

# Tax Bulletin

Update publication for our clients

*September, 2018*



**Vijaywargi Khabiya & Saoji**  
Chartered Accountants

# FOREWORD

August 31 was a time when we at **Vijaywargi Khabiya & Saoji ('VK&S')** were occupied in preparing and uploading Income Tax returns of clients within the extended due date to avoid newly introduced penalty. Also, parallelly going on is the audit function which is marching towards climax. Amidst all this, there is anxious atmosphere amongst the trade, industry and GST practitioners to close the first financial year of GST [i.e. FY 2017-18 comprising of 9 months], in the smoothest possible way.

Additionally, there is the GST annual return [applicable to FY 2017-18] to be filed before December 31, 2018 and also GST audit to be carried out by Chartered Accountants or Cost Accountants in case of specified entities within the same time frame.

The preparedness of the law makers as well as the tax payer is critical. In this regard, the only resort is keeping ourselves abreast of the latest developments and its timely implementation.

Accordingly, we have compiled the **4<sup>th</sup> Edition of the Tax bulletin** in relation to Direct Tax (i.e. Income Tax) and Indirect Tax (i.e. GST, Customs law and FTP).

Warm Regards,

**Team VK&S**

# CONTENTS – UPDATE ON



- 1 Income Tax
- 2 Goods & Services Tax ['GST']
- 3 Customs
- 4 Foreign Trade Policy ['FTP']

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# Income Tax updates

- Electronic Issue of certificate U/s 197
- Tax Audit – Deferment of Reporting Requirement
- Legal Snippets

# Electronic Issue of Certificate for Lower/NIL TDS



- ❖ CBDT has issued draft Notification dated August 17, 2018 proposing the process of electronic issue of certificate U/s 197 of the Income Tax Act, 1961 for Nil, lower deduction / collection of taxes
- ❖ **Following important points to be noted**
  - Existing Form 13 along relevant rules will be rationalized
  - Application proposed to be made electronically
  - Traditionally, this form was to be submitted manually, but certain jurisdictions implemented online process
  - Comments and suggestions on draft Notification invited till September 4, 2018
  - Proposed process will reduce interaction between taxman and taxpayers



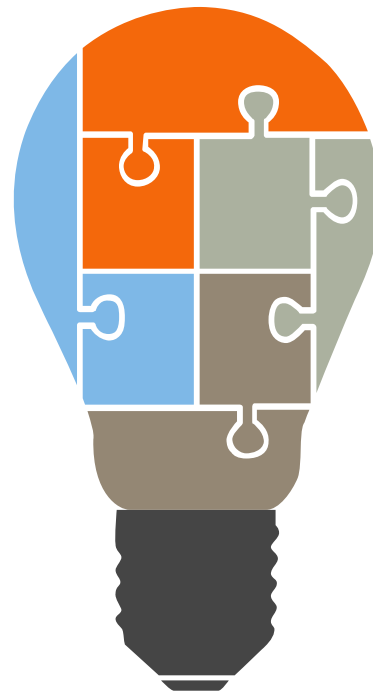
The idea behind this is to substitute manual process with e -procedures which will ensure faster and timely issue of Certificate



# Legal Snippets

Equipment which have become obsolete and were written off, in the books of accounts, has to be allowed as Depreciation

*[CIT vs Bhatia General Hospital (2018) TIOL - 1733-HC-MUM-IT]*



Audit Report is mere information and does not constitute tangible material to initiate re-assessment. Reassessment U/s 148 can not be sustained

*[FIS Global Business Solutions India Private Limited vs CIT (2018) TIOL-1729-HC-DEL-IT]*



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# GST updates

- Notifications and Circulars
- GST Advance Rulings
- Legal Snippets



# Due dates for filing GST Returns

## GSTR - 1

Aggregate turnover of **more than 1.5 Cr**

Due date: 11th day of the succeeding month for which the return is being filed.

Applicable for the months from July, 2018 to March, 2019

## GSTR - 1

Aggregate turnover of **less than 1.5 Cr**

S. No.	Quarter	Due Date
1.	July - September, 2018	October 31, 2018
2.	October - December, 2018	January 31, 2019
3.	January - March, 2019	April 30, 2019

## GSTR - 3B

Due date: 20th day of the succeeding month for which the return is being filed.

