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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 and transfer pricing matters.

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

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

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Serving of notice cannot be presumed by the department by placing it on the income tax portal

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The taxpayer is a trust and during the year under consideration, had made an application for registration u/s. 12A(1)(ac)(iii) of the ITA. Subsequently the CIT(E) issued a show cause notice and 2 reminder notices however the taxpayer did not respond to any of the notices and thereby the CIT(E) cancelled the registration of the trust. The taxpayer filed a writ before the HC stating that the notice was only reflecting on the income tax portal and was not served to the taxpayer on his registered email. Further, subsequent reminders were also published on the portal only and were never served on the taxpayer.

Before the HC, the revenue justifying the cancellation order, argued that it was presumed that the taxpayer was having the knowledge of notices and reminder issued since the taxpayer has filed the form on the portal only and therefore the department is justified in cancelling the taxpayer's registration on account of non-filing of response to the notice and reminders.

The Court held that it is essential that a communication of notice must be in terms of provisions of section 282 read with rule 127 and the said provisions do not mention of communication to be presumed by placing the notice on the income tax portal. Further held that in such case pragmatic view has to be adopted always and the taxpayer is not expected to always keep the portal open to have the knowledge of department's action. In view of the same, the High court quashed the order cancelling the taxpayer's registration and directed the CIT(E) to pass a fresh order duly granting proper opportunity of being heard to the taxpayer.

The judgement highlights the importance of "serving" the notice on the taxpayer and not merely "issuance" of the notice. Rule 127(2) requires communication of any notice, order etc. to be delivered on specified email address and not mere uploading of notice in taxpayer's web account on e-filing portal. In cases where no communication has been made by the revenue in such manner as per section 282 r.w.r 127, the taxpayer may file its objection to such notice.

Change of opinion – an inbuilt check against the reassessment proceedings

Vibrant Securities Pvt. Ltd. Vs. ITO, Mumbai, Writ Petition no. 3423 of 2022, Bombay HC

The Taxpayer was engaged in the business of providing stock broking services to its client as well as undertaking proprietary trade ("Pro trade") on BSE and NSE in derivative and cash segments. The taxpayer treated the pro trade activity as its business activity and filed its return of income. Subsequently, the case was selected for scrutiny assessment and during the course of proceedings details regarding pro trade business were asked which were duly submitted. Subsequently the assessment order was passed.

Thereafter a notice u/s. 148 of the Act was issued on the ground that the taxpayer had entered into sale/purchase of equity shares with or without actual delivery on the recognized stock exchange with a belief that income had escaped from assessment. The taxpayer filed

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objections against the reassessment proceedings, however they were rejected by the department.

Aggrieved, the taxpayer filed a writ petition before the Bombay High Court and argued that the issue in respect of which reassessment proceedings had been initiated were subject matter of consideration during the assessment proceedings and the proceedings are a mere change of opinion.

The HC quashed the reassessment proceedings by relying on its own decision in case of Aroni Commercials holding that even if the issue is not mentioned in the assessment order, since it was raised during the original proceedings and the taxpayer has duly submitted its reply, the consequent reassessment proceedings on the same matter is merely a change of opinion which is not justified.

In addition to the same, the court observed that the reasons recorded by the AO does not indicate anything cogent or clear finding that there was a failure on the part of taxpayer to fully disclose all the material facts necessary for assessment. The AO in the reasons was also supposed to establish a live link between the information received and formation of his belief that income has escaped assessment which is missing in the present case. Resultantly the HC quashed the reassessment proceedings.

The decision has been pronounced in the context of the erstwhile section 148 of the Act (applicable up to FA 2021), however the judicial pronouncement reiterates the position that a case cannot be reopened on account of a mere change of opinion, a principle which may also be tested under new provisions as amended from Finance Act 2021.

Ind-AS adjustment of income which are notional in nature cannot be said to be accrued to the taxpayer

ACIT Vs. Kesar Terminals and Infrastructure Ltd., ITA No. 3001/Mum/2023, Mumbai ITAT

The taxpayer is a public limited company engaged in the business of storage and handling of liquid cargo. During the AY 2018-19 it had given an interest free loan to its wholly owned subsidiary. No interest was due on the said loan, however, in accordance with the requirement of Indian Accounting Standard, the taxpayer accounted for notional interest and credited the same to the statement of profit and loss account. Since the same was not accrued to the taxpayer and was merely a book entry, the taxpayer excluded the notional interest while computing the total income chargeable to tax.

The return of income of the taxpayer was processed u/s. 143(1) of the ITA and the CPC determined the total income after adding the notional interest. Against the intimation, the taxpayer filed a rectification which was rejected. Subsequently, the taxpayer filed an appeal with the CIT(A) which passed the order in favor of the taxpayer holding that notional interest is not liable to tax as the same is not accrued to the taxpayer.

Thereafter, the revenue preferred an appeal before the Bombay ITAT against the order of CIT(A). The Bombay ITAT held that notional interest credited to the statement of profit and loss account as per the requirement of Indian Accounting Standard cannot be considered as real income of the taxpayer as there is no contractual obligation for the debtor to pay the interest. Further the ITAT relied on the decision of the Chennai ITAT in the case of M/s. Shriram Properties Ltd wherein the similar issue was raised, and it was held that the notional

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guarantee commission credited to the statement of profit and loss account as per the requirement of Indian accounting standards is not accrued to the taxpayer since there is no contractual obligation to pay. Accordingly, the Bombay ITAT dismissed the appeal of the revenue.

The ITAT in this decision has emphasized the principle of "Real Income". Mere book entries which are passed basis the requirements of accounting standards are not to be offered to tax unless there is an obligation to make payment between the parties involved.

HC: Second re-assessment notice issued without original reassessment order being set aside deserved to be quashed

Arvind Kumar Shivhare V/s Union of India in ITA No 1238 of 2022 dated April 4, 2024 - Allahabad HC

The Taxpayer was subjected to scrutiny proceedings u/s 143(3) of the ITA for the AY 2017-18. Thereafter, reassessment proceedings were initiated and the re-assessment order was passed on March 28, 2022. The order was not challenged by the taxpayer and therefore it attained finality.

Subsequently, the taxpayer received a second re-assessment notice by the revenue u/s 148A without the previous order being set aside by any authority or the court. Aggrieved, the taxpayer challenged the second re-assessment proceedings by filing a writ petition with the Allahabad HC.

The revenue argued that the first reassessment notice dated March 31,2021 was digitally signed on April 01, 2021. By virtue of the law declared by the Supreme Court in the case of Union of India Vs. Ashish Agrawal dated May 4, 2022, the revenue authorities had taken a view that the notice dated March 31,2021 was wrongly acted upon. That notice having been digitally signed on April 1, 2021, the day when amended law that introduced section 148A of the Act came into force, the entire proceedings arising from the original re-assessment order dated 28.03.2022 were annulled since the notice had to be issued u/s 148A and the proceedings had to be carried out as per the new 147 provisions.

Hon'ble Allahabad Court held that since the reassessment order was neither challenged nor revised by the commissioner nor there was any declaration by the Supreme Court to annul all assessment orders other than specifically challenged before Hon'ble Supreme Court, the original re-assessment order cannot be concluded as void.

Accordingly, it was held that there is no jurisdiction with the revenue to again reissue the impugned notice in the absence of declaration of law to annul or set aside the pre-existing reassessment order and thus proceeding initiated u/s 147 r.w.s. 148 were quashed.

The judgement lays down an important principle to hold that a subsequent reassessment proceeding cannot be carried out if the original re-assessment order is valid and in force.

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Relief to deductor from higher deduction of TDS/TCS consequent to PAN of deductee becoming inoperative.

