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# Tax Street

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**March 2021**

WORLD TAX
RECOMMENDED FIRM
2021

# 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 March 2021.

- The **'Focus Point'** explores the Dissolution or reconstitution of firm – Taxability Revamped.
- 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

# Dissolution or reconstitution of firm – Taxability Revamped

Section 45(4) of the Income Tax Act, 1961 (IT Act) provides that profits or gains arising from the transfer of capital assets by way of distribution of said assets on the dissolution of a firm or otherwise are chargeable to tax as income of the firm. The taxability is in the previous year in which the said transfer takes place.

The applicability of this Section has been under the scanner for various situations from the perspective of whether the term 'or otherwise' encompasses such situations. The instances of such situations would cover the distribution of capital assets taking place during the existence of the partnership firm, assets of the firm getting transferred to the retiring partner or where subsisting partners of the firm transfer assets in favor of the retiring partner. The landmark Bombay High Court ruling[1] accorded wide scope to the words 'otherwise' and thereby concluded that situations mentioned above trigger provisions of Section 45(4) of the IT Act.

Another area of dispute pertained to the aspect as to whether consideration (an amount equal to their capital balance or asset equivalent to capital balance) paid to the retiring partners is nothing but their share of interest in the firm and therefore, no capital gain tax is leviable. The Supreme Court[2] had given a favorable view on this issue, but some adverse decisions renewed the debate.

## Issue sought to be addressed by Finance Bill

The Memorandum to Finance Bill 2021 noted that there is uncertainty regarding the applicability of section 45(4) to a situation where assets are revalued or self-generated assets recorded in the books of accounts and also when payment is made to retiring partner in excess of his capital contribution/ balance.

## Amendment by Finance Bill 2021

The Finance Bill 2021, presented on 1 February 2021, proposed certain amendments in the IT Act to address the concern in this regard by substituting section 45(4) and inserting new section 45(4A).

However, the Finance Act 2021, as assented to by the President on 28 March 2021 (hereinafter referred to as 'the Finance Act'), presented significant amendments to the proposals introduced earlier. The Finance Act has introduced two-fold amendments in this regard –

i. on the transfer of property or stock in trade by the firm on reconstitution or dissolution and

ii. on the transfer of right by the partner on reconstitution of the firm



1. A.N. Naik Associates 265 ITR 346 – subsequently followed in many rulings
2. Mohanbhai & Pamabhai 165 ITR 166

*These amendments are discussed hereunder:*

### i. Insertion of section 9B: Income on receipt of a capital asset or stock in trade by a partner from the firm

The newly introduced Section provides for taxability in the hands of the firm where a partner receives any stock-in-trade or capital asset from such entity in connection with dissolution or reconstitution. The fair market value (FMV) of the stock in trade or the capital asset shall be deemed as full value of consideration while computing business profits/capital gains in the hands of the firm. Reconstitution shall cover the below –

a. Retirement/death of one or more partners; or

b. Admission of new partners, provided at least one existing partner continues: or

c. Change in respective profits shares of all or some of the partners.

**To summarize, section 9B covers taxability in the hands of the firm under both circumstances, i.e., reconstitution as well as dissolution. The taxability of gains from transfer stock-in-trade/capital asset is encapsulated below:**

- FMV of stock-in-trade on the date of receipt by the partner shall be taxable as business income under section 28 of the IT Act (with due consideration to the legit business expenditure incurred).
- Determination of income taxable on the transfer of capital asset would be subject to the mode of computation as per section 48 of the IT Act and factors such as nature of the capital asset, period of holding, cost of acquisition, full value of consideration.

### ii. Substitution of section 45(4) of IT Act: Transfer of right by the partner on reconstitution:

The substituted Section provides that profits and gains arising from receipt of a capital asset or money by a partner from a firm in connection with the reconstitution of the firm shall be deemed to be the income of the firm under the head 'Capital Gains' in the year in which the partner receives such capital asset or money or both.

The profit and gains are to be computed in accordance with the following formula:

A = B + C - D

A = Income chargeable to tax under this provision as the income of the firm under the head capital gains;

B = Value of money received by partner on the date of such receipt;

C = FMV of the capital asset received by the partner on the date of such receipt; and

D = Balance in the capital account (represented in any manner) of the partner in the books of accounts of the firm at the time of reconstitution.

*Where the value of A is negative, profits and gains shall be deemed to be nil.*

Furthermore, for computation of the balance in the capital account, an increase on account of revaluation of any asset, self-generated goodwill, or other self-generated asset shall not be taken into account.

**The amended Section aims at taxing the firm for the entire surplus received by the partner over and above the capital balance (without considering any revaluation to assets.** The amendments overrule the judicial precedents[3] wherein it has been held that what the partner receives at the time of retirement/reconstitution is his own share of interest in the firm and thus not a transfer liable to tax.

## Interplay of Section 9B and Section 45(4) of IT Act

### Applicability

From the above, it is clear that the firm would be assessed under section 9B for its own income and under Section 45(4) for the income arising to partner thereof. Explanation 2 to Section 45(4) clarifies that provisions of the said Section shall apply in the specific case (as covered under the Section) in addition to Section 9B of the IT Act.

### Elimination of double taxation

Section 48 has been amended to deal with double taxation due to capital gains tax arising under Section 45(4) (i.e., to the extent income taxed under section 45(4) shall be reduced from the full value of consideration of the capital asset being transferred by the firm while computing gains under section 9B of the IT Act).

## Our comments

With the rationalization of the corporate tax rates and providing individuals with an alternate tax regime, the government's objective seems to plug all the tax leakages due to loopholes in any provisions of the IT Act. The aim also seems to rationalize the provisions for bringing requisite certainty on taxability in various situations. This is evident from the amendments brought in the context of taxability of 'slump sale' and 'entitlement of depreciation on Goodwill.'

While the government had promised no retro tax, these provisions are proposed to be applicable from the financial year 2020-21. Considering the same, if the taxable event as per section 9B and section 45(4) has occurred during the period 1 April 2020 till date, the same shall be taxable in the hands of the firm.

3. National Company - 105 taxmann.com 255 (Madras High Court), Electroplast Engineers - 104 taxmann.com 444 (Bombay High Court) and Dynamic Enterprises 359 ITR 83 (Karn) [FB]

# From the Judiciary

## Direct Tax

### Whether fees paid for advertising, marketing in ICC events can be taxable as Royalty in India?

LG Electronics India Private Ltd
A.A.R. No AAR/971/2010

***Facts***

LG Electronics India Pvt. Ltd (LG India) is a private limited company incorporated in India. International Cricket Council (ICC) is the official international governing body for cricket responsible to its members for the governing of the sport of cricket. ICC Development (International) Limited (IDI), is a company incorporated in UAE, which owns and controls the Commercial Rights in relation to the ICC Events. IDI has licensed the commercial rights for India in relation to the ICC events to IDI Mauritius Limited (IML), a tax resident of Mauritius. All rights and power to negotiate and enter into an agreement to grant Global Partnership right and Marketing and Advertising right in respect of the territory of India were vested with IML.

