST tax rates, measures for facilitation of trade and measures for streamlining compliances in GST.

A. Recommendations relating to GST rates on goods and services

I. Changes in GST rates of goods

1. GST rates on "Food preparation of millet flour in powder form, containing at least 70% millets by weight", falling under HS 1901, with effect from date of notification, have been prescribed as:

   a. 0% if sold in other than pre-packaged and labelled form

   b. 5% if sold in pre-packaged and labelled form

2. To clarify that imitation zari thread or yarn made out of metallised polyester film /plastic film, falling under HS 5605, are covered by the entry for imitation zari thread or yarn attracting 5% GST rate. However, no refund will be allowed on polyester film (metallised) /plastic film on account of inversion.

3. Foreign going vessels are liable to pay 5% IGST on the value of the vessel if it converts to coastal run. GST Council recommends conditional IGST exemption to foreign flag foreign going vessel when it converts to coastal run subject to its reconversion to foreign going vessel in six months.

II. Other changes relating to Goods

1. GST Council recommended to keep Extra Neutral Alcohol (ENA) used for manufacture of alcoholic liquor for human consumption outside GST. Law Committee will examine suitable amendment in law to exclude ENA for use in manufacture of alcoholic liquors for human consumption from ambit of GST.

2. To reduce GST on molasses from 28% to 5%. This step will increase liquidity with mills and enable faster clearance of cane dues to sugarcane farmers. This will also lead to reduction in cost for manufacture of cattle feed as molasses is also an ingredient in its manufacture.

3. A separate tariff HS code has been created at 8 digit level in the Customs Tariff Act to cover rectified spirit for industrial use. The GST rate notification will be amended to create an entry for ENA for industrial use attracting 18% GST.

III. Changes in GST rates of services

1. Entries at Sl. No. 3 and 3A of notification No. 12/2017-CTR dated 28.06.2017 exempts pure and composite services provided to Central/State/UT governments and local authorities in relation to any function entrusted to Panchayat/ Municipality under Article 243G and 243W of the Constitution of India. The GST Council has recommended to retain the existing exemption entries with no change.

2. Further, the GST Council has also recommended to exempt services of water supply, public health, sanitation conservancy, solid waste management and slum improvement and upgradation supplied to Governmental Authorities.

IV. Other changes relating to Services

1. To clarify that job work services for processing of barley into malt attracts GST @ 5% as applicable to "job work in relation to food and food products" and not 18%.

2. With effect from 1st January 2022, liability to pay GST on bus transportation services supplied through Electronic Commerce Operators (ECOs) has been placed on the ECO under section 9(5) of CGST Act, 2017. This trade facilitation measure was taken on the representation of industry association that most of the bus operators supplying service through ECO owned one or two buses and were not in a position to take registration and meet GST compliances. To arrive at a balance between the need of small operators for ease of doing business and the need of large organized players to take ITC, GST Council has recommended that bus operators organised as companies may be excluded from the purview of section 9(5) of CGST Act, 2017. This would enable them to pay GST on their supplies using their ITC.

3. To clarify that District Mineral Foundations Trusts (DMFT) set up by the State Governments across the country in mineral mining areas are Governmental

Authorities and thus eligible for the same exemptions from GST as available to any other Governmental Authority.

4. Supply of all goods and services by Indian Railways shall be taxed under Forward Charge Mechanism to enable them to avail ITC. This will reduce the cost for Indian Railways.

B. Measures for facilitation of trade:

i) Amnesty Scheme for filing of appeals against demand orders in cases where appeal could not be filed within the allowable time period:

The Council has recommended providing an amnesty scheme through a special procedure under section 148 of CGST Act, 2017 for taxable persons, who could not file an appeal under section 107 of the said Act, against the demand order under section 73 or 74 of CGST Act, 2017 passed on or before the 31st day of March, 2023, or whose appeal against the said order was rejected solely on the grounds that the said appeal was not filed within the time period specified in sub-section (1) of section 107. **In all such cases, filing of appeal by the taxpayers will be allowed against such orders upto 31st January 2024,** subject to the condition of payment of an amount of pre-deposit of 12.5% of the tax under dispute, out of which at least 20% (i.e. 2.5% of the tax under dispute) should be debited from Electronic Cash Ledger. **This will facilitate a large number of taxpayers, who could not file appeal in the past within the specified time period.**

ii) Clarifications regarding taxability of personal guarantee offered by directors to the bank against the credit limits/loans being sanctioned to the company and regarding taxability of corporate guarantee provided for related persons including corporate guarantee provided by holding company to its subsidiary company:

The Council has inter alia recommended to:

(a) issue a circular clarifying that when no consideration is paid by the company to the director in any form, directly or indirectly, for providing personal guarantee to the bank/ financial institutes on their behalf, the open market value of the said transaction/ supply may be treated as zero and hence, no tax to be payable in respect of such supply of services.

(b) to insert sub-rule (2) in Rule 28 of CGST Rules, 2017, to provide for taxable value of supply of corporate guarantee provided between related parties as one per cent of the amount of such guarantee offered, or the actual consideration, whichever is higher.

(c) to clarify through the circular that after the insertion of the said sub-rule, the value of such supply of services of corporate guarantee provided between related parties would be governed by the proposed sub-rule (2) of rule 28 of CGST Rules, 2017, irrespective of whether full ITC is available to the recipient of services or not.

iii) Provision for automatic restoration of provisionally attached property after completion of one year:

The Council has recommended an amendment in sub-rule (2) of Rule 159 of CGST Rules, 2017 and FORM GST DRC-22 to provide that the order for provisional attachment in FORM GST DRC-22 shall not be valid after expiry of one year from the date of the said order. This will facilitate release of provisionally attached properties after expiry of period of one year, without need for separate specific written order from the Commissioner.

iv) Clarification on various issues related to Place of Supply: The Council has recommended to issue a Circular to clarify the place of supply in respect of the following supply of services:

(i) Supply of service of transportation of goods, including by mail or courier, in cases where the location of supplier or the location of recipient of services is outside India;

(ii) Supply of advertising services;

(iii) Supply of the co-location services.

v) Issuance of clarification relating to export of services-:

The Council has recommended to issue a circular to clarify the admissibility of export remittances received in Special INR Vostro account, as permitted by RBI, for the purpose

of consideration of supply of services to qualify as export of services in terms of the provisions of sub-clause (iv) of clause (6) of section 2 of the IGST Act, 2017.

vi) Allowing supplies to SEZ units/ developer for authorised operations for IGST refund route by amendment in Notification 01/2023-Integrated Tax dated 31.07.2023:

The Council has recommended to amend Notification No. 1/2023-Integrated Tax dated 31.07.2023 w.e.f. 01.10.2023 so as to allow the suppliers to a Special Economic Zone developer or a Special Economic Zone unit for authorised operations to make supply of goods or services (except the commodities like pan masala, tobacco, gutkha, etc. mentioned in the Notification No. 1/2023-Integrated Tax dated 31.07.2023) to the Special Economic Zone developer or the Special Economic Zone unit for authorised operations on payment of integrated tax and claim the refund of tax so paid.

