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kcm Insight

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Dear Reader,

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

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

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Understanding Net Debt and Normalised Working Capital in Transaction Valuation

Introduction

In transaction valuations, "Net Debt" and "Normalised Working Capital" play a significant role in the assessment of the target and the overall deal structure. During the due diligence phase, the acquirer closely examines the financial performance of the target. These metrics provide valuable insights into the target's financial health, operational efficiency, and potential risks, allowing the acquirer to make informed decision and effectively negotiate the transaction.

Let us understand some of the most commonly encountered Net Debt and Normalised Working Capital adjustments that are made to the target's enterprise value to arrive at its equity value in a transaction.

Net Debt

Net Debt is a crucial financial metric used to assess a target's overall debt burden and its ability to meet its financial obligations. Net Debt is arrived at by subtracting the target's cash and cash equivalents and liquid investments from its total debt including short-term and long-term, secured and unsecured, and interest accrued thereon. All forms of compulsorily redeemable and non-convertible financial instruments are treated as Net Debt.

A high Net Debt relative to the operating earnings (EBITDA) of the target indicates a potential financial risk, which results in a lower equity value for the target.

Net Debt that is reported in the balance sheet of the target often shows a distorted picture as certain debt like items are hidden in the balance sheet masked as working capital items. As such, adjusted Net Debt is widely used by investors, lenders, creditors, and analysts to evaluate a target's financial health, creditworthiness, and its actual debt servicing capacity. Below are a few common adjustments seen to arrive at the adjusted Net Debt position:

Stretched creditors: When payment to a creditor is not made within the credit period, that liability is a debt-like item or source of funding and not an operational item. Additional funds will be required to service such creditors hence it is added to net debt and removed from reported working capital.

Capital creditors: Capital creditors are related to the payments due for fixed or long-term assets of the target. These are usually group under operational creditors and needs to be adjusted as a part of net debt and removed from reported working capital.

Related party balances: These are balances outstanding in relation to the related party transactions entered and as these payments would generally have favourable credit terms as compared to external non-related creditors/debtors, these are considered as a debt-like item and adjusted from reported working capital.

Provision for long term employee benefits: Provision for employee benefits in relation to gratuity, compensated encashment, pension plans, superannuation, etc. are considered as a long-term liability and a non-operational item in

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day-to-day business operations, hence it is added to the net debt.

Provision for income tax: Provision for income tax is a non-operating provision as it does not impact the operating earnings (EBITDA) of the target, which is why it is adjusted as a debt like item.

Finance lease obligations: As these liabilities pertain to funding or financing of long-term fixed assets, these are adjusted as net debt for the purposes of transaction valuation.

Advance from customers: As reported cash and bank balances includes the amount received as advance from customers, the same is adjusted back from net cash primarily because this would result in non-cash revenue getting generated going forward.

Capital commitments: Those payments which are planned or committed by the target to be spent to complete an ongoing project, or order placed for fixed assets, or any near-term capex are not reflected in the balance sheet and thus funding would be required in the near future. As such, it is added to the reported net debt of the target.

Deferred tax liability: Target would be required to pay higher tax going forward on account of timing difference on taxation for e.g., on depreciation as per income tax vis-à-vis reported in the books of accounts. Often debated, however, the same may get adjusted as net debt.

Deposits placed as margin: Reported cash and bank balances may include deposits which are placed as margin against bank borrowings or bank guarantees. As these balances are necessary for funding the business and operational activities, these are removed from reported cash balances and considered as a working capital item.

Pre-closing litigation matters: Any liability or provision in relation to any open litigations or claims are considered debt like and adjusted from valuation as net debt.

Exposure from tax or legal due diligence: Any exposure that is probable to lead to a cash outflow on account of any finding from the due diligence exercise needs to be considered as an adjustment to valuation.

Transaction related costs: Costs such as stamp duty, documentation charges, advisor fees, compliance expenses, carve-out expenses, etc. which are to be borne by the target in relation to the transaction are adjusted as net debt.

Normalised Working Capital

Normalised Working Capital is a fundamental financial metric that signifies the liquidity and operational efficiency of a target. Calculated as the difference between a target's operating assets (such as accounts receivable and inventories) and its operating liabilities (including accounts payable and accruals), Normalised Working Capital provides insight into a target's ability to meet its operating obligations.

Assets and liabilities corresponding to the operating earnings (EBITDA) are considered to be forming part of the Normalised Working Capital except where any such items is considered as Net Debt. As such, asset and liabilities not forming part of net cash or net debt, fixed assets, and equity are considered as part of the Normalised Working Capital. It is pertinent to note that debt like items which

Understanding Net Debt and Normalised Working Capital in Transaction Valuation

have been culled out of reported working capital will result in an increase in the Normalised Working Capital of the target.

For the purposes of valuation, the Normalised Working Capital is generally agreed based on the historical trend and/or cyclicality in the working capital observed during the due diligence exercise to "normalise" the effect of any one-off or non-recurring or non-operational item. Normalised Working Capital is generally expressed as days of revenue based on diligenced trend subject to seasonality or cyclicality. Normalised Working Capital is compared with the actual working capital as on the valuation reference date and shortfall or excess is adjusted from the valuation.

As the enterprise value is generally agreed on cash/debt free basis, this adjustment is necessitated as sellers would try to reduce the working capital and convert it to net cash which could enhance the valuation. However, the acquirer would have to pump in more cash post-acquisition to finance the working capital gap created by the seller and hence this adjustment becomes extremely critical in negotiating transaction valuation.

Following are some of the common adjustments to arrive at Normalised Working Capital, apart from the ones discussed above in relation to the adjusted Net Debt:

Provision for doubtful debts: Trade receivables which are not received within the normal credit period are adjusted form the reported working capital as provision for bad and doubtful debts subject to balance confirmations or subsequent collections from debtors.

Inventory valuation adjustment: While valuing the inventories, the target may have undervalued or overvalued the inventories by not properly following the valuation norms, for e.g., by improper allocation of overhead costs to inventories.

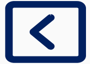
Non-moving inventories: There are cases wherein the inventories carried in books are too high but may have become obsolete or non-usable due to its age. To normalise the levels of inventories carried in books, appropriate adjustment needs to be made to arrive at the normalised working capital.

Cut-off adjustments: The target may not have completely recorded the transactions in respective period of accrual such as return of goods, reversal of debtors on account of revenue cut-off at period end, inventories in transit, expense accruals, etc. which may lead to misstatement of operating earnings (EBITDA) and thus working capital also gest impacted. Hence such transactions are identified during due diligence, and adjustment is made to the reported working capital.

Income tax refund receivable: This is not an operational item reported in the balance sheet and shows an inflated working capital position. Income tax being an item not impacting the EBITDA is adjusted from reported working capital.

Capital advances: These are advances made towards procurement of fixed assets, and hence do not form a part of the operating working capital of the target.

Understanding Net Debt and Normalised Working Capital in Transaction Valuation



Conclusion

Net Debt and Normalised Working Capital are vital in determining the final consideration in an M&A transaction. These financial metrics are critical for the purposes of valuation as well as post-acquisition integration. These adjustments ensure that parties to a transaction have a fair understanding and agreement of the target's financial position to help conclude the transaction. As these adjustments directly impact the transaction consideration, extensive negotiations take place in relation to these matters while finalising the definitive agreements to avoid any ambiguity while closing the transaction.

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Important Rulings

CPC empowered to make disallowance of delayed deposit of PE / ESIC u/s.143(1)

M/s. Checkmate Services Pvt. Ltd. Vs. ADIT, CPC Bangalore & DCIT, Circle 3(1)(1), Vadodara in ITA No. 69 of 2023, ITAT Ahmedabad

The Taxpayer filed income tax return for the AY 19-20, declaring a total income of INR 16.46 crore and claiming a refund of INR 7.32 crore. The return was processed under Section 143(1) of ITA, during which an adjustment of INR 5.87 crore was made due to the delay in depositing employees' contributions to the Provident Fund (PF) and Employee State Insurance (ESI), as mentioned in the tax audit report filed by the Taxpayer.

The CIT(A) upheld this addition and dismissed the Taxpayer's appeal against the adjustment.

Aggrieved by this decision, the Taxpayer approached the ITAT. The ITAT relied upon the Apex judgment in the Taxpayer's own case, where it was noted that there is a clear distinction between the employer's primary liability to make contributions and its obligation to deposit amounts deducted from employees. The Apex court observed that employees' contributions are considered deemed income under Section 2(24)(x) and are subject to the conditions specified in Explanation to Section 36(1)(va), which mandates depositing such amounts received or deducted from employees on or before the due date specified under relevant Act. The judgment highlighted that while the employer's liability is paid out of its income, the contributions deducted from employees are held in trust by the employer. This distinction influences the interpretation of obligations under section 43B and Section 36(1)(va), suggesting that if these contributions are not deposited by the due date, the deduction is not available to the Taxpayer.

The Taxpayer, before ITAT argued that the Apex court's judgment should only apply in the context of scrutiny assessments, not for adjustments made during the processing of the return under Section 143(1). However, the ITAT dismissed such argument, emphasizing that the Apex court judgment is a declaration of law applicable to all proceedings, whether under section 143(3) for scrutiny assessments or under Section 143(1) for processing returns.

Further, the Taxpayer alternatively contended that the delayed deposits should be treated as normal business expenditure under Section 37. The ITAT held that the assessee did not make such claims in the return, and since the claim wasn't certified by the auditor, it could not be considered during return processing u/s 143(1) by CPC.

The Taxpayer also argued that the exact type of adjustment, as stipulated in clauses (i) to (vi) of Section 143(1), was not specified in the intimation, which it considered a flaw. The ITAT dismissed this claim, indicating that the adjustment of INR 5.87 crore was clearly indicated in the intimation sheet under Sl. No. 14, which contained details of all claims made by the Taxpayer and the computation under Section 143(1). The ITAT emphasized that the nature of adjustment was adequately reflected in the intimation and there was prior communication from the CPC to the Taxpayer.

Based on these considerations, the ITAT dismissed the appeal by Checkmate Services P. Ltd. It upheld the adjustment of ₹5.87 crore for the late deposits of PF and ESI contributions, reiterating that the SC judgment was applicable

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to all proceedings, and the procedural requirements under the Income Tax Act were duly followed. The ruling reinforces the importance of adhering to statutory due dates for depositing employee contributions and the binding nature of apex court judgement across all proceedings.

It is to be noted that under section 143(1)(a)(iv) of the Act, CPC is empowered to make disallowance of expenditure or increase in income indicated in the audit report but not considered while computing the taxable income. On bare reading of Form 3CD, the Tax Auditor is not required to give any view on allowability of employee's contribution to PF but merely required to report the due date of payment and actual date of payment thereof. In fact, before the Apex Court ruling (supra) on such aspect, there are various judgment which had upheld such deduction even if such payment is made after due date. Such aspect is not comprehensively dealt with in such decision and therefore we believe that such controversy will continue in future. In fact Jaipur ITAT in the case of Paris Elysees India Private Ltd (ITA No.357 of 2022) held that CPC is not empowered to make variation relating to employee's contribution to PF while processing return u/s.143(1) of the Act.