IML and LG India had entered into 'Marketing and Advertising Agreement' (MAA) pursuant to which IML had agreed to grant LG India certain promotional, advertising, marketing and other commercial rights in the capacity of being a Global Partner in connection with the ICC events.

LG India had entered into another agreement, namely 'Global Partner Agreement' (GPA) with IML, wherein IML had agreed to grant LG India the Global Partnership Rights in connection with the ICC events in respect of the territory of India. LG India has sought advance ruling with respect to MAA.

As per LG India, the consideration paid under MAA would not qualify to be considered as Royalty under the India-Mauritius treaty. Thus, in the absence of a Permanent Establishment (PE) no income shall be taxable in India. Further, LG India also denied the applicability of withholding tax under Section 194E as the payment by LG India was neither made to a non-resident sports association nor was the payment in the nature of guarantee money.

On the other hand, the Revenue had submitted that in respect of the games played in India, provision of Section 194E of the Act, read with section 115BBA, will be attracted. Such consideration should therefore be subject to withholding tax at the rate of 20%. Reliance was placed on the Supreme Court Judgement in the case of PILCOM. Further, it was alleged that the applicant had employed an artificial device of splitting up a single bundle of commercial rights into two.

Thus, MAA and GPA must be read together and the composite payment was for the commercial rights inextricably linked with the use of logos, marks and brands. Thus, such income would be considered as Royalty.

*Ruling*

The Authority for Advance Ruling (AAR) observed that the commercial rights under MAA are predominantly in respect of advertisement, marketing and promotion of LG products while those under GPA are on account of association, licensing, franchising, sponsorship, etc. Even if the two agreements are considered as a part of a composite agreement, only those rights can be taxed, which fulfill the conditions for 'royalty.' The payment under MAA is neither found to be on account of the use or right to use any copyright of literary, artistic or scientific work nor for any information concerning the industrial, commercial or scientific experience. Thus, consideration under MAA cannot be taxed as Royalty.

Furthermore, with respect to the applicability of section 194E for matches played in India, it was observed that ICC is the official international governing body for cricket, and the matches for which the payment was made under MAA could not have been conducted without the sanction of ICC.

IML was managing the commercial rights of ICC Events for the territory of India. As per this arrangement, IML was only acting as a commercial arm of the ICC. Thus, payment under MAA was found to be payable to a non-resident sports association/institution in relation to the game played in India. Taxes should be withheld at the rate of 20% under Section 194E read with 115BBA. The Supreme Court judgment of PILCOM was followed.

**Our Comments**

The AAR has once again highlighted that even where an agreement is considered as composite, only the income having nexus with India can be taxed in India.

## Whether professional fees paid to offshore lawyers and CAs can be taxable as Fees for Technical Services (FTS) in India?

M/s Sundaram Business Services Limited Vs. The Income Tax Officer ITA No: 771/CHNY/2019

*Facts*

During the year under consideration, the taxpayer availed certain professional services from two offshore entities, i.e., (1) TWB Pty Ltd., a US Chartered Accountant company, and (2) KL Gates, an Australian law firm. The taxpayer did not deduct any taxes on the professional fees paid to KL Gates on the grounds of Article 14 of India-Australia DTAA, which states that professional services or other independent activities of a similar character shall be taxable only in the country where such professional has a fixed base.

With respect to payments made to TWB Pty Ltd, the taxpayer was of the view that although payments made to the company do no fall under the ambit of Article 14, the same is grossly covered under Article 7, and in the absence of a PE, business income cannot be subject to tax in India.

On the contrary, the Assessing Officer (AO) considered both the fees as FTS and made additions. The AO's order was upheld by the CIT(A). Aggrieved by the order, the taxpayer filed an appeal before the Chennai Tribunal.

*Held*

Considering the arguments of both the parties, the tribunal held that M/s. KL Gates has rendered professional services in connection with a dispute with Tranzact Financial Services, and such services are in the nature of independent professional services as defined under Article 14 and hence are outside the scope of the definition of royalties as defined u/s.9(1)(vi) of the Act, and thus, outside the scope of the provision of section 195 of the Act.

As for the professional charges paid to M/s. TWB Pty Ltd., a company of Chartered Accounts, payment is outside the scope of provisions of section 195 of the Act, because it is neither in the nature of royalties as defined u/s.9(1)(vi) of the Act nor in the nature of FTS because the nature of services rendered by the company of accountants does not make available technical knowledge, expertise, skill, know-how or processes to the assessee.

**Our Comments**

There have been several instances where courts have decided that independent professionals' income cannot be brought under the umbrella of FTS. This is a welcome decision.

## Transfer Pricing

### Whether prior period income to be included in operating revenue base for determination of ALP?

MTU India Private Limited [TS-102-ITAT-2021(PUN)-TP] - A.Y. 2013-14

***Facts***

The taxpayer is engaged in the business of marketing and distribution of MTU, Detroit Diesel and Mercedes Benz (Off-highway) diesel engines and spare parts, including associated equipment.

The international transactions were in relation to the distribution division of the taxpayer, which comprised of (i) Purchases from Associated Enterprises (AEs), which were sold to non-AEs; (ii) Receipt of Commission on sale of the AEs products in India; (iii) Receipt of income on rendering global procurement services; and (iv) Income from the rendition of warranty services.

During the course of the assessment, one of the key issues identified by the Transfer Pricing Officer (TPO) was in relation to the prior period income considered as operating income by the taxpayer in relation to the commission income. The TPO disagreed with the transfer pricing analysis carried out by the taxpayer on issues such as aggregating the commission income with the distribution division, comparable companies, including considering the prior period income as operating income, thereby making an adjustment.

Accordingly, against the adjustment made by the TPO, the taxpayer filed an application before the Dispute Resolution Panel (DRP). While the DRP did provide relief on few issues, however it treated of prior period income as operating income.

***Ruling by Income Tax Appellate Tribunal (ITAT)***

The ITAT observed that since the taxpayer used Transactional Net Margin Method (TNMM) as Most Appropriate Method (MAM), as per rules of 10B(1)(e) requires that all the operating costs qua the international transaction are to be reduced from all the operating revenues of the international transaction.

The transaction of `prior period commission income' was a consequence of the taxpayer changing the accounting treatment for recognizing commission income from raising the invoices by the AE to the customer to recognizing revenue on receipt of credit notes from AE (even if payment was already received in the earlier year). As a consequence of the change in the accounting policy, while prior year's income was forming part of the year under consideration as prior period income, some income of the current year was also accounted for, in the subsequent year as prior period income.

