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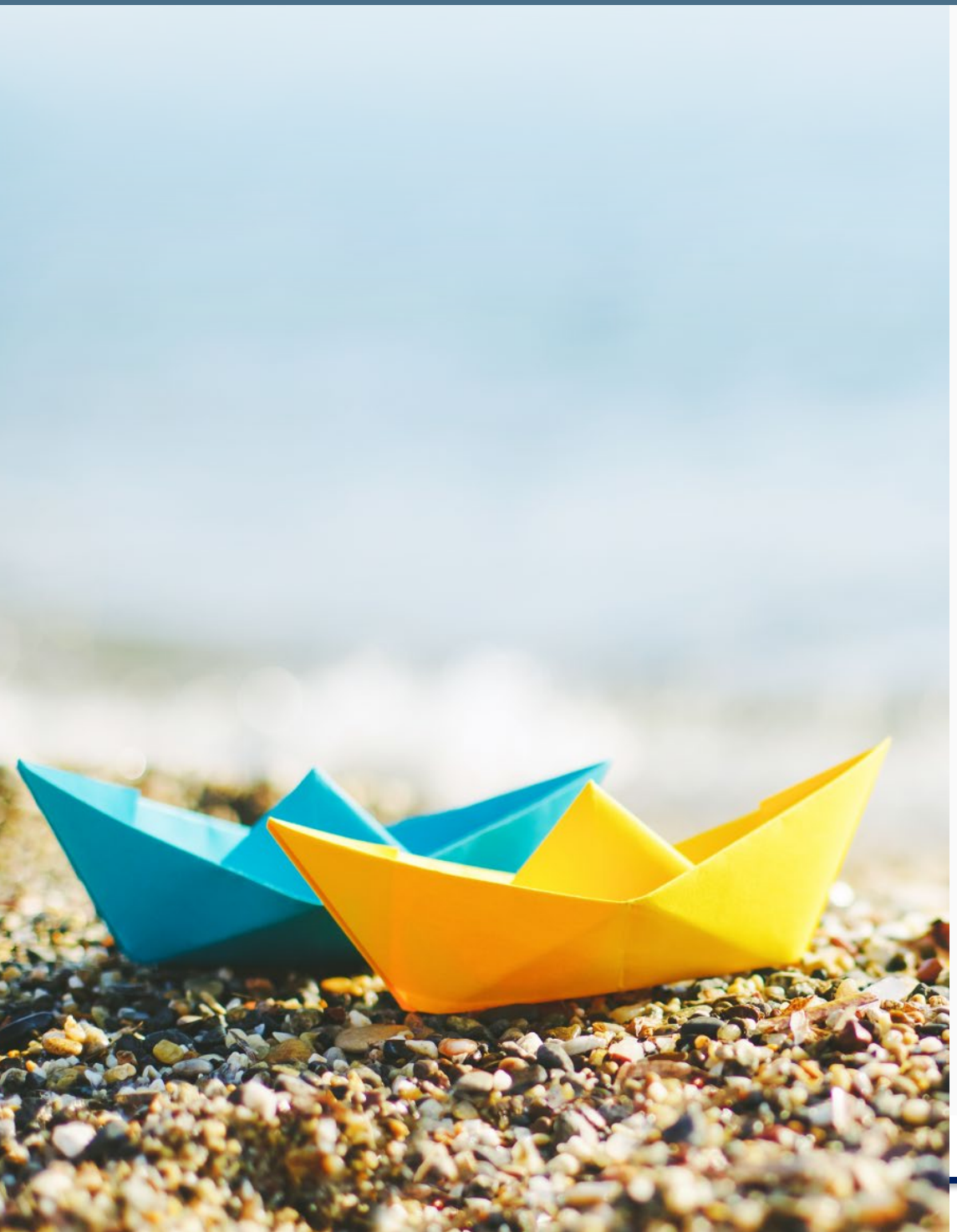

Dear Reader,

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

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

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

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Introduction

M&A transactions can take many forms, one of which is the most sensitive to negotiate and agree, and that is a Joint Venture (JV) structure. Structuring a JV is extremely critical to ensure meeting of minds of the parties to a transaction who ought to work together for an agreed business cause. The rights and responsibilities of the parties to the JV are agreed and laid down in a Joint Venture Agreement (JVA). Key phases in a JV involve initial acquisition of stake by the parties, defining the term of the JV and the roles of JV partners during the said term, and finally giving an opportunity to the parties to exit the JV on amicable terms and upon fulfilment of the objective of the JV.

To understand some of the typical terms encountered in a JV agreement, we will take an example where Party A wants to acquire a controlling stake in Company C, which is fully owned by Party B before the acquisition. Accordingly, Party A will acquire shares of Company C from Party B. Upon completion of the acquisition, Party A will become 60% owner of Company C while Party B's stake in the Company will get diluted to 40%.

Key terms negotiated in a JV agreement:

1. **Purchase Consideration**

   Purchase Consideration is the aggregate consideration payable by Party A to Party B for acquisition of shares in the Company. Purchase Consideration is payable for the acquisition of the proportionate stake based on the Equity Value of the Company. Equity Value is derived from the Enterprise Value subject to adjustment of net debt/cash and normalized working capital of the Company. Enterprise Value is the aggregate value of the business of the Company which may have been determined based on comparable market values, income and cash generating capacity of the Company, actual investment made by the Company or any combination of these factors after considering an element of goodwill for a going concern Company. Elements of net debt/cash and normalized working capital are agreed based on the due diligence exercise.

   In our example, Purchase Consideration will be determined as 60% of the Enterprise Value subject to proportionate adjustment of net debt/cash and normalized working capital on the effective date.

2. **Closing Date vs Locked Box Date**

   It is critical to agree the effective date of valuation to arrive at the Purchase Consideration. The ideal date of valuation is the Closing Date, i.e., the date on which the Purchase Consideration is paid and the ownership is transferred to the acquirer. However, there are practical challenges in getting financial statements of the Company on the Closing Date. As such, parties generally agree a Locked Box Date for the purpose of locking the valuation. Locked Box Date is generally kept a few days to a few weeks prior to the Closing Date to avoid any valuation ambiguities on the Closing Date. Net debt/cash and normalized working capital is considered as of the Locked Box Date.

   In the above example, parties may agree to 31 July 2023 as the Closing Date, while the valuation will be agreed based on the financial statements of 30 June 2023 which will be the Locked Box Date for considering the elements of net debt/cash and normalized working capital.

3. **Period between Execution Date and Closing Date**
   Execution Date is the date on which the JVA is signed, stamped, and delivered by the parties to the JV. Whereas the Closing Date is the date on which the transfer of ownership is affected, which is the date of payment of Purchase Consideration by the acquirer to the seller. The period between Execution and Closing is termed as a standstill period wherein no material business decisions are taken by the seller or the Company without the concurrence of the acquirer. The business may, however, continue to operate in its ordinary course during this period. This is essentially done to avoid any erosion or leakage of value from the Company until the Closing Date.
   In the above example, if the Execution Date of the JVA is 15 June 2023, then the Company and Party B will have to abide by the standstill provisions from 15 June 2023 to 31 July 2023 which is the Closing Date.
4. **Conditions Precedent to Closing**
   During the standstill period, there are certain regulatory conditions agreed as part of the transaction which need to be fulfilled before the Closing takes place. These conditions are referred to as Conditions Precedent to Closing. These conditions typically involve getting pre-requisite regulatory approvals and consents for the transaction, putting in place all the requisite documents required for the Closing, preparing the Locked Box Date financial statements, complying with the matters that may have been raised during the due diligence exercise which are critical to address before Closing, etc. Likewise, there could be certain matters which may not be critical and can be addressed by the Company as Condition Subsequent to Closing.
   In our example, Party B and the Company need to obtain all requisite regulatory approvals and put in place all requisite Closing documents and forms ready prior to the Closing Date so that the Closing can happen effectively.
5. **Board Composition and Management**
   This is the most critical aspect to be agreed on in a JVA which lays down a future roadmap for the management and governance of the business. In an ideal scenario, board representation by the shareholders is in proportion to their respective shareholding in the Company. However, there are certain reserved matter rights (also known as affirmative vote rights or veto rights) available to minority shareholders to protect value erosion or diversion of business motives during the term of the JV. Management roles and responsibilities of shareholders' nominees are laid down under this section of the JVA which acts as a roadmap for smooth functioning of the JV.
   In our above example, Party A can get a right to nominate 3 directors on the board of the Company while Party B will appoint 2 directors so that the board representation is in proportion to their shareholding. However, Party B can seek reserved matter rights on certain critical business decisions which could be taken only after their concurrence. Further, for efficient management, Party A would get a right to appoint the CEO and CFO of the Company,

while Party B will appoint the COO and CTO of the Company depending on the core competencies of each party.

6. **Exit Options**

Upon expiry of the agreed lock-in period for shareholders, generally a right of first refusal is granted to the parties of the JV. This is essentially done to retain control of the business upon potential exit of another JV partner. In addition, there is a tag-along right available with the minority shareholder and a drag-along right with the majority shareholder upon expiry of the lock-in period. To provide a confirmed exit to one of the parties, there can be a call option (generally provided to the majority shareholder) and a put option (generally with the minority shareholder). Basis of valuation for exercise of the options is also agreed in the JVA.

In our case, while both parties will have a right of first refusal upon any party willing to make an exit after the lock-in period, Party A would seek a call option and a drag-along right whereas Party B would get a put option and a tag-along right to ensure a fair exit to the shareholders.

7. **Non-Compete & Non-Solicitation**

In a Joint Venture, it is imperative that the JV partners do not end up competing with each other or with the JV during the term of the JV and a reasonable period thereafter. This is to ensure that the value envisaged for the JV is not eroded by any of the partners. As such, the parties agree not to compete directly or indirectly with the business of the JV during the non-compete period subject to permissible carve-outs. Likewise, neither party can solicit employees, customers or vendors of the Company in a manner detrimental to the business of the JV during the non-compete period. This is to ensure that key talent and customer relationships remain intact at the JV during this period.

In our example, Party A and Party B will agree not to compete with the business of the Company and not to solicit its employees, customers, and vendors during the non-compete period. In reciprocation, the Company will also agree not to compete with the unrelated business of Party A and Party B during the non-compete period.

8. **Warranties & Indemnities**

Customary representations and warranties need to be provided by the existing shareholders and the Company to the incoming shareholder to protect the incoming shareholder against any past liability which pertains to a period prior to the Closing Date, and which have not already been factored in the valuation or disclosed to the incoming shareholder prior to the Closing Date. Existing shareholders and the Company need to indemnify and hold harmless the incoming shareholder against any such liability or claim that pertains to the period prior to the Closing.