Apex Court upholds depreciation claim on revalued cost of assets on account of conversion

Pr. Commissioner of Income Tax 5 Vs. Dharmanandan Diamonds Pvt. Ltd, SLP No. 19968/2024, SC

The Taxpayer was earlier partnership firm which got converted into private limited company w.e.f. August 31, 2007. The Taxpayer took over all the assets and liabilities of the firm as on September 01, 2007, on account of the conversion. Further as per the proviso to section 32 of the ITA, the predecessor firm claimed the depreciation for the period of 5 months i.e. upto August 2007. For the remaining period, i.e. from September 2007 to March 2008, the depreciation was claimed by the Taxpayer on the revalued value of the assets. Subsequently, in the next financial year, the Taxpayer claimed depreciation on the WDV of the assets as on March 31, 2008, after reducing the depreciation on revalued assets.

According to the revenue, the Taxpayer claimed excess depreciation in the year relevant to AY 2009-10 since depreciation was calculated on WDV represented by revalued cost of assets as considered at the time of conversion of firm into private limited instead of original cost in the hands of partnership firm. Therefore, the revenue disallowed the Taxpayer's claim of depreciation on revalued assets and recalculated the depreciation allowable to the Taxpayer basis WDV of the assets determined basis original cost of assets in the hands of partnership firm. Aggrieved by the same, the Taxpayer preferred an appeal before CIT(A). CIT(A) dismissed the appeal of the Taxpayer.

The Taxpayer filed an appeal before the Tribunal against the order of CIT(A). The Tribunal held that as per sixth proviso to section 32 of the ITA, the Taxpayer's claim of depreciation cannot exceed the total depreciation claimed by predecessor and the successor jointly had there been no conversion and the same applies only in the year of succession. However, such proviso to section 32 does not provide for what cost / WDV be considered for the purpose of

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computing depreciation for which the court relied upon the definition of 'actual costs' and held that same is required to be considered for computing depreciation. It was observed by the tribunal that during the next financial year, the Taxpayer was the sole owner of the assets. Therefore, as per section 32 read with rule 5, the Taxpayer was entitled to claim the depreciation on the actual cost of the assets. The actual cost shall be the value which was paid by the Taxpayer to the firm after revaluing the assets. In the instant case, the Taxpayer had issued shares in lieu of the cash. Therefore, the same shall be considered as actual cost for the Taxpayer. Therefore, the Taxpayer had correctly claimed the depreciation. The revenue also took an argument that no capital gain tax was paid by the predecessor firm on transfer of assets and thereby successor cannot consider revalued cost for depreciation. The tribunal also dismissed such argument stating that had the conditions laid down in section 47(xiii) not fulfilled, the predecessor firm could have been required to pay tax on such transfer and therefore such view of the revenue is not sustainable. The tribunal also relied on multiple decisions relied by the Taxpayer and interpreted that the Taxpayer is entitled to depreciation on the enhanced cost at which the Taxpayer has taken over the assets.

Aggrieved by the decision of tribunal, the revenue filed an appeal before the Bombay HC. The Bombay HC upheld the decision of the tribunal by holding that the Taxpayer had correctly claimed the depreciation on WDV represented by revalued cost of assets. Therefore, Bombay HC dismissed the revenue's appeal by holding that substantial question of law does not arise. The revenue filed a petition before the SC. The SC hold that it does not find any error in the decision of Bombay HC and thereby dismissed the revenue's petition.

It is to be noted that Explanation 1 to section 43(6) is applicable in case of situation referred in section 170(2) and not section 170(1). Section 170(2) covers situation of assessment of predecessor's assessment in the hands of successor and not the assessment of successor's asset. Hence currently the provision of section 43(6) does not cover to have tax neutrality of depreciation claim in hands of successor in case where any of the explanation to section 43(6) is not applicable. Such anomaly in law has lead to claim of depreciation on revalued amount by the successor as actual cost for the purpose of claim of depreciation.

Discount offered to employees on ESOP on exercise of options permitted for deduction u/s 37(1)

ACIT v/s Axis Bank Ltd. in ITA No 48 & 49 of 2024 – Ahmedabad Tribunal

For the Assessment Year 2011-12, the Taxpayer while computing total income claimed deduction of Rs. 250.63 crore on account of ESOP expenditure under section 37(1) of the Income Tax Act being the difference between the market price as on date of exercise of options and market price of share on the grant date.

The AO disallowed this expenditure, stating that the discount eligible for deduction as revenue expenditure is the difference between the market price of the shares at the time of grant of option and actual exercise price. In the current

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scenario the Taxpayer has erred in taking the market price of option on the date of exercise of option as well as the market price as on the grant date. If the discount is calculated considering market price of option as on date of grant of option and actual exercise price, then there is no actual discount passed on to the employees.

The AO rejected the Taxpayer's claim, stating that the decision of Hon'ble Bangalore Special Bench in case of Biocon Ltd vs. DCIT [2013] 25 ITR(T) 602 was not applicable due to factual differences. In Biocon (supra), the difference between the market price and exercise price was treated as revenue expenditure at the time of the grant of options. However, Taxpayer had claimed the expenditure based on the market price at the exercise date, which, according to the AO, did not align with the provisions of Section 2(15A) of the Indian Companies Act, 1956. The AO contended that the ESOP discount should be calculated based on the market price at the grant date, not the exercise date, as it represented a predetermined price at the grant of options.

Aggrieved from such order of AO, the Taxpayer filed an appeal before CIT(A). Hon'ble CIT(A) allowed the appeal of the Taxpayer by relying on the decision of Bangalore Special bench in case of Biocon Ltd (supra) which was subsequently upheld by the Hon'ble Karnataka HC in CIT v. Biocon Ltd (2020) 40 ITR 151.

Aggrieved by the said decision, the Revenue filed an appeal before the ITAT and contended that AO was correct in taking the view that the option shall be granted at a predetermined price (price as on the date of grant of option), to be eligible for deduction. The revenue relied upon the judgement of ACIT Vs Ranbaxy Laboratories in ITA Nos. 2613 & 3871 to contend that ESOP expense debited to P&L is notional in nature and same is not allowable. It was also argued by the revenue that the Taxpayer's claim was merely based on SEBI guidelines, but deduction is not permitted considering provisions of the Act. The revenue also pointed out that the Taxpayer has launched multiple ESOP schemes over various years and there is no clarity under which the Taxpayer has claimed the aforesaid deduction.

In response, the Taxpayer submitted that the terms of scheme are such that the difference between market price as on the date of grant of stock options and the market price as on date of exercise were claimed as revenue expenditure. During the course of assessment proceedings, the Taxpayer had furnished the detailed chart of specific employees to whom discount was offered which clearly shows that there is a substantial difference between the market price as on date of grant of option and market price as on date of exercise of such options indicating a clear benefit to the employees.

Hon'ble ITAT relying on the decision of Hon'ble Karnataka High Court held that issuing shares at a discount constitutes an expenditure under Section 37(1) of the Act and it is ascertained liability and not contingent liability when options are exercised by the employees. The primary purpose of this exercise was not to deplete capital but to generate profits by ensuring the consistent services of employees. Further it was observed that, ESOP expenses are treated as perquisites in the hand of its employees and TDS at appropriate rate has also been deducted. Therefore, the discount on the issue of ESOPs was allowable as a deduction under Section 37(1) of the Act.

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Apex Court upheld that discount reimbursement given to distributor is not a commission

CIT(TDS) vs Acer India Pvt. Ltd. in ITA No 159 & 159 of 2019 (Karnataka HC)

The Taxpayer is engaged in the business of manufacturing computers and peripherals. It had supplied its products to its distributors and such distributors had sold the products to its dealers in the market. Subsequently, due to certain unfavorable market conditions and due to special occasions, the Taxpayer suggested the distributors to sell the products at a price which was less than the invoice value raised by the Taxpayer. In order to protect the distributors from this loss, the Taxpayer reimbursed such discount amount to the distributor.

During the income-tax proceedings, the Assessing Officer held that the relationship between the Taxpayer and the distributor is of a Principal and Agent and classified the payment of the discount amount paid by the Taxpayer to the distributor as "commission" wherein TDS was required to be deducted u/s 194H of the ITA. Further the Taxpayer was held as an Assessee in default u/s 201(1) and 201(1A) of the ITA. On appeal to CIT(A), the said decision of the Assessing Officer was reversed and the same was also upheld by the Tribunal.

Aggrieved, the revenue filed an appeal before the Karnataka High Court wherein it was noted that the distributors place orders for the products with the Taxpayer and the Taxpayer had the right to accept or reject such orders. Further the products are sold by the Taxpayer to the distributors and the distributors at their own risk sell the products to their dealers. Thereby the risk of inventory is of the distributor making this arrangement a Principal-to-Principal arrangement. Further, since the distributor is not an agent of the Taxpayer such discount which were provided shall not be termed as a "commission" on which TDS u/s 194H shall be attracted. The decision of the HC was challenged before the Apex Court, however the SLP was dismissed.

The judicial outcomes in this case underscore the need for proper identification and classification of arrangements between Taxpayers and distributors. This precedent clarifies that discounts reimbursed to distributors in a Principal-to-Principal transaction are not subject to TDS requirements applicable to commissions.

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Important Rulings

Indian Rulings

Treaty benefit allowed to tax resident of Mauritius based on TRC, Global Business License etc.

Maven India Fund – [ITA No 1766/Del/2023 – Order dated 23 July 2024(Delhi ITAT)]

Taxpayer is a Mauritius based investment fund and registered as Foreign Portfolio Investor with SEBI. Based on India-Mauritius DTAA, Taxpayer claimed exemption from taxation of capital gain on sale of shares (acquired prior to 1 April 2017) as well as profit in relation to F&O transactions. Further, taxes were paid at beneficial rate prescribed under Article 13(3B) of DTAA, in respect of capital gain on sale of shares during financial year 2017-18.

AO denied the benefit of DTAA by observing that taxpayer as well as its holding company in Mauritius were directly held by Shri Mukut Behari Agarwal who was resident of UAE based on information furnished by SEBI. AO also alleged that taxpayer was a conduit company without commercial substance, directors of the taxpayer and its holding company were only namesake as taxpayer was controlled from UAE only and hence not entitled to benefit of DTAA. AO further relied on Protocol signed on 07 March 2024 between India-Mauritius, whereby a new preamble has been inserted which states that the common intention of the parties to the treaty is "to eliminate double taxation without creating opportunities for non-taxation or reduced taxation through tax evasion or avoidance including through treat-shopping". The taxpayer placed reliance on recent decision of Hon'ble Supreme Court in case of Nestle SA, 2023 SCC OnLine SC 1372 wherein the Court had held that in the absence of notification, a protocol cannot be applied.