The ITAT further explained that where the transaction commences and is completed in a single year, then there can be no question of including the prior period expense or incomes in the arm's length price (ALP) determination. However, when the international transaction is completed in year two, then the relevant costs/revenue of the international transaction from year one would also qualify for consideration in determining the ALP even though characterized as `prior period costs/revenue.'

In the instant case, based on the inter-company agreement, the ITAT laid down the three steps, where the commission income would conclude. These are: (i) background work for sale; (ii) Actual sale by the AEs; and (iii) realization of the invoice value by the AE from the Indian customers (issuance of credit note by the AE needs to coincide with receipt of payment by the AE).

All operating costs/income relating to these three steps would form part of the ALP determination.

Based on this principle, the ITAT set aside the order and directed the TPO/AO to decide the issue accordingly.

Further, ITAT also directed the AO/TPO to adopt the correct Profit Level Indicator (PLI) for two comparable companies while computing ALP. Also, AO/TPO had overlooked the directions of the DRP while passing the order and is directed to comply with the DRP's direction.

**ITAT rules in favor of the taxpayer on principle and comparables.**

### Our Comments

While computing the operating profit, it is necessary that all operating costs/revenue in relation to the international transactions are considered and are aligned with the inter-company agreement when closing the books. This would help avoid giving rise to such disputes.

## Whether taxpayer's berry ratio, i.e., Operating Profit/Value Added Expenses OP/VAE can be used for benchmarking over revenues OP/TC?

Agility Logistics Private Limited [TS-114-ITAT-2021(MUM)-TP] - A.Y. 2013-14 and A.Y. 2014-15

### *Facts*

The taxpayer is engaged in the business of providing logistics services offering a comprehensive portfolio of international, domestic and specialized freight handling services.

During the years under consideration, the taxpayer had primarily engaged in the receipt of freight revenue from its AEs and payment of freight expenses to its AEs. The taxpayer had benchmarked its international transactions using external TNMM at the entity level and using OP/VAE as the PLI. On the basis of multiple-year data, the taxpayer had worked out its margin at 30.22% as against the arithmetic mean margin of 27.79% of the comparable companies.

During the course of the assessment, the TPO directed the taxpayer to provide a single-year margin of the comparable companies selected by his predecessor in the immediately preceding year for determining the ALP. Further, the TPO also called upon the taxpayer to compute the margins of the comparables selected in the TP study report using OP/TC as the PLI after applying two more filters[4] in addition to the filters that were already considered in the TP study report.

The taxpayer provided the information on a without prejudice basis. The TPO from this set only accepted two companies and further added three companies. Thereafter, the TPO worked out the ALP using OP/TC as the PLI and made a transfer pricing adjustment of INR. 286.9 million. Aggrieved by the order, the taxpayer filed an appeal before the DRP.

After deliberating the issue at length, the DRP observed variation in the revenue and cost of the so-called pass-through costs proved that the TPO had rightly concluded that the taxpayer was making profits as regards the same. Further, the DRP observed that the TPO had clearly brought out the fact that the taxpayer was rendering significant services with reference to freight charges through negotiations with air and shipping companies. However, such benefits were reaped by the taxpayer separately and not shared with third parties.

The DRP while, rejecting the plea for pass-through costs, stated that the TNMM was based on improper financial and factual data and that the PLI of OP/VAE was a very fragile PLI and in fact, one which was not used earlier in the case of any logistic concern providing freight forwarding services.

The DRP, while providing its order, dismissed taxpayer's other arguments on multiple-year data and partially rejected the inclusion of three additional comparable companies by the TPO.

The DRP, while rejecting the ground on restricting the TP adjustment only to the extent of international transactions, stated that since the DRP order is not appealable by the TPO/AO, and the Special Leave Petition (SLP) filed by the tax department was pending before Hon'ble Supreme Court, if the DRP accepted the taxpayer's contention it would be tantamount to pre-judging the issue and bringing finality to the issue pending before the Hon'ble Apex Court.

### *Ruling by ITAT*

While deliberating in detail, the ITAT upheld the validity of OP/VAE as the PLI, also known as Berry ratio for benchmarking the international transactions, stated that the pass-through costs didn't involve any service and risk element of the taxpayer, nor did the taxpayer employed any assets in relation of the same. They supported their decision relying on Mumbai ITAT's ruling in the case of DHL Logistics Private Limited[5], a similarly placed logistic service provider.

The ITAT restored the matter to the AO/TPO for the purpose of benchmarking the international transactions of the taxpayer by adopting the PLI of OP/VAE.

In connection with the plea on a proportional adjustment, the ITAT stated that a TP adjustment envisaged in Chapter X is only in respect of the international transactions of the taxpayer with its AEs and cannot be extended to the transactions entered into by the taxpayer with the independent unrelated third parties. Accordingly, the matter was restored to the AO/TPO for the limited purpose of working out the TP adjustment only in respect of the transactions of the taxpayer with its AEs.

Regarding additional comparables, the ITAT restored the issue to AO/TPO.

**Appeal of the taxpayer is allowed.**

### Our Comments

It is important to understand the industry nuances and identify the industry's peculiarities and then determine the kind of PLI to be applied. Many companies/industries incur pass-through costs in undertaking their core business activities, where no service/risk element is present. This is an ideal case to deliberate on the use of the correct PLI, i.e., OP/TC or OP/VAE.

4. (i) service income to total income greater than 75% filter and (ii) turnover filter of 1/10th times to 10 times
5. DHL Logistics Private Limited vs. DCIT, Circle 9(3)(1), Mumbai, ITA No. 1030/Mum/2015, dated 20.12/.2019

### Whether TNMM can be the Most Appropriate Method when Comparable Uncontrolled Price (CUP) data is available?

UBS Securities India Private limited [TS-126-ITAT-2021(MUM)-TP] - A.Y 2003-04

***Facts***

The taxpayer is a part of the UBS group and is a securities broking company, and is a leading broking house in India, servicing the needs of Foreign Institutional Investor (FII) and domestic mutual funds. During the year taxpayer has entered transactions with its AEs who operates as FII based in Mauritius.

The taxpayer entered into a transaction of the brokerage with its AEs and applied TNMM as the most appropriate method for the purpose of benchmarking. TPO rejected the TNMM applied by the taxpayer and preferred the CUP method and proposed transfer pricing adjustment.

First-level appellate authority upheld the adoption of the CUP method by TPO and rejected the taxpayer's contentions regarding volume adjustments and salary costs adjustments.

Further, the tax authorities alleged that taxpayer failed to provide details of an employee of its AEs – details of its AEs employees

The taxpayer challenged the transfer pricing addition mainly on the following grounds:

- While selecting the comparable transactions, domestic comparables also ought to have been selected;
- Volume adjustment is critical and ought to have been done while determining the arm's length price under the CUP approach
- Transactions with third parties need to be further adjusted on account of the salary cost of the research personnel.

