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# EDITORIAL

**Friends,**

Recently, Investigation Units in both Income Tax and GST, Issue Instructions with mandate to field officers for 'strict compliance'.

Over last one year we have witnessed a substantial increase in summons and arrests under GST and Orders under Income Tax in gross violation of the Principles of Natural Justice. The taxpayers are running to High Courts and in most cases also getting relief from these actions. Hence, many a times these arbitrary actions are not getting the desired results for the Department on the one hand and also leading to taxpayers' disgruntlement with the Boards on the other hand.

To somewhat check this trend, we have witnessed two Instructions by The GST-Investigation Unit on SOPs on Summons, Arrest and Bail. These came with Caveats that non-compliance with these instructions would be viewed 'seriously'.

Now, on 22nd August 2022 - Instruction F No 299/10/2022-Dir(Inv III)/647 has been issued by The Investigation Wing of the CBDT re-emphasizing that before initiating proceedings under Section 148/147 of the Act, any information available on data-base/portal of Department shall be verified before drawing any adverse inference against the taxpayers.

Also, it is mandated that the information made available/data uploaded by the reporting entities may also be checked first for any error including an error of a human nature technical nature, etc. Most importantly, an opportunity of being heard be given to the taxpayer before initiating proceedings under Section 148/147 of the Act.

Twice in the Instruction it has been emphasized that Supervisory authorities are to ensure that all extant Instructions/Guidelines/Circulars/SOPs in this regard are duly followed by Officers. This makes the intent of the CBDT clear in as far as strict compliance with this Instruction too. It is clear that CBDT does not wish paper demands and unfruitful litigation.

**Just to reiterate that we remain available over telecom or e-mail.**

**Truly Yours**

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# SYNOPSIS

# TAX CALENDAR

| Due Date | Form/Return/ Challan | Reporting Period | Description |
|---|---|---|---|
| **30th Aug** | **194-IA** | **July 22** | Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194-IA for the month of July, 2022 |
| **30th Aug** | **194M** | **July 22** | Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194M for the month of July, 2022 |
| **30th Aug** | **194-IB** | **July 22** | Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194-IB for the month of July, 2022 |

# INCOME TAX

## NOTIFICATION

### RULE 17CB – MEANING OF SPECIFIED PERSON EXPLAINED

**OUR COMMENTS:** The Central Board of Direct Taxes (CBDT) vide Notification No. 101/2022 dated 22.08.2022 In exercise of the powers conferred by sub-section (2) of section 115TD read with section 295, of the Income-tax Act, 1961 (43 of 1961), the Central Board of Direct Taxes hereby makes the following rules further to amend the Income-tax Rules, 1962, namely:-

1. Short title and commencement.-

(1) These rules may be called the Income-tax (Twenty Eighth Amendment) Rules, 2022.

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

2. In the Income-tax Rules, 1962, in rule 17CB,-

(i) for the words "trust or institution" wherever they occur, the words "specified person" shall be substituted;

(ii) in Explanation, after clause (h), the following clause shall be inserted, namely:-

'(ha) "specified person" shall have the same meaning as assigned to it in clause (iia) of the Explanation to section 115TD;'.

**[For further details please refer the Notification]**

## NOTIFICATION

### U/S 280A(1) OF IT ACT 1961, CENTRAL GOVERNMENT, IN CONSULTATION WITH THE CHIEF JUSTICE OF HOGH COURT OF CHHATTISGARH DESIGNATES SPECIAL COURT IN THE CHHATTISGARH

**OUR COMMENTS:** The Investigation Division-V of Central Board of Direct Taxes (CBDT) vide Notification No. 102/2022 dated 22.08.2022 notified In exercise of the powers conferred by sub-section (1) of section 280A of the Income-tax Act, 1961 (43 of 1961) read with section 84 of the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 (22 of 2015), the Central Government, in consultation with the Chief Justice of the High Court of Chhattisgarh, hereby designates all the Chief Judicial Magistrate Courts of the State of Chhattisgarh as Special Courts for the purposes of section 280A of the Income-tax Act, 1961 and section 84 of the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015, for the areas falling within the respective territorial jurisdictions of the Chief Judicial Magistrate Courts in the State of Chhattisgarh.

**[For further details please refer the Notification]**

## NOTIFICATION

### U/S 10(46) OF IT ACT 1961 – CENTRAL GOVERNMENT NOTIFIES, ANDHRA PRADESH POLLUTION CONTROL BOARD A BOARD CONSTITUTED BY THE STATE GOVERNMENT OF ANDHRA PRADESH

**OUR COMMENTS:** The Central Board of Direct Taxes (CBDT) vide Notification No. 103/2022 dated 24.08.2022 In exercise of the powers conferred by clause (46) of section 10 of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby notifies for the purposes of the said clause, the Andhra Pradesh Pollution Control Board (PAN AAAJA1610Q), a Board constituted by the State Government of Andhra Pradesh under the Water (Prevention and Control of Pollution) Act, 1974 (6 of 1974), in respect of the following specified income arising to that Board, namely:-

(a) consent fee received under the Water (Prevention and Control of Pollution) Act, 1974 (6 of 1974) and Air (Prevention and Control of Pollution) Act, 1981 (14 of 1981);

(b) analysis fees or air ambient quality survey fees or noise level survey fees;

(c) reimbursement of the expense received from Central Pollution Control Board towards National Water Quality Monitoring Programme and National Air Quality Monitoring Programme like Schemes;

(d) bio medical authorization fees;

(e) cess reimbursement and cess appeal fees;

(f) grants from State or Central Government;

(g) fees received under the Right to Information Act, 2005 (22 of 2005);

(h) sale of law books where no profit element is involved and the activity is not commercial in nature;

(i) interest on loans and advances given to staff of the Board;

(j) miscellaneous income like sale of old scrap items, tender fees; and

(k) Interest earned on (a) to (j) above.

2. This notification shall be effective subject to the conditions that the Andhra Pradesh Pollution Control Board,-

(a) shall not engage in any commercial activity;

(b) activities and the nature of the specified income shall remain unchanged throughout the financial years; and

(c) shall file return of income in accordance with the provision of clause (g) of sub-section (4C) of section 139 of the Income-tax Act, 1961.

3. This notification shall be deemed to have been applied for the financial years 2016-2017, 2017-2018, 2018-2019, 2019-2020 and 2020-2021 subject to the outcome of the Special Leave Petition filed by Central Board of Direct Taxes vide SLP(C) No. 014351/2022 in the Hon'ble Supreme Court of India against the Common order dated 26.07.2021 in W.P.4834/2020 and 15629/2020 by the High Court for the State of Telangana.\

**Explanatory Memorandum**

This notification is issued in compliance to the Hon'ble High Court for the State of Telangana's Common Order dated 26.07.2021 in W.P. No.4834/2020 and 15629/2020 in case of Telangana State Pollution Control Board and Andhra Pradesh Pollution Control Board vs. CBDT & ors. Special Leave Petition has been filed by SLP(C) No.014351/2022 in the Hon'ble Supreme Court of India against the abovementioned Order dated 26.07.2021 of the Hon'ble High Court of Telangana. It is certified that no person is being affected adversely by giving retrospective effect to this notification.

**[For further details please refer the Notification]**

## CASE LAW

### THERE IS DUTY TO DECLARE THE HSN CODE IN THE TENDER AND WHAT IS MORE, MAKE THE TENDERERS QUOTE THE RATE ACCORDINGLY: HON'BLE SUPREME COURT OF INDIA

**OUR COMMENTS:** The Hon'ble Supreme Court held that A Writ of Mandamus or a direction, in the nature of a Writ of Mandamus, is not to be withheld, in the exercise of powers of Article 226 on any technicalities. This is subject only to the indispensable requirements being fulfilled. There must be a public duty. While the duty may, indeed, arise form a Statute ordinarily, the duty can be imposed by common charter, common law, custom or even contract. The fact that a duty may have to be unravelled and the mist around it cleared before its shape is unfolded may not relieve the Court of its duty to cull out a public duty in a Statute or otherwise, if in substance, it exists. Equally, Mandamus would lie if the Authority, which had a discretion, fails to exercise it and prefers to act under dictation of another Authority - A Writ of Mandamus or a direction in the nature thereof had been given a very wide scope in the conditions prevailing in this country and it is to be issued wherever there is a public duty and there is a failure to perform and the courts will not be bound by technicalities and its chief concern should be to reach justice to the wronged.

It is, undoubtedly, too late in the day to countenance the contention that the mandate of fairness in State action does not extend to the realm of contract entered into by the State - The observations made by the Court, undoubtedly, draw inspiration from factual matrix essentially involved in the culling out of the principle of level playing field, which was found to be impaired on the basis of a lack of legal certainty, as found established by the material available on record. In the course of observations in paragraph-36, this Court held that Article 19(1)(g) confers a Fundamental Right to carry on a business to a company. We would accept it, subject to the caveat that Article 19 confers a right on the citizens, who are natural persons.