C. Other measures pertaining to law and procedures:

i) Alignment of provisions of the CGST Act, 2017 with the provisions of the Tribunal Reforms Act, 2021 in respect of Appointment of President and Member of the proposed GST Appellate Tribunals:

The Council has recommended amendments in section 110 of the CGST Act, 2017 to provide that:

- an advocate for ten years with substantial experience in litigation under indirect tax laws in the Appellate Tribunal, Central Excise and Service Tax Tribunal, State VAT Tribunals, by whatever name called, High Court or Supreme Court to be eligible for the appointment as judicial member;
- the minimum age for eligibility for appointment as President and Member to be 50 years;
- President and Members shall have tenure up to a maximum age of 70 years and 67 years respectively.

ii) Law amendment with respect to ISD as recommended by the GST Council in its 50th meeting:

GST Council in its 50th meeting had recommended that ISD (Input Service Distributor) procedure as laid down in Section 20 of the CGST Act, 2017 may be made mandatory prospectively for distribution of ITC in respect of input services procured by Head Office (HO) from a third party but attributable to both HO and Branch Office (BO) or exclusively to one or more BOs. The Council has now recommended amendments in Section 2(61) and section 20 of CGST Act, 2017 as well amendment in rule 39 of CGST Rules, 2017 in respect of the same.

Note: The recommendations of the GST Council have been presented in this release containing major item of decisions in simple language for information of the stakeholders. The same would be given effect through the relevant circulars/ notifications/ law amendments which alone shall have the force of law.

Central Board of Indirect Taxes and Customs' (CBIC) Special Campaign 3.0 in full swing

A nation-wide cleanliness drive underway in all CBIC field offices

1,038 sites identified for conducting Cleanliness Campaigns

Around 44,000 physical files and 23,000 e-files identified for review

Posted On: 09 OCT 2023 2:39PM by PIB Delhi

With the vision of giving a heartfelt tribute of 'A Clean India' to Mahatma Gandhi, Central Board of Indirect Taxes and Customs (CBIC) is participating with great vigour in the Special Campaign on Disposal of Pending Matters (SCDPM) 3.0, launched on 15th Sept. 2023 for institutionalising Swachhata (cleanliness) and minimising pendency of identified items of work viz., VIP references, Public Grievances, Public Grievance appeals etc.

CBIC, along with its field offices across India, strives to dispose of the identified references/ issues during the campaign phase 2nd - 31st October, 2023.

As on 9th Oct. 2023, 31 VIP references, 933 Public Grievances, 357 Public Grievance appeals have been identified for disposal during the campaign. A nation-wide cleanliness drive is also planned across all field offices of CBIC. Till date, 1,038 sites have already been identified for conducting Cleanliness Campaigns during the campaign period. Further, around 44,000 physical files and 23,000 e-files have been identified for review. Another identified area of focus is disposal of old/unused office equipment and scrap material and thus freeing up additional space. The additional space so created will be put up for productive use.

The achievements along with photos of activities undertaken during the campaign phase will be shared through SCDPM 3.0 portal. CBIC remains committed to ensuring cleanliness and enhancing the quality of public spaces maintained by it. TB

NOTIFICATIONS & CIRCULARS

Direct Tax

Circular
Direct Tax
Circular No. 17/2023-Direct Tax
Dated 09th October 2023

Circular No. 17/2023 :Order under section 119 of the Income-tax Act, 1961

Audit report in the case of a fund or trust or institution or any university or other educational institution or any hospital or other medical institution, under clause (b) of the tenth proviso to clause (23C) of section 10, or sub-clause (ii) of clause (b) of sub-section (I) of section 12A of the Income-tax Act, 1961 (the Act), as the case may be, is required to be furnished in Form No. IOB I Form No. 10BB. 2. Representations have been received regarding difficulties in filling details of persons who have made a 'substantial contribution to the trust or institution', that is to say, any person whose total contribution up to the end of the relevant previous year exceeds fifty thousand rupees (as referred to in section 13(3)(b) of the Act). 3. The matter has been examined with reference to the issue raised in paragraph 2 and it is hereby stated that for the purposes of providing details in (i) Form No. IOB in the Annexure, in row 41 ; and (ii) Form No. 10BB in the Annexure, in row 28, for the assessment year 2023-24: (a) the aforesaid details (that is, of persons making substantial contribution) may be given with respect to those persons whose total contribution during the previous year exceeds fifty thousand rupees; (b) details of relatives of such person, as referred to In (a) above may be provided, if available. (c) details of concerns in which such person, as referred to in (a) above, has substantial interest may be provided, if available.

For more details, please follow,

https://incometaxindia.gov.in/communications/circular/circular-17-2023.pdf

Notifications
Direct Tax
Notification No. 88/2023-Direct Tax
Dated 10th October 2023

The Central Government Provides Income-tax (Twenty-fourth Amendment) Rules, 2023.

G.S.R. 728(E).— In exercise of the powers conferred by clause (vii) of sub-section (1), clause (c) subsection (5) and sub-section (6A) of section 139A read with section 295 of the Income-tax Act, 1961 (43 of 1961), the Central Board of Direct Taxes hereby makes the following rules further to amend the Income-tax Rules, 1962, namely:––

1. Short title and commencement. –– (1) These rules may be called the Income-tax (Twenty-fourth Amendment) Rules, 2023.

(2) They shall come into force from the date of their publication in the Official Gazette.

