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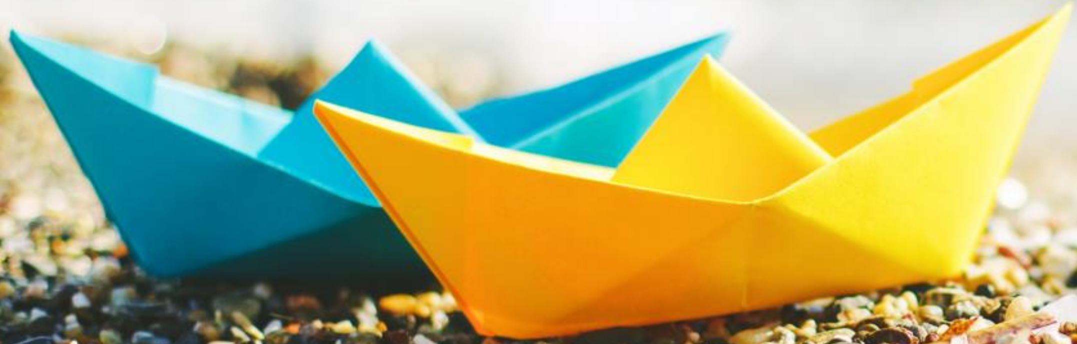
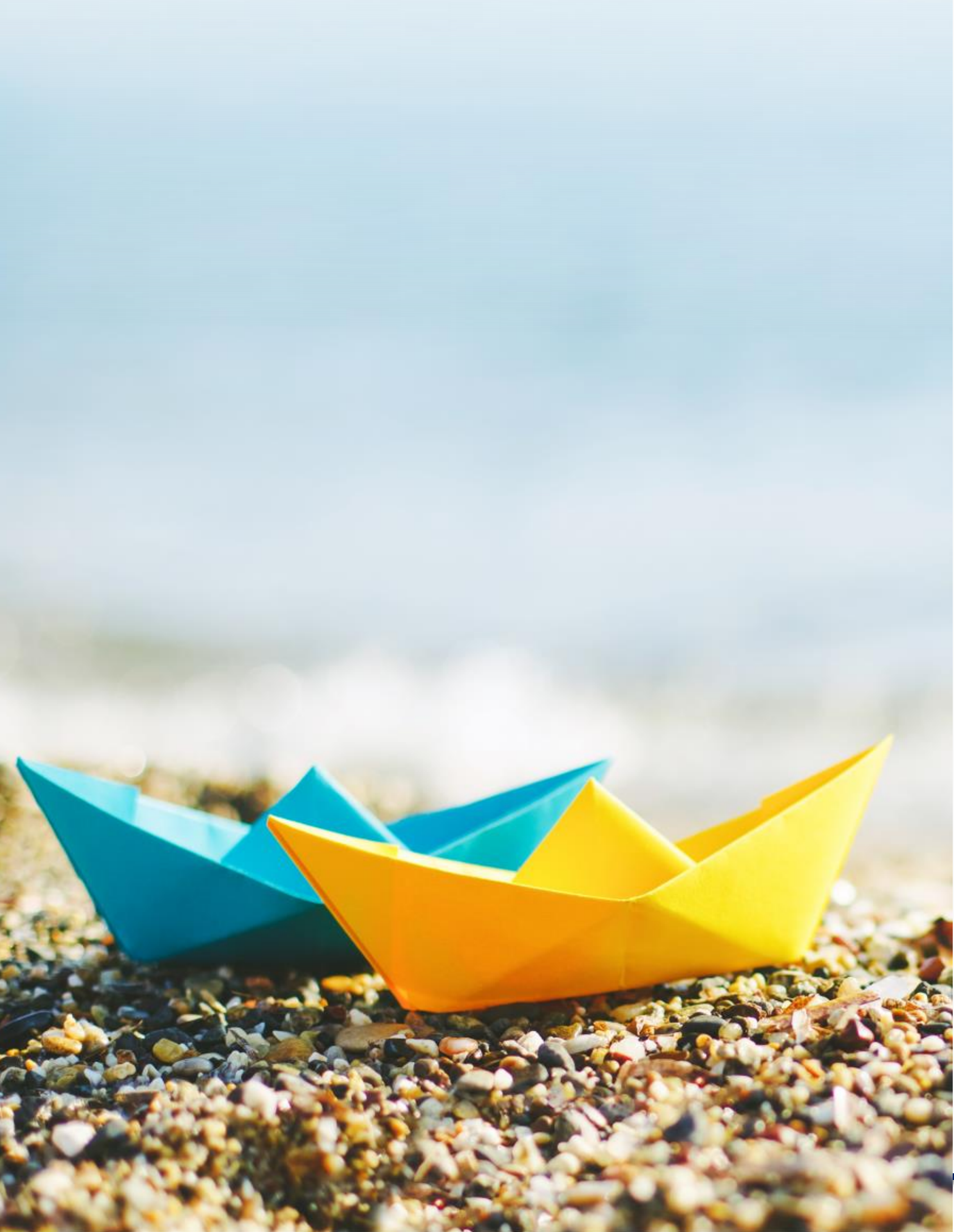


April 2023



Dear Reader,

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

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

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Key Protective Terms in Shareholders Agreement

Introduction

We frequently come across jargons such as anti-dilutive provisions, right of first offer, right of first refusal, tag along right, drag along right and so on while negotiating a shareholders' agreement. These are some of the protective transfer provisions agreed among shareholders either in a strategic partnership (joint venture) or financial investment by private equity and/or venture capital investors.

To explain these provisions, we will take an example of a Joint Venture (JV). Party A and Party B enter into a JV agreement with an initial stake of 70% and 30% respectively. The JV agreement has a lock-in period of 5 years, this is the period during which no Party can exit the JV. The exit window for any shareholder would open only at the end of the lock-in period, wherein a Party can either buy out the stake of another Party or sell stake to a third party (not a competitor).

Let us understand some of these terms and the role it plays in determining the JV partners' rights:

1. **Right of First Offer (ROFO)**

   This refers to the right of non-selling shareholders to make a fair offer to the selling shareholders before the selling shareholders can solicit any third-party offer. However, the selling shareholder must accept or reject the offer giving reasonable explanation to the non-selling shareholders. The benefit of ROFO is that the selling shareholder can save on the cost and time it takes to find a third party to sell their stake. It also makes it easy for the non-selling shareholders for business control and continuity by preventing the entry of a third party. Where a selling shareholder has insights into the business value, it is better positioned to value its investment.

   In our above example, if Party B is willing to sell the shares after the lock-in period, then it has to make an offer to Party A for buying the sale shares before approaching any third party. This is the ROFO available with Party A.

2. **Right of First Refusal (ROFR)**

   This refers to the right to non-selling shareholders to either accept or refuse an offer from the selling shareholder after the selling shareholder has received a third party offer for its stake. Third party buyers are generally reluctant to spend time negotiating a transaction when the shares are subject to a ROFR. The non-selling shareholder has no pressure to come up with an offer as ROFR only gets triggered once the selling shareholder has an offer for its stake from a third party. Where a selling shareholder lacks insight into the business value, it may be advantageous to negotiate a ROFR to ensure it gets the best value for its investment upon exit. For the continuing shareholders, it gives them an opportunity to gain more control over the business.

   In our example, assuming that Party A does not exercise its ROFO and if Party B approaches a third party for sale of its shares or if a third party directly approaches Party B for purchasing its stake, then Party B will have to provide the same offer received from the third party to Party A to purchase the sale shares offered by Party B to the third party. This indicates the ROFR available with Party A.

Key Protective Terms in Shareholders Agreement

3. Pre-emptive Right

This refers to legal relationships either created by a statute or through contract. In India, the statutory pre-emptive rights of a shareholder in a company have been recognized statutorily through the Companies Act 2013, as well as by the security exchange laws. Whereas, in the case of contractual pre-emptive rights, these are enforced as per the Indian Contract Act 1872. By exercise of these rights, priority is given to the shareholders of a company whereby additional shares shall not be issued by the company to a third party, without the issue shares being first offered to its existing shareholders or the shareholders having such pre-emptive rights.

Pre-emptive right protects the voting power of shareholders as their exiting ownership stake gets diluted when additional shares are issued by the company. For a company, it becomes easier to raise funds from existing investors as they are already familiar with the company, leading to savings in the cost of due diligence and delays in negotiations with new investors.

4. Anti-dilutive Protection

When additional shares are issued by a company, the proportion of the shareholding of existing shareholders falls if the existing shareholders do not subscribe to further shares. When such issue of additional shares is done at a price per share higher than what the existing shareholders had invested at, while the % stake gets diluted the overall equity value still increases. However, if the additional share issue takes place at a price lower than the price at which existing shareholders had invested, it would reduce (i.e., dilute) the equity value.

Anti-dilutive protection based on share price protects the equity value from eroding by preventing any further issue of shares at a price of shares last issued. In case a subsequent issue happens at a price lower than the last round, then the investors of the last round get additional proportionate shares to compensate for the loss of value. This protection is generally sought by early-stage private equity and venture capital investors in startups and high growth companies.

5. Tag Along Right

Tag along rights also referred to as "co-sale rights," are contractual obligations used to protect a minority shareholder when a majority shareholder sells its stake. The minority shareholder can join the sale transaction initiated by the majority shareholder and sell its stake in the company along with the majority shareholder to a third party. Tag along right allows the minority shareholder to sell its stake either in full or in proportion to the majority shareholder in the event of a transaction between the majority shareholder and a third party.

Tag along right effectively obliges the majority shareholder to include the holdings of the minority shareholder in negotiations with a third party whereby all the existing shareholders get an equal opportunity to exit. The minority shareholder gets the same price and conditions of sale as the majority shareholder.

In the above example, if Party A (i.e., majority shareholder) wishes to sell its shares to a third party, then Party B (i.e., minority

Key Protective Terms in Shareholders Agreement

shareholder) would ask for a tag along right while negotiating the JV agreement. The third-party buyer will be obliged to buy shares of both Party A and Party B either in full or in the agreed proportion.

