

# NEWSLETTER

AUGUST 2022

J P Chawla & Co. LLP

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Chartered Accountants

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Taxation | Audit | Outsourcing | Regulatory | Transaction Advisory | Business Intelligence



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**Let's quickly have look on the latest news in the month of August**

## **One District One Product (ODOP) & Open Network for Digital Commerce (ONDC) Integration**

Mr Piyush Goyal emphasized that India cannot progress until the remotest areas of the nation have equal stakes in development and partake equally in the benefits of growth. He emphasized his conviction that ODOP would help those at the bottom of the economic pyramid succeed.

## **Boost in Connectivity & Digital Entrepreneurs**

The spread of internet access by Digital India to more villages has aided digital entrepreneurs, according to PM Modi, who also said that 4G connectivity has ushered in a new era in the North East.

## **Google's Cyber Security Upskilling Programme for Indian Developers**

A mission to equip 100,000 Indian engineers and researchers in cyber security has been revealed by Google. The upskilling programme will target 100,000 engineers in India and will address two primary programme areas, Android and Google Cloud. While the Android upskilling programme will benefit developers producing apps for consumer usage, the Google Cloud upskilling programme will target commercial developers and security administrators.

## **India to Become World's Number One Producer of Steel**

Jyotiraditya Scindia, Minister of Civil Aviation and Steel, said that India would soon overtake China as the world's leading producer of steel. He said India had changed from being a net importer of steel to an exporter. He claims that as of now, India utilizes 78 kg of steel per person, and by 2030, the government plans to manufacture 300 million tonnes.

## **Sector for Auto Components Experiences Historic Growth**

The Automotive Component Manufacturers' Association of India (ACMA) reports that in FY 2021–2022, India's auto component industry saw growth of 23% and generated its highest-ever revenue of Rs. 4.2 trillion (US\$ 52.59 billion). This growth was attributed to strong aftermarket and export results. According to ACMA, whereas exports of auto parts climbed by 43% during the same period, imports increased by 33%.

## **India's Market Capitalization Reaches a New Peak**

The market capitalization (m-cap) of all companies listed on the BSE has already surpassed its previous peak, despite the benchmark Sensex is just 2.4% away from reaching a new lifetime high. The overall market capitalization of the 4,776 companies listed on the BSE increased to Rs. 280.5 trillion (\$3.51 trillion), surpassing the previous peak set on January 17 of Rs. 280 trillion (\$3.50 trillion).

## India will Serve as a Global Centre for App Innovation

According to Google Play, India would be crucial in the development of international apps because its startups produce widely used items.

Google recently introduced the Startup School India programme, which aims to create 10,000 entrepreneurs in smaller cities. A special programme was launched under the Google for Startups Accelerator programme with the specific objective of aiding female founders in the country.

By 2025–2026, India is on track to have a trillion-dollar digital economy with 60–65 million jobs that can be conducted using digital tools.



## Indirect Tax

### GST Analysis- Aug-2022

[Notification, Circulars, and Instruction/Guidelines]

#### 1) Notification No-17/2022-Central Tax – 01st August 2022

##### **Mandatory of issuing e-Invoice for the taxpayers having turnover exceeding 10 Cr. from 01st Oct,2022**

Every registered person who is making B2B supplies, export of goods or services or both and whose aggregate turnover has been extended 10 Crores in a financial year shall be eligible to issue an e-invoice from 01st October 2022 as per Rule 48(4) of CGST Rules.

If any registered person to whom e-invoice is applicable however the said person issue invoice in any manner such invoice shall not be treated as valid invoice.

Note: If the turnover of any registered person does not exceed 10 Crore in preceding financial year however the same has been exceeded in the current financial year. The e-invoice would be applicable from beginning of new financial year.

#### 2) Circular No. 177/09/2022 Dated 03rd August 2022

##### **Clarification regarding GST rates and exemptions on certain services**

Clarifications have been made by the GST department in relation to the following issues as stated below:

###### **a) Rate of GST on ice-cream parlor during the period 01.07.2017 to 05.10.2021**

As already clarified in Circular No. 164/20/2021 -GST dated 06.10.2021 that ice cream parlor sells already manufacture ice cream and they do not have a custom of restaurants. Hence, ice cream parlor and similar outlets will attract standard rate of GST @ 18% with ITC with effect from 06.10.2021.

parlor and similar outlets will attract standard rate of GST @ 18% with ITC with effect from 06.10.2021.

In the absence of clarifications prior to issue of the of Circular dated 06.10.2021, initially the ice cream parlors have paid the GST @5% as per existing practice and did not avail any input benefit. In the issued Circular No. 177/09/2022 dated 03.08.2022 the GST Department has clarified that the ice cream parlors who have paid the GST @5% without ITC for the period 01.07.2017 to 05.10.2021 shall be considered as fully GST paid to avoid unnecessary litigation. It is pertinent to mention that the taxpayer cannot refund the amount who has already paid GST with 18% for the said period.

The purpose of the circular is to regularize the practice to charged GST @18% with ITC effective from 06.10.2021.

**b) Applicability of GST on application fees charged for entrance, issuance of eligibility certificate or issuance of migration certificate**

Educational services provided by educational institutions to its students are exempt from GST vide notification no. 12/2017 Central Tax (Rate) dated 28.06.2017 under the entry no. 66.

**The relevant entry of notification is read as follows:**

Services provided –

a.by an educational institution to its students, faculty, and staff.

The purpose of the circular is to regularize the practice to charged GST @18% with ITC effective from 06.10.2021.

[(aa) by an educational institution by way of conduct of entrance examination against consideration in the form of entrance fee;]...”

As stated above in the notification service provided by an “educational institutions’ to its students are exempted from GST. The exemption notification is sufficed to provide the exemption on fees charged on entrance exams, application fees, issuance of eligibility certificate. Moreover, the services provided on account of issuance of migration certificate to leaving or ex-students are also covered under the notification.

**c) Whether storage or warehousing of cotton in baled or ginned form is covered under entry 24B of Notification No. 12/2017-Central Tax (Rate) which exempted services by way of storage and warehousing of raw vegetable fibres such as cotton before 18.07.2022.**

As per entry no. 24B in the exemption notification no. 12/2017 Central Tax- Rate dated 28.06.2017 following services are exempted in GST as delineated below

“Any services provided by way of storage or warehousing of cereals, pulses, fruits, nuts and vegetables, spices, copra, sugarcane, jaggery, **raw vegetable fibres such as cotton**, flax, jute etc., indigo, unmanufactured tobacco, betel leaves, tendu leaves, coffee, and tea”.

“**barnhardcotton.net**” defines ‘cotton staple, virgin cotton or raw cotton’ as cotton fibers that are removed from the cotton seed by the gin.

