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kcm Insight

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Dear Reader,

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

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

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

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Tata grabs BigBasket

Coverage

Overview

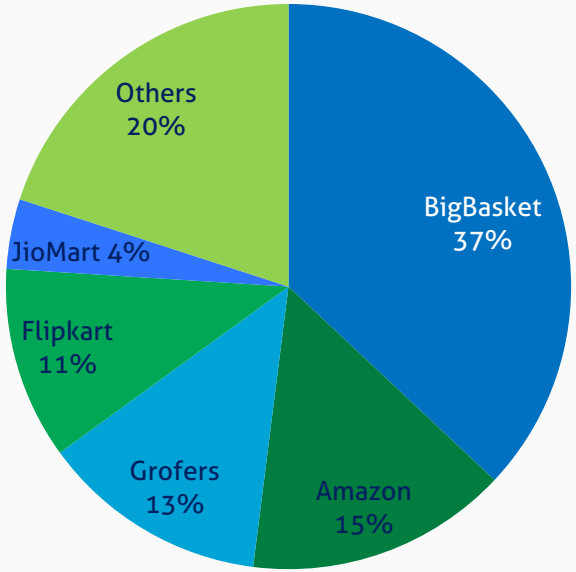
Indian online grocery market grossed a value of around US$ 3 Bn in 2020 which is estimated to grow to US$ 5 Bn by the end of 2021 and to US$ 26 Bn by 2025. While metros continue to dominate the e-grocery market space, e-grocers have of late penetrated deeper into Tier 2 cities and Suburb markets thanks to the restrictions forced by the pandemic. Staples and cooking essentials contributed almost a third of the total online grocery sales in 2020.

India's online grocery market which represents only 0.3% of the overall grocery market grew by almost 70% in 2020 as compared to the previous year largely due to a Covid induced push. The e-grocery market had started proliferating even before the pandemic due to change in lifestyle of consumers, growing urbanization, and the urge of tech savvy consumers to buy products online leading to savings in time as well as money. Fast delivery, cashback offers, low delivery charges, flexible return policies are some of the appealing aspects due to which India's online grocery market is gaining traction.

The Deal

Tata Digital Limited, the digital business vertical of Tata Sons, announced acquisition of a majority stake (c. 64%) in Supermarket Grocery Supplies Private Limited ("BigBasket") in Jan-21 at a deal value of c. US$ 1.2 Bn, which would include infusion of c. US$ 0.2 Bn in BigBasket and the balance through acquisition of stake from existing investors in BigBasket.

BigBasket, founded in 2011, is India's largest e-commerce player in food and grocery segment operating in around 25 cities with c. 20 Mn of monthly orders. BigBasket enjoys a market share of c. 37% in FY21 according to market research firm PGA Labs.



Source: PGA Labs

Tata grabs Big Basket

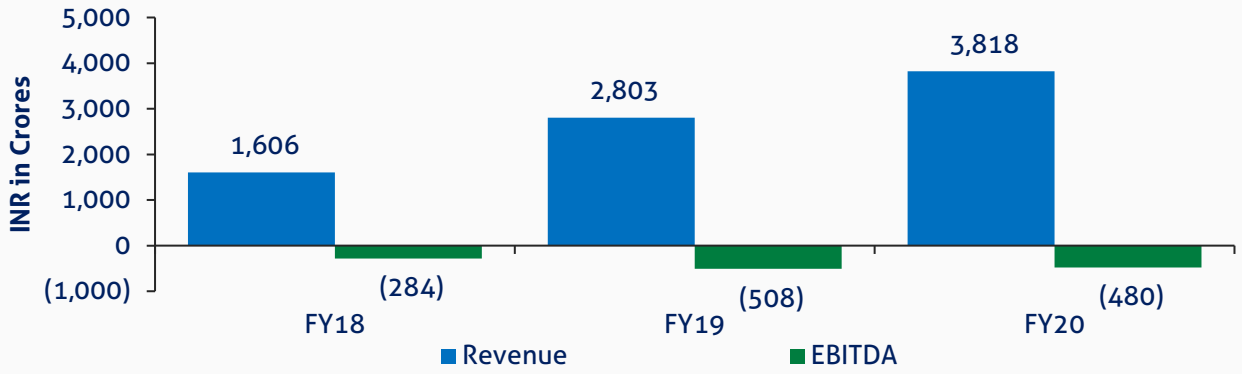
Coverage

The acquisition would result in synergy benefits accruing to both players by upselling, cross selling and leveraging upon each other's customer base and brand values.

While BigBasket will gain from the deep pockets of Tata Group to enhance its market presence, Tata Group would gain an online presence in the food retail space which it lacked despite having a strong market position in the FMCG space including the beverage segment (tea and coffee).

The acquisition will also lay a foundation of a "Super App" that will give consumers a single retail platform to access all the types of services including groceries and medicines under a single roof.

BigBasket's consolidated revenue increased from INR 1,606 Cr in FY18 to INR 2,803 Cr in FY19 and to INR 3,818 Cr in FY20 recording a growth of 75% in FY19 and 36% in FY20 over the respective previous years. While historical operating earnings (EBITDA) has been negative, the operating margin improved from -18% in FY18 and FY19 to -13% in FY20.



Source: VCC Edge

Based on the above, valuation of the deal indicates a multiple of c. 3.5 times the revenue of FY20 largely driven by the anticipated growth and augmenting market position by BigBasket.

Conclusion

While the pandemic forced many businesses to the brink, e-commerce business got a boost witnessing an increase in customer base and proliferation of markets as distance is no longer a barrier to retail sales. Changing consumer preferences and convenience is only going to drive further growth in e-retail space.

The acquisition of BigBasket significantly reduces the time to market for Tata Group as it now owns the largest e-grocer in the country which naturally complements its other consumer goods businesses. Subsequent to the acquisition of BigBasket, Tata Digital acquired e-pharmacy 1MG and also made a strategic investment in CureFit, a leading fitness and wellness player. These strategic investments clearly underline the importance of diversifying from conventional consumer retail to an omni-channel retail proposition.

Case Laws

Amendment to section 36(1)(va) and 43B made by FA 2021 is not applicable prior to 0104.2021

M/s Crescent Roadways Private Limited. V. DCIT, Hyderabad ITAT

For the AY 2015-16, the Taxpayer filed the ITR before the due date u/s 139(1) and had claimed the deduction towards late payment of employee's contribution towards the Provident fund as well as ESI while filing the ITR on the ground that said liability was discharged on or before the due date for filing the ITR u/s 139 and therefore as per section 43B, the deduction is allowable.

The Department is of the view that in terms of section 36(1)(va), the delayed payment of employee's PF, ESI etc. cannot be allowed as deduction. In support of his stand, the AO also referred to the amendment made by the FA 2021 to section-36(1)(va) and 43B to clarify that amendment is clarificatory in nature and thus will have retrospective applicability and accordingly late payment of employee's contribution to provident fund is not allowable as deduction.

The ITAT after considering the facts on records referred to the Memorandum to the Budget 2021 and then held that the amendment to section-36(1)(va) as well as section-43B of the ITA are applicable only with prospective effect from 1st April 2021 and therefore, it cannot be applied retrospectively.

In view of the same, the amendments brought by Finance Act,2021 shall apply with effect from 1st April,2021 and it does not apply to any years prior to that. Recently Delhi ITAT in the case of Indo State Exports v ACIT (ITA No 1892/Del/2020) and Pune ITAT in case of Krishnae Infrastructure P Ltd v PCIT (ITA No 427/PUN/2020) also taken a position that employee's contribution to PF, ESI etc. cannot be disallowed where the payment is made on or before the due date of filing ITR. Following the same, it is therefore possible to argue that prior to AY 21-22, the Taxpayer may put a claim of deduction of late payment of PF, ESI etc. relying on the above judicial precedent.

Forfeiture amount arising from sale of property not taxable u/s 28(iv)

M/s. Archana Traders Pvt. Ltd. Vs. ITP (ITA No. 408 of 2020, ITAT Bangalore)

The Taxpayer is engaged in the business of trading in refined salt. The Taxpayer's case for AY 2011-12 was reopened by issuing notice u/s 148.

The Taxpayer had taken loan of Rs. 3.77 crores from its director. The Taxpayer was not in a position to repay the loan and therefore, the Taxpayer decided to sell one of its properties to the director for total consideration of Rs. 9 crores. The director committed default in making payment of balance amount and therefore, as per the terms of the agreement, the Taxpayer forfeited the sum of Rs. 3 crores.