The CBDT vide earlier notification no. 15 of 2023 dated March 28, 2023, issued the consequences regarding PAN becoming inoperative on account of failure to intimate Aadhar Number in accordance with section 139AAA r.w.r 114AAA. In accordance with the said notification, TDS/TCS shall be deducted/collected at higher rate as per the provisions of section 206AA/206CC of the ITA on account of such failure.

Several grievances were received from the taxpayers regarding receipt of notices with regard to short deduction/collection of TDS/TCS while carrying out the transaction with the deductees/collectees whose PAN were inoperative. As a result, demand have been raised against the deductors/collectors while processing TDS/TCS statements.

To redress the grievances faced by such deductors/collectors, the CBDT *vide* circular no. 6/2024 dated April 23, 2024, partially modified the aforesaid circular no. 3/2023 and specified that TDS/TCS rates shall be applied as per chapter XVII-B or XVII-BB only and not at higher rates for the transactions entered upto March 31, 2024, in cases where the deductees/collectees link their Aadhar with their PAN on or before May 31, 2024.

CBDT Extends Due Date for Filing Form 10A and Form 10AB to June 30, 2024.

All the existing trusts were required to apply in Form 10A for re-registration / approval and on or before September 30, 2023, in view of extension granted by the CBDT. Similarly, such extension was also applied to all provisionally registered / approved trusts who were also required to apply for regular registration / approval in Form 10AB on or before September 30, 2023.

Vide circular dated April 25, 2024, the CBDT considering difficulties arising to taxpayers has extended the due date for filing Form 10A and 10AB from September 30, 2023, to June 30,2024. This extension will also apply to all pending applications for which orders has not yet passed by the Principal Commissioner or Commissioner. It is important to note that if an application for Form No. 10A or Form No. 10AB was rejected by Principal Commissioner or Commissioner before the issuance of the circular solely because of non-filing of application within the due date or the application was furnished under the wrong section code, the concerned fund, institution, or trust can file the form within extended deadline i.e. June 30, 2024.

Furthermore, if a trust, institution, or fund failed to file Form No. 10A for AY 2022-23 within the previously extended due date and subsequently applied for provisional registration as a new trust, institution, or fund, receiving Form No. 10AC, it can now opt to surrender Form No. 10AC and apply for registration for the AY 2022-23 as an existing trust, institution, or fund by filing Form No. 10A within the newly extended deadline of June 30, 2024.

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Indian Rulings

Benefit under a tax treaty cannot be denied without invoking GAAR

Accion Africa-Asia Investment Company [ITA No.1815/Del/2023- Order dated 26 October 2023 (Delhi ITAT)]

Taxpayer, a tax resident of Mauritius, is an investment holding company and had a valid Tax Residency Certificate (TRC) for the year under consideration. It held a Category 1 Global Business License issued by the Financial Services Commissioner, Mauritius. The taxpayer derived long-term and short-term capital gains from the sale of shares of Indian Companies. Short-term capital gains were offered to tax, however the long-term capital gains were not offered to tax since the taxpayer argued that it was entitled to benefit under Article 13(4) of the India- Mauritius DTAA pursuant to which long term capital gains arising on sale of shares acquired prior to 01.04.2017 in the hands of a tax resident of Mauritius could only be taxed in Mauritius and not in India.

The Tax Officer rejected the claim of the taxpayer and observed that since the company had no physical assets, paid no rent or utilities, had no employees, and incurred no staff costs, it appeared to be a shell company established solely to exploit treaty benefits. He argued that the scheme of arrangement through which the taxpayer had been setup was a colorable device to avoid taxes and hence should be considered as an Impermissible Avoidance Arrangement (IAA).

ITAT held that with the introduction of GAAR provisions, the department had been empowered to deny treaty benefits even if they are more beneficial to the taxpayer if GAAR is applicable. The ITAT observed that the argument by the tax authorities that the taxpayer was a conduit entity was not backed by any substantive and cogent material. The ITAT further observed that though the tax authorities have claimed that the taxpayer had been set up as a part of an IAA, they have not invoked the GAAR provisions as provided in the ITA. The ITAT accordingly held that since the department had failed to establish that the assessee was a conduit company and had also failed to invoke GAAR, the TRC issued by Mauritius authorities would entitle the taxpayer for treaty benefits. While doing so, the ITAT took note of the Circular No. 78, dated 13.04.2000 and the decision of Hon'ble SC in the case of Azadi Bachao Andolan.

This ruling enshrines the importance of TRC and other supporting documents relevant for establishing the economic substance of taxpayers for the purpose of availing DTAA benefits. It further underscores the importance of following the procedure for invoking GAAR for alleging a transaction as an IAA by the tax authorities. This becomes important in sphere of domestic taxation as well specially in M&A transactions whereby the tax authorities cannot regard an arrangement as an IAA merely by taking an argument that the arrangement is a colorable device during regular assessment proceedings without following the procedures for invoking GAAR.

India and Mauritius have recently signed a protocol for amending their DTAA. It provides for amending the Preamble and introducing Principal Purpose Test (PPT) provision in compliance with OECD BEPS Action Plan 6 for addressing treaty shopping. The proposed amendment aims to tighten regulations and prevent misuse of tax benefits provided under India-Mauritius DTAA. Readers may refer KCM flash on "Navigating Turbulent Waters – India-Mauritius Protocol Amendment sets sail against tax evasion" dated 24 April 2024. Going forward, an evaluation of such structures' past, ongoing, and planned transactions may be required to avail treaty benefits and to ensure alignment with tax regulations.

Telecom interconnect facility charges not taxable as Royalty in absence of right to use IPRs

KDDI Corporation, Japan [in IT(IT)A Nos. 100 to 102/Bang/2024 – Bangalore ITAT]

Taxpayer, a Japanese company, had provided telecom interconnect facility to Indian telecom operators and received interconnect usage charges. Tax authorities contended that payments made to the non-resident taxpayer for provision of interconnect services were for the 'use of process' or 'use of equipment' and hence in the nature of royalty and taxable in India.

The ITAT held that applying the rules of ejusdem generis (i.e. of the same kind) or noscitur a sociis (i.e. it is known by its associates), the word 'Process' as per Explanation 2 to Section 9(1)(vi) of the ITA must refer to a "process" which is an item of intellectual property. The ITAT held that while Explanation 5 & 6 to Section 9(1)(vi) of the ITA, has widened the definition of the term 'process' and the process need not be 'secret' and situs of control and possession of right, property or information has been rendered to be irrelevant, however, the Explanation has not done away with the requirement of (i) exclusivity of right in respect of process with the person claiming royalty and (ii) granting its usage to a third party by the person claiming such royalty.

Relying on the decision of AAR in the case of Cable & Wireless Networks India (P.) Ltd, the ITAT held that the word 'use' in relation to equipment is not to be understood in the broad sense of availing of the benefit of an equipment and that there must be some positive act of utilization, application, or employment of equipment by the payer. Considering that the equipment or infrastructure, only part of which was installed at payer's premises, was only to facilitate provision of telecommunication service by service provider, the same was in the nature of 'service' and could not be considered to be royalty under section 9(1)(vi) of the ITA.

Further, the ITAT held that the process involved in providing the services to the end users was not "secret" but a standard commercial process followed by the telecom industry players. It held that clause 3 of Article 12 of India-Japan DTAA specifically covered consideration for the 'use of or right to use of' a process which is 'secret process' and distinguished the same from clause (iii) of Explanation 2 to section 9(1)(vi) of the ITA. It held that the said process also could not be classified as a "secret process", as is required by the definition of "royalty" mentioned in India-Japan DTAA.

