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Chartered Accountants

kcm Insight

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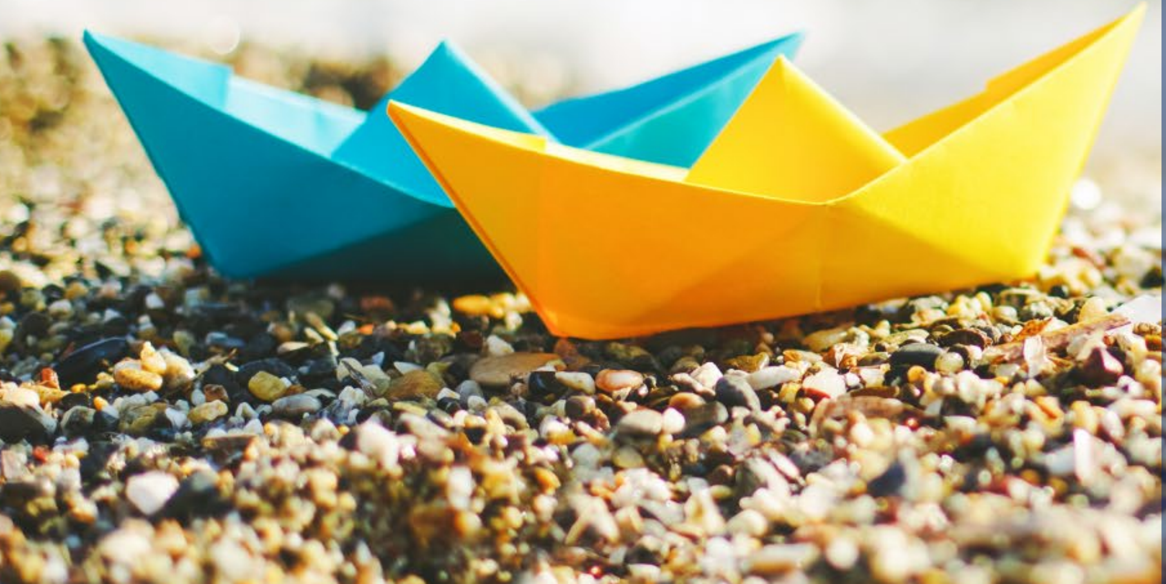

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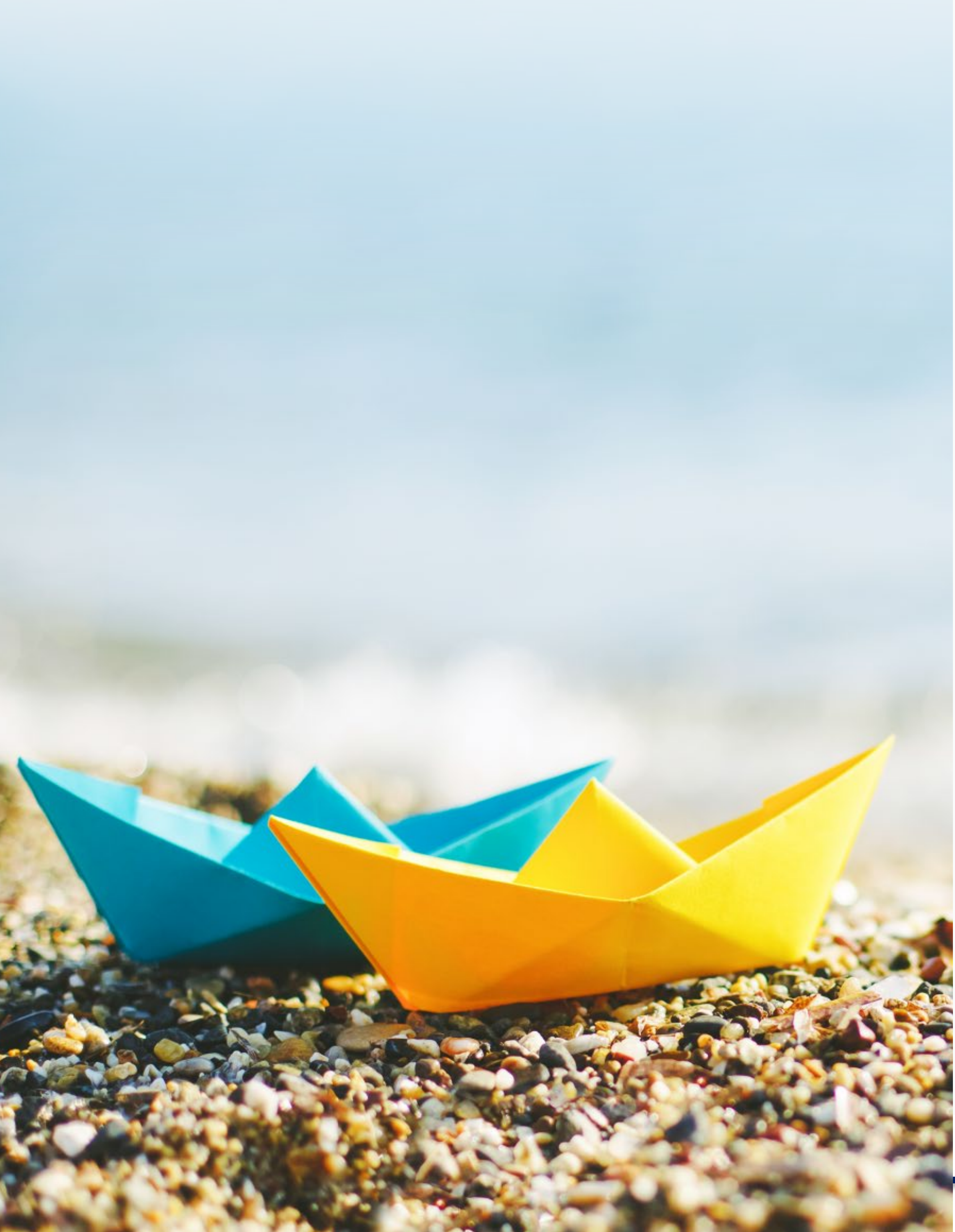

Dear Reader,

We are happy to present kcmInsight, comprising of important updates in the M&A space, legislative changes in direct and indirect tax law, corporate & other regulatory laws, as well as recent important decisions on direct and indirect taxes.

We hope that we are able to provide you an insight on various updates and that you will find the same informative and useful.

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Detailed Analysis

Abbreviations

For detailed understanding or more information, send your queries to kcminsight@kcmehta.com

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Significance of HR Due Diligence

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Introduction

While evaluating M&A transactions, dealmakers generally review a lot of financial, commercial, and operational information about the target business. However, they often pay scant attention to the culture of the organization and the roles individuals play in making a transaction successful. This is where Human Resources Due Diligence comes in handy. HR Due Diligence is a detailed review of the target's human resource policies, processes, and employee mix/composition to help maximize the human capital potential. It is a fact that much of the target's performance is dependent on its workforce and the way an organization is designed to achieve business objectives. Let us have an overview of the HR Due Diligence exercise.

1) **Overview of Current Staff**

This covers a basic overview of all individuals who work at the company, beginning with the company's key positions up to the lower level of the hierarchy. This includes a list of employees in the company, along with their salary information, job titles, responsibilities, and their total experience including with the company. This helps in understanding the strengths of workforce, effective working hours / days, demographics, cost to company, actual payment of salary, allowances / benefits offered and so on. One comes to know if there is any discrepancy in recording employee data like number of employees, actual payment vis-à-vis CTC, composition of employee salary, efficiency, and age group of the workforce.

2) **Assessment of HR Policy**

HR policy is one of the most crucial documents of a company which is often neglected. It contains guidelines around the hiring and training new employees, providing compensation and promotion to existing employees, benefits offered to the employees like paid / sick / maternity leave, gratuity benefit, leave encashment, pension, bonuses and many more. It also assesses the company's code of ethics and conduct which determines organizational behavior and lays out the company's overall expectations from its workforce. It often happens that to minimize the cost, implementation of such policies does not take place, which creates an inherent risk of labilities of the company towards its employees which remains unrecognized in the books of accounts. This may also lead to higher employee turnover due to the dissatisfaction of employees including loss of morale.

3) **Review of Legal and Compliance Documents**

There are lot of statutory rules and regulations which are in force to protect the interest of the employees like minimum wages, provident fund, employee life & medical insurance, statutory bonus, overtime pay, working hours per day, pension, working conditions and safety measure, etc. These are enforced by the law of land and may vary from place to place. There are also employment contracts, agreements with the labour union, non-compete contracts, confidentiality agreement and others which outline the employees' right and obligations during and after their employment with the company. There is a risk that the target company may not comply with statutory laws and regulations for reasons like working capital crunch, improper maintenance of records, lack of competency in understanding and awareness of such requirements.

4) **Review of Employee Benefits**

Companies usually enter into separate agreements with key personnel containing terms like profit sharing, production / sales

Significance of HR Due Diligence

linked incentives, retirement benefits, various employment benefits and such other terms which are specifically available to these individuals. Companies also take employee group insurance for the safety of their employees. These agreements are not always in place, which may lead to inconsistencies in paying the additional incentives year on year. In the absence of any agreement, it would be difficult for a potential acquirer to understand the real cost of acquisition and the normalized employee costs, which could be a significant deal driver.

5) **Transaction Closure & Synergy Review**

This is the most crucial stage of the HR Due Diligence exercise. After having a complete background of the organization's policies, applicable rules, and regulations, understanding the culture and analyzing the synergy that would be brought in by the employees, one has to chart a way of operations going forward. This stage includes revision of HR policies, realignment of roles of employees, negotiations with labour unions and generally managing employee expectations after the transaction closing.

Additionally, the key managerial personnel need to collaborate and work together with the acquirer for smooth functioning and integration going forward. This includes revising employment terms, benefits, board and management composition, confidentiality, non-compete agreements, collaboration with new management during the transitional period. This is a non-exhaustive list which may vary from one company to the other.

Golden parachutes are quite common in M&A transactions involving intellectual capital. It refers to a large financial compensation or substantial benefits guaranteed to the key managerial personnel upon termination or discontinuance of employment following an M&A transaction. Compensation can be by way of substantial severance pay, bonus and stock options. Such terms also help in retention of top talent, reduce conflict of interest and chances of hostile takeovers.

