Tax Street

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Tax Street

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Introduction

We are pleased to present the latest edition of Tax Street – our newsletter that covers all the key developments and updates in the realm of taxation in India and across the globe for the month of April 2021.

- The **'Focus Point'** Focus Point explores the importance of taxpayer's conduct in extended stay of demand beyond 365 days.
- Under the **'From the Judiciary'** section, we provide in brief, the key rulings on important cases, and our take on the same.
- Our **'Tax Talk'** provides key updates on the important tax-related news from India and across the globe.
- In the **'M&A Tax and Regulatory'** section we highlight the critical rulings and significant updates in the M&A tax and regulatory arena.
- Under **'Compliance Calendar'**, we list down the important due dates with regard to direct tax, transfer pricing and indirect tax in the month.

We hope you find our newsletter useful and we look forward to your feedback. You can write to us at taxstreet@nexdigm.com. We would be happy to hear your thoughts on what more can we include in our newsletter and incorporate your feedback in our future editions.

Warm regards,
The Nexdigm (SKP) Team

Focus Point

Extended stay of demand beyond 365 days-Taxpayer's conduct important

The Income Tax Statute in India requires the taxpayer to pay tax demand arising pursuant to an order passed by the Revenue Authority within the prescribed time under the Income-tax Act, 1961 (ITA). A non-payment of the appropriate tax demand could lead to interest, penalty exposure, and a consistent default could lead to Revenue Authority taking coercive action like attachment of bank account, property, etc. of the taxpayer.

If the taxpayer decides to adjudicate and file an appeal against the order passed by the Revenue Authority, it has a remedy under the ITA to apply for a stay of demand till the appeal is disposed of. The first appeal lies before the Commissioner of Income Tax (Appeals) [CIT(A)], and the second level of appeal lies with Income Tax Appellate Tribunal (ITAT or Tribunal).

The ITA provides for a procedure for applying for a stay of demand before the Tribunal, while an appeal is pending for adjudication before the Tribunal. Also, it provides power to the Tribunal to grant stay and limitation on the period to be covered by the stay. The present provisions in the statute provide for an initial stay of 182 days followed by an extension, with an aggregate stay period not exceeding 365 days, from the date of passing the initial stay order by the Tribunal and subject to the following conditions being satisfied:-

- Tribunal is satisfied with respect to the merits of the application (say, the financial hardship of the taxpayer, issue involved in the appeal, etc.);
- The taxpayer pays 20% of the demand raised or furnishes security for an equivalent amount;
- Delay in disposing of the appeal is not attributable to the taxpayer.

The provision further provides that the stay granted by the Tribunal will be automatically vacated if the appeal is not disposed of within the period of stay, irrespective of the fact that the delay in disposing of the appeal was not attributable to the taxpayer.

This has been the area of dispute between the taxpayers and the Revenue Authorities over the past few years. The taxpayer's main contention was that where the delay in disposing of the appeal was not attributable to themselves, it should not be subject to undue hardship, which results from the automatic vacation of the stay. In order to avoid recovery of the tax demand on the automatic vacation of the stay order, the taxpayer had to then approach the for stay, which adds to the unnecessary compliance cost and undue hardship.

The Apex Court of India has recently settled this issue[1] in favor of the taxpayers. The Apex court held as under:

- Present provisions, providing for the automatic vacation of stay of demand, for no fault of the taxpayer are discriminatory as it would treat the taxpayers who are intentionally delaying the appeal, equal with the taxpayers who are not responsible in any manner for the delay in disposal of the appeal;
- Provisions are arbitrary, for it would permit the Revenue Authorities to collect the demand, even if the delay in disposal of appeal is attributable to them;
- The intention of the legislature for enacting such provisions is to ensure early disposal of appeals, rather than being unreasonable to the taxpayers;
- The Apex Court also concurred with the judicial precedents, which held that such provisions curtail the Tribunal's power of stay, which flows from its basic power of deciding an appeal,i.e., when a Tribunal has the power to adjudicate an appeal, it also has the power to stay the demand. However, such power cannot be discretionary in nature and should be exercised with caution and as per the legal provisions. However, such legal provisions restrict the Tribunal in exercising its power of stay even in genuine cases, the provisions should be held to be constitutionally invalid.

Considering the above hardship caused to the taxpayers and the judicial precedents on the subject, the Apex Court ruled in favor of the taxpayers.

Our Comments

With the Apex Court ruling, the provisions relating to the automatic vacation of stay of demand in an appeal pending before the Tribunal would now be applicable, **only if the delay in disposal of an appeal before the Tribunal is on account of the taxpayer.** In other words, the Tribunal is empowered to extend the stay of demand, even beyond a period of 365 days, provided the conditions bulleted above are satisfied. This decision is a big relief to the taxpayers who have applied for a stay before the Tribunal.

In view of the above decision, the taxpayer would have to be mindful of its conduct during the appeal proceedings, i.e., timely filing of appeal documents/paperbook/evidence/attending hearings, avoid taking adjournments, etc. It becomes imperative for the taxpayers to substantiate that the delay in disposing of the appeal is not attributable to the taxpayer. Also, the taxpayers whose stay period is about to expire, or where the stay order is automatically vacated can take the benefit of this decision and apply/reapply for an extension of stay to the Tribunal.

1. DCIT vs Pepsi Foods Ltd. [Civil Appeal No. 1106 to 1139 of 2021 vide Judgment dated 06 April 2021]

From the Judiciary

Direct Tax

Can the Most Favored Nation(MFN) clause be invoked automatically to apply the lower withholding tax rate?

Concentrix Services Netherlands B.V Vs ITO (TDS) and Optum Global Solutions International BV Vs DCIT

W.P.(C) 9051/2020 and W.P.(C) 882/2021, CM Appl. 2302/2021

Facts

Concentrix Services Netherlands BV and Optum Global Solutions International BV (the taxpayers) had applied for a Lower Deduction Certificate (LDC) with the jurisdictional tax officer to receive dividend payments from its Indian counterpart. The taxpayers applied for 5% rate in light of the MFN clause provided in the India-Netherlands Double Tax Avoidance Agreement (DTAA). The taxpayers referred to India's tax treaties with Slovenia, Lithuania and Columbia for MFN as it provides for a lower withholding rate of 5% on dividend income as compared to 10% under India-Netherlands DTAA.

The Revenue Authorities denied the request and issued a LDC for 10% withholding tax.

The Revenue Authorities contended that the MFN's benefit could be provided only when the countries whose treaties are referred were members of the Organisation for Economic Co-operation and Development (OECD) at the time of signing India-Netherlands DTAA and their respective treaties with India. Slovenia, Lithuania and Columbia were not members of the OECD when India-Netherlands DTAA was executed. Furthermore, DTAAs were signed with Slovenia, Lithuania and Columbia before they became members of the OECD.

Also, the Revenue Authorities were of the view that where there is no notification for providing the benefit of lower withholding tax rate under treaties with Slovenia, Lithuania and Columbia, the benefit of a lower rate provided in these treaties cannot be extended to the Netherlands residents.

Held

Ruling in favor of the taxpayers, the Hon'ble Delhi High Court(HC) made the following observations.

