

### HIGHLIGHTS

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#### INCOME TAX

- + E-advance rulings Scheme, 2022
- + Rule 8AD : Computation of capital gains, not exempt under Section 10(10D)
- + Extension of Timelines for various compliances under the Income Tax Act.

#### GOODS AND SERVICE TAX

- + Guidelines issued for recovery of self-assessed tax (differences between tax as per GSTR-1 vs GSTR-3B)

#### CUSTOMS

- + Alignment of Authorised Economic Operator (AEO) Circulars with CAROTAR, 2020
- + Classification of automobile parts falling under Section XVII of Customs Tariff Act, 1975

#### FOREIGN TRADE POLICY

- + Continuation of operations of the DGFT 'COVID-19 Helpdesk' for International Trade related Issues'
- + De-Activation of IECs not updated at DGFT
- + Extension of Date for Mandatory electronic filing of Non-Preferential Certificate of Origin (CoO) through the Common Digital Platform to 31st March 2022

#### CORPORATE LAW

- + Appointed date for section 56 of Companies (Amendment) Act 2020
- + Disclosure Obligations of high value debt listed entities for Related Party Transactions ("RPT")
- + SEBI (Foreign Portfolio Investors) (Amendment) Regulations, 2022
- + SEBI (Listing Obligations and Disclosure Requirements) (Amendment) Regulations, 2022

### INCOME TAX

- + **E-advance Rulings Scheme, 2022:** The CBDT has notified the E-advance Rulings Scheme, 2022 (“Scheme”) to facilitate electronic proceeding and disposal of advance ruling applications. All the communications under this Scheme shall be exclusively by electronic mode and there is no scope for personal appearance before the Board for Advance Rulings (‘BAR’), either by the applicant or their authorized representative, the opportunity of being heard shall be provided through video conferencing or video telephony. The BAR shall have all the powers vested in a civil court.

*Notification No. 7 of 2022 dated 18.01.2022*

- + **Computation of capital gains on receipt under a specified unit linked insurance policy:** Per the provisions of the Income-tax Act, 1961 (‘the Act’), receipt of income under a unit linked insurance policy is taxable as capital gains. The manner of calculation of such income is now prescribed under Rule 8AD. The rule also specifies that such income shall be deemed to be gains arising from the transfer of “unit of an equity-oriented fund” such that the said income at the rate prescribed under section 112A.

*Notification No. 8 of 2022 dated 18.01.2022*

- + **Extension of timelines for filing of various compliances under Act:** The due dates for the following compliances are now extended to 15<sup>th</sup> of February, 2022.
  - The filing of report of audit of accounts under this Act or any other Act.
  - The filing of report from an accountant by persons entering into international or specified domestic transactions.

The due date for furnishing the return of income for assesses who are either liable to get their accounts audited under this Act or any other law or any assessee liable to furnish a report from an accountant under section 92E is now extended to 15<sup>th</sup> of March, 2022.

*Circular No. 1 of 2022 dated 11.01.2022*

### GOODS AND SERVICES TAX

- + **Guidelines issued for recovery of self-assessed tax (differences between tax declared in GSTR-1 vs GSTR-3B):** Effective 01.01.2022, ‘self-assessed tax’ has been defined to include tax payable in respect of outward supplies declared in Form GSTR-1 but not declared in Form GSTR-3B and failure in payment of such self-assessed tax or interest will result in initiation of recovery proceedings through various modes like detaining/selling goods belonging to defaulter, distraint movable or immovable property belonging to the defaulting person, etc.)

Taking cognizance of the existence of genuine reasons for differences in Form GSTR-1 and Form GSTR-3B, certain guidelines for initiation of recovery proceeding have been prescribed as under:

**1. Possible genuine cases for differences in Form GSTR-1 and Form GSTR-3B:**

- (a) Typographical error may have been made in Form GSTR-1 and Form GSTR-3B;
- (b) Details in Form GSTR-1 or GSTR-3B may have been wrongly reported; or
- (c) Supply could not be declared in Form GSTR-1 of an earlier tax period, though appropriate tax was paid in Form GSTR-3B.
- (d) Supply declared in Form GSTR-1 but appropriate tax was not paid in Form GSTR-3B.

The above circumstances warrant an opportunity to be given to the taxpayer to explain the differences between Form GSTR-1 and Form GSTR-3B before initiating the recovery proceedings.

