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kcm Insight

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Dear Reader,

We are happy to present ***kcm**Insight*, comprising of important updates in the legislative changes in direct tax law, corporate & other regulatory laws, as well as recent important decisions on direct 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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For detailed understanding or more information, send your queries to kcminsight@kcmehta.com

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Short-term capital loss can be set off against Short-term capital gain despite different tax-rates

M/s JS Capital LLC v ACIT, ITA No. 3396/M/2023, Mumbai ITAT

The Taxpayer is a non- resident entity registered with the SEBI as a Foreign Portfolio Investor for carrying out investment activity in Indian capital markets. In the return of income filed, the Taxpayer set off short term capital gain on derivatives, which is chargeable to tax at the rate of 30%, against short term capital loss on sale of equity shares, which is chargeable to tax at the rate of 15%.

The AO passed draft assessment order proposing an addition by disallowing the set-off of short-term capital loss, taxable at rate of 15% against short term capital gain, taxable at rate of 30%.

The Taxpayer filed objections before DRP, which were dismissed by DRP on ground that capital gain on derivative transactions is on a different footing than capital gain on equity shares.

Pursuant to the appeal, ITAT, relying on their decision in case of VEMF -A LP v. DCIT, ITA No. 6727/Mum/2016, held that under the provisions of section 70(2), short term capital loss arising from any asset can be set off against short term capital gain arising from any other asset under a similar computation made irrespective of different rate of tax. There is no prohibition, nor the ITA compels the Taxpayer to first set off short term capital loss with STT against short term capital gain with STT and then allows set off against short term capital gain without STT. In absence of any specific mode of set off provided in the ITA and in absence of any prohibition and in absence of any specific chronology for set off prescribed in the ITA, the Taxpayer was entitled to exercise his option with regard to the chronology of set off which was most beneficial to the Taxpayer.

Refund adjustment not permissible without due intimation u/s 245 and adjudication of Stay Application.

Avana Global FZCO v. DCIT, Writ Petition no. 879 of 2024, Bombay HC

The refund due to the Taxpayer was adjusted against demand for another year without giving a prior intimation u/s 245(1) of the ITA and without adjudication of stay application filed by the taxpayer.

The Taxpayer filed a writ petition before HC on the question whether the Revenue can set off or withhold a refund without an intimation u/s 245 of the ITA.

HC observed that mere perusal of section 245 makes it clear that intimation is required to be given prior to the set off of demand payable against the amount to be refunded. It can be neither simultaneous nor subsequent. The fact that Income tax department has not followed the mandatory prior requirement of intimation under Section 245 of the ITA would make the adjustment wholly illegal and therefore, respondent was clearly in error in not refunding the amount. HC also affirmed the view that the power u/s 245 is discretionary. Revenue shall have to dispose stay application and consider the stay orders before adjusting the demand with the refund. The AO shall have to inform the Taxpayer as to why the objections of the taxpayer against the proposed adjustment are not sustainable.

In view of the above, HC directed that all refunds should be processed and paid out within four weeks.

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Notice u/s 148 barred by first proviso cannot be saved by fifth proviso

Godrej Industries Ltd v. ACIT, Writ Petition no. 450 of 2023, Bombay HC

The Taxpayer was in receipt of notice u/s 148 of the ITA for AY 2014-15 dated May 21, 2021, under the old regime. The Taxpayer did not file any writ petition against the said notice. Pursuant to the SC decision in case of Ashish Agarwal, notice u/s 148A(b) was issued on May 21, 2022, order u/s 148A(d) and 148 notice was issued on July 31, 2022.

Before HC, Revenue took the plea based on the fifth proviso to Section 149(1) and CBDT Instruction No.1/2022 for exclusion of the period starting from the issuance of Section 148 notice in the old regime (May 21, 2021) and ending on May 4, 2022 (date of SC judgment in Ashish Agarwal) for construing the limitation period under Section 149(1).

HC relied on its decision in the case of The New India Assurance Company Limited v. ACIT Writ Petition No.2450 of 2022 dated 26th August 2022, wherein it was held that notice issued u/s 148 for AY 2013-14 is barred by limitation and on the same lines, notice issued for AY 2014-15 is also barred by limitation.

With respect to the fifth proviso, HC observed that the first limb of the fifth proviso to Section 149 of the ITA will apply where a show cause notice under Section 148A(b) of the ITA is issued to an Taxpayer and the time granted to him or the extended time subsequently granted to him to reply to the show cause notice would be excluded in computing the period of limitation and accordingly HC agreed to exclude period of 27 days in relation to time given to the Taxpayer for giving reply to show cause notice.

The second limb of the fifth proviso shall apply when the proceedings under Section 148A of the ITA is stayed by an order or injunction of any Court. Since in this case, the Taxpayer did not file writ petition, there is no stay or injunction granted by the Court and there can be no period which has to be excluded as per second limb of the fifth proviso. The Hon'ble SC in Ashish Agarwal only deemed the first notice issued under Section 148 of the ITA to be a show cause notice under Section 148A(b) of the ITA and left all defenses available to the Taxpayer under Section 149 of the ITA. The Hon'ble SC did not grant any stay and the period from 21st May 2021 till the notice under Section 148A(b) of the ITA is issued cannot be excluded under the second limb of the fifth proviso or even under the first limb.

HC observed that the validity of a notice must be judged on the basis of the law existing as on the date on which the notice is issued under Section 148 of the ITA, which in the present case is 31st July 2022, by which time the Finance Act, 2021 is already on the statute and in terms thereof, no notice under Section 148 of the ITA for AY 2014-15 could be issued on or after 1st April 2021 based on the first proviso to Section 149 of the ITA. Therefore, the fifth proviso cannot apply in a case where the first proviso applies because, if a notice under Section 148 of the ITA could not be issued beyond the time period provided in the first proviso, then the fifth proviso could not save such notices. The fifth proviso can only apply where one has to determine whether the time limit of three years and ten years in Section 149(1) of the ITA are breached.

Accordingly, HC decided the matter in favour of the Taxpayer.

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Utilization of loan from holding company for investing in shares of subsidiary, interest paid could not be treated as business expenditure

Zuari Management Services Ltd v. CIT, SLP Appeal (C) No(s). 24188 of 2017, SC

The Taxpayer had the objective of setting up and developing Special Economic Zone (SEZ), information technology, and IT-enabled services, and later expanding into real estate development. During the year under consideration, the taxpayer had not commenced its business of development of SEZ/real estate. The Taxpayer obtained loan from its holding company and utilised amount for investing in shares and giving loans to subsidiary company. The interest payable on said loan and other incidental expenses was charged to Profit and loss account as expenses incurred during the year under consideration. The loss was claimed as business loss and was carried forward to subsequent years.

PCIT observed that under the provisions of the ITA, any expenditure exclusively incurred for the purpose of the business is an allowable deduction. Since the Assessee has not commenced its business and the loan availed was not used for the purpose of its business of development of SEZ/real estate business, the expenditure claimed is required to be disallowed. Hence, PCIT issued notice u/s 263 on the ground that assessment order passed by AO was erroneous and prejudicial to the interest of revenue since AO overlooked this aspect.

Before the ITAT, the Taxpayer contended that business of the Taxpayer was set up as well as commenced during AY 2008-09 when it had borrowed money from holding company and lent it to subsidiary company, which represents one of the objects of the Taxpayer. However, ITAT dismissed the appeal of the Taxpayer.

HC noted that CIT is right in holding that AO has not considered the relevant consideration of absence of actual business activity of the Taxpayer for the purpose of treating expenditure claimed as allowable expenditure and hence the assessment order is erroneous. Even the second condition that, the assessment order had an adverse effect on the interest of the Revenue, is satisfied, since in absence of commencement of business, expenditure claimed by the Taxpayer cannot be treated as expenditure for the purpose of business. Accordingly, HC dismissed the appeal of the Taxpayer.