- The Delhi HC affirmed the view expressed by the division bench of the same court in the case of Steria (India) Ltd, [(2016) 386 ITR 390 (Delhi)] that protocol forms an integral part of the Tax Treaty and that the government requires no separate notification.
- The protocol incorporates the principle of parity between the India-Netherlands Tax Treaty and the conventions executed thereafter between India and any OECD member nations. Accordingly, if India agrees to a lower or restricted rate or scope with a third country, which is an OECD member, such a lower rate can be applied to the India-Netherlands Tax Treaty.
- The Delhi HC also held that the third country (whose treaty is invoked to take benefit) should be an OECD member when a taxpayer intends to avail the benefit, irrespective of the fact whether such third country was an OECD member (or not) at the time of signing the Tax Treaty.
- Furthermore, the Delhi HC relied on the Supreme Court's judgment in the case of **Union of India and Anr. vs. Azadi Bachao Andolan and Another**, (2004) 10 SCC 1, to hold that while interpreting international treaties including Tax Treaties, the rules of interpretation that apply to domestic or municipal law need not be applied, as the international treaties, conventions and tax treaties are negotiated by diplomats and not necessarily by men instructed in the law. Therefore, their interpretation is liberated from the technical rules which govern the interpretation of domestic/municipal law.

Our Comments

This is a welcome decision for the Dutch residents deriving dividend income from India, as withholding taxes would be restricted to 5%. It would certainly reduce the undue hardship faced by non-residents while taking benefit of the MFN clause in their respective treaties where the language of the treaty is similar to the language of the India-Netherlands DTAA. The DTAA of India, with Sweden, France, Hungary, etc., has a language similar to the India-Netherlands.

However, it would be interesting to see if the benefit can be extended to treaties where the language of the MFN is not in line with India-Netherlands DTAA, e.g., Switzerland DTAA.

Can a non-resident carry forward capital losses even if the capital gains are exempt under the treaty governing the non-resident?

Goldman Sachs India Investments (Singapore) PTE Limited Vs. DCIT [TS-294-ITAT-2021(Mum)]

Facts

Goldman Sachs India Investments (Singapore) Pte Limited (the taxpayer) is a company incorporated in Singapore and registered with the SEBI. During the concerned financial year, the taxpayer had incurred Short Term Capital Loss (STCL). The taxpayer, in its return of income, carried forward such losses in light of the provisions of the ITA.

The Assessing Officer (AO) denied the carry forward of losses on the basis that the capital gains earned by the taxpayer are exempt under the provisions of the India-Singapore DTAA, thus the capital losses should be ignored.

Aggrieved by the order, the taxpayer filed an appeal before the Mumbai ITAT.

Held

On analyzing the contentions of both the parties, the Tribunal was of the opinion that during the concerned financial year, the taxpayer has elected to be governed by the beneficial provisions of the ITA. In any case, the Tax Treaty cannot be thrust upon a taxpayer simply because it's a tax resident of a country with which India has entered into a Tax Treaty or on account of AO's mere perception that the taxpayer may claim benefits under the Tax Treaty in subsequent years. In case the taxpayer, during one year, does not opt for the Tax Treaty, it would not preclude him from availing the benefits of the said treaty in the subsequent years.

The Tribunal's view was also supported by the Mumbai Tribunal's judgment in the case of the taxpayer's sister concern.

Our Comments

The Mumbai Tribunal has reiterated the principle that a tax treaty is not binding on the non-resident taxpayer, and the taxpayer is free to opt for the beneficial provisions provided under the ITA.

Whether investments made by a non-resident in India through remittance from abroad can be subject to tax under Section 68 and Section 69?

Iqbal Ismail Virani [TS-164-ITAT-2021(PAN)]

Facts

Iqbal Ismail Virani (taxpayer) is a non-resident Indian and is a citizen of the USA. He had acquired two properties in India, and the funds for purchase consideration were repatriated from Dubai. The AO called upon the taxpayer to explain the sources of money for investment. The taxpayer stated that the above investments were from the income from jewelry and hotel business carried out in the USA. It was further submitted that the credits in the bank account of Bank of Baroda, Dubai were out of sale proceeds of gold bars and maturity proceeds of the FDs held in the name of a company owned by the appellant and his wife in Dubai.

The taxpayer had also submitted the financial statement and copies of returns of income filed in the USA for the last two years.

The AO observed that the business in the earlier years was not making a profit and being dissatisfied with the taxpayer's response, the AO made additions under Section 68 and Section 69 of the Act on account of unexplained investment.

Aggrieved by the order, the taxpayer filed an appeal with the Tribunal.

Held

The ITAT granted relief to the assessee, citing the following observations:

The taxpayer provided explanations of the source of money and the lower authorities rejected the explanation merely based on conjectures, surmises and presumptions. It was held that the explanation offered in support of the sources of money for the acquisition of properties could not be rejected without giving any cogent reasons.

The taxpayer had been carrying the jewelry and hotel business in the USA for the last 30 years. Even if the taxpayer had incurred losses for the last two preceding years, it does not mean that he does not have funds for making remittances to India.

The ITAT ruled that the impugned addition cannot be sustained as investments were made from the money remitted by the taxpayer himself from his own account in Dubai. The appellant received money for the first time in Dubai, and the income, if any, had accrued at Dubai only. It does not represent any receipt or deemed receipt in India and is thus, beyond the scope of jurisdiction of the AO.

Our Comments

The Tribunal reaffirms the principle that in the absence of any allegations of the round tripping, no addition can be made under Section 68 and Section 69 of the Act in the hands of the non-resident on account of foreign remittance received in India.

Transfer Pricing

Recovery of Expenses – whether reimbursed on costs to costs or on mark-up?

Tata Coffee Limited – IT(TP)A Nos.568 & 729/Bang/2015 (AY 2010-11)

Facts

The taxpayer had incurred certain expenses to carry out due diligence for acquiring an overseas company. However, due to certain business reasons, the acquisition was shelved. Subsequently, an overseas Associated Enterprise (AE) acquired that overseas company. Hence the taxpayer raised a debit note for reimbursement of expenses incurred towards such due diligence. Initially, the taxpayer stated such recovery as 'refund of advance' and no mark-up was to be applied.

The Transfer Pricing Officer (TPO) alleged that income received from the AE was taxable and expenditure incurred was determined to be Nil. However, the Dispute Resolution Panel (DRP) held that the TPO was not right in making Transfer Pricing (TP) adjustment of the entire amount. It held that the adjustment should be restricted to mark-up and limited the adjustment to 10% only.

The taxpayer submitted that there is "no income" element in this transaction as it is a case of mere reimbursement of expenses. It was said that it had initially intended to acquire the company, thus it cannot be held that the expenses were incurred on behalf of AE.

The ITAT held that due to a change in the group's strategy, the same company was acquired by AE. The taxpayer is transferring the benefit of work done by it. Accordingly, in a normal course, a company would have charged a mark-up as its resources, infrastructure, skills, time, etc., were invested in the said activities.

It was unable to accept the contentions that this transaction itself would fall outside the scope of transfer pricing provisions in the absence of any income element. Accordingly, the adjustment was upheld. However, the matter was remanded to determine appropriate mark-up.

Our Comments

A refund of expenses cannot always be reimbursement of expenses. The nature of the parties' conduct and the situation is critical to determine whether mark-up is to be charged.

Should excess depreciation warrant a change in the PLI (absent specific guidance on comparability)?

Aerzen Machines(India) Pvt. Ltd. - IT(TP)A No. 111/AHD/2016 (AY 2011-12)

The taxpayer is engaged in the manufacture of machinery and components. The assessee had entered into certain international transactions – purchases, design charges, etc. It had determined the arm's length price (ALP) using the Cost Plus Method (CPM) and adopted Profit Before Depreciation, Interest and Tax (PBDIT) as the Profit Level Indicator (PLI).

The AO dissatisfied with the taxpayer's working rejected the same and adopted Transactional Net Margin (TNM) method as the Most Appropriate Method (MAM) and proposed an adjustment. The (CIT(A)) also upheld the view.