**2. Procedure for recovery:**

- (a) Proper officer to send a communication (with DIN) to the taxpayer person to pay the amount short paid or not paid, or to explain the reasons for such differences within a reasonable time.
- (b) Recovery proceedings to be initiated as under:

No recovery proceedings to be initiated <i>if</i>	Recovery proceedings maybe initiated <i>if</i>
Registered person: <ul style="list-style-type: none"> <li>▪ Explains the reasons the differences to the satisfaction of the proper officer or can justify the difference between GSTR-I and GSTR-3B; or</li> <li>▪ Pays the amount such short paid or not paid.</li> </ul>	Registered person: <ul style="list-style-type: none"> <li>▪ Fails to reply to the proper officer;</li> <li>▪ Fails to explain the reasons for such difference / short payment of tax to the satisfaction of the proper officer; or</li> <li>▪ Fails to make the payment which is short / not paid, within the time prescribed in the communication.</li> </ul>

*Instruction No. 01/2022-GST – dated 07.01.2022*

**CUSTOMS**

- + Alignment of Authorised Economic Operator (AEO) Circulars with CAROTAR, 2020:** With the introduction of Customs (Administration of Rules of Origin under Trade Agreements) Rules, 2022 (CAROTAR, 2020), which prescribes rules for importer of goods, who is importing goods under claim for preferential rate of duty, board has found it relevant to revisit certain exemptions made available to AEOs with different tags namely, AEO-T1, AEO-T2 and AEO-T3.

In this backdrop board has decided to align specified AEO Circulars with CAROTAR, 2020, as a result and on account of such alignment, benefits that were available to importers who were tagged as AEOs, in form of furnishing Bank Guarantees (BGs) at reduced rates, as compared to any other importer is now done away with. However, such benefits will continue to apply to all other imports made by AEOs, which do not fall into the category of goods imported under claim of preferential rate of duty. Further, all other benefits that were available to AEO tag holders, will continue to be available at their disposal in terms of Circular No. 33/2016 – Customs dated 22.07.2016 (as amended from time to time).

*Circular No. 02/2022 – Customs dated 19.01.2022*

- + **Classification of automobile parts falling under Section XVII of Customs Tariff Act, 1975:** In the wake of judgment of Hon'ble Apex Court in M/s Westinghouse Saxby Farmer Ltd vs Commissioner of Customs Excise Calcutta Civil Appeal No. 37 of 2009 dated 08.03.2021, where it was held that any product which has specific classification or they get classified based on “suitability for use test or the user test” or they are specifically excluded from particular chapter(s) as the case may be, needs to be analysed on a case-to-case basis.

In this context, board having preferred a review petition against the above referred judgement, has by way of an instruction made note of the following observations:

- (a) Classification of “parts” of goods falling under Section XVII of Customs or Central Excise Tariff is a complex issue;
- (b) Board has listed judgements, in which it believes that Section notes have been suitably applied while pronouncing judgements, on parts of goods falling under Section XVII of Customs or Central Excise Tariff – While, it is relevant to note in these judgements, largely note 2 of the Section XVII has given higher importance to, without looking into “suitability for use test or the user test”;
- (c) Board attempted to distinguish the above referred judgement in Westinghouse Saxby Farmer on the ground that considering note 3 of Section XVII in isolation is inappropriate, while classifying parts of Section XVII of Customs of Central Excise Tariff;
- (d) Thus, board clarifies that classification of various parts of Section XVII is to be decided taking into account all facts, details of individual cases and all decisions on the subject.

*Instruction No. 01/2022 – Customs dated 05.01.2022*

### FOREIGN TRADE POLICY

**+ Continuation of operations of the DGFT 'COVID-19 Helpdesk' for International Trade related Issues':** The DGFT has operationalized 'COVID-19 Helpdesk' with the following objectives:

- To monitor the status of exports and imports and difficulties faced by trade stakeholders in view of the surge of COVID-19 cases and
- To support and seek suitable resolutions to issues arising in respect of International Trade.

This helpdesk will be equipped to collate and look into the wide range of issues pertaining to international trade along with trade related issues concerning other Ministries/Departments/Agencies of Central Government and State Governments.

As part of achieving the aforesaid objectives, the Export-Import community have been invited to submit information on the DGFT website which require support from the help-desk through the navigation steps as stated in this trade notice. Further, the e-mail id and toll-free number of the helpdesk along with the facility of status tracker has been activated which can be referred in this trade notice.

*Trade notice no.29/2021-22 dated 06.01.2022*

**+ De-Activation of IECs not updated at DGFT portal:** DGFT had earlier issued various notifications from time-to-time mandating IEC holders to update their respective IECs electronically every year during April-June period (for which no user charges will be borne by the IEC holder). Further, the timelines for such updations were extended upto 31st July 2021 and subsequently to 31st August 2021, based on various representations. In addition to the above, due intimations were also provided from time to time prior to the phase-wise deactivation of the IECs not updated yet.

