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BUSINESS LICENCE (AMENDMENT) ACT, 2022

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No. 21 of 2022

BUSINESS LICENCE (AMENDMENT) ACT, 2022

AN ACT TO AMEND THE BUSINESS LICENCE ACT

Enacted by the Parliament of The Bahamas

1. Short title and commencement.

- (1) This Act, which amends the Business Licence Act, 2010 (*No.25 of 2010*), may be cited as the Business Licence (Amendment) Act, 2022.
- (2) This Act shall come into force on the 1st day of July, 2022.

2. Amendment of section 2 of the principal Act.

Subsection (1) of section 2 of the principal Act is amended —

- (a) by the deletion of the definitions, “Apex body” and “export turnover” and the particulars relating thereto;
- (b) in the definition of “financial services entity” —
 - (i) in paragraph (a)(i), by the deletion of the words “(*Ch. 316*)” and the substitution of the words “, 2020 (*No. 22 of 2020*)”;
 - (ii) in paragraph (a)(iii), by the deletion of the words “(*Ch. 369*)” and the substitution of the words “, 2020 (*No. 27 of 2020*)”;
 - (iii) by the deletion of paragraph (b) and the substitution of the following —

“(b) an insurer regulated under the —

 - (i) Insurance Act (*Ch. 347*);
 - (ii) External Insurance Act (*Ch. 348*);
- (c) a co-operative credit union under the Bahamas Co-operative Credit Unions Act, 2015 (*No. 9 of 2015*);
- (d) a digital assets exchange or other digital assets business registered under the Digital Assets and Registered Exchanges Act, 2020 (*No. 28 of 2020*);”;

- (c) by the deletion of definition of “firm” and the substitution as follows —
 - “**firm**” means—
 - (a) an unincorporated body of —
 - (i) two or more individuals; or
 - (ii) one or more individuals and one or more corporations; or
 - (iii) two or more corporations, who have entered into partnership with one another with a view to carrying on business for profit; or
 - (b) an unincorporated association;”
- (c) in the definition of “**foreign person**” by the deletion of paragraph (i) and the substitution of the following —
 - “(i) a person who is not —
 - (a) a citizen of The Bahamas; or
 - (b) a permanent resident with a right to work in The Bahamas;”;
- (d) by the deletion of the words “**supply of services**” and the definition relating thereto;
- (e) in the definition of “**tax**” by the deletion of the words “in respect of a business licence granted under this Act” and the substitution of the words “to carry on a business in or from within The Bahamas”;
- (f) in the definition of “**turnover**”—
 - (i) by the deletion of the words “prior financial year” and the substitution of the words “year of assessment”; and
 - (ii) by the deletion of paragraph (e);
- (g) by the insertion in the appropriate alphabetical order of the following new definition —
 - “**taxable person**” means a person who carries on a business in or from within The Bahamas and is licensed or required to apply for a licence under section 3, 5 or 6 and includes any person whose liability to pay tax under this Act is in question whether or not, an amount is found to be payable;
 - “**year of assessment**” or “**year**” means the period of twelve months commencing on the 1st day of January in each year.”.

3. Amendment of section 3 of the principal Act.

Section 3 of the principal Act is amended —

- (a) by the deletion of subsection (1) and the substitution of the following—

- "(1) No person, other than a person who—
- (a) contracts exclusively with the Government; and
 - (b) has the prior approval of the Minister,
- shall carry on a business in or from within The Bahamas without the grant of a licence duly issued to him in accordance with the requirements of this Act.”;
- (b) by the deletion of subsection (3) and the substitution of the following —
- “(3) Every licensee who carries on a business in any year shall —
- (a) on or before the 31st day of January of the succeeding year file and submit to the Secretary as prescribed —
 - (i) an application for renewal of the licence;
 - (ii) financial results in a manner prescribed by the Secretary showing the turnover of the business for the prior year and the difference between the actual tax and the estimated tax for the prior year; and
 - (b) pay —
 - (i) by the 31st day of March any unpaid tax for the prior year; and
 - (ii) by the 31st day of March or in four equal installments commencing on or before the 31st day of March, the estimated tax for the succeeding year.”;
- (c) in subsection (3A), by the deletion of the words “Subsection (3)” and the substitution of the words “Paragraphs (a)(i) and (b)(ii) of subsection (3)”;
- (d) by the insertion immediately after subsection (8) of the following new subsections —
- “(9) Where the actual tax for the year is less than the estimated tax paid by a licensee, the amount overpaid shall be carried forward and treated as a credit towards tax payable for the succeeding year.
- (10) A licensee who wishes to pay the estimated tax for any year in installments must notify the Secretary in writing at the time of application for the renewal of his licence.
- (11) A licensee who in any year does not notify the Secretary by the time of application for the renewal of his licence shall be deemed to have selected to pay the estimated tax in full by the 31st March.