2. In the Income-tax Rules, 1962, (hereinafter referred to as the principal rules) in rule 114B,––

(a) in the second proviso, for the words "Provided further that any person", the words "Provided further that any person, not being a company or a firm," shall be substituted;

(b) after second proviso, the following proviso shall be inserted, namely: –– "Provided also that a foreign company who, ––

(i) does not have any income chargeable to tax in India; and

(ii) does not have a permanent account number, and enters into any transaction referred to at Sl. No. 2 or 12 of the Table, in an IFSC banking unit, shall make a declaration in Form No. 60:";

(c) in the Explanation, clause (1) shall be re-numbered as (1A) and before the said clause as so re-numbered, the following clause shall be inserted, namely: ––

"(1) "IFSC banking unit" means a financial institution defined under clause (c) of sub-section (1) of section 3 of the International Financial Services Centres Authority Act, 2019 (50 of 2019), that is licensed or permitted by

the International Financial Services Centres Authority to undertake permissible activities under the International Financial Services Centres Authority (Banking) Regulations, 2020;";

3. In the principle rules, in rule 114BA, the following shall be inserted at the end, namely:–– "Provided that the provisions of this rule shall not apply in a case,––

(a) where the person, making the deposit or withdrawal of an amount otherwise than by way of cash as per clause (a) or (b), or opening a current account not being a cash credit account as per clause (c) of this rule, is a non-resident (not being a company) or a foreign company;

(b) the transaction is entered into with an IFSC banking unit; and

(c) such non-resident (not being a company) or the foreign company does not have any income chargeable to tax in India.

Explanation. –– For the purposes of this rule, "IFSC banking unit" shall have the same meaning as assigned to it in clause (1) of the Explanation to rule 114B.";

4. In the principle rules, in rule 114BB, after the proviso, the following shall be inserted, namely:–– "Provided further that the provisions of this sub-rule shall not apply in a case,––

(a) where the person, making the deposit or withdrawal of an amount otherwise than by way of cash as per Sl. No. 1 or Sl. No. 2 of column (2), or opening a current account not being an cash credit account as per Sl. No. 3 of column (2) of the Table, is a non-resident (not being a company) or a foreign company;

(b) the transaction is entered into with an IFSC banking unit; and

(c) such non-resident (not being a company) or the foreign company does not have any income chargeable to tax in India.

Explanation. –– For the purposes of this sub-rule, "IFSC banking unit" shall have the same meaning as assigned to it in clause (1) of the Explanation to rule 114B.";

For more details, please follow

https://incometaxindia.gov.in/communications/notification/notification-88-2023.pdf

Notifications
Customs
Notification No. 59/2023-CUSTOMS
Dated 13th October 2023.

The Central Government Seeks to amend notification No. 55/2022-Customs, dated 31.10.2022, in order to extend the currently applicable export duty of 20% on Parboiled rice up to 31.03. 2024.

G.S.R. .....(E). -In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962), the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby makes the following further amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 55/2022-Customs, dated the 31stOctober 2022, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 796(E), dated the 31st October 2022, namely:-

In the said notification, in the Annexure, in the entry against Condition number 5, for the figures, letters and words "16thday of October, 2023", the figures, letters and words "1st day of April, 2024" shall be substituted.

For more details, please follow

https://taxinformation.cbic.gov.in/view-pdf/1009887/ENG/Notifications

Notifications
Customs
Notification No. 75/2023-CUSTOMS (N.T)
Dated 13th October 2023.

The Central Government fixes of Tariff Value of Edible Oils, Brass Scrap, Areca Nut, Gold and Silver- Reg.

S.O. ... (E). – In exercise of the powers conferred by sub-section (2) of section 14 of the Customs Act, 1962 (52 of 1962), the Central Board of Indirect Taxes & Customs, being satisfied that it is necessary and expedient to do so, hereby makes the following amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 36/2001-Customs (N.T.), dated the 3rd August, 2001, published in the Gazette of India, Extraordinary, Part-II, Section-3, Sub-section (ii), vide

number S. O. 748 (E), dated the 3rd August, 2001, namely:

TABLE - I

Sl. No.	Chapter/ heading/ sub-heading/tariff item	Description of goods	Tariff value (US $Per Metric Tonne)
(1)	(2)	(3)	(4)
1	1511 10 00	Crude Palm Oil	8593
2	1511 90 10	RBD Palm Oil	863
3	1511 90 90	Others – Palm Oil	861
4	1511 10 00	Crude Palmolein	868
5	1511 90 20	RBD Palmolein	871
6	1511 90 90	Others – Palmolein	870
7	1507 10 00	Crude Soya bean Oil	972
8	7404 00 22	Brass Scrap (all grades)	4682

2. This notification shall come into force with effect from the 14th October 2023.

For more details, please follow

https://taxinformation.cbic.gov.in/view-pdf/1009888/ENG/Notifications

Notifications
Customs
Notification No. 10/2023-CUSTOMS (ADD)
Dated 12th October 2023.

The Central Government Seeks to impose Anti-dumping duty on imports of flax yarn of below 70 lea count originating in or exported from China PR.

G.S.R. ...(E).-Whereas, the designated authority, vide notification No. 7/03/2023-DGTR, dated the 31st March, 2023, published in the Gazette of India, Extraordinary, Part I, Section 1, dated the 31stMarch, 2023, had initiated the review in terms of sub-section (5) of section 9A of the Customs Tariff Act, 1975 (51 of 1975) (hereinafter referred to as the Customs Tariff Act), read with rule 23 of the Customs Tariff (Identification, Assessment and Collection of Anti-dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995, in the matter of continuation of anti-dumping duty on imports of "flax yarn of below 70 lea count" (hereinafter referred to as the subject goods) falling under Tariff Sub-headings 5306 10 or 5306 20 of the First Schedule to the Customs Tariff Act, originating in or exported from China PR (hereinafter referred to as the subject country) initially imposed, vide notification of the Government of India, Ministry of Finance (Department of Revenue), No. 53/2018-Customs (ADD), dated the 18th October, 2018, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 1044(E), dated the 18thOctober, 2018.