6. **Drag Along Right**

   This right in a shareholders' agreement enables a majority shareholder to force a minority shareholder to join the sale initiated by the majority shareholder. The minority shareholder shall be entitled to the same price, terms and conditions as the majority shareholder. The buyer only has to negotiate and agree with the majority shareholders of the company, which makes 100% equity acquisition of a company faster and easier.

   In our example, if Party A (i.e., majority shareholder) wishes to sell its entire stake to a third party and the buyer wishes to acquire 100% stake in the company, then Party A can drag along Party B (i.e., minority shareholder) to sell its entire stake on same terms as applicable to Party A.

Conclusion

These share transfer restrictions cum protective provisions are gaining more importance and relevance with the increase in M&A and PE/VC transactions over the last few decades. Having these provisions in the shareholders' agreement can play a significant role in defining smooth operations of business as well as ensuring an amicable exit for shareholders partnering together.

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

Important Rulings

Capital Gains taxation provisions for NR u/s 112 shall prevail over provisions u/s 48

Legatum Ventures Limited v. ACIT ITA no.1627 / Mum / 2022, Mumbai ITAT

The Taxpayer, a foreign company, had sold shares of an unlisted company in India, during the year under consideration. For computing capital gains, the Taxpayer had converted sale consideration and cost of acquisition of such shares in foreign currency as per the first proviso to Section 48 of the ITA, which resulted in long term capital loss. The Taxpayer carried forward the said loss to the subsequent year in its return of income. However, the AO was of the view that since the Taxpayer is a foreign company and had sold unlisted shares of Indian company, provision of section 112(1)(c)(iii) should be applied for computing capital gains, without giving effect to the 1st and 2nd proviso to section 48 of the ITA.

The Taxpayer has argued that provision of section 112(1)(c)(iii) can be invoked when total income includes any long capital gain arising from transfer from sale of unlisted securities. However, for computing total income such capital gain/loss has to be computed by applying the mechanism provided u/s 48 of the ITA, which is after giving effect to exchange fluctuation benefit as provided in 1st proviso to section 48. Since the said computation results in long term capital loss, section 112(1)(c)(iii), which provides for rate of tax to be apply without giving benefit of such provisos, is not applicable.

The AO disagreed with the Taxpayer's contentions and relied on earlier decisions of SC, wherein it was held that the term 'income' includes loss. Further, AO contended that since section 112(1)(c)(iii) are special provisions applicable in special circumstances, Taxpayer does not have any option to choose provisions of section 48 over the special provisions. The Taxpayer filed objections before DRP against the draft assessment order, which were rejected.

ITAT observed that although section 112 of the ITA deals with determination of tax payable on income arising from the transfer of a long-term capital asset, section 112(1)(c)(iii) also provides the mode of computation of capital gains, which is, without giving effect to 1st and 2nd proviso to section 48 of the ITA. Therefore, section 112(1)(c)(iii) is special provision for computation of capital gains in case of non-resident from unlisted shares/securities whereas section 48 is general provision which deals with mode of computation of capital gains in all cases of transfer of capital assets. Further, section 112(1)(c)(iii) does not provide for re-computation of capital gains for levying tax rate of 10%.

ITAT noted if a special provision is made for a certain matter, that matter is excluded from general provision. Further, if in an enactment, two provisions exist, which cannot be reconciled with each other, they should be so interpreted that if possible, effect should be given to both. ITAT also observed that if the argument of Taxpayer is accepted, then it would render the computation mechanism u/s 112(1)(c)(iii) of the ITA completely otiose and redundant. In view of the above, ITAT dismissed the appeal of the Taxpayer.

While rendering the decision, it should have been noted that the provisions of Section 112 are relevant only for 'Tax on long-term capital gains' under Chapter XII titled 'Determination of tax in certain cases', and these provisions cannot extend to 'Computation of income' under 'Capital Gains' for which there are specific provisions under section 48. On the other hand, the provisions of Section 48 deal with the quantification of income under the head 'Capital Gains'. It would be interesting to see how the courts will consider the matter where effect to both of such provisions can be given.

Penalty u/s 271C cannot be levied on failure to pay TDS within time

M/s US Technologies International Pvt. Ltd. v. CIT, Civil Appeal No. 7934 of 2011 & Nos. 1258-1260 of 2019, Apex Court of India

The Taxpayer is a company engaged in software development business. In a survey conducted by Revenue at Taxpayer's premises, it was noticed that the Taxpayer had deducted TDS on certain payments but did not deposit same within the prescribed time limit. Additional CIT levied penalty u/s 271C(1)(a) of the ITA, which was confirmed by the HC.

The issue came up for hearing before the SC.

Before the SC, Learned AR on behalf of the Taxpayer contended that the provisions of section 271C apply when there is a failure to deduct tax at source, but in the given case, there is late remittance of TDS and not non-deduction of TDS. It was further argued that section 276B of the ITA provides for prosecution consequences in case of failure to pay TDS within time. The words 'fails to pay' as appearing in section 276B are missing in section 271C. Without prejudice, the delay in remittance of TDS was on account of reasonable cause and hence as per Section 273B of the ITA, no penalty should be imposed.

On the other hand, Revenue, relying on CBDT Circular 551 of 1998, contended that object of insertion of section 271C seems to be that over and above prosecution, person who has deducted TDS but not remitted to Government shall also be liable to pay penalty.

SC held that the provisions of section 271C(1)(a) of the ITA are noticeably clear, the relevant words used are 'fails to deduct' and not belated remittance of TDS. As per settled position of law, the penal provision is to be construed strictly and literally. SC noted that wherever the Legislature wanted to have the consequences of non-payment and/or belated remittance/payment of the TDS, the Legislature has provided the same like in Section 201(1A) and Section 276B of the ITA. Further SC also remarked that the Circular referred by the Revenue in fact favors the Taxpayer. Hence, Penalty u/s 271C of the ITA cannot be levied on mere delay in deposition of TDS with the Government.

SC, vide this decision, have again reinforced the cardinal principle that penal provisions are to be read as they are and nothing is to be added or taken out of such provisions.

Section 263 of the ITA can be invoked when two views are not possible on the matter involved

CIT v. M/s. Paville Projects Pvt. Ltd. Civil Appeal No. 6126 of 2021, SC

The Taxpayer was engaged in the business of manufacturing and export of garments, shoes etc. During the year under consideration, it had sold immovable property 'Paville House' for an amount of Rs. 33 crores. However, on account of some litigation between shareholders who were also family members, an interim award was passed for family settlement in arbitration proceedings. Amount of Rs. 31.05 crores paid as per family settlement, was considered as cost of

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improvement, on the ground that it was paid to remove encumbrances. The balance amount of Rs. 1.2 crores were offered to tax as capital gains in the return of income.

The assessment was completed by AO u/s 143(3) of the ITA wherein computation of the said long term capital gains was accepted.

However, according to the CIT, assessment order was erroneous and prejudicial to interest of revenue on the issue of deduction of Rs. 31.05 crores as cost of improvement. According to him, the said expenditure neither constituted expenditure that is capital in nature nor resulted in any additions/alterations that provide an enhanced value of an enduring nature. CIT set aside the assessment order with a direction to AO to recompute the capital gains in consonance with the provisions of ITA.

The Taxpayer approached the ITAT against the order passed u/s 263 of the ITA. ITAT decided matter in favour of Taxpayer by observing that every loss of revenue cannot be treated as prejudicial to interest of Revenue, particularly, when two views are possible. Department's Appeal before the HC was dismissed. Matter came up for hearing before SC.

SC held that Section 263 gets attracted only when the twin conditions are satisfied namely i) the order of AO sought to be revised is erroneous and ii) it is prejudicial to the interest of the Revenue. If any one of them is not satisfied, then order u/s 263 of the ITA cannot be passed.

SC also placed reliance on its decision in case of Malabar Industrial Co. Ltd. Vs. CIT [(2000) 2 SCC 718: (2000) 243 ITR 83] wherein it was observed that the phrase "prejudicial to the interests of the Revenue" includes the situation where due to an erroneous order of the Income Tax Officer, the Revenue is losing tax lawfully payable by a person. However, only in a case where two views are possible and the AO has adopted one view, such a decision, which might be plausible and it has resulted in loss of Revenue, such an order is not revisable under Section 263.

Applying the ratio of this decision, SC held that in the given case, on perusal of assessment order and order of CIT, the order passed by AO is not only erroneous but also prejudicial to interest of Revenue. In view of the same, SC restored the order passed by CIT u/s 263 of the ITA.

It is important to note that the SC did follow and confirm the rationale as held in earlier case in Malabar Industrial Co Ltd (supra). However, the Hon'ble Court merely relied on the orders of lower authorities and did not independently examine and explain as to how two views on the issue involved were not possible.

Meaning of term 'education' as laid down by SC in New Noble Educational Society applicable retrospectively

DCIT v. Gujarat Council of Science City, ITA No. 2405/Ahd/2017, ITA No. 260/Ahd/2018 & ITA No.306/Ahd/2019, Ahmedabad ITAT

The Taxpayer is registered under the Society Registration Act for advancement and promotion of science and technology by developing science city projects and to undertake/encourage research & training in various science activities.

The Taxpayer contended that it is carrying out activities in nature of imparting education u/s 2(15) of the ITA. However, the AO rejected such claim by holding that the word 'education' used in section 2(15) of the ITA includes only systematic method of training through well-

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defined pedagogical method and hence the advancement & promotion of science and technology per se could not be treated as education.

Thereafter, the AO held that the nature of activities carried out by the Taxpayer were for advancement of any other object of general public utility and since it was charging fees for various services rendered, it was carrying on such activity in nature of trade, commerce, and business. Therefore, the AO held that the Taxpayer is not entitled to claim exemption of income u/s 11 and 12 of the ITA. CIT(A) decided in favour of the Taxpayer and the matter reached to ITAT.