In the above example, Party B and Company C will provide representations and warranties to Party A at the time of the initial acquisition. Party B and the Company will also indemnify and hold harmless Party A against any claim or liability which arises as a result of any breach of the representations and warranties.

Negotiating a Joint Venture Agreement

Conclusion

With the increasing trend of Joint Ventures being set up by global players in India, it is highly imperative that the terms of the partnership are duly laid down in the JV agreement to avoid any misunderstanding or ambiguity going forward. A thoroughly negotiated JVA acts as a foundation for a strong and successful partnership. The terms of the JVA need to clearly provide a roadmap for future operations, rights & duties of JV partners, remedies to address any roadblocks during the term, and ensuring a fair exit to the shareholders upon achievement of the agreed milestones by the JV. As such, the JV agreement acts as a guiding light to the JV partners throughout the JV term while protecting their interests so as to save time and efforts in negotiating or litigating differences once the JV is effective.

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

Important Rulings

No TDS liability on year-end provisions reversed in subsequent year if payee is not identifiable

HT Mobile Solutions Limited v JCIT ITA No. 2475 & 2476/Del/2022, Delhi ITAT

The Taxpayer made year-end provision for expenses without deducting tax at source on the premise that payees of the expenses were not identifiable. The AO initiated TDS proceedings and treated the taxpayer as 'Assessee in default' u/s 201(1) and 201(1A) of the ITA. CIT(A) dismissed the appeal of the Taxpayer.

ITAT observed that such provisions were made in view of accrual method of accounting followed by the taxpayer and the same were reversed in the books of account on the first day of the immediately succeeding year. Further, ITAT also noted that as and when the invoices are received by the taxpayer in the succeeding year with date of invoice falling in the succeeding year, the same are processed for payment wherein due deduction of tax at source have been made and remitted to the account of the Central Government within the prescribed time and this practice has been followed consistently. Further, the Taxpayer disallowed the expenses in the computation of income filed for the year under consideration.

ITAT held that in absence of an ascertainable amount and identifiable payee, the machinery provisions of recovering tax deducted at source are not applicable, because in either way, it does not aid the charge of tax u/s 4 of the ITA but takes a form of separate levy independent of other provisions of the ITA. ITAT placed reliance on the decision of Delhi HC in case of DCIT vs. Ericcson Communications Ltd. reported in 378 ITR 395 and in case of UCO Bank vs. Union of India reported in 369 ITR 335.

In view of the above, ITAT allowed the appeal of the taxpayer.

It is important to note that in this decision, ITAT had held that taxpayer cannot be treated as 'assessee in default' u/s 201 of the ITA but, did not comment on the suo-moto disallowance made by the taxpayer in the return of income in respect of year end provisions. Nevertheless, the observation by the ITAT that machinery provisions do not apply in absence of charging provisions u/s 4, can be useful.

Section 56(2)(viib) not applicable on transactions between holding and subsidiary companies

BLP Vayu (Project-1) (P.) Ltd. v. PCIT, ITA NO. 4895 OF 2019, Delhi ITAT

The Taxpayer, engaged in the business of generating and dealing in electricity, filed nil return of income for the year under consideration, which was accepted by the AO. During the year, the Taxpayer had issued shares at premium to its holding company.

Pr. CIT set aside the assessment order u/s 263 of the ITA on the ground that the AO failed to examine the case in respect of CASS reason, for which case was selected for scrutiny assessment "Large Share Premium received during the year". Pr. CIT noted that the AO was required to examine the justification of the share premium with regard to the FMV in the light of section 56(2)(viib) of the ITA, the creditworthiness of the subscriber and the genuineness of the transaction and therefore, order u/s 143(3) is erroneous, in so far as, it is prejudicial to the interests of the Revenue.

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The Taxpayer preferred appeal before the ITAT against the said order. The Taxpayer contended that the subscriber to equity shares is 100% holding company and shares have not been allotted to third party investor and therefore, the deeming fiction of section 56(2)(viib) cannot be invoked in the context of the case.

ITAT noted that the transaction of allotment of shares at a premium in the instant case is between holding company and it is subsidiary company and thus when seen holistically, there is no benefit derived by the taxpayer by issue of shares at certain premium notwithstanding that the share premium exceeds fair market value. Instinctively, it is a transaction with self, if so to say. ITAT relied on the decision of Coordinate Bench in case of DCIT v. Ozone India Ltd. in ITA No.2081/Ahd/2018 and the decision of SMC Bench in the case of KBC India Pvt. Ltd. v. ITO in ITA No.9710/Del/2019, wherein it was held that the true purport of Section 56(2)(viib) is to prevent unlawful gains by issuing company in the garb of capital receipts.

ITAT noted that in the facts of this case, the allotment has been made to the existing shareholder holding 100% equity and therefore, there is no change in the interest or control over the money by such issuance of shares. Accordingly, it was held that section 56(2)(viib) is wholly inapplicable for transactions between holding and its subsidiary company where no income can be said to accrue to the ultimate beneficiary, i.e., holding company. The chargeability of deemed income arising from transactions between holding and subsidiary or vice versa militates against the solemn object of Section 56(2)(viib) of the ITA.

This decision could be useful to construe the anti-abuse provisions based on the purposive interpretation as against literal interpretation.

Capital gains 'income' relevant for Rs. 50 Lac threshold in section 149(1)(b) and not Sale Consideration

Sanath Kumar Murali v ITO, Writ Petition No. 7647 of 2023 (T-IT), Karnataka HC

During the year under consideration, the Taxpayer had sold an immovable property at Rs.55,77,700/-, whose indexed cost of acquisition was Rs. 21,91,931/- and taxable capital gain was Rs. 33,85,769/-.

The Taxpayer received a notice u/s 148A(b) of the ITA on March 3, 2023, as per which income chargeable to tax for AY 2016-17 has escaped assessment within the meaning of section 147. As per supporting documents to the notice, the notice was issued in context of consideration received from sale of immovable property for Rs. 55,77,700/-

The Taxpayer submitted that the capital gain from the property was Rs. 33,85,869/- and since income escaping assessment did not exceed Rs. 50 Lacs in terms of section 149(1)(b), the notice u/s 148 could not be issued beyond three years from the end of relevant assessment year. In the instant case, notice u/s 148 was issued on March 3, 2023, beyond the time limit of three years from end of relevant assessment year.

The AO contended that since the proceedings u/s 148 of the ITA is at the initial stage and adjudication is to take place in terms of procedure prescribed u/s 148A, it would be premature to construe the contention relating to 'income chargeable to tax' as contended by the Taxpayer. What is relevant is information received in respect of income escaping assessment, which refers to sale consideration,

which is above Rs. 50 lacs. Since the income escaping assessment exceeds Rs. 50 lacs, the extended period u/s 149(1)(b) would save the notice from the bar of the period prescribed to reopen provided u/s 149(1)(a) of the ITA.

Against the writ petition filed by the Taxpayer, HC held that the words found in section 149 which is 'income chargeable to tax' must be read in terms of income as arising out of 'Capital Gains' as providing u/s 48. HC stated that this is only manner of understanding words 'income chargeable to tax' u/s 149(1)(b) of the ITA. Accordingly, HC allowed the Taxpayer's petition and set aside the notice issued u/s 148 of the ITA.

Exemption u/s 54F allowable if Taxpayer is not exclusive owner of multiple house properties

Zainul Abedin Ghaswala v CIT(A), ITA No.545/MUM/2023, Mumbai ITAT

The Taxpayer, an individual, claimed deduction u/s 54F of the ITA, in the income tax return filed for the year under consideration. The Taxpayer's late father along with five other family members had inherited a land, on which all the six members constructed six flats. After the demise of the Taxpayer's father, the Taxpayer inherited the said property from his father.

The AO contended that the claim for deduction u/s 54F made by the Taxpayer cannot be allowed since the Taxpayer owned interest in more than one residential property. The Taxpayer submitted that all the members are owning and occupying one flat each for which they are paying separate electricity bills. The Taxpayer also submitted confirmation letter to AO from owners of other flats to the effect that none of them had any right/interest of whatsoever nature in each other's flats.

However, the AO disregarded the submission made by the taxpayer and held that taxpayer is not eligible for exemption u/s 54F of the ITA.

The Taxpayer relied on decision of Madras HC in the case of CIT (2012) 252 CTR 0336 and AO relied on decision of Karnataka HC in the case of M.J. Siwani v. Commissioner of Income taxmann.com 318.

ITAT decided in favour of the taxpayer since there was no material to show that the taxpayer is the exclusive owner of other house properties which are occupied by other family members. Since there was no decision of Jurisdictional HC on the matter in dispute, the view favourable to the Taxpayer was followed by the ITAT. Accordingly, the appeal of the Taxpayer was allowed.

Club Membership in name of individual directors is allowable business expenditure u/s 37

New Globe Logistik Pvt. Ltd (ITA No 1757/Mum/2021, ITAT Mumbai)

The taxpayer, a private limited company, was converted into Limited Liability Partnership (LLP) in the current year. Before conversion, the taxpayer has incurred an expenditure in respect of club membership fees for the directors of the company and claimed as business expenditure u/s 37 of the ITA. The AO has disallowed such expenditure by holding that the expenditure incurred is non-genuine and non-business-related expense.

The AO has challenged the genuineness of expenditure for club membership availed in the name of the director of the company. The AO contended that club membership expenditure cannot be termed as expenditure incurred wholly

and exclusively for the purpose of the business of the taxpayer on account of closure/conversion of the business of the taxpayer.

The CIT(A) has accepted the contention of the AO by holding that the taxpayer has made payment for director's membership fees which is in the 'individual category' and not 'corporate membership' and thus the same is personal in nature and not allowable as business deduction to the taxpayer.

Aggrieved by the findings of the CIT(A), the taxpayer filed an appeal before the ITAT and argued that since the taxpayer was ineligible for corporate membership, it has availed membership through its director. The taxpayer has justified its action by explaining that the purpose for incurring expenditure for club facility is mainly to have suitable platform for maintaining and making contacts for the benefit of the business. The said expenditure is in the nature of business promotion expenditure incurred through directors or key managerial personnel of the organization.