- (12) A licensee who is approved by the Secretary to pay in installments shall pay the second installment by the 30th day of June, the third installment by the 30th day of September and the fourth installment by the 31st day of December.
- (13) For the purpose of this section,—
- “**estimated tax**” for any year means tax computed by applying the applicable rate under section 8 to the estimated turnover for that year;
- “**estimated turnover**” for any year means turnover for the prior year;
- “**Government**” means the Government of The Bahamas and does not include an agency, statutory body, local government council or Government Business Enterprise;
- “**unpaid tax**” means the amount by which the actual tax exceeds the estimated tax.”.

4. Amendment of section 4 of the principal Act.

Section 4 of the principal Act is amended —

- (a) by the deletion of subsections (6A) to (6J);
- (b) in subsection (7), by the deletion of the words “or on any one of the days specified in column II of the Fifth Schedule”.

5. Insertion of new section 7A into the principal Act.

The principal Act is amended by the insertion immediately after section 7 of the following new section —

“7A. Advance tax rulings.

- (1) The Secretary may, on application by a person in the prescribed form, issue an advance tax ruling setting out the Secretary's position regarding the application of the Act to that person with respect to a transaction, venture or other activity proposed or entered into by that person.
- (2) An advance tax ruling shall not be provided —
- (a) where the applicant has not provided all the information determined by the Secretary to be necessary;
- (b) where the Secretary is of the opinion that there are no genuine points of uncertainty as to the person's tax liability;
- (c) where the applicant is asking the Secretary to give tax planning advice;

- (d) where the request relates to transactions which, in the Secretary's view, are for the purposes of avoiding tax;
 - (e) in any other circumstances outlined by the Secretary in rules.
- (3) Subject to subsection (4), an advance tax ruling by the Secretary—
- (a) is binding on the Secretary for the time period determined by the Secretary and stated in the ruling;
 - (b) may state a time period during which the ruling is binding on the applicant, to include transactions commenced or completed prior to the application being made for the ruling.
- (4) Where the Secretary finds that an advance ruling issued by him is based on false, misleading or incorrect information provided by the applicant, the Secretary shall declare that ruling void and of no effect.”.

6. Amendment of section 8 of the principal Act.

Subsection (2A)(c) of section 8 of the principal Act is amended by the insertion immediately after the word “where” of the words “a member of”.

7. Amendment of section 9B of the principal Act.

Section 9B of the principal Act is amended —

- (a) in subsection (2) —
 - (i) in paragraph (a), by the deletion of the words “within fifteen calendar days of the date of service of the notice” and the substitution of the words “within the time stated in the notice;
 - (ii) in paragraph (b), by the deletion of the word “fifteen” and the substitution of the word “two”;
- (b) by the deletion of subsection (3) and the substitution of the following —

“(3) The time stated in the notice under subsection (2) shall not exceed fifteen calendar days from the date of service of the notice, so, however, that the Secretary may, in his discretion, permit an agent to pay the money specified in the notice in instalments.”.

8. Insertion of new sections 9D - 9J into the principal Act.

The principal Act is amended by the insertion immediately after section 9C of the following new sections —

“9D. Receivers and duties of receivers under this Act.