The High Court, in the impugned Judgment, has correctly noticed the contours of the jurisdiction of courts in the realm of judicial review of action of State in matters relating to contracts. It is correctly found that the Court cannot examine the details of the terms of the contract - Thereafter it poses the question, as to whether the classification of the HSN Code is integral to the tendering process and answers it by holding that it is integral and then founds its interference in the manner done by finding that fair competition or level playing field would be denied to each bidder as someone may bag the tender by quoting the lesser rate of GST, creating a substantial difference in the total price. Undoubtedly, selection is based on aggregating the base price with the tax (GST). If there is lack of clarity, each bidder would be in a position to take a shot at the tender by understating the value of the tax.

Section 9 of the Central Act provides for levy of the tax called the Central Goods and Services Tax on all intra-state supply of goods and services, except as provided therein. Section 9(3) provides that the Government, may, on the recommendation of the Council, notify categories of supply of goods or services or both, where the tax is to be levied, assessed and recovered on the reverse charge basis - Section 102 provides for rectification of advance ruling. Section 103 provides that the advance ruling shall be binding on an applicant and on the concerned officer or jurisdictional officer in respect of the applicant. Section 103(1A) inserted by the Finance Act, 2019, amplifies the scope of advance ruling, as provided therein. An advance ruling can become void in certain circumstances, which includes fraud or suppression of material or misrepresentation of facts (see Section 104). Section 105 provides for the powers of the Civil Court under the CPC in respect of discovery and inspection, enforcing attendance of any person and examining him on oath and issuing commission and production of books of account and other records.

The purport of the Railway Board is that it is the responsibility of the bidder to quote the correct HSN Number and the corresponding GST rate - The very idea of a discretionary power would suffer annihilation, if it ceases to be discretionary in the hands of a Court ordering a Mandamus. No doubt, there may be cases where the facts are such that the court is not powerless to direct the Authority to do a thing which it considers absolutely necessary and just and legal to perform the act even when the Authority seeks shelter on the basis that what is conferred on it, is a mere discretion. The other terms of the circular clearly appear to indicate that the rate even if indicated by the appellants will not detract from the tenderers quoting the rate which is up to them. It is the rate quoted by the tenderers which governs. It is the same which will be used to carry out the ranking. The other terms also militate against a public duty with the appellants as directed. The appellant seeks to protect its best interest as a player in the commercial field. The clauses are self-evident.

When a successful bidder invoices the goods with the GST rate or HSN Number different from that incorporated in the purchase order, payment is to be made at the rate, which is lower of the GST rate, as between what is incorporated in the purchase order or the invoice. It is further made clear in the Circular dated 05.09.2017 that if a higher tax rate is billed and an all-inclusive price is mentioned in the purchase order, then, the basic price would have to be accordingly adjusted to make it in conformity with all-inclusive price - in view of the Make in India policy as contained in the order dated 15.06.2017, there is duty to declare the HSN code in the tender and what is more, make the tenderers quote the rate accordingly.

Unless Clause 2.9.2 is done away with (it must be remembered that there is no challenge to Clause 2.9.2), the tenderers would be free to quote a lumpsum rate without including the tax rate. The further and more important obstacle is the mechanism or rather the absence of the same by which the purchaser of goods and services (the appellants) can be compelled to ascertain the correct HSN Code - Circular dated 05.09.2017, issued by the Board, does not provide for the mandatory duty to specify the HSN Code.

Since the first appellant is the Union of India, we would expect that if it is otherwise permissible to sustain the impugned judgment, it may not be fair to not have a uniform policy in the matter of award of largesse by the various units under it. However, the appellants do point out that even in the tenders which have been brought out, the HSN Code mentioned in the tender is shown as indicative only – the impugned judgment based on the issuance of tenders, cannot be entertained.

It is noticed from the tender condition relied upon by the writ petitioner which have been extracted at paragraph 58, what is contemplated is that the amount would be deducted at the applicable GST rate from the bill under the Reverse Charge Mechanism and deposited with the concerned tax authority. If under the terms of the tender, what is contemplated is that, in a case where the tax component is not included or it is included at a lower rate, the appellants are entitled to deduct the actual rate of tax as payable by it under the Reverse Charge Mechanism and the tender of such a person is accepted being the lowest tender, then there can be no question of public interest being prejudiced. If on the other hand, the tax rate is included and the clause provides for deduction of the actual rate from the bill, then also public interest may not be affected. This is all the more reason for the tenderer specifically including the tax component indicating the correct rate of tax. This is a matter where the first appellant can consider giving appropriate instructions.

Thus, the appellants have made out a clear case for our interference with the impugned Judgment. There remains, however, one aspect. It is the case of the appellants that the supplier of the goods and services, i.e., the successful tenderer is, indeed, liable to pay the GST by filing returns and carrying out self-assessment - in order to also ensure that the successful tenderer pays the tax due and to further ensure that, by not correctly quoting the GST rate, there is no tax evasion, it is considered necessary to direct that, in all cases, where a contract is awarded by the appellants, a copy of the document, by which, the contract is awarded containing all material details shall be immediately forwarded to the concerned jurisdictional Officer.

Appeal allowed.

## NOTIFICATION

**FOREIGN EXCHNAGE MANAGEMENT (OVERSEAS INVESTMENT) REGULATIONS, 2022**

**OUR COMMENTS:** The Reserve Bank of India vide notification no. 400/2022 RB dated 22.08.2022 notified In exercise of the powers conferred by sub-section (1) and clause (a) of sub-section (2) of section 47 of the Foreign Exchange Management Act, 1999 (42 of 1999), the Reserve Bank hereby makes the following regulations, namely:–

**1. Short title and commencement.**–

(1) These regulations may be called the Foreign Exchange Management (Overseas Investment) Regulations, 2022.

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

**2. Definitions**.– (1) In these regulations, unless the context otherwise requires,–

(a) "Act" means the Foreign Exchange Management Act, 1999 (42 of 1999);

(b) "debt instruments" shall have the same meaning as assigned to it in the Foreign Exchange Management (Overseas Investment) Rules, 2022;

(2) The words and expressions used but not defined in these regulations shall have the meanings respectively assigned to them in the Act or the Foreign Exchange Management (Overseas Investment) Rules, 2022.

**3. Financial commitment by Indian entity by modes other than equity capital,**– (1) The Indian entity may lend or invest in any debt instrument issued by a foreign entity or extend non-fund based commitment to or on behalf of a foreign entity including overseas step down subsidiaries of such Indian entity subject to the following conditions within the financial commitment limit as prescribed in the Foreign Exchange Management (Overseas Investment) Rules, 2022:–

(i) the Indian entity is eligible to make Overseas Direct Investment (ODI);

(ii) the Indian entity has made ODI in the foreign entity;

(iii) the Indian entity has acquired control in such foreign entity at the time of making such financial commitment.

(2) The financial commitments under regulations 4, 5, 6 and 7 shall be reckoned towards the financial commitment limit referred to in sub-regulation (1).

**4. Financial commitment by Indian entity by way of debt.–** An Indian entity may lend or invest in any debt instruments issued by a foreign entity subject to the condition that such loans are duly backed by a loan agreement where the rate of interest shall be charged on an arm's length basis.

*Explanation*.— For the purpose of this regulation, the expression "arm's length" means a transaction between two related parties that is conducted as if they were unrelated, so that there is no conflict of interest.

**5. Financial commitment by way of guarantee.**– (1) The following guarantees may be issued to or on behalf of the foreign entity or any of its step down subsidiary in which the Indian entity has acquired control through the foreign entity, namely:–

(i) corporate or performance guarantee by such Indian entity;

(ii) corporate or performance guarantee by a group company of such Indian entity in India, being a holding company (which holds at least 51 per cent. stake in the Indian entity) or a subsidiary company (in which the Indian entity holds at least 51 per cent. stake) or a promoter group company, which is a body corporate;

(iii) personal guarantee by the resident individual promoter of such an Indian entity;

(iv) bank guarantee, which is backed by a counter-guarantee or collateral by the Indian entity or its group company as above, and issued, by a bank in India.

(2) Where the guarantee is extended by a group company, it shall be counted towards the utilisation of its financial commitment limit independently and in case of a resident individual promoter, the same shall be counted towards the financial commitment limit of the Indian entity:

Provided that where the commitment under sub-regulation (1) is extended by a group company, any fund-based exposure to or from the Indian entity shall be deducted

from the net worth of such group company for computing its financial commitment limit:

Provided further that where the guarantee under sub-regulation (1) is extended by a promoter, which is a body corporate or an individual, the Indian entity shall be a part of the promoter group.

