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kcm Insight

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Dear Reader,

We are happy to present to you, the third edition (June 2020) of *kcm*Insight.

We hope it provides you with an insight on various updates and that you will find the same informative and useful.

About *kcm*Insight

*kcm*Insight is a dedicated monthly publication rolled out with a specific endeavour to provide our readers and clients with all the relevant updates from across sectors / laws, on one single platform. The Teams' effort is to cater to you a consolidated document covering the most important circulars, notifications, clarifications and case laws in the tax & regulatory world issued or pronounced in the past month.

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Changes in ITR forms for AY 2020-21

CBDT vide notification No. 31 dated May 29, 2020 has notified new ITR forms applicable for the AY 2020-21. For relevant changes in new ITR Forms relating to Corporate Taxpayer, complete analysis is available in KCM Flash dated 11th June 2020.

The major changes in ITR Forms pertaining to other categories of the Taxpayer are broadly summarized as under.

In view of withdrawal of CBDT Notification No 1 dated January 3, 2020 , any person owning a property in joint-ownership or who has entered into specified transactions such as payment of electricity bill in excess of Rs 1 lakh or payment for foreign travel expense in excess of Rs. 2 lakh for himself or for any other person and/or having deposited cash of more than 1 crore in one or more current account with bank can continue to file ITR in Form ITR-1 or ITR-4 if they fulfil other conditions.

In wake of unprecedent lockdown owing to Covid-19 across India, new Schedule DI has been introduced in ITR-1 to ITR-6. The Taxpayer is required to provide specific details of investment such as deduction u/s 10AA, Investment made under chapter VI-A as well as section 54 to 54G between 1st April 2020 to 31st July 2020 in this schedule to avail the benefit of deduction/exemption in AY 2020-21.

If a taxpayer does not have income exceeding basic exemption limit, he is still required to file the ITR in view of seventh proviso to 139(1) if he has entered into any of the following specified transaction during the year. In new ITR form, he is accordingly required to additionally disclose details of such specified transactions in ITR-1 to ITR-4 if he is filing ITR under said provision.

- Deposit of more than Rs 1 Crore in one or more current account maintained with bank or co-operative bank or.
- Incurred more than Rs 2 lakh for himself or for any other person for travel to a foreign country or
- Incurred more than Rs 1 lakh towards payment of electricity bill in a year.

The FA 2020 had revised the turnover threshold for non-applicability of tax audit from Rs. 1 Cr. to Rs. 5 Crs. (with eligibility criteria of maximum 5% cash transactions for both revenue and expenditure). Pursuant to the said amendment, the taxpayer is required to notify in the new check-box whether these conditions are complied with or not.

In ITR-3, Schedule DEP has been amended to provide new block of asset with rate of depreciation at 45% so as to enable taxpayers to claim depreciation on motor buses, motor lorries and motor taxis used in a business of running them on hire, acquired between 23-08-2019 and 31-03-2020 and is put to use on or before 31-03-2020.

The new ITR forms have been amended to allows the Taxpayers to select multiple bank accounts for the purpose of credit of refund claimed in ITR.

In terms of provision of 139(5E), a taxpayer can also quote Aadhar Number in place of PAN, if not available at relevant schedules in ITR.

The new ITR forms require a taxpayer to quote Document Identification Number (DIN) of the

notice in response to which he is filing the return of income. (ITR 1 to ITR 7)

New Schedule TPSA has been introduced in ITR form to provide details of additional income tax paid in respect of secondary adjustment made under provisions of section 92CE of the ITA.

In new ITR 3 separate reporting of disallowance of any interest, salary, bonus or commission paid to members of AOP and BOI is also required to be disclose. u/s 40(ba) in Schedule P & L.

In ITR 2 & ITR 3, the persons who are holding directorship in any company are additionally required to disclose the type of company (whether private, public etc.) while furnishing said details in ITR.

Cost Inflation Index notified for FY 2020-2021

CBDT vide Notification No. 32 dated June 12, 2020 has notified the cost inflation index (CII) for the financial year 2020-2021 relevant for the AY 2021-22 at 301.

Exemption for conveyance & Travel allowances available to employee opting for an alternate Tax regime u/s 115BAC

The FA 2020 has introduced an optional new personal taxation regime which provides an option to individual & HUF Taxpayers to pay taxes at relatively lower rates provided he let goes specified deductions and allowances. The provision further provides that CBDT may notify specified allowances u/s 10(14) which may continue to available to the Taxpayer opting the scheme.

CBDT vide Notification dated June 28, 2020 has accordingly amended IT Rule 2BB to provide that in case an employee who has opted for the alternate tax regime u/s 115BAC can continue to get the exemption u/s 10(14) in respect of following allowances granted by an employer during the course of employment. .

- Any allowance granted to meet the cost of travel on tour or on transfer including allowances paid to an employee, who is blind or deaf and dumb or orthopedically handicapped with disability of lower extremities for the purpose of commuting between the place of his residence and the place of his duty will be exempted.
- Any allowance, whether, granted on tour or for the period of journey in connection with transfer, to meet the ordinary daily charges incurred by an employee on account of absence from his normal place of duty
- any allowance granted to meet the expenditure incurred on conveyance

Further, CBDT has amended IT Rule 3 dealing with determination of value of perquisites so as to provide that in case of employees who are opting for new personal taxation regime u/s 115BAC of ITA, the free food and non-alcoholic beverages provided by employer through pre-paid vouchers would be considered as taxable perquisites even if value per meal does not exceed Rs. 50.

Important Rulings

Limited Scrutiny cannot be converted into full Scrutiny based on suspicion or making roving inquiry

Dev Milk Foods Pvt. Ltd, ITA No 6767/Del/2019 Delhi, ITAT

Under the ITA, in order to make correct assessment of income declared by the Taxpayer, the statute has entrusted the AO with all powers including specific powers like calling for information, making inquiry, recording of statement etc. ITR filed by the Taxpayers are usually selected for scrutiny assessment through CASS (Computer Aided Scrutiny System) which identifies cases which requires scrutiny of claims made by the Taxpayer. The scrutiny assessment which confers to limited issues identified by CASS is known as Limited Scrutiny. CBDT vide its Instruction No. 5/2016 dated July 14, 2016 has laid down conditions subject to which AO can convert the Limited Scrutiny into Complete Scrutiny after obtaining the approval of PCIT.

In the present case, the Taxpayer's case was selected for Limited Scrutiny on the issue of long-term capital gains. The AO, during the limited scrutiny assessment proceeding observed that the short-term capital loss was suspicious in nature. Therefore, after obtaining the approval form PCIT, he converted the limited scrutiny into complete scrutiny. The CIT(A) also concurred with the said finding.

Before the ITAT, the Taxpayer contended that the assessment order shall be required to be quashed since the conversion of Limited Scrutiny into Full Scrutiny itself was not done strictly in accordance with the parameters laid down by CBDT Instructions. The Taxpayer while objecting the observations of AO, also contended that company wise details of complete Short Term Capital Loss was already available in ITR filed by it and therefore, the contention of the AO that said details were provided only during the assessment for substantiating his action is devoid of facts. The taxpayer also contended that while conducting subsequent enquiries; adequate opportunity of cross examination was not provided and therefore it violates the principle of natural justice.

The Revenue on the other hand contended before the ITAT that the limited scrutiny was converted into full scrutiny after taking approval of PCIT. The limited scrutiny was converted into complete scrutiny based on the finding of Investigation Wing's Report received by it where it has been informed that share transactions with Kolkata based entities with whom Taxpayer had transacted are also bogus. Therefore, the approval was within the four corners of CBDT instruction. The Revenue also argued that the case of the Taxpayer should not be decided based on legal ground alone.

The ITAT while deciding the case discussed the spirit of CBDT Instruction No. 5/2016 dated July 14, 2016, circumstances under which AO can convert the scrutiny into complete scrutiny, evidences on records and facts of case and then quashed the entire assessment order on following grounds.

