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K C Mehta & Co LLP
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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 M&A space, legislative changes in direct and indirect tax law, corporate & other regulatory laws, as well as recent important decisions on direct and indirect taxes.

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

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

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Nitty Gritty of Purchase Price Allocation

Introduction

Surge in M&A transactions has led to significant increase in application of Purchase Price Allocation (PPA) principles. PPA is the process of assigning fair values to the assets and liabilities of an acquired enterprise following a business combination. The value allocation process is largely driven by principles and guidance provided under Ind AS 103 and Accounting Standard 14 in the Indian context. Underlying equation for purchase price allocation is based on the fact that the value of net assets acquired must be equal to the value of consideration paid in a transaction. Accounting standards illustrate the methodology of recognizing / allocating the Purchase Price in the consolidated (merged) books of the acquirer.

Purchase Price Allocation

Under Ind AS 103 and AS 14 all business combinations require the acquirer to apportion the consideration paid amongst the tangible and intangible assets by applying the acquisition method. The tangible assets are pre-existing in the books of acquiree which are easily identifiable and could be measured at fair value by using generally accepted valuation methodologies, viz. Income approach, Market approach and Cost approach.

Generally Accepted Valuation Models

1. **Market Approach**
   The Market Approach measures the value of an asset through the analysis of recent transactions / sales or offerings of comparable assets (e.g., real estate). Adjustments may need to be made to those recorded transactions or bid prices to take account of differences in the timing, location and other relevant parameters. This method is often inapplicable for valuation of intangible assets as these are usually bundled with other assets and active market or quotes for intangible assets are not generally available.
2. **Income Approach**
   The Income Approach measures the value of an asset based on the present value of its future economic benefits. Under this approach, the value of an asset can be measured by the present worth of the net economic benefit to be received over the life of the subject asset. This method is widely used in valuing intangible assets (e.g., patents, customer relationships, process research & development, etc.)
3. **Cost Approach**
   The Cost Approach measures the value of an asset based on the cost to replace it with an identical or similar unit of equal utility. Largely, depreciable assets such as buildings, plant, and machinery, etc. can be most appropriately valued using this method.

Valuation Models for Intangible Assets

Intangible assets can be broadly categorized into contract based, customer based, marketing based, technology related, artistic related and are generally valued based on Income approach as under –

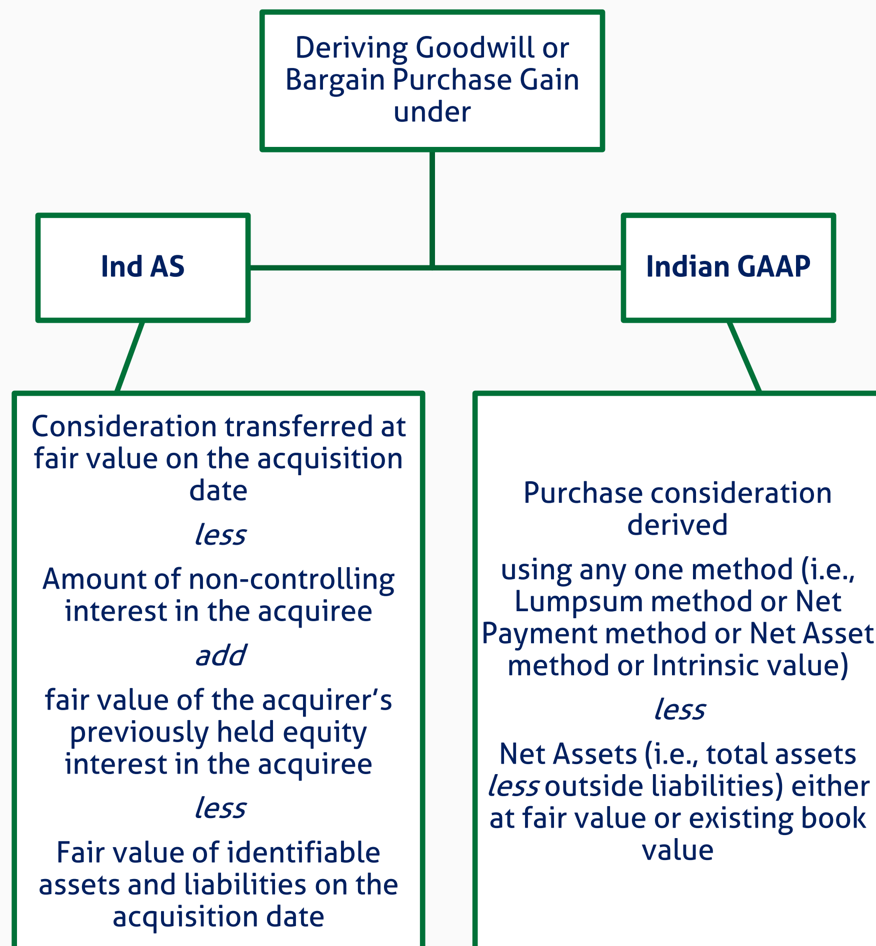
1. **Relief from Royalty Method (RRM)**
   Valuation is based on hypothetical royalty payments that would be saved by owning the asset rather than licensing it. RRM is often used to value domain names, trademarks, licensed computer software, and in-progress R&D that can be tied to a specific revenue stream.

Nitty Gritty of Purchase Price Allocation

2. **Multiperiod Excess Earnings Method (MPEEM)**
   MPEEM is a variation of discounted cash-flow analysis, it isolates the cash flows that can be associated with a single intangible asset. MPEEM tends to be applied when one asset is the primary driver of a firm's value and the related cash flows can be isolated from the firm's overall cash flows. This method is best suitable for valuing customer relationship based intangible assets such as customer contracts, customer lists, etc.
3. **With and Without Method (WWM)**
   WWM estimates an intangible asset's value by calculating the difference between two discounted cash-flow models - one that represents the status quo for the business enterprise with the asset in place, and another without the subject asset. This method is generally used to value non-compete arrangements.
4. **Real Option Pricing**
   Assets that have the potential to create cash flows in the future but do not presently generate cash are valued as per this method. These assets have option characteristics that make them suitable to be valued using option pricing models and include undeveloped patent and undeveloped natural resource options, among others.
5. **Replacement Cost Method**
   This method requires an assessment of the replacement cost of the intangible asset, that is the cost to construct, at current prices as of the date of the analysis, an intangible asset with equivalent utility to the subject intangible, using modern materials, production standards, design, layout and quality workmanship. The replacement cost is then adjusted for obsolescence factor relative to the intangible asset. Most appropriate asset for this valuation method could be an acquired software.
6. **Distributor Method**
   The Distributor Method is a variation of MPEEM that may be used when the acquired entity's relationship with its customers is similar to the relationship between a distribution company and its customers. This method utilizes margins and contributory asset costs consistent with a distributor within the applicable industry in order to isolate cash flow attributable to the customer related assets.
7. **Greenfield Method**
   This method is based on the discounted cashflows of a notional start-up business with no assets but owns the specific intangible asset being valued. It is applied mostly during the valuation of an intangible asset such as a radio or television license.