*Explanation*.– For the purposes of this sub-regulation, the expression "promoter group" shall have the meaning as assigned to it in the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations 2018.

(3) No guarantee shall be open-ended.

(4) The guarantee, to the extent of the amount invoked, shall cease to be a part of the non-fund based commitment but be considered as lending.

(5) Where a guarantee has been extended jointly and severally by two or more Indian entities, 100 per cent. of the amount of such guarantee shall be reckoned towards the individual limits of each of such Indian entities.

(6) In case of performance guarantee, 50 per cent. of the amount of guarantee shall be reckoned towards the financial commitment limit.

(7) Roll-over of guarantee shall not be treated as fresh financial commitment where the amount on account of such roll-over does not exceed the amount of original guarantee.

**6. Financial commitment by way of pledge or charge,**– An Indian entity, which has made ODI by way of investment in equity capital in a foreign entity, may—

(a) pledge the equity capital of the foreign entity in which it has made ODI or of its step down subsidiary outside India, held directly by the Indian entity in a foreign entity and indirectly in step down subsidiary, in favour of an AD bank or a public financial institution in India or an overseas lender, for availing fund based or non-fund based facilities for itself or for any foreign entity in which it has made ODI or its step down subsidiaries outside India or in favour of a debenture trustee registered with SEBI for availing fund based facilities for itself;

(b) create charge by way of mortgage, pledge, hypothecation or any other identical mode on–

(i) its assets in India, including the assets of its group company or associate company, promoter or director, in favour of an AD bank or a public financial institution in India or an overseas lender as security for availing of the fund based or non-fund based facility or both, for any foreign entity in which it has made ODI or for its step down subsidiary outside India; or

(ii) the assets outside India of the foreign entity in which it has made ODI or of its step down subsidiary outside India in favour of an AD bank in India or a public financial institution in India as security for availing of the fund based or non-fund based facility or both, for itself or any foreign entity in which it has made ODI or for its step down subsidiary outside India or in favour of a debenture trustee registered with SEBI in India for availing fund based facilities for itself:

Provided that–

(i) the value of the pledge or charge or the amount of the facility, whichever is less, shall be reckoned towards the financial commitment limit in force at the time of such pledge or charge provided such facility has not already been reckoned towards such limit and excluding cases where the facility has been availed by the Indian entity for itself;

(ii) overseas lender in whose favour there is such a pledge or charge shall not be from any country or jurisdiction in which financial commitment is not permissible under the Foreign Exchange Management (Overseas Investment) Rules, 2022;

(iii) the creation or enforcement of such pledge or charge shall be in accordance with the provisions of the Act or rules or regulations made or directions issued thereunder.

*Explanation.*– For the purposes of this regulation–

(i) the expression "public financial institution" shall have the same meaning as assigned to it under clause (72) of section 2 of the Companies Act, 2013 (18 of 2013);

(ii) the "negative pledge" or "negative charge" created by an Indian entity or a bid bond guarantee obtained in accordance with these regulations for participation in a bidding or tender procedure for the acquisition of a foreign entity shall not be reckoned towards the financial commitment limit referred to in sub-regulation (1) of regulation 3.

**7. Acquisition or transfer by way of deferred payment**.– (1) Where a person resident in India acquires equity capital by way of subscription to an issue or by way of purchase from a person resident outside India or where a person resident outside India acquires equity capital by way of purchase from a person resident in India, and where such equity capital is reckoned as ODI, the payment of amount of consideration for the equity capital acquired may be deferred for such definite period from the date of the agreement as provided in such agreement subject to the following terms and conditions, namely:–

(i) the foreign securities equivalent to the amount of total consideration shall be transferred or issued, as the case may be, upfront by the seller to the buyer;

(ii) the full consideration finally paid shall be compliant with the applicable pricing guidelines:

Provided that the deferred part of the consideration in case of acquisition of equity capital of a foreign entity by a person resident in India shall be treated as non-fund based commitment.

(2) The buyer may be indemnified by the seller up to such amount and be subject to such terms and conditions as may be mutually agreed upon and laid down in the agreement:

Provided that such agreement is in compliance with the provisions of the Act and the rules and regulations made thereunder.

**8. Mode of payment**. – A person resident in India making Overseas Investment may make payment –

(i) by remittance made through banking channels;

(ii) from funds held in an account maintained in accordance with the provisions of the Act;

(iii) by swap of securities;

(iv) by using the proceeds of American Depository Receipts or Global Depositary Receipts or stock-swap of such receipts or external commercial borrowings raised in accordance with the provisions of the Act and the rules and regulations made thereunder for making ODI or financial commitment by way of debt by an Indian entity.

**9. Obligations of person resident in India**.– (1) A person resident in India acquiring equity capital in a foreign entity, which is reckoned as ODI, shall submit to the AD bank share certificates or any other relevant documents as per the applicable laws of the host country or the host jurisdiction, as the case may be, as an evidence of such investment in the foreign entity within six months from the date of effecting remittance or the date on which the dues to such person are capitalised or the date on which the amount due was allowed to be capitalised, as the case may be.

(2) A person resident in India, through its designated AD bank, shall obtain a Unique Identification Number or "UIN" from the Reserve Bank for the foreign entity in which the ODI is intended to be made before sending outward remittance or acquisition of equity capital in a foreign entity, whichever is earlier.

(3) A person resident in India making ODI shall designate an AD bank and route all transactions relating to a particular UIN through such AD:

Provided that where more than one person resident in India makes financial commitment in the same foreign entity, all such persons shall route all transactions relating to that UIN through the AD bank designated for that UIN.

(4) A person resident in India having ODI in a foreign entity, wherever applicable, shall realise and repatriate to India, all dues receivable from the foreign entity with respect to investment in such foreign entity, the amount of consideration received on account of transfer or disinvestment of such ODI and the net realisable value of the assets on account of the liquidation of the foreign entity as per the laws of the host country or the host jurisdiction, as the case may be, within ninety days from the date when such receivables fall due or the date of such transfer or disinvestment or the date of the actual distribution of assets made by the official liquidator.

(5) A person resident in India who is eligible to make ODI may make remittance towards earnest money deposit or

obtain a bid bond guarantee from an AD bank for participation in bidding or tender procedure for the acquisition of a foreign entity:

Provided that in case of an open-ended bid bond guarantee, it shall be converted into a close-ended guarantee not later than three months from the date of award of the contract.

**10. Reporting requirements for Overseas Investment.**– (1) Unless otherwise provided in these regulations, all reporting by a person resident in India, as specified, shall be made through the designated AD bank in the manner provided in this regulation and in the format provided by the Reserve Bank.

(2) A person resident in India who has made ODI or making financial commitment or undertaking disinvestment in a foreign entity shall report the following, namely:–

(a) financial commitment, whether it is reckoned towards the financial commitment limit or not, at the time of sending outward remittance or making a financial commitment, whichever is earlier;

(b) disinvestment within thirty days of receipt of disinvestment proceeds;

(c) restructuring within thirty days from the date of such restructuring.

(3) A person resident in India other than a resident individual making any Overseas Portfolio Investment (OPI) or transferring such OPI by way of sale shall report such investment or transfer of investment within sixty days from the end of the half-year in which such investment or transfer is made as of September or March-end:

Provided that in case of OPI by way of acquisition of shares or interest under Employee Stock Ownership Plan or Employee Benefits Scheme, the reporting shall be done by the office in India or branch of an overseas entity or a subsidiary in India of an overseas entity or the Indian entity in which the overseas entity has direct or indirect equity holding where the resident individual is an employee or director.

(4) A person resident in India acquiring equity capital in a foreign entity which is reckoned as ODI, shall submit an Annual Performance Report (APR) with respect to each foreign entity every year by 31st December and where the accounting year of such foreign entity ends on 31st December, the APR shall be submitted by 31st December of the next year:

Provided that no such reporting shall be required where–

(i) a person resident in India is holding less than 10 per cent. of the equity capital without control in the foreign entity and there is no other financial commitment other than by way of equity capital; or

(ii) a foreign entity is under liquidation.

*Explanation*.– For the purposes of this sub-regulation–

(a) the APR shall be based on the audited financial statements of the foreign entity:

Provided that where the person resident in India does not have control in the foreign entity and the laws of the host country or host jurisdiction, as the case may be, do not provide for mandatory auditing of the books of accounts, the APR may be submitted based on unaudited financial statements certified as such by the statutory auditor of the Indian entity or by a chartered accountant where the statutory audit is not applicable;

(b) in case more than one person resident in India have made ODI in the same foreign entity, the person holding the highest stake in the foreign entity shall be required to submit APR and in case of holdings being equal, APR may be filed jointly by such persons;

(c) the person resident in India shall report the details regarding acquisition or setting up or winding up or transfer of a step down subsidiary or alteration in the shareholding pattern in the foreign entity during the reporting year in the APR.

