

INCOME TAX

- + Income-tax return (ITR) mandatory for non-corporates in specified circumstances
- + CBDT notifies form ITR-U for filing updated return of income
- + CBDT notifies manner of claiming income-tax relief on incomes from overseas retirement benefit accounts in certain circumstances
- + Dispute Resolution Committees (DRC) – constitution and mode of conduct of proceedings

CUSTOMS

- + Introduction of Customs Tariff (Determination of Origin of Goods under the CEPA between India and United Arab Emirates) Rules, 2022

FOREIGN TRADE POLICY

- + Amendments in Chapter 5 of the Handbook of Procedures 2015-20, related to Export Promotion Capital Goods (EPCG) Scheme
- + DGFT Helpdesk support available on 24*7 basis
- + Re-operationalisation of scrip transfer recording module
- + Extension of Date for Mandatory electronic filing of Non-Preferential Certificate of Origin (CoO) through the Common Digital Platform to 01st August 2022

CORPORATE LAW

- + Clarification on validity period of shareholders' approval for related party transactions for listed companies
- + Personal details of Directors in Register of Members not available for inspection
- + Relaxation in fees for delay in filing forms for creation or modification of charge
- + Relaxation of time limit for depositing and filing ESI Contribution for March 2022
- + Compliance requirement related to issue of secured debt securities by listed companies
- + Declaration from Nidhi Companies at the stage of incorporation

Quick bit

Income Tax

In a recent ruling, the Bangalore Income-tax Appellate Tribunal ('ITAT')¹ has ruled on the long-litigious issue of 'notional' interest on outstanding receivables. The facts involved the IndCo-taxpayer having outstanding receivables from its group companies. In summary, IndCo contended that:

- (a) outstanding receivables are closely linked to main transaction and hence, cannot be considered as separate international transaction;
- (b) inter-co agreements provides for extending credit period with mutual consent and it does not provide any interest clause in case of delay;
- (c) working capital adjustment takes into account the factors related to delayed receivables and no separate adjustment is required in such circumstances.

The ITAT held as follows:

- (a) The ITA has been amended to provide that 'debt arising during the course of business' refers to trading debt arising from sale of goods or services rendered in course of carrying on business.
- (b) The ITAT Special Bench has held in Instrumentation Corpn. Ltd.² that outstanding sum of invoices is akin to loan advanced to foreign AE, hence it is an international transaction.

Hence, considering all of the above and also the ruling of the Delhi ITAT in Orange Business Services India Solutions (P.) Ltd.³, the ITAT remanded the matter back to the TPO to consider the following factors before holding that every receivable is an international transaction:

- (a) Assessment on the working capital of the assessee;
- (b) Impact of the receivables appearing in the taxpayer's accounts of the assessee; and
- (c) Reasons why the same are shown as receivables.

As taxpayers proceed to finalize their accounts for FY 2021-22, it is relevant to bear the above observations of the Bangalore ITAT and review whether the outstanding receivables requires a characterisation as an explicit 'international transaction' and consequently whether an arm's length interest charge should be claimed from the group companies.

INCOME TAX

+ Income-tax return ('ITR') mandatory for non-corporates in specified circumstances: Hitherto,

under the provisions of the Income-tax Act, 1961 ('ITA'), a non-corporate is required to mandatorily file an ITR if such person:

- i. deposits in excess of Rs. 1 crore during the year in one or more current accounts maintained with a banking company or a co-operative bank;
- ii. incurs expenditure exceeding Rs. 2 lakhs in connection to foreign travel;
- iii. incurs expenditure exceeding Rs. 1 lakh towards consumption of electricity.

The above provisions are now supplemented to mandatorily file an ITR where any of the following conditions are satisfied.

¹ Goodrich Aerospace Services Pvt. Ltd. v. DCIT (ITA 566 / Bang / 2021 dated 16.03.2022 for AY 2017-18)

² Instrumentation Corpn. Ltd. v. Asstt. DIT (ITA 1548 / Kol / 2009 dated 15.07.2016)

³ Orange Business Services India Solutions (P.) Ltd. v. Dy. CIT (91 taxmann.com 286)

MAY 2022

- i. if the total sales / turnover / gross receipts in the business exceeds Rs. 60 lakhs during the tax year;
- ii. if the total gross receipts in profession exceeds Rs. 10 lakhs during the tax year;
- iii. if the aggregate of tax deducted at source and tax collected at source during the tax year is Rs. 25,000/- or more (Rs. 50,000/- in case of a resident individual of age 60 years or more);
- iv. the deposit in one or more savings bank account of the person, in aggregate, is Rs. 50 lakhs or more during the previous year.

