

OCTOBER
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NEWSLETTER

TAX

- Income Tax
- Goods and Services Tax



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INCOME TAX

1. Income-tax (31st Amendment) Rules, 2021

CBDT

Notification No. 118/2021 dated 1.10.2021

CBDT has notified the Income tax (31st Amendment) Rules, 2021 to further amend the Income-tax Rules, 1962.

Rule 11UE has been amended to provide for “**specified eligibility conditions**” for claiming relief/refund.

Rule 11UF has been amended to prescribe the form and manner of furnishing undertaking for withdrawal of pending litigation, claiming no cost, damages, etc.

Changes in Rules have been notified to cater to the amendments made (as below) in the Income Tax law by the Taxation Laws (Amendment) Act, 2021

- that no tax demand is raised in future on the basis of the amendment to section 9 of the Income-tax Act made vide Finance Act, 2012, for any offshore indirect transfer of Indian assets if the transaction was undertaken before 28/05/2012 (i.e., the date on which the Finance Bill, 2012 received assent).
- that the demand raised for offshore indirect transfer of Indian assets made before 28/05/2012 (including the validation of demand provided under Section 119 of the Finance Act 2012) shall be nullified on fulfillment of specified conditions such as withdrawal or furnishing of undertaking for withdrawal of pending litigation and furnishing of an undertaking to the effect that no claim for cost, damages, interest, etc. shall be filed and such other conditions are fulfilled as may be prescribed.
- that the amount paid/ collected in these cases shall be refunded, without any interest, on fulfillment of the said conditions.
- that pending Income-tax proceedings shall be withdrawn, demand, if any, raised shall be nullified, and amount, if any, collected shall be refunded to the taxpayer without any interest, to bring tax certainty.

[Notification No.118](#)

2. Exemption to class of persons from the requirement of furnishing a return of income from AY 2021-22 onwards

CBDT

Notification No. 119/2021 dated 11.10.2021

Vide this notification, CBDT hereby exempts the following class of persons from the requirement of furnishing a return of income under **section 139(1)** from **AY 2021-22** onwards. The exemption is subject to fulfillment of conditions specified: -

Class of Persons	Conditions specified
Non-resident, not being a company; or a foreign company.	<ul style="list-style-type: none">• The said class of persons does not earn any income in India, during the previous year, other than the income from investment in the specified fund referred to in section 10(4D)(c)(i).• The provisions of section 139A (provisions related to PAN) are not applicable to the said class of persons subject to fulfillment of the conditions specified in sub-rule (1) of rule 114AAB
Non-resident, being an eligible foreign investor.	<ul style="list-style-type: none">• a) The said class of persons, during the previous year, has made transaction only in capital asset referred to in clause (viia) of section 47, which are listed on a recognized stock exchange located in any International Financial Services Centre and the consideration on transfer of such capital

asset is paid or payable in foreign currency.

b) The said class of persons does not earn any income in India, during the previous year, other than the income from transfer of capital asset referred to in clause (viiab) of section 47.

- The provisions of section 139A of the said Act are not applicable to the said class of persons subject to fulfillment of the conditions mentioned in sub-rule (2A) of rule 114AAB.

[Notification No.119](#)

3. Guidelines under clause (23FE) of section 10 of the Income-tax Act, 1961

CBDT

Circular No. 19/2021 dated 26.10.2021

Vide Finance Act 2020, CBDT inserted **clause (23FE) of section 10 (List of tax-free incomes)** to provide for exemption to sovereign wealth funds and pension funds on their income in the nature of dividend, interest and long-term capital gains arising from investment in infrastructure in India made between **01.04.2020** and **31.03.2024**.

Vide this circular, clarifications as below have been provided vis a vis eligibility of exemption under clause (23FE) of section 10: -

- If the loans and borrowings have been taken by the specified fund or any of its group concern, specifically for the purposes of making investment by the specified fund in India, such fund shall not be eligible for exemption under clause (23FE) of section 10.
- If the loans and borrowings have been taken by the specified fund or any of its group concern, not specifically for the purposes of making investment in India, it shall not be presumed that the investment in India has been made out of such loans and borrowings and such specified fund shall be eligible for exemption under clause (23FE) subject to the fulfilment of all other conditions under the said clause, provided that the source of the investment in India is not from such loans and borrowings.

[Circular No.19](#)

GOODS AND SERVICES TAX

1. Clarification regarding GST rates & classification (goods) based on the recommendations of the GST Council in its 45th meeting held on 17th September, 2021

CBIC Circular No.
163/2021– dated 06.10.2021

Vide this circular, CBIC has issued clarification on GST rates & classification (goods) based on the recommendations of the GST Council in its 45th meeting held on 17th September, 2021.

Clarification regarding GST rates & classification (goods) is tabulated in [Annexure -1](#) to this Newsletter.