ITAT explained that many organizations are allowing their members to participate in sport clubs or entertainment events so as to enable the members to maintain good relationship as well as meet new people and develop business growth. ITAT also noted that even event of conversion and membership in individual category would not affect the utilization and benefit of club facilities. While analyzing the applicability of section 37 of ITA in present case, ITAT has also held that club membership fees paid is not capital expenditure as it only facilitates smooth and efficient running of the business and does not add profit earning apparatus. In backdrop of this, ITAT has held that club membership fees is allowable business expenditure u/s 37 of the ITA.

Taxability of deemed dividend in the hands of non-members

DCIT vs. Aaryavart Infrastructure Pvt Ltd, ITA No. 2105 of 2015, ITAT Ahmedabad

Section 2(22)(e) of ITA is a deeming provision and defines dividend as payment of any loans or advances by closely held company to beneficial shareholders having more than 10% voting power. It further includes any amount of loans or advances granted by closely held company to any concern being HUF, firm, AOP, BOI or company in which such shareholder is a member or partner and has substantial interest. The term substantial interest has been defined so as to include any person except company entitled to 20% of the income of the concerns.

The Taxpayer is a private limited company and received loans from Aryavart Commodities Pvt Ltd ("ACPL") and Anmol Tradeline Pvt Ltd ("ATPL"). The Taxpayer is not shareholder of ACPL or ATPL but shareholders of the Taxpayer company holding more than 10% of the voting power in the Taxpayer Company holds substantial interest in ACPL and ATPL. Accordingly, it is the case of inter-corporate deposits with common shareholders.

As the shareholders of Taxpayer company holds substantial interest in the companies from whom the Taxpayer has availed loans, the AO treated receipt of loans and advances as deemed dividend u/s 2(22)(e) of the ITA. Reliance was placed on the decision of Delhi HC in case of National Travel Services in IT Appeals no. 219 of 2010 and others wherein it was held that 2(22)(e) would be extended to beneficial shareholder and cannot be restricted only to registered shareholders.

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The ITAT upholding the decision of CIT(A) held, that the concept of deemed dividend shall apply to shareholders who receives loans or advances in lieu of dividend and cannot be extended to non-members. It was held that provision of section 2(22)(e) would apply only to registered shareholders and not to beneficial shareholders.

The ITAT observed that the Apex Court in case of Madhur Housing & Development Co in CA No. 3961 of 2013 affirmed the view adopted by Delhi HC and held that applicability of deemed dividend is limited to registered shareholders only. Thus, the view adopted by Delhi HC in case of Ankitech Pvt Ltd in IT No. 462 of 2009 was affirmed by SC. The SC in case of National Travel Services (supra), took a divergent view that the term shareholder in section 2(22)(e) referred to beneficial owners of the shares and need not be necessarily registered shareholder. Accordingly, matter was referred to Chief Justice of India ("CJI") for reconsidering the view adopted in case of Ankitech Pvt Ltd as the second limb of the section provides for applicability of deemed dividend to the concerns who may be beneficial owner but not necessarily registered shareholders. However, before attending the finality the case of National Travel Services (supra) was settled under DTVSV, 2020.

Therefore, relying on the favorable judicial pronouncements of various HC's including Gujarat HC in case of Daisy Packers Pvt Ltd in TA 212 of 2010 which was further confirmed by SC, ITAT held that though the loans and advances granted by ACPL and ATPL tantamount to deemed dividend but considering Taxpayer company was not shareholder of either of the companies granting loan, provisions of section 2(22)(e) would not apply.

Fate of cases settled under Direct Tax Vivad se Vishwas Scheme, 2020 ("DTVSV")

Jayantibhai S Patel vs. PCIT, ITA No. 141 of 2022, ITAT Ahmedabad

The Taxpayer is an individual who along with other co-owners entered into development agreement for developing the construction site. In lieu of the development agreement, the Taxpayer received certain sum over and above the agreed amount which was not forming part of the returned income. In the original assessment proceedings, the excess undisclosed income was treated as long term capital gain ("LTCG") by the AO. The Taxpayer filed appeal to the CIT(A) against the addition made by the AO. Subsequently in view DTVSV, the Taxpayer settled the appeal against original assessment order under DTVSV.

Subsequently, the PCIT invoked revisionary proceedings u/s. 263 on the ground that the undisclosed amount received by the Taxpayer needs to be taxed u/s. 69A and tax was required to be collected as per section 115BBE instead of it being treated as LTCG. The PCIT accordingly treated the assessment order as erroneous and prejudicial to the interest of the revenue. The order of the PCIT was challenged before the ITAT.

The question before the Tribunal was whether issue settled under DTVSV can be re-adjudicated u/s 263 of the Act. The Tribunal appreciating the provisions of DTVSV Act, 2020 wherein section 8 provides for immunity or benefit to the matters covered by the declaration made under DTVSV held that the PCIT does not have jurisdiction to revise the issue of taxing the unaccounted income as LTCG or unexplained money. The ITAT held that the

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intention of scheme was to close the pending disputes and therefore any reopening of the matter once settled under DTVSV would defeat the very purpose of introducing such settlement schemes.

Section 5(3) of DTVSV Act, 2020 specifically provides that the matters covered by the declaration shall attain finality and cannot be reopened in any manner.

Important Updates

Revision of Monetary Limits for the application u/s 119(2)(b) regarding ITRs claiming refund or carry forward of losses

Circular No. 7 of 2023 [F. No. 312/63/2023-OT], Dated 31-05-2023

Application for condonation of delay in filing of ITRs for claim of refund and carry forward of losses is filed u/s 119(2)(b) of the ITA and instructions in respect of the same are laid down in Circular 9 of 2015. Vide this circular, CBDT has revised the monetary limits as specified in the earlier circular, as below:

Monetary Limits	Claims to be made to (Authority)
Not more than Rs. 50 lakhs	The Principal Commissioners of Income-tax/Commissioners of Income-tax (Pr. CsIT /CsIT)
Between Rs.50 lakhs to Rs. 2 crores	The Chief Commissioners of Income-tax (CCsIT)
Between Rs. 2 crores to 3 crores	The Principal Chief Commissioners of Income-tax (Pr. CCsIT)
Exceeding Rs. 3 crores	Central Board of Direct Taxes

Expansion of scope of non-applicability of the provisions of section 56(2)(x)

Notification No. 35 /2023/F. No. 370142/ 14 /2023-TPL, dated 31-05-2023

CBDT vide Rule 11UAC has prescribed certain class of transactions, on which the provisions of section 56(2)(x) of the ITA do not apply. Vide this notification, CBDT has extended the list of exclusion by amending Rule 11UAC(4).

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Previously, the exclusion applied in respect of a situation when equity shares of any public sector company were allotted by the Central Government or any State Government under strategic disinvestment.

According to this notification, exclusion is now also applied when equity shares of not only public sector company but also any other company are allotted either by a public sector company, Central Government, or any State Government under strategic disinvestment. Therefore, the same will now not fall into the scope of the section 56(2)(x) of the ITA.

Cost Inflation Index for AY 2024-25 notified

Notification No. 39 / 2023 / F. No. 370142 / 5 / 2023 - TPL dated June 12, 2023

The Central Government has notified cost inflation index for AY 2024-25 at 348, for the purposes of computing capital gains under section 48 of the ITA.

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

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Indian Rulings

CIV entitled to India – Mauritius DTAA benefits based on TRC

Sapien Funds Ltd [ITA No. 976/Del/2022 – Order dated 08 June 2023]

Two UK tax resident individuals incorporated Sapien Capital Ltd, a UK company with 50% shareholding each. The UK entity floated a wholly owned subsidiary namely Sapien Capital Ltd (Mauritius), which in turn created Sapien Funds Ltd, a Collective Investment Vehicle in Mauritius ('CIV' or 'taxpayer').

In India, taxpayer is a SEBI registered FPI, and undertakes investment in securities / bonds / derivatives etc. While filings its return of income, taxpayer shown the interest income as exempt income for, which was accepted during the assessment proceeding. CIT, under its revisionary jurisdiction, denied the benefits of tax treaty between India-Mauritius and treated the aforesaid income as taxable under the ITA.

Before Hon'ble ITAT, the Revenue argued that **i)** Taxpayer is not entitled to benefits of India-Mauritius DTAA **ii)** In the absence of any express provision in the DTAA or any notification, a CIV is not entitled to DTAA benefits **iii)** Taxpayer adopted treaty shopping and was a mere conduit entity and **iv)** TRC is not conclusive as the DTAA allows control and management test in case of dual residency.

While rejecting the arguments of the Revenue, Hon'ble ITAT granted the benefit of tax treaty to the taxpayer by observing that i) TRC is statutorily the only evidence required to be eligible for the benefit under the tax treaty and the CIT's attempt to question TRC and to go behind the TRC is wholly contrary to the Government of India's consistent policy and repeated assurances to Foreign Investor as has been held by Hon'ble Delhi High Court in case of Blackstone Capital Partners (Singapore) VI FDI Three Pte. Ltd Vs. ACIT (CM Appeal 7332/2022) ii) Tax exemption provided by the resident country doesn't give an automatic right to the Revenue to tax the income in the Contracting State **iii)** as regards the argument of treaty shopping, ITAT relied upon the decision of Hon'ble SC in case of Vodafone International Holdings B.V. v. Union of India (2012)341 ITR1 (SC) wherein it was held that one has to consider the arrangement as a whole instead of resorting to transactional analysis.

It has been observed that despite the law laid down by Hon'ble Courts in number of cases, the Revenue has been questioning the treaty entitlement of foreign companies / funds in most of the cases merely because the taxpayer does not pay tax in its country of incorporation or taxpayer is a fiscally transparent entity in home country. This is indeed an important decision delivered by Hon'ble Delhi ITAT wherein ITAT has brushed aside all the arguments of the revenue by relying upon the settled principles laid down by Hon'ble Courts, from time to time.

Pre-clinical lab services not taxable as FTS / FIS in absence of technical know-how made available

Charles River Laboratories Inc. [IT(IT)A Nos. 88 to 90/Bang/2023 – Order dated 01 June 2023]

Taxpayer is a non-resident incorporated under the laws of the USA and engaged in rendering pre-clinical laboratory services to enable the determination of a safe dose and assess the potential toxicity of new drugs prior to human clinical trials by way of conducting in vitro and in vivo tests and trials. The aforesaid services are largely catered towards Indian customers in

the pharmaceutical, medical device and biotechnology industries.

The customers provide samples prior to undertaking human clinical trials, which is tested by the taxpayer, by rendering such preclinical laboratory services. The taxpayer provides report to its customers containing a generic protocol of the test procedure and results to conclude the preclinical phase of testing.