Reliance was placed on the decisions of Karnataka High Court in the case of M/s. Vodafone Idea Ltd., Delhi Tribunal in case of Bharti Airtel, AAR ruling in case of Dell International Services India Ltd. and a series of decisions in favour of taxpayers holding that receipt of interconnectivity utility charges could not be taxed as royalty as per the provisions of the ITA read with DTAA.

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While on literal reading of Explanation 5 & 6 to Section 9(1)(vi) of the ITA, it may appear that a process, whether or not secret, in relation to transmission is covered, the ITAT reiterates that in substance, to qualify as royalty, there has to be an exclusive right over such process for which royalty is charged. In the case of Bharti Airtel, the ITAT has elaborately discussed that a 'process' which has been in public domain for some time and is widely used by everyone in the field cannot constitute an item of intellectual property for the purpose of charge of 'royalty'.

Salary paid by Indian company for services rendered outside India not taxable

Yogesh Kotiyal [ITA No. 391/Del/2023, Delhi ITAT]

Taxpayer, an employee of Nokia Solutions and Networks India Private Limited ('Nokia India'), was on an overseas assignment to Australia. While he rendered services in Australia, for administrative convenience, his payroll remained in India and salary was paid in India.

Taxpayer's stay in India during the year was less than 60 days and hence was a non-resident as per section 6(1) of the ITA. Taxpayer claimed that since he was a tax resident of Australia and had exercised employment in Australia, salary received in India for services rendered in Australia was not liable to tax in India. The taxpayer provided copy of passport and Australian tax return as proof of residency and payment of taxes in Australia, but he could not provide TRC during assessment proceedings. TRC was produced before the DRP as additional evidence.

DRP and AO however denied benefit under Article 15(1) of the DTAA on the ground that employment was based in India throughout the Australia assignment period, control of the employment was executed in India and source of salary income was in India as salaries were paid by Indian company.

Considering that the employee had exercised employment with Nokia Australia in Australia and had furnished Australian tax returns, paid taxes in Australia and had obtained a valid Tax Residency Certificate from Australian tax authorities, ITAT held that the salary income was not liable to tax in India as per the provisions of section 5 read with section 9(1)(ii) and section 15 of the ITA and Article 15(1) of the DTAA. ITAT also relied upon various decisions holding that mere fact that the salary received from an Indian company would not render salary income deem to accrue in India where employment was exercised outside India.

It is relevant to note that in light of the provisions of section 90(4) read with Rule 21AB, a valid TRC along with e-filed Form 10F (where applicable) is essential to claim tax treaty benefit. However, considering that the taxpayer could substantiate his residential status based on copy of passport and Australian tax return, even where the taxpayer could obtain TRC for the period under consideration only at a later point in time and submitted the same subsequent to assessment proceedings, the ITAT in this case has upheld benefits conferred by the DTAA.

Receipts from Software Licensing not taxable as Royalty

Saxo Bank A/S [ITA No. 2010/Del/2023 (Delhi ITAT)

Taxpayer, a Denmark-based company entered into a global agreement with Microsoft for procuring various shrink-wrapped software user

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Coverage

licenses (e.g., Microsoft Visual Studios, Dynamic 365, remote desktop, office 365 etc.) for entities within the group. It cross charged the cost of software to its Indian AE on which taxes were withheld under section 195 of the ITA. The taxpayer considered the receipts as exempt relying on the judgement of the Hon'ble Supreme Court in case of Engineering Analysis. During assessment, the AO deemed the receipts taxable as equipment royalty, stating that the receipts from AE were for allowing IT infrastructure use which consisted of various third-party software. AO accordingly held that the receipts were taxable under explanation 2(iva) to section 9(1)(vi) of the ITA. It was argued by the taxpayer that the software was installed in the laptop of end user and did not require any IT infrastructure to be maintained by the taxpayer. In other cloud based softwares, the IT infrastructure was maintained by the service provider and not the taxpayer.

The Hon'ble Tribunal accepted the taxpayer's contention and held that the taxpayer had cross charged the software cost without maintaining IT infrastructure for the same. Software used by the taxpayer and Indian AE could not be sublicensed, transferred, reverse engineered, modified, or reproduced, indicating no transfer of copyright. Microsoft granted a non-exclusive, non-sublicensable, non-transferable, revocable license for internal business purposes. Accordingly, relying on EY Global Services and Engineering Analysis judgement it was held that payment from AE could not be termed as Royalty.

This judgment aligns with the established legal precedent set by the Supreme Court in the Engineering Analysis case. Moreover, it is beneficial for companies with exempted income where TDS under section 195 has been deducted as royalty. It opens the possibility of claiming a refund for the deducted amount.

Reimbursement of expats' salary not taxable as Fees for Technical Services

Advics Co., Ltd. [ITA No. 1053/Del/2022]

The taxpayer was a tax resident of Japan and received reimbursement of expats salary costs from its Indian AE. The Revenue believed that the said receipts were in the nature of FTS as the taxpayer had provided technical services by seconding its employees to its Indian AE. The taxpayer argued that the receipts were in the nature of reimbursement of salary cost wherein no income element was involved, hence, there could not be any tax implications. The taxpayer further contended that employer-employee relationship existed between expats and the Indian AE and there was no service which was provided by the taxpayer to the Indian AE.

The Hon'ble Delhi ITAT examined the case and observed that the expats were actually taken into employment by the Indian AE, and the expats worked under the direct control and supervision of the Indian AE. The Indian AE was responsible for their conduct, payment of salaries, withholding and thus was the real and economic employer during the secondment period and part salary had been disbursed in Japan only for administrative convenience. Moreover, no material evidence was brought on record by the Revenue to substantiate that the taxpayer was providing technical services through these expats.

Further, the ITAT distinguished the multiple cases cited by the Revenue in this context, particularly, the ruling of the Supreme Court in the case of Northern Operating Systems Pvt. Ltd.

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which pertained to manpower recruitment under service tax provisions and was not directly relevant to the taxability of salary reimbursements as FTS under the ITA. Consequently, the ITAT held that receipts related to employee salary cost were pure reimbursements and hence could not be taxed as FTS.

Given the significant tax ramifications and the multitude of legal precedents, both favoring and opposing taxpayers, it is recommended that taxpayers meticulously draft their employment agreements, clearly outlining the roles and responsibilities of the Indian employer, foreign expatriates, and the foreign company.

Salary income from employment exercised in US, not taxable in India

Somnath Duttagupta vs. ACIT [ITA No. 627/Kol/2023]

The taxpayer, an individual, had stayed in India for only 16 days during the previous year and was assigned to a US project for remaining part of the year wherein the employment was exercised from US with salary paid by the Indian employer in his Indian bank account. The issue under consideration was whether the taxpayer was an Indian resident or not and consequently whether the salary income so earned should be offered to tax in India.

The Hon'ble Kolkata Tribunal observed that though the taxpayer stayed in India only for 16 days in the previous year, however, after referring to the condition of section 6(1)(c) of the ITA, stated that since his stay details of last four years was not on record, it was not possible to conclude whether the taxpayer was a resident of India as per the domestic law. Since the taxpayer was also a US resident as per the documents submitted, the Tribunal invoked the dual residency scenario and considered the taxpayer as Indian resident as per Article 4 of India-US DTAA by breaking ties in India.

After concluding the taxpayer as Indian resident, recourse was taken to Article 16 of the India-US DTAA dealing with Dependent Personal Services wherein the Tribunal held that Article 16(1) allows the country other than resident country to tax the salary income if the employment was exercised in that country. Further, the court held that the provisions of Article 16(2) which mandates only resident country to tax such income shall not be applicable since the taxpayer stayed in US for more than 183 days. Accordingly, the tribunal held that such salary income shall only be taxed in US pursuant to Article 16 and hence not taxable in India.