And whereas, in the matter of review of anti-dumping duty on imports of the subject goods, originating in or exported from the subject countries, the designated authority in its final findings, published, vide notification No. 7/03/2023-DGTR, dated the 16thJuly, 2023, published in the Gazette of India, Extraordinary, Part-I, Section 1, dated the 17thJuly, 2023, has come to the conclusion that, -

(i) there is likelihood of continuation or recurrence of dumping and injury in case the anti-dumping duty in force is allowed to cease at this stage;

(ii) the likelihood analysis shows that significant exports of the subject goods from the subject country to third countries other than India are at dumped and injurious prices;

(iii) there is significant price attractiveness to make exports to India as price to third countries are below the price to India;

and has recommended continued imposition of the anti-dumping duty on imports of the subject goods, originating in or exported from the subject country, in order to remove injury to the domestic industry.

Now, therefore, in exercise of the powers conferred by sub-sections (1) and (5) of section 9A of the Customs Tariff Act, 1975 read with rules 18, 20 and 23 of the Customs Tariff (Identification, Assessment and Collection of Anti-dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995 and in supersession of the notification of the Government of India, Ministry of Finance (Department of Revenue), No. 53/2018-Customs (ADD), dated the 18th October, 2018, published in the Gazette of

India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 1044(E), dated the 18th October, 2018, the Central Government, after considering the aforesaid final findings of the designated authority, hereby imposes on the subject goods, the description of which is specified in column (3) of the Table below, falling under Tariff Item of the First Schedule to the Customs Tariff Act as specified in the corresponding entries in column (2), originating in the country as specified in the corresponding entries in column (4), exported from the country as specified in the corresponding entries in column (5), produced by the producers as specified in the corresponding entries in column (6), an anti-dumping duty at the rate equal to the amount as indicated in the corresponding entries in column (7), in the unit as specified in the corresponding entries in column (8), namely :

S. No	Tariff Item	Description of Goods	Country of Origin	Country of Export	Producer/ exporter	Duty Amount	Unit
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
1	5 3 0 6 1 0 , 530620	Flax Yarn of below 70 Lea Count (or below 42 nm)	China PR	Any including China PR	Jiangsu Jinyuan Flax Co., Ltd./ Zhejiang Jinyuan Flax Co., Ltd.,/ Zhejiang Kingdom Linen Co., Ltd.	2.42	USD/KG
2	5 3 0 6 1 0 , 530620	Flax Yarn of below 70 Lea Count (or below 42 nm)	China PR	Any including China PR	Yixing Sunshine Linen Textile Co., Ltd.	2.29	USD/KG
3	5 3 0 6 1 0 , 530620	Flax Yarn of below 70 Lea Count (or below 42 nm)	China PR	Any including China PR	Any other than the producers at Sl. No. 1-2	4.83	USD/KG

2. The anti-dumping duty imposed under this notification shall be levied for a period of five years (unless revoked, superseded or amended earlier) from the date of publication of this notification in the Official Gazette and shall be payable in Indian currency.

For more details, Please follow

https://taxinformation.cbic.gov.in/view-pdf/1009886/ENG/Notifications

Notifications
Customs
Notification No. 58/2023-CUSTOMS
Dated 09th October 2023.

The Central Government Seeks to amend notification no. 152/2009-Customs, dated 31.12.2009 in order to implement Bilateral Safeguard measure on imports of "Ferro Molybdenum" from the Republic of Korea under India-Korea Comprehensive Economic Partnership Agreement (Bilateral Safeguard Measures) Rules, 2017 on the basis of DGTR recommendation.

G.S.R .....(E).—Whereas, in the matter concerning imports of "Ferro Molybdenum"(hereinafter referred to as the subject goods) falling under tariff item 7202 70 00 of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) (hereinafter referred to as the Customs Tariff Act), the Directorate General of Trade Remedies (hereinafter referred to as the Authority) initiated an Bilateral Safeguard investigation in terms of the India-Korea Comprehensive Economic Partnership Agreement (Bilateral Safeguard Measures) Rules, 2017 (hereinafter referred to as the rules) vide initiation notification under F.No.22/03/2022-DGTR, dated the 30thSeptember, 2022published in the Gazette of India, Extraordinary, Part I, Section 1, dated the30thSeptember, 2022in order to determine whether the imports of the subject goods from Korea RP constitute increased imports and whether the increased imports have caused or are threatening to cause serious injury to the domestic industry;

And whereas, in the final findings of the Bilateral Safeguard investigation issued vide F. No. 22/03/2022-DGTR, dated the 29th May, 2023, published in the Gazette of India, Extraordinary, Part I, Section 1, dated the 29thMay, 2023, the Authority has concluded that-

(i) imports of the subject goods from Republic of Korea have increased and constitute "increased imports" within the meaning of the rules and India-Korea Comprehensive Economic Partnership Agreement;

(ii) the increased imports have caused serious injury;

(iii) there exists a causal link between the increased

imports and serious injury to the domestic industry;

and recommended imposition of bilateral safeguard measure of increasing the rate of customs duty on subject goods originating in Korea RP and imported into India as specified in the aforesaid final findings, in order to remove injury to the domestic industry. Now, therefore, in exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962) read with rule 11 of the said rules, the Central Government, on being satisfied that it is necessary in the public interest so to do, after considering the aforesaid final findings of the designated authority, hereby makes the following further amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No.152/2009-Customs, dated the 31stDecember,

2009, published in the Gazette of India, vide number G.S.R. 943 (E), dated the 31stDecember, 2009, namely:-

In the said notification, -

(a)in the Table, after serial number 529 and the entries relating thereto, the following serial numbers and entries shall be inserted, namely: -

(1)	(2)	(3)	(4)
"529A	7202 (except 720260, 720270)	All Goods	0.00
"529B	720270	Ferromolybdenum	5.00
"529C	720270	Ferromolybdenum	3.75

(b) after the second proviso below the Table, the following proviso shall be inserted, namely: -

"Provided also that, to give effect to the bilateral safeguard measure, as recommended by the Director General of Trade Remedies, -

(i) nothing contained in serial number 528and entries relating thereto in the said table shall have effect up to and inclusive of the 9thday of October, 2025;

(ii) the entries contained in serial number 529A in the said table shall have effect only up to and inclusive of the 9thday of October, 2025;

(iii) the entries contained in serial number 529B in the said table shall have effect only up to and inclusive of the 9thday of October, 2024; and

(iv) the entries contained in serial number 529C in the said table shall have effect only from the 10thday of October, 2024to the 9thday of October, 2025(both days inclusive);

unless revoked, superseded or amended earlier

2. This notification shall come into force onthe10thday of October 2023.

For more details, please follow

https://taxinformation.cbic.gov.in/view-pdf/1009884/ENG/Notifications

Notifications
Central Tax
Notification No. 74/2023-Customs (N.T)
Dated 6th October 2023

The Central Government Seeks to Amend Notification No. 100/2017-Customs (N.T.) dated 27.10.2017 - Notification of AFS at Village Khajod, Taluka Majura, Distt. Surat.

