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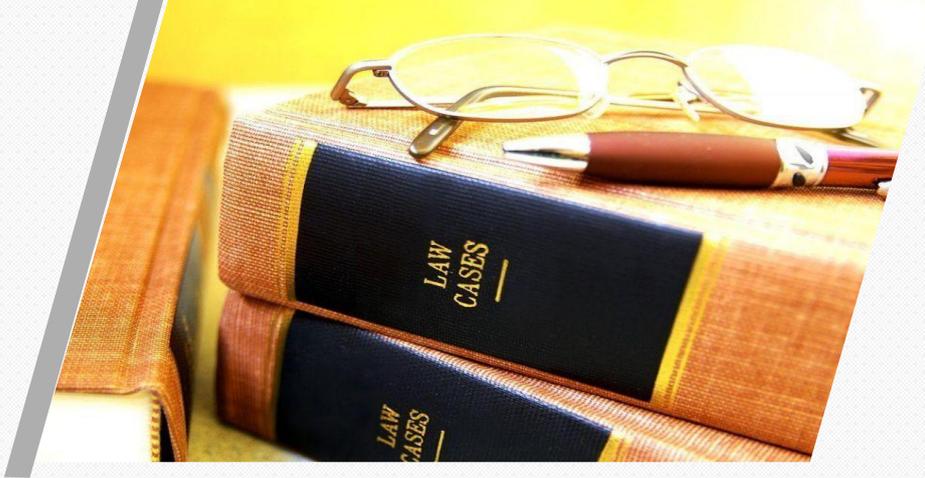
CONNEKT

November - 2021

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Direct Tax Case Laws



Case Law 1:

Issue: Whether since assessee had paid commission charges to overseas agents for services rendered outside India and not any lump sum consideration for rendering managerial, technical or consultancy services, such payments could not be considered as fees for technical services under section 9(1)(vii).

The assessee is an individual, engaged in the business of trading and export of leathers, filed its return of income for the Assessment Years 2013-14 and 2014-15. The Assessing Officer, during the assessment proceeding noticed that the assessee had claimed

- Rs. 1,28,34,756/- for the Assessment Year 2013-14 and
- Rs. 26,23,59,611/- for the Assessment Year 2014-15 as selling expenses overseas.

However, no TDS under section 195 of the Income Tax Act, 1961 was deducted towards the payments made to parties. Hence, the Assessing Officer felt that these activities tantamount to managerial and technical services as envisaged under section 9(1)(vii) of the Act. Hence, the above payments claimed as selling expenses has been disallowed under section 40(a)(i) of the Act and added to the income of the assessee.

Section 195 of the IT Act attracts tax only on

chargeable income, if any, paid to a non-resident. Where there is no liability, the question of tax deduction does not arise. The above was substantiated in the case Supreme Court in GE India Technology Centre (P.) Ltd. v. CIT. Where there is no liability in India, there can be no question of disallowance under section 40(a)(i) or section 40(a)(ia) of the IT Act on the ground of non-deduction of tax at source. Moreover, where a non-resident has no permanent establishment in India, there can be no liability either under the domestic law or under Double Taxation Avoidance Agreement.

Under section 9(1)(vii)(b), income by way of fees for technical services payable by a person, who is a resident, is taxable income except where the fees are payable in respect of services utilised in a business or profession carried on by such person outside India or for the purposes of making or earning any income from any source outside India.

In the instant case, the Assessing Officer accepted that the appellant assessee had paid commission charges to overseas agents. It is not the case of the Assessing Officer that any lump sum consideration has been made for any specific managerial, technical or consultancy services.

On an overall reading of the Explanation, it is apparent that fees for technical services does not contemplate commission which is

Direct Tax : Case Laws

order specific and computable at a small percentage of the order value. Section 40(a)(i) does not contemplate order wise commission based on the order value.

For the reasons discussed above the case was in favour of the assessee.

Principal Commissioner of Income-tax (Chennai) v/s Gopakumaran Nair

Case Law 2:

Issue: Where assessee holding company advanced interest-free loans to its subsidiary purely out of commercial expediency and there were no findings of fact that such loans advanced by assessee were utilized for personal benefits of directors of subsidiary and, further, assessee had sufficient interest-free funds to cover such loans given to its subsidiary, no interest expenditure was to be disallowed under section 36(1)(iii).