Nitty Gritty of Purchase Price Allocation

General Accounting Principle for Purchase Price Allocation



Conclusion

As per industry reports, in the past 3 years in India, ~ 35% of the purchase price was attributable to goodwill, ~ 24% was allocated to identifiable intangible assets and ~ 41% to tangible and other assets. However, in recent times due to changes in tax regimes largely due to allowability of depreciation on intangible assets, the allocation of purchase price has altogether become more vital in a business combination.

In sectors like retail, consumer products, life sciences and telecommunications, a major part of purchase price could be allocated to intangible assets such as brands, trademarks, license rights and customer relationships. While in sectors such as real estate, hospitality, metals, energy and building materials which are capital intensive sectors, purchase price would largely be allocated to technology, design, know-how.

Source: cfainstitute, incWert, Ind AS 103, AS 14, ICAI Valuation Insights

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Important Rulings

In absence of certainty of incurring expenditure, provision for warranty is not allowable as business deduction

Healthware (P.) Ltd. v. ACIT ITTA.NO.443 OF 2005, Telangana HC

The Taxpayer was engaged in the business of purchase and sale of medical equipment and related services. It had created provision for warranty during the year under consideration and had claimed the same as deduction while filing return of income. The AO disallowed said provision for warranty on ground that Taxpayer had not incurred any expenditure on account of warranty during the year under consideration being a contingent liability. The CIT(A) upheld the decision of the AO.

Before ITAT it was argued that the Taxpayer had made provision for warranty for the first time and thus it could not be said that quantification was based on its past experience. In fact, the Taxpayer decided to give warranty on products sold w.e.f. January 2001 and therefore it had made provision for warranty on sales made during last quarter of the year.

ITAT noted that though the Taxpayer claimed that such provision was made based on past experience of its holding company, but it did not submit any evidence of such history. They also noted that there was huge gap between provision and actual expenditure, which is evident from the fact substantial provision amount were written back in next years. Based on the said observations, the appeal of Taxpayer was dismissed by ITAT.

Before the HC, the Taxpayer has put strong reliance on the decision of Bharat Earth Movers v. CIT [2000] 112 Taxman 61 wherein it was had that if the liability has arisen during the year, the same shall be allowed in that year although the liability may have to be quantified and discharged at a future date. However, the Hon'ble HC distinguished the decision of the Apex Court by holding that no such liability had arisen during the year under consideration considering the facts of the Taxpayer and it had merely made provision for warranty that might accrue in future. Since there was no certainty of incurring expenditure, HC answered the question against the Taxpayer.

The decision reopens the controversy decided by the SC long back in case of Rotork Controls India P Ltd v CIT 180 taxman 422. SC in said decision had held that for provision to qualify for recognition, there must be present obligation arising from past events, settlement of which is expected to result in outflow of resources and in respect of that, a reliable estimate can be made. It is to be noted that such decision is not considered by the HC while deciding the issue against the Taxpayer. In the case of Rotork, Apex Court has allowed deduction for provision of warranty in respect of certain goods based on past trend indicating existence of defects in items sold and actual expenditure incurred on warranty expenses. With this decision in light, taxpayers have more onus to prove that such provision has been made based upon past trend and on scientific basis along with evidence thereof.

Loss incurred on settlement of investment for preserving business reputation is business loss

Deutsche Asset Management India P. Ltd v. ACIT, ITA no. 2599/Mum/2017, Mumbai ITAT

The Taxpayer is the SEBI registered Asset Management Company acting as an asset manager and investment manager for Deutsche Mutual Fund ('DMF'). During the year under consideration, it had debited an amount of Rs. 2.8 crores as 'Loss on sale of investment' in profit and loss account.

During the assessment proceedings, the Taxpayer submitted that one of schemes managed by it-DWS Money Plus Fund had investment in

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unsecured debentures of Vishal Retail Limited ('VRL'). Such investment had turned into NPA and had to be written off as per SEBI provisioning requirement. However, due to such provisioning/writing off requirement, the NAV of the Fund would have decreased, causing loss to the customers and consequently, customers would have withdrawn funds not only from this scheme but also from other schemes of DMF. This would have severely impacted the business and future profitability of the Fund as well as the Taxpayer. Accordingly, it was decided by the Taxpayer to purchase the debentures at written down value. Subsequently, Taxpayer decided to enter into settlement arrangement with a company who planned to buy out VRL and claimed the settlement loss as business deduction in its return of income.

However, the AO held that the debenture is capital asset/investment for the Taxpayer and not part of Stock in trade, therefore, loss on sale of debenture is capital loss for the Taxpayer. Further, Taxpayer had incurred loss on behalf of another entity and therefore was legally not liable to incur that loss. CIT(A) upheld the decision of AO.

ITAT noted that Taxpayer had taken decision to purchase and settle the debentures in order to save its reputation with the investors not only in this scheme but also in other schemes. Though the Taxpayer was earning management fees as investment advisory, it would have impacted its earning if investors had withdrawn funds from various schemes. Since the said decision was taken for commercial consideration and on account of business exigency, it is expense on business purpose. ITAT also noted that mere disclosure of debenture as investment does not conclude that loss on said asset is capital in nature.

In the present case though the loss can be considered as capital loss, however considering the factual case for incurring such loss and its business expediency, ITAT has taken the view that the same is allowable as business loss.

Notional income accounted under Ind AS is not taxable income

M/s Shriram Properties Limited v. PCIT, ITA no. 431 / Chny / 2022, Chennai ITAT

The Taxpayer was a company engaged in the business of construction, development and sale of housing projects and other related activities. It had adopted Indian Accounting Standards (Ind AS) as mandated by Ministry of Corporate Affairs (MCA) for the first time in the year under consideration. While filing the tax return, the Taxpayer reversed impact of various entries which were credited to Profit and Loss account on account of Ind AS.

The case of the Taxpayer was selected for limited scrutiny and assessment order was passed u/s 143(3) of the ITA. PCIT noted that order u/s 143(3) is passed without making any inquiry and verification on said issues arising out of Ind AS adjustments. Against the show-cause notice issued u/s 263 of the ITA, the taxpayer argued that the impugned accounting entries were purely notional in nature and therefore adjustments ought to have been carried out in computation of income as per the provisions of ICDS. However, PCIT rejected such argument of the taxpayer since it had not placed on record any reference to ICDS guidelines which enable the Taxpayer to negate such Ind AS adjustments and passed the order u/s 263 directing AO to make fresh assessment u/s 143(3) r.w.s 263 of the ITA.

Aggrieved by the order of PCIT, the Taxpayer preferred an appeal before ITAT.

