R.C.JAIN AND ASSOCIATES LLP

NEWSLETTER

April & May

2022

"The best view comes after the hardest climb"

-Janvi Bhanushali

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DIRECT TAX

Income Tax

1) Circular regarding use of functionality under section 206AB and 206CCA of the Income-tax Act, 1961:

As per section 206AB and 206CCA, tax was deducted or collected at a higher rate in case of certain specified persons. It was difficult for the tax deductor or the collector to do a due diligence of whether the deductee or the collectee was a specified person. In order to ease this compliance burden, the Income-tax Department came out with functionality "Compliance Check for Section 206AB & 206CCA", which was made available through reporting portal of the Income-tax Department. It enabled the tax deductor or the collector to feed the single PAN (PAN search) or multiple PANs (bulk search) of the deductee or collectee. The functionality then gave a response if such deductee or collectee was a specified person.

Finance Act 2022 has brought about the following changes in the above-mentioned provisions, i.e., section 206AB and section 206CCA of the Act with effect from 1st April, 2022:

i. The provision of higher TDS under section 206AB is not applicable on tax to be deducted under sections 194-IA, 194-IB and 194M. This is in addition to already existing provision of its non-applicability on tax to be deducted under sections 192, 192A, 194B, 194BB, 194LBC and 194N.

ii. The definition of specified person has been amended in both section 206AB and section 206CCA. Now "specified person" means a person who satisfies both the following conditions:

   a. He has not furnished the return of income for the assessment year (earlier it was for 2 assessment years) relevant to the previous year immediately preceding the financial year in which tax is required to be deducted/collected. The previous year to be counted is required to be the one whose return filing date under sub-section (1) of section 139 has expired.

   b. Aggregate of tax deducted at source and tax collected at source is rupees fifty thousand or more in that previous year.

iii. Further, it has been provided that provisions of section 206AB will not apply in case of deduction of tax on transfer of virtual digital asset (VDA) under section 194S of the Act to a person being an individual or Hindu undivided family, whose sales, gross receipts or turnover from the business carried on by him or profession exercised by him does not exceed one crore rupees in case of business or fifty lakh rupees in case of profession, during the financial year immediately preceding the financial year in which such VDA is transferred or if such person does not have any income under the head " Profit and gains of business or profession".

2) *Guidelines under clause (23FE) of section 10 of the Income-tax Act, 1961:*

In order to incentivize infrastructure investments by Abu Dhabi Investment Authority (ADIA) and other specified persons in India, the Finance Act, 2021 has amended the following provisions of clause (23FE) of section 10 of the Act:

i. amended item (c) of sub-clause (iii) thereof to allow exemption for investment by specified person in Category I or Category II Alternative Investment Funds which invest in one or more of the companies, enterprises or entities through domestic companies and Non-Banking Finance Companies. Further, the Finance Act also relaxed the condition requiring an AIF to have investment in eligible infrastructure entity or InvIT from 100% to 50%.

ii. Inserted item (d) in sub-clause (iii) thereof, to allow investment by specified person in a domestic company set up and registered on or after 01.04.2021, having minimum 75 per cent investments in eligible infrastructure entity.

iii. inserted item (e) in sub-clause (iii) thereof, to allow investment by specified person in a Non-Banking Financial Company registered as an Infrastructure Finance Company or in an Infrastructure Debt Fund (hereinafter referred to as NBFC), having minimum 90 per cent lending in eligible infrastructure entity.

iv. inserted Explanation 3 thereof, to provide that the method for determination of 50 per cent, 75 per cent or 90 per cent investment referred to in item (c), (d) or (e) of sub-clause (iii) of the said clause (23FE) shall be prescribed by the Central Government.

v. inserted fourth, fifth and sixth proviso thereof, providing that in case of an AIF, domestic company and NBFC referred to in item (c), (d), (e) of sub-clause (iii), has

investment or lending of less than hundred percent in eligible infrastructure entity, income accrued or arisen to, or received by, or attributable to such investment, directly or indirectly, which is exempt under this clause shall be calculated proportionately to the investment made in eligible infrastructure entity, in the prescribed manner.

First proviso to clause (23FE) of section 10 of the Act provides that if any difficulty arises regarding interpretation or implementation of the provisions of the said clause, the Board may, with the approval of the Central Government, issue guidelines for the purpose of removing the difficulty. In exercise of the powers under this proviso, Board, with the approval of the Central Government, has issued guidelines which can be seen in Circular No. 9 dated 9th May, 2022.

3) Transactions in relation to which PAN is to be quoted:

After rule 114B, rule 114BA has been inserted vide notification no. 53/2022 which specifies the transactions for the purposes of clause (vii) of sub-section (1) of section 139A, namely:

i. Cash deposit or deposits aggregating to twenty lakh rupees or more in a financial year, in one or more account of a person with a banking company or a co-operative bank or post office.

ii. Cash withdrawal or withdrawals aggregating to twenty lakh rupees or more in a financial year, in one or more account of a person with a banking company or a co-operative bank or post office.

iii. Opening of a current account or cash credit account by a person with a banking company or a co-operative bank or a post office.