Concurring with the decision and findings of CIT(A), Hon'ble ITAT dismissed the appeal filed by Revenue by observing that documents received from SEBI did not pertain to the AY under dispute but for some other AY, hence no conclusion regarding control and management of the taxpayer or beneficial ownership for the impugned year could be drawn based on such documentary evidence. ITAT also observed that TRC, Global Business License and SEBI registration taken by taxpayer clearly demonstrated that the taxpayer was a genuine tax resident of Mauritius. ITAT rejected the reliance placed by tax department on the Protocol, since the same has not yet been notified.

In the past decade, there has been plethora of rulings wherein the Courts have allowed the treaty benefits by treating TRC as sufficient documentary evidence. Of late, the approach of judiciary seems to have shifted whereby besides TRC, the Courts now also examine various documentary evidences such as Board Resolutions, Location of Directors, Registrations, Business Operations etc. to check if the entity claiming the benefits is genuine or not. For a prudent foreign investor, it is now *sine qua non* to ensure that benefits of tax treaty are not claimed merely on the strength of TRC but sufficient documentary evidences are kept on record to demonstrate the bona fides of the transactions. Nevertheless, the decision of the tribunal is welcome.

Sum received for granting sponsorship / advertisement rights not royalty

Cricket Australia [ITA No. 3200/Del/2023-Order dated 27 June 2024 (Delhi ITAT)]

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Taxpayer is a national government body for the game of cricket in Australia and a tax resident of Australia. During the year under consideration, the taxpayer entered into a commercial partnership agreement with an Indian entity (BAL) whereby certain sponsorship and advertisement benefits were given to BAL to promote its international business in Australia for which a fee was received by the taxpayer. Certain benefits available to BAL under the said agreement *inter alia* were as follows:

- Entitled to promote its brand through advertisement on products and at point of sale
- Eligible to produce an advertisement campaign promoting its association with Big Bash League (BBL – *the Australian intra-country league*)
- Advertisement on the LEB perimeter, sight screens, boundary rope, rear of umpire shirts, scoreboard at various venues in Australia where BBL is played
- Digital partnership package on taxpayer's digital channels and BBL social media app.

The tax authorities contended that BAL had various rights under the said agreement including exclusive advertisement rights, designated rights like being holder of the licensed logo of BBL, right to in-stadium match promotions etc. and also had the right to use BBL logo 'with or without' the joint logo, hence receipts for the same were in the nature of Royalty as per Article 12 of the India-Australia DTAA

The Tribunal held that BAL had the right to use taxpayer's IPR merely to indicate its association with BBL. As per the terms of agreement, BAL did not have any exclusive rights in the use of taxpayer's logo or the event of BBL. The logo was to be used in restricted spaces and on limited goods and services of BAL. BAL, as a sponsor had the responsibility to use the logo and other rights in the taxpayer's IPR to increase the event's viewership. The rights were not of the nature of 'copyright' but simplistic rights to represent in the advertising, communications and sales and marketing campaigns showcasing BAL's association with BBL.

The Tribunal held that for any payment to fall within the scope of royalty, there must be some kind of transfer of rights. The 'right to use' the IPR should not be restrictive in purpose or mode of use. The agreement nowhere indicated that BAL had any claim in the taxpayer's logo or other IPR beyond the event of BBL. The right was not in the logo or IPR of the taxpayer, but the right to be part of BBL, organised by the taxpayer as a sponsor and represent its association with BBL to the viewers of the event, to market its own product or brand. Accordingly, the Tribunal held that amount received towards sponsorship and advertisement rights did not amount to Royalty.

In determining whether a receipt qualifies as a royalty, it is essential to analyse the nature of the rights transferred under the agreement. The classification depends on whether the rights grant exclusive control over intellectual property or are merely restrictive and promotional in nature. Only when the agreement confers substantive rights to use or exploit an intellectual property, akin to a license, does the payment potentially fall within the ambit of royalty. The nature and extent of the rights—whether they provide an

Important Rulings

unrestricted right to use an intellectual property or merely facilitate brand association—play a pivotal role in categorizing a receipt as a royalty under international tax treaties.

TDS not required on payment for marketing, compliance services, segregation services etc.

Rane Engine Valve Limited [ITA Nos. 1497, 1498 / CHNY / 2017, 1477, 2815 / CHNY / 2018 & 885 / CHNY / 2020 - Order dated 3 July 2024 (Chennai ITAT)]

Rane Engine Valve Limited, a tax-resident company in India, entered into a retainer arrangement with Ms. Eva M. Delith, a marketing specialist and tax resident in Germany. The arrangement involved providing customer support to European customers including visiting warehouses to assess stock position, providing an interface with clients, attending to quality and warranty claims etc. The AO disallowed the payment made to Ms. Delith under section 40(a)(i) of the ITA due to non-deduction of TDS, claiming it was income from business activities in India. The taxpayer contended that the services provided did not involve managerial, technical, or consultancy functions and hence did not qualify as FTS. Furthermore, the taxpayer argued that the services fell under Article 14 of India-Germany DTAA being services in the nature of independent personal services (IPS) and since the payee did not stay in India for more than 120 days, the services were not chargeable to tax in India. The Hon'ble ITAT relying on the judgement of Delhi Tribunal in the case of Mira Exim held that marketing consultancy services constituted professional services under Article 14 of India- Germany DTAA and since the payee did not visit India during the relevant period, the income is taxable only in Germany and no TDS is required on such payments in India.

AO disallowed another payment made by the taxpayer with respect to VAT compliance support services rendered in Germany by BDO on which TDS was not deducted. The Hon'ble ITAT relying on the decision of Mumbai ITAT in the case of BSR & Co. held that professional services in relation to audit, taxation, TP, information technology etc. would be IPS and in the absence of fixed base or PE in India, the same would not be chargeable to tax in India.

Taxpayer had also made payments to various entities in relation to segregation charges towards warehousing, unpacking, repacking of goods and supplying to customers in Germany. The taxpayer contended that the services did not qualify as FTS and, since they were rendered and utilized outside India for export purposes, they should not be deemed as income accruing or arising in India. However, the AO countered that according to Explanation 2 to section 195 of the ITA, the taxpayer was required to deduct TDS, regardless of whether the non-resident had a business connection in India or not. He further argued that the taxpayer did not approach the tax department for 'nil' tax deduction certificate under section 195(2) of the ITA and hence disallowed the payment under section 40(a)(i) of the ITA. The Hon'ble ITAT held that the said services would not fall under 'technical' or 'managerial' services and in the absence of permanent establishment, these services were not chargeable to tax in India and no TDS was required.

Another payment was in relation to market research and development expenditure paid in USA. Since the services did not make available any technical knowledge, ITAT held that the said payment would constitute business profits and

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not FTS under India-US DTAA and hence no disallowance under section 40(a)(i) was warranted in the absence of PE in India.

In the judgment, the tax authorities consistently emphasized Explanation 2 to section 195, arguing that TDS must be deducted regardless of whether the non-resident has a business connection in India. It is crucial to understand that this explanation is oriented from the payer's perspective. It stipulates that even if the non-resident payer does not have a business connection in India, they are still required to deduct TDS if the payment is made to a non-resident payee is chargeable to tax in India. However, the explanation does not mandate tax deduction if the payee lacks a business connection or taxable presence in India and the income is not taxable in India. Although the ITAT ruled in favor of the taxpayer, this issue was not addressed in the judgment. Another notable aspect of the decision was the favorable ruling concerning payments made to BDO in Germany for VAT compliance services. The ITAT relied on precedents involving India-USA and other treaties to reach a favorable conclusion. However, it is crucial to understand that Article 14 of the India-Germany DTAA applies only to individuals, unlike other treaties where firms are also covered under Article 14. There have been instances where the benefit of Article 14 has been extended to firms, even when the treaty explicitly uses the term "individuals." However, whether this benefit should be applied to firms when the treaty specifically mentions "individuals," while other treaties explicitly include both individuals and firms in Article 14, remains a matter of debate.

Commission received by US subsidiary for sales & marketing activities not taxable as FTS

Steer America Inc. – [IT (IT) Appeal Nos. 832 & 833 of 2024 (Bangalore ITAT)]

Taxpayer, a US based company and subsidiary of STEER Engineering Private Limited ('SEPL') procured sales orders in US for products (Extruders and related peripherals) manufactured by SEPL and received payments from the customers which was remitted to SEPL. For marketing of products, taxpayer received commission on sales from SEPL. AO treated the payments received by taxpayer from SEPL as FTS under section 9(1)(vii) of the ITA as well as under Article 12 of India USA DTAA.

While allowing the appeal and directing for deletion of adjustment, ITAT observed that taxpayer was merely engaged in reaching out to potential customers and generating the sales orders whereas it was SEPL which carried out all related technical support activities including post-sales support, trouble shooting, replacement, warranties, technical writeups and training of the users etc. Entire tech team of SEPL was based out of Bangalore, India. Taxpayer was set up merely to demonstrate long term intent to serve US customers and establish local presence in US.

Issue of taxability of commission paid to foreign agents / companies assisting in procuring export orders is settled with numerous case laws holding the payment to be not taxable in India in the absence of any business connection or PE in India. However, of late, the tax officers have been attempting to characterise the said payments as FTS merely because the sale of product or services may involve or require certain degree of technical knowledge or skills. However, it needs to be appreciated that whether the product being sold is highly technical or not, should not change the basic

Important Rulings

character of activity of the sales agent. Payment to non-resident commission agents is made for securing orders and not for rendering any managerial, technical or consultancy services per se and hence ITAT has rightly held the payments to be not taxable in India.

Receipts from offshore supply of equipment not taxable only based on cross-fall breach clause

Jiangsu Zhongtian Technology Ltd. [ITA No. 350/Del/2023 and SA No. 186/Del/2023 - Order dated 27 June 2024 (Delhi ITAT)]

The taxpayer is a non-resident corporate entity incorporated under the laws of China and a tax resident of China. The taxpayer had executed an offshore contract for supply of equipment and its Indian related party had executed contract for onshore services and maintenance. The AO considered the same as a composite contract and attributed profit in India. The Tribunal relied on a judgement of a coordinate bench wherein the factual and legal proposition considered were similar to the case at hand and allowed the taxpayer's appeal by upholding the following:

- The presence of a cross-fall breach clause, which links the offshore and onshore contracts in the event of a breach, does not make them composite.
- The offshore supply was completed on a principal-to-principal basis, and the title of goods was transferred outside India, ensuring that these transactions remain distinct and not taxable under Indian jurisdiction.
- Even though the Indian entity received a commission for specific activities, there was no involvement in the design, manufacture, or supply of goods. The Indian entity's operations were distinct, and it did not act as an agent for the taxpayer concerning the offshore supply.
- The arbitrary attribution of income as FTS lacked evidence and rationale.