G.S.R. 726(E). —In exercise of the powers conferred by clause (aa) of sub-section (1) read with sub-section (2) of section 7 of the Customs Act, 1962 (52 of 1962), the Central Board of Indirect Taxes and Customs hereby makes the following further amendment in the notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 100/2017-Customs (N.T.) dated the 27th October, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R 1347 (E), dated the 27th October, 2017, namely: -

In the said notification, in the Table, the following item and entries shall be inserted, namely: —

S.No	State/Union Territory	Place	Purpose.
(1)	(2)	(3)	(4)
"2	Gujarat	Village Khajod, Taluka Majura, District Surat	Unloading of imported goods and loading of export goods" *

* Explanation-For the purposes of this notification, ''goods'' at S.No. 2 means diamonds, precious and semi-precious stones, pearls, jewellery made of gold or any other precious metal, with or without studding, industrial diamonds including powders, both natural and synthetic and synthetic stones

For more details, please follow

https://taxinformation.cbic.gov.in/view-pdf/1009885/ENG/Notifications

Notifications
Customs
Notification No. 78/2023-CUSTOMS (N.T)
Dated 5th October 2023

The Central Government Fixes Exchange Rate Notification No. 68/2023-Cus (NT) dated 21.09.2023-reg.

In exercise of the powers conferred by section 14 of the Customs Act, 1962 (52 of 1962), and in supersession of the Notification No. 61/2023-Customs(N.T.), dated 21st September, 2023 except as respects things done or omitted to be done before such supersession, the Central Board of Indirect Taxes and Customs hereby determines that the rate of exchange of conversion of each of the foreign currencies specified in column (2) of each of Schedule I and Schedule II annexed hereto, into Indian currency or vice versa, shall, with effect from 7th September, 2023, be the rate mentioned against it in the corresponding entry in column (3) thereof, for the purpose of the said section, relating to imported and export goods.

Schedule I

Sl. No.	Foreign Currency	Rate of exchange of one unit of foreign currency equivalent to Indian rupees	
1	2	3	
		(a)	(b)
		(For Imported Goods)	(For Export Goods)
1.	Australian Dollar	54.30	51.95
2.	Bahraini Dinar	228.25	214.25
3.	Canadian Dollar	61.70	59.70
4.	Chinese Yuan	11.50	11.25
5.	Danish Kroner	11.95	11.55
6.	EURO	89.25	86.10
7.	Hong Kong Dollar	10.80	10.45
8.	Kuwaiti Dinar	277.75	261.20
9.	New Zealand Dollar	50.90	48.55
10.	Norwegian Kroner	7.70	7.45
11.	Pound Sterling	102.95	99.55
12.	Qatari Riyal	23.55	22.15
13.	Saudi Arabian Riyal	22.90	21.55
14.	Singapore Dollar	61.80	59.85
15.	South African Rand	04.45	04.20
16.	Swedish Kroner	07.65	07.45
17.	Swiss Franc	92.85	89.40
18.	Turkish Lira	03.10	02.95
19.	UAE Dirham	23.40	22.00
20.	US Dollar	84.15	82.40

Schedule II

Sl. No.	Foreign Currency	Rate of exchange of 100 unit of foreign currency equivalent to Indian rupees	
1	2	3	
		(a)	(b)
		(For Imported Goods)	(For Export Goods)
1.	Japanese Yen	56.95	55.20
2.	Korean Won	06.40	06.00

For more details, please follow

https://taxinformation.cbic.gov.in/view-pdf/1009883/ENG/Notifications

JUDGEMENT INDIRECT TAX

Intent to evade payment of tax is mandatory for invoking the proceeding u/s 129(3) and 130: HC

Facts of the case -

Shyam Sel and Power Ltd. v. State of U.P - [2023] (Allahabad)

The petitioner sold goods to a person registered in Uttar Pradesh and transported the same. The goods accompanied tax invoice, e-way bill, and consignment note. The goods were intercepted during transportation and on verification, it was found that the e-way bill had been cancelled by the purchasing dealer, whereupon, goods were seized and GST MOV-07 was prepared seeking the response from the petitioner.

In response, the petitioner submitted that all e-way bills were duly filled up and the petitioner was not aware about the cancellation of e-way bills by the purchasing dealer, and the goods sold were accompanying genuine documents. Dissatisfied by the response, an order was passed under section 129(3) of the CGST Act imposing a penalty and further appeal was also rejected.

Decision of the case :

- It is held by HC that, for invoking the proceeding under section 129(3) of the CGST Act, section 130 of the CGST Act was required to be read together, where the intent to evade payment of tax is mandatory but while issuing notice or while passing the order of detention, seizure or demand of penalty, tax, no such intent of the petitioner was observed in the present case.

- It is also held that once the dealer has intimated the attending and mediating circumstances under which e-way bill of the purchasing dealer was cancelled, it was a minor breach. Once the authorities have not observed that there was intent to evade payment of tax, proceedings under Section 129 of the CGST Act ought not to have been initiated, but it could be done under Section 122 of the CGST Act.

Writ petition filed against denial of ITC claim to be rejected *since petitioner didn't reply & appear on date of hearing: HC*

Facts of the case -

Ansil Ibrahim v. Assistant Commissioner - [2023] (Kerala)

In the present case, the Assessing Authority denied the claim of input tax credit of the petitioner. The interest and penalty was also levied since the Assessing Authority verified the input tax credit as per GSTR-2A and return as per GSTR-3B for the tax period 2017-18. The petitioner filed writ petition against the denial of credit.