In the backdrop of the above, the DGFT have undertaken the deactivation measures of IECs in the following manner:

- **IECs which have not been updated after 01.07.2020 have been deactivated currently (w.e.f. 01.02.2022).** The list of IECs which are deactivated can be accessed on DGFT website *through the link (<https://www.dgft.gov.in/CP/?opt=IECDL>)*.
- Any IEC where an online updation application has been submitted but is pending with the DGFT RA for approval shall be excluded from the de-activation list.
- Any IEC so de-activated, opportunity for automatic re-activation without any manual intervention or any visits to the DGFT RA. For IEC re-activation after 31.01.2022, the said IEC holder may navigate to the DGFT website and update their IEC online. Upon successful updation, the given IEC shall be activated again and transmitted accordingly to Customs system with the updated status.

*Trade notice no.31/2021-22 dated 14.01.2022*

- + **Extension of Date for Mandatory electronic filing of Non-Preferential Certificate of Origin (CoO) through the Common Digital Platform to 31st March 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 31st March 2022.

During such period, the manual and electronic modes will be kept operational parallelly as twin options. On considering the feedbacks and suggestions from the stakeholders, DGFT has rolled out/proposed to rollout various enhancements such as

- Bulk upload of line items from file (to save efforts on keying-in each item);
- Creation of duplicate/cloned application from an existing application (to save efforts on repetitive entries);
- E-Wallet facility for bulk payments of user charges (to avoid payment gateway interaction in each CoO submission);
- Aadhaar e-sign facility for authentication (in-lieu of Digital Signature Certificates)

Exporters and Issuing Agencies already onboarded have been advised to make maximum use of the e-CoO platform for process familiarisation and ease of operations. The issuing agencies are also advised to issue suitable advisories, in this regard.

Trade notice no.32/2021-22 dated 24.01.2022

## CORPORATE LAW

- + **Appointed date for section 56 of Companies (Amendment) Act 2020:** Ministry of Corporate Affairs (“MCA”) vide its notification dated 11.01.2022, appoints 01.07.2022 as the date on which the provisions of section 56 of the Companies (Amendment) Act 2020 (section 403(1) of Companies Act, 2013) shall come into force. The above section deals with the additional fees required to be paid by companies in case they fail to submit, file, register or record any document with the Registrar of Companies.

Notification dated 11.01.2022

- + **Disclosure Obligations of high value debt listed entities for Related Party Transactions (“RPT”):** Securities Exchange Board of India (“SEBI”) issued a circular dated 22.11.2021 specifying the disclosure obligation in relation to RPT with respect to specified securities. Since the provisions of Regulation 23 of the LODR Regulations would be applicable to high value debt listed companies also, the SEBI, vide its circular dated 07.01.2022, has made the provisions of the circular dated 22.11.2021 applicable to high value debt listed entities effective from 07.01.2022.

Circular dated 22.11.2021 & Circular dated 07.01.2022

- + **SEBI (Foreign Portfolio Investors) (Amendment) Regulations, 2022:** SEBI introduced the Foreign Portfolio Investors (Amendment) Regulations, 2022 on 14.01.2022 to provide relaxations from the strict enforcement of regulations to the Foreign Portfolio Investors in the interest of the investors and development of the securities market. The Board may suo moto or on an application (accompanied by a non-refundable fee of US \$1,000) made by the foreign portfolio investor, grant the relaxation subject to such conditions if the Board is satisfied that:
  - the non-compliance is caused due to factors beyond the control of the entity; or
  - the requirement is procedural or technical in nature.

SEBI (Foreign Portfolio Investors) (Amendment) Regulations, 2022 dated 14.01.2022

- + **SEBI (Listing Obligations and Disclosure Requirements) (Amendment) Regulations, 2022:** SEBI has notified the LODR Amendment Regulations 2022 on 24.01.2022. The said amendment regulation has mandated the following:
  - to obtain the prior approval of shareholders for appointment of a person including as a managing director or a whole-time director or a manager, who was earlier rejected by the shareholders at a general meeting.
  - the requests for transfer, transmission and transposition of securities shall only be affected if the shares are held in dematerialized form.

SEBI (LODR) (Amendment) Regulations, 2022 dated 24.01.2022

**SINGHVI DEV & UNNI LLP**

+91 (80) 2226 1371 | [www.sduca.com](http://www.sduca.com) | [info@sduca.com](mailto:info@sduca.com)

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