(5) An Indian entity which has made ODI shall submit an Annual Return on Foreign Liabilities and Assets within such time as may be decided by the Reserve Bank from time to time, to the Department of Statistics and Information Management, Reserve Bank of India.

**11. Delay in reporting.**– (1) A person resident in India who does not submit the evidence of investment within the time specified under sub-regulation (1) of regulation 9 or does not make any filing within the time specified under regulation 10, may make such submission or filing, as the

case may be, along with Late Submission Fee within such period as may be advised, and at the rates and in the manner as may be directed by the Reserve Bank, from time to time:

Provided that such facility can be availed within a maximum period of three years from the due date of such submission or filing, as the case may be.

(2) A person resident in India responsible for submitting the evidence or any filing relating to overseas investment in accordance with the Act or regulations made thereunder before the date of publication of these regulations in the Official Gazette and who has not made or does not make such submission or filing within the time specified thereunder, may make such submission or filing along with Late Submission Fee or make payment of Late Submission Fee where such submission or filing has been done, as the case may be, within such period as may be advised, and at the rates and in the manner as may be directed by the Reserve Bank, from time to time.

Provided that such facility can be availed within a maximum period of three years from the date of publication of these regulations in the Official Gazette.

**12. Restriction on further financial commitment or transfer.–** A person resident in India who has made a financial commitment in a foreign entity in accordance with the Act or rules or regulations made thereunder, shall not make any further financial commitment, whether fund-based or non-fund-based, directly or indirectly, towards such foreign entity or transfer such investment till any delay in reporting is regularised.

**[For further details please refer the Notification]**

| NOTIFICATION |
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| **FOREIGN EXCHNAGE MANAGEMENT (OVERSEAS INVESTMENT) RULES, 2022** |

**OUR COMMENTS:** The Ministry of Finance vide notification no. G.S.R. 646(E) dated 22.08.2022 notified In exercise of the powers conferred by sub-section (1) and clauses (aa) and (ab) of sub-section (2) of section 46 and sub-section (3) of section 47 of the Foreign Exchange Management Act, 1999 (42 of 1999) and in supersession of the Foreign Exchange Management (Transfer or Issue of Any Foreign Security) Regulations, 2004 and the Foreign Exchange Management (Acquisition and Transfer of Immovable Property Outside India) Regulations, 2015, except as respects things done or omitted to be done before such supersession, the Central Government hereby makes the following rules, namely:

**1. Short title and commencement.–**

(1) These rules may be called the Foreign Exchange Management (Overseas Investment) Rules, 2022.

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

**2. Definitions**.– (1) In these rules, unless the context otherwise requires,–

(a) "Act" means the Foreign Exchange Management Act, 1999 (42 of 1999);

(b) "Authorised Dealer Category-I bank or "AD bank" means a person authorised as such under sub-section (1) of section 10 of the Act and for the purposes of these rules, shall mean only the domestic branches of such AD bank;

(c) "control" means the right to appoint majority of the directors or to control management or policy decisions exercisable by a person or persons acting individually or in concert, directly or indirectly, including by virtue of their shareholding or management rights or shareholders' agreements or voting agreements that entitle them to ten per cent. or more of voting rights or in any other manner in the entity;

(d) "disinvestment" means partial or full extinguishment of right, title or possession of equity capital acquired under these rules;

(e) "equity capital" means equity shares or perpetual capital or instruments that are irredeemable or contribution to non-debt capital of a foreign entity in the nature of fully and compulsorily convertible instruments;

(f) "financial commitment" means the aggregate amount of investment made by a person resident in India by way of Overseas Direct Investment, debt other than Overseas Portfolio Investment in a foreign entity or entities in which the Overseas Direct Investment is made and shall include the non-fund-based facilities extended by such person to or on behalf of such foreign entity or entities;

(g) "financial service regulator" means a financial service regulator established under any law in force in India and include the Reserve Bank, the Securities and Exchange Board of India, the Insurance Regulatory and Development Authority and the Pension Fund Regulatory and Development Authority;

(h) "foreign entity" means an entity formed or registered or incorporated outside India, including International Financial Services Centre that has limited liability:

Provided that the restriction of limited liability shall not apply to an entity with core activity in a strategic sector;

(i) "host country" or "host jurisdiction" means the country or jurisdiction, including the International Financial Services Centre, in which the foreign entity is formed, registered or incorporated, as the case may be;

(j) "Indian entity" means–

(i) a company defined under the Companies Act, 2013 (18 of 2013);

(ii) a body corporate incorporated by any law for the time being in force;

(iii) a Limited Liability Partnership duly formed and incorporated under the Limited Liability Partnership Act, 2008 (6 of 2009); and

(iv) a partnership firm registered under the Indian Partnership Act, 1932 ( 9 of 1932).

(k) "International Financial Services Centre" or "IFSC" shall have the same meaning as assigned to it in clause (g) of section 3 of the International Financial Services Centres Authority Act, 2019 ( 50 of 2019);

(l) "last audited balance sheet" means audited balance sheet as on date not exceeding eighteen months preceding the date of the transaction;

(m) "listed foreign entity" means a foreign entity whose equity shares or any other fully and compulsorily convertible instrument is listed on a recognised stock exchange outside India;

(n) "listed Indian company" means an Indian company that has equity shares or any of its fully and compulsorily convertible instruments listed on a recognised stock exchange in India and the expression "unlisted Indian company" shall be construed accordingly;

(o) "mutual fund" means any fund registered as such with the Securities and Exchange Board of India;

(p) "net worth" shall have the same meaning as assigned to it in clause (57) of section 2 of the Companies Act, 2013 (18 of 2013).

*Explanation*.– For the purposes of this clause, "net worth" of registered partnership firm or Limited Liability Partnership shall be the sum of the capital contribution of partners and undistributed profits of the partners after deducting therefrom the aggregate value of the accumulated losses, deferred expenditure and miscellaneous expenditure not written off, as per the last audited balance sheet;

(q) "Overseas Direct Investment" or "ODI" means investment by way of acquisition of unlisted equity capital of a foreign entity, or subscription as a part of the memorandum of association of a foreign entity, or investment in ten per cent, or more of the paid-up equity capital of a listed foreign entity or investment with control where investment is less than ten per cent. of the paid-up equity capital of a listed foreign entity;

*Explanation*.– For the purposes of this clause, where an investment by a person resident in India in the equity capital of a foreign entity is classified as ODI, such investment shall continue to be treated as ODI even if the investment falls to a level below ten per cent. of the paid-up equity capital or such person loses control in the foreign entity;

(r) "Overseas Investment" or "OI" means financial commitment and Overseas Portfolio Investment by a person resident in India;

(s) "Overseas Portfolio Investment" or "OPI" means investment, other than ODI, in foreign securities, but not in any unlisted debt instruments or any security issued by a person resident in India who is not in an IFSC:

Provided that OPI by a person resident in India in the equity capital of a listed entity, even after its delisting shall continue to be treated as OPI until any further investment is made in the entity.

*Explanation*.– For the purposes of this clause, the expression "debt instruments" means the instruments specified as such in clause (A) of rule 5;

(t) "relative" shall have the same meaning as assigned to it in clause (77) of section 2 of the Companies Act, 2013, (18 of 2013);

(u) "resident individual" means a person resident in India who is a natural person;

(v) "Resident Foreign Currency Account" or "RFC Account" shall have the same meaning as assigned to it in the Foreign Exchange Management (Foreign Currency Accounts by a Person Resident in India) Regulations, 2015;

(w) "SEBI" means the Securities and Exchange Board of India established under section 3 of the Securities and Exchange Board of India Act, 1992 (15 of 1992);

(x) "Society" means a society registered under the Societies Registration Act, 1860 (21 of 1860);

(y) "Subsidiary" or "step down subsidiary" of a foreign entity means an entity in which the foreign entity has control;

(z) "strategic sector" shall include energy and natural resources sectors such as oil, gas, coal, mineral ores, submarine cable system and start-ups and any other sector or sub-sector as deemed necessary by the Central Government;

(za) "sweat equity shares" means such equity shares as are issued by an overseas entity to its directors or employees at a discount or for consideration other than cash, for providing their know-how or making available rights like intellectual property rights or value additions, by whatever name called;

(zb) "Trust" means a trust registered under the Indian Trust Act, 1882 (2 of 1882);

(zc) "Venture Capital Fund" means a fund registered as such with the SEBI.

(2) The words and expressions used but not defined in these rules shall have the meanings respectively assigned to them in the Act or the rules or regulations made thereunder.

**3. Administration of these rules.**– (1) These rules shall be administered by the Reserve Bank. (2) The Reserve Bank may issue such directions, circulars, instructions and clarifications as it may deem necessary for the effective implementation of the provisions of these rules.