Before the ITAT, the Taxpayer contended that the narrower meaning to term 'education' as interpreted by SC in case of New Noble Education Society was in context of section 10(23C)(vi) of the ITA wherein the term 'education' was interpreted along with term 'solely'. The said interpretation would not apply to cases where exemption is claimed u/s 11/12 of the ITA. Even otherwise, the law as laid down in the said judgement was operative prospectively. Alternatively, if activities of Taxpayer qualify as general public utility activities, first proviso to section 2(15) does not apply since activities were not carried in commercial manner as per principles laid down by Apex Court in case of Ahmedabad Urban Development Authority. The Taxpayer argued that charging the amount towards consideration which is on cost-to-cost basis or nominally above cost cannot be treated as trade, commerce, and business.

After considering the rival submissions, ITAT held that Apex Court in case of New Noble Educational Society, gave narrow meaning to the term "Education" for the purpose of section 2(15) of the ITA. Therefore, the contention of Taxpayer was rejected. Further, the prospective operation as per order of Apex Court was only for the term 'solely' and not for the meaning given to the term 'education'.

Lastly, in order to decide whether the activity of general public utility qualify as commercial in nature, ITAT restored the matter back to the AO as per the guidelines laid down by Apex Court in case of AUDA.

Hon'ble ITAT has very precisely laid down that the prospective operation as per order of Apex Court was only for term 'solely' and not for term 'education'. This would significantly impact several cases where benefit u/s 11/12 is claimed considering the activity carried out by the trusts/institutions as 'education' u/s 2(15) of the ITA.

Taxpayer cannot be treated as 'assessee-in-default' if NR Recipient is held taxable in future assessment proceedings

Van Oord ACZ Pvt. Ltd. v. CIT, Civil Appeal No. 5088/2011, SC

The Taxpayer is a wholly owned subsidiary of foreign company, Van Oord ACZ Marine Contractors (hereinafter referred to as "VOAMC"). The Taxpayer had reimbursed the cost relating to mobilization and demobilization cost which were incurred by the holding company on its behalf.

In order to determine the applicability of TDS liability, the Taxpayer had filed an application with AO for issuing nil tax withholding certificate in respect of reimbursement on the ground that amount represented pure reimbursement of expenses and thus, there was no income liable to tax in India in hands of VOAMC.

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However, AO held that the reimbursement of expense is liable to tax in India and determined 11 % of the amount paid as the profit arising to VOAMC in India and directed the Taxpayer to deduct tax at source on the above basis. The Taxpayer deducted the tax at source on payments made to VOAMC accordingly. VOAMC filed return of income and was refunded the tax deducted at source by the Taxpayer.

However, the AO while passing the assessment order u/s 143(3) of the ITA, disallowed the amount reimbursed to VOAMC by invoking the provisions of Section 40(a)(i) of the ITA, on the ground that the Taxpayer had defaulted in deducting tax at source u/s 195 of the ITA, while making payment to VOAMC. CIT(A) and ITAT upheld the disallowance made by AO.

HC observed that order of AO u/s 195(2) of the ITA is tentative in nature. In the assessment proceedings, if it is found that Taxpayer was required to deduct tax at source, Taxpayer cannot argue that amount paid to recipient is not chargeable under the provisions of the ITA. If assessment proceedings in case of VOAMC are reopened and it is determined that the VOAMC is chargeable to tax in India, then the Taxpayer would be treated as assessee-in-default which would attract the consequences of Section 40(a)(i) of the ITA.

Taxpayer filed appeal before the SC against the aforesaid observation of the HC.

SC held that the said observation of HC is based on surmises and conjectures. SC further holds that once the Taxpayer are held not liable to deduct tax at source at all, merely because subsequently the foreign company VOAMC is held liable to be taxed in India, the Taxpayer cannot be treated as assessee in default.

Scope of assessment proceedings in absence of incriminating material

PCIT – 3, v. Abhisar Buildwell Private Limited, CA No. 6580 of 2021, Supreme Court

Time and again various HCs including jurisdictional HC in case of Saumya Construction (TA 24 of 2016) and one of the lead judgments by Delhi HC in case of Kabul Chawla (TA 707,709&713 of 2014) have held that where assessment is completed, the jurisdiction of the department to assess total income shall be subject to finding of any incriminating material during the course of search. The HC observed that intention of legislature is to provide authority to the AO to make assessment and tax undisclosed income found during search. It was therefore held that assessment has to be on the basis of material collected during the search and if no material is found during the course of search, then assessment which had earlier attained finality cannot be disturbed.

The department preferred appeal against the order of HCs to determine the scope of assessment u/s 153A. The contention of revenue was that section 153A provides for assessment of total income including all the income irrespective of the source from which it is derived. It was further contended that the scheme of assessing only undisclosed income was done away when the new provisions of search assessment were introduced against the concept of block assessment wherein two parallel and independent assessments in respect of undisclosed income and regular income was undertaken by the AO. Thus, revenue harped on the term "total income" as used in section 153A to empower the AO to conduct assessment and make addition de hors

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any material found during the search proceedings.

The SC upheld the findings of Delhi HC and Gujarat HC in case of Kabul Chawla and Saumya Construction that no addition can be made in respect of completed assessment in absence of any incriminating material. The SC observed that section 158BA envisaged two parallel assessments to assess undisclosed income and regular assessment wherein undisclosed income was charged to tax at special rates. On the contrary, provisions of section 153A were introduced to detect undisclosed income by giving extraordinary power to undertake search / seizure. The SC further held that AO gets jurisdiction to assess total income for six assessment years but as per second proviso to section 153A which provides for abatement of pending assessment, the AO would be entitled to assess total income in respect of such abated assessment. It was therefore concluded that there was no intention of the legislature to re-open concluded / unabated assessment so as to recompute the total income in absence of any incriminating material.

Expanding scope of assessing income of any other person

ITO v. Vikram Sujitkumar Bhatia, CA 911 of 2022, Supreme Court and ACIT v. Shruti Bhamasha Shah, CA 2743 of 2023, Supreme Court

The issue before the SC was to decide applicability of amendment brought to the provisions of section 153C of the ITA to search conducted prior to 01.06.2015.

As per pre-amended provisions, the AO had jurisdiction to assess income of the person other than the person on whom search was conducted if the AO is satisfied that any money, bullion, jewellery, books of accounts or documents or any other valuable article or thing belongs to other person.

The Delhi HC in case of Pepsico India Holdings Pvt Ltd (WP 414, 566 to 567 and 572 to 574 of 2014) has held that belongs to is narrower term as compared to the term relates to or refers to and only on the basis of searched documents which refers or relates to other person does not satisfy the conditions for invoking provisions of section 153C thereby assess income of any other person.

Accordingly, section 153C was amended w.e.f 01.06.2015 so as to justify its true intention and thereby covering and assessing income of any other person in relation to whom any books of accounts or documents are found during the course of search.

The HC held that provisions of section 153C are machinery provision to assess income of any other person, amendment brought in same would not apply retrospectively i.e. to the searches conducted before the date of amendment. It was also observed that the amendment to section 153C would widen the scope of persons assessable u/s 153C and thereby affect the substantive rights of such persons. The findings of HC were supported by the decision of SC in case of Controller of Estate Duty vs. M A Merchant (CA 2-4 of 1975) and CBDT circular no. 2 of 2018 dated 15.02.2018 which provides for applicability of amendment u/s 153A from date of search.

The Revenue by relying on the decision in case of Shamrao V. Parulekar Vs. District Magistrate (Petition No. 86, 147 and 155 of 1952) contended that the substitution has effect of wiping off the original provisions as if such

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provision never existed. Further, the amendment was brought to defeat the mischief noticed by Delhi HC and justify the legislative intend of bringing other persons to taxing statues, if any books of accounts or documents relating to such person is found during the course of search.

The SC observed that the narrow meaning given to the term "belongs to" resulted into setting aside of the assessment proceedings though incriminating material pertaining to third party were found which debar the very purpose of section 153C. The SC relied on the decision of Shamrao V Parulekar and held that amended provisions were replaced by the unamended provisions and would apply from its initiation. Accordingly, it was held that amendment brought to section 153C would apply to search conducted before 01.06.2015.

Important Updates

Cost Inflation Index for A.Y.24-25 notified by the CBDT

Notification No. 21 / 2023 / F. No. 370142 / 5 / 2023-TPL dated April 10, 2023

Cost inflation index relevant to A.Y. 2024-25 has been notified as '348' for computation of indexed cost of acquisition to determine the capital gains on transfer of long-term capital assets.

Mahila Samman Savings Certificate, 2023 rolled out by the Central Government

Notification No. G.S.R. 237(E) [F. No. 1/3/2023-NS], dated March 31, 2023

The Central Government has announced the Mahila Samman Savings Certificate, 2023, as another savings programme to encourage women to save money. Procedures regarding opening of account, making deposits, Interest rates, Maturity payments, withdrawals and premature closure of account have been laid down by the government.

CBDT notifies introduces e-filing of Forms 15C/15D and instructions for the same

Notification No. 01 / 2023 F. No. Pro DGIT(S)CPC(TDS) / NOTIFICATION / 2022-23 dated March 29, 2023

As per section 195(3) read with Rule 29B, a banking company/insurer or any other person who carries on business or profession in India through a branch can apply for nil TDS certificate to Assessing officer in Form 15C/15D. Now, the CBDT has specified the procedure, format, and standard for filing of such Form 15C and Form 15D electronically through TRACES portal with effect from April 1, 2023.

Taxpayers shall have to log on to the TRACES portal by either Digital signature, E-Verification Code, AADHAR based Authentication or Mobile OTP. However, only Digital Signatures are permitted for applicants accessing the TRACES portal from outside of India.

The applicant may also monitor the application status under the 'Statements/Forms' Tab. The

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generated certificates shall be available for download to the applicant on their TRACES login. There are detailed provisions regarding assignment of applications, processing, role of Range Heads and CIT in the notification.

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

Important Rulings

Coverage

Indian Rulings

DDT cannot be restricted to more beneficial rates specified under DTAA for Dividends

DCIT. v. Total Oil India Pvt Ltd, ITA No. 6997/Mum/2019, Mumbai Special Bench

The Taxpayer, an Indian Company, had distributed dividends to its shareholders who were tax residents of France. The Taxpayer sought to pay DDT u/s 115-O of the ITA at reduced rate of 10% as specified under Article 11(2) of the Indo-French DTAA with respect to Dividends.

