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K C Mehta & Co LLP
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kcmInsight

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.

Coverage

Detailed Analysis

Abbreviations

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Coverage | Detailed Analysis

Coverage | Detailed Analysis

International Tax

Important Updates

Foreign Updates

- French Finance Committee adopts bill introducing citizenship-based taxation
- China removes restrictions on foreign investment in manufacturing sector
- US released final rules for advanced manufacturing production credit

Transfer Pricing

Important Updates

- Revisionary powers not exercisable by Transfer Pricing Officer prior to April 01, 2022
- Captive entity necessitates risk adjustment in relation to the comparable companies operating under uncontrolled environment

Indirect Tax

Important Updates

GST Portal Updates and Advisory

- Locking of auto-populated liability in GSTR-3B
- Advisory for GSTR-9/9C

Notifications

- Tax under the RCM is payable by a registered person for the purchase of metal scrap from an unregistered person
- Tax under the RCM is payable by a registered person for the service of renting of any immovable property other than a residential dwelling from an unregistered person.
- Various amendments to CGST Rules,2017
- Due date for payment to qualify for waiver of interest and penalty pertaining to tax liability as stipulated in the notice or order
- Special procedure for rectification of orders under the CGST Act, 2017 for the order passed for disallowance of ITC under Section 16(4) of CGST Act, 2017

Indirect Tax

Important Updates

Notifications

- Waiver of Late Fees for GSTR-7
- Registration requirements for suppliers of Metal Scrap
- Recipients of Metal Scrap are required to deduct the GST TDS

Circulars

- Clarifications regarding the applicability of GST on certain services
- Clarification regarding GST rates & Classification of various good.
- Clarification regarding the scope of "as is / as is, where is basis" mentioned in the GST
- Clarifying the issues regarding the implementation of provisions of sub-sections (5) and sub-sections (6) in section 16 of CGST Act, 2017.
- Clarification of various doubts related to Section 128A of the CGST Act, 2017.

Coverage | Detailed Analysis

Corporate Laws

MCA Notifications

- Companies (Accounts) Amendment Rules, 2024
- Investor Education and Protection Fund Authority (Form of Annual Statement of Accounts) Amendment Rules, 2024
- Companies (Adjudication of Penalties) Second Amendment Rules, 2024

RBI Notifications

- Gold loans - Irregular practices observed in grant of loans against pledge of gold ornaments and jewellery
- Due diligence in relation to non-resident guarantees availed by persons resident in India
- Interest Equalization Scheme (IES) on Pre and Post Shipment Rupee Export Credit
- Implementation of Credit Information Reporting Mechanism subsequent to cancellation of licence or Certificate of Registration

RBI Notifications

- Facilitating accessibility to digital payment systems for Persons with Disabilities – Guidelines
- Directions - Compounding of Contraventions under FEMA, 1999

SEBI Notifications

- Usage of UPI by individual investors for making an application in public issue of securities through intermediaries
- Reduction in the timeline for listing of debt securities and Non-convertible Redeemable Preference Shares to T+3 working days from existing T + 6 working days
- Operational Guidelines for Foreign Venture Capital Investors (FVCIs) and Designated Depository Participants (DDPs)
- Measures to Strengthen Equity Index Derivatives Framework for Increased Investor Protection and Market Stability

SEBI Notifications

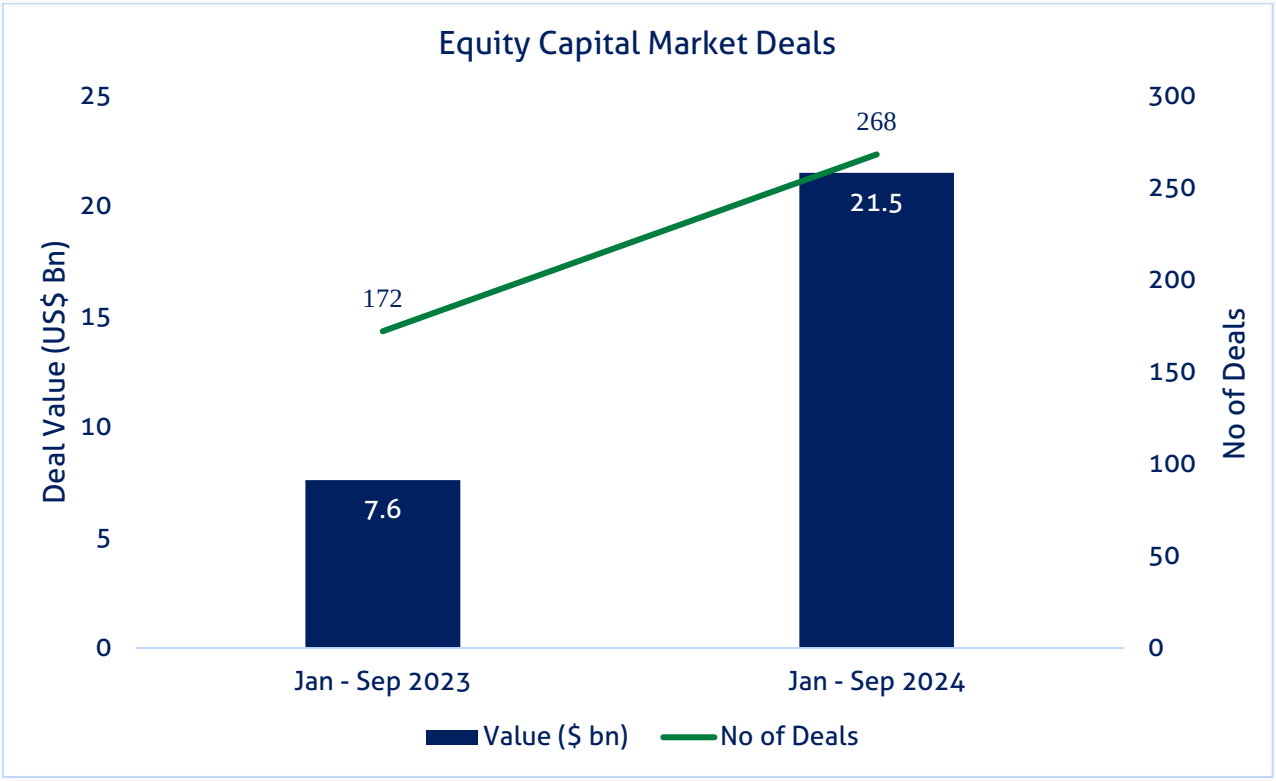
- Relaxation from compliance with certain provisions of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015
- Specific due diligence of investors and investments of AIFs
- Change in timing for securities payout in the Activity schedule for T+1 Rolling Settlement
- Monitoring of position limits for equity derivative segment
- Introduction of Liquidity Window facility for investors in debt securities through Stock Exchange mechanism
- Inclusion of Mutual Fund units in the SEBI (Prohibition of Insider Trading) Regulations, 2015

Surge in Equity Capital Market Transactions

Coverage

Introduction

Equity capital markets in India have of late witnessed a significant resurgence in popularity of Initial Public Offerings (IPOs), with businesses across various sectors choosing to go public. This movement is influenced by the robust returns on investment that IPOs have recently provided coupled with the enhanced visibility and credibility gained by the companies going public. The following chart shows the surge in equity capital market deals in the first nine months of 2024 as compared to the same period last year.



Source: VCCEdge; Note: Equity Capital Market deals include IPOs, QIPs and Rights Issues

Deal volume witnessed a growth of over 50% in the current year, while deal values grew by almost 2 times as compared to the last year. The average deal size almost doubled in the current year owing to increase in valuations coupled with some larger deals in IPOs as well as Qualified Institutional Placements (QIPs).

Surge in Equity Capital Market Transactions

Understanding Primary and Secondary Markets

Equity capital markets refer to a broad network of financial institutions, intermediaries and financial markets that together assist companies in raising capital or going public. Equity capital is raised by issuing shares in the company, either publicly or privately, and can be used to fund expansion of the business or its working capital requirements. Equity capital markets can be further segregated as primary and secondary markets.

Primary market is where new securities are created by the company upon fresh issuance generally to public shareholders including foreign investors, domestic financial institutions, mutual funds, accredited non-institutional investors and general public at large. Companies in the private sector, public/government sector and multinational corporations can obtain funding through issuance and sale of securities via IPOs.

Secondary market facilitates trading of securities and provides liquidity to the securities that are listed on stock exchanges in the primary market. Stock exchanges act as a platform for buying and selling securities among the investors, and while these transactions are performed, the price of the underlying securities is determined by demand and supply dynamics of the investors on the stock exchanges.

Conventional Valuation Methods

Valuing public companies including for an IPO or a QIP is a complex process; however, the fundamental methods of valuation largely followed are:

- **Discounted Cash Flow:** This method involves estimating the company's future cash flows over an explicit forecast period and a terminal value. The cash flows are then discounted to its present value using a discount rate which is generally the weighted average cost of capital of the company.
- **Comparable Multiples:** This method involves comparing the company with similar companies in the industry that are already publicly traded. Metrics such as price-to-earnings ratio, price-to-sales ratio, price-to-book value ratio, enterprise value to EBITDA ratio are generally used to benchmark valuation of the target company. Comparable multiples are adjusted to give effect to the company specific and market specific factors.
- **Precedent Transactions:** Similar to the public market comparable multiples, this method involves analysing the valuation multiples of similar companies in recent private market transactions (i.e., private equity, venture capital, strategic M&A, joint ventures, etc.). Illiquidity discount is generally applied to private market multiples to make it comparable to public market multiples.

Surge in Equity Capital Market Transactions

Coverage

Understanding Value Drivers of Swiggy vs Zomato

In July 2021, Zomato made its public market debut with an initial market capitalization of nearly $13 billion (₹1,07,250 crore). Presently, Zomato's market capitalisation is well above $25 billion (₹2 lakh crore), showcasing significant growth and investor confidence. As Swiggy is now headed for its IPO with a target valuation between $10 billion and $12 billion, let us take a look at various financial and operational metrics to understand how Swiggy measures up against Zomato in performance. Note that these valuation metrics are quite unlike the conventional valuation methods summarized above.