The loans advanced by the assessee to its subsidiaries were not sham transactions or paper transactions, but further, such loans were advanced for reasons of commercial expediency. These findings have been confirmed by the Division Bench. That apart, the CIT (Appeals) in the present case, has recorded a finding that the subsidiary companies to whom the assessee had advanced the loans have not earned any interest income therefrom. The assessee is the holding company and has major stakes in the subsidiary to whom these interest-free loans came to be advanced & had reserves of over Rs. 1,000 crores. The source of subsidiaries' income is not 'interest'.

The ITAT has relied on the decision of the

Gauhati High Court in Highways Construction Co. (P.) Ltd. v. CIT in which it is held that where there are no findings of fact to the effect that any interest had actually been collected by the assessee but was not reflected in the accounts, there was no provision empowering the Income-tax authorities to include in the income, interest, which was neither due nor collected. The addition of amounts as notional interest was therefore not justified. In the present case as well, there is no such finding. Only notional income is sought to be included in the income and taxed.

And decision in S.P. Jaiswal is distinguishable because in that case, the father had advanced a loan to his own children, and interest was earned by the children on the loan so advanced.

The assessee has quite rightly relied on Reliance Communication (supra) which has after considering S.A. Builders held that the expression "commercial expediency" is an expression of wide import and includes such expenditure as a prudent businessman incurs for business. An expenditure, which is commercially expedient, may not be incurred under a legal obligation, but so long as it meets the requirement of commercial expediency, it must be allowed. In the present case, there is not even any allegation that the interest-free loans advanced by the assessee were utilized for the personal benefit of the directors of the sister concern.

As a result, the case was in favour of the assessee.

Principal Commissioner of Income-tax (Panaji) v/s V.S. Dempo Holding (P.) Ltd.

Direct Tax : Case Laws

Case Law 3:

Issue: Where assessee appointed, a France based trading company as its agent to procure export orders from France and paid it commission, since no knowledge was provided to assessee which could be further exploited while services were rendered by non-resident of procuring export orders for assessee, payment made for said services could not be held as FTS under India-France DTAA and would not be taxable in India

The brief facts qua the issue in dispute are that the M/s Ace Trading Company, France (In short 'Ace') was appointed by the assessee in earlier years for assistance in procuring export orders for the assessee in France. In the year under consideration also, the assessee appointed M/s 'Ace' as its agent for procuring export orders in France. The assessee debited a sum of Rs. 1,16,99,172/- as commission paid on export sales. No tax was deducted at source by the assessee on said payment.

According to Assessing Officer, the assessee was required to deduct tax at source on the said payment in accordance with provision of section 195 of the Act and due to failure on the part of the assessee, provision of section 40(a)(i) be invoked, and the payment to 'Ace' might be disallowed.

It was submitted by the assessee, that commission was paid to foreign Payee, who is a tax resident of France, and no TDS was attracted under section 195 of the Act, as commission paid to the foreign payee is business income as per Article 7 of the DTAA with France Since the foreign payee had no permanent establishment in India,

therefore, no income is chargeable to tax in India. Accordingly, the assessee was not required to deduct tax at source under section 195 of the Act.

In the present case, the commission income paid to the foreign agent neither accrued in India nor deemed to be accrued in India as per deeming provisions of section 9 and nor the same was received nor deemed to be received in India. Further, the non-resident can invoke DTAA between India and France if provisions of the same are more beneficial to the non-resident. In view of Most Favoured Nation (MFN) clause, the beneficial provision of Convention between India and UK automatically extends to India-France DTAA.

In India UK DTAA fee for technical services (FTS) exclude the term 'managerial services' and provides for 'make available clause'. While analyzing the Fee for technical services (FTS) definition as per India France DTAA, in view of the MFN clause, the entire definition of the FTS can be imported from India UK DTAA. Services rendered by the non-resident of procuring export order for the assessee, no knowledge has been provided to the assessee which could be exploited further by the assessee. In such circumstances, the services rendered by the non-resident cannot be held as 'FTS' under the India-France DTAA.

In view of above discussion, the appeal of the assessee is allowed.