Decision of the case :

- The Honorable High Court noted that the department issued notice to the petitioner to show cause why credit should not be denied but the petitioner did not appear in pursuance of the show cause notice nor did he provide any document or evidence to discharge his burden under section 155 of the GST Act.

- Therefore, the Assessing Authority had no other material before them except Form GSTR-2A and GSTR-3B since the petitioner himself had given up his right to prove his claim for the input tax credit. Thus, it was held that Court cannot help such an assessee by entertaining this writ petition and dismissed the petition.

Madras HC set aside notice in Form GST MOV-07 issued by authorities beyond statutory limitation period of seven days

Facts of the case -

Tvl. V. V. Iron and Steels v. State Tax Officer - [2023] (Madras)

The goods and conveyance of petitioner were intercepted and order for physical verification/inspection of goods and documents were issued. The petitioner filed writ petition

against the order and contended that the notice in Form GST MOV-07 was received beyond statutory period of limitation.

Decision of the case :

- The Honorable High Court noted that the notice ought to have been issued to petitioner within seven days on date of detention/seizure of goods/conveyance. The issuance of notice within seven days should be calculated from date on which seizure was to be effected and not from following date.

- However, in the present case, the notice was dispatched through e-mail on 7-9-2023 after expiry of limitation. Therefore, it was held that notice was liable to be quashed department was directed to release goods/conveyance of petitioner.

Allahabad HC set aside penalty order where assessee was able to generate e-way bills with cancelled GSTIN

Facts of the case -

Meera Tent Cloth Supplies v. Additional Commissioner - [2023] (Allahabad)

In the present case, the goods in transit were intercepted and the department detained goods and vehicle on ground that petitioner's GSTIN was not found on website and it had been cancelled. Subsequently, notice was issued, determining value of goods and imposing tax liability with penalty. The petitioner challenged the penalty order and contended that the cancellation of registration was not communicated to petitioner.

Decision of the case :

- The Honorable High Court noted that the petitioner purchased the goods on the strength GSTIN number allotted to him and e-way bill was generated from the official portal. Moreover, the petitioner had obtained composition scheme and there could not be any tax evasion since benefit of ITC could not be availed. Therefore, the Court held that the impugned order demanding tax and penalty was liable to be quashed.

Allahabad HC quashed detention order levying penalty due to truck not on route of its destination

Facts of the case -

Om Prakash Kuldeep Kumar v. Additional Commissioner Grade-2 - [2023] (Allahabad)

In the present case, the goods in transit of petitioner were intercepted by GST authorities. During inspection of required documents, a seizure/detention order was issued on ground that truck was not on route of its destination and penalty was levied as there was intention to evade tax. The petitioner paid an amount under protest as demanded by authorities and filed appeal against the demand order but the same was also dismissed. Thereafter, it filed writ petition against the order.

Decision of the case :

- The Honorable High Court noted that in the instant case, interception and seizure of goods were not justified as documents accompanying goods were genuine. Moreover, there is no specific provision under GST Act requiring disclosure of route for transporting goods unlike earlier VAT Acts, which had such provision. The power of detention and seizure of goods could only be exercised when goods were not accompanied by genuine documents. Therefore, the Court held that the impugned order was to be quashed and cost of Rs. 5000 was to be paid by State to petitioner. TB

JUDGEMENT DIRECT TAX

Sec. 292B couldn't be invoked to cure a mistake of issuing notice in name of diff. entity: Delhi HC

Facts of the case -

AVS Infrabuild (P.) Ltd. V. Assistant Commissioner of Income-tax - [2023] (Delhi)

Assessing Officer (AO) passed an order under section 148A(d), and subsequently, the assessee received a notice under section 148, which was in the name of a different entity. In the meantime, the AO, by a letter intimated the assessee that the notice had been issued to it. He further passed a reassessment order on the assessee and issued a demand and penalty notice.

Assessee challenged the notice before the Delhi High Court.

Decision of the case :

- The Delhi High Court held that the notice issued under section 148 had various errors, namely incorrect name and PAN of the assessee, wrong assessment year and document identification number, which shows that the notice issued under section 148 does not concern the assessee.
- If these defects were excised, quite clearly, nothing would remain of the notice, and it would cease to be a notice bearing the imprint of section 148.
- According to a straightforward interpretation of section 148, the Assessing Officer (AO) must, before conducting an assessment, reassessment, or re-computation under section 147, serve the assessee with a notice, along with a copy of the order issued if deemed necessary under clause (d) of section 148A.
- Therefore, the reassessment proceedings can only commence once notice under section 148 is issued. It is a step AO must take before he assumes jurisdiction, inter alia, for reassessing the case.
- Insofar as the reliance placed on section 292B was concerned, a mistake, which can be corrected under section 292B, should be such that if excised, it does not change the tenor and scope of the documents/ proceedings referred to therein. Undoubtedly, there was a misstep on the part of AO since he has not assumed jurisdiction as per law.
- Therefore, the impugned notice issued under section 148, the reassessment order, notices of demand and penalty, and the order issued under section 148A(d) deserve to be quashed.

Sum received for giving up rights to buy a property is taxable under head capital gains: ITAT

Facts of the case -

Sukhwant Singh v. Income-tax Officer - [2023] (Chandigarh - Trib.)

The assessee entered into an agreement to purchase a property in 2005 and paid consideration of Rs. 14 lakhs. However, the seller could not transfer such property to the assessee and refunded Rs. 28 lakhs to the assessee in the year 2012 (relevant assessment year).

While furnishing the return of income for the relevant assessment year, the assessee considered the amount of Rs. 14 lacs as purchases and availed the indexation benefit, thereby offering such income to tax under the head of Capital Gains in accordance with the provisions of Section 45.

The Assessing Officer (AO) accepted the sale consideration of Rs. 28 lakhs and accepted the purchase value of Rs. 14 lakhs but assessed the difference of Rs. 14 lakhs straight away as income from other sources instead of Capital Gains. On appeal, CIT(A) upheld the order of AO. Aggrieved by the order, the assessee filed an appeal to the Tribunal.