~Compiled by Nikunj Agrawal

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Case Laws

1. Issue Involved:

Reassessment notice if issued on or after 1-4-2021 under unamended section 148 needs to be set aside; however, same being a bona fide mistake, notice should not be set aside, rather deemed to have been issued under substituted section 148A.

- **In The Supreme Court of India , "Union of India v. Ashish Agarwal"**

Section 148A, read with section 148, of the Income-tax Act, 1961 and section 3 of the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 and Article 142 of the Constitution of India, 1950 - Income escaping assessment - Conducting inquiry, providing opportunity before issue of notice (TLA, 2020) –

GIST OF THE CASE

Assessing Officer issued reassessment notices on or after 1-4-2021 under unamended section 148 by relying on Explanation in Notifications dated 31-3-2021 and 27-4-2021 which extended applicability of aforesaid provision as they stood on 31-3-2021 before commencement of Finance Act, 2021 beyond period of 31-3-2021 - Said reassessment notices were set aside by High Court on ground that reassessment notices issued on or after 1-4-2021 should be governed by substituted sections 147 to 151 which came into effect vide Finance Act, 2021 - Whether though view taken by High Court was correct, since revenue had made a bona fide mistake, instead of setting aside impugned reassessment notices, same should be deemed to have been issued under section 148A as substituted by Finance Act, 2021 and were to be treated as show cause notices in terms of section 148A(b) - Held, yes - Whether in exercise of its power under Article 142 of Constitution it was also to be held that this order would be applicable PAN INDIA on all judgments and orders passed by different High Courts where similar notices issued after 1-4-2021 under section 148 are set aside.

Held, yes [Para's 8 and 11] [In favour of revenue] Circulars and Notifications: Notification No. 20/2021, dated 31-3-2021 and Notification No. 38/2021, dated 27-4-2021.

FACTS

- The Assessing Officer had issued reassessment notices on or after 1-4-2021 under the erstwhile sections 148 to 151 by relying on Explanations in the Notification No. 20/2021, dated 31-3-2021 and Notification No. 38/2021, dated 27-4-2021 which extended applicability of aforesaid provision as they stood on 31-3-2021, before commencement of Finance Act, 2021, beyond period of 31-3-2021.

- The said reassessment notices were the subject matter of writ petitions before High Courts. The High Court's set aside all the reassessment notices on ground that reassessment notices issued after 1-4-2021 would be governed by substituted sections 147 to 151 which came into effect vide Finance Act, 2021.

On revenue's appeal to the Supreme Court.

HELD

Under the substituted provisions of the IT Act vide Finance Act, 2021; no notice under section 148 can be issued without following the procedure prescribed under section 148A. Along with the notice under section 148, the Assessing Officer is required to serve the order passed under section 148A. Section 148A is a new provision which is in the nature of a condition precedent. [Para 6.2]

By way of section 148A, the procedure has now been streamlined and simplified. It provides that before issuing any notice under section 148, the Assessing Officer shall (i) conduct any enquiry, if required, with the approval of specified authority, with respect to the information which suggests that the income chargeable to tax has escaped assessment; (ii) provide an opportunity of being heard to the assessee, with the prior approval of specified authority; (iii) consider the reply of the assessee furnished, if any, in response to the show-cause notice referred to in clause (b); and (iv) decide, on the basis of material available on record including reply of the assessee, as to whether or not it is a fit case to issue a notice under section 148 and (v) the Assessing Officer is required to pass a specific order within the time stipulated. [Para 6.4]

The new provisions substituted by the Finance Act, 2021 being remedial and benevolent in nature and substituted with a specific aim and object to protect the rights and interest of the assessee as well as and the same being in public interest, the respective High Courts have rightly held that the benefit of new provisions shall be made available even in respect of the proceedings relating to past assessment years,

provided section 148 notice has been issued on or after 1-4-2021. The view taken by the various High Courts in holding so is completely agreed with. [Para 7]

However, at the same time, the judgments of the several High Courts would result in no reassessment proceedings at all, even if the same are permissible under the Finance Act, 2021 and as per substituted sections 147 to 151. The revenue cannot be made remediless and the object and purpose of reassessment proceedings cannot be frustrated. It is true that due to a bonafide mistake and in view of subsequent extension of time vide various notifications, the Revenue issued the impugned notices under section 148 after the amendment was enforced with effect from 1-4-2021, under the unamended section 148. It is viewed that the same ought not to have been issued under the unamended Act and ought to have been issued under the substituted provisions of sections 147 to 151 as per the Finance Act, 2021. There appears to be genuine non-application of the amendments as the may have been under a bonafide belief that the amendments may not yet have been enforced. Therefore, it is opined that some leeway must be shown in that regard which the High Courts could have done so. Therefore, instead of quashing and setting aside the reassessment notices issued under the unamended provision of IT Act, the High Courts ought to have passed an order construing the notices issued under unamended Act/unamended provision of the IT Act as those deemed to have been issued under section 148A as per the new provision section 148A and the revenue ought to have been permitted to proceed further with the reassessment proceedings as per the substituted provisions of sections 147 to 151 as per the Finance Act, 2021, subject to compliance of all the procedural requirements and the defences, which may be available to the assessee under the substituted provisions of sections 147 to 151 and which may be available under the Finance Act, 2021 and in law. Therefore, the judgments are proposed to be modified and orders passed by the respective High Courts as under -

