

# TAXTIME

## NEWSLETTER

### DIRECT TAX NEWS

## VIVO SENT 50% OF ITS TURNOVER TO CHINA TO AVOID TAX IN INDIA: ED



The Enforcement Directive (ED) announced today that Chinese phone maker Vivo remitted 50 per cent of its turnover, worth ₹62,476 crore, to China, to avoid payment of taxes in India. The ED also noted that 22 companies associated with Vivo were transferring a huge amount of funds to Vivo India.

Eighteen of these companies were incorporated by a Chinese Director, who falsified identification and forged address at the time of incorporation of one of the companies, Grand Prospect International Communication (GPICPL).

The ED disclosed that it had conducted raids in 48 locations across the country belonging to VIVO Mobiles India Private Ltd and its 23 associated companies. The investigation, under the Prevention of Money Laundering Act, was initiated by the ED against Vivo after the Ministry of Corporate Affairs filed an FIR against GPICPL, alleging its fraudulent incorporation.

According to the complaint by the Ministry of Corporate Affairs, GPICPL and its shareholders had used forged identification documents and falsified addresses at the time of incorporation. The ED stated that it had found those allegations to be true.

“The investigation revealed that the addresses mentioned by the directors of GPICPL did not belong to them, but in fact, was a government building and house of a senior bureaucrat.”

The ED also found that Bin Lou, Director, GPICPL, who is also named in the FIR, was responsible for incorporating 18 companies across the country. These were incorporated around the same time or when Vivo incorporated its India operations. The ED named another Chinese national, Zhixin Wei, who had incorporated a further four companies.

These 22 companies were located in 19 major cities, including Lucknow, Gurugram, Ahmedabad, Hyderabad, Bengaluru and Chennai.

Bin Lou left India in 2018 and Zhixin Wei in 2021. The ED stated that as per their investigation, “these companies are found to have transferred a huge amount of funds to Vivo India. Further, of the total sale proceeds of ₹1,25,185 crore, Vivo India remitted ₹62,476 crore, almost 50 per cent of the turnover out of India, mainly to China.

These remittances were made in order to disclose huge losses in Indian incorporated companies to avoid payment of taxes in India.”



## DENMARK DRAFT BILL INTRODUCING TAX LIABILITY ON EEZ



On 24 June 2022, the Danish Minister of Taxation published a draft bill expanding the scope of tax liability for nonresident companies and individuals engaged in activities outside of Denmark's sea territory (12 nautical miles) but within Denmark's Exclusive Economic Zone (EEZ). The draft bill will be subject to public consultation until 18 August 2022, after which it will be presented in Parliament.

Currently, Denmark only levies tax on nonresidents activities in the EEZ related to hydrocarbon activities. The draft bill will expand the scope of tax liability to nonresident companies meeting all of the following conditions: (i) activities are carried out in the EEZ; (ii) the activities constitute a permanent establishment; and (iii) the activities relate to "the establishment, operation and use of artificial islands, installations, and facilities." Examples of such activities include the establishment and operation of renewable hydrogen production, offshore wind farms, artificial energy islands, and activities associated with the storage of CO<sub>2</sub>. The proposal must be seen in the light of a political agreement to establish an artificial island in the North Sea hosting a wind farm and related production facilities and to establish offshore Carbon Capture and Storage (CCS) facilities. The statutory corporate tax rate is 22%.

A carve-out provision means that activities related to sea cables and pipelines will not trigger tax liability unless the cables or pipelines: (i) continue to Denmark's sea or land territory; (ii) relate to exploration or extraction of resources in Denmark's EEZ; or (iii) relates to the operation of artificial islands, installations or facilities in Denmark's EEZ. Hence, sea cables and pipelines that are only used to transit through the Danish EEZ will remain exempt from Danish taxation. Nonresident individuals will also be subject to Danish tax liabilities if engaging in the above activities as employees or self-employed.

The bill is proposed to be applicable as of 1 January 2023.

## ERROR IN AIS ON TAX PORTAL? FLAG ISSUE, FILE RETURN



Ahead of the income tax return filing deadline, it may help to check your Annual Information Statement (AIS) on the tax portal and flag any irregularities in it. The government is promising to help in rectifying the problem that may have crept in due to misreporting or because the system may not have been able to fully capture the details.

The Annual Information Statement (AIS), which was introduced last year, has details of the tax deducted at source, information on property transactions, dividends, fixed deposits, mutual funds and shares and other securities, which are collated from multiple sources based on your PAN. The idea is to help taxpayers with the information that is available with the government and enable them to file accurate returns as some of the details may have been missed by them.

Tax authorities have assured that there will be no problem

A taxpayer is given five options on seeing the information, officials explained — she can either accept the data or deny it in case the data does not relate to her and may be wrongly reflected in her tax account. Alternatively, it could relate to someone else's PAN, or could relate to the previous year or could be duplicate or related to other information.

Officials suggested that the taxpayer could click on the relevant box and enter the details in the remarks section. Authorities, however, said that the discrepancies must be flagged in the tax system as they will be available in case is taken up for scrutiny.