The matter in dispute comprised of three issues: (i) Guarantee commission income (ii) Fair value gain recorded at FVTPL (iii) Gain on extinguishment of financial liability and Receipt of securities

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premium. ITAT observed that the order passed u/s 143(3) was neither erroneous nor prejudicial to the interest of revenue since all the issues pointed out by PCIT were thoroughly examined by the AO, which is evident from various notices issued u/s 142(1) and 143(2) of the ITA and detailed submissions made by the Taxpayer.

ITAT also examined all issues on merits as below:

i. With regard to the income from guarantee commission credited to P & L Account, ITAT noted that as per the terms of contract between the Taxpayer and banker, there was a clause for not charging any kind of commission. Hence, it cannot be said that income had accrued to the Taxpayer, merely because Taxpayer had recognized notional income in the books as per Ind AS.

ii. With regard to Fair value gain on financial instruments recorded at FVTPL, ITAT noted that taxpayer had recognized gain/loss in respect of certain investments as per Ind AS 39. For the computation of income, taxpayer had excluded such gain and offered to tax, actual gain on sale of investments. Therefore, ITAT held that when Taxpayer had offered gain or loss out of financial instruments in year when such investments are redeemed, the question of taxation of notional gain does not arise when said notional entries are passed in books. Similar ratio was applied to notional interest income recognized on redeemable preference shares in subsidiaries.

iii. With regard to gain on extinguishment of financial liability and increase in securities premium, ITAT noted that in facts of case, shareholders had a 'put' right to require company to buy back shares for consideration including fixed rate of interest in certain events. Under Ind AS, these equity shares (including security premium) have been considered as compound financial instruments and have accordingly been segregated between liability and equity components based on their fair value measurement. During the year under consideration, shareholders entered into new agreement, as per which, 'put' rights were removed. Consequently, the liability component in financials was derecognized and equity instrument including securities premium was recorded at fair value. The difference between the fair value of the equity and carrying amount of the liability aggregating was credited to P&L account as gain on extinguishment of financial liability. Correspondingly, securities premium received in earlier years was reclassified from liability to equity.

ITAT noted that since the aforesaid is notional entry and liability component was never claimed as expenditure in earlier years, gain on extinguishment of liability does not constitute income in hands of taxpayer. With regard to securities premium, ITAT held that there is no question of application of provisions of Section 56(2) (viib) since there is no fresh issue of shares during the year under consideration.

ITAT ultimately concluded that the entry in the books which was made on a hypothetical income which did not materialized and the entry was reversed in the next year, then it could not be brought to tax as income because only real income can be brought to tax as held by the Hon'ble Supreme Court in the case of CIT vs Bokaro Steel Ltd [1999] 236 ITR 315. The appeal of taxpayer was allowed.

The aforesaid decision seems to be one of the maiden decisions on the issue of real income theory after the application of Ind AS. This decision could be extremely useful in cases where the

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department seeks to tax notional income credited to profit and loss account on account of Ind AS principles.

Short term capital loss can be set off first against short term capital gain taxable at higher rate

DCIT v. M/s J.P. Morgan Fund ITA no. 2862/Mum/2022, Mumbai ITAT

The Taxpayer is a non-resident entity registered with SEBI as a Foreign Institutional Investor for carrying out investment activity in Indian capital markets. During the year, investments made by the taxpayer resulted in net short term capital loss, which were first set off against short term capital gains taxable at 30% and balance against short term capital gains taxable at 15%.

One of the issues in dispute was that the AO rejected the said manner of set off of short-term capital loss adopted by the taxpayer. CIT(A) deleted the addition made by AO on this issue by relying on decision of Special Bench of Mumbai ITAT in case of Montgomery Emerging Markets Fund 100 ITD 217.

Revenue preferred appeal before ITAT. ITAT accepted the reliance of CIT(A) on the aforesaid decision and noted that the Taxpayer has duly complied with the provisions of Section 70 which deals with the set off of loss under the same head of income. When section 70 provides that a loss falling under a source of income can be set off against income from any other source under the same head, it means that the long-term capital loss being a separate source can be set off against short term capital gains, which is another separate source of income. Within the provisions of law contained in section 70, there is no further identification of sources of income against which alone loss of a particular source can be set off. Therefore, the contention of the Taxpayer that irrespective of the identity of the source of income, it is possible for the Taxpayer to set off the loss of a particular source against income from another source, both falling under the same head of income is tenable in law.

ITAT also relied on its another decision in case of ADIT v. Legg Mason Asia (Ex Japan) Analyst Fund reported in 38 taxmann.com 12, which was rendered in post STT regime, and it was held that the Taxpayer has an option to adjust the loss arising on a short term capital asset against the income arising from such assets for the same year, irrespective of whether the transactions are categorized as 'off market transactions' or 'on market transactions'. Considering the above, ITAT dismissed the appeal of the Revenue on this ground.

This decision could be useful to taxpayers in cases where taxpayers have gain and losses from several sources under the same head of income and the taxpayer would have choice to select the order of set off of losses against gains.

Important Updates

Consequences as a result of PAN becoming inoperative, on account of failure to intimate the Aadhar number

Circular No. 3 of 2023 [F.No. 370142/14/2022-TPL], Dated March 28, 2023

A person who has failed to intimate the Aadhaar number shall face the following consequences because of his PAN becoming inoperative:

i. refund of any amount of tax or part thereof, due under the provisions of ITA shall not be made to him;

ii. interest shall not be payable to him on such refund for the period, beginning with the date specified under sub-rule (4) of rule 114AAA and ending with the date on which it becomes operative;

iii. where tax is deductible under Chapter XVU-B in case of such person, such tax shall be deducted at higher rate, in accordance with the provisions of section 206AA;

iv. where tax is collectible at source under Chapter XVII-BB in case of such person, such tax shall be collected at higher rate, in accordance with the provisions of section 206CC.

It is notified that such consequences shall take effect from July 1, 2023, and continue till the PAN becomes operative. A fee of one thousand rupees will continue to apply to make the PAN operative by intimating the Aadhaar number.

Clarification on employer's TDS obligation in view of amendment in section 115BAC

Circular No. 04/2023 dated April 5, 2023

CBDT directs employers to seek information from each of its employees regarding their intended tax regime, so as to meet their withholding obligations u/s 192 of the ITA. In absence of intimation by employee, employers are allowed to presume that employees opt to continue in the default tax regime i.e. the new tax regime stipulated u/s 115BAC(1A) of the ITA. It is further clarified that employee's intimation to employer for withholding purpose does not tantamount to exercising option u/s 115BAC (6) of the ITA.

