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kcm Insight

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Dear Reader,

We are happy to present **kcm**Insight, 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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Mergers & Acquisitions

Artificial Intelligence shaping the future of Corporate Finance

Artificial Intelligence ("AI") is the buzzword of this decade, from robots beating humans at chess to helping us avoid missing numerous subscription renewals we forget about, AI is everywhere including in the field of corporate finance and mergers & acquisitions ("M&A"). Managing corporate finance used to mean drowning in spreadsheets and hoping your calculations weren't off even by a decimal, but AI has swooped in, making life easier by faster number crunching. However, it is not just about speed, the integration of AI into corporate finance and M&A activities is providing companies with enhanced decision-making capabilities, greater efficiency, and improved accuracy.

AI in Corporate Finance: Redefining efficiency and accuracy

In corporate finance, AI technologies such as machine learning, natural language processing (NLP), and advanced analytics are streamlining processes that were once manual and time-consuming. AI's ability to analyse vast datasets with speed and precision allows financial institutions and corporations to improve forecasting, risk management, financial planning, and reporting.

1. **AI in financial forecasting:** Making AI driven predictive models can analyse historical data and market trends to provide more accurate financial forecasts to make strategic decisions in a volatile economic environment.
2. **Risk management and fraud detection:** Traditional methods of risk assessment rely on manual data analysis, which can be prone to errors and delays. AI, however, can process and analyse real-time data from multiple sources, identifying potential risks faster and with greater precision.
   State Bank of India (SBI), the largest public sector bank in India, has integrated AI based systems for fraud detection and risk management. From a customer chatbot perspective, SBI has launched SIA, an AI powered chat assistant that addresses customer enquiries instantly.
3. **Automating financial reporting:** AI is also automating the creation of financial reports, generating financial statements, consolidating data and ensuring regulatory compliance which helps reduce human errors and saves time.

AI in M&A activities: Enhancing speed and precision

Mergers and acquisitions include complex multifaceted processes that involve detailed due diligence, financial analysis, and negotiations. AI is making this process more efficient and precise by automating certain stages, reducing time spent on manual tasks, and improving the accuracy of valuations and risk assessments.

1. **AI driven due diligence:** Due diligence is one of the most critical and relatively time-consuming phases in an M&A transaction. AI driven tools can perform faster analysis of large volumes of data and review of financial documents and legal contracts to identify potential risks.
2. **Valuation and deal structuring:** Accurately valuing a target company is

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critical to ensuring a successful M&A transaction. AI powered valuation tools analyse financial data, market conditions, and future growth potential, providing more effective valuations. AI can also be useful to confirm transaction multiples of historical deals and identifying patterns that led to successful outcomes while performing valuation.

3. **Post-merger integration:** AI tools can monitor integration processes in real time, helping companies align operations, financial systems and corporate cultures more efficiently by flagging any issues that may arise, and suggesting solutions to address them.

   For instance, after the acquisition of Myntra by Flipkart, AI was used to streamline the integration of Myntra's fashion e-commerce business into Flipkart's larger retail ecosystem. AI driven systems helped manage inventory, logistics, and customer data, ensuring a smooth transition post-acquisition and maximizing the value generated by the merger.

Statistical data on usage of AI in due diligence

Statistic	Value	Source
Adoption rate of AI in due diligence (2023)	42%	According to a PwC India report, the percentage of M&A deals utilizing AI tools has grown from 25% in 2020 to 42% in 2023. This significant increase highlights how AI is becoming integral to M&A processes.
Reduction in due diligence timelines using AI	30%	On an average, AI tools can reduce the time required for M&A due diligence by up to 30%. This is a critical advantage in fast-moving deal markets.
Projected growth of investment in AI in Indian financial sector	23%	By 2025, AI investment in India's financial services sector is expected to grow at a compound annual growth rate (CAGR) of 23% according to a NASSCOM report.

Examples of AI tools used in due diligence exercise

1. **Kira Systems:** Uses machine learning to identify, extract, and analyse text in contracts and other documents.
2. **DataRobot:** Provides automated machine learning tools for building and deploying predictive models.
3. **RPA Tools (e.g., UiPath, Blue Prism):** Automates repetitive tasks, such as data entry and document processing, thereby enhancing efficiency.
4. **FICO Falcon Fraud Manager:** Applies machine learning for real-time fraud detection and prevention.
5. **IBM Watson:** Provides NLP and machine learning capabilities to analyse unstructured data and generate insights. It has been integrated into several M&A due diligence processes, helping firms analyse thousands of pages of legal documents, contracts, and financial data in minutes.

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Challenges in adoption of AI for Corporate Finance in India

Despite its advantages, AI adoption in corporate finance is not without its challenges.

1. **Data privacy & security concerns**

   The sensitive nature of financial data poses significant security risks. Indian companies need to ensure that their AI systems comply with privacy regulations and have robust cybersecurity measures.

2. **High initial investment**

   Implementing AI-based solutions requires a significant upfront investment, which may not be feasible for smaller firms. However, as technology becomes more affordable, wider adoption is expected.

3. **Regulatory & compliance hurdles**

   Indian regulatory frameworks are evolving, and companies must navigate these rules while implementing AI in M&A activities. Regulatory agencies such as the Securities and Exchange Board of India (SEBI) are gradually adapting to the rise of AI but can present challenges while assigning responsibility and onus of ensuring the compliance.

4. **Uniformity in source data**

   AI relies on data from various sources to run analysis, but if the data lacks uniformity or contains inaccuracies, the conclusions drawn will also be flawed. Inconsistent or incorrect data can distort patterns, lead to erroneous insights, and negatively impact decision making. Ensuring data quality, accuracy, and consistency is essential for reliable AI driven analysis and outcomes.

Conclusion

AI is reshaping the landscape of corporate finance and M&A. Its ability to process large datasets, predict trends, and automate routine tasks allows finance professionals and M&A teams to focus on more strategic aspects of their work, which was very nicely put by Prof. Aswath Damodaran in one of his articles – "*If the valuation is all about extrapolating historical data on a spreadsheet, AI can do it quicker and with far fewer errors than humans can; however, valuation is built around a business story where you have considered the soft data (management quality, the barriers to entry) and AI will have a tough time replicating what humans do*".

AI enhances financial planning, forecasting, and risk assessment. In M&A, AI tools streamline deal sourcing, improve due diligence, and enable effective valuations. However, the full potential of AI is yet to be realized, and companies that invest in AI capabilities early are likely to gain a competitive edge. As AI technology continues to advance, its role in corporate finance and M&A will only become more integral, helping firms to make more informed, faster, and effective strategic decisions.

Sources: Economic Times, Mint, LinkedIn, NASSCOM report, PwC India report

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Important Rulings

Indian Rulings

US LLC eligible for India-US Treaty benefits

General Motors Company USA [ITA No. 2359/Del/2022 - Order dated 5 September 2024 (Delhi ITAT)]

Taxpayer was incorporated as a Limited Liability Company (LLC) under US laws and held a tax residency certificate (TRC) issued by the US tax authorities. Taxpayer had received fees for technical services from two Indian entities. The AO concluded that the taxpayer, being a Fiscally Transparent Entity (FTE), was not eligible for the benefits under the India-US DTAA as it did not qualify as a "person liable to tax" in the U.S. Additionally, the AO held that the LLC did not fall under the special provision in Article 4(1)(b) of the DTAA, which grants residency status to partnerships and trusts if their partners are subject to tax in the U.S. Consequently, the AO denied the concessional tax rate of 15% as provided in Article 12 of India-US DTAA and imposed a 25% tax u/s 115A of the ITA.

The taxpayer argued that the LLC, having a separate and perpetual legal existence distinct from its members, should be considered a "Person" under the DTAA. The taxpayer further explained that, under U.S. tax laws, an LLC has the option to be taxed either as a corporation or as a disregarded entity, where the LLC's income is clubbed in the hands of its owner who discharges the tax that is assessable in the case of the LLC. The taxpayer contended that the benefits available to FTEs should also apply to LLCs, even though the treaty did not explicitly reference LLCs in Article 4(1)(b), as the concept of disregarded LLCs did not exist when the treaty was signed.

The Hon'ble Tribunal referred to Publication 3402 of the Department of the Treasury, Internal Revenue Service (IRS) of the Government of US on Taxation of LLC and Instructions for Form 8802 (application for United States Certificate of Residency). ITAT noted that for federal income tax purposes, LLC may be classified as a partnership or a corporation or a disregarded entity for tax purposes. It held that the ability of the LLC to elect its tax classification under US federal income tax law supported the legal situation of the LLC being 'liable to tax'. In case of LLC being a disregarded entity also, the LLC would essentially be 'liable to tax' but the income gets attributed to its tax owner and such tax is paid by its respective tax owner. ITAT further noted that the Residency Certificate provided by IRS certifies that for the certification year, the applicant had been a resident of the United States for purposes of U.S. taxation or, in the case of a FTE, the entity, when required, filed an information return and its partners/ members/owners/beneficiaries filed income tax returns as residents of the United States.

Further ITAT also referred the AAR ruling in General Electric Pension Trust [2006] 150 Taxman 545 (AAR) to hold that an exclusion provision can only apply to something initially included. Thus, a fiscally transparent partnership is considered "liable to tax" under the India-US DTAA, and Article 4(1)(b) limits eligibility by excluding income not ultimately "subject to tax" in the US. In view of the above, the ITAT held that the taxpayer (i.e., US LLC) qualified as tax resident in the US and was eligible for tax benefit under India-US DTAA.