Decision of the case :

- The Tribunal held that as per the contents of the

compromise agreement, the seller was unable to get the sale deed of said land executed in favour of the assessee, and both parties decided to settle their dispute without any litigation. For that purpose, both parties decided to abandon their respective claims, and the assessee agreed to forgo his right to buy the land. Consequently, the assessee was entitled to a payment of Rs. 28 lacs, and the original agreement to sell became null and void.

- In the instant case, the amount so received by the assessee was towards relinquishment of his rights to buy the property, and the same would qualify as property of any kind and, thus, a capital asset. Where such an asset is transferred by way of relinquishment, the compensation for such relinquishment so received is chargeable to tax under the head of "Capital gains", and the amount initially paid shall be treated as cost of acquisition for acquiring such rights.

- Therefore, the income was rightly offered to tax under the head of "Capital gains", and the same cannot be brought to tax under the head of "Income from other sources".

Excess stock can't be treated as undisclosed income if assessee identified diff. much prior to commencement of search

Facts of the case -

PCIT vs. Industrial Safety Products (P.) Ltd. - [2023] (Calcutta)

A search was conducted on the premises of the assessee's group companies. Assessing Officer (AO), while completing the assessment for the relevant assessment year, issued a show cause notice to the assessee, calling upon it to explain the under-valuation of physical stock.

In response, the assessee stated that the excess stock of leather found during the physical verification of inventory from January to February 2014 had been properly accounted for in the books for the financial year 2014-15, and the same had also been disclosed.

Rejecting the explanation offered, AO treated under-valued stock as undisclosed income.

On appeal, the CIT(A) deleted the additions made by AO. Aggrieved-AO filed an appeal to Calcutta High Court.

Decision of the case :

- The High Court held that no material had been brought on record by the AO to show that during the search, the authorized officer had conducted a physical inspection of the stock, because of which excess quantities of raw leather were detected. Consequently, additions were made towards undisclosed stock.

- It was found that well before the search, the assessee had internally conducted a stock-taking exercise and detected the discrepancy in stock, and the same was reported. Before the commencement of the search, the managing director had instructed the respective unit heads to reconcile the stocks and records and incorporate differences in the books for the said financial year.

- Further, the assessee is a corporate body that is required to maintain and prepare its accounts in conformity with the provisions of the Companies Act. The accounts must be audited, and the auditor must furnish his report in the manner prescribed. After taking note of the auditor's report as well as the stock inspection report, it was found that such an inspection report was prepared at the instance of the assessee as a matter of internal control, and the same was drawn up much before the date of search.

- Therefore, the difference in stocks had been identified by the internal team of the assessee itself much prior to the commencement of the search. Accordingly, the action taken by AO wasn't correct.

No TP adjustment if interest cost was negligible in comparison to benefit derived by assessee from AE

Facts of the case -

Rubamim Ltd. v. Deputy Commissioner of Income-tax - [2023] (Ahmedabad - Trib.)

Assessee-company was engaged in the business of manufacturing a wide range of Cobalt, Nickel, and Copper. It was acquiring raw materials of Cobalt from the Democratic Republic of Congo (DRC). For seamless supply of raw materials, it set up a wholly-owned subsidiary in

UAE and an indirect subsidiary in DRC. The assessee had provided interest-free loans and advances to its AE in UAE.

Assessing Officer (AO) observed that the assessee had not submitted any evidence to substantiate that not charging interest on the loan given to AE could extract a better price for its supplies. Accordingly, he held that the action of the assessee in not charging interest on the loan given to its AE located in UAE was not in accordance with transfer pricing provisions. Thus, AO treated the transaction as an international transaction and worked out the arm's length price of interest.

On appeals, CIT (A) confirmed the adjustment made by AO. The aggrieved assessee filed an appeal to the Ahmedabad Tribunal.

Decision of the case :

- The Tribunal held that the associated enterprise based in UAE was purchasing cobalt concentrate for AE in DRC and supplying the assessee for its manufacturing activity. Thus, the question arose whether any adjustment was required under the transfer pricing provision for such interest erosion advances.

- In the present case, the transaction for advancing the interest-free loans to the associated enterprises had to be seen in the context of the benefit received by it from such associated enterprises. As such the transaction of interest-free loans/advances viz-a-viz the benefit received by the assessee were intrinsically linked, which has to be evaluated after aggregating both the transactions. The transaction of interest-free advances cannot be viewed without considering the benefit derived by the assessee from the associated enterprises.

- The interest cost appeared negligible when analyzing the notional interest added by the TPO under the transfer pricing adjustment with the benefit derived by the assessee. The interest cost was around approximately Rs. 30 lacs. In contrast, the gross import of material and export generated by the assessee was far more than the interest expenses after converting into Indian rupees.

- Therefore, the answer stands negative because the assessee got such huge business from its associated enterprises, which would not have been possible until the assessee had not incorporated a company in UAE and DRC. No adjustment under the transfer pricing provisions is required to be made with respect to the interest-free loans and advances by the assessee to its associated enterprises.

CIT(E) can't reject trust application merely due to inadvertent error of mismatch in name as appearing on PAN: ITAT

Facts of the case -

Shri Balkrishna Shudhhadwait Sthanik Mahasabha vs. CIT (Exemptions) - [2023] (Surat-Trib.)

The assessee applied for registration under section 12AB in Form No. 10AB in accordance with rule 17A. The assessee furnished the necessary details when applying electronically, including a copy of the original registration, trust deed, PAN and the activities with the audited financial statements for the last two financial years.

On perusal of details of the assessee in different documents, the Commissioner (Exemption) found that the assessee's name differed from the name mentioned in the certificate of registration and financial statements.

The Commissioner (Exemption) believed that the assessee had not furnished the required details and decided to dispose of the application based on material available on record. The matter reached the Surat Tribunal.

Decision of the case :

- The Tribunal held that the basic ground of rejection of the application under section 12AB was a mismatch in the name of the assessee vis-à-vis name shown in PAN. Such mistake may be unintentional as the registration number, PAN, and the assessee's object are not in dispute.