- Letter issued by AO indicated that the approval was mechanical and without

application of mind since the AO has not brought any direct evidence on record

- Both the letter and the outcome of subsequent inquiry conducted by AO indicated that basic detail required for forming a reasonable belief was completely absent.
- Section 292BB cannot absolve the infirmity arising from infraction of CBDT Instructions where the assessment has been framed in direct conflict with the guideline issued by CBDT.

The decision of ITAT once again lays down the settled position of law that though the AO is empowered with ample powers under the ITA, he cannot assume the powers as a matter of inherent rights. CBDT has time and again issued several instructions to enforce checks and balances on powers of the AO which are binding on tax authority. Therefore, the contravention of the said instruction would render the proceeding void ab initio.

Amended provision for disallowance being 30% of expenses on account of TDS default is retrospective in nature

Muradul Haque ITA No. 114 / 2019, Delhi ITAT

In terms of the provision of section 40(a)(ia) of the ITA as it stood prior to the amendment made by the FA (No.2) 2014, in respect of any expenditure on which TDS was not deducted the claim of deduction was required to be disallowed in toto. Such provision has been amended from AY 2015-16 onwards so as to restrict the amount of disallowance by 30% of such expenditure. The ITAT was considering whether the amendment to section 40(a)(ia) to restrict the disallowance to 30% as against 100% is retrospective in nature or not.

The Taxpayer was engaged in Fabrication and Job-work business and during the course of business he paid commission to various parties on which no TDS was deducted in AY 2014-15. The AO invoked the provision of 40(a) (ia) and carried out 100% disallowance of claim of commission. CIT(A) also confirmed the disallowance.

Before the ITAT, the Taxpayer has contended that such amendment made by FA (No.2) 2014 is curative in nature and therefore, even for the assessment year prior to April 1, 2015, the disallowance should be restricted to 30% as against 100% provided in statute at relevant point of time. . Revenue on the other hand contended that non-deduction of TDS would attract the provision of section 40(a)(ia) since such provision was amended with effect from AY 2015-16 onwards.

The ITAT has not discussed the amendment at length but followed the unreported decisions of its co-ordinate bench in case of R.H. International vs ITO ITA No. 6724 of 2018 dated March 20, 2019 and also considered one unreported decision of Jaipur ITAT in the case of Rajendra Yadav. Considering such decision ITAT held that amendment made in section 40(a)(ia) was curative in nature and should be applied retrospectively.

While the judgement would be useful for related pending appeal matter before ITAT, one

has to wait and see how the law is being interpreted by the High Court. It is also to be noted that section 40(a)(ia) also provide to claim deduction of such disallowance in the year of making such TDS default good.

Expenditure incurred even after incorporation but before the commencement of business is eligible for deduction u/s 35D

Addlife Investments Pvt Ltd, ITA No. 2053 / 2017, Ahmedabad ITAT

The Taxpayer was incorporated as private company with main object of making investment. The Taxpayer was incorporated on 28th November 2013 with authorized capital base of Rs. 3 Crores. The Taxpayer initially incurred expenses of Rs. 4.12 lakhs by way of fees for registering company under Companies Act. Within 3 weeks thereafter, the Taxpayer further increased its authorize capital base to Rs 211 Crores for making investment in another company and incurred further cost of Rs. 127.98 lacs. The Taxpayer accordingly incurred aggerate expenditures of Rs.132.11 lacs for increase in capital and claimed deduction of 1/5th of such amount of Rs.26.42 lacs u/s 35D.

The AO took a view that the expenditure for subsequent increase in authorized capital to Rs. 211 crores were incurred much after the incorporation of the Company and acquisition of shares of another company cannot be considered as new business activity of the taxpayer as contemplated in 35D. The AO accordingly restricted the claim u/s 35D to the extent of Rs.4.12 lacs only. The CIT(A) also confirmed the said disallowance.

The ITAT, in peculiar facts of the case, clarified that there is vital difference between registration of the company and commencement of business and in terms of 35D, the expenditure incurred before the commencement qualifies for deduction. The business of the Taxpayer commences only after doing the transaction for which it was established, i.e. acquisition of shares of another company. The ITAT accordingly held that aggregate expenditure incurred by the Taxpayer of Rs.132.11 lacs were incurred before the commencement of business of investment in shares of another company (i.e. incurred after incorporation but before the commencement of business) and therefore qualifies for deduction u/s 35D of the Act.

It is interesting to note that in the above case, benefit of deduction was given for expenditure on subsequent issue of shares u/s. 35D by holding that it was incurred before commencement of business. In case the business has already been commenced the benefit of deduction for expenditure incurred for subsequent issue of shares shall be allowable only when it is incurred in connection with extension of its existing business or setting up of new unit in accordance with section 35D of ITA.

Important Rulings

AO is not empowered to change method of valuation of share adopted by taxpayer u/s 56(2)(vii)(b) of the ITA

VBHC Value Homes Pvt Ltd, ITA No. 2541 / 2019 & ITA No. 37 / 2020, Bangalore ITAT

The Taxpayer has issued fresh shares to the Investor at price of Rs.527/- which is derived as per DCF Method. The valuation is also supported by Independent Valuation Report issued by CA in accordance with the provision of IT Rule 11UA(2) read with section 56(2)(viib) of the ITA. The AO rejected the valuation report submitted by the Taxpayer and adopted alternative valuation method Net Asset Value Method provided in IT Rule 11UA to value the share and accordingly carried out the addition of Rs.14.04 crores representing the differential value u/s 56(2)(viib) of the ITA. The CIT(A) has also confirmed the view expressed by AO and rejected the valuation report and sustained the addition.

Before the ITAT, the Taxpayer has primarily contended that in view of coordinated bench's decision in case of Innoviti Payment Solutions P ltd. v ITO, ITA No. 1278 of 2018, in order to ascertain the reliability of the valuation, the matter is required to be restored back to the file of AO for re-verification. The Taxpayer further contended that valuation method adopted by it cannot be changed by the AO and the AO can only verify the reasonableness and reliability of said valuation.

Against the above contentions, the Revenue has taken an objection that that since the DCF Method adopted by the Taxpayer is irrational and has no relevance to the factual financial results of the taxpayer, the valuation report cannot be relied upon. The Revenue further objected that matter cannot be restored back to the AO in view of the decision of Hon'ble Kerala HC in the case of Sunrise Academy of Medical Specialties (India) (P.) Ltd., Vs. ITO as reported in WA No 1297 of 2018 where the HC has categorically held that the Taxpayer cannot seek for fresh consideration on same issue when reasonable construction and conclusion has already been drawn by the lower authorities based on same very aspect.

The ITAT while remanding back the matter to the AO specifically discussed the finding of its coordinated bench decision in the case of Innoviti Investments P Ltd. and the decision of Bombay HC in the case of Vodafone M-Pesa Ltd (Supra) and held that in terms of 56(2)(viib) if the explanation offered by the taxpayer is not satisfactory then the AO can not only go into the depth of valuation report but also get the fresh valuation done. However, under no circumstance he can change the method of valuation opted by the Taxpayer under IT Rule 11UA and revised valuation shall confer to the said method.

The ITAT further noted that the decision of Hon'ble Kerala HC also lay down contrary legal position. However, the decision of Bombay HC is in favor of the Taxpayer and hence same can be relied upon and matter can be restored back to the AO. The decision of ITAT once again emphasizes that where there exist two conflicting views at High Court, the ITAT have power to follow & prefer judgment which is in favor of the Taxpayers.

Important Rulings

Coverage

Capital Loss arising on cancellation of share in pursuant to capital reduction scheme not allowable if there is no consideration received

Mahindra & Mahindra Limited, ITA No. 1449 / 2016, Mumbai ITAT

Recently, the ITAT has an occasion to consider the admissibility of claim of Long-Term Capital Loss (LTCL) arising out of cancellation of shares held in the Indian subsidiary pursuant to scheme of capital reduction approved by HC.