**CESTAT Chandigarh in the case of R.K.& Sons vs CCE, Rohtak dated 14th July 2016 has observed as under:**

“Cotton (with seeds) as plucked from cotton plants can hardly be called cotton fibre in which case cotton fibre would come into existence only after the seeds are ginned away from cotton plucked from cotton plants. Cotton fibre obtained by ginning cotton plucked cotton plants is nothing but raw cotton fibre because there cannot be rawer form of cotton fibre obtained from cotton-with-seeds plucked from cotton plants.”

**Hence, it is clarified that service by way of storage or warehousing of cotton in baled or ginned form shall be covered under entry no. 24B of notification no. 12/2017-Central Tax (Rate) dated 28.06.2017**

However, it is pertinent to mention that such exemption has been withdrawn by the GST department with effect from 18.07.2017 vide notification no. 04/2022 Central Tax (Rate) dated 13th July 2022.

The substitute notification is read as follows:

*"Services by way of storage or warehousing of cereals, pulses, fruits and vegetables."*

**d) Whether exemption under Sl. No. 9B of notification No. 12/2017-Central Tax (Rate) dated 28.06.2017 covers services associated with transit cargo both to and from Nepal and Bhutan.**

As per the notification no. 30/2017 Central Tax (Rate) dated 29.09.2017 the GST department has amended the exemption notification and inserted a new entry no. 9B in exemption notification no. 12/2017 -Central Tax (Rate) in relation to the transportation service for Nepal and Bhutan.

The inserted entry is as follows:

Supply of services associated with transit cargo to Nepal and Bhutan (landlocked countries).

As per the recommendation of council, it is clarified that exemption under Sl.no 9B of Notification No. 12/2017 Central Tax -Rate covers services associated with transit cargo both to and from Nepal and Bhutan.

**Hence, it is also clarified that if empty containers from Nepal and Bhutan after the delivery of goods is also a service associated with the transit cargo to Nepal and Bhutan, therefore shall be covered under the exemption.**

Before movement of any cargo to Nepal and Bhutan regulations/procedure as governed under Custom Act, Treaties for Trade and Transit in Nepal and Bhutan should be followed.

- i. An alpha numeric identifier for the container should be declared.
- ii. Custom broker, Shipping line and carrier is responsible for making trace and track facility for locating goods brought for transshipment.
- iii. The authorised carrier should execute a bond as directed by the proper officer.
- iv. An Electronic Cargo Tracking System (ECTS) should procure from appointed service provider.

The above regulations have to be followed in addition to the electronic track and trace facility, this facility is used to locate the container and to verify the empty container who are returning from Nepal and Bhutan is the same container used for delivery of goods. Moreover, the bond submitted by the authorised carrier shall be discharged or recredit on pursuant of ECTS trip report.

**e) Applicability of GST on sanitation and conservancy services supplied to Army and other Central and State Government departments.**

The exemption provided in notification no. 12/2017 -Central Tax (Rate) dated 28.06.2017 vide entry no. 3 and 3A as follows:

**Entry No.3**, “Pure services (excluding works contract service or other composite supplies involving supply of any goods) provided to the Central Government, State Government or Union territory or local authority or a Governmental authority **by way of any activity in relation to any function entrusted to a Panchayat under article 243G of the Constitution or in relation to any function entrusted to a Municipality under article 243W of the Constitution.**

**Entry No.3A**, “Composite supply of goods and services in which the value of supply of goods constitutes not more than 25 per cent. of the value of the said composite supply provided to the Central Government, State Government or Union territory or local authority or a Governmental authority or a Government Entity by way of any activity in relation to any function entrusted to a Panchayat under article 243G of the Constitution or in relation to any function entrusted to a Municipality under article 243W of the Constitution”.

The above exemptions shall be available when the Central Government, State Government, Union Territories and Local Authorities procured any supplies for performing functions listed in the 11th and 12th Schedule of Constitution.

It is clarified that the sanitation and conservancy services received by India Army or any other Government which does not perform functions listed in 11th and 12th schedule for general public, the same are not eligible for exemption under S.no 3 and 3A of exemption notification.

**f) Whether the activity of selling of space for advertisement in souvenirs is eligible for concessional rate of 5%.**

Selling of space for advertisement in print media attracts GST @5%. Print media means-

- i)** ‘book’ as defined in sub-section (1) of section 1 of the Press and Registration of Books Act, 1867 (25 of 1867), but does not include business directories, yellow pages and trade catalogues which are primarily meant for commercial purposes.
- ii)** ‘book’ as defined in sub-section (1) of section 1 of the Press and Registration of Books Act, 1867 (25 of 1867), but does not include business directories, yellow pages and trade catalogues which are primarily meant for commercial purposes.

Further, sub-section (1) of section 1 of the Press and Registration of Books Act, 1867 defines ‘book’ as follows:

“Book” includes every volume, part or division of a volume, and pamphlet, in any language and every sheet of music, map, chart or plan separately printed.



Books has been defined in Press and Registration of Books Act, 1867 in a manner with a wide ambit of souvenir books also.

**It is clarified that 5% GST will be levied on advertisement in souvenir book, which is covered under notification no. 11/2017 Central Tax (Rate).**

- g) Taxability and applicable rate of GST on transport of minerals from mining pit head to railway siding, beneficiation plant etc., by vehicles deployed with driver for a specific duration of time.**

There is an ambiguity among the taxpayers whether the transportation service with driver will covered as exempt service under the notification no. 12/2017 Central Tax (Rate), which **exempts transportation of goods by road except GTA.**

Generally, mining companies hire or lease dumper, tippers, loader, and truck etc. These vehicles along with drivers are at disposal at mining place with the driver and the mining operator use them as per their requirement.

Generally, these services shall be considered as a **“rental services of transport vehicles”**. The person who takes the vehicle on rent is used as per his determined schedules, routes, and timing. Therefore, the person who gives the vehicle on rent with operator can not said that he is supplying service by way of transportation of goods services.

It is clarified that rent of vehicles for a specific period of time will come under the **“rental services of transport vehicles”** falling under heading 9966 and not a service of transportation of goods. Where the cost of fuel is included in consideration charged from the recipient, GST will be charged @12% with effect from 18.07.2022, prior that it was 18%.

- h) Whether location charges or preferential location charges (PLC) collected in addition to the lease premium for long term lease of land constitute part of the lease premium or of upfront amount charged for long term lease of land and are eligible for the same tax treatment.**

There is an ambiguity among the taxpayers whether the transportation service with driver will covered as exempt service under the notification no. 12/2017 Central Tax (Rate), which **exempts transportation of goods by road except GTA.**

As per entry 41 of the notification No. 12/2017-Central Tax (Rate) dated 28.06.2017- upfront amount, which is defined as “upfront amount (called as premium, salami, cost, price, development charges or by any other name) payable in respect of service by way of granting of long term lease (of thirty years, or more) of industrial plots or plots for development of infrastructure for financial business, provided by the State Government Industrial Development Corporations or Undertakings or by any other entity having 20 per cent or more ownership of Central Government, State Government, Union territory to the industrial units or the developers in any industrial or financial business area”, is exempt from GST.