**4. Non-applicability of rules and regulations relating thereto in certain cases.**– Nothing in these rules or the Foreign Exchange Management (Overseas Investment) Regulations, 2022 shall apply to–(a) any investment made outside India by a financial institution in an IFSC;

(b) acquisition or transfer of any investment outside India made,–

(i) out of Resident Foreign Currency Account; or

(ii) out of foreign currency resources held outside India by a person who is employed in India for a specific duration irrespective of length thereof or for a specific job or assignment, duration of which does not exceed three years; or

(iii) in accordance with sub-section (4) of section 6 of the Act.

*Explanation.*– For the purposes of this rule, the expression "financial institution" shall have the same meaning as assigned to it in the International Financial Services Centres Authority Act, 2019 (50 of 2019).

**5. Debt instruments and non-debt instruments.**– The following shall be the debt instruments and non-debt instruments as determined by the Central Government under sub-section (7) of section 6 of the Act, namely:–

(A) Debt instruments:

(i) Government bonds;

(ii) corporate bonds;

(iii) all tranches of securitisation structure which are not equity tranche;

(iv) borrowings by firms through loans; and

(v) depository receipts whose underlying securities are debt securities;

(B) Non-debt instruments:

(i) all investments in equity in incorporated entities (public, private, listed and unlisted);

(ii) capital participation in Limited Liability Partnerships;

(iii) all instruments of investment as recognised in the Foreign Direct Investment policy from time to time;

(iv) investment in units of Alternative Investment Funds and Real Estate Investment Trust and Infrastructure Investment Trusts;

(v) investment in units of mutual funds and Exchange-Traded Fund which invest more than fifty per cent in equity;

(vi) the junior-most layer (i.e. equity tranche) of securitisation structure;

(vii) acquisition, sale or dealing directly in immovable property;

(viii) contribution to trusts; and

(ix) depository receipts issued against equity instruments;

**6. Continuity of certain investments.**– Any investment or financial commitment outside India made in accordance with the Act or the rules or regulations made thereunder and held as on the date of publication of these rules in the Official Gazette, shall be deemed to have been made under these rules and the Foreign Exchange Management (Overseas Investment) Regulations, 2022.

**7. Rights issue and bonus shares**.– (1) Any person resident in India who has acquired and continues to hold equity capital of any foreign entity in accordance with the provisions of the Act or the rules or regulations made thereunder–

(a) may invest in the equity capital issued by such entity as a rights issue; or

(b) may be granted bonus shares subject to the terms and conditions under these rules.

(2) The person resident in India acquiring the rights under sub-rule (1) may renounce such rights in favour of a person resident in India or a person resident outside India.

**8. Prohibition on investment outside India.**– Save as otherwise provided in the Act or these rules or the regulations made or directions issued under the Act, no person resident in India shall make or transfer any investment or financial commitment outside India.

**9. Overseas Investment.–** (1) Save as otherwise provided in these rules or the Foreign Exchange Management (Overseas Investment) Regulations, 2022, any investment made outside India by a person resident in India shall be made in a foreign entity engaged in a bona fide business activity, directly or through step down subsidiary or the special-purpose vehicle, subject to the limits and the conditions laid down in these rules and the said regulations:

Provided that the structure of such subsidiary or step down subsidiary of the foreign entity shall comply with the structural requirements of a foreign entity:

Provided further that Overseas Investment or transfer of such investment including swap of securities in a foreign entity formed, registered or incorporated in Pakistan or in any other jurisdiction as may be advised by the Central Government from time to time shall require prior approval of the Central Government.

*Explanation*.– For the purposes of this sub-rule, "bonafide business activity" shall mean any business activity permissible under any law in force in India and the host country or host jurisdiction, as the case may be:

(2) Notwithstanding anything contained in these rules or Foreign Exchange Management (Overseas Investment) Regulations 2022 –

(i) the Central Government may, on an application made to it through the Reserve Bank, permit financial commitment in strategic sectors or geographies, above the limits laid down in these rules and subject to such terms and conditions as it considers necessary.

(ii) the Reserve Bank may, on an application made to it through the designated AD bank and for sufficient reasons, permit a person resident in India to make or transfer any investment or financial

commitment outside India subject to such conditions as may be laid down by it:

Provided that Overseas Investment by a person resident in India shall not be made in a foreign entity located in a country or jurisdiction as may be decided by the Central Government from time to time.

(3) The Reserve Bank, if it considers necessary may, in consultation with the Central Government,–

(i) stipulate the ceiling for the aggregate outflows during a financial year on account of financial commitment or Overseas Portfolio Investment;

(ii) stipulate the ceiling beyond which the amount of financial commitment by a person resident in India in a financial year shall require its prior approval.

**10. No Objection Certificate.–**

(1) Any person resident in India who,–

(i) has an account appearing as a non-performing asset; or

(ii) is classified as a wilful defaulter by any bank; or

(iii) is under investigation by a financial service regulator or by investigative agencies in India, namely, the Central Bureau of Investigation or Directorate of Enforcement or Serious Frauds Investigation Office,

shall, before making any financial commitment or undertaking disinvestment under these rules or the Foreign Exchange Management (Overseas Investment) Regulations, 2022, obtain a No Objection Certificate from the lender bank or regulatory body or investigative agency by making an application in writing to such bank or regulatory body or investigative agency concerned:

Provided that where the lender bank or regulatory body or investigative agency concerned fails to furnish the certificate within sixty days from the date of receipt of such application, it may be presumed that there was no objection to the proposed transaction.

(2) The No Objection Certificate issued under sub-rule (1) shall be addressed by the lender bank or regulatory body or investigative agency concerned to the designated AD bank with an endorsement to the applicant.

**11. Manner of making Overseas Direct Investment by Indian entity**.– An Indian entity may make Overseas Direct Investment in the manner and subject to the terms and conditions prescribed in Schedule I.

**12. Manner of making Overseas Portfolio Investment by an Indian entity.**– An Indian entity may make Overseas Portfolio Investment in the manner and subject to the terms and conditions prescribed in Schedule II.

**13. Manner of making Overseas Investment by resident individual**.– A resident individual may make Overseas Investment in the manner and subject to the terms and conditions prescribed in Schedule III.

**14. Overseas Investment by person resident in India other than Indian entity and resident Individual.–** A person resident in India, other than an Indian entity and a resident individual, may make Overseas Investment in the manner and subject to the terms and conditions prescribed in Schedule IV.

**15. Overseas Investment in IFSC by person resident in India.**– A person resident in India may make Overseas Investment in an IFSC in India in the manner and subject to the terms and conditions prescribed in Schedule V.

**16. Pricing guidelines**.– (1) Unless otherwise provided in these rules, the issue or transfer of equity capital of a foreign entity from a person resident outside India or a person resident in India to a person resident in India who is eligible to make such investment or from a person resident in India to a person resident outside India shall be subject to a price arrived on an arm's length basis.

(2) The AD bank, before facilitating a transaction under sub-rule (1), shall ensure compliance with arm's length pricing taking into consideration the valuation as per any internationally accepted pricing methodology for valuation.

**17. Transfer or liquidation**.– (1) Unless otherwise provided in these rules, a person resident in India holding equity capital in accordance with these rules may transfer such investment, in compliance with the limits and subject to the conditions for such investment or disinvestment, pricing

guidelines or documentation and reporting requirements, in the manner provided in these rules and the Foreign Exchange Management (Overseas Investment) Regulations, 2022.

(2) A person resident in India may transfer equity capital by way of sale to a person resident in India, who is eligible to make such investment under these rules, or to a person resident outside India.

(3) In case the transfer is on account of merger, amalgamation or demerger or on account of buyback of foreign securities, such transfer or liquidation in case of liquidation of the foreign entity, shall have the approval of the competent authority as per the applicable laws in India or the laws of the host country or host jurisdiction, as the case may be.

(4) Where the disinvestment by a person resident in India pertains to ODI–

(i) the transferor, in case of full disinvestment other than by way of liquidation, shall not have any dues outstanding for receipt, which such transferor is entitled to receive from the foreign entity as an investor in equity capital and debt;

(ii) the transferor, in case of any disinvestment must have stayed invested for at least one year from the date of making ODI:

Provided that the above conditions shall not be applicable in case of a merger, demerger or amalgamation between two or more foreign entities that are wholly-owned, directly or indirectly, by the Indian entity or where there is no change or dilution in aggregate equity holding of the Indian entity in the merged or demerged or amalgamated entity.

(5) The holding of any investment or transfer thereof in any manner shall not be permitted if the initial investment was not permitted under the Act.