The Taxpayer has made investment in wholly own Indian subsidiary company viz. Mahindra Shubhlabh Services Ltd (MSSL) wherein the Taxpayer was holding 83.05% stake. The taxpayer was holding 2,46,81,437 shares of Rs.10 each in MSSL. The Hon'ble Bombay HC approved the scheme of capital reduction on March 25, 2011 in terms of which, the shares amounting to Rs. 15,59,19,890 (1,55,91,989 shares of Rs.10 each) got cancelled without payment of any consideration. The Taxpayer accordingly claimed capital loss of Rs. 27,25,59,579 in ITR and claimed for carry forward to subsequent years.

The claim of the Taxpayer was not accepted by the AO and DRP primarily on the ground that as per section 47(iv) and 47(v), the transaction between Holding and Subsidiary company is not regarded as transfer for section 45. Further, they also placed reliance on Special Bench (SB) decision of ITAT Mumbai in the case of Bennett & Coleman Co Ltd in ITA No. 3013 of 2017 wherein it has been held that capital loss on account of capital reduction is not allowable.

The Taxpayer while contending the matter before ITAT, clarified that MSSL was not WOS and therefore, the provision of section 47(iv)/(v) is not applicable. The Taxpayer also contended that the reduction in share capital amounts to transfer of capital asset u/s 2(47) of the ITA and thereby loss arising from such capital reduction should be allowed to be carried forward to subsequent year in view of the decision in of the Hon'ble Apex court in the case of Kartikeya Sarabhai, Civil Appeal No. 1098 of 1982 and decision Jupiter Capital Pvt. Ltd in ITA No. 445 of 2018 which also followed the said decision of SC.

The ITAT while denying the claim of the Taxpayer u/s 2(47) distinguished the decision of the Hon'ble Apex Court in the case of Kartikeya Sarabhai (supra) and Bangalore ITAT decision on the ground that in the present case, in pursuant to the capital reduction, no payment was received by the taxpayer. The ITAT also observed that the Special Bench decision of ITAT Mumbai categorically held that in absence of any payment, capital loss on account of capital reduction scheme is notional loss and therefore unless the shares are actually transferred no loss can be allowed. The ITAT held that SB decision has binding precedent over the Division Bench decision and in absence of any argument advanced by the Taxpayer on this issue, the ITAT concluded that in absence of consideration flowing to the Taxpayer on capital reduction scheme, the claim of LTCL cannot be allowed.

It is pertinent to mention that the decision of SB was dealing with the case where in scheme of Capital Reduction, there was reduction in face value of the shares and even post Capital

Reduction Scheme, the Taxpayer shareholder continued to hold same number of equity shares in the company. Therefore, the SB categorically held that there was no extinguishment of right in the shares as the rights remained intact. In contrast to this, in present case before the ITAT there was case of cancellation of shares wherein no payment was received by the taxpayer. It is interesting to note that the reason for no consideration or other non-cash consideration if any arising under the Scheme has not been discussed in such case.

Actual sales consideration and not the stamp duty value shall be deducted from block of asset for computing tax depreciation

Futurz Next Services (Private) Limited, ITA No 1383/Del/2017 Delhi, ITAT

The ITAT, among the other issues, was considering the issue as to whether the deeming fiction created u/s 50C, for replacing actual consideration by stamp duty value on sale of building, is also applicable to provision of 43(6) for computing the written down value (WDV) of the block of the assets for the purpose of calculating depreciation. The Taxpayer has contended that fiction of section 50C does not apply while calculating the WDV and consequential claim of deprecation. The Department on the other hand has been contending that in terms of fiction of 50C, the stamp duty value shall be required to be deducted from the gross value of the block of assets.

The ITAT held that according to section 43(6), block of assets is required to be reduced by monies payable in respect of any asset falling with the block of asset which has been transferred. The ITAT has held that fiction created u/s 50C has limited application and therefore it replaces the actual consideration received or accrued as result of transfer for the purpose of section 48 only. The ITAT accordingly held that WDV and claim of depreciation u/s 32 shall be required to be computed after deducting the actual sale consideration received by the Taxpayer of any asset falling within the clock of asset only.

It is pertinent to note that the decision of ITAT does not deal with the proposition where the Block of Asset ceases to exist hence there was no capital gain tax. In terms of section 50 of the ITA, if the block of asset ceases to exist, the capital gains would be computed as per the provisions of section 50 and in such case the provisions of section 50 would have to be read in conjunction with section 50C. Therefore, the stamp duty value would be adopted as the full value of consideration for computing the capital gains in terms of section 50 read with 50C.

Levy of fees u/s 234E is mandatory and not at discretion of the AO

Block Development Officer, ITA No 891 to 896/JP/2019, Jaipur ITAT

The provisions of section 234E provide for levy of late fees for not filing of TDS and TCS statement within the stipulated time frame u/s 200(3). The Taxpayer is engaged in the business of implementation of various Central and State Government scheme and it had not filed the TDS statement for relevant quarters within time stipulated under the ITA which culminated into levy of late fees u/s 234E of the ITA. The

Important Rulings

Taxpayer contended that there was no willful or deliberate attempt and it was prevented by unavoidable circumstances from filing TDS statement in time. Since there was reasonable cause for not filing TDS statement in time, late fees u/s 234E cannot be levied.

The Revenue on the other hand has contended that levy of fees u/234E is mandatory and consequential in nature. The Revenue also contended that the late fees u/s 234E is not akin to penalty governed by chapter XXI of the ITA which can be deleted on ground of reasonable cause.

The ITAT was thus considering the issue as to whether levy of late fees u/s 234E of the ITA is mandatory or discretionary. The ITAT categorically held that in terms of section 200A of the ITA, the AO is required to make various adjustments contemplated therein and if there is any delay in filing TDS statement, the said section mandatorily requires levy of fees u/s 234E. Therefore, in terms of 234E, the AO has no discretion to take decision and he is bound to make an adjustment for late filing of TDS statement u/s 234E. The ITAT accordingly rejected the Taxpayer's contention and held that levy of fees is mandatory and the same cannot be exempted on the basis of any reasonable cause.

Section 234F also provides for similar levy of fee for late filing of ITR. Following the above decision, it can be inferred that in case of late filing of ITR as well, levy of fees u/s 234F is also mandatory and the AO does not have discretion to waive the same. The Taxpayer does not have any right to appeal against such levy except under exceptional cases, it may decide to explore the possibility of taking his matter before CBDT u/s 119 of the ITA.

Payment of Guarantee commission, neither interest nor FTS under India-Netherlands DTAA

Lease Plan India Private Limited, ITA No. 6461 & 6462 of 2015, Delhi ITAT

The Taxpayer had paid Guarantee Charges to its AE in the Netherlands without withholding tax considering the same as pure reimbursement against actual expenses. The AO disallowed the claim treating the same as FTS. On Appeal, CIT(A) upheld the order of the AO and held that the payment under consideration was interest and taxable under Article 11 of India-Netherlands DTAA as it was income from debt-claim of every kind and alternatively was taxable as FTS under Article 12 of India-Netherlands DTAA as the services were consultancy services.

As regards the contention of Department that the payment should be considered as Interest, the Bench held that in order to be covered by the definition of Interest, there should be provision of capital in the form of a debt claim in the first place. Further, the Bench held that there should be a lender-borrower relationship for a payment to be classified as interest. Accordingly, the Bench held that the payment was not in the nature of Interest. On the contention of FTS, the Bench held that, while there was a service, it was a financial service and not consultancy service. Further, the services did not satisfy the make available test as provided in India-Netherlands DTAA. Accordingly, it was held that the payment was not FTS. Accordingly, it was held that in absence of Other Income Article in the DTAA there was no need to withhold tax in India in absence of taxable income in India and consequently, no disallowance was warranted.