Conclusion

Target company's human capital, or the economic value of its employees, has a significant potential to create value in any M&A transaction. Ensuring proper utilization of human capital can help increase productivity, improve company culture, processes and channels of communication. It helps in post-acquisition integration by preventing conflicts from occurring within the organization due to different management styles. It can also minimize potential risks that might arise during or directly after the acquisition by helping the acquiring company create an effective retention strategy and an inclusive and cohesive company culture.

HR Due Diligence also helps in understanding the competitiveness to retain key talent, map potential salary equalization and benefit for a smooth integration post dealmaking. It is one of the key areas of emphasis during the due diligence process as employees are a company's most valuable albeit unrecognized asset. A company is only as good as the people who are managing the company.

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Expenditure or Loss, for an offence or which is prohibited by law, is not deductible

CIT v. Prakash Chand Lunia (D), Civil Appeal Nos.7689-90 of 2022, Supreme Court of India

The Taxpayer was engaged in the business of trading of silver. A search was conducted by the Directorate of Revenue Intelligence (DRI) wherein 144 slabs of silver and two silver ingots were recovered and confiscated. Since the taxpayer could not give any explanation regarding the nature and source of acquisition of silver, addition was made u/s 69A of the ITA and the loss arising on account of confiscation was not allowed as deduction.

CIT(A) and ITAT upheld the order of AO. However, the HC held that loss due to confiscation of goods by DRI is business loss and allowed the deduction in respect of the same.

The question before the Apex Court was whether the HC had erred in law in allowing the loss on account of confiscation of silver bars by DRI officials, as a business loss.

Apex Court noted that provisions of section 37(1) were amended by the Finance Act, 1998 to provide that ***any expenditure*** incurred by the assessee for any purpose which is an offence prohibited by law is not an allowable business expense. In the facts of this case, the assessee did not claim value of silver bars confiscated, as ***business expense***, it was claimed as ***business loss***.

However, SC observed that the word '***any expenditure***' mentioned in section 37 of the ITA takes within its sweep loss occasioned in the course of business, being incidental to it. As a consequence, any loss incurred by way of expenditure by an assessee for any purpose which is an offence, or which is prohibited by law is not deductible as per Explanation 1 to section 37 of the ITA. SC held that the decisions of this Court in Piara Singh 124 ITR 41 and Dr T A Quereshi 2 SCC 759 do not lay down correct law in this regard.

Accordingly, it was held that any loss incurred by way of an expenditure by a taxpayer for any purpose which is an offence, or which is prohibited by law is not deductible in terms of Explanation 1 to Section 37 of the ITA. The order passed by the HC was quashed and those passed by the ITAT & CIT(A) in this regard were restored.

TDS credit allowed in hands of person who has offered income, even in absence of filing prescribed particulars as per Rule 37BA

Late Russi Dinshaw Bahadurji v. ITO ITA No.1618 / Mum / 2022, Mumbai ITAT

The taxpayer executed a trust deed in the favour of his brother and succeeding him, his brother's wife, was entitled to the entire annual income of the trust. After the death of his brother and his brother's wife, the trust reverted to the taxpayer. According to the trust deed, after the demise of the taxpayer, the trust deed shall come to an end, and then, the entire corpus of the Trust Fund, together with the accrued income, shall revert to his estate.

After the death of the taxpayer, the entire income received from the trust became part of his total income and it was duly offered to tax and TDS credit pertaining to such income was claimed in his return. Correspondingly, the trust filed return with nil income and did not claim any TDS credit, which was also processed u/s 143(1) of the ITA. In the return of trust, the TDS credit was transferred to PAN of taxpayer and in the ITR form of the taxpayer, the TDS credit was transferred from PAN of the trust. However, in

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the intimation u/s 143(1) of the taxpayer, the said TDS credit was not granted.

The question under consideration was whether CPC had wrongly denied credit of TDS, pertaining to income of the trust, which is taxed, in the hands of taxpayer.

Revenue alleged that as per section 199 r.w.r. 37BA, a form containing the prescribed particulars is to be filed with the deductor, who shall, then, issue a certificate in the name of such other person who is claiming the TDS credit. Such compliance was not undertaken by the taxpayer.

After hearing both sides, Tribunal held that on harmonious construction of section 199 r.w.r 37BA, the intention of Legislature was not to deny the credit if income on which tax has been deducted is assessable in hands of person other than the deductee. If the deductee has produced evidence that it has not claimed TDS as income belongs to the other person and which is also acknowledged by department u/s 143(1), then, even if compliance u/s 37BA is not made, as required, credit cannot be denied to the person who has shown the income.

ITAT remarked that procedure prescribed under Rule 37BA in certain circumstances becomes extremely cumbersome. Therefore, the strict conditions provided in Rule 37BA especially the forms prescribed has to be read in the spirit of the provision of section 199(1) of the ITA, which shall prevail upon the forms and conditions provided in the Rules. It is also equally settled law that the Form prescribed by delegated authority cannot extend the scope of the provisions nor lay down any further conditions.

ITAT also made passing remark that though they have observed that Rules and Forms issued should not frustrate the main provisions of the ITA, but they are not laying any proposition that conditions of Rules are not to be adhered to, but in pressing circumstances, there should be mechanism to resolve the issues. Accordingly, it was held that TDS credit ought to be granted to the taxpayer.

This decision could be extremely useful in cases where there is procedural lapse by the taxpayers, including delay for grant of tax credit.

'Right to sue' in terms of contract is not Capital Asset, since such right is not transferable

Ishvakoo Grand Plaza v DCIT, ITA No. 4537 / Del / 2017, Delhi ITAT

The Taxpayer is a Partnership Firm which had taken a property on lease. As per the lease deed, if the lessor intended to sell the premises, the taxpayer had first right to purchase the property. If the taxpayer did not want to avail the offer and the property is transferred to third party, lessor shall have to oblige the purchaser to recognize obligations and liabilities as per the lease deed in respect of the taxpayer.

During the year, the lessor committed breach of the said clause in lease deed, so the taxpayer filed suit against the lessor. On settlement, the purchaser of the property paid Rs. 20.4 crores to the taxpayer to amicably settle the dispute. In the return of income filed, the taxpayer considered the said settlement amount received as non-taxable.

The AO contended that the right of preemption / right of first priority of purchase of premises falls under the definition of 'Capital Asset' u/s 2(14) of the ITA and the 'Relinquishment' of the

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said right falls under the definition of 'Transfer' as per the ITA. In absence of any cost incurred by the taxpayer, the AO brought the entire amount to tax under the head 'Capital Gains'.

The Taxpayer submitted that the right is mere right to sue the lessor. Mere right to sue cannot be transferred u/s 45 r.w.s 2(47) of the ITA and therefore cannot be considered as transferable asset.

Hon'ble ITAT observed that taxpayer merely had the right to offer of purchase of premises and not to follow the purchaser and get himself substituted in place of purchaser. Normally, in case of right of pre-emption, lessee has right to follow the purchaser and get himself substituted in place of purchaser.

In view of the said facts and relying on various judicial precedence, ITAT observed that the right held by the taxpayer cannot be considered as right of pre-emption. Therefore, ITAT opined that right of taxpayer to have offer for purchase, cannot be considered as property, within the definition of 'Capital Asset', since its alienation, transfer or relinquishment is not possible independently at the will of the taxpayer but was incidental to prospective sale by the lessor. Therefore, as per ITAT, it was merely a contingent right.

In view of the above, ITAT remarked that impugned consideration of Rs. 20.4 crores received by the taxpayer may have any other incidence of taxability, but certainly not 'Capital Gains'. Further, relying on SC decision in case of BC Srinivas Shetty 128 ITR 294, ITAT held that since cost of acquisition of so called right of preemption is Nil, computation provisions fail and therefore capital gains could not be calculated.

This decision lays substantial importance on 'transferability', being a important criteria, to decide whether right falls within the definition of 'Capital asset'.

Co-operative credit Societies entitled to deduction u/s 80P

PCIT v. M/s Annasaheb Patil Mathadi Kamgar Sahakari Pathpedi Limited, Civil Appeal No. 8719/2022, Supreme Court of India

The taxpayer is a registered co-operative credit society engaged in the business of providing loans to its members. In the impugned year, the taxpayer claimed deduction u/s 80P(2)(a)(i) of the ITA. Revenue claimed that the taxpayer is a co-operative bank and hence ineligible to claim deduction as per the exclusion u/s 80P (4) of the ITA.

CIT(A) held that taxpayer is carrying on business of extending credit facility to its members only, so, it cannot be treated as a co-operative bank within the meaning of the Banking Regulation Act. Accordingly, CIT(A) deleted the additions made by the AO. ITAT and HC upheld the decision of CIT(A).

The Apex Court held that merely giving credit to members cannot be said to carrying on activity of cooperative banks, under the Banking Regulation Act. There is vast difference between the credit societies giving credit to their own members and banks providing banking facilities including credit to the public at large. Accordingly, it was held that taxpayer cannot be said to cooperative bank and therefore is entitled to deduction u/s 80P (2) of the ITA.

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Clarifications regarding provisions relating to Charitable and Religious Trusts

Circular No. 6 of 2023 [F. No.370133/06/2023-TPL], dated 24-05-2023

All the existing trusts were required to apply in Form 10A for re-registration/approval on or before November 25, 2022. Similarly, all provisionally registered/approved trusts needed to apply for regular registration/approval in Form 10AB on or before September 30, 2022.

Finance Act, 2023 had amended section 115TD under the ITA, to provide that the accreted income of the trusts not applying for registration/approval, within the specified time, shall be made liable to tax in accordance with the provisions of section 115TD of the ITA, w.e.f April 1, 2023.

Representations have been received stating that several trusts have not been able to apply for registration/ approval within the required time due to genuine hardship.

In order to mitigate genuine hardship, the due date for making application in Form 10A & Form 10AB has been extended to September 30, 2023. It is also clarified that extension of due date will also be valid for all pending applications.

The due date for furnishing statement of donations in Form 10BD and certificate of donation in Form 10BE has also been extended to June 30, 2023.

Furthermore, it has also been clarified that the provisional approval/registration u/s 10(23C) or u/s 12A, shall be effective from the assessment year relevant to the previous year in which the application is made and shall be valid for a period of three assessment years.