The SC noted that pursuant to 263 proceedings, fresh assessment order has been passed and same is under challenge before ITAT. Accordingly, SC dismissed the SLP filed by the taxpayer.

Rental income taxable under 'house property' and not 'business income' unless main object is of Leasing

Directi Internet Solutions Pvt Ltd v/s ITO, ITA no. 3019 and 3018/Mum/2023, Mumbai ITAT

The Taxpayer is a company engaged in the business of rendering Information Technology enabled services and business support services. The Taxpayer leased a portion of its office premises on "Leave and license agreement" for a period of 15 months to another company. According to the agreement, the lessee agreed to do alteration in the building including non-removable fixtures at its own cost and the Taxpayer agreed not to charge any license or compensation fee for the part licensed period in

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lieu of the condition that lessee would leave all those non-removable fixtures at the time of vacating the building.

The Taxpayer claimed depreciation u/s 32 of the ITA on the entire building, including the rented premises, claiming that the building was put to use for business purpose. However, AO rejected the claim of depreciation and disallowed the same treating the Taxpayer as liable to be assessed under the head Income from House property. The AO computed the Annual Lettable Value (ALV) of the property corresponding to investment made by lessee in non-removable fixtures and allowed 30% standard deduction u/s 24(b) of the ITA.

CIT(A) upheld the order of the AO.

Before ITAT, the Taxpayer claimed that building was part of block of asset and once it became part of the block of assets, it was not feasible to compute separate depreciation and disallow the same. Further, depreciation should not be disallowed since the act of granting premises on leave and license basis was a temporary phenomenon. Revenue argued that the main object of the Taxpayer was not letting out of properties, and it was mainly engaged in the services of information technology.

ITAT observed that the issue of taxability of rental income from building in case of a company has been decided by Hon'ble SC in case of Chennai Properties & Investments Ltd v CIT 56 taxmann.com 456, wherein, SC has held that wherein in terms of memorandum of association, main object of the Taxpayer company is to acquire and hold properties and earn income by letting out, said income is liable to tax as 'business income' and not as 'income from house property'. Hon'ble SC in case of Rayala Corporation P Ltd v ACIT 72 taxmann.com 149 affirmed the decision of Hon'ble SC in case of Chennai Properties & Investments Ltd.

On perusal of Memorandum of Association of the Taxpayer company, ITAT noted that main object of the Taxpayer company is not letting out of properties. Further, in Profit and loss account, the Taxpayer has reported rental income in succeeding year under the head 'Miscellaneous Other Income', which also shows that leasing is not main business of the Taxpayer company.

Accordingly, rental income is to be assessed under the head 'Income from house property' and not under the head 'Profits and gains from business or profession'. Accordingly, depreciation on corresponding part of building is liable to be disallowed as per section 38(2) of the ITA, which provides that where any building, machinery, plant, or furniture was not exclusively used for purpose of business or profession, depreciation claimed u/s 32 of the ITA shall be restricted to fair proportionate part thereof, which the AO may determine. Thus, the disallowance made by AO was upheld by ITAT. Further, ITAT rejected the estimation of Annual Lettable value (ALV) made by the AO and directed AO to compute ALV as per provisions of section 23 of the ITA.

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Balance 15% of amount of donation to another trust shall not be required to be invested

Circular No. 3/2024 [F. No. 370142/5/2024-TPL], dated March 6, 2024

Finance Act, 2023 provided that eligible donations made by a trust/institution shall be treated as application for charitable or religious purposes only to the extent of 85% of such donations. However, since funds have already been disbursed, there were concerns that whether balance 15% would be taxable or has to be accumulated.

Vide this circular, it is clarified that such 15% shall not be required to be invested in specified modes u/s 11(5) of the ITA as the entire amount is donated to other trust. There are three illustrations given under the Circular for better understanding, as below:

Particulars	Trust 1		Trust 2		Trust 3	
Income (A)	300		100		100	
Income which is required to be applied (85% of A)		255		85		85
Donation to other trusts (B)	100		100		0	
Amount to be considered as application of income against donation made (85% of B)		85		85		0
Balance income for application (A-B=C)	200		Nil		100	
Application other than donation (85% of C)		170		0		85
Remaining income which may be accumulated (balance 15% of C)		30		0		15
Funds to be invested in modes u/s 11(5)		30		0		15
Exemption of Income	300		100		100	

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Extension of due date for filing Form No. 26QE which was required to be filed during the period 1-7-2022 to 28-2-2023.

Circular no. 4/2024 [F. NO. 275/01/2023-IT(B)], dated March 7, 2024

Any person who is responsible for paying to any resident person any sum by way of consideration for the transfer of a virtual digital asset is required to deduct an amount equal to 1% as per section 194S of ITA. Further the person who deducts such tax at source is required to report such deduction in Form No. 26QE within 30 days from end of the month in which such deduction is made. However, during the period from July 2022 to January 2023, the specified persons could not file Form No. 26QE due to unavailability of such form, this has resulted into wrong consequential levy of fee u/s 234E and interest u/s 201(1A)(ii) of the ITA. Furthermore, the persons who deducted tax u/s 194S in the month of February 2023 had insufficient time to file Form No. 26QE. To address the grievances of such persons, CBDT has extended the due date of filing the Form No. 26QE to May 30, 2023, for the specified persons who deducted tax u/s 194S during the period from July 2022 to February 2023 and fees levied, and interest charged shall be waived.

Filing appeals by Tax department before ITAT, High Court and Supreme Court

Circular no. 5/2024 [F. No. 279/Misc.142/2007-ITJ(PT.)]

CBDT has issued Circular for filing appeals by the Income Tax Department before ITAT, HC and SC. The Circular comprises the monetary limit for filing an appeal, exceptions where decision to appeal shall be taken on merits, with regarding the tax effect and monetary limits and exception for deferral of appeals u/s 158AB of the ITA.

The monetary limits for filing appeals have not been changed. However, the Circular provides additional cases where appeal can be filed, without regarding the tax effects and monetary limits. Some of the exceptions are reproduced as below:

- Where any provision of the ITA or the Rules or notification has been held to be constitutionally invalid, or where any order, notification, instruction, or circular has been held to be illegal or ultra vires the ITA or otherwise constitutionally invalid, or
- Where the assessment is based on information in respect of any offence alleged to have been committed under any other law received from any of the law enforcement or intelligence agencies or
- Where the case is one in which prosecution has been filed by the Department and the trial is pending in any Court and has not been compounded, or
- Where the tax effect is not quantifiable or not involved, such as the case of registration of trusts or institutions under sections 10(23C), 12 A/ 12AA/12AB of the ITA, order passed u/s 263 of the ITA etc.
- Where addition relates to undisclosed foreign income/undisclosed foreign assets /undisclosed foreign bank account, or Cases involving organized tax evasion, or
- Where mandated by a Court's directions, or Writ matters, or

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- Matters related to wealth tax, fringe benefit tax, equalization levy and any matter other than the ITA, or
- In respect of litigation arising out of disputes related to TDS/TCS matters in both domestic and international taxation charges: -
  - i. Where dispute relates to the determination of the nature of transaction such that the liability to deduct TDS/TCS thereon or otherwise is under question, or
  - ii. Appeals of International taxation charges where the dispute relates to the applicability of the provisions of a Double Taxation Avoidance Agreement or otherwise.

There are also exceptions provided in respect of deferral of appeals u/s 158AB of the ITA.

Further, it is clarified that an appeal should not be filed merely because the tax effect in a case exceeds the monetary limits prescribed above, rather than, filing of appeal in such cases is to be decided on merits of the case.

The meaning of the term 'tax effect' has been clarified as tax on total income assessed and tax that would have been chargeable had such total income been reduced by amount of income in respect of issues against which appeal is intended to be filed. The tax effect shall include surcharge and cess but does not include interest. In case of loss situation or circumstance where tax is payable on book profit under provisions of section 115JB, the meaning of tax effect is clarified.