Description	Swiggy	Zomato
Revenue	In FY24, Swiggy's revenue grew 36% to ₹11,634 crores	A growth of 68% in revenue in FY24 to ₹12,961 crores
Food delivery margins	Adjusted EBITDA margin improved historically and was -0.2% in FY24	Adjusted EBITDA margin improved from -18% in FY21 to 2.8% in FY24
Market share in food delivery	Swiggy holds 34% market share, it has lost some share due to intense competition from Zomato	Zomato continues to lead the market with 58% market share as of FY24
Market share in quick commerce	Swiggy Instamart lags at 20-25% market share, according to UBS research report of Aug'24	Zomato's Blinkit leads quick commerce market with 40-45% share
Gross order value	Reduced losses by 43% and achieved 26% year on year growth in gross order value for its quick commerce business	Gross order value increased by 93% year on year for its quick commerce business
Diversified model	Integrating services like food delivery, quick commerce, meat delivery and grocery under one platform which allows to cross sell services	Blinkit as a standalone quick commerce app helps concentrate innovation in this space
B2B platform	No such B2B platform	Zomato has a B2B platform which is a farm to fork model

Surge in Equity Capital Market Transactions

Both the aforesaid peers have made significant strides in reducing their losses, demonstrating commitment to improving financial health and moving towards profitability. Their innovative use of technology such as AI and data analytics enhances customer experience and optimises delivery operations, in order to maintain their relative competitive edge over the other.

Conclusion

IPOs are becoming an increasingly vital part of the equity capital markets, offering businesses a means to raise capital while providing investors with opportunities to invest and/or exit after understanding the market and valuation dynamics. While conventional valuation models are being challenged by new age companies going public, the diversity of public offerings is helping enrich the investment landscape. As 2024 comes to an end, the trend of companies going public has only accelerated reflecting broader economic confidence and the ongoing evolution of financial markets.

Sources: VCCEdge, Kotak Securities, Economic Times, Zomato Annual Report 2024

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

Important Rulings

No recovery actions until the appeal in question is disposed

Om Vision Infraspace Private Limited [SPANO. 6953 of 2020 / 2692 of 2024 / 6725 of 2024 / 16617 of 2023 / 14309 of 2024 - Order dated 15 October 2024 (Gujarat HC)]

In this case before the Gujarat High Court, multiple petitions were filed regarding the extensive delay in the disposal of appeals pending with CIT(A), alongside continued recovery actions for outstanding demands by the Income Tax Department. Petitioners highlighted that their appeals had been pending for over four years without being addressed, while recovery proceedings continued, creating undue hardship.

On 17 September 2024, the High Court issued an interim order, directing the Income Tax Department to submit an affidavit detailing:

(i) Pendency of appeals before CIT(A)

(ii) Average life of the appeal

(iii) Allocation of appeals to CIT(A)

(iv) Remedial measures for inordinate delay

In response, the Income Tax Department submitted an affidavit stating that, as of 26 September 2024, approximately 5,80,188 appeals were pending before CIT(A). The affidavit noted that each Faceless CIT(A) handled around 1,400 cases, while Non-faceless CIT(A) managed around 1,252 cases on average. However, the Department did not provide specific details regarding the average life of pending appeals or propose substantive remedial measures for addressing the backlog.

The Gujarat High Court observed that the Tax Department appeared more focused on justifying its existing practices than on effectively resolving the backlog of cases. In light of these findings, the High Court ruled that no recovery of outstanding dues should be enforced against the assessees while their appeals are pending. This interim relief prevents the Income Tax Department from taking recovery actions until the appeals in question are resolved, offering relief to taxpayers facing delays in their appeals.

If income is offered to tax, TDS credit cannot be denied on procedural ground

Testec Asia Limited [ITA No. 44 of 2024 – Order dated 30 September 2024(Ahmedabad ITAT)]

The Assessee is a foreign company and a non-resident in India. It is a beneficial owner of American Depository Receipts (ADRs) of Vedanta Limited. The ADRs were held through a broker. The said ADRs were subsequently redeemed, and tax was withheld at 43.68% on the gross proceeds as the Assessee did not have a PAN in India at that time. Accordingly, the said TDS credit didn't reflect in Form 26AS of the Assessee.

The Assessee subsequently obtained a PAN and filed the tax return in India declaring capital gains income from the redemption of ADRs and claiming credit of taxes withheld. Simultaneously, the Assessee also made formal correspondence with the broker and the DP for the TDS credit in its name, being the real and end beneficial owner of the ADRs.

The return was processed under section 143(1) of the ITA without granting TDS credit. Aggrieved by the same, the Assessee filed an

appeal before the CIT(A). The CIT(A) decided against the Assessee, stating that procedural requirements provided in Rule 37BA were not undertaken.

Aggrieved by the order of CIT(A), the Assessee preferred an appeal before ITAT, Ahmedabad. The ITAT, Ahmedabad noted that the Assessee is the rightful owner of the income from ADRs, and it has declared the said income in its tax return. The taxpayer had acted in good faith and made all reasonable efforts to rectify the situation. Hence, it should not suffer due to procedural lapses caused by third parties. ITAT held that offering income to tax should take precedence over procedural errors for entitlement of TDS credit. Furthermore, section 205 protects the taxpayer from being asked to pay tax again if tax has already been deducted. In light of the same, ITAT held that denial of TDS credit solely based on procedural grounds was not justified and that the Assessee was entitled to the TDS credit as claimed.

Assets imported free of cost for testing purpose not taxable as benefit or perquisite u/s 28(iv)

Samsung R&D Institute India- Bangalore Pvt. Ltd [IT(TP)A No. 625/Bang/2020 & IT(TP)A No. 641/Bang/2020 – Order dated 22 October 2024 (Bangalore ITAT)]

Taxpayer, a wholly-owned subsidiary of Samsung Electronics Company Ltd., Korea (SECL), provided software development services to SECL and its other subsidiaries (AEs) on a cost-plus-mark-up basis. Two disallowances were made by the AO, aside from the TP adjustments: (i) disallowance of depreciation on computer software under section 40(a)(i) of the ITA due to the non-deduction of TDS on payments for software purchases, and (ii) an addition under section 28(iv) on account of equipment received free of cost from the AEs for software development and testing.

ITAT relied on the judgment of the Karnataka High Court in PCIT vs. Tally Solutions Pvt. Ltd. [2021] 123 taxmann.com 21 (Karnataka), as well as its earlier ruling in the taxpayer's own case, to conclude that section 40(a)(i) applied for disallowance only in respect of expenditure and not allowance. Depreciation being a statutory deduction would be an allowance, rather than expenditure, loss, or trading liability. ITAT ruled that disallowance under section 40(a)(i) could not be applied on depreciation based on non-deduction of TDS.

With regard to the addition under section 28(iv), the taxpayer contended that the equipment received free of cost was imported solely for real-time testing and calibration of software in relation to the actual hardware. The equipment was essential for assessing the compatibility of software modules with the existing hardware and did not confer any benefit to the taxpayer. Furthermore, the taxpayer argued that the equipment was either returned or destroyed after testing and could not be used for any purpose other than software testing for AEs.

The ITAT accepted the taxpayer's arguments, holding that for a benefit to be taxable under section 28(iv), it must be irretrievable and received with the intent to circumvent taxable

income. In this instance, the equipment was not provided to the taxpayer on a permanent basis and did not confer any lasting benefit, as it was either returned or destroyed and could not be used for any other benefit. The Tribunal further noted that if there was a correlation between the price charged by the taxpayer for its services and the receipt of free-of-cost assets, such an adjustment should be addressed through Transfer Pricing mechanisms rather than under section 28(iv).

This ITAT ruling sets an important precedent regarding the interpretation of "benefit" or "perquisite" for a taxpayer, highlighting that the benefit must be "irretrievable" to be taxable under section 28(iv). The decision is particularly favourable for captive service providers, as it clarifies that assets received temporarily for testing or limited use do not constitute taxable benefits under this section.

Fresh claim of deduction u/s 80IA in a return filed u/s 153A pursuant to a search is not allowable in completed assessments

SEW Infrastructure Limited [ITA Nos.1717 to 1720 & 1722/Hyd/2017 – Order dated 7 October 2024 (Special Bench Hyderabad ITAT)]

A taxpayer engaged in the business of infrastructure development claimed a deduction u/s 80IA of the ITA for the first time in a return filed in response to a notice issued u/s 153A of the ITA following a search conducted on the taxpayer. The Revenue disallowed the claim on the basis that the deduction had not been claimed in the original return of income filed under Section 139 of the ITA. The Revenue argued that search proceedings are meant to bring undisclosed or escaped income to tax and are intended for the benefit of the Revenue. Therefore, the taxpayer should not be allowed to benefit by making fresh claims in the return filed in response to the search. Additionally, the Revenue argued that sections 80A(5) and 80AC require taxpayers to claim deductions u/s 80IA in a return of income filed on or before the due date provided under Section 139(1) of the ITA. They contended that beneficial provisions of the law should be interpreted strictly.

The taxpayer, however, argued that a return filed u/s 153A should be considered as a return filed under Section 139 of the ITA, as per the language of Section 153A. Thus, any fresh claims made should be allowed. The taxpayer further argued that there was no explicit prohibition on claiming such a deduction in a return filed u/s 153A and that the ITR form also provides a separate schedule for claiming deductions u/s 80IA. Additionally, since the search provisions enable the AO to reassess the taxpayer's 'total income,' the taxpayer argued that all permissible deductions should be allowed.

The Special Bench of the ITAT observed that in cases of unabated or concluded assessments (assessments not pending at the time of the search), the AO has the authority to reassess the total income. However, this power should be

limited to income based on incriminating material found during the search. In other words, if no incriminating material was found, the completed assessment should not be disturbed, and no fresh claim should be allowed. The ITAT also noted that even if a return filed u/s 153A partook the character of a return filed u/s 139, a deduction not claimed in the original return cannot be claimed in the return filed u/s 153A, as this would contradict the framework of regular and search assessments.

Furthermore, the ITAT held that the presence of a separate schedule in the ITR form for section 153A returns does not imply that fresh claims can be made under Section 153A. The underlying purpose of assessing the 'total income' under Section 153A is to capture income that was undisclosed or would not have been disclosed otherwise. A combined reading of Sections 80A(5) and 80AC clarified that to claim a deduction under Section 80IA(4), the taxpayer must file a return under Section 139(1) and claim the deduction in the return filed for the relevant assessment year. However, in cases of abated assessments (where original assessments are still pending), the ITAT held that the taxpayer is permitted to make a fresh claim for the first time in the return filed in response to a notice u/s 153A, following a search u/s 132 of the ITA.

ITAT Special Bench Ruling on Applicability of Concessional Long-Term Capital Gains Rate for Depreciable Assets under Section 50

SKF India Limited [ITA No.7544/Mum/2011– Order dated 3 October 2024 (Special Bench Mumbai ITAT)]

In the present case, the taxpayer sold depreciable assets held for over 36 months and reported the resulting capital gains as short-term capital gain u/s 50 of the ITA. However, the taxpayer applied a concessional tax rate of 20% u/s 112, applicable to long-term capital gains, arguing that the deeming fiction in section 50 only affects the computation method and not the fundamental classification of the asset as long-term. The taxpayer relied on the decision of Bombay High Court in the case of CIT vs Ace Builders Pvt. Ltd. [2005] 144 taxman 855, which held that the deeming fiction of section 50 do no convert a long-term capital asset into a short-term capital asset.