Foreign Rulings

No royalty withholding tax or diverted profits tax payable – court considers intent of transaction

PepsiCo, Inc [VID 27,28 of 2024 (Foreign Court of Australia)]

Schweppes Australia Pty Ltd. (the Bottler) was sole distributor and bottler in Australia of beverages i.e., Pepsi, Mountain Dew and Gatorade. The bottler had entered into exclusive bottling agreements (EBA) with [PepsiCo and SVC (taxpayer)] for purchasing concentrate from an Australian Company (the Seller – *a member of PepsiCo group*) to make beverages in Australia. The EBAs included a grant, by two US members of the PepsiCo group (i.e. the taxpayer) to the bottler, for the right to use the trademarks and other intellectual property associated with each beverage such as bottle and can designs. However, EBA did not make any provision for the payment by the bottler of a royalty for its use of the intellectual property. As per EBA the payments for supply of the concentrate were made by the bottler to the Seller.

Important Rulings

The Commissioner contended that a part of the payment made by the Bottler to the Seller was in consideration for use of trademarks and other intellectual property and hence taxpayer were liable to pay Royalty Withholding Tax (RWT). The Commissioner further contended that even otherwise taxpayer were liable to pay Diverted Profits Tax (DPT) on the basis that they had entered into a scheme with the 'principal purpose' of obtaining tax benefits.

Foreign Court of Australia held as under:

Royalty withholding Tax:

The EBAs determined the price at which the concentrates were to be purchased. The price paid for concentrate was not part of what moved the right of the Bottler to use the trademarks and other intellectual property. The right to use trademarks and other intellectual property was not the central property disposition or transaction which they contemplated. Rather, the central bargain under the EBAs was the establishment of an exclusive arrangement to distribute taxpayer's beverages in Australia. It was a distribution arrangement of which the licensing of intellectual property was merely a part. The payments were in no part made in 'consideration for' the use of that intellectual property and they did not therefore include a 'royalty'.

Further, the payments were received by the Seller and not the taxpayer and accordingly, income had derived to the Seller and not in the hands of the taxpayer, accordingly, taxpayer was not liable to pay RWT on the payments made by the Bottler to the Seller.

Diverted Profit Tax:

In order to examine the applicability of DPT, two questions had to be answered. First, whether the taxpayer obtained a tax benefit and whether it did so for a principal purpose that included a purpose of obtaining a tax benefit and of reducing its liability to tax under the law of the United States.

Based on the Court's findings, they determined that price for concentrate did not include a royalty component and commercial and economic substance of scheme was that price agreed for concentrate was for concentrate. Based on the Court's findings, they concluded that the "commercial and economic substance of the scheme was that the price agreed for concentrate was for concentrate only", and for nothing else. Therefore, the taxpayer did not obtain a tax benefit "in connection with a scheme".

The Foreign Court of Australia astutely distinguished between payments made for tangible products and those potentially constituting royalties, emphasizing that the mere inclusion of intellectual property in a commercial agreement does not automatically trigger royalty taxation unless there is clear evidence of intent to pay for the use of such rights. By focusing on the commercial and economic substance of the arrangement, the court affirmed that the payments were solely for the concentrate and not for any implicit rights to intellectual property. This judgment is particularly significant in the context of GAAR, as it delineates the boundary between genuine commercial transactions and contrived arrangements designed to exploit tax benefits. It serves as a robust precedent for interpreting agreements where the risk of mischaracterization of payments might arise, ensuring that tax liability is appropriately aligned with the true commercial intentions of the parties involved.

Important Updates

Indian Updates

International tax updates under the Finance (No.2) Bill, 2024

Corporate Income Tax

The corporate income tax for foreign companies has been lowered from 40% to 35%.

Capital Gains

The long-term capital gains on sale of unlisted securities or shares by a non-resident earlier taxable at the rate of 10%, now would be taxed at 12.5% effective from 23 July 2024. This results into a uniform long term capital gains tax rate for both residents and non-residents and across all types of assets. The benefit of first proviso to section 48 (which provides for adjustment in respect of foreign exchange fluctuation) which was not available earlier on transfer of unlisted securities or shares is still proposed to be restricted. Therefore, for non-residents transferring unlisted debentures or unlisted shares on or after July 23, 2024, the applicable tax rate will be 12.5%, with no benefit from the first proviso to section 48 being available.

A step forward towards BEPS 2.0

A further step has been taken towards implementation of the BEPS 2.0 project by removal of Equalisation levy 2.0 (applicable on e-commerce at the rate of 2%) effectively from 1 August 2024. Equalisation levy 1.0 (applicable on advertisements at the rate of 6%) still remains.

Presumptive Taxation under section 44B

An amendment has been proposed to be made to section 44B by deeming 20% of receipts of non-resident "cruise" shipping companies as income as against existing rate of 7.5%. The said amendment will be effective from assessment year 2025-26. Further, subject to certain conditions, lease rentals to be paid by operators to foreign ship owners, being sister companies (specifically defined), will not be taxable in India up to assessment year 2030-31.

Non-inclusion of foreign withholding taxes

An amendment to section 198 has been proposed to address the underreporting of income by some taxpayers who do not include taxes withheld outside India in their total income calculations. Such taxpayers claimed credit for foreign taxes withheld without accounting for the corresponding income, leading to a double deduction. The amendment stipulates that all sums deducted in accordance with the provisions of chapter XVII-B, including income tax paid outside India by way of deduction will be considered as income deemed to be received. This change will take effect from April 1, 2025.

Time limit to pass orders for TDS/TCS defaults

Section 201(3) of the ITA establishes a seven-year time limit for orders under section 201(1), which designate a person as an assessee in default for not deducting tax (TDS) when the payee is a resident of India. However, there is no such time limit for non-resident payees, creating uncertainty in these cases. Similarly, section 206C(6A) of the ITA states that if a person fails to collect the entire tax (TCS) or, after collecting, fails to remit it as required, they will be deemed an assessee in default. To address these issues, it is proposed to amend section 201(3) and introduce sub-section (7A) to section 206C of the ITA. This amendment will stipulate that no order declaring a person as an assessee in default for failing to deduct or collect tax shall

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be issued beyond six years from the end of the relevant financial year, or two years from the end of the financial year in which the correction statement is filed, whichever is later irrespective of whether the payee is a resident or non-resident. These changes will take effect from April 1, 2025.

Penalty for non-compliance of section 285

Section 285 prescribes filing of a statement by a non-resident having liaison office in India within 60 days from the end of financial year. The Bill proposes to prescribe the time limit to be notified *via* the Rules for filing such statement instead of existing time limit of 60 days.

To enhance compliance with above, it is proposed to introduce a new section 271GC, which will impose a penalty of one thousand rupees for each day if the period of failure does not exceed three months, and one lakh rupees for other case.

However, in cases where the taxpayer proves that there was reasonable cause for such failure, the Bill also proposes to widen the scope of section 273B of the ITA to provide relief from such penalty. These changes will take effect from April 1, 2025.

Increase in scope of Transfer Pricing Officer (TPO)

Section 92CA of the ITA empowers the AO to refer the determination of Arm's Length Price (ALP) for international transactions or specified domestic transactions (SDTs) to a Transfer Pricing Officer (TPO). Currently, the TPO's jurisdiction is limited to undisclosed international transactions that come to their attention, excluding SDTs. A proposed amendment aims to expand the TPO's authority to include SDTs that are either not referred by the AO or not reported in the audit report under section 92CE. This amendment will be effective from April 1, 2025, applicable for the assessment year 2025-26 and onwards.

Foreign Updates

Canada takes a step forward towards the BEPS projects

Pursuant to the Budget Implementation Act, 2024, No. 1 (Bill C-69), the Department of Finance of Canada has enacted the Global Minimum Tax Act. This statute mandates a 15% global minimum tax under Pillar Two of BEPS 2.0 project for qualifying multinational enterprise groups (MNEs), coming into effect from December 31, 2023.

Further, recognizing the growing necessity for taxation on digital transactions, the Department of Finance of Canada has announced a 3% digital service tax (DST) under the Digital Service Act, as outlined in the Fall Economic Statement Implementation Act, 2023 (Bill C-59). The implementation date remains to be determined by the Governor in Council.

Other significant provisions of the Fall Economic Statement Implementation Act, 2023, include the introduction of Earnings-Stripping Rules in alignment with BEPS Action 4 guidelines, the implementation of Hybrid Mismatch Rules

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pursuant to BEPS Action 2 guidelines, restrictions on dividend received deductions for Canadian financial institutions, and enhancements to the General Anti-Avoidance Rule (GAAR) featuring new penalty provisions and an extended reassessment period under certain specified circumstances.

Malta introduces "Income from Sports Activities Rules, 2024"

Effective from the assessment year 2025, Malta has implemented a 7.5% flat tax rate on gross income earned from full-time or part-time employment in sports activities under the Income from Sports Activities Rules, 2024. This tax regime does not allow for any setoffs or refunds.

The categories of individuals eligible for 7.5% of tax rate, are specifically defined within these rules. Additionally, these individuals also have an option to choose taxation under the standard individual income tax rules.

New Jersey imposes a surtax

Under the New Jersey's Fiscal Year 2025 Budget, a surtax termed the "Corporate Transit Fee" has been introduced at a rate of 2.5% on certain Corporation Business Tax (CBT) taxpayers. This surtax will apply to those with New Jersey allocated taxable net income exceeding $10 million for privilege periods beginning on or after January 1, 2024, and extending through December 31, 2028.

This surtax is not applicable on any S Corporation or public utility. Further, no credits would be allowed against this surtax except for credits for instalment payments, estimated payments made with a request for an extension of time for filing a return, or overpayments from prior privilege periods.

The revenue generated by this surtax would be appropriated annually to support New Jersey Transit's operating expenses and to pay for the State's matching funds required to receive federal funding for eligible New Jersey Transit capital projects.

Guidance published by State Tax Service of Ukraine on Tax Residency Certificate

The State Tax Service of Ukraine issued guidance on the requirements for tax residency certificates when claiming a withholding tax exemption or tax benefit under a tax treaty between Ukraine and any other country. It has been provided that if a non-resident does not provide a qualifying certificate issued by the competent authority of the treaty country, the income must be taxed under the Ukraine Tax Code. These certificates, must be legalised, translated, and notarized in accordance with Ukrainian law.

Further, the guidance provides for the contents that a residency certificate should ideally contain such as taxpayer's name, tax year for which the certificate is issued, Issuance date etc.

Important Updates

Tourist Tax in Russia

According to some news reports, the Russian parliament is evaluating a draft proposal to establish a municipal tourist tax. This tax would be levied on accommodation expenses, commencing at a rate of 1% in 2025 and progressively increasing to 2% in 2026, 3% in 2027, 4% in 2028, and ultimately 5% from 2029 onwards. The obligation to collect and remit this tax would fall upon the accommodation operators.

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Important Rulings

Turnover is one of the significant ingredients affecting the profitability of the comparable companies | Ruling favourable to the taxpayer to be adopted wherein divergent conclusions are possible

Triniti Advanced Software Labs (P.) Ltd. vs. Income-tax officer [(2024) 163 taxmann.com 771 (Hyderabad – Trib.)]