***Ruling by ITAT***

- ITAT upheld the CUP approach adopted by the tax authorities;
- ITAT observed that TNMM could not be the most appropriate method in the instant case, given that there are market rate prevailing for broking services;
- The ITAT opined that in the presence of a reliable, comparable uncontrolled price, the CUP method should have been chosen as it is the MAM, as it is most direct method and hence is preferable to all other methods which determine the ALP in an indirect manner, and
- The comparable cases considered by the taxpayer under the TNMM are not engaged in functions that are similar to the taxpayer.
- Geographical differences are a relevant factor in determining the comparability. Thus domestic third-party transactions are not comparable with the overseas FIIs on account of geographic differences.

ITAT rejected the argument of the taxpayer that adjustment needs to be carried out on account of the marketing function, the taxpayer claimed that it does not perform any marketing function on AE transactions.

The ITAT observed that the taxpayer has failed to provide any particulars of the marketing function undertaken by the overseas AE. The taxpayer has not even provided the details of the employees on the role of the AE in this regard. This indicates that the taxpayer undertakes the marketing functions in respect of both related party transactions as well as third-party transactions.

**Our Comments**

This judgment once again emphasizes the most fundamental aspect of any TP analysis – the selection of the MAM. The taxpayer needs to document the reasoning for the selection of the MAM adequately.

## Indirect Tax

**Whether proceedings initiated by the Directorate of Revenue Intelligence (DRI) for recovery of duty not paid under Section 28(4) of the Customs Act, 1962 are valid in law?**

[Background: As per the said Section, a 'proper officer' can issue a notice in case of short-levy or short-payment of duty.]

Canon India Private Limited Versus Commissioner Of Customs [2021 (3) TMI 384 - Supreme Court of India]

***Facts***

- A consignment of cameras arrived at Delhi.
- The importer submitted a Bill of Entry (BOE) to the Customs authorities along with literature containing specifications of the cameras;
- After verifying the BOE and other documents, the Customs authorities cleared the goods as exempt from duty as per Notification No.15/2012;
- Later, a Show Cause Notice (SCN) was issued under the said Section alleging that the Customs authorities had been induced to clear the cameras by willful misstatement and suppression of facts about the cameras.
- The Deputy Commissioner, Appraisal Group, passed the decision to clear the goods for import because they were exempt from customs duties. However, the SCN was issued by the Additional Director General, DRI.

Based on the above facts, the Supreme Court held as under:

- The Section empowers and confers the power of recovery on 'the proper officer';
- Parliament has employed the article 'the' not accidentally but with the intention to designate the proper officer who had assessed the goods at the time of clearance;
- It must be clarified that the proper officer need not be the very officer who cleared the goods but maybe his successor in office or any other officer authorized to exercise the powers within the same office. In this case, anyone authorized from the appraisal group;
- It is, therefore, clear that the Additional Director General of DRI was not 'the' proper officer to exercise power under the said Section, and the initiation of the recovery proceedings in the present case was without any jurisdiction and liable to be set aside.

**Our Comments**

This is a crucial judgment and is expected to result in other importers approaching the High Court to seek relief in similar cases wherein SCN has been issued/ proceedings have been initiated by the DRI officers without proper authority.

The judgment also lays down an important precedence for GST and other tax laws, which contain similar provisions requiring initiation of proceedings by 'the proper officer.'

However, it would be interesting to see whether the government brings in retrospective amendments to the legislature to overcome this judgment and to validate the powers of DRI and ensuing proceedings.

### Whether the subsidized shared transport facility provided to employees in terms of employment contract through third-party vendors would be construed as 'supply of service' by the company to its employees?

[Background: It was obligatory for the applicant to arrange a transport facility for female workers under a notification issued by the Uttar Pradesh government.]

North Shore Technologies Private Limited [2021(3) TMI 707 - Authority for Advance Ruling (AAR), Uttar Pradesh]

***Facts***

- The applicant provides an optional subsidized shared transport facility to its employees for commutation between office and residence;
- This facility is provided by a third-party vendor who issues an invoice in the name of the applicant and charges GST therein.
- However, the applicant has not availed any ITC on the same.
- As regards the payment to the third-party vendor towards transport charges, the applicant deducts a subsidized amount from the salaries of employees and bears the balance cost itself.

Based on the above facts, the AAR ruled as follows:

- While defining the term 'supply,' emphasis has been made upon the term 'in the course or furtherance of business.'
- The applicant is transferring the entire amount collected from their employees to the third-party vendor who is providing transport services to their employees.
- This activity is not integrally connected to the functioning of their business.
- In its press release dated 10 July 2017, the Central Board of Indirect Taxes and Customs (CBIC) has clarified that *'the supply by the employer to the employee in terms of contractual agreement entered into between the employer and the employee, will not be subject to GST.'*
- Therefore, the arranging of transport facility for the employees and recovery from employees towards such transport facility, under the terms of the employment contract, cannot be considered as supply of service in the course of furtherance of business.

**Our Comments**

This is an interesting ruling as it rules that providing transport facility to its employees cannot be said in furtherance of business. However, in such a scenario, the Department can raise questions on the eligibility of ITC in relation to input transport services received by the taxpayer [given that such facility being obligatory in nature, the ITC is otherwise eligible].

# Tax Talk

## Indian Developments

### Direct Tax

#### Open to reviewing INR 0.25 million cap on tax-free EPF contribution: Finance Minister

[Excerpts from Businessline, 22 February 2021]

The finance minister (FM) Nirmala Sitharaman indicated that there is no plan to discourage higher income earners from saving with the Employees' Provident Fund (EPF). The FM also confirmed the possibility of reviewing the contribution limit of INR 0.25 million a year for tax-free interest, which was imposed in the recent Union Budget. It was clarified that EPF shall not be merged with the already existing National Pension Scheme (NPS).

#### Government extends deadline for filing declarations and payments under Vivad Se Vishwas Scheme

[Excerpts from Business world, 27 February 2021]

Recently, the income tax department extended the deadline under the Vivad Se Vishwas Scheme for filing declarations till 31 March 2021 and making payment till 30 April 2021.

#### Rationalization of tax norms for foreign nationals living in India urged by Foreign Investors Forum

[Excerpts from The Economic Times, 2 March 2021]

For attracting investment and encouraging fund managers and high-flying corporate executives having overseas incomes to stay in the country, the foreign investors' forum has been requesting the government to align the tax provisions with that of Singapore and China. Individuals with foreign domicile residing in India can avail the treaty benefits in case of double taxation on non-Indian incomes. However, challenges like paying higher taxes, availing tax credit benefits, subjectivity in tax assessments and risk arising due to reporting requirements still exist.