Deputy Commissioner of Income-tax (New Delhi) v/s Rajinder Kumar Aggarwal (HUF)

Direct Tax Notifications



1. Roll out of the new Annual Information Statement (AIS)

Income Tax Department has rolled out the new Annual Information Statement (AIS) on the Compliance Portal which provides a comprehensive view of information to a taxpayer. The new AIS can be accessed by clicking on the link “Annual Information Statement (AIS)” under the “Services” tab on the new Income tax e-filing portal. The display of Form 26AS on TRACES portal will also continue in parallel till the new AIS is validated and completely operational.

The new AIS includes additional information relating to interest, dividend, securities transactions, mutual fund transactions, foreign remittance information etc. The reported information has been processed to remove duplicate information. Taxpayer will be able to download AIS information in PDF, JSON, CSV formats. If the taxpayer feels that the information is incorrect, relates to other person/year, duplicate etc., a facility has been provided to submit online feedback.

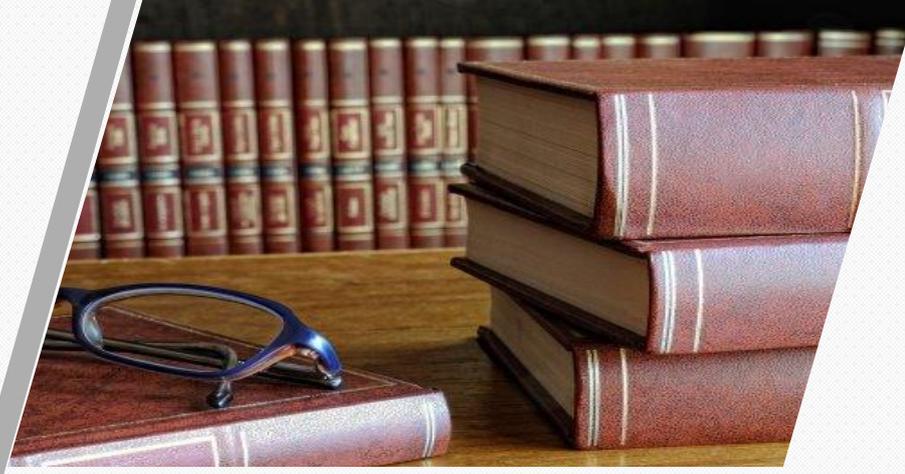
A simplified Taxpayer Information Summary (TIS) has also been generated for each taxpayer which shows aggregated value for the taxpayer for ease of filing return. TIS shows the processed value (i.e. the value generated after deduplication of information based on pre-defined rules) and derived value (i.e. the value derived after considering the taxpayer feedback and processed value). If the taxpayer submits feedback on AIS, the derived information in TIS will be automatically updated in real time. The derived information in TIS will be used for pre-filing of Return (pre-filing will be enabled in a phased manner). Taxpayers should remember that Annual Information Statement (AIS) includes information presently available with the Income Tax Department.

There may be other transactions relating to the taxpayer which are not presently displayed in Annual Information Statement (AIS). Taxpayers should check all related information and report complete and accurate information in the Income Tax Return.

In case there is a variation between the TDS/TCS information or the details of tax paid as displayed in Form 26AS on TRACES portal and the TDS/TCS information or the information relating to tax payment as displayed in AIS on Compliance Portal, the taxpayer may rely on the information displayed on TRACES portal for the purpose of filing of ITR and for other tax compliance purposes.

Link : - <https://incometaxindia.gov.in/Lists/Press%20Releases/Attachments/1001/PressRelease-Roll-out-of-the-new-Annual-Information-Statement-AIS-1-11-21.pdf>

Indirect Tax : Case Laws



Case Law 1:

Payment of salary/wages not excludible from the value of supply for the purpose of section 15 of the CGST Act, 2017

The applicant is engaged in supplying manpower service to his clients as per their requirements. The applicant has submitted that under the Client Service Agreement, he is acting as a pure agent for the purpose of payment of salary/wages during supply of manpower service to the clients. The applicant neither intends to hold nor holds any title to the service supplied to his clients. The applicant submitted that he does not use the service, so procured for his own interest and the manpower service are directly supplied to the client. Besides, the applicant submitted that the clients authorize him to make payment of salary/wages to the manpower. The applicant also submitted that he raises periodical invoices to his clients clearly indicating such salary/wages payable against the manpower service supplied by him. The applicant, thus, sought advance ruling as to:

- Whether the applicant is acting as a pure agent as defined in Explanation to Rule 33 of the CGST Rules, 2017 (hereinafter referred to as 'the said rules')?
- Whether the payment of salary/wages by the supplier can be excluded from the value of supply for the purpose of section 15 of the CGST Act, 2017?