It is specifically clarified that in a case where appeal before a Tribunal or a Court is not filed only on account of the tax effect being less than the monetary limit specified above, the PCIT/CIT shall specifically record that,

> *"Even though the decision is not acceptable, appeal is not being filed only on the consideration that the tax effect is less than the monetary limit specified in the CBDT Circular dated<>"*

Further, in such cases, there will be no presumption that the Income Tax Department has acquiesced in the decision on the disputed issues.

Returns of Income filed for AY 2021-22 can now be processed by AO up to April 30, 2024.

Order F. No. 225/132/2023/ITA-II, dated March 1, 2024.

It has been observed by CBDT that due to technical issues, several returns for AY 2021-22 could not be processed and hence intimation could not be sent within prescribed time-limit u/s 143(1) of the ITA and accordingly, taxpayers are unable to get their legitimate refund. CBDT, considering the issue hereby relaxes the time-frame prescribed u/s 143(1) and directs that all returns of income validly filed electronically for AY 2021-22 can be processed now with prior administrative approval of Pr. CCIT/CCIT concerned. The intimation of such processing shall be sent to Taxpayer by April 30, 2024. All subsequent effects under the ITA including issue of refund shall also follow as per the prescribed procedures.

The returns for which above relaxation shall not be applied are:

a) Returns selected for scrutiny.
b) Unprocessed returns where demand is payable or is likely to arise after processing.

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c) Returns remaining unprocessed for any reason attributable to Taxpayer.

CBDT clarifies filing of modified return for Business Reorganization sanctioned prior to April 01, 2022

Order F. No. 225/5/2021-ITA-II, dated March 13, 2024

Section 170A was inserted vide Finance Act 2022 with effect from April 01, 2022, provides that in case of business reorganization, if any return of income filed by such entity before order of competent authority, then the successor shall furnish, modified return of income, within a period of six months from the end of the month in which such order was issued. However, the Entities whose reorganization order were sanctioned prior to April 01,2022 have made applications before the Board seeking approval to furnish return of income in pursuance to business reorganization sanctioned by the order of the High court or NCLT prior to April 01, 2022.

To mitigate the genuine hardship, the Board hereby allows the successor companies to furnish the return for the relevant assessment year(s) through e-filing portal by using the functionality *"u/s 119(2)(b) - after condonation of delay / Court Order or Sanction Order of Business reorganization of the Competent authority issued prior to 1-4-2022"*, as per following timeline:

Action	Timeline
Communication by the taxpayer to Jurisdictional Assessing officer (A)	Up to April 30, 2024
Completion of verification by JAO and enablement through ITBA	Within 30 days of receipt of (A)
E-filing on the portal by the taxpayer	Up to June 30, 2024

It is clarified that henceforth no separate application u/s 119(2)(b) of the ITA is required to be filed before the Board where the order of Business reorganization was issued after June 06, 2016, but prior to April 01,2022.

Amendment in Form 3CD, Form 3CEB and Form 65 notified by CBDT

Notification G.S.R. 155(E) [No. 27/2024/F. No. 370142/3/2024-TPL], dated March 5, 2024

CBDT has amended Form 3CD- Tax Audit Report u/s 44AB, Form 3CEB- Transfer Pricing Report u/s 92E and Form 65-for applying for tonnage taxation scheme.

No Deduction shall be made in respect of specified payments by any Payer to IFSC unit

Notification S.O. 1135(E) [No. 28/2024/F.No. 275/21/2023-IT(B)], dated March 7, 2024

The Central Government has notified the list of payments on which no tax deduction shall be made under the provisions of the ITA if payment is made by any 'payer' to a person being a Unit of International Financial Services Centre (IFSC). These IFSC Units include the Banking Unit, IFSC Insurance Intermediary Office, Finance Company, Finance Unit, Fund Management entity, Broker Dealer, Investment advisor, Registered Distributor, Credit rating agency, Investment banker, etc. The notification enlists various types of payments for each category of IFSC Unit, including interest, dividend, commission, professional fees, etc., on which tax is deducted under sections 194A, 194D, 194H, or 195.

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To avail of this benefit, the IFSC unit is required to furnish a declaration in Form No. 1 to the payer giving details of previous years relevant to the ten consecutive assessment years for which such unit opts for claiming deduction under section 80LA(1A) and 80LA(2). Further, the payer is required to furnish the particulars of all the payments made on which tax has not been deducted in the TDS return.

It is to be noted that the relaxation shall be available to the IFSC Unit only during the said previous years relevant to the ten consecutive assessment years as declared in Form No. 1, for which deduction under section 80LA is being opted.

Guidelines for priority/out of turn disposal of appeal by CIT(A)

Letter F. No. 279/Misc./M-102/2021-ITJ, dated March 7, 2024

CBDT has issued guidelines aimed for expediting the handling of appeals by Commissioners of Income Tax (Appeals/Assessment Unit) or Additional /Joint CIT(A). Priority resolution will be given to appeals involving genuine and exceptional circumstances raised by appellant or A.O./Range head in following situations:

- Cases having demand above Rs. 1 Cr, or
- Cases where a VIP/PMO reference is received for expeditious disposal, or
- Cases where directions to this effect have been issued by the Courts, or
- Cases where request is made by senior citizens and/or super senior citizens, or
- Any other case of genuine hardship.

For appeals under the jurisdiction of faceless CIT (Appeals Unit), requests for expedited processing should be directed to Principal CCIT(NFAC).

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Important Rulings

Indian Rulings

Marketing Contribution and Reservation fees reimbursed from hotels not Royalty

Six Continents Hotels, Inc. [ITA no. 3662/ Mum. / 2019- Order dated 08 February 2024 (Mumbai ITAT)]

Taxpayer is a US-based company, part of InterContinental Hotel Group and held the registered trademark of "Holiday Inn" and "Crowne Plaza." It entered into license agreements with Indian hotels allowing them to use 'Holiday Inn' and 'Crowne Plaza' trademarks and earned royalty income taxable in India. It also received Marketing Contribution and Reservation Fees which were not offered to tax contending they were reimbursement for common expenses. However, Revenue deemed these fees as part of royalty for brand usage and thus held the same as taxable. The Revenue further contended that aforesaid fees were charged by the taxpayer for providing the right to use its systems and for providing technical services and maintenance. Accordingly, the aforesaid fees were taxed as Royalty as well as 'Fees for included services' taxable in India and India – US DTAA.

The taxpayer argued that the funds received under the categories of "Marketing Contribution and Reservation Fees" from IHG-managed hotels worldwide was allocated for specific purposes. These included marketing expenditures aimed at promoting IHG-managed hotels globally, including those in India under brand names like "Holiday Inn," "Holiday Inn Express," and "Crowne Plaza." Additionally, these funds were utilized for maintaining reservation systems, ensuring smooth operations in handling room reservations and guest relations.

Hon'ble ITAT took note of earlier rulings in taxpayer's own case *viz* Bass International Holdings NV v/s JCIT and Six Continents Hotel Inc. v/s DCIT wherein these receipts were held as not taxable. These decisions emphasized that the funds were received with a corresponding obligation to use them for agreed purposes like trust money held in a fiduciary capacity. Such receipts could not be termed as a consideration for use of intellectual property even though they may have been incidental to the same. Accordingly, in the absence of a PE in India such receipts were held not taxable as Royalty or Fees for technical services. Following the judicial precedence in earlier years, the ITAT deleted the addition.