- (1) In this section, a receiver is a person who in relation to an asset within The Bahamas is —
 - (a) a liquidator of a company;
 - (b) a judicial receiver or a receiver appointed out of court;
 - (c) a trustee for a person adjudged bankrupt;
 - (d) a mortgagee in possession;
 - (e) a guardian, conservator or any other person conducting business on behalf of a person legally incapacitated; or
 - (f) a personal representative, an executor or administrator of the estate of a deceased person.
- (2) A receiver must notify the Secretary in writing within fourteen calendar days after the person is appointed receiver, or takes possession of an asset of a taxable person, whichever event occurs first.
- (3) The Secretary may in writing notify a receiver of the amount which appears to the Secretary to be sufficient to provide for any tax which is or will become payable by the person whose assets are in the possession of the receiver.
- (4) A receiver —
 - (a) must set aside out of the assets or proceeds of sale of an asset —
 - (i) the amount notified by the Secretary under subsection (3);
 - (ii) such lesser amount as the Secretary may subsequently agree with the receiver;
 - (b) is liable, to the extent of the amount set aside, for the tax of the person who owned the asset; and
 - (c) notwithstanding any provision of this section, may pay any debt that has priority over the tax referred to in this section.
- (5) A receiver is personally liable to the extent of any amount required to be set aside under subsection (4) for the tax referred to in subsection (3) where, and to the extent that, the receiver fails to comply with the requirements of this section.

9E. Secretary has power to declare representative of a taxable person.

- (1) Where the Secretary considers it necessary or desirable to do so for the administration and enforcement of this Act, the Secretary may declare a person referred to in subsection (5),

to be a representative of a taxable person in the form and manner prescribed in regulations.

- (2) A person who is declared by the Secretary under subsection (1), to be the representative of a taxable person is deemed to be such representative and must perform the duties imposed by this Act on the taxable person, including the duty to apply for and renew a licence and pay taxes under this Act.
- (3) A representative is personally liable, in his representative capacity, for the payment of tax payable where the representative during the time the amount remains unpaid —
 - (a) alienates, charges, or disposes of any money received or accrued in respect of which the tax is payable;
 - (b) disposes of or parts with any fund or money belonging to the business whose representative he is, and from or out of which such tax could legally have been paid, which —
 - (i) is in the possession of the representative; or
 - (ii) comes to the representative after the tax becomes payable.
- (4) Notwithstanding any provision of this section, a taxable person must perform any duty imposed under this Act on a taxable person which a representative declared under this section has failed to perform.
- (5) In this section, a representative in relation to a business is —
 - (a) the financial controller or the designated officer of a company, other than a company in liquidation;
 - (b) a member of the committee of management of a firm;
 - (c) a person who is responsible to account for the receipt and payment of money or funds on behalf of a company or a firm, where paragraphs (a) and (b) do not apply;
 - (d) a person responsible for accounting for —
 - (i) the receipt and payment of money under the provisions of any law;
 - (ii) the receipt and payment of public funds;
 - (iii) the receipt and payment of funds voted by Parliament to a statutory body;
 - (e) a partner in a partnership;
 - (f) a trustee of a trust;

- (g) a liquidator of a company;
- (h) a person controlling the affairs of a resident or non-resident of The Bahamas, including a manager of a business carried on by the resident or non-resident of The Bahamas.

9F. Temporary closure of business premises.

- (1) Without prejudice to any other penalty which may be imposed for contravention of, or non-compliance with, any provision of this Act, the Secretary may apply to the Supreme Court for an order to close one or more business premises of a person who has repeatedly—
 - (a) failed to apply for, or renew, a licence;
 - (b) failed to pay tax when due under any provision of this Act; or
 - (c) contravened section 26.
- (2) The Secretary may, where the court grants an order for temporary closure pursuant to subsection (1), use such reasonable methods or secure such police assistance as may be necessary to execute the order in respect of the business premises specified in the order including the use of locks, fencing, boarding, or other appropriate methods.
- (3) For the purposes of subsection (1), a repeated contravention or non-compliance is one that is committed by a person within one year of a previous contravention or non-compliance.
- (4) Before the Secretary makes application to the court under subsection (1), he shall issue to the person a warning letter stating that —
 - (a) a specified contravention or non-compliance referred to in paragraphs (a) through (c) of subsection (1) of this section has been committed more than once within the preceding year; and
 - (b) a repetition of the specified contravention or non-compliance may result in closure of one or more of such person's business premises under this section.

9G. Death or insolvency of taxable person.

- (1) Where after the death of a taxable person, or the sequestration of the estate of that person, a business previously carried on by the deceased is carried on after his death, by or on behalf of his personal representative, executor

or administrator, that person shall be treated under this Act, as the taxable person in respect of the business.