- The respective impugned section 148 notices issued to the respective assessees shall be deemed to have been issued under section 148A as substituted by the Finance Act, 2021 and treated to be show-cause notices in terms of section 148A(b). The respective Assessing Officers shall within thirty days from today provide to the assessees the information and material relied upon by the revenue so that the assessees can reply to the notices within two weeks thereafter;

- The requirement of conducting any enquiry with the prior approval of the specified authority under section 148A(a) be dispensed with as a one-time measure vis-àvis those notices which have been issued under section 148 of the

unamended Act from 1-4-2021 till date, including those which have been quashed by the High courts.

The present order would be applicable PAN INDIA on all judgments and orders passed by different High Courts on the issue under which similar notices issued after 1-4-2021 under section 148 are set aside and shall be governed by the present order and shall stand modified to the aforesaid extent. The present order is passed in exercise of powers under article 142 of the Constitution of India so as to avoid any further appeals by the revenue on the very issue by challenging similar judgments and orders. [Para 11]

~Compiled by Ramanand Yadav

2. Issue Involved:

WHETHER LOSS SUFFERED ON TRANSACTIONS IN RESPECT OF TRADING IN DERIVATIVES COULD BE SET OFF AGAINST INCOME ARISEN OUT OF NORMAL BUSINESS?

- **In the Hon'ble High Court of Judicature at Bombay Bench at Aurangabad, in case of Souvenir Developers (I) Pvt Ltd vs The Union of India through Assistant Commissioner.**

GIST OF THE CASE

The appellant is dealing in collection of Toll fees in the name and style "M/s. Souvenir Developer (India), Pvt. Ltd., Dhule" The appellant is also carrying business of shares and derivatives. The return of income declaring total income of Rs.85,43,220/- was submitted electronically by assessee. Subsequently the case of the appellant was picked up for scrutiny. The assessing officer refused to consider the loss suffered by the assessee on transaction in derivatives while computing net taxable income. Being aggrieved by the said order, the appellant preferred an appeal before the Income Tax Appellate Tribunal. The Income Tax Appellate Tribunal was of the view that the appellant would not be entitled to claim set-off in view of the provisions of Section 73. Being aggrieved by the said decision of the ITAT, the appellant has preferred this appeal under section 260-A of the Income Tax Act, 1961.

HELD

Provision of section 73(1) relevant extracts from which are as follows:

Any loss, computed in respect of a speculation business carried on by the assessee, shall not be set off except against profits and gains, if any, of another speculation business.

It is clear that, the transactions in respect of trading in derivatives referred to in Clause (ac) of Section 2 of Securities Contracts (Regulation) Act, 1956 carried in a recognized stock exchange are excluded from the definition of 'speculation transaction' described under Section 43 (5) of the Income Tax Act, 1961. In our view, the respondents thus, cannot be allowed to contend that the appellant had claimed any set off of the losses suffered by the appellant in respect of the speculation business carried on by the assessee against the profits and gains, if any, of another speculation business.

In our view, Section 73 (1) as well as the explanation inserted by Taxation Laws (Amendment) Act, 1975 with effect from 01.04.1977 thus would not apply to the loss having arisen in the trading in derivatives being not speculative transaction which is excluded from the definition of "speculation transaction" described under Section 43 (5) of the Income Tax Act. In the facts of this case, the appellant has claimed set off in respect of the loss suffered by the appellant in the transaction in derivatives against the income arising of infrastructure business under the head of income from business or profession under Section 28 of the Income Tax Act, 1961.

The appellant was thus entitled to claim set off of the loss suffered by the appellant in the said transactions in derivatives against the business income of the appellant from infrastructure business under Section 70 of the Income Tax Act 1961.

3. Issue Involved:

DOES PAYMENT MADE TO "RELATED PARTIES" ATTRACT 100% DISALLOWANCE?

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- **In the ITAT of New Delhi, in the case of Amit Mehra, Noida v. ITO, New Delhi**

GIST OF THE CASE

The assessee is engaged in the business of manufacturing of disposable ECG electrode. During the year, the assessee has paid interest of Rs.41,375/- to two persons namely, Amit Mehra (HUF) and Rs.73,280 Veena Mehra, mother of the assessee. The AO after going through the bank accounts of the entities involved held that the loans received by these two individuals are infact are the amounts given by the assessed himself. The AO held that the transfer of funds from the proprietary concern of the assessee to the assessee's personal account and then to the firm wherein the assessee is a partner and from the partnership firms the amounts have been transferred to the HUF and to the mother's account and finally the amounts have been received from the account of the mother and the HUF to the proprietary concern of the assessee and keeping in view the circular route of the flow funds, the loans given are not for genuine business purpose and since the loans Amit Mehra are not for the business purpose, the interest on these loans has to be disallowed u/s 40A(2)(b).