ITAT in this decision has re-emphasized on the principle that reimbursement of expenses without any profit element embedded in it, ought not be an income chargeable to tax in India. Such principles have been earlier upheld by judiciary at various levels [Director of Income-tax (IT)-I v. A.P. Moller Maersk A S 293 CTR 1 (SC)[17-02-2017] , [Director of Income-tax, (IT) – 1 v. WNS Global Services (UK) Ltd. [2013] 32 taxmann.com 54 (Bombay HC)] etc.[DCIT, Large Taxpayer Unit-II, Chennai v. International Flavours & Fragrances (I) (P.) Ltd. 66 SOT 261 (Chennai – Trib.)] etc. It should be noted that it is essential to segregate the reimbursement portion from the taxable revenue. Accordingly, in such cases endeavour should be made to have separate agreement / invoices in place instead of an integrated invoice for reimbursement portion.

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Income from sale of Off-the-shelf software to be embedded in cars not Royalty

SAIC Motor Overseas Intelligent Mobility Technology Co. Ltd [ITA No. 2194/ Del/ 2023 - Order dated 23 February 2024 (Delhi ITAT)]

Taxpayer is a Chinese company primarily engaged in supply / licensing of automobile related software. Taxpayer entered into a License Agreement with MG India to incorporate its "Intelligent connected vehicle system" software into head units provided by a third-party supplier from outside India, which were then installed in MG India's cars.

The Revenue argued that the end user license agreement ('EULA') was entered by the taxpayer with the end user (i.e., buyer of car) and hence the software was not transferred to MG India. The transaction with MG India was in relation to purchase of information coded in forms of maps and related utilities which were then used for manufacturing of cars hence it constituted imparting of information in the nature of industrial, commercial, or scientific experience amounting to Royalty. Revenue accordingly contended that the SC decision in the case of [Engineering Analysis Centre of Excellence Pvt. Ltd. vs. CIT 432 ITR 471] was not applicable to the facts of present case since the issue at hand was in relation to imparting of information and not transfer of software. The Revenue thus taxed the receipts as royalty both under domestic tax laws and the India-China DTAA.

Taxpayer contended that MG India purchased the licensed software which was embedded in the head unit and fitted into cars for end use by the buyer of the car. EULA was signed with the end user to restrict access to rights in the license. MG India acted as a reseller and for that reason was not a signatory in EULA. The taxpayer argued that the case was squarely covered by the Hon'ble Supreme Court in the case of Engineering Analysis *(supra).*

ITAT meticulously examined the License Agreement between taxpayer and MG India and EULA, which clearly outlined that taxpayer provided a standard / off the shelf software to MG India. It had granted non-exclusive, non-transferable license to incorporate the software into cars manufactured by MG India. The agreement did not involve the transfer of intellectual property rights or the imparting of technical know-how. The end user had limited right to use the application akin to use of licensed software. The ITAT held that the SC judgement in the case of Engineering Analysis *(supra)* would be applicable to the taxpayer's case. ITAT held that the said payments did not fall within the scope of royalty income under the India-China DTAA, instead ITAT categorized the income received by taxpayer as business income, which was not taxable in India in the absence of a PE.

This ruling highlighted the importance of carefully analyzing the nature of transactions and contractual agreements in determining the tax treatment of cross-border transactions involving intellectual property rights.

Beneficial ownership cannot be denied only because surplus income was transferred back to shareholders

M/s. Worldpart Limited [ITA No. 740 & 741/Chny/2023 and I.T.A. Nos.758, 759 & 760/Chny/2023 -Order dated 29 February 2024 (Chennai ITAT)]

Taxpayer is a tax resident of Cyprus. It held Fully and Compulsorily Convertible Debentures

Important Rulings

(FCCD) of an Indian Company ('RGE') and earned interest from the same which was offered to tax at the rate of 10% in terms of Article 11 of India – Cyprus DTAA. The investment in FCCD was made out of equity and loan funds received from shareholders residing in multiple jurisdictions and the surplus funds out of interest income was used for reduction of share capital. The Revenue contended that the taxpayer was merely a conduit company established for facilitating investments of shareholders in RGE to obtain unjustified tax benefits and was not the beneficial owner of interest income and therefore the income ought to be taxed at the maximum marginal rate of 40%.

The taxpayer argued that it was a consortium for various shareholders representing different PE funds and its objective was to enter into an independent project. The taxpayer received capital funds from shareholders, independently managed its affairs, and invested in FCCD with RGE. It asserted that repaying surplus funds to reduce share capital did not negate its status as the true beneficial owner of the interest income.

The Hon'ble ITAT followed an earlier year's decision in taxpayer's own case wherein it had referred to OECD commentary (2017) for considering the meaning of the term 'beneficial owner' and held that the taxpayer was having absolute control over interest income and said income was at the disposal of the taxpayer and the mere fact that the taxpayer had transferred surplus funds back to shareholders would not affect its status as a beneficial owner of interest income. The ITAT held that the taxpayer was the beneficial owner of the interest income earned from FCCD and was entitled to the benefits of Article 11 of the India-Cyprus DTAA.

Determination of beneficial ownership has been a prolonged matter of litigation. This judgement underscores the importance of examining legal structure and operational independence in determining beneficial ownership in cross-border transactions. Time and again Indian judiciary has debated on this topic as to whether TRC is a conclusive evidence of legal as well as beneficial ownership and whether the 'look through' approach can be adopted in determining taxability under DTAAs - references may be made to the judgement of Vodafone International Holdings B.V. [2012] 17 taxmann.com 202 (SC) , Blackstone Capital Partners (Singapore) Vi Fdi Three Pte. Ltd. [2023] 146 taxmann.com 569 (Delhi HC), Sanofi Pasteur Holding SA [2013] 30 taxmann.com222 (Andhra Pradesh HC) etc. SLP has been admitted by Hon'ble Supreme Court against the decision of Delhi HC in the case of Blackstone. Amidst the surge in cross-border transactions, it is vital to uphold integrity while guarding against treaty abuse. Balancing commercial practices with vigilance against exploitation is key to fostering a fair global business landscape.

Splitting of Turnkey contracts for business purposes does not constitute artificial division of contracts

UK Grid Solutions Ltd [ITA Nos. 2239,884,885 & 2240/Del/2023 – Order dated 13 March 2024 (Delhi ITAT)]

Taxpayer is a company incorporated in and a tax resident of UK engaged in the business of designing, manufacturing, testing and supply of electric equipment and undertaking power projects on turnkey basis. The taxpayer was awarded a project by Power Grid Corporation of India Ltd. ('PGCIL') for setting up a terminal in Chhattisgarh. The project was divided into three

Important Rulings

contracts *viz.*, (i) Offshore supplies contract between taxpayer and PGCIL for supply of plant and equipment outside India, type test and training to be conducted outside India, (ii) On shore supply contract and (iii) On shore service contract; The second and third contracts were assigned to taxpayer's Indian AE.

AO considered it to be a case of artificial division of a composite contract to avoid PE while all the responsibilities and liabilities of the project lied with the taxpayer. He further contended that the taxpayer was a fiscally transparent entity, not entitled to treaty benefits and the Indian AE constituted Dependent Agent Permanent Establishment ('DAPE') and construction PE of the taxpayer in India. It accordingly taxed the receipts from offshore supplies under section 44BBB of the Act.

Hon'ble bench of Delhi ITAT relying on its earlier decision in taxpayer's own case emphasized on the principles laid down by Hon'ble SC in case of Ishikawajma-Harima Heavy Industries Ltd. and observed that the adjudication of an issue should be on basis of wholesome reading of the contract while keeping in view the intention of the parties. The ITAT made the following observations upon the perusal of relevant documents of contracts :

- Having an Indian Associate was an integral part of the bid and not introduced at the discretion of the taxpayer.
- Offshore and Onshore contracts were awarded by way of separate notification of award with separately defined scope of work
- Indian Associate was to be an independent contractor having separate and independent obligation and receiving separate consideration.