**18. Restructuring**.– A person resident in India who has made ODI in a foreign entity may permit restructuring of the balance sheet by such foreign entity, which has been incurring losses for the previous two years as evidenced by its last audited balance sheets, subject to ensuring compliance with reporting, documentation requirements and subject to the diminution in the total value of the outstanding dues towards such person resident in India on account of investment in equity and debt, after such restructuring not exceeding the proportionate amount of the accumulated losses:

Provided that in case of such diminution where the amount of corresponding original investment is more than USD 10 million or in the case where the amount of such diminution exceeds twenty per cent of the total value of the outstanding dues towards the Indian entity or investor, the diminution in value shall be duly certified on an arm's length basis by a registered valuer as per the Companies Act, 2013 (18 of 2013) or corresponding valuer registered with the regulatory authority or certified public accountant in the host jurisdiction:

Provided further that the certificate dated not more than six months before the date of the transaction shall be submitted to the designated AD bank.

**19. Restrictions and prohibitions.**– (1) Unless otherwise provided in the Act or these rules, no person resident in India shall make ODI in a foreign entity engaged in——

(a) real estate activity;

(b) gambling in any form; and

(c) dealing with financial products linked to the Indian rupee without specific approval of the Reserve Bank.

*Explanation.*– For the purposes of this sub-rule, the expression "real estate activity" means buying and selling of real estate or trading in Transferable Development Rights but does not include the development of townships, construction of residential or commercial premises, roads or bridges for selling or leasing.

(2) Any ODI in start-ups recognised under the laws of the host country or host jurisdiction as the case may be, shall be made by an Indian entity only from the internal accruals whether from the Indian entity or group or associate companies in India and in case of resident individuals, from own funds of such an individual.

(3) No person resident in India shall make financial commitment in a foreign entity that has invested or invests into India, at the time of making such financial commitment or at any time thereafter, either directly or indirectly,

resulting in a structure with more than two layers of subsidiaries:

Provided that such restriction shall not apply to the following classes of companies mentioned in sub-rule (2) of rule 2 of the Companies (Restriction on Number of Layers) Rules, 2017 as may be amended from time to time, namely:-

(a) a banking company as defined in clause (c) of section 5 of the Banking Regulation Act, 1949 (10 of 1949);

(b) a non-banking financial company as defined in clause (f) of section 45-I of the Reserve Bank of India Act, 1934 (2 of 1934) which is registered with the Reserve Bank and considered as systematically important non-banking financial company by the Reserve Bank;

(c) an insurance company being a company which carries on the business of insurance in accordance with provisions of the Insurance Act, 1938 (4 of 1938) and the Insurance Regulatory and Development Authority Act, 1999 (41 of 1999); and

(d) a Government company referred to in clause (45) of section 2 of the Companies Act, 2013 (18 of 2013).

**20. Requirements to be specified by Reserve Bank.**– The mode of payment, deferred payment of consideration, reporting, realisation, and other requirements for any investment outside India by a person resident in India shall be as per the regulations made in this behalf by the Reserve Bank under the Act.

**21. Restriction on acquisition or transfer of immovable property outside India.–**

(1) Save as otherwise provided in the Act or this rule, no person resident in India shall acquire or transfer any immovable property situated outside India without general or special permission of the Reserve Bank:

Provided that nothing contained in this rule shall apply to a property–

(i) held by a person resident in India who is a national of a foreign State;

(ii) acquired by a person resident in India on or before the 8th day of July, 1947 and continued to be held by such person with the permission of the Reserve Bank;

(iii) acquired by a person resident in India on a lease not exceeding five years.

(2) Notwithstanding anything contained in sub-rule (1)–

(i) a person resident in India may acquire immovable property outside India by way of inheritance or gift or purchase from a person resident in India who has acquired such property as per the foreign exchange provisions in force at the time of such acquisition;

(ii) a person resident in India may acquire immovable property outside India from a person resident outside India–

(a) by way of inheritance;

(b) by way of purchase out of foreign exchange held in RFC account;

(c) by way of purchase out of the remittances sent under the Liberalised Remittance Scheme instituted by the Reserve Bank:

Provided that such remittances under the Liberalised Remittance Scheme may be consolidated in respect of relatives if such relatives, being persons resident in India, comply with the terms and conditions of the Scheme;

(d) jointly with a relative who is a person resident outside India;

(e) out of the income or sale proceeds of the assets, other than ODI, acquired overseas under the provisions of the Act;

(iii) an Indian entity having an overseas office may acquire immovable property outside India for the business and residential purposes of its staff, as per the directions issued by the Reserve Bank from time to time;

(iv) a person resident in India who has acquired any immovable property outside India in accordance with the foreign exchange provisions in force at the time of such acquisition may–

(a) transfer such property by way of gift to a person resident in India who is eligible to acquire such property under these rules or by way of sale;

(b) create a charge on such property in accordance with the Act or the rules or regulations made thereunder or directions issued by the Reserve Bank from time to time.

(3) The holding of any investment in immovable property or transfer thereof in any manner shall not be permitted if the initial investment in immovable property was not permitted under the Act.

**Schedule I**

[See rule 11]

**Manner of making Overseas Direct Investment by Indian entity**

**1. Manner of making ODI**.- (1) An Indian entity may make ODI by way of investment in equity capital for the purpose of undertaking bonafide business activity in the manner and subject to the limits and conditions provided in this Schedule.

(2) The ODI may be made or held by way of,–

(i) subscription as part of memorandum of association or purchase of equity capital, listed or unlisted;

(ii) acquisition through bidding or tender procedure;

(iii) acquisition of equity capital by way of rights issue or allotment of bonus shares;

(iv) capitalisation, within the time period, if any, specified for realisation under the Act, of any amount due towards the Indian entity from the foreign entity, the remittance of which is permitted under the Act or does not require prior permission of the Central Government or the Reserve Bank under the Act or any rules or regulations made or directions issued thereunder;

(v) the swap of securities;

(vi) merger, demerger, amalgamation or any scheme of arrangement as per the applicable laws in India or laws of the host country or the host jurisdiction, as the case may be.

**2. ODI in financial services activity**.– (1) An Indian entity engaged in financial services activity in India may make ODI in a foreign entity, which is directly or indirectly engaged in financial services activity, subject to the following conditions, namely:--

(i) the Indian entity has posted net profits during the preceding three financial years;

(ii) the Indian entity is registered with or regulated by a financial services regulator in India;

(iii) the Indian entity has obtained approval as may be required from the regulators of such financial services activity, both in India and the host country or host jurisdiction, as the case may be, for engaging in such financial services:

(2) An Indian entity not engaged in financial services activity in India may make ODI in a foreign entity, which is directly or indirectly engaged in financial services activity, except banking or insurance, subject to the condition that such Indian entity has posted net profits during the preceding three financial years:

Provided that an Indian entity not engaged in the insurance sector may make ODI in general and health insurance where such insurance business is supporting the core activity undertaken overseas by such an Indian entity.

(3) If an Indian entity does not meet the net profits required under sub paragraph (1) & (2) of this paragraph due to the impact of Covid-19 during the period from 2020-2021 to 2021-2022, then the financial results of such period may be excluded for considering the profitability period of three years:

Provided that such period may be extended by the Reserve Bank in consultation with the Central Government, as it may deem necessary:

(4) Notwithstanding anything contained in this paragraph, Overseas Investment by banks and non-banking financial institutions regulated by the Reserve Bank shall be subject

to the conditions laid down by the Reserve Bank under applicable laws in this regard.

**3. Limit for financial commitment.–** (1) The total financial commitment made by an Indian entity in all the foreign entities taken together at the time of undertaking such commitment shall not exceed 400 percent of its net worth as on the date of the last audited balance sheet or as directed by the Reserve Bank, in consultation with Central Government from time to time.

(2) The total financial commitment referred to in sub-paragraph (1) shall not include capitalisation of retained earnings for reckoning such limit but shall include–

(i) utilisation of the amount raised by the issue of American Depository Receipts or Global Depositary Receipts and stock-swap of such receipts; and

(ii) utilisation of the proceeds from External Commercial Borrowings to the extent the corresponding pledge or creation of charge on assets to raise such borrowings has not already been reckoned towards the above limit:

Provided that the financial commitment made by Maharatna or Navratna or Miniratna or subsidiaries of such public sector undertakings in foreign entities outside India engaged in strategic sectors shall not be subject to the limits laid down under this paragraph.

*Explanation*.– For the purposes of this Schedule, a foreign entity shall be considered to be engaged in the business of financial services activity if it undertakes an activity, which if carried out by an entity in India, requires registration with or is regulated by a financial sector regulator in India.

**Schedule II**

[See rule 12]

**Manner of making Overseas Portfolio Investment by an Indian entity**

**1. OPI by an Indian entity**.– (1) An Indian entity may make OPI which shall not exceed fifty percent of its net worth as on the date of its last audited balance sheet, in the manner and subject to the conditions laid down in this Schedule.