The Taxpayer adjusted the cost of asset in accordance with the provision of section 51. During the assessment proceeding, the Taxpayer contended as per section 51 of the ITA, the amount forfeited is required to be reduced form the cost of acquisition. The AO referred to the ITR filed by the Director and held that the

amount forfeited by the Taxpayer has been declared as business loss and therefore, the claim of the Taxpayer cannot be accepted. The AO is of the view that the arrangement between the Director and the Taxpayer was a colourable transaction and therefore, the AO rejected the claim of the Taxpayer and assessed the amount as business income u/s 28(iv) in line with the stand taken by the director. The CIT(A) confirmed the findings of the AO.

Before the ITAT, the Taxpayer contended that the amount forfeited is a capital receipt and as per the clear mandate of section 51, the amount forfeited is required to be reduced form the cost of asset and it cannot be assessed u/s 28(iv). The Taxpayer then argued that such amount could not be taxed u/s 28(iv) of the ITA since the provision of 28(iv), deals with the value of benefit or benefit derived in any manner i.e., non-monetary transactions only. In support of this the Taxpayer relied upon the decision of Hon'ble Bombay HC in the case of Mahindra and Mahindra Ltd vs. CIT '(RA No. 1709 of 1982) which has also been upheld by the Hon'ble SC (Civil appeal No. 6949-6950 of 2004).

The Department placed reliance on the order of lower authorities.

The ITAT, after considering the facts of the case and provision of section 28(iv) and 51 of the ITA and the decision of SC in case of Mahindra and Mahindra (supra) held that the amount forfeited by the Taxpayer is required to be adjusted to the cost of asset as per section 51 only. The amount forfeited cannot be taxed u/s 28(iv) merely because the Director has treated it as business loss. Section 28(iv) is applicable only if the benefit is received in form of money. The ITAT also held that in absence of any cogent evidence, the finding of lower authorities that it was colorable transaction cannot be accepted.

It is important to note that with effect from April 1, 2015, the provision of section 56 has been amended to clarify that any sum received as an advance or otherwise in course of negotiations for transfer of capital asset, would be subject to tax u/s 56 if there is no transfer of the capital asset.

AO can't consider FMV of developed land if the agreed consideration is for transfer of underdeveloped land was more than it's SDV

Amit Vishnu Pashankar v/s DCIT (ITA No.427/PUN/2019, ITAT Pune)

The Taxpayer along with his family members owned a plot of land. During the AY 2015-16, the Taxpayer along with other co-owners entered a Joint Development Agreement (JDA) with Real Estate Developer for development of land. As per the JDA, the total consideration was agreed at Rs.8.76 Crores. The Stamp Duty Value (SDV) of the land was Rs.5.90 crores and therefore, the agreed consideration for transfer of undeveloped land was more than it's SDV.

The Taxpayer offered its share (33.33%) of capital gain tax in ITR. For the purpose of computing the capital gain, the Taxpayer considered the full value of consideration at Rs.2.95 crores (33.33% of 8.76 crores). During the assessment proceeding, the AO observed that the FMV of the area allocated to the Taxpayer together with the consideration paid in cheques is required to be adopted as full

value of consideration. The AO was therefore of the view that as per section 48 read with 50C, the FMV of Rs.9.11 crores is required to be assessed. The Taxpayer argued that AO could not resort to the provisions of section 45(5A) which were introduced by Finance Act, 2017 w.e.f. AY 2018-19. Also, since the appurtenant consideration stated in the JDA is more than the value adopted for stamp duty valuation, the appurtenant consideration in the sale deed should be adopted as 'full value of consideration'. However, the AO rejected the stand of the taxpayer and passed the assessment order and assessed income of the taxpayer at Rs.8.10 Cr by adopting the FMV of the saleable area at Rs. 9.11 Cr. The Order of AO was affirmed by CIT(A).

The ITAT after examining the facts and evidence on record, categorically held that the agreed consideration between the parties at Rs.8.76 crores was more than SDV of Rs. 5.90 crores and therefore, 50C is not applicable. The ITAT relied upon the decision of Hon'ble Karnataka HC in Ved Prakash Rakhra (ITA No.1081/2006) and Khivraj Motors (ITA No. 801/2017) and held that the exchange value agreed under JDA is to be taken as full value consideration for the purpose of computing capital gains. The ITAT held that the AO can't consider the FMV of the developed land / project and replace the value of consideration.

Amount paid to convert leasehold land into freehold land eligible to be claimed as cost of improvement

Mr. Sujit Majumdar Vs. ITO - ITA No.143/ALLD/2017, Allahabad

The Taxpayer along with his three brothers jointly own leasehold plot of land at Allahabad. The land was taken on lease from the State government of Uttar Pradesh. In AY 12-13 the joint owners entered into an agreement to sell the freehold land for total consideration of Rs. 4.53 Crores. For conversion of land the Taxpayer along with other co-owner paid 1.43 Crores. The Taxpayer filed the ITR for AY 12-13 and offered capital gain from transfer of land after claiming the deduction towards freehold conversion charges as cost of improvement u/s 48 of the ITA and paid tax on LTCG. The sale deed was executed on 25.04.2012 relevant to AY 2013-14.

The Department among the other issue contended that the conversion charges of Rs.1.43 crore was reimbursed by the buyer of the land and thus, the Taxpayer cannot claim this amount u/s 48. Before the Department, the Taxpayer argued that the amount was required to improve the title in the asset and therefore, same is admissible deduction u/s 48.

The ITAT after considering the facts and legal position held that the freehold conversion charges were incurred by the sellers to improve the title and marketability of the land and without such conversion, it was not possible to transfer the leasehold land. The ITAT also considered the decision of coordinated bench in co-owner matter and held that the conversion charges can be claimed as cost of improvement u/s 48 of Act.

Important Rulings - India

Tax Treaty benefit for DDT doubted, referred to Special Bench [ITA No. 6997/Mum/2019]

Till March 31, 2020, tax on dividends was payable by the Company declaring the dividend in form of DDT and was exempt in the hands of the shareholder receiving the dividend. Vide Finance Act, 2020, the concept of DDT has been abolished and dividends were made taxable in the hands of the shareholder.

In the present case, the Taxpayer paid dividends to non-resident shareholders situated in France. It was contended before Mumbai Bench of ITAT that the tax payable by the Taxpayer u/s 115-O of the Act should not exceed the rate prescribed under India-France DTAA (which was earlier not contended before the lower authorities but raised before the ITAT by way of cross objection).

The present case has fairly been covered by the Delhi ITAT in case of Giesecke & Devrient India Pvt Ltd v. ACIT [(2020) 120 taxmann.com 338 (Del)] and Kolkata ITAT in case of DCIT v. Indian Oil Petronas Pvt Ltd [(2021) 127 taxmann.com 389 (Kol)] wherein the Benches have held that tax rates specified in DTAA in respect of dividend should prevail over DDT.

Mumbai Bench of ITAT expressed doubts on the correctness of the decisions of the co-ordinate Benches on the following counts:

- DDT cannot be treated as tax on behalf of the recipient of dividends and hence treaty protection should not be available in absence of specific provision
- Wherever it is intended the tax treaty provisions specifically provide for treaty application to taxes like DDT (protocol of India-Hungary treaty was cited as an example)
- No tax credit on DDT paid in hands of shareholder
- Tax treaty protects taxation of income in the hands of residents of the treaty partner jurisdictions in the other treaty partner jurisdiction. Therefore, in order to seek treaty protection of an income in India under the Indo French tax treaty, the person seeking such treaty protection has to be a resident of France
- Foreign precedence (South African ruling) that DDT is a tax on a company declaring the dividends not on the dividends

A Special Bench is generally constituted in case of contrary views. However, the Bench in the present case, mentioning the Supreme Court judgement in case of Union of India v. Paras Laminates Pvt Ltd [(1990) 186 ITR 722 (SC)] held that when a judicial bench has doubt on the correctness of an earlier decision by co-ordinate Bench, the issue can be referred to Special Bench for adjudication and accordingly referred the case of the Taxpayer to the special bench.

While the Bench has definitely brought out few new dimensions apart from points which were considered earlier, there are certain arguments that are still unexplored. Considering that many companies have started approaching tax authorities to allow Tax Treaty benefit for DDT paid in the past, it would be interesting to see how the Special Bench approaches the present case. However as mentioned earlier, the implications of the case may not be relevant post amendment vide Finance Act 2020 whereby the dividend recipient has to pay tax.

