

Direct Tax Vista

Your weekly Direct Tax recap

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By Vivek Jalan, Partner, Tax Connect Advisory Services LLP



1. New Foreign Trade Policy 2023 – Salient features

The New FTP is out after a gap of Eight years; three years after its initial end date. The most important and favourable Policy change is that the FTP is now dynamic and Industry can keep on suggesting and with dialogue with the CI Ministry and can get amendments done, like RoDTEP rates, AA time periods, EO for specific industries, etc. The revisions of the FTP shall be done as and when required and shall not be linked to any date. The other important features are as follows –

1. The new FTP is introducing a one-time Amnesty Scheme for exporters to close the old pending authorizations and start afresh - This scheme is intended to provide relief to exporters who have been unable to meet their obligations under EPCG and Advance Authorizations, and who are burdened by high duty and interest costs associated with pending cases. All pending cases of the default in meeting Export Obligation (EO) of authorizations mentioned can be regularized on payment of all customs duties that were exempted in proportion to unfulfilled Export Obligation. The interest payable is capped at 100% of these exempted duties under this scheme. However, no interest is payable on the portion of Additional Customs Duty and Special Additional Customs Duty and this is likely to provide relief to exporters as interest burden will come down substantially.

2. Status Holder Export Thresholds are Rationalised as follows to Enable more exporters to achieve higher status and reduced transaction cost for exports -

Status House Category	Existing Export Performance Threshold (USD ml)	Revised Export performance Threshold (USD ml)
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One Star	3	2
Two Star	25	15
Three Star	100	50
Four Star	500	200
Five Star	2000	800

3. Schemes like Advance Authorisation, DFIA, EPCG, RoDTEP, RoSTEL, etc are continued.

4. Focus on Digital interface and regulation of schemes by regional office will reduce costs - Duty exemption schemes for export production will now be implemented through Regional Offices in a rule-based IT system environment, eliminating the need for manual interface. During the FY23-24, all processes under the Advance and EPCG Schemes, including issue, re-validation, and EO extension, will be covered in a phased manner. Cases identified under risk management framework will be scrutinized manually, while majority of the applicants are expected to be covered under the 'automatic' route initially.

5. The Key Approach to the policy is based on these 4 pillars:

- (i) Change from Incentive to Remission,
- (ii) Export promotion through collaboration between Exporters, States and Districts
- (iii) Ease of doing business, reduction in transaction cost and e-initiatives – The following are the key initiatives in this regard –

a. Reduction in processing time and immediate approval of applications under automatic route for exporters - The time required for Advance authorization issuance, EPCG issuance, Revalidation of authorizations and Extension of Export Obligation period have been all reduced to 1 (ONE) Day.

b. Reduction in user charges for MSMEs under AA and EPCG – Cost of licenses has been reduced from Rs.1000-1 Lakh to Rs.100 to Rs.5000

c. Paperless filing of Export Obligation Discharge Applications - With this, the entire lifecycle of the authorization shall become paperless.

(iv) Emerging Areas – E-Commerce Developing Districts as Export Hubs and streamlining SCOMET policy.

6. Four new towns, namely Faridabad, Mirzapur, Moradabad, and Varanasi, have been designated as Towns of Export Excellence (TEE) in addition to the existing 39 towns. The TEEs will have priority access to export promotion funds under the MAI scheme and will be able to avail Common Service Provider (CSP) benefits for export fulfillment under the EPCG Scheme. This addition is expected to boost the exports of handlooms, handicrafts, and carpets.

7. Taking forward the Districts as Export Hubs (DEH) initiative to promote exports at the district level and accelerate the development of grassroots trade ecosystem. Efforts to identify export worthy products & services and resolve concerns at the district level will be made through an institutional mechanism – State Export Promotion Committee and District Export Promotion Committee at the State and District level, respectively. District specific export action plans to be prepared for each district outlining the district specific strategy to promote export of identified products and services.

It is an opportunity to local Industries and Chambers to represent on the products they would wish to get into the “district specific strategy to promote export”

8. Battery Electric Vehicles (BEV) of all types, Vertical Farming equipment, Wastewater Treatment and Recycling, Rainwater harvesting system and Rainwater Filters, and Green Hydrogen are added to Green Technology products – will now be eligible for reduced Export Obligation requirement under EPCG Scheme

9. Merchanting trade of restricted and prohibited items under export policy would now be possible. In course of time, this will allow Indian entrepreneurs to

convert certain places like GIFT city etc. into major merchanting hubs as seen in places like Dubai, Singapore and Hong Kong.

10. Changes for trade settlement in Rupee introduced in FTP - FTP benefits extended for rupee realisations through special Vostro accounts setup as per RBI circular issued on 11 July 2022

2. CBDT eases doing business for Non-Residents and foreigners vide APAs and digitization of Form 15C and 15D

The CBDT has entered into records no. of APAs and digitized Form 15C and 15D, thus sending out message to Non Residents and foreigners that it wishes to usher an era of tax certainty and ease of doing business in India.

APA Scheme endeavours to provide taxpayers with transfer pricing certainty by specifying the pricing methods and determining the ALP of international transactions in advance for a maximum of five future years. Further, the taxpayer has the option to rollback the APA for four preceding years, as a result of which, tax certainty is provided for nine years.