### NRIs and foreign nationals with forced overstay in India required to submit double taxation details by 31 March

[Excerpts from Business Standard, 3 March 2021]

As per a recent circular from the Central Board of Direct Taxes (CBDT), a person would become resident in India for the year 2020-21 only if he/she stayed in India for 182 days or more and thus, a short stay will not result in Indian tax residency. CBDT in the Circular required the non-resident individuals facing double taxation in FY 2020-21 because of forced overstay in India due to COVID-19 to furnish the specific information by 31 March 2021. CBDT may consider providing either a general relaxation or specific relaxation in individual cases, depending on the information it gets from people.

### Foreign Portfolio Investors (FPIs) request for a common platform to avail dividend tax benefits

[Excerpts from Business Standard, 4 March 2021]

Many foreign custodians have reached out to the depositories to allow (FPIs) to upload details for availing lower withholding tax on dividends received at the depository account level. With an aim to enable companies to download the requisite information directly from the depositories or from their registrars, making it easier for them to withhold tax after taking into account the applicable treaty benefits.

### India files appeal against Cairn Energy USD 1.4 billion arbitration award

[Excerpts from Economic Times, 23 March 2021]

As per the sources, India has challenged the arbitration tribunal's ruling overturning its demand for INR 102.47 billion in back taxes from Cairn Energy Plc at The Hague. As per the Finance Ministry, taxation is not a subject of the UK-India Bilateral Investment Treaty under which Cairn had sought rescinding of the tax demand raised, and so the award should be dismissed. It is of the opinion that Cairn set up a tax abusive structure in 2006 when it reorganized its India business to list the local unit, and did not pay taxes anywhere in the world on the gains that it made in India. The Arbitration Tribunal had observed that the issue at stake is not a matter of domestic tax law, it is rather whether the fiscal measures taken by the state, valid or not under its own tax laws, violate international law.

## Indirect Tax

### Widening the ambit of e-invoicing requirements

[Notification No. 5/2021 - Central Tax dated 8 March 2021]

Earlier, the registered persons whose aggregate turnover in any preceding financial year exceeds INR 1 billion were required to comply with e-invoicing requirements regarding B2B supplies, including exports. With effect from 1 April 2021, the registered persons with aggregate turnover exceeding INR 0.5 billion in any preceding financial year are also liable to comply with the e-invoicing requirement.

### Changes to HSN declaration on tax invoice

[Notification No. 78/2020 - Central Tax dated 15 October 2020]

With effect from 1 April 2021, taxpayers having aggregate turnover up to INR 50 million in the preceding financial year are required to mention HSN code at 4-digit level (instead of 2-digit level). However, for such taxpayers, the said requirement is optional in the case of B2C supplies. Further, taxpayers having an aggregate turnover of more than INR 50 million in the preceding financial year are required to mention the HSN code at a 6-digit level (instead of a 4-digit level) for both B2B and B2C supplies.

### Clarification on refund related issues

[Circular No. 147/03/2021 dated 12 March 2021]

- **Extension of relaxation for filing refund claim in case of wrong-disclosure of zero-rated supplies in GSTR-3B**

  Certain taxpayers had inadvertently entered the details of export of services or zero-rated supplies to a Special Economic Zone Unit/ Developer in table 3.1(a) instead of table 3.1(b) of GSTR-3B, resulting in failure to claim a refund of the IGST paid on the same. Earlier, a Circular was issued to clarify that for the tax periods from 1 July 2017 to 30 June 2019, such registered persons shall be allowed to file the refund application on the common portal subject to the condition that the amount of refund of IGST claimed shall not be more than the aggregate amount of IGST mentioned in tables 3.1(a), 3.1(b) and 3.1(c) of GSTR-3B filed for the corresponding tax period. Now, the present Circular extends this relaxation for all tax periods till **31 March 2021.**

- **Clarification in respect of refund claim by the recipient of deemed exports**

  Earlier, vide Circular No. 125/44/2019-GST dated 18 November 2019, the recipient of deemed export supplies for obtaining the refund of tax paid on such supplies was required to submit an undertaking that he has not availed ITC on invoices for which refund has been claimed. However, from a practical standpoint, when such taxpayer proceeds to file a refund claim on the portal, the system requires them to debit the corresponding ITC amount so claimed from their electronic credit ledger. Accordingly, the present Circular has now corrected this anomaly, and the restriction placed by the earlier Circular on the recipient of deemed exports in relation to non-availment of ITC and submitting an undertaking in that regard has been removed.

- **Clarification on manner of calculating refund of adjusted total turnover**

  It has been clarified, for the purpose of Rule 89(4) of CGST Rules, 2017, that the value of export/ zero-rated supply of goods to be included while calculating 'adjusted total turnover' will be the same as being determined as per the amended definition of 'Turnover of zero-rated supply of goods' in the said sub-rule viz. it cannot exceed 1.5 times the value of like goods domestically supplied by the same or, similarly placed, supplier.

# Tax Talk

## Global Developments

## Direct Tax

### US trade chief readies tariffs against six countries over digital taxes

[Excerpts from Reuters, 27 March 2021]

The United States Trade Representative(USTR) Katherine Tai on Friday said she was maintaining the threat of US tariffs on goods from Austria, Britain, India, Italy, Spain and Turkey in retaliation for their digital services taxes. The taxes target in-country revenues of digital services platforms, such as Facebook, Google, and Amazon.com.

Tai also said that the USTR was terminating 'Section 301' tariff investigations against Brazil, the Czech Republic, the European Union and Indonesia because these jurisdictions have not adopted or implemented digital services taxes that were previously under consideration. If they do adopt a digital services tax, USTR said it may open a new tariff probe.

The US also is maintaining a more advanced tariff threat against USD 1.3 billion in imports of French Champagne, cosmetics, handbags and other goods in retaliation for France's digital tax.

Like the French tax, the USTR investigations into the taxes adopted by Austria, Britain, India, Italy, Spain and Turkey found that they discriminate against US technology companies and are inconsistent with international tax norms.

### Warren Proposes Tax On The 100,000 Richest Americans

[Excerpts from Forbes, 1 March 2021]

Sen. Elizabeth Warren, (D-Mass.) and other progressives introduced legislation to tax the net worth of the richest Americans on Monday, framing it as a way to fund the sweeping federal spending programs proposed by President Joe Biden and other Democrats.

The bill would impose a 2% annual tax on the net worth — the total value of assets after debts are subtracted — of households and trusts above USD 50 million. A 1% surcharge would apply to those with net worth above USD 100 billion under the so-called Ultra-Millionaire Tax Act. It would apply to the 'wealthiest 100,000 households in America,' Warren, who joined the influential Senate Finance Committee this year, said in a statement.