While the ruling was held in the favour of the taxpayer, it seems that the Hon'ble tribunal erred in interpreting the provisions of the treaty as well as the ITA. Though Article 16(1) of DTAA provides that the other country may have the right to tax such income provided employment is exercised in that country, however, it cannot be interpreted that resident Country shall forgive its right to tax such income. Further, the tribunal also erred in considering the taxpayer as Indian resident by reading the twin conditions of section 6(1)(c) of the ITA independently i.e. stay in India for 365 or more days in four preceding years and 60 or more days in the previous year. Once the taxpayer's stay in India is less than 60 days in the previous year, he automatically comes out of the purview of section 6(1)(c) & becomes non-resident.

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Foreign Updates

New Zealand enacts OECD's Pillar 2 Globe Rules from January 2025

New Zealand Government has taken proactive steps to implement the OECD's Global Anti-Base Erosion (GloBE) Pillar Two Rules. The adoption of these rules is not unexpected, as the Government flagged this originally as part of a public consultation process in May 2022.All multinational (MNE) groups operating in New Zealand with consolidated accounting revenue exceeding €750m in at least two of the preceding four years are within scope of the new rules.

The Income Inclusion Rule (IIR) and Under Taxed Profits Rule (UTPR) will apply equally to both New Zealand-parented MNE Groups and to foreign-parented MNE Groups. Conversely, the Domestic Income Inclusion Rule (DIIR) will apply only to New Zealand-headquartered MNEs. The income inclusion rule and under-taxed profits rule will take effect from January 1, 2025, while the domestic income inclusion rule will become effective from January 1, 2026. An income inclusion rule is applied when a New Zealand-based multinational enterprise has under-taxed income in another country. A domestic income inclusion rule is applied when a New Zealand-based multinational enterprise has under-taxed income in New Zealand. An under-taxed profits rule is a backup to ensure that multinational enterprises based in countries that are not implementing the GloBE rules still contribute via top-up tax.

The rules associated with calculating the top-up taxes required under the IIR, UTPR and DIIR are complex and have been the subject of extensive consultation at both the OECD level and within New Zealand. The rules override existing double-tax treaties with New Zealand (unless the double-tax treaty specifically refers to the Pillar Two rules).

US Senators Introduce Bipartisan Bill to curb tax-free treatment of corporate reorganizations

Stop Subsidizing Giant Mergers Act, introduced by U.S. Senators Sheldon Whitehouse and JD Vance, addresses a significant tax loophole that allows large corporations to avoid tax obligations during mergers and acquisitions. Under current tax laws, certain types of mergers structured by exchanging stock can result in the appreciation of the target firm's assets being fully tax-exempt, allowing corporations and their shareholders to potentially avoid taxes indefinitely.

The proposed legislation aims to close this loophole by ending the tax-free treatment for mergers and acquisitions involving firms with combined average annual gross receipts exceeding $500 million over the prior three years. By setting this threshold, the legislation targets large corporations while making exceptions for small businesses and internal corporate reorganizations.

Ending tax-free mergers and acquisitions for giant corporations aligns with the broader goal of preventing subsidizing corporate consolidation and taxpayer subsidies for acquisitions that consolidate corporate power. It seeks to ensure that corporations pay their fair share of taxes and do not exploit loopholes in the tax code to avoid their tax liabilities.

The Bill if enacted could have significant implications for corporate tax practices and the broader landscape of mergers and acquisitions in the United States.

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UK proposes abolishing its conventional 'Non-Dom' tax regime

The UK announced abolishing the current Non-Domiciled Individuals tax regime and replacing it with a new residency-based regime. The current rules have allowed non-UK domiciled individuals to avoid paying UK taxes on their overseas earnings for as long as 15 years. Under this new regime, individuals relocating to the UK who have not been UK tax residents in the past ten tax years may, upon annual claim, avoid taxation on non-UK source income or gains for up to four tax years. This exemption applies during the initial four tax years of their UK tax residency, enabling them to bring non-UK source income or gains into the UK tax-free.

Individuals who have been UK tax resident for less than four years on 5 April 2025 (and who were non-resident for a period of ten years before that) can use the new regime while they are UK resident for the remainder of the four-year period. However, after four tax years of UK tax residency, individuals will become subject to UK tax on their worldwide income and gains at prevailing rates (irrespective of whether it is remitted to the UK). Individuals who transition from the current Non-Dom Regime and who are not eligible for the new regime will be subject to tax on 50% of their non-UK source income (but not capital gains) arising in the tax year 2025/26. Individuals who have elected to be taxed on the remittance basis under the current Non-Dom Regime and have unremitted (and so, to date, untaxed) non-UK income and gains can also opt to remit that income and those gains that arose before 6 April 2025 and be taxed on them at a special low rate of 12% during the initial two years.

In summary, starting from April 2025, newcomers to the UK will enjoy a tax-free period of four years on foreign income and gains. This new approach will radically change the UK tax treatment of the foreign income and capital gains of Non-Dom's who are already resident in the UK and other Non-Dom's who are non-UK resident and move to the UK in the future.

US introduces Corporate Tax Dodging Prevention Bill

Corporate Tax Dodging Prevention Bill introduced by the US Senator aims to address various loopholes and strategies used by large corporations to minimize their tax obligations. In addition to putting an end to offshore tax havens and tax breaks for companies that ship jobs and factories overseas, this legislation would reform the tax code by:

- Ending the rule allowing American corporations to pay a lower or Nil tax rate on offshore earnings.
- Closing loopholes allowing American corporations to shift income between foreign countries to avoid U.S. taxes.
- Eliminating the Interest-Free Deferral of Repatriation Tax Payments.
- Repealing the "check-the-box" and "CFC Look-Thru" offshore loopholes.
- Preventing multinational corporations from stripping earnings out of the US by manipulating debt expenses.
- Preventing American corporations from claiming to be foreign by using a tax haven post office box as their address.
- Restoring the top 35 percent corporate tax rate, the rate it was from 1993-2017.
- Reforming and tightening the Based Erosion and Anti-Abuse Tax.

Important Updates

- Preventing extractive and gambling companies from disguising royalty tax payments to foreign governments as foreign income taxes.
- Preventing the abuse of tax treaty benefits.
- Repeal the Tax Break for Foreign Derived Intangible Income etc.

Overall, the legislation aims to ensure that large corporations pay their fair share of taxes, stop profit sheltering in tax havens, eliminate tax breaks for outsourcing jobs, and close loopholes that allow corporations to avoid paying taxes. It would significantly impact corporate tax practices and potentially generate additional revenue for the government.

New Zealand sets-out 2024 International Tax Disclosure Exemption

New Zealand Inland Revenue has released a determination on international tax disclosure exemption 2024. The disclosure exemption simplifies reporting obligations for taxpayers with interests in foreign entities for the income year ending on 31 March 2024. The scope of the 2024 disclosure exemption is the same as the 2023 disclosure exemption.

Here's a summary of the key points of the 2024 disclosure exemption:

1. Residents are not required to disclose their interest in a foreign company if:
   - Their income interest in that company is less than 10%, and
   - Either that income interest is not an attributing interest in a Foreign Investment Fund (FIF), or it falls within the $50,000 de minimis exemption. However, the de minimis exemption doesn't apply if the person has opted out of it by including FIF income or loss in their tax return.
2. Residents who are not widely held entities need not disclose an attributing interest in a FIF that is a direct income interest of less than 10%, if:
   - The foreign entity is incorporated or tax resident in a treaty country or territory, and
   - The fair dividend rate or comparative value method of calculation is used.
3. Residents who are widely held entities are exempt from disclosing an attributing interest in a FIF that is a direct income interest of less than 10% (or a direct income interest in a foreign PIE equivalent) if the fair dividend rate or comparative value method is used for the interest. Instead, they are required to disclose the end-of-year New Zealand dollar market value of all such investments, split by the jurisdiction in which the attributing interest in a FIF is held or listed.