(2) A listed Indian company may make OPI including by way of reinvestment.

(3) An unlisted Indian entity may make OPI only under clauses (iii), (iv), (v) and (vi) of sub-paragraph (2) of paragraph 1 of Schedule I.

**Schedule III**

[See rule 13]

**Manner of making Overseas Investment by resident individual**

**1. Manner of making OI**.– (1) Any resident individual may make ODI by way of investment in equity capital or OPI in the manner provided in this Schedule and unless otherwise provided hereunder, shall be subject to the overall ceiling under the Liberalised Remittance Scheme of the Reserve Bank.

(2) A resident individual may make or hold Overseas Investment by way of,–

(i) ODI in an operating foreign entity not engaged in financial services activity and which does not have subsidiary or step down subsidiary where the resident individual has control in the foreign entity:

(ii) OPI, including by way of reinvestment;

(iii) ODI or OPI, as the case may be, by way of–

(a) capitalisation, within the time period, if any, specified for realisation under the Act, of any amount due from the foreign entity the remittance of which is permitted under the Act or does not require prior permission of the Central Government or the Reserve Bank;

(b) swap of securities on account of a merger, demerger, amalgamation or liquidation;

(c) acquisition of equity capital through rights issue or allotment of bonus shares;

(d) gift as per the conditions laid down under this Schedule;

(e) inheritance;

(f) acquisition of sweat equity shares;

(g) acquisition of minimum qualification shares issued for holding a management post in a

a. foreign entity;

(h) acquisition of shares or interest under Employee Stock Ownership Plan or Employee Benefits Scheme:

Provided that ODI in respect of clauses (e), (f), (g) and (h) may be made in a foreign entity whether or not such foreign entity is engaged in financial services activity or has subsidiary or step down subsidiary where the resident individual has control:

Provided further that the acquisition of less than ten per cent. of the equity capital, whether listed or unlisted, of a foreign entity without control under clauses (f), (g) and (h), shall be treated as OPI.

*Explanation.*— For the purposes of this Schedule, a foreign entity will be considered to be engaged in the business of financial services activity if it undertakes an activity, which if carried out by an entity in India, requires registration with or is regulated by a financial sector regulator in India.

**2. Acquisition by way of gift or inheritance.**– (1) A resident individual may, without any limit, acquire foreign securities by way of inheritance from a person resident in India who is holding such securities in accordance with the provisions of the Act or from a person resident outside India.

(2) A resident individual, without any limit, may acquire foreign securities by way of gift from a person resident in India who is a relative and holding such securities in accordance with the provisions of the Act.

(3) A resident individual may acquire foreign securities by way of gift from a person resident outside India in accordance with the provisions of the Foreign Contribution (Regulation) Act, 2010 ( 42 of 2010) and the rules and regulations made thereunder.

**3. Acquisition of shares or interest under Employee Stock Ownership Plan or Employee Benefits Scheme or sweat equity shares.–** (1) A resident individual, who is an employee or a director of an office in India or branch of an overseas entity or a subsidiary in India of an overseas entity or of an Indian entity in which the overseas entity has direct or indirect equity holding, may acquire, without limit, shares or interest under Employee Stock Ownership Plan or Employee Benefits Scheme or sweat equity shares offered by such overseas entity, provided that the issue of Employee Stock Ownership Plan or Employee Benefits Scheme are offered by the issuing overseas entity globally on a uniform basis.

*Explanation.*– For the purposes of this paragraph, the expression,–

(i) "indirect equity holding" means indirect foreign equity holding through a special purpose vehicle or step down subsidiary;

(ii) "Employee Benefit Scheme" means any compensation or incentive given to the directors or employees of any entity which gives such directors or employees ownership interest in an overseas entity through ESOP or any similar scheme.

(2) Notwithstanding anything contained in these rules, a resident individual may acquire Employee Stock Ownership Plans under any scheme of the Central Government.

**Schedule IV**

[See rule 14]

**Overseas Investment by person resident in India other than Indian entity and resident Individual**

**1. ODI by Registered Trust or Society.–** Any person being a registered Trust or a registered Society engaged in the educational sector or which has set up hospitals in India may make ODI in a foreign entity with the prior approval of the Reserve Bank, subject to the following conditions, namely:–

(i) the foreign entity is engaged in the same sector that the Indian Trust or Society is engaged in;

(ii) the Trust or the Society, as the case may be, should have been in existence for at least three financial years before the year in which such investment is being made;

(iii) the trust deed in case of a Trust, and the memorandum of association or rules or bye-laws in case of a Society shall permit the proposed ODI;

(iv) such investment have the approval of the trustees in case of a Trust and the governing body or council or managing or executive committee in case of a Society;

(v) in case the Trust or the Society require special licence or permission either from the Ministry of Home Affairs, Central Government or from the relevant local authority, as the case may be, the special licence or permission has been obtained and submitted to the designated AD bank.

**2. OI by Mutual Funds or Venture Capital Funds or Alternative Investment Funds**.– (1) A mutual fund or Venture Capital Fund or Alternative Investment Fund may acquire or transfer foreign securities as stipulated by SEBI from time to time in accordance with the provisions of these rules and subject to such other terms and conditions as may be laid down by the Reserve Bank and the SEBI under applicable laws from time to time:

Provided that the aggregate limit for such investment shall be decided by the Reserve Bank in consultation with the Central Government:

Provided further that the individual limits for such investments shall be as per the instructions issued by the SEBI from time to time.

(2) Every transaction relating to the purchase and sale of foreign security by the funds referred to in subparagraph (1) shall be routed through the designated AD bank in India:

(3) Notwithstanding anything contained in these rules, any investment under these rules by mutual funds, Venture Capital Funds and Alternative Investment Funds shall be treated as OPI.

*Explanation.*– For the purposes of this paragraph, "Alternative Investment Fund" means any fund registered as such with the SEBI.

**3. Opening of Demat Accounts by clearing corporations of stock exchanges and clearing members.**– Any person, being a SEBI approved clearing corporation of a stock exchange and its clearing members, may acquire, hold and transfer foreign securities, offered as collateral by foreign portfolio investors and, subject to the guidelines issued by the SEBI from time to time,–

(i) open and maintain Demat Account with foreign depositories;

(ii) remit the proceeds arising due to such action, if any; and

(iii) liquidate such foreign securities and repatriate the proceeds thereof to India.

**4. Acquisition and transfer of foreign securities by domestic depository.**– A domestic depository may acquire, hold and transfer foreign securities of a foreign entity, being the underlying security to issue Indian Depository Receipts as may be authorised by such foreign entity or its overseas custodian bank and the person investing in Indian Depository Receipts may either sell or continue to hold foreign securities in accordance with the conditions provided in these rules and the Foreign Exchange Management (Overseas Investment) Regulations, 2022 upon conversion of such depository receipts.

**5. Acquisition and transfer of foreign securities by AD bank.**– An AD bank including its overseas branch may acquire or transfer foreign securities in accordance with the terms of the host country or host jurisdiction, as the case may be, in the normal course of its banking business.

**Schedule V**

[See rule 15]

**Overseas Investment in IFSC by person resident in India**

**1. Overseas Investment in IFSC by person resident in India**.– (1) Subject to the provisions of these rules and the Foreign Exchange Management (Overseas Investment) Regulations, 2022, a person resident in India may make Overseas Investment in an IFSC in India within the limits provided in these rules .

(2) A person resident in India may make Overseas Investment in an IFSC in the manner as laid down in Schedule I or Schedule II or Schedule III or Schedule IV:

Provided that –

(i) in the case of an ODI made in an IFSC, the approval by the financial services regulator concerned, wherever applicable, shall be decided within forty-five days from the date of application complete in all respects failing which it shall be deemed to be approved;

(ii) an Indian entity not engaged in financial services activity in India, making ODI in a foreign entity, which is directly or indirectly engaged in financial services activity, except banking or insurance, who does not meet the net profit condition as required under these rules, may make ODI in an IFSC.

(iii) a person resident in India may make contribution to an investment fund or vehicle set up in an IFSC as OPI;

(iv) a resident individual may make ODI in a foreign entity, including an entity engaged in financial services activity, (except in banking and insurance), in IFSC if such entity does not have subsidiary or step down subsidiary outside IFSC where the resident individual has control in the foreign entity.

(3) A recognised stock exchange in the IFSC shall be treated as a recognised stock exchange outside India for the purpose of these rules.