The taxpayer contended that PBDIT should have been taken as PLI while computing operating margin instead of PBIT because it was a new set-up. Thus, there was a huge difference in the depreciation amount claimed by the taxpayer, viz a viz claimed by the comparable companies.

The ITAT held

- If items such as capital employed, turnover is not comparable to the tested party for any reason, then the necessary adjustments must be made.
- The depreciation-to-turnover ratio of the taxpayer was 9.36%, whereas that of comparables was 2.08%
- It also rejected the CIT(A)'s argument of equating the amount of depreciation with the repair and maintenance expenses, being independent items of expenses as there is no guarantee that if the depreciation is higher then, the repair and maintenance expenses will be lower or vice versa.

Hence, the ITAT viewed that the PBDIT should have been taken as the appropriate PLI.

Our Comments

For the determination of ALP, a comparison needs to be made in terms of functions, capital employed, debt-equity ratio, turnover, risk, contractual terms, assets employed, etc. If any of the items are not comparable to the tested party for any reason, then the necessary adjustments are required to be made.

Indirect Tax

(i) Whether a writ petition challenging the orders of provisional attachment (under Section 83 of CGST Act) is maintainable under Article 226 of the Constitution before the High Court? and

(ii) If the answer to (i) is in the affirmative, whether the orders of provisional attachment constitute a valid exercise of power?

M/s Radha Krishan Industries vs. State of Himachal Pradesh & Ors. [2021 (4) TMI 837 - Supreme Court]

Facts

- A memo under Section 70 of GST law was issued to the appellant requiring it to appear and produce invoices for inward and outward supplies, copies of GST returns, etc.
- Later, a Show Cause Notice(SCN) was issued to Fujikawa Power, one of the customers of the appellant, for provisionally attaching an amount of INR 50 million due to the appellant – An order was then passed for provisional attachment of the receivable of INR 50 million.
- The Commissioner of State Taxes and Excise, Himachal Pradesh, delegated his powers under Section 83 to the Joint Commissioner (JC).
- The JC issued two orders of provisional attachment, attaching the receivables of the appellant from its customers, Fujikawa Power and M/s Deepak International.
- The order stated that the appellant was found to be involved in an ITC fraud of INR INR 50.3 million during FY 2017-18 and FY 2018-19.
- The appellant filed a representation and objections against the attachment and denied liability. However, by an order, the JC rejected the objections of the appellant.

Judgment

- The language of the statute indicates:
  - **First** - **Necessity** of the formation of opinion by the Commissioner;
  - **Second** - **Formation of opinion** before ordering a provisional attachment;
  - **Third** - Existence of opinion that it is necessary so to do for the purpose of **protecting the interest of the government revenue;**
  - **Fourth** - **Issuance of an order in writing** for the attachment of any property of the taxable person; and
  - **Fifth** - **Observance by the Commissioner** of the provisions contained in the rules in regard to the manner of attachment.
- Each component of the statute is integral to a valid exercise of power.
- Further, as per Rule 159(5), it is a mandatory requirement to furnish an opportunity of being heard to the person whose property is attached.
- It is not open to the Commissioner to hold a view that the only safeguard under sub-rule 5 is to submit an objection without an opportunity of a personal hearing.
- There has, hence, been a fundamental breach of the principles of natural justice.
- Sub-Rules 5 and 6 of Rule 159 do not expressly contemplate a situation in which the person can object on the ground that the attachment is in excess of the amount likely to be due, nor does it provide for a specific opportunity to the taxable person to offer any alternative form of security in lieu of the attachment. Such an opportunity must be read into the provision to allow fair working in practice.
- Furthermore, ex facie, the order passed by the JC does not indicate any basis for the formation of the opinion that provisional attachment was necessary to protect the interest of the government revenue.
- Given that there were no pending recovery proceedings against the appellant (order of provisional attachment was passed before initiation of proceedings under Section 74), the mere fact that proceedings under Section 74 had concluded against GM Powertech would not satisfy the requirements of Section 83.
- The order of provisional attachment was accordingly set aside.

Our Comments

In a crucial judgment, the Supreme Court has delved into various aspects involved in the interpretation of a taxation statute, especially in the context of stringent provisions such as provisional attachment under the GST law.

Given the wider ambit of Section 83 after amendment made in Finance Act, 2021, this judgment can assist taxpayers to get relief in matters of provisional attachment by the department.

Can the applicant claim ITC in relation to debit notes issued by the supplier in the current financial year,i.e., 2020-21, towards the transactions for the period 2018-19?

M/s. I-Tech Plast India Pvt. Ltd., [2021 (4) TMI 558 - AAR, Gujarat]

Facts and applicant's contentions

- The applicant submitted that a supplier sought to issue debit notes concerning transactions entered into and goods supplied to it during the period 2018-19.
- The proposed debit notes were in relation to price variation as the supplier had mistakenly charged a low price, and the said error was noticed by the supplier recently.
- The applicant further submitted that amendment in Section 16(4) of the CGST Act had done away with the requirement of correlating the invoice to the debit note.
- The earlier words, "invoice relating to such debit note," were restricting the ITC to a particular time limit which otherwise was a legitimate right of an assessee.
- This anomaly was detected and recognized by the government and vide the Finance Act, 2020, the same had been corrected.

Based on the above, the Authority for Advance Rulings (AAR) ruled as follows:

- The amendment to Section 16(4) is not such a drastic or far-reaching change as interpreted by the applicant.
- Just because the words "invoice relating to such," connected to "debit note pertains," were omitted does not mean that the relation of the debit note with the invoice has been cut-off or that omission of the above words mean that the year in which the debit note was issued would be considered as the 'financial year' as per amended Section 16(4).
- The debit note is not an independent document or an invoice in itself. It's connected to an invoice as it's issued in pursuance of a change in the value of an invoice. It, therefore, follows that the financial year to which a debit note pertains is invariably the financial year in which the original invoice (related to the said debit note) was issued.
- Therefore, the applicant cannot claim ITC in relation to debit notes issued by the supplier in the current financial year, i.e., 2020-21, towards the transactions for the period 2018-19.

Our Comments

While the AAR has ruled that the amendment does not result in any change in the time limit for availing ITC in relation to a debit note, it has failed to provide its understanding of the purpose of the amendment.

In fact, the Explanatory Notes to the Finance Bill 2020 clearly provide that "Clause 118 of the Bill seeks to amend sub-section (4) of Section 16 of the Central Goods and Services Tax Act so as to delink the date of issuance of debit note from the date of issuance of the underlying invoice for purposes of availing ITC."

This ruling showcases the view and interpretation adopted by the GST Department and could potentially lead to litigation in similar cases.

Tax Talk

Indian Developments

Direct Tax

USTR proposes tariffs against Indian goods in retaliation to a 2% equalization levy

[Excerpts from Business Standard, 27 March 2021]

The US administration has proposed an increase in the tariff rate on the import of goods from India in retaliation to the equalization levy. Last year, the US Trade Representative (USTR) concluded that India's equalization levy was "actionable" under Section 301 of the Trade Act for being unreasonable, burdensome, and discriminatory against American companies and inconsistent with international tax principles. The proposed charge includes a 25% ad valorem-based tariff on goods like basmati rice, seafood, jewelry, bamboo, semi-precious stones and pearls.

The due date for linking PAN Card-Aadhaar card has been extended till 30 June 2021

[Excerpts from Financial Express, 31 March 2021]

In the wake of increasing COVID-19 cases, and difficulties arising due to the same, the Central Government has extended the due date for linking the Aadhaar number with PAN from 31 March 2021 to 30 June 2021.