In this ruling, the Tribunal referred to and discussed the internal guidelines and instructions under U.S. tax laws to determine whether the LLC would be considered a tax resident of the U.S. When interpreting treaty provisions, examining the domestic tax laws of the respective countries read along-side treaty provisions and adopting an ambulatory approach to interpretation can assist in understanding the correct legal position and the intent of the treaty partners.

Important Rulings

Permanent Establishments to be taxed independently ignoring global losses

Hyatt International Southwest Asia Ltd [ITA 216/2020- Order dated 19 September 2024 (Delhi HC)]

The taxpayer, a resident of the United Arab Emirates (UAE), operated a PE in India. Despite the taxpayer incurring losses globally, the Indian PE generated profits. The taxpayer argued that no profits should be attributed to the PE in India due to the overall global losses and cited the Delhi High Court's earlier decision in Nokia Solutions to support this position. The core contention was that for profit attribution to occur, the global enterprise should first make a profit and a part of that profit should be attributable to the PE in India.

The Revenue, however, argued that the PE should be viewed as an independent entity under Article 7 of the DTAA between India and the UAE. The Indian PE's profits, irrespective of the parent company's overall profitability, should be taxed based on the activities undertaken by the PE at its individual level and uninfluenced by the activities of the enterprise of which it may be a part. The Revenue highlighted that the DTAA recognizes the PE as a separate entity for the purposes of profit attribution, and the taxability in India should focus on the income generated locally by the PE, not the global financial results of the enterprise.

The Divisional Bench of Delhi HC referred the said matter to larger bench since they doubted the view expressed by co-ordinate bench in the case of Nokia Solutions. The larger bench of the Delhi High Court ruled in favour of the Revenue, holding that the PE must be treated as an independent taxable entity. It clarified that Article 7 of the DTAA supports the notion that the source country (India) has the right to tax profits attributable to a PE which arises or accrues within its territorial boundaries and the activities undertaken therein, regardless of the global losses incurred by the parent enterprise. It held that if an entity is allowed to claim that its global profits aren't taxable based on the source principle and only the profits attributable to the PE would be taxed in source state, it would be completely unacceptable for it to argue that the income earned in the source state is free from tax due to global loss.

The Court rejected the taxpayer's reliance on the Nokia Solutions case, noting that it was based on a misinterpretation of special bench ruling in case of Motorola Inc. The Hon'ble HC distinguished the Motorola case and observed that the special bench decision was rendered in the backdrop of the parties having failed to produce adequate material which may have independently established the profit margin of the PE in India and hence a percentage of profit was attributed to the Indian PE.

The Court appears to have created a legal fiction by treating a PE as a separate independent entity. Notably, in the Delhi High Court's ruling in Bank of Tokyo-Mitsubishi UFJ Ltd [IT Appeal Nos. 773 and 887 of 2018], dated May 28, 2024, it was held that interest received by a branch (PE) from deposits with its head office is not taxable in India, emphasizing that a branch and its head office are not distinct entities. The decision at hand deviates from earlier rulings, which treated a PE and its head office as inseparable, and now recognizes the PE as an independent entity. The legal fiction created by this judgment should be confined to the context of Article 7 of the DTAA and should not extend to other provisions, such as transfer pricing rules. The Court did not address the interaction between section 9 of the ITA, which governs the taxability of non-residents conducting business operations in India, and Article 7 of the treaty. It remains to be seen whether the independent entity concept under Article 7 would also apply to section 9 of the ITA.

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Writ Dismissed on TDS Applicability for Trademark Acquisition from Non-Resident

Hindustan Unilever Ltd [WP No. 4325 of 2024 - Order dated 23 September 2024 (Bombay HC)]

Taxpayer acquired a Trademark of a health food drink registered in India from a non-resident entity without deducting TDS u/s 195 of the ITA. The Revenue held that consideration paid for assignment of India specific Intellectual Property Rights, should be held to be in lieu of acquisition of assets situated in India.

The taxpayer contended that although the trademark was an intellectual property registered in India, the owner of the same being a foreign entity, such acquisition did not involve transfer of a capital asset in India, so as to attract any capital gains, falling within the purview of section 9(1)(i) of ITA. The taxpayer relied on the Delhi HC decision in the case of CUB Pty Ltd. [2016] 71 taxmann.com 315 to hold that in case of transfer of intangible asset, situs of owner of an intangible asset would be closest approximation of situs of an intangible asset and hence the location of the trademark would not be in India.

The Revenue argued that territoriality principle as laid down by the Supreme Court in Toyota Jidosha Kabushiki Kaisha Vs. Prius Auto Industries Limited (2018) 2 SCC 1 would apply to the Trademark by virtue of its registration under the Trade Marks Act and would be held to be an asset within the territory of India. Revenue also submitted that Delhi HC in the case of CUB Pty had not considered the effect of registration of a TradeMark under the Trade Marks Act.

The Bombay HC accepted the Revenue’s contentions and held that the said matter could not be decided in a writ by exercising extraordinary jurisdiction conferred under Article 226 of the constitution. The issue under hand was held to be a debatable issue on the applicability of legal principles vis-à-vis substantive provisions of the ITA. Hence it was held that appellate remedy as provided under the ITA be resorted to.

Although the Bombay High Court did not reach a final legal conclusion, it acknowledged the Revenue's argument that the trademark registration under the Trade Marks Act, was not addressed by the Delhi High Court or subsequent positive judgments. This ruling has opened new avenues for the Revenue to challenge cases involving trademarks registered in India under the Trade Marks Act and owned by non-residents. The judiciary's final stance on this matter, considering the territoriality principle and trademark registration, remains to be determined.

Delhi HC emphasises on superiority of TRC and grandfathering provisions over GAAR

Tiger Global International III Holdings [W.P.(C) 6764/2020 & CM APPL. 23479/2020 – Order dated 28 August 2024 (Delhi HC)]

Taxpayers were Mauritius-incorporated entities that sought tax benefits under the India-Mauritius DTAA for the sale of shares in a Singapore company with Indian subsidiaries. The taxpayers contended that the grandfathering provisions of Article 13 of the DTAA applied since the shares were acquired before April 1, 2017, thus exempting them from capital gains tax. The Taxpayers also argued that the Revenue's claims of beneficial ownership by a U.S. entity were unfounded and that the control of the Taxpayers was based in Mauritius.

The Revenue argued that the Taxpayers were conduit entities used to avoid capital gains tax in India, as the real control of the taxpayers was in the U.S., not Mauritius. The Revenue contended that the transfer of shares in a Singapore entity deriving value from Indian assets should be taxable under Indian law, rejecting the taxpayers’ reliance on the DTAA. It also claimed that the GAAR provisions applied to the transaction and had overriding effect over section 90 of the ITA.

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The Delhi High Court ruled in favour of the taxpayers, holding that the taxpayers had sufficient economic substance and were not merely conduit for tax avoidance. It held that U.S. entity could not be said to be the beneficial owner of shares since the taxpayers were under no contractual or legal obligation to transmit revenue to the U.S. entity. The High Court also found that Chapter X-A of the ITA (i.e., GAAR provisions) would not apply in light of Article 13(3A) of the India-Mauritius DTAA, which grandfathers all acquisitions made before 1 April 2017. It further held that the onus was on the Revenue to prove tax avoidance, which required a high standard of proof that was not met in this case.

This ruling reaffirms the importance of the TRC and treaty provisions in cross-border transactions, even in the presence of domestic anti-abuse rules. It highlights the courts' inclination to protect legitimate treaty benefits and emphasizes that mere suspicion of tax avoidance is insufficient to deny such benefits. The decision also leaves open the broader question of how domestic GAAR provisions will interact with treaties in future specifically for investments made after 1 April 2017. Readers may refer to KCM Flash dated 2 September 2024 for detailed analysis on the said judgement.

ITAT upholds DTAA benefits emphasizing genuine economic substance

Tyco Electronics Singapore Pte Limited [ITA No.1760/Del/2022 -Order dated 5 September 2024 (Delhi ITAT)]

Taxpayer, a Singapore based company was engaged in the business of trading electromechanical relays, wire and wireless equipment and other electronic components. During the year under consideration, it sold shares of an Indian company as a part of global restructuring process. The sale of these shares resulted in significant long term capital gains for which the taxpayer claimed exemption under Article 13(4A) of India-Singapore DTAA.

The Revenue disregarded the TRC and denied the taxpayer being a tax-resident of Singapore. It contended that the taxpayer had failed to substantiate its economic substance in Singapore and held that the taxpayer was established for tax evasion and treaty shopping. It accordingly taxed the capital gains income and interest income from Compulsory Convertible Debentures as per the provisions of the ITA without considering the beneficial provisions of DTAA.

The Tribunal ruled in favour of the taxpayer, affirming the taxpayer’s entitlement to benefits conferred under India-Singapore DTAA. The ITAT based its decision on the following reasons:

- **Tax Residency Certificate**: The taxpayer provided a valid TRC which served as statutory evidence of its tax residency in Singapore. The burden was on the Revenue to demonstrate that the entity was established solely for obtaining tax benefits without actual economic activity.
- **Significant Business Operations**: The taxpayer’s business was managed and controlled in Singapore. All the board and shareholder meetings were held, and key business decisions were taken in Singapore. It was submitted that the taxpayer had incurred substantial expenditure and generated considerable revenue from the sale of goods which evidenced that it had significant business operations in Singapore. This was uncontested by the Revenue.
- **Business Activities**: The taxpayer had sufficient employees during the year under consideration. The Singapore’s Economic Development Board had

recognized the taxpayer as the Asia Pacific headquarters and the regional trading hub in 2016 for a period of 10 years.