It is clarified that location charges or preferential location charges (PLC) paid upfront in addition to the lease premium for long term lease of land constitute part of upfront amount charged for long term lease of land and are eligible for the same tax treatment, and thus eligible for exemption under Sl. No. 41 of notification no. 12/2017-Central Tax (Rate) dated 28.06.2017.

**i) Applicability of GST on payment of honorarium to the Guest Anchors.**

Sansad TV and other TV channels invite guest anchors for participating in their shows and pays remuneration to them in the form of honorarium. Some of the guest anchors have requested payment of GST @ 18% on the honorarium paid to them for such appearances.

It is to be noted that all supply of goods and services are taxable unless exempt or declare “neither a supply of goods nor supply of service” therefore services provided by the guest anchors in lieu of honorarium shall attract GST liability. Threshold limit (does not exceeds 20 Lakh) shall be applicable to take registration and pay GST.

**j) Whether the additional toll fees collected in the form of higher toll charges from vehicles not having fastag is exempt from GST.**

Entry 23 of notification No.12/2017-Central Tax (Rate) dated 28th June 2017 exempts service by way of access to a road or a bridge on payment of toll charges.

As directed by the Ministry of Road Transport & Highways (MORTH) to collect the additional amount from the user's extent two times of the fees applicable to the category of vehicle which not having a valid functional fast tag.

Essentially the additional amount collected from the users of the road not having a functional fast tag is in the nature of toll charges and should be treated as additional toll charges.

It has already been clarified vide circular number 164/20/2021-GST dated 06.10.2021, that overloading charges at toll plazas would get the same treatment as given to toll charges.

Therefore, it is clarified that additional fee collected in the form of higher toll charges from vehicles not having Fastag is essentially payment of toll for allowing access to roads or bridges to such vehicles and may be given the same treatment as given to toll charges

**k) Applicability of GST on services in form of Assisted Reproductive Technology (ART)/In vitro fertilization (IVF)**

Health care services is defined vide 2(zg) of the notification No. 12/2017-Central Tax (Rate) dated 28.06.2017 as –

“health care services” means any service by way of diagnosis or treatment or care for illness, injury, deformity, abnormality or pregnancy in any recognised system of medicines in India and includes services by way of transportation of the patient to and from a clinical establishment, but does not include hair transplant or cosmetic or plastic surgery, except when undertaken to restore or to reconstruct anatomy or functions of body affected due to congenital defects, developmental abnormalities, injury or trauma

The abnormality/disease/ailment of infertility is treated using ART procedure such as IVF. It is clarified that services by way of IVF are also covered under the definition of health care services for the purpose of above exemption notification.

**l) Whether sale of land after levelling, laying down of drainage lines etc., is taxable under GST**

As per Sl no. (5) of Schedule III of the Central Goods and Services Tax Act, 2017, 'sale of land' is neither a supply of goods nor a supply of services, therefore, sale of land does not attract GST.

Land may be sold either as it is or after some development such as levelling, laying down of drainage lines, water lines, electricity lines, etc. It is clarified that sale of such developed land is also sale of land and is covered by Sr. No. 5 of Schedule III of the Central Goods and Services Tax Act, 2017 and accordingly does not attract GST.

**m) Situations in which corporate recipients are liable to pay GST on renting of motor vehicles designed to carry passengers.**

Services provided by a non-body corporate to a body corporate by way of renting of any motor vehicle for transport of passengers, tax is required to be paid by the body corporate under RCM.

There is an uncertainty whether the RCM is applicable on service on transportation of passenger fall under heading 9964 or renting of motor-vehicle design to carry passengers fall under heading 9966.

Service covered under "renting of motor vehicles" (heading 9966) to carry passenger for a period of time where the routes, timing, and other operational considerations are at the discretion of renter.

Whereas "passenger transportation services" covers (under heading 9964) passenger transport service over pre-determined routes and schedules.

Therefore, a clear distinction exists in service of transport of passengers and renting of a vehicle that is used for transport.

Accordingly, as recommended by the GST Council, it is clarified that where the body corporate hires the motor vehicle (for transport of employees etc.) for a period of time, during which the motor vehicle shall be at the disposal of the body corporate, the service would fall under Heading 9966, and the body corporate shall be liable to pay GST on the same under RCM.

However, where the body corporate avails the passenger transport service for specific journeys or voyages and does not take vehicle on rent for any particular period of time, the service would fall under Heading 9964 and the body corporate shall not be liable to pay GST on the same under RCM.

**n) Whether hiring of vehicles by firms for transportation of their employees to and from work is exempt under Sr. No. 15(b) of Notification No.12/2017-Central Tax (Rate) transport of passengers by non-air-conditioned contract carriage.**

Sr. No. 15 (b) of notification No. 12/2017-Central Tax (Rate) dated 28.06.2017 exempts "transport of passengers, with or without accompanied belongings, by non-air-conditioned contract carriage, other than radio taxi, for transport of passengers, **excluding tourism, conducted tour, charter, or hire.**

It is clarified that 'charter or hire' excluded from the above exemption entry is charter or hire of a motor vehicle for a period of time, where the renter defines how and when the vehicles will be operated, determining schedules, routes, and other operational considerations.

It is apposite to mention that the said exemption would apply where the passenger transportation services falling under head 9964 and transportation take place of pre-determined schedule. The exemption shall not be applicable where contract carriage is hired for a period of time, during which the contract carriage is at the disposal of the service recipient and the recipient is thus free to decide the manner of usage (route and schedule).

**o) Whether supply of service of construction, supply, installation, and commissioning of dairy plant on turn-key basis constitutes a composite supply of works contract service and is eligible for concessional rate of GST prior to 18.07.2022**

In case of a turnkey project for construction, supply, installation, and commissioning of a 2.00 LLPD dairy plant, it has been held by Advance Ruling Authorities of Bihar and Gujarat that the same does not result into an immovable property and is therefore not a supply of works contract. This being so, such supply is not eligible for concessional rate of 12% applicable on works contract supplied by way of construction, erection, commissioning, or installation of original works pertaining to mechanized food grain handling system, machinery or equipment for units processing agricultural produce as food stuff excluding alcoholic beverages.

In this regard, it may be seen that prior to 18.07.2022, serial number 3(v)(f) of notification no. 11/2017 Central Tax (Rate) dated 28.06.2017 prescribes GST rate of 12 % on the composite supply of works contract by way of construction, erection, commissioning, or installation of original works pertaining to mechanized food grain handling system, machinery or equipment for units processing agricultural produce as food stuff excluding alcoholic beverages.