Based on the above, ITAT concluded that there was not a consortium to which one contract was awarded with bifurcation at level of the members of Consortium. Further, in relation to the ultimate responsibility being that of the taxpayer, the ITAT opined that the tax authorities cannot question business prudence where certain clauses are inserted to safeguard the rights of Indian entity (here PGCIL). ITAT observed that taxpayer and Indian AE were "Independent contractors" and there was no principle – agent relationship, accordingly there was no DAPE. Furthermore, revenue was derived from offshore supplies and not from civil construction/ turnkey project in India, hence, "Construction PE" as well as section "44BBB" had no application. It was further established that the Indian Associate had no involvement in offshore supplies and the title of goods had passed outside India, consequently the taxpayer had no business connection in India. ITAT further held that the taxpayer was a fiscally transparent entity entitled for treaty benefits since it had a valid TRC.

Turnkey projects occurring at global level has its own intricacies and often floats unsettled tax issues such as determination of type of contract, situs of accrual of income, distinction between PE and FTS, conflict of law between ITA and DTAA etc. Each case must be weighed based on its own merits and a commercial nexus must be established for splitting of projects.

No further profit to be attributable to alleged PE (AE of the taxpayer) when AE is remunerated at arms-length price

AB Sciex Pte Ltd [ITA Nos. 514/Del/2021, 1968/Del/2022, 1969/Del/2022 – Order dated 21 March 2024 (Delhi ITAT)]

Important Rulings

Taxpayer is a tax resident of Singapore engaged in the business of manufacturing and sale of scientific research instruments and peripheral. The case involved two issues (i) whether the taxpayer's Indian Associate (AE) constituted its PE in India (ii) Amount of profit to be attributed to the alleged PE. The first issue had been decided in favour of the taxpayer *vide* an earlier decision of the ITAT. Since the Revenue filed an appeal with the High Court, the matter was remanded back to the ITAT for deciding on the second issue. High Court did not disturb the findings of the ITAT regarding the first issue.

Regarding the second issue, the taxpayer without prejudice to the argument that it had no PE in India, challenged the order of lower authorities, and argued that the AO had attributed excessive profits to the alleged PE on ad-hoc and arbitrary basis without considering commercial and economic factors governing the business. It argued that the Ld. AO while determining the gross profit margin had not considered the custom duty costs, warehousing costs, passing down of discount to ultimate customers, working capital costs etc. incurred by the alleged PE. The Revenue argued that the alleged PE had performed many activities like providing after sales support, warranty services etc. for which it was not remunerated and hence profit was required to be attributed on the basis of assets, risks and functions performed by the alleged PE.

ITAT distinguished the judgement of Delhi ITAT in the case of Rolls Royce relied by the revenue on the grounds that the said case was rendered in a case where the taxpayer had a PE in India whereas in the case at hand the AE did not perform any additional functions leading to a PE of the taxpayer in India and thus the remuneration for the same would-be nil. Further it observed that the effective commission rate earned by the AE was above the arms length average margin earned by comparable companies and thus held the amount of profits offered to tax by the AE should be considered at arm's length and no further attribution was required in the absence of a PE in India. It relied on the decision of SC in the case of Morgan Stanley and held that once TP analysis is undertaken no further profits to be attributed to PE so far that the AE which constituted PE had been remunerated at arms-length. It further took note of the Delhi High Court decision in the case of Adobe Systems to hold that if a dependent agent ('DA') was not remunerated at arms length, adjustment could be made only in the assessment of the DA (i.e., Indian entity) and not non-resident (i.e., alleged PE).

The concept of attribution of profits to DA *vis-à-vis* DAPE has been a matter of long drawn litigation. Hon'ble Mumbai High Court in the matter of Set Satellite (Singapore) Pte. Ltd. [2008] 173 Taxman 475 (Bombay) held that if DA is remunerated at arm's length nothing survives for taxation in the hands of DAPE. This view renders the existence of DAPE as wholly tax neutral since resident DA is to be taxed on its income *dehors* the existence of DAPE. SLP has been filed against the said judgement. It is also a point to ponder if the judgement of Morgan Stanley rendered in the case of service PE can be squarely applied in the case of DAPE since DAPE assumes entrepreneurship risk for which DA cannot be compensated. This argument has been discussed in subsequent judgements of Mumbai ITAT, however considering a binding judgement of jurisdictional high court, the matter had been rendered in favour of the

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taxpayer. In case the SLP gets admitted, it would be interesting to witness the stance of the Apex Court.

Subscription fees paid for accessing legal database neither royalty nor FTS/FIS under the India-US DTAA

Relx Inc [ITA 630/2023-Order dated 07 February 2024 (Delhi HC)]

The taxpayer Relx Inc, a US based company received subscription fees from Indian subscribers for using its legal database 'Lexis Nexis'. The taxpayer claimed it was business profit not subject to tax in absence of a PE in India. Revenue argued that subscription fees was in the nature of technical consultancy and fell under "fees for included services" as per Article 12(4) of the India-US DTAA and thus taxable. Taxpayer contended that the fees did not fall within the ambit of Article 12(4)(b) of the DTAA, since the access accorded to the Indian consumer was neither a transfer of copyright nor would it satisfy the requirement of 'included service 'comprising of an element where technical knowledge, experience, skill, know-how or processes was made available.

The HC ruled in favor of the taxpayer and held that the income was in the nature of business profit, not taxable in India in absence of PE. The HC while coming to the said conclusion, analyzed the taxability of the said fees under section 9(1)(vii) of the Act and held that mere access granted to subscriber to a legal database could not be construed as providing services of the nature prescribed in section 9(1)(vii) of the Act. It relied on the SC judgement in the case of Engineering Analysis and held that the same could not be considered as Royalty under Article 12(3) of India-US DTAA since granting access does not amount to transfer of copyright. It further noted that the access to the database did not constitute rendering of any technical or consultancy services and in any case did not amount to technical knowledge, experience, skill, know-how or processes being made available.

This is a welcome judgement wherein the Delhi HC reaffirmed the below key points regarding taxability of subscription fees:

- Granting access to a database does not qualify as technical or consultancy services.
- Granting access to a database does not amount to transferring copyright
- The income from subscription fees is business profit, not subject to tax in India in absence of a PE.

Foreign Ruling

"Share Borrowers" merely temporary custodian of dividend and not beneficial owners, ineligible for treaty benefit

Husky Energy Inc., (2023 TCC 167, The Tax Court of Canada)

Taxpayer is a company incorporated under the domestic laws of Canada engaged in the business of oil and natural gas. Majority of shares of the taxpayer were held by Barbados Companies (Barbcos) which had transferred these shares to Luxembourg Companies (Luxcos) under a Securities Lending Agreement (SLA). As per the SLA, lender (Barbcos) had imposed a legal obligation on the bor rower (Luxcos) to pay the equivalent amount of dividend back to the lender within a specified period and redeliver the shares of the taxpayer to the Barbcos at the end of SLA period.

The taxpayer paid dividend to the Luxcos since they were the registered shareholders and withheld tax at a rate of 5% as per the Article

Important Rulings

10(2) of the Canada-Luxembourg DTAA. The tax authorities alleged that the taxpayer was required to withhold tax at 15% as per the Article X(2) of the Canada-Barbados DTAA since Barbcos were the beneficial owners of the dividends. The Luxcos were contractually obligated to Barbcos for any dividend on the shares. The taxpayer argued that it was not involved in the decision to implement SLA had no reason to believe that the Luxcos were agents or nominees of Barbcos and since the title to the shares had been transferred, it had deducted tax at beneficial rate of 5% as applicable under Canada-Luxembourg DTAA. It was also argued that there was no restriction on Luxcos regarding use of funds received from the taxpayer by virtue of dividends and Barbcos had no access to these funds.

The whole matter revolved around the following two questions:

- Whether Canada-Luxembourg DTAA or Canada-Barbados DTAA would be applicable with respect to the aforementioned transaction?
- Whether the Luxcos were the beneficial owners of the shares?