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Important Rulings

Indian Rulings

Fee for providing access to database created from information available under public domain is not taxable as royalty

M/s. UpToDate Inc. Vs. DCIT ITA No.7347/Del/2019, Delhi ITAT

The Taxpayer is a non-resident entity incorporated in the USA and a tax resident of the USA. During the year, taxpayer earned income for providing access to online database to its customers in India but did not offer the same to tax in its return of income. The AO, relying on the decision of Karnataka HC in case of CIT vs. Samsung Electronics Pvt. Ltd. (2011) 16 taxmann.com 141, treated the income received as royalty and taxed at rate of 15% as per Article 12 of India US DTAA. CIT(A) upheld the addition made by the AO.

Before ITAT, the Taxpayer submitted that it had merely collated the information available in public domain to create a database and the only value addition made is analysis, indexing, description, and appending notes for facilitating easy access to the customers.

The customer merely acquires a right to view information online or access the database and there is no transfer or licensing of any right in respect of the database. Further, the judgment of Karnataka HC in case of CIT vs. Samsung Electronics Pvt. Ltd. (supra) has been reversed by the Hon'ble SC in case of Engineering Analysis Centre of Excellence Pvt. Ltd. 432 ITR 471.

Revenue maintained the stand of the AO by submitting that subscription received by the Taxpayer allowing access to the online database amounts to royalty as in the process, the Taxpayer has transferred use or right to use of copyright created by it in the database.

ITAT noted that the content which is put in the database is not created by the Taxpayer but by the third party. The Taxpayer had just picked up content from public domain and created a database. ITAT also observed as per terms of subscription agreement, the customers were only granted access to the contents of the database and were not permitted to copy, print, reproduce, modify, translate, adapt, or create derivative works based upon the licensed products. Also, all the rights, title, and interest in the licensed product, including all copyright and other intellectual property rights under United States of America and international laws treaties, remains with the taxpayer. Thus, ITAT held that since the Appellant was neither the content creator nor had transferred right to use of any copyright to the customers, the amount received by it could not be regarded as royalty under Article 12(3) of the Treaty and cannot be taxed in India in absence of Permanent Establishment.

This decision reinforces the view that unless the taxpayer is content creator, payment for access of database created from information available in public domain cannot be regarded as royalty under the treaty.

Limitation of Benefit clause under India-Mauritius treaty not applicable on grandfathered investments

Bid Services Division (Mauritius) Ltd. [Writ petition no. 713 of 2021 – order dated 08 March 2023]

Taxpayer was a company incorporated in Mauritius and was a tax resident of Mauritius. It was a wholly owned subsidiary of a company incorporated in South Africa. It held a valid TRC. Further, the taxpayer was one of the entities in the Consortium which invested in Mumbai International Airport Limited ('MAIL'). It had subscribed to 27% of the shares of MIAL in a phased manner between 2006

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and 2010. In 2011, taxpayer sold 13.5% of its shareholding to another existing shareholder of MIAL. Taxpayer had earned capital gains from sale of said shares.

The taxpayer believed that the said capital gains are not chargeable to tax in India as per beneficial provisions of Article 13(4) of Indio-Mauritius DTAA ('DTAA') and obtained a 'Nil' withholding tax certificate by filing application under Section 197(1) of the ITA. Further, the taxpayer filed an application under Section 245Q(1) before AAR to determine the correctness of its belief.

AAR denied benefit of DTAA by invoking LOB provision under Article 27A of DTAA, considering that taxpayer is an entity incorporated only two weeks before the bidding for MAIL by the consortium. AAR noted that taxpayer had neither financial nor management capabilities of its own and is therefore interposed only as a device to avoid taxes which would have otherwise been levied under India-South Africa DTAA. The core issue for a consideration before the HC was that whether Article 27A of the DTAA is applicable for investment with effect from 01 April 2017 and not prior to that.

The HC noted that incorporation of SPV is not unusual in corporate transactions, especially considering that the bid documents provided such flexibility. That the taxpayer was brought in for ease of doing business or for operational reasons and to provide supportive business environment. It further observed that the AAR has failed to consider Circular 682 of 1994, 789 of 2000, the Press release with respect to the TRC, the decision in the case of Union of India vs. Azadi Bachao Andolan, the decision in the case of Vodafone Intl. Holding B.V. v. Union of India, the applicability of the LOB clause as well as the Press Releases dated 01 March 2013 and 29 August 2016 which clearly grandfathers investments made before 01 April 2017 by stating that such investments will not be subject to capital gains taxation in India and the investment as well as the sale in the instant case being prior to 01 April 2017. HC observed that the concept of LOB in cases of shell/conduit company would become applicable to investments made on or after 01 April 2017 only.

HC finally quashed the ruling pronounced by AAR and remanded the matter back to be consider afresh and pass Advance ruling (within a period of eight weeks) after considering all relevant aspects as enumerated above.

While the ruling is clarificatory in nature, there may be challenges in executing the order since the matter has been remanded back to AAR- an authority which has been replaced by BAR. The international business community shall await the execution of HC's order.

Delhi HC quashes reassessment proceedings, upholds sanctity of TRC

Blackstone Capital Partners (Singapore) VI FDI Three Pte. Ltd. [WP(C) 2562/2022 – Order dated 30 January 2023]

The Taxpayer, a Singapore resident, acquired equity shares of an Indian company in two tranches in AY 2014-15. The Taxpayer subsequently sold all the equity shares to other parties in India during the AY 2016-17 ('Transaction'). The Taxpayer claimed that the capital gains arising from the aforesaid transfer were not taxable in India by virtue of Article 13(4) of the India-Singapore DTAA and based on the TRC issued by Government of Singapore.

The Revenue authorities, based on information received from TDS Officer of buyer of the shares, issued the notice under section 147 of the Act to initiate reassessment proceedings. Revenue authorities have disregarded the TRC produced by

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the Taxpayer and held the TRC is not sufficient evidence of residency to claim DTAA benefit and the same is not binding of the statutory authorities. Revenue authorities has also stated that the taxpayer failed to satisfy the LOB Test necessary to claim capital gains tax exemption under Article 13(4) of the India-Singapore DTAA. The core issue under consideration before the HC was whether revenue authorities are empowered to go beyond a TRC furnished by the Taxpayer for granting benefit of DTAA. The HC's reasoning on the said issues is summarized below.