The issue of taxability of guarantee commission is now settling down with a consensus that Guarantee Commission is neither Interest nor FTS under normal provisions of a DTAA. However, one should factor taxability of such Guarantee Commission under Other Income depending upon the provisions of the relevant DTAA. While there was a passing reference of the business of the foreign entity being akin to a banking company, the ITAT has allowed the claim of the Taxpayer by holding that in absence of Other Income Article, the income would not be taxed in India. There is a possible view that in absence of Other Income Article, recourse should be had to the domestic law and it should not render the payment non-taxable automatically. However, the judgment may provide a favorable argument in such cases. In absence of access to a DTAA, the question of such guarantee commission being regarded as Interest under ITA continues to remain a grey area.

Capital Gains taxable in Cyprus under the pre-amended India-Cyprus DTAA

Narmil Infosolutions Pvt. Ltd., ITA No. 1152 of 2016, Delhi ITAT

The Taxpayer was engaged in the business of providing IT enabled services. It acquired shares of Unitech Info Park Limited from a Cyprus entity. Unitech Info Park Limited was set up with the main object of real estate development and was in the process of developing an IT Software-exporting zone in Chennai.

The Taxpayer contended that there was a change in India-Cyprus DTAA and the case pertained to the unamended India-Cyprus DTAA. While under the amended DTAA, capital gains on sale of shares of an Indian company was taxable in India, the same was taxable in Cyprus under the pre-amended DTAA.

The AO held that the sale was taxable under Article 14(1) of India-Cyprus DTAA as through the transfer of shares, the transaction was effectively of alienation of immovable property (land) in India.

The ITAT held that what was transferred was shares in an Indian company which could not fall within the definition of immovable property and accordingly Article 14(1) of India-Cyprus DTAA was not attracted. Further, in absence of a PE of the Cyprus entity, Article 14(2) was also held to be not applicable. The Bench held that the transaction feel under Article 14(4) of India-Cyprus DTAA wherein it was taxable in the country of residence of the transferor, i.e. Cyprus. The Bench also took a note of the difference between the unamended and revised DTAA.

It is important to note that India-Cyprus DTAA has been revised from 2017 whereby Capital Gains on sale of shares of Indian company deriving its value principally from immovable property in India is now taxable also in India pursuant to Article 13(4) of the amended DTAA.

Payment for purchase of goods connected with "Business Connection" liable to withholding tax

Sanghvi Foods Private Limited, ITA No. 743 & 744 of 2018, Indore ITAT

The Taxpayer, being an Indian company, made payments towards purchase of spare parts for old machines from a Swiss Company (Buhler AG) without withholding tax. AO called for information from Buhler India, a wholly owned subsidiary of Buhler AG and concluded that Buhler AG had a business connection as Buhler India worked on behalf of Buhler AG and provided marketing services to Buhler AG. Accordingly, the AO held that the Taxpayer was liable to withhold tax @ 40% (plus surcharge and cess) on the gross amount.

The Taxpayer contended that it had merely procured capital goods from the Swiss Company by placing orders directly on the same and accordingly, there was no income taxable in India warranting withholding of tax under section 195. The Taxpayer also contended that Buhler India was not an agent of Buhler AG as transaction by the Taxpayer with Buhler AG was on principal to principal basis and Buhler India had no authority to conclude contracts on its own.

The Bench observed that as per email correspondences between the Taxpayer and Buhler India, orders were finalised by the Taxpayer with Buhler India, and then order was placed on Buhler AG. Buhler India played a key role in each leg of the transaction and also from an overall perspective (undertaking discussions, negotiations, offering quotation, accepting purchase order, liaison work, finalising deal, etc.). Based on the information collected from Buhler India, the Bench ultimately held that all the three clauses of Explanation 2 to section 9(1) would get attracted in India and hence, the

income was taxable in India obliging the Taxpayer to withhold tax from the payments.

In absence of TRC and other necessary documents of Buhler AG, the Bench did not analyse the taxability under DTAA. For the purpose of withholding tax, the Bench has specifically gone into verification of the payee's tax liability in great detail including calling for information from its Indian entity. The Bench ultimately dismissed the appeals of the Taxpayer and confirmed the stand of the AO of the payment attracting withholding tax @ 40% (plus surcharge and cess) on gross amount.

Interestingly, there is no discussion on how clause b) of Explanation 2 regarding maintaining goods and delivering goods therefrom on behalf of the non-resident got fulfilled. Further, the conclusion that Buhler India was "concluding contracts" as required under clause a) was arrived at based on the key role being played by Buhler India in the whole process.

It is also worth noting that while the amount involved in the appeal were a meagre ~ INR 325,000, the tax authorities have, at length, evaluated the taxability of the transactions. Further, there is no reference to formal conclusion of contracts between the Taxpayer and Buhler India. It would also not be out of place to refer to Delhi ITAT's judgment in the case of *Daikin Industries Limited v. ACIT* wherein on similar facts, in the context of India -Japan DTAA, the Bench held that the Indian subsidiary was a dependent agent PE of the parent entity even though the contracts were officially signed / concluded by the Japanese entity.

It is important to note that vide Finance Act 2018, clause a) of Explanation 2 has been amended so as to include activity through a person, who acting on behalf of a non-resident, plays the principal role leading to conclusion of contracts which would have otherwise covered the instant case under clause a).

Non-compete payments to employees characterized as Salary, taxable only in the US under India-US DTAA

Sasken Communication Technologies Limited, ITA No. 241 of 2011, Karnataka High Court

The Taxpayer had entered into three agreements with two of its employees, viz. Employment Agreement, Non-Disclosure Agreement and Non-Compete agreement. These persons were employees of the Taxpayer's subsidiary and had become employees of the Taxpayer pursuant to a merger. The employees were rendering services in the US and were tax residents of the US. Proceedings under section 201 were initiated and it was held by the AO that the payments pursuant to Non-Compete agreement were taxable in India under Article 23(2) of India-US DTAA dealing with Other Income and the Taxpayer was treated as an assessee in default. In the process, it was held that the agreement was sham undertaken merely to obtain tax benefit and that there was no difference between Non-Compete Agreement and Non-Disclosure Agreement. Accordingly, the Department also contended that the payment made should be taxable as Business Income under section 28(va) of ITA.

Important Rulings - India

The Taxpayer contended that the payment was not taxable under section 9 of ITA as services were rendered outside India and without prejudice, the same was taxable in the US under Article 16 of India -US DTAA dealing with salary.

While the CIT(A) upheld the order of the AO, ITAT ruled in favour of the Taxpayer by undertaking a detailed fact-finding exercise. ITAT held that the agreements were not sham and were entered into for commercial reasons. Further, the persons were employees of the Taxpayer and hence, the payments were taxable as Salary under section 17 of ITA.

On appeal by Department to the HC, the HC observed that the ITAT had already undertaken a detailed fact-finding exercise and hence, a substantial question of law did not arise. HC upheld the order of the ITAT and held that the payments were not in the nature of Business Income as the employees did not carry out any business in India. Further, it held that the payments would get covered by Article 16(1) of India-US DTAA and were taxable only in the US and not in India. Accordingly, the appeal by the Department was dismissed.

Important Rulings - Global

Treaty to be interpreted as on the date of transaction, subsequent Model Convention, Commentary not relevant, "Dynamic" Interpretation ruled out

Stryker Iberia SL (Spanish Supreme Court) [STS 1071/2020 – ECLI: ES: TS: 2020: 1071]

In the context of interpretation of Tax Treaties, Spanish Supreme Court observed that a Treaty as available at the time of the transaction should be considered (including Model Conventions and Commentary thereon at that point in time). The Court ruled out Department's reliance on a later version of the Convention and Commentary, thereby negating a dynamic approach for interpretation of Tax Treaties. It was further held that mere reliance on Model Convention / Commentary would also not be a correct approach to interpret a DTAA.