HELD

On appeal, ITAT held that this was not a case where borrowed funds had been diverted to interest free advances without any commercial expediency. Section 40A(2)(b) provides disallowance if any expenditure is excessive and unreasonable having regard to its fair market value. In this case HUF and assessee's mother received amount from the partnership firm. If any disallowance was to be made it had to be made in the hands of the partnership firm but not in the hands of the assessee.

Further, section 40A(2)(b) does not envisage 100% disallowance unless expenditure is proved to be excessive or unreasonable having regard to fair market value. No such finding had been established by the revenue, thus, disallowance cannot be made.

~Compiled by Tarun Lakhani

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RBI

Part A: Foreign Exchange Management Notifications

1) RBI/2022-2023/57
A.P. (DIR Series) Circular No.04

Guidelines on import of gold by Qualified Jewellers as notified by – The International Financial Services Centers Authority (IFSCA)

i) AD banks may allow Qualified Jewellers to remit advance payments for eleven days for import of Gold through IIBX in compliance to the extant Foreign Trade Policy and regulations issued under IFSC Act. AD banks shall ensure that advance
ii) remittance for such import through exchange/s authorised by IFSCA shall be as per the terms of the sale contract or other document in the nature of an irrevocable purchase order in terms of IFSC Act and regulations made thereunder by IFSCA. AD bank shall carry out all the due diligence and ensure the remittances sent are only for the bona fide import transactions through exchange/s authorised by IFSCA.
iii) The advance remittance for import of Gold should not be leveraged in what-so-ever form for importing Gold worth more than the advance remittance made.
iv) In case the import of Gold through IFSCA authorised exchange, for which advance remittance has been made, does not materialize, or the advance remittance made for the purpose is more than the amount required, the unutilised advance remittance shall be remitted back to the same AD bank within the specified time limit of eleven days.
v) For gold imported through IIBX, QJ shall submit the Bill of Entry (or any other such applicable document issued/approved by Customs Department for evidence of import), issued by Customs Authorities to the AD bank from where advance payment has been remitted.
vi) All payments by qualified jewellers for imports of gold through IIBX, shall be made through exchange mechanism as approved by IFSCA in terms of IFSC Act and regulations. Any deviations from the extant guidelines for import of Gold through IIBX need to be approved in advance by IFSCA and other applicable and appropriate authority/ies.

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Part B: Other RBI Notifications

1) RBI/2021-22/187
CO.DPSS.OVRST.No.S1738/06-08-018/2021-2022

Framework for Geo-tagging of Payment System Touch Points

i) To facilitate nuanced spread of acceptance infrastructure and inclusive access to digital payments, the Monetary Policy Statement 2020-21 on October 08, 2021 had announced that a framework for geo-tagging of physical payment acceptance infrastructure would be prescribed by Reserve Bank. Accordingly, frameworks for capturing geo-tagging information of payment system touch points deployed by banks / non-bank PSOs. The date from which the information shall be reported to Reserve Bank shall, however, be advised in due course.

ii) This framework is issued under Section 10 (2) read with Section 18 of Payment and Settlement Systems Act, 2007 (Act 51 of 2007).

iii) Geo-tagging refers to capturing the actual Location where customers are making digital payments using merchants payment infrastructure .Geo -tagging has many benefits for the government.

Few have been mentioned below-

a) Identifying the region where there less digital payments here less digital payments.
b) Monitor infrastructure density across different locations.
c) identify scope for deploying additional payment touch points
d) Facilitate focused digital literacy programmes.

iv) Infrastructure is broadly categorized into two. They are a) banking infrastructure comprising Points of Sale (PoS) terminals, Quick Response (QR) codes deployed by banks / non-bank Payment System Operators (PSOs), etc. comprising bank branches, offices, extension counters, Automated Teller Machines (ATMs) / Cash Deposit Machines (CDMs), Cash Recycler Machines (CRMs), micro-ATMs used by Business Correspondents (BCs), etc. Infrastructure & b) Payment Acceptance infrastructure comprising Points of Sale (PoS) terminals, Quick Response (QR) codes deployed by banks / non-bank Payment System Operators (PSOs), etc.

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v) Capturing of such details from the above infrastructure is the responsibility of Banks/Non-bankPSOs.
The same has to be reported to the RBI in the format asked from the RBI.

2) RBI/2021-2022/188
CO.DPSS.RPPD.No./S1769/03-01-002/2021-22

Special Clearing operations on March 31, 2022

i) Department of Government and Bank Accounts (DGBA) vide CO.DGBA.GBD.No. S1595/42-01-029/2021-2022 dated March 24, 2022 has informed all governments banks like Scheduled Commercial Banks, State Co-operative banks, Small finance banks , National Payments corporation of India ,etc. regarding special clearing operations on March 31, 2022.

ii) Normal clearing timings as applicable to any working "Thursday" shall be followed on March 31, 2022. Further, to facilitate accounting of all the Government transactions for the current financial year (2021-22) by March 31, 2022, it has been decided to conduct Special Clearing exclusively for Government Cheques across the three CTS grids on March 31, 2022 as detailed below:

Location	Presentation Clearing	Return Clearing
CTS Grids (New Delhi, Chennai and Mumbai)	Between 17:00 and 17:30 Hours	Between 19:00 and 19:30 Hours

iii) It is mandatory for all banks to participate in the special clearing operations on March 31, 2022. All the member banks under the respective CTS Grids are required to keep their inward clearing processing infrastructure open during the Special Clearing hours and maintain sufficient balance in their clearing settlement account to meet settlement obligations arising out of the Special Clearing.

iv) Member banks may also be guided by the circular NPCI/2016-17/CTS/Circular No.32 dated October 3, 2016 issued by NPCI to all member banks regarding clearing type for instruments to be presented in Special Clearing sessions.

