

# TAXTIME

## NEWSLETTER

### DIRECT TAX NEWS

## NON-DISCLOSURE OF FOREIGN ASSETS COMES BACK TO HAUNT THOUSANDS



A flurry of summons from the Income tax (I-T) investigation wing and the Enforcement Directorate (ED) over the past fortnight has come as a rude reminder to many that despite paying tax they may have a brush with the law.

Thousands of recipients of such letters have been caught in a stern, yet often ignored, provision of the statute that requires a mandatory disclosure of all foreign assets like ownership in a company, properties, and accounts with overseas banks, three persons familiar with the development told ET.

Nonetheless, many hold back such information due to their unfamiliarity with the law, laxity in the filing of tax returns, and fears that such declarations could trigger more queries from the tax office.

But, there is a stiff cost to such non-disclosures, as many are discovering: a penalty of Rs. 10 lakh a year under Black Money Act (BMA) - so, if a bank account was opened five years ago and has remained a 'secret' since then, the basic fine will be Rs. 50 lakh if the assessee is unable to convince tax authorities. "About 3,500 notices have been issued in Mumbai itself. None of these names are in the Panama, Pandora, HSBC leaks. But they have owned foreign assets which weren't declared," said a senior I-T official.

A person is exposed to penalty even if the overseas investment was out of tax-paid earnings and funds were transferred through banking channels using the Reserve Bank of India's liberalised remittance scheme which allows a resident to invest \$250,000 a year abroad.

Some of the summons relate to remitting money that was transferred from another member of the family who has exhausted individual LRS limit for the year. If such fund transfers are not established as a 'gift' to the family member, it could be construed as 'borrowing' - and therefore a violation - by the latter as LRS investments cannot be with borrowed money.

These notices have been issued based of foreign suspicious transactions reporting shared by the Financial Intelligence Unit. The notices have been sent to assesseees as well as the respective foreign jurisdictions

### GST OFFICIALS CAN'T FORCE RECOVERY DURING SEARCHES



Tax authorities will now face action if a taxpayer makes voluntary payment of tax during a search. In a move aimed at curbing instances of use of force or coercion, the Central Board of Indirect Taxes and Customs (CBIC) has directed its field formations that recovery of tax dues should be made following the due legal process after issuance of adjudication order and not during searches.

The move comes in the backdrop of complaints of use of force and coercion by tax authorities for making 'recovery' during the course of search or inspection.

"In case of any wrongdoing on the part of any tax officers, strict disciplinary action as per law may be taken against the defaulting officers," the CBIC said in an internal department note addressed to principal commissioners/commissioners of Central GST (all zones), the commissioner, GST Investigation, issued late evening on May 25.

It added that in case, any complaint is received from a taxpayer regarding use of force or coercion by any of their officers for getting the amount deposited during search or inspection or investigation, it has to be enquired at the earliest.

As per the law no recovery can be made unless the amount becomes payable in pursuance of an order passed by the adjudicating authority.

### EXAM AN ESSENTIAL COMPONENT OF EDUCATION, BOARDS CONDUCTING IT TO GET GST EXEMPTION: AAAR



Examination can be considered an essential component of education, so State Boards are eligible for exemption from Goods & Services Tax (GST), Gujarat Appellate Authority for Advance Ruling has said. It also clarified that not every exam conducted by the board can be given the exemption

This was said while disposing an appeal by Gujarat's State Examination Board against the ruling of Gujarat's Authority for Advance Ruling. Though AAR and AAAR rulings are binding only on applicant and jurisdictional tax officer, these can be referred to in similar matters

AAAR said that education can be considered as the act or process of imparting knowledge, especially at a school, college or university. This act of imparting knowledge also includes all the matters relating to imparting and controlling education. Quoting a ruling by the Supreme Court in the matter of State of Tamil Nadu vs. K Shyam Sunder (2011), it also said, "the examination is always considered as one of the major means to assess and evaluate candidate's skills and knowledge, be it a school test, university examination, professional entrance examination or any other examination. Thus, examination can be considered as an essential component of education," it said.