After carefully examining the facts of the instant case along with documents furnished by the applicant in support of his contention. The ruling authority found that, for the purpose of supplying manpower service to the clients, the applicant has entered 'Employment Agreement' with different workmen. By virtue of the 'Employment Agreement' made between the applicant (service provider) and workman (third party), the applicant, being the employer is liable to make payment to the third party i.e., workmen as employee. Thus, in the instant case, undisputedly, the applicant is the person, liable to pay salary/wages to the workmen employed by him and just showing such amount in a separate manner in the invoice doesn't shift his liability on the recipient of services and doesn't make him qualify as a 'pure agent' in terms of rule 33 of the said rules.

In addition, rule 33 of the said rules, clearly speaks that one of the conditions that has to be satisfied for exclusion of expenditure or costs from the value of supply, which has been incurred by a supplier as a pure agent i.e., "the supplies procured by the pure agent from the third party as a pure agent of the recipient of supply are in addition to the services he supplies on his own account". In the instant case, the applicant is engaged in providing only manpower service to his clients, by first entering into an agreement with the clients and subsequently engaging different workmen at the client's place.

Therefore, the ruling authority answered in

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negative to both the questions asked by the applicant.

AUTHORITY FOR ADVANCE RULINGS – WEST BENGAL IN M/s PRODIP NANDI (ADVANCE RULING NO. 13/WBAAR/2021-22 DATED 08th October 2021)

Case Law 2:

Non-service of notice before passing penalty order tantamount to trampling assessee's rights

In the given case, officer has issued order of penalty under section 73 for wrongly availment of ITC. Assessee cites that before issuing penalty order under section 73, statutory requirement of Rule 142 of CGST and SGST rules 2017 for issue of FORM GST DRC-01 and FORM GST DRC-01A, wherein summary and details of any tax, interest and penalty as ascertained by the said officer has to be mentioned, was not met. Madras HC observed that order was passed against the assessee for wrongly availment of ITC, but without any notice and order for demand of GST. Further, it clarifies that the requirements for issue of FORM GST DRC-01 and FORM GST DRC -01A have been statutorily ingrained in Rule 142 and it is a rule which necessarily needs to be adhered. Hence, Madras HC sets aside impugned order issued under section 73 solely on the grounds of non-adherence to Rule 142 and remands matter for expeditious de-novo adjudication.

**[Shri. Tyres Vs State Tax Officer
W.P.No.19756 of 2021]**

Indirect Tax

Notifications & Circulars



S. No Circulars

1. Clarification regarding GST rates & classification of Goods

CBIC vide Circular No. 163/19/2021-GST clarifies the following:

- ❖ Only fresh dry fruits/nuts are exempt from GST i.e., which are not frozen or dried in any manner. Otherwise, GST at the rate of 5% / 12% is applicable
- ❖ Tamarind seeds and other seeds used for any purpose other than sowing taxable at the rate of 5%
- ❖ Scented sweet supari is distinct from 'illaichi' or 'cardamom' hence GST at the rate of 18% is applicable
- ❖ External batteries sold along with UPS system are two distinctly identifiable supplies hence separate GST rate shall apply on each item
- ❖ Earlier, Corrugated boxes and cartoons were taxable at 12% and other cartoons at 18%. This resulted into ambiguity of rate applicable on fibre Drums. GST Council decided to prescribe uniform rate of 18% (w.e.f. 1st October 2021) on all type of cartoon to remove such ambiguity.

Link: <https://cbic-gst.gov.in/pdf/Circular-No-163-18-2021-GST.pdf>

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

CBIC vide Circular No. 164/20/2021-GST clarifies the following:

- ❖ Cloud Kitchen are covered under "Restaurant services" taxable at the rate of 5%.
- ❖ Sale of already manufactured ice-creams in ice cream parlour is a supply of good, not supply of service taxable at the rate of 18%
- ❖ Overloading charges on toll plaza is of same nature as that of Toll charge hence exempt
- ❖ Services provided by contract manufacture to brand owners for manufacture of alcoholic liquor for human consumption taxable at the rate of 18%
- ❖ Renting as well as hiring of vehicles to state transport undertaking and local authorities are exempt from GST via notification no. 12/2017-CT(R).