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RBI

3) RBI/2021-2022/186
CO.DGBA.GBD.No.S1595/42-01-029/2021-2022

Annual Closing of Government Accounts – Transactions of Central / State Governments – Special Measures for the Current Financial Year (2021-22)

i) All government transactions done by agency banks for Financial Year 2021-22 must be accounted for within the same financial year. Accordingly, the following arrangements are put in place to report and account for Government transactions for March 31, 2022.
ii) All agency banks should keep their designated branches open for over the counter transactions related to government transactions upto the normal working hours on March 31, 2022.
iii) Transactions through National Electronic Funds Transfer (NEFT) and Real Time Gross Settlement (RTGS) System will continue upto 2400 hours as hitherto on March 31, 2022.
iv) Special clearing will be conducted for collection of government cheques on March 31, 2022 for which the Department of Payment and Settlement Systems (DPSS), RBI will issue necessary instructions.
v) Regarding reporting of Central and State Government transactions to RBI, including uploading of GST / e-receipts luggage files, the reporting window of March 31, 2022 will be extended and kept open till 1200 hours on April 1, 2022.
vi) Agency banks may take note and give adequate publicity to the special arrangements made as above.

4) RBI/2021-22/185
DOR.MRG.REC.96/21.04.141/2021-22

Master Direction - Classification, Valuation and Operation of Investment Portfolio of Commercial Banks (Directions), 2021 – Amendment

i) Please refer to the Master Direction DOR.MRG.42/21.04.141/2021-22 dated August 25, 2021 – 'Classification, Valuation and Operation of Investment Portfolio of Commercial Banks (Directions), 2021' (hereinafter referred as 'Master Direction')
ii) The Master Direction outlines the prudential treatment for investment in Venture Capital Funds (VCFs). We have received queries from banks regarding the applicability of these instructions for investment in Alternative Investment Funds (AIFs).

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iii) Accordingly, on a review, it has been decided that the investment in Category I and Category II AlFs, which includes VCFs, shall receive the same prudential treatment as applicable for investment in VCFs.

iv) In addition, based on feedback from banks, clarifications / updates have been provided regarding section 4(a)(vii), 10(c)(ix), 12(ii)(b), 12(ii)(d)(ix), 13(iv)(b), 16(i), 16(ii), 18(ii)(e)(ii) and Annex II of the Master Direction.

v) The relevant sections of the Master Direction have been amended to reflect the aforementioned changes.

Applicability

- This circular is applicable to all Commercial Banks (excluding Regional Rural Banks).
- These instructions shall come into force with immediate effect.

5) RBI/DOR/2021-22/89
DoR.FIN.REC.95/03.10.038/2021-22

Master Direction – Reserve Bank of India (Regulatory Framework for Microfinance Loans) Directions, 2022

A microfinance loan is defined as a collateral-free loan given to a household having annual household income up to ₹ 3,00,000.

The provisions of these directions shall apply to the following entities:

- All Commercial Banks (including Small Finance Banks, Local Area Banks, and Regional Rural Banks) excluding Payments Banks;
- All Primary (Urban) Co-operative Banks/ State Co-operative Banks/ District Central Co-operative Banks; and
- All Non-Banking Financial Companies (including Microfinance Institutions and Housing Finance Companies.

Please click on the link below for detail information –

https://rbi.org.in/Scripts/NotificationUser.aspx?Id=12256&Mode=0

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RBI

6) RBI/2021-2022/180
DOR.AML.REC.94/14.06.001/2021-22

Interest Equalization Scheme on Pre and Post Shipment Rupee Export Credit – Extension

i) Government of India has approved the extension of Interest Equalization Scheme for Pre and Post Shipment Rupee Export Credit ('Scheme') up to March 31, 2024 or till further review, whichever is earlier. The extension takes effect from October 1, 2021 and ends on March 31, 2024. The modifications made by the Government to the Scheme are detailed below:

- Telecom Instruments' sector having six HS lines[1] shall be out of the purview of the Scheme, except for MSME manufacturer exporters.
- Revised interest equalisation rates under the Scheme will now be 3 per cent for MSME manufacturer exporters exporting under any HS lines, and 2 per cent for manufacturer exporters and merchant exporters exporting under 410 HS lines (after excluding 6 HS lines pertaining to Telecom Sector as mentioned above).
- Banks, while issuing approval to the exporter, will necessarily furnish i) the prevailing interest rate, ii) the interest subvention being provided, and iii) the net rate being charged to each exporter, so as to ensure transparency and greater accountability in the operation of the Scheme.
- The extended Scheme will not be available to those beneficiaries who are availing the benefit under any Production Linked Incentive (PLI) scheme of the government.

ii) For the period from October 1, 2021 to March 31, 2022, banks shall identify the eligible exporters as per the Scheme, credit their accounts with the eligible amount of interest equalization and submit sector-wise consolidated reimbursement claim for the said period to the Reserve Bank by April 30, 2022.

iii) With effect from April 1, 2022, banks shall reduce the interest rate charged to the eligible exporters upfront as per the guidelines and submit the claims in original within 15 days from the end of the respective month, with bank's seal, and signed by authorized person.

iv) Other provisions of the extant instructions issued by the Bank on the captioned Scheme shall remain unchanged.