The Revenue, however, argued that Section 50 should be interpreted to treat such gains as short-term for both computation and tax rate purposes. They maintained that the deeming fiction should extend to all aspects of the transaction, including the tax rate. The matter was brought before the ITAT Special Bench to resolve the issue.

By a 2-1 majority, the ITAT Special Bench ruled in favor of the taxpayer, concluding that the deeming provision in section 50 is confined to the computation of gains and does not alter the asset's classification as a long-term capital asset. Thus, the gain should be taxed at the 20% concessional rate u/s 112. The decision was based on judicial precedents, including the decision of Bombay High Court in Ace Builders Pvt. Ltd. (supra) which in turn has been approved by Supreme Court in CIT vs. Dempo Company Ltd reported in (2016) 74 Taxmann.com 15, which clarified that deeming fiction of section 50 is limited to computation and does not affect the tax rate.

However, in the dissenting opinion, the Accountant Member disagreed with the majority

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view, holding that deeming fiction of section 50 should apply not only to the computation of capital gains but also to the tax rate. According to the Accountant Member, treating the gain as short-term solely for computation but then applying the long-term tax rate would undermine the legislative intent behind Section 50, which is to prevent depreciable assets from receiving favorable long-term tax treatment, on which benefit of the depreciation has already been availed by the assessee. The Accountant Member argued that if the taxpayer's interpretation were accepted, Section 50 would become ineffective, as depreciable assets held for over 36 months could always qualify for the concessional rate, negating Section 50's purpose of treating such gains as short-term. Thus, the dissent held that both the computation and the tax rate should align with the short-term classification, applying the higher short-term tax rate instead of the concessional long-term rate.

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Indian Rulings

Residency Tie breaks in favour of India under India-US DTAA

Ashok Kumar Pandey [ITA No. 3986/MUM/2023 - Order dated 3 October 2024 (Mumbai ITAT)]

The taxpayer was a resident of both India and the USA, requiring the application of the tie-breaker test under the India-US DTAA to determine his residential status. This status depended on the center of his vital interests, evaluated based on his personal and economic relations. The taxpayer argued that, with permanent homes in both countries, his center of vital interest lay in the USA. He supported this by noting that he held a US passport, was a US national, and had family members who were also US nationals holding US passports. Additionally, he and his family were Overseas Citizens of India (OCI). He highlighted his significant investments in the USA, his assets, and income, reinforcing his claim that his center of vital interest was in the USA.

On the other hand, the Revenue contended that the taxpayer's center of vital interest was in India. They highlighted that he had spent more than 183 days in India, resided in Mumbai with his wife and two children, and, together with his wife, held 100% of the shares in an Indian company, where he served as Managing Director. The Revenue also noted that although the taxpayer earned passive income in the US, such as dividends, capital gains, and rental income, his active business involvement was centered in India. His income from the US was largely passive, requiring no active involvement, unlike his business activities in India.

The Hon'ble ITAT ruled that, in determining personal connections, the nucleus family was more relevant than the extended family. For economic relations, more weight was given to active involvement in commercial activities rather than passive investments. The taxpayer had returned to India to manage the film distribution company he and his wife had established in 2009, where he played an active role and held substantial financial involvement. He also participated in board meetings and maintained bank accounts in India. In contrast, his economic activities in the US were passive. Thus, the ITAT concluded that the taxpayer's personal and economic interests were more closely aligned with India.

The tie-breaker test is a highly fact-specific analysis, requiring a comprehensive examination of an individual's personal and economic ties to each country. Active participation in commercial or economic ventures reflects a deeper commitment to a country, aligning personal and economic interests more closely with that nation. Passive income often does not require the same level of engagement and, therefore, may carry less weight in determining residency for tax purposes. Thus, the judiciary tends to look beyond mere numerical comparisons of income or wealth in each country. They focus on the qualitative aspects of the taxpayer's economic and personal engagements. Each case under the tie-breaker rule must be assessed individually, requiring a detailed factual analysis that balances various factors, such as personal ties, business involvement, and the overall location of economic interests.

Important Rulings

Technical inspection service & scanning offshore pipeline does not satisfy make available test

Transkor Global Pte Ltd [ITA Nos. 969 & 1614/Del/2023 - Order dated 3 October 2024 (Delhi ITAT)]

Taxpayer was a tax resident of Singapore engaged in the business of providing technical non-invasive inspection and integrity assessment/scanning of offshore pipelines under the sea or surface through Magnetic Tomography Method (MTM) technology. This technology was used for inspection and integrity assessment of Oil and Gas pipelines. The taxpayer did not have a PE in India; hence business income was not liable to tax in India. The taxpayer further contended that, under the India-Singapore DTAA, the services rendered did not "make available" any technical knowledge, experience, skills, know-how, or processes enabling the recipient to apply the technology embedded in those services. Consequently, the amounts received should not have been classified as FTS under the India-Singapore DTAA. Additionally, the taxpayer had obtained a lower withholding certificate, directing that tax be withheld at a rate of 4% on the payments received from Indian entities further fortifying its arguments.

Revenue treated the receipts as 'other income' as per Article 23 of India – Singapore DTAA chargeable to tax at rate of 40% plus surcharge and cess. Revenue also argued before the Tribunal that the taxpayer had entered in treaty shopping arrangements and hence section 90(1)(b) of the ITA to apply.

The Hon'ble Delhi Tribunal dismissed the Revenue's reliance on section 90(1)(b), noting that this argument had been raised for the first time and that section 90(1)(b) was only applicable from AY 2021-22, not the relevant assessment year. The Tribunal upheld the lower authorities' conclusion that the services were technical in nature and fell within the scope of FTS. However, since the services did not meet the "make available" test, they were not taxable as FTS under the India-Singapore DTAA. The services, being technical, were covered under Article 12 of the DTAA, and Article 23 had no application in this case. Moreover, since the receipts were not taxable as FTS under Article 12, they fell under Article 7 of the DTAA, qualifying as business income. In the absence of a permanent establishment (PE) in India, such business income could not be taxed in India.

The Delhi ITAT reaffirmed that Article 23 cannot be invoked when income falls under another article but is not taxable due to failure to meet the prescribed conditions. In such instances, if the income pertains to the taxpayer's business, Article 7, rather than Article 23, would apply.

Guarantee charges does not amount to interest under DTAA – SC dismisses SLP

Johnson Matthey Public Limited Company [SLP No. 21190/2024 - Order dated 4 October 2024 (Supreme Court)]

Delhi HC had in a recent judgement held that guarantee charges for loan extended to Indian subsidiaries shall be considered as income accrued in India since the obligation to pay the guarantee charges was incurred in India and was in respect of services utilized in India. It further held that the guarantee charges shall not be considered as 'interest' under Article 12 of India-UK DTAA on the grounds that payment or re-payment pursuant to any loan to be qualified as "interest" had to be within the context of loan and should relate to the parties to the privity of contract. The taxpayer (guarantor) was not a

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party to the loan transactions, and the contract of guarantee was separate from the loan contract.

The taxpayer approached the Supreme Court, which subsequently dismissed the special leave petition. With this dismissal, the High Court's judgment has attained finality. However, it is important to note that the High Court did not address whether the guarantee charges should be classified as 'business income' or 'other income.' Consequently, while the guarantee charges were deemed to have been accrued in India, the classification of such income remains unresolved. If these charges are treated as 'business income' in cases involving countries with which India has signed a DTAA, there is potential for the argument that the charges may not be taxable in India in the absence of a permanent establishment. It remains to be seen how the judiciary will interpret this issue.

FTC allowable for tax paid on professional legal fees: Article 12 vs Article 14

Amarchand Mangaldas & Suresh A Shroff & Co. [ITA No.852/M/2024 - Order dated 30 September 2024 (Mumbai ITAT)]

Taxpayer, a partnership firm established under the Indian Partnership Act was engaged in providing legal services. The firm received professional legal fees from clients in Japan, Malaysia, Brazil, China, and Nepal, from which taxes were withheld. The taxpayer claimed FTC in India for these withheld taxes. However, the tax authorities denied the FTC for taxes paid in Japan. They argued that Article 14 of the India-Japan DTAA, which pertains to Independent Personal Services (IPS), was applicable in this case. Since the taxpayer did not maintain a fixed base in Japan for more than 183 days—a requirement for taxability under Article 14—no tax should have been deducted in Japan, leading to the denial of FTC in India.

The taxpayer contended that the Japanese tax authorities classified the payments for professional legal fees as "fees for technical services" under Article 12 of the India-Japan DTAA, which subjected them to a 10% withholding tax. The Japanese tax authorities held that Article 14 applied solely to professionals operating in an independent capacity, such as individual lawyers, and not to corporate law firms.

The ITAT, referring to a prior decision by a co-ordinate bench, ruled that FTC should indeed be available to the taxpayer. It recognized that professional services could be taxed under both Article 14 and Article 12 of the treaty, highlighting the overlap between these provisions. Article 12(4) of the India-Japan DTAA excludes payments made to 'individuals' for IPS under Article 14 from being categorized as "fees for technical services." However, the language of Article 14 does not limit its applicability to individuals alone. A harmonious reading of both provisions suggests that Article 14 applies specifically to individuals, particularly given the exclusion clause under Article 12(4), which pertains only to payments made to individuals. The ITAT determined that when the source jurisdiction had reasonably concluded that taxes should be withheld, which was not manifestly erroneous, FTC should be granted by the resident jurisdiction even if the legal interpretation in the residence jurisdiction differed. Consequently, the ITAT ruled that India should provide FTC for the taxes withheld in Japan.

This judgment sheds light on the interpretation of treaty provisions, particularly in instances of

overlap between different articles. It holds that one article should not be considered in isolation; rather, the treaty should be interpreted as a cohesive whole. It is worthwhile to note that FTC has not been held allowable in cases where tax was not deductible as per the treaty but was nonetheless withheld in the source state. The ITAT allowed FTC in this instance only because a reasonable interpretation of the provisions of the treaty held that professional legal fees derived by a partnership firm would be taxed under Article 12 since the exclusion applied to individuals only.

Hence, in cases where tax in the source jurisdiction has not been withheld in accordance with the terms of the treaty, claiming FTC may not be possible under the ITA. This is highlighted by a recent judgment from the UK Court of Appeals, which denied FTC for US taxes paid because the taxpayer was not liable to pay tax in the US as per the treaty. Readers may refer to our September month insight discussing the case of *GE Financial Investments*. Thus, it is crucial to understand the various interpretations of tax treaties and ensure that tax withholding in the source country aligns with reasonable interpretations of treaty provisions for claiming FTC in resident country.