Notification No. 37 of 2022 dated 21.04.2022

- + **CBDT notifies Form ITR-U for filing updated return of income:** Finance Act, 2022 had introduced provisions enabling filing of an 'updated return of income', in specified circumstances with specific implications. In this regard, the CBDT has notified Form ITR-U, being the form in which such 'updated return' is to be filed.

Notification No. 48 of 2022 dated 29.04.2022

- + **CBDT notifies manner of claiming income-tax relief on incomes from overseas retirement benefit accounts in certain circumstances:** Finance Act, 2022 had introduced provisions to enable individuals to claim income-tax relief on income from retirement benefit accounts ('specified income') maintained in notified countries. These incomes were not subject to tax on accrual basis in the notified countries, but taxed at the time of withdrawal or redemption. This relief is available for residents who opened such accounts while being non-residents from an India tax standpoint but being residents in the notified country. The CBDT has now notified the manner of claiming the tax relief on incomes from such accounts. Amongst other provisions, the rules provide that the specified incomes would be taxed in the hands of these individual, at the time of redemption or withdrawal, at the option of the individual.

Further, Canada, United Kingdom and United States of America have been notified as the countries, specified income from which is eligible for the above relief.

Notification No. 24 of 2022 & Notification No. 25 of 2022 both dated 04.04.2022

- + **Dispute Resolution Committees (DRC) – constitution and mode of conduct of proceedings:** Finance Act 2021 had provided for constitution of the DRC with powers to reduce / waive penalties imposable under the ITA or / and grant immunity from prosecution under the provisions of the ITA. The circumstances in which recourse cannot be had to the DRC was also specified. In this regard, the rules in relation to the constitution and mode of conduct of proceedings before the DRC has now been notified. Highlights of these rules are as under:

MAY 2022

- *Constitution:* DRC is to be constituted by 3 members, 2 retired income-tax commissioners or higher post who have served as such for five years or more; and 1 serving officer not below the rank of Principal commissioner of Income Tax or Commissioner of Income Tax as specified by the CBDT.
- *Form and manner of application:* The application to DRC shall be filed in Form 34BC along with a fee of Rs. 1000. Form 34BC is also notified along with the relevant rules.
- *Proceedings before the DRC:* The proceedings will be conducted in a faceless manner and the assessee or his authorized representative shall not be required to appear personally. The DRC may, at the request of the assessee, permit a personal hearing and such hearing shall be conducted through video conferencing.
- *Specified orders:* The notification specifies a list of orders that can be referred to the DRC. However, such orders shall be subject to the following.
 - i. Aggregate of variations proposed or made in such order does not exceed Rs. 10 lakhs;
 - ii. Such order is not based on search initiated under section 132 or requisition under 132A or survey under section 133 or any information received under an agreement referred to in section 90 or section 90A; and
 - iii. Where return is filed by the assessee for the relevant assessment year and the total income as per such return does not exceed Rs. 50 lakhs.

Notification No. 26 of 2022 & Notification No.27 of 2022 both dated 05.04.2022

CUSTOMS

- + **Introduction of Customs Tariff (Determination of Origin of Goods under the Comprehensive Economic Partnership Agreement between India and United Arab Emirates) Rules, 2022:** Government of Republic of India, upon identifying potential and to strengthen / enhance trade and economic co-operation in the fields agreed, has entered into Comprehensive Economic Partnership Agreement (CEPA), with the Government of United Arab Emirates. In this backdrop, in addition to the notifications the board has issued granting necessary exemptions (partial or complete) from payment of duty of customs (including AIDC), it has now detailed necessary rules to determine the Origin of Goods, which is the basis for granting necessary exemptions for goods so imported under the CEPA/PTA. Rules issued in this regard provides for the following details:
 - Necessary definitions such as “non-originating material”, “issuing authority”, “indirect material” “customs value”, “ex-works price” “FOB value” and so on;
 - Criterion, basis which products shall be eligible for preferential treatment under Preferential Trade Agreement (PTA), such as (a) wholly owned or produced product; or (b) product that has undergone sufficient working or production as per product specific rules, as prescribed in Annexure B to the rules;