[Circular No.163](#)

2. Clarifications regarding applicable GST rates & exemptions on certain services

CBIC Circular No.
164/2021– dated 06.10.2021

Vide this Circular, CBIC has clarified regarding the applicable GST rates and exemptions in respect of certain services (as below): -

➤ **Services by cloud kitchens /central kitchens**

Restaurant service includes-

- Services provided by restaurants, cafes, eating facilities include takeaway services, room services and door-delivery of food.
- Take-away services and door delivery services of food are also considered restaurant services. Accordingly, service provided by cooking and supply of food by cloud kitchens are covered under restaurant service and therefore they would attract 5% GST without ITC.

➤ **Supply of service by ice cream parlors**

Ice-cream parlors do not engage in any form of cooking. They only sell already cooked ice cream. Accordingly, they are not covered under restaurant service and would be treated as supply of good attracting GST @18%.

➤ **Coaching services supplied by coaching institutions and NGOs under the central sector scheme of 'Scholarships for students with Disabilities'**

Services provided by institutions/NGOs under scheme of 'Scholarships for students with Disabilities' where expenditure is borne by Govt are covered under notification No. 12/2017-Central Tax (Rate) dated 28 June 2017 and are **exempt from GST**.

➤ **GST on overloading charges at toll-plaza**

Overloading charges are effectively higher toll charges and will attract the same treatment as applicable to toll charges.

➤ **Renting of vehicles to State Transport Undertakings and Local Authorities**

Following services are exempt from GST: -

- Services by way of giving on hire to a state transport undertaking, a motor vehicle meant to carry more than twelve passengers or to a local authority.
- Services by way of giving on hire to a state transport undertaking an Electrically Operate vehicle meant to carry more than twelve passengers.

It is clarified that the expression "**giving on hire**" in Sl. No. 22 of the notification No. 12/2017-Central Tax (Rate) dated 28 June 2017 includes **renting of vehicles** also.

➤ **Services supplied by contract manufacturers to brand owners for manufacture of alcoholic liquor for human consumption:**

GST rate of 5% is applicable on services by way of job work in relation to food and food products falling under chapters 1 to 22 in the first Schedule to the Customs Tariff Act, 1975.

It is clarified that the expression “food and food products” excludes alcoholic beverages for human consumption. In common parlance also alcoholic liquor is not considered as food.

Accordingly, services by way of job work in relation to manufacture of alcoholic liquor for human consumption are not eligible for the GST rate of 5% and GST @ 18 % would continue to be levied.

[Circular No.164](#)

Clarification regarding GST rates & classification (goods) based on the recommendations of the GST Council in its 45th meeting held on 17th September, 2021

Following are the Clarification regarding GST rates & classification (goods): -

Item Name	Clarification
Fresh and Dried Fruits and Nuts	Exemption from GST to fresh fruits and nuts covers only such products which are not frozen or dried in any manner as stated or otherwise processed. Supply of dried fruits and nuts, falling under heading 0801 and 0802 attract GST at the rate of 5% / 12% as specified in the respective rate schedules.
Tamarind Seeds	Tamarind and other seeds falling under heading 1209 if not supplied as seed for sowing, would attract GST at the rate of 5% w.e.f. 01-October, 2021.
Copra	Exemption available to Coconut, fresh or dried, whether or not shelled or peeled, is not available to Copra. Accordingly, Copra, classified under heading 1203, attracts GST rate of 5%.
Pure Henna Powder and Leaves	Pure henna powder and henna leaves, having no additives, is classifiable under tariff item 1404 90 90 and shall attract GST rate of 5% GST rate on mehndi paste in cones falling under heading 1404 and 3305 shall be 5%.
Scented Sweet Supari & Flavoured and Coated Illaichi	Scented sweet supari falls under tariff item 2106 90 30 as "Betel nut product" known as "Supari" and attracts GST rate of 18%. The flavoured and coated illaichi is a value-added product and falls under sub-heading 2106. It accordingly attracts GST at the rate of 18%.
Pharmaceutical goods falling under heading 3006	All goods falling under heading 3006 attract GST rate of 12% under entry 65 in the 12% rate schedule.
Laboratory Reagents and other goods falling under heading 3822	GST rate of 12% is applicable on all goods falling under heading 3822.
External batteries sold along with UPS Systems/ Inverter	UPS/ inverter would attract GST rate of 18% under heading 8504, while external batteries would attract GST rate as applicable under heading 8507 (28% for all batteries except lithium-ion battery), being separately identifiable products
Solar PV Power Projects	GST on such specified Renewable Energy Projects can be paid in terms of the 70:30 ratio for goods and services, respectively, for the period of July 01, 2017 to December 31, 2018. However, it is specified that no refunds will be granted if GST already paid is more than the amount determined using this mechanism.
Fiber Drums, whether corrugated or non-corrugated	Uniform GST rate of 18% on all goods classifiable under heading 4819. Rates on such Fibre Drums even if made at 12% GST (during the period from July 01, 2017 to September 30, 2021), would be treated as fully GST-paid. Therefore, no action for recovery of differential tax (over and above 12% already paid) would arise

Disclaimer:

This is not a complete listing of all circulars/notifications issued during the month.
Instead, it is only a listing of some of the circulars/notifications that we considered important



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