Applicable for the months from July, 2018 to March, 2019

GSTR-3B for July - Due date extended to 24.8.2018

Due date for GSTR - 2 to be subsequently notified









# GST Clarifications on Fertilizers and Petroleum gases



## GST on Fertilizers



Fertilizers supplied for direct use as fertilizers, or supplied for use in the manufacturing of other complex fertilizers for agricultural use (soil or crop fertilizers), will attract GST at 5% .



Applicability of GST on petroleum gases retained for the manufacture of petrochemical and chemical products

GST will be payable by refineries only on the net quantity of petroleum gases retained by the recipient manufacturer for the manufacture of petrochemical and chemical products

Even in cases involving supply of goods, where feed stock is retained by the recipient and remaining residual material is returned back to the supplier, GST will be applicable on the amount retained



# Taxability of services provided by Industrial Training Institutes (ITI)

1 GST on vocational training provided by private ITI in designated trades and other trades.

- Services provided by private ITI's in respect of designated trades under the Apprenticeship Act, 1961 are exempt
- As a corollary services provided by private ITI in respect of other than designated trades will not be exempt

2 GST on service provided by private ITI's for conduct of examination services related to admission

- For designated trades – GST will be exempt
- For non-designated trades – GST will not be exempt

3 Services provided by Government ITI's

- Services provided by a Government ITI to individual trainees or students is exempt from GST as these are in the nature of services provided by the Central or State Government to individuals. Such exemption would cover both – vocational training and examinations conducted by these Government ITI's



# Clarifications regarding ITC lapse and refund of accumulated ITC on fabrics

1

Whether all unutilized ITC will lapse after payment of tax upto the month of July, 2018

- No. ITC of only those inputs lying unutilised after payment of tax up to the month of July 2018. will lapse. ITC on capital goods and inputs services will not lapse.
- Formula prescribed in Rule 89(5) of CGST Rules for calculating the amount that would lapse

2

Disclosure of lapsed unutilised ITC

- To be furnished in column 4B(2) [ITC amount to be reversed for any other reason] of GSTR-3B for August.
- Detailed calculation to be submitted in respect of accumulated ITC lapsed at the time of filing first refund claim on account of inverted duty structure (Verification of accumulated ITC may be done at that time)

3

Whether ITC relating to closing stock of finished goods as on 31.07.2018 shall also lapse?

- No. ITC involved in the finished stock may be excluded for determining the net ITC for applying the formula
- ITC relating to stock may be calculated as prescribed in S.No. 7 of form GST ITC-01

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Whether accumulated ITC in respect of exports shall also lapse?

- No. Formula prescribed in Rule 89(5) of CGST Rules itself ensures that ITC relating to exports does not lapse as zero rated supplies are excluded.
- Further refund of ITC on exports is separately determined under rule 89(4) of CGST Rules

For fabrics like cotton and silk where there is no inverted duty structure, ITC would only lapse in case ITC of inputs is accumulated.

# Clarifications on applicability of GST on various goods and services...

Supply of drinking water for public purposes if not supplied in a sealed container is exempt from GST.

Wipes of various kinds are classifiable under Heading 3307 or 3401 depending upon their constituents. Baby wipes with perfumes or cosmetics would attract GST at 18%. Similarly, if they are coated with soap or detergent, then it would fall under Heading 3401 and attract GST at 18%

Normal human plasma to attract GST at 5%, whereas plasma products to attract GST at 12%

Fortified toned milk (with vitamins 'A' and 'D') to attract NIL rate of GST under HSN Code 0401

Beet and cane sugar, including refined beet and cane sugar, to attract GST at 5% under Heading 1701

Tamarind kernel powder and treated, i.e. modified tamarind kernel powder fall under Chapter 13, both attract GST at 5%



# ...Clarifications on applicability of GST on various goods and services

Imitation zari thread or yarn known as "Kasab" or by any other name in trade parlance, to attract GST at 12% under Heading 5605.

Supplies of marine engine for fishing vessel (being a part of the fishing vessel), fall under tariff item 8408 10 93 attracting GST at 5%.

"Disc Brake pad" for automobiles, to attract GST at 28% as it is classifiable under Heading 8708.