MAY 2022

- Minimum Value addition methodology, prescribed for each product category in Annexure B to the rules;
- Circumstances in which products are considered as wholly obtained or produced product;
- Percentage or weight of non-originating materials permitted in the final product imported under the CEPA/PTA, for which claim is lodged i.e., De Minimis condition;
- Product is not considered to be originated from UAE, in cases where only the specified list of operations and processes are carried out such as (a) simple painting and polishing; (b) sharpening, simple grinding or simple cutting, slaughter of animals, simple testing calibration, inspection or certification and so on;
- Listing non-qualifying operations, for the purpose of computation of origination criterion;
- Circumstances where accessories, spare parts and tools supplied will also be considered as goods originating from UAE under PTA;
- Necessary accounting policies that person needs to adhere to under the provisions of these rules, including period for which records will have to be preserved i.e., five years from the date of issuance;
- Circumstances under which originating products can be transported outside the territories of the parties i.e., merchant export of such goods;
- Format of Certificate of Origin, which will be issued in form as prescribed in Annexure E of the rules, while format for application is prescribed in Annexure A to the said rules;
- Certificate of Origin issued, will remain valid for one import only and can include one or more products. Further, imports under said certificate in specified circumstances will be permitted even beyond expiry of validity of certificate so issued;
- Permitted issuance of Certificate of Origin on retrospective basis – cannot be older than 12 months from date of shipments;
- Process to obtain Certified True Copy in case of loss or destruction of Certificate of Origin issued;
- Relevant authorities for the purpose of PTA and these rules are prescribed in Rule 17 of said rules;
- Obligations of the exporter or producer or manufacturer on whom such Certificate of Origin is or will be issued;
- Submission of Original Certificate of Origin (including certified true copy), is necessary for claiming preferential treatment benefits;
- Process/procedure for verification of correctness of Certificate of Origin produced, to claim preferential treatment benefits including timelines for submission of documents and verification thereof by authorities;
- Circumstances in which preferential treatment can be denied, Certificate of Origin issued can be rejected and appeals can be preferred by aggrieved party;

MAY 2022

- Circumstances in which prospective restoration of preferential benefits is permitted;
- Circumstances in which preferential treatment can be suspended on temporary basis;
- Basis for tariff classification, exchange of electronic data on origin, geographical scope to which scope of preferential treatment under these rules is/are applicable;
- Penalties for non-compliances of rules prescribed herein;

For more details on the rules summarized as supra, we request you to read notification details of which is mentioned below.

(Notification No. 39/2022 – Customs (NT) dated 30.04.2022)

FOREIGN TRADE POLICY

- + **Amendments in Chapter 5 of the Handbook of Procedures 2015-20, related to Export Promotion Capital Goods (EPCG) Scheme:** With an intent to enhance ease of doing business and reduce compliance burden, in Chapter 5 of the Handbook of Procedures 2015-20, related to EPCG scheme has been amended. The highlights of such amendments are as follows:

Matter	Impact of amendments	
Remedies available on account of non-fulfilment of Block-wise Export Obligation (EO)	Period from date of issue of authorization	Minimum export obligation to be fulfilled
	Block of 1 st to 4 th year	50%
	<p>If not fulfilled, authorization holder to remit the custom duties along with interest within 6 months of expiry of block (<i>hitherto, within 3 months of expiry of block</i>). (except in the situation where extension of EO allowed on payment of composition fee).</p> <p>Going forward, the authorization holder can place a request for extension of EO period of first block, which did not exist earlier.</p> <p>Further extension can be allowed on request placed beyond 6 months but within 6 years from date of authorization with late fee. The regularization of EO period is allowed beyond 6 years with additional late fee (<i>Hitherto, such additional extensions were not available</i>).</p>	
Monitoring of Export obligation (EO)	<p>Furnishing of report of export obligation to RA has been extended from 30th April of every year to 30th June of every year. Going forward, the mode of filing will be digital. Filing of hard copies have been done away with.</p> <p>The mandatory contents of such report have been specified. Delay in filing shall be regularized on payment of Rs.5,000/- per financial year per authorization (<i>hitherto, contents and consequences on delay were not existed</i>).</p>	