Low tax jurisdictions preferred for routing outward FDI (overseas direct investment) by Indian businesses

[Excerpts from Businessline, 19 April 2021]

FY 2021 has seen a cut-back in investments by Indian investors. Although, investments in low tax jurisdictions have remained at the top, especially in countries like Singapore, with investments up to USD 3.4 billion under Overseas Direct Investments (ODIs). India is followed by the USA with approximate investments of USD 2.42 billion. Jurisdictions such as the Netherlands, Mauritius, Bermuda and the British Virgin Islands are among the top 10 investment destinations for Indian investors. The respective DTAAs of India with these investee countries have preferential provision, allowing lower or no taxation in India as well.

The Central Board of Direct Taxes (CBDT) further extends due dates to 30 June 2021

[Excerpts from Livemint, 24 April 2021]

In a recent statement, the CBDT stated the due dates, which were earlier extended till 30 April 2021 have extended to 30 June 2021. This includes an extension of due dates for making payments under the Vivad se Vishwas direct tax dispute settlement scheme without the additional tax of 10%, completion of assessment, re-assessment and re-computation of income as well as issuing notice under Section 148 (i.e., notice for re-assessment) of the ITA

Transfer Pricing

Relaxation in Master File and Country by Country Reporting (CbCR) Rules

The CBDT, vide notification dated 5 April 2021[2], provided the following amendments made in Rule 10DA and Rule 10DB of the Income Tax Rules, 1962:

Rule 10DA(4) - Where there are more than one constituent entities resident in India of an international group, Form No. 3CEAA may be furnished by any one of the constituent entities.

Amendment - Master File designation extended to non-resident constituent entities.

International groups that have multiple constituent entities filing their tax returns in India (resident and non-resident) are required to comply with the Master File compliances under rule 10DA. Formerly, all resident constituent entities in India of the same international group could designate any one of the resident constituent entities to abide by such compliances by furnishing Form No. 3CEAB. This restricted the designation for and by only resident constituent entities. Thus, any non-resident constituent entities were filing their tax returns in India were required to comply with these provisions separately. This process has been done away with to ease the compliance burden.

Rule 10DB(6) - For the purposes of sub-section (7) of Section 286, the total consolidated group revenue of the international group shall be-

Amendment - Thresholds revised for CbCR applicability.

International groups that have a consolidated group revenue exceeding a certain threshold are required to comply with the CbC Regulations under rule 10DB. The amendment replaces the threshold from 'INR 55 billion to INR 64 billion.'

This would help align the CbCR filing threshold in India with global requirements.

These amendments are applicable on or after 1 April 2021 for Financial Year ending 31 March 2021 relevant to Assessment Year 2021-22.

This is a welcome move from the CBDT, as it will ease out the compliance-related processes in India and remove inconsistencies in global compliance requirements. This move is aligned with the Indian Government's continuing efforts to promote ease of doing business in India.

Extension in Timelines

Considering the hassles and hardships faced by the taxpayers, the Government has once again extended certain due dates:

Former Due Date	Extended Due Date	Applicable for
30 April 2021	30 June 2021[3]	• Passing an order for assessment or re-assessment - including an order under u/s 144C(13) • Issuance of notice u/s 148
1 April 2021 or thereafter	Up to 31 May 2021[4]	• Appeal to Commissioner (Appeals) • Objections to the Dispute Resolution Panel • Income Tax Return in response to notice u/s 148 • Filing of belated tax return u/s 139(4) and revised return u/s 139(5)
By 30 April 2021	Up to 31 May 2021[4]	• Payment of tax deducted u/s 194-IA, 194-IB and 194 M and filing of challan-cum statement for such tax deducted • Statement in Form No. 61 containing particulars of declarations received in Form No. 60

2. Notification No. 31/2021 dated 5 April 2021 – Click Here
3. Notification No. 38/2021 dated 27 April 2021 – Click Here
4. Circular No. 8/2021 dated 30 April 2021 – Click Here

Indirect Tax

Real-time report on vehicles moving without e-way bills

[with excerpts from The Hindu]

E-way bill is mandatory under the GST law for transportation of goods valued over INR 50,000 (INR 1 lakh in certain States). The government is now planning to introduce real-time analysis reports on RFID to assist the GST officers in reducing tax evasion. The government is also working on a real-time report on vehicles moving without e-way bills for a few selected toll plazas to help the officers intercept vehicles that do not have e-way bills.

Customs Duty and Health Cess exemption on import of oxygen, oxygen related equipment and COVID-19 vaccines

[Notification No. 28/2021-Customs dated 24 April 2021]

In view of the COVID-19 pandemic, the government has exempted Customs Duty and Health Cess on import of critical medical items such as oxygen, oxygen-related equipment and COVID-19 vaccines, etc. These exemptions shall remain in force up to 31 July 2021.

Tax Talk

Global Developments

Direct Tax

Greece and Hungary deposit MLI ratification instrument

[Excerpts from OECD, 30 March 2021]

Greece and Hungary have deposited their instrument of ratification for the Multilateral Convention to Implement (MLI) Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (BEPS). The effective date of MLI for these two countries shall be 1 July 2021.

Tax on Big Tech in the federal budget will bring in USD 3.4 billion

[Excerpts from National Post, 19 April 2021]

The Liberal government will target Big Tech with a USD 3.4-billion digital services tax, despite some experts warning that such a move carries the risk of retaliatory tariffs from the United States.

The federal budget confirmed that the government will go ahead with the tax, which is aimed at large companies that operate online marketplaces, social media platforms and earn revenue from online advertising. That category would include Amazon, Google and Facebook, as well as Uber and Airbnb, if they also meet minimum revenue criteria.

The 3% tax will come into effect from 1 January 2022 and will apply to large businesses with gross revenues of more than USD 1.13 billion, and USD 20 million in 'in-scope revenue associated with Canadian users.' The government expects to collect USD 3.4 billion over five years.

The budget also aims to boost Canada's leadership in genomics, or the study of genes and their functions, with a five-year project. "Canada was an early mover in advancing genomics science and is now a global leader in the field. A national approach to support genomics research can lead to breakthroughs that have real world applications," the budget said.

Joe Biden to propose tax hikes, USD 80 billion for audits of the rich

[Excerpts from Business Standard, 28 April 2021]

According to a person familiar with his proposal, President Joe Biden will propose a large-scale tax increase and give billions more to the Internal Revenue Service (IRS) to ensure that rich individuals and large corporations are paying all they owe.

The plan will include a top individual tax rate of 39.6% for those making at least USD 400,000 and will end an inheritance tax break on capital gains known as 'step-up in basis,' the person said. The proposal will include USD 80 billion to boost the IRS's audit capabilities over the next decade for wealthy individuals and corporations, a change that could generate USD 700 billion in revenue, according to the person.

The measures will be key elements to offset the cost of Biden's 'American Families Plan' that he's set to unveil in a speech to Congress on Wednesday. The plan, estimated to cost about USD 1.8 trillion, is expected to include funding for paid leave, childcare and education, funded through tax increases on the rich.

Spending billions more on audits is intended to reverse a multi-year trend of falling audit rates at the IRS. Commissioner Chuck Rettig told a congressional panel this month that as much as USD 1 trillion in taxes may go uncollected each year. A pot of USD 80 billion over a decade specifically for IRS enforcement, which averages to USD 8 billion in additional funding per year, would be a significant increase to the IRS, which has an annual budget for the entire agency of about USD 11.9 billion for the fiscal year 2021.

France, Germany support USA's 21% tax plan for corporations

[Excerpts from The Hindustan Times, 27 April 2021]

France and Germany support the USA's proposal of a 21% minimum tax on multinational companies, French Finance Minister Bruno Le Maire and his German counterpart Olaf Scholz told Le Figaro and Die Zeit in a joint interview released on Tuesday. "If the Biden administration proposes a 21% rate and there is consensus, it would be acceptable for us," Le Maire is quoted as saying.