**[For further details please refer the Notification]**

# CUSTOMS

## NOTIFICATION

### CUSTOMS (COMPOUNDING OF OFFENCES) AMENDMENT RULES, 2022

**OUR COMMENTS**: The Ministry of Finance (Central Board of Indirect Taxes and Customs) vide notification no 69/2022 -CUSTOMS (N.T.) dated 22.08.2022 notified In exercise of the powers conferred by clause (h) of sub-section (2) of section 156, read with sub-section (3) of section 137 of the Customs Act, 1962 (52 of 1962), the Central Government hereby makes the following rules further to amend the Customs (Compounding of Offences) Rules, 2005, namely: -

1. (1) These rules may be called the Customs (Compounding of Offences) Amendment Rules, 2022.

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

2. In the Customs (Compounding of Offences) Rules, 2005 (hereinafter referred to as the said rules), in rule 5, in the Table, after Sl. No. 8 and entries relating thereto, the following Sl. No. and entries shall be inserted, namely; -

| | | |
|---|---|---|
| "9 | Offences specified under Section 135AA of the Act | One lakh rupees for the first offence, to be increased by hundred per cent of this amount for each subsequent offence.". |

3. In rule 6 of the said rules, -

(i) the words, "has co-operated in the proceedings before him and" shall be omitted;

(ii) the following proviso shall be inserted, namely: -

"Provided that if the offence is punishable only under Section 135AA, the immunity from prosecution shall be granted."

4. In rule 7 of the said rules, in sub-rule (2), for words, brackets and number, "sub-rule (1)", the words, brackets and number, "rule (6)" shall be substituted.

**[For further details please refer the Notification]**

## CIRCULAR

### SIMPLIFICATION FOR PROCEDURE FOR COMPOUNDING OF OFFENSES UNDER CUSTOMS ACT, 1962 - CUSTOMS

**OUR COMMENTS**: The Ministry of Finance (Central Board of Indirect Taxes and Customs) vide Circular No. 15/2022-Customs dated 23.08.2022 issued clarification regarding Simplification for procedure for compounding of offenses under Customs Act, 1962.

Reference is invited to Circular No. 54/2005-Customs dated 30.12.2005 on guidelines for compounding of offenses under Customs Act read with para 12 of the Circular 27/2015-Customs dated 23.10.2015. The Central Government has brought further changes in the Customs (Compounding of Offenses) Rules, 2005 vide Notification No.69/2022 Customs (N.T.) dated 22.08.2022.

The salient features of the amendment are as follows:

i. Satisfaction of compounding authority has been limited only to verify and be satisfied that the full and true disclosure of facts has been made by the applicant;

ii. The offense under section 135AA of the Customs Act has also been made compoundable. Further, the competent authority has been mandated to grant immunity when offense is only of this type.

3. While reviewing the provisions, a need was perceived to undertake awareness campaigns for conveying the benefits of compounding provisions which could enhance the use of such provision by concerned persons. Accordingly, Pr. Chief/Chief Commissioners are directed to undertake periodical (say, quarterly) comprehensive and targeted outreach programmes for this purpose.

4. It has also been decided that Pr. DG, Director General & Data Management shall incorporate in the reporting, the performance of every Zone in terms of receipt and timely disposal within 6 months of compounding applications, as well as for recording of the sums realized as compounding amount, as envisaged in para 7 of the Circular No. 54/2015-Customs dated 30.12.2005.

5. The difficulty if any, in the implementation of the said rules may be brought to the notice of the Board.

**[For further details please refer the Circular]**

## NOTIFICATION

### AMENDMENT IN IMPORT POLICY ARTEMIA CYST UNDER ITC (HS) CODE 05119140 OF CHAPTER-05 OF ITC (HS), 2022, SCHEDULE – I (IMPORT POLICY)

**OUR COMMENTS**: Ministry of Commerce and Industry vide Notification no. 28/2015-2020 dated 25.08.2022 notified In exercise of powers conferred by Section 3 and section 5 of FT (D&R) Act, 1992, read with paragraph 1.02 and 2.01 of the Foreign Trade Policy (FTP) 2015-2020, as amended from time to time, the Central Government hereby amends the import policy of ITC (HS) 05119140 of Chapter 05 of ITC (HS) 2022, Schedule 1 (Import Policy) as under:

| ITC (HS) Code | Description | Existing Import Policy | Revised Import Policy |
|---|---|---|---|
| 05119140 | --- Artemia cyst | Restricted | Free |

**Effect of this Notification**: The import policy of artemia cyst under ITC (HS) 05119140 is revised from 'Restricted' to 'Free'.

**[For further details please refer the Notification]**

## PUBLIC NOTICE

### ENLISTMENT OF AN AGENCY UNDER APPENDIX 2E OF FTP, 2015-2022 – AUTHORIZED TO ISSUE CERTIFICATE OF ORIGIN (NON-PREFERENTIAL)

**OUR COMMENTS**: Ministry of Commerce and Industry vide public notice no. 22/2015-2020 dated 23.08.2022 notified In exercise of powers conferred under paragraph 2.04 of the Foreign Trade Policy (FTP) 2015-2020, the Director General of Foreign Trade hereby authorizes following agency to issue Certificate of Origin (Non Preferential):

Panipat Exporters Association

19, Shakuntala Complex, Palika Bazar,

GT Road, Panipat,

Haryana - 132103

Tele no.: +91-22-4226-3600

E-mail: pnpexpo@gmail.com

2. Accordingly, the name of Panipat Exporters Association (PEA) is added at Serial No. 5 (Haryana) of Appendix 2E [List of Agencies Authorized to issue Certificate of Origin (Non-Preferential)] to Appendices & Aayat Niryat Forms of FTP (2015-2020).

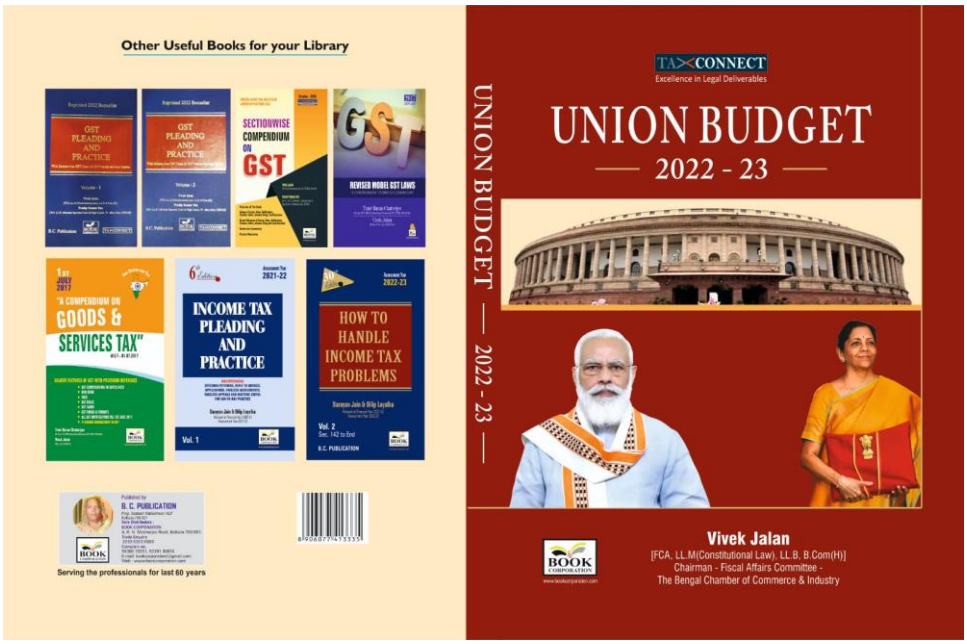
3. **Effect of this Public Notice:**

Panipat Exporters Association (PEA), Panipat is enlisted under Appendix 2E of FTP, 2015-20 for issuing Certificate of Origin (Non Preferential).

**[For further details please refer the public notice]**

## :IN STANDS

# UNION BUDGET 2022-23

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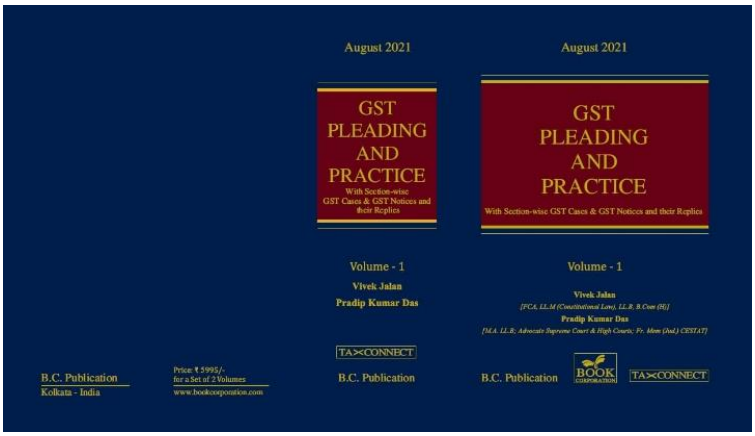


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