It is clarified that a contract of the nature described here for construction, installation and commissioning of a dairy plant constitutes supply of works contract. There is no doubt that dairy plant which comes into existence as a result of such contracts is an immovable property

It is also clarified that such works contract services were eligible for concessional rate of 12% GST under serial number 3(v)(f) of notification No. 11/2017 Central Tax (Rate) dated 28.06.2017 prior to 18.07.2022. With effect from 18.07.2022, such works contract services would attract GST at the rate of 18% in view of amendment carried out in notification No. 11/2017-Central Tax (Rate) vide notification No. 03/2022-Central Tax (Rate).

**p) Applicability of GST on tickets of private ferry used for passenger transportation**

It has been stated that private ferries are used as means of transport from one island to another island in Andaman-Nicobar Islands and representation sought on applicability of GST on private ferry ticket.

As per Sl. No 17 (d) of notification No. 12/2017-Central Tax (Rate) dated 28.06.2017 –  
"Transportation of passengers by public transport, other than predominantly for tourism purpose, in a vessel between places located in India is exempted.

It is clarified that this exemption would apply to tickets purchased for transportation from one point to another irrespective of whether the ferry is owned or operated by a private sector enterprise or by a PSU/government.

### 3) Circular No. 178/10/2022 dated 03rd August 2022

#### **GST applicability on liquidated damages, compensation and penalty arising out of breach of contract or other provisions of law.**

Due to the uncertainty among the taxpayer's question have been raised regarding taxability of an activity or transaction as the supply of service of agreeing to the obligation to refrain from an act or to tolerate an act or a situation, or to do an act.

Applicability of GST on payments in the nature of liquidated damage, compensation, penalty, cancellation charges, late payment surcharge etc. arising out of breach of contract or otherwise and scope of the entry at para 5 (e) of Schedule II of Central Goods and Services Tax Act, 2017 (hereinafter referred to as, "CGST Act") in this context has been examined in the following paragraphs.

"Agreeing to the obligation to refrain from an act or to tolerate an act or a situation, or to do an act" has been specifically declared to be a supply of service in para 5 (e) of Schedule II of CGST Act if the same constitutes a "supply" within the meaning of the Act.

The said expression has following three limbs: -

#### **i. Agreeing to the obligation to refrain from an acts**

The activities covered in this part would include non-compete agreements, where one party agrees not to compete with the other party in a product, service, or geographical area against a consideration paid by other party.

Eg: builder refraining from constructing more than a certain number of floors, even though permitted to do so by the municipal authorities, against a compensation paid by the neighboring housing project, which wants to protect its sunlight, or an industrial unit refraining from manufacturing activity during certain hours against an agreed compensation paid by neighbouring school, which wants to avoid noise during those hours.

#### **ii. Agreeing to the obligation to tolerate an act or a situation-**

This would include activities such a shopkeeper allowing a hawker to operate from the common pavement in front of his shop against a monthly payment by hawker, on RWA tolerating the use of loudspeakers for early morning prayers by a school located in the colony subject to the school paying an agreed sum to the RWA as compensation.

#### **iii. Agreeing to the obligation to do an act-**

This would include the case where an industrial unit agrees to install equipment for zero emission/discharge at the behest of the RWA of a neighbouring residential complex against a consideration paid by such RWA, even though the emission/discharge from the industrial unit was within permissible limits and there was no legal obligation upon the individual unit to do so.

Over the years doubts have persisted regarding various transactions being classified under the said description, some of the important examples of cases where Service Tax/GST demands on-

- i. Liquidated damages paid for breach of contract.
- ii. Compensation given to previous allottees of coal blocks for cancellation of their licenses pursuant to Supreme Court Order.
- iii. Cheque dishonor fine/penalty charged by a power distribution company from the customers.
- iv. Penalty paid by a mining company to State Government for unaccounted stock of riverbed material.
- v. Bond amount recovered from an employee leaving the employment before the agreed period.
- vi. Late payment charges collected by any service provider for late payment of bills.
- vii. Fixed charges collected by a power generating company from State Electricity Boards (SEBs) or by SEBs/ DISCOMs from individual customer for supply of electricity.
- viii. Cancellation charges recovered by railways for cancellation of tickets, etc
- ix.

GST authorities have considered it appropriate to charge GST during the investigation and audit conducted by them, even Advance Ruling authorities have upheld the taxability.

Here, the taxability in details have been discussed in followings paragraphs.

### **Liquidated Damages**

Mainly the losses occurs when there is breach of contracts due to non-performance of contract by one party to another party. Section 73 of Contract Act, 1972 said that when a contract has been broken, the party which suffers by such breach is entitled to receive from the other party compensation for any loss or damaged cause to him by such breach. The compensation is not by way of consideration for any other independent activity, it is an event in the course of performance of that contract. Such compensation clause should be written in contracts for breach of non-performance of the contract or parties of the contract is referred as liquidated damages.

Black's Law Dictionary defines 'Liquidated Damages' as cash compensation agreed to by a signed, written contract for breach of contract, payable to the aggrieved party.

"Liquidate damages" is only an amount paid by one party to another party to compensate the loss, damage suffered by aggrieved party due to breach of contract and there is no agreement, express, implied by aggrieved party receiving the liquidated damages, to refrain from or to tolerate an act.

Liquidate damages is mere flow of money from the person causes breach of contract to the person who suffers losses or damages due to such breach. Such payments due not constitute consideration for a supply and not taxable. Example of liquidated damages are damage to property, negligence, piracy, unauthorized use trade of name, copy right etc.

## **Compensation for cancellation of Coal Blocks**

In the year 2014, coal block/mine allocations were cancelled by the Hon'ble Supreme Court vide order dated 24.09.2014. Subsequently, Coal Mines (Special Provisions) Act, 2015 was enacted to provide for allocation of coal mines and vesting of rights, title, and interest in and over the land and mines infrastructure together with mining leases to successful bidders and allottees. In accordance with section 16 of the said Act, prior (old) allottee of mines were given compensation in year 2016.

There was no agreement between the prior allottees of coal blocks and the Government that the previous allottees shall agree to or tolerate cancellation of the coal blocks allocated to them if the Government pays compensation to them. No such promise or offer was made by the prior allottees to the Government. The allottees had no option but to accept the cancellation. The compensation was given to them for such cancellation, not under a contract between the allottees and the Government, but under the provisions of the statute and in pursuance of the Supreme Court Order. Therefore, it would be incorrect to say that the prior allottees of the coal blocks supplied a service to the Government by way of agreeing to tolerate the cancellation of the allocations made to them by the Government or that the compensation paid by the Government for such cancellation in pursuance to the order of the Supreme Court was a consideration for such service. Therefore, the compensation paid for cancellation of coal blocks pursuant to the order of the Supreme Court in the above case was not taxable

## **Cheque dishonor fine/penalty**

Cheque is valid instrument where the supplier promises to pay against the supply. When a cheque is given against the supply of goods or service, then supplier agree to pay the amount against the goods or services. There is no implied or express offer or willingness on part of the supplier that he would tolerate deposit of an invalid, fake or unworthy instrument in form of cheque dishonor fine or penalty.