U.S. President Joe Biden's administration has proposed combating corporate tax-reduction strategies with a global minimum rate of 21%, and a system for ensuring that the world's 100 or so biggest companies pay more in places they actually do business. While the broad proposal has received widespread support, after years of talks hosted, the OECD tried to reach a global deal, the precise tax rate could still be a sticking point.

Transfer Pricing

Singapore: Issued special transfer pricing guidelines on centralized activities in multinational enterprise groups[6]

The Inland Revenue Authority of Singapore (IRAS) has issued special transfer pricing guidelines on centralized activities in multinational enterprise groups. Many leading companies choose Singapore to be their headquarter to deepen their presence in Asia and centralize key decision-making, management and coordination, build customer insights and develop product and services strategies for local markets. Even Singapore-based service providers have deepened capabilities and broadened their networks to support the business, innovation and talent needs of such headquarters. While the guidelines are to be read with the e-Tax guide on Transfer Pricing Guidelines (Fifth Edition), certain keys areas of focus are:

- centralized activities and their importance in Singapore to a MNE group
- analysis of activities taken place and appropriate transfer pricing methods used.

The Guidelines acknowledge that every headquarter is different and each headquarter has to be considered on its own facts and circumstances.

- On an overall basis, the total remuneration for the headquarter should always be commensurate with its functions, assets and risks profile.
- Any of the five methods set out in the IRAS TP Guidelines, any other more appropriate methods or a combination of various methods can be used. The Comparable Uncontrolled Price (CUP) can be appropriate only if a comparable transaction is found in a case where headquarter acts as a principal in distribution, manufacturing or research and development. In the case of contract manufacturers and research and development service providers, these would be tested by using Cost Plus Method (CPM) or Transactional Net Margin Method(TNMM). Whereas in the case of distributors, Resale Price Method or TNMM would be tested using sales as the appropriate base.
- Preparation of transfer pricing documentation would also be liable to headquarters. (where related party transaction meets the conditions specified).

Maldives: Publishes Advance Pricing Agreement (APA) regulations[7]

Maldives Inland Revenue Authority (MIRA) published APA regulations (Regulation Number 2021/R-42) that set out the procedure to be followed to enter into an APA, introduces a rollback provision, and imposes an annual compliance report filing requirement. Certain Keys aspects of these regulations are as follows:-

- Application Process is in three phases – (i) a pre-filing consultation is required, through which the scope of the arrangement is identified and the controlled transaction in question is understood, (ii) a formal application requesting an APA can be lodged following the pre-filing consultation and then the application is passed through for evaluation, (iii) Once the parties have successfully entered into an APA, an annual compliance report will be filed along with the income tax return.
- Even if the APA application process is expected to be time-consuming, no time frame is provided within which the tax administration completes the process.

5. Click Here for the e-Tax Guide issued by the Inland Revenue Authority of Singapore
6. Click Here for the APA Regulations published by the Maldives Inland Revenue Authority

- The rollback provision: In permitting a rollback, the regulation merely states that the tax administration will look into the APA duration of participating jurisdictions, investigate the surrounding circumstances of the transaction in question, seek whether a tax audit or investigation is being carried out, and determine whether any legal actions are being taken in relation to the transaction in question. The detailed guidelines on the applicability and limitations of the rollback provision are still awaited.
- The regulation includes provisions on possible revisions and/or cancellation of the arrangement for consideration of uncontrolled economic circumstances and possibilities of significant changes to business operations.

Greek: General guidelines in light of COVID-19 for intra-group transactions[8]

Greek Independent Authority for Public Revenue (IAPR) provides guidance on intra-group issues impacted by the COVID-19 crisis, based on the OECD's guidance. The keys areas of importance are summarized below:-

Comparability Analysis

- Details on the pandemic's impact on the controlled transactions can be drawn from a) review change in volume of sales, distribution of channels b) analyzing the cost and profit margins c) comparison of an industry that has affected the sale, cost and profitability;
- Comparability analysis based on information from prior financial crises is not recommended since the COVID-19 pandemic effect on the economic environment is unique;
- The application of more than one method can be more useful, provided it is required;
- Appropriate to consider loss-making companies in the comparable set.

Losses and cost due to COVID-19

- Examine whether a company is taking consistent positions on the allocation of functions and risks, before and after the pandemic;
- In response to the pandemic emergency, independent parties could seek to renegotiate certain terms in their existing agreements;
- For extraordinary costs incurred due to the pandemic, the circular follows the rationale of the OECD guidance regarding the conditions that must be met and the circumstances that must be considered for the costs to be considered exceptional and allocated to the cost basis of each related entity involved.

Advance Pricing Agreements (APAs)

- The pandemic's economic impact cannot be a factor for the revocation of APAs.
- The guidance encourages taxpayers to revise APA applications or some terms — which are already submitted and are under negotiation.
- The taxpayers should also consider submitting separate applications for the pandemic period and the subsequent period to cover the entire period, adding a clause permitting annual amendments to the arrangement.

Indirect Tax

Florida online sales tax bill

Florida Governor Ron DeSantis has signed a bill that requires out-of-state online retailers to collect sales tax on purchases made from a Florida address. Previously, the law required sales tax to be paid to the state by the purchaser. Now, this burden has been shifted to out-of-state retailers/online marketplaces.

UK VAT deferral new payment scheme

An announcement by Her Majesty's Revenue and Customs (HRMC) said that businesses who deferred VAT payments in the previous year between March to June 2020 under the VAT Payment Deferral Scheme could join the online VAT Deferral New Payment Scheme to pay in equal consecutive monthly installments from March 2021, interest-free. Businesses will need to opt-in to the VAT Deferral New Payment Scheme through the online services, which closes on 21 June 2021. The payments can be spread across the months depending on when the scheme is joined, i.e., 10 installments will be available if the scheme is joined by 21 April 2021, 9 installments when joined by 19 May 2021, and 8 installments if joined by 21 June 2021.

7. Click Here for the circular issued by the Greek Independent Authority for Public Revenue

Merger & Acquisition Tax and Regulatory Updates

Taxation Updates

From the Judiciary

Ahmedabad ITAT: Sec. 56(2)(viib) held not applicable to issue of shares on amalgamation

Citation: M/s. Ozone India Ltd. (I.T.A. Nos. 2081/Ahd/2018)

M/s. Kalavir Estate Pvt. Ltd. (KEPL) amalgamated with Ozone India Ltd. (the assessee) under a scheme of amalgamation approved by the High Court of Gujarat effective from 1 April 2012. Pursuant to the amalgamation, the assessee took over all the assets and liabilities of the KEPL (net assets were worth ~INR 540 million). In consideration, the assessee issued 300 shares for each share held by the shareholders of KEPL, amounting to INR 150 million.

The excess of net assets over consideration was credited to capital reserve by the assessee. The tax authorities considered the same as income liable to tax under Section 56(2)(viib) of the Act being excess of the consideration received on the issue of shares in the course of amalgamation.