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7) RBI/2021-22/179
DOR.CAP.REC.92/09.18.201/2021-22

Issue and regulation of share capital and securities - Primary (Urban) Co-operative Banks

Relevant changes are made where UCB are permitted to issue the following instruments – preference shares and debt instruments.

Please click on the link below for detail information –
https://rbi.org.in/Scripts/NotificationUser.aspx?Id=12251&Mode=0

8) RBI/2021-22/177
DOR.REC.MRG.90/16.20.000/2021-22

Investment in Umbrella Organization (UO) by Primary (Urban) Co-operative Banks

i) Please refer to circular UBD.(PCB).BPD.Cir.No.46/16.20.000/2008-09 dated January 30, 2009 on Investments in Non-SLR securities by Primary (Urban) Co-operative Banks. Paragraph 2(i) of the circular states that the non-SLR investments shall be limited to ten per cent of a bank's total deposits as on March 31 of the previous year. Further, paragraph 2(iii)(b) states that investments in unlisted securities shall not exceed ten per cent of the total non-SLR investments at any time.
ii) RBI has accorded regulatory approval to National Federation of Urban Co-operative Banks and Credit Societies Ltd. (NAFCUB) in June 2019 for formation of Umbrella Organization (UO) for the UCB Sector. The approval *inter-alia* permits UCBs to subscribe to capital of the UO on voluntary basis.
iii) It is advised that the investment made for subscribing to the capital of the UO, for acquiring its membership, shall be exempt from the limits prescribed in Paragraphs 2(i) and 2(iii)(b) of the circular ibid.
iv) This circular is applicable to all Primary (Urban) Co-operative Banks.
v) These instructions come into effect from the date of the circular.

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RBI

9) RBI/2022-23/44
REF.No.MPD.BC.S33/07.01.279/2022-23 May 04, 2022

Liquidity Adjustment Facility- Change in rates

- As announced in the Monetary Policy Statement, 2022-23, today, it has been decided by the Monetary Policy Committee (MPC) to increase the policy Repo rate under the Liquidity Adjustment Facility (LAF) by 40 basis points from 4.00 per cent to **4.40 per cent** with immediate effect.
- Consequently, the standing deposit facility (SDF) rate and marginal standing facility (MSF) rate stand adjusted from 3.75 per cent to 4.15 per cent and from 4.25 per cent to 4.65 per cent respectively, with immediate effect.
- All other terms and conditions of the extant LAF Scheme will remain unchanged.

10) RBI/2022-23/43
DOR.LEG.REC.No.35/09.07.005/2022-23

Standing Liquidity Facility for Primary Dealers

- In the Monetary Policy Statement 2022-23, dated May 4, 2022, the policy repo rate under the Liquidity Adjustment Facility (LAF) has been increased by 40 basis points to 4.40 per cent from 4.00 per cent with immediate effect.
- Accordingly, the Standing Liquidity Facility provided to Primary Dealers (PDs) (collateralised liquidity support) from the Reserve Bank would be available at the revised repo rate of 4.40 per cent with effect from May 4, 2022.

11) RBI/2022-23/45
DOR.RET.REC.32/12.01.001/2022-23

Change in Bank Rate

- As announced in the Monetary Policy Statement 2022-23 dated May 04, 2022, the Bank Rate is revised upwards by 40 basis points from 4.25 per cent to 4.65 per cent with immediate effect.
- All penal interest rates on shortfall in reserve requirements, which are specifically linked to the Bank Rate, also stand revised as indicated in the Annex.

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RBI

Annex

Penal Interest Rates which are linked to the Bank Rate

Item	Existing Rate	Revised Rate (With immediate effect)
Penal interest rates on shortfalls in reserve requirements (depending on duration of shortfalls).	Bank Rate plus 3.0 percentage points (7.25 per cent) or Bank Rate plus 5.0 percentage points (9.25 per cent).	Bank Rate plus 3.0 percentage points (7.65 per cent) or Bank Rate plus 5.0 percentage points (9.65 per cent).

12) RBI/2022-23/46
DOR.RET.REC.33/12.01.001/2022-23

As announced in the Governor's Statement dated May 04, 2022, it has been decided to increase the Cash Reserve Ratio (CRR) of all banks by 50 basis points from 4.00 percent to 4.50 percent of their Net Demand and Time Liabilities (NDTL), effective from the reporting fortnight beginning May 21, 2022.