- **Long term investment decision**: The Tribunal noted that the investment in Indian entity were made by the taxpayer after 16 years of its incorporation and the transaction was a long-term investment decision by an entity which had sufficient managerial and operational structure in Singapore.
- **Consistency and Reasoning**: The taxpayer had availed treaty benefits in previous years which had not been denied by the Revenue. The ITAT criticized the Revenue for not adhering to the principle of consistency and drifting away from the same without any reasoning.

In the judgment mentioned above, the Tribunal examined several factors beyond the TRC to determine the taxpayer's eligibility for treaty benefits. While it reaffirmed that the burden lies with the Revenue to prove the entity's ineligibility for treaty benefits when a valid TRC is presented, the Tribunal also considered various aspects that supported the taxpayer's position of conducting genuine business activities.

Foreign Rulings

Professional and management services income taxable under Article 7 and not Article 21

Total Kenya Limited [Tax Appeal No. 151 of 2016 and 16 of 2017- Order dated 4 July 2024 (Kenya HC)]

Total Kenya Limited (Taxpayer), a wholly owned subsidiary of France-based Total Outre Mer (TOM), was involved in a withholding tax dispute for payments made to TOM under a Technical Assistance Agreement during 2011-2015. The Commissioner of Direct Taxes of Kenya claimed that the taxpayer had failed to withhold taxes on payments for professional and management services. The taxpayer, however, argued that under the Kenya-France DTAA, these payments were taxable only in France, relying on Article 7 of the DTAA. The taxpayer highlighted the deletion of Article 14 of the OECD Model Tax Convention (MTC) in relation to independent personal services. Since the treaty lacked a specific provision for such fees, the taxpayer maintained that the payments should be treated as business profits under Article 7.

The Commissioner, on the other hand, considered the payments as taxable under Article 21(4) ("Other Income") of the Kenya-France DTAA, given that TOM did not have a PE in Kenya. The Commissioner argued that since professional and management services were not covered by any other article, they should fall under Article 21, which would take precedence over Article 7 of the DTAA. The Tax Appeals Tribunal ruled in favour of the taxpayer, and the Commissioner subsequently appealed to the High Court.

The High Court upheld the Tribunal's decision, ruling in favour of the taxpayer. The Hon'ble Court found that, in the absence of a specific article addressing professional and management services in the Kenya-France DTAA, such payments should be governed by Article 7 (Business Profits), aligning with the OECD Commentary following the deletion of Article 14. The OECD commentary specifies that "*the effect of the deletion of Article 14 is that income derived from professional services or other activities of an independent character is now dealt with under Article 7 as business profits*". The court rejected the Commissioner's assertion that Article 21 applied, noting that the article was intended for miscellaneous income like alimony or lottery winnings and not management or professional fees. The court further dismissed the argument

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that Article 21 took precedence over Article 7, as there was no such priority indicated in the DTAA or the OECD Commentary.

Indian Courts have also repeatedly held that in the absence of an Article dealing with 'FTS', business profits are governed by Article 7 of DTAA and in absence of PE in India, said income would not be chargeable to tax in India. The Hon'ble HC of Kenya has reiterated this position. It is essential to assess whether income of a technical nature relates to the recipient's business for it to be categorized as "business income" under Article 7 of the DTAA. Proper analysis and classification of income under the correct Article of the DTAA are crucial, especially when the DTAA does not explicitly address the nature of the income in question.

EU Court of Justice confirms Ireland's unlawful tax aid to Apple

Commission v. Ireland and others [Case C-465/20P-Order dated 10 September 2024 (Court of Justice of the European Union)]

Apple's subsidiaries, Apple Sales International (ASI) and Apple Operations Europe (AOE) were incorporated in Ireland but were not tax resident of Ireland. Two specific tax rulings of Ireland from 1991 and 2007 allowed ASI and AOE to determine their taxable profits in a way that excluded significant income related to intellectual property licenses held by ASI and AOE. Irish tax authorities had accepted, in the contested tax rulings, the premise that the Apple Group's IP licences held by ASI and AOE had to be allocated outside Ireland.

The European Commission concluded in 2016 that Apple benefitted from illegal tax advantages in Ireland from 1991 to 2014. These advantages stemmed from the way profits generated from Apple's activities outside the U.S. were taxed. The Commission considered that the IP licences held by ASI and AOE for the procurement, manufacture, sale, and distribution of the Apple Group's products outside North and South America had contributed significantly to those two companies' income. Those profits should have been allocated to ASI's and AOE's Irish branches, which alone were in a position effectively to perform functions related to the Apple Group's IP that were crucial to ASI's and AOE's trading activity.

In 2020, the General Court annulled the Commission's decision, stating that the Commission failed to demonstrate that the tax rulings provided a selective advantage to Apple. It held that the agreements and activities of ASI and AOE outside Ireland showed that those companies were in a position to develop and manage the Apple Group's IP and to generate profits outside Ireland and that those profits were, consequently, not subject to tax in Ireland.

The Court of Justice found that the General Court erred in its assessment. It confirmed that the Commission had adequately established that the tax rulings conferred a selective advantage, as they allowed profits to be allocated in a manner that did not align with the actual economic activity carried out in Ireland. The contested tax rulings had enabled ASI and AOE to reduce the amount of tax for which they were liable in Ireland during the period when those rulings were in force, and that reduction in the amount of tax represented an advantage as compared to other companies in a comparable situation.

The ruling mandates Ireland to recover an estimated €13 billion in illegal tax benefits granted to Apple, reinforcing the idea that companies must pay taxes in accordance with the activities they conduct in a given jurisdiction. This decision is significant for the future of state aid regulations in the EU, emphasizing the importance of fair tax practices and the responsibility of member states to ensure compliance with EU rules.

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Worldwide Income Taxation does not confer Tax Residency for DTAA Purposes

GE Financial Investments [Case No: CA-2023-001974 – Order dated 17 July 2024 (UK Court of Appeal)]

Taxpayer, a UK incorporated company was a sister concern of a GEFI Inc (a US corporation). The shares of the taxpayer and GEFI Inc were stapled together (Stapled shares refer to two or more ownership interests in different entities that are linked together in such a way that if one interest is transferred, the others must also be transferred). As per the US tax laws if a domestic corporation and a foreign corporation are stapled entities, the foreign corporation shall be treated as a domestic corporation. Accordingly, the taxpayer was considered as domestic corporation of US liable to tax on its worldwide income in US as per the US tax laws and tax resident of UK by virtue of its incorporation in UK. Taxpayer and GEFI Inc. formed an LLP in US (US LP) with 99:1 interest ratio. US LP was treated as transparent entity for both US and UK tax laws and hence the interest income derived by US LP was to be taxed directly in the hands of the partners. As per the US tax laws, the provisions for stapled entities would override treaty provisions.

The issue under consideration was whether the taxpayer was to be treated as US tax resident for DTAA purposes and whether it carried on business in the US through a PE. US and UK tax authorities could not reach at an agreement determining the taxpayer's residence for DTAA purposes. The Revenue authorities of UK rejected the taxpayer's claim of FTC (credit for tax paid on interest income in US) stating that as per the DTAA provisions, taxpayer was neither a US resident nor had a PE in US through which it carried on a business in the US. They argued that for residence to be established, Article 4(1) of the DTAA required both liability to worldwide taxation and a “connection” or “attachment” to the country concerned and unlike incorporation, share stapling did not provide the requisite connection to establish US residency.

UK Court of Appeals observed that the taxpayer could not be regarded as falling within any of the enumerated criteria of domicile, residence, citizenship, place of management or place of incorporation as far as US was concerned. Article 4(1) defined resident as a person "liable to tax… by reason of" having a particular status, such as domicile or residence. "By reason of" means tax liability arising from that status status, rather than residence status being defined by liability to tax. It accepted the Revenue’s contentions and held that taxpayer could not be treated as resident under Article 4 of the DTAA. Furthermore, the Court held that the taxpayer did not carry on business through a PE in US since its only US activity was having an interest in US LP with no active participation. Further, the US LP's main purpose was to hold financial receivables and assets and acted as a passive holding vehicle. It accordingly held that UK was not required to confer double tax relief to the taxpayer since it was neither a tax resident of US as per DTAA nor carried any business through a PE in US.

The judgment clarifies that deemed residency under domestic law may not necessarily align with the concept of residency under treaties. Liability to tax on worldwide income in a country does not automatically grant residency under treaty provision unless conditions like incorporation or domicile are met. It becomes imperative to scrutinize the extent to which domestic legislation can be invoked when interpreting treaty provisions, as treaties often permit reference to domestic tax laws. However, such interpretations must harmonize with the spirit and framework of

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the treaty. Unilateral treaty overrides, like the US stapled entity rules, do not compel treaty partners to extend benefits unless explicitly agreed upon by both nations in the convention.

Important Updates

Foreign Updates

OECD releases the list of countries joining the first STTR MLI signing ceremony

OECD recently published a list of jurisdictions from the OECD/G20 Inclusive Framework on BEPS taking part in the first signing ceremony of the Multilateral Convention on Pillar Two's Subject to Tax Rule (STTR). Under the Convention, jurisdictions must present their STTR MLI position at the time of signing. The signing ceremony was held in Paris on 19 September 2024 with 57 member countries participating in the ceremony out of which 9 members signed the STTR MLI, while 10 others expressed intent to do so. India did not participate in the signing ceremony.