Taxpayer received Rs.9.77 Cr from its Indian customers for services rendered, which was not offered to tax in India nor tax was deducted at source by the customers. Revenue initiated reassessment proceedings and held that the income from pre-clinical lab services were taxable as FTS both under the Act as well as India-USA DTAA, which was confirmed by DRP.

On Appeal, Hon'ble ITAT held that fees / income from rendering pre-clinical laboratory services to Indian customers is not taxable in India, since the elements necessary for satisfying the 'make available clause' (which is a pre-condition for taxing the foreign remittance as fees for included services as per India-USA DTAA) were absent, in the context of services rendered by the taxpayer to its Indian customers. While holding so, Hon'ble ITAT considered the following:

- On perusal of the Master Service Agreement entered into by the taxpayer, it was noted that all inventions or techniques for rendering of necessary services by taxpayer to its client shall remain the exclusive property of the taxpayer alone. The reason for such agreements between the taxpayer and its Indian clients for carrying out research and to issue reports is merely providing information for enabling the Indian clients to use such data to perform its business.
- Taxpayer is contacted to undertake the research activities on frequent basis which establishes the fact that there is no 'make available' of such technical knowledge.
- Decision of Hon'ble ITAT, Hyderabad in case of *DCIT vs. Dr. Reddy's Laboratories Ltd. reported in (2013) 35 taxmann.com 339* having similar facts.

The above decision of Hon'ble ITAT is welcome and is in line with several judicial precedents wherein Hon'ble Courts / Tribunals have examined the agreements entered into by non-resident services providers with customers and also deliverables, to evaluate whether the services provided by any non-resident results into transfer of technical knowledge, skills, experience, know-how or process etc. to the Indian party.

Royalty income received from Foreign OEMs without Indian PE, not taxable in India

Qualcomm Incorporated USA [TS-316-ITAT-2023(DEL) - Order dated 13 June 2023]

Taxpayer is a non-resident corporate entity incorporated in the USA. The taxpayer earns revenue from two divisions, viz, Qualcomm CDMA Technology ('QTC') division which develops, and supplies CDMA based integrated circuits and system software and Qualcomm Technologies Licensing ('QTL') which grants license to manufactures of wireless products for the right to use Qualcomm's intellectual property.

For the AY 2014-15 and AY 2015-16, taxpayer earned royalty income received from OEMs carrying business in India through their PE were offered to tax in India. However, the royalty received from OEMs outside India were not

offered to tax as per section 9(1)(vi) of the ITA as well as Article 12 of DTAA.

The AO has made the alleged addition relying on the following documents:

- Assessment order for the AY 2012-13,
- Order passed by Tribunal for the previous AY and
- Opinion of the technical experts (obtained by AO on directions of tribunal)

Aggrieved by the draft assessment order, taxpayer raised objections before learned DRP, however, the decision of the AO was upheld. Pursuant to it, taxpayer filed an appeal before the ITAT. The taxpayer submitted that in respect to OEMs located outside India, the activity relating to accrual of royalty on the manufacture of subscriber units or network equipment happens outside India. Further, it was submitted that the burden lies on the Revenue to prove that OEMs are operating in India through their PEs. The taxpayer reiterated the decision of the Tribunal that as long as patents are used in the manufacturing process which has taken place outside India, such royalty cannot be taxed in India. To conclude, the taxpayer submitted that the AO has not brought any evidence on record to prove that OEMs carry business in India, in which, patents of the taxpayer are used.

Pursuant to considering the submissions of the taxpayer and the Revenue, ITAT was persuaded by the fact that the AO has not brought any material on record to demonstrate that Foreign OEMs have PEs in India. Further, AO adjudicated the taxability of royalty income received by the taxpayer from OEMs located outside India only based on the assessment order for the AY 2012-13 and the report of technical experts. From perusal of previous order passed by the Tribunal, it was observed that the Tribunal has categorically held that foreign OEMs, since have not carried on any business in India, it cannot be said that such OEMs have used taxpayer's patent for the purpose of any business by them in India. In regard to, report of technical experts pursuant to AY 2010-11, the said report does not have any relevance in so far as the impugned AYs are concerned as the locking of CDMA technology to subscriber units was discontinued since AY 2010-11.Hence, the present additions made is based on assessment order for AY 2012-13, which now stands reversed and therefore the addition made by the AO is set aside.

The whole issue revolves around the event of triggering the section 9(1)(vi)(c), services utilized in a business carried by Non-Resident in India. However, in the present case one should appreciate the fact that the foreign OEMs has carried on their business of manufacturing of subscriber units and infrastructure equipment outside India, therefore, the prerequisite condition to trigger section 9(1)(vi)(c) of business to be carried in India is lacking.

Supply of drawings / designs inextricably linked to offshore sale of plant not taxable as FTS

SMS Concast AG [ITA No. 1361/Del/2012 – Order dated 16 June 2023]

Taxpayer is a non-resident corporate entity incorporated in Switzerland and a tax resident of Switzerland. Taxpayer is engaged in the business of manufacturing and supply of plant, equipment, drawings as well as rendering of services of the nature of supervision of rection and commissioning. The taxpayer has entered into separate contracts with JSW Steel Ltd. (JSW) for the following works:

Important Rulings

- Supply of plant and equipment from Switzerland.
- Supply of drawings and designs in relation to such plant from Switzerland.
- Supervision of erection and commissioning of the equipments supplied.

AO has observed that receipts from supply of drawings and designs were in the nature of technical services as per the definition of FTS under Explanation 2 to section 9(1)(vii) of the ITA. Hence, it had to be treated as FTS under section 9(1)(vii) of the ITA. Thereafter, referring to various judicial precedents as well as definition of FTS under Article 12(4) of India-Switzerland DTAA, the AO ultimately concluded that the amount received toward supply of drawings and designs was taxable in Inda as FTS. The view of AO has also been confirmed by CIT(A). The issue before the ITAT was whether supply of the drawings and designs in relation to plant will be treated and taxable as FTS or not.

Taxpayer contended before ITAT that the contract of supply of drawings and designs in relation to plant and equipment is inextricably linked to supply of such plant and equipment were executed on same day. Taxpayer further submitted that in terms with the contract, the taxpayer manufactures the plant and equipment in its factory in Switzerland according to the specification provided by the contractee and supplied them in India. The drawings and design of such plant and equipment was also made in Switzerland and sold by taxpayer outside India. Taxpayer has relied upon the decisions in case of Linde Engineering Division Vs. DIT (365 ITR 1 (Delhi HC)), CIT Vs. Neyveli Lignite Corporation Ltd. (243 ITR 459 (Madras HC)), CIT Vs. Mitsui Engineering and Ship Building (259 ITR 248 (Madras HC)).

On the contrary department submitted that taxpayer had entered in two separate contracts for supply of plant and equipment and supply of drawings and designs. Scope of work under both the contracts is different. The consideration to be received for the work to be done under the two contracts have been separately identified. Thus, it cannot be said that the contracts are inextricably linked to each other.

ITAT has concluded the matter in favour of the taxpayer that the supply of drawings and designs are inextricably linked to the supply of plant and equipment, hence not taxable in Inda after considering following parameters.

- Material on record reveal that the drawings and designs are in relation to basic engineering necessary to design the plant and equipment.
- The supply of drawing and design cannot be considered on standalone basis as the purchaser could not have utilized such drawings and designs without the supply of plant and equipment. It is also not the case of the department that by purchasing the drawings and designs, the purchaser could have got the plant and equipment manufactured by a third party.
- Crucial fact emerging from the drawing and design contract was that the purchaser is vested with the right to terminate the contract unilaterally, inter alia, due to the delay in delivery of the equipment beyond 120 days for the reasons solely pertains to the seller and seller fails to take remedial action.
- Both the contracts were executed on the same day.

Further, in relation to question raised by AO for taxability of supervisory service as FTS, ITAT held that as admitted by taxpayer, qualified technical personnel deputed by the taxpayer

Important Rulings

Foreign Rulings

Supreme Court of Canada (SCC) upholds invocation of GAAR notwithstanding presence of SAAR in law

Deans Knight Income Corporation [Order dated 25 May 2023]

Forbes Medi-Tech Inc. (now Deans Knight Income Corporation), a British Columbia based drug research business had accumulated approx. $90 million of unabsorbed tax losses.

Under the Canada ITA, a taxpayer can reduce its income tax by deducting such losses from its taxable income. The unabsorbed losses may be carried back for 3 years or forward 20 years. However, under section 111(5) of the ITA, in event of a change of control, the new owners may not carry forward or set off such losses unless the company continues to operate the same/ similar business. The law in this provision considers *De-jure* control which can be established based on the number of shares owned.

To offset the losses, the taxpayer entered into a complex Investment agreement with VC firm, Matco Capital Ltd (Matco) to generate taxable profits. The agreement was drafted in a way that ensured Matco did not acquire control of the taxpayer to avoid implications of the said section of the Act. However, in substance, Matco gained functional equivalent of control of the taxpayer through the agreement.

Matco set up a separate mutual fund management company, Deans Knight Capital Management through which the taxpayer was able to generate sufficient profits and it filed its tax returns for 2009 to 2012 claiming nearly $65 million in unabsorbed tax losses, thereby reducing its tax liability.

The Revenue reassessed the taxpayer's tax returns and denied the deductions. On appeal, the Tax Court held that the taxpayer gained tax benefit through a series of transactions conducted primarily for tax avoidance purposes but held that the transactions did not amount to an abuse of the Act. The Revenue appealed to the Federal Court of Appeal, which held that the transactions were abusive. It applied the GAAR under the ITA to deny taxpayer the tax deductions claimed.

On appeal to the SCC, the majority decision held the transactions as 'abusive' and applied GAAR to deny the tax benefit. The majority determined that the underlying rationale of such provision was to deny loss carryovers when there is a lack of continuity of business. The majority held that the rationale is not fully captured by the *de jure* test which is to prevent companies from being acquired by unrelated parties to deduct the company's unabsorbed losses against future taxable income from another business for the benefit of new shareholders. The majority further held that the parties achieved the outcome which law sought to prevent as the transactions allowed an unrelated third party to achieve the control of the taxpayer through an investment agreement while circumventing the law.