- The reason for reopening of assessment by revenue authorities was to verify the nature and genuineness of Transaction. In this regard, the HC held that the return of income had been filed by the Taxpayer within the stipulated time with complete particulars as required, and the timeline for verification and seeking clarifications or additional documents had already expired. In such a case, the order for reopening of assessment was held untenable in law. Hence, recourse to Section 147 to extended time period for verification is illegal. The HC held that while information from third party sources can form a basis for investigation but the decision to reopen assessment has to be of the AO with the independent application of mind and not of the third party. Accordingly, The HC held that issuance of such a notice tantamount to borrowed satisfaction which is legally impermissible.
- The HC held that satisfaction of beneficial ownership was required only qua dividend, interest and royalty. The concept of beneficial ownership under the DTAA was not required for capital gains as at the relevant time, capital gains was to be taxed on the basis of legal ownership and not on the basis of beneficial ownership.
- On perusal of the audited financial statement of the Taxpayer and an independent chartered accountant's certificate, the HC held that the Taxpayer was satisfying the LOB condition provided in amended protocol of the DTAA.
- The HC categorically enunciated that "it is a fundamental rule of international taxation that every nation has a sovereign right to impose tax on the global income of its residents and on income that accrues or arises within its territorial limits", and that the "respondent's attempt in seeking to question the TRC is wholly contrary to the Government of India's repeated assurances to foreign investors." The HC referred to various provisions of the DTAA, Section 90 of the Act, judicial decisions such as UOI Vs. Azadi Bachao Andolan [2003] 263 ITR 706 (SC) and Vodafone International Holdings B.V. vs. UOI and Anr., (2012) 6 SCC 613, CBDT Circulars and Press Release issued by Government of India from time to time to interpret that the Taxpayer was eligible to the benefits of the DTAA. The HC further noted that the TRC is statutorily the only evidence required to be eligible for the benefit under the DTAA and ruled that the tax authorities cannot go behind the TRC issued by the other tax jurisdiction and such an attempt is not tenable in law.

The decision of the HC will give assurance to foreign investors as with the increased expansion of international trade and commerce, the taxation of cross border transactions has been a critical challenge for both Parliament and the Courts. It is common for the tax department to challenge availability of benefit under tax treaty. Nevertheless, the HC noted that the tax department had not been able to prove that the Taxpayer was a tax resident of USA or was

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controlled or managed from the USA entity. The fact that the Taxpayer had maintained appropriate documents and was managed by its board of directors from Singapore worked in its favour.

Receipts from online advertisement not liable to be taxed as Royalty

Google Ireland Ltd. [IT(IT)A No. 2845/Bang/2017 – Order dated 28 February 2023]

Taxpayer had received amounts from sale of online advertisement space through AdWords Program from its related party, Google India Pvt. Ltd. ('GIPL') as well as other advertisers in India, which the tax authorities sought to tax as Royalties.

The Bangalore ITAT has ruled in the favour of Taxpayer holding that the income from sale of online advertisement space cannot be characterised as Royalty was not taxable in India in absence of a PE in India, in light of the provisions of India-Ireland DTAA.

On the issue of withholding tax liability on payments from GIPL to the Taxpayer under the said AdWords Program Distribution Agreement, Bangalore ITAT had recently in 2022 ruled in favour of GIPL [IT(TP)A 1513 to 1516/Bang/2013], holding that the impugned payments made by GIPL to Taxpayer cannot be characterised as Royalty under the IT Act read with Article 12 of India-Ireland DTAA and that the same did not require deduction of tax at source in India. In the present case, the ITAT held that a different treatment cannot be taken in the hands of the Taxpayer and the decision of the co-ordinate bench of the ITAT in the case of payer on withholding tax issue should hold good in the case of recipient as well on taxability of income from the same transaction.

In both cases above, reliance was placed on the SC Decision in the case of Engineering Analysis Centre of Excellence Private Limited (2021) 432 ITR 471 (SC) which held that use of a computer software or a copyrighted article cannot be equated with use or right to use copyrights and that the definition of royalty as per DTAA is restrictive and narrower in scope than the definition as per Section 9(1)(vi) of the IT Act. The ITAT held that mere use of or right to use a computer program without any transfer of underlying copyright will not be satisfying the definition of Royalty and that use of confidential information, software technology, training documents and others were all 'literary work' with copyrights in it owned by the foreign entity and where there was no transfer or license of copyrights in favour of Indian payer, the payments cannot be characterised as 'Royalty' under the DTAA.

Receipts on sale of online advertisement space from other Indian customers was also held as not falling within the definition of royalty and hence not taxable in India relying on various decisions in the case of Yahoo, Pinstorm, Right Florists, Inception Business, Urban Ladder, Myntra Designs, Matrimony, ESPN, etc. Plethora of decisions in this regard may it quite clear that in view of judicial authorities, payments with respect to online advertisement space and like would be covered by equalization levy or any form of tax on digital economy but would be out of the scope of traditional definition of royalties as appearing in current provisions of most of the Indian tax treaties. Additionally, Article 12B of the UN tax model grants new taxing rights to the 'source state' on any income derived from Automated Digital Services. This includes advertising services, digital content services, social media services, etc. None of this, however, is covered under Article 12A and FTS.

Important Rulings

Treaty shopping allegations rejected considering Substance in Singapore, benefit of Article 8 available

Tata NYK Shipping Pte. Ltd. [TS-99-ITAT-2023(DEL) – Order dated 09 March 2023]

The taxpayer engaged in Shipping business was a tax resident of Singapore since its incorporation in 2007. The taxpayer was a JV Company of an Indian and Netherlands Company further owned by Japanese company. It had three types of shipping income from India being shipping within Indian ports, shipping from outside to Indian port and shipping from Indian port to outside India. The taxpayer offered shipping income arising within India to tax u/s 44B of the ITA and claimed exemption under Article 8 of the India-Singapore treaty in respect of other Income i.e., Income from shipping in international traffic.

The order of the AO and TPO was taken up for review by CIT u/s 263 of the ITA based on the view that the assessment order was erroneous and prejudicial to the interest of Revenue. The reasons cited by the CIT for opening the case u/s 263 was as under:

- Back-to-back arrangement to pass the Indian profits to other group entities in the form of lease rental payments was a conduit arrangement
- Singapore company was formed with the ultimate object of treaty shopping
- No commercial rationale on incorporation of taxpayer in Singapore
- The taxpayer was not a tax resident of Singapore, treaty benefit not available
- Control and management of the taxpayer was not established in Singapore
- Taxed inward shipping Income as Royalty income denying benefit of section 44B

The Hon'ble Delhi Tribunal after hearing the contentions of the taxpayer and revenue quashed all contentions of the CIT and set aside the order passed u/s 263 of the ITA. To begin with, the ITAT first held that the CIT cannot enlarge the scope of limited scrutiny where the case of the taxpayer was selected by the AO under the limited scrutiny and thus revisionary order was bad in law.

The ITAT further observed that the taxpayer has continued its business since its incorporation in 2007, has substantial fixed assets in Singapore and Singapore has become major hub for shipping industry across the world. It was held that these were sufficient reasons to not consider the taxpayer as merely a conduit company or established for the sole purpose of tax evasion. Moreover, the revenue cannot step into the shoes of the taxpayer to question the business prudence.

In relation to the argument that the taxpayer was not eligible of treaty benefit as it was not a tax resident of Singapore, the Tribunal held that only on the ground that the shipping income of the taxpayer was exempt in Singapore and thus its income was not liable to tax in Singapore, it cannot be said that the taxpayer is not a resident under Article 4 of the treaty as the treaty does not prescribe the condition of liable to tax for being resident. It further held that there is no material to reveal that control and management of the taxpayer was not in Singapore especially wherein as per the list produced all the key managerial personnel were based in Singapore and were holding Identity Cards issued by the Singapore Government.

