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## DIRECT TAX UPDATES

### CBDT notifies Protocol amending DTAA between India and Austria:

The Government of India has notified the protocol amending Double Taxation Avoidance (DTAA) with Austria. The date of entry into force of such amending protocol is May 01, 2020.

Protocol broadens the scope of the existing framework of exchange of tax related information which will help curb tax evasion and tax avoidance between the two countries and will also enable mutual assistance in collection of taxes.

The protocol replaces Article 26 on Exchange of Information. The amended Article 26 states provides the following:

- That the Competent Authorities of the contracting States shall exchange such information as is foreseeably relevant for carrying out the provisions of Convention between the two states or to the administration or enforcement of the domestic laws concerning taxes of every kind and description imposed on behalf of the contracting state.
- The information obtained shall be treated as secret and shall be disclosed only to persons or authorities concerned in tax related/court/judicial proceedings. The information such obtained may be used for other purposes when such information may be used for such other purposes under the laws of both states and the competent authority of the supplying state authorizes such use.
- If information is requested by one state the same should be supplied by the other state irrespective of whether or not the supplying state has domestic interest in the information.
- None of the states should decline supplying information solely because the information is held by a bank or other financial institution, nominee or a person acting in an agency or a fiduciary capacity or because it relates to ownership interest in a person.

The Protocol further inserts Article 26A on Assistance in the Collection of Taxes, which provides that the Contracting States shall lend assistance to each other in the collection of the tax to the extent needed to ensure that any exemption or reduced rate of tax granted under this Convention shall not be enjoyed by persons not entitled to such benefits. The competent authorities of the Contracting States may by

mutual agreement settle the mode of application of this Article.

## **Supreme Court Upholds High Court Decision that Liaison Office Activities Do Not Constitute PE Under Tax Treaty with the UAE**

- The Honourable Supreme Court issued a judgment on April 24, 2020 concerning whether the activities of a liaison office in India constituted a taxable permanent establishment (PE). The case involves a limited company incorporated in the United Arab Emirates, UAE Exchange Centre LLC (UAE Exchange), which is engaged in offering, among others, remittance services for transferring amounts from the UAE to various places in India.
- UAE Exchange was granted approval by the Reserve Bank of India to operate a liaison office in 1996 and for the assessment years 1998-1999 until 2003-2004 filed tax returns showing NIL income without any issue.
- UAE Exchange filed an application before the Authority for Advance Rulings (Income Tax) for a ruling on whether any income is accrued/deemed to be accrued in India from the activities carried out in India.
- In the ruling, it was provided that income is deemed to accrue in India from the activity carried out by the liaison office and that the profits of the enterprise needed to be taxed in India to the extent attributable to the liaison office activities as a PE. The ruling was based primarily on provisions of India's Income Tax Act, 1961, with the Authority for Advance Rulings finding that the exemption for activities of preparatory and auxiliary character under the India-UAE tax treaty did not apply.
- With respect to the treaty provisions, the Authority for Advance Rulings found that while certain activities could be considered auxiliary, certain activities could not. In particular, one of the modes in which payments are remitted to beneficiaries in India, which involves the liaison office preparing cheques/drafts and dispatching them to the addresses of the beneficiaries in India through courier. Based on this activity it was found that a PE existed and as a result, the Indian tax authority issued notices to UAE Exchange for tax years 2000-2001, 2001-2002, 2002-2003, and 2003-2004.
- In response to the ruling and notices, UAE Exchange brought the matter before the High Court of Delhi. In its decision, the High Court found that the Authority for Advance Rulings committed manifest error in appreciating the relevant facts and materials on record and more particularly, misread the purport of Section 90 of the 1961 Act and the settled legal position that the India-UAE tax treaty ought to override the provisions of the Act. In other words, the tax liability of UAE Exchange was required to be assessed on the basis of the provisions in the tax treaty. Accordingly, the High Court was of the opinion that the Authority proceeded on a wrong premise by first examining the relevant provisions of the 1961 Act instead of applying the provisions in Articles 5 (Permanent

Establishment) and 7 (Business Profits) of the tax treaty for ascertaining UAE Exchange's liability to tax.