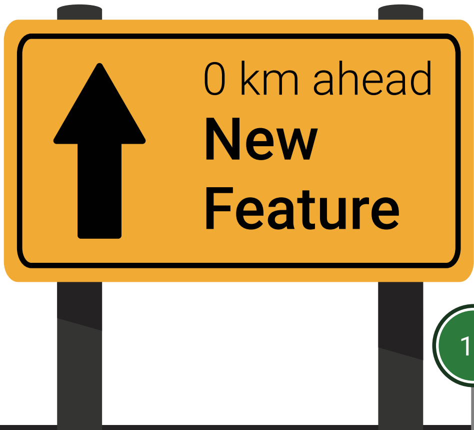
The ITAT ruled out the applicability of Section 56(2)(viib) in transactions like amalgamations observing as under:

- The intent of the provision was to deter the generation and use of unaccounted money.
- The Budget Memorandum to Finance Bill, 2012 and CBDT Circular 3/2012 indicates that the legislative intent was to cover the cases of the closely held company who receive a disproportionate amount on the issue of shares which over and above the face value of the share by way of share-premium.
- In the scheme of amalgamation, consideration is paid by the amalgamated company in the form of issue of share capital rather than consideration being received by the assessee as understood by the tax authorities. The persons to whom shares have been allotted have not paid anything for the allotment of shares. The shares have been allotted in consideration of their shareholding in the amalgamating company.
- The SC ruling in Mother India Refrigeration has held that deeming fictions are limited to the underlying purpose and cannot be extended beyond their legitimate field.
- In cases of amalgamation, there is a tripartite agreement between the amalgamated co., amalgamating co and shareholders of amalgamating co. and such agreements are not contemplated in the deeming clause in question;

In view of the above, the Ahmedabad ITAT held that issue of shares at face value by amalgamated co. to shareholders of amalgamating co. in pursuance to the scheme of amalgamation does not fall under Section 56(2)(viib) of the ITA;

Our Comments

The ruling clearly reflects the unintended ambiguity caused by the provision and thus unsettling the settled. Deeming fiction must be construed strictly and cannot be extended beyond its purpose/intent.



Mumbai ITAT - Section 56(2)(viib) held not to be applicable on advance received, should apply at the time of allotment of shares

Citation: Impact Retail Tech Fund Pvt. Ltd [TS-258-ITAT-2021(Mum)]

Impact Retail Tech Fund Pvt. Ltd. (assessee) revalued its investment in its wholly-owned subsidiary on account of the huge losses incurred by the subsidiary in its business. The assessee created a provision of INR 2.8379 billion on revaluation and its net worth became negative. In order to improve the financial position of the assessee and the subsidiary, the holding company of the assessee provided financial assistance of INR 1.5926 billion in the form of a loan to the assessee in A.Y. 2012-13. During the year,i.e., A.Y. 2013-14, the assessee re-classified the said loan as an advance towards share capital and received a further advance towards share capital of INR 1.54 billion. The AO invoked the provisions of Section 56(2)(viib) and held that the advance received by the assessee was in excess of the fair market value of the shares as on the date of receipt of advance.

The Tribunal ruled out the applicability of Section 56(2)(viib) by observing as under:

- While it is agreed that no prudent investor will invest more than fair market value, but a prudent businessman will invest in order to safeguard the investment in the subsidiary or revive it.
- The intent behind introducing the provision by the legislature is to curb the practice of generation and circulation of unaccounted money. In the current case, no such event is brought on record.
- Receipt of advances is a liability and will never take the character of the ownership until it is converted into share capital. The event of allotment will change the color of funds received by the assessee from liability to ownership. Thus, the provisions of Section 56(2)(viib) are attracted only in the year of allotment of shares, i.e., subsequent year.
- If Revenue's contention is accepted, any fund received by the sick or capital eroded subsidiary companies which will be more than the fair market price of the shares, for expansion or revival, shall attract the deeming provisions of Section 56(2)(viib). The intent of the legislature does not appear to tax such legitimate investments.

Our Comments

A landmark decision by the Mumbai Tribunal holding that Section 56(2)(viib) has limited applicability to cases of money laundering of unaccounted income. The Tribunal has reiterated the principle that deeming fictions should not be extended beyond their legitimate field.

Madras High Court: Allows depreciation on non-compete fees taken over in the course of amalgamation, deletes addition made u/s. 28 of reserve arising on amalgamation

Citation: Areva T & D India Ltd [TS-231-HC-2021(MAD)]

Areva T&D India Ltd (assessee) had taken over businesses of three sister concerns under a scheme of amalgamation. The assessee credited the excess of net asset value over the purchase consideration paid to the amalgamating companies to its general reserve. The AO treated such excess as business income of the assessee taxable under Section 28(1)(iv) of the Act.

Furthermore, the AO also disallowed the claim of depreciation on 'non compete fee,' which was claimed by the assessee on an asset taken over from one of its sister concerns in the course of amalgamation. The AO rejected the claim holding that the same was not a business or commercial right under Section 32 of the Act.

On appeal, the CIT(A) and ITAT ruled in favor of the assessee. Aggrieved, the Revenue appealed before the HC, which dismissed Revenue's appeal, with key observations and findings as under:

Addition w.r.t excess of net asset value over consideration, credited to reserves:

- The Supreme Court, in the case of Mahindra & Mahindra (404 ITR 1) held that for applicability of Section 28(1)(iv) the income must arise from the business or profession. The assessee was not in the business of amalgamation, hence, Section 28(iv) cannot be made applicable.
- Furthermore, the coordinate bench in the case of Stads Limited (373 ITR 313) had held that provisions of Section 28(1)(iv) make it clear that the amount reflected in the balance sheet as amalgamation reserve under the head 'reserves and surplus' could not be treated as a benefit or perquisite.
- The Revenue's reliance on the case of Aries Advertising (125 Taxman 969) was distinguished on facts as in the said case, the amounts, which were transferred to the company represented various credits and deposits and remained outstanding for a long time for recovery and unclaimed. The amounts were then transferred to the general reserve. Whereas in the present case, the amount transferred to general reserve is the excess of net book value over purchase consideration.
- The HC thus ruled in favor of the assessee.

In context of depreciation on non-compete fee:

- The Revenue placed reliance on the case of Sharp Business System (27 taxmann.com 50), where the Delhi HC had laid that the rights contemplated in Section 32 of the Act require an element of exclusivity whereby the owner has an advantage against the world at large. It was observed that the coordinate bench in the case of Asianet Communications (257 Taxman 473), after considering the said ruling, categorically expressed disagreement with the reasoning provided by the Hon'ble division bench in the case of Sharp Business Systems, holding that the test laid down by the Apex Court in the case of Empire Jute was not fulfilled.
- It was also observed that in the past years, the AO and CIT(A) allowed depreciation to the assessee's sister concern on the non-compete fee. Therefore, it was held that the AO was bound to be consistent with the earlier approach, and depreciation shall be allowed.
- In the present appeal, the Tribunal had granted the relief placing reliance on the jurisdiction HC ruling in the case of Pentasoft Technologies (41 taxmann.com 120), holding that non-compete fee is in the nature of a commercial right.
- It was also held that the case of Sharp Business System was distinguishable on facts and hence the Tribunal rightly allowed the reliance to the assessee.

Our Comments

The decision retouches upon the highly litigated issue of depreciation on non-compete fees and reapproves of the deductibility. The tax authorities' approach for taxing the excess of the net book value of assets over consideration as business income is clearly a case of unwarranted litigation!

Mumbai ITAT grants stay on furnishing securities worth 20% of the demand raised by tax authorities by invoking deemed dividend provisions on the demerger leg of the composite scheme of arrangement

Citiation: Grasim Industries Limited [TS-253-ITAT-2021(Mum)]

The assessee, Grasim Industries Ltd., had entered into a composite scheme of arrangement facilitating its merger of Aditya Birla Nuvo Ltd (ABNL), and thereafter, the demerger of the financial services business into Aditya Birla Capital Limited (ABCL). The NCLT approved this composite scheme of arrangement. Prior to this merger, ABCL was a subsidiary of ABNL, but as ABNL itself merged into the assessee company, ABCL became a subsidiary of the assessee company. The AO observed that the demerger is not in accordance with Section 2(19AA) and held that ABCL merely transferred INR 920 million shares to the assessee under the guise of consideration for the combination of assets and liabilities with a net book value of INR 17.21 billion. He held that the consideration paid is taxable as deemed dividend and the assessee had a liability to discharge Dividend Distribution Tax (DDT). While the assessee's case is pending before the Tribunal, it filed an appeal before the Tribunal for seeking a stay on recovery proceedings.