With respect to the first question, the Tax Court of Canada held that tax rate of 15% as per Article X of Canada-Barbados DTAA could not be applied since the taxpayer had distributed the dividend to the Luxcos and not to the Barbcos. It argued that the Canada-Barbados DTAA would be applicable only when a Canadian company had 'paid' dividend to a resident of Barbados. In the case at hand no dividend had been 'paid' by the taxpayer to Barbcos. The transaction had taken place between a Canadian company and a resident of Luxembourg. Canada-Barbados DTAA had no application in the current facts and hence the beneficial rate of 15% would not be applicable.

Further, with respect to analysing and determining the beneficial ownership of dividend, the Court held the Barbcos to be the beneficial owner of the dividends due to the following reasons:

- Luxcos had only temporary custody of the dividends rather than the use and enjoyment of the dividends in real sense
- Barbcos retained the full benefit of any dividends received by the Luxcos on the borrowed shares during the term of the SLA
- Luxcos were obligated to compensate Barbcos within approximately seven weeks after the payment of dividends by taxpayer

The Tax Court further held that the Barbcos were not liable to pay tax under domestic tax laws of Canada since the law-imposed tax on a non-resident when dividend had been 'paid' to them. In the instant case, the dividend was not paid to Barbcos and hence the taxpayer was held liable to pay shortfall in tax withheld. Luxcos were not the beneficial owners of the shares and consequently, the Luxcos were not entitled for the beneficial rate of DTAA. Since Canada-Barbados DTAA would not be applicable to the facts of the case, the rate of withholding on dividend was held to be 25% as per the domestic tax laws of Canada and not 15% as envisaged in Canada-Barbados DTAA.

The aforementioned decision of the Tax Court of Canada has yet again reflected that the test of "substance over form" continues to be regarded as a potent weapon to determine the beneficial ownership. This decision is a classic precedent drawing analogy that any income received by a person should not be subjected to any obligation which suggest that the recipient is not entitled to the full benefit of the income, otherwise the beneficial ownership of the recipient may be jeopardized.

Important Updates

Indian Updates

Government notifies reduced tax rates on royalty and FTS with Spain by invoking MFN clause

The Central Government vide notification has modified the Convention between India and Spain for the avoidance of double taxation and prevention of fiscal evasion.

Paragraph 7 of the Protocol of the DTAA consists of the MFN clause. The paragraph ensures that if India reduces its taxation at the source of royalties or FTS in any future agreement with an OECD member country (after January 1st, 1990), the same reduced rate will apply to India-Spain DTAA.

Since India agreed to lower tax rate on royalties and FTS in its 1996 Convention with Germany (an OECD member), the same lower rate to apply to the Convention with Spain. Accordingly, the Central Government has directed the substitution of paragraph 2 of Article 13 of the India-Spain DTAA and has provided ceiling tax rate of 10% on the royalties or FTS provided beneficial ownership test is satisfied. The existing tax rate on FTS and other royalties was 20% in India-Spain DTAA. The amended Article 13(2) of the India-Spain DTAA is effective from Assessment Year 2024-25.

Foreign Updates

Dubai implements 20% annual tax on foreign banks

Recently a new law has been introduced in Dubai that imposes 20% annual tax on foreign banks operating within the emirate, including special development zones and free zones. However, foreign banks licensed to operate in the Dubai International Financial Center are excluded with respect to income derived from conducting business within or through the Center.

The law stipulates that an annual tax of 20% shall be imposed on foreign banks on taxable income. The corporate tax paid shall be deducted from this percentage, if the foreign bank pays the tax under the Corporate Tax Law, in accordance with Federal Decree Law No. (47) of 2022.

The law provides principles for calculating taxable income, the requirements for filing tax returns and making payments, the protocols for auditing tax returns and voluntary disclosures, and the responsibilities and protocols associated with tax auditing. The law specifies the rights of the foreign bank and its branches licensed by the Central Bank of the United Arab Emirates.

Capital gain tax exemption from gains on disposal of foreign capital assets received in Malaysia

Malaysia has released an Income Tax (Exemption) (No.3) Order 2024 in its Official Gazette which provides capital gain tax exemption to companies, limited liability partnerships, trust bodies and cooperative societies resident in Malaysia in respect of gains derived from the disposal of capital assets located outside Malaysia which meet economic substance requirements (ESR).

Economic substance requirement includes:

- Employ an adequate number of employees in Malaysia; and
- Incur an adequate amount of operating expenditures in Malaysia

The exemption does not extend to gains from the sale of intellectual property rights. The

Important Updates

exemption does not apply to person carrying on the business of banking, insurance, sea transport or air transport. The order is effective from 1st January 2024 till 31st December 2026.

OECD publishes working paper on the design of presumptive tax regimes for small businesses

A working paper on structuring of presumptive tax systems has been released by the OECD. Presumptive tax regimes, also known as simplified tax regimes intend to reduce tax compliance costs for small and micro businesses and enforcement costs for tax administrations while levying a lower tax burden as compared to the standard tax systems. They are particularly useful in situations where actual taxable income is difficult to quantify as a taxpayer's tax base is determined using alternative indicators. Although these regimes exist in many tax systems, they vary greatly in their design.

The working paper compiles detailed information on the presumptive tax regimes existing across various OECD and non-OECD countries, identifies common practices adopted across the countries surveyed and provides multiple instances of best strategies found within these systems. This OECD working paper provides an analytical framework for characterising and comparing these regimes. It also highlights key design aspects that deserve further consideration and lists a series of best practices on the design and administration of these regimes.

The working paper also highlights the common challenges generally observed in the presumptive tax regimes under study, which might undermine the role of these regimes in incentivising business formalisation and strengthening tax compliance over time.

Ireland publishes CESOP Guidelines for Registration and Filing - Non-Resident PSP Registration

The registration facility for EU Cross-Border Payments Reporting (CESOP) filers opened in Revenue Online Services (ROS) on 1st February 2024.

Non-resident CESOP filers are required to complete a two-step verification process when registering for CESOP in Ireland. Hence, in order to allow sufficient time, all non-resident PSPs have been advised to commence ROS registration at least one month before the first filing deadline of 30th April 2024. ROS process may be used by the PSPs who register for CESOP in Ireland in order to certify agents or service providers to file CESOP reports on their behalf.

The Tax and Duty Manual (TDM) on CESOP registration Guidelines and Guidance for filing provides the below information for PSPs which have a CESOP reporting obligation in Ireland:

- Guidance on the procedure for registration as a resident or non-resident PSP for the purpose of CESOP reporting in Ireland
- An outline of the process for filing CESOP reports in Ireland
- An outline of technical specifications required for filing CESOP reports in Ireland.

Important Updates

Canadian province of Newfoundland and Labrador to cut its small business corporate tax from 3% to 2.5%

The province of Newfoundland and Labrador in Canada is intending to reduce its small business corporate tax rate from 3% to 2.5% as outlined in its 2024 Budget. This reduction would affect the first CAD 500,000 of active business income and is supplementary to the federal small business rate of 9%. Pending approval, this tax rate reduction will be applied retroactively starting from January 1, 2024.

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

RBI Notifications

Master Direction – Reserve Bank of India (Bharat Bill Payment System) Directions, 2024

RBI / DPSS / 2023-24 / 111 vide Notification No. CO. DPSS. POLC. No. S1114 / 02-27-020 / 2023-2024 dated February 29, 2024

Reserve Bank of India (RBI) vide Circular DPSS.CO.PD.No.940/02.27.020/2014-15 dated November 28, 2014 introduced the Bharat Bill Payment System (BBPS) to provide for a tiered structure for bill payments system in the country – with a central unit setting the standards and various operating units working in accordance and adherence to the standards set for the BBPS.