The taxpayer is engaged in the business of providing software development and related consultancy services to its AE located in USA. For determining arm's length price in relation to the aforesaid services provided by taxpayer to its AE, the TPO carried out a search on an external database wherein the TPO chose to ignore the maximum turnover filter while selecting the comparable companies. Aggrieved by the same, taxpayer filed an appeal before Dispute Resolution Panel ('DRP').

DRP observed that functionality of service provided by the taxpayer and comparable selected by TPO is similar and upheld the order passed by TPO. Aggrieved by the same, the taxpayer filed an appeal before Hyderabad ITAT. The tax authorities had relied on the ruling of Delhi HC in case of Chryscapital Investment Advisors[1] wherein the functional comparability takes precedence over high turnover or huge profits.

The taxpayer rebutted that as compared to the turnover of assessee, the turnover of certain comparable companies was significantly higher. The taxpayer based its arguments on the ruling by Bombay HC in case of Pentair Water India[2] wherein it provides that there is a substantial rise in profits with increase in revenue as the costs rise at a slower rate.

Hyberabad ITAT relied on Karnataka HC's decision in case of Obopay Mobile Technology[3] which takes into account both the rulings in case of Chryscapital Investment Advisors (supra) and Pentair Water India[2] (supra). Karnataka HC has held in case of Obopay Mobile Technology that where two views are possible on an issue, the view favorable to the Assessee has to be adopted and as a result ordered the exclusion of certain entities on the ground of huge turnover.

1 Chryscapital InvestmentAdvisors (India) (P.) Ltd. v. Dy. CIT [2015] 56 taxmann.com 417/232 Taxman 20

2 CIT v. Pentair Water India Pvt.Ltd. [2016] 69 taxmann.com 180

3 Obopay Mobile Technology India (P.) Ltd. v. Dy CIT [2016] 66 taxmann.com 119/157 ITD 982 Bang.-Trib.)

Reader's focus

In the case of comparison of PLI, there is a general tendency to carry out a search on the external domain to identify companies engaged in similar business activities as that of the controlled transaction. Generally due to vastness of the data available in the public domain, certain quantitative screens are applied to narrow down the companies which are altogether operating at different levels than the taxpayer. One such screens is the quantum of turnover.

Herein, the rationale to be appreciated is that the different turnover levels indicate the difference in the technology involved, economies of scale, overheads, marketing expenditure, and other business factors. The aforementioned variations not only portray a difference in cost but also other differences in functional aspects which render the companies incomparable to the taxpayer / controlled transaction. While selecting the screening criteria for the turnover limit, it is important to delineate the industry so as to appreciate whether the application of turnover screen provides for a better comparability or not. It may

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be reasonably inferred that a certain industry might be indifferent to changes in turnover except in case of substantial differences in level of turnover between the taxpayer and comparable companies.

Business and economic conditions surrounding controlled transactions triumph over actual comparable transaction information

Elitecore Technologies Pvt Ltd [TS-292-ITAT-2024(Ahd)-TP]

The taxpayer is primarily engaged in development of software product and providing IT Solutions. The taxpayer extended loans to its AE located in Bahrain. The interest rate charged by the taxpayer from its AE was computed taking into account the Prime Lending Rate (PLR) of the Central Bank of Bahrain. The taxpayer's case was referred to the TPO for determination of the ALP of the interest charged to the AE.

The TPO made an upward adjustment considering the loan transactions occurring in the US and European region. The TPO was short handed with regards to any actual loan transactions in the Bahrain region and accordingly had to resort to the US and European comparable loan transactions. The TPO further made adjustments for the difference in risk profile of Bahrain and US / European region, foreign exchange fluctuation risk, etc. Aggrieved by TPO's calculations, the taxpayer appealed before the Ahmedabad ITAT.

The Hon'ble Ahmedabad ITAT upheld that the taxpayer's determination of the ALP considering the PLR of the Bahrain Central Bank is commensurate and appropriately reflects the economic conditions of the Bahrain financial market as well as acts as an index for the composite class of borrowers with the highest credit worthiness.

Reader's Focus

The above case law is a tussle between the comparables to be chosen based either on the conditions underlying the actual transactions (i.e., actual loan transactions in the US / European region) or the blended rate prevailing in the comparable circumstances (i.e., PLR in the Bahrain region). Though the interest rates charged in case of **actual individual transactions** entered into in the US / European region maybe readily considered as sufficient comparable rates but the same suffer from the inherent limitation that the economic circumstance surrounding such transactions including the cost of funds (which forms the very basis of advancing the same to other parties) do not resonate with the controlled transaction of providing loan from India to Bahrain.

On the other hand, though PLR of the Bahrain Central Bank denotes the composite rate made up of actual transactions, yet it does not provide the insight into the weights assigned to various factors such as borrowers repaying capacity, borrowers credit worthiness, tenure of loans, etc. In spite of such inherent limitations due to data unavailability, the Ahmedabad ITAT rightly identified that the PLR of the Bahrain region is closely associated with the cost of funds prevailing in the Bahrain financial market.

Further, the TPO's act of making adjustments to the US and European loan transactions cannot do away the systemic differences in economic conditions, cost of funds, political ideologies, and other similar factors which play out differently in the overall interest rate.

Important Updates

Notifications

Amendments to the GST Rules, 2017

Rules are effective from the date to be notified separately unless specified otherwise

Notification no. 12/2024 – Central Tax dated July 10, 2024

Rule	Amendment made
Rule 8	A proviso has been added to Rule 8 of the CGST Rules, 2017, requiring individuals and, in the case of non-individual applicants, the Karta, Managing Director, partners, etc., who have not opted for Aadhaar authentication for registration, to have their photograph taken and their original documents, as uploaded with the registration form, verified at one of the Facilitation Centres notified by the Commissioner. The application is considered complete only after the successful verification of these documents and photographs.
Rule 28(2)	Rule 28(2) of the CGST Rules, 2017, has been retrospectively amended from October 26, 2023, to specify the recipient's location located in India and to compute the value of corporate guarantees on a per annum basis. Additionally, a proviso has been inserted stating that if the recipient of the service is eligible for full ITC, the value declared in the invoice shall be considered as value of service.
Rule 39(1)	Rule 39(1) of the CGST Rules, 2017, has been amended to provide a new set of norms for the distribution of ITC by an ISD. The amendment includes detailed guidelines on the monthly distribution of ITC, pro rata allocation based on turnover, separate handling of eligible and ineligible ITC, and specific procedures for distributing ITC from debit and credit notes.
Rule 59	Rule 59 of the CGST Rules, 2017, provides for the furnishing of outward supplies by registered persons in Form GSTR-1. A new proviso allows registered persons to amend or add new details in GSTR-1 by filing GSTR-1A. The GSTR-1A at the option of a registered person may be furnished after filing GSTR-1 but before filing GSTR-3B for the respective tax period.
Rule 59(4)	Rule 59(4) of the CGST Rules, 2017, has been amended effective August 1, 2024, to stipulate that transactions for invoice values exceeding ₹1 lakh for inter-state supplies to unregistered persons must be reported invoice-wise. Previously, the requirement was for invoice values exceeding ₹2.5 lakh

Important Updates

Rule	Amendment made
Rule 59(4A)	Rule 59(4A) has been inserted to provide the following reporting details in GSTR-1A as the requirement of the registered person: ✓ Invoice-wise details of inter-State and intra-State supplies to registered persons, and inter-State supplies over ₹1 lakh to unregistered persons ✓ Consolidated details of intra-state supplies to unregistered persons by tax rate, and State-wise inter-state supplies up to ₹1 lakh to unregistered persons by tax rate. ✓ Debit and credit notes issued for previously recorded invoices.
Rule 62	Rule 62 of the CGST Rules, 2017, has been amended to specify that the due date for filing FORM GSTR-4 for the financial year 2024-25 and onwards is the 30th day of June following the end of the financial year.
Rule 88B	A new proviso has been inserted in Rule 88B to provide that no interest will be charged on amounts credited to the electronic cash ledger by the return due date, but if the same amounts are debited from the electronic cash ledger after the due date while filing the return, as long as the amount remains in the ledger until it is debited
Rule 89(1B)	New Rule 89B of the CGST Rules, 2017 allows for refund claims of additional integrated tax paid due to an upward price revision in exported goods for which the initial integrated tax refund has already been sanctioned under Rule 96. Applications must be filed electronically in FORM GST RFD-01 within two years from the relevant date. If the two-year period ends before this rule's insertion, the time limit is computed from the rule's insertion date.
Rule 89(2)(bb) and (bc)	New Rule 89(2)(bb) of the CGST Rules, 2017 specifies the required documents for refund applications due to an upward price revision in exported goods. Rule 89(bc) requires a reconciliation statement for supplies declared in supplementary invoices, debit notes, or credit notes, along with relevant Bank Realisation or foreign inward remittance certificates.
Rule 95B	New Rule 95B provides for the Canteen Stores Department under the Ministry of Defence to file a refund application in FORM GSTR – RFD – 10A on a quarterly basis. The refund is eligible if the following conditions are met: ✓ The invoice must be furnished by the supplier GSTR-1, and the supplier must file their return in FORM GSTR-3B. ✓ The invoice must include the name and GSTIN of the Canteen Store. ✓ The goods must be used for subsequent supply to the Unit Run Canteens or authorized customers of the Canteen Stores Department.

Important Updates

Rule	Amendment made
Rule 110 and 111	Rules 110 and 111 of the CGST Rules, 2017 has been amended and amended rule provides that, ✓ The process for filing appeals and applications to the Appellate Tribunal. ✓ Appeals under section 112(1) and applications under section 112(3) must be filed electronically using FORM GST APL-05 and FORM GST APL-07, respectively, with provisional acknowledgment. ✓ Cross-objections under section 112(5) are to be filed in FORM GST APL-06. ✓ Manual filing of appeal and cross objection may be allowed by registrar with special or general order as may be required. ✓ Final acknowledgment in FORM GST APL-02 is issued after order verification ✓ Filing fees are ₹1,000 per ₹1 lakh of tax, input tax credit, fine, fee or penalty capped at ₹25,000, with a minimum of ₹5,000, and no fee for error rectification. ✓ Filling fee in respect of an order not involving any demand of tax, interest, fine, fee or penalty shall be ₹5,000
113A	New Rule 113A allows applicants to withdraw an appeal filed in FORM GST APL-05 or an application in FORM GST APL-07 before the issuance of an order under section 113(1) by submitting FORM GST APL-05/07W. If a final acknowledgment in FORM GST APL-02 has been issued, the withdrawal requires Appellate Tribunal approval within fifteen days. Any new appeal or application pursuant to such withdrawal must be filed within the time limits specified in section 112(1) or 112(3).
Rule 142(2B)	New Rule 142(2B) requires anyone who has made a tax payment payable under sections 52, 73, 74, 76, 122, 123, 124, 125, 127, 129, or 130 using Form DRC-03 to file Form DRC-03A to credit the amount from the electronic liability ledger. The date of payment in Form DRC-03 will then be considered the date of payment towards the demand. Additionally, once an order in FORM GST DRC-05 is issued for a payment made in FORM GST DRC-03, filing FORM GST DRC-03A for that payment is not allowed.