The 2024 disclosure exemption also removes the requirement for a non-resident or transitional resident to disclose interests held in foreign companies and FIFs.

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Important Rulings

Indian Rulings

Letter of comfort/support to banks on behalf of AEs constitutes as an international transaction as per section 92B of the Act

Asian Paints Ltd. [ITA No. 5363/Mum/2017]

During the year under consideration, the assessee had issued non-contractual letters of comfort/support ('LOC') to banks on behalf of some of its associated enterprises (AEs) who had availed loans amounting to INR 123.46 crores from banks outside India. The assessee had disclosed the corporate guarantee as well as the LOC as contingent liability in its financial statements. The assessee had not charged any consideration from its AEs for providing LOC.

The assessee was of the opinion that these are mere comfort letters that are non-contractual in nature.The LOC does not keep the assessee financially or legally obligated to bear the cost of repayment of loans to the banks in case the subsidiaries default in repayment. Accordingly, the assessee opined that it could not be said to be covered within the scope of transfer pricing provisions. Hence, only corporate guarantee was considered as an international transaction by the assessee.

The TPO did not agree with the submissions of the assessee and held that the LOC was to be regarded as an international transaction, as an intergroup service had been rendered by the assessee to its AEs.

Further, TPO drew inference from section 92B of the Act which states that a transaction to be constituted as an international transaction has to be entered into between two or more AEs, either or both of whom are non-residents. Accordingly, TPO held that since the assessee issued LOC on behalf of its AEs outside India, it satisfies the aforesaid condition. Also, taking into account the disclosure of the corporate guarantee as well as LOC by the assessee in its financial statements as contigent liability it was held that the same has a bearing on the assets and liabilities of the assessee and should be considered as an international transaction.

Considering the above, the TPO determined the ALP for the LOC as 0.50 percent (being 50 percent of 1 percent fee for guarantee commision) and accordingly computed the transfer pricing adjustment. The Commissioner (Appeals) had reduced the same to 0.04 percent (being 20 per cent of 0.20 percent fee for guarantee commision) by following the orders in assessee's own case in earlier years and thereby disposed of the appeal.

The Hon'ble ITAT held that the provision of comfort by the parent in favour of its subsidiary is an international transaction as per provisions of section 92B of the Act since it involves an element of service that benefits the subsidiary. Further, the Hon'ble ITAT noted that the assessee, vide LOC, not only undertook to use its best endeavor to see that the obligations of the subsidiary are met as and when they fall due but also treated the liability as a contingent liability in its financial statement. Accordingly, since the transaction has been admitted as liability in its own financial statement, it constitutes an international transaction within the meaning of section 92B of the Act.

A letter of comfort sought by banks is generally not in the nature of expecting a parent to make good the subsidiary's defaults but is generally in the nature of seeking an assurance of continued support to the subsidiary in form of capital that

Important Rulings

it would require. It is non-contractual in nature from the perspective that a loan default by a subsidiary cannot make a parent responsible for its repayment. The comfort given by the parent is usually limited to its continued holding of shares in the subsidiary. Accordingly, generally, letters of comfort would neither form part of a contingent liability not would it tantamount to an international transaction. If however, the letter of comfort is in the nature of making good the liability of its subsidiary and is also recorded as such in financial statements as contingent liability, the revenue would not be incorrect in expecting a fee towards provision of such comfort. Accordingly, the content of the letter of comfort would be a single factor based on which the subsequent actions would be taken.

Benchmarking dilemma: Comparability of Letter of comfort with a bank guarantee

Axis Bank Limited [TS-142-ITAT-2024(Ahd)-TP]

Taxpayer had provided loan to its UK based AE, Axis UK and charged interest at 3 months LIBOR plus 425 basis points. The taxpayer benchmarked the transaction using Any Other Method ('AOM') considering the quotation furnished by Bank of India (BOI) to Axis UK for advancing funds on similar terms. The quote of BOI had required 'Letter of Comfort' (LOC) by the taxpayer and the rate of interest as per the quote was 6 months USD LIBOR plus 425 bps.

During assessment proceedings, TPO noted that interest rate as quoted by BOI was after taking into account the LOC to be provided by the taxpayer and held that the LOC is equivalent to a corporate guarantee given to BOI. Further, TPO held that taxpayer bears greater risk in relation to the funds advanced to its AE due to absence of a letter of comfort when the same is compared with the quote furnished by BOI to the AE. Accordingly, the TPO determined ALP of interest to be charged on the loan to be 6 months USD LIBOR plus 425 bps plus 200 bps for the risk involved due to absence of LOC in funds advanced by the taxpayer to its AE.

ITAT observed that a bank guarantee provides that the liabilities of a debtor are going to be met and bank will pay the debt in case of default by the borrower. LOC is an assurance that the obligation will ultimately be met. LOC helps to prove creditworthiness in the eyes of parties with whom they are dealing and obligated. Generally, LOCs are sought from parent companies who are in a position to provide an assurance of creditworthiness of their subsidiaries, and it establishes the parent company's commitment to providing its subsidiary with the resources it needs to meet its financial obligations.

Considering the above, ITAT held that there is no scope for equating bank guarantees with letter of comfort. Bank guarantees entail risk as the guarantor has to pay the amount guaranteed in case of default in payment of loan by the person guaranteed. LOC entails no such financial risk on the provider of the LOC.

Additionally, as per the ruling in case of Asian Paints (supra), the act of charging any consideration towards the LOC shall depend upon whether the LOC mandates any repayment or any fund outflow obligations on the party issuing the LOC or any other conditions which may take the form of contingent liabilities or having any adverse effect in the foreseeable future in the books of the party issuing the LOC.