The major contentions of the Taxpayer were as below:

- DDT is in nature of 'additional tax', which is covered within the definition of 'Tax' u/s 2(43) of the ITA. As per section 4, income tax including additional income tax is chargeable in accordance with and subject to the provisions of the ITA, which include provisions of section 90 of the ITA.
- The charge of additional tax u/s. 115-O, referred to as tax on distributed profits is in the nature of tax on income by way of dividend income of the shareholders and not in the nature of tax on profits of the company.
- Reliance was placed on decisions of Delhi ITAT in the case of Giesecke & Devrient India Pvt Ltd. 120 taxmann.com 338 and Kolkata ITAT in the case of DCIT vs Indian Oil Petronas Pvt Ltd. 127 taxmann.com 389, wherein it was held that DDT u/s 115-O of the Act is in essence, a tax on dividend income of the shareholders and hence the rate of tax mentioned in DTAA with respect to Dividends should prevail.
- Reliance was also placed on decision of Apex Court in case of Tata Tea Company Ltd. 85 taxmann.com 346 wherein DDT u/s 115-O of the Act was held to be constitutionally valid holding the principle that it was a tax on dividend income.
- References were also drawn to Memorandum of Finance Bill 1997 and Circular No.763 dated 18/02/1998 stating that introduction of levy of DDT on distributing company was merely for administrative convenience to facilitate collection of taxes and was introduced in lieu of tax on shareholders.

The key arguments of Revenue were as below:

- Section 115-O of the ITA is not a procedural section but is a separate charging section and hence, it takes no support from section 4 of the ITA and instead prevails over general charge of Section 4 due to its non-obstante provisions.
- References were drawn to the FM speech in Parliament in 1997, stating that section 115-O was introduced with an intention to discourage distribution of exorbitant dividends which were ploughed back as fresh investments and to encourage retention of profits by the companies.
- Dividend income accrues or arises to shareholders u/s 9(1)(v) at a later point in time and liability to pay DDT crystalizes at a preceding event of declaration of dividends. At the time of declaration of dividends (especially in the case of interim dividends), only the class of shareholders is identified and not a specific shareholder.
- Reliance was placed on the decision of SC in case of Godrej and Boyce Manufacturing Co. Ltd. 81 taxmann.com 111, wherein it was held that disallowance under section 14A was applicable in case of Taxpayer earning dividend income, which is exempt from tax u/s 10 in its hands, and dividend income has suffered tax in hands of the company distributing dividends u/s 115-O of the Act is not relevant.
- 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. When the taxes are paid by the resident of India, in respect of its own liability in India, such taxation in India, cannot be protected by a tax treaty, unless a specific provision exists in the related tax treaty to that effect as in case of India-Hungary DTAA.

Considering the rival submissions, the Special Bench decided in favour of revenue, holding as below:

- Out of the two modes of taxing dividend income (i) classical/progressive system of taxing dividends in the hands of shareholders and (ii) simplistic system of taxing company distributing the dividends and exempting the shareholders, India has chosen to levy tax under simplistic system, which is additional tax on the company itself and not a tax on shareholders.
- The non-obstante clause in section 115-O is an indication that the charge under the said section is independent and divorced from the concept of 'total income' under the ITA and overrides the other provisions of the ITA, including section 4.
- SC decision in case of Tata Tea cannot be relied upon since it dealt with constitutional validity and not on nature of income. Judicial precedent is only an authority for what it actually decides and not what may come to follow from some observations which find place therein.
- Reliance placed on SC decision in case of Godrej & Boyce Mfg Co Ltd holding that DDT is not payment on behalf of the shareholder by the domestic company. ITAT also upheld the reliance placed by Revenue authorities on the decision of Bombay HC in case of Small Industries Development Bank of India (SIDBI) which states that charge u/s 115-O is on company's profits and not income in hands of shareholder.
- Chapter XII D is the complete code in itself, devoid of provisions of Total Income and charging provisions of Section 4 of the ITA. DDT is charged to tax on profits of the company and not charge in hands of shareholder. Since DDT is tax not on shareholder but on profits distributed by company, there is no double taxation of the same income and therefore the benefit of reduced rate as specified in the DTAA between India and France cannot be availed.

ITAT remarked that the sovereign and the country of residence of shareholders can specifically agree to provide relief from DDT or extend the protection to its residents as in case of India-Hungary DTAA.

The decision revolves more around the interpretations under the domestic laws of India and does not focus much on the interplay of DTAA and domestic laws and on treaty obligations being impacted by unilateral acts of a country.

It is arguable that DTAA with France provides the rate of tax on divided in case of payment to non-resident where the divided has been paid by the company resident in India. It does not specify whether it is taxable in the hands of such non-resident in India. It would be interesting to see how the higher courts deal with such matters considering the more interpretive provision of DTAA.

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

UK Grid Solution Limited [ITA No. 2087/Del/2022 – Order dated 12 April 2023]

Taxpayer is a company incorporated in and a tax resident of UK. It is a part of General Electrics group engaged in the business of designing, engineering, manufacturing and supply of electric equipment that help in the transmission of power,

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commissioning of transmission systems on turnkey basis. During AY 2018-19, taxpayer was awarded a project by Power Grid Corporation India Ltd. ('PGCIL') for setting up a terminal in Chhattisgarh. There were three contracts in respect of project awarded viz., (i) Offshore supplies contract between Taxpayer and PGCIL for supply of plant and equipment including spares outside India, type test and training to be conducted outside India, (ii) on shore supply contract and (iii) on shore service contract; The last two contracts were assigned to taxpayer's Indian associate GE T&D India Ltd. ('Indian Associate')

AO considered it to be a case of artificial division of composite contract while all the responsibilities and liabilities of the project lied with the taxpayer. He contended that taxpayer has been awarded a single composite ('EPC') contract on a turnkey basis by PGICL to complete a power project in India and thus taxpayer has a "business connection" under section 9(1)(i) of the Act and a 'Construction PE' under the provisions of Art. 5(2) of the India-UK DTAA. Further, AO also observed that Indian Associate is actively involved in the solicitation of business and concluded that it is Indian leg of the composite contract and constitutes "dependent agent" PE. After concluding PE, AO applied special provisions of section 44BBB of the Act to derive profits attributable to PE in India. Taxpayer approached the Ld. DRP which had sustained the draft assessment order.

Hon'ble Delhi ITAT relying on the principle laid down by Hon'ble SC in case of IshikaWajma-Harima Heavy Industries Ltd., observed that the adjudication of an issue should be on basis of wholesome reading of the contract and the contract must be construed keeping in view the intention of the parties. Therefore, ITAT referred to the bidding documents alongwith minutes of bid meeting, the major clauses of contracts and the notification of award of offshore contract. On the perusal of said documents, Hon'ble ITAT made following observations:

- Having an Indian Associate was an integral part of the bid and not introduced at the discretion of the taxpayer.
- Offshore and onshore contracts were awarded by way of Separate Notification of Award.
- Scope of work of both the contacts were separately defined.
- Onshore contract notification specifically mentions that Indian Associate shall be an independent contractor.

Based on the above, ITAT concluded that there was not a consortium to which one contract was awarded with bifurcation at level of the members of Consortium. It has been observed that Revenue erred to construe the clauses of the contract in a narrow and selective approach and failed to consider the same in entirety. Reliance was placed on jurisdictional HC ruling in Linde AG and AAR ruling in Hyundai Rotem to hold that there was no artificial split of contract. Further, ITAT observed that taxpayer and GE India are "Independent contractors and Taxpayer has concluded First Contract in independent capacity and hence no "Dependent PE" is constituted. Also, it was observed that revenue is from offshore supplies and not services in connection with civil construction/ turnkey Power Project, hence, "Construction PE" as well as section "44BBB" does not have application. Lastly, it was concluded that there is no business connection of taxpayer in India as the title of goods supplied has passed outside India.

Turnkey projects occurring at global level has its own intricacies and often floats unsettled tax issues such as determination of type of contract, situs of accrual of income, distinction between PE and FTS, conflict of law between ITA and DTAA etc.

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There cannot be a straight- jacket formula for determination of these issues as interpretation of domestic and treaty provisions provides wider scope to skew it in many possible and conflicting manner. Thus, with evolving principles established by the judicial precedents, the dust settles with respect to such intricacies. However, each case must be weighed based on its own merits and a commercial nexus must be established for splitting of projects.

Separate notification not required to invoke MFN clause, CBDT circular prospective

Dieffenbacher GmbH [ITA No. 556/Mum/2022 – Order dated 16 March 2023]

Taxpayer is a company incorporated in and a tax resident of Germany. It has a service PE in India. During the AY under dispute, the taxpayer had paid installation and supervision expenses to a Belgium based company without deducting TDS.

The taxpayer believed that as per the MFN clause under the Indi-Belgium DTAA, the scope of FTS was restricted by the Make-available condition provided under tax treaty between India and Portugal. Therefore, no TDS was required to be deducted on payment of installation and supervision expenses.

DRP disallowed the expenditure in the hands of taxpayer for non-deduction of TDS (under Section 40(a)(i)). It upheld AO's order which stated that taxpayer has received managerial, technical and consultancy services from the Belgium based company, enriching it with the knowledge of enduring nature and it is in the nature of FTS falling within the definition provided under Section 9(1)(vii) of the ITA. With respect to invoking MFN clause, AO referred CBDT Circular No. F. No.503/1/2021 FT&TR-1 dated 03 February 2022 which stated the requirement of a separate notification under section 90 of the ITA to implement terms of DTAA.

The core issue for consideration before the Mumbai ITAT was that whether the requirement of a separate notification to implement terms of DTAA under CBDT Circular dated 03 February 2022 is applicable in taxpayer's case.