- Further, the High Court found that the activities carried on by UAE Exchange in the liaison office were only of preparatory and auxiliary character and were clearly excluded by virtue of the treaty provisions. Based on its findings, the High Court quashed the ruling, as well as the notices issued by the tax authority. Feeling aggrieved, the tax authority appealed the High Court decision to the Supreme Court.
- In its judgment, the Supreme Court upheld the decision of the High Court, finding that even if the activities of the liaison office are regarded as business activity, the preparatory or auxiliary character of the activities, excludes the liaison office from being treated as a PE by virtue of Article 5(3)(e) of the India-UAE tax treaty. Since the office is deemed not to be a PE, it is therefore not subject tax liability in terms of Article 7 of the tax treaty. Accordingly, the Supreme Court found no substance in the tax authority appeal and it is dismissed.

### **Clauses 30C (GAAR)/ 44 (GST) of Revised 3CD further extended up to March 31, 2021 vide CBDT Order 10/2020:**

Implementation of certain changes notified in revised Tax Audit Report Form 3CD, vide Notification dt. July 20, 2018 (applicable from 20 Aug. 2018) have been further extended up to March 31, 2021, i.e. changes relating to two new reporting requirements under 'clause 30C pertaining to GAAR' and 'clause 44 pertaining to GST'.

# INDIRECT Taxes



## INDIRECT TAX UPDATES

### GST Updates:

#### A. Notification No. 37/2020-Central Tax, dated April 20, 2020:

CBIC has made changes in Rule 87 CGST Rules, 2017 which deals with electronic cash ledger vide Notification No. 31/2019-Central Tax dated June 28, 2019, by inserting sub rule 13 namely “ A registered person may, on the common portal, transfer any amount of tax, interest, penalty, fee or any other amount available in the electronic cash ledger under the Act to the electronic cash ledger for integrated tax, central tax, State tax or Union territory tax or cess in FORM GST PMT-09”.

The above said provisions of rule 87 (13) and FORM GST PMT-09 of the CGST Rules, 2017 will be effective from April 21, 2020.

#### B. Karnataka Goods and Service Tax Act, 2017, Notification FD 03 CSL 2020(e) dated April 30, 2020:

The provisions of rule 87(13) and FORM GST PMT-09 of KGST Rules, 2017 will be effective from April 21, 2020.

### Customs Updates:

- A. Following amendments are made to the TABLE -1, TABLE-2, and TABLE-3 in the notification No. 36/2001-Customs (N.T.), dated the August 3, 2001, vide Notification No. 40/2020-Customs (N.T.) dated April, 30, 2020.

Tariff Notification in respect of Fixation of Tariff Value of Edible Oils, Brass Scrap, Poppy Seeds, Areca Nut, Gold and Silver- Reg.

TABLE – 1

Sl. No.	Chapter/ heading/ sub-heading/tariff Item	Description of goods	Tariff value (US \$Per Metric Tonne)
1	1511 10 00	Crude Palm Oil	605
2	1511 90 10	RBD Palm Oil	630
3	1511 90 90	Others – Palm Oil	618
4	1511 10 00	Crude Palmolein	635
5	1511 90 20	RBD Palmolein	638
6	1511 90 90	Others – Palmolein	637
7	1507 10 00	Crude Soya bean Oil	656
8	7404 00 22	Brass Scrap (all grades)	3023
9	1207 91 00	Poppy seeds	3623

TABLE - 2

Sl. No.	Chapter/ heading/ sub-heading/tariff item	Description of goods	Tariff value (US \$)
1.	71 or 98	Gold, in any form, in respect of which the benefit of entries at serial number 356 of the Notification No. 50/2017-Customs dated 30.06.2017 is availed	548 per 10 grams
2.	71 or 98	Silver, in any form, in respect of which the benefit of entries at serial number 357 of the Notification No. 50/2017-Customs dated 30.06.2017 is availed	489 per kilogram
3.	71	<p>(i) Silver, in any form, other than medallions and silver coins having silver content not below 99.9% or semi-manufactured forms of silver falling under sub-heading 7106 92;</p> <p>(ii) Medallions and silver coins having silver content not below 99.9% or semi- manufactured forms of silver falling under sub-heading 7106 92, other than imports of such goods through post, courier or baggage.</p> <p>Explanation. - For the purposes of this entry, silver in any form shall not include foreign currency coins, jewellery made of silver or articles</p>	489 per kilogram