Moreover, various queries were received vis-à-vis filing of Form 10/9A, at least 2 months prior to due date of furnishing return of income. It has been clarified that although statement of accumulation in Form 10/9A is required to be filed two months prior to the due date of furnishing ITR, still accumulation/deemed application shall not be denied to a trust if the statement is furnished on or before the due date of furnishing the return of income u/s 139(1) of the ITA.

For the purpose of bifurcation of certain payments/application in electronic/non-electronic mode for purpose of audit report in Form 10B / 10BB, account payee cheque and bank draft are added to electronic modes currently prescribed in Rule 6ABBA.

Increased limit for tax exemption on leave encashment for non-Government salaried employees

Notification No. 31/2023/F No. 200/3/2023-ITA-I, dated May 24, 2023

Pursuant to proposal made in Budget Speech 2023, the exemption limit u/s 10(10AA) for leave encashment, received on retirement or otherwise, has been increased from Rs. 3,00,000 to Rs.25,00,000 w.e.f. April 1, 2023. It has been clarified that the aggregate amount of exemption shall not exceed Rs. 25 lakhs, as reduced by the tax exemption already allowed in any previous years or even in case, when received from more than one employer in the same previous year.

FAQs on inclusion of International Credit Cards (ICCs) under LRS

Press Release dated May 19, 2023

Under Liberalized Remittance scheme ('LRS'), individuals' resident in India, are allowed to

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remit up to USD 2,50,000 per financial year for any permissible current or capital account transaction or a combination of both.

According to section 206C(1G), tax is required to be collected on foreign remittance through the Liberalized Remittance Scheme and on the sale of overseas tour packages. As per Finance Act 2023, the rates for TCS on Overseas Tour Package has been increased from 5% to 20%, w.e.f. July 1, 2023. In respect of any other kind of remittance, other than for education and medical treatment, rate has been increased from 5% to 20% and the threshold of Rs. 7 Lakhs has been reduced to Nil.

This press release covers various FAQs regarding applicability of TCS on foreign remittance made through Liberalized Remittance Scheme (LRS), including on amendment of FEM(CAT) Rules, 2000.

Earlier use of International Credit Cards was excluded for the purposes of LRS Limit vide Rule 7 of FEM(CAT) Rules, 2000. Now, this rule has been omitted and thus International Credit Cards just like Debit Cards are included for the purpose of LRS Limit. To avoid any procedural ambiguity, further, it has been clarified that any payments by an individual using their International Debit or Credit cards up to Rs 7 lakh per financial year will be excluded from the LRS limits and hence, will not attract any TCS.

It has also been clarified that when an employee travels out of India for business visits, and the expenses are borne by the company, such expenses shall be treated as residual current account transactions outside LRS.

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For detailed understanding or more information, send your queries to ***kcminsight@kcmehta.com***

Indian Rulings

Existence of Installation PE is dependent on various parameters, matter restored by admitting additional evidences

Sime Darby Engineering Sdn Bhd [ITA Np. 1926 &1927 – order dated 22 May 2023]

Taxpayer is a non-resident corporate entity incorporated in Malaysia and a tax resident of Malaysia. Taxpayer was specialized in business of fabrication of all types of offshore and onshore structures and complexes used in extraction and exploration of mineral oil. The taxpayer along with a Singapore based company, M/s Swiber Offshore Construction Pte Ltd. ('Swiber') formed a consortium and entered into two separate contracts named as 'wellhead platform contract (offshore)' and 'process platform contract (onshore)' with Oil and Natural Gas Commission ('ONGC'). As per the terms of contracts, taxpayer was required to carry out design, engineering, material procurement, fabrication in relation to platforms and hook-up, testing and commissioning ('HUC') of platforms. The core issue for consideration is that whether the taxpayer had a fixed place PE or installation PE in India in accordance with DTAA.

In connection with fixed place PE the department has alleged that the taxpayer had a project office in India, which has to be construed as PE, whereas taxpayer has contested the aforesaid conclusion of the department by contending that the project office is of Swiber which was entrusted with onshore activities. This claim of the taxpayer has not been controverted by the department by bringing on record any convincing material. It is trite law that the burden is entirely on the department to establish existence of fixed place PE. ITAT held that in the present facts department failed to discharge such burden and accordingly, taxpayer had no fixed place PE in India in terms of Article 5(1) of India-Malaysia DTAA.

In connection with installation PE in terms of Article 5(3)(a) of the DTAA, the taxpayer contends that while calculating nine months in accordance with Article 5(3)(a) for installation PE the taxpayer also argued that during the monsoon period, no work could be undertaken hence, it has to be excluded from the period of nine months as provided under Article 5(3)(a) of the DTAA. Additionally, the taxpayer was required to undertake pre-construction / pre-installation survey which was entrusted to a sub-contractor. Therefore, the period of survey is also to be excluded.

At the stage of ITAT, the taxpayer has furnished additional evidences in support of its claim that no installation PE exists during the year under consideration which were not produced before departmental authorities before. ITAT has pressed on below criteria for determination of existence of Installation PE.

- Date of contract and actual date on which activity commenced.
- On which date the taxpayer requested ONGC for access to installation site and when such access was provided to the assessee.
- Whether the work was actually stopped during monsoon period and if stopped, whether on its own decision or at the request of ONGC.
- Whether during monsoon break, men and machine actually demobilized and whether they were located in India or have gone back to their country of residence.
- Meaning of 'Monsoon Period' and 'Weather' as defined under the contract.

In view of the above, ITAT held that AO must give a fair opportunity to go through such additional evidences and conduct factual verification to ascertain assessee's claim of stoppage of work and demobilization of personnel and equipment

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during monsoon period. Therefore, though ITAT admit the additional evidences furnished by the taxpayer before them, ITAT deem it appropriate to restore the matter relating to existence of installation PE to the AO for *de novo adjudication* after verifying all facts and material brought on record or to be brought on record by the taxpayer including additional evidences. Accordingly, ITAT has allowed taxpayer's appeal on statistical purposes.

Aforesaid ruling is a welcoming ruling in a way that ITAT is admitting the additional evidences and directs AO for factual verification in connection with exclusion of monsoon period and sub-contracting period from nine months as provided under the Article 5(3)(a) of the India-Malaysia DTAA to conclude that whether installation PE exist or not. However, OECD in its commentary has specifically dealt with the seasonal interruption which includes interruptions due to bad weather in which it says that a site should not be regarded as ceasing to exist when work is temporarily discontinued. Seasonal or other temporary interruptions should be included in determining the life of a site. Accordingly, it will be interesting to see the ultimate ruling to be provided in this case.

Attribution of profits to PE, a question of fact

Travelport Inc. [CIVIL APPEAL NOS. 6511-6518/2010] (SC) – Order dated 19 April 2023]

Taxpayer was engaged in the business of providing electronic global distribution services to airlines through a Computerized Reservation System ('CRS'). The taxpayer-maintained host computers and servers in USA / Europe and the Master Computer System was connected to airline servers to exchange data on flight schedules, seat availability, etc. The taxpayer had appointed various Indian entities to market and distribute CRS services to various travel agents in India. The taxpayer earned USD 3 or EURO 3 per booking made in India and paid 33-60% thereof to the Indian entities as per the distribution agreement entered into with Indian entities.

The Assessing Officer ('AO') contended that the entire income earned by the taxpayer was taxable because the income was earned through hardware installed by the taxpayer in the premises of the Indian travel agents.

The Tribunal held that taxpayer constituted a fixed place and dependent agent PE in India. However, based on functional analysis, the ITAT held that major part of the activities was processed in the host computers outside India and only a minor portion of the activities was carried out in India. Accordingly, the Tribunal concluded that only 15% of the total revenue could be attributed to income accruing or arising in India and since the taxpayer had already paid more than 15% to the Indian parties under the distribution agreements, no further income was attributable to PE in India.

Delhi HC dismissed various appeals filed by the tax authorities on the ground that attribution of profits to PE is a question of fact and not a question of law. The Apex Court has affirmed the principle that the attribution of profits depends upon the quantum and nature of operations carried out in India is essentially a question of fact. Consequently, appeals filed by tax authorities against the Tribunal's finding on the issue of attribution, which was based on detailed FAR analysis, was dismissed by the SC.

In cases of profit attribution to PE, decision of ITAT, being a final fact-finding authority, would therefore be critical and challenging the same in higher courts may be difficult. Profit attribution to PE has been one of the most debated issues in international tax arena, especially in the context of digital economy transactions and until we see legislative changes in this regard, detailed FAR

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analysis can be considered as an important key for allocation of profits to PE.

Reimbursement of salaries of seconded employees' not taxable as FTS

Juniper Networks Inc. [IT(IT)A No.164 / Bang / 2023 – Order dated 08 May 2023]

The taxpayer, in the present case was US headquartered company and had seconded its personnel to Indian entity Juniper Networks India Pvt. Ltd. ('Juniper India'). The salary of the seconded employees was paid by the taxpayer and reimbursed to it by Juniper India. The assessee contended that reimbursements were not chargeable to tax in India on the following grounds:

- CIT(A)'s conclusion that no employer-employee relationship existed between the employees and Juniper India was factually incorrect.
- The reimbursement of salary was on a cost-to-cost basis without any profit element and hence the same did not constitute income in the nature of FTS in the hands of the taxpayer.
- Even if it is considered as provision of services, the services were not in the nature of make-available services and hence did not fall within the definition of FIS under Article 12 of India-USA DTAA.
- Appropriate taxes had been withheld by Juniper India under section 192 of the Act and once a receipt had suffered taxation, the same could not be taxed twice.

Bangalore ITAT has ruled in the favor of the taxpayer taking into consideration that the above arguments of the taxpayer and held that the case was squarely covered by the decision of Karnataka HC in the case of Abbey Business Services India Pvt. Ltd., Flipkart Internet Pvt. Ltd. and De Beers India Minerals Pvt. Ltd. The Karnataka HC in the case of Abbey Business Services India Pvt. Ltd, held that where based on the facts, seconded employee had to work and function based on instructions from and under the direction, control and supervision of the Indian company and adhere to the rules, regulations, policies and guidelines applicable to employees of the Indian company, the seconded employees were to be considered as employees of the Indian company and reimbursement of their salary expenses were not to be held as FTS.

There is yet another decision from Bangalore ITAT after a series of recent rulings in the cases of Goldman Sachs Services Pvt. Ltd., Tesco Bengaluru Private Limited and Google LLC, holding that reimbursement of salary of seconded employees should not be considered as FTS under the Act / FIS under India-US DTAA and should not be chargeable to tax in India.