STTR MLI is similar to BEPS MLI applies only to covered tax agreements which are notified by the respective countries. The STTR allows jurisdictions to "tax back" where defined categories of income are subject to nominal tax rates below the STTR minimum rate of 9%, and domestic taxing rights over that income have been ceded under a treaty.

Congress of the United States challenges UTPR and other GloBE Rules

The U.S. Congress recently issued a formal letter to the Secretary-General of the OECD, expressing strong opposition to the Undertaxed Payments Rule (UTPR) envisioned in the OECD GloBE Rules. The letter highlighted that, a year ago, members of the U.S. House Committee on Ways and Means travelled to Paris to clearly convey to the OECD that the U.S. Congress would not endorse the global tax deal unilaterally negotiated by the Biden-Harris administration.

The letter argued that implementing the UTPR would undermine U.S. tax sovereignty, allowing unelected foreign officials to influence U.S. tax policy. It asserted that foreign governments could arbitrarily extract hundreds of billions of dollars from the U.S. economy through this mechanism. The UTPR has been described to be fundamentally flawed and ineffective in addressing companies backed by entities such as the Chinese Communist Party (CCP). According to the letter, China could exploit loopholes in the OECD's global tax framework by leveraging direct government subsidies, a common feature of Chinese economic policy, thereby circumventing the OECD's objective of ensuring a global minimum tax rate.

The letter also warned that the UTPR could unfairly target U.S. workers and businesses by allowing foreign governments to reclaim key U.S. tax incentives. It emphasized that the U.S. already has

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the Global Intangible Low-Taxed Income (GILTI) regime in place, which effectively curbs abusive tax practices by multinational corporations, further questioning the necessity of the UTPR.

The letter concluded by stating that the U.S. Congress remains opposed to the unfair and impractical OECD global tax agreement. It further stated that in case the foreign governments attempted to target American businesses or individuals through the UTPR or other provisions of the OECD global tax framework, they would be compelled to consider countermeasures in response.

The Brazilian government proposes increasing the CIT by amending the CSLL and raising the withholding tax rates on INE distributions

On August 30, 2024, the Brazilian government introduced a bill to Congress aimed at addressing the budget deficit through temporary tax increases. The proposed changes would affect the social contribution on net profits (CSLL) and the withholding tax on interest on net equity (INE). If enacted, these adjustments are set to take effect on January 1, 2025.

Key Provisions of the CSLL Increase:

The CSLL is an additional corporate income tax levied alongside the general corporate income tax (15%) and a surtax (10%). The proposed changes to CSLL rates are as follows and this would apply only to calendar year 2025:

1. **Banks and Financial Institutions**: CSLL would rise from 20% to 22%, leading to a total corporate tax rate of 47%.
2. Insurance companies, exchange and securities brokerage firms, real estate credit companies' and similar entities: CSLL would increase from 15% to 16%, resulting in a total corporate tax rate of 41%.
3. **Other Legal Entities**: CSLL would go up from 9% to 10%, resulting in a total corporate tax rate of 35%.

Proposed Changes to Withholding Tax on INE:

INE represents long-term interest payments made by companies to shareholders to compensate for the loss of investment value due to local inflation. Currently, amounts credited or paid to shareholders are subject to a 15% withholding tax (WHT).

According to the proposal, the WHT rate on INE payments would increase from 15% to 20%.

Taxpayers should prepare for the anticipated changes and consider strategic adjustments before year-end to mitigate the potential impact of the proposed tax increases.

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Important Rulings

Functional comparability Vs. Acceptance of the low profit / loss making / high margins comparable companies

Italy vs Convergys Italy S.R.L, Supreme Court, Case No 19512/2024

In a ruling by Apex Court of France i.e., Court of Cassation ('Apex Court'), held that the outright exclusion of loss-making companies from the final set of comparables for the purpose of computing the profit level indicator ('PLI') is not in accordance with the principles of Transfer Pricing Guidelines as published by OECD from time to time. The ruling has led to a huge debate i.e., what is the ideal way – to consider loss-making companies as comparables / not.

In the present case, the Italian tax offices rejected the inclusion of certain comparable companies which had incurred losses in 2 out of 3 years. The Italian tax offices did not undertake any analysis to ascertain whether the companies rejected merely on the basis of lower or negative profitability suffered from any peculiar situations indicating any difference in the functional or comparability profile from that of the tested party. The SC has held that it was wrong on part of the lower Italian tax authorities to reject the companies which earned lower or negative results.

Guidance from OECD

Technically, OECD TP Guidelines mandates carrying out a comparability analysis to further identify uncontrolled transactions / companies for the purpose of comparing the prices / margins / profitability of the controlled transactions / circumstances with those operating under the uncontrolled transactions / companies. OECD lists out various factors or characteristics to properly delineate the controlled transactions so as to identify better comparable companies / transactions. Notably, the OECD TP Guidelines nowhere mention exclusion of companies owing to their profitability.

The entire focus of the guidelines is on various factors that may result in a different profitability e.g., stage of business cycle – whether startup / facing bankruptcy, business strategies pursued, or any other relevant factor which establishes likeness between the controlled and uncontrolled parties in terms of their business and commercial operations.

Arguments for and against

The comparison of profitability of controlled and uncontrolled transactions are undertaken when applying TNMM i.e., net margin-based Profit Level Indicators (PLI). Ideally, TNMM is selected as a method of last resort, after direct methods have been evaluated and eliminated. The comparison under TNMM is always done from the perspective of least-complex entity, usually a captive / low-risk entity.

It is an understood principle that low-risk entities are to be remunerated for the functions that they perform i.e., always eligible for a positive net margin, as against to risk-taking entities that, owing to their risk profile, may be left with profits / losses, depending on how the business has fared. Consequently, logic dictates that when selecting comparables for low-risk entities, loss-making companies ought to be eliminated.

On the other hand, a strong argument against this is that low-risk entities do not mean **no**-risk entities. The probability of risk materialising, however low, always exists. Periods like the pandemic have taught us that in such cases the

Important Rulings

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unanticipated and significant loss at a global level to the group would have to be borne by both high-risk and low-risk entities, albeit in differential proportions, so as to ensure the longevity of long-term business.

Hence, one would always be able to argue that unless the entire industry is suffering from systematic risks which affect each and every market player, the arm's length range concept (quartiles in international context and percentiles in Indian context) takes care of outliers in terms of either loss-making / high profit-making entities and hence, no valid justification exists for outright rejection.

Indian jurisprudence on outliers

The Indian transfer pricing rulings provide some insight on how the tax office views outliers on higher side i.e., high profit-making entities. The ruling by the Special bench of the Mumbai Tribunal in case of **Maersk Global Centres (I) Pvt Ltd**[1] underpins the importance of functional and business comparability over the profitability of the comparable companies, wherein it was held that potential comparables cannot be excluded merely on the ground that the comparable companies are earning abnormally high profits. Mumbai Tribunal stated that abnormal margins do not directly call for rejection but rather an investigation into the comparability of those entities with that of the tested party, whether the abnormal profits represent normal business trend for the comparable companies. Similar guidance is provided by the Delhi Tribunal in case of **Chryscapital Investment Advisors (I) Pvt Ltd.**[2] wherein Delhi Tribunal has categorically held that the earning of high / extremely high profit or losses does not in itself leads to exclusion of those potential comparable companies from the final set of comparable companies. Similar views have been expressed by Delhi High Court in case of **Nokia Siemens Network (I) Pvt Ltd** and the Delhi Tribunal in case of **Quark Systems (P) Ltd.** which provides that functional comparability overrides profitability in terms of selection of potential comparable companies.

The above does not mean that lower authorities are open to inclusion of loss-making entities in the final comparable set. Usual experience at first-level assessment is always to exclude loss-making but keep high profit-making entities.

Times are changing in terms of international jurisprudence (including that of India to an extent) where Transfer Pricing is concerned. There are more and more judgments discussing core economic principles or based in logic, like this current case. Of course, TP being a very fact specific activity undertaken for a particular industry in a particular point in time, requires careful evaluation of all these factors before finalising a comparable set. However, guidance in this regard is highly welcome.

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[1] Maersk Global Centres (I) Pvt Ltd Vs. ACIT [2014 43 taxmann.com 100 (Mumbai – Trib) (SB)]

[2] Chrsycapital Investment Advisors (I) Pvt Ltd Vs. DCIT [2015 56 taxmann.com 417 (Delhi)]

Important Updates

Notification

Notified certain amendment proposed in the Finance (No. 2) Act, 2024

[No. 17/2024–Central Tax – dated 27th September 2024]

The Finance (No. 2) Act, 2024 ('FA 2024') introduced several significant amendments to the CGST Act, 2017. The government has issued Notification No. 17/2024 – Central Tax, specifying that sections 118, 142, 148, and 150 of the said Finance Act will come into force from September 27, 2024. Additionally, Sections 114 to 117, 119 to 141, 143 to 147, 149, and 151 to 157 will come into force from November 01, 2024. A detailed list of these notified important provisions is outlined in the table below.