Important Rulings - India

HC reaffirms lower withholding tax rate on dividends by invoking MFN Clause

Nestle SA v. AOC (International Taxation) [W.P.(C) 3243/2021, Delhi HC]

The Delhi HC has granted the relief of lower withholding tax rates on payment of dividend to a non-resident. The HC relied on its recent decision of Concentrix Services Netherlands B V vs. ITO (WP[C] 9051 of 2020, where the HC had adjudicated on a similar issue.

In that decision, the HC had granted the lower withholding tax rate to a Netherlands entity by triggering the MFN clause. The HC in that decision held that the MFN clause is to be read as an integral part of the DTAA and does not require any separate notification. Further the HC held that the country should be a member country on the date when the taxation is triggered for the non-resident to avail the MFN clause if the member countries DTAA agreement is more beneficial.

It should be noted that in the current case, the treaty under scrutiny was the India-Swiss confederation DTAA the MFN clause of which is worded differently as compared to that of the India-Netherlands DTAA (evaluated in the case of Concentrix Services Netherlands BV). The India-Swiss DTAA categorically states that the MFN clause can only be triggered if India's Treaty with the third country is signed after the date of the signature of the Amending Protocol though which the MFN was modified. i.e. after December, 27, 2011 This condition was not explicitly stated in the India-Netherlands DTAA. The Slovenia DTAA which has a withholding rate of 5% was signed in 2005 and thus may not be helpful in the present context. However, recourse can be taken to the India-Lithuania DTAA (signed in 2012) which also had a tax withholding rate of 5% on dividends.

Swiss bank account slips away from Revenue's grasp

Late Shri Bhushan Lal Sawhney (through his L.R /Wife Smt. Sneh Lata Sawhney) v. DCIT (ITA no. 427 to 432 of 2017, Delhi ITAT)

The Revenue made an addition of Rs. 9.2Cr, allegedly lying in a Swiss Bank account during between FY 2005-06 to 2010-11. The Taxpayer challenged the additions made to his income (i) that the assessment order pertaining to the six years from financial year 2005-06 to 2010-11 was time-barred (ii) lack of incriminating evidence found during a search that had been conducted on the individual Taxpayer.

The ITAT took note of the letter from the Swiss Competent Authority dated June 26, 2015, addressed to the Government of India which specifically mentioned that as per the amended Article 26 of the India-Swiss DTAA, information as required could be provided from F.Y. 2011-12, thus the prior years are not covered by temporal scope of Article 26. Therefore, no such information relating to a period prior to April 01, 2011, could be provided. Therefore, Swiss Authorities have not provided any information to Revenue Authorities in India about Taxpayer's bank account with HSBC, Geneva, Switzerland for assessment years under appeals i.e., A.Ys. 2006-2007 to 2011-2012. Thus, the ITAT held that there is no incriminating material available on record to make any addition in any assessment years. The ITAT thus ordered deletion of this addition to the income of the individual Taxpayer.

Important Rulings - India

This case had originated from HSBC-Geneva account cases, when an employee of HSBC Bank, Geneva obtained information on nearly 30,000 bank accounts and became a whistle-blower. The employee took refuge in France, and in 2011 the French government shared information of the bank account holders with authorities in India on the basis of which proceedings were initiated in the case of the Taxpayer.

This decision highlights the importance of Article on Exchange of Information with foreign countries. To overcome the issue faced in this case, the Indian government has been signing DTAAs with exchange of information article or separate tax information exchange agreement (TIEAs).

Re-Domiciliation does not lead to disentitlement from treaty benefits

ADIT v. Asia Today Limited (ITA no. 4628 & 4629 of 2006, Mumbai ITAT)

The Taxpayer was originally incorporated in the British Virgin Islands; however, the Taxpayer has later re-domiciled to Mauritius on grounds of commercial parameters which was evidenced by the tax residency certificate issued by the Government of Mauritius. The Revenue argued that if the Taxpayer is a BVI company, the Taxpayer cannot take recourse to the Indo Mauritian tax treaty.

The Court noted that corporate re-domiciliation is the process by which a company moves its place of incorporation from one jurisdiction to another by changing the country under whose laws it was originally registered or incorporated, whilst maintaining the same legal identity. The ITAT has ruled that the re-domiciliation of Taxpayer by itself did not affect treaty entitlement benefits on account of situs of incorporation particularly when both the countries have approved the re-domiciliation. The court held that the fact of re-domiciliation of the company could at best trigger detailed examination as to whether the re-domiciled company is actually fiscally domiciled in that jurisdiction and considering in the present case, the Taxpayer has already received tax residency certificate from Mauritius, the court held that there is no scope for the tax authorities to make such investigations.

The ITAT further noted that the issue of treaty access was raised by the Department more than two decades after the re-domiciliation and that the AO himself has granted the treaty benefits to the Taxpayer in the earlier years, therefore it cannot be open to the Revenue to wake up today to revisit this foundational aspect. This reinstates the basic principle of consistency which has been well settled through numerous judicial precedents.

No disallowance for non-deduction of taxes due to retrospective amendment to Section-9

McCANN Erickson (India) Pvt. Ltd v. ACIT (ITA no. 2252 of 2016, Delhi ITAT)

In AY 2008-09, the Taxpayer made payments for technical services without deducting any taxes since the services were rendered from outside India. Subsequently retrospective amendments were made to the provisions of section 9 whereby income was deemed to accrue or arise in India even in cases where the services were rendered from outside India. The department took note of this amendment made to Section 9 and made addition u/s 40(a)(i) for non-deduction of taxes as per the provisions of section 195.

Important Rulings - India

The ITAT held that no tax withholding liability can be fastened on the Taxpayer based on a retrospective amendment. At the time of withholding of tax, the legal position was that unless the technical services were rendered in India, the fees for such services could not be brought to tax under section 9(1)(vii). The ITAT held that so far as tax withholding liability is concerned, the law as it existed at the point of time when payments were made is to be considered. In case where at the time of credit, there was no tax liability on the non-resident, then the Taxpayer could not be expected to withhold taxes on the same.

In the context of TDS liability on domestic payments, the Pune ITAT in the case of DCIT v. Barclays Technology Centre India (P.) Ltd. (ITA no. 601 & 700 of 2017) similarly held that TDS contemplates making deduction while making payment and if at time when the Taxpayer paid the charges there was no such provision requiring deduction of taxes on such payment, subsequent retrospective amendment could not be enforced upon assessee so as to make disallowance under section 40(a)(ia) of the ITA.

Important Rulings - Global

Swedish Supreme Court – Timing of taxability of pension in Source State and Resident State may be different

The Taxpayer, a resident of Sweden who worked for a US Company was entitled to pension plan (401(k) plan) The amount of pension was deposited by the Company in a trust which did not result into any immediate taxation. In future, the Taxpayer made a roll over from 401(k) plan to an IRA and, later that year, also made two withdrawals from his IRA. The question before the Apex Court was when the taxable event occurs.

The Apex Court decided that the tax treatment and tax-triggering event in the US are not relevant for the Swedish tax analysis, and that the taxable event should be determined in Sweden regardless of the tax treatment in the US. Further the Apex Court observed that the funds in the 401(k) are managed by a trust that is linked to the employer, and that the individual therefore cannot be deemed to have sufficient access to or control over the funds at that time. Hence, the taxable event cannot occur at the time of contribution to the 401(k) plan. Instead, the Apex Court concluded that the taxable event occurs at the time of the rollover from the 401(k) to the IRA, considering that the IRA is in the name of the individual and that the individual can access the funds in the IRA without limitations. Accordingly, the entire value of the transferred funds is deemed as pension income in Sweden. Further, Article 19 of DTAA between US and Sweden, pension is taxable in the resident state only and accordingly held that the income is taxable in Sweden.

Since the Swedish law is applied without considering the tax treatment in the US, the transferred funds may be fully taxable in the US at the point of withdrawal from the IRA without the US allowing a foreign tax credit for the Swedish taxes paid at the time of the rollover which would result into double tax situation.

From an Indian context, the tax authorities have tried to resolve the issue of double taxation vide Finance Act 2021 wherein it has been mentioned that when a person resident in India who has opened an account in a specified country income accruing shall be taxable in the manner as may be prescribed (it is yet to be prescribed).