ITAT noted that the payment made to Belgium based sub-contractor towards supervision, installation and commissioning services for dryer fans cannot be considered as FTS under Article 12(4) of DTAA due to non-fulfilment of 'make available' condition. It observed that there is no requirement of separate notification for invoking MFN clause and that CBDT Circular dated 03 February 2022 cannot have a retrospective effect and hance, cannot be invoked for the assessment year prior to the year of CBDT Circular, i.e., 2022. In this regard, ITAT relied on GRI Renewable Industries S.L. Vs ACIT vide ITA No. 202/Pun/2021 and M/s Essity Hygiene & Health Vs. DCIT (ITA No.778/Mum/2021) - which in turn relied on the aforementioned ruling of Pune Tribunal in the case of GRI Renewable Industries. ITAT finally ruled in favour of the taxpayer by deleting the disallowance under Section 40(a)(i).

It is noteworthy that the Pune ITAT while pronouncing the ruling in case of GRI Renewable Industries, discussed in detail and held that the protocol containing MFN clause is an integral part of DTAA. Therefore, it gets automatically notified with the DTAA, in terms of section 90(1) of the ITA leaving no room for a separate notification. It observed that reference under section 90(1) of the ITA, to the expression-'make such provisions as may be necessary' for the purpose of notification in the Official Gazette, is to adopt the manner of notifying as may be necessary for implementing the agreement and not that the notification is to be issued piecemeal and in a truncated manner. On notifying the Agreement or Convention, all its integral parts, gets automatically notified. As such,

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there remains no need to again notify the individual limbs of the agreement so as to make them operational one by one. The Mumbai ITAT while relying on the said ruling by Pune ITAT has not considered the said observation and has given more emphasis to the observation of the Bench that Circular cannot have a retrospective effect. In order to emphasise on no need of a separate notification, the Tribunal has relied upon decision of Mumbai Bench of ITAT in the case of Essity (supra). This ruling would be relied upon heavily in times to come by taxpayers invoking MFN Clause.

Force of Attraction Rule under India-Germany DTAA cannot be applied in absence of link between the projects

Lahmeyer International GmbH [ITA No.5614/Del/2011– Order dated 31 March 2023]

Taxpayer is a company incorporated in and a tax resident of Germany. It is an engineering consulting company offering plan, design and consultancy in relation to complex infrastructure projects. During the AY under dispute, it had undertaken contract work with certain Government/Semi-Government projects, such as, Jammu and Kashmir State Power Development Corporation ('P1'), Jaypee Karcham Hydro Corporation Limited ('P2') and Jaypee Ventures Limited ('P3') projects.

With respect to P1, taxpayer admitted existence of PE. However, with respect to income from P2 and P3, it offered the same to tax @ 10% on gross basis as FTS under Article 12 of India-Germany DTAA.

In pursuance to the directions of DRP, the AO concluded that P2 will constitute taxpayer's fixed place PE in India under article 5 of DTAA since as per the agreement it was supposed to make office space available to it. In this regard, ITAT observed that though, as per Article 5(2)(c), an office constitutes PE, however, that office must be belonging to the concerned entity and some space made available by the contractee in its own complex. It further observed that the scope of work under P2 is to provide services as a design review consultant which is of purely technical/consultancy nature. Further, the project was completed within 3 months (i.e., less than 6 months). Hence, the receipt from such work has to be treated as FTS.

Moreover, AO alleged that since the taxpayer has a PE in respect of P1, the activities of other contracts would be taxable in India as business income (under section 44DA of the ITA) applying the FOA Rule. In this regard, ITAT relied on Tribunal's ruling in taxpayer's own case for earlier years wherein the tribunal had discussed the issue at length and had observed that the FOA provided under Protocol to India-Germany DTAA restricts the application of the rule to a case where, the PE is in any way involved in the transaction and the transaction is resorted to in order to avoid taxation in the source state and both these contentions need to be satisfied so as to attract the rule.

ITAT observed that FOA would not apply to P2 and P3 since, there was no common link between the projects such as common expats, common nature of the projects, commonality of the location, the common contracting parties etc. and AO could not prove that P2 and P3 were formed for the purpose of deliberate avoidance of tax.

India-Germany DTAA is peculiar in nature wherein while Article 7 does not explicitly provide for FOA, it is provided for in the Protocol and that too in an uncommon manner. It is pertinent to note that while the ITAT has discussed conditions to invoke FOA rule under the DTAA, neither taxpayer argued nor did the ITAT discuss the provisions of the ITA with respect to FOA rule. Whether FOA is inbuilt under the ITA is in itself a question where there is a school of thought that FOA does not find place in the domestic tax law.

In the absence of FTS Article in India-UAE DTAA, taxability to be determined in terms of Article 5 and 7 of the DTAA

Kalpataru Power Transmission Ltd [ITA. No. 35/Ahd/2021 - Order dated 21 March 2023]

Taxpayer is an Indian company engaged in the business of providing engineering, procurement, and construction ('EPC') services relating to infrastructure facilities. An EPC contract was awarded to taxpayer by the Chinese entity for erecting a transmission line in Uganda. Taxpayer through its branch office in Uganda obtained the services of Oil Stone Technologies ('Oil Stone'), a company incorporated in UAE for carrying out project specification studies, preparation of tower designs, preparation of structural drawings of towers, etc. as per the service agreement.

TDS Officer treated the taxpayer as Assessee in default for non-deduction of TDS on payment made to Oil Stone, UAE, by holding that said payment is chargeable to tax as Royalty under section 9(1)(vi) of the Act. On appeal, CIT(A) observed that in the present case, Oil Stone was required to create a new design as per the specifications provided by the taxpayer. As per the agreement, once designs were prepared by Oil Stone, the ultimate customer i.e., (in Uganda) will be the owner. Hence, based on these facts, an inference was drawn by the CIT(A) that the aforesaid payments made under service agreement cannot be regarded as royalty and should be considered as FTS. However, as the services were provided by Oil Stone to the taxpayer outside India and the said services were utilized for the purpose of the business of the taxpayer outside of India, it was not chargeable to tax in India.

Hon'ble ITAT concurred with the views of CIT(A) that the aforesaid payment is in the nature of FTS. However, with respect to taxability of said transaction in India, ITAT held that as there is no FTS clause in India-UAE DTAA, aforesaid payments will be taxable in India only if the payee has PE in India. And in the absence of any PE in India, it is not taxable in India in terms of Article 5 and 7 of the treaty.

On the very same issue, there have been quite a few rulings wherein it has been held that in the absence of FTS clause in the DTAA, one has to determine the taxability of the transaction in terms of 'Other Income' Article of the DTAA or alternatively, the benefit of DTAA itself is not available. However, the above decision of the Hon'ble ITAT is in line with majority of the judicial precedents that have held in favour of taxpayer, that in the absence of FTS clause in DTAA, the taxability of the transaction needs to be determined in terms of Article 5 & 7 of the relevant DTAA.

Foreign Rulings

Sweden allows offset of carry forward of FTC on income not subject to foreign tax

Tax Ruling by Supreme Administrative Court ('SAC') of Sweden [Order dated 16 March 2023]

Taxpayer is a company registered under Swedish Tax Law and has its branch in Belgium. In the year 2012, the company had paid Belgian tax on the income from the branch and the said income was also taxed in Sweden. For the said year, credit for tax paid in Belgian was not utilized. Subsequently, the taxpayer sought to apply for carry forward of FTC to offset Swedish tax on foreign-source interest income earned in 2017.

Under Swedish tax law, Taxpayer who is taxable in Sweden and has income taxed abroad, have the right to deduct the foreign tax from the income tax to be paid in Sweden. If foreign taxes are not

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utilized, the same can be carried forward for succeeding five years.

The Swedish Tax Agency rejected the aforesaid request to offset carry forward FTC against Swedish tax payable on the ground that deduction of FTC cannot be allowed in the year in which the taxpayer is not liable to pay foreign tax on income earned abroad.

The SAC didn't concur with the views of Tax Agency. The SAC is of the view that tax credits may be allowed even though the taxable person has not been taxed abroad during the year of credit. Further, the SAC was of the view that the tax authority's position was not supported by the applicable law and regulations thereunder.

Accordingly, SAC held that the taxpayer must be allowed to apply its foreign tax carry forward to offset Swedish tax on its current year foreign-source income.

The ruling was passed against the Tax Agency's position. Furthermore, the Swedish Tax Agency's previous school of thoughts are undergoing changes and are evolving pursuant to this ruling. This is a welcome judgement from taxpayer's perspective.

Italian Court Ruling on application of imported hybrid mismatch rule

Tax Ruling by Italian court [Ruling no. 288 dated 7 April 2023]

Multinational Companies (MNCs) strategize its taxation by planning payments and making financial arrangements across multiple countries with differing income recognition systems. This is generally referred to as a 'hybrid mismatch' which derives benefit from the difference in tax treatment of the entities involved or the instruments being transferred. Arrangements consisting of hybrid mismatches for the purpose of gaining a tax advantage are known as structured arrangements. These structured arrangements are generally scrutinized by the tax authorities for legislation and treaty abuse.

One such analysis has been made by Italian tax authorities (ITA) in case of an Italian limited risk distributor (LRD) that is part of US multinational group. Italian LRD incurs COGS in relation to transactions with a Swiss company (the sole shareholder of the Italian LRD). Since 01 January 2020, the Swiss tax authorities has abolished of the "principal company regime" and consequently, the Swiss company was unilaterally granted the ability to step-up the goodwill generated abroad by the deemed PEs and amortize this amount over a 10-year period.

As per anti-hybrid rule introduced in Italy, "a taxpayer is not allowed to deduct a negative income component to the extent that it finances, directly or indirectly, deductible expenses that generate a hybrid mismatch through a transaction or series of transactions between associated enterprises or that are parties to a structured agreement. In derogation from the preceding sentence, the negative income component incurred or deemed to be incurred by a taxpayer is deductible if and to the extent that one of the countries of residence or location of the parties involved in the transaction or series of transactions has made an equivalent adjustment with the effect of neutralizing the hybrid mismatch in question." In considering the situation of the Italian LRD, the deduction of COGS incurred with respect to transactions with the Swiss company and the offsetting of a portion of the corresponding income at the level of the Swiss company with the goodwill amortization requires an assessment of the applicability of the imported hybrid mismatch rule.