It may be important to note that the decision also places reliance on Bangalore CESTAT decision and the decision of SC in the case of Volkswagen India Pvt. Ltd. holding non applicability of service tax on reimbursement of salary of seconded employees, however, does not evaluate the impact of the recent SC ruling in the case of Northern Operating Systems Pvt Ltd. in context of GST negating the decision of Volkswagen.

While the decision is a welcoming decision, it is very important to note that there are several contrasting decisions from various Courts on the matter such as ruling of Delhi HC in the case of Centrica India Offshore Pvt. Ltd. and Bangalore ITAT in the case of Food World Supermarkets Ltd. and clarity of arrangement between group entities supported by robust documentation is critical in case of secondment arrangements to avoid consequences of PE, WHT implications and other tax aspects.

Important Rulings

Termination Compensation to foreign cricket associations not taxable in India

The Board of Control for Cricket in India [ITA no.5492/Mum/2017 – order dated 11 May 2023]

Non-resident foreign companies often receive compensation from Indian companies for termination or modification in terms of contract. It is pertinent to analyze the taxability of such compensation in India. Under the provisions of ITA, section 28(ii)(e) specifically covers such a compensation within the scope of business income. However, there has not been any such clarity on the classification of such compensation under DTAAs. Further, in case of non-resident foreign companies it also become a matter of debate as to whether such compensation can be said to be taxable as business income in absence of PE. One such analysis has been made by Hon'ble Mumbai ITAT in TDS appeal made by BCCI India, brief of which is discussed below.

Taxpayer (BCCI) entered into an agreement with Cricket South Africa ('CSA'), to ensure participation of its domestic Cricket team(s) in Champions League T20 (CLT20). It was agreed that BCCI would pay a participation fee to CSA each year towards the participation of teams. From the year 2015 onwards, it was mutually decided to discontinue staging of the CLT20 Tournament. As compensation for the termination of the CLT20 Tournament, BCCI agreed to pay CSA, an amount of USD 22,696,000, net of taxes. BCCI grossed up the payment by 43.26% and remitted the tax to the credit of the Revenue. BCCI filed an appeal under section 248 of the Act seeking a declaration that the tax was not required to be deducted on the said amount paid by it to the CSA.

Ld. CIT(A) rejected BCCI's claim on the grounds that situs is in India as all the agreements have been executed in India, cause of action (i.e., all matches are to be played in India). Ld. CIT(A) also observed BCCI was dependent agent PE (DAPE) of CSA as the Governing Council of CLT20 comprises members of BCCI, CSA and other cricket associations and BCCI acted on behalf of all of them.

Hon'ble Mumbai ITAT referred the terms of termination agreement and observed that compensation paid is not only for premature termination but also for non-compete (i.e., CSA can't participate in other similar tournament held outside India). Hon'ble Mumbai ITAT relying on provisions of section 9(1)(i) held that only that portion of income which is "reasonably attributable" to the operation carried out in India can be said to be "deemed to accrue and arise in India". In the present case, no matches were conducted in India during the year in which termination compensation was paid. Further, non-compete clause was applicable to tournament to be conducted outside India. Based on this, Hon'ble ITAT concluded that no income could be said to be "reasonably attributable" to PE in India. With respect to DAPE, Hon'ble ITAT twin conditions are required to be fulfilled for constitution of DAPE which was not established by the revenue and therefore BCCI cannot be said to be DAPE of CSA.

Here, Hon'ble Mumbai ITAT made an important observation of "attribution of income" of non-residents in India to determine the taxability of compensation in India. Accordingly, it follows from the above discussion that it is important to determine the situs of income to analyze the taxability of termination compensation in hands of non-resident as per the Act as well as DTAA.

Important Rulings

Foreign Rulings

Danish Supreme Court denies benefits of Tax Treaties and EU Directives in absence of Beneficial Ownership

Supreme Court of Denmark - Takeda A/S [116/2021] and NTC Parent S.a.r.l [117/2021]

In the first case, pursuant to a reorganization in 2006, holding companies in Luxembourg and Sweden were inserted between the Danish company and private equity shareholders. Further, Swedish Hold Co 2 had provided loans to Danish Company which was funded by equity infusion from Swedish Hold Co 1 into Swedish Hold Co 2, which was funded by way of loans from Luxembourg SICAR Company to Swedish Hold Co 1 and there were group contributions by Swedish entities to achieve tax neutrality.

In the second case, several Luxembourg entities were interposed between Danish Company and its shareholders and there were back-to-back loan arrangements along with other hybrid instruments to achieve interest deductions in Denmark with no tax liability in the hands of the recipients.

Interest accruals from Danish Company on loans from Swedish Cos and Lux Cos, were denied benefits of Nordic tax treaty and Denmark – Luxembourg Tax Treaty, respectively, by the Danish Supreme Court. The Supreme Court held that the companies did not qualify as beneficial owners of the interest income and the arrangement constituted an abuse of the provisions of tax treaties and EU directive and that the Danish taxpayers had defaulted in withholding tax obligations on interest payments made to its group entities in both the cases, based on the following observations:

- The financing arrangements were pre-arranged events designed to create a tax deduction in Denmark without corresponding taxable income elsewhere.
- The arrangements did not have business justification other than obtaining a possible tax advantage.
- The interposed entities were only flow through entities and did not engage in any significant activity other than managing the investment / loan.
- Holding companies did not have the real right to dispose of the income accrued / received, as it was to be passed on to another entity.
- Withholding tax obligation arise on accrual of interest and irrespective of whether or not, interest accrued is actually paid or subsequently converted into equity.

The Supreme Court stated that the tax treaties should be read in lines with OECD commentaries and that the concept of beneficial ownership was introduced to ensure that treaty benefits are not granted in case of tax advantages through artificial legal constructions or conduit entities for another person not eligible to tax treaty benefits. Similar decisions on requirement of beneficial ownership in case of dividend incomes were also pronounced by Danish Supreme Court earlier this year.

The decisions clarify how overall arrangements, whether or not in the nature of back-to-back arrangements can be looked through to test beneficial ownership of an income and emphasizes on significance of substance over form such as who manages the entities, whether or not the recipient has control over the funds, nature and quantum of operations carried out by an entity, etc. to avail tax treaty benefits. This may be relevant even in case of tax treaty provisions which have not been covered by Multilateral Instruments but have beneficial ownership tests.

Chilean-Spain treaty does not permit taxation of indirect transfer of shares

Tax Ruling by Chilean Appeals Court ('CAC') of Chile [Order dated 27 April 2023]

Taxpayer is a company incorporated under the laws of Spain and had earned capital gains from selling the shares of another Spanish Company. Generally, Capital gains arising out of the direct transfer of share is taxable in the state where the transferor is a resident (Spain in present case). However, in cases where the shares derive its value from the immovable property situated in another state, such transfer of shares are termed as indirect transfer of shares and capital gain may be taxable in the source state where the immovable property is present. In present case, shares of Spanish Company derive its value from the immovable property situated in Chile.

The Tax Court of Chilean contended that Article 13(4) of the DTAA between Chile and Spain allows the source country (i.e., Chile) to apply tax in a direct transfer as well as indirect transfer of a Chilean underlying company and thus Chile has the right to tax the indirect transfer of shares of the Chilean company.

Aggrieved by the aforesaid order, taxpayer filed an appeal to the Court of Appeals. However, the Court of Appeals held in the favour of the taxpayer by taking the position that as per the literal meaning of Article 13(4) of DTAA with Spain, the source country has right to tax the transfer of shares only in direct transfer and not in indirect transfer. The court also noted that Chile is a part of the OECD Model Convention and OECD generally do not grant taxing rights to the source country in case of direct sale of shares, and thus indirect transfer cannot be taxed either. Further, the Court observed that in case the intention was to tax the indirect transfer, it should have explicitly mentioned in the Chile-Spain treaty as specified in tax treaties of other countries with Chile.

Resultantly, the court relied on the residual article 13(5) of DTAA to state that indirect transfers could only be taxed in the state or residence of the entity that generates the income (in this case, Spain).

Although many countries have incorporated taxation of Indirect transfer provisions in its domestic laws similar to India, however, several treaties have still not undergone changes with respect to taxation of indirect transfer of shares. Based on the facts of each case, the taxpayers can challenge both the original intent of the treaties as well as the literal interpretation of the treaties to contend that indirect transfer of shares cannot be taxed in the source country as per the treaty provisions unless specifically mentioned otherwise. The Indian taxpayers may place reliance on Andhra Pradesh HC in the case of Sanofi Pasteur Holding SA and AAR ruling in case of GEA Refrigeration Technologies GmbH wherein the authorities have held that source country does not have the right to tax the indirect transfer of shares in the respective treaties.

Indian Updates

CBDT proposes changes to Rule 11UA in respect of Angel Tax

Finance Act 2023 extended the applicability of provisions of section 56(2)(viib) of the ITA to non-resident investors. Accordingly, if a closely held company issues shares at a value higher than Fair Market Value ('FMV') of such shares computed as per Rule 11UA of the IT Rules to non-residents, the excess of consideration received over FMV is taxable as income in hands of company. After interactions with stakeholders, CBDT now proposes to amend Rule 11UA to provide certain relaxations and also to exclude money received from certain non-resident investor entities from applicability of section 56(2)(viib). The key changes proposed includes:

- Addition of five more valuation methods for non-resident investors,
- Price matching guidelines with investment made by notified non-resident entities and venture capital funds / specified funds,
- Safe harbour for variation up to 10% and non-applicability in case of certain class of investors like Government entities, banks, and insurance companies.
- Investments in registered startups will also be out of the purview of section 56(2)(viib).

Further, CBDT vide notification no. 29/2023 dated 24 May 2023 also provides list of certain classes of persons being non-resident investors which are excluded from the applicability of section 56(2)(viib) of the ITA.

Foreign Updates

Netherlands updates Decree in relation to DTAA and other regulations

The Dutch State Secretary of Finance issued a Decree no. 2023-2897 on 2 May 2023 updating the DTAA and other regulations which:

- Further clarifies the used methodology and applied sequence of available credits;
- Provides information in relation to income of foreign sportsmen and artists and
- Contains policy where DTAA do not mention a type of income explicitly (i.e., domestic rules could be relied on instead).