Important Rulings - Global

French Supreme Court - Capital gains chargeable in source state does not deny right of tax to resident state

The Apex Court of France dealt with the question of the place of taxability of capital gains arising from shares of a Company situated in Brazil (primarily investment in real estate assets), held by the tax payer, a resident of France i.e. whether gains should be taxable in Brazil (source state)/ Brazil as well as in France (resident state) considering Article 13(1) of DTAA between France and Brazil provides gains from transfer of such shares "is taxable" in Brazil.

The Apex Court observed that where the France-Brazil, DTAA envisages to tax exclusively in a particular jurisdiction, they have used the word "shall be taxable only". Since Article 13(1), which deals with the taxability in the present scenario uses the word "is taxable", the Court held that since the word used is, "is taxable" and not shall be taxable", the legislative intent is to tax in source as well as resident state. Further, Article 22 of the DTAA provides for tax credit of taxes paid by a French resident in Brazil and accordingly the double taxation is avoided.

Considering the legislative intent and the wordings of Article 13(1), the Apex Court held that gains arising from sale of shares would be taxable in France i.e. the resident state as well.

From an Indian context, the controversy mainly revolves around the usage of word "may be taxed", which has been addressed by a notification (Notification No. 91/2008) issued by CBDT vide powers exercised under Section 90(3) of the Act (wherein it has been mentioned that if any term has not been defined in the DTAA, a notification may be issued in this regard), wherein CBDT has specified that the phrase "may be taxed" does not take away the taxing rights of the resident state.

International Tax Updates

G20 leaders joins hands for two pillar solutions for taxing digital economy

Majority members of the G20/OECD Inclusive Framework on Base Erosion and Profit Shifting including India, adopted a consensus solution to address tax challenges arising from the digitalisation of the economy. The framework proposed by OECD is divided into two pillars, Pillar One – reallocating additional share of profit to the market jurisdictions and Pillar Two – Minimum tax rates.

Pillar One proposal aims to ensure a fairer distribution of profits and taxing rights among countries wherein MNEs are established. However, there are certain open points which remains to be addressed such as share of profit allocation and scope of certain tax rules, which is likely to be addressed in coming months.

Pillar Two proposals are intended to address concerns that countries are competing for inbound investment through low, or no, corporation tax rates. For pillar two approach, the nations agreed to support a global minimum corporate tax rate of at least 15 per cent which paves the way for stabilisation of international tax system.

The OECD's Inclusive Framework is scheduled to meet again in October to adopt a final version of the agreement that is supposed to resolve the outstanding issues, as well as an implementation plan and timeline.

Important Rulings - India

Administrative Services cannot be treated as shareholder's activities if some outcome is arising to the assessee

Adient India Private Limited Appeal No. 2986 of 2017 (Pune ITAT)

The taxpayer, a Joint Venture Company has entered into specified domestic transaction pertaining to availing of intra-group services comprising of HR, group policies / databases, marketing & sales, finance and legal & taxation advisory services from its Indian associated enterprise (AE).

TPO determined the ALP of the intra group services as nil citing that no benefit derived from such services ignoring the detailed documentation submitted by the taxpayer substantiating the rendering of services. ITAT accepted the contention of the taxpayer that intra group services availed are specific and exclusive under the agreement and held that "*Every expenditure incurred by a businessman cannot necessarily lead to swelling of the profit. If the proposition of the TPO is taken to a logical conclusion, then it would mean that no business would ever incur loss, which is not a reality. The important consideration is the incurring of bona fide expenditure and availing of service, which may or may not lead to the increased income. Application of the benefit test is not warranted. Enquiry in this regard should come to an end as soon as the factum of availing the services for the business purpose is established.*"

While this decision reiterates the norms established by OECD with respect to the need and actual receipt of intra group services, ITAT held benefit test unwarranted. In a situation, where the services are required and availed from a Group company, the business rationale of the businessman cannot be questioned.

ITAT deletes penalty u/s 271G owing to practical difficulties in providing asked information by TPO

Appeal No. 3109 of 2019 (Mumbai ITAT) AY 2013-14

The tax payer, Hari Krishna Exports Private Limited is engaged in manufacturing and export of cut and polished diamonds. The international transactions for the year were benchmarked using entity level TNMM. During the course of transfer pricing assessments, TPO after ignoring the nature of business of the taxpayer, levied penalty under section 271G of the Act for non-furnishing of segmental profitability.

ITAT relied on Mumbai Tribunal in ACIT-5(1)(2), Mumbai Vs. M/s D Navinchandra Exports Pvt. Ltd., ITA No. 6306/Mum/2016 (engaged in similar business) approved by Gujarat High Court in CIT (Central) Surat Vs. M/s D. Naveen Chandra Exports Private Limited wherein it was held that, "*we are not inspired by the fault finding approach adopted by the TPO without understanding the intricacies of the diamond manufacture and trading business, and are of the considered view that he instead of determining the arms length price by asking for the Profit & loss a/c and Balance Sheets of the AEs and comparing the financial ratios in general, had rather hushed through the matter and imposed penalty under Sec. 271G..... are of the considered view that the failure to the said extent on the part of the assessee to comply with the directions of the TPO can safely be held to be backed by a reasonable cause, which thus would bring the case of the assessee with the sweep of Sec. 273B of the Act*".

From the instant case, it can be said that nature of the business and the nuances related to its industry and operations play an important role in the determination of most appropriate method and benchmarking carried out by the taxpayer. So, these facts should be properly documented in the transfer pricing study so as to

support the claim of the taxpayer in case of litigation, at later point in time.

AO's 'Reason to believe' considered powerful for reassessments, 92CA cannot restrict powers conferred by section 147

M/s. Aban Offshore Limited Writ Petition No. 7689 & 7690 of 2014 (Madras HC)

The taxpayer is carrying on business of provision of oil services and had entered into international transactions with its associated enterprise during FY 2006-07. A reference was made by the AO to TPO in terms of Section 92CA(1) to arrive at the ALP at the time of scrutiny assessment. The TPO passed an order dated 29.10.2010 proposing an upward adjustment to the transaction value determined by the taxpayer. The final order was passed on 25.02.2011 upholding the upward adjustment made by the TPO. Meanwhile, the proceedings for reassessment of the income in respect of the Assessment Year 2007-08, has been initiated under Section 147 of the ITA.

The taxpayer received a notice dated 02.04.2013 under Section 92CA(2) along with a questionnaire. The taxpayer contented that the Transfer Pricing proceedings were completed vide order dated 29.10.2010 and was unable to understand the basis on which the said notice had been issued under Section 92CA of the ITA.

The taxpayer referred to sub-section 2C of Section 92CA and based on the same, claimed that the issuance of notice by the TPO dated 02.04.2013 and passing of order dated 29.01.2014 are null, void and bad in law since they fall beyond the period of limitation prescribed by the ITA. Sub-section 2C and 2B of Section 92CA state as follows –

"(2C) Nothing contained in sub-section (2B) shall empower the Assessing Officer either to assess or reassess under section 147 or pass an order enhancing the assessment or reducing a refund already made or otherwise increasing the liability of the taxpayer under section 154, for any assessment year, proceedings for which have been completed before the 1st day of July, 2012."

"(2B) Where in respect of an international transaction, the taxpayer has not furnished the report under section 92E and such transaction comes to the notice of the Transfer Pricing Officer during the course of the proceeding before him, the provisions of this Chapter shall apply as if such transaction is an international transaction referred to him under sub-section (1)."

The taxpayer further contended that since it had filed Accountant's Report under Section 92E and order by AO dated 25.02.2011 had been passed after due considerations. The taxpayer made reference to sub-section 2C to Section 92CA and argued that the said notice i.e., 02.04.2013 was beyond period of limitation prescribed therein.

The **Hon'ble High Court of Madras** held that the AO in the present case has not invoked either sub-section 2B or sub-section 2C of Section 92 CA. The AO re-opened the proceedings by invoking Section 147 and a notice was issued under Section 148 of the ITA and thereafter, the AO sought for certain information from the TPO, who in turn, sent a letter to the taxpayer on 02.04.2013 to clarify certain queries.

Section 147 of the ITA though referred under sub-section 2C, the same must be read along with Sub-Section 2B of Section 92CA of the ITA. Sub-section 2C cannot be read independently for the purpose of understanding the difference between re-opening of assessment contemplated under Section 147 and the *suo motu* powers conferred to the Transfer Pricing Officer under Sub-Section 2B of Section 92CA. Section 147 is a special provision for re-opening

Important Rulings - India

of assessment regarding the income escaped assessment.