Section o 2024	Relevant Section of CGST Act and the Key Amendment
Provision Notified from 27th September – 2024	
118	Insertion of section 16(5) and 16(6) - Section 16(5) – Provides for extending the time limit of 30 November 2021 for availing ITC for FY 2017-18 to FY 2020-21 - Section 16(6) — Providing time limit to avail ITC in case of revocation of cancelled registration
148	Provides for insertion of the proviso to state that, from the date of notification, the anti-profiteering authority shall not accept any verification as required under the said section
150	Section 118 of the FA 2024 introduced Sections 16(5) and 16(6) of the CGST Act, 2017, thereby extending the time limit for availing ITC for year 2017-18 to 2020-21 till 30 November 2021. As a result of these changes, Section 150 provides that there will be no refunds of tax or ITC that have already been paid but were not actually payable, in view of the retrospective insertion of the said sections.
Provision Notified from 01st November – 2024	
116	Insertion of section 11A enabling Government to provide waiver of tax not paid/short paid due to generally prevalent practice followed in respect of supply of goods or services.

Important Updates

Provision Notified from 01st November – 2024	
117	Amendments to time of supply provisions in section 13 with respect to inward supplies liable to reverse charge.
122	Amendment to tax invoice provisions in section 31 with respect to inward supplies liable to reverse charge.
124	Amendment in section 39 to mandate monthly filing of TDS return.
138	Insertion of new section 74A for determination of tax, interest and penalty for both fraud and non-fraud cases.
141	Reduction in pre-deposit maximum threshold to INR 20 Crores for filing appeal before Appellate authority in section 107.
143	Reduction in pre-deposit threshold to 10% of disputed tax subject to maximum of INR 20 Crores; for filing appeal before Appellate Tribunal in section 112.
146	Insertion of new section 128A providing waiver of interest, penalty, or both with respect to demands of section 73.

Circular

Clarification on the classification of Indian advertising agencies as intermediaries under the GST

[Circular No. 230/24/2024-GST Dated September 10, 2024]

The circular provides important clarifications regarding the treatment of advertising services provided by Indian agencies to foreign clients under the GST law. It addresses concerns raised by the advertising industry, particularly about how these services are classified and whether they are eligible for export benefits.

First, the circular explains that when a foreign client hires an Indian advertising agency to provide end-to-end services, such as media planning, content creation, and purchasing media space, the agency is not acting as an "intermediary" under GST law. Instead, it is directly supplying advertising services on a principal-to-principal basis. In this scenario, the place of supply for GST purposes is the location of the foreign client, which is outside India. Therefore, these services qualify as an export of services, provided the conditions outlined in Section 2(6) of the IGST Act are fulfilled. As a result, the Indian agency can benefit from the export provisions, such as zero-rated tax.

However, the circular also distinguishes between scenarios where the Indian advertising agency acts merely as a facilitator between the foreign client and a media company. In such cases, if the agency’s role is limited to arranging media space for the foreign client, and the media company directly bills the foreign client, the agency is considered an "intermediary." When this happens, the place of supply is deemed to be within India, meaning that the advertising

Important Updates

services provided by the agency would not be treated as an export, and GST would be applicable within India.

The circular further clarifies that the advertising services provided by Indian agencies to foreign clients do not fall under the category of "performance-based services" under Section 13(3) of the IGST Act, as there is no physical presence required of the foreign client or their representatives with the agency in India. Therefore, the place of supply remains the foreign client's location outside India, making the services eligible for export classification.

Clarification on the availability of input tax credit in respect of demo vehicles

[Circular No. 231/25/2024-GST Dated September 10, 2024]

The circular primarily addresses two significant issues: the availability of ITC for motor vehicles with a seating capacity of 13 persons or fewer, including the driver, as specified under Section 17(5)(a) of the CGST Act, 2017, and the eligibility of ITC for demo vehicles that are capitalized in the dealer's books of accounts.

Under the CGST Act, ITC is generally restricted for motor vehicles used for passenger transport with up to 13 seats. However, an exception is made for vehicles utilized in the further supply of motor vehicles, passenger transportation, or driving training, allowing ITC in these specific scenarios. Applying this to demo vehicles, the circular clarifies that when these vehicles are used to promote and facilitate the sale of similar vehicles, they qualify for ITC as they fall under the category of "further supply." Conversely, if demo vehicles are used exclusively for purposes such as employee transportation or management, or if the dealer acts merely as an agent without direct involvement in the sale, ITC on these vehicles is not permitted.

The circular also addresses situations, where authorized dealers function solely as agents or service providers for vehicle manufacturers. In such roles, dealers facilitate marketing activities, including organizing test drives for potential customers, without directly participating in the purchase or sale of the vehicles. In these cases, the vehicle manufacturer issues the sale invoice directly to the customer, and the dealer may sell the demo vehicle only after a predetermined period or mileage as per their agreement with the manufacturer, upon payment of applicable GST. Since the dealer is merely providing marketing and facilitation services and not supplying motor vehicles on their own account, the demo vehicles used in this capacity do not qualify for ITC. Consequently, ITC on these demo vehicles is not available to dealers acting in this manner.

Furthermore, the circular clarifies that demo vehicles capitalized in the dealer's books under Section 2(19) of the CGST Act, 2017 are eligible for ITC provided they are used in the course or furtherance of business. However, dealers must adhere to specific conditions, including restrictions outlined in Section 16(3) of the CGST Act,2017 which disallows ITC if depreciation is claimed on the tax component of the vehicle's cost. Additionally, upon the sale of a capitalized demo vehicle, dealers are required to comply with the applicable tax payment provisions as specified in Section 18(6) and Rule 44(6) of the CGST Rules, 2017 are met.

Important Updates

Clarification on the place of supply of data hosting services provided by service providers located in India to cloud computing service providers located outside India

[Circular No. 232/26/2024-GST Dated September 10, 2024]

Primarily, the circular addresses whether data hosting service providers act as intermediaries between the overseas cloud computing service providers and their end customers. It clarifies that these service providers engage directly with foreign cloud providers on a principal-to-principal basis, managing their own infrastructure without involving themselves in the end users' interactions. Consequently, they do not qualify as intermediaries under Section 13(8)(b) of the IGST Act,2017 and thus, this section does not apply to determine the place of supply.

Furthermore, the circular examines if data hosting services are related to goods "made available" by the service recipient, which would invoke Section 13(3)(a) of the IGST Act, 2017 It concludes that data hosting services operate independently of any physical goods provided by the recipient. Even in scenarios where hardware is supplied by the cloud computing service provider, the nature of the services remains distinct and does not fall under the aforementioned section.

Additionally, the circular explores whether data hosting services are directly related to immovable property, which would require the application of Section 13(4) of the IGST Act, 2017 It clarifies that these services encompass a wide range of functions such as IT management, infrastructure maintenance, security, and operations, rather than being solely tied to immovable property. Therefore, Section 13(4) is not applicable in this context.

Based on these clarifications, the circular determines that the place of supply for data hosting services should be as per the default provision under Section 13(2) of the IGST Act,2017 which considers the location of the service recipient. For services provided to overseas cloud computing service providers, this means the place of supply is outside India. As a result, such transactions qualify as exports of services, provided all conditions outlined in Section 2(6) of the IGST Act, 2017 are met.

Clarification regarding regularization of refund of IGST availed in contravention of rule 96(10) of CGST Rules, 2017, in cases where the exporters had imported certain inputs without payment of integrated taxes and compensation cess

[Circular No. 233/27/2024-GST Dated September 10, 2024]

This Circular provides essential clarifications regarding the regularization of refunds for IGST that were availed in violation of Rule 96(10) of the CGST Rules, 2017. This issue primarily affects exporters who import certain inputs without initially paying IGST and compensation cess under specific exemption notifications, namely Notification No. 78/2017-Customs and Notification No. 79/2017-Customs.

According to Rule 96(10) of the CGST Rules, 2017, IGST refunds on goods exports with payment of taxes are disallowed if exemptions or concessional notifications have been utilized for importing or procuring inputs/raw materials. However, an explanation was inserted in sub-rule (10) of Rule 96 by Notification No. 16/2020-CT dated 23rd March 2020, which was made retrospective from 23rd October 2017. This explanation stipulates that if a registered person pays IGST and compensation cess on imported inputs after initially availing only the exemption of BCD, the benefits of the exemption notifications for IGST and compensation cess are deemed not to have been availed.

In practical terms, this means that exporters who subsequently pay IGST and compensation cess, along with any applicable interest, on the imported inputs are considered not to have availed of the exemption benefits for these taxes. Consequently, the refund of IGST paid on exports in such cases will not be viewed as contravening Rule 96(10) of the CGST Rules, 2017 The circular clarifies that when inputs are imported without paying integrated tax and compensation cess under the specified notifications but are later paid along with interest, and the Bill of Entry is reassessed by Customs, the refund of IGST on exports is permissible and does not violate Rule 96(10).

GST Portal Updates and Advisory

Update on reporting B2C Sales in GSTR-1 and GSTR-5

As per Notification No. 12/2024 – Central Tax dated July 10, 2024, the government has reduced the threshold for reporting invoice-wise details of inter-state taxable outward supplies to unregistered dealers from ₹2.5 lakh to ₹1 lakh. This means that taxpayers are now required to report any B2C sales invoices exceeding ₹1 lakh in Table 5 of Form GSTR-1 and Table 6 of Form GSTR-5. However, since the GST portal is currently being updated to incorporate these changes, it is advised to continue reporting B2C invoices exceeding ₹2.5 lakh until the new functionality becomes available.