In this context, the ITA concluded that under the imported hybrid mismatch rule in absence of neutralizing adjustment in another jurisdiction,

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the COGS incurred by the Italian LRD were not deductible for Italian tax purposes to the extent of the goodwill amortization deducted by the Swiss company (irrespective of whether the goodwill was related to the Italian deemed PE or whether the Swiss company generated taxable income or a tax loss), as such goodwill amortization triggers the effect of a deduction without inclusion falling within the scope of hybrid mismatch article (i.e., payment to a disregarded PE).In addition, the ITA took the position that the inclusion of the Swiss company's income in the US parent company's tax base was not sufficient to neutralize the imported hybrid mismatch, since neither the deduction of the goodwill amortization nor the corresponding income was subject to an "equivalent adjustment".

The ruling might be relevant for multinational groups with a similar fact pattern and hence the same should be considered to review the structures. Globally, BEPS Action Plan 2 has addressed the concept of hybrid mismatches and made recommendations to implement the same in domestic law. As such, there are no specific rules under Indian domestic law that are designed to neutralize the effects of hybrid arrangements. However, structures involving hybrid arrangements may potentially be hit under the "GAAR" or "PPT" of MLI.

Important Updates

Indian Update

Online Procedure Notified for "Nil TDS Certificate" in case of Non residents

In exercise of powers granted under section 195 of the Act read with rule 29B, CBDT vide notification 01/2023 dated 29/03/2023, has introduced an online procedure for filing applications in Form 15C and 15D. As per this, an application for the grant of a certificate for non-deduction of income tax (No TDS certificate) can be made through the TRACES platform. This will simplify the application procedure for non-resident taxpayers and improve efficiency in the Income-tax department.

Procedure for Filing Applications on TRACES:

To file an application in Form 15C or 15D, applicants must register on TRACES website and submit the form electronically alongwith supporting documents. The form can be submitted using various authentication methods, such as digital signature, electronic verification code, AADHAR-based authentication, or mobile OTP. In case application is made from outside India, the form along with supporting documents shall be submitted using a digital signature only.

By default, the applications shall be assigned to the DCIT/ACIT (International Tax) exercising jurisdiction over the applicant for TDS matters. AO shall approve/reject the application based on the parameters defined in rule 29B and any other instructions/guidelines in this regard.

Foreign Update

UAE notifies the list of persons exempted from obtaining corporate tax registrations

The MOF has issued Ministerial Decision No 43 of 2023 to grant exemption to taxable person from tax registration with Federal Tax Authority to comply with the Corporate Tax Law ('CTL') that will take effect from tax periods beginning on or after 01 June 2023.

The decision has provided the list of persons which are exempted from registration with the Federal Tax Authority, as under:

- A Government Entity
- A Government controlled entity
- A person engaged in an extractive business
- A person engaged in a non-extractive natural resources business
- A Non-Resident that derives only state sourced income and that does not have a PE in the state according to the provisions of the CTL

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The aforesaid decision is issued in accordance with international best practices followed across the jurisdictions.

Russia to suspend its tax treaties with 'Unfriendly" Countries

It has been proposed by the Russian Ministry of Foreign Affairs to suspend its tax treaties with the countries that have unilaterally imposed economic restrictions on Russia.

Most likely, Russia may suspend its tax treaties with USA, Canada, UK, Japan, Australia as well as European Countries that added Russia in the list of non-cooperative jurisdictions for tax purposes or the so-called EU blacklist. This suspension will remain in effect until Russia's violated rights are restored.

Australia releases draft legislation to strengthen thin capitalization rules

The Government of Australia has released an exposure draft legislation to strengthen thin capitalization rules in line with the OECD's best practice guidance.

Following are the key changes introduced in the said draft legislation:

- A new fixed ratio test replaces the safe harbour debt test for all general class investors. The fixed ratio test disallows net interest deductions that exceeds 30% of tax EBITDA. This change aligns with the OECD's recommendations in BEPS Action 4.
- Net interest deductions disallowed over the previous 15 years under fixed ratio test can be claimed under the Special Deduction Rule

A new group ratio test replaces the worldwide gearing debt for all general investors. The group ratio test can be used as an alternative to the fixed ratio test and allows an entity in a highly leveraged group to deduct net interest deductions in excess of the amount permitted under the fixed ratio rule, based on a relevant financial ratio of the worldwide group.

OECD releases fifth annual peer review report on BEPS Action 6

The OECD released the fifth annual peer review report on the implementation of the Action 6 minimum standard relating to prevention of treaty shopping.

As per the report, as of 31 May 2022, more than 975 bilateral agreements between members of the Inclusive Framework complied with the BEPS recommended minimum standard. An additional 76 agreements not subject to review (i.e., agreements between Inclusive Framework members and non-members) also complied with the minimum standard, bringing the total number of compliant agreements concluded by members of the Inclusive Framework to more than 1,050 agreements, which represents a significant increase from 2021.

This year's peer review shows that many jurisdictions have followed the recommendations made in last year's peer review, either formulating a plan for the implementation of the minimum standards, or by completing the steps for the entry into effect of the MLI, as applicable.

Further, the report shows that among the three alternative methods to implement the second component of the minimum standard (i.e., (1) PPT, (2) the PPT supplemented by a detailed or simplified LOB, or (3) a detailed LOB together with an anti-conduit mechanism), the PPT alone remains the most widely used. However, this may create challenges and potential litigation for businesses as interpretation of PPT is going to be very subjective exercise.

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Canada Federal Budget 2023-24

Canada Federal Budget 2023 provides updates towards implementation of the OECD recommended Pillar One and Pillar Two solutions.

Budget 2023 announced that the digital services tax ('DST') could be imposed as of 1 January 2024, but only if the multilateral convention implementing the Pillar One framework has not come into force. In that event, the DST would be payable as of 2024 in respect of revenues earned as of from 1 January 2022.

Further, the Budget 2023 also reaffirms Canada's intention, (announced in Budget 2022), to introduce legislation implementing the IIR and a domestic minimum top-up tax as part of Pillar Two, with effect from fiscal years 31 December 2023. Additionally, the Government also intends to implement the UTPR effective from fiscal years 31 December 2024.

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Important Rulings

ITAT upholds deletion of 1.5% commission for Indian liaison entity in case of foreign AEs being sub-contracted the offshore drilling contract

Transocean Drilling Services (I) Pvt Ltd [TS-191-ITAT-2023(Mum)-TP]

Transocean Group operates as an offshore drilling contractor providing fleet of mobile offshore drilling units to help its clients to find and develop oil and natural gas reserves. It also constructs oil and natural gas wells based on the requirements of its clients. Transocean foreign group entities have project offices in India and pay tax u/s 44BB as a foreign company for profits attributable to the project offices.

Oil and Natural Gas Corporation (ONGC) floated a tender in the year 2008 for offshore drilling services with a pre-condition that multiple entities of the same group were not allowed to bid for the tender. Accordingly, the group incorporated Transocean Drilling Services (I) Pvt Ltd (the assessee) in May 2008 in order to bid for the tender floated by ONGC.

The assessee submitted its tender and was awarded the same by ONGC for offshore drilling services. It may be noted that while submitting the bid, the tender document of the assessee highlighted its novice status in the industry. The tender document also mentioned that the contract, if awarded, would be subcontracted to the AEs who have relevant experience, skills, assets, or personnel to carry out the contract. ONGC awarded the contract to the assessee on the financial and technical backing of its parent company and other group companies.

During the year under consideration, the assessee was engaged in provision of coordination services (such as contracting / bid, liaisoning, assistance in import of equipment and warehousing, accounting and document maintenance, invoicing and collection) to these group entities, towards which, it recovered a markup of 10% over costs incurred for provision of services.

The TPO, with a view that since the entire risk was undertaken by the assessee, being the primary contractor to perform the offshore drilling services to ONGC, it should be adequately compensated in addition to the cost plus mark-up reimbursed by the AE, applied an ALP rate of 1.56% for procurement of contract on behalf of its AEs.

The ITAT upheld the deletion of the CIT, which had ruled in favour of the assessee, based on the facts and functional analysis submitted, whereby it was clear that the assessee did not, on its own, qualify the pre-qualification requirements laid out by ONGC itself, and without its AEs and their experience in off-shore drilling, would not have been awarded a contract. Further, the contract was only awarded upon guarantees issued by the group companies, both of which substantiate, that essentially, the contract would be performed by the AEs and the assessee, would merely be operating as a liaison entity.

In cases as these, there would be no one-size-fits-all position for offshore and onshore projects. The facts of the case, the functional analysis, the contractual obligations and actual activities undertaken by entities would be given weightage. As discussed in this case, where the facts amply justify that one entity is merely a liaison entity, it would not be prudent to allocate higher income to such entity, by way of a TP adjustment.

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ITAT permits GP / Sales as an appropriate PLI to eliminate differences on account of age of machinery, capacity utilization, etc.

Toyota Industries Engine India Pvt Ltd [TS-140-ITAT-2023(Bang)-TP]

The assessee is engaged in manufacture and sale of textile machinery & auto transmission components and also in distribution of material handling equipment.

One of the aspects for consideration before the ITAT pertained to selection of PLI for manufacturing companies, where TNMM was the most appropriate method. While the assessee's contention was to consider GP / Sales as an appropriate PLI, the TPO had considered OP / Sales as a PLI.

Placing reliance on assessee's own case in earlier year, the ITAT ruled in favour of the assessee. The primary reason given by the ITAT for selection of GP / Sales in place of OP / Sales was to eliminate differences on account of age of machinery, capacity utilisation, method of depreciation i.e., SLM / WDV, etc. The ITAT observed that when comparing GP / Sales, it would be possible to evaluate whether purchase of raw material from AE was resulting in an adverse profitability for the assessee or not.

This is a refreshing decision, which demonstrates that considering GP / Sales does not eliminate TNMM from being the most appropriate method. Rather, eliminating other costs and depreciation is a comparability adjustment i.e., it allows for correct comparability between the tested party and the comparable companies, eliminating differences like age of machinery / capacity utilization, etc.