The very concept of "reason to believe" inserted by way of an amendment would provide wider scope to the AO to re-open the assessment, in the event of identifying any income escaped assessment. While re-opening the assessment, the AO is of an opinion that further clarifications or information are required from the TPO or from any other authority, he is empowered to seek the same.

Section 2(8) of the Income Tax Act defines the word "Assessment", which includes *'reassessment'*. Thus, when the assessment includes reassessment, the reassessment proceedings can be undertaken by seeking further clarifications / information to call out more details and information to ascertain the truth regarding the tax escaped assessment.

We can therefore conclude that the intention of law cannot be restricted based on one particular provision which is otherwise required to be read in conjunction with another provision. Constructive interpretation is imminent in such circumstances in order to ensure that the purpose and object of the Act is met with in its letter and spirit.

Important Rulings - Global

Provision of Intra-Group Loans akin to provision of Intra-Group Services

M/s. A Oyj, Supreme Administrative Court of Finland, Case No. KHO:2021:66 of May 2021

The taxpayer was the parent company of the group, responsible for the centralised financial activities of the group. A Oyj had raised funds from outside the group and had lent funds to its subsidiary B Oy, which in turn had lent these funds to ZAO C, Russia, a member of the group. ZAO C had been charged interest based on average margin of A Oyj's external financing i.e., cost plus 10%.

The tax administration was of the view that the ALP should have been determined following the traditional approach taking into account market rate, ZAO C's credit rating and thereafter looking for comparable loans / deals on external database i.e., based on separate company approach & circumstances of the borrower.

It was argued by the tax administration that the taxation of group companies is based on the well-established principle of the separation of taxpayers, according to which each group company is taxed on the results of its own activities. The said principle is therefore also applied when assessing the marketability of interest rates. The interest margin cannot be determined on the basis of the average interest rate on the external financing of the parent company but must be determined taking into account the circumstances of the borrower.

It was held by the Supreme Administrative Court ('SAC') that the cost-plus pricing method referred to in the OECD Transfer Pricing Guidelines was the most useful method for assessing the pricing of intra-group services. Thus, the amount of interest to be charged to ZAO C could have been determined on the basis of the costs incurred by the Finnish companies of the group in obtaining the financing, i.e., the cost of external financing plus a mark-up on costs, and ZAO C could have benefited from the better creditworthiness of the parent company of the group.

The SAC referred to the OECD Transfer Pricing Guidelines' Chapter VII, which concerns intra-group services. Instead of analysing the implicit support in terms of the impact on the credit rating, the SAC ruled that ZAO C had obtained economic benefit from the centralised financing function of A Oyj for which A Oyj should have been compensated as a service provider.

Important Rulings

According to the SAC, the pricing of the intra-group financing could therefore be determined by adding a mark-up to the costs of the external financing obtained in case of the taxpayer. Parent company performed a treasury function by acting as a central financier for the subsidiaries by further lending the funds it has acquired from external financial markets. Thus, a functional analysis suggests that the parent company should be remunerated for its intra-group services and form of the transaction i.e., intra-group loan and interest thereon is not relevant.

The OECD TP Guidelines provide that for the purposes of the arm's length principle, the answer to the question whether an intra-group service has been provided, where a member of the group has performed an activity for the benefit of one or more other members of the group, should be determined by whether the activity provides economic or commercial value to that member of the group which enhances its commercial position. Thus, the said transaction is classified as provision of intra-group services.

The Group's financial operations are centralized in A Limited. The financing model has been aimed at obtaining sufficient financing on favourable terms for the entire Group. When comparing the level of interest charged by B Oy to ZAO C in the tax years 2009-2011 with the level of interest charged by ZAO C based on its own credit rating as determined by the tax audit, the group's financing activities have been of economic value to ZAO C. ZAO C has thus received an intra-group financial service in the form of financing provided by A Oyj through B Oy. A Oyj has in turn acted as a provider of centralised financial services to the group. The group's external and internal loan agreements have prohibited A Oyj's subsidiaries from obtaining external financing in their own name. Where necessary, the subsidiaries have provided security for debts incurred by the parent company. No separate premiums have been paid for such guarantees.

The OECD transfer pricing guidelines described above have identified the cost-plus pricing method as the most useful method for assessing the pricing of intra-group services. The method involves adding an appropriate cost-plus mark-up to the cost of providing the service. Thus, the amount of interest to be charged to ZAO C could have been determined on the basis of the costs incurred by the group's Finnish companies in obtaining the financing, plus a cost mark-up, and ZAO C could have benefited from the better creditworthiness of the group's parent company.

Circulars & Notifications

Goods and Service Tax

Amendments to CGST Rules, 2017

Notification No. 23/2021 Central Tax dated June 1, 2021

The Government departments and local authorities have been excluded from the requirements of generating an IRN / issuance of E-Invoicing.

Filing of GST returns through EVC

Notification No. 27/2021 Central Tax dated June 01, 2021

Taxpayers registered under Companies Act, 2013, can file their Form GSTR-1 and Form GSTR-3B with EVC on GST portal, till August 31, 2021.

Waiver of Penalty for Non-Compliance of Dynamic QR code provisions

Notification No. 28/2021-Central Tax dated June 30, 2021

The CBIC has waived the penalty for non-compliance with the provisions of generating Dynamic QR code between period December 01, 2020, to September 30, 2021, if the taxpayers to whom such provisions apply, comply with the provisions from October 1, 2021.

Circulars

Clarifications provided on applicability of various entries of the notification No. 12/2017-Central Tax (Rate) dated 28th June 2017 as discussed during the 43rd GST Council Meeting

The scope of clause (b)(ii) of entry 66 is wide enough to cover serving of any food to a school, including pre-school and thus covers serving of food in Anganwadi under Mid-Day Meals Scheme - *Circular No 149/05/2021-GST dated June 17, 2021.*

Entry 23A does not exempt GST on the annuity (deferred payments) paid for construction of roads - *Circular No 150/06/2021-GST dated June 17, 2021.*

GST shall not apply on any amount charged by Central or State Boards, including NBE for conduct of any examinations including entrance examinations. GST is also exempt on input services, such as online testing service, result publication etc. relating to admission to, or conduct of examination. GST shall apply at the rate of 18% to other services provided by such Boards, namely of providing accreditation to an institution or to a professional etc. - *Circular No 151/07/2021-GST dated June 17, 2021.*

Guaranteeing of loans by Central or State Government for their undertakings or PSUs is exempt – *Circular No 154/10/2021-GST dated June 17, 2021.*

Laterals/parts to be used solely or principally with sprinklers or drip irrigation system, which are classifiable under heading 8424, would attract a GST at 12%, even if supplied separately. Any other part of general use, not covered by HSN head 8424 will be subject to GST at rates applicable to the respective head. *Circular No 155/11/2021-GST dated June 17, 2021.*

Certain clarifications have been issued by the CBIC in relation to applicability of Dynamic QR Code such as providing bank details in the QR code, generating Dynamic QR code for supplies made to persons having UIN, persons situated outside India, but the place of supply is in India. – *Circular no. 156/12/2021-GST dated June 21, 2021.*

Circulars & Notifications

Customs

Online filing of AEO T2 and T3 applications activated

Circular No. 13/2021-Customs dated July 01, 2021

The portal for AEO application processing now includes online filing of application AEO T2 and T3 also. Hitherto, filing and processing of only AEO T1 was available online and applications for AEO T2 and T3 were required to be filed manually. From August 1, 2021, the applications for AEO T2 and T3 shall be required to be filed online only.

Foreign Trade Policy

Acceptance, processing & issuance of claims under various export promotion scheme

Trade Notice No. 08/2021-22 dated July 08, 2021

Issuance of benefits/scrips in respect of schemes such as MEIS, SEIS, RoSL and RoSCL would be on hold for a temporary period due to changes in the allocation procedures. During the said period, no fresh application for the above schemes would be allowed to be submitted on the online IT module of DGFT and all submitted applications pending for issuances of scrips would also be kept on hold. The trade will be suitable informed once the issuance of scrips is opened again.

Removal of requirement of furnishing returns by exporters to the registering authorities

Public Notice No. 12/2015-2020 dated July 12, 2021

The requirement of submission of monthly returns of exports including 'NIL' returns by the exporters having RCMC, to the registering authority by the 15th of the month following the quarter has been removed.

Changes on the period

Public Notice No. 12/2015-2020 dated July 12, 2021

Only one revalidation for a period of 12 months to AA issued on or after August 15, 2020 (other than AA issued in respect of deemed exports) shall be allowed instead of 2 revalidations of 6 months each, provided earlier.