Dissenting, Justice Côté opined that the majority's decision expands the concept of control based on a wide array of operational factors despite Parliament's unambiguous adoption of the *de jure* control test in the law. He reasoned that the majority's approach to determining the rationale of the provision failed

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to account for the central principle that the GAAR does not and cannot override Parliament's specific intent regarding the law. He further held that the text of a provision in certain circumstances is conclusive, especially for specific anti-avoidance rules. Considering this interpretation, he held that the Parliament never intended courts to consider factors other than those related to share ownership in determining who has control over a company and that the appeal of the taxpayer should be allowed.

Similar provision is contained in Section 79 of the Indian ITA, however, the only focus in Indian context is the minimum shareholding (51%) which should be same before and after any reconstitution for carryover of losses and there is no precondition regarding the nature of business. However, certain specific provisions for reconstitution like Demerger require the transfer to be on a going concern basis.

Important Updates

Indian Updates

CBDT eliminates mandatory digital signing requirement for Advance Ruling applications

Vide Income-tax (Ninth Amendment) Rules, 2023, CBDT further amends the rules and eliminates the mandatory digital signing requirements for Advance ruling applications.

Sub rule 2 of the Rule 44E was amended and substituted by the phrase "**signed or digitally signed**" instead of the former rule which said "**signed digitally**" in case of all the category of applicants namely Individuals, HUF, Company, Firm, Association of Persons and any other person.

Amendment in Forms for Advance Ruling applications

- All the Forms for different category of applicants of Advance ruling applications (namely Form 34C- Form EA) were amended to provide for "*Whether the transaction referred to in the advance ruling application is an event of national or international importance*" and if so, to provide for *name of the event.*
- Form 34C (for application by Non-resident) and Form 34EA (for application to evaluate Impermissible Avoidance Arrangement implications) were amended to provide for further basic details including *DOB/ DOI, Father's name, Type of incorporation*)

The phrase Authority for Advance rulings was substituted by Board for Advance rulings as a consequential amendment.

Foreign Updates

UAE releases conditions under which a non-resident person is considered to have a "NEXUS" in UAE

The Cabinet of Ministers, UAE vide Cabinet Decision No. 56 of 2023 has announced that any judicial person being a non-resident person shall be said to have a nexus in UAE if he earns income from immovable property in UAE.

The subject decision specifies that the taxable income that is attributable to the immovable property in the state shall include income derived from the right in rem, sale, disposal, assignment, direct use, letting including subletting and any other form of exploitation of immovable property.

Further, Article 12 of the Corporate Tax Law provides that a non-resident person is subject to Corporate Tax on the taxable income attributable to the nexus in the state. Hence, a person with a nexus in UAE shall be required to register with the Federal Tax Authority and obtain a Tax Registration Number.

Denmark terminates Double Taxation Agreement with Russia

The Danish Parliament on 02 June 2023 has approved Bill L 124 which covers a draft law on the denunciation of the double taxation treaty between Denmark and Russia. Confirming the same, it has published Law No. 712 on 13 June 2023 in the official gazette. Major reasons behind this decision are:

- Declaration of Russia as a non-cooperative jurisdiction by European Union.
- Russia's military invasion in Ukraine.

Both the above reasons have resulted in a reduction of Danish business interests in Russia. Termination of the treaty will take effect from 01 January 2024.

Important Updates

UAE introduce participation exemption

The MOF, UAE by the above decision has clarified various aspects and conditions for availing Participation Exemption. As per the decision, the exemption is available in respect of dividend, profit distributions and capital gains derived from a participating interest. A participating interest refers to an ownership stake of 5% or more in another entity's shares or capital which must be held for a minimum period of at least 12 months.

In order to qualify for exemption, the subsidiary must be situated in jurisdiction of corporate tax rate of 9% on profits, income or equity. Further, it also specifies that this relief applies to various types of ownership interests such as preferential shares, ordinary shares, redeemable shares, membership interests and partner interests. For availing this exemption, the aggregate cost of acquisition of these interests must be equal to or greater than AED 4,000,000.

Thus, UAE based companies will not be subject to any UAE Corporate tax if the above referred conditions get satisfied.

UAE provides Business Restructuring Relief

The MOF of UAE has issued Ministerial Decision No 133 of 2023 providing guidelines on conducting business mergers and restructuring transactions without incurring Corporate Tax obligations. This relief applies when a business or portion of it is transferred or merged into another legal entity and in exchange, the transferring entity receives shares or ownership interests. By electing for this relief, the transferring entity is exempted from including any gain or loss in the calculation of their taxable income subject to below condition.

The market value of any other forms of the consideration received in addition to shares or the ownership interests do not exceed the lower of:

- The net book value of the assets and liabilities transferred; or
- 10% of the nominal value of the ownership interests issued.

The decision also provides insights into clawing back the relief if subsequent transfers of the business or ownership interests occur within two years of the original restructuring.

UAE releases General Interest Deduction Limitation Rule

The Ministry of Finance, UAE has issued the Ministerial Decision No. 126 of 2023 on 30 May 2023 in relation to General Interest Deduction Rule (GIDR). The Decision provides for the GIDR and treatment of Interest expense or income for a certain class of persons.

In line with international standards, the net interest expenditure that can be deducted is capped at the higher of 30% of adjusted earnings before interest, tax, depreciation and amortization (EBITDA) or a safe harbor limit of AED 12 million. Tax groups with members who are banks and/or insurance providers must exclude these members income and expenditure while determining 30% EBITDA limit.

In recognition of importance of infrastructure projects to the country, long term infrastructure projects meeting the relevant conditions will not face restrictions on interest deductibility. Further, interest incurred on debt instruments entered into before the law was published to the general public on 09 December 2022 will not be subject to this limitation rule.

Important Updates

Taiwan amends the Assessment Rules for withholding tax mitigation regime

Taiwan's Ministry of Finance (MOF) on 29 May 2023 announced amendments in the rules of Taiwan's Income Tax Act for calculating the taxable income of foreign profit-seeking enterprises. Article 25 deals with deemed profit rate wherein, a foreign profit-seeking enterprise engaged in certain business activities (i.e international transport, construction contracting, technical services, or machinery and equipment leasing services) within Taiwan facing difficulty in calculating and apportioning costs may apply for a deemed profit rate from the tax authority to determine the foreign enterprise's Taiwan source income. This option is available to the entity irrespective of the fact whether it has a fixed place of business (i.e Branch or Agent) in Taiwan. The deemed profit rate is 10% for the revenue from international activities and 15% for the revenue from other qualified business activities.The amendment includes:

- Adding qualified filing agents
- Extension of application deadline from 5 years to 10 years after the date of receiving income from domestic payer of Taiwan
- Capping the approval period at 5 years

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Important Rulings

Documentary evidence must to substantiate cost-to-cost reimbursement

Jungheinrich Lift Truck India Private Limited [TS-367-ITAT-2023(Mum)-TP]

This decision, while pertaining to 'reimbursement of expenses', is an important one from the perspective of documentary evidence to be maintained by an assessee for any transaction entered into with associated enterprises.

During the year under consideration, the assessee paid Rs. 32,51,464 to its associated enterprise (AE) as reimbursement of expenses. In the TP Documentation, the purpose mentioned was to reimburse the AE for travelling, consulting and advertisement expenses paid for by the AE on behalf of the assessee. The assessee also submitted that these transactions were undertaken for administrative convenience.

However, during the assessment proceedings, the AE was unable to furnish any evidence to support the cost-to-cost nature of reimbursement, as claimed in the TP Documentation. The debit notes raised by the AE contained a narration which was different than the description provided in the TP Documentation. Considering lack of evidence, the TPO made a TP adjustment for the said expenses purported to have been reimbursed by the assessee. This was also supported by the DRP.

In this regard, the ITAT has remitted the matter back to the TPO for examination in detail as a fresh examination of evidence available with the assessee, with a remark that in case of cost-to-cost reimbursements, (i) true nature of expenses, (ii) how they pertain to assessee's business, and (iii) documents evidencing the said payment form important part of the documentation trail. It is noteworthy that merely claiming a transaction as a cost-to-cost reimbursement would not absolve either the AE or the assessee from maintaining required documents on record to evidence the same.

Scope of TPO limited to ALP computation and not to include benefit test, where AO has not disallowed expenditure of services availed from AE u/s 37

Kalburgi Cement Private Limited [ITA No 573/Hyd/2022]

Taxpayer is a company engaged in business of manufacture of cement.

The taxpayer entered into various international transactions with its AE including fee paid for management services availed. The taxpayer benchmarked the transaction of management services using CUP Method. During assessment proceedings, TPO determined the arm's length price of the intra-group services as Nil contending that the taxpayer failed to substantiate the need for such services, whether the services were actually rendered, the benefit derived from it, with any documentary evidence. Accordingly, the TPO made an adjustment of Rs. 6,17,73,273 towards the international transaction of management services.

Being aggrieved by the order, taxpayer filed an application u/s 263 of the Act before PCIT. The DRP perused the objections filed by the taxpayer and upheld the ALP determined by the TPO in respect of management services.

Aggrieved by this, the taxpayer file an appeal before ITAT. The taxpayer relying upon the decision of Hon'ble Delhi High Court in the case CIT Vs. M/s. Cushman and Wakefield (India) Pvt. Ltd. (ITA 475/2012 dt.23.05.2014) submitted

that it is not within the purview of the TPO to examine whether the services received by the taxpayer were needed by the taxpayer as well as whether any benefit is derived by the taxpayer from such services. Regarding alleged non-rendition of services, the taxpayer submitted that despite availability of evidence, the said lower authorities have not examined it and passed a cryptic order.

The ITAT relies upon the decision of the Bangalore Bench of the Tribunal in the case of 3M India Ltd Vs. ACIT and various other decisions opined that once the AO has recorded a finding that the services are intrinsically related to the activities of the taxpayer and have not disallowed the expenditure on the basis of section 37 of the Act, then the scope of determination of TPO is limited to compute whether the prices paid for the services or product received by the taxpayer were within the ALP range or not. The matter was remitted back to the TPO to determine whether sufficient documentary evidence exists to substantiate service receipt and, if yes, to determine the ALP thereof.

This is a decision in a series of management fee related decisions, where the Indian tax tribunals have continued to hold that "need test" or "benefit test" which are touted to be important parameters for examining management fee recharges globally may not be entirely relevant in the Indian context. This however, does not absolve the assessees from establishing some amount of linkage between the services received and how it relates to their business operations. It could lead to a potential disallowance under section 37 if found otherwise.

Delhi HC rules in favor of consistency, basis FAR analysis – similar approach to be adopted for years not covered by APA, as long as functional profile remains same

Springer India Pvt Ltd [TS-403-HC-2023(DEL)-TP]

The assessee, engaged in the business of publishing, reprinting and distribution of scientific books and journals, adopted a transaction-by-transaction approach to benchmark the transactions in its TP Documentation for AY 2012-13, instead of aggregating the transactions under TNMM.