Section 92CC of the Act provides for Advance Pricing Agreement. Section 92CD of the Act provides for Effect to Advance Pricing Agreement. It states that where taxpayer has entered into an agreement and prior to the date of entering into the agreement, any return of income has been furnished under the provisions of section 139 of Income Tax Act, 1961, such person shall furnish within a period of 3 months from the end of the month in which the said agreement was entered into, a modified return in accordance with the agreement. In case of assessment proceedings for an assessment year relevant to a previous year to which the agreement applies have been completed before the expiry of period allowed for furnishing of modified return, Assessing Officer shall, in case a modified return is filed within the abovesaid period of 3 months, pass an order modifying the total income determined in such assessment or reassessment in accordance with the agreement.

The CBDT entered a record 95 Advance Pricing Agreements (APAs) in FY 2022-23 with Indian taxpayers. The Bi-Lateral APAs were signed as a consequence of entering into Mutual Agreements with India's treaty partners namely Finland, the UK, the US, Denmark, Singapore, and Japan. This is the highest-ever APA signings in any financial year since the board's launch of the APA programme.

Foreign Taxpayers who foresee Transfer Pricing disputes, thus have a bright chance of entering into APAs for achieving Tax certainty.

In another move, from 1st April 2023, Form No. 15C and Form No. 15D prescribed under Rule 29B(3) of the Income Tax Rules, 1962 shall be filed electronically at TRACES website under digital signature or through electronic verification code. The procedure, format and standards for the purpose of electronic filing of Form No. 15C and Form No. 15D and generation of certificate under Section 195(3) of Income-tax Act, 1961, through TRACES have been notified vide N No 1/2023 by CBDT.

Applicants accessing TRACES from outside India shall submit the application along with supporting documents using a digital signature only. The application will be assigned to TDS AO in the International Taxation charges. AO can process the application through TRACES and can obtain the data from CPC(TDS). By default, the applications shall be assigned to the DCIT/ACIT (Intl. Taxn.) exercising jurisdiction over TDS matters. However, if the jurisdiction orders are otherwise, the assigned AO can transfer the applications to the AO concerned on AO Portal. AO shall approve/reject the application based on the parameters defined in rule 29B and any other instructions/guidelines in this regard.

These are steps in the right direction by the CBDT as India invites the world to do business in India.

3. Finance Act 2023 notified

The Central Government has notified the Finance Act, 2023 as the Parliament has approved the amended Finance Bill, 2023 applicable with effect from 1st April. A

total of around 125 amendments are proposed to the Income Tax Act, 1961, along with some income tax rate/slab changes.

Tax professionals thus have to now re-visit the final changes in incorporate it to their processes.

4. No TDS on payments made to 'advertising agencies' for procuring and canvassing for advertisements

The issue of applicability of TDS provisions on payments made by television channels or media houses publishing newspapers or magazines to advertising agencies for procuring and canvassing for advertisements has been examined by the Board in view of representations received in this regard. The issue is whether the fees/charges taken or retained by advertising companies from media companies for canvassing/booking advertisements (typically 15% of the billing) is 'commission' or 'discount'.

Two types of payments are involved in the advertising business viz. Payment by client to the advertising agency, and Payment by advertising agency to the television channel/newspaper company. TDS under section 194C (as work contract) will be applicable on the first type of payment, there will be no TDs under section 194C on the second type of payment e.g. payment by advertising agency to the media company. In CBDT Circular 05 of 2016 dated 29th February, 2016 it is clarified by the Board that no TDS is attracted on payments made by television channels / newspaper companies to the advertising agency for booking or procuring of or canvassing for advertisements. It has been further clarified that the word 'commission' referred to Question No.27 of the Board's Circular No.715 dated 8th August, 1995 does not refer to payments by media companies to advertising companies for booking of advertisements but to payment for engagement of models, artists, photographers, sportspersons, etc. and, therefore, is not relevant to the issue of TDS referred in this Circular.

It has thus been held by The Hon'ble High Court at Calcutta in the case of COMMISSIONER OF INCOME TAX, TDS, KOLKATA Vs ABP PRIVATE LIMITED [2023-

VIL-46-CAL-DT] that since the relationship between the media company and the advertising company is on a principal-to-principal basis, such payments are in the nature of trade discount and not commission and, therefore, outside the purview of TDS under section 194H.

5. Unlinked PAN Cards would stop functioning from 1st July 2023

Every person who has been allotted a PAN as of 1st July 2017 and is eligible to obtain an Aadhaar Number, is required to intimate his Aadhaar to the prescribed authority.

The CBDT has extended the Aadhaar-PAN linking deadline from March 31 to June 30, 2023, by three months, and announced that all unlinked PAN cards will stop functioning as of July 1, 2023. Consequently, TDS and TCS shall be deducted /collected at higher rate, as provided in the Act; No refund shall be made against such PANs; Interest shall not be payable on such refund for the period during which PAN remains inoperative;

The mandatory linking of Aadhaar with PAN does not apply to four categories.

- 1) Residents of the states of Assam, Jammu and Kashmir, and Meghalaya.
- 2) Non-resident Indians (NRIs) as per the Income-tax Act, 1961.
- 3) Anyone who was of the age 80 years or more at any time during the previous year.
- 4) Individuals who are not a citizen of India.

It is thus advised to not wait for 30th June 2023 and link the PAN and Aadhar immediately through a simple OTP and online process. Even the above persons not required to link PAN and Aadhar mandatorily, are advised to do so to get future benefits through integrated Government Database.

(The author is a CA, LL.M & LL.B and Partner at Tax Connect Advisory Services LLP. The views expressed are personal. The author is The Lead - Indirect Tax Core Group of CII- ER and The Chairman of The Fiscal Affairs Committee of The Bengal

Chamber of Commerce. He has Authored more than 15 books on varied aspects of Direct and Indirect Taxation. E-mail - vivek.jalan@taxconnect.co.in)