## SALE OF MACHINE MADE OR POLYESTER NATIONAL FLAG EXEMPT FROM GST



Sale of the Indian national flag, irrespective of whether machine made or of polyester, is exempt from the Goods and Services Tax (GST), the finance ministry said on Friday.

Hand-woven, hand-spun national flags made of cotton, silk, wool or Khadi are already exempt from GST.

In an office memorandum, the Revenue Department clarified that polyester or machine-made tricolour too would be exempt from the levy following amendments to the 'Flag Code of India, 2002' in December last year.

"It has been clarified that the sale of the Indian National Flag, adhering to the Flag Code 2002 and its subsequent amendments, is exempt from GST," Finance Minister Nirmala Sitharaman's office tweeted.

The clarification from the finance ministry comes in the backdrop of the 'Har Ghar Tiranga' initiative under the 'Azadi ka Amrit Mahotsav' -- celebrating 75 years of India's independence.

It envisages inspiring Indians everywhere to hoist the national flag at their home. The idea behind the initiative is to invoke the feeling of patriotism in the hearts of the people and promote awareness about our national flag.

The Flag Code of India brings together all laws, conventions, practices, and instructions for the display of the national flag.

The Flag Code of India, 2002 was amended in December 2021, and tricolour made of polyester or machine-made flags have been allowed.

Now, the tricolour can be made of hand-spun and hand-woven or machine-made, cotton/polyester/wool/silk/khadi bunting.

## CBIC NOTIFIES PROCEDURAL CHANGES TO GST RULES EASING THE COMPLIANCE BURDEN ON SMALL PLAYERS



The government has notified certain procedural changes in the GST rules, including those related to threshold, for filing annual returns for the 2021-22 fiscal, a move that will help ease the compliance burden on small players.

The changes were vetted by the Goods and Services Tax (GST) Council at its meeting last week. With the amendments notified by the Central Board of Indirect Taxes and Customs (CBIC), businesses have also been allowed to make tax payments on the GSTN portal by using IMPS and UPI payment modes.

Businesses with an aggregate annual turnover of up to ₹2 crore in the fiscal ended March 31, 2022 are exempt from filing annual returns for 2021-22, as per the amended rules.

Other important changes include extension of time-limit specified under Section 73 (determination of tax) under the GST Act for issuance of an order for FY 2017-18 to September 30, 2023. However, no extensions have been provided for any other financial year. In relation to the delayed filing of refund applications during the Covid period (March 1, 2020 to February 28, 2022), extension has been granted that will enable numerous exporters to encash the refunds stuck in litigation.

The manner of calculation of interest on delayed payment of tax has been notified and that would help taxpayers in making precise calculation of the tax dues. As per the amended rules, every invoice issued by an MSME supplier will have a standard declaration printed on invoice regarding non-applicability of e-invoice. Also, cash ledger balance can be transferred from one GST registered entity to another under the same PAN.

The changes were approved by the GST Council, comprising finance ministers of Centre and State, at its June 28-29 meeting.



### GST ON PRE-PACKAGED, PRE-LABELLED FOOD ITEMS ON PAR WITH BRANDED ONES



Pre-packaged and pre-labelled retail food items will attract GST rate at par with the branded ones, Chairman of Central Board of Indirect Taxes and Custom (CBIC) Vivek Johri said on Thursday. This means the rate could be 5, 12 or 18 per cent.

GST was exempted on specified food items, grains, etc when not branded, or right on the brand has been foregone. In its meeting last month, the GST Council recommended changing the scope of the exemption to exclude pre-packaged and pre-labelled retail packs that comply with the Legal Metrology Act, such as curd, lassi, and butter milk.

The new rates are coming into effect from July 18. "There will be no difference between branded and unbranded retail food items," Johri told BusinessLine. Also, exemption for items sold in loose, etc will continue. This means pre-packed and pre-labelled curd, lassi and butter milk will attract 5 per cent GST, while ghee and butter will attract GST at the rate of 12 per cent. According to the Legal Metrology Act, 2009 "pre-packaged commodity" means a commodity which without the purchaser being present is placed in a package of whatever nature, whether sealed or not, so that the product contained therein has a pre-determined quantity. Meanwhile, trade and industry bodies are unhappy about this decision. Confederation of All India Traders (CAIT) says only 15 per cent of the population in the country uses branded goods, while the rest lives on products which are pre-packed or pre-labelled.

"Bringing these items in the tax slab of GST is an unjust move, which should be taken back by the GST Council and the decision should not be notified as an immediate relief," BC Bhartia, National President, and Praveen Khandelwal, Secretary General of CAIT, said in a statement. They further said marking and inscription of other related information on food products is mandatory under Food Safety & Standard Act and by virtue of this, the product can't be treated as branded.

### CBIC TIGHTENS SCREWS AGAINST FAKE INVOICES

The Central Board of Indirect Taxes & Custom (CBIC) has come out with a mechanism for clearer framework to curb fake invoices. This will help officials in determining demand and penalty in respect of transactions involving fake invoice much more effectively. The new circular, based on decision taken by the GST Council last week, prescribes three scenarios and action in each one of them. First, what happens when there is an issuance of tax invoice by one registered person to another without any underlying supply of goods or services? As there is no supply, no demand for tax and recovery can be made, but the person issuing the invoice would be liable for penal action.