Meaning provided by a deeming provision under domestic law cannot be imported into a DTAA

Fowler v. Commissioner of HMRC (UK Supreme Court) [2020] UKSC 22

In the context of taxability of income of a diver, being a resident of South Africa, from diving activities in UK waters, Supreme Court of the UK held that merely because the domestic law of the UK deemed income of a diver in employment as trading income would not make such income taxable as Business Profits under the UK-South Africa DTAA. The UK Supreme Court accordingly denied the benefit to the Taxpayer and upheld his taxability in the UK under Article 15 as Income arising from Employment. In the process, the UK Supreme Court denied accepting the Taxpayer's reliance on Article 3(2) of UK-South Africa DTAA to derive meaning from the domestic law and observed that a deeming provision under the domestic law created a statutory fiction which could not be considered while interpreting a Tax Treaty.

Important Rulings

Transfer Pricing is applicable to interest free loan transaction, real income theory rejected

United Spirits Limited, IT(TP)A No.489/Bang/2017, Bangalore ITAT

The taxpayer is engaged in the business of manufacture and sale of alcoholic beverage. The taxpayer has provided interest free loan of Rs. 315.80 crores to its AE. The said loan was given for the purpose of acquiring a company incorporated in UK. The TPO has made an ALP adjustment of Rs. 45.69 crores on such interest free loan by adopting yield rate from the ratings given by CRISIL on corporate bonds.

Having regard to the adjustment made by TPO and confirmed by DRP in respect of interest free loan extended to its AE, the taxpayer claimed that *real income theory* should be applied. And hence, where no was interest supposed to be charged, there is no question of determining the arm's length price of the same. The taxpayer also relied on the argument that the loan was in the nature of quasi-equity and was intended to be converted to equity.

The ITAT held that under Chapter-X of the ITA has introduced a legal fiction/deeming provision. Therefore, while computing "total income", the legal fictions/deeming provisions included under ITA should be given effect to. ITAT noted that Special bench in case of Instrumentarium Corporation Ltd. had duly addressed the taxpayer's contention that there should arise some "income" from the international transaction in order to invoke the provisions of sec. 92. ITAT held that the loan transactions have been included in the definition of the term "International transactions" and if the loan is given free of interest, the same should be construed as having been given at "Zero interest" and hence, arm's length price for the same needs to be tested.

The ITAT further held that since the loan transaction remained as loan transaction in the books, the contention of the taxpayer that it is intended to be converted in equity capital cannot be recognized and accordingly rejected the contention of the taxpayer that the loan transaction is in the nature of quasi-equity.

This decision primarily deals with the *real income theory* concept in the context of transfer pricing and holds that where an arrangement is in place, real income includes zero income (zero interest in this case) and hence, there is no exemption from applying transfer pricing provisions.

TNMM approved as MAM to benchmark Royalty payments, AMP Expenditure not an International Transaction

M/s. Reckitt Benckiser (I) Private Ltd, ITA No.404/Kol/2015, 625/Kol/2016, Kolkata ITAT

The taxpayer has been engaged in manufacturing and sale of various FMCG products. The current judgment pertains to transfer pricing adjustment made by the TPO in respect of royalty payments and AMP expenditure.

Adjustment in respect of Royalty payments

The Taxpayer has paid royalty to two of its AE for the transfer of intellectual property rights for the production, sale, distribution and marketing

of Reckitt Benckiser "products" domestically and internationally and the same has been benchmarked considering TNMM as the most appropriate method (MAM).

The issues considered by the ITAT can be categorized into two baskets. Firstly, whether, when an issue has been decided in previous assessments, the TPO or the revenue can change its position without substantial change in facts / law? In this respect, The ITAT held that the taxpayer has been paying royalty to its AEs for several years which has been allowed in the assessment of earlier years. There is no change in facts and law in the year under consideration. Therefore, a contrary view cannot be taken and settled facts cannot be disturbed unless there is a change in law and facts as upheld by the Supreme Court in the case of Radhasoami Satsang.

Secondly, whether royalty payments can be benchmarked using TNMM considering that royalty was an integral part of all other transactions, where royalty payments are towards a basket of brands? The TPO argued for rejection of royalty paid for two brands on account of 'benefit test'. Here, ITAT noted that the royalties are paid not only in respect of patent but for a basket of services. It is a common occurrence that a person using a brand name pays certain brand royalty to the owner of brand. Further, the TPO's case was not that there was no usage of brand names. The taxpayer has included payment of royalty in its TP study report and according to it the royalties are at arm's length. Hence, the disallowance of royalty on the 2 products was deleted by the ITAT and benchmarking exercise undertaken by the taxpayer using TNMM as MAM was upheld.

Adjustment in respect of AMP Expenses

The taxpayer manufactured products at its own facilities and also engaged third party contract manufacturers for manufacturing some products. The company incurred certain Advertisement, Marketing and Promotion (AMP) expenses and all activities of advertisement performed were targeted for consumers in India and were related to products that it was dealing in.

Having considered the TPOs argument that the meaning of 'international transaction' as per Section 92B includes arrangement, understanding or concerted action, which may be informal or in writing, the ITAT held that the definition of 'Transaction' under Section 92F(v) includes arrangement or understanding; it per se involves a bilateral arrangement or contract between the parties. A unilateral action by one party in absence of any understanding or contract or binding obligation could not be termed as 'transaction'. The said understanding / arrangement is missing in the case of the taxpayer and it has incurred AMP expenditure in respect of its business operations in India and in order to boost its sales in India. Thus, no 'transaction' could be said to exist in respect of such AMP expenditure incurred by the taxpayer.

The ITAT placed reliance on the decision of Delhi ITAT in the case of Maruti Suzuki India Limited vs. CIT [381 ITR 117] wherein it was held that the AMP transaction does not represent the international transaction between the AE's

therefore no question of determining the ALP of AMP transactions.

It may be noted that a similar view was taken by Mumbai ITAT in the case of L'oreal India Pvt. Ltd. The appeal of the Revenue against the same is admitted by the High Court of Mumbai and the same is now under consideration.

PLI calculation to only include expenses pertaining to period during which revenue is generated

M/s. Trident Microsystems India Pvt Ltd, IT(TP)A No.842/Bang/2016 & IT(TP)A No.2020/Bang2017, Bangalore ITAT

The taxpayer is engaged in the business of Software Development and related R&D. During the year under consideration the taxpayer had stopped its business operations from the month of June and hence all its revenue generated during the year pertains to the first two months of the year i.e. April and May only. Accordingly, the taxpayer computed its operating margins by using operating profit to operating costs (OP/OC) as an appropriate PLI by considering the costs pertaining to first two months of the year. The TPO computed the operating margins by considering expenses incurred during the entire year.

The ITAT observed that the revenue had been generated by the taxpayer during the first two months namely April & May and accordingly it held that the operating cost relatable to the operating revenue generated by the taxpayer should alone be considered for computing operating margin for the purpose of determining arm's length price of the international transactions. Considering the expenses incurred by the taxpayer in subsequent months, where no revenue was generated, would result in a distorted picture.

It would be interesting to see whether this decision can also be applied in current situation (Covid-19) where businesses are not closed / shut down but temporarily stalled due to disruptions caused by the pandemic.

Deduction u/s.10A granted to taxpayer on enhanced export income pursuant to MAP resolution

Dell International Services India Private Limited, IT(TP)A No.879/Bang/2018, Bangalore ITAT

The taxpayer is engaged in provision of ITES services to its AE in USA. The TPO made certain adjustment to the said transaction, in respect of which, the AE had approached the competent authority for seeking resolution as per MAP under India-USA DTAA. Consequently, the export income of the taxpayer was enhanced by the AO as per the MAP resolution. However, the AO denied deduction u/s.10A citing first proviso to Section 92C(4) of ITA, which provides that no deduction shall be granted where the income is determined by assessing officer.