Biometric-based Aadhaar authentication for the registration under GST across India

Notification No. 13/2024 – Central Tax–Dated July 10, 2024

Notification No. 13/2024, rescinds Notification No. 27/2022 dated 26th December 2022. The previous notification exempted all States and Union territories, except Andhra Pradesh, Gujarat, and Puducherry, from the requirement of biometric-based Aadhaar authentication for GST registration. With this rescind of the previous notification, biometric-based Aadhaar authentication is now mandated for GST registration across all States and Union territories in India.

Important Updates

Exemption from Filing Annual Return for FY 2023-24

Notification No. 14/2024 – Central Tax– Dated July 10, 2024

Notification 14/2024 has exempted registered persons with an aggregate turnover of up to ₹2 crore for the financial year 2023-24 from filing the annual return for that year. With this amendment, filing the annual return is mandatory for taxpayers with a turnover exceeding ₹2 crore, while for those with a turnover up to ₹2 crore, filing the return remains optional.

Seek to amend the rate of collection of TCS by electronic commerce operator

Notification No. 15/2024 – Central Tax, / No. 01/2024- Integrated Tax, 01/2024 Union Territory Tax Dated July 10, 2024

Effective from July 10, 2024, the rate of tax collection at source by electronic commerce operators has been reduced to 0.25% from the previous 0.50% for intra-state supplies. For inter-State supplies, the rate has been reduced from 1% to 0.5%.

Circulars

CBIC prescribed monetary limits for filing Departmental appeals

Circular No. 207/1/2024-GST dated 26 June 2024

The CBIC has fixed the below monetary limits for the revenue authorities for filing appeals, applications or special leave petitions before the Goods and Services Tax Appellate Tribunal [GSTAT], High Court, and Supreme Court as below:

- ✓ GSTAT: Rs. 20,00,000
- ✓ High Court: Rs. 1,00,00,000
- ✓ Supreme Court: Rs. 2,00,00,000

The above money limit is computed as below, and the monetary limit is computed only on the disputed amount of tax/interest/penalty/late fee as the case may be.

Dispute Pertains	Monetary Limit to be applied on
Tax [With or without interest and/ or penalty]	Aggregate amount of tax [including CGST, SGST / UGST and IGST and Cess] in dispute
Only Interest	Amount of interest
Only Penalty	Amount of penalty
Only Late fees	Amount of late fees
Interest, penalty and/ or late fees [without involving any amount for tax in dispute]	Aggregate amount of interest, penalty and late fees
Erroneous refunds	Amount of refund in dispute (including CGST, SGST / UGST, IGST and Cess)
Composite order involving for more than one appeal/ demand notice	Total amount of tax/ interest/ penalty / late fees as per the full order *[Not the* individual appeal or demand]

Important Updates

Exceptions to Monetary Limits for Filing Appeals

- ✓ Provisions of the Act held ultra vires to the Constitution.
- ✓ Rules/regulations held ultra vires to the parent Act.
- ✓ Government/Board orders, notifications, instructions, or circulars held ultra vires to the Act or Rules.
- ✓ Recurring matters involving: (a) Valuation of goods or services (b) Classification of goods or services (c) Refunds (d) Place of Supply (d) Other interpretative issues
- ✓ Cases with adverse comments or costs imposed against the Government/department or officer
- ✓ Any other necessary cases as deemed by the Board.

Other clarification:

- ✓ **Decision-based on merits of the case:** The Department officer should file appeals based on the merits of the case, not just the disputed tax amount, to reduce unnecessary litigation and provide certainty to taxpayers.
- ✓ **No precedent value:** Cases not appealed due to monetary limits have no precedent value. Authorities must record this explicitly.
- ✓ **Future appeals:** Non-filing due to monetary limits does not prevent the tax officer from filing an appeal or application, in other cases with higher amounts or having legal questions.
- ✓ **No presumption of acceptance:** Not appealing due to limits does not imply Department acceptance.
- ✓ **Information to Tribunal/ Courts:** Inform GSTAT or Courts that appeals weren't filed due to tax amounts below limits, citing section 120(4) of the CGST Act.

Determination of place of supply of goods to unregistered persons

Circular No. 209 / 3 / 2024 – GST dated 26 June 2024

The circular clarifies the provisions of Clause (ca) of Section 10(1) of the IGST Act, 2017, which came into effect on 1st October 2023. This clause specifies that for goods supplied to unregistered persons, the place of supply will be the address recorded on the invoice. If no address is recorded, the supplier's location will be considered the place of supply. Explanation to the said section also states that recording the State's name on the invoice is deemed sufficient for address recording.

It clarifies that, in cases where the billing address and the delivery address of an unregistered person purchasing goods (particularly through an e-commerce operator) differ, the delivery address recorded on the invoice shall be considered the place of supply for such goods.

Illustration:

Scenario	Billing Address	Delivery Address	Place of Supply
An unregistered person orders goods	State X	State Y	State Y

Important Updates

Valuation of Import of services from the related party

Circular No. 210/4/2024-GST dated 26 June 2024

Rule 28 of the CGST Rules, 2017, provides that the value of the supply of goods or services between distinct or related persons, where the recipient is eligible for full Input Tax Credit (ITC), is deemed to be the open market value as declared in the invoice. Further, Circular No. 199/11/2023-GST, dated July 17, 2023, clarified that for services between distinct persons, such as from the Head Office to a Branch Office, where the recipient is entitled to full ITC, the invoice value is considered the open market value. If no invoice is issued, the value may be deemed as NIL.

In the case of the import of services, the tax must be paid under the reverse charge mechanism by the recipient, and a self-invoice must be issued for the same.

In relation to the said invoice issued for the import of services, the present circular clarifies that, the same principles of Circular No. 199/11/2023-GST, dated July 17, 2023, will also apply to the import of services by a registered person in India from a related person outside India. Further, it is clarified that, if full ITC is available to the recipient, the invoice value declared in the invoice shall be deemed the open market value. If no invoice is issued, the value may be considered as Nil.

Time limit for availment of ITC for RCM supplies received from unregistered suppliers

Circular No. 211/5/2024-GST dated 26 June 2024

When tax is required to be paid by the recipient under the RCM and the supplier is not registered, the recipient is required to issue a self-invoice for the said supplies. Regarding the timing for availing ITC as per Section 16(4) of the CGST Act for the self-invoice, it was interpreted by the revenue authorities that the relevant financial year for ITC availment should be the year in which the supply was received, not the date of the self-invoice.

The CBIC has clarified that the relevant financial year for ITC availment under Section 16(4) will be the financial year in which the self-invoice is issued by the recipient.

Furthermore, it also clarified that if the invoice is issued after the time of supply, the recipient must pay interest on the delayed tax payment. Additionally, delayed issuance of the invoice may attract penal action under Section 122 of the CGST Act.

The mechanism for proof of reversal by recipient for post-sale discounts

Circular No. 212/6/2024-GST dated 26 June 2024

As per the condition of Section 15(3)(b)(ii) of the CGST Act, any post-supply discount offered by a supplier to a recipient is allowed as a deduction from the taxable value of the invoice issued by the supplier through the issuance of a credit note. However, this is subject to one of the conditions that the ITC attributable to such a discount is reversed by the recipient.

Currently, there is no system functionality available on the common portal to verify the ITC reversal by the recipient. To address this, the circular mandates that suppliers obtain a certificate from a Chartered Accountant (CA) or Cost Accountant (CMA) if the value exceeds ₹5,00,000 in a financial year. In other cases, an

Important Updates

undertaking from the recipient is deemed sufficient.

These certificates or undertakings are considered valid evidence of ITC reversal by the recipient and must be presented during any tax proceedings if required. The circular also allows for the use of similar certificates or undertakings for past periods to demonstrate compliance.

Procedure for recovery of outstanding dues, in cases where the first appeal has been disposed

Circular No. 224/18/2024 -GST Dated July 11, 2024

When the first appellate authority confirms a demand, taxpayers are statutorily allowed to appeal this decision before the Tribunal. However, due to the non-operation of the Tribunal, taxpayers are currently unable to file such an appeal. The circular provides a procedure for pre-deposit payment and clarifications on the stay of recovery until the appeal is disposed of by the Tribunal

Procedure for Pre-Deposit Payment: The circular states that although taxpayers cannot currently file an appeal to the Tribunal, those intending to appeal must make the pre-deposit payment through the Electronic Liability Register (ELL) Part-II. The payment can be made by navigating to Services >> Ledgers >> Payment towards demand on the GST portal. This amount will be mapped against the outstanding demand order, reducing the balance liability accordingly.

Filing an undertaking: After making the pre-deposit payment, taxpayers must file an undertaking with the jurisdictional proper officer, declaring their intention to file an appeal once the Tribunal becomes operational.

Effect of filing the undertaking and making the Pre-Deposit: Upon filing the undertaking and making the pre-deposit payment, recovery of the remaining confirmed demand will be stayed, as per Section 112(9) of the CGST Act. This stay remains effective until the appeal is disposed of by the Tribunal.

Effect of non-filing the Undertaking and making the Pre-Deposit: If a taxpayer fails to make the pre-deposit or submit the undertaking, it will be presumed that they do not intend to file an appeal. Consequently, recovery proceedings will commence as per the law.

Adjustment of payments made via FORM GST DRC-03: For taxpayers who have already made payments through FORM GST DRC-03, the circular provides for the adjustment of these amounts. In relation to the same, taxpayers must submit an application using FORM GST DRC-03A on the common portal once it becomes available in the portal. These payments will then be treated as pre-deposits towards the appeal.

Interim measures until Form GST DRC-03A is available: Until the functionality for FORM GST DRC-03A is available on the portal, taxpayers should notify the proper officer about any pre-deposit made via FORM GST DRC-03. The officer may then halt recovery proceedings temporarily

Clarification on Taxability and valuation of supply of services of providing corporate guarantee between related persons

Circular No. 225/19/2024 - GST Dated 11 July 2024

The circular addresses issues related to the taxability and valuation of corporate guarantees provided between related persons and provides the clarification as below

Important Updates

Applicability of Rule 28(2) to corporate guarantees issued prior to insertion of Rule 28(2): It is clarified that corporate guarantees issued/renewed before October 26, 2023, are taxable, but their valuation will be made as per the rules existing before this date. However, any corporate guarantees issued/ renewed post-October 26, 2023, will be valued as per Rule 28(2).

Valuation of Corporate Guarantee where the loan is only partly availed or not availed at all by the recipient: It is clarified that the value is determined based on the amount guaranteed, not on the loan amount disbursed. Further clarified that the recipient can avail full ITC even before the total loan is disbursed/ irrespective of the amount of loan actually disbursed, subject to other conditions.