Re-opening of reporting ITC Reversal Opening Balance

As per Notification No. 14/2022 – Central Tax dated July 5, 2022, read with Circular 170/02/2022-GST dated July 6, 2022, the government has introduced changes for reporting ITC in Form GSTR-3B. Taxpayers are required to report the entire value of ITC as reflected in GSTR-2B within GSTR-3B. Specifically, if an invoice appears in GSTR-2B but is not accounted for in the books, it must be reported in Table 4(A)(5) of GSTR-3B and simultaneously in Table 4(B)(2) of the same month. If the invoices are accounted for in a subsequent month, they should be reported in Table 4(A)(5), and the reclaimed ITC must also be included in Table 4(D)(1).

To ensure accurate tracking of ITC reversals and to minimize errors in reclaiming reversed amounts, the GST portal introduced a new ledger named Electronic Credit Reversal and Re-claimed Statement starting August 2023 for monthly filers and from July to September 2023 for quarterly filers. This ledger enables taxpayers to effectively monitor ITC reversals and reclaims. Additionally, taxpayers have now been granted an extended opportunity to report their cumulative ITC reversals as an opening balance within the Electronic Credit Reversal and Re-claimed Statement before the system locks the reversal and reclaim ledger.

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Key dates for reporting opening balance:

- **Reporting Period:** September 15, 2024, to October 31, 2024
- **Amendment Deadline:** November 30, 2024

Reporting requirements for pending balance:

- **Monthly Taxpayers:** Must report ITC reversals and reclaims up to July 2023.
- **Quarterly Taxpayers:** Must report ITC reversals up to the April-June 2023 period.

After above deadlines, the system will no longer permit reclaiming ITC beyond the amounts previously reversed. It is crucial for taxpayers to utilize this extended period to accurately report all relevant ITC reversals and ensure their records are up to date.

Archival of GST Returns Data on GST Portal and Restoration of Data

On September 24, GSTIN issued an advisory stating that, as per Notification No. 28/2023 – Central Tax dated July 31, 2023, taxpayers will no longer be permitted to file GST returns after three years from the due date of the respective return. Additionally, according to the GST portal data policy, taxpayer data will be retained for only seven years, meaning that return data will not be accessible for viewing beyond this period.

Starting August 1, 2024, the GST portal will begin archiving return data on a monthly basis. For example, returns filed for July 2017 will be archived on August 1, 2024, followed by those for August 2017 on September 1, 2024, and so forth. This archival process will continue monthly, progressively removing older data from the portal over time.

In response to requests from the trade due to difficulties faced, GSTN issued another advisory on September 29, 2024, regarding the restoration of GST return data on the portal. Based on this advisory, the data has been restored. However, taxpayers are advised to download and securely store their relevant GST return data from the portal, as the archival policy will be implemented again after providing advance notice.

Invoice Management System reporting of ITC

The Invoice Management System (IMS), a new communication process, introduced by the GSTIN aims to streamline the reconciliation and management of invoices between taxpayers and suppliers. Operational from October 1st on the GST portal, IMS ensures that only accepted invoices are eligible for ITC in GSTR-2B, promoting accurate and genuine ITC claims.

When a supplier files an invoice in GSTR-1, IFF, or 1A, it appears on the recipient's IMS dashboard. The recipient can accept, reject, or keep the invoice pending until filing their GSTR-3B return. If no action is taken, the invoice is automatically deemed accepted and included in GSTR-2B. Any amendments made by the supplier will update the invoice in IMS, affecting ITC in the subsequent month's GSTR-2B.

Important Updates

Classification of Key Categories:

Sr No.	Action of Taxpayer	Category
1	No action taken	Considered as deemed accepted in GSTR 2B
2	Accepted	Will be considered in GSTR 2B
3	Rejected	Will not be considered in GSTR 2B
4	Pending	Will not be considered in current month's GSTR 2B and will be carried forwarded to next month for future action

Key Points of IMS

Sr No.	Key points	Understanding
1	Deemed accepted	If no action is taken in IMS, the same will be deemed accepted and included in GSTR-2B.
2	Mandatory re-computation	Required in case of change in action already taken records or if actions taken after the 14th of the month.
3	Direct population in GSTR-3B	Inward RCM supplies and supplies where ITC is not eligible due to 16(4) or on account of POS rule, will not be reflected on IMS dashboard.
4	Flow of records	Records will flow to IMS dashboard upon saving data by supplier and will be populated in 2B upon filing respective return by suppliers.

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Sr No.	Key points	Understanding
5	Record movement	All the accepted/ deemed accepted/ rejected records will move out of IMS dashboard after filing of respective GSTR 3B.
6	Pending records	Remain on IMS dashboard and these records can be accepted or rejected in future months
7	Sequential GSTR-2B generation	System will generate GSTR 2B of a return period only if GSTR 3B of previous return period is filed.
8	Impact in Supplier's liability	IMS affects the supplier's liability for rejected records, increasing their obligations in GSTR-3B for various rejected transactions, such as original or amended credit notes and invoices.

In conclusion, IMS by GSTN enhances invoice management efficiency, ensures accurate ITC claims, and enforces compliance through clear actions and timelines. This system fosters transparency between taxpayers and suppliers, reducing discrepancies and improving the overall GST ecosystem.

Important Rulings

Notification no.56/2023-CT declared invalid for the lack GST council recommendation and orders passed under extended notification held to be invalid.

[Case No.: WP(C)/3585/2024 – Gauhati HC]

The petitioners challenged orders issued under Section 73(9) of both the CGST Act, 2017 and the Assam SGST Act, 2017 These orders were based on two Central Government notifications: Notification No. 9/2023-CT dated March 31, 2023, and Notification No. 56/2023-CT dated December 28, 2023, both of which aimed to extend the statutory time limits for issuing orders under Section 73(10) of the CGST Act.

The petitioners contended that Notification No. 56/2023-CT was invalid because it was issued without the mandatory recommendation from the GST Council, as required by Section 168A of the CGST Act. They argued that this procedural lapse rendered the notification ultra vires, thereby invalidating any subsequent orders based on it. Additionally, they asserted that the extension of the statutory time limits was unjustified since the COVID-19 pandemic, cited as the force majeure event, had significantly subsided by December 2023, eliminating the need for such extensions. The petitioners also highlighted the absence of a corresponding notification from the Assam State Government under the SGST Act, which meant that any state-level orders extending beyond the statutory period were invalid and lacked jurisdiction. Furthermore, they maintained that the High Court had the appropriate jurisdiction to hear the writ petition because the challenge was directed at the legality of the notifications themselves, rather than merely the orders issued under them, a matter that could not be adequately addressed through the statutory appeal process provided under Section 107 of the CGST Act, 2017

In response, the Department defended the validity of Notification No. 56/2023-CT by asserting that the enduring effects of the COVID-19 pandemic constituted an ongoing force majeure event, justifying the extension of statutory time limits. They argued that pandemic-related disruptions necessitated additional time to complete GST assessments and audits, thereby serving the public interest by ensuring compliance from both taxpayers and authorities. The Department maintained that these extensions were essential to accommodate the delays caused by the pandemic, validating the necessity and legality of the notifications.

The Hon'ble High Court observed that Notification No. 56/2023-CT falsely claimed to be issued "on the recommendation of the Council," a statement that was unsubstantiated due to the lack of any formal recommendation from the GST Council. The Court deemed this misrepresentation a colorable exercise of power by the Central Government, rendering the notification ultra vires. Emphasizing the pivotal role of the GST Council in upholding cooperative federalism and ensuring a harmonized GST structure across India, as envisioned by Article 279A of the Constitution, the Court noted that bypassing the GST Council's recommendation disrupted the intended uniformity and cooperative spirit fundamental to the GST regime. Additionally, the Court found that the conditions for invoking Section 168A, specifically the existence of a force majeure event, were not satisfied at the time of issuing Notification No. 56/2023-CT. The absence of a corresponding notification from the Assam State Government under the SGST Act further meant that any orders passed under state law beyond the prescribed period were invalid and lacked jurisdiction.

Ultimately, the Hon'ble High Court declared Notification No. 56/2023-CT ultra vires the CGST Act, 2017 due to the lack of a GST Council recommendation. Consequently, all orders issued under Section 73(9) based on this invalid notification were deemed without jurisdiction and invalid. The Court affirmed its jurisdiction to entertain the writ petition, recognizing that the challenge pertained to the legality of the notifications themselves rather than merely the orders passed under them. As a result, the High Court set aside the impugned orders against the petitioners.

KCM Comments

The judgment carries far-reaching implications. Many notices and orders issued under extended time limits are now considered time-barred under Section 73, preventing the department from making demands based on those notices and orders. Additionally, other high courts have upheld challenges to the same notification. It will be interesting to see whether the department appeals the order to the Supreme Court and how the Supreme Court's decision might significantly impact the matter. Given the high courts' divergent views, the department may continue to assert the notification's valid for demands issued in other states where judgments have not yet been made on similar notification challenges.

Due process to be followed in blocking of electronic credit ledger under CGST Rule 86A

[W.A. No. 100425 of 2023 – Karnataka HC)

The petitioners, registered under the GST Act, operated in the business of lead and lead scrap, among other related activities. They had availed ITC on purchases from GST-registered suppliers, which was appropriately credited to their ECL. However, the tax authorities invoked Rule 86A, alleging fraudulent or ineligible availing of ITC, leading to the blocking of the petitioners' ECL. This action prompted the petitioners to file writ petitions, which were subsequently dismissed by a single judge, leading to the appeal to the Karnataka High Court.