Bus body builder builds the bus, works on the chassis which would attract GST at 28% since the supply is that of a bus. Fabrication of body on chassis provided by the principal and not body builder, would merit classification as service, and attract GST at 18%.

Essential character of a cotton quilt is imparted by the filling material. Thus, a quilt filled with cotton constitutes a cotton quilt, irrespective of the material of the cover of the quilt, which need not necessarily be cotton.

What constitutes a 'Cotton quilt'





# GST – Advance Rulings



As per Section 97(1) of the Central Goods and Services Tax Act, 2017 ('CGST Act'), an applicant desirous of obtaining an advance ruling may make an application to the Authority for Advance Ruling ('AAR')

The broad objective for setting up a mechanism of Advance Ruling is to provide certainty in tax liability in advance, in relation to an activity proposed to be undertaken by the applicant and reduce litigation. Under GST, advance ruling can be obtained for a proposed transaction as well as a transaction already undertaken by the applicant

*It may be clarified that an Advance ruling is binding only on the applicant who has sought the advance ruling and on the concerned officer or the jurisdictional officer in respect of the applicant*

However, the Rulings help us to ascertain the mind-set and interpretation that may be adopted by the Department. Accordingly, we have discussed a few Advance rulings issued in the past months in the subsequent slides

# AAR on issues relating to supply to SEZ

## M/s Coffee Day Global Ltd. (Karnataka)

**Issue** Whether supply of non-alcoholic beverages to SEZ units using coffee vending machines is in the nature of zero rated supply as per Section 16 of the IGST Act 2017?

**Ruling** – Supply of goods or services or both described in Section 16(1)(b) have to be read as in relation to authorized operations as given under Rule 89 of the CGST Rules. In the instant case, the Applicant has not made out a case that the activity undertaken by them is certified as an authorized operation by the proper officer of the SEZ. Therefore, the activity undertaken by the Applicant does not qualify to be a zero-rated supply

Supply will qualify as zero-rated only if the same has been carried out for authorized operations



## Garuda Power Pvt .Ltd (West Bengal)

**Issue:** Whether the Applicant supplying goods and on-site maintenance of diesel engines is required to pay GST on supply to SEZ unit or SEZ developer?

**Ruling:** Since the Applicant is supplying to units and developers of SEZ only, Section 16 of IGST Act will be applicable in this case and the tax liability will be at zero rated. The Applicant may supply without paying tax under LUT, or he may supply on payment of tax and claim refund subsequently

The said AAR does not deal with the condition that the supply should be for authorised operations and therefore, the applicability of the AAR should reconsidered

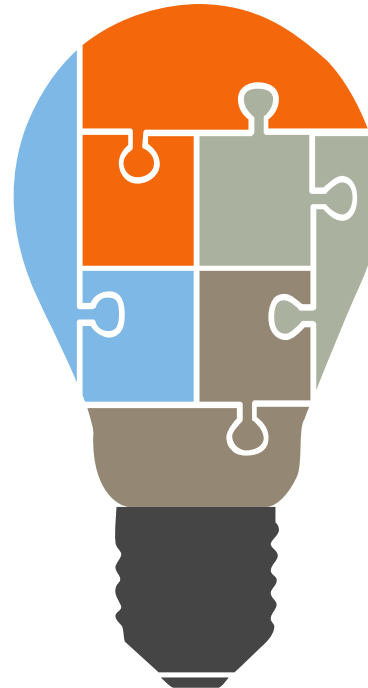
# AAR on Applicability of GST on 'toys' and 'Activities performed by employees at HO for other units'

*M/s A.W. Faber-Castell (India) Pvt. Ltd. – (Maharashtra)*

**Issue:** Whether 'Modelling dough' is to be classified under Chapter 34 or Chapter 95 of the Customs Tariff Act, 1975?

**Ruling:** The Authorities held that Heading 3407 covers modelling pastes for amusement of children and since the dough is being used for amusement of children Heading 3407 would be the correct classification

The AAR does not comment on what constitutes a 'toy' and whether 'Modelling dough' is a 'toy', due to which there still lingers a sense of uncertainty



*Columbia Asia Hospitals Pvt. Ltd. (Karnataka)*

**Issue:** Whether the activities performed by the employees at Corporate office in the course of or in relation to employment such as accounting, other administrative and IT system maintenance for the units located in the other states i.e. distinct persons are to be treated as a 'supply' or not?