AAAR made it clear that for getting exemption, qualifications for examination related with a course need to be recognised by any law for the time being in force. Primary and secondary school education or education at higher secondary schools or colleges are always recognised by the law. Alternatively, it should be considered as functions entrusted to a panchayat under article 243G of the Constitution.

Keeping all these in mind, AAAR modified the AAR ruling and said exemption benefit with regard services supplied for the 12 types of examinations including Teacher Eligibility Tests, Teacher Aptitude Tests, Diploma in Elementary Education. However, no such benefit will be available for examination related with Diploma in Home Science, GCC Typo Steno or Departmental Exam.

### TAXPAYERS CAN CLAIM REFUND OF IGST ON OCEAN FREIGHT, EXPERTS SAY ON SC RULING



Taxpayers who have paid GST on 'Ocean Freight' on imported goods will be entitled to claim refunds, following the Supreme Court verdict, provided they have not claimed input tax credit, experts said.

Giving its ruling in the Mohit Minerals case, the Supreme Court held that since the Indian importer is liable to pay IGST on the 'composite supply', comprising of supply of goods and supply of services of transportation, insurance, etc in a CIF (Cost Insurance Freight) contract, a separate levy on the Indian importer for the 'supply of services' by the shipping line would be in violation of ... the CGST Act. In this particular case, the company had challenged the validity of the CBIC notification regarding levy of Integrated GST on ocean freight in the Gujarat High Court. The Supreme Court upheld the decision of the Gujarat High Court which had favoured the company.

Through this, a window of opportunity has been opened for the importers who have already paid the tax to demand refund from the exchequer. Federation of Indian Export organisations (FIEO) DG Ajay Sahai said FIEO has already represented that ocean freight on goods imported on CIF basis should not be charged as it is tantamount to double taxation, adding to the liquidity problem.

"Indian importers (who had paid GST under RCM on Ocean Freight) should evaluate the possibility of filing refund claims for claiming the said amounts (to the extent not utilized as input credit).

### SURGING INFLATION LIKELY TO DELAY GST RATE RATIONALISATION

With the surge in inflation, the rationalisation of GST rates may not happen any time soon, a top government official said here on Wednesday. The official also asserted that the slew of inflation control measures announced in the last few days will not alter the Government's borrowing calendar and the Centre will stick to its planned borrowings as of now. While highlighting the plethora of measures that the government has taken to rein in inflation including lowering of road and infrastructure cess, allowing import of edible oil at nil duty and limiting the export of sugar, the Centre has been at pains to point out that the utilisation of cess collected by it as excise duty on petrol and diesel is much higher than collection.

After the GST Council meeting in Lucknow last September, a Group of Ministers (GoM) led by Chief Minister of Karnataka, Basavaraj S Bommai, was set up to look at rate rationalisation. The GoM is yet to finalise its report.

"There have been genuine problems in rate rationalisation. But even if the GoM submits its report now and it is presented before the Council, will the Council take a call? Difficult to say, as the ecosystem is strenuous," the official said. Earlier, steps to rationalise tax rates could not be taken due to the Covid-19 pandemic although the inverted duty structure (i.e., higher duty on inputs and lower duty on output) was corrected on items such as footwear.

There are two key issues as far as rate rationalisation is concerned. First, the weighted average Revenue Neutral rate (RNR) has come down to around 11.5 per cent from the initial rate of 15-15.5 per cent, which necessitates rate rejig. Now, the intention is to see how to achieve at least the RNR rate at which the GST was brought in.

The second issue is too many rates. As on date, there are four main rates under the GST: 5, 12, 18 and 28 per cent. Then there are special rates of 0, 0.25, 1 and 3 per cent. Besides, there is also a provision of cess at the rate of 1 to 25 per cent. For services, there are four rates — 5, 12, 18 and 28 per cent, beside a special rate of 0 per cent. There have been demands for restructuring the slabs by merging either 12 and 18 or 5 and 12, and also for a special rate on textile in case the inverted duty structure is done away with.

# TODAY'S QUOTE

*Very often, a change of self is  
needed more than a change of  
scene*

*- A.C. Benson*

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