The idea was fructified with the setting up of:

a) NPCI Bharat Bill Pay Ltd (NBBL) as a Central Unit (BBPCU)

b) Bharat Bill Payment Operating Units (BBPOUs) and;

c) Agent network/s of the BBPOUs.

With the changing developments in the payment landscape, RBI felt a need to revisit the whole structure and has come up with new set of guidelines in form of Directions which will supersede the erstwhile regulations.

The tiered structure has been modified so as to provide greater operational flexibility and efficiency to all the system participants.

Tier 1 - NPCI Bharat BillPay Ltd. (NBBL) is the authorised Bharat Bill Pay Central Unit (BBPCU), the entity designated to operate Bharat Bill Payment System (BBPS).

Tier 2 - Bharat Bill Payment Operating Unit (BBPOUs) are the System Participants in BBPS.

Tier 2a - BBPOU may function either as a Biller Operating Unit (BOU), which is an entity which onboards biller(s), either directly or through biller aggregator(s), on to the BBPS platform for collection of its bills.

Tier 2b – BBPOU can function as a Customer Operating Unit, which is an entity which provides its customers with an interface (physical / digital) to pay bills, either directly or through agent institution(s).

Tier 2c – BBPOU can function as both a BOU and a COU.

In addition to providing clarity on the various market participants in the BBPS, these Directions defines the roles and responsibilities of each entity along with providing the Compliant Management and Grievance Redressal mechanism.

Effective Date: April 01, 2024

Arrangements with Card Networks for issue of Credit Cards

RBI / 2023-24 / 131 issued vide CO. DPSS. POLC. No. S1133 / 02-14-003 / 2023-24 dated March 06, 2024

Authorized card networks such as American Express Banking Corp., Diners Club International Ltd., MasterCard Asia/ Pacific Pte. Ltd., National Payments Corporation of India–Rupay, and Visa Worldwide Pte. Limited., tie-up with banks and non-banks for issuance of credit cards.

The choice of card network (VISA / MASTERCARD) for a card issued to a customer is decided by the card issuer (namely the bank / non-bank) and is linked to the arrangements that the card issuers have with card networks in terms of their bilateral agreements.

RBI Notifications

It has been observed by RBI that such tie ups are not conducive for optimal choice for the customers. To provide better access to customers, RBI has given the following directives to the card issuers and card networks:

Card issuers not to enter into any arrangement or agreement with card networks that can restrain customers from availing services of other card networks.

Card issuers to provide an option to their eligible customers to choose from multiple card networks at the time of issue. Further for existing cardholders, the option to choose from card networks is to be provided at the time of the next renewal.

Effective Date: Six months from the date of the Circular

Amendment to the Master Direction - Credit Card and Debit Card – Issuance and Conduct Directions, 2022

RBI / 2023-24 / 132 vide Notification No. DOR. RAUG. AUT. REC. No. 81 / 24.01.041 / 2023-24 dated March 07, 2024

Reserve Bank of India has amended certain provisions to the Master Direction issued vide DoR.AUT.REC.No.27/24.01.041/2022-23 dated April 21, 2022 on 'Credit Card and Debit Card – Issuance and Conduct Directions, 2022'.

The amendments to the Master Direction is primarily in respect of certain procedural matters including issuance of business cards and co-branded cards. In terms of card billing cycle, the cardholders have now been provided the option to modify the billing cycle of the credit card at least once, as per the cardholders' convenience.

A detailed FAQs on the various commonly sought questions on card issuance, activation of card, levy of interest on late payment etc. have been addressed in detail. A link of the same is being provided herewith: ***Reserve Bank of India - Frequently Asked Questions (rbi.org.in)***

Effective Date: March 07, 2024

Omnibus Framework for recognizing Self-Regulatory Organisations (SROs) for Regulated Entities (REs) of the Reserve Bank of India

Reserve Bank of India is the regulator to manage the currency and credit system and to ensure stability in the financial system for which it designs the appropriate regulatory framework for its Regulated Entities (REs). Regulatory Entities can range from the large public and private sector banks to the small micro finance institutions, from NBFCs to Core Investment Companies (CICs). However, with the rapid growth in the financial system linked with the ever-growing Internet of Things (IoT), the growth of the REs in terms of number as well as scale of operations has expanded exponentially.

With the increase in adoption of innovative technologies and enhanced customer outreach, a need is felt by RBI to develop industry standards for self-regulation. This is in line with the thinking that certain areas can grow much more rapidly if the players themselves can regulate as they are best aware of the complexities.

Self-Regulatory Organisations (SROs) can enhance the effectiveness of regulations by drawing upon the technical expertise of practitioners and also help in framing/ adjusting regulatory policies by providing inputs on technical & practical aspects, subtleties and the trade-offs involved.

RBI Notifications

Reserve Bank of India has thus provided an Omnibus where it has provided broad contours of how the SROs should be established and have the inherent characteristics, what are the objectives and responsibilities under which the SRO should operate along with the eligibility criteria for an SRO and the governance framework thereof.

It becomes apparent from this that the Reserve Bank of India is willing to delegate greater responsibility to the newly developing sectors such as fintech, especially in the field of blockchain, Sensors and Internet of Things (IoT), Mobile Payments and Digital Banking Services, Artificial Intelligence (AI) and Machine Learning (ML) and many other such innovative technologies.

Exchange Traded Currency Derivatives

Press Release: 2024-2025/32 dated April 04, 2024

Reserve Bank of India (RBI) vide A.P. (DIR Series) Circular No. 13 dated January 05, 2024 have released fresh guidelines for hedging of foreign exchange risk which is on back of the feedback received from market participants and the experience gained since the notification of Foreign Exchange Management (Foreign Exchange Derivative Contracts) (First Amendment) Regulations, 2020.

However, some concerns were expressed by the market participants in the exchange traded currency derivatives (ETCD) market in the light of the Circular released in January 2024. To this effect the RBI has issued a Press release stating that the regulatory framework for participation in ETCDs involving the Indian rupee (INR) is guided by the provisions of the Foreign Exchange Management Act (FEMA), 1999 and regulations framed thereunder mandate that currency derivative contracts involving the INR, both over-the-counter (OTC) and exchange traded, are permitted only for the purpose of hedging of exposure to foreign exchange rate risks.

RBI has further claimed that for the purpose of ease of doing business, the RBI permitted users of ETCDs to take positions without having to provide documentary evidence to establish the underlying exposure but did not provide any exemption from the requirement of having the exposure (current single limit stands at USD 100 million combined across all exchanges for exposure without providing documentary evidence of underlying exposure).

RBI has thus clarified that the regulatory framework for ETCDs has remained constant through the years and there has been no deviation in the RBI's policy permitting positions in ETCDs only to those entities / individuals have underlying exposure / having a contracted exposure.

However, RBI on feedback and representations from market participants has extended the effective date of implementation of the revised "Risk Management and Inter-Bank Dealings – Hedging of foreign exchange risk" guidelines notified in January 2024, from the original effective date of April 05, 2024, to May 03, 2024.

SEBI Notifications

List of goods notified under Securities Contracts (Regulation) Act, 1956

SEBI / HO / MRD / MRD-PoD-1 / P / CIR / 2024 / 13 dated March 05, 2024

The Ministry of Finance (MoF), vide notification dated March 01, 2024, has notified list of goods under clause (bc) of Section 2 of Securities Contracts (Regulation) Act, 1956 (SCRA, 1956). The notified list supersedes the earlier list of goods notified by MoF on September 27, 2016. The derivatives can be launched for goods covered under the new list which also includes following additional 13 goods and alloys for 5 metals:

Sr.No.	Goods	Category
1	Apple	Fruits and Vegetables
2	Cashew	Dry fruits
3	Garlic	Spices
4	Skimmed Milk Powder	Dairy and Poultry
5	White Butter	Dairy and Poultry
6	Weather	Activities, Services, Rights, Interests and Events
7	Processed Products of Timber	Forestry
8	Processed Products of Bamboo	Forestry
9	Bitumen	Chemicals
10	Cement	Construction
11	Freight including trucks, railways, waterways, airways	Activities, Services, Rights, Interests and Events
12	Palladium (including variants such as coins, bars etc.)	Precious metals
13	Manganese	Metals
14	Aluminium and Aluminium Alloys	Metals
15	Copper and Copper Alloys	Metals
16	Lead and Lead Alloys	Metals
17	Nickel and Nickel Alloys	Metals
18	Zinc and Zinc Alloys	Metals

MoF has also notified a contract for purchase or sale of right to buy or sell or a right to buy and sell in future such underlying goods by superseding the notification dated October 18, 2019.