Applicability of the GST on the takeover of existing loans by another banking company/ financial institution: It is clarified that if a loan is taken over by another financial institution without issuing a new corporate guarantee, GST does not apply. GST is applicable only if a new guarantee is issued.

Applicability of GST on the corporate guarantee provided by Multiple Co-Guarantors: It is clarified that when multiple related entities provide a corporate guarantee, GST is calculated based on the total consideration paid to the co-guarantors. If this total consideration exceeds 1% of the guaranteed amount, GST is payable on the actual consideration. If the total consideration is less than 1% of the guaranteed amount, GST is payable by each co-guarantor proportionately on 1% of their respective guaranteed amount.

Example Summary:

Scenario: Two co-guarantors, A and B, provide a corporate guarantee of ₹1 crore to a financial institution on behalf of a related recipient C.

Case 1: Equal Guarantee Shares **A's Share**: 50% and **B's Share**: 50%

Case 2: Unequal Guarantee Shares **A's Share**: 60% **B's Share**: 40%

Co-Guarantor	Guarantee Share	GST Payable
Case 1		
A	50%	0.5% of ₹1 crore
B	50%	0.5% of ₹1 crore
Case 2		
A	60%	1% of ₹60 lakhs
B	40%	1% of ₹40 lakhs

GST applicable on Intra-Group Guarantees: It is clarified that Domestic guarantees are taxed under the forward charge mechanism. For guarantees by foreign entities, the recipient in India is required to pay GST under the RCM.

Time period of tax liability on Corporate Guarantees: It is clarified that rule 28(2) of the CGST Rules, amended retrospectively from October 26, 2023, specifies that the value of corporate guarantee services is 1% of the

Important Updates

guaranteed amount per annum or the actual consideration, whichever is higher.

Further, it is clarified that, for guarantees spanning multiple years, the value is 1% per year of the guaranteed amount multiplied by the number of years, or the actual consideration, whichever is higher. For guarantees less than a year, the value is proportionate (e.g., 0.5% for six months).

If a one-year guarantee is renewed annually, GST is payable on 1% of the guaranteed amount or the actual consideration each year.

Example Summary:

Scenario	Calculation	GST Payable On
Corporate guarantee issued for 5 years	1% per year of the guaranteed amount or actual consideration	5% of the guaranteed amount or actual consideration, whichever is higher

Declared value of Invoice considered as open market value: A proviso has been inserted in sub-rule (2) of Rule 28 of the CGST Rules, retrospectively with effect from October 26, 2023. It provides that in cases involving the supply of corporate guaranteed services between related persons, where the recipient can avail full input tax credit, the value declared in the invoice shall be deemed to be the value of the supply.

Applicability of Rule 28(2) for Export of Corporate Guarantee Services: It is clarified that Rule 28(2) does not apply to the export of corporate guaranteed services between related persons.

Contributed by

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Important Updates - MCA

Amendments in the provisions of Form MSME-I, Form MGT-6 and Form BEN – 2

The following changes were introduced under the MCA notifications dated July 15, 2024, issued with respect to Form MSME-I, Form MGT-6 and Form BEN – 2:

MCA notification / Reference	Amendments in the form post issuance of notification	Explanation
MCA notification dated July 15, 2024, with respect to MSME I	Point no. 3 of MSME Form I was initially for details of outstanding towards MSMEs at the time of introduction of the said form by the MCA as a one-time exercise. Thereafter as details were provided on a half yearly basis, the aforesaid point was no longer relevant, hence deleted. Now Point no. 3 has been reintroduced to include details of MSME payments / dues, including: • Supplier details of Micro / Small Enterprises Suppliers. • Amounts paid to MSMEs within 45 days. • Amounts paid to MSMEs exceeding 45 days and unpaid amounts in excess of 45 days along with reasons thereof.	MCA amended Specified Companies (Furnishing of information about payment to micro and small enterprise suppliers) Order, 2019 and stated that only those specified companies which are having payments pending to any micro or small enterprises for more than 45 days from the date of acceptance or the date of deemed acceptance of the goods or services need to be reported in MSME-I
MCA notification dated July 15, 2024 with respect to MGT-6	• Income Tax PAN/Passport/Other registration number, Date of Birth/Date of Incorporation, Mobile no. and email id of Registered owner and Beneficial Owner • ID of Beneficial Owner to be mentioned, if available and Forgot BO ID option added	MCA *vide* this notification added feature of PAN verification and ID of Beneficial Owner. After successful filing of form, a beneficial owner identification number (BO ID) will be generated which will be useful in future transactions in this regard. Also, an option of forgot BO ID is added which can be used to know the BO ID in case it is misplaced or forgotten.

Important Updates - MCA

MCA notification / Reference	Amendments in the form post issuance of notification	Explanation

MCA notification dated July 15, 2024, with respect to BEN - 2	• Two new purposes have been added namely:
	  ○ Change in holding reporting Company
	  ○ Change in particulars of existing SBO
	• Option of Forgot SBO ID option added
		The new purpose can be used to intimate to ROC about the change in details of holding company, for example, in case of merger etc.
		Earlier, there was one purpose in form called 'change in significant beneficial ownership.' Now this purpose is split in two different purposes namely, 'change in particulars of existing SBO' and 'change in existing SBO.'
		The first purpose to be used for updating personal details of existing SBO and;
		Second purpose to be used for intimating the change in person who is SBO.
		Additional benefit by including the option of forgot SBO ID is to ease the compliance.

Amendment in Directors KYC rules for alteration of basic details

MCA Notification dated July 16, 2024

At present, directors are required to file their KYC with the MCA every year on or before September 30 of the financial year where they can update their mobile numbers and email IDs. However, once the KYC is filed, the details cannot be changed until the next financial year.

MCA vide this notification amended Rule 12A of Companies (Appointment and Qualification of Directors) Rules, 2014.The inserted proviso now permits an individual to update his personal mobile number or the email address again during any time in the financial year by submitting e-form DIR-3 KYC on payment of fees of five hundred rupees.

Important Updates - MCA

This amendment brings significant relief to the Directors who have changed their email and mobile number at any time during the Financial Year.

Applicability: August 01, 2024

Filing of Forms [BEN-2, MGT-6] due to migration from V2 Version to V3 Version in MCA 21 Portal from July 04, 2024, to July 14, 2024

General Circular No. 04/2024 dated July 04, 2024

MCA vide this circular allowed additional time of 15 days, without levying additional fees to stakeholders in cases where the due dates for filing of these 2 forms fall between July 04, 2024, to July 14, 2024, due to migration from V2 Version to V3 Version in MCA 21 Portal for ensuring compliance.

Companies (Incorporation) Amendment Rules, 2024

MCA Notification dated July 16, 2024

MCA *vide* this notification amended Companies (Incorporation) Rules, 2014 and omitted the word "Nidhi" and omitted clause V from the list of undesirable names.

Nidhi (Amendment) Rules, 2024

MCA Notification dated July 16, 2024

MCA *vide* this notification amended Nidhi Rules, 2014 and have stated that a company shall not use the words "Nidhi Limited" in its name unless it is declared as a Nidhi Company under sub-section (1) of section 406 of the Companies Act, 2013.

Waiver of Additional fees in IEPF Forms

General Circular No. 06/2024 dated July 16, 2024

In view of transition of IEPF e-Forms [IEPF-1, IEPF-1A, IEPF-2, IEPF-4], MCA vide this notification waived the additional fees on these e-Forms and e-verification of claims filed in e-Form IEPF-5 from MCA 21 Portal till August 16, 2024, for providing relaxation and ensuring compliance.

Merger of forms IEPF-3 with IEPF-4 and IEPF-7 with IEPF-1 along with change in payment process in MCA Version 3 portal

General Circular No 07/2024 dated July 17, 2024

To ease the compliance burden and simplify filings, the MCA has merged Form IEPF-3 with Form IEPF-4 and Form IEPF-7 with IEPF-1 in MCA Version 3. Further, various amounts that need to be transferred to the IEPF Authority as due on shares transferred by companies will be paid online *via* MCA 21 through the "Pay Miscellaneous Fee" service after selecting the option "Investor Education and Protection Fund."

Important Updates - RBI

Domestic Money Transfer - Review of Framework

RBI / 2024 – 25 / 52 issued vide CO. DPSS. POLC. No. S415 / 02.27.019 / 2024 – 25 dated July 24, 2024

There has been a significant increase in the availability of banking outlets, advancements in payment systems for funds transfers, and ease in fulfilling KYC requirements. Users now have multiple digital options for funds transfer. Following changes have been made in services availed by users:

1. **Cash Pay-Out Service**: The remitting bank shall obtain and keep record of the name and address of beneficiary.
2. **Cash Pay-in Service:**
   a. Remitting Banks and their business correspondents will register the remitter based on a verified cell phone number and a self-verified Officially Valid Document ("OVD").
   b. Every remittance transaction will be validated by an Additional Factor of Authentication ("AFA").
   c. Banks and their correspondents will be guided by provisions of Income Tax Act,1961, Rules and Regulations, pertaining to cash deposits.
   d. Every remitter bank will include the remitter's details as part of the IMPS/NEFT transaction message.

Card-to-Card transfers are currently excluded from the purview of the Domestic Money Transfer.

Effective date: November 01, 2024

Fraud Risk Management

Master Direction on Fraud Risk Management in Commercial Banks (including Regional Rural Banks) and All India Financial Institutions

RBI / DOS / 2024 – 25 / 118 DOS. CO. FMG. SEC. No. 5 / 23. 04. 001 / 2024 – 25 dated July 15, 2024

Master Direction on Fraud Risk Management in Urban Cooperative Banks (UCBs)/ State Cooperative Banks (StCBs)/ Central Cooperative Banks (CCBs)

RBI / DOS / 2024 – 25 / 119 DOS. CO. FMG. SEC. No. 6 / 23. 04. 001 / 2024 – 25 dated July 15, 2024

Master Direction on Fraud Risk Management in Non- Banking Financial Companies (NBFCs) (including Housing Finance Companies)

RBI / DOS / 2024 – 25 / 120 DOS. CO. FMG. SEC. No. 7 / 23. 04. 001 / 2024 – 25 dated July 15, 2024

Fresh directions have been issued vide the Master Direction to commercial banks, urban cooperative banks and to the non-banking financial companies with respect to fraud risk management. The need to review the existing guidelines for financial institutions was primarily to address the lacunae in the banking systems and policies and the risking threats of financial frauds and non-performing assets (NPAs).

The revised Master Directions have been notified to provide a framework to commercial banks / cooperative banks and NBFCs for prevention, early detection, and timely reporting of incidents of fraud to Law Enforcement Agencies (LEAs), the Reserve Bank of India (RBI), and NABARD. This framework covers the governance structure in banks and includes mechanisms for Early Warning Signals

Important Updates - RBI

and Red Flagging of Accounts. It also addresses the treatment of accounts under resolution and those classified as fraud and sold to other companies and lenders.