**Ruling:** Activities performed by the employees at Corporate office in the course of or in relation to employment (such as accounting, other administrative and IT system maintenance) for the units located in the other states (i.e. distinct persons) shall be treated as supply as per Entry 2 of Schedule I of the CGST Act

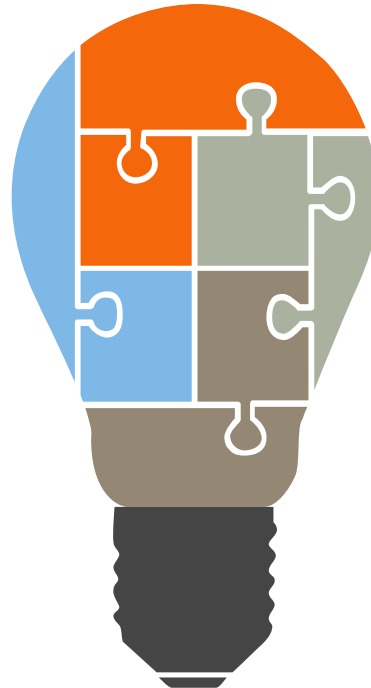
The AAR does not intend to tax salaries paid to employees at 18%. However, the Ruling is far-fetched as far as it considers employees of an entity working at Head Office not as employees of units/ plants/ offices located in different States. This interpretation of employer-employee relationship given the AAR appears to be legally untenable

# Legal Snippets

## *M/s Dhamtari Krishi Kendra – (Chattisgarh HC)*

**Issue:** Petitioner unable to submit FORM GST TRAN-1 to avail input tax benefit due to technical glitches

**Ruling:** The Court relied upon a Circular dated 3<sup>rd</sup> April, 2018, issued by the Board, which stipulated that those assesseees who were unable to file TRAN-1 due to technical glitches could file the same by 30.04.2018 and completing filing of GSTR 3B which could not be filed for such TRAN 1 shall be completed by May 31, 2018



## *M/s Gati Kintetsu Express Pvt Ltd (Madhya Pradesh HC further appealed to SC)*

**Issue:** Petitioner had not filed Part B of FORM EWB-01 for transportation of goods for a total distance of 1200-1300km.

**Ruling:** The Petitioner stated that due to technical error and no grievance was raised by the Petitioner. The Court held that, it is mandatory to file Part B for such long distances and therefore, the Petitioner was liable to penalty

Compliance related to E-way bill has been strictly imposed

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# Custom updates

- Notifications and Circulars

# Customs – Non-tariff Notifications



Courier Imports and Exports (Clearance) Amendment Regulations, 2018



Courier Imports and Exports (Electronic Declaration and Processing) Amendment Regulations, 2018



Fixation of Tariff Value of Edible Oils, Brass Scrap, Poppy Seeds, Areca Nut, Gold and Silver- Reg.

Threshold of 25,000 extended upto Rs. 5 Lakh for exports under MEIS involving transaction in foreign exchange

Applicable to provisional assessments ordered on and after the enforcement of these regulations.

Customs (Finalisation of Provisional Assessment) Regulations, 2018 notified

# Customs – Tariff Notifications

Notification No.	Implications
56/2018	Vide Notification No.49/2018-Customs dated June 20, 2018 the Indian Government had sought to increase the Customs duty on certain good imported from United states of America w.e.f. August 4, 2018. Vide the current Notification, the effective date of the hike will be September 18, 2018
57/2018	Seeks to prescribe effective rate of customs duty viz. 15% on Screw or SIM socket / other mechanical items (metal) for cellular mobile phone
58/2018	Increases Ad-valorem component of BCD from 10% to 20% on 328 tariff lines of carpets, apparels and other textile products
59/2018	Exempts BCD & IGST on goods imported for donation for relief & rehabilitation of the people of Kerala affected by the floods upto 31.12.2018

The increase in Import Duty was initiated as a retaliatory measure to counter the increasing import duties sought to be levied by the US Government

Higher duties to be imposed on a number of items including apples, almonds, walnuts, diagnostic reagents and certain steel products imported from US