		made of silver.	
4.	71	<p>(i) Gold bars, other than tola bars, bearing manufacturer's or refiner's engraved serial number and weight expressed in metric units;</p> <p>(ii) Gold coins having gold content not below 99.5% and gold findings, other than imports of such goods through post, courier or baggage.</p> <p>Explanation. - For the purposes of this entry, "gold findings" means a small component such as hook, clasp, clamp, pin, catch, screw back used to hold the whole or a part of a piece of Jewellery in place.</p>	548 per 10 grams

TABLE – 3

Sl. No.	Chapter/ heading/ sub-heading/tariff item	Description of goods	Tariff value (US \$ Per Metric Tonne)
1	080280	Areca nuts	3752"

**B. Instruction F. No. 390/Misc/3/2019-JC dated April 27, 2020:** Guidelines for conduct of personal hearings in virtual mode under Customs Act, 1962 – regarding:

**The guidelines for the conduct of virtual mode of personal hearing through video conferencing facility are as under:**

- i. In any proceedings before appellate/adjudicating authority under the Customs Act, 1962, the party, either as an appellant/respondent, shall give his consent to avail the personal hearing before such authority, through video conferencing facility, at the time of filing his appeal or immediately after the issue of this instruction, in the case of pending appeals/adjudication matter. He should also indicate his email address for correspondence etc.
- ii. The date and time of hearing along with a link for the video conference shall be informed in advance to the appellant/ respondent or their consultant/ counsel and the concerned commissioner representing revenue through the official email or electronic media of the adjudicating/appellate authority, giving the details of officer in-charge who would provide assistance to the party, for conducting the virtual hearing. This link should not be shared with any other person without the approval of the adjudicating/appellate authority.

- iii. The advocate/ consultant/ authorized representative, appearing on behalf of the party, in virtual hearing, should file his vakulutnama or authorization letter along with a copy of his photo ID card and contact details to the adjudicating/appellate authority through official e-mail address of the concerned authority after scanning the same. All persons participating in the video conference should be appropriately dressed and maintain the decorum required for such an occasion.
- iv. Virtual hearing through video conference shall be held from the office of adjudicating/appellate authority or any official video conference facility set up in the office of the adjudicating/appellate authority.
- v. The virtual hearing through video conference will be conducted through available applications like VIDYO, or other secured computer network. The appellant/respondent should download such application in their computer system/laptop/mobile phone beforehand for ready connectivity during virtual hearing, and join the video conference at the time allotted to them, as given in point (ii) above.
- vi. In case where the party/ his representative wishes to participate in the virtual hearing proceeding along with their advocate, they should do so under proper intimation to the adjudicating/ appellate authority as mentioned at point (ii) above. They may participate in virtual hearing along with their advocate/ authorized representative or join the proceedings from their own office.
- vii. The submissions made by the appellant or their representative through the video conference will be reduced in writing and a statement of the same will be prepared, which shall be known as “record of personal hearing”. A soft copy of such record of personal hearing in PDF format will be sent to the appellant through email ID provided by advocate/ appellant/ respondent, within one day of such hearing.
- viii. If the, appellant/their representative wants to modify the contents of e-mailed record of personal hearing, they can do so and sign the modified record, scan and send back the signed record of personal hearing to the adjudicating/appellate authority.
- ix. If, however, the appellant/their representative do not resend the above e-mailed record of personal hearing within 3 days of receipt of such e-mail as at point (viii) above, it will be presumed that they agree with the contents of e-mailed record of personal hearing and adjudicating authority/appellate authority will proceed to decide the case accordingly. No modification in e-mailed record of personal hearing will be entertained after 3 days of its receipt by appellant/their representative. The date of receipt of the email by the appellate/adjudicating authority will not be counted for this purpose.
- x. The record of personal hearing submitted in this manner shall be deemed to be a document for the purpose of Customs Act, 1962 in terms of section 138C of the said Act, read with Section 4 of the information Technology Act, 2000.
- xi. If the party/ advocate prefers to submit any document including additional submissions during the virtual hearing, he may do so by self-attesting such document and a scanned copy of the same may be e-mailed to the adjudicating/appellate authority immediately after virtual hearing and in no case after 3 days of virtual hearing. The date of the hearing will be excluded for this purpose.