Important Rulings

Coverage

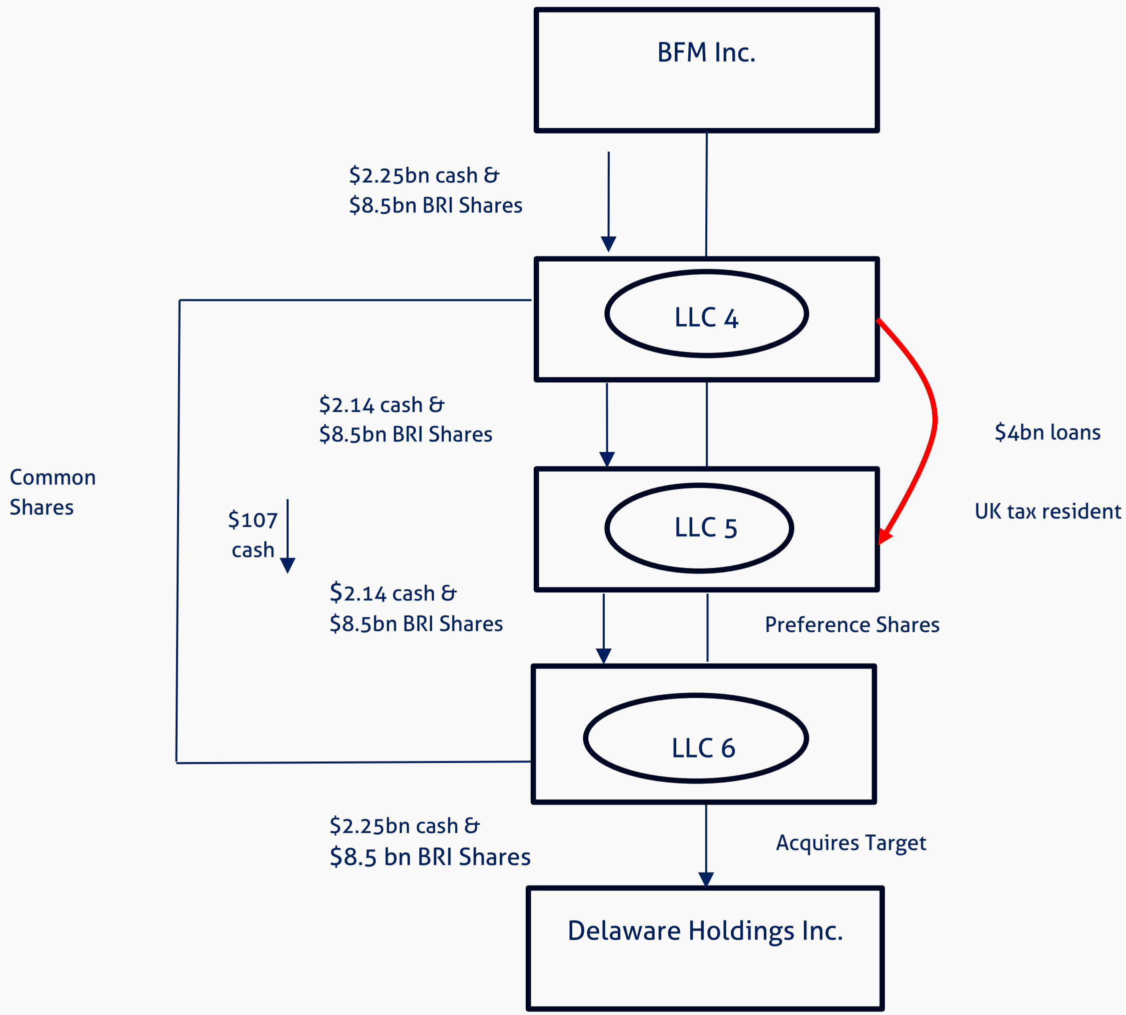
Foreign Rulings

Cognizance of risk prima facie requirement vis-à-vis contractual terms for comparability analysis

BlackRock Hold Co 5, LLC vs Commissioners for his Majesty's revenue and customs (HMRC) [2024] EWCA Civ 330

BlackRock Group acquired the business of Barclay's Global Investors (BGI US) for approx. USD 13.5 bn, comprising USD 6.6 bn in cash and the balance in shares in BlackRock Inc. (BRI), the group's parent company.

The acquisition structure involved formation of three entities incorporated in Delaware as limited liability companies i.e., LLC4, LLC5 and LLC6. BlackRock Financial Management Inc. (BFM), an existing Delaware corporation and indirect wholly owned subsidiary of BRI became the sole member of LLC4, LLC4 became the sole member of LLC5, while both LLC4 and LLC5 became members of LLC6; LLC6 then acquired BGI US by acquiring all outstanding shares in Delaware Holdings Inc., the existing owner of BGI US, from the Barclay's group. The pictorial summary of acquisition structure for better understanding is presented next:



Important Rulings

Coverage

For financing the acquisition of BGI US, LLC 4 advanced a loan of USD 4 Billion to LLC 5 which in turn would form part of the consideration paid to BGI US which would flow through LLC 6.

LLC5 claimed tax deduction for interest costs arising on the loans and sought to surrender the resulting tax losses to other members of the BlackRock group to set against the profits of their UK operations, as a result reducing their UK tax liability.

The issues raised by HMRC in the case is as under:

i. HMRC claimed that no loans would have been made between parties acting at arm's length, accordingly any interest payment arising out of aforesaid loan agreement shall be entirely disallowed under the transfer pricing rules in Part 4 of the Taxation (International and Other Provisions) Act 2010 (the 'transfer pricing issue').

ii. HMRC also maintained that deduction for interest should be denied under the unallowable purpose rule in section 441 of the Corporation Tax Act 2009, on the basis that securing a tax advantage was the only purpose of the relevant loans (the 'unallowable purpose issue').

The First-tier tribunal (FTT) with the benefit of expert evidence, has found that the loans would have been made if the lender and borrower had been acting at arm's length, provided that certain covenants were given by other group entities.

The Court of Appeal concluded that it was correct to take account of those covenants rather than to disregard them as the Upper Tribunal had decided. This was essentially because the legislation, and the OECD principles required to be applied in construing it, permit hypothetical covenants which ensure that the risks assumed by the parties in the hypothetical arm's length transaction correspond to the risks assumed in the actual transaction.

UK Court of Appeal relied on OECD Guidelines that "*economically relevant characteristics of the situations being compared either to be sufficiently comparable or that reasonably accurate adjustments can be made to eliminate the effect of any material differences*". The economically relevant characteristics of the actual lender and borrower in this case include that LLC4 had no need to consider any covenants because it had control of LLC6 and its subsidiaries, including BGI US by virtue of its ownership in LLC5. Third-party covenants just adjust for the absence of these risks in the actual transaction, so rendering the economically relevant characteristics comparable. Further notes that "*appropriate comparison is not between non-existence of covenants in the actual transaction and the covenants that a third-party lender would require, but between the actual risks in the real world and the risks in the hypothetical transaction*" - In the hypothetical transaction there are risks that third parties may take actions that prejudice the performance of the Loans. Those risks do not exist for the parties to the actual transaction. The covenants in the hypothetical transaction effectively bring the risks into line with each other, so that the transactions are comparable.

Thus, the relief was provided by Court of Appeal for deduction of interest from transfer pricing perspective.

However, the deduction of interest was denied by Court of Appeal considering unallowable

Important Rulings

purpose rule. It was held that one of the major purposes for LLC5 to be formed and included in the acquisition structure was to obtain tax advantage and it lacks commercial purpose.

The just and reasonable apportionment that the legislation requires between "unallowable" and other purposes resulted in all of the interest being attributed to the unallowable purpose.

From Indian Transfer Pricing regulation perspective, though OECD Transfer Pricing Guidelines (TPG) hold a persuasive value, Indian transfer pricing law does not explicitly recognise the direct applicability of the OECD TPG. Hence, TPO may deviate from these guidelines in their assessment and do not permit existence of third-party covenants to be hypothesised where those covenants are not present in the actual transaction. Combined with GAAR, a similar situation in India could lead to potential disallowances from both TP and tax perspectives.

Important Updates

New Transfer Pricing Rules for Intercompany financing in Germany

The new transfer pricing rules regarding cross-border intercompany financing arrangements in Germany were published in the (German) federal gazette on March 27, 2024 under Growth Opportunities Act. The new rules are effective from Assessment Year 2024 (1 January 2024). The newly introduced sections are aimed at increasing transparency on intra-group financing.

Introduction of debt-capacity analysis, business purpose and maximum interest rate test for inbound financing arrangements

The new rules seek to bring in greater transparency in tax reporting. While the arm's length compliance is still required, the new rules tighten the deductibility of expenses over and above the hither-to understood arm's length principle.

A financial transaction would not be considered at arm's length if the taxpayers are unable to demonstrate that:

- They could have served the debt for the entire term of financing arrangement from the outset (**Debt capacity analysis**); and
- The financing is economically needed and used for the purpose of the company (**Business purpose test**)

The ability to serve the debt includes both interest as well as principal repayments. More guidance is currently expected on the meanings of "economically needed" and "for the purpose of the company".