Considering that such a huge cash outgo can cripple the business in the current pandemic situation, the Tribunal directed the assessee to submit securities worth 20% of the demand of INR 37.8634 billion as determined by the CIT(A). The Tribunal, going a step ahead, has recorded the below critical issues to be considered while deciding the matter:

- It cannot be concluded that the demerger scheme does not constitute, directly or indirectly, distribution by a company of accumulated profits, and if such distribution entails the release by the company to its shareholders of all or any part of the assets of the company.
- A call will also have to be taken whether the shares allotted to the assessee's shareholders must come 'out of' the accumulated profits, or as long as the distribution is 'of' accumulated profits directly or indirectly, the foundational requirements of Section 2(22)(a) will suffice.
- Whether it can be open to the Income Tax authorities to rewrite the demerger scheme approved by the NCLT- particularly when the income tax authorities did not question the same when they were provided of an opportunity to object to the same.

Our Comments

While the ITAT has granted the stay on demand against the deposition of securities by the assessee, the true fate of the case is the most awaited. It needs to be seen how the courts view the term 'business activity' or 'undertaking' in the context of demerger transactions that enjoy tax neutrality.

Regulatory Updates

Company Law Corner

The Ministry of Corporate Affairs (MCA)'s, circular on clarification for spending CSR funds for setting up makeshift hospitals and temporary COVID-19 care facilities

MCA vide Circular No. 05/2021 dated 22 April 2021 has clarified that spending of CSR funds for 'setting up makeshift hospitals and temporary COVID-19 Care facilities' is an eligible CSR activity under item nos. (i) and (xii) of Schedule VII of the Companies Act 2013 relating to healthcare promotion, including preventive healthcare and, disaster management respectively.

Our Comments

The clarification would pave the way in augmenting resources in the prevailing COVID-19 situation.

MCA issues the Companies (Accounts) Amendment Rules, 2021 and the Companies (Accounts) Second Amendment Rules, 2021 and Companies (Audit and Auditors) Amendment Rules, 2021 and The Companies (Audit and Auditors) Second Amendment Rules, 2021

The MCA, vide a notification dated 1 April 2021, has made a further amendment to The Companies (Accounts) Rules, 2014, regarding the exercise of the powers conferred by Section 134 read with Section 469 of Companies Act, 2013. These new rules may be called the Companies (Accounts) Second Amendment Rules, 2021.

As per the Amendment, the MCA has now deferred the implementation of mandatory use of accounting software featuring the capability of an audit trail to Financial Year commencing from 1 April 2022, i.e., (Beginning from Financial Year 2022-23).

Previously, the implementation of such accounting software was mandatory from Financial Year 2021-22. The above amendment shall come into force with effect from 1 April 2021.

In line with the above, MCA also vide its notifications dated 24 March 2021 has inter alia prescribed use of software directing mandatory use of audit trails and made the same applicable with effect from 1 April 2021. Now vide notification dated 1 April 2021, prescribed the Companies (Audit and Auditors) Second Amendment Rules, 2021 has deferred use of software for audit trails which shall now be applicable from 1 April 2022.

Our Comments

The deferment of the date of implementation gives sufficient time to corporates to be ready for proposed changes, especially in view of the COVID-19 situation.

External Commercial Borrowings (ECB)

External Commercial Borrowings (ECB) Policy – Relaxation in the period of parking of unutilized ECB proceeds in term deposits

RBI vide Circular No. RBI/2021-22/16 dated 7 April 2021 has allowed unutilized ECB proceeds drawn down on or before 1 March 2020 to be parked in term deposits with AD Category-I banks in India prospectively for an additional period up to 1 March 2022.

Our Comments

ECB borrowers are allowed to park ECB proceeds in term deposits with AD Category-I banks in India for a maximum period of 12 months cumulatively. Based on requests from stakeholders, including industry associations, and to provide relief to the ECB borrowers affected by the COVID-19 pandemic, RBI relaxed the above stipulation as a one-time measure for ECB proceeds drawn down on or before 1 March 2020, for an additional period up to 1 March 2022.

Securities Law And Compliances Corner

Amendment in Securities and Exchange Board of India Act, 1992 (SEBI Act)

The SEBI Act has been amended on 1 April 2021 in light of the Finance Act, 2021. The Board has inserted Section 12(1C) in the SEBI Act, making it compulsory to obtain registration by every person who acts as a sponsor or cause to be sponsor or cause to be carried on the activity of an alternative investment fund or a business trust as defined in clause (13A) of section 2 of the ITA, 1961.

A sponsor is a person(s) who set up the Alternative Investment Fund(AIF) and includes promoter in case of a company and designated partner in case of a limited liability partnership.

Our Comments

The said amendment would increase the control on such sponsors who intend to carry on the business of AIF, Real Estate Investments Trusts or Infrastructure Investment Trusts without obtaining appropriate registration certificates.

Amendments in Securities Contracts (Regulation) Act, 1956

To bring it in consonance with the amendments advised in the Finance Act, 2021 the SEBI has brought the following amendments in the Securities Contracts (Regulation) Act, 1956 (The Act) w.e.f. 1 April 2021:

- Insertion of the definition of 'Pooled Investment Vehicle'(PIV) under Section 2 (da);
- modification of the definition of 'securities' under Section 2 (h)(i);
- insertion of 'units or any other instrument issued by any pooled investment vehicle' as Section 2 (h)(ida);
- insertion of special provisions related to pooled investment vehicle as Section 30B

Special provisions related to PIV have also been prescribed under Section 30B of the Act, which entails the management of the PIV. The provisions inter alia consist of the below:

PIV eligible to borrow and issue debt securities

PIV constituted as a trust or otherwise and registered with SEBI shall be eligible to borrow and issue debt securities in the manner and extent as specified under the SEBI regulations.

PIV to be permitted to provide security interest to lenders

PIVs shall be permitted to provide security interest to lenders in terms of the facility documents entered into by such PIVs.

Lenders' right to recover any amount from trustees acting on behalf of pooled investment vehicles

In case of default, the lender shall recover the defaulted amount and enforce security interest, if any, against the trust assets, by initiating proceedings against the trustee acting on behalf of such PIV, provided the trustees shall not be personally liable, and his assets shall not be utilized towards the recovery of such debt.

Our Comments

With the above amendments PIV will not fall in the definition of 'securities' and be construed accordingly under various statutes, including ITA.

Regulatory reporting by AIFs

As per paragraph 3.2 of Circular No. CIR/IMD/DF/10/2013 dated 29 July 2013, and in terms of AIF Regulations, the AIFs are required to submit periodic reports to SEBI relating to their activities.

In order to simplify the reporting requirements, SEBI vide its circular no. SEBI/HO/IMD/IMD-I/DOF6/CIR/2021/549 dated 7 April 2021 has advised that all AIFs shall submit a report on their activity as an AIF to SEBI on a quarterly basis within 10 calendar days from the end of each quarter in the revised formats. Further, Category III AIFs shall also submit a report on leverage undertaken on a quarterly basis in the revised formats. All this reporting shall be done online through SEBI intermediary portal and would come into force with immediate effect.