SC holds 'substantial question of law' could include questions on comparability, subject to perversity being demonstrated in the order being appealed against

Hon'ble Supreme Court has delivered a landmark ruling in the context of a 'substantial question of law' in the determination of Arm's Length Price for a batch of appeals, the lead case being SAP Labs India Private Ltd[1].

In the cases involved, the taxpayers were subject to TP adjustments primarily owing to alteration in set of comparable companies selected by the assessee viz., those selected by the TPO. These included companies altered on account of both, quantitative and qualitative variations. Both the taxpayers as well as the tax authorities went from ITAT to the High Courts with a fundamental question as to whether the selection of comparable companies could be a 'substantial question of law' warranting an adjudication by the High Court.

Several High Courts have held that the selection of comparable and application of filters is merely a fact-finding exercise and does not give rise to a substantial question of law unless any perversity is demonstrated in the order pronounced by the ITAT.

In 2018, in the case of Softbrands India Private Ltd., the Karnataka High Court held that issues relating to the selection of comparable data and criteria for comparability in benchmarking for transfer pricing purposes do not raise a "substantial question of law". The High Court prima facie opined that the entire exercise of making Transfer Pricing Adjustments on the

[1] *SAP Labs India Pvt. Ltd. & Others [TS-225-SC-2023-TP]*

basis of the comparable is nothing but a matter of estimate of a broad and fair guess-work of the Authorities based on relevant material brought before the Authorities including the Appellate Tribunal, but nonetheless, the Tribunal being the final fact finding body, remains so for Chapter X also.

The High Court also observed that the entry into the High Court under Section 260-A of the Act is locked with the words "substantial questions of law" and the key to open that lock to maintain such appeal can only be the perversity of the findings of the Tribunal in these types of cases. The High Court then noted the contention of parties that in view of a different stand taken by different benches of the tribunal, the appeal deserved to be maintained by the High Court for laying down certain Guidelines about the filters or the Most Appropriate Method to be adopted for determination of the ALP. However, the High Court found that since none of the parties were able to point any perversity in the orders of ITAT, the said issue cannot give rise to a substantial question of law.

The High Court also held that had it been a case of substantial question of interpretation of provisions of Double Taxation Avoidance Treaties (DTAA), interpretation of provisions of the Income Tax Act or Overriding Effect of the Treaties over the Domestic Legislations or the questions like Treaty Shopping, Base Erosion and Profit Shifting (BEPS), Transfer of Shares in Tax Havens (like in the case of Vodafone etc.), if based on relevant facts, such substantial questions of law could be raised before the High Court under Section 260-A of the Act, the Courts could have embarked upon such exercise of framing and answering such substantial question of law.

The Supreme Court has held that any determination of the arm's length price under Chapter X de hors the relevant provisions (namely section 92, 92A to 92CA, 92D, 92E and 92F of the Act and Rules 10A to 10E of the Rules), can be considered as perverse and it may be considered as a substantial question of law as perversity itself can be said to be a substantial question of law.

There cannot be any absolute proposition of law that in all cases where the Tribunal has determined the arm's length price the same is final and cannot be the subject matter of scrutiny by the High Court in an appeal under Section 260A of the IT Act. Further, when the determination of the arm's length price is challenged before the High Court, it is always open for the High Court to consider and examine whether the arm's length price has been determined while taking into consideration the relevant guidelines under the Act and the Rules.

Accordingly, the Supreme Court, while clarifying that it has not expressed any opinion on the ALP determination in specific cases, remits the cases back to the concerned High Courts to decide and dispose of the respective appeals afresh in light of the observations made and to examine in each and every case whether the ITAT has followed the guidelines laid down under the Act and the Rules while determining the ALP.

After this ruling, there has been a lot of discussion on whether this decision would lead to cases piling up before the HC / SC for adjudication, etc. However, based on the ruling, it is amply clear that the SC's decision does give a good credence to the provisions of the Act and the Rules, which were hitherto thought to have been given a go by in a lot of orders at the TPO level. Further, the cases would be admitted

Important Rulings

before the HC only where the perversity in the case is demonstrated by the appellant and hence, to that extent, the hysteria around piling up of cases appears unfounded.

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RBI Notifications

Framework for acceptance of Green Deposits

RBI/2023-24/14 vide Notification No. DOR.SFG.REC.10/30.01.021/2023-24 dated 11 April 2023

With its initiative to combat global critical challenge of Climate Change and to foster and develop green finance ecosystem, RBI has constituted a framework for acceptance of **Green Deposits** for the Regulated Entities (REs) effective from **1st June 2023**.

The salient features of the framework are as under:

- REs shall issue Indian Rupee denominated Green Deposits as cumulative/ non-cumulative, with the provision to either renew or withdraw on maturity, at the option of the depositor.
- REs to frame a Board approved policy and financing framework to state:
  - (i) the eligible green activities/projects that could be financed out of proceeds raised through Green Deposits,
  - (ii) the process for project evaluation and selection by the RE,
  - (iii) the allocation of proceeds of Green Deposits and its reporting,
  - (iv) third-party verification/assurance of the allocation of proceeds and the impact assessment and;
  - (v) the particulars of the temporary allocation pending their allocation to the eligible activities/projects.
- Allocation of funds raised through Green Deposits by REs during a financial year will be subject to independent third-party verification/assurance, on an annual basis.
- REs, along with external firms, shall annually assess the impact associated with the funds lent for or invested in green finance activities/projects through an Impact Assessment Report. This report shall be mandatory from FY 2024-25 onwards.
- Review report shall be placed by the RE before its Board of Directors within three months of the end of the financial year and REs shall make appropriate disclosures in their Annual Financial Statements.

Important definitions:

Green Deposits *mean an interest-bearing deposit, received by the RE for a fixed period and the proceeds of which are earmarked for being allocated towards green finance (i.e., lending to /or investing in the activities/projects meeting the requirements prescribed in these guidelines that contribute to climate risk mitigation, climate adaptation and resilience, and other climate-related or environmental objectives - including biodiversity management and nature-based solutions).*

Regulated Entities (REs) *include all Scheduled Commercial Banks (excluding Regional Rural Banks, Local Area Banks and Payment Banks) as well as all deposit taking NBFCs.*

RBI simplifies the application process for registration of Core Investment Companies

Press Release: 2023-2024/44 dated 10 April 2023

In order to foster speedy and hassle-free registration process of incorporating Core Investment Companies under Section 45-IA of The RBI Act, 1934, RBI has introduced a revamped application form with reduced set of documents to be submitted.

The number of documents to be furnished along with the application form has been **reduced to 18 from the existing set of 52 documents** to make the registration process user friendly.

In event of the Reserve Bank of India calling for further documents other than those in the indicative list of RBI9, the applicant company must respond within a stipulated time of one month.

Master Circular - Bank Finance to Non-Banking Financial Companies (NBFCs)

RBI/2023-24/09 vide Notification No. DOR.CRE.REC.No.07/21.04.172/2023-24 dated 03 April 2023

Statutory guidelines have been issued under *Section 35A of Banking Regulation Act, 1949* to lay down Reserve Bank of India's regulatory policy regarding financing of NBFCs by banks. These have been issued with an intent to encourage registration of NBFCs with RBI and providing operational freedom to banks for credit dispensation.

Relaxations by RBI:

Bank Finance to NBFCs registered with RBI:

- Ceiling on bank credit linked to Net Owned Fund (NOF) withdrawn for NBFCs engaged in principal business of asset financing, loan, factoring, and investment activities.
- Banks may extend both need based working capital facilities as well as term loans to such NBFCs.
- Banks may also extend finance NBFCS for secondhand assets financed by them.

Bank Finance to NBFCs not requiring Registration:

- For funding such NBFCS, banks have been granted the authority to take credit decisions on the basis of regular factors like the purpose of credit, nature and quality of underlying assets, repayment capacity of borrowers as also risk perception, etc.

Activities not eligible for Bank Credit:

- Bills discounting / rediscounting, except for rediscounting of bills discounted by NBFCs arising from sale of commercial vehicles, two / three-wheeler vehicles subject to conditions.
- Investments both short and long term, except Stock Broking Companies which may be provided with need-based credit against shares and debentures held by them as stock-in-trade.
- Unsecured loans / inter-corporate deposits to / in any company.
- Loans and advances by NBFCs to its subsidiaries, group companies / entities.
- Finance to NBFCs for further lending to individuals for subscribing to Initial Public Offerings (IPOs) and for purchase of shares from secondary market.

Prohibitions / Restrictions on Bank Credit:

- Banks will not grant bridge loans of any nature, or interim finance against capital / debenture issues and / or in the form of loans of a bridging nature pending raising of long-term funds from the market by way of capital, deposits, etc. to all categories of NBFCs.

RBI Notifications

- Shares and debentures will not be accepted as collateral securities for secured loans granted to NBFC borrowers.
- Banks will not execute guarantees covering inter-company deposits / loans thereby guaranteeing refund of deposits / loans accepted by NBFCs / firms from other NBFCs / firms.
- Guarantees will also not be issued for the purpose of indirectly enabling the placement of deposits with NBFCs except as permitted by RBI.
- Banks will not invest in Zero Coupon Bonds (ZCBs) issued by NBFCs unless the issuer NBFC creates a sinking fund for all accrued interest and keeps it invested in liquid investments / securities (Government bonds).

Master Direction – Facility for Exchange of Notes and Coins

RBI/2023-24/97 vide Notification No. DCM (NE) No. G-2/08.07.18/2023-24 dated 03 April 2023

RBI has directed all bank branches to provide the following services to the public at large on all working days.

Facility for Exchange of Notes and Coins at Bank Branches:

- Issue fresh/ good quality notes and coins of all denominations;
- Exchange soiled[1]/ mutilated[1]/ defective notes;
- Accept coins and notes either for transactions or exchange;
- Providing sachets with coins in 100 pieces each at the counters;
- Accept small denominations notes or coins tendered at their counters (all coins in the denomination of 50paise, Rupee 1, Rupee 2, Rupee 5, Rupee 10 and Rupee 20 issued by Government of India, GOI, shall continue to be legal tender);

Cases where Notes tendered may NOT be accepted (for exchange):

- Mutilated/defective notes bearing "**Pay/Paid**" or "**Reject**" stamp of RBI Issue Office or any bank branch.
- Notes with slogans, political/religious messages, scribbling, stain, deliberately cut, torn, altered, tampered, etc. (against the *Clean Note Policy of RBI*); and
- Notes which are found to be deliberately cut, torn, altered or tampered with, if presented for payment of exchange value.