In addition to the above, the new rules bring in maximum interest rate payable by a taxpayer which is limited to the interest rate at which financing could be obtained based on group's credit rating. (**Credit Rating and Interest Rate Analysis**)

Introduction of Low function and Low risk service company

New rules have also been introduced for pass-through financing services such as group treasury, financial or currency risk management functions. These are usually considered to be low value adding and are remunerated on a cost-plus basis.

Important Updates

As per the rules, a low-function and low-risk service exists where a financing relationship is:

- Inter-company financial arrangement within multinational group, or
- Financial relationship is passed on from one company to another company within a multinational group.

If a company takes over management of financial resources, such as liquidity management, financial risk management, currency risk management or activities as financing company for one or more than one companies in a group of company then it should be assumed to be low function and low risk service company. However, this would not apply if functions and risk analysis demonstrates that it does not perform low function and assume low risk.

The new Transfer Pricing Rules signal a departure from the harmonization of the German transfer pricing rules with OECD transfer pricing principles. Further, there is an increased requirement for comprehensive documentation and transfer pricing analysis with respect to cross-border financing arrangement since the burden of proof has been shifted to taxpayers.

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RBI Notifications

Bank Finance to Non-Banking Financial Companies (NBFCs)

RBI / 2024-25 / 24 issued vide DOR.CRE.REC.No.17/21.04.172/2024-25 dated April 24, 2024

Reserve Bank of India ("RBI") has over a period of time been deregulating banks' credit matters so as to increase operational freedom for credit dispensation. However, given that the registrations are mandatory for NBFCs with the RBI, it was felt prudent to continue with restrictions related to financing of certain activities undertaken by NBFCs.

The revised Master Circular, updated to reflect all instructions issued vide Master Circular DOR. CRE. REC. No.07/21.04.172/2023-24 dated April 03, 2023, only consolidates all instructions on the above matter issued up to April 23, 2024, and does not contain any new instructions/guidelines. Some of the key guidelines to all Scheduled Commercial Banks (excluding Regional Rural Banks) are as follows:

a) **Bank Finance to NBFCs registered with RBI**: The ceiling on the bank credit linked to Net Owned Fund (NOF) has been withdrawn in respect of all the NBFCs registered with RBI and engaged in the principal business of asset financing, loan, factoring and investment activities.

b) **Bank Finance to NBFCs not requiring registration with RBI**: Banks can make credit decisions based on credit purpose, asset quality, borrowers' repayment capacity, and risk perception for NBFCs which are not subject to Reserve Bank registration such as Securitisation and Reconstruction Companies, Merchant Banking Companies, Stock Brokers and sub brokers, Insurance Companies, Alternative Investment Funds (AIFs) and Core Investment Companies (CICs).

c) **Activities not eligible for Bank Credit**: Certain activities undertaken by NBFCs are not eligible for bank credit, including Bills discounted / rediscounted by NBFCs, Current and Non-Current investments, unsecured loans and inter corporate deposits, loans, and advances to the group companies.

d) **Bank finance to Factoring Companies**: Banks can provide financial support to factoring companies, including NBFC-Factors and NBFC-ICCs, registered under the Factoring Regulation Act, 2011.

e) **Prohibitions on bank finance to NBFCs**: Certain other prohibitions by lending to NBFCs by Banks include:

   a. Bridge loans or interim finance or in the form of loans of a bridging nature while such NBFCs are in the process of raising long-term funds from the market by way of capital, deposits, etc.

   b. Shares and debentures cannot be accepted as collateral securities for secured loans granted to NBFC borrowers.

   c. Banks not to execute guarantees to enable placement of funds with NBFCs or other non-banking entities directly or indirectly, including inter-company deposits/ loans and will apply to all sources of funds raised by such entities, e.g. deposits/ loans received from trusts and other institutions.

RBI Notifications

Disbursement of Government Pension by Agency Banks

RBI / 2024-25 / 06 issued vide DGBA.GBD.No.S1 / 31.02.007/2024-25 dated April 01, 2024

Payment of pension to retired government employees, including payment of basic pension, increased dearness relief (DR), and other benefits whenever announced are governed by the relevant schemes released by concerned Ministries / Departments of the Government of India and State Governments.

The Master Circular currently notified is a consolidation of important instructions issued by the Reserve Bank of India till March 31, 2024 with regard to pension payments to retired government employees, including basic pension, increased dearness relief, and other benefits as announced by governments.

Some of the key instructions provided in the Master Circular are provided below:

a) Procedure of forwarding government orders for dearness relief (DR) to pension disbursing agency banks has been discontinued.

b) Pension paying banks instructed to credit the pension amount in the accounts of the pensioners based on the instructions of the respective Pension Paying Authorities.

c) Separate procedure has been specified for old, sick, disabled and incapacitated pensioners to ease out the problems and difficulties faced by them in withdrawal of pension.

d) Banks instructed not to insist on opening a new account for family pension credit when the survivor has a joint account with the pensioner.

e) Single Window System introduced to facilitate prompt settlement of reimbursement claims and reconciliation at the Pension Paying Bank level.

f) To address the issue of misplacement of Life Certificates, Agency banks now required to enter the receipt of life certificates in their Core Banking Solution (CBS).

Hedging of Gold Price Risk in Overseas Market

RBI/2024-25/17 issued vide A. P. (DIR Series) Circular No. 01 dated April 15, 2024

Resident entities were earlier permitted to hedge their exposure to price risk of gold on exchanges in the International Financial Services Centre (IFSC) vide A. P. (DIR Series) Circular No. 19 dated December 12, 2022.

Resident entities have now been permitted to hedge their exposures using Over the Counter (OTC) derivatives in the IFSC which will be in addition to the derivatives on the exchanges in the IFSC permitted as of date. Such hedging will be subject to the stipulations set out in Master Direction – Foreign Exchange Management (Hedging of Commodity Price Risk and Freight Risk in Overseas Markets) Directions, 2022.

Limits for investment in debt and sale of Credit Default Swaps by Foreign Portfolio Investors (FPIs)

RBI/2024-25/27 issued A.P. (DIR Series) Circular No. 03 dated April 26, 2024

Investment Limits for the financial year 2024-25:

a) Foreign Portfolio Investors (FPI) investment limits in Government securities, State government securities, and corporate bonds have been pegged at 6%, 2%, and 15% of outstanding securities stocks respectively for 2024-25.

b) FPIs will be limited to selling a maximum notional amount of Credit Default Swaps of 5% of the outstanding stock of corporate bonds with an additional ₹2,54,500 crore limit set aside for 2024–2025.

Unauthorized Foreign Exchange Transactions

RBI/2024-25/25 issued vide A.P. (DIR Series) Circular No.02 dated April 24, 2024

It had come to the observation of the Reserve Bank of India (RBI) that many unauthorized entities were providing foreign exchange (forex) trading facilities to Indian residents with promises of unrealistic returns through local agents. The modus operandi of the agents was to arrange opening of accounts at various bank branches for collecting money towards margin, investment, charges, etc. These accounts were then used for transactions which were not commensurate with the stated purpose for which such accounts were opened.

Furthermore, these entities were providing options to residents to remit / deposit in Rupees for undertaking unauthorized currency transactions using payment systems, including internet transfers, payment gateways, etc.

To address the issue, RBI has instructed the Authorized Dealer Category-I Banks to exercise greater caution and prevent misuse of banking channels for unauthorized forex dealings. AD Cat-I banks have also been directed to report any misuse of bank account for unauthorized forex trading to the Directorate of Enforcement, Government of India for further action.