- xii. Any official representing the Department's side can also participate in the virtual hearing through video conferencing. The Commissionerate concerned shall inform the details in advance regarding such participation, on receipt of intimation as mentioned at point (ii) above.

The aforesaid guidelines will mutatis mutandis apply to personal hearings granted under Central Excise Act, 1944 8, Chapter V of Finance Act, 1994. Suitable Trade Notice/ Standing Order may be issued for guidance of the trade and industry. Difficulties, if any, faced in implementation of this instruction may be brought to the notice of the Board immediately.

**C. Instruction F. No. 450/153/2017-Cus IV dated April 30, 2020:** Requirement of New LUT for financial year 2020-21-regarding.

As per the clarification issued by the CBIC vide Circular No. 137/07/2020 dated April 13, 2020, in terms of Notification No 35/2020- Central tax, time limit for filing of LUT for the year 2020-21 shall stand extended to June 30, 2020 and the tax payer can continue to make the supply without payment of tax under LUT provided that the FORM GST RFD-11 for 2020-21 is furnished on or before June 30, 2020. Taxpayers may quote the reference no of the LUT for the year 2019-20 in the relevant documents.



## **RBI UPDATES**

### **RBI Announces INR 50,000 crore Special Liquidity Facility for Mutual Funds (SLF-MF)**

Heightened volatility in capital markets in reaction to COVID-19 has imposed liquidity strains on mutual funds (MFs), which have intensified in the wake of redemption pressures related to closure of some debt MFs and potential contagious effects therefrom. The stress is, however, confined to the high-risk debt MF segment at this stage; the larger industry remains liquid.

The RBI has stated that it remains vigilant and will take whatever steps are necessary to mitigate the economic impact of COVID-19 and preserve financial stability. With a view to easing liquidity pressures on MFs, RBI vide its press release dated April 27, 2020 has decided to open a special liquidity facility for mutual funds of INR 50,000 crore (~ USD 6.67 billion).

- i. Under the SLF-MF, the RBI shall conduct repo operations of 90 days tenor at the fixed repo rate. The SLF-MF is on-tap and open-ended, and banks can submit their bids to avail funding on any day from Monday to Friday (excluding holidays). The scheme is available from April 27, 2020 till May 11, 2020 or up to utilization of the allocated amount, whichever is earlier. The Reserve Bank will review the timeline and amount, depending upon market conditions.
- ii. Funds availed under the SLF-MF shall be used by banks exclusively for meeting the liquidity requirements of MFs by (1) extending loans, and (2) undertaking outright purchase of and/or repos against the collateral of investment grade corporate bonds, commercial papers (CPs), debentures and certificates of Deposit (CDs) held by MFs.
- iii. Liquidity support availed under the SLF-MF would be eligible to be classified as held to maturity (HTM) even in excess of 25 per cent of total investment permitted to be included in the HTM portfolio. Exposures under this facility will not be reckoned under the Large Exposure Framework (LEF). The face value of securities acquired under the SLF-MF and kept in the HTM category will not be reckoned for computation of adjusted non-food bank credit (ANBC) for the purpose of determining priority

sector targets/sub-targets. Support extended to MFs under the SLF-MF shall be exempted from banks' capital market exposure limits.

## **Reserve Bank Extends Regulatory Benefits under SLF-MF Scheme**

Based on requests received from banks, RBI vide its press release dated April 30, 2020 has said that it has decided that the regulatory benefits announced under the SLF-MF scheme will be extended to all banks, irrespective of whether they avail funding from the Reserve Bank or deploy their own resources under the scheme of special liquidity facility for mutual funds (SLF-MF) .