Foreign Rulings

Finnish Supreme Court allows FTC for inheritance tax paid in Canada despite different tax base

[ECLI:EN:KHO:2022:104 - Order dated 2 September 2022 (Finland Supreme Administrative Court)]

B passed away on November 20, 2016, leaving behind two properties in Canada. His estate filed a tax return in Canada, reporting capital gains and paying capital gains tax in Canada. The Finnish Tax Administration, in its inheritance tax assessment, included the Canadian properties in B's estate and allowed the Canadian tax paid as a deduction under Finland's Inheritance and Gift Tax Act. However, A, one of B's heirs, appealed, arguing that the Canadian tax should be credited against inheritance tax in Finland.

The Board of Adjustment denied A's claim, concluding that Canadian tax on capital gains differed from Finnish inheritance tax, as it was not based on the value of the entire estate but rather on the increase in the property's value. The Administrative Court, however, overturned this decision, holding that although the tax systems were different, the taxes were imposed on the same property. It ruled that the income tax paid to Canada could be deducted from inheritance tax in Finland, considering the objective of preventing double taxation.

The Supreme Administrative Court upheld the Administrative Court's decision, agreeing that section 4(2) of Finland's Inheritance and Gift Tax Act did not require the foreign tax to be determined on exactly the same basis as Finnish inheritance tax. Since the Canadian tax related to the same property and was imposed due to B's death, it could be offset against the Finnish inheritance tax. However, the offset could not exceed the proportional amount of inheritance tax levied in Finland based on the value of the Canadian property.

In the said judgement though the DTAA between Canada and Finland did not provide for offsetting of Canadian tax from Finland inheritance tax, however, the Inheritance and Gift tax Act of Finland had provisions to eliminate international double taxation. The Supreme Court rightly provided the requisite relief to the legal heirs of the deceased by considering the objective of preventing double taxation.

Important Updates

Foreign Updates

Ireland introduces Participation Exemption for Foreign Dividends

A new Participation Exemption for Foreign Dividends has been introduced in Ireland Budget 2025. The Participation Exemption will be available for relevant distributions received on or after 1 January 2025 from subsidiaries in EU/EEA and tax treaty partner source jurisdictions. A participation exemption would exempt qualifying foreign dividend income from Irish corporation tax in the hands of the recipient

Parent must hold 5% of the ordinary share capital of the relevant subsidiary or be beneficially entitled to not less than 5% of the profits available for distribution to equity holders or beneficially entitled on a winding up. The parent must satisfy the holding requirement for an uninterrupted period of at least 12 months. The parent company must be resident in Ireland or in an EEA jurisdiction.

Malaysia introduces capital gains tax exemption on sale of unlisted shares pursuant to IPO or group restructuring

Malaysia has issued the Income Tax (Restructuring of Companies Scheme) (Exemption) Order 2024 and the Income Tax (Initial Public Offering) (Exemption) Order 2024.

Income Tax (Restructuring of Companies Scheme) (Exemption) Order 2024 – dated 3 October 2024

The Order has been made effective from 1 March 2024 to 31 December 2028. By virtue of this order, exemption is granted to a company, LLP, trust body or co-operative society from the payment of capital gains tax on the disposal of shares of a company incorporated in Malaysia which is not listed on the stock exchange to an acquirer company, a company resident in Malaysia. Conditions of exemption are as follows:

- Disposal of shares shall be made within the period from 1 March 2024 to 31 December 2028
- Shares shall be disposed of under a scheme for restructuring of companies in the same group to increase efficiency
- The consideration for the disposal of shares shall consist of shares in the acquirer company or not less than 75% of shares in the acquirer company and the balance of a money payment.

Any loss incurred on the disposal of shares as per above, shall be disregarded. If the acquirer company subsequently disposes of the shares referred above, the acquisition amount shall be equal to the price paid for the shares by the disposer (i.e., price paid by previous owner).

This order is not applicable to the disposal of shares of an unlisted company incorporated in Malaysia where gains or profits from the disposal of shares are chargeable to tax as business income.

Income Tax (Initial Public Offering) (Exemption) Order 2024 - dated 19 September 2024

The Order has been made effective from 1 March 2024 to 31 December 2028. By virtue of this order, exemption is granted to a company, LLP, trust body or co-operative society from the payment of capital gains tax on the disposal of shares of a company incorporated in Malaysia which is not listed on the stock exchange. Conditions of exemption are as follows:

Important Updates

- Disposal of shares shall be made within the period from 1 March 2024 to 31 December 2028
- Shares shall be disposed of in relation to restructuring of any company for an initial public offering (IPO).
- The company, LLP, trust body or co-operative society shall apply for the IPO under the Capital Market and Services Act 2007 within a period of one year from the date of the disposal of shares and shall obtain approval for application for IPO on or before 31 December 2028.

Any loss incurred on the disposal of shares as per above, shall be disregarded.

This order is not applicable to the disposal of shares of an unlisted company incorporated in Malaysia where gains or profits from the disposal of shares are chargeable to tax as business income.

Philippines imposes VAT obligations for foreign digital service providers

On 2 October 2024, Philippines passed the Republic Act (R.A.) No. 12023, imposing value added tax (VAT) on the cross-border provision of digital services. VAT equivalent to 12% shall be levied on the digital services consumed in Philippines. The term 'Digital Services' refers to any service that is supplied over the internet or other electronic network with the use of information technology and where the supply of the service is essentially automated. Digital services shall include Online search engine, Online marketplace or e-marketplace, Cloud service, Online media and advertising, Online platform, Digital goods etc.

A non-resident digital service provider (DSP) having no physical presence in Philippines is required to be registered for VAT if their gross sales exceed or expected to exceed PHP 3 million in a 12-month period. Non-resident DSP shall be liable for the remittance of VAT on the digital services that are consumed in the Philippines if the consumers are non-VAT registered. If the consumers are VAT-registered, provisions of reverse charge mechanism shall apply, and VAT registered purchaser shall be liable to withhold and remit VAT on its purchase of digital services consumed in the Philippines.

If a VAT-registered non-resident DSP is classified as an online marketplace or e-marketplace, it shall also be liable to remit the VAT on the transactions of non-resident sellers that go through its platform provided that it controls key aspects of the supply and it either sets the terms and conditions of the supply or is involved in ordering or delivering of goods.

The law shall be effective within fifteen(15) days after its publication in the Official Gazette. However, non-resident DSP will only be subject to VAT after 120 days from the effectivity of the Implementing Rules and Regulations which need to be issued within 90 days from the effectivity of the law.

UK issues guidelines for non-UK companies for corporate tax registration

A non-UK incorporated company that is UK resident should register for UK Corporation Tax. A non-UK incorporated company is resident in the UK for UK Corporation Tax purposes if its central management and control is in UK, unless it is also resident in a territory with which UK has a DTAA and that DTAA awards sole residence to that other territory. The registration must be obtained within 3 months of the company becoming liable to UK Corporation Tax (i.e., from the date the company became a UK resident).

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Further, a non-UK resident company needs to register in UK for Corporation Tax purposes if the company has no physical establishment in the UK and is trading in the UK through a dependent agent permanent establishment. A dependent agent is an agent who does business on behalf of a non-UK resident company in the UK. This excludes anyone acting for the company as an agent of independent status. A company must register within three months of the date it becomes liable for UK Corporation Tax. A non-UK resident company becomes liable to UK Corporation Tax when it starts to trade in the UK through a dependent agent permanent establishment.

Additional requirements for Foreign Owned Singapore resident companies to apply for TRC

A Company resident in Singapore can obtain a Certificate of Residence (COR). However, foreign-owned investment holding companies with purely passive sources of income and receiving only foreign-sourced income are not eligible for a COR. A foreign-owned company is a company where 50% or more of its shares are held by:

- Foreign companies that are incorporated outside Singapore; or
- Individual shareholders who are not citizens of Singapore.

The ownership is applied at the ultimate holding company level.

However, IRAS may still issue a COR if these companies can show that:

- The control and management of the company's business is exercised in Singapore; and
- The company has valid reasons for setting up an office in Singapore.

This includes demonstrating that decisions on strategic matters are made in Singapore (e.g., by showing IRAS that their Board of Directors' meetings are held in Singapore).

For COR applications in respect of calendar year 2025 and after, apart from demonstrating that decisions on strategic matters are made in Singapore, the company must also:

- Have at least 1 director based in Singapore who holds an executive position and is not a nominee director;
- Have at least 1 key employee (e.g., CEO, CFO, COO) based in Singapore; or
- Be managed by a related company based in Singapore (e.g., the related company makes the decisions relating to the operations of the foreign-owned investment holding company or reviews the performance of the investments of the company)

The above change is to allow these companies to better substantiate that they have valid reasons for setting up operations in Singapore.

French Finance Committee adopts bill introducing citizenship-based taxation

Amendment No. I-CF821 to the 2025 Budget Bill modifies Article 4 of the French General Tax Code, establishing a tax system applicable to French citizens who have resided in France for at least three of the past ten years and subsequently transfer their tax residency to a country with a tax rate more than 50% lower than that of France in terms of employment, capital, or assets.

These individuals, despite residing outside France, will now be subject to French tax on their

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personal income (whether it is income tax, inheritance tax, capital gains tax, or dividend tax), including when these are earned in country other than France, making it a form of universal taxation. However, they will receive a tax credit for the amount of tax paid in their country of tax residence. This amendment is subject to tax treaties France has signed with other countries. This provision targets countries where tax rates on income from employment, capital, or assets are at least 50% lower than those in France and combats tax exile while remaining compatible with European law and respecting existing tax treaties signed by France.

China removes restrictions on foreign investment in manufacturing sector

In September 2024, China's National Development and Reform Commission and the Ministry of Commerce jointly issued the Special Administrative Measures (Negative List) for Foreign Investment Market Access, 2024 Version ("Negative List 2024"). The latest version of the Negative List shall be effective from 1 November 2024. The total number of items on the negative list, or restricted sectors for foreign investment, has been reduced from 31 items in the 2021 version to 29 in the latest version.

Restrictions on foreign investment in the manufacturing sector, namely in the publishing or printing industry, and in industries such as steaming, stir frying, moxibustion, calcining and other processing techniques for Chinese herbal medicines as well as the production of confidential prescription products of proprietary Chinese medicines have been removed, thus resulting in zero restrictions on the manufacturing sector nationwide.

US released final rules for advanced manufacturing production credit

U.S. Department of the Treasury and the IRS released final rules for the Advanced Manufacturing Production Credit (Section 45X of the Internal Revenue Code) established by the Inflation Reduction Act of 2022, to spur continued growth of U.S. clean energy manufacturing. The final regulations shall be effective on the date that is 60 days after the regulations are published in the Federal Register (which is scheduled to be October 28, 2024).