The petitioners contended that the blocking of their ECL was arbitrary, illegal, and contrary to the provisions of Rule 86A. They argued that Rule 86A is an exceptional measure intended to be used only when there are substantial reasons to suspect fraudulent or ineligible ITC claims. They asserted that the tax authorities lacked valid reasons and failed to verify the legitimacy of the transactions or apply independent judgment before blocking the ECL. Additionally, the petitioners highlighted that they were denied a pre-decisional hearing, a fundamental principle of natural justice, arguing that any action with significant civil implications should afford affected parties the opportunity to present their case.

The petitioners further emphasized the severe impact of the ECL blockage on their business operations, causing financial distress and disrupting their ability to utilize ITC effectively. They referenced CBIC Circular No. CBEC-20/16/05/2021-GST/1552 dated November 2, 2021, which outlines strict guidelines for exercising powers under Rule 86A. The petitioners contended that the tax authorities did not adhere to these guidelines, rendering the blocking order invalid.

In contrast, the department maintained that the ECL blockage was justified based on genuine suspicions of fraudulent ITC claims. They argued that Rule 86A was lawfully invoked to prevent revenue loss and that the urgency of safeguarding revenue justified the immediate action without a pre-decisional hearing.

The High Court examined the legal framework of Rule 86A, acknowledging its role as a tool to combat tax evasion and fraud. However, the court stressed that its application must be judicious and not arbitrary, requiring a genuine and independent assessment of facts rather than mechanical adherence to directives. The court deliberated on the necessity of a pre-decisional hearing, referencing the Supreme Court's decision in CB Gautam v. Union of India, which established that principles of natural justice must be integrated into statutory provisions affecting significant rights, even if not explicitly stated.

The High Court found that the tax authorities had failed to conduct an independent analysis or verify transactions adequately, relying solely on an investigation report from another officer. This approach was inconsistent with the CBIC Circular's directives, indicating that the authorities acted arbitrarily and mechanically. Consequently, the court set aside the impugned order, ruling that the tax authorities had not followed due process or provided the petitioners with a fair opportunity to present their case.

KCM Comments

The judgment underscored the necessity of procedural fairness and adherence to natural justice principles in the application of Rule 86A. It highlighted that while Rule 86A is essential for preventing tax fraud and evasion, its powers must be exercised with caution to protect taxpayers' rights.

Appellate authority is legally empowered to decide on the jurisdiction of a GST order

[WRIT PETITION No.24412 of 2024- Telangana HC]

The petitioner filed a writ petition challenging the jurisdiction of the officer who issued the notices, contending that the officer lacked the proper authority to issue the SCN. Based on this contention, the petitioner argued that the resulting Order-in-Original was invalid. Additionally, the petitioner asserted that although they have a statutory remedy under Section 107 of the CGST Act, 2017 the appellate authority would not be competent to decide on the jurisdiction of the authority that issued the notices and passed the Order-in-Original.

In response, the department contended that competent authorities issued both the SCN and the subsequent Order-in-Original. The respondent emphasized that the petitioner retained the right to appeal these orders should there be legitimate grounds for dispute.

The Court observed that the petitioner's challenge encompassed not only legal issues but also involved a mixed question of fact and law concerning the jurisdiction of the issuing officer. Recognizing that such mixed questions are best adjudicated by the appellate authority, the Court noted that under Section 107 of the CGST Act, the appellate authority is empowered to decide on jurisdictional matters. Consequently, the petitioner was advised to pursue the statutory appeal process to resolve the jurisdictional dispute.

Important Rulings

Separate SCN to be issued for each financial year under CGST Act

[WRIT PETITION NO.16500 OF 2024 (T-RES) – Karnataka HC]

The petitioner received a SCN from the tax department. This notice, issued under Section 73 of the CGST Act, 2017, alleged tax liabilities for five financial years, from 2019-20 to 2023-24. Instead of issuing separate SCNs for each financial year, the department consolidated multiple periods into a single notice.

The petitioner contended that Section 73 of the CGST Act mandates separate assessments for each financial year. By consolidating multiple periods into one SCN, the department allegedly violated the three-year limitation period applicable to each individual year. Additionally, the petitioner referenced rulings from the Madras High Court and the Supreme Court to support the argument that each tax period should be treated independently.

The High Court agreed with the petitioner, determining that the consolidation of multiple financial periods into a single SCN contravened Section 73 of the CGST Act, 2017.Consequently, the court quashed both the consolidated SCN and the accompanying summary notice. However, the court permitted the tax authorities to issue separate SCNs for each financial year, ensuring compliance with the statutory requirements.

KCM Comments

This case establishes that under Section 73 of the CGST Act,2017 tax authorities must issue separate SCN for each financial year, adhering to the three-year limitation period. It reinforces the principle that each tax assessment must be treated independently, thereby protecting taxpayers' rights.

Contributed by

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Important Updates - MCA

Companies (Compromises, Arrangements and Amalgamations) Amendment Rules, 2024

Notification dated September 09, 2024

MCA amends Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 and inserts sub rule (5) to Rule 25A which states that in the case where a foreign holding company incorporated outside India ("transferor") and an Indian wholly owned subsidiary ("transferee") enter into a merger or amalgamation:

1. Both companies must obtain prior approval from the Reserve Bank of India ("RBI").
2. The Indian subsidiary must comply with Section 233 of the Companies Act, which covers mergers and amalgamations.
3. The Indian company needs to apply to the Central Government under Section 233 of the Companies Act, and the provisions in Rule 25 will apply to this application.
4. The declaration specified in sub-rule (4) needs to be provided when submitting an application under Section 233.

Rule 25A of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 (Merger Rules) had permitted companies incorporated overseas to merge with an Indian company by seeking prior approval of the Reserve Bank of India (RBI) and the National Company Law Tribunal (NCLT). The amendment by notification of Rule 25A(5) to the said Rules, now permits the merger or amalgamation of a foreign holding company into an Indian subsidiary through the fast-track merger scheme set out under Section 233 of the Companies Act, 2013. What this implies is that the merger of a foreign parent company with its Indian subsidiary will no longer require approval from the NCLT, which because of the backlog of cases was time consuming. This will also result in significant reduction of costs associated with the merger process.

Investor Education and Protection Fund Authority (Accounting, Audit, Transfer and Refund) Second Amendment Rules, 2024

Notification dated September 09, 2024

The Investor Education and Protection Fund Authority on September 09, 2024 has issued the Investor Education and Protection Fund Authority (Accounting, Audit, Transfer and Refund) Second Amendment Rules, 2024.

Schedule II -

1. The word **"shares"** has been replaced with **"securities"** throughout Schedule II of the rules.
2. In the "Explanation", for clause (2) of Item 2 and 4 of Part A and in the "Explanation", for clause (2) of Item 2 and 4 of Part B:
   - In cases where a copy of Will is submitted as may be applicable in terms of the Indian Succession Act, 1925, the same shall be accompanied with a notarised indemnity bond from the claimant to whom the securities are transmitted.
   - In cases where a copy of legal heir certificate issued by the revenue authority not below the rank of Tahsildar having jurisdiction is submitted, the same shall be accompanied with:

Important Updates - MCA

a) a notarised indemnity bond from the legal heir or claimant to whom the securities are transmitted; and

b) a no objection certificate from all legal heirs other than claimants, stating that they have relinquished their rights to the claim for transmission of securities, duly attested by a notary public or by a gazetted officer.

- The value of the securities as on the date of application shall be quantified by the applicant. The basis for quantification will be the closing price of such securities at any one of the recognised stock exchange a day prior to the date of such submission of the application for the listed securities and for unlisted securities, the value shall be quantified based on the face value or the maturity value of the security, whichever is more.

Schedule III -

1. The word "shares" has been replaced with "securities" throughout Schedule III of the Rules.
2. **The following explanations shall be inserted:**

a) *"A foreign national or non-resident Indian, in lieu of documents mentioned in item 1, shall be permitted to provide self-declaration of securities lost or misplaced or stolen which shall be duly notarised or apostilled or Consularised in their country of residence, along with self-attested copies of valid passport and overseas address proof.*

b) *The value of the securities as on the date of application shall be quantified by the applicant based on the closing price of such securities at any one of the recognised stock exchange a day prior to the date of such submission in the application, for listed securities and for unlisted securities, the value shall be quantified basis on the face value of the maturity value of the securities, whichever is more."*

Schedule IV -

1. The company shall take special contingency insurance policy from the insurance company towards the risk arising out of such claim in respect of verification report under sub-rule (3) of rule 7 or the revised verification report under the second proviso of sub-rule (7) of the said rule.

Applicability:

Date of publication in Official Gazette

Clarification on holding of AGM and EGM through Video Conference

General Circular No. 09/2024 dated September 19, 2024

MCA vide this circular has extended the due date of convening Annual General Meeting("AGM") and Extraordinary General Meeting ("EOGM") through Video Conferencing ("VC") or Other Audio Visual Means ("OAVM") up to September 30, 2025 from September, 30, 2024 for ease in convening general meetings.

However, it should be noted that this General Circular should not be construed as conferring any extension of statutory time for holding of AGMs by Companies under Companies Act, 2013.

Important Updates - RBI

Coverage

Interest Equalization Scheme (IES) on Pre and Post Shipment Rupee Export Credit

a. *RBI/2024-25/71 DOR.STR.REC.41/04.02.001/2024-25 dated August 29, 2024*

b. *RBI/2024-25/76 DOR.STR.REC.44/04.02.001/2024-25 dated September 20, 2024*

The Government had approved the Interest Equalization Scheme for Pre and Post Shipment Rupee Export Credit with effect from April 01, 2015 for a period of five (5) years. The Scheme was made available to 416 tariff lines [at ITC (HS) code of 4 digits] and exports made by MSMEs across all ITC(HS) codes at the rate of interest equalisation of 3% per annum on Pre Shipment Rupee Export Credit and Post Shipment Rupee Export Credit. The said Scheme was continued on the expiry of the five year period and extended during post COVID-19 to benefit the MSME sector as well as certain industries / sectors.