- (2) Where a taxable person becomes insolvent or on the sequestration of his estate, a business previously carried on by him is continued after his insolvency by or on behalf of a liquidator, receiver, trustee, guardian or conservator, that person shall be treated under this Act, as the taxable person in respect of the business.

9H. Directors of unincorporated bodies.

For the purposes of this Act —

- (a) a liability or obligation imposed by or under this Act or the regulations on a firm carrying on a business as such, shall be imposed jointly and severally on each of the persons who are directors of the firm at the time a liability or obligation is imposed;
- (c) the existence of a firm, and a business carried on by such firm, is not affected by any change in the members or directors of the firm;
- (d) a document served on a firm is treated as served on the firm and the directors of the firm;
- (e) a contravention or non-compliance or an offence committed by a firm is treated as having been committed by the directors of the firm;
- (f) a director of a firm means —
 - (i) a partner of a partnership;
 - (ii) a participant in a joint venture;
 - (iii) a trustee of a trust; and
 - (iv) in any other case —
 - (aa) a person who holds office in the firm as a chairman, president, treasurer, secretary, or any other similar office;
 - (bb) where there is no director of the firm, a member of a committee responsible for management of the affairs of the firm; or
 - (cc) where (aa) or (bb) does not apply, a member of the firm.

9I. Mortgagee in possession, trustee.

- (1) A mortgagee in possession of land or other property—

- (a) previously mortgaged by a mortgagor who is a taxable person; and
- (b) receiving rents and profits from the land or other property; or
- (c) who carries on any other business in relation to the land or other property,

is the taxable person carrying on the business —

- (i) from the date the mortgagee took possession of the land or other property;
 - (ii) until such time as the mortgagee ceases to be in possession of the land or other property.
- (2) A person who is a trustee in more than one capacity, is, under this Act, a separate person in relation to each capacity.

9J. Liability of a director or similar officer of a company to pay tax.

- (1) Subject to subsection (2), a person is jointly and severally liable together with a company to pay tax payable by the company under this Act, together with interest and penalties in relation to such tax, where —
- (a) the company fails to pay an amount of tax payable by the company within the time prescribed; and
 - (b) such person was at the time the company was liable to pay the amount of tax a director or other similar officer of the company or acted, or purported to act, in such a capacity.
- (2) A person referred to in subsection (1)(b) is not liable, and may not be assessed for tax where the Secretary is satisfied that such person exercised the degree of care, diligence, and skill that a reasonably prudent person would have exercised in order to prevent the failure by the company to pay the amount of tax payable within the prescribed time.
- (3) The Secretary must serve on a person liable under subsection (1) a notice of assessment specifying the —
- (a) amount of the tax, together with any interest, fine or other penalty, assessed;
 - (b) time, place, and manner of objecting to the assessment.
- (4) A person served with a notice of assessment pursuant to subsection (3) may object to the decision under section 11.
- (5) The Secretary may not assess a person for an amount of tax payable by such person under this section where —

- (a) more than seven years have passed since the filing of the return relating to the amount concerned; or
 - (b) in the case where an assessment was made by the Secretary under section 10, more than seven years have passed since the date of the assessment relating to the amount.
- (6) A person who pays an amount of tax payable by a company under this section, in whole or in part, is entitled to contribution in respect of the amount so paid from the other persons who are liable to pay the amount under subsection (1).”.

9. Amendment of section 10 of the principal Act.

Section 10 of the principle Act is amended —

- (a) by the insertion immediately after subsection (4) of the following new subsection —

“(4A) The Secretary may at any time make, or cause to be made, an assessment of a person’s liability to pay tax where —

- (a) a person fails to comply with a notice under section 9B, or makes any disposition of money, property or arrangement that contradicts the purpose of such notice;
- (b) a receiver fails to comply with section 9D;
- (c) a representative commits an act under subsection (3) of section 9E;
- (d) subject to the provisions of section 9J, a company fails to pay the amount of tax payable by the company within the time prescribed and such person was, at the time the company was liable to pay the amount of tax, a director or other similar officer of the company or acted, or purported to act, in such a capacity;
- (e) where an amount is paid to, or applied to a liability of, a person as a credit or refund under this Act and the person is not entitled to the credit or refund, or the amount paid or applied exceeds the credit or refund to which the person is entitled.”;

- (b) by the insertion immediately after subsection (6) of the following new subsections —