Submissions of accounts in respect of consumption and utilisation of goods imported / domestically procured duty free shall be allowed in an online mode on the DGFT website.

GSTN Portal Updates

Negative liability statement for composition taxpayers

In case of composition taxpayers, if there is negative liability in any tax period and if no amount is required to be paid by the taxpayer during that period then the said negative liability will be maintained in negative liability statement. This balance in the negative liability statement will be automatically adjusted against the liabilities of subsequent tax period (s).

Facility to view and download the ledger for 12 months

The Taxpayers can now view the ledgers (ECL, ECrL etc.) for a period of 12 months on their dashboard instead of 6 months.

Circulars & Notifications

Download Form GSTR-4A in excel & Auto population of details in Form GSTR-4

The composition dealers can now download the details of GSTR-4A which is an auto-drafted statement containing details reported by their suppliers in Form GSTR-1/GSTR-5 & by TDS deductors in Form GSTR-7. Based on these details, the Table 4A and 4B of the GSTR-4 shall also get auto populated. A consolidated summary of the supplies at GSTIN level for the complete F.Y, can also be downloaded.

Inclusion of Common names in the HSN Directory & its download in excel file

The GSTN has updated the HSN master to include product names commonly used in Trade corresponding to a particular HSN code. The entire HSN directory can be downloaded in excel by navigating as under:

Services → User Services → Search HSN Code → Download HSN in Excel Format

Functionality to check misuse of PAN

To address the complaint related to misuse of PAN for obtaining GST registrations, a functionality has been introduced on the GSTN Portal to register complaints. This will help in checking misuses, control frauds and help the officers in conducting enquiry and cancellation of such registrations.

Once complaint is registered, it will be sent to the concerned jurisdictional authority where the registration is claimed to be fraudulently taken, for necessary enquiry and suitable action.

Functionality to check Annual Aggregate Turnover

The GSTN has implemented a new functionality to show the AATO of the taxpayer based on the returns filed by him/her in the last financial year. If the taxpayer feels that the system calculated turnover varies from the turnover as per his/her records, a facility to update the turnover has also been provided.

A Taxpayer can amend the turnover twice within a period of one month from the date of roll out of this functionality. Thereafter, the updated values shall be frozen and no further attempts to amend the same shall be provided. Further, this amended turnover figure shall be forwarded to the JTO for his review and in cases where the JTO finds any discrepancy in the updated values furnished by the taxpayer, the said officer can amend the turnover after consulting with the taxpayer which shall be considered final. In case no action is taken by the officer within 30 days on the turnover reported by the taxpayer, the same shall be considered as final.

Functionality to check status and update Bank Account details

A functionality to check the status of and update the bank account details for the taxpayers who have taken new registration, has been introduced. Henceforth, such taxpayers are required to update their Bank Account Details within 45 days of the first login. In case the taxpayers who had not updated bank account after registration and are also failed to update within 45 days of their first login henceforth, the system will prompt and force them to comply with the requirements.

The taxpayers may login and update Bank Account details through non-core amendment.

MCA Notifications

Inclusion of Shops and Establishment Registration in AGILE-PRO-S

Notification dated June 7, 2021

To promote ease of doing business, the MCA has been linking various post registration processes in one single incorporation form. Continuing with this objective, Ministry of Corporate Affairs [MCA] has revised AGILE-PRO and introduced AGILE-PRO-S whereby the registration under Shops and Establishment Act also needs to be applied along with the Incorporation of the Company.

Insertion of new Rule 6A in Investor Education and Protection Fund Authority [IEPF Authority] (Accounting, Audit, Transfer and Refund) Rules, 2016

Notification dated June 9, 2021

MCA vide this Notification inserted new Rule 6A which states the manner of transfer of shares along with all the resultant benefits arising out of such shares to the IEPF Authority, in case where a Company does not receive information regarding Significant Beneficial Ownership or information received is incomplete.

- The shares shall be credited to DEMAT Account of the IEFP Authority within a period of thirty days of such shares becoming due to be transferred to the IEPF Authority;
- The procedure for transfer of shares to the IEPF Authority shall be deemed to be the transmission of shares;
- No application shall be filed for claiming back such shares from the Authority and the shares shall be transferred without any restrictions;
- Detailed procedure for transfer of shares via depository and physical form is provided in the amended rules.

Omission of Rule 4 to allow certain matters to be approved through Video Conferencing or Other Audio-Visual means

Notification dated June 15, 2021

MCA vide this Notification has taken one more step in the world of digitalisation. Through this Notification, MCA omitted Rule 4 of the Companies (Meetings of Board and its Powers) Rules, 2014 which listed the matters which can not to be conducted in a Meeting through Video Conferencing or Other Audio Visual Means and such matters include the Approval of the Annual Financials Statements, Board's Report, Prospectus, meetings relating to Amalgamation, Merger, Demerger, Acquisition and Takeover and the Audit Committee Meetings for consideration of Financial Statements including Consolidate d Financial Statements. These matters can now be conducted through Video Conferencing or Other Audio-Visual Means.

Fees for Renewal of names in Databank of Independent Directors and Penalty for delay in inclusion/renewal

Notification dated June 18, 2021

MCA vide this Notification extend power to the Indian Institute of Corporate Affairs [Institute] to allow individuals for renewal of their names in the data bank of Independent Directors on payment of reasonable as decided by the Institute.

MCA has notified to levy an additional fee of one thousand rupees in case of any delay in filing an application for inclusion and renewal of names in databank of Independent Directors.

MCA Notifications

Extension for convening Extraordinary General meetings [EGMs] through Video Conferencing [VC] or Other Audio-Visual Means [OAVM]

General Circular No. 10/2021 dated June 23, 2021

With the pandemic risk not yet mitigated and travel restrictions continuing, MCA has permitted Companies to convene their Extraordinary General Meetings through Video Conferencing [VC] or Other Audio-Visual Means [OAVM] or to transact items though postal ballot up to December 31, 2021.

Extension of due date for filing Forms under Companies Act, 2013 and LLP Act, 2008 up to August 31, 2021

General Circular No. 11/2021 dated June 30, 2021

In continuation to the Ministry General Circular No. 06/2021 dated May 3, 2021, MCA decided to grant further relaxation up to August 31, 2021 to Companies / LLPs to file forms [except charge related forms] without any additional fees and the forms which were/are due for filing during April 1, 2021 to July 31, 2021 can now be filed with normal fees up to August 31, 2021.

Relaxation for filing of charge related forms under Companies Act, 2013

General Circular No. 12/2021 dated June 30, 2021

In continuation to the Ministry General Circular No. 07/2021 dated May 3, 2021, MCA further extended the relaxation in filing charge related forms i.e. Form CHG -1 [Creation or Modification of Charges] and CHG – 9 [Creation or Modification of Charge related to Debentures] in the manner as tabled below:

Due date of Creation or Modification of Charges	Relaxation in calculating time period	Relaxation in Additional Fees
Before April 01, 2021	The period between April 01, 2021 to July 31, 2021.	Before July 31, 2021- Normal fees Beyond July 31, 2021- Fees applicable from August 01, 2021 till the date of filing plus the time period lapsed from the date of Creation of Charge till March 31, 2021.
Between April 01, 2021 to July 31, 2021	The time period from the date of Creation / Modification of Charge and ending on July 31, 2021.	Before July 31, 2021- Normal fees Beyond July 31, 2021- Fees applicable from August 01, 2021 till the date of filing.

MCA Notifications

Issuance of fresh Certificate of Incorporation to Companies not complying with the Order of Regional Director under Section 16 of Companies Act, 2013

Notifications dated July 22, 2021

To trigger the non-compliant Companies under Section 16 of the Companies Act, 2013, the Central Government amended Section 16 of the Companies Act, 2013 and inserted new Rule 33A of Companies (Incorporation) Rules, 2014. These Rules shall come into force from September 1, 2021. With the aforesaid amendment, Company which fails to change its name / new name within 3 months from the date of issue of notice / direction from the Central Government regarding rectification of name, the Registrar shall issue a fresh certificate of incorporation in Form No. INC-11C specifying the new name of the Company with the letters "ORDNC" (Order of Regional Director Not Complied) and the year of passing of the notice / direction, the serial number and the existing Corporate Identity Number (CIN) of the company. This amendment shall not apply if the Company has filed Form INC 24 and its approval is pending on expiry of 3 months from the date of issue of such directions.