Germany supports dynamic interpretation of tax treaties

The German Ministry of Finance ('MOF') has issued a Decree that provides guidance on interpreting German tax treaties using the commentary of the OECD Model. The decree specifies that any updates to the commentary of the OECD Model should be considered while interpreting tax treaties, even if the tax treaties were concluded prior to such updates. However, if a MOF decree or other circular provides a country interpretation, its binding effect is not affected by the commentary of the OECD Model.

Companies undergoing liquidation proceedings are exempt from paying UAE corporate tax

The Finance Ministry of UAE publishes a Ministerial Decision No. 105 of 2023 stating that a person will be deemed to be an exempt from paying UAE corporate tax from the date of its liquidation or termination until the date it is completed subject to certain conditions. However, the deeming provision will only be applicable if notification of this is submitted to the authority within 20 business days from the date of the beginning of the procedures.

Greece mandates TRC applications through myAADE Digital portal

The Greek Public Revenue Authority issued Decision A. 1052 in connection with the issuance of TRCs digitally. With effect from May 2023, individuals or legal representatives of companies

Important Updates

are required to file their application for a TRC through the myAADE digital portal.

The application must include information related to administrative region, the relevant year, and the category of income earned abroad. Additionally, applicants must declare their intention to submit a tax return of the following year, which includes foreign income if any. Separate applications must be filed If an applicant seeks certificates for multiple categories of income, years, or administrative regions.

UAE lists down situations where the presence of a natural person won't give rise to PE

By virtue of Ministerial Decision No. 83 of 2023, MOF of the UAE has outlined conditions which provides that presence of natural persons in UAE would not give rise to PE for the non-resident person subject to below mentioned conditions:

- Presence of the natural person in the State is a consequence of exceptional circumstances.
- The exceptional circumstances cannot reasonably be predicted by the natural persons or non-resident persons.
- Natural persons did not express intention to remain in the State post ending of exceptional circumstances.
- The Non-resident person does not have a PE in the State before the occurrence of the exceptional circumstances.
- The Non-Resident Person did not consider that the natural person is creating a PE or deriving income in the State as per the tax legislation applicable in other jurisdictions.

The decision also explains the exceptional circumstances which provides that an exceptional circumstance is a situation or an event beyond the natural person's control and:

- Which occurred while he was already in the State;
- Which he could not reasonably predict or prevent; and
- Which prevented him from leaving the State as originally planned, whether with respect to the exceptional circumstances of a public nature (e.g., act of war, occurrence of natural disasters etc.) or private nature (e.g., Occurrence of an emergency health condition etc.).

Government notifies provisions of DTAA with Chile

MOF of India on 3 May 2023 vide notification no. 24/2023 notifies the provisions of DTAA between India and Chile in accordance with Section 90 of the ITA.

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Important Rulings

Distributor's dilemma – Presence of selling & marketing expenses in taxpayer's books does not indicate value addition.

Bristol Myers Squibb India Private Limited [TS-270-ITAT-2023(Mum)-TP]

The taxpayer is engaged in the business of distribution of oncology, hepatitis B, virology, immunology, and critical care products in India. The taxpayer had applied RPM to benchmark the activity of purchase of formulations from its AE and resale in the Indian market.

The TPO rejected the application of RPM and applied the TNM method to benchmark the distribution transaction. The TPO rejected the RPM on the premise that the taxpayer is incurring significant expenditure towards advertisement and brand promotion expenses, which in turn severely impacts the operating margin of the tested party (i.e., the taxpayer). The aggrieved taxpayer made an appeal before the CIT(A) which partially allowed the contention made by the taxpayer.

Aggrieved by the aforesaid TPO's and CIT(A) ruling, the taxpayer made an appeal to the Mumbai ITAT. The Mumbai ITAT noted the ruling in the taxpayer's own case in earlier year of Fresenious Kabi India (P) Ltd. Vs. DCIT (ITA No. 235/Mum/2013), wherein it was held mere existence of selling & marketing expenses borne by the taxpayer would not lead to any value addition. Accordingly, the Mumbai ITAT upheld the application of RPM by the taxpayer as the most appropriate method for benchmarking of the distribution function.

Here, it is important to note that there has been quite a number of litigations concerning advertisement, marketing and promotion expenses (AMP) in transfer pricing, either focussed on using TNM method as the most appropriate method or employing the use of Bright Line Test by the TPOs to reject the benchmarking carried out by taxpayers. In this case, most ITAT benches have ruled that in distributors' cases, the AMP expenses are to be used as a comparability factor i.e., to identify comparable companies based on AMP expenses % incurred by a taxpayer, and not assume that AMP cannot be the responsibility of a distributor. So far, this appears to be a standard position across India, and hence, the most reliable one when it comes to AMP.

Recruitment agency services not comparable with secondment of employees

Zensar Technologies Ltd [TS-231-ITAT-2023(Mum)-TP]

The taxpayer is engaged in the business of development and marketing of software. The taxpayer had entered into an international transaction regarding the recovery of the salary cost of employees who were seconded to the US-based AE. The taxpayer sends personnel for specific projects and once the project is completed, the personnel return to India to join back taxpayer's company which is a normal practice in the software industry.

The TPO made an adjustment contending that the taxpayer should be entitled to some benefit over and above the cost incurred for employing the personnel. In this regard, the TPO applied the markup chargeable in case of agencies engaged in recruitment services deeming it as comparable with the activity of secondment of employees by the taxpayer. Upon further appeal before the CIT(A), it allowed partial relief in respect of some of the employees but no relief in TPO's principle w.r.t recruitment agency markup charged.

Important Rulings

Coverage

Aggrieved by the aforesaid TPO's and CIT(A)'s orders, the taxpayer made an appeal before the Mumbai ITAT. Mumbai ITAT held that an adjustment is warranted for the benefit derived by the AE due to the deployment of personnel for which the taxpayer is required to be compensated since AE has derived benefit out of it. But the Mumbai ITAT negated the application of the recruitment agency rate since there are additional services/benefits provided in recruitment agency services and the mere secondment of employees is not at par with the recruitment agency services.

This is one of the transactions, where TPO's are prone to take different positions, depending on whether the Indian taxpayer is sending/receiving employees on secondment.

A secondment is where an employee of a company is sent to work for another company, as an employee of the other company i.e., the most important part being, that the employee in question works as an integral part of the company to which it is seconded. If the factual reality is different i.e., the employee is in essence, providing a service to the secondee company while still, in principle, reporting to the company of original employment, the secondment arrangement fails, and TPOs position, as in this case, would take precedence. Hence, it would be important to maintain documents, agreements, etc. which substantiate in support of secondment, where applicable.

Important Updates

CbCR – paving its way to become public!

Tax Transparency is quickly becoming the new motto of the OECD with multiple reforms around the principle, beginning with BEPS and now unto Pillar 1 and 2.

There are multiple countries today that have begun the drive towards tax transparency through making Country-by-Country Report (CbCR) a public document, beginning with countries of the European Union and now, Australia. Public CbCR is seen as an efficient and appropriate tool for increasing transparency in relation to the activities of multinational undertakings and for enabling the public to assess the impact of those activities on the real economy.

As the name suggests, Public CbCR shall be published in the public domain. The countries that have implemented or are in the process of implementing have provided for the information to be publicly accessible, free of charge and in an electronic reporting format which is machine-readable via the (local) company website.

By introducing Public CbCR, EU became a global leader in the promotion of financial and corporate transparency. The EU public Country-by-Country (CbC) Reporting Directive (the Directive) entered into force on December 21, 2021, and introduced a timeline for the adoption of rules that will require multinational groups operating in the EU and that exceed certain thresholds to publish certain information on their tax affairs. EU Member States have until June 22, 2023, to transpose the Directive into domestic legislation. The rules will apply, at the latest, from the commencement date of the first financial year starting on or after June 22, 2024.

EU member states like Romania, Germany, Spain, and Poland have introduced public CbCR legislation in their national laws. Member states such as Sweden, Hungary, Luxembourg, and the Netherlands have proposed the draft legislation.

Public CbCR in Australia is proposed to be applicable for income years commencing from 1 July 2023. The final legislation to this effect will be approved before its implementation date. The draft legislation also requires four disclosures in addition to the OECD's CbCR requirements – information about intangible assets, expenses paid to related parties in other jurisdictions, an explanation of why current year income tax accrued differs from the headline tax rate multiplied by profit before tax, and the effective tax rates (ETR) for each jurisdiction (with the ETR to be calculated consistently with Pillar Two requirements, an intricate calculation).

This mix-and-match approach could lead to differing approaches being taken, making it challenging for groups to achieve consistency in their own disclosures or satisfy both EU Public CbCR and Australian CbCR simultaneously.

If legislated, this would be the first unrestricted worldwide mandated public reporting of all CbC report data combined with additional information by jurisdiction. It would apply to any large multinational enterprise (MNE) doing business in Australia through an Australian resident entity or Australian permanent establishment, regardless of whether its group parent is an Australian or foreign entity, having an annual global income of AUD 1 billion or more.

The implementation of the Public CbCR will be an important milestone in terms of tax transparency. However, the responsibility for its compliance creates a new obligation with far-reaching implications. The least of these being that any information in the public domain is subject to scrutiny and (mis)interpretation. Also, the court of public opinion could be two-edged, with no right to defense granted to the companies. However, the most important of all would be the release of

Important Updates

information in the public domain, which is otherwise perceived as a competitive advantage or commercially confidential by the companies. MNEs must be prepared to establish a strategy for the publication or transparency of their tax information and communication with different stakeholders.

Brazilian TP Regulations: Interesting times ahead

Finally, the Brazilian tax regime is realigning itself with the OECD Transfer Pricing Guidelines. This significant change of stance from the earlier mechanism of fixed margins has been brought about by the approval of Conversion Bill No. 8 of 2023 by the Brazilian Senate. It is said to be a change of shifting the pillars on which the Brazilian transfer pricing regime rests.

The erstwhile Brazilian TP regime provided for a fixed markup on the inbound / outbound transactions and did not call for conducting a comparability search i.e., for example, on the export of goods transactions, the fixed markup on local cost varied based on the nature of the industry. Although rigid in nature, it provided certainty to the taxpayers as far as the minimum markup thresholds required to comply with the Brazilian TP regulations.