Link : <https://cbic-gst.gov.in/pdf/Circular-No-164-2021-GST.pdf>

Legal & Regulatory Notifications



S. No Notifications

1. RELAXATIONS IN PAYING ADDITIONAL FEES IN CASE OF DELAY IN FILING FORM 8 (THE STATEMENT OF ACCOUNT AND SOLVENCY) BY LIMITED LIABILITY PARTNERSHIPS UPTO 30TH DECEMBER, 20

(MCA circular dated October 26, 2021)

The Ministry of Corporate Affairs (MCA) vide its circular number 16/2021 dated October 26, 2021, has extended the last date for filing the Statement of Account and Solvency in form 8 by Limited Liability Partnerships (LLPs). MCA has decided to allow LLPs to file Form 8 (the Statement of Account and Solvency) for the Financial Year 2020-21 without paying additional fees up to 30.12.2021.

Link: [getdocument \(mca.gov.in\)](https://mca.gov.in)

2. RELAXATION ON LEVY OF ADDITIONAL FEES IN FILING OF E-FORMS AOC-4, AOC-4 (CFS), AOC-4 XBRL, AOC-4 NON-XBRL AND MGT -7/MGT-7A FOR THE FINANCIAL YEAR ENDED ON 31.03.2021 UNDER THE COMPANIES ACT, 2013

(MCA circular dated October 29, 2021)

The Ministry of Corporate Affairs (MCA) vide its circular number 17/2021 dated October 29, 2021, has provided the relaxation to all the Companies in filing e-forms AOC-4, AOC-4 (CFS), AOC-4 XBRL, AOC-4 NON-XBRL AND MGT -7/MGT-7A for the financial year ended as on 31.03.2021 without levying additional fee till 31.12.2021.

Only normal fees will be levied for filing the aforementioned e-forms till 31.12.2021.

Link: [getdocument \(mca.gov.in\)](https://mca.gov.in)

3. EXTENSION OF LAST DATE OF FILING COST AUDIT REPORT TO THE BOARD OF DIRECTORS UNDER RULE 6(5) OF THE COMPANIES (COST RECORDS AND AUDIT) RULES, 2014

(MCA circular dated October 29, 2021)

The Ministry of Corporate Affairs (MCA) vide its circular number 18/2021 dated October 29, 2021 in continuation with its General Circular number 15/2021 dated 27 September 2021 has extended the last date of filing cost audit report to the Board of Directors from October 31, 2021 to November 30, 2021 and the same will not be considered as violation of Rule 6(5) of the Companies (Cost Records and Audit) Rules, 2014.

Link: [getdocument \(mca.gov.in\)](https://mca.gov.in)



Securities Transaction: Implications under GST

By –Pallavi Jain

IBA

Securities are financial instrument which covers stock, bond, mutual fund, interest bearing treasury bill, debenture, derivative etc. Transaction in securities has always been a matter of discussion as to whether such transitions would be taxable under GST or not. Per GST Act 2017, tax is levied under GST when taxable event arises and taxable event under GST is “Supply of goods and services”. Now the question arises, whether transaction in securities will fulfill the criteria of taxable event?

As per Section 2(52) of the CGST Act 2017, goods mean “every kind of movable property other than money and securities but includes actionable claim, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before supply or under a contract of supply”. Further, per Section 2(102) of the CGST act 2017, services mean “anything other than goods, money and securities but includes activities relating to the use of money or its conversion by cash or by any other mode, from one form, currency or denomination to another form, currency or denomination for which a separate consideration is charged”. Therefore, under GST regime, “securities” do not fall under the definition of either Goods or Services and hence the sale of securities is a non- taxable transaction under GST i.e., no taxable event arise.

As no GST would be levied on transaction in securities, it also needs to be checked whether the sale of securities constitute a supply under GST. Section 7 of the CGST Act 2017 defines the scope of supply which inter-alia includes “all forms of supply of goods or services or both such as sale, transfer, barter, exchange, license, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business”. Since securities find an exclusion from the ambit of goods and services itself, therefore, the terms of section 7 do not get fulfilled and hence transaction in securities does not constitute a supply under GST regime.