In line with the above Rule, the Company whose name has been changed as aforesaid, need to comply with the provisions mentioned under Section 12 of the Act and wherever the name of the Company is printed, affixed or engraved, it has to mention below in bracket "Order of Regional Director Not Complied (under Section 16 of the Companies Act, 2013)". It is not required to be complied if the Company changes its name subsequently by altering Memorandum of Association.

RBI & FEMA Notifications

Survey on Computer Software and Information Technology Enabled Services (ITES) Exports for 2020-2021

RBI Press Release: 2021-2022/419 Dt. June 24, 2021

RBI has initiated a Survey for collating information on the financial details of all exporting entities (Companies / LLPs / Partnership Firms / Sole Proprietorships) in the IT/ITES sector. The information requested is on lines similar to that required for Foreign Assets and Liabilities (FLA) submission. The following are the salient features of the Survey:

- The Survey Schedule is to be based on financials for the year ended March 31, 2021.
- The objective of the Survey is primarily for public circulation along with compilation of Balance of Payments (BoP) statistics by the RBI.
- The link to Survey Form is https://www.rbi.org.in/Scripts/BS_ViewForms.aspx?FCId=40.
- The link to FAQs on the Survey filing is https://rbi.org.in/Scripts/FAQView.aspx?Id=142.

MSME Memorandums / Notifications / Press Release – June 2021

New Definition of Micro, Small and Medium Enterprises - Addition of Retail and Wholesale Trade in list of MSMEs

Office Memorandum (OM) No. 5/2(2)/2021-E/P & G/Policy dated July 2, 2021

- Ministry of Micro, Small and Medium Enterprises has now permitted Retail and Wholesale traders to register as MSMEs on Udyam Registration Portal (https://udyamregistration.gov.in). The criteria for registration is based on NIC Codes and the trading activities as referred under NIC Codes below shall be entitled to register as MSMEs:

NIC Code	Activity
45	Wholesale and retail trade and repair of motor vehicles and motorcycles
46	Wholesale trade except of motor vehicles and motorcycles
47	Retail trade except of motor vehicles and motorcycles

- However, the benefits of registration/qualification under MSMEs shall be restricted to Priority Sector Lending only, for such Retail and Wholesale traders. Thus this is a partial relief to such traders whereby they will not be entitled to any other benefits / relief even after qualifying as an MSME.

RBI & FEMA Notifications

Interest Equalization Scheme on Pre and Post Shipment Rupee Export Credit - Extension

RBI/2021-22/65 DOR. CRE(DIR). REC. 28/04.02.001/2021-22 dated July 1, 2021

The Government has extended the "Interest Equalization Scheme for Pre and Post Shipment Rupee Export Credit" ended on June 30, 2021, for a further period of three months, i.e., up to September 30, 2021.

Review of Instructions on Interest on overdue domestic deposits

RBI/2021-22/66 DOR. SPE. REC. 29/13.03.00/2021-2022 dated July 02, 2021

Based on the amended provisions, if a Term Deposit (TD) matures and proceeds are unpaid, the amount left unclaimed# with the bank shall attract rate of interest as applicable to savings account or the contracted rate of interest on the matured TD, whichever is lower. Earlier the said rate of interest was as applicable to savings account.

[#*"Unclaimed Deposits" as per the Banking Regulation Act, 1949 means: accounts [in India] which have not been operated upon for ten years: and*

"Unclaimed Term Deposits" means "that in the case of money deposited for a fixed period the said term of ten years shall be reckoned from the date of the expiry of such fixed period".]

Roadmap for LIBOR Transition

RBI/2021-22/69 CO. FMRD. DIRD. S39/14.02.001/2021-22 dated July 08, 2021

The Reserve Bank of India (RBI) has instructed the Banks / Financial Institutions (FIs) to delink / transition away from LIBOR benchmarked financial contracts, including interest rates. This action has been initiated in context to the press statement by the Financial Conduct Authority (FCA), UK (dated March 05, 2021), which announced that all LIBOR settings will either cease to be provided by any administrator or no longer be representative:

- Immediately after December 31, 2021, in the case of all Pound sterling, Euro, Swiss franc and Japanese yen settings, and the 1-week and 2-month US dollar settings; and
- Immediately after June 30, 2023, in the case of the remaining US dollar settings.

The Banks/FIs have also been instructed to cease using the Mumbai Interbank Forward Outright Rate (MIFOR) by December 31, 2021, a benchmark which is referenced to the LIBOR.

The FCA directives to do away with LIBOR as the benchmark rate shall have wide repercussions across the global financial system since derivative transactions, commercial borrowings and other financial products have been benchmarked against the LIBOR. In India too, External Commercial Borrowings (ECB) are a large source of funding by Indian companies. Change to the LIBOR is going to impact all such companies, wherein they shall have to delink the benchmark interest rate from LIBOR to another globally accepted benchmark. Likewise, derivatives and hedged transactions of Indian borrowers, exporters and importers linked to the LIBOR shall have to be revised in due course.

RBI & FEMA Notifications

Loans and Advances – Regulatory Restrictions

RBI/2021-22/72 DOR. CRE. REC. No. 33/13.03.00/2021-22 dated July 23, 2021

The origin of restricting credit facilities by a bank to Director/(s) and their relatives of another bank was in 2004, when RBI took note that banks had developed an informal understanding or mutual / reciprocal arrangement among themselves for extending such credit facilities. It was also observed that the usual procedures and norms in sanctioning credit limits as applicable to other borrowers was not followed in these cases.

To avoid quid pro quo arrangements between Directors /their relatives of the Banks, granting of loans above INR 25 lacs was restricted, unless sanctioned by Board of Directors/Management Committee of the Lending Bank. The restrictions were not only limited to personal loans to Director/(s) or their Relative/(s) but also to Firms / Companies in which such Director/Relative was a Partner / Director or a Guarantor or held substantial interest (as defined in Section 5(ne) of the Banking Regulation Act, 1949) in the Company.

Given due consideration to the fact that the limit has remained in force for more than 15 years, RBI has herewith enhanced the limit of such loans and advances from INR 25 Lacs to INR 5 Crores.

[Note: "substantial interest",-

(i) in relation to a company, means the holding of a beneficial interest by an individual or his spouse or minor child, whether singly or taken together in the shares thereof, the amount paid-up on which exceeds five lakhs of rupees or ten per cent. of the paid-up capital of the company, whichever is less;

(ii) in relation to a firm, means the beneficial interest held therein by an individual or his spouse or minor child, whether singly or taken together, which represents more than ten per cent. of the total capital subscribed by all the partners of the said firm;]

Export Credit in Foreign Currency – Benchmark Rate

RBI/2021-2022/79 DOR. DIR. REC. 37/04.02.002/2021-22 August 6, 2021

The AD Banks are permitted to extend Pre-shipment Credit in Foreign Currency (PCFC) to exporters for financing the purchase, processing, manufacturing or packing of goods prior to shipment at LIBOR / EURO LIBOR / EURIBOR related rates of interest.

On account of discontinuance of LIBOR as a benchmark rate (as mentioned above), the banks can extend export credit using any other widely accepted Alternative Reference Rate in the currency concerned.

SEBI Notifications

Coverage

Enhancement of Overseas Investment limits for Mutual Funds

SEBI/HO/IMD/IMD-II/DOF3/P/CIR/2021/571 dated June 03, 2021

SEBI vide circular no. SEBI/HO/IMD/DF3/CIR/P/2020/225 dated November 05, 2020, had specified overseas investment limits for Mutual Funds. Considering the representations received from Mutual Fund industry, SEBI further enhanced the investment limits as tabled below:

Sr. No.	Particulars of Investment	Current Limits	New Limits
1	Overseas investments by Mutual Funds	– *Maximum Limit:* US$ 600 million per mutual fund, within overall industry limit of US$ 7 billion. – *Reserved Limits:* US$ 50 million for each mutual fund individually.	– *Maximum Limit:* US$ 1 billion per mutual fund, within overall industry limit of US$ 7 billion. – *Reserved Limits done away with.*
2	Investments in overseas Exchange Traded Funds (ETFs)	– *Maximum Limit: US$ 200 million per mutual fund, within overall industry limit of US$ 1 billion.*	– *Maximum Limit:* US$ 300 million per mutual fund, within overall industry limit of US$ 1 billion.