The fine or penalty imposes by the bank or supplier for dishonoring of cheque not for tolerating an act or situation. Therefore, cheque dishonor fine or penalty is not a consideration for any service and not taxable

## **Penalty imposes for violation of laws**

Any penalty imposes by the Central or State Government for violation of laws such as traffic norms, pollution norms or any other law not consideration of any supply received and are not taxable. In some cases where the penalties and fine are imposes on mining companies for discovering of excess mining beyond the permissible limit. Such penalties and fine can not be regarded as consideration charged by the government.

It was also clarified vide Circular No. 192/02/2016-Service Tax, dated 13.04.2016 that fines and penalty chargeable by Government or a local authority imposed for violation of a statute, byelaws, rules or regulations are not leviable to Service Tax. The same holds true for GST also

### **Forfeiture of salary or payment of bond amount in the event of the employee leaving the employment before the minimum agreed periods**

The provisions for forfeiture of salary or recovery of bond amount in the event of the employee leaving the employment before the minimum agreed period are incorporated in the employment contract to discourage non-serious candidates from taking up employment. The said amounts are recovered by the employer not as a consideration for tolerating the act of such premature quitting of employment but as penalties for dissuading the non-serious employees from taking up employment and to discourage and deter such a situation. Further, the employee does not get anything in return from the employer against payment of such amounts. Therefore, such amounts recovered by the employer are not taxable as consideration for the service of agreeing to tolerate an act or a situation.

### **Compensation for not collecting toll charges**

During the time of demonetization, NHAI directed the toll operators to allow free access of toll roads to the user for the period 08.11.2016 to 01.12.2016 for which loss of toll charges shall be paid by the NHAI as per the instructions of Ministry of Road Transportation and Highways.

*“Service by way of access to a road or a bridge on payment of toll charges is in the negative list of service and is not taxable”.*

It has been clarified vide Circular No. 212/2/2019-ST dated 21.05.2019 that the service that is provided by toll operators is that of access to a road or bridge, toll charges being merely a consideration for that service. During the period from 8.11.2016 to 1.12.2016, the service of access to a road or bridge continued to be provided without collection of toll from users. Consideration came from the project authority. The fact that for this period, for the same service, consideration came from a person other than the actual user of service does not mean that the service has changed

### **Late Payment Surcharge or fees**

The facility of accepting late payments with interest or late payment fee, fine or penalty is a facility granted by supplier naturally bundled with the main supply. It is not uncommon or unnatural for customers to sometimes miss the last date of payment of electricity, water, telecommunication services etc. Almost all service providers across the world provide the facility of accepting late payments with late fine or penalty. Even if this service is described as a service of tolerating the act of late payment, it is an ancillary supply naturally bundled and supplied in conjunction with the principal supply, and therefore should be assessed as the principal supply. Since it is ancillary to and naturally bundled with the principal supply such as of electricity, water, telecommunication, cooking gas, insurance etc. it should be assessed at the same rate as the principal supply. However, the same cannot be said of cheque dishonor fine or penalty as discussed in the preceding paragraphs

### **Fixed capacity charges for Power**

The price charged for electricity by the power generating companies from the State Electricity Boards (SEBs)/DISCOMS or by SEBs/DISCOMs from individual customers has two components, namely, a minimum fixed charge (or capacity charge) and variable per unit charge. The minimum fixed charges have to be paid by the SEBs/DISCOMS/individual customers irrespective of the quantity of electricity scheduled or purchased by them during a month. They take care of the fixed cost of generating/ supplying electricity. The variable charges are charged per unit of electricity purchased and increase or decrease every month depending on the quantity of electricity consumed.



The fact that the minimum fixed charges remain the same whether electricity is consumed or not or it is scheduled/ consumed below the contracted or available capacity or a minimum threshold, does not mean that minimum fixed charge or part of it is a charge for tolerating the act of not scheduling or consuming the minimum the contracted or available capacity or a minimum threshold.

Both the components of the price, the minimum fixed charges/capacity charges and the variable/energy charges are charged for sale of electricity and are thus not taxable as electricity is exempt from GST. Power purchase agreements may have provisions that the power producer shall not supply electricity to a third party without approval of buyer. Such agreements which ensure assured supply of power to State Electricity Boards/DISCOMS are ancillary arrangements; the contract is essentially for supply of electricity.

### **Cancellation Charges**

The supplier may allow cancellation of supply by customer within a certain specific time period on payment of cancellation fees on booking of hotel accommodation, railway tickets, air tickets and an entertainment event. Cancellation fees charged by the supplier as per the terms of contract. Cancellation facility provide by the supplier of service for a certain period of time before intended supplies. Services like transportation and travel services are considered bundled of services where all other services like online ticket booking, lounge facility, water and cleaning facilities are naturally bundled with principal supply.

Therefore, facilitation supply of allowing cancellation of an intended supply against payment of cancellation fee or retention or forfeiture of a part or whole of the consideration or security deposit in such cases should be assessed as the principal supply. For example, cancellation charges of railway tickets for a class would attract GST at the same rate as applicable to the class of travel (i.e., 5% GST on first class or air-conditioned coach ticket and nil for other classes such as second sleeper class). Same is the case for air travel.

## **4) Circular No. 179/11/2022 dated 03rd August 2022**

**Following clarifications regarding classification of goods and gst rate on the recommendation of GST council.**

### **Electric vehicles whether or not fitted with a battery pack, attract GST rate of 5%**

The explanation of 'Electrically operated vehicles' in entry 242A of Schedule I of notification No. 1/2017-Central Tax (Rate) reads as:

'Electrically operated vehicles which run solely on electrical energy derived from an external source or from one or more electrical batteries fitted to such road vehicles and shall include E-bicycles.'

As is evident from the explanation above, electrically operated vehicle including three wheeled electric vehicle means vehicle that runs solely on electrical energy derived from an external source or from electrical batteries. Therefore, the fitting of batteries cannot be considered as a concomitant factor for defining a vehicle as an electrically operated electric vehicle.

In view of the above, it is clarified that electrically operated vehicle is to be classified under HSN 8703 even if the battery is not fitted to such vehicle at the time of supply and thereby attract GST at the rate of 5% in terms of entry 242A of Schedule I of notification No. 1/2017-Central Tax (Rate).

**Stones otherwise covered in S. No. 123 of Schedule-I (such as Napa stones), which are not mirror polished, are eligible for concessional rate under said entry.**

Napa Stone is a variety of dimensional limestone, which is a brittle stone and cannot be subject to extensive mirror polishing. Currently, S. No. 123 of Schedule-I prescribes GST rate of 5% for 'E caussine and other calcareous monumental or building stone; alabaster [other than marble and travertine], other than mirror polished stone which is ready to use.' However, being brittle in nature, stones like Napa Stone, even though ready for use, are not subject to extensive polishing. Therefore, such minor polished stones do not qualify as mirror polished stones.