The proposed (mandatory in the foreseeable future) changes in Brazilian TP regulations have formally introduced the applicability of the principles laid down by the OECD Transfer Pricing guidelines. This would lead to conducting comparability exercises and extensive examination of the transaction under consideration to correctly delineate the functional profile. On one hand, the introduction of the new TP regulations has paved the way for an economic/business/transaction-centred approach but on the other hand, it has opened up a plethora of grounds for scrutiny by the Brazilian tax authorities which need to be met with a watertight documentation approach by the taxpayer, supported by a detailed fact-finding exercise.

UAE Government releases norms for maintenance of TP documents for Corporate Tax Law

The Finance Minister of UAE has issued the Ministerial Decision No. 97 of 2023 which covers requirements for maintenance of TP documentation for the purpose of taxation of corporations and businesses. It also covers requirement of maintaining Master File and Local File.

If a taxable person is a part of Multinational Enterprises Group having a total consolidated group revenue of AED 3.15 billion or above or whose revenues are AED 200 million or above in the relevant tax period is required to maintain both a Master File and a Local File.

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Important Updates

Foreign Trade Policy

Realignment of RoDTEP Schedule w.e.f 01.05.2023 consequent to amendments made under Finance Bill, 2023

Notification No. 04/2023 dated 1st May 2023

The central government has made certain additions/amendments in Appendix 4R w.e.f 01.05.2023. to align it with the First Schedule of Customs Tariff Act, consequent to The Finance Act 2023

Public Notice

Amnesty scheme for one time settlement of default in export obligation by Advance and EPCG authorization holders

Public Notice No. 7/2023 dated 18th April 2023

The DGFT has amended Public Notice no. 2/2023 to clarify the duties on which interest shall be payable. All the pending cases of default in meeting Export Obligation can be regularised by the authorisation holders on payment of all customs duties that were exempted in proportion to unfulfilled EO. Interest payable is capped at maximum of 100% of such exempted duties. However, no interest is payable on the portion of Additional Customs Duty and Special Additional Customs Duty.

Extension in implementation of Trace and Track system for Export of Pharmaceuticals

Public Notice No. 3/2023 dated 3rd April 2023

The DGFT has extended the date for implementation of Track and Trace system for export of drug formulations with respect to maintaining the Parent-Child relationship in packaging levels and its uploading on central portal has been extended up to 1st August 2023 for both SSI and non-SSI manufactured drugs.

Customs

Amnesty Scheme for one time settlement of default in export obligation by Advance and EPCG authorization holders

Circular No. 11/2023 – Customs dated 17th May 2023

The ministry of finance has issued several notifications to amend 13 customs notifications pertaining to AA and schemes. The Public Notice No.02 dated 01.04.2023 notified by DGFT that has provided a procedure for regularization of bona fide defaults, in which all pending cases of the default in meeting export obligation may be regularized by the authorization holder on payment of applicable Customs duty, corresponding to the shortfall in EO. Interest payable is capped at maximum of 100% of such duties exempted on which interest is payable as specified in the said Public Notice dated the 01.04.2023. However, no interest is payable on the portion of Additional Customs Duty and Special Additional Customs Duty. The authorization holder choosing to avail this procedure must complete the process of payment on or before 30-09-2023.

GST

Guidelines for Special All India Drive against fake registrations

Standard Operating Procedure for Scrutiny of Returns for FY 2019-20 onwards

Instruction No. 02/2023 – GST, dated 26th May 2023

The CBIC has issued an SOP for scrutiny of returns for the Financial Year 2019-20 onwards. The DG systems has developed this functionality containing the workflow for scrutiny of returns in the CBIC ACES-GST application. An advisory along with user manual has been issued where the detailed workflow of the said functionality is mentioned. It is expected that this functionality will further boost the efforts of the department to leverage technology and risk-based tools to encourage self-compliance and to conduct scrutiny of returns with minimal interaction with registered person. At the same time, it is expected that the taxpayers shall be faced with a sizeable number of notices for various mismatches in the returns filed.

Recent Advisories issued in GSTN

Abeyance in implementation of time limit for Reporting Invoices on IRP Portal

To ensure timely compliance, the Government had imposed a time limit of 7 days for reporting old invoices on the IRP Portals for generation of IRN in respect of taxpayers having aggregate turnover 100 Crores or more. The said restriction has been deferred based on various representations and shall be implemented in due course. The aforementioned clarification indirectly clarifies that an IRN can be generated post facto basis.

Bank Account Validation

To ensure that the bank accounts provided by the taxpayer are correct, functionality has been introduced by the GSTN for checking Bank Account Validation. The bank account validation status can be seen under the Dashboard -> My Profile -> Bank Account Status. Taxpayers will also receive the bank account status detail on registered email and mobile number immediately after the validation is performed for their declared bank account.

Facility to verify document reference number (RFN) mentioned on offline communications issued by State Authorities

To enable the taxpayers to ascertain the genuineness of offline communication issued by the state authorities, a new facility for Reference Number (RFN) generation by State tax officer and verification by taxpayer has been provided. Under this feature, the state tax officer can generate an RFN for physically generated correspondence sent to the taxpayers. The taxpayer can validate the same (both pre-login and post-login) by navigating to Services -> User Services -> Verify RFN option and provide the RFN number. It is to be noted that limited details will be provided during pre-login search, while greater details will be provided when the taxpayer logs in. This facility is only for offline communication issued by the State authorities, for documents issued by Central GST officers, CBIC DIN facility may be used.

GST at 18% to be charged on Liquidated Damages received for non-performance

AP Power Development Co. Ltd

AAR No. 04/AP/GST/2023

The taxpayer had entered into an agreement with its vendor for the supply of certain services. In the event of failure in performance of the job assigned by the Vendor the taxpayer was to collect liquidated damages and penalties for the short supply or damages. The taxpayer sought an advance ruling asking whether the liquidated damages collected by the taxpayer for non-performing of an act constitute as supply as per Section 7 of the Act in the background of Circular No. 178/10/2022 dated 3rd August 2022 issued by the CBIC.

The AAR held the liquidated damages to be taxable at 18% under SAC 9997. It referred to the aforementioned circular specifically para 7.1.6 and concluded that such payments, even though they may be referred to as fine or penalty, are actually payments towards a consideration for a supply and are subject to GST if such supply is otherwise taxable. As per Section 7 read with definition of consideration under Section 2(31), liquidated damages paid for tolerating the act of non-performance or breach of contract must be treated as consideration for tolerating an act or situation under an agreement would constitute a supply of service. The AAR, while holding the above, also observed that the aforementioned is not universal and absolute.

KCM Comments

The point of taxability of liquidated damages has always been contentious right from the introduction of the negative list under the Service Tax regime. While the Government came out with a detailed clarification on the taxability of liquidated damages in August 2022, the present advance ruling demonstrates that this issue is far from being clear and would need a few judgements from High Courts / Supreme Court or GST Tribunal if it is formed as per the expectations.

Corporate Guarantee to Group Companies without consideration not Taxable

Commissioner of CGST & Central Excise Vs. M/s Edelweiss Financial Services Ltd

Appeal no. 5258/2023

In this case, the department was in appeal before Supreme Court challenging the order of the CESTAT wherein the order of the Principal Commissioner holding that corporate guarantee given by the taxpayer is not a taxable service.

The taxpayer argued that as per Section 65 (12) of the Finance Act, 1994 the issuance of a corporate guarantee to a group company without consideration would not fall within banking and other financial services and therefore it was not a taxable service. It was submitted that as per Section 65B (44) of Finance Act,1994 the definition of service would indicate that only such service would be taxable which is rendered for a valuable consideration.

The Hon'ble Supreme Court agreed to the aforementioned arguments held that issuance of a corporate guarantee to a group company without consideration would not fall within the banking and other financial services and is therefore not a taxable service.

KCM Comments

Under GST regime, the transaction between related parties for inadequate or no consideration is covered under Entry 2 Schedule I of CGST Act, 2017 making it liable to GST even where there is no consideration. It would, therefore, be interesting to see how the taxability of Corporate Guarantee develops under the GST regime as not only the taxability would be a question, the valuation coupled with the question as to whether such a supply would be eligible for zero rating given that there is no foreign exchange earnings, would also be an issue.

HC Quashes orders denying ITC on works contract services invoking blocked credit provision

M/S SR Constructions vs. The Union of India Ors.

WP (C) 399 of 2022

The taxpayer is engaged in the construction business. For the purpose of its activities of providing works contract / construction services it procured materials and took services of works contractors. The ITC in respect of such expenses was denied by the department by relying upon Section 17(5) of CGST Act. 2017.

The Hon'ble High Court observed that the taxpayer has fulfilled all conditions of works contracts as he is providing works contract services under a contract for construction of building of a hotel wherein transfer of property in goods is involved in the execution of such contract. The taxpayer has been providing works contract services to the owner of the hotel and not for its own. It was held that, in this case the taxpayer does not fall under Section 17(5) (c) of CGST Act, 2017. Accordingly, the impugned order was set aside and quashed.

Right to use car parking service not naturally bundled with construction services – Upholds AAR

Eden Real Estates Pvt. Ltd

Appeal Case No. 01/WBAAAR/APPEAL/2023

The taxpayer is engaged in the business of construction of residential apartments intended for sale. The prospective buyers are given an option to acquire car parking space along with the apartment being booked by them and the buyers who opt to avail the car parking facility are charged a certain sum towards the car parking space which forms part of the total consideration charged. The taxpayer sought advance ruling om the question as to whether the amounts charged by the applicant for right to use of car/two-wheeler vehicle parking space along with the sale of under constructed apartments to its prospective buyers is to be treated as a composite supply of construction of residential apartment services or the same is a distinct supply under section 7 of the CGST Act, 2017. The taxpayer's argued that the customer's primary objective is to buy an apartment in such residential project and the parking space that came with the apartment was naturally bundled. The taxpayer further stated that registering deed of conveyance contains both sale of apartment and right to use of open parking space and the stamp duty was paid on the entire consideration received from bundled supply.

The AAAR observed that though a sanctioned plan requires inclusion of parking layout, an uncovered parking space such as open parking area is not included in the definition of "garage" but falls within the meaning of "common area". The common area belongs to all apartment owners jointly or the owner's association when formed and no portion can be sold/transferred/leased out to any person by the promoter. So, in this case the sanctioned

Important Rulings

plan may have open parking spaces, but the taxpayer has no right to transfer ownership or lease out or allow right to use of the said spaces to allottees. It was held that sale/right to use car parking service and construction services are separate services which are not dependent on sale and purchase of each other. Therefore, sale/right to use car parking is not naturally bundled with construction services and hence, it cannot be treated as composite supply of construction services.