# Customs – Other Notifications

Notification No.	Implications
<b>Anti-Dumping Duty</b>	
38/2018-Cus (ADD)	Antidumping duty on imports of 'Methylene Chloride' originating in or exported from European Union and United States of America to continue till October 20, 2019
39/2018-Cus (ADD)	Anti-dumping duty on imports of 'Paracetamol" originating in or exported from China PR to continue till April 26, 2019
<b>Safeguard Duty</b>	
01/2018 Cus.(SG)	Safeguard duty on imports of 'Solar Cells, whether or not assembled in modules or panels' falling under heading 8541 of the Customs Tariff Act, 1975, for a period of two years imposed

*Vide Customs Instructions issued on 13.08.2018 payment of safeguard duty on solar cells in light of Writ Petition filed with Orissa High Court has been stayed. Provisional assessment to be done on furnishing simple letter of undertaking / bond by concerned person*



# Customs – Circulars



Due date for **mandatory RFID** sealing in case of movement of goods under warehousing bond extended up to **October 1, 2018**

**Waiver of bank guarantee/ surety to EOUs** would continue to be governed by various circular issued from time to time by CBIC with regard to B-17 bonds executed by EOUs and will not be guided by the Circular no. 48/2017-Customs dated 08.12.2017 which governs the general importers and not the EOUs

Standard operating procedures for **discharge of bonds executed by nominated agencies/ banks while importing gold** for the purpose of export of gold jewellery/ articles prescribed. Provides for expeditious processing of bonds with provision for electronic submission and verification of documents



All Intelligence Agencies directed to regularly share information with Central Economic Intelligence Bureau. **Information Sharing Protocol** and time lines prescribed



# Customs – Circulars



For Air Cargo Complex, New Delhi and Chennai Customs House it is proposed to introduce a facility to upload digitally signed supporting documents in relation to Shipping Bills that may be filed on or after 1.09.2018. This initiative will cover all types of exports and after its review will be implemented as a mandatory requirement at all ICES locations.

- Implementation through ICEGATE URL
- Uploading, assessment and verification of documents will be done on the portal

Authorized Economic Operator

AEO is a programme under the aegis of the World Customs Organization (WCO) SAFE Framework of Standards to secure and facilitate Global Trade which aims to enhance international supply chain security and facilitate movement of legitimate goods.

Due to stringing requirements for registration and compliances not many entities were opting for AEO.

- Simplified Annexure prescribed for AEO T1 Application
- Process of accreditation of AEO-T1 to be decentralized to zonal level
- Online processing of application to commence soon

E-Sanchit

Pilot implementation of Paperless processing of Exports under SWIFT

Simplification and rationalization of processing of AEO-T1 application

# 4 FTP updates

- Notifications, Public Notices, Circulars & Trade Notices.

# FTP Notifications & Public Notices



## Amendment in Para 2.08 of the HBP 2015-2020

- IEC will be system auto generated. Applicant needs to generate IEC certificate from their end after submission of IEC application
- Earlier IEC Certificate was issued by the competent authority after the verification of attached relevant documents



## Regarding shifting of Capital Goods imported under the EPCG Scheme

- EPCG Authorization holders can shift capital goods to any other units mentioned in their IEC and RCMC Certificate during the entire export obligation period
- In such case, new installation certificate has to be submitted to the Regional Authority (DGFT) within six months of the shifting



## Regarding intimation to Regional Authorities about Block-wise fulfillment of EO under the EPCG Scheme

- EPCG Authorization holders needs to intimate the Regional Authority in respect to fulfillment of export obligation as well as average export obligation within three months of completion of the block
- Earlier intimation was supposed to be done using digital signature
- Now, digital signature will not be required

# FTP Public Notices



## Services allotted to Services Export Promotion Council ('SEPC')

- An "Others" Category has been added to the list of 14 Service sectors of SEPC.
- List of 15 services are:-
  1. Accounting / Auditing and Book Keeping;
  2. Advertising;
  3. Architectural;
  4. Consultancy;
  5. Distribution;
  6. Educational;
  7. Entertainment including Audio-Visual;
  8. Environmental;
  9. Healthcare;
  10. Hotel and tourism;
  11. Legal;
  12. Maritime;
  13. Marketing Research & Public Opinion Pulling and Management;
  14. Printing and Publishing &
  15. Others