The said Circular has also made certain modifications to paragraph 3 of Circular No. CIR/IMD/DF/16/2014 dated 18 July 2014. As per the changes, SEBI has inter alia advised that any changes in terms of private placement memorandum and the fund/scheme documents shall be intimated to investors and SEBI on a consolidated basis within one month of the end of each financial year. These modified reporting requirements shall be applicable from the quarter ending December 2021.

Our Comments

SEBI, based on consultation with various stakeholders and recommendation of the Alternative Investment Policy Advisory Committee, has taken efforts to assuage the existing regulatory reporting requirements of the AIFs.

SEBI Circular on relaxations relating to procedural matters – Issues and Listing

SEBI vide Circular no. SEBI/HO/CFD/DIL2/CIR/P/2021/552 on 22 April 2021 has extended the relaxations granted vide Circular No. SEBI/HO/CFD/DIL2/CIR/P/2020/78 dated 6 May 2020 (Primary Circular). In the primary Circular, SEBI had granted a one-time relaxation from strict enforcement of certain SEBI regulations, including (Issue of Capital and Disclosure Requirements) Regulations, 2018, pertaining to Rights Issue opening. The relaxation mentioned in point no. in point (iv) of aforesaid Circular, providing that an application to rights issue can be made by in addition to ASBA facility having regard to difficulties faced due to COVID-19 and lockdown measure, has been extended up to 30 September 2021.

Our Comments

SEBI has been receiving requests from various market participants for relaxation from the clause that the application for a rights issue shall be made only through the Applications Supported by Blocked Amount (ASBA) facility. SEBI, therefore, understanding the difficulties being faced by the applicants, had granted the above relaxation in May 2020 for rights issues opening up to 31 July, and later extended the relaxation for rights issues opening up to 31 December 2020, 31 March 2021 and now up to 30 September 2021.

SEBI Circular for relaxation from compliance with certain provisions in light of the COVID-19 pandemic

SEBI vide circulars dated 29 April 2021 has relaxed certain timelines under SEBI (Listing Obligations Disclosure Requirements) Regulations, 2015 (Regulations) considering the surge in COVID-19 cases and lockdown measures. The below table prescribes revised timelines as under:

Provision	Timeline as per Regulations	Revised timelines
Regulation 24A for secretarial compliance by an entity whose equity shares are listed	30 May 2021	30 June 2021
Regulation 33(3) for quarterly, annual financial results by an entity whose equity shares are listed	30 May 2021	30 June 2021
Regulation 32(1) for Statement of deviation or variation in the use of funds Along with the financial results by an entity whose equity shares are listed	15 May 2021 and 30 May 2021	30 June 2021
Regulation 52 for half-yearly/ annual results by an entity whose non-convertible debt instruments are listed	15 May 2021 and 30 May 2021	30 June 2021
Regulation 52 for Statement of deviation or variation in the use of funds to be filled Along with the financial results by an entity whose non-convertible debt instruments are listed	15 May 2021 and 30 May 2021	30 June 2021

Furthermore, listed entities are permitted to use digital signature certifications for authentication/certification of filings/submissions made to the stock exchanges under the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 for all filings until 31 December 2021.

Our Comments

The relaxation comes at the right time and responds to the needs of the present situation of increasing COVID-19 cases and lockdown measures.

Compliance Calendar

Direct Tax
Indirect Tax

7 May 2021

Payment of Tax Deducted at Source (TDS) and Tax collected at source (TCS) collected in April 2021

13 May 2021

GSTR-6 for the month of April 2021 to be filed by Input Service Distributor (ISD)

20 May 2021

- GSTR-5 for the month of April 2021 to be filed by Non-Resident Foreign Taxpayer
- GSTR-5A for the month of April 2021 to be filed by
  Non-Resident service provider of Online Database Access and Retrieval (OIDAR) services
- GSTR-3B for the month of April 2021 to be filed by all registered taxpayers with turnover of more than INR 50 million in preceding financial year *[In case of delayed filing - late fees has been waived up to 4 June 2021. However, interest would be applicable at the reduced rate of 9% p.a. till the said date.]*

31 May 2021

- Furnishing quarterly statement of TDS deposited for the quarter ending 31 March 2021
- Furnishing of statement of financial transaction (in Form No. 61A) as required to be furnished under sub-section (1) of Section 285BA of the Act respect of a financial year 2020-21
- Due date for e-filing of annual statement of reportable accounts as required to be furnished under Section 285BA(1)(k) (in Form No. 61B) for the calendar year 2019 by reporting financial institutions
- Due date for filing revised and belated return for AY 2020-21, which was required to be filed on or before 31 March 2021
- Statement in form 61, which was due to be furnished on or before 30 April 2021, can be furnished on or before
  31 May 2021
- GST ITC-04 for the period from January 2021 to March 2021 to be filed by taxpayers sending/receiving material to/from job-worker

10 May 2021

- GSTR-7 for the month of April 2021 to be filed by taxpayer liable for Tax Deducted at Source (TDS)
- GSTR-8 for the month of April 2021 to be filed by taxpayer liable for Tax Collected at Source (TCS)

15 May 2021

Furnishing quarterly statement of TCS deposited for the quarter ending 31 March 2021.

26 May2021

GSTR-1 to be filed by registered taxpayers for the month of April 2021 by all registered taxpayers not under Quarterly Return Monthly Payment (QRMP) scheme

28 May 2021

Uploading B2B invoices using Invoice Furnishing Facility under QRMP scheme for the month of April 2021 (optional)

30 May 2021

- Submission of a statement (in Form No. 49C) by non-resident having a liaison office in India for the financial year 2020-21
- Due date for furnishing of challan-cum-statement in respect of tax deducted under Section 194-IA in the month of April 2021
- Due date for furnishing of challan-cum-statement in respect of tax deducted under Section 194-IB in the month of April 2021.

Note: Taxpayers under QRMP scheme can make payment of tax through GST PMT-06 by 9 June 2021 [without any interest liability on delayed payment]

Alerts

CBDT relaxes Master File and Country by Country Reporting (CbCR) Rules

7 April 2021

Read Here https://bit.ly/3oewMOR

Ahmedabad ITAT: Sec. 56(2)(viib) held not applicable to issue of shares on the amalgamation

23 April 2021

Read Here https://bit.ly/2RTkizL

Delhi High Court Rules Dividend Income Taxable at 5% under the India-Netherlands Tax Treaty applying the protocol to the Tax Treaty

28 April 2021

Read Here https://bit.ly/2Q5DJ8b

Madras High Court: Liability cannot be imposed on the recipient for non-payment of GST by the supplier

10 May 2021

Read Here https://bit.ly/3y6P7So

Revised Tax Penalties for various defaults under UAE VAT Law

11 May 2021

Read Here https://bit.ly/2SK7v3d

Webinars

TDS & TCS - Compliance nightmare for companies

Organizer - Taxsutra

6 May 2021

Watch Here https://youtu.be/vKyAvu3jVnQ

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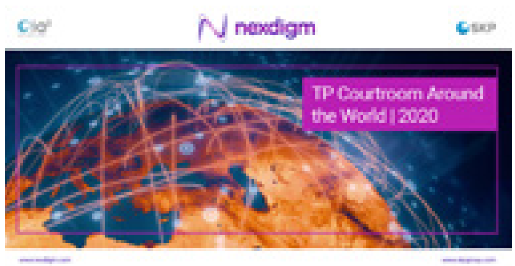

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Our cross-functional teams serve a wide range of industries, with a specific focus on healthcare, food processing, and banking and financial services. Over the last decade, we have built and leveraged capabilities across key global markets to provide transnational support to numerous clients.

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