CIT(A) upheld the decision of the AO and held that adjustment made as per MAP resolution is not disclosed in the books of accounts of the taxpayer and hence, cannot be allowed for deduction.

Important Rulings

The ITAT made reference to CBDT Circular 14/2001 which clarified that the first proviso to Sec. 92C(4) was introduced to deny deduction with respect to the amount represented by the adjustment so made that would not have actually been received in India. In the present case, the conditions under which the dispute was resolved under MAP, was that the taxpayer had to increase its taxable income and the sum agreed was to be subsequently invoiced and realized and thereby there was inflow of foreign exchange in India. Such features do not exist when the adjustment to ALP is suggested by a TPO. The ITAT also noted that the proviso to Sec.92C(4) will apply only to adjustments made by the AO and not to any other modes of ALP determination.

Considering the above, benefit of deduction u/s. 10A was allowed to the taxpayer in respect to enhanced income arrived at pursuant to resolution as per Mutual Agreement Procedure (MAP).

Customs

Faceless Assessment under Customs

Circular No: 28/2020 dated June 5, 2020

With effect from June 8,2020 CBIC has rolled out the first phase of faceless assessment under the project "Turant Customs" at Bengaluru and Chennai ports, for imports coved under Chapter 84 and 95 of the Customs Tariff Act, 1975.

Under faceless assessment, the assessment of the BOE will be assessed through risk management system of Customs, irrespective of the port of entry of imported goods. Certain percentage of BOEs will be facilitated automatically with no intervention of Customs officer. The remaining non-facilitated BOEs will be only assessed by the Customs officer at the port of import.

Anti-dumping duty on certain import from China etc.

Notification No: 11/2020 – Customs (ADD) dated June 3, 2020

The levy of Anti-dumping duty on imports of Hot Rolled Flat Products of Stainless Steel of ASTM Grade 304 with all its variants originating in or exported from the People's Republic of China, Malaysia and Republic of Korea has been extended for a period of six months i.e. till the December 4, 2020.

Goods and Service Tax (GST)

Further extension of due dates for compliance in view of COVID-19

Notification 55/2020 and 56/2020 – CT dated June 27, 2020

The time limit for completion of any statutory compliances, issuance of a refund order or completion of any action, for which the due date falls between the period March 20, 2020 to August 30, 2020 has been extended till August 31, 2020.

Conditional wavier of late fees for GSTR-3B

Notification 57/2020 – CT dated June 30, 2020

Waiver of late fees for all the taxpayers has been provided, whose tax payable is "Nil" under GSTR -3B, for the tax periods July 2017 to July 2020, subject to the returns being filed on or before September 30, 2020.

Further, late fees for filing GSTR-3B for taxpayers who have the tax liability, have been capped at maximum Rs. 500 for the tax period July 2017 to July 2020 subject to returns being filed on or before September 30, 2020.

Customs, Excise & Service Tax

Notification G.S.R. 418(E) dated June 27, 2020

The time limit for completion of any statutory compliances, issuance of a refund order or completion of any action, for which the due date falls between the period March 20, 2020 to September 29, 2020 has been extended till September 30, 2020.

DGFT

SCOMET Updates

Notification no. 10/2015-2020 dated June 11, 2020

DGFT has amended the Appendix 3 (SCOMET items) to Schedule 2 of ITC (HS) Classification of Export and Import items 2018.

Important Rulings

Supply of service in relation to maintenance & repair of machinery / equipment by foreign entity is liable to GST

M/s IZ-Kartex, Advance Ruling No. 04/WBAAR/2020-21, West Bengal Advance Ruling

IZK, a Foreign Company, entered into a Maintenance and Repair Contract ('MARC') of machinery with an Indian company, BCCL. The Applicant being branch of IZK who is engaged in providing support services such as receiving and making payments on behalf of the foreign company. The ruling was sought on the question as to whether services supplied by IZK to BCCL is liable to GST under reverse charge mechanism or not?

The AAR observed that the MARC is long-term contract spanning over 17 years. IZK is required to depute the officers, support staff and system expert at the site for maintenance and repair of equipment and train the BCCL personnel which should be considered as having suitable permanent structure in terms of human and technical resources at the sites of BCCL. The services would therefore be considered as being supplied from a Fixed Establishment in India and therefore the location of the supplier shall be in India. GST, would therefore, be payable under forward charge by the local branch of foreign entity.

In the peculiar facts of the present case, a Foreign Company had a branch office in India, however, maintained that the services are provided in India by the foreign Company and not the Indian branch which is actually responsible only for receiving and making payments. The AAR, however, looking at the nature of contract held the GST shall be payable by the branch located in India under forward charge mechanism.

The above interpretation of the AAR shall also open up registration issues for foreign entities who do not have a branch in India but provide services by deploying staff in India temporarily or by entering into indirect employment arrangements with other entities in India.

Sale of developed plot is a Supply of Service and not merely Sale of Land

Shree Dipesh Anilkumar Naik, Advance Ruling No. GUJ/GAAR/R/2020/11, Gujarat Advance Ruling

The applicant, being an owner of a land, has developed his land with various infrastructure facilities such as drainage, electricity & water line etc., for which the Development officer approval is mandatory. Post completion of all the activities, the land is divided into small plots meant for sale without any construction activity.

The Applicant approached the AAR for determining the applicability of GST on sale of such developed plots and argued that the Sale of land exclusively by way of transfer of title or transfer of ownership, is neither 'Supply of goods' nor 'Supply of services' as per Schedule III of CGST Act, 2017 and therefore, does not attract GST.

The AAR ruled that sale price of plot is based on Super built-up basis which includes the cost of

land as well as the cost of common amenities. Thus, sale of developed plot is not simply sale of land, but it is 'Supply of Construction Service' which would be covered under the category of 'Construction of a complex intended for sale to a buyer'.

Sale of land i.e. an immovable property, which is liable to stamp duty is outside the ambit of GST. It is a general practice to sell a developed plot of land after providing basic facilities and obtaining the requisite approvals as there may not be many takers for a plot land without approvals and basic facilities. Considering supply of developed land as a supply of 'Construction Service' by the Authority of Advance Ruling is crucial and noteworthy observation as it goes against the basic GST framework and would impact a lot of developers in the business of sale of developed plots.

Landowner cannot challenge the sealing of premise due to default in making payment of GST by tenant

Mrs. Poonam Anand Kishore Vachhani, Writ petition no. 7906 of 2020 (T-RES)- Karnataka High court

The petitioner has granted her premise to Alfara, the tenant on lease. The premise was sealed by the Assistant Commissioner in view of default in making payment of GST by the tenant. The petitioner first approached the assistant commissioner to unseal the premise and thereafter filed a writ petition before the HC with the prayer to:

- Unseal the premise and handover to petitioner or
- Direct Assistant commissioner to unseal the premises

The petitioner has argued that she is facing hardship for no fault on her part and in addition the tenant is also not making payment of monthly rent.

The HC observed the tenant is in the possession of premises as per the lease agreement and proceeding under GST is initiated against him. The unsealing procedure can be carried out in accordance with the law. The HC dismissed the writ stating that the matter shall be governed by the lease agreement and the court cannot exercise writ jurisdictions in such matters.

Supply of coal / other inputs for generation of electricity construed as job work

JSW Energy Ltd., AAAR No. MAH/AAAR/SS-RJ/01A/2019-20 dtd.13.01.2020

JSL supplied coal to JEL using which the Appellant was to generate electricity and transmit the same to JSL using power grid of MSEDCL. JEL considered it as Job Work transaction and maintained that the ITC of tax paid on coal should be available to them. However, the AAR and AAAR held against JEL which was challenged before the HC. The HC redirected to AAAR for fresh consideration.