The Ultra-Millionaire Tax Act is projected to raise USD 3 trillion over a decade, according to estimates from the Berkeley economists Emmanuel Saez and Gabriel Zucman. The researchers raised that estimate this year because 'wealth at the top, particularly among billionaires, has grown' in part because of the COVID-19 pandemic, which has hit low-income earners and minorities particularly hard.

# Transfer Pricing

## Bahrain: Introduced Country by Country Reporting (CbCR) requirements

### *Background*

Recently, Bahrain's Ministry of Industry, Commerce, and Tourism (MoICT) issued ministerial resolution 28 of 2021, introducing CbCR requirements. Earlier in 2018, Bahrain became a member of the Organisation for Economic Co-operation and Development (OECD)'s inclusive framework, thereby committing to implement the minimum standards of the OECD's Base-Erosion and Profit Sharing (BEPS) action plan. Later, Bahrain became a signatory to the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbC reports in December 2019, which provides a mechanism for the automatic exchange of CbC reports among members.

### Applicability

The requirement of CbCR is majorly in line with the OECD recommendation. Wherein a Bahrain-resident entity or branches that are part of a multinational group (whose consolidated revenue was at least BHD 342 million (approximately Euro 760 million or USD 907 million) in the preceding financial year must file a notification with the MoICT, explaining whether or not the Bahrain entity is the group's ultimate parent entity or has been nominated as the surrogate parent entity. The requirements are applicable with effect from the financial year commencing on or after 1 January 2021. Where the entity is neither the ultimate parent entity nor the surrogate parent entity, it must identify the CbCR entity and its tax residence.

### Due date

The due date for furnishing the CbCR (wherever applicable) is within twelve months of the group's financial year-end. For example, for the year ending on 31 December 2021, the report must be submitted on or before 31 December 2022. The authority is yet to provide the format of the CbCR notification and report. Also, the manner of filing has not yet been clarified by the authority.

### Penalties for non-compliance

The resolution suggests potential penalties for failing to file CbC notifications or reports by the due dates. These include suspension of the commercial registration for six months, as well as administrative penalties of up to BHD 100,000 (approximately USD 265,000).

### Our Comments

The introduction of CbCR requirements is a step to honor Bahrain's commitment of becoming a member country to the OECD's inclusive framework. A number of countries within the region have now implemented the CbCR and other tax transparency-related measures for greater clarity towards tax administrations through increased international cooperation.

## Zambia: Introduced CbCR requirement

### *Background*

The Zambian Minister of Finance announced the government's intention to amend Zambia's Income Tax (Transfer Pricing) Regulations 2000 to provide for the implementation of Action Point 13. Zambia already has a requirement to prepare the equivalent of a Master File and a Local File under the Transfer Pricing Regulations. Now, with the implementation of the Zambian CbCR Regulations, Zambia has completed the adoption of a three-tiered approach to Transfer Pricing Documentation.

### Applicability

Under the Zambian CbCR Regulations, reporting applies only to the MNE groups, with business entities in two or more states, with an annual consolidated revenue exceeding EUR 750 million or approximately ZMW 4,795 million during the immediately preceding accounting year (MNE Groups).

The filing requirements under the Zambian CbCR Regulations are applicable to Zambia tax resident entities of MNE groups for tax years ending on 31 December 2021 and each subsequent tax year. CbCR provides for the automatic exchange of the CbC reports among tax administrations in jurisdictions in which the MNE group operates (refer our comments on the exchange of information).

The CbC report should be filed by the Ultimate Parent Entity of an MNE Group (UPE) in its jurisdiction of tax residence. This is the primary filing mechanism as recommended by the OECD and also Zambian regulations.

In certain circumstances, constituent entities of an MNE Group other than the UPE are required to file a CbC report in their jurisdiction of tax residence.

This is known as the secondary filing mechanism. Under the Zambian CbCR Regulations, the secondary mechanism applies to either (a) a Zambia tax resident Constituent Entity (CE), which is not a UPE or (b) a non-Zambia tax resident CE acting as UPE Surrogate Parent Filing.

A non-reporting CE tax resident in Zambia must submit a CbC notification to the Zambia Revenue Authority (ZRA) providing the reporting entity's identity and tax residency (i.e., the UPE or the surrogate parent entity) in its MNE group.

### Due date

The due date for UPE to furnish the CbCR is within twelve months of the group's financial year-end. For example, for the year ending on 31 December 2021, the report must be submitted on or before 31 December 2022).

On the other hand, the due date for the CE/non-reporting entity to furnish the notification is the last day of the reporting accounting year of the MNE Group. For example, the due date for furnishing the notification with respect to the accounting year ending on 31 December 2021 would be 31 December 2021.

### Our Comments

With the introduction of CbCR, Zambia has now implemented all key recommendations of Action Plan 13 (3 Tier documentation). However, there is yet some work on the exchange of information that Zambia needs to work on.

While Zambia has international agreements which provide for an exchange of information, this is not sufficient for the exchange of CbCR. Zambia is not yet a signatory to the Multilateral Competent Authority Agreement on the Exchange of Country-by-Country Reports (CbC MCAA).

This is critical because, under the Zambian CbCR Regulations, if the state of tax residence of either the reporting UPE or surrogate parent entity has an international agreement with Zambia but does not have a Qualifying Competent Authority Agreement (QCAA) with Zambia, then a full report will need to be filed in Zambia by a local CE of the MNE group. Currently, Zambia has no QCAAs in place, which would mean that a number of MNE groups with a Zambia tax resident CEs will be required to file a CbC Report in Zambia.

# Indirect Tax

## Introduction of VAT in Oman from April 2021

Oman will become the fourth GCC country, after UAE, Saudi Arabia and Bahrain, to implement Value Added Tax (VAT) once it is made applicable from 16 April 2021 in a phased manner depending upon the turnover. Similar to other GCC nations, Oman will levy VAT at the rate of 5% on most goods and services, with certain exceptions.

# Merger & Acquisition Tax & Regulatory Updates

Taxation Updates

## From the Judiciary

### Ahmedabad Tribunal – Allows reduction in investment value on account of capital reduction by the subsidiary as a business loss

Citation: DCIT v. GHCL Ltd (ITA No. 976/Ahd/2014 & other multiple appeals)

Indian Britain BV (IBBV) was a wholly-owned subsidiary (WOS) of M/s. GHCL Ltd (GHCL/assessee). Due to heavy losses, the capital reduction was carried out by IBBV by way of cancellation of shares. In view of the said capital reduction, the assessee company incurred a loss of INR 998.9 million on the investment made in the subsidiary and claimed such loss as a capital loss in its return of income. However, during the course of assessment proceedings, the assessee contended that such loss should be allowable as a business loss as the investment was made out of commercial exigency to expand its business. The AO disregarded such a claim in the absence of a revised return by placing reliance on the decision of the Apex Court[6].