Also, the Tribunal noted that there were gross inconsistencies in the approach of the revenue in taxing the three shipping incomes differently. Based on above observations, the revisionary order was quashed, and the AO order was retrieved by the Tribunal. In the current times, the tax offices have started questioning the rationale of the organisation structures with focus on treaty

Important Rulings

shopping practices and thus it becomes more important now that in the tax planning stage, commercial reasons should form the basis for choosing a particular structure and that each company in the structure has sufficient means (substance, office accommodation and personnel) to perform the tasks and duties it is supposed to undertake.

Foreign Ruling

PE cannot be construed merely on appointment of representative and registration of Foreign Company under Japan's Companies Act

Tax Ruling by Japan's National Tax Agency ('NTA') [order dated 08 March 2023]

Creation of PE under the domestic laws of Japan is determined based on various relevant facts and circumstances and registration under Companies Act can also be one of the criteria considered relevant in determining whether or not a foreign entity constitutes PE in Japan. The Tax Ruling therefore clarifies that while this could be a relevant factor, the registration would not automatically result in PE in Japan.

The Company in the present ruling, is an Irish resident and engaged in operation of an online marketplace in Japan. In order to operate the said business, the Company was required to obtain registrations in light of the provisions of Japan's Telecommunications Business Act and Companies Act. The Company appointed an external attorney as its representative for compliance with said registration requirements in Japan and for responding to notice received from Ministry of Justice in this regard.

Japan's NTA observed that the lawyer appointed as a representative was an independent person and that the agreement between the lawyer and the Company clarified that (i) The Company was not authorised to access the premises of the attorney (ii) The attorney was not involved in carrying out any business activity for or on behalf of the Company and had no authority to be involved in the business activities of the Company. Based on the said facts of the case, the NTA held that the registration of the Irish Company in Japan and the appointment of representative did not constitute fixed place PE or dependant agency PE as defined under Article 6 of the Japan-Ireland DTAA.

Indian Updates

Partial relaxation in e- submission of Form 10F by certain taxpayers in accordance with the DGIT(S) Notification No. 3 of 2022

Due to continued practical challenges and to mitigate the genuine hardship, CBDT vide Notification No. 13420 of 2023 has further extended exemption date from 31 March 2023 to 30 September 2023 for mandatory electronic filing of Form 10F by competent authority in cases of NR taxpayers who were not having PAN and not required to have PAN as per relevant provisions of the ITA read with the IT Rules.

However, it has been also clarified that such category of taxpayers shall file Form 10F till 30 September 2023 manually as it was being done prior to issuance of the DGIT(S) Notification No. 3 of 2022.

Change in the tax rates on specified income of non-residents under section 115A of the ITA

The Lok Sabha has passed the Finance Bill, 2023 on 24 March 2023 has brought the following two major changes in the tax rates under Section 115A of the ITA:

1. The 10% special tax rate on royalty income and FTS earned by a non-resident or a foreign company, as mentioned in Section 115(1)(b)(A)/(B), has been increased to 20% and corresponding amendments has also been made in provisions of withholding of taxes.

   The amendment of increasing the tax rate / withholding tax rate on Royalty / FTS under section 115A effectively means (and assumingly intends) that all foreign entities opting for being governed by beneficial provisions of Tax Treaties for Royalty / FTS taxation will now have to file a tax return in India. Seems to have been introduced to allow tax officers a chance to verify the claim / transactions.

   This would also indirectly mean that they will need to obtain a PAN in India (the only possible exception being cases of non-taxability pursuant to tax treaty provisions - tax authorities may possibly require compliance even in such cases). It will also broadly nullify the impact of section 206AA and Rule 37BC in respect of such transactions due to effective requirement of obtaining PAN.

2. A new proviso has been inserted in Section 115(1)(a)(A) to provide that the dividend received from a unit in an IFSC, as referred to in Section 80LA(1A), shall be taxable at 10%. The concessional tax rate of 10% shall be available to a non-resident and a foreign company.

Foreign Updates

IMF releases policy paper on International Corporate Tax Reforms

IMF has released policy paper No. 2023/001 on 06 February 2023 on International Corporate Tax Reforms. Policy concludes that BEPS 2.0 to assist in shaping an international tax system and moderately increasing global tax revenues.

The policy paper indicates that in process of implementation of the BEPS 2.0, countries will require to proceed with introducing amendments to their respective corporate income tax systems and domestic policies. The policy paper also lays out guidance on the implementation of the rules along with a QDMTT.

The World Bank releases Report on the GMT

The World Bank has released a Report on the GMT on 25 January 2023 with respect to policy consideration, implementation options and next steps with respect to Pillar Two.

Important Updates

This report highlights the impact on reallocation of taxing rights and Amount B under Pillar One are expected to benefit developing countries. On the other side, Pillar Two implementation is expected to increase revenues on introduction of a QDMTT. The Report also indicates the developing countries is also require to take consideration of consequences of non-adoption and the interaction of Pillar Two with the United States GILTI rules.

Apart from the above the report also indicates that a country might (i) proceed without amending its tax system; (ii) protect its tax base by introducing a QDMTT and/or reform its tax incentive regime (iii) introduces the IIR and the UTPR or (iv) consider broader reforms of its corporate income tax system.

Spain releases document for public consultation on the implementation of the EU Minimum Tax Directive

The Spanish Ministry of Finance released a public consultation document for implementation Pillar Two GMT Rules on 06 March 2023 in the Spanish tax law.

The document also acknowledges that the Spanish rules transposing the GMT Rules should be implemented before 31 December 2023 and UTPR before 31 December 2023. Further, the provisions implementing the GMT Rules into the Spanish tax law will be applicable in 2024.

Thai Cabinet provides in-principal approval to implementation of GMT Rules under OECD BEPS 2.0 Pillar Two

To align with the OECD BEPS 2.0 Pillar Two Thai cabinet has approved collection of GMT in Thailand on 07 March 2023. The Revenue Department has been assigned for preparation of draft legislation. The legislation will be effective from 2025.

US President releases Budget for FY 2024

The US President has released the budget for FY 2024 on 09 March 2023 announcing several changes to the GILTI regime, including replacing "global averaging" for calculating the US shareholder's GILTI with a jurisdiction-by-jurisdiction calculation and creating a separate FTC limitation for each jurisdiction.

Additionally, taxes paid under an IIR by a foreign parented group would be creditable against any GILTI tax paid by a US domestic corporation that is a member of that group.

Apart from the above BEAT will be replaced with a UTPR described in the OECD Pillar Two Model Rules.