The contentions raised by JEL were as follows:

- The plant where JEL supplies electricity to JSL is a captive plant of JSL which utilises the electricity to manufacture steel and hence qualifies as inputs for JSL.
- Even if coal is consumed in the process becoming irretrievable, it will qualify
- The arrangement with MSEDCL for transmission of electricity generated meets the conditions stipulated under Section 143 of CGST Act

Important Rulings

- Job worker can add minor inputs, will not alter the nature of job work

JEL also presented 2 new grounds of Appeal to AAAR:

- Coal not covered as input under SION for steel products under FTP
- Coal is consumed in the process and hence irretrievable in same form after job work

Considering the observations of the HC, the AAAR changed its earlier stance and held that the proposed arrangement of supply of coal or any other inputs by the JSL to the Applicant for generation of electricity will qualify as "job work". Accordingly, no GST will be leviable on this supply. Further, the supply of power by JEL to JSL, being an exempt supply, will attract nil rate of GST. Finally, the job work charges payable to JEL by JSL will be subjected to GST.

This AAAR has now settled the dilemma related to various questions raised on inputs, manufacture, job work, conversion of inputs and involvement of third party. This judgment will bring relief to various other industries like cement and aluminium where job work transactions are common and have transactions of similar nature. In certain cases there may not be a difference between job work and manufacture which is to be understood and this judgment provides the clarity that even though there is a manufacture, the process can still be construed as a job work.

ITC allowed on purchase/fabrication of cash-carry vans

CMS Infor Systems Ltd., AAAR No. MAH/AAAR/SS-RJ/04A/2018-19 dtd.31.10.2019

The Applicant has procured motor vehicle, popularly known as 'cash carry vans' and fabricated /designed the same as per RBI guidelines for transport of cash/bullions.

The Applicant has approached AAR & AAAR to get clarity on admissibility of ITC on purchase of Motor Vehicle. Since there was a difference of opinion between the members of the AAR, the matter was referred to the AAAR who held that ITC in respect of cash carry vans shall not be available. Aggrieved by the said order, the Applicant approached the HC, who redirected the matter back to the AAAR for fresh consideration with specific directions.

The points raised by the Applicant were as:

- Exception is carved for ITC on motor vehicles used for transportation of goods
- Definition of 'Goods' specifically excludes money and securities; however, 'Currency' being transported is not covered in definition of 'money' as the said currency cannot be used as legal tender
- E-way bill is not required for transportation of 'Currency'

The AAAR this time concluded that the currency being transported by the Applicant is not money for the Applicants but is in fact goods. The AAAR thus, held that ITC shall be available to the Applicant on the GST paid by it on the purchase and fabrication of the motor vehicles, used for carrying goods i.e. cash and bullions.

This ruling lays down a very important principle with respect to assigning meaning to words in the context in which they have been used in the law.

Companies Act

Start-up can issue sweat equity shares for longer period

Notification dated June 5, 2020

MCA has amended Companies (Share Capital and Debentures) Rules, 2014, and allowed Start-up Companies to issue sweat equity shares not exceeding fifty percent of its paid up capital up to 10 years (earlier 5 years) from the date of incorporation.

Suspension of corporate insolvency regulation process up for default arising during COVID-19 situation

MCA Portal "News and Important Updates" dated June 5, 2020

Ministry of Law and Justice, vide notification dated June 5, 2020 promulgated an ordinance to amend Insolvency and Bankruptcy Code [IBC], 2016 and inserted Section 10A stating that no application for initiating Corporate Insolvency Resolution process [CIRP] of a Corporate Debtor shall be filed, for any default arising on or after March 25, 2020 for a period of 6 months or such further period, not exceeding one year and also inserted sub-section (3) to Section 66 stating that no application shall be filed by a resolution professional in respect of such default against which initiation of CIRP is suspended as per Section 10A.

Scheme for Relaxation in Filing of Charges

General Circular No. 23/2020 dated June 17, 2020

MCA introduced a scheme for Relaxation of time for filing forms, related to Creation or Modification of Charges.

The Key Highlights of the Scheme are:

- This scheme shall come into force with effect from June 17, 2020.
- This is applicable for filing of Form CHG-1 (Creation and Modification of Charge, other than Debentures)/ Form CHG-9 (Creation and Modification of Charge for Debentures).
- If the date of creation/modification of charge is before March 1, 2020 but the period of 120 days for filing the Forms had not expired as on this date, then companies can file Form CHG-1/CHG-9 without any additional fees up to September 30, 2020. If the Form is not filed before September 30, 2020, the fees shall be charged beginning the period from October 1, 2020 till the date of filing plus the time period lapsed from the date of creation of charge till February 29, 2020.
- If the date of creation/modification of charge falls between March 1, 2020 to September 30, 2020, companies can file Form CHG-1/CHG-9 without any additional fees up to September 30, 2020. If the Form is not filed before September 30, 2020, the fees shall be charged beginning the period from October 1, 2020 till the date of filing.

Scheme shall not apply in the following cases:

- If Form CHG-1/ CHG-9 had already been filed before the date of this Circular i.e. March 17, 2020;
- The timeline for filing the Form i.e. 120 days already expired before March 1, 2020;
- Form CHG-4 for Satisfaction of charge and
- The timeline for filing of Forms expires at a future date other than covered above.

Companies Act

Coverage

Further extension of timelines under various provisions of Companies Act, 2013 due to COVID-19

Considering the current prevalent COVID situation, MCA has further extended the due date relating to certain compliance etc. The same is summarised as under:

Circular No. / Notification	Date	Provisions	Due date	Extended Date
General Circular No. 22/2020	June 15, 2020	Convening of Extra- Ordinary General Meetings [EGM] through Video Conferencing [VC] or other Audio-Visual Means [OAVM]	June 30, 2020	September 30, 2020
General Circular No. 24/2020	June 19, 2020	Extension of time for creation of Deposit Repayment Reserve of 20% of deposits under Section 73(2)(c) of the Companies Act, 2013 and for investment or deposit of 15% of amount of debentures under Rule 18 of the Companies (Share Capital and Debentures) Rules, 2014	June 30, 2020	September 30, 2020
Notification	June 23, 2020	Application for inclusion of name in databank of Independent Directors who has been appointed on the date of commencement of Companies (Appointment and Qualification of Directors) Fifth Amendment Rules, 2019	7 months of the commencement of Rules	10 months of the commencement of Rules
MCA Portal "News and Important Updates"	June 30, 2020	Reservation of Name for Incorporation of Companies and LLPs and change of name of LLP, if the last date of expiration of name falls between March 15, 2020 to July 31, 2020	20 days beyond May 31, 2020	20 days beyond July 31, 2020
MCA Portal "News and Important Updates"	June 30, 2020	Change of name of Companies, if the last date of expiration of name falls between March 15, 2020 to July 31, 2020	60 days beyond May 31, 2020	60 days beyond July 31, 2020
MCA Portal "News and Important Updates"	June 30, 2020	Resubmission of Forms for Companies and LLPs, in case the last date of resubmission falls between March 15, 2020 to July 31, 2020	15 days beyond May 31, 2020	15 days beyond July 15, 2020

Circulars, Notification & Clarifications

Further extension of time for submission of Annual Secretarial Compliance Report due to the continuing impact of the Covid-19

SEBI/HO/CFD/CMD1/CIR/P/2020/109 dated June 25, 2020

Under Regulation 24A of SEBI (LODR), Regulations, 2015 every listed entity and its material unlisted subsidiaries incorporated in India shall undertake secretarial audit and shall annex with its annual report, a secretarial audit report, given by a company secretary in practice, with effect from the year ended March 31, 2019 and shall become due within 60 days from the end of each financial year i.e. by May 31, 2020. Earlier, SEBI had extended the due date by 1 month i.e. the due date was extended to June 30, 2020. SEBI has further extended time for submission of Annual Secretarial Compliance Report (ASCR) by listed entities due to the continuing impact of the Covid-19 pandemic to July 31, 2020.