Banks meeting the liquidity requirements of MFs by (1) extending loans, and (2) undertaking outright purchase of and/or repos against the collateral of investment grade corporate bonds, commercial paper (CPs), debentures and certificates of deposit (CDs) held by MFs will be eligible to claim all the regulatory benefits available under SLF-MF scheme without the need to avail back to back funding from the Reserve Bank under the SLF-MF.

The bank claiming the regulatory benefits as detailed above would be required to submit a weekly statement containing consolidated information on entity-wise and instrument-wise loans and advances extended or investment made to eligible entities to Financial Markets Operations Department and to Department of Supervision on every Monday till the closure of the scheme.

## **Extension of timelines Submission of regulatory returns –**

In order to mitigate the difficulties faced by the Schedule Commercial Banks (including Regional Rural Banks and Small Finance Banks), Payments Banks, Local Area Banks, All India Financial Institutions and All the Co-Operative Banks, in timely submission of various regulatory returns, in view of disruptions on account of COVID-19 pandemic, RBI has extended the timelines for their submission vide its notification dated April 29, 2020.

List of regulatory returns which can be submitted with a delay of a maximum of 30 days from the due date are provided in <https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=11882&Mode=0#ANN1>

## **Contribution to the Rural Infrastructure Development Fund (RIDF) and other funds by Primary (Urban) Co-operative Banks (UCBs)**

With reference to the Revised Guidelines on Lending to Priority Sector for Primary (Urban) Co-operative Banks (UCBs), issued vide circular DCBR.BPD (PCB).Cir.No.07/09.09.002/2017-18 dated May 10, 2018, RBI has decided that with effect from March 31, 2021, all UCBs (excluding those under all-inclusive directions) will be required to contribute to Rural Infrastructure Development Fund (RIDF) established with NABARD and other Funds with NABARD / NHB / SIDBI / MUDRA Ltd., against their priority sector lending (PSL) shortfall vis-à-vis the prescribed target.



## UPDATES IN THE COMPANIES ACT, 2013

### A. Companies (Appointment and Qualification of Directors) Second Amendment Rules, 2020:

- As per Rule 6(1)(a) of the Companies (Appointment and Qualification of Directors), every person appointed as an independent director shall within a period of 5 months apply to the Indian Institute of Corporate Affairs (Institute) for inclusion of his name in the data bank for a period of 1 year or 5 years or for his lifetime.
- The above period of applying to the Institute for inclusion of name within 5 months has now been increased to 7 months.

*Above is as per notice of Ministry of Corporate Affairs dated April 29,2020.*

### B. Extension of last date for filing form NFRA-2:

The MCA in continuation to General Circular No. 7/2020 dated March 5, 2020, has decided that the time limit for filing the form NFRA-2 “Identity of the Auditor and Contact Persons”, for the reporting financial year 2018-19 will be 210 days from the date of deployment of the form which was on December 09,2019 on the website of NFRA .

Previously, the due date to file this form was 150 days from the date of deployment which was on or before May 7, 2020

*Above is as per General Circular No.19/2020 dated April 30,2020.*

[www.manian-rao.com](http://www.manian-rao.com)**Address:****Bangalore**

#361, First Floor, 7<sup>th</sup> Cross, 1<sup>st</sup> Block,  
Jayanagar, Bangalore – 560011  
Phone: +91 80 26569500 / 9501

**Chennai**

# 4, Easwaran Koil Street  
Old Pallavaram,  
Chennai – 60017  
Phone: +91 44 22641404

**Madurai**

# 110, First Floor  
Old No 85, 4<sup>th</sup> Street  
Harvey Nagar, Arasaradi  
Madurai – 625016  
Phone: +91 452 2343630

**Key Contacts****Paresh Daga**

Senior Partner  
paresh@manian-rao.com

**R Srikanth**

Senior Partner  
srikanth@manian-rao.com

**Ravindra C**

Partner  
ravindra@manian-rao.com

**Pallavi V Rao**

Partner  
pallavi@manian-rao.com

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