13) RBI/2022-23/50
FIDD.CO.Plan.BC.No.5/04.09.01/2022-23

Lending by Commercial Banks to NBFCs and Small Finance Banks (SFBs) to NBFC-MFIs, for the purpose of on-lending to priority sectors

- To ensure continuation of the synergies that have been developed between banks and NBFCs in delivering credit to the specified priority sectors, it has been decided to allow the above facility on an on-going basis.
- Bank credit to NBFCs (including HFCs) for on-lending will be allowed up to an overall limit of 5 percent of an individual bank's total priority sector lending in case of commercial banks. In case of SFBs, credit to NBFC-MFIs and other MFIs
- (Societies, Trusts, etc.) which are members of RBI recognized 'Self-Regulatory Organisation' of the sector, will be allowed up to an overall limit of 10 percent of an individual bank's total priority sector lending. These limits shall be computed by averaging across four quarters of the financial year, to determine adherence to the prescribed cap.

- SFBs are allowed to lend to registered NBFC-MFIs and other MFIs which have a 'gross loan portfolio' (GLP) of up to ₹ 500 crore as on March 31 of the previous financial year, for the purpose of on-lending to priority sector. In case the GLP of the NBFC-MFIs/other MFIs exceeds the stipulated limit at a later date, all priority sector loans created prior to exceeding the GLP limit will continue to be classified by the SFBs as PSL till repayment/maturity, whichever is earlier.
- A Revised Regulatory Framework for NBFCs' issued vide Circular Ref.DOR.CRE. REC.No.60/03.10.001/2021-22 dated October 22, 2021[1]. As indicated therein, Non-Banking Financial Companies in the Upper Layer (NBFC-UL) and Middle Layer (NBFC-ML) would be required, inter alia, to have an independent Compliance Function and a Chief Compliance Officer (CCO). Accordingly, this Circular shall be applicable to all NBFC-UL and NBFC-ML. NBFCs in the Base Layer (NBFC-BL) shall continue to be governed under the existing guidelines[2].

13) RBI/2022-23/51
FIDD.CO.FSD.BC.No.6/05.05.010/2022-23

Kisan Credit Card Scheme - Eligibility criteria for farmers engaged in fisheries/ aquaculture

- Please refer to Para 3.1.1.2 of our circular FIDD.CO.FSD.BC.12/05.05.010/2018-19 dated February 04, 2019 on Kisan Credit Card (KCC) Scheme: Working Capital for Animal Husbandry and Fisheries. It has been brought to our notice that
- licensing/authorisation related requirements pertaining to fishing/aquaculture in inland water bodies vary across states. Accordingly, the eligibility criteria for inland fisheries and aquaculture under Para 3.1.1.2 of the circular stand modified as follows:
- The beneficiaries must own or lease any fisheries related assets such as ponds, tanks, open water bodies, raceways, hatcheries, rearing units, boats, nets and such other fishing gear as the case may be and possess necessary authorisation/certification as may be applicable in respective states for fish farming and fishing related activities and for any other state specific fisheries and allied activities.
- All other terms and conditions of the scheme remain unchanged.

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14) RBI/2022-23/52
FIDD.MSME & NFS.BC.No.7/06.02.31/2022-23

New Definition of Micro, Small and Medium Enterprises – Clarification

In view of the above amendment, it is clarified that:

i) the existing Entrepreneurs Memorandum (EM) Part II and Udyog Aadhaar Memorandum (UAM) of the MSMEs obtained till June 30, 2020 shall remain valid till June 30, 2022 for classification as MSMEs; and
ii) the validity of documents obtained in terms of O.M. No.12(4)/ 2017-SME dated March 8, 2017 (RBI Circular FIDD.MSME & NFS.BC.No.10/06.02.31/2017-18 dated July 13, 2017), for classification of MSMEs upto June 30, 2020, has been extended upto June 30, 2022.

15) RBI/2022-23/54
CO.DPSS.POLC.No.S-227/02-10-002/2022-23

Interoperable Card-less Cash Withdrawal (ICCW) at ATMs

- All banks, ATM networks and WLAOs may provide the option of ICCW at their ATMs. NPCI has been advised to facilitate Unified Payments Interface (UPI) integration with all banks and ATM networks. While UPI would be used for customer authorisation in such transactions, settlement would be through the National Financial Switch (NFS) / ATM networks. The on-us / off-us ICCW transactions shall be processed without levy of any charges other than those prescribed under the circular on Interchange Fee and Customer Charges.
- Withdrawal limits for ICCW transactions shall be in-line with the limits for regular on-us / off-us ATM withdrawals. All other instructions related to Harmonisation of Turnaround Time (TAT) and customer compensation for failed transactions shall continue to be applicable.