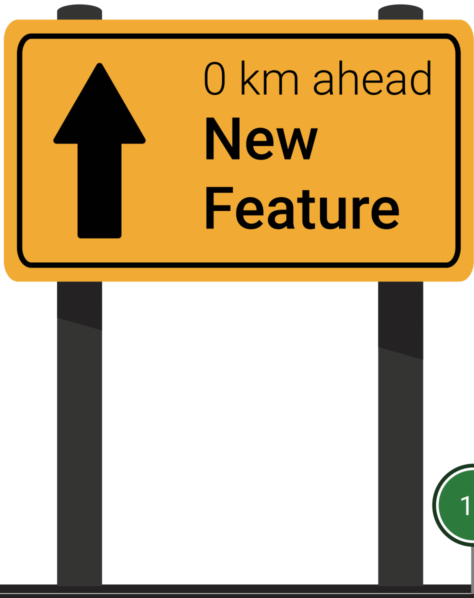
The CIT(A) and the Tribunal upheld the allowability of such loss as a business loss by making these observations:

- The entire investment in WOS was made by the assessee company for acquiring global units of soda ash manufacturing and textile business-chain as a measure of commercial expediency to further its business objective. The appellant, through IBBV, formed step-down subsidiaries in the Netherlands and USA for various acquisitions of textile business;
- It is clear that the purpose of investment in subsidiaries was to expand globally and after such acquisitions, the sales and export would shoot up substantially;
- Due to the recession in Europe and the USA, continued financial difficulty and other adverse factors, all the three subsidiaries incurred huge losses and became sick units. The subsidiary has reduced its capital to offset such huge losses.

On a separate ground, the Tribunal has also allowed a loss of ~INR 309.6 million suffered on the crystallization of guarantee provided on the letter of credit for another subsidiary. Tribunal rejecting the AO's finding that the same was capital in nature observed that the guarantee was given as a temporary measure to tide over the financial difficulties and further expand the business of the assessee company.

**Our Comments**

The Tribunal has laid a key principle that, as long as the investment is justified on the grounds of commercial exigency, the loss on sale of such investments is to be considered as business loss. The nature of business exigency could vary from case to case, but there must be an underlying motive to serve the business interest in making such investment.




6. Goetz (India) Ltd. v. CIT (157 taxman 1)

### Delhi High Court – Confines from interfering with the valuation in view of the recognized method adopted by the assessee. Holds it to be a question of fact and not a question of law

Citation: PCIT v. M/s. Cinestaan Entertainment Private Limited (ITA No. 8113/Del/2018)

Cinestaan Entertain Private Limited (assessee), during the relevant assessment year, allotted shares at a premium to various persons. The case was selected for limited scrutiny on the premise of large share premium received during the year and low income in comparison to high investment.

During the course of assessment proceedings, the assessee submitted an independent valuer's report from a CA valuing the shares, basis the Discounted Cash Flow method (DCF). The AO disregarded the valuation report on the ground that the projections of revenue did not match with actual revenues of subsequent years. Observing that the funds received on the issue were invested further by the assessee in 0% debenture of its associate companies, the AO concluded that the basic substance of receiving a high premium is not justified and proceeded to make an addition of INR 909.5 million under section 56(2)(viib).

While CIT(A) upheld the order of AO, on the second appeal, the Tribunal ruled in favor of the assessee setting aside the AO's order. On further appeal by the department, the High Court also upheld the order of the Tribunal, making the following observations:

- There is no dispute that the methodology adopted by the assessee is a recognized and accepted method;
- The Courts have repeatedly held that valuation is not an exact science, and therefore cannot be done with arithmetic precision. It is a technical and complex problem that can be appropriately left to the consideration and wisdom of experts in the field of accountancy, having regard to the imponderables that enter the process of valuation of shares;
- The Revenue is unable to demonstrate that the methodology adopted by the assessee is not correct and has also failed to provide any alternate fair value of shares;
- If the third-party investors have seen certain potential and accepted this valuation, then the Revenue cannot question their wisdom;
- The question of law urged by the Revenue is purely based on facts and does not call for consideration as a question of law.

#### Our Comments

The ruling emphasizes the need of robust documents and factors/basis for projections to justify the higher premium. While the court ultimately upheld the independent valuer's report, it was in view of the fact that the Revenue was unable to demonstrate any errors.

It is pertinent to note that as per the amended Rule 11UA, the valuation report for the purposes of section 56(2)(viib) can only be issued by a SEBI registered Category 1 Merchant banker.

### Chennai ITAT: Issue of preference shares at face value by a company having negative net-worth held to be a colorable device

Citation: M/s Sindya Securities and Investments Pvt. Ltd. I.T.A.No.1816/Chny/2019

The assessee, a private limited company, raised capital to repay an existing debt by issuing certain preference shares to a related party having common directors and functioning in the same premises. The preference shares were issued at a face value of INR 10,000 per share. The AO treated the amount of excess consideration over the fair market value of such preference shares as income under Section 56(2)(viib) of the Act by observing that it was not a simple commercial transaction between prudent parties for raising share capital. Aggrieved, the assessee filed an appeal before the CIT(A) and subsequently before the ITAT.

In this regard, the ITAT observed as under:

- To invoke the applicability of Section 56(2)(viib) of the Act, shares should be issued over and above the face value of such shares. However, the assessing officer's case is not a case of a simple commercial transaction between the parties but a transaction arranged to circumvent taxability. Thus, it is essential to see whether a transaction is a sham transaction arranged by parties to overcome the provisions of the Act;

- Fixation of face value in this fact pattern raises doubts about the genuineness of the transaction in view of the following:
  - The transaction is between related parties;
  - Memorandum of Association was recently amended to divide the share capital into equity shares and preference shares. The face value of equity shares was retained at INR 10 whereas face value of preference shares was fixed at INR 10,000; Net worth at the time of issue of preference shares was negative;
  - The assessee did not file a valuation report to justify the face value of preference shares;
  - The assessee had no explanation for the basis of fixing different share price for equity shares and preference shares and;
  - The assessee does not have significant activities except investment in Deccan Digital Networks Pvt. Ltd., which in turn invested in Aircel Ltd., a defunct company.

In view of the above observations, the ITAT upheld the addition made by the AO. Relying on the decision of Hon'ble Supreme Court in the case of Mc Dowell & Co Ltd[7], the ITAT noted that from the sequence of events and manner in which preference share capital was raised, including terms of repayment, rate of return, and period of shares, it can be easily concluded that transaction of issue of preference share capital is arranged transaction in the nature of a sham transaction to overcome the provisions of section 56(2)(viib) of the Act.