“(7) The Secretary may, within three years after service of a notice of assessment —

- (a) amend an assessment, as the Secretary considers necessary; and

- (b) serve a written notice as prescribed of the amended assessment on the person assessed.
- (8) For the purposes of this Act —
 - (a) an assessment includes an amended assessment;
 - (b) tax charged under this Act includes an amount of tax assessed as due and payable by the Secretary in an assessment under this section.
- (9) The original notice or a copy certified by the Secretary, of a notice of assessment is receivable in any proceedings as conclusive evidence that —
 - (a) the assessment is a true assessment duly made; and
 - (b) except in appeal proceedings before the Tax Appeal Commission, the amount and all particulars in the notice are correct.
- (10) A notice of assessment or other document purported to be made, issued, or executed under this Act shall not be quashed, or deemed to be void or voidable, for want of form or by reason of mistake, defect or omission where —
 - (a) the assessment or other document is in substance and effect in conformity with this Act; and
 - (b) the person assessed or intended to be assessed, or affected by the document, is identified in the assessment or document.”.

10. Amendment of section 11 of the principal Act.

Section 11 of the principal Act is amended —

- (a) in subsection (1), by the deletion of the word “licensee” and the substitution of the word “person”;
- (b) by the insertion immediately after subsection (1) of the following new subsection —

“(1A) The Secretary may accept an objection after the time specified in subsection (1) where the Secretary is satisfied that there has been no unreasonable delay on the part of a person in lodging the objection due to —

 - (a) absence from The Bahamas;
 - (b) sickness; or
 - (c) other reasonable cause.”;
- (c) by the insertion immediately after subsection (2) of the following new subsection —

“(2A) An objection to an assessment that is based solely on an error of calculation in a business licence application filed with the Secretary does not suspend the objector’s obligation to pay the amount assessed.”;

(d) in subsection (3), by the deletion of the word “licensee” wherever it appears and the substitution of the word “objector”;

(e) in subsection (5), by the deletion of the words “a licensee” and the substitution of the words “the objector”;

(f) by the insertion immediately after subsection (5) of the following new subsection —

“(6) Notwithstanding the provisions of this section or section 5 of the Tax Appeal Commission Act, 2020 (*No. 3 of 2020*), a person shall not, in respect of an issue for which the right of objection or appeal has been waived in writing by the person —

(a) object to the Secretary; or

(b) appeal to the Tax Appeal Commission.”.

11. Amendment of section 12 of the principal Act.

Section 12 of the principal Act is amended by the insertion immediately after paragraph (d) of the following new paragraphs —

(e) on an application for an advance tax ruling under section 7A;

(f) to declare a person as a representative of a taxable person under section 9E.”.

12. Amendment of section 19 of the principal Act.

Section 19 of the principal Act is amended by the deletion of subsection (3).

13. Amendment of section 36 of the principal Act.

Section 36 of the principal Act is amended —

(a) by the deletion of paragraphs (g) and (h); and

(b) in paragraph (j), by the deletion of the word “financial”.

14. Insertion of new sections 33C and 33D into the principal Act.

The principal Act is amended by the insertion immediately after section 33B of the following new sections —

“33C. Electronic communications.

(1) The Secretary may establish an information processing system (in this section referred to as “the system”), including provision for any or all of the following operations —

- (a) filing of electronic communications with the Secretary;
 - (b) service or issue of electronic communications with the Secretary;
 - (c) payment or collection of tax by electronic means.
- (2) The filing, service or issuance of documents by the Secretary via an information processing system established by the Secretary shall be valid and effective for all purposes under this Act and an electronic communication that is made by means of the system is deemed immediately upon sending to have been received by the person to whom it has been sent unless the contrary is shown.
- (3) The filing, service or issuance of documents by electronic means other than via an information processing system established by the Secretary, shall be valid and effective for all purposes under this Act where provided in accordance with the Electronic Communications and Transactions Act (*Ch. 337A*).
- (4) In this section, “electronic”, “electronic communication”, “electronic means” and “information processing system” have the meanings assigned to them respectively under section 2 of the Electronic Communications and Transactions Act (*Ch. 337A*).

33D. Service of documents.