16) RBI/2022-23/55
DOR.ACC.REC.No.37/21.04.018/2022-23

Reserve Bank of India (Financial Statements - Presentation and Disclosures) Directions, 2021 - Reporting of reverse repos with Reserve Bank on the bank's balance sheet

In order to bring more clarity on the presentation of reverse repo on the balance sheet, it has now been decided as under:

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i) All type of reverse repos with the Reserve Bank including those under Liquidity Adjustment Facility shall be presented under sub-item (ii) 'In Other Accounts' of item (II) 'Balances with Reserve Bank of India' under Schedule 6 'Cash and balances with Reserve Bank of India'.
ii) Reverse repos with banks and other institutions having original tenors up to and inclusive of 14 days shall be classified under item (ii) 'Money at call and short notice' under Schedule 7 'Balances with banks and money at call and short notice'.
iii) Reverse repos with banks and other institutions having original tenors more than 14 days shall be classified under Schedule 9 – 'Advances' under the following heads:
   a) Cash credits, overdrafts and loans repayable on demand'
   b) 'Secured by tangible assets'
   c) Banks ,'Others' (as the case may be)

17) RBI/2022-23/56
DOR.CRE.REC.18/09.22.010/2022-23

Housing Finance – Loans for repairs/additions/alterations - Enhancement of limits

i) The ceiling on loans to individuals for carrying out repairs/additions/alterations to their dwelling units was revised upwards to ₹ 2 lakh in rural and semi-urban areas and ₹ 5 lakh in urban areas.
ii) The ceiling on such loans is now revised to ₹ 10 lakh in metropolitan centres (those centres with population of 10 lakh and above) and ₹ 6 lakh in other centres

18) RBI/2022-2023/58
CO.DPSS.POLC.No. S-253/02-27-020/2022-23

Bharat Bill Payment System – Amendment to guidelines

This has reference to the guidelines on Bharat Bill Payment System (BBPS) issued by the Reserve Bank of India (RBI) vide circular DPSS.CO.PD.No.940/02.27.020/2014-2015 dated November 28, 2014. As announced in the Statement on Development and Regulatory Policies dated April 08, 2022, the minimum net-worth requirement for non-bank Bharat Bill Payment Operating Units (BBPOUs) stands reduced to ₹ 25 crore. The BBPS guidelines have been suitably amended.

This circular is issued under Section 10 (2) read with Section 18 of the Payment and Settlement Systems Act, 2007 (Act 51 of 2007), and shall come into effect immediately.

~Compiled by Gerard Manjaly.

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CORPORATE LAW

A) CLARIFICATION FOR HOLDING OF ANNUAL GENERAL MEETING (AGM) THROUGH VIDEO CONFERENCE (VC) AND OTHER AUDIO VISUAL MEANS (OAVM):

1. Ministry of Corporate Affair with reference to General Circular Nos. 20/2020 dated 05.05.2020, 02/2021 dated 13.01.2021, 19/2021 dated 08.12.2021 and 21/2021 dated 14.12.2021 has issued General Circular No. 2/2022 on 05.05.2022, stating that Company can now hold AGM through VC and OAVM for the financial year ending 2022, on or before 31stDecember, 2022. Such AGM if conducted through above means then Company need to follow guidelines laid down in Para 3 and 4 of General Circular No. 20/2020 dated 05.05.2020.

   https://www.mca.gov.in/Ministry/pdf/Circular20_05052020.pdf

2. MCA further clarified that this circular is not allowing any extension of time for holding of AGM by the Companies under the Companies Act, 2013. Companies making default in holding of AGM as per Companies Act, 2013 prescribed time-limit shall be liable for legal action as per the provision of the Act.

   https://www.mca.gov.in/bin/dms/getdocument?mds=ArgX2%252B%252BijiObjlpD2nMcUA%253D%253D&type=open

B) COMPANIES (PROSPECTUS AND ALLOTMENT OF SECURITIES)AMENDMENT RULES, 2022:

MCA wide notification dated 05.05.2022 stated that, no Company shall make any offer or invitation of any securities to any Body Corporate incorporated in or a national of, a country which shares a land border with India, unless such Body Corporate has taken approval of Central Government under Foreign Exchange management (Non-debt Instruments) Rules, 2019 and attach same with the private placement offer cum application letter in form PAS-4.

C) DESIGNATION OF SPECIAL COURT UNDER SECTION 435 OF THE COMPANIES ACT, 2013:

The Central Government, with Concurrence of the chief Justice of the High Court of Jharkhand decided to designate status of Special court, to the Additional Judicial Commissioner, Ranchi, in the state of Jharkhand; for the purpose of Speedy trial of

offences punishable with imprisonment of two years or more as per the provision of section 435 of the Companies Act, 2013.

D) CLARIFICATION ON PASSING OF ORDINARY AND SPECIAL RESOLUTIONS BY THE COMPANIES UNDER COMPANIES ACT, 2013 ON ACCOUNT OF COVID-19:

Ministry of Corporate Affair with reference to General Circular Nos. 14/2020 dated 08.04.2020, 17/2020 dated 13. 04.2020, 22/2020 dated 15.06.2020, 33/2020 dated 28.09.2020, 39/2020 dated 31.12.2020 , 10/2021 dated 23.06.2021 and 20/2021 dated 08.12.2021 has issued General Circular No. 3/2022 on 05.05.2022, stating that Company can now conduct their EGM through VC and OAVM upto 31st December, 2022. Such EGM if conducted through above means then Company need to follow guidelines laid down General Circular No. 14/2020 dated 08.04.2020.

https://www.mca.gov.in/Ministry/pdf/Circular14_08042020.pdf

~Compiled by Pooja Gorana

Art washes away from the soul the dust of everyday life.

~ Priya Suthar.

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Allow us to tell you more!

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