Exceptions:

- For notes which have turned extremely brittle or are badly burnt, charred or inseparably stuck up together (*and cannot withstand normal handling*), shall not be accepted by the bank branches for exchange but the holder can tender such notes to the **Issue Office of Reserve Bank of India** for exchange.

For genuine cases where any currency note or bank note of GOI has been lost, stolen, mutilated or imperfect, RBI may, with prior sanction of Central Government, refund with grace.

[1] *A soiled note means note which has become dirty due to normal wear and tear and also includes a two-piece note pasted together wherein both the pieces belong to same note and no essential feature shall be missing.*
[2] *A mutilated note is a note of which a portion is missing, or which is composed of more than two pieces.*

SEBI Notifications

E-wallet investments in Mutual Funds

SEBI/HO/IMD/IMD-PoD-2/P/CIR/2023/40 dated March 23, 2023

SEBI vide circular no. SEBI / HO / IMD / DF2 / CIR / P / 2017/39 dated May 8, 2017, permitted use of e-wallet for investment in Mutual Funds within the umbrella limit of INR 50,000 for investments by an investor through e-wallet and/or cash, per Mutual Fund per financial year. E-wallets have become a popular mode of investment in Mutual Funds as they offer a convenient and secure way to manage investments.

SEBI has directed e-wallets to be fully compliant with respect to KYC norms prescribed by the Reserve Bank of India. This directive is likely to boost security and decrease the risk of fraud in mutual fund transactions.

Applicability: Effective from May 01, 2023

Streamlining of Onboarding process of Foreign Portfolio Investors (FPIs)

SEBI/HO/AFD/P/CIR/2023/043 dated March 27, 2023

Foreign Portfolio Investors (FPIs) making investments in India are required to obtain certificate of registration from Designated Depository Participant (DDPs) for which an integrated process of obtaining registration, allotment of PAN and carrying out of KYC for opening of Bank and Demat Account had been notified in December 19, 2022 by SEBI by way of Master Circular.

A few amendments have been made to the Master Circular to enable faster registration of FPIs. The modifications are as listed below:

- Grant of FPI registration on the basis of scanned copies of executed Common Application Form (CAF) instead of submitting signed application;
- Execution of CAF and other documents by digital signatures instead of hand signatures;
- Certification of copies of original documents by Bank through SWIFT mechanism instead of physical verification and attestation;
- Verification of PAN through CAF module on website of DDPs where PAN application is made via CAF portal;
- Submission of unique investor group ID in lieu of details of group constituents, where FPI applicant share ownership of more than 50% or common control;
- Timeframe set for application processing for change of name in PAN records, intimation for deletion of sub-fund/share classes/equivalent structure and intimation for change in material information within limit but not later than 7 working days;
- Reporting to SEBI in respect of delay in intimation of material change or FPI comes under the Sanctions list notified by the United Nations Security Council or FPIs breaching investment limit as soon as possible but not later than 2 working days.

Applicability: With immediate effect

Cyber Security and Cyber Resilience framework for Portfolio Managers

SEBI/HO/IMD/IMD-PoD-1/P/CIR/2023/046 dated March 29, 2023

SEBI has introduced a cybersecurity and Cyber Resilience framework for all portfolio managers having an asset worth of at least Rs 3,000 crore (*discretionary and non-discretion portfolio* *management service combined*). As per the new guidelines, portfolio managers are required to report any instances of cyber-attacks or breaches encountered by them within 6 hours of detecting such incidents.

As a part of operational risk management framework to manage risk to systems, networks, and databases from cyber-attacks and threats, Portfolio Managers have been asked to formulate comprehensive cyber security and cyber resilience policy document to include the following:

- Process to identify, assess, and manage cyber security risks associated with processes, information, networks, and systems.
- The Cyber security policy should encompass the principles prescribed by the National Critical Information Infrastructure Protection Centre (NCIIPC) of the National Technical Research Organization (NTRO), Government of India.
- Portfolio Managers should also incorporate best practices from standards such as ISO 27001, ISO 27002, COBIT 5, etc.
- Designate a senior official as Chief Information Security Officer (CISO) whose function would be to assess, identify and reduce cyber security risks.
- Establish a reporting procedure to facilitate communication of unusual activities and events to CISO.

Applicability: Effective from October 01, 2023

Review of time limit for disclosure of NAV of Mutual Fund schemes investing overseas

SEBI / HO / IMD / IMD-I POD2/P/CIR/2023/48 dated March 29, 2023

SEBI has mandated Mutual Funds (MFs) to disclose NAVs of all the schemes within a prescribed time limit. Considering the differences in time zones and market hours, revised timelines for disclosure of NAV are tabled as follows:

<table>
<tr><th>Sr. No.</th><th>Type of scheme</th><th>Existing timeline</th><th>New timeline</th></tr>
<tr><td>1</td><td>All other schemes</td><td colspan="2">11 PM on T* Day (no change)</td></tr>
<tr><td>2</td><td>For schemes having exposure to Exchange Traded Commodity Derivatives (ETCDs)</td><td colspan="2">9 PM on T+1 Day (no change)</td></tr>
<tr><td>3</td><td>Fund of Funds (FoFs) schemes</td><td colspan="2">10 AM on T+1 Day (no change)</td></tr>
<tr><td>4</td><td>Schemes investing at least 80% of total assets in permissible overseas investments</td><td rowspan="2">11 PM on T Day</td><td rowspan="2">10 AM on T+1 Day</td></tr>
<tr><td>5</td><td>Index funds and ETFs investing at least 80% of total assets in permissible overseas investments</td></tr>
<tr><td>6</td><td>Schemes unable to disclose NAV as per aforesaid timeline due to inability in capturing same day valuation of underlying investments</td><td>11 PM on T Day
Or
10 AM on T+1 Day</td><td>Time as per disclosure in SID** along with reasons for delayed disclosure</td></tr>
</table>

SEBI Notifications

** T day = date of investment in MF units in India.*

*** Scheme Information Document (SID)*

Applicability: Effective from July 1, 2023

Usage of brand name / trade name and Advertisements by Investment Advisers (IA) and Research Analysts (RA)

SEBI/HO/MIRSD/ MIRSD-PoD-2/P/CIR/2023/51 dated April 05, 2023

SEBI/HO/MIRSD/ MIRSD-PoD-2/P/CIR/2023/52 dated April 06, 2023

Investment Advisers (IA) and Research Analysts (RA) have to prominently display their name registered with SEBI, its logo, registration number, complete address, telephone number, name of compliance officer and grievance officer including contact details on portal/website, if any, notice board, display boards, advertisements, publications, know your client forms, client agreements, statements, reports and any other correspondence.

IA and RA are also mandated to comply with the Advertisement Code while issuing any advertisement. Strict guidelines have been given to prevent false, misleading, biased or deceptive, based on assumptions or projections or giving misleading or deceptive testimonials or any promise or guarantee of assured or risk free return to the investors or any such advertisements which are likely to be misunderstood or give exaggerated or inconsistent or unrelated statements or terminology.

Applicability: Effective from May 1, 2023

Extension of Timelines (as per Circular reference given in the Table below):

SEBI extended time period of various compliance requirements as tabled below:

Sr. No.	SEBI Circular No. with date	Brief Requirement	Existing Date/ Timeline	Extended Date/Timeline
1	SEBI/HO/MIRSD/ MIRSD-PoD-1/P/CIR/2023/42 dated March 27, 2023	Mandatory submission of 'choice of nomination' for existing trading and demat accounts. In case of failure, the respective demat and trading account shall be frozen	March 31, 2023	September 30, 2023
2	SEBI/HO/IMD/IMD-I POD1/P/CIR/2023/47 dated March 28, 2023	Requirement for nomination/opting out of nomination by Mutual Fund Unit Holders. In case of failure, the folios shall be frozen for debits	March 31, 2023	September 30, 2023
3	SEBI/HO/DDHS/DDHS-RACPOD1/P/CIR/2023/049 dated March 31, 2023	Compliance requirement for large corporates to raise minimum 25 per cent of their incremental borrowings in a financial year through issuance of debt securities	Contiguous block of two years [to be reckoned from FY 2021-22 onwards]	Contiguous block of three years [to be reckoned from FY 2021-22 onwards]

MCA Notifications

Coverage

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

Notification dated April 17, 2023

Ministry of Corporate Affairs has established a special authority namely "Registrar, Centre for Processing Accelerated Corporate Exit [C-PACE]" for a speedy disposal of applications for removal of name from the Register of Companies. Under this 'Accelerated Corporate Exit" an application for voluntary removal of name of a company has to be submitted to "Registrar, Centre for Processing Accelerated Corporate Exit" in Form STK-2 along with fees of INR Ten Thousand.

Moreover, requirement of attaching certified copy of Special Resolution or consent of 75% of members in terms of paid-up share capital is done away with.

This special authority has been established specifically to reduce the processing time required for documentation in cases of voluntary removal of name of company.

Applicability: May 01, 2023

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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
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
DRP	Dispute Resolution Panel
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
FOA	Force of Attraction
FTC	Foreign Tax Credit
FTP	Foreign Trade Policy 2015-20
FTS	Fees for Technical Service
FY	Financial Year
GAAR	General Anti-Avoidance Rules
GDR	Global Depository Receipts
GMT	Global Minimum Tax
GILTI	Global Intangible Low-Taxed Income
GSTN	Goods and Services Tax Network
GVAT Act	Gujarat VAT Act, 2006
HSN	Harmonized System of Nomenclature
IBC	Insolvency and Bankruptcy Code, 2016

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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
LTCG	Long term capital gain

Abbreviation	Meaning
MAT	Minimum Alternate Tax
MCA	Ministry of Corporate Affairs
MeitY	Ministry of Electronics and Information Technology
MFN	Most Favoured Nation
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