The TPO and the DRP rejected this approach of the assessee and aggregated the transactions under TNMM, thereby making a TP adjustment to the income of the assessee, under the argument that in earlier years, the assessee has been aggregating the transactions under TNMM and hence, a different approach may not be entirely reliable.

While this matter was being adjudicated by the ITAT, the assessee concluded and entered into Advanced Pricing Agreement (APA) where (i) selection of Most Appropriate Method (MAM) and (ii) computation of ALP were the primary inclusions. As per the APA, a transaction-by-transaction approach was found to be appropriate under the 'other method' for covered years AY 2013-14 to AY 2021-22 ('covered years'). Notably, AY 2012-13 i.e., the year under consideration was not a covered year.

Before the Hon'ble ITAT bench, the assessee contended the importance of Functions, Assets and Risks (FAR) analysis, which was consistent for the assessee for the year under consideration and the covered years. While the AY 2012-13 was not covered within the

Important Rulings

provisions of the Act for APA itself (being made applicable from AY 2013-14 onwards). The Delhi ITAT ruled in favour of the assessee with the contention that the ITAT has been consistently following the principle that as long as the FAR is the same for covered years and non-covered year, the approach adopted cannot be different.

Before the HC, the assessee, apart from its other arguments, also brought on record that the 'other method' was available only from AY 2012-13 onwards and hence, its approach in earlier years could not be brought to question.

The Hon'ble HC bench dismissed the Revenue's appeal challenging the applicability of APA for AY 2012-13 addressing the Tribunal's approach to be 'wholesome'. Having regard to the limiting factor that the assessee could enter into the APA with CBDT only from AY 2013-14 and given the complexity of the transaction which the assessee was involved in, the Tribunal thought it fit that the APA could be used to benchmark the transactions even for the AY 2012-13.

This ruling is a landmark in itself – endorsing the 'wholesome approach' in the transfer pricing disputes - surely a win-win. Rightly, even while the FAR for the non-covered year remains the same, the ALP is required to be decided on the basis of the comparability and economic analysis carried out specifically for the non-covered year. Its opens the road for entities to enter into APAs for complex, voluminous transactions, if certainty like this is available, where basis a consistent FAR, the approach under covered and non-covered years would not undergo a change.

Important Updates

New Transfer Pricing Rules in Malaysia

The Inland Revenue Board of Malaysia (IRBM) has brought into effect the Income Tax Rules (Moving Price) 2023 and Income Tax (Transfer Pricing Rules) 2023 effective from Assessment Year 2023 and onwards. These rules replace the existing transfer pricing rules. The key amendments in the new rules are as follows:

- **Introduction of a narrower arm's length range** - 37.5 percentile to 62.5 percentile.

  However, the IRBM may still adjust the price of the controlled transaction to the median or any other point above the median (within the arm's length range) when the comparable data is the kind which has a lesser degree of comparability, or there are comparability defects which cannot be quantified, identified, or adjusted.

- **Contemporaneous Transfer Pricing Documentation**
  - Date of preparation of Transfer Pricing Documentation to be mentioned in the Documentation.
  - To be submitted within 14 days upon request by the IRBM
- **Extensive information requirement** – Information that generally forms part of the Master file (as per OECD format) is required to be included in transfer pricing documentation.
  - a cross-reference to the group Master File can be made if the taxpayer is a part of a multinational enterprise group subject to the requirements of Master File
- **Offsetting adjustment rule removed** - Any transfer pricing adjustment made on a taxpayer in relation to domestic controlled transactions, may not make the counterparty taxpayer eligible for a corresponding relief.
- **Alignment with revised OECD Transfer Pricing Guidelines** - The new TP Rules have been aligned with the revised OECD Transfer Pricing Guidelines (updated in January 2022) with respect to certain important aspects, such as accurate delineation of controlled transactions, cost contribution arrangements and entitlement to income attributable to intangibles.

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Important Updates

GST

Instruction

Guidelines issued for processing registration applications

Instruction No. 3/2023 dated June 14, 2023

CBIC has issued guidelines to verify fake or bogus registration under GST. The guidelines outline the steps for scrutiny and verification of registration applications, including checking the authenticity of documents, cross-verifying addresses, considering risk ratings, issuing notices for deficiencies, and conducting physical verifications when necessary. Further, the guidelines also highlight that the Principal Chief Commissioners and Chief Commissioners shall supervise the process of registration applications within their zones.

Recent Advisories issued by GSTN

Introduction of E-Invoice Verifier Application

GSTN has developed an application named "E-Invoice QR Code Verifier" which facilitates easy and efficient verification of e-Invoices.

Update on Enablement Status for Taxpayers for e-Invoicing

As per Notification No. 10/2023 Central Tax dated May 10, 2023, the threshold for e-Invoicing for B2B transactions has been reduced from Rs. 10 crores to Rs. 5 crores w.e.f. August 01, 2023. In line with these changes, GSTN has enabled all eligible taxpayers with an Aggregate Annual Turnover above Rs. 5 crores as per GSTN records in any of the preceding financial years to access all six IRP portals including NIC-IRP for e-Invoice reporting.

Online compliance pertaining to liability / difference between GSTR-1 and GSTR-3B (DRC-01B)

The GSTN has introduced a functionality on the GSTN portal that enables taxpayers to explain differences between GSTR-1/IFF and GSTR-3B/3BQ returns. The feature compares declared liability as per GSTR 1 with paid liability as per GSTR 3B, and if the difference exceeds a set limit or threshold, the taxpayers will receive an intimation in the Form DRC-01B. Upon receiving such intimation, the taxpayers would be required to respond using Form DRC-01B Part B, providing payment details via Form DRC-03 and/or explaining the difference.

Foreign Trade Policy

DGFT introduces guidelines on manual procedures to be followed for one time settlement of default in export obligation by Advance and EPCG authorization holders

Policy circular No. 2/2023 dated June 23, 2023

In view of the issued being faced by some exporters in filing application in EODC module of DGFT website, DGFT has introduced a procedure for manual application with regard to one time settlement of default in discharge of export obligation. Manual application needs to be submitted to Regional Authority (RA) concerned within deadline specified under the amnesty scheme along with supporting documents. Concerned RA would examine (within 3 days) and consider granting EODC online in EODC module of DGFT website.

Custom

Procedure to be followed for re-assessment of BOE as per instruction given by the Hon'ble Supreme Court in case of Cosmos films Ltd

Important Updates

Circular No. 16/2023 dated June 07, 2023

In case of Union of India Vs Cosmos Films Limited, the Hon. Supreme Court had upheld the constitutional validity of the imposition of 'pre-import' condition in order to avail the exemption of IGST and compensation cess ('cess') under the Advance Authorisation ('AA') scheme. In the same judgement, the Apex Court had also directed the revenue to come out with an appropriate procedure for allowing Input Tax Credit to importers for such IGST paid now.

Pursuant to directions of the Apex Court, the CBIC has issued a circular on procedure to be followed for payment of IGST wherever pre-import condition was breached. The circular clarifies that valid document for claiming ITC is a bill of entry (and not TR-06 Challan). Hence the Board prescribed a procedure of cancellation of existing OOC, reassessment of such Bills of Entry and generation of 'notional OOC' upon payment of such re-assessed IGST. Under this procedure, the payment of IGST would be against the reassessed BOE and the details of such IGST payment would flow from ICEGATE portal to GSTN portal for flow of ITC.

Important Rulings

Retrospective cancellation of supplier's registration no ground to deny ITC benefit to recipient

Gargo Traders vs. The Joint Commissioner, Commercial Taxes (State Tax) & Ors

HC(CAL)-2023-GST

The taxpayer was denied the ITC in respect of purchase made from a supplier whose registration was cancelled retrospectively. The taxpayer filed a writ petition challenging the order passed. The taxpayer provided documentation, including tax invoices and bank statements, to support that they have complied with all the necessary obligations and that the transactions in question are genuine and valid.

Hon'ble High court of Calcutta took note of the taxpayer arguments that it had the pertinent support documents required by law and the fact that supplier was a registered taxable person as per the Government portal. The taxpayer had also paid the price of the purchased items and the tax thereon via bank transfer. Considering that the taxpayer had exercised due diligence in confirming the authenticity and identity of the supplier, the impugned order was set aside, and the revenue was directed to pass the order afresh after following the principles of natural justice.

Intra-company equipment movement between branches in different States taxable as 'lease rental service'

CHEP India Pvt Ltd

AAAR(MAH)-2023-GST

The taxpayer is engaged in the business of leasing pallets, crates and containers and they lease the equipment to their other units located in other states who subsequently lease it to end customers. In some cases, the equipment is transferred interstate, in case the equipment lying in one state is required at another state. The Authority of Advance Ruling (AAR) had held that the transfer of equipment between the distinct persons shall be treated as a supply however, the AAR held that the value of the equipment shall be the value at which the recipient location leases the end goods to end customer. Aggrieved by the order of the AAR, the taxpayer had filed an appeal before the Appellate authority for Advance Ruling (AAAR).

Important Rulings

The AAAR held that in case of lease of equipment between head office and other locations being distinct persons, the value declared on the invoice issued by the appellant would be the value at which GST has to be charged in terms of Section 15 of the CGST Act, 2017 read with second proviso to Rule28 of the CGST Rules, 2017, considering that the said locations shall be eligible to ITC. The AAAR also held that where one location transfers the equipment to another on the instructions of the head office, such transfer cannot be termed as mere movement of goods as the transferee location is charging a facilitation fee for the same. Further, once the equipment is transferred to the other location, the said other location shall be treated as receiving leasing services from the head office. It is to be noted that this conclusion of the AAAR is based on the peculiar facts of the case presented before the AAAR. Further, so far as the questions raised in respect of documentation required for movement of goods, were concerned the AAAR held that such questions are not covered under the ambit of advance ruling under GST and were therefore, not answered.

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MCA Notifications

Filing of e-Form CSR-2- Amendment in Companies (Accounts) Rules, 2014

Notification dated May 31, 2023

Ministry of Corporate Affairs revised Rule 12 of Companies (Accounts) Rules, 2014 and directed that e-Form CSR-2 shall be filed separately on or before March 31, 2024, after filing Form AOC-4 [Filing of Financial statements] or Form No. AOC-4-NBFC (Ind AS) or Form No. AOC-4 XBRL (Filing of Documents and Forms in Extensible Business Reporting Language) for the Financial Year 2022-23.