### Our Comments

This is a classic case of invocation of judicial General Anti-Avoidance Rule (GAAR) by tax authorities. Section 56(2)(viib) is invocable only when the consideration for the issue of shares exceeds the face value of shares. While a company is free to fix the face value for the shares, the same should be justifiable basis the underlying valuations and other parameters to establish the commercial substance. With the applicability of the GAAR provisions, the tax authorities have assumed wide powers to challenge the genuineness of the transactions.

## Mumbai ITAT: Loss on the transfer of shares between group companies by physical delivery and through banking channels held to be a genuine and a non-speculative transaction

Citation: Panther Industrial Products Ltd (ITA no.1080 & 1081/ Mum./2018)

The assessee was engaged in the business of granting loans and advances. It purchased certain shares of Landmark Leisure Ltd. (LLL) at INR 152.40 per share from one of its group companies, i.e., Classic Credit Ltd. (CCL), by way of physical delivery. The consideration for such share purchase was paid to CCL on behalf of the assessee by another group company Panther Fincap & Management Services Ltd (PFMS). Later in the same FY, the assessee sold the said shares held in LLL to PFMS at INR 48.10 per share by way of physical delivery. Resultantly, the assessee reported a significant amount of business loss on account of the purchase and sale of shares of LLL.

The assessing officer and the CIT(A) held the transaction to be sham in nature and further also characterized the same as speculative in nature and disallowed the loss.

On appeal, the ITAT ruled in favor of the assessee laying as under:

- The transaction cannot be regarded a bogus merely because the assessee has taken advances from its group company to settle purchase consideration;
- The transaction can be considered speculative only when the transaction is settled otherwise than by actual delivery. In the present case, both purchase and sale transactions were carried out with actual delivery of shares on the specific dates and at the specific rate prevailing on the date of transfer. Further, the settlement of purchase consideration was done through proper banking channels;
- Furthermore, considering that the assessee's 75% of the total assets consist of loans and advances, it falls under the category of 'principal business' of granting loans and advances. Thus, the explanation to section 73 is not applicable and the loss cannot be considered as a speculative loss.

### Our Comments

The above judgment reaffirms the principle that a transaction cannot be treated as bogus or speculative in nature merely because it is undertaken with sister concerns. However, establishing the commercial substance remains the driving factor.

7. (1985) 154 ITR 148

Regulatory Updates

# Company Law Corner

## Companies (Incorporation) Third Amendment Rules, 2021

The Central Government vide Amendment Rules dated 5 March 2021 has amended the Companies (Incorporation) Rules, 2014 (Rules). The Amendment Rules prescribes insertion of the option of Aadhaar authentication for GST Registration for Company Incorporation.

## Companies (Management and Administration) Amendment Rules, 2021

Central Government vide Amendment Rules dated 8 March 2021 made the following changes:

- Release of Form MGT 7A for One Person Company and Small company, as against MGT 7 for ordinary companies;
- Rule 12 for the extract of Annual return has been amended to remove the obligation to file an annual return in Form MGT 9 along with Board Report;
- Rule 20 for Voting through Electronic Means, the definition of for the terms remote e-voting, secured system, cybersecurity, etc., has been added to provide clearer grounds for general understanding.

## Companies (Amendment) Act, 2020

Ministry vide its Notification date appointed the 24 March 2021 has made the below amendments:

- Section 127 of Companies Act, 2013, which deals with the Unpaid Dividend Account, the penalty for non-compliance is INR 0.1 million and in case of continuing failure, with a further penalty of INR 500 for each day after the first during which such failure continues, subject to a maximum of INR 1 million;
- Section 247 of the Companies Act, 2013, which deals with contraventions by the Registered Valuers, the penalty for non-compliance is INR 50,000.

# Compliance Calendar

Direct Tax

Indirect Tax

**7 April 2021**

Payment of Tax collected at source (TCS) collected in March 2021

**10 April 2021**

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

**11 April 2021**

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

**13 April 2021**

- GSTR-6 for the month of March 2021 to be filed by Input Service Distributor
- GSTR-1 for the quarter of January 2021 to March 2021 to be filed by all regis-tered taxpayers under QRMP scheme

**14 April 2021**

Issue TDS Certificates under Section 194IA and 194IB.

**20 March 2021**

- GSTR-5 for the month of March 2021 to be filed by Non-Resident Foreign Tax-payer
- GSTR-5A for the month of March 2021 to be filed by Non-Resident Online Da-tabase Access and Retrieval services provider
- GSTR-3B for the month of March 2021 to be filed by all registered taxpayers not under QRMP scheme

**22 April 2021**

GSTR-3B for the quarter of January 2021 to March 2021 to be filed by regis-tered taxpayers under QRMP scheme and having principal place of business in Category 1 states

**24 April 2021**

GSTR-3B for the quarter of January 2021 to March 2021 to be filed by registered taxpayers under QRMP scheme and having principal place of business in Category 2 states

**30 April 2021**

- Payment of TDS deducted in March 2021 by non-government deductors on salary and non-salary payments.
- Challan-cum-statement for TDS under Section 194IA and 194IB for the month of March 2021.

***Notes***

Category 1 states - Chhattisgarh, Madhya Pradesh, Gujarat, Maharashtra, Karnataka, Goa, Kerala, Tamil Nadu, Telangana, Andhra Pradesh, the Union territories of Daman and Diu and Dadra and Nagar Haveli, Puducherry, Andaman and Nicobar Islands or Lakshadweep.

Category 2 states - Himachal Pradesh, Punjab, Uttarakhand, Haryana, Rajasthan, Uttar Pradesh, Bihar, Sikkim, Arunachal Pradesh, Nagaland, Manipur, Mizoram, Tripura, Meghalaya, Assam, West Bengal, Jharkhand or Odisha, the Union territories of Jammu and Kashmir, Ladakh, Chandigarh or Delhi.

# Insights & Webinars

## Alerts

### Taxability of shrink-wrap software - Supreme Court rules in favor of the taxpayer

**5 March 2021**

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

### CBDT issues clarification on tax residency provisions – Tax relief on applications only

**5 March 2021**

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

### PAN Aadhaar Linking Deadline- 31 March 2021

**19 March 2021**

Read Here https://bit.ly/3d6D1Aa

## Webinars

### QRMP Scheme; Dynamic QR Code; Compulsory Quoting of HSN/SAC for Supply of Goods & Services - Issues and Way Forward

Organizer - Phd Chamber of Commerce

**26 March 2021**

## Easy Remittance Tool

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# About Nexdigm (SKP)

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We provide an array of solutions encompassing Consulting, Business Services, and Professional Services. Our solutions help businesses navigate challenges across all stages of their life-cycle. Through our direct operations in USA, India, and UAE, we serve a diverse range of clients, spanning multinationals, listed companies, privately owned companies, and family-owned businesses from over 50 countries.

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