Matter	Impact of amendments
Timing of furnishing additional fee in case of Automatic reduction/enhancement upto 10% duty saved amount and pro rata reduction/enhancement in export obligation	<p>Authorisation holder shall furnish additional fee to cover excess imports effected, in terms of duty saved amount to RA concerned, at the time of application for EODC (<i>hitherto, the timing to furnish was within one month of excess imports taking place</i>).</p> <p>Thus, the provision of remittance of additional late fee, on account of delay in the above, has been done away with.</p>
Extension in Export obligation (EO) period	<p>Extension of EO period can be considered by Regional authority (RA):</p> <p>(a) If application made within expiry of 6 months from date of expiry of original EO period. (<i>hitherto, within expiry of 90 days from date of expiry of original EO period</i>).</p> <p>(b) Further, an additional extension upto 8 years with additional late fee of Rs.10,000/- (<i>hitherto, additional extension upto 180 days was with additional composition fee of Rs.5,000/-</i>).</p> <p>(c) The application made beyond 8 years for regularization purposes with an additional late fee of Rs.5,000/- per year per authorization. This is in addition to composition fee for shortfall in EO (<i>hitherto, such regularization provision was not existed</i>).</p> <p>However, EO extension beyond 8 years from date of authorization shall not be allowed any RA.</p>
Maintenance of Annual Average Export obligation (AAEO)	<p>The excess exports done towards the average export obligation fulfillment of an EPCG authorization during a year can be used to offset any shortfall in the Average EO done in other year(s) of the EO period or the block period as the case may be, provided Average EO imposed is maintained on an overall basis, within the EO period (<i>hitherto, an option was available for maintenance of AAEO either within the block period or the EO period as applicable</i>).</p>
Export Obligation Discharge certificate (EODC)	<p>Authorisation holder shall apply for EODC (<i>hitherto, application was for redemption</i>) in ANF-5B as a proof of Export obligation fulfilment. Accordingly, RA will issue EODC to EPCG authorization holder, on being satisfied and a copy of which will be forwarded to ICEGATE through online, for further action by Jurisdictional Customs Authorities with whom BG/LUT has been executed.</p> <p>Furnishing of statement, by authorization holder, giving details of documents submitted, towards evidence of EO fulfilment, has been done away with.</p>
Availability of option during regularisation and bonafide default and exit from EPCG scheme.	<p>The option for authorisation holder to furnish valid duty credit scrips, issued under Chapter 3 and 5 of FTP, for payment of customs duty component, has been done away with.</p>

Public notice no.03/2015-20 dated 13.04.2022

MAY 2022

- + **DGFT Helpdesk support available on 24*7 basis:** In order to facilitate trade and extend more proactive helpdesk support to the exporting community, it is informed that the services of DGFT Helpdesk will now be available on a 24x7 basis. The contact details of the helpdesk have been provided in this trade notice.

Trade notice no.02/2022-23 & Circular no.394 both dated 22.04.2022

- + **Re-operationalisation of scrip transfer recording module:** In order to prohibit fraudulent scrip transfers between exporters, the Online scrip transfer recording module was earlier suspended. Based on inputs from Department of Revenue and in the interest of trade facilitation it is now decided to re-operationalise the IT module which existed in the year 2019 along with the additional features, which are as follows:

- Introduction of time-lag for transfer of scrips in the cases where such transfers are between individual persons/ such transfers are between entities/ such transfers are subsequent to IEC modification.
- Introduction of maximum limit of initiating scrip transfers/acceptance of such scrips per day.
- Automatic de-linking of Digital Signature and Aadhaar Registration every 90 days.
- Automatic delinking of IECs every 6 months.
- Email and SMS notifications to IEC holders and Director/ Partners attached to IEC on account of transfer of scrips, modification of IEC, linking of IEC.
- Flagged IECs (having mismatches in particulars) will not be allowed to use Scrip transfer module.

In addition to the above, it has been categorically advised to the stakeholders to suitably follow necessary due diligence while transferring scrips and report on deviations, if any. Further, the original duty scrip holder is required to register the duty credit scrip at the Port of Registration with Customs and transfer of scrips from one IEC to another IEC will be based on negotiations between buyer and seller and DGFT/Customs are not responsible for any lapse/ dispute, in this regard.

Trade notice no.01/2022-23 dated 11.04.2022

- + **Extension of Date for Mandatory electronic filing of Non-Preferential Certificate of Origin (CoO) through the Common Digital Platform to 01st August 2022:** In the backdrop of implementation of electronic platform for Certificate of Origin (CoO)(URL: <https://coo.dgft.gov.in>) to facilitate electronic filing and issuance for Non-Preferential Certificates of Origin(CoO) besides Preferential CoOs, it is informed that the **transition period for mandatory filing of applications for Non-Preferential Certificate of Origin through the e-CoO Platform has been extended till 01st August 2022.** Hitherto, the said date was extended till 31st March 2022.