The Rules incentivize U.S. based production of renewable energy components. The Rules clarify definitions and provide for credit amounts for eligible components, including solar energy components, wind energy components, inverters, qualifying battery components, and applicable critical minerals and clarify the circumstances under which taxpayers can claim the credit. The Regulations further provide rules for the sale of eligible components to unrelated persons as well as special rules that apply to sales between related persons and provide rules to address contract manufacturing scenarios.

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Important Rulings

Revisionary powers not exercisable by Transfer Pricing Officer prior to April 01, 2022

*Amazon Web Services India Private Limited [*ITA NO. 2706/Del/2024 *– Order dated 28 October 2024 (Delhi ITAT)]*

The taxpayer was engaged in the provision of marketing support services to its associated enterprise during financial year 2017-18 among other international transactions. The taxpayer's case was selected for scrutiny by the TPO's office and the TPO's office examined the marketing support services based on the Transactional Net Margin method and passed an upward adjustment to the same. The TPO passed the order on July 31, 2021, which was assailed by Principal CIT ('PCIT') on its own motion by virtue of revisionary powers as provided under section 263 of the ITA.

Aggrieved by the PCIT's action of invoking the revisionary powers, the taxpayer made an appeal before the Delhi ITAT. The taxpayer contended various grounds for dismissing the action of the PCIT which included that the revisionary powers under section 263 of the ITA were exercisable by the AO only and not by the TPO.

The Delhi ITAT noted that the amendment to section 263 of the ITA in relation to extending the powers to modify or cancel an order has been extended to orders passed by the TPO under section 92CA of the ITA has been effectuated w.e.f. April 01, 2022. Therefore, the Delhi ITAT held that the order passed by the TPO on July 31, 2021 is outside the purview of the PCIT for the purpose of invoking revisionary powers provided under section 263 of the ITA.

Captive entity necessitates risk adjustment in relation to the comparable companies operating under uncontrolled environment

Hyundai Rotem Company-Indian Project Offices [ITA No.365/DEL/2021 – Order dated 18 September 2024 (Delhi ITAT)]

The taxpayer operated as an extension of its foreign based company namely, Hyundai Rotem Company by being a captive entity providing services to its group entities. The taxpayer's case was selected for scrutiny by the TPO's office wherein the taxpayer pressed for providing for adjustments with respect to the difference in risks assumed by the taxpayer vis-à-vis the comparable companies.

The taxpayer contended that the comparable companies operating in an uncontrolled environment and assuming substantially more risks than those incurred by the taxpayer shall earn unlimited profit or unlimited losses and accordingly, the margins earned by the taxpayer should not be directly compared with those earned by the comparable companies. This view of the taxpayer was upheld by the CIT(A) against which the TPO's office made an appeal before the Delhi ITAT.

The Delhi ITAT rightly noted that the comparables operated in a free and uncontrolled environment and thereby face in numerous risks which are not faced by the taxpayer. Further, the Delhi ITAT placed its reliance on the ruling by Bangalore ITAT in case of M/s. Supportsoft India Pvt. Ltd. wherein it was held that single customer risk attributable to the taxpayer is only an anticipated risk whereas the risk attributed by the taxpayer to the comparable companies are existing ones and are subject to actual realisation in day-to-day operations of the comparable companies.

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Reader's focus:

The study of transfer pricing and consequent benchmarking of the international transactions requires one to provide for differences in the controlled transactions vis-à-vis uncontrolled comparable transactions. In the case of captive entity service providers which are financed by the principal entity being served as well as which receive instructions to act in accordance with the directions and supervision provided by the principal entity generally are remunerated on a cost-plus model wherein the total operating costs incurred by the captive entity are recharged along with a suitable markup attributable to such operations. The captive entities which are established in India, or any other region are generally due to some specific factors in terms of location such as pool of resources, cheap labour, availability of raw material, or any other relevant factor. The captive entities are remunerated on the basis of the routine functions which they perform along with the support from the principal entity in terms of strategy, supplier support, product delivery, technology, customer lists, and other similar business elements.

In this regard, it is important to note that the captive entity generally do not undertake significant functions in terms of overall group strategy or wherever performing such functions are inherently and extensively supported by the principal entity of the group. The captive entities generally may not perform extensive marketing functions or guiding the overall group marketing strategy or interacting with the customers on its own motion or providing unique insights to the principal entity thereby undertaking limited risks. Whereas on the contrary those operating in the open market are facing all kinds of risks such as financing, customer retention, marketing risk, strategy risk (in terms of overall guidance), service or products liability risk and other related risks.

It is but business economics that provides that the return is proportional to the variety of functions performed as well as the risks assumed along with the type of assets utilized to run the business operations. So even though two entities might be operating in a similar business or producing similar goods or providing similar kind of services, but it might happen that the functional profile might be different in terms of risks which are not outrightly or rather not sufficiently quantifiable. But the transfer pricing aspect especially with respect to carrying out the economic analysis entails ironing out the differences if any between the controlled functions / prices / margins vis-à-vis uncontrolled functions / prices / margins. Accordingly, it becomes apparent that these key differences in the risk profile of the captive service providers vis-à-vis comparable companies needs to be adjusted to the extent possible.

Important Updates

GST Portal Updates and Advisory

1. **Locking of auto-populated liability in GSTR-3B**

The GSTIN issued an advisory outlining forthcoming procedural change to the GSTR-3B filing mechanism. Effective from the tax period of January 2025, the GST Portal will tentatively enforce restrictions on modifications to auto-populated liabilities in the pre-filled GSTR-3B, which are derived from GSTR-1, GSTR-1A, or the Invoice Furnishing Facility (IFF). This measure aims to enhance the accuracy and integrity of return filings. Any adjustments to the auto-populated liability must be carried out exclusively through GSTR-1A.

Furthermore, the hard-locking of auto-populated ITC within GSTR-3B will be implemented subsequent to the full deployment of the Invoice Management System (IMS). A separate advisory will be issued to communicate the exact date and any additional procedural requirements pertaining to this implementation.

2. **Advisory for GSTR-9/9C**

GSTIN has issued an advisory that, commencing from FY 2023-24, the GST system will auto-populate eligible ITC for domestic supplies (excluding ITC related to reverse charge and imports) from Table 3(I) of GSTR-2B to Table 8A of GSTR-9. These amendments in GSTR-9 and GSTR-9C for FY 2023-24 will be accessible on the GST portal starting from October 15, 2024.

Additionally, a validation utility will be implemented in phases, allowing taxpayers to validate the auto-population of GSTR-9 from GSTR-2B for the period from April 2023 to March 2024.

Notifications:

3. **Tax under the RCM is payable by a registered person for the purchase of metal scrap from an unregistered person**

[Notification No. 06/2024 – Central Tax (Rate)– Dated October 8th 2024]

This notification has been issued to cover the procurement of metal scrap by a registered person from any unregistered person, classified under Chapters 72, 73, 74, 75, 76, 77, 78, 79, 80, or 81, making the registered person liable to GST payment under the RCM. This is become effective on October 10, 2024.

4. **Tax under the RCM is payable by a registered person for the service of renting of any immovable property other than a residential dwelling from an unregistered person.**

[Notification No. 09/2024 – Central Tax (Rate)– Dated October 8th, 2024] and CORRIGENDUM Dated October 22nd, 2024]

This notification has been issued to cover the procurement of the service of renting any immovable property other than residential dwellings by a registered person from any unregistered person, making the registered person liable to GST payment under the Reverse Charge Mechanism (RCM). This becomes effective on October 10, 2024.

The same is tabulated below:

Description	Supplier	Recipient
Service by way of renting of any immovable property other than residential dwelling.	Any unregistered Person	Any registered person

5. Various amendments to CGST Rules,2017

[Notification No. 20/2024 – Central Tax – Dated October 8th, 2024]

The CGST Rules, 2017 have been amended pursuant to Notification No. 20/2024 – Central Tax, dated October 8, 2024. Unless specifically stated otherwise, the amendments shall take effect from October 8, 2024. The significant changes introduced by this notification are summarized below:

Rule	Amendment made
Rule 47A	A new Rule 47A has been inserted and made effective from November 01, 2024. As per this rule, a registered person who is liable to pay tax under the RCM and is required to issue a self-invoice must now issue an invoice within thirty days from the date of receiving the supply of goods or services.
Rule 66	Rule 66 has been amended, effective from November 01, 2024, to provide that the time limit for furnishing returns in FORM GSTR-7 is on or before the tenth day of the month succeeding the calendar month.
Rule 89(4A) and (4B)	Rule 89(4A) and 89(4B), have been omitted. Previously, Rule 89(4A) and 89(4B) provided a special mechanism that enabled exporters to claim refunds of accumulated ITC on account of zero-rated supplies made under a Letter of Undertaking (LUT) without payment of IGST. This was applicable in cases where exporters had availed benefits of GST exemption or concessional rates under prescribed notifications (such as advance authorisation, Export Oriented Units (EOUs), merchant exporters, etc.).
Rule 96(10)	Rule 96(10) contained restrictions on exporters to claim a refund of ITC upon payment of IGST for persons who availed various benefits under the notifications mentioned in the said rule.

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Rule 164	**Application for Waiver of Interest or Penalty:** Rule 164 provides a framework allowing eligible persons to apply electronically for the waiver of interest, penalty, or both, in connection with notices, statements, or orders issued under Section 128A. ✓ **Forms to Use**: ○ **FORM GST SPL-01**: Applicable for notices or statements specified under clause (a) of sub-section (1) of Section 128A. ○ **FORM GST SPL-02**: Applicable for orders specified under clauses (b) and (c) of sub-section (1) of Section 128A. ✓ **Payment of Tax Demanded**: ○ Applicants must ensure full payment of the tax demanded prior to submitting their application ✓ **Payments must be made as follows**: ○ By crediting the requisite amount in the Electronic Liability Register against the debit entry generated by the order. ○ If the payment was made via FORM GST DRC-03, an application in FORM GST DRC-03A must be submitted to adjust the credit to the Electronic Liability Register before filing FORM GST SPL-02. ✓ **Time Limits for Filing Applications**: ○ Applications must be filed within three months from the date as notified under sub-section (1) of Section 128A. ○ For cases involving first proviso to sub-section (1) of Section 128A, the time limit extends to six months from the communication date of the redetermined tax order ✓ **Withdrawal of Appeals or Writ Petitions**: ○ Applicants are required to furnish documentation evidencing the withdrawal of any appeals or writ petitions previously filed before appellate authorities, tribunals, or courts. ○ If the withdrawal order is pending issuance, the application for withdrawal must be uploaded, and subsequently, the formal withdrawal order must be uploaded within one month of its issuance. ✓ **Processing by the Proper Officer**: ○ If the proper officer deems the application ineligible, a rejection notice (FORM GST SPL-03) must be issued within three months from the date of receipt of the application, providing the applicant with an opportunity to respond. ○ Applicants have one month to respond to such notices, using FORM GST SPL-04.