The extension of period up to August 31, 2024 was granted only to MSME manufacturer exporters but discontinued w.e.f. June 30, 2024 for non-MSME exporters vide the Circular dated August 29, 2024.

There was a further extension for the period up to September 30, 2024 for MSME manufacturer exporters, subject to an annual net subvention amount capped at INR 10 Cr. per Import Export Code (IEC) in a financial year.

Note: Ministry of Commerce and Industry vide Trade Notice No. 18/2024-25 dated September 30, 2024 has granted further extension of three months (i.e.) up to December 31, 2024. Notification to this effect from the Reserve Bank of India is awaited.

Effective date: Not Applicable

Scheme for Trading and Settlement of Sovereign Green Bonds in the International Financial Services Centre in India

RBI/2024-25/72 CO. FMRD. FMIA. No. S242/11-01-051/2024-2025 dated August 29, 2024

The Reserve Bank of India ("RBI") has introduced the 'Scheme for Trading and Settlement of Sovereign Green Bonds in the International Financial Services Centre (IFSC) in India' for the investments in Sovereign Green Bonds issued by the Government of India by eligible investors in the IFSC in India.

Eligible investors:

- Persons resident outside India as defined in Section 2(w) of the FEMA, 1999, that are eligible to invest in the IFSC as specified by IFSCA.
- IFSC Banking Units ("IBUs") of foreign banks that do not have a branch or subsidiary licensed to undertake banking business in India.
- Funds / schemes, including the ones setup by entities incorporated in India and regulated by IFSCA under the *IFSCA (Fund Management) Regulations, 2022.*

Eligible Securities:

- Investments in Sovereign Green Bonds designated as 'specified securities' under the Fully Accessible Route (FAR) will be governed by the Foreign Exchange Management (Debt Instruments) Regulations, 2019.

Important Updates - RBI

Coverage < >

- Sovereign Green Bonds other than those designated as 'specified securities' under the FAR will be considered under the investment limits prescribed for Foreign Portfolio Investors (FPI).

Investor Participation:

- Investors can participate in the primary auctions of securities conducted by the Reserve Bank by submitting competitive bids through the authorised clearing corporation(s). The bids will have to be submitted on the day of the auction during the time window notified.
- Investors can trade in the secondary market in the IFSC with other investors and with eligible IBUs. However, transactions between two eligible IBUs is not permitted.

Settlement Process:

- Transactions between two investors or between an investor and an eligible IBU will be settled as per the clearing arrangement approved by the IFSCA.
- Settlement of securities will take place in the books of the authorised depository with the fund leg of transactions to be settled in foreign currency.

Coupon Payment and Redemption:

Coupon payments and redemption proceeds in respect of the securities held in the Constituents' Subsidiary General Ledger ("CSGL") account of the authorised depository will be credited to the current account of the authorised depository maintained with the Reserve Bank on the due date which in turn shall credit the coupon and redemption proceeds to the accounts of the investors on the same day / for the same value date, after deduction of applicable taxes.

Taxation:

The applicable taxes will be as notified by the Government of India, from time to time for such investment and redemption in Sovereign Bonds.

Effective date: Immediate effect

Important Updates - SEBI

Review of eligibility criteria for entry/exit of stocks in derivatives segment

SEBI/HO/MRD/MRD-PoD-2/P/CIR/2024/116 dated August 30, 2024

SEBI has revised the eligibility criteria for entry and exit of stocks in the derivatives segment to ensure that only high-quality stocks with sufficient market depth are allowed to trade in such segments.

For entry:

For being eligible for entry into the derivatives segment, stocks have to meet certain size/volume/depth-based criteria based on their performance in the cash market for a continuous period of six months on a rolling basis. The following are the revised guidelines for eligibility into the derivatives segment:

Sr. No.	Criteria	Existing Criteria	Revised criteria	Rationale for change
1	The stock's Median Quarter Sigma Order Size (MQSOS) over the previous six months, on a rolling basis, shall not be less than:	INR 25 lakhs	INR 75 lakhs	As the average market turnover has increased over 3.5 times since the last review, MQSOS criteria would need to be adjusted on similar lines (i.e.) about 3-4 times.
2	The stock's market wide position limit (MWPL), over the period of previous six months, on a rolling basis shall not be less than:	INR 500 crores	INR 1,500 crores	Market capitalisation is now 2.8 times the last review, hence the adjustment factor of 3 times.
3	The stock's Average daily delivery value (ADDV) in the cash market, in the previous six months on a rolling basis, shall not be less than:	INR 10 crores	INR 35 crores	Average Daily Delivery Value has increased by over 3 times since the last review hence the increment is 3.5 times to factor the ADDV increase. [Note that upon expiry, unlike index derivatives that are cash settled, single stock derivatives are physically settled.]

Stocks which meet the eligibility criteria in the underlying cash market of any stock exchange would then be permitted to trade in equity derivatives segment of all stock exchanges.

Important Updates - SEBI

For Exit:

If a stock in the derivatives segment fails to meet any of the eligibility criteria for a continuous period of three months, on a rolling basis, based on the data for previous six months, then it shall exit from derivatives segment.

Applicability:

Effective from date of issuance of Notification

Allowing securities funded through cash collateral as maintenance margin for Margin Trading Facility (MTF)

SEBI/HO/MRD/MRD-PoD-2/P/CIR/2024/118 dated September 11, 2024

SEBI on the basis of representations from various market participants has decided to relax certain provisions so as to reduce the burden of investors by permitting securities funded through cash collateral to be considered as maintenance margin for Margin Trading Facility (MTF).

The relaxation provided to investors is subject to the following conditions:

- In case the funded stock is considered towards maintenance margin to the extent of cash collateral provided by the client, the Trading Members shall ensure that the funded stock considered is under Group 1 securities.
- The applicable margin shall be VaR + 5 times the Extreme Loss Margin, irrespective of whether the funded stock is available in F&O segment or not.

The reporting of exposure under Margin Trading Facility by the Trading Members has been modified accordingly to allow reporting on or before 6 PM on T+1 day.

Applicability

October 01, 2024

Optional mechanism for fee collection by SEBI registered Investment Advisers (IAs) and Research Analysts (RAs)

SEBI/HO/MIRSD/MIRSD-POD-1/P/CIR/2024/120 dated September 13, 2024

With the growing interest in the securities market, need was felt to create an eco-system so as to ensure that payment of fees was being made only to a registered IA/RA so as to avoid duping of investors by unscrupulous persons.

"Centralized Fee Collection Mechanism for Investment Advisors (IAs) and Research Analysts (RAs)" has been co-created by Bombay Stock Exchange ("BSE") to facilitate collection of fees by registered IAs and RAs from their clients. Under this mechanism, clients have to pay fees to IAs/RAs, through a designated platform/portal administered by recognized Administration and Supervisory Body ("ASB").

This mechanism is optional, ASB had operationalized in the interest of investors for transparency and ease of convenience.

Applicability

Operational from October 1, 2024

Reporting by Foreign Venture Capital Investors (FVCIs)

SEBI/HO/AFD/AFD-PoD-3/P/CIR/2024/121 dated September 13, 2024

As per the SEBI (FVCI) Regulations, 2000, FVCIs are required to submit quarterly reports to SEBI in the specified format of their venture capital activity as Foreign Venture Capital Investor.

Important Updates - SEBI

SEBI has not only introduced a new reporting format but also mandated the FVCIs to submit quarterly reports, irrespective of whether any investment was made or not during the reporting quarter.

The report for the quarter ending September 30, 2024 and December 31, 2024 will have to be submitted in excel file and from the quarter ending March 31, 2025, FVCIs will have to submit the quarterly report in the revised format on the SEBI intermediary portal ("SI Portal").

Timeline for submission of quarterly report:

Within 15 calendar days from the end of each quarter.

Enabling T+2 trading of Bonus shares where T is the record date

CIR/CFD/PoD/2024/122 dated September 16, 2024

SEBI has decided to reduce the time taken for credit of bonus shares and trading of such shares, from the record date of the Bonus Issue under SEBI (ICDR) Regulations, 2018.

Implementation procedure is as follows:

- Issuer has to apply for in-principle approval for the bonus issue under Regulation 28(1) of SEBI (LODR), within 5 working days of the Board approving the Bonus issue.
- Issuer must notify the stock exchange of the record date (T Day) and the deemed date of allotment (T+1 day).
- On acceptance of the record date and requisite documents, Stock exchange will issue a notification about the number of shares in the bonus issue, including the deemed date of allotment (T+1).
- On issuance of notification by the Stock Exchange for acceptance of record date, the Issuer will ensure the required documents are submitted to depositories for crediting the bonus shares latest by 12 PM on the T+1 day (i.e.) next working day of the record date.
- The issuer has to upload the Distinctive Numbers [DN] ranges before the shares are credited.
- The newly allotted bonus shares will be available for trading on the T+2 day.
- Bonus shares will be directly credited to the existing ISIN without using a temporary ISIN.

Applicability

This new process is mandatory for all bonus issues announced on or after October 1, 2024.

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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
DRP	Dispute Resolution Panel
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