During such period, the manual and electronic modes will be kept operational parallelly as twin options. For guidance on registration and online application submission process, the Help Manual & FAQs may be referred on the aforesaid website URL.

The issuing agencies who do not use the online system for issue of non-preferential CoOs after 01st August 2022 will invite penal action and can be subject to ‘de-listing’ an authorized agency. The authorised agencies are therefore required to sensitize the exporting community and their constituents regarding the Online system and its registration requirements well in time.

Trade notice no.04/2022-23 dated 27.04.2022

CORPORATE LAW

- + **Clarification on validity period of shareholders’ approval for related party transactions for listed companies:** Securities and Exchange Board of India (‘SEBI’) vide its circular on 08.04.2022 has clarified that the shareholders’ approval of related party transactions (‘RPT’s) in an annual general meeting (‘AGM’) shall be valid up to the date of the next AGM for a period not exceeding fifteen months. In case of omnibus approvals for material RPTs, obtained from shareholders in general meetings other than AGMs, the validity of such omnibus approvals shall not exceed one year.

Circular dated 08.04.2022

- + **Personal details of Directors in Register of Members not available for inspection:** Ministry of Corporate Affairs (‘MCA’) has amended the Companies (Management and Administration) Rules, 2014 to include a new sub-rule in Rule 14. The new sub-rule has mandated that the personal details of Directors including their addresses, email ID, Unique Identification Number and PAN which is included in the Register of Members of a Company shall not be made available for inspection under section 94(2) of the Companies Act, 2013 (‘the Act’) or for taking extracts under section 94(3) of the Act.

Notification dated 06.04.2022

- + **Relaxation in fees for delay in filing forms for creation or modification of charge:** MCA amended the Companies (Registration of Charges) Rules, 2022 on 27.01.2022. The amendment to the rules has prescribed that the additional fees and higher additional fees for delay in filing forms shall not apply to any charge required to be created or modified by a banking company under section 77 in favor of the Reserve Bank of India when any loan or advance has been made to it under sub-clause (d) of clause (4) of section 17 of the Reserve Bank of India Act, 1934 (2 of 1934).

Notification dated 27.04.2022

- + **Relaxation of time limit for depositing and filing ESI Contribution for March 2022:** Ministry of Labour and Employment (Government of India) has extended the due date for depositing for March 2022 to 30.04.2022 instead of 15.04.2022. Further the return of contribution for the period from October 2021 to March 2022 has to be filed by 26.05.2022 instead of 11.05.2022.

Circular dated 13.04.2022

MAY 2022

- + **Compliance requirement related to issue of secured debt securities by listed companies:** SEBI notified the Securities and Exchange Board of India (Issue and Listing of Non-Convertible Securities) Regulations, 2021 on 11.04.2022. The notification requires the listed companies to ensure that the secured debt securities are secured by 100 percent security cover or higher security cover as per the terms of the offer document and/or Debenture Trust Deed, sufficient to discharge the principal amount and the interest thereon at all times for the issued debt securities. Further, a due diligence certificate has to be furnished in the prescribed form at the time of filing the draft offer document.

Notification dated 11.04.2022

- + **Declaration from Nidhi Companies at the stage of incorporation:** MCA has notified the Companies (Incorporation) Amendment Rules, 2022 on 08.04.2022. The rules have mandated that Companies should obtain the declaration from Central Government to operate as a Nidhi Company before commencing the business and a declaration in this behalf shall be submitted at the stage of incorporation by the Company. Further, the FORM INC-20A has been substituted with Form INC 32A(SPICe+).

Notification dated 08.04.2022

SINGHVI DEV & UNNI LLP

+91 (80) 2226 1371 | www.sduca.com | info@sduca.com

Document date: 11.05.2022

The views expressed and the information provided in this newsletter are of general nature and are not intended to address the circumstances of any particular individual or entity. Further, the above content should neither be regarded as comprehensive nor sufficient for making decisions. Although we endeavor to provide accurate and timely information, there is no assurance or guarantee in this regard. No one should act on the information or views provided in this publication without appropriate professional advice. SDU will not be responsible for any loss arising from any actions taken or to be taken or not taken by anyone based on this publication. This is meant for private circulation only.