Important Updates

- ✓ **Issuance of Order**:
  - If the proper officer is satisfied with the application, they will conclude the proceedings by issuing FORM GST SPL-05.
  - If dissatisfied, the officer will issue an order rejecting the application in FORM GST SPL-07.
- ✓ **Time Frame for Issuing Orders**:
  - **Without Issuing Notice in FORM GST SPL-03**: The proper officer must issue the order within three months from the receipt of the application.
  - **With Issuance of Notice FORM GST SPL-03**: The order must be issued either:
    - Within three months from receiving the applicant's response, or
    - Within four months from the notice issuance if no reply is received.
    - If the proper officer fails to issue an order within these prescribed time limits, the application is deemed approved, and proceedings are considered concluded.
- ✓ **Restoration of Appeals**:
  - If the application for waiver is rejected and no further appeal is filed within the stipulated time, any previously withdrawn appeal or writ petition will be restored.
- ✓ **If an appeal against the rejection is filed**:
  - **If Rejection is Overturned**: The appellate authority will issue FORM GST SPL-06, thereby accepting the application and conclude the proceedings.
  - **If Rejection is Upheld**: The original appeal is reinstated if the applicant files an undertaking not to pursue further appeals against the appellate authority's decision.
- ✓ **Additional Tax Liability**:
  - If additional tax liability is established under the second proviso to sub-section (1) of Section 128A and remains unpaid within the stipulated time, the waiver of interest or penalty granted earlier becomes void.
- ✓ **Payment of Interest or Penalty for Other Demands**:
  - Where interest or penalties are due concerning erroneous refunds or periods not covered under sub-section (1) of Section 128A, such amounts must be paid within three months from the issuance of FORM GST SPL-05 or FORM GST SPL-06.

Failure to comply with this payment requirement within the specified time renders the waiver void.

Important Updates

6. Due date for payment to qualify for waiver of interest and penalty pertaining to tax liability as stipulated in the notice or order

[Notification No. 21/2024 – Central Tax – Dated October 8th, 2024]

The CBIC has issued a notification specifying the deadline by which payments must be made for tax liabilities detailed in notices, statements, or orders to qualify for the waiver of interest, penalty, or both under Section 128A of the CGST Act, 2017. This applies to specific classes of registered persons, and the relevant details are outlined in the table below

Class of registered person	The due date for payment of tax
Registered persons to whom a notice or statement or order has been issued.	31-03-2025
Registered persons to whom a notice has been issued under Section 74 and subsequently converted into a notice issued under Section 73	Within six months from the date of issuance of the order by the proper officer redetermining tax under Section 73 of the said Act.

7. Special procedure for rectification of orders under the CGST Act, 2017 for the order passed for disallowance of ITC under Section 16(4) of CGST Act, 2017

[Notification No. 22/2024 – Central Tax – Dated October 8th, 2024]

The CBIC has issued Notification No. 22/2024, introducing a special rectification procedure for orders issued under Sections 73, 74, 107, and 108. This notification is specifically applicable to registered persons who previously availed of ITC in contravention of Sub-section (4) of Section 16 but are now eligible under Sub-sections (5) or (6) of the same section. Rectification is permissible only if no appeal has been filed against the original order. A summary is provided below:

1. **Application for Rectification**
   - ✓ **Deadline for Application:** Eligible individuals must file their application electronically on the GST common portal within six months from the issuance date of this notification.
   - ✓ **Required Documentation:** Applicants are required to provide all relevant details as **stipulated** in **Annexure A of the notification**, ensuring accurate and comprehensive information.
2. **Processing of Rectification**
   - ✓ **Proper Officer's Role:** The rectification shall be conducted by the proper officer who issued the original order. This continuity ensures procedural consistency.
   - ✓ **Timeline for Decision:** The proper officer must strive to issue a rectified order within three months from the date of the receipt of the rectification application, facilitating a swift resolution.

Important Updates

3. Issuance of Rectified Order

- ✓ Documentation Requirements: Upon successful rectification, the proper officer is obligated to upload a summary of the rectified order electronically:
  - FORM GST DRC-08: For rectified orders originally issued under Sections 73 or 74.
  - FORM GST APL-04: For orders under Sections 107 or 108.

8. Waiver of Late Fees for GSTR-7:

[Notification No. 23/2024 – Central Tax – Dated October 8th, 2024]

The CBIC has issued a notification for waiver of late fee for failure to furnish the return in Form GSTR-7 by a registered person in excess of Rs 25 per day subject to the maximum limit of Rs. 1,000. Further, where the TDS amount is NIL, the entire late fees shall be waived. The same is applicable for the period from June 2021 onwards.

9. Registration requirements for suppliers of Metal Scrap

[Notification No. 24/2024 – Central Tax– Dated October 9th, 2024]

A new proviso has been added to Notification No. 5/2017 - Central Tax, dated June 19, 2017. This notification provided an exemption from registration for persons solely engaged in the supply of taxable goods or services, as long as the entire tax liability was paid by the recipient under the RCM

The newly added proviso now states that anyone supplying metal scrap, which falls under Chapters 72 to 81 of the First Schedule of the Customs Tariff Act, 1975, is no longer eligible for this exemption. Furthermore, Notification No. 06/2024 - Central Tax (Rate), dated October 8, 2024, mandates that the tax on such supplies must be paid by the recipient through the RCM, effective from October 10, 2024.

As a result, suppliers dealing with the specified categories of metal scrap are now required to register under GST, despite such supplies being covered under RCM, if the supplies exceed the prescribed threshold limit for obtaining the registration.

10. Recipients of Metal Scrap are required to deduct the GST TDS

[Notification No. 25/2024 – Central Tax– Dated October 9th, 2024]

CBIC has notified that, effective from October 10, 2024, any registered person receiving supplies of metal scrap classified under Chapters 72 to 81 of the First Schedule to the Customs Tariff Act, 1975, shall be obligated to deduct tax at source.

11. Clarifications regarding the applicability of GST on certain services

[Circular No. 234/28/2024 dated October 11, 2024]

Pursuant to the recommendations by the GST Council in its 54th meeting on September 9, 2024, the CBIC has issued a circular providing the applicability of GST for multiple service-specific contexts. A detailed summary of these clarifications is presented in tabular form below.

Important Updates

Coverage

Sr. No.	Topic of Clarification	Detailed Clarification	GST Applicability/Rate	KCM Comments
1	Affiliation Services by Universities to Colleges	The affiliation services provided by universities to colleges encompass the evaluation of infrastructure, faculty strength, and institutional eligibility to conduct specific academic programs. These services do not pertain to admissions or examinations and, therefore, do not fall within the ambit of the exemption available for educational institutions under Notification No. 12/2017-CT(R) dated 28.06.2017	18%	The clarification confirms that affiliation services are taxable and are ineligible for exemption typically provided to educational services, as they are not intrinsically linked to student admissions or examination activities.
2	Affiliation Services by Central/ State Boards or other similar bodies to Schools	✓ **Taxability of Affiliation Services**: Affiliation services provided by Central and State educational boards, or similar bodies, to schools are taxable. These services involve evaluating the infrastructure, finances, and faculty strength of schools to ensure their eligibility for affiliation and do not relate to student admissions or examination services. ✓ **Exemption for Government Schools**: Affiliation services provided to government schools (those owned or controlled by the Central Government, State Government, local authorities, or Government entities) have been exempted from GST effective from 10th October 2024, as per Notification No. 08/2024-Central Tax (Rate) dated 8th October 2024. ✓ **Regularization of GST Liability**: For affiliation services provided to all schools from 1st July 2017 to 17th June 2021,	18% (except for government schools)	This clarification delineates that affiliation services provided to private schools are taxable, whereas government schools are exempt. The retrospective liability for such services has been regularized to prevent retrospective punitive actions.

		the GST Council recommended regularizing the GST liability. This clarification follows Circular No. 151/07/2021-GST, which specified that such services are taxable at an 18% rate. ✓ The GST liability for the affiliation services provided during this past period has been regularized on an 'as is where is' basis.		
3	Flying Training Courses by DGCA Approved FTOs	Flying Training Organizations (FTOs), sanctioned by the Directorate General of Civil Aviation (DGCA), are responsible for conducting DGCA-accredited flying training programs. Pursuant to Notification No. 12/2017-Central Tax (Rate) dated June 28, 2017, specifically Sl. No. 66, services rendered by educational institutions are exempt from Goods and Services Tax (GST). The term "educational institution" is construed to encompass entities providing instruction as part of a curriculum designed to confer a qualification recognized by applicable law. The Aircraft Rules, 1937, promulgated under the Aircraft Act, 1934, require DGCA authorization for both the training curricula and the Flying Training Organizations. Moreover, the approved FTOs are obligated to issue completion certificates to trainees upon successful completion of their courses, as mandated by the Civil Aviation Requirements (CAR). In light of the fact that DGCA-approved flying training programs align with the definition of educational services	Exempt	Flying training courses are exempt under Notification No. 12/2017-CT(R), as they form part of a recognized curriculum approved by the DGCA, leading to a certified qualification.

		and meet the specifications stipulated in Sl. No. 66 of the aforementioned notification, such programs conducted by accredited FTOs are consequently exempt from GST imposition.		
4	Transport of Passengers by Helicopter	✓ **GST Rate on Helicopter Transport (Seat Share Basis):** The 54th GST Council recommended a GST rate of 5% for the transportation of passengers by air, in a helicopter, on a seat share basis. Notification No. 07/2024 - Central Tax (Rate) dated 08.10.2024 has been issued to this effect, effective from 10.10.2024 ✓ **Regularization of Past Payments**: GST payments for the transportation of passengers by air, in a helicopter, on a seat share basis from 01.07.2017 to 09.10.2024 are regularized on an 'as is where is' basis. ✓ **Charter Helicopter Operations**: It is clarified that charter of helicopters will continue to attract a GST rate of 18%.	5% (seat share basis); 18% (charter of helicopter)	The clarification provides for the GST rates applicable to seat-sharing and charter of helicopter and regularizes historical liabilities for seat-sharing services to prevent discrepancies in tax compliance.
5	Incidental Services by Goods Transport Agency (GTA)	The Central Board of Indirect Taxes and Customs (CBIC) has provided clarification regarding the classification of incidental or ancillary services—such as loading, unloading, packing, unpacking, transshipment, and temporary warehousing—that are provided in connection with the transportation of goods by road. The issue in question is whether these services should be considered as part of the Goods Transport Agency (GTA)	As per transport of goods	This clarification affirms that invoicing ancillary services separately does not affect their classification as part of a composite supply by GTAs if such services are inherently connected to transportation activities.

		services, constituting a composite supply, or whether they should be classified as separate, independent supplies. It has been clarified that ancillary services provided by a Goods Transport Agency (GTA), including loading/unloading, packing/unpacking, and other similar services, are to be treated as a composite supply when performed in the course of transporting goods by road. The method of invoicing these ancillary services separately does not change their classification as part of a composite supply, provided they are directly associated with the transportation of goods. However, if these ancillary services are rendered independently of the main transportation service and invoiced separately, they will be treated as independent supplies rather than as part of a composite supply. In such instances, these independently invoiced services are liable to Goods and Services Tax (GST) at the standard rate of 18%.		
6	Import of Services by Foreign Airlines Establishments	Import of services by an establishment of a foreign airline from a related establishment, without consideration, is exempt from GST. The exemption is effective from 10.10.2024, and any prior liability from 01.07.2017 to 09.10.2024 has been regularized on an 'as is where is' basis.	Exempt	The clarification exempts services imported by foreign airlines from related entities without consideration and regularizes past GST liabilities to mitigate potential ambiguities.