## Enhancement of rates for certain HS codes in the Appendix 3B, Table 2 under MEIS

- The MEIS benefits for certain items has been enhanced from 2% to 4%; 3% to 5% & 5% to 7% respectively for the exports made on or after 01.11.2017.
- HS Codes are listed below-
  - 73231000; 73239110; 73239310; 73239390; 73239410; 73239910; 73239920; 35021100; 35021900; 03057200; 03074990; 03074330; 03075200; 62142010



## Provision for HS Code 63029100 under MEIS incentive for the period 01.04.2015 to 30.09.2015

- The HS code 63029100 has been made eligible for MEIS for the exports made between 01.04.2015 to 30.09.2015;
- The eligibility criteria will be same as HS Code 63029190;
- Late cut will not be applicable for HS Code 6329100

# FTP Notifications & Public Notices

## Amendment in Para 2.05 of Foreign Trade Policy 2015-2020

No import or export can be made without obtaining Import Export Code ('IEC') Certificate

In case of Service exports, IEC is mandatory only when Service Provider wants to take Chapter 3 benefits under FTP

Application process for IEC has been made completely online and IEC can be generated by the applicant itself as per procedure mentioned in Handbook of Procedure ('HBP')

Para 2.05 of FTP 2015-20 for IEC has been revised and details in respect to IEC is shifted to Para 2.08 of HBP

## Acceptance of installation certificate under EPCG Scheme by the RAs, wherein installation certificate is submitted beyond 18 months, without penalty

Under the EPCG Scheme, the authorization holders have to submit the installation certificate duly mentioning installation details of the capital goods to the competent authority within the prescribed time;

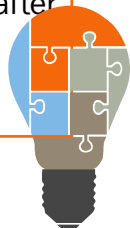
Where, the authorization holder fails to submit the installation certificate within prescribed time for such cases submission can be done with the payment of Rs. 5000/- composition fees on or before 30.09.2018

Now, EPCG Authorizations which are issued up to 31.03.2015 can submit installation certificate without payment of composition fees



# FTP Trade Notices

Subject	Implications
<p>Amendment in Policy and Procedure for online IEC applications</p>	<p>For the ease of doing business automatic PAN verification has been enforced in the IEC System. PAN will be directly verified by Central Board of Direct Taxes ('CBDT'). Accordingly, the mandatory requirement of PAN Card for the issuance of IEC Certificate has been removed</p> <p>With effect from 09.08.2018 only two documents will be required for obtainment of IEC Certificate.</p> <ul style="list-style-type: none"> <li>(i) Cancelled cheque [entity's name must be printed on it] OR Bank Certificate in ANF 2A (I) format and</li> <li>(ii) address proof of the applicant entity</li> </ul> <p>Digital signature for submitting applications for fresh or amendment of IEC will not be required</p> <p>Regional Authority ('RA') will conduct post verification of online IEC as per the guideline. Applicant will be liable for penal / criminal action for furnishing wrong / incomplete information also in such cases IEC will be suspended / cancelled</p>
<p>Status of Norms for Fixation of Advance Authorizations obtained under Self declaration basis</p>	<p>The applicants who are seeking to obtain authorization for import or export of restricted items can be made through e-mail. Such applicants are requested to mention e-com reference number as well. Also applicants can now view the status of the such applications on DGFT's website (<a href="http://www.dgft.gov.in">www.dgft.gov.in</a>)</p>
<p>New E-Com module for SEIS, ANF 3B to be available from 20.09.2018 for application</p>	<p>New online module for SEIS application against FYI 2017-18 which was supposed to be available on or after 01.09.2018, due to some technical error new module will be available on or after 20.09.2018</p>



# About VK&S



## SERVICES

Customers are the source of real  
growth with practical expertise.

**Vijaywargi Khabiya and Saoji**, Chartered Accountants, is a single window professional services firm focusing on high quality services one needs from a business advisory organization. The firm is managed by dynamic & pulsating partners with decade long professional experience. The firm provides services and consultancy related to accounting & implementation thereof, auditing including internal, statutory, tax, concurrent and management audit, matters related to direct & indirect tax including advisory, litigation, due diligence review, tax optimization and compliance services, outsourcing of accounts, payrolls, FEMA, Company Laws matters, Project Financing, Subsidies, and the like



# Contact us



## ANY QUESTIONS?

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