- The application of the assessee was rejected in a mechanical way. Assessee had duly filed copy of the PAN, registration certificate granted under the provisions of the Bombay Public Trust Act . The audited financial statement also mentioned the registration number and the name of the assessee trust and PAN. The trust deed also clearly mentioned the name of the assessee-trust.

- The assessee was not given an opportunity either to explain the mismatch or to get such a mismatch corrected. Thus, the assessee deserved one more opportunity to correct its name wherever required. Accordingly, the issue was restored to reconsider the registration of the assessee under section 12AB afresh and pass the order in accordance with the law.

Tax Calendar (Indirect Tax)

Due Dates	Returns
Oct 18th, 2023	CMP-08 (Jul-Sep, 2023)
Oct 20th, 2023	GSTR-3B (Sep, 2023)
Oct 22nd, 24th, 2023	GSTR-3B (Jul-Sep, 2023)
Oct 20th, 2023	GSTR-5A (Sep, 2023)
18 Months after the end of quarter for which refund is to be claimed	RFD-10

Tax Calendar (Direct Tax)

Due Dates	Returns
30 October 2023	Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194-IA in the month of September, 2023
30 October 2023	Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194-IB in the month of September, 2023
30 October 2023	Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194M in the month of September, 2023
30 October 2023	Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194S in the month of September, 2023 Note: Applicable in case of specified person as mentioned under section 194S
30 October 2023	Quarterly TCS certificate (in respect of tax collected by any person) for the quarter ending September 30, 2023
31 October 2023	Intimation by a designated constituent entity, resident in India, of an international group in Form no. 3CEAB for the accounting year 2022-23
31 October 2023	Quarterly statement of TDS deposited for the quarter ending September, 2023
31 October 2023	Due date for furnishing of Annual audited accounts for each approved programmes under section 35(2AA)
31 October 2023	Quarterly return of non-deduction of tax at source by a banking company from interest on time deposit in respect of the quarter ending September, 2023
31 October 2023	Copies of declaration received in Form No. 60 during April 1, 2023 to September 30, 2023 to the concerned Director/Joint Director
31 October 2023	Due date for filing of return of income for the assessment year 2023-24 if the assessee (not having any international or specified domestic transaction) is (a) corporate-assessee or (b) non-corporate assessee (whose books of account are required to be audited) or (c)partner of a firm whose accounts are required to be audited or the spouse of such partner if the provisions of section 5A apply Note: The due date of furnishing of Return of Income in Form ITR-7 in the case of assessees referred to in clause (a) of Explanation 2 to section 139(1) has been extended from October 31, 2023 to November 30, 2023, vide Circular no. 16/2023, dated 18-09-2023
31 October 2023	Audit report under section 44AB for the assessment year 2023-24 in the case of an assessee who is also required to submit a report pertaining to international or specified domestic transactions under section 92E
31 October 2023	Report to be furnished in Form 3CEB in respect of international transaction and specified domestic transaction.
31 October 2023	Due date for e-filing of report (in Form No. 3CEJ) by an eligible investment fund in respect of arm's length price of the remuneration paid to the fund manager (if the assessee is required to submit return of income on October 31, 2023).
31 October 2023	Statement by scientific research association, university, college or other association or Indian scientific research company as required by rules 5D, 5E and 5F (if due date of submission of return of income is October 31, 2023).
31 October 2023	Submit copy of audit of accounts to the Secretary, Department of Scientific and Industrial Research in case company is eligible for weighted deduction under section 35(2AB) [if company does not have any international/specified domestic transaction]
31 October 2023	Intimation in Form 10BBB by a pension fund in respect of each investment made in India for quarter ending September, 2023
31 October 2023	Intimation in Form II by Sovereign Wealth Fund in respect of investment made in India for quarter ending September, 2023
31 October 2023	Furnishing of Audit report in Form no. 10B/10BB by a fund or trust or institution or any university or other educational institution or any hospital or other medical institution. Note: the due date for furnishing the Audit report in Form no. 10B/10BB has been extended from September 30, 2023 to October 31, 2023 vide Circular no. 16/2023, dated 18-09-2023

E-PUBLICATIONS OF TAX RESEARCH DEPARTMENT

Guide Book for GST Professionals	Handbook on SpecialEconomice Zone and Export Oriented Units
Handbook for Certification for difference between GSTR-2A & GSTR - 3B	Handbook on GST on Service Sector
Taxation on Works Contract	Handbook on Works Contract under GST
Impact of GST on Real Estate	Handbook on Impact of GST on MSME Sector
Insight into Customs-Procedure & Practice	Insight into Assessment including E-Assessment
Input Tax Cradit & In depth Discussion	Impact on GST on Education Sector
Exemptions under the Income Tax Act, 1961	Addendum_Guidance Note on GST Annual Return & Audit
Taxation on Co-operative Sector	An insight to the Direct Tax-Vivadse Vishwas Scheme 2020
Guidance Note on GST Annual Return & Audit	International Taxation and Transfer Pricin
Sabka Vishwas _Legacy Dispute Resolution Scheme 2019	Handbook on E-Way Bill
Guidance Note on Anti Profiteering	

For E-Publications, Please Visit Taxation Portal-

https://icmai.in/TaxationPortal/

Notes

TAXATION COMMITTEES - PLAN OF ACTION

Proposed Action Plan:

1. Successfully conduct all Taxation Courses.
2. Publication and Circulation of Tax bulletin (both in electronic and printed formats) for the awareness and knowledge updation of stakeholders, members, traders, Chambers of Commerce, Universities.
3. Publication of Handbooks on Taxation related topics helping stakeholders in their job deliberations.
4. Carry out webinars for the Capacity building of Members - Trainers in the locality to facilitate the traders/ registered dealers.
5. Conducting Seminars and workshops on industry specific issues, in association with the Trade associations/ Traders/ Chamber of commerce in different location on practical issues/aspects associated with GST.
6. Tendering representation to the Government on practical difficulties faced by the stakeholders in Taxation related matters.
7. Updating Government about the steps taken by the Institute in removing the practical difficulties in implementing various Tax Laws including GST.
8. Facilitating general public other than members through GST Help-Desk opened at Head quarter of the Institute and other places of country.
9. Introducing advance level courses for the professionals on GST and Income Tax.
10. Extending Crash Courses on Taxation to Corporates, Universities, Trade Associations etc.

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