In the second scenario, a registered entity gets a fake invoice without any underlying supply, but gets ITC on the basis of that invoice. In this situation, the said business could be liable for demand and recovery of the said ITC, along with penal action and interest. The third scenario involves issuance of a fake invoice by one registered entity to another and further passes on the said input tax credit to another registered entity. In such a situation, the second entity could be held liable for penal action on two counts – getting ITC fraudulently and issuing fake invoice. The circular clarified that actual action to be taken against a person will depend upon the specific acts and circumstances of the case which may involve complex mixture of above scenarios or even may not be covered by any of the above scenarios.

"Any person who has retained the benefit of transactions specified under sub-section (1A) of section 122 of CGST Act, and at whose instance such transactions are conducted, shall also be liable for penal action under the provisions of the said sub-section," the circular said. CBIC has also come out with some other circulars too to implement decisions taken by GST Council. For example one circular says GST payable as a consequence of any proceeding Instituted under the provisions of GST laws, can be paid by utilisation of the amount available in the electronic credit ledger of a registered person. Then another circular talks about transaction(s) between related parties are subject to GST levy even if made without a consideration.



## MORE SERVICES TO GO OUT OF GST EXEMPTION LIST: TARUN BAJAJ



Revenue Secretary Tarun Bajaj on Tuesday said that further pruning of exemption list for services is next on agenda. He also ruled out according 'Zero' rating for healthcare sector. At the time of introduction, 81 categories of services were on the exemption list which was expanded further. Last week, the GST Council recommended doing away with exemptions on some services, including those those provided by the RBI, IRDA, SEBI, FSSAI, hotel accommodation priced up to ₹1,000/day and room rent (excluding ICU) exceeding ₹5,000 per day per patient, beside others. Still the exemption list is very long.

"In the 47th meeting, we have taken away a lot of exemptions but exemptions still remain, work needs to be done on that on the services side, we still have a large number of exemptions. The CBIC, GST Council and all of us in collaboration with the trade and industry will continue to work on that if we can prune this list of exemptions. While we need to provide exemption to certain categories, health sector for example, is one of them," he said while addressing the event to five years of GST organised by CII here.

Taking note of voices raised against decision to impose 5 per cent GST (without ITC) on room rent (excluding ICU) exceeding ₹5,000 per day per patient, he wanted to know how many hospital rooms are there in the country and out of those what are the percentage of rooms which are charging above ₹5,000. "I think it will be miniscule. So if I can spend ₹5,000 on a room, I can perhaps spend ₹250 on GST. This GST, which comes into a common pool, will be used for poor," he said.

Explaining the reasons behind such a decision, he said this is in response to demand for doing away exemption or Inverted Duty Structure (higher duty on input and lower duty on output, resulting in more and more refund). "I don't see any reason that there should be any such kind of messaging that 5 per cent GST on ₹5,000 plus non-ICU room is hitting affordable healthcare," he said.

On Monday, industry body wrote a letter expressing concern over 5 per cent GST on non-ICU room and 12 per cent GST on common bio-medical waste treatment facilities for treatment or disposal of biomedical waste. Industry argued that it will create complexity. It demanded doing away of exemption from healthcare services and bring in under Zero rating, so that ITC could be availed.

He also made it clear that 'Zero' rating is only available for export.

## COS WITH OVER RS 5 CR ANNUAL TURNOVER WILL SOON HAVE TO GENERATE GST E-INVOICES FOR B2B TRANSACTIONS



GST-registered businesses with annual turnover of more than Rs 5 crore will soon have to generate electronic invoices for B2B transactions, a top official said on Thursday. Central Board of Indirect Taxes and Customs (CBIC) Chairman Vivek Johri said the GST Council, comprising finance ministers of the Centre and states, had decided to implement it in a phased manner and with e-invoices being generated, for every B2B (Business-to-Business) transaction, invoice matching by tax authorities would not be required under Goods and Services Tax (GST).

"We started with a very high threshold and soon we are going to have all taxpayers with an annual turnover of more than Rs 5 crore having to generate e-invoices for their B2B part of business. With the launch of e-invoice, we don't need invoice matching," Johri said at an event organised by industry body PHDCCI here. Currently, businesses with turnover of over Rs 20 crore will have to generate e-invoices for B2B transactions.

"E-invoicing is revolution and there is no other country that has adopted this. The phasing has been very gradual. We didn't want to burden the taxpayer community with e-invoices... we (Council) knew it cannot be done in one stroke, we started in a phased manner and gradually brought it down," Johri said. Under GST, e-invoicing for B2B transactions was made mandatory for companies with turnover of over Rs 500 crore from October 1, 2020, which was then extended to those with turnover of over Rs 100 crore from January 1, 2021. From April 1 last year, companies with turnover over Rs 50 crore were generating B2B e-invoices, and the threshold was brought down to Rs 20 crore from April 1, 2022.



# TODAY'S QUOTE

*I may not agree with you say, but till my death, I will not take away your freedom to disagree with me*

*- Ankown*

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