Consequent to the aforesaid notification, Master Circular on Commodity Derivatives Segment has been amended to the extent of notification dated March 01, 2024, issued by MoF.

Applicability: Date of issuance i.e., March 05, 2024.

SEBI Notifications

Measures to instill trust in securities market – Expanding the framework of Qualified Stock Brokers (QSBs) to more stock brokers

SEBI / HO / MIRSD / MIRSD-PoD-1 / P / CIR / 2024 / 14 dated March 11, 2024

SEBI, vide circular no. SEBI/HO/MIRSD-PoD-1/P/CIR/2023/24 dated February 06, 2023, and Master Circular for Stock Brokers dated May 17, 2023 has prescribed parameters for designating stockbroker as Qualified Stock Broker (QSB). The first list of QSBs was issued on March 03, 2023.

A need was felt to provide more safeguards so as to protect the interest of investors and for building trust in securities market, resulting in extending the framework of QSBs to more stockbrokers.

Stockbrokers shall be designated as QSBs based on evaluation of the following parameters on annual basis:

1. The total number of active clients of the stock broker;
2. The available total assets of clients with the stock broker;
3. The trading volumes of the stock broker (excluding the proprietary trading volume of the stock broker);
4. The end of day margin obligations of all clients of a stock broker (excluding the proprietary margin obligation of the stock broker in all segments);
5. The proprietary trading volumes of the stock broker;
6. Compliance score of the stock broker; and
7. Grievance redressal score of the stock broker.

Further, for identifying the stockbroker as QSB, the values for the particular year shall be calculated based on parameters as on December 31st of particular year.

Applicability:

The provisions of this circular shall be applicable in following manner:

Basis for designating a broker as QSB	Applicability of the circular
Parameters mentioned in Pts. 1 to 5 are triggered	June 1st of the subsequent year
Parameters mentioned in Pts. 6 & 7 are triggered	September 1st of the subsequent year

A point-based formula has been devised on the basis of which the aggregate score for each broker is defined. In case this threshold is breached, then broker is categorized as a QSB. The values are to be calculated on an annual basis and the revised list is to be released by Stock Exchanges in consultation with the SEBI.

Repeal of circular(s) outlining procedure to deal with cases where securities are issued prior to April 01, 2014, involving offer / allotment of securities to more than 49 but up to 200 investors in a financial year

SEBI/HO/CFD/PoD-1/P/CIR/2024/ 016 dated March 13, 2024

As per the provisions of Companies Act, 1956, the Company which offers / allots the securities

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to more than 49 persons was deemed to be public offers. While under Companies Act, 2013, the Company may allot securities up to 200 offerees / allottees in one financial year.

Considering the higher cap for private placement, SEBI, vide its circular CIR/CFD/DIL3/18/2015 dated December 31, 2015 and Circular No. CFD/DIL3/CIR/P/2016/53 dated May 03, 2016, allowed Companies which had issued securities to more than 49 investors but less than 200 investors, to avoid penal action by providing the investors an option to surrender the securities and receive the refund amount of subscription money paid along with 15% interest p.a. thereon or such higher return as promised to the investors.

Since considerable time has elapsed with the repeal of the Companies Act, 1956, it has been decided to repeal the circulars dated December 31, 2015, and May 03, 2015, effective from 6 months from the date of issue of this circular.

The Company will not be penalized if it refunds at a price not less than the amount of subscription money along with 15% interest p.a. thereon or such higher return as confirmed to investors duly backed by a certificate from Independent Chartered Accountant certifying the compliances.

Safeguards to address the concerns of the investors on transfer of securities in dematerialized mode

SEBI/HO/MRD/MRD-PoD-2/P/CIR/2024/18 dated March 20, 2024

With an objective of strengthening the measures to prevent fraud / misappropriation for inoperative demat accounts following safeguards shall be applied to address the concerns of the investors arising out of transfer of securities in dematerialized mode:

- Investor education with regard to careful preservation of Delivery Instruction Slip (DIS) by Beneficial Owners (Bos). Bos shall not leave 'blanked/signed' DIS with Depository Participants (DPs) or any other person.
- DPs shall not accept pre-signed DIS with blank columns.
- Written intimation to DPs in case of lost/stollen/un-traceable DIS.
- New DIS booklet to be issued only on the strength of DIS instruction request slip. In case of inactive/dormant account, DIS booklet shall be delivered at the registered office of BO.
- DPs shall not issue more than 10 loose DIS to one account holder in a financial year. Loose DIS to be issued only if BO comes in person.
- Appropriate checks and balances to be placed by DP for verification of signatures of Bos.
- Cross checking with Bos under exceptional circumstances before acting upon DIS.
- Mandatory verification by DPs with Bos before acting upon DIS in case of inactive/dormant accounts. In case of active accounts, such verification may be made mandatory only if the BO account has 5 or more International Securities Identification Number (ISINs) and all such ISIN balances are transferred at a time.

Applicability: With effect from April 01, 2024

SEBI Notifications

Introduction of Beta Version of T+0 rolling settlement cycle on optional basis in addition to the existing T+1 settlement cycle in Equity Cash Markets

SEBI/HO/MRD/MRD-PoD-3/P/CIR/2024/20 dated March 21, 2024

Introduction of T+1 rolling system lead all the stock exchanges, clearing corporations and depositories (collectively referred to as "Market Infrastructure Institutions (MIIs)") to shift to the same in phased manner which got fully implemented w.e.f. January 27, 2023.

The technological evolution, architecture and capacity of MIIs, has provided further impetus to advance the clearing and settlement timelines. Based on the recommendations of Working Group constituting MIIs, general public and the recommendations of Risk Management Review Committee of SEBI, proposal for introduction of optional T+0 settlement cycle and subsequently optional instant settlement was placed before SEBI.

Based on evaluation of the recommendations Board has granted approval to introduce a Beta version of T+0 settlement cycle on optional basis in addition to the existing T+1 settlement cycle in equity cash market for a set of 25 scrips and with limited no. of brokers.

Operational Guidelines:

a) **Eligible Investors:** All investors are eligible to participate in the segment for T+0 settlement cycle, if they are able to meet the timelines, process and risk requirements as prescribed by the MIIs.
b) **Surveillance Measures:** Same as applicable in T+1 settlement cycle.
c) **Trade Timings:** Continuous session from 9:15 a.m. to 1:30 p.m.
d) **Price Band:** The price in the T+0 segment will operate with a price band of +100 basis points from the price in the regular T+1 market. This band will be re-calibrated after every 50 basis points movement in the underlying T+1 market.
e) **Index calculation and settlement price computation:** T+0 prices will not be considered in index calculation and settlement price computation. No separate close price for securities based on trading in T+0 segment.
f) **Netting of obligations:** No netting in pay-in and pay-out obligations between T+1 and T+0 settlement cycle.

Applicability: With effect from March 28, 2024.

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

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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
EODC	Export Obligation Discharge Certificate

Abbreviation	Meaning
EPCG	Export Promotion Capital Goods
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

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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
RA	Regional Authority
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