KCM Comments

The West Bengal AAR previously in case of Bengal Peerless Housing Development Co. Ltd. had held that such parking charges shall be treated as an ancillary supply to the main supply of construction of a flat thereby eligible for the abatement. However, that ruling was later overturned by the AAAR holding that abatement shall not be available which has also been followed in the present case on the ground that the buyer has an option to buy or not to buy the parking and that the open parking are not allowed to be sold under RERA. The AAAR has however, failed to appreciate that while one has an option to buy the parking, one can get that option only if he takes the construction services which makes such supply dependent upon the principal supply of construction services.

Contributed by

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For detailed understanding or more information, send your queries to ***kcminsight@kcmehta.com***

MCA Notifications

Amendment in the Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016

Notification dated May 10, 2023

Ministry of Corporate Affairs (MCA) vide its notification dated April 17, 2023, has introduced a new regime of "Accelerated Corporate Exit" for speedy disposal of voluntary application for removal of name of a company from the Register of Companies.

In context to the said regime, MCA has amended Rule 4 of the Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016 stating that the Company shall not file an application for removal of name (Form STK-2) unless it has filed overdue financial statements (Form AOC-4 / AOC-4 CFS / AOC-4 XBRL) and annual returns (Form MGT-7 / MGT-7A) up to the end of the financial year in which the Company ceased to carry its business operations.

Moreover, a Company would also be required to file all pending financial statements and annual returns before filing an application (Form STK-2) after issue of notice by Registrar of Companies (RoC) of his intention to remove the name of the Company.

However, a Company would not be allowed to make application (STK-2) in case RoC removes the name of the Company and issues the notice for publication under Section 248(5) of the Companies Act, 2013.

Applicability: May 10, 2023

Amendment in the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016

Notification dated May 15, 2023

Ministry of Corporate Affairs (MCA) has proposed amendment to the Rule 25 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016. The proposed amendment would result in timely disposal of various activities in respect of amalgamation of small companies, start-ups and Holding-Subsidiary companies as per the newly introduced time frame / limits.

The proposed amendment to sub-rule (5) & (6) of Rule 25 would change the manner of disposal of objections / suggestions received from Registrar of Companies (RoC) & Official Liquidator (OL) for the scheme of arrangement / amalgamation.

MCA Notifications

Rule	Erstwhile provisions	Amended provisions
Rule 25(5)- Scheme is in Public Interest / Interest of Creditors as per ROC & OL	If no objection / suggestion is received from RoC and OL or their objection / suggestion is deemed to be not sustainable and Central Government (i.e.) Regional Director (RD) is of opinion that scheme is in the public interest or interest of creditors, it may issue confirmation order in ***Form CAA 12***. **Comments: No time frame prescribed for confirmation order in Form CAA 12.**	If no objection / suggestion is received from RoC and OL within 30 days of receipt of scheme and Central Government (i.e.) Regional Director (RD) is of opinion that the scheme is in the public interest or interest of creditors, it may issue confirmation order in ***Form CAA 12*** within **15 days** from expiry of said 30 days. If RD does not issue confirmation order within 60 days of receipt of scheme, it shall be deemed to have no objection and confirmation order to be issued accordingly. **Comments: RD has been given a time frame of 15 days from expiry of 30 days from date of submission of scheme to give confirmation order in Form CAA 12.** **In case RD does not issue the confirmation within prescribed time period, it is deemed to be a confirmation.**
Rule 25(6) – Scheme is not in Public Interest / Interest of Creditors as per ROC & OL	Objections / suggestions received from RoC and OL and RD is of opinion that scheme is not in the public interest or interest of creditors, it may file an application before National Company Law Tribunal (NCLT) in ***Form CAA 13*** within **60 days** from the date of receipt of scheme requesting NCLT to consider the scheme under Section 232 of the Companies Act 2013. **Comments: No time frame specified for submission of application to NCLT in Form CAA 13 by the RD.**	Where the objections / suggestions are received from RoC and OL and RD within 30 days from the date of receipt of scheme: ➢ Case 1: Where RD is of an opinion that objections / suggestions of RoC and OL are not sustainable, and the scheme is in the public interest or in the interest of creditors, RD may issue confirmation order in ***Form CAA 12*** within 30 days after expiry of aforesaid 30 days. **Comments: Time frame specified where RD is of an opinion that scheme is in public interest and provide confirmation in Form CAA 12 within specified time period.**

MCA Notifications

Rule	Erstwhile provisions	Amended provisions
		➢ Case 2: Where RD is of opinion that scheme is not in the public interest or interest of creditors, it may file an application before National Company Law Tribunal (NCLT) in Form CAA 13 within 60 days from the date of receipt of scheme requesting NCLT to consider the scheme under Section 232 of the Companies Act 2013. If RD does not issue confirmation order within 60 days of receipt of scheme, it shall be deemed to have no objection and confirmation order to be issued accordingly. **Comments: Time frame specified for submission of application to NCLT in Form CAA 13 by the RD, where it observes that the scheme is not in public interest or interest of creditors.** **In case of non-submission of Form CAA 13 within time frame, it would be deemed to have been confirmed by the RD.**

These amendments are applicable from June 15, 2023.

RBI Notifications

Coverage

Remittances to International Financial Services Centres (IFSCs) under the Liberalised Remittance Scheme (LRS)

RBI/2023-24/21 vide Notification No. A.P. (DIR Series) Circular No. 3 dated 26 April 2023

Government of India established International Financial Services Centres Authority in April 2020 under the International Financial Services Centres Authority Act, 2019 passed by the Indian Parliament. The first International Financial Services Centre ("IFSC") has been set up at GIFT City, Gandhinagar with an objective to create a global hub for financial services.

With the move to make IFSCs investor friendly for Indian Resident Individuals, RBI, in February 2021 gave permission to such Resident Individuals to open non-interest-bearing Foreign Currency Account (FCA) in IFSCs. The primary objective was to make investments in securities issued by the non-resident entities in IFSCs under the Liberalized Remittance Scheme ("LRS"). However, there was a restrictive covenant in the form that <u>any funds lying idle in the account shall be repatriated to resident account of the investor in India within a period of 15 days from receipt of such funds to the account</u>.

In order to ease the procedural hassles of frequently moving funds between FCA and resident account and vis-a-versa, the covenant for repatriation of idle funds from FCA has been withdrawn by the RBI with immediate effect.

Formalisation of Informal Micro Enterprises on Udyam Assist Platform

RBI/2023-24/27 vide Notification No. FIDD.MSME & NFS.BC.No.09/06.02.31/2023-24 dated 09 May 2023

RBI mandated obtaining Udyam Registration Certificate for enterprises to be classified as Micro, Small and Medium Enterprise (MSME), vide its Gazette Notification No. S.O. 2119(E) dated June 26, 2020. Government of India (GOI) observed that certain enterprises not covered under the Goods and Service Tax regime ("Informal Micro Enterprise" or "IME") were unable to register on the Udyam Registration Portal (URP) due to lack of stipulated documents.

To ease IMEs to be formally classified as MSMEs (*to take benefits of all the Government schemes and programs available to MSMEs*) till such time the IMEs obtain the necessary documents required to register through URP, GOI has launched Udyam Assist Platform (UAP) wherein IMEs can now obtain Udyam Assist Certificate through designated RBI regulated entities.

IMEs can at a later date migrate to URP once they have received all the mandatory documents but can still obtain the benefits available to MSMEs during such interim period.

RBI Notifications

₹2000 Denomination Banknotes – Withdrawal from Circulation; Will continue as Legal Tender

RBI/2023-24/32 vide Notification No. DCM(Plg) No.S-236/10.27.00/2023-24 dated 19 May 2023

With RBI withdrawing ₹2000 denomination banknotes, please find below some important FAQs shared by RBI for further deliberation on the matter:

1. **Why are ₹2000 denomination banknotes being withdrawn?**
   ₹2000 notes were printed in a limited quantity during the year 2016-17 to 2018-19, with an estimated lifespan of 5 years. With other denomination currencies now being flowing in adequate quantities and with a view to ensure availability of good quality bank notes to the public under the Clean Note Policy, RBI has withdrawn ₹2000 denomination banknotes from circulation.
2. **Can ₹2000 banknotes be used for normal transactions?**
   Yes, banknotes can either be exchanged or used for normal transactions since they are still considered as legal tender.
3. **What should the public do with the ₹2000 denomination banknotes held by them?**
   Deposit and/or exchange these banknotes on or before **September 30, 2023, at any bank** branch in India, without any restrictions subject to KYC norms and for free of cost. Moreover, exchange of ₹2000 banknotes can also be made through Business Correspondents up to a limit of ₹4000/- per day for an account holder.
4. **Is there an operational limit on the amount of ₹2000 banknotes that can be exchanged?**
   Yes, at a time, exchange of ₹2000 banknotes up to a limit of ₹20,000/- is permissible.
5. **What will happen if a bank refuses to exchange / accept deposit of ₹2000 banknote?**
   If the bank does not respond within a period of 30 days after lodging of the complaint or if the complainant is not satisfied with the response/resolution given by the bank, the complainant can lodge the complaint under the Reserve Bank - Integrated Ombudsman Scheme (RB-IOS), 2021 at the Complaint Management System portal of RBI (cms.rbi.org.in).

SEBI Notifications

Coverage

Introduction of Legal Entity Identifier (LEI) for certain issuers

SEBI/HO/DDHS/DDHS_Div1/P/CIR/2023/64 dated May 03, 2023

Legal Entity Identifier [LEI] is a unique global identifier for legal entities participating in financial transactions. LEI is a unique 20-character code designed to create a global reference data system that uniquely identifies every legal entity, in any jurisdiction, that is party to a financial transaction. Till now, RBI directions had mandated non-individual borrowers having aggregate exposure of above Rs. 25 crores to obtain LEI Code.