Applicability: With effect from June 02, 2023

Relaxation in filing of Form DPT-3 – Return of Deposits

General Circular No. 06/2023 dated June 21, 2023

Keeping in view the challenges faced by the stakeholders due to transition of the MCA-21 Portal from Version-2 to Version-3, Ministry of Corporate Affairs granted extension in filing Form DPT-3 [Return of Deposits] from June 30, 2023 to July 31, 2023, without payment of any additional fees for the Financial year ended on March 31, 2023.

Applicability: With Immediate effect.

RBI Notifications

Remittances to IFSCs under the LRS

RBI/2023-24/45 vide Notification No. A.P. (DIR Series) Circular No. 06 dated 22 June 2023

RBI, vide its circular dated 16th February 2021, had amended the Liberalised Remittance Scheme (LRS) guidelines to permit Resident Indians to make remittances towards investments in IFSCs subject to the following towards conditions:

i. remittance shall be made only for making investments in IFSCs in securities.

ii. Resident Individuals may also open a non- interest bearing Foreign Currency Account (FCA).

iii. Resident Individuals not to settle any domestic transactions with other residents through such FCAs.

To further widen the scope of LRS in IFSCs, Authorised Persons are now permitted to facilitate remittances by Resident individuals under purpose '**studies abroad**' [*as per Schedule III of Foreign Exchange Management (Current Account Transactions) Rules, 2000*] for payment of fees to foreign universities or foreign institutions in IFSCs for pursuing such Government notified courses.

With a view to broaden the scope further under LRS, RBI has directed Authorized Persons to facilitate remittance by resident individuals under the purpose "Studies abroad" in Schedule III for payment of fees to foreign universities or foreign institutions in IFSCs. Such remittance shall, however, be restricted to the extent it is for pursuing courses notified by the Central Government, i.e., courses offered in Financial Management, FinTech, Science, Technology, Engineering and Mathematics *(Refer Gazette Notification No. SO 2374(E) dated May 23, 2022).*

Framework for Compromise Settlements and Technical Write-offs

RBI/2023-24/40 vide Notification No. DOR.STR.REC.20/21.04.048/2023-24 dated 08 June 2023

With a view to provide a framework for compromise settlements of stressed assets, RBI had over time issued various directions to Commercial Banks, All India Financial Institutions, Systematically Important Non Deposit taking NBFCs and Deposit taking NBFCs, including *Prudential Framework for Resolution of Stressed Assets dated 07 June 2019 ("Prudential Framework")*.

To further provide impetus to resolution of stressed assets, RBI has now issued a comprehensive regulatory framework governing **Compromise Settlements**[1] **and Technical Write Offs**[2] (together referred to as "CSTO" hereunder) for the Regulated Entities ("Res"), of which some of the key features are as follows:

[1] Compromise settlement for this purpose shall refer to any negotiated arrangement with the borrower to fully settle the claims of the RE against the borrower in cash; it may entail some sacrifice of the amount due from the borrower on the part of the REs with corresponding waiver of claims of the RE against the borrower to that extent.

[2] Technical write-off for this purpose shall refer to cases where the non-performing assets remain outstanding at borrowers' loan account level but are written-off (fully or partially) by the RE only for accounting purposes, without involving any waiver of claims against the borrower, and without prejudice to the recovery of the same.

RBI Notifications

Key Parameters	Description
Board approved Policy	Policy to lay down processes, timeline, specific guidance, conditions precedents, staff accountability, etc. in detail.
Delegation of Power	Policy to ensure proper delegation of power to approve/sanction CSTOs.
Prudential treatment	Defining time frame for compromise settlements and process for partial write-offs.
Reporting Mechanism	Hierarchical mechanism for quarterly reporting mechanism to be adopted up to Board level.
Oversight by the Board	Board to mandate a standard reporting format to ensure adequate coverage for such CSTOs.
Treatment of accounts categorized as fraud and willful defaulter	REs may undertake CSTOs even in cases where criminal proceedings are underway against such willful / fraud defaulters.

Expanding the Scope of Trade Receivables Discounting System

RBI/2023-24/37 vide Notification No. CO. DPSS. POLC. No. S-258/02-01-010/2023-24 dated 07 June 2023

Reserve Bank of India ("RBI") had earlier issued 'Guidelines for the Trade Receivables Discounting System (TReDS)' to enable financing/discounting of MSME receivables on '**without recourse**' basis by permitted financiers.

With a view to further ease constraints faced by MSMEs in converting their trade receivables into liquid funds, RBI has issued the following guidelines permitting:

1. Insurance facilities by insurance companies for TReDS transactions such that no premium shall be levied on the MSME Seller and collection of premia can be done through the National Automated Clearing House System (NACH). *(Credit insurance shall not be treated as a Credit Risk Mitigant to avail any prudential benefits.)*
2. All entities/institutions to undertake factoring business under the Factoring Regulation Act 2011, to act as financiers (*Earlier RBI permitted banks, NBFCs and other financial institutions to act as financiers only).*
3. TReDS platform operators to introduce and enable secondary market for transfer of Factoring Units (FU) (*i.e., invoice or bill in the system)* within the same platform.
4. TReDS platform operators to undertake settlement of all FUs through NACH *(Earlier, undiscounted, or non-financed FUs were required to be settled outside the system).*
5. Display of details of bids placed for an FU on the platform.

RBI Notifications

Risk Management and Inter-Bank Dealings - Non-deliverable derivative contracts (NDDCs)

RBI/2023-24/36 vide Notification No. A.P. (DIR Series) Circular No. 05 dated 06 June 2023

With a view to expand the onshore[3] INR Non - Deliverable Derivative Contracts (NDDC) market and to provide flexibility to the residents to efficiently design their hedging programmes, RBI has now permitted AD Cat-I banks operating IFSC Banking Units (IBUs) to:

(a) Offer NDDCs cash settled in INR to resident non-retail user for hedging (*earlier it was restricted to foreign currency cash settled transactions only*); and

(b) Flexibly settle NDDCs in both INR and foreign currency with other AD Cat-I Banks and person resident outside India.

[Note: NDDC means an OTC foreign exchange derivative contract in which there is no delivery of the notional amount of the underlying currencies of the contract, and which is cash settled].

[3] India's onshore foreign exchange (forex) market is primarily a wholesale market, dominated by banks, forex brokers and corporate clients. Individuals, the government and the central bank generally transact through banks. Forex trading typically takes place over-the-counter (OTC) for spot, forward and swaps, while options and futures are traded on exchanges, i.e., National Stock Exchange (NSE), Bombay Stock Exchange (BSE) and Metropolitan Stock Exchange of India Ltd. (MSE).

SEBI Notifications

Tripartite Agreement among Listed Company, Existing Share Transfer Agent and New Share Transfer Agent

SEBI/HO/MIRSD/MIRSD-PoD-1/P/CIR/2023/79 dated May 25, 2023

Registrar and Transfer Agent (RTA) is mandated to enter into bipartite agreement with body corporate or person or group of persons for or on behalf of whom it is acting as a registrar to an issue or share transfer agent to define the roles and responsibilities of RTA as well as body corporate or person or group of persons. Further, regulation 7(4) of the SEBI (LODR) Regulations, 2015 mandates the Listed Entity to enter into tripartite agreement with existing RTA and new RTA in case of change of RTA.

In view of easy access to model tripartite agreement, RTAs and Listed Companies are advised to publish format of the said agreement on their respective websites by **June 01, 2023.**

Comprehensive guidelines for Investor Protection Fund and Investor Services Fund

SEBI/HO/MRD/MRD-PoD-3/P/CIR/2023/81 dated May 30, 2023

Investor Protection is one of the significant objectives of Indian market regulator. In order to protect and educate investors across the country and globe, SEBI has issued guidelines for Investors Protection Fund (IPF) and Investor Services Fund (ISF) way back in 1992 which were modified through issuance of various circulars from time to time.

The existing provisions on IPF and ISF are repealed with issuance of comprehensive guidelines covering various aspects as follows:

- Constitution and Management of IPF;
- Contribution to IPF of stock exchanges and depositories;
- Utilization of IPF and interest or income from IPF;
- Deployment of funds of IPF by stock exchanges and depositories;
- Review of IPF corpus;
- Manner of inviting claims from investors by stock exchanges;
- Eligible claims and their threshold limits;

Applicability: From June 1, 2023

Online processing of investor service requests and complaints by RTAs

SEBI/HO/MIRSD/MIRSD-PoD-1/P/CIR/2023/72 dated June 08, 2023

With an increasing trend of digitalization, it has been proposed to process the various service requests / complaints lodged by the investors through online mechanism which would confer the benefits such as database for service requests and complaints, online acknowledgement and intimation and online tracking of status of service requests and complaints.

Online mechanism for processing the investors' service request and complaints will become operative into two phases.

Phase 1:

The RTAs shall have to set up a functional website with a user-friendly mechanism for service requests/ complaints with a scalable model and having robust cyber security protocols.

Applicability: For Qualified Registrar and Transfer Agents ("QRTAs") from January 01, 2024, and by all other registered RTAs dealing with listed companies from June 01, 2024.

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Phase 2:

In this Phase, a common website shall be made and operated by QRTAs through which investors shall be redirected to individual web-based portal/website of the concerned RTA for further resolution by putting the name of the listed company.

Applicability: from July 01, 2024.

Upstreaming[1] of clients' funds by Stockbrokers (SBs) / Clearing Members (CMs) to Clearing Corporations (CCs)

SEBI/HO/MIRSD/MIRSD-PoD-1/P/CIR/2023/84 dated June 08, 2023

Stock Brokers (SBs) and Clearing Members (CMs) are required to take utmost care of clients' funds received by them during the day. To safeguard the clients' funds SEBI has been decided to require upstreaming[1] of clients' funds by SBs/CMs to CCs for which framework has been introduced for upstreaming and down streaming of clients' funds.

According to framework, clients' fund to be up-streamed on End of Day (EoD) basis by SBs/CMs to CCs in the form of cash, lien on Fixed Deposits (FDR) (subject to certain conditions) or pledge of units of Mutual Fund Overnight Schemes (MFOS) only.

Clients' funds other than lien of FDR and pledge of MFOS shall be upstreamed by SBs CMs and CMs to CCs any time during the day before below mentioned cut-off time:

Sr. No.	Particular	Cut-off time
1	CM upstreaming cutoff time	To be decided by CC - not earlier than 6 p.m.
2	SB upstreaming cutoff time	To be decided by CM – not earlier than 1 hour prior to CM upstreaming cutoff time

Applicability: From July 01, 2023.