On the other hand, it is stated that “when goods or services or both are used partly for the purpose of effecting taxable supplies and partly for effecting exempt supplies, the proportionate amount of input tax credit shall get reversed against exempt supplies and shall be allowed only

for the input tax that is attributable to the taxable supplies". Also, the value of exempt supply shall include supplies on which the recipient is liable to pay tax on reverse charge basis, transactions in securities, sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building (Section 17(2) read with section 17(3) of the CGST Act 2017). Thus, while having transaction in securities, a proportionate amount of Input tax credit needs to be reversed in respective monthly/quarterly/Annual GST Returns.

Also, the value adopted for the purpose of proportionate reversal of Input tax credit shall be 1% of sale value of such securities as per valuation rules under the CGST Act.

Thus, from above we can conclude that one of the pre-requisites for a transaction to be covered under GST is that it must be a supply of goods or services. As securities are neither considered as goods nor services then transaction in securities do not fall within the ambit of GST. But in order to fulfill the requirements of a specific section i.e., section 17(2) read with section 17(3) of CGST Act 2017, proportionate input tax credit shall be reversed considering sale of securities as exempt supply.

Diwali Celebration



Celebrated Diwali at workplace, participated in Pooja followed by prasad and gifts. Everyone's got a smile as this festival brings in so much positivity at work.

Upcoming Compliances

Date	Compliance
November 11, 2021	Due Date for filing of FORM GSTR-1 for the month of October 2021 for the registered taxpayers who have opted for monthly filing of GST Returns
November 13, 2021	Due Date for filing of IFF (Invoice furnishing facility) for the month of October 2021 for the registered taxpayers who have opted QRMP scheme
	Due Date for filing of FORM GSTR-6 for the month of October 2021 for the registered taxpayers who have taken Input Service Distributor (ISD) registration
November 14, 2021	Due date for issue of TDS Certificate for tax deducted under section 194-IB, 194-IA and 194M in the month of September 2021
November 15, 2021	Quarterly TDS certificate (in respect of tax deducted for payments other than salary) for the quarter ending September 30, 2021
November 20, 2021	Due Date for filing of FORM GSTR-3B for the month of October 2021 for the registered taxpayers who have opted for monthly filing of GST Returns
November 25, 2021	Due Date for making Payment for the month of October 2021 for the registered taxpayers who have opted QRMP scheme and having principal place of business in the state of Chhattisgarh, Madhya Pradesh, Gujarat, Maharashtra, Karnataka, Goa, Kerala, Tamil Nadu, Telangana or Andhra Pradesh or the Union territories of Daman and Diu and Dadra and Nagar Haveli, Puducherry, Andaman and Nicobar Islands and Lakshadweep.
	Due Date for making Payment for the month of October 2021 for the registered taxpayers who have opted QRMP scheme and having principal place of business in the state of Himachal Pradesh, Punjab, Uttarakhand, Haryana, Rajasthan, Uttar Pradesh, Bihar, Sikkim, Arunachal Pradesh, Nagaland, Manipur, Mizoram, Tripura, Meghalaya, Assam, West Bengal, Jharkhand or Odisha or the Union territories of Jammu and Kashmir, Ladakh, Chandigarh and Delhi
November 30, 2021	Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194-IB, 194-IA and 194M in the month of October 2021

Upcoming Compliances

Date	Compliance
November 30, 2021	Report in Form No. 3CEAA by a constituent entity of an international group for the accounting year 2020-21
	Statement of income distribution by Venture Capital Company or venture capital fund in respect of income distributed during previous Year 2020-21 (Form No. 64)
	Statement to be furnished in Form No. 64D by Alternative Investment Fund (AIF) to Principal CIT or CIT in respect of income distributed (during previous year 2020-21) to units' holders
	Intimation in Form II by Sovereign Wealth Fund in respect of investment made in India for quarter ending June 2021
	Quarterly statement in respect of foreign remittances (to be furnished by authorized dealers) in Form No. 15CC for quarter ending June 2021
	Upload the declarations received from recipients in Form No. 15G/15H during the quarter ending June 2021

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