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7	Preferential Location Charges (PLC) collected along with consideration for sale/ transfer of residential / commercial properties	Preferential Location Charges (PLC) collected as part of a construction service constitute a composite supply and are treated identically to the construction service for GST purposes. PLC represents an integral component of the overall consideration for construction services.	Same as construction services	The clarification confirms that PLC, when charged alongside construction services, is inherently bundled with the primary construction service and thereby attracts the same GST rate as the construction service.
8	Services of Incidental or ancillary to the supply of transmission and distribution of electricity provided by transmission and distribution utilities to their consumers	Ancillary services such as renting metering equipment, meter testing, and issuing duplicate bills, provided by electricity utilities, are exempt from GST if incidental to the supply of electricity. This exemption takes effective from 10.10.2024, and the GST for prior services is regularized from 01.07.2017 to 09.10.2024.	Exempt	The clarification specifies the tax treatment of ancillary services provided by electricity distribution utilities, granting exemption if these services are incidental to electricity supply.
9	Film Distribution Services	Transactions between film distributors and exhibitors involving the granting of theatrical rights are subject to GST at 18%. The GST Council has also regularized the payment of GST for these transactions for the period from 01.07.2017 to 30.09.2021.	18%	The clarification articulates the GST treatment of theatrical rights transactions between distributors and exhibitors and regularizes the GST liabilities for past transactions to ensure uniform compliance standards.

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12. Clarification regarding GST rates & Classification of various good.

[Circular No. 235/29/2024 dated 11 October 2024]

The CBIC has issued clarifications on the classification and applicable GST rates for various goods, summarized as follows:

Clarification	HSN Code	GST Rate	Effective Date
Extruded/Expanded Savoury Food Products	HS 1905 90 30	12%	From 10th October 2024
Un-fried or Un-cooked Snack Pellets	HS 1905 90 30	5%	Ongoing
Past Period Rate for Extruded/Expanded Products	HS 1905 90 30	18%	Before 10th October 2024
Roof Mounted Package Unit (RMPU) Air Conditioning Machines for Railways	HS 8415	28%	Ongoing
Seats for Two-Wheelers	HS 8714	28%	Ongoing
Seats for Cars	HS 9401	28%	From 10th October 2024

13. Clarification regarding the scope of "as is / as is, where is basis" mentioned in the GST

[Circular No. 236/29/2024 dated 11 October 2024]

The CBIC has issued the circular primarily to clarifying the meaning and implications of regularizing GST payments under the "as is" or "as is, where is basis." In the context of GST, this phrase means that the tax authorities accept the taxpayer's declared tax position, where payments made at a lower GST rate or exemptions claimed are considered fully settled. Importantly, taxpayers who have paid GST at a higher rate are not eligible for refunds under this regularization process.

The circular explains that regularization is necessary in situations where conflicting GST rates were previously notified, leading some suppliers to pay lower rates or nil GST due to exemptions, while others paid higher rates. Diverse interpretations of the GST provisions have resulted in inconsistent tax payments among suppliers. To address these discrepancies, the GST Council recommended clarifications to ensure uniformity in GST rate applications and classifications of goods or services.

Under the regularization framework, taxpayers who have paid GST at lower rates or claimed exemptions are treated as having fully discharged their tax liabilities for the relevant period. This means no additional duty is required from them, and they will not receive refunds even if they had paid higher GST rates initially. Conversely,

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those who paid higher GST rates are also considered to have fully paid their taxes, but they will not be eligible for any refunds.

Illustration 1

Scenario: Certain taxpayers have paid 5% GST on the supply of "X", while others have paid 12% GST. The GST Council recommends reducing the rate to 5% prospectively and regularizing the past on an "as is, where is basis" as notified on 1.12.2023.

Taxpayer Group	GST Paid Before 1.12.2023	Action Required	Outcome
Paid 5% GST	5%	No further action required	GST paid at 5% is treated as fully paid. No duty differential of 7% (difference between 5% and 12%) is required.
Paid 12% GST	12%	No refund claims allowed	GST paid at 12% is treated as fully paid. No refunds will be provided.

Illustration 2

Scenario: Certain taxpayers have paid 5% GST on the supply of "X", while others have paid nil duty due to genuine doubts about an exemption entry for "X". The GST Council clarifies that the applicable rate is 5% and regularizes the past on an "as is, where is basis" as notified on 01.12.2023.

Taxpayer Group	GST Paid Before 1.12.2023	Action Required	Outcome
Paid 5% GST	5%	No further action required	GST paid at 5% is treated as fully paid. No refund will be provided.
Paid Nil GST (Declared Exemption)	Nil	No further action required	Declaring transactions as exempted is treated as full discharge of tax liability. No duty differential of 5% is required.

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Illustration 3

Scenario: There is an interpretational issue between 5% and 12% GST rates for the supply of "X". Some taxpayers have paid 5%, others 12%, and certain taxpayers have not paid any GST. The GST Council clarifies that the applicable rate is 12% and regularizes the past on an "as is, where is basis" as notified on 1.12.2023.

Taxpayer Group	GST Paid Before 1.12.2023	Action Required	Outcome
Paid 5% GST	5%	No further action required	GST paid at 5% is treated as fully paid. No duty differential between 5% and 12% is required.
Paid 12% GST	12%	No refund claims allowed	GST paid at 12% is treated as fully paid. No refunds will be provided.
Did Not Pay Any GST	Nil	Must pay the applicable 12% GST	GST at 12% must be recovered for these transactions.

In conclusion, Circular No. 236/30/2024-GST clarifies that regularizations under the "as is" or "as is, where is basis" framework accept the tax positions declared by taxpayers, treating lower or nil GST payments as complete settlements of tax liabilities and disallowing refunds for higher GST payments. This measure aims to ensure consistency in GST applications and resolve previous ambiguities related to GST rate interpretations and classifications.

14. Clarifying the issues regarding the implementation of provisions of sub-sections (5) and sub-sections (6) in section 16 of CGST Act, 2017.

[Circular No. 237/31/2024 dated 15 October 2024]

CBIC has issued a Circular concerning the retrospective application of amendments introduced in Section 16 of the Central Goods and Services Tax Act (CGST), 2017, specifically sub-sections (5) and (6) as below:

Retrospective extension for ITC Availment: The insertion of sub-sections (5) and (6) effectively extends the timeframe for availing ITC pertaining to financial years 2017-18 to 2020-21, thereby permitting taxpayers to claim ITC until November 30, 2021. This amendment also addresses scenarios involving the cancellation and subsequent revocation of GST registrations.

Non-Eligibility for Refund of Reversed ITC: Section 150 of the Finance Act, 2024, explicitly provides that no refund shall be

granted for taxes already paid or ITC that has already been reversed as a consequence of the retrospective amendment and further, restriction of refund is not applicable to the pre-deposit by the taxpayer for filing of an appeal, where such appeals are decided in favour of the said taxpayer

Special Procedure for Rectification: Taxpayers who have been served with demand notices under Sections 73, 74, 107, or 108 of the CGST Act for improper ITC claims are entitled to apply for rectification under a special procedure provided in Notification No. 22/2024. This special procedure is applicable where ITC is now permissible pursuant to the revised provisions under sub-sections (5) or (6).

Guidelines for Tax Authorities and/ or taxpayers in different scenarios as below

Absence of Formal Demand Notice: In instances where no formal demand notice has been issued, tax authorities are directed to acknowledge the amendments and allow the ITC accordingly.

Demand notice Issued but no final adjudication: Where a demand notice has been issued but no final adjudication order has been passed, adjudicating authorities must consider the amendment and pass appropriate order

Pending appeals and rectifications: In circumstances where appeals have been lodged but are still pending determination, appellate authorities are mandated to take into consideration the retrospective amendments while deciding the appeal.

Order has been issued but no appeal is filed and also appeal filed and order passed but no appeal file to Tribunal: In cases where final orders have already been issued and no appeal has been filed, taxpayers may file for rectification within six months from the date of issuance of Notification No. 22/2024.

Electronic Submission of Applications: Applications for rectification must be submitted electronically through the GST portal, following the procedural steps specified for the relevant sections (73, 74, 107, 108).

Principles of Natural Justice: Any rectification that has an adverse impact on the taxpayer must adhere to the principles of natural justice, thereby providing the affected party an opportunity to be heard. Furthermore, appeals against rectified orders can be filed under Sections 107 or 112 of the CGST Act.

15. Clarification of various doubts related to Section 128A of the CGST Act, 2017.

[Circular No. 238/32/2024 dated 15 October 2024]

The Circular provides detailed clarifications on Section 128A of the CGST Act, introduced to facilitate the waiver of interest, penalty, or both for demands raised under Section 73 of the CGST Act for Financial Years (FY) 2017-18, 2018-19, and 2019-20. This waiver is

available subject to compliance with specified conditions, including full payment of the tax demanded.

1. **Applicability**: The waiver under Section 128A pertains to demands raised under Section 73 of the CGST Act for FYs 2017-18, 2018-19, and 2019-20, covering cases where:
   - ✓ **Notices Issued without Final Order**: Cases where notices have been issued under Section 73, but no final order has been passed.
   - ✓ **Orders Issued pending for Appellate Order** : Situations where an order has been issued under Section 73, but it has not yet been subjected to appellate or revisionary proceedings.
   - ✓ **Pending Tribunal Orders**: Instances where orders have been passed by Appellate Authorities under Sections 107 or 108, but no order has been passed by the Appellate Tribunal under Section 113.
2. **Application Process**:
   - ✓ **Forms for Application**: Applications for waiver are to be filed in FORM GST SPL-01 or FORM GST SPL-02, depending on the status of the demand and whether the case has been subject to appellate proceedings. FORM GST SPL-01 is used when the proceedings are still at the initial stage, while FORM GST SPL-02 is used in cases involving appellate or tribunal orders.
   - ✓ **Filing Timeline**: The filing of the application must be completed electronically within three months from 31.03.2025 for standard cases. In cases requiring re-determination of tax under Section 73, applications must be filed within six months from the date of such order.
   - ✓ **Withdrawal of appeals or writs**: Taxpayers must withdraw any pending appeals or writ petitions before filing the waiver application. This ensures that only those who have decided not to further contest the tax demand are eligible for the waiver.
3. **Conditions for Payment**:
   - ✓ **Mode of Payment**: For tax notices or statements that are yet to be adjudicated under clause (a) of sub-section (1) of Section 128A, taxpayers must make payments using FORM GST DRC-03.