- (1) Where this Act requires a document to be served on or lodged with the Secretary, such document may be —
- (a) served by electronic means in accordance with section 33C;
 - (b) personally served on the Secretary or on any person duly authorised by the Secretary to accept service;
 - (c) left at the Secretary’s office; or
 - (d) forwarded to the Secretary’s office by post.
- (2) Where this Act requires a document to be served on any person other than the Secretary, such document may be served —
- (a) by electronic means in accordance with section 33C;
 - (b) by delivering it to the person on whom it is to be served;
 - (c) by leaving it at the usual or last known place of abode of that person;
 - (d) by sending it by post addressed to the person on whom it is to be served —

- (i) to the usual or last known place of abode, office or place or business of such person;
- (ii) to any post office box rented in the name of such person or employer of such person or known to the Secretary to be used as an address for correspondence by such person; or
- (iii) in care of the Post Office (for general delivery) —
 - (aa) in the case where such person is known to the Secretary to have a place of abode in New Providence; or
 - (bb) in the case where such person is known to the Secretary to have a place of abode in an Family Island at a district post office or subpost office in that Out Island;
- (e) in the case of a body corporate —
 - (i) by delivering it to an officer, employee, agent or other representative of the body corporate at its registered office or other place of business;
 - (ii) by sending it by post addressed to the secretary of that body corporate at any post office box rented in the name of that body corporate or known to the Secretary to be used as an address for correspondence by that body corporate, or at any post office box rented in the name of that body corporate' registered office.”.

15. Amendment of First Schedule to the principal Act.

The First Schedule of the principal Act is amended —

- (a) in Part I —
 - (i) in paragraph (3), by the deletion of the words “subject to paragraph (1A), a business licence tax for the businesses specified below” and the substitution of “a business licence tax for all businesses for which no special provision has been made under the First Schedule”;
 - (ii) in paragraph (4), by the deletion of the words “subject to paragraph (5A)”;
 - (iii) in paragraph (5), by the deletion of the words “subparagraphs (4) and (5A)” and the substitution of the words “paragraph (4)”;
 - (iv) by the deletion of paragraph (5A);

(b) by the insertion immediately after Part I of the following new Part

—
“PART II – FINANCIAL SERVICES ENTITIES TAXES

Where the business is a financial service entity, a tax of \$2,500 and for the financial services entities outlined below an additional tax as follows —

Type of Financial Service Entities	Annual Tax
Authorised Dealers	2.25% of total revenues net of interest expenses
Authorised Agents under the Bank and Trust Companies Regulations Act, 2020	\$10,000.00
Other Public Banks and Trust Companies	\$5,000.00
Non-bank Money Transmission Businesses (MTBs)	2.25% of turnover
Insurer with respect to their operations in the domestic market	2.25% of turnover
Fund administrators, investment managers, investment advisors and digital asset businesses with respect to their operations in the domestic market	2.25% of turnover
Moneylenders	2.25% of turnover”;

(c) in Part IV, by the deletion of the words “under section 21 of the Broadcasting Act (*Ch. 305*), a tax of 3% of turnover” and the substitution of the words “under the Communications Act (*Ch. 304*), a tax of 1.25% of turnover”.

16. Repeal of Fifth Schedule to the principal Act.

The Fifth Schedule to the principal Act is repealed.

17. Transitional.

- (1) A licensee who before the commencement of this Act had a financial year other than the calendar year shall —
- (a) on the expiry of its licence in force on the commencement date, file and submit its financial results, in a manner prescribed by the

Secretary, showing the turnover of the business for the period specified in column III of the Table in subsection (2); and

- (b) on or before the relevant date specified in column II of the Table in subsection (2) pay the pro-rated tax, calculated based on turnover, for the corresponding period specified in column III of the Table in subsection (2); and
- (c) at the end of the period specified in column IV of the Table in subsection (2), transition to the calendar year and comply with section 3(3) of the principal Act.

(2) For the purpose of this section, the Table below shall apply —

TABLE FOR TRANSITION PERIOD

Financial Year	Date Payable	Period for Pro-rated tax	Transition Year
1st April	30th June, 2023	1st April, 2022 – 31st December, 2022	1st April, 2023 – 31st December, 2023
1st July	31st September, 2022	1st July, 2021 – 31st December, 2021	1st July, 2022 – 31st December, 2022
1st September	31st December, 2022	1st September, 2021 – 31st December, 2021	1st September, 2022 – 31st December, 2022