Therefore, it is clarified that S. No. 123 in schedule-I to the notification No. 1/2017-Central Tax (rate) dated 28.06.2017 covers minor polished stones

**Mangoes under CTH 0804 including mango pulp, but other than fresh mangoes and sliced, dried mangoes, attract GST at 12% rate:**

On the basis of the recommendation of the GST Council in its 22nd Meeting, the GST rate on 'Mangoes sliced, dried', falling under heading 0804, was reduced from 12% to 5% [S. No. 30A of Schedule I of notification No. 1/2017-Central Tax (Rate) dated the 28th of June, 2017]. However, the GST rate on all forms of dried mangoes (other than sliced and dried mangoes), falling under heading 0804, including mango pulp, was always meant to be at the rate of 12%.

Accordingly, it is hereby clarified that mangoes, fresh falling under heading 0804 are exempt; Mangoes, sliced and dried, falling under 0804 are chargeable to a concessional rate of 5%; while all other forms of dried mango, including Mango pulp, attract GST at the rate of 12%. To bring absolute clarity, the relevant entry at S. No. 16 of Schedule-II of notification no. 1/2017-Central Tax (Rate), dated 28th June 2017, has been amended vide notification No. 6/2022-Central Tax (Rate), dated the 13th of July 2022.

Fresh mangoes, falling under heading 0804, continue to remain exempt from GST [S. No. 51 of notification No. 2/2017-Central Tax (Rate), dated the 28th of June 2017]

**Treated sewage water attracts Nil rate of GST**

In general, Water, falling under heading 2201, with certain specified exclusions, is exempt from GST vide entry at S. No. 99 of notification No. 2/2017-Central Tax (Rate), dated the 28th of June 2017.

Accordingly, it is hereby clarified that supply of treated sewage water, falling under heading 2201, is exempt under GST. Further, to clarify the issue, the word 'purified' is being omitted from the above-mentioned entry vide notification No. 7/2022-Central Tax (Rate), dated the 13th of July 2022.

### **Nicotine Polacrilex Gum attracts a GST rate of 18%**

The WCO 2022 HS Codes has inter alia introduced a new entry 2404 91 00 comprising of products for oral application containing nicotine and intended to assist tobacco use cessation with effect from 01.01.2022. Accordingly, a technical change, without any consequential rate change, has been made vide notification No. 18/2021 – Central Tax (Rate), dated the 28th of December, 2021, wherein S. No. 26B in Schedule III of notification no. 1/2017-Central Tax (Rate), dated the 28th June, 2017, has been inserted to include products for oral application containing nicotine and intended to assist in cessation of use of tobacco, and falling under tariff item 2404 91 00. The same is supplemented by the HS Explanatory notes 2022 which states that heading 2404 includes nicotine containing products for recreational use, as well as nicotine replacement therapy (NRT) products intended to assist tobacco use cessation, which are taken as part of a nicotine intake reduction programme in order to lessen the human body's dependence on this substance.

Accordingly, it is hereby clarified that the Nicotine Polacrilex gum which is commonly applied orally and is intended to assist tobacco use cessation is appropriately classifiable under tariff item 2404 91 00 with applicable GST rate of 18% [Sl. No. 26B in Schedule III of notification no. 1/2017-Central Tax (Rate), dated the 28th June, 2017].

### **Fly ash bricks and aggregate - condition of 90% fly ash content applied only to fly ash aggregate, and not fly ash bricks:**

As per entry at S. No. 176B of the Schedule II the items of description “Fly ash bricks or fly ash aggregate with 90 per cent. or more fly ash content; Fly ash blocks” attracts a GST rate of 12%. Confusion has arisen about the applicability of 90 per cent. condition on fly ash aggregates and fly ash bricks. As per the recommendations of the GST Council in the 23rd Meeting, the condition of 90% or more fly ash content was applicable only for fly ash aggregate.

Therefore, it is clarified that the condition of 90 per cent. or more fly ash content applied only to Fly Ash Aggregates and not to fly ash bricks and fly ash blocks. Further, with effect from 18th July, 2022 the condition is omitted from the description.

### **Applicability of GST on by-products of milling of Dal/ Pulses such as Chilka, Khanda and Churi**

As per entry at S. No. 176B of the Schedule II the items of description “Fly ash bricks or fly ash aggregate with 90 per cent. or more fly ash content; Fly ash blocks” attracts a GST rate of 12%. Confusion has arisen about the applicability of 90 per cent. condition on fly ash aggregates and fly ash bricks. As per the recommendations of the GST Council in the 23rd Meeting, the condition of 90% or more fly ash content was applicable only for fly ash aggregate.

<u>Entry No &amp; Notification</u>	<u>Description</u>	<u>GST Rate</u>
S. No. 102 of notification No. 2/2017-Central Tax (Rate), dated the 28th June, 2017	Aquatic feed including shrimp feed and prawn feed, poultry feed & cattle feed, including grass, hay & straw, supplement & husk of pulses, concentrates & additives, wheat bran & de-oiled cake[other than rice bran]	<b>NIL</b>
S. No. 103A of Schedule-I of notification No. 1/2017-Central Tax (Rate), dated 28th June, 2017	Bran, sharps and other residues, whether or not in the form of pellets, derived from the sifting, milling or other working of cereals or of leguminous plants [other than aquatic feed including shrimp feed and prawn feed, poultry feed and cattle feed, including grass, hay and straw, supplement and husk of pulses, concentrates and additives, wheat bran and de-oiled cake]	<b>5%</b>
S. No. 103B of Schedule-I of notification No. 1/2017-Central Tax (Rate), dated 28th June, 2017	Rice bran (other than de-oiled rice bran)	<b>5%</b>

## Direct Tax

### Notification of Documents to be maintained for expenditure in relation to COVID - 19

#### 1) Documents to be shared with employer

The following documents to be shared by employee to his employer for the purpose of Section 17

- a) The COVID-19 positive report of the employee or his family member, or medical report if clinically determined to be COVID-19 positive through investigations in a hospital or an in-patient facility by a treating physician of a person so admitted
- b) All necessary documents of medical diagnosis or treatment of the employee or his family member for COVID-19 or illness related to COVID-19 suffered within six months from the date of being determined as COVID-19 positive
- c) A certification in respect of all expenditure incurred on the treatment of COVID-19 or illness related to COVID-19 of the employee or of any member of his family

Based on the above documents, the employer will not consider the amount incurred by him for the employee as a perquisite taxable in the hands of employee.

This notification shall be deemed to have come into force from the 1st day of April, 2020 and shall apply in relation to the financial year 2019-20 and subsequent financial years.