Adherence to provisions of regulation 51A of SEBI (Issue and Listing of Non-Convertible Securities) Regulations, 2021 by Online Bond Platform Providers

SEBI/HO/DDHS/POD1/P/CIR/2023/092 dated June 16, 2023

SEBI, vide its circular no. SEBI/HO/DDHS/DDHS-RACPOD1/P/CIR/2022/154 dated November 14, 2022, has restricted Online Bond Platform Providers (OBPP) from offering products/services/securities on its Online Bond Platform (OBP) other than listed debt securities and debt securities proposed to be listed through public offering. OBPPs were required to divest itself of offerings of any other products/services/securities.

Nevertheless, it has been observed that OBPPs are offering other products/services/securities and have not divested itself as mentioned above. Market regulators have also received certain representations from OBPPs.

[1] Upstreaming means transfer of funds so as to ensure that no clients' funds are lying with SB / CM at the End of Day (EOD).

SEBI Notifications

In view of the above, OBPPs shall no longer be permitted to offer products/services/securities on its OBP, other than following:

- Listed debt securities, listed municipal debt securities and listed securitised debt instruments;
- Debt securities, municipal debt securities and securitised debt instruments proposed to be listed through a public offering;
- Listed Government Securities, State Development Loans and Treasury Bills; and
- Listed Sovereign Gold Bonds.

It is therefore imperative that any customer trading on the OBP be aware of the permissible transactions / products that are offered and avoid misuse of funds.

Applicability: June 16, 2023

Regulatory framework for Execution Only Platforms for facilitating transactions in direct plans of schemes of Mutual Funds

SEBI/HO/IMD/IMD-PoD-1/P/CIR/2023/86 dated June 13, 2023

SEBI registered Investment Advisors (IAs)/Stock Brokers (SBs) provides services in respect of execution of direct plans of mutual funds to investors who are their clients but also to investors who are not their clients. Though it is convenient for non-client investors to avail such services on digital platform of IAs/SBs, they are left with no recourse or protection for the executed transactions.

In order to protect the interests of investors and to develop and regulate investment in securities market, regulatory framework for Execution Only Platforms (EOPs) has been prescribed for transacting in direct plans of schemes of Mutual Funds.

A comprehensive framework for EOPs has been notified by SEBI in respect of (i) applicability and scope of EOPs, (ii) registration, (iii) eligibility criteria, (iv) on-boarding of investors and fees, (v) operational risk management, (vi) grievance redressal and handling the conflict of interest, (vii) disclosure requirements and (viii) maintenance of books of accounts, records, etc.

Applicability: September 01, 2023

Trading Preferences by Clients

SEBI/HO/MIRSD/MIRSD-PoD-1/P/CIR/2023/95 dated June 21, 2023

Investors are required to provide various details at the time of opening a trading account with a stockbroker. Presently, the investors are mandated to give separate authorization if they are desirous to trade on different stock exchanges for the same segment or on different segment.

In order to facilitate the investor clients to the access all the stock exchanges (i.e. BSE, NSE, MSEI including commodity exchanges) in which the said stock brokers are registered.

The stockbrokers are mandated to the following:

- ✓ **New clients** to be registered on all the active stock exchanges after obtaining trading preferences.
- ✓ **Existing clients** will be offered access on all active stock exchanges for segments already opted by them as default mode or activate / deactivate the segments based on the preference of the clients. Time limit of three months from the date

SEBI Notifications

of applicability of the said Circular has been granted for this process.

Applicability: August 01, 2023

Alternative Investment Funds

A slew of Circulars has been issued by the Securities and Exchange Board of India in respect of Alternative Investment Funds (AIFs), the details of which have been provided below:

Issuance of units of AIFs in dematerialized form

SEBI/HO/AFD/PoD1/CIR/2023/96 June 21, 2023SEBI/HO/MIRSD/MIRSD-PoD-1/P/CIR/2023/72 dated June 08, 2023

In terms of Regulation 10(aa) of AIF Regulations, AIFs have to issue units in dematerialised form as per the prescribed timelines:

Particulars	Schemes of AIFs with corpus ≥ Rs 500 Crore	Schemes of AIFs with corpus < Rs 500 Crore
Dematerialisation of all the units issued	Latest by October 31, 2023	Latest by April 30, 2024
Issuance of units only in dematerialised form	November 01, 2023 onwards	May 01, 2024 onwards

Standardised approach to valuation of investment portfolio of Alternative Investment Funds (AIFs)

SEBI/HO/AFD/PoD/CIR/2023/97 dated June 21, 2023

Valuation norms for valuation of securities, both traded and non traded have already been prescribed under the Eighth Schedule of SEBI (Mutual Funds) Regulations, 1996 ('MF Regulations'). As per the valuation guidelines, the Net Asset Value ('NAV') of a scheme is determined by dividing the net assets of the scheme by the number of outstanding units on the valuation date.

However, where valuation of securities has not been specified as the MF Regulations stated above, SEBI has prescribed the eligible AIF industry association to endorse appropriate valuation guidelines after taking into account recommendations of Alternative Investment Policy Advisory Committee of SEBI.

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Abbreviations

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Abbreviation	Meaning
AA	Advance Authorisation
AAR	Authority of Advance Ruling
AAAR	Appellate Authority of Advance Ruling
AAC	Annual Activity Certificate
AD Bank	Authorized Dealer Bank
AE	Associated Enterprise
AGM	Annual General Meeting
AIR	Annual Information Return
ALP	Arm's length price
AMT	Alternate Minimum Tax
AO	Assessing Officer
AOP	Association of Person
APA	Advance Pricing Arrangements
AS	Accounting Standards
ASBA	Applications Supported by Blocked Amount
AY	Assessment Year
BAR	Board of Advance Ruling
BEAT	Base Erosion and Anti-Avoidance Tax
CBDT	Central Board of Direct Tax
CBIC	Central Board of Indirect Taxes and Customs
CCA	Cost Contribution Arrangements
CCR	Cenvat Credit Rules, 2004

Abbreviation	Meaning
CESTAT	Central Excise and Service Tax Appellate Tribunal
CGST Act	Central Goods and Service Tax Act, 2017
CIT(A)	Commissioner of Income Tax (Appeal)
COO	Certificate of Origin
Companies Act	The Companies Act, 2013
CPSE	Central Public Sector Enterprise
CSR	Corporate Social Responsibility
CTA	Covered Tax Agreement
CUP	Comparable Uncontrolled Price Method
Customs Act	The Customs Act, 1962
DFIA	Duty Free Import Authorization
DFTP	Duty Free Tariff Preference
DGFT	Directorate General of Foreign Trade
DPIIT	Department of Promotion of Investment and Internal Trade
DRI	Directorate of Revenue Intelligence
DTAA	Double Tax Avoidance Agreement
ECB	External Commercial Borrowing
ECL	Electronic Credit Ledger
EO	Export Obligation
EODC	Export Obligation Discharge Certificate

Abbreviation	Meaning
EPCG	Export Promotion Capital Goods
FEMA	Foreign Exchange Management Act, 1999
FII	Foreign Institutional Investor
FIFP	Foreign Investment Facilitation Portal
FIRMS	Foreign Investment Reporting and Management System
FLAIR	Foreign Liabilities and Assets Information Reporting
FPI	Foreign Portfolio Investor
FOCC	Foreign Owned and Controlled Company
FTC	Foreign Tax Credit
FTP	Foreign Trade Policy 2015-20
FTS	Fees for Technical Service
FY	Financial Year
GAAR	General Anti-Avoidance Rules
GDR	Global Depository Receipts
GMT	Global Minimum Tax
GILTI	Global Intangible Low-Taxed Income
GSTN	Goods and Services Tax Network
GVAT Act	Gujarat VAT Act, 2006
HSN	Harmonized System of Nomenclature
IBC	Insolvency and Bankruptcy Code, 2016

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Abbreviation	Meaning
ICDS	Income Computation and Disclosure Standards
ICDR	Issue of Capital and Disclosure Requirements
IEC	Import Export Code
IIR	Income Inclusion Rule
IMF	International Monetary Fund
IRP	Invoice Registration Portal
IRN	Invoice Reference Number
ITC	Input Tax Credit
ITR	Income Tax Return
IT Rules	Income Tax Rules, 1962
ITAT	Income Tax Appellate Tribunal
ITR	Income Tax Return
ITSC	Income Tax Settlement Commission
JV	Joint Venture
LEO	Let Export Order
LIBOR	London Inter Bank Offered Rate
LLP	Limited Liability Partnership
LOB	Limitation of Benefit
LODR	Listing Obligations and Disclosure Requirements
LTA	Leave Travel Allowance
LTC	Lower TDS Certificate
LTCG	Long term capital gain
MAT	Minimum Alternate Tax
MCA	Ministry of Corporate Affairs
MeitY	Ministry of Electronics and Information Technology
MSF	Marginal Standing Facility
MSME	Micro, Small and Medium Enterprises
NCB	No claim Bonus
OECD	The Organization for Economic Co-operation and Development
OM	Other Methods prescribed by CBDT
PAN	Permanent Account Number
PE	Permanent establishment
PPT	Principle Purpose Test
PSM	Profit Split Method
PY	Previous Year
QDMTT	Qualified Domestic Minimum Top-up Tax
RA	Regional Authority
RMS	Risk Management System
ROR	Resident Ordinary Resident
ROSCTL	Rebate of State & Central Taxes and Levies
RoDTEP	Remission of Duties and Taxes on Exported Products
RPM	Resale Price Method
SC	Supreme Court of India
SCN	Show Cause Notice
SDS	Step Down Subsidiary
SE	Secondary adjustments
SEBI	Securities Exchange Board of India
SEP	Significant economic presence
SEZ	Special Economic Zone
SFT	Specified Financial statement
SION	Standard Input Output Norms
SOP	Standard Operating Procedure
ST	Securitization Trust
STCG	Short term capital gain
SVLDRS	Sabka Vishwas (Legacy Dispute Resolution Scheme) 2019
TCS	Tax collected at source
TDS	Tax Deducted at Source
TNMM	Transaction Net Margin Method
TP	Transfer pricing
TPO	Transfer Pricing Officer
TPR	Transfer Pricing Report
TRO	Tax Recovery Officer
UTPR	Undertaxed Profits Rules
WHT	Withholding Tax
WOS	Wholly Owned Subsidiary