With the view to expand the transactions to be covered under LEI, the following entities having issued financial instruments as tabled below shall also have to apply for LEI (as per timelines stated in the Table):

Category of security	Relevant Regulation	Applicability	Timeline
Non-convertible Securities	SEBI (Issue and listing of Non-convertible Securities) Regulations, 2021	Issuer having outstanding listed non-convertible security as on August 31, 2023	On or before September 1, 2023
		Issuer proposing to issue and list non-convertible security	On or after September 1, 2023

Category of security	Relevant Regulation	Applicability	Timeline
Securitized Debt Instruments and Security Receipts	SEBI (Issue and Listing of Securitized Debt	Issuer having outstanding listed Securitized Debt Instruments and Security Receipts as on August 31, 2023	On or before September 1, 2023
		Issuer proposing to issue and list Securitized Debt Instruments or Security Receipts	On or after September 1, 2023

The LEI system helps to improve transparency in financial markets and mitigate systemic risk by providing a comprehensive and standardized database of legal entity information.

Applicability: With immediate effect

Direct Market Access (DMA) to SEBI registered Foreign Portfolio Investors (FPIs) for participating in Exchange Traded Commodity Derivatives (ETCDs)

SEBI/HO/MRD/MRD-PoD-1/P/CIR/2023/68 dated May 10, 2023

Direct Market Access [DMA] as a concept facilitates the clients of a broker to directly access the exchange trading system through the broker's infrastructure to place/execute orders without manual intervention.

SEBI Notifications

Several benefits viz. direct control over orders, faster execution of orders, lower impact costs for large orders and implementing better hedging and arbitrage strategies accrue to the clients vide the DMA.

The DMA framework which was laid down by SEBI way back in 2009 for institutional investors or through investment manager for other clients is being further broadened. SEBI has decided to allow stock exchanges to extend DMA facility to **Foreign Portfolio Investors (FPIs) for participating in Exchange Traded Commodity Derivatives (ETCDs)**, subject to the following conditions:

1) Stock exchange/brokers shall comply with procedures related to application for DMA, operational specifications, Client authorization and broker-client agreement, risk management, etc.
2) In September 2022 SEBI had permitted FPIs to participate in ETCDs and the provisions that were notified then shall continue to remain applicable for investment through the DMA route as well.

Applicability: With immediate effect

Investment in units of Mutual Funds in the name of Minor through guardian

SEBI/HO/IMD/POD-II/CIR/P/2023/0069 dated May 12, 2023

SEBI in partial modification of Circular no. SEBI/HO/IMD/DF3/CIR/P/2019/166 dated December 24, 2019 [in respect of investments in mutual funds made in the name of a minor through a guardian] has introduced the revised guidelines:

1) Investments can now be made from the bank account of the minor, parent or legal guardian of the minor, or from a joint account of the minor with parent or legal guardian.
   [Earlier, investment in mutual fund units on the behalf of a minor was allowed only from the minor's bank account or from a joint account of the minor with the guardian].
2) Irrespective of the source of payment for the subscription of mutual fund units, all redemption proceeds will be credited only to the verified bank account of the minor, which they hold with the parent/legal guardian.
3) However, for existing folios, the AMCs shall insist upon a **Change of Pay-out Bank mandate** before redemption is processed.

Applicability: With effect from June 15, 2023

Risk Disclosure with respect to trading by individual traders in Equity Futures & Options Segment

SEBI/HO/MIRSD/MIRSD-PoD-1/P/CIR/2023/73 dated May 19, 2023

Greater participation by investors in the Indian securities market including, the derivatives segment leads to the issue of making the investors aware of the risks associated with trading in derivatives.

To facilitate informed decision making by the investors trading in derivatives segment, SEBI has decided to introduce 'Risk disclosures' with respect to trading in equity Futures & Options (F&O) segment.

SEBI Notifications

Stock Brokers:

- As a part of this awareness initiative, SEBI has instructed all stock brokers to display detailed 'Risk disclosures' on their websites and to ensure that all their clients have the opportunity to go through these disclosures while logging in to the system for trading / investing in equity F&O segment
- Qualified Stock Brokers (QSBs) have been mandated to maintain the Profit and Loss (P&L) data of their clients which shall have to be retained for at least 5 years.

Stock Exchanges and Depositories:

- Stock Exchanges and Depositories instructed to bring the provisions of this circular to the notice of their members / participants and also disseminate the same on their websites.
- They have also been asked to display the 'Risk disclosures' on their respective websites, with a link to study conducted by SEBI.

Applicability: With effect from July 01, 2023

Dematerialization of securities of Hold Cos and SPVs held by Infrastructure Investment Trusts (InvITs)

SEBI/HO/DDHS-PoD-2/P/CIR/2023/76 dated May 22, 2023

Regulation 14(18) of SEBI (Real Estate Investment Trust) Regulations, 2014 ("REIT Regulations") and Regulation 14(4)(r) of SEBI (Infrastructure Investment Trusts) Regulations, 2014 ("InvIT Regulations") provides that the units of REIT/ InvIT as the case may be, shall be issued only in dematerialized form to all the applicants.

For any existing securities holdings by REITs / InvITs in Hold Cos and SPVs in physical form, the Manager of the REIT / InvITs respectively have been directed to dematerialize the securities of Hold Cos and SPVs of the REIT / InvITs respectively**, on or before June 30, 2023**.

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Abbreviations

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Abbreviation	Meaning
AA	Advance Authorisation
AAR	Authority of Advance Ruling
AAAR	Appellate Authority of Advance Ruling
AAC	Annual Activity Certificate
AD Bank	Authorized Dealer Bank
AE	Associated Enterprise
AGM	Annual General Meeting
AIR	Annual Information Return
ALP	Arm's length price
AMT	Alternate Minimum Tax
AO	Assessing Officer
AOP	Association of Person
APA	Advance Pricing Arrangements
AS	Accounting Standards
ASBA	Applications Supported by Blocked Amount
AY	Assessment Year
BAR	Board of Advance Ruling
BEAT	Base Erosion and Anti-Avoidance Tax
CBDT	Central Board of Direct Tax
CBIC	Central Board of Indirect Taxes and Customs
CCA	Cost Contribution Arrangements
CCR	Cenvat Credit Rules, 2004

Abbreviation	Meaning
CESTAT	Central Excise and Service Tax Appellate Tribunal
CGST Act	Central Goods and Service Tax Act, 2017
CIT(A)	Commissioner of Income Tax (Appeal)
COO	Certificate of Origin
Companies Act	The Companies Act, 2013
CPSE	Central Public Sector Enterprise
CSR	Corporate Social Responsibility
CTA	Covered Tax Agreement
CUP	Comparable Uncontrolled Price Method
Customs Act	The Customs Act, 1962
DFIA	Duty Free Import Authorization
DFTP	Duty Free Tariff Preference
DGFT	Directorate General of Foreign Trade
DPIIT	Department of Promotion of Investment and Internal Trade
DRI	Directorate of Revenue Intelligence
DTAA	Double Tax Avoidance Agreement
ECB	External Commercial Borrowing
ECL	Electronic Credit Ledger
EO	Export Obligation
EPCG	Export Promotion Capital Goods

Abbreviation	Meaning
FEMA	Foreign Exchange Management Act, 1999
FII	Foreign Institutional Investor
FIFP	Foreign Investment Facilitation Portal
FIRMS	Foreign Investment Reporting and Management System
FLAIR	Foreign Liabilities and Assets Information Reporting
FPI	Foreign Portfolio Investor
FOCC	Foreign Owned and Controlled Company
FTC	Foreign Tax Credit
FTP	Foreign Trade Policy 2015-20
FTS	Fees for Technical Service
FY	Financial Year
GAAR	General Anti-Avoidance Rules
GDR	Global Depository Receipts
GMT	Global Minimum Tax
GILTI	Global Intangible Low-Taxed Income
GSTN	Goods and Services Tax Network
GVAT Act	Gujarat VAT Act, 2006
HSN	Harmonized System of Nomenclature
IBC	Insolvency and Bankruptcy Code, 2016

Abbreviations

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Abbreviation	Meaning
ICDS	Income Computation and Disclosure Standards
ICDR	Issue of Capital and Disclosure Requirements
IEC	Import Export Code
IIR	Income Inclusion Rule
IMF	International Monetary Fund
IRP	Invoice Registration Portal
IRN	Invoice Reference Number
ITC	Input Tax Credit
ITR	Income Tax Return
IT Rules	Income Tax Rules, 1962
ITAT	Income Tax Appellate Tribunal
ITR	Income Tax Return
ITSC	Income Tax Settlement Commission
JV	Joint Venture
LEO	Let Export Order
LIBOR	London Inter Bank Offered Rate
LLP	Limited Liability Partnership
LOB	Limitation of Benefit
LODR	Listing Obligations and Disclosure Requirements
LTA	Leave Travel Allowance
LTC	Lower TDS Certificate

Abbreviation	Meaning
LTCG	Long term capital gain
MAT	Minimum Alternate Tax
MCA	Ministry of Corporate Affairs
MeitY	Ministry of Electronics and Information Technology
MSF	Marginal Standing Facility
MSME	Micro, Small and Medium Enterprises
NCB	No claim Bonus
OECD	The Organization for Economic Co-operation and Development
OM	Other Methods prescribed by CBDT
PAN	Permanent Account Number
PE	Permanent establishment
PPT	Principle Purpose Test
PSM	Profit Split Method
PY	Previous Year
QDMTT	Qualified Domestic Minimum Top-up Tax
RCM	Reverse Charge Mechanism
RMS	Risk Management System
ROR	Resident Ordinary Resident
ROSCTL	Rebate of State & Central Taxes and Levies
RoDTEP	Remission of Duties and Taxes on Exported Products

Abbreviation	Meaning
RPM	Resale Price Method
SC	Supreme Court of India
SCN	Show Cause Notice
SDS	Step Down Subsidiary
SE	Secondary adjustments
SEBI	Securities Exchange Board of India
SEP	Significant economic presence
SEZ	Special Economic Zone
SFT	Specified Financial statement
SION	Standard Input Output Norms
SOP	Standard Operating Procedure
ST	Securitization Trust
STCG	Short term capital gain
SVLDRS	Sabka Vishwas (Legacy Dispute Resolution Scheme) 2019
TCS	Tax collected at source
TDS	Tax Deducted at Source
TNMM	Transaction Net Margin Method
TP	Transfer pricing
TPO	Transfer Pricing Officer
TPR	Transfer Pricing Report
TRO	Tax Recovery Officer
UTPR	Undertaxed Profits Rules
WHT	Withholding Tax
WOS	Wholly Owned Subsidiary