Effective date: Immediate effect

Online submission of Form A2: Removal of limits on amount of remittance

RBI / 2024 – 25 / 46 issued vide A.P. (DIR Series) Circular No. 12 dated July 03, 2024

Prior to this notification, AD Category-I banks and AD Category-II had been permitted to allow submission of Form A2 through online mode by their customers subject to an upper limit of USD 25,000 vide circular A.P. (DIR Series) Circular No. 50 dated February 11, 2016.

For ease of doing business for customers and Authorised Dealers, the RBI has removed the limit on the amount being remitted on the basis of 'online' Form A2.

Effective date: Immediate effect

Release of foreign exchange for Miscellaneous Remittances

RBI / 2024 – 25 / 47 issued vide A.P. (DIR Series) Circular No. 13 dated July 03, 2024

Authorised Dealers were permitted to release foreign exchange for any current account transaction based on a simple letter from the customer containing basic information for remittances up to USD 25,000 or its equivalent. Further, Authorised Dealers were instructed not to obtain any other documents, including Form A2 subject to the condition that payment should be made by the applicant through a demand draft or a cheque drawn on his/her bank account.

To streamline the process, it has now been decided that AD banks must obtain Form A2 in physical or digital form for all transactions, irrespective of the transaction value.

Effective date: Immediate effect

Remittances to International Financial Services Centres (IFSCs) under the Liberalised Remittance Scheme (LRS)

RBI / 2024 – 25 / 49 issued vide A.P. (DIR Series) Circular No. 15 dated July 10, 2024

Till the release of this Circular, remittances under the Liberalised Remittance Scheme (LRS) to International Financial Services Centres (IFSCs) were restricted to the following purposes only:

- Making investments in IFSCs in securities, except those issued by entities / companies resident in India (outside IFSC); and
- Payment of fees for education to foreign universities or foreign institutions in IFSCs for pursuing specified courses.

To enhance the remittances under the Liberalised Remittance Scheme (LRS) to International Financial Services Centres (IFSCs), the following have been permitted for:

- Availing financial services or financial products permitted within IFSCs; and
- Opening of Foreign Current Account (FCA) for undertaking any legitimate current or capital account transactions in any other foreign jurisdiction (other than IFSCs).

Effective date: Immediate effect

Important Updates - SEBI

Participation by Non-Resident Indians (NRIs), Overseas Citizens of India (OCIs) and Resident Indian (RI) individuals in SEBI registered FPIs based in International Financial Services Centres in India

SEBI / HO / AFD / AFD – POD – 2 / P / CIR / 2024 / 89 dated June 27, 2024

SEBI *vide* Master Circular on Foreign Portfolio Investors ("FPI Master Circular") dated May 30, 2024, issued guidelines for participation by NRIs, OCIs and RI Individuals in FPIs based in International Financial Services Centres in India.

Subsequently on June 26, 2024, SEBI notified the *SEBI (Foreign Portfolio Investors) Second Amendment Regulations, 2024* to provide relaxation of up to 100% aggregate contribution by NRIs, OCIs and RIs in the corpus of FPIs based in International Financial Services Centres ("IFSCs") in India.

To align the Master Circular in line with the notified Regulations, the following amendments have been made to the FPI Master Circular, namely:

- Intimation to Dedicated Depository Participants ("DDPs") in case the aggregate contribution, of NRIs, OCIs and RIs exceeds fifty per cent or more in its corpus.
- Procedural aspects such as copy of PAN, Declaration from NRI / OCI of nil taxable income in India, copy of Indian passport for NRIs etc.
- Maximum limit of 20% of the corpus of the FPI investment in the equity shares of an Indian listed entity.
- Minimum of at least 20 investors, with the condition that each investor will not contribute more than 25% to the corpus of the FPI.

The SEBI Regulations prior to notification of *SEBI (Foreign Portfolio Investors) Second Amendment Regulations, 2024* on June 26, 2024 did not specify any conditions but merely stated investments could be made by the NRIs, OCIs or the RIs provided they meet conditions specified by the Board from time to time.

Applicability: Immediate effect

Facility for Basic Services Demat Account (BSDA) for Financial Inclusion and Ease of Investing

SEBI / HO / MIRSD / MIRSD - PoD1 / P / CIR / 2024 / 91 dated June 28, 2024

SEBI has provided the facility of "Basic Services Demat Account" [BSDA] with a set of defined services for eligible individuals. In order to further boost participation in securities market the facility has been comprehensively reviewed and the following has been decided as the basic criteria for BSDA:

- **Eligibility:**
  - Individual to have one Demat account
  - Individual to have only one BSDA in his / her name across all depositories
  - Value of securities held in the demat account not to exceed INR 10 Lakhs for both debt and other than debt securities combined at any given point of time.

Important Updates - SEBI

- **Opening of BSDA and conversion of existing eligible demat accounts into BSDA**
  - DPs to open only BSDA for Beneficial Owners (BOs)[1], if such demat accounts are eligible for BSDA
  - The DPs shall also reassess the eligibility of all the existing BOs with respect to BSDA referred above within two months from the date of this circular coming into effect and shall convert all such eligible demat accounts into BSDA.
- **Charges**

  The charge structure shall be as indicated below:

Value of Holdings in the Demat Account (Debt as well as other than debt securities combined)	Maximum Annual Maintenance Charges ("AMC")
Up to 4 lakhs	NIL
More than 4 lakhs but up to 10 lakhs	100
More than 10 lakhs	Not a BSDA. Regular AMC may be levied.

- **Services for Basic Services Demat Accounts**
  - Electronic statements shall be provided free of cost;
  - Physical statement may be charged at a fee not exceeding INR 25/- per statement;
  - All other conditions as applicable to regular demat accounts, other than the ones mentioned above, shall continue to apply to basic services demat account.

Applicability: With effect from September 01, 2024

Reduction in denomination of debt securities and non-convertible redeemable preference shares

SEBI / HO / DDHS / DDHS – PoD – 1 / P / CIR / 2024 / 94 dated July 03, 2024

SEBI vide this Circular announced reduction in denomination of debt securities and non-convertible redeemable preference shares. Market participants had represented to SEBI that a lower ticket size of debt securities will encourage more non-institutional investors to participate in the corporate bond market and also enhance liquidity.

The key amendments in Chapter V (Denomination of issuance and trading of Non-convertible Securities) of the Master Circular are specified below:

- The Issuer may issue debt security or non-convertible redeemable preference share on private placement basis at a face value of INR ten thousand (regular issuance of face value INR one lakh) subject to fulfilment of certain conditions.

[1] The beneficial owner (BO) has been defined under SEBI as the natural person or persons who ultimately own, control or influence a client and/or persons on whose behalf a transaction is being conducted, and includes a person who exercises ultimate effective control over a legal person or arrangement

Important Updates - SEBI

- Clause on trading lot of listed debt security / non-convertible redeemable preference share issued on private placement basis amended.

Measures to instill confidence in securities market – Brokers' Institutional mechanism for prevention and detection of fraud or market abuse

SEBI / HO / MIRSD / MIRSD – PoD – 1 / P / CIR / 2024 / 96 dated July 04, 2024

Stockbrokers were directed by SEBI to put in place a Brokers' institutional mechanism to prevent and detect frauds / market abuse. Stockbrokers were also directed for putting in place the following obligations / mechanisms, laid down in Chapter IVA of the Broker Regulations:

1. Installation of systems for surveillance of trading activities and internal controls
2. Drafting of obligations of the stockbroker and its employees
3. Setting up of escalation and reporting mechanisms
4. Putting in place the Whistle Blower Policy

Applicability:

The provisions of this circular shall come into force in a staggered manner:

Number of active Unique Client Codes ("UCCs") of stockbroker as on last day of the preceding month from date of the circular	Applicability of Operational / working Modalities & Guidance Note
> 50,000	January 01, 2025
2,001 to 50,000	April 01, 2025
Up to 2,000	April 01, 2026

For Qualified Stockbrokers, the effective date for implementation of the circular for QSBs (irrespective of number of UCCs) is August 01, 2024.

Information to be filed by schemes of AIFs availing dissolution period/additional liquidation period and conditions for in-specie distribution of assets of AIFs

SEBI/HO/AFD-1/AFD-1-PoD/P/CIR/2024/100 dated July 09, 2024

SEBI vide this circular has issued clarification regarding the information to be filed by schemes of AIFs availing dissolution period/additional liquidation period and conditions for in-specie distribution of assets of AIFs.

A. Information Memorandum for schemes of AIFs entering into Dissolution Period

- Information memorandum for a scheme of an AIF entering into dissolution period to be submitted to SEBI before expiry of the liquidation period or additional liquidation period of the scheme in the prescribed format.
- Due Diligence Certificate by Merchant Banker to be submitted along with the Information memorandum to SEBI as per prescribed format.

B. Information to be submitted by schemes of AIFs availing additional liquidation period

- If the eventuality of liquidation period for a scheme of an AIF has expired or is expiring within three months from the date of notification (i.e., on or before July 24, 2024), such schemes may be

Important Updates - SEBI

granted an additional liquidation period.

- Schemes of AIFs intending to avail the additional/fresh liquidation period will have to submit information to SEBI regarding the same as per the prescribed format, for grant of the additional liquidation period.

C. In specie distribution of investments of AIFs

- In specie distribution (other than cases of mandatory in specie distribution) to be carried out only after obtaining the approval of at least seventy-five percent of the investors by value of their investment in the scheme of the AIF.

Applicability: Immediate effect

Recognition of BSE Limited as Research Analyst Administration and Supervisory Body (RAASB) and Investment Adviser Administration and Supervisory Body (IAASB)

SEBI / HO / MIRSD / MIRSD – POD – 1 / P / CIR / 2024 / 101 dated July 12, 2024

BSE Ltd has been granted recognition to act as Research Analyst Administration and Supervisory Body (RAASB) and Investment Adviser Administration and Supervisory Body (IAASB) for administration and supervision of Research Analysts (RAs) and Investment Advisers (IAs) for a period of five years starting from July 25, 2024.

The initiative has been taken with the objective to protect the interests of investors in securities market and to promote the development of, and to regulate the securities market.

Contributed by

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

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

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Abbreviations

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Abbreviation	Meaning
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

Abbreviations

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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

Abbreviation	Meaning
LTCG	Long term capital gain
MAT	Minimum Alternate Tax
MCA	Ministry of Corporate Affairs
MeitY	Ministry of Electronics and Information Technology
MSF	Marginal Standing Facility
MSME	Micro, Small and Medium Enterprises
NCB	No claim Bonus
OECD	The Organization for Economic Co-operation and Development
OM	Other Methods prescribed by CBDT
PAN	Permanent Account Number
PE	Permanent establishment
PPT	Principle Purpose Test
PSM	Profit Split Method
PY	Previous Year
QDMTT	Qualified Domestic Minimum Top-up Tax
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

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