Relaxation of minimum vesting period in case of death of employee(s) under SEBI (Share Based Employee Benefit) Regulations, 2014

SEBI/HO/CFD/DCR2/CIR/P/2021/576 dated June 15, 2021

As per Regulation 18(1) and 24(1) of SEBI (Share Based Employee Benefit) Regulations, 2014 ("SBEB Regulations"), a minimum vesting period of one year has been mandated for Employee Stock Options ("Options") and Stock Appreciation Rights ("SAR").

However, if any employee dies during his/her employment, then all the Options, SARs and other benefits granted to such employee till the date of his/her death shall vest with his/her legal heirs or nominees [As per Regulation 9(4) of SBEB Regulations], subject to the completion of one year vesting period.

Giving due consideration to the current pandemic situation, SEBI has exempted the families of deceased employees from the applicability of minimum vesting period, in case of death of an employee (for any reason) on or after April 01, 2020, whereby all the options,

SEBI Notifications

SARs or any other benefit granted to such employee shall vest with his/her legal heir or nominee on the date of death.

Extension in timelines for compliance with regulatory requirements

SEBI/HO/MIRSD/DOP/P/CIR/2021/587 dated June 30, 2021

In view of prevailing situation due to COVID-19 pandemic and based on the representations received from Stock Exchanges, SEBI has extended the timeline from **June 30, 2021 to July 31, 2021** for compliance by the Trading Members / Clearing Members / KYC Registration Agencies for the following regulatory requirements;

- Maintaining call recordings of orders / instructions received from clients.
- Client Funding Reporting.
- Operating trading terminals from designated alternate locations.
- Uploading of supporting documents of the clients KRA system for KYC application [within 15 working days against normal 10 working days].
- Issuing of Annual Global Statement to clients [relaxation provided only in cases where the client requests for a physical statement].

Standard Operating Procedure for delisting of listed subsidiary company through a Scheme of Arrangement wherein the listed holding company and the listed subsidiary are in the same line of business

SEBI/HO/CFD/DIL1/CIR/P/2021/0585 dated July 06, 2021

Pursuant to the provisions of Regulation 37 of SEBI (Delisting of Equity Shares) Regulations, 2021, amended by SEBI vide notification no. No. SEBI/LAD-NRO/GN/2021-25 dated June 10, 2021, equity shares of listed subsidiary company can be delisted through scheme of arrangement with its listed holding company provided that both the companies are in same line of business. However, the listed entities were facing problems in determining the meaning of "same line of business".

Considering the issues faced by the listed entities, SEBI vide this notification has clarified that for the purpose of qualifying being in "same line of business", listed subsidiary company and its listed parent company shall fulfill following criteria:

- The principal economic activities of both the companies are und er the same group under National Industrial Classification (NIC) 2008.
- At least 50% of revenue from operations of both the companies must be earned from same line of business as per last audited financial results.
- At least 50% of net tangible assets of both the companies must be invested in same line of business as per last audited financial results.
- If any of the listed entities has changed its name during last one year, then for preceding one full year, at least 50% of revenue, calculated on restated and consolidated basis, must be earned from the activity reflected by its new name.
- Both the companies shall provide certificate to the effect that they are in same line of business.

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Statutory Auditors and SEBI registered Merchant Banker shall certify all the aforesaid criteria.

The shares of both the companies shall be listed for at least 3 years and holding – subsidiary relationship between two companies is in existence since past 3 years.

Relaxation in timelines for compliance with regulatory requirements by Debenture Trustees

SEBI/HO/MIRSD/CRADT/CIR/P/2021/597 dated July 20, 2021

In view of prevailing situation due to COVID-19 pandemic and based on the representations received from Debenture Trustees, SEBI has extended the timeline for compliance with the following regulatory requirements in respect of quarter/ half year/ year ended on March 31, 2021;

Submission of reports/ certifications to Stock Exchanges

Sr. No.	Regulatory requirements	Periodicity & Time limit	Current time limit	Extended time limit
1	Asset Cover Certificate	To be submitted on **Quarterly basis** within 60 days from the end of each quarter.	July 15 2021	August 31, 2021
2	Statement of value of pledged securities			
3	Statement of value for Debt Service Reserve Account (DSRA) or any other form of security offered.			
4	Net worth certificate of guarantor	To be submitted on **Half yearly basis** within 60 days from the end of each half-year.		October 31, 2021
5	Financials/value of guarantor prepared on basis of audited financial statement of the guarantor	To be submitted on **Annual basis** within 75 days from the end of each financial year.		
6	Valuation report and title search report for the immovable/ movable assets, as applicable.			

SEBI Notifications

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Disclosures on the website of Debenture Trustee				
Sr. No.	Disclosures	Periodicity & Time limit	Current time limit	Extended time limit
1	Monitoring of asset cover certificate and quarterly compliance report of the listed entity.	To be disclosed on **Quarterly basis** within 60 days from the end of each quarter.	July 15 2021	August 31, 2021
2	Status of breach of covenants/ terms of the issue, if any and action taken by debenture trustee	To be disclosed on **Half yearly basis** within 60 days from the end of each half-year.		
3	Status regarding maintenance of accounts maintained under supervision of debenture trustee	To be disclosed on **Annual basis** within 75 days from the end of financial year.		
4	Monitoring of Utilization Certificate			

Holding of Annual General Meeting (AGM) by top 100 listed entities by market capitalization

SEBI/HO/CFD/CMD1/P/CIR/2021/602 dated July 23, 2021

A provision relating to holding of AGM by top 100 listed entities was newly inserted under Regulation 44(5) of SEBI (Listing Obligations and Disclosure Requirements) (Amendment) Regulations 2018, wherein it was mandated that top 100 listed entities by market capitalization shall hold their AGM within five months from the end of every financial year.

However, in view of CoVID-19 pandemic and on the basis of the representations received from listed entities and the Institute of Company Secretaries of India (ICSI), SEBI has extended the aforesaid time limit by one month and accordingly, top 100 listed entities by market capitalization can hold Annual General Meeting (AGM) within six months from the end of financial year 2020-21.

To determine top 100 listed entities based on market capitalization, data as on 31st March of every financial year shall be taken into account.

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For further analysis and discussion, you may please reach out to us.

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Abbreviations

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Abbreviation	Meaning
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
BOI	Body of Individuals
BRC/FIRC	Bank Realisation Certificate / Foreign Inward Remittance Certificate
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	The Central Goods and Services Tax
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
EGM	Extra-ordinary General Meeting

Abbreviation	Meaning
FEMA	Foreign Exchange Management Act, 1999
FII	Foreign Institutional Investor
FIFP	Foreign Investment Facilitation Portal
FIRMS	Foreign Investment Reporting and Management System
FLAIR	Foreign Liabilities and Assets Information Reporting
FPI	Foreign Portfolio Investor
FOCC	Foreign Owned and Controlled Company
FTC	Foreign Tax Credit
FTP	Foreign Trade Policy
FTS	Fees for Technical Service
FY	Financial Year
GAAR	General Anti-Avoidance Rules
GDR	Global Depository Receipts
GOI	Government of India
GST	Goods and Service Tax
GSTN	Goods and Services Tax Network
GVAT Act	Gujarat VAT Act, 2006
HC	High Court
HSN	Harmonized System of Nomenclature
ICAI	Institute of Chartered Accountant of India

Abbreviations

Abbreviation	Meaning
ICDS	Income Computation and Disclosure Standards
ICDR	Issue of Capital and Disclosure Requirements
IEC	Import Export Code
IGST	Integrated Goods and Services Tax
IRDA	Insurance Regulatory and Development Authority
ISD	Input Service Distributor
ITA	Income Tax Act, 1961
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
LO	Liaison Office
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
MEIS	Merchandise Exports from India Scheme
MSF	Marginal Standing Facility
MSME	Micro, Small and Medium Enterprises
ODI	Overseas Direct Investment
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
RBI	Reserve Bank of India
RCM	Reverse Charge Mechanism
RMS	Risk Management System
ROR	Resident Ordinary Resident
ROSCTL	Rebate of State & Central Taxes and Levies
RoDTEP	Remission of Duties and Taxes on Exported Products

Abbreviation	Meaning
RPM	Resale Price Method
SC	Supreme Court of India
SCN	Show Cause Notice
SDS	Step Down Subsidiary
SE	Secondary adjustments
SEBI	Securities Exchange Board of India
SEP	Significant economic presence
SEZ	Special Economic Zone
SFT	Specified Financial statement
SION	Standard Input Output Norms
SST	Security Transaction Tax
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
WHT	Withholding Tax
WOS	Wholly Owned Subsidiary