- [Notification No. 90/2022]

#### 2) Documents to be maintained by Individual in respect of expenditure related to COVID - 19

An individual shall maintain the following the records for the purpose of Section 56(2)(x)

- a) The COVID-19 positive report of the individual or his family member, or medical report if clinically determined to be COVID-19 positive through investigations in a hospital or an in-patient facility by a treating physician for a person so admitted
- b) All necessary documents of medical diagnosis or treatment of the individual or family member due to COVID-19 or illness related to COVID-19 suffered within six months from the date of being determined as a COVID-19 positive

Statement of any amount received for any expenditure actually incurred by an individual for his medical treatment or treatment of any member of his family, for any illness related to COVID-19 for the purposes of proviso of section 56(2)(x) of the Income-tax Act, 1961 shall be verified and furnished in **Form No. 1**.

The details of the amount received in any financial year shall be furnished in Form No. 1 to the Income Tax Department within nine months from the end of such financial year or 31.12.2022, whichever is later.

Based on the above documentation, the amount received by individual will not considered as income taxable under head Other Sources.

This notification shall be deemed to have come into force from the 1st day of April, 2020 and shall apply in relation to the financial year 2019-20 and subsequent financial years.

- [Notification No. 91/2022]

### **3) Documents to be maintained by family member of deceased individual in respect of expenditure related to COVID – 19**

The family member of the individual shall keep a record of the following documents

- a) The COVID-19 positive report of the individual, or medical report if clinically determined to be COVID-19 positive through investigations in a hospital or an inpatient facility by a treating physician
- b) A medical report or death certificate issued by a medical practitioner or a Government civil registration office, in which it is stated that death of the person is related to corona virus disease (COVID-19)

The above records are to be kept by the family member in case his death is within 6 months from from the date of testing positive or from the date of being clinically determined as a COVID-19 case and any amount has been received by the family member.

Statement of any sum of money received by a member of the family of a deceased person from the employer of the deceased person or from any other person or persons, on account of death due to COVID-19 for the purposes of clause (XIII) of the first proviso to clause (x) of subsection (2) of section 56 of the Income-tax Act, 1961 shall be verified and furnished in Form A.

The details of the amount received in any financial year shall be furnished in Form A to the Assessing Officer within nine months from the end of such financial year or 31.12.2022 whichever is later.

This notification shall be deemed to have come into force from the 1st day of April, 2020 and shall apply in relation to the financial year 2019-20 and subsequent financial years.

- [Notification No. 92/2022]

### **Amendment of Rule 21AK**

The CBDT has amended the 21AK which specifies the conditions for the purpose of claiming exemption under section 10(4E) of Income Tax Act, 1961. As per the amendment, offshore derivative instruments or over-the-counter derivatives shall be inserted as instruments eligible for claiming deduction u/s 10(4E) of the Income Tax Act, 1961.

- [ Notification No. 87/2022]

### **Notification of Capital Asset for Section 47**

The Central Government has notified the following capital asset - Bullion Depository Receipt with underlying bullion for the purpose of Section 47(viiab)(d) of Income Tax Act, 1961. Section 47 of Income Tax Act, 1961 specifies the transactions which will be not considered as transfer and will not be chargeable as Income under head Capital Gain.

- Notification No. 89/2022]

### **Insert of New Rule 17AA**

The CBDT has inserted a new rule 17AA which specifies the books of accounts to be maintained by the fund or institution or trust or any university or other educational institution or any hospital or other medical institution who are claiming the exemption u/s 10(23C) or 12A. These books of accounts are to be maintained for a period of 10 years from the end of relevant assessment year.

- [Notification No. 94/2022]

### **Substitution of Rule 17**

The CBDT has substitutes the rule 17 of Income Tax Rules, 1962 which species the procedure for filing an application Form 9A and Form 10 by the charitable or religious organisation for the purpose of accumulation of Income.

- [Notification No. 96/2022]

### **Insert of New Rule 40G**

The CBDT has inserted a new rule 40G which specifies the procedure for filing of application to claim refund of taxes under Section 239A of Income Tax Act, 1961. Form 29D i.e. the application for claim of refund has been notified.

- [Notification No. 98/2022]

### **Amendment in Form 67**

The Form 67 is an application filed by the person to claim the benefit of "Foreign Tax Credit". The CBDT has amended the time limit to file the form. Form 67 is now required to be filed by the person before the end of assessment year relevant to the financial year in which the foreign income is offered to tax and the Income tax return has been filed. Further, a person can file Form 67 in case of updated return filed u/s 139(8A) of Income Tax Act, 1961.

This amendment is effective from the April 01st, 2022 so that it applies to all the claims of foreign tax credit furnished during the financial year 2022-2023.

- [Notification No. 100/2022]

## Audit and Assurance

### Exposure Draft of Compendium of Social Audit Standards

“Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) (Third Amendment) Regulations, 2022” dated July 25, 2022, has been issued in The Gazette of India regarding formation of Social Stock Exchange [https://www.sebi.gov.in/legal/regulations/jul-2022/securities-and-exchange-board-of-india-issue-of-capital-and-disclosure-requirements-third-amendment-regulations-2022\\_61171.html](https://www.sebi.gov.in/legal/regulations/jul-2022/securities-and-exchange-board-of-india-issue-of-capital-and-disclosure-requirements-third-amendment-regulations-2022_61171.html).

The notification defines Social Stock Exchange as “A separate segment of a recognized stock exchange having nationwide trading terminals permitted to register Not for Profit Organizations and/ or list the securities issued by Not-for-Profit Organizations in accordance with provisions of these regulations.”

As per the above notification, The Institute of Chartered Accountants of India (ICAI) has been entrusted with the responsibility of being Self- Regulatory Organization for regulating the profession of social auditors. In this regard, Sustainability Reporting Standards Board of ICAI has developed following-

- i. Draft Preface to the Social Audit Standards
- ii. Draft Framework for the Social Audit Standards
- iii. Draft Social Audit Standards (SAS) on all the sixteen thematic areas specified in the above-mentioned notification.

The downloadable version of the Exposure Draft is available at: <https://resource.cdn.icai.org/71191srsb57193.pdf>

## Accounting

Amendment in the Companies (Accounts) Rules, 2014 relating to availability of books of account and other relevant books and papers maintained in electronic mode Reporting

In exercise of the powers conferred under sub-sections (1) and (3) of section 128, sub-section (3) of section 129, section 133, section 134, sub-section (4) of section 135, sub-section (1) of section 136, section 137 and section 138 read with section 469 of the Companies Act, 2013 (18 of 2013), the Central Government has made following amendments in Companies (Accounts) Rules, 2014:

- in sub-rule (1), for the words “accessible in India”, the words “accessible in India, at all times,” shall be substituted;
  - in sub-rule (5), in the proviso, for the words “periodic basis”, the words “daily basis” shall be substituted;
  - in sub-rule (6), after clause (d), the following clause shall be inserted, namely:-  
“(e) where the service provider is located outside India, the name and address of the person in control of the books of account and other books and papers in India.”.
- These amendments will be effective from date of notification (i.e. 05th August 2022). A note on comparison (pre-amendment and post-amendment) from Corporate Laws & Corporate Governance Committee of the ICAI is available on <https://resource.cdn.icai.org/71244clcg160822.pdf>



## Regulations

### THE MINISTRY OF CORPORATE AFFAIRS (MCA)

#### **Replacement of E Form DIR-3-KYC to Form DIR-3-KYC-WEB**

MCA vide its notification dated August 29, 2022, has notified “the Companies (Appointment and Qualification of Directors) Third Amendment Rules, 2022” which shall come into force on the date of its publication in the Official Gazette. According to the amendment MCA has substituted the existing DIR-3 KYC and DIR-3-KYC web forms with new DIR-3 KYC and DIR-3-KYC web forms to align the same with new portal.