Guarantees and Co-Acceptances

RBI / 2024-25 / 03 issued vide DOR.STR.REC.2 / 13.07.010/2024-25 dated April 01, 2024

Master Circular - Guarantees and Co-acceptances notified *vide* RBI/2024-25/03 DOR.STR.REC.2/13.07.010/2024-25 dated April 01, 2024, is an updation to and in continuance to the Master Circular STR. REC.5/13.07.010/2023-24 dated April 1, 2023, to reflect all instructions issued up to March 31, 2024 on the matters of Guarantees and Co-acceptances.

The Master Circular provides the necessary guidelines to all Scheduled Commercial Banks with respect to;

- Conduct of guaranteed business, including norms for unsecured advances and guarantees, precautions to be taken at the time of issuance, internal control systems, guidelines for obtaining personal guarantees of key management personnel and directors / shareholders of borrowing entities etc.
- Issuance of bid bonds and performance guarantees for exports, including precautions in case of project exports, export advances, guarantees for foreign entity or its step-down subsidiaries.
- Restrictions on guarantees for placement of funds with NBFCs or other non-bank entities
- Payments on invoked guarantees and Co-acceptance of bills

Amendment to Foreign Exchange Management (Mode of Payment and Reporting of Non-Debt Instruments) Regulations, 2024

RBI Notifications

RBI vide Notification No. FEMA. 395(2)/2024-RB dated April 23, 2024

The extant Regulations have been amended with respect to Purchase or Subscription of Equity Shares of Companies Incorporated in India listed on either of the two recognized International Exchange operating in the IFSC, Gift City, Gandhinagar under the International Exchanges Scheme.

The Regulation with respect to reporting compliances under FIRMS portal vide Form LEC(FII) has also been amended for investment / transfer on the International Exchange.

Amendment to Foreign Exchange Management (Foreign Currency Accounts by a person resident in India) Regulations, 2024

RBI vide Notification No. FEMA. 10(R)(3)/2024-RB dated April 23, 2024

In sub-regulation (F)(1) of Regulation 5 of the Foreign Exchange Management (Foreign Currency Accounts by a person resident in India) Regulations, 2015 ("Principal Regulations"), the existing provision has been amended to include companies incorporated in India which have raised funds on the International Exchanges *via* direct listing of shares to hold funds so raised in foreign currency accounts with a bank outside India pending their utilization or repatriation to India, as guided by the Principal Regulations.

RBI cautions public against Prepaid Payment Instruments issued by unauthorized entities

Press Release: 2024-2025/186 dated April 25, 2024

Para 2.1 of the Master Directions- Prepaid Payment Instruments dated August 27,2021 defines Closed System PPIs as instruments issued by an entity which facilitates purchase of goods and services from that entity only but do not permit cash withdrawals.

Further, as per Section 4 of The Payment and Settlement Systems Act, 2007 ("the Act"), No person, other than the Reserve Bank, shall commence or operate a payment system except under and in accordance with an authorization issued by the Reserve Bank.

It had recently come to the notice of RBI that an entity had issued Prepaid Payment Instruments (wallets) without obtaining the required authorization from RBI under the provisions of the Act. Entity's wallets were being used for third party services which did not conform to be Closed System PPIs thereby tantamounting to operating PPIs, which was not permitted without due registrations. The Entity was thereby issued directions to refund the balances held in wallets to its customers.

RBI has therefore cautioned members of pubic to exercise utmost caution while using websites and applications of unauthorized entities and to verify that the entity's credentials and permissibility to offer the services.

The list of the authorized payment system providers / operators is displayed on RBI website at https://www.rbi.org.in/Scripts/PublicationsView.aspx?id=12043.

Launch of RBIs New website and Mobile Application

Press Release: 2024-2025/57 dated April 05, 2024

Reserve Bank of India has launched a new website and a mobile application for more accessibility and ease of use. The same can be accessed using URL https://website.rbi.org.in.

SEBI Notifications

Standardization of the Private Placement Memorandum (PPM) Audit Report for Alternative Investment Funds

SEBI/HO/AFD/SEC-1/P/CIR/2024/22 dated April 18, 2024

Private Placement Memorandum ('PPM') is a primary document which provides the relevant information about the Alternative Investment Fund ("AIF") to its prospective investors. To ensure that a minimum standard of disclosure is made available in the PPM, SEBI has prescribed a template of PPM which ensures that a minimum level of information in simple, yet comparable format is provided by the AIFs.

According to the relevant Regulations and Master Circular, it is mandatory for Alternative Investment Funds (AIFs) to carry out an annual audit of compliance with the terms of the Private Placement Memorandum (PPM) and the AIFs are required to submit Annual PPM Audit Reports to the Trustee, Board of Directors or Designated Partners of the AIF, Board of directors or Designated Partners of the Manager and SEBI, within 6 months from the end of the Financial Year.

To ensure uniform compliance standards and facilitate compliance reporting, SEBI introduced a standard reporting format for the Private Placement Memorandum (PPM) Audit Report. This format is applicable to various categories of AIFs and has been prepared in consultation with pilot Standard Setting Forum for AIFs (SFA).

The aforesaid reporting format shall be hosted on the websites of the AIF Associations that are part of the SFA within 2 working days of the issuance of this circular. Further, the PPM audit reports shall be submitted to SEBI by AIFs online via the SEBI Intermediary Portal (SI Portal) as per the aforesaid format. Also, the reporting requirement shall be applicable for PPM audit reports to be filed for the financial year ending March 31, 2024, onwards.

Cross Margin benefits for Offsetting positions having different expiry dates

SEBI/HO/MRD/TPD-1/P/CIR/2024/24 dated April 23, 2024

Cross margining is an offsetting process whereby excess margin in a trader's margin account is moved to another one of their margin accounts to satisfy maintenance margin requirements. The process allows a company or individual to use all their available margin across all of their accounts. Cross margining allows market participants to reduce the total margin payment required, if they are taking two mutually offsetting positions. The move helps market participants transfer excess margin from one account to another.

SEBI vide Master Circular dated October 16, 2023, provided stipulations for cross-margin benefits between index futures and constituent stock futures, as well as cross-margin for offsetting positions in correlated equity indices, but only if both the correlated indices or an index and its constituents had the same expiry day.

However, SEBI vide this circular extended the cross-margin benefit to offsetting positions with different expiry dates, subject to the following conditions:

- 40% spread margin would be levied for offsetting correlated indices with different expiry dates (instead of 30% margin, in case of same expiry date)

SEBI Notifications

- 35% spread margin for index and its constituents with different expiry dates (25%, in case of same expiry date)
- The spread margin benefit will be revoked on the expiry day of indices or constituents, whichever expires first, in case the expiry dates of both legs of the position are different.

Applicability: Within 3 months from April 23, 2024

Text on Contract note with respect to 'Fit and Proper' status of shareholders for all recognized stock exchanges

SEBI/HO/MRD/MRD-POD-2/P/CIR/2024/25 dated April 24, 2024

To enhance ease of doing business in the securities market and to address the concerns raised by market participants, SEBI issued this circular regarding the publication of text related to the 'fit and proper' status on Contract notes. This requirement pertained to publishing text regarding 'fit and proper' status on Contract notes, in accordance with Regulation 19 and 20 of the SEBI (Securities Contract (Regulation) (Stock Exchanges and Clearing Corporation) Regulations, 2018.

The Circular states that the text 'Fit and Proper' on contract notes is no longer mandatory. Instead, a reference to the applicable regulation regarding fit and proper, along with the URL/weblink of Regulation 19 and 20 of the SCR (SECC) Regulations, 2018 shall suffice the requirements in the contract note.

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

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Abbreviations

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

Abbreviations

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
u/s	Under Section
WOS	Wholly Owned Subsidiary