Relaxation of time gap between two board/ Audit Committee meetings of listed entities owing to the Covid-19 pandemic

SEBI/HO/CFD/CMD1/CIR/P/2020/110 dated June 26, 2020

SEBI has now granted further relaxation to the entities till July 31, 2020 from adhering to the maximum stipulated time gap of 120 days between two meetings of the board and Audit Committees of listed entities, as required under Regulation 17(2) and 18(2)(a) of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 ('LODR Regulations'). However, it was provided that the board of directors and audit committees of listed entities shall ensure that they meet at least four times a year, as stipulated under aforementioned of the LODR Regulations.

Notifications

Uniform Stamp Duty on Security Market

Ministry of Finance (Department of Revenue) Notification G.S.R. 226(E) dated March 30, 2020

In order to facilitate ease of doing business and to bring in uniformity of the stamp duty on securities across States and thereby build a pan-India securities market, the Central Government, after due deliberations and consultations with the States, through requisite amendments in the Indian Stamp Act, 1899 and Rules made thereunder, has created the legal and institutional mechanism to enable states to collect stamp duty on securities market instruments at one place by one agency (through Stock Exchange or Clearing Corporation authorized by it or by the Depository) on one Instrument. The present system of collection of stamp duty on securities market transactions led to multiple rates for the same instrument, resulting in jurisdictional disputes and multiple incidences of duty, thereby raising the transaction costs in the securities market and hurting capital formation.

The relevant provisions of the Finance Act, 2019 amending the Indian Stamp Act, 1899 and the Indian Stamp (Collection of Stamp-Duty through Stock Exchanges, Clearing Corporations and Depositories) Rules, 2019 were notified simultaneously on December 10, 2019 and these were to come into force from January 9, 2020 which was later extended to April 1, 2020 vide notifications dated January 8, 2020.

Further, considering the requests received from stakeholders, country-wide lockdown situation due to Covid-19 and in line with the relaxations given on statutory and regulatory compliance in other sectors, the date for implementation of amendments in the Indian Stamp Act, 1899 brought through Finance Act 2019 and Rules made thereunder was further extended to 1st July, 2020 vide notifications dated March 30, 2020.

Pursuant to the aforesaid notification, rates of Stamp Duty w.e.f. July 1, 2020 shall be as follows:

Stamp duty on debentures	Rate
Issue	0.005%
Transfer and re-issue	0.0001%

Stamp duty on securities (other than debentures)	Rate
Issue of security	0.005%
Transfer of security on delivery basis	0.015%
Transfer of security on non-delivery basis	0.003%
Derivatives –	
Futures (equity and commodity)	0.002%
Options (equity and commodity)	0.003%
Currency and interest rate derivatives	0.0001%
Other derivatives	0.002%
Government securities	0%
Repo on corporate bonds	0.00001%

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Should you need detail understanding or more information, kindly reach out to subject team

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Abbreviations

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Abbreviation	Meaning
AAAR	Appellate Authority of Advance Ruling
AAR	Authority of Advance Ruling
ASBA	Applications Supported by Blocked Amount
ADR	American Depository Receipts
AE	Associated Enterprise
AGM	Annual General Meeting
AIF	Alternate Investment Fund
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
AY	Assessment Year
BBT	Buy Back Tax
BMA	Black Money (Undisclosed Foreign Income and Assets) and Imposition Tax Act 2015
BOE	Bill of Entry
BOI	Body of Individuals
BT	Business Trust
CBDT	Central Board of Direct Tax

Abbreviation	Meaning
CCA	Cost Contribution Arrangements
CFC	Controlled Foreign Corporation
CIT(A)	Commissioner of Income Tax (Appeal)
CPC	Central Processing Centre
COI	Constitution of India
CPSE	Central Public Sector Enterprise
CSR	Corporate Social Responsibility
CTA	Covered Tax Agreement
CUP	Comparable Uncontrolled Price Method
CUP	Cost Plus Method
DDT	Dividend Distribution Tax
DGIT	Director General of Income Tax
DRP	Dispute Resolution Panel
DTAA	Double Tax Avoidance Agreement
ECB	External Commercial Borrowing
EPF	Employee's Provident Fund
EGM	Extra-ordinary General Meeting
EOU	Export Oriented Unit
EQL	Equalization Levy
FA	Finance Act
FAR	Function Assets and Risk
FEMA	Foreign Exchange Management Act, 1999

Abbreviation	Meaning
FII	Foreign Institutional Investor
FPI	Foreign Portfolio Investor
FOF	Fund of Funds
FTC	Foreign Tax Credit
FTP	Foreign Trade Policy
FTS	Fees for Technical Service
FY	Financial Year
GAAR	General Anti-Avoidance Rules
GDR	Global Depository Receipts
GOI	Government of India
GST	Goods and Service Tax
GVAT Act	Gujarat VAT Act, 2006
HC	High Court
Hold Co	Holding Company
HUF	Hindu Undivided Family
ICAI	Institute of Chartered Accountant of India
ICDS	Income Computation and Disclosure Standards
ICDR	Issue of Capital and Disclosure Requirements
Ind-AS	Indian Accounting standards
IRDA	Insurance Regulatory and Development Authority
ITA	Income Tax Act, 1961

Abbreviations

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Abbreviation	Meaning
ITR	Income Tax Return
IT Rules	Income Tax Rules, 1962
ITAT	Income Tax Appellate Tribunal
ITO	Income Tax Officer
ITR	Income Tax Return
ITSC	Income Tax Settlement Commission
JCIT/DCIT	Joint/Deputy Commissioner of Income Tax
LAF	Liquidity Adjustment Facility
LIBOR	London Inter Bank Offered Rate
LIC	Life Insurance Company
LO	Liaison Office
LOB	Limitation of Benefit
LODR	Listing Obligations and Disclosure Requirements
LTA	Leave Travel Allowance
LTC	Lower TDS Certificate
LTCG	Long term capital gain
MAP	Mutual Agreement Procedure
MAT	Minimum Alternate Tax
MCA	Ministry of Corporate Affairs
MFN	Most Favored Nation clause under DTAA
MLI	Multilateral Instrument
MMR	Maximum Marginal Rate

Abbreviation	Meaning
MNE	Multinational Enterprise
MPS	Minimum Public Shareholding
MSF	Marginal Standing Facility
MSME	Micro, Small and Medium Enterprises
NBFC	Non-Banking Finance Company
NCDS	Non-convertible Debentures
NCRPS	Non-convertible Redeemable Preference Shares
NPA	Non-Performing Asset
NRI	Non-Resident Indian
OECD	The Organization for Economic Co-operation and Development
OM	Other Methods prescribed by CBDT
PAN	Permanent Account Number
PE	Permanent establishment
PPT	Principle Purpose Test
PSM	Profit Split Method
PY	Previous Year
RBI	Reserve Bank of India
RCM	Reverse Charge Mechanism
REs	Dematerialized Rights Entitlements
RNOR	Resident and Not Ordinarily Resident

Abbreviation	Meaning
ROR	Resident Ordinary Resident
RPF	Recognized Provident Fuds
RPM	Resale Price Method
SC	Supreme Court of India
SDT	Specified Domestic Transaction
SE	Secondary adjustments
SEBI	Securities Exchange Board of India
SEP	Significant economic presence
SEZ	Special Economic Zone
SFT	Specified Financial statement
SION	Standard Input Output Norms
SST	Security Transaction Tax
ST	Securitization Trust
STCG	Short term capital gain
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
UPE	Ultimate Patent Entity
VCF	Venture Capital Fund
WHT	Withholding Tax