#### **The Companies (Acceptance of Deposits) Amendment Rules, 2022**

MCA vide its notification dated August 29, 2022, has notified “the Companies (Acceptance of Deposits) Amendment Rules, 2022” which shall come into force on the date of its publication in the Official Gazette. According to the provisions of Rule 16 of the said Rules, every company to which these rules apply, shall on or before the 30th day of June, of every year, file with the Registrar, a return in Form DPT-3 along with the fee as provided in Companies (Registration Offices and Fees) Rules, 2014 and furnish the information contained therein as on the 31st day of March of that year duly audited by the auditor of the company and a declaration to that effect shall be submitted by the Auditor in Form DPT-3. Also, the E Form DPT-3 and E Form DPT-4 are substituted.

#### **Amendment in Companies (Registration of Charges) Rules, 2014**

MCA vide its notification dated August 29, 2022 has notified “the Companies (Registration of Charges) Second Amendment Rules, 2022” which shall come into force on the date of its publication in the Official Gazette. According to the amendment rule 13 is inserted by stating that, signing of charge e-forms (i.e. Form No. CHG-1, CHG-4, CHG-8 and CHG-9) by the insolvency professional or resolution professional or liquidator for companies under resolution or liquidation, as the case may be and filed with the Registrar. Further, the E Form No. CHG-1 is substituted.

#### **The Companies (Appointment and Qualification of Directors) Third Amendment Rules, 2022**

MCA vide its notification dated August 29, 2022, has notified “the Companies (Appointment and Qualification of Directors) Third Amendment Rules, 2022” which shall come into force on the date of its publication in the Official Gazette. According to the amendment, the E Form DIR-3-KYC and Form DIR-3-KYC-WEB are substituted

#### **The Companies (Incorporation) Third Amendment Rules, 2022**

MCA vide its notification dated August 18, 2022, has notified the Companies (Incorporation) Third Amendment Rules, 2022 which shall come into force on the date of its publication in the Official Gazette. According to the amendment, a new Rule 25B is inserted in the Companies (Incorporation) Rules, 2014, stating physical verification of the registered office of the company by the Registrar in terms of section 12(9) of the Companies Act, 2013 in presence of two witnesses of the locality. The Registrar shall carry the documents as filed on MCA 21 in support of the address of the registered office of the company for the purposes of physical verification and take a photograph of the registered office.

## **RESERVE BANK OF INDIA (RBI)**

### **RBI notifies revised regulatory framework on Overseas Investment**

RBI, with effect from August 22, 2022, has combined erstwhile FEMA (Transfer or Issue of Foreign Security) Regulations, 2004 and FEMA (Acquisition and Transfer of immovable property outside India) Regulations, 2015 into FEMA (Overseas Investment) Rules, 2022 and FEMA (Overseas Investment) Regulations, 2022 and the erstwhile regulations stand superseded.

The new Overseas Investments Rules/ Regulations/ Directions (the framework) have been simplified for ‘ease of doing business’ and to provide global opportunities for growth/ competitiveness of the Indian entrepreneurs/ entities (person resident in India), to boost their global business/ brand value, which eventually will contribute to India’s economic growth also, by way of increase in foreign trade, employment, investment, etc.

The draft rules and regulations were rolled out for public comments on August 9, 2021. RBI has also issued the compiled FEMA (Overseas Investment) Directions, 2022 covering the Overseas Investment Rules and Overseas Investment Regulations grouping the requirements under three categories viz. General provisions, Specific provisions, and Other operational instructions to the AD Banks. It also provides for certain compliance requirements from the erstwhile ODI Master Directions, not covered in Overseas Investment Rules or Regulations.

## **Security Exchange Board of India (SEBI)**

### **SEBI lays down rules for the deactivation of accounts (July 30, 2022)**

SEBI has released a framework dated July 30, 2022, for deactivation of trading and demat accounts of investors automatically in case of inadequate Know Your Client (KYC) details.

The framework will come into effect on August 31, 2022.

### **Circular on use of a digital signature certificate for announcements submitted by listed companies**

The National Stock Exchange on August 2, 2022 has notified the steps taken by SEBI for the usage of digital signature certification for authentication/certification of filings/submissions made to Stock Exchanges.

In accordance with Regulation 10 of SEBI (Listing Obligation and Disclosure Requirements) Regulations, 2015 (LODR), all listed companies are required to file the reports, statements, documents, filings, and any other information with the recognized Stock Exchange(s) on the electronic platform as specified by the Board or the recognized Stock Exchange(s). Accordingly, the Exchange has provided an electronic platform viz. National Stock Exchange Electronic Application Processing System (NEAPS) and the Digital Portal for listed companies to file the above documents. The Exchange has provided unique User Id and Passwords to listed companies to access the said electronic portals.

The circular shall be effective from September 01, 2022.

### **SEBI Settlement Scheme, 2022**

SEBI vide public notice dated August 19, 2022 has issued Public notice in respect of SEBI-Settlement Scheme 2022 to provide an opportunity for settlement to the entities who have executed reversal trades in the illiquid stock options segment of BSE between

Pursuant to the order of the Hon’ble Securities Appellate Tribunal (“SAT”) dated May 13, 2022, in the matter of illiquid stock options, SEBI has framed a Settlement Scheme (“Scheme, 2022”) for the entities against whom proceedings have been initiated

and are pending before any forum or authority, viz. Courts/SAT, Adjudicating Officer and Recovery Officer (provided an appeal has been filed and the same is pending before the SAT/Court).

The entities may avail the Scheme, 2022 as per its terms and conditions. The terms and conditions of the Scheme, 2022 shall be available on the respective websites of SEBI and BSE on August 22, 2022. The Scheme shall commence on August 22, 2022 and end on November 21, 2022 (both days inclusive) or such other date as approved by the Competent Authority.

### **SEBI enhances disclosure norms for rating companies**

SEBI vide its circular dated August 27, 2022 has enhanced the rules on disclosures by credit rating agencies, and put in place a framework for rating withdrawals of perpetual debt securities to facilitate withdrawal of perpetual debt security ratings, that are listed or are to be listed on the bourses, a credit rating agency may withdraw a rating in case it rated these securities continuously for at least five years, or received an undertaking from either the issuer or other agencies that a rating is available for such bonds.



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