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Important Updates

Notifications issued by CBIC on 28th February 2023		
Notification Number	**Subject**	**Summary**
01/2023 – Central Tax (Rate)	Exemption for Entrance Exam Fee area widened	Exemption which was earlier available to Central and State Education Boards has been extended to the any authority, board, body including National Testing Agency with effect from 1st March 2023.
02/2023 – Central Tax (Rate)	Services by Courts or Tribunals covered under RCM	With effect from 1st March 2023, RCM provisions will be applicable to Service provided by Courts or Tribunals as they apply currently to Central and State Government.
03/2023 – Central Tax (Rate)	GST Rate change for Rab and Pencil Sharpener	GST rate for the following has been changed with effect from 1st March 2023 - • GST rate for Rab if Pre-packaged and Labelled has been changed from 18% to 5% • GST rate for Pencil Sharpener has been changed from 18% to 12%
04/2023 – Central Tax (Rate)	GST applicability on Rab (other than Pre-Packaged and Labelled)	GST is not payable when Rab is sold otherwise (other than Pre-packaged and Labelled), Earlier the same was taxable at 18%.

Notifications issued by CBIC on 31st March 2023		
Notification Number	**Subject**	**Summary**
02/2023 – Central Tax	Reduction in late fee for GSTR4 non-filers	Late fee has been fully waived for Nil GSTR4 and Maximum late fee of Rs.500 is applicable for other than Nil return filers if the returns for FY 17-18 to FY 20-21 are filed between 1st April 2023 to 30th June 2023.
03/2023 – Central Tax	Reactivation allowed for cancelled GSTINs	Taxpayers whose registration was cancelled on or before 31st December 2022 or whose appeal against cancellation was time-barred, may apply for revocation if the returns are furnished and tax is paid along with interest and penalty by 30th June 2023.

Important Updates

Notification Number	Subject	Summary
04/2023 – Central Tax 05/2023 – Central Tax	Biometric Aadhar Authentication for GST Registration in Gujarat	Applicant for registration opting for authentication of Aadhar shall be required to undergo such authentication while submitting application, and based on data analysis and risk parameters may have to provide additional details (currently applicable only in Gujarat – 27/2022-CT)
06/2023 – Central Tax	Deemed withdrawal of best judgement assessment orders even if returns are filed after 30 days of service of notice	The assessment orders issued on or before 28th February 2023 shall be deemed to be withdrawn if the taxpayers file the returns before 30th June along with the payment of tax, interest, and late fees.
07/2023 – Central Tax	Rationalization of Late fee for GSTR9	1. Aggregate Turnover up to 5 Crores – Rs. 50 per day (Rs.25 CGST+ Rs.25 SGST) maximum of 0.02% of Turnover 2. Aggregate Turnover above 5 Crores but up to 20 Crores – Rs. 100 per day (Rs.50 CGST + Rs. 50 SGST) maximum of 0.04% of Turnover
	Amnesty to GSTR9 non-filers	Late fees for filing annual returns for FY 17-18 to FY 21-22 shall be capped at Rs. 20,000 if the returns are filed between 1st April 2023 to 30th June 2023.
08/2023- Central Tax	Reduction in late fee for GSTR10 non-filers	The fees for delay in filing of GSTR10 (Final Return) shall be restricted to Rs. 1,000 if filed between 1st April 2023 to 30th June 2023.
09/2023 – Central Tax	Extension of time limit to GST Officers to issue orders	The time limit for issuance of orders u/s 73(9) for recovery of tax or ITC has been extended as below: • FY 2017-18 – 31st December 2023 • FY 2018-19 – 31st March 2024 • FY 2019-20 – 30th June 2023

Important Updates

Recent Functionalities introduced in GSTN

Transfer of balance in ECL through PMT-09

The GSTN portal has enabled the new functionality to transfer the balance in Electronic Cash Legder available from one GSTIN to another on the same PAN. The same can be accessed from Dashboard > Services > Ledgers > Electronic Cash Ledger. This functionality can be used by GST registered entities who have multiple GSTINs under the same PAN to transfer fund between their own accounts.

HSN Code reporting in e-invoice portal

Going forward, in few weeks' time, E-invoicing System will not accept 4 Digit HSN. The timeframe for preventing the creation of electronic invoices with 4-digit HSN codes will also be announced shortly on GSTN portal. In case the 6-digit HSN code is not available, taxpayer have been advised to raise a ticket at Helpdesk so that it can be included in the system.

Registration of One Person Company

The option for choosing One person company while registering is not notified in CGST/SGST Acts, hence it is not available in GSTN portal as well. For registering of One Person Company, it is advised that in the 'Part B' of GST Registration Form REG-01, applicant may select the option "Others". After selecting option as "Others", the applicant can also mention 'One Person Company' in the text field and follow the remaining steps for normal registration to complete the process.

Important Rulings

Appealable orders would not be implemented till the Tribunal becomes functional

Rochem India Pvt Ltd & Ors vs UOI & Ors, Writ petition no. 10883 of 2019

In order to remove the difficulty arising on the grounds that Appellate Tribunal is not yet constituted, the government on recommendation of GST Council, provided through the CGST (Ninth Removal of Difficulties) order that appeal to tribunal can be provided within three months (six months in case of appeals by Government) from the date of communication of order or the date on which the President or the State president of the Appellate Tribunal enters the office, whichever is later. Consequently, a circular was issued in this regard (Circular No. 132/2/2020 dated 18-03-2020).

The High court observed that the government does not intend that taxpayers are prejudiced for the want of a Tribunal and period of limitation was extended with this intend. That being the position, the writ petitions do not need to remain pending in the court. Therefore, writ petitions were disposed of and the period of filing of Appeal will stand extended as well as the impugned order will not be given effect until two weeks after the period prescribed for filling appeal in Circular dated 10th march 2020 is over.

High Court allows refund application of SEZ for unutilized ITC

SE Forge Ltd vs UOI, R/Special Civil Application no. 16056 of 2022

The company (an SEZ unit) receives supplies from Non SEZ suppliers wherein some suppliers had levied GST. Since the company was an SEZ unit it was not able to utilize the credit which remains unutilized in Electronic Credit Ledger. Hence, the company had filed refund application in form GST RFD-01 for refund of unutilized ITC under the category of 'Export of

Important Rulings

Goods/Services without payment of tax'. The application was rejected on the grounds that supply to SEZ unit is zero rated and the units situated in SEZ are not eligible for refund under section 54. Thereafter, a second refund application was filed which was also rejected and the rejection was confirmed by the commissioner.

The Hon'ble Highcourt of Gujarat allowed refund of SEZ unit under Form GST RFD-01 for unutilized ITC under the category of "Export of Goods and Services without payment of tax" where supplier levied IGST and same was paid by SEZ unit. The department has been directed to refund the amount to company within 8 weeks. However, the company is required to file a specific bond or undertaking stating that if supplier at any point has taken refund which comes to department's notice, the same shall be recovered from the company with interest.

RCM applicability on renting of 'residential dwelling' used as 'guest house' for company employees

Indian Metals and Ferro Alloys Ltd. Order No. 04 / Odisha-AAR/2021-22 / Dated

The company has taken properties on rent in Delhi and Odisha which are meant to provide accommodation and food to its employees who visit the places for official purpose. Hence, the company had raised query regarding whether renting of properties from a registered person as well as unregistered person for use as guest house would amount to Forward Charge Mechanism (FCM) or Reverse Charge Mechanism (RCM).

The AAR observed that the nature of rented properties appeared to be residential property used for commercial purpose. The type or nature or purpose of the use of residential dwelling has not been a condition in the RCM notification. Hence, it was clarified that GST at 18% under RCM will arise on the tenant if he is a registered person under GST.

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RBI Notifications

Financial Action Task Force (FATF) High risk and other monitored jurisdictions – February 24, 2023

Press Release: Press Release: 2022-2023/1814 dated 01 March 2023

Financial Action Task Force (FATF) is an inter-governmental body established in 1989 covering over 200 jurisdictions. The objectives of the FATF are to set standards and promote effective implementation of legal, regulatory and operational measures for combating money laundering, terrorist financing and other related threats to the integrity of the international financial system.

FATF has provided flexibility to jurisdictions not facing immediate deadlines to report progress on a voluntary basis on account of COVID 19 pandemic restrictions in the period from February 2020 to October 2022. The detailed review process was reinitiated in October 2022 and the status report issued on February 24, 2023 has categorized the following jurisdictions under the said two categories:

- High-risk and other monitored jurisdictions
- Jurisdictions under Increased Monitoring

Sr. No.	FATF Jurisdiction	Commonly referred as	Deficiencies & Action Plan	Countries under Surveillance
1	High risk and other monitored jurisdictions	Black List	Countries which have significant strategic deficiencies in their regimes to counter money laundering, terrorist financing, and financing of proliferation. For such countries, FATF calls for its Members to apply enhanced due diligence and in more serious cases, countries are called upon to apply countermeasures to protect the international financial system from the money laundering, terrorist financing, and proliferation financing (ML/TF/PF) risks.	Democratic People's Republic of Korea (DPRK) and Iran New Additions: Myanmar
2	Increased Monitoring	Grey List	Countries which are actively working with the FATF to address strategic deficiencies in their regimes to counter money laundering, terrorist financing, and proliferation financing	Albania, Barbados, Burkina Faso, The Cayman Islands, Democratic Republic of the Congo, Gibraltar, Haiti, Jamaica, Jordan, Mali, Mozambique, Panama, Philippines, Senegal, South Sudan, Syria, Tanzania, Türkiye, Uganda, United Arab Emirates and Yemen. New Additions: South Africa and Nigeria.

SEBI Notifications

Coverage

Framework for Adoption of Cloud Services by SEBI Regulated Entities (REs)

SEBI / HO / ITD / ITD_VAPT / P / CIR / 2023 / 033 dated March 06, 2023

Cloud computing (*meaning delivery of computing services over the internet or a network of remote servers*) is becoming increasingly popular as it offers several benefits like ease of deployment and lower maintenance costs. However, the convenience of keeping data on servers and internet introduces the element of cyber security risks and challenges.

Securities and Exchange Board of India ("SEBI") has introduced a **Cloud Framework** to identify and address the critical risks associated with cloud computing and to establish mandatory control measures that the Regulated Entities ("Res") must implement before adopting cloud services.

The cloud framework is a principle-based framework which covers Governance, Risk and Compliance (GRC), selection of Cloud Service Providers (CSPs), data ownership and data localization and other principles.

REs availing the cloud services currently need to comply with the new cloud framework not later than 12 months from the date of issuance of the framework and also need to provide milestone-based updates as listed below:

Cloud Framework - Milestones	Timelines
Details of the cloud services, if any, currently deployed	Within 1 month of issuance of framework
Submission of Roadmap (including details of major activities, timelines, etc.) for the implementation of the framework.	Within 3 months of issuance of framework
Quarterly progress report as per the roadmap submitted	From 3 to 12 months of issuance of framework
Compliance with respect to the framework to be reported regularly	After 12 months of issuance of framework

Applicability: With immediate effect for any new project of REs

Operational Guidance - Amendment to SEBI Buy Back Regulations

SEBI / HO / CFD / PoD-2 / P / CIR / 2023 / 35 dated March 08, 2023

SEBI has tightened the rules for buyback of shares through stock exchange route with the objective to introduce greater transparency and prevent manipulations in the buy-back process.

Regulation 16 (vi) of the Buy- back regulations amended so as to restrict companies undertaking buy back through stock exchange route on certain criteria, such as placement of bids, price and volume, details of which are provided below:

- The company shall not purchase more than 25% of the average daily trading volume (in value) of its shares in the ten trading days preceding the day on which such purchases are made.

SEBI Notifications

- The company shall not place bids in the pre-open market, first thirty minutes and the last thirty minutes of the regular trading session.
- The company's purchase order price should be within the range of ±1% from the last traded price.

Regulation 9 (xi) (c) and Regulation 20 (ii) of the Buy-back Regulations amended for margin requirements for deposits in Escrow accounts (which consists of cash and/or other than the cash portions):

- The portion of escrow account in the form of other than the cash shall be subject to appropriate haircut, as per SEBI Master Circular for Stock Exchange and Clearing Corporations dated July 05, 2021, as amended from time to time.
- Merchant banker (*appointed for the buy back*) to ensure that adequate amount, after the applicable haircut is available in the Escrow account/(s) till the completion of all formalities of buy back.

Applicability: With effect from March 09, 2023

Common and simplified norms for processing investor's service requests by Registrar to an Issue and Share Transfer Agent (RTAs) and norms for furnishing PAN and KYC details

SEBI / HO / MIRSD / MIRSD-PoD-1 / P / CIR / 2023 / 37 dated March 16, 2023

To further enhance ease of doing business by investors in the securities market, SEBI has mandated **furnishing of PAN, KYC details and nomination for all Holders of physical securities**.

For Holders who do not have such information available on or after October 01, 2023, will have their folios frozen by the Registrar to an Issue and Share Transfer Agent [RTA] appointed by the Company.

Security holder(s) whose folio(s) shall be frozen, will still be eligible:

1) to lodge grievance or avail any service request only after furnishing the complete documents/ details; and
2) for Dividend/interest/redemption payment only through e-mode with effect from April 01, 2024.

The frozen folios shall be referred by the RTA / listed company to the administering authority if they continue to remain frozen as on December 31, 2025.

In relation to service requests, self-attested copies of documents will be accepted by the RTA by way of in person verification or post or electronic mode for processing of service requests.

Applicability: Effective from April 01, 2023

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Abbreviations

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
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
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 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
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
LOB	Limitation of Benefit
LODR	Listing Obligations and Disclosure Requirements
LTA	Leave Travel Allowance
LTC	Lower TDS Certificate

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

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