     In cases where the tax demand has already been adjudicated as per clauses (b) and (c) of sub-section (1) of Section 128A, the payment should primarily be made by addressing the debit entry in the Electronic Liability Register (ELR) Part II according to the procedures outlined in Circular No. 224/18/2024-GST dated July 11, 2024. If the tax has already been paid using FORM GST DRC-03, taxpayers should adjust this payment using FORM GST DRC-03A before applying for a waiver under Section 128A with FORM GST SPL-02.

     It is important to note that the official payment date is considered to be the date when the amount was paid

through FORM GST DRC-03, not the date when the adjustment was made using FORM GST DRC-03A.

- ✓ **Full payment requirement**: Full payment of the tax demanded must be made by 31.03.2025 in order to be eligible for the waiver. Partial payments do not qualify for the waiver benefit, reinforcing the need for complete settlement of tax dues.
- ✓ **Adjustments for Retrospective Changes**: Any amount of tax not payable due to retrospective amendments to Section 16(5) and 16(6) should be deducted from the payable amount. This ensures that taxpayers are not penalized for liabilities that were retrospectively nullified.

4. **Processing and Issuance of Orders**
   - ✓ **Proper Officer's Role**: The officer processing the waiver applications will be the same as the officer responsible for issuing orders under Section 73 or recovery under Section 79. This provides consistency in handling the case, as the same officer is familiar with the details of the tax demand.
   - ✓ **Timelines for Order Issuance:**
     - **Acceptance Orders**: If an application is found eligible, an acceptance order will be issued in FORM GST SPL-05. This indicates that the application has been successful, and the waiver of interest or penalty is approved.
     - **Rejection and Personal Hearing**: If an application is found ineligible, a notice will be issued in FORM GST SPL-03, and the applicant will be given an opportunity for a personal hearing to present their case. This ensures that taxpayers have a fair chance to explain any discrepancies or provide additional information.
     - **Deemed Approval:** If the proper officer fails to issue an order within the prescribed timeframe, the application will be deemed to be approved.

Important Updates

Clarifications on Specific Issues and Scenarios

The circular further addresses an array of specific issues to aid compliance by taxpayers and to provide guidance to field officers:

Sr. No.	Issue	Clarification
1	Applicability to Taxpayers Who Paid in Full Before Section 128A Came into Effect	All amounts paid towards the demand up to the date notified under sub-section (1) of Section 128A are considered for the waiver, regardless of whether the payment was made before or after Section 128A came into effect, or before/after the issuance of the demand notice/order, provided the amount was intended for the demand and paid by the notified date.
2	Amount Recovered from Third Parties Considered as Tax Paid	Amounts recovered by tax officers from third parties on behalf of the taxpayer against a specific demand are treated as tax paid towards that demand for the purposes of Section 128A, provided the recovery was made on or before the notified date under sub-section (1) of Section 128A.
3	Adjustment of Interest or Penalty from Previous Financial Years Under Section 73	No waiver is available for interest or penalties related to demands under Section 73 for Finasncial Years 2017-18, 2018-19, and 2019-20. As per the third proviso to sub-section (1) of Section 128A, interest or penalties cannot be adjusted against the tax amount payable, and no refund of such amounts is available.
4	Applicability When Only Interest/Penalty is Involved and Tax Due is Already Paid	Section 128A applies when only interest or penalties are demanded under Section 73, provided the actual tax due has already been paid. However, waiver is not applicable for interest due to delayed filing of returns or delayed reporting of supply, as such interest pertains to self-assessed liability recoverable under sub-section (12) of Section 75.
5	Partial Waiver Through Partial Payment and Litigation	Waiver under Section 128A is not available if the taxpayer opts for a partial waiver by making only part payment of the demanded amount and chooses to litigate the remaining issues. Full payment of the tax demanded in the notice/statement/order is required to avail the waiver of interest or penalty under Section 128A.

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6	Multiple Tax Periods in a Single Notice/Order with Partial Coverage Under Section 128A	Taxpayers can apply for waiver of interest or penalty for the tax periods covered under Section 128A within a notice/order that spans both applicable and non-applicable periods. They must pay the full amount demanded in the notice/order to avail the waiver for the applicable periods. The waiver will only apply to the periods specified under Section 128A, while liabilities for other periods remain payable. Payment must be made within three months from the issuance of FORM GST SPL-05 or FORM GST SPL-06, failing which the waiver becomes void as per sub-rule (17) of Rule 164.
7	Waiver Application When Notice/Order Involves Multiple Issues Including Erroneous Refund Demand	Taxpayers can file for waiver under Section 128A even if the notice/order includes a demand for an erroneous refund. However, they must pay the full amount demanded, including the erroneous refund demand, to qualify for the waiver. The waiver will only apply to tax demands other than those related to erroneous refunds. The amount related to erroneous refund remains payable and must be settled within three months from the issuance of FORM GST SPL-05 or FORM GST SPL-06 to maintain the waiver. Failure to do so renders the waiver void as per sub-rule (17) of Rule 164.
8	Impact of Appeals or Orders Enhancing Tax Liability on Waiver Under Section 128A	If an appeal or legal proceeding results in an enhanced tax liability after a waiver order (FORM GST SPL-05 or FORM GST SPL-06) has been issued, the taxpayer must pay the additional tax within three months from the date of the appellate order. Failure to do so will void the waiver of interest or penalty under Section 128A as per sub-rule (16) of Rule 164. The conclusion of waiver proceedings is contingent upon the payment of any additional tax as determined by the appellate authority within the specified timeframe.
9	Procedure When Special Leave Petition (SLP) is Pending Before the Supreme Court	Taxpayers with a pending SLP must withdraw the SLP and file an application using FORM GST SPL-01 or FORM GST SPL-02, along with proof of withdrawal or documentation showing the intention to withdraw the SLP. If the withdrawal order is not yet issued, the procedure outlined in para 3.1.6 should be followed to avail the waiver under Section 128A.

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10	Applicability of Section 128A to IGST and Compensation Cess	The waiver benefits under Section 128A are applicable to matters involving Integrated GST (IGST) and Compensation Cess. Full payment for waiver eligibility must include CGST, SGST, IGST, and Compensation Cess as demanded in the notice/statement/order. This is based on the joint reading of Section 20 of the IGST Act, Section 11 of the GST (Compensation to States) Act, and Section 128A of the CGST Act.
11	Coverage of Section 128A for Demand of Irregularly Availed Transitional Credit	Demands for wrongly availed transitional credit, whether wholly or partly, issued under Section 73 or Section 74 are covered under Section 128A if the credit was availed during the period applicable to Section 128A and the notice is issued under Section 73. The transitional credit is considered availed on the date it is credited to the Electronic Credit Ledger.
12	Coverage of Penalties Under Other Provisions, Late Fees, Redemption Fines, etc., Under Section 128A	Penalties under various sections such as Section 73, Section 122, Section 125, etc., demanded under notices/orders issued under Section 73, are eligible for waiver under Section 128A. However, late fees, redemption fines, and similar charges are not covered by the waiver provided under Section 128A.
13	Payment Methods for Availing Waiver Under Section 128A Using Input Tax Credit (ITC)	Tax required for waiver eligibility under Section 128A can be paid by debiting the Electronic Cash Ledger, utilizing Input Tax Credit (ITC) by debiting the Electronic Credit Ledger, or a combination of both. However, if the demand is for tax payable under Reverse Charge Mechanism or by an Electronic Commerce Operator under Section 9(5), payment must be made by debiting the Electronic Cash Ledger only. Similarly, demands related to erroneous refunds must be paid by debiting the Electronic Cash Ledger exclusively, not through the Electronic Credit Ledger.
14	Applicability of Section 128A to Import IGST Payable Under the Customs Act, 1962	No, Section 128A does not apply to Import IGST payable under the Customs Act, 1962. Demands issued under the Customs Act are outside the purview of Section 128A's waiver provisions, as such demands are not issued under Section 73 of the CGST Act.
15	Payment Requirements When Tax Demanded Reduces Due to	When tax demanded in a notice/order reduces due to the retrospective insertion of sub-sections (5) and (6) to Section 16 of the CGST Act, the payable amount for Section 128A waiver is

	Retrospective Insertion of Sub-sections (5) and (6) to Section 16 of the CGST Act	calculated after deducting the non-payable amount (as per the new sub-sections) from the total demanded. Taxpayers must provide a breakup of the non-payable amount in FORM GST SPL-01 or FORM GST SPL-02 to facilitate verification. Additionally, if ITC was previously denied under Section 16(4) but is now available under the new sub-sections, taxpayers are not required to file a rectification application as per the special procedure notified under Section 148 via Notification No. 22/2024-Central Tax dated 8th October 2024.
16	Requirement to File FORM GST DRC-03A When Adjusting Tax Amount Paid via FORM GST DRC-03 in Applications Using FORM GST SPL-02	Taxpayers who have paid full or partial tax amounts through FORM GST DRC-03 and wish to adjust these payments against demands in FORM GST DRC-07, FORM GST DRC-08, or FORM GST APL-04 must first adjust the amounts in the Electronic Liability Register as per the second proviso to sub-rule (2) of Rule 164. Subsequently, they must file the application using FORM GST SPL-02. This ensures that the paid amounts are appropriately reflected and adjusted before seeking the waiver under Section 128A.

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Important Updates - MCA

Companies (Accounts) Amendment Rules, 2024

Notification dated September 24, 2024

MCA *vide* this notification amends Rule 12 of Companies (Accounts) Rules, 2014 and states that from the Financial Year 2023-2024, Form CSR-2 shall be filed separately on or before 31st December 2024 after filing Form No. AOC-4 or Form No. AOC-4-NBFC (Ind AS) or Form No. AOC-4 XBRL.

The reporting compliance under Form CSR-2 that was mandated to be completed on or before March 31 of the subsequent Financial Year ('FY') has been pulled back to December 31 from the end of the FY for which the filing is being undertaken.

Investor Education and Protection Fund Authority (Form of Annual Statement of Accounts) Amendment Rules, 2024

Notification dated October 03, 2024

Sub Rule (2) of Rule 5 of Investor Education and Protection Fund Authority (Form of Annual Statement of Accounts) Rules, 2018 states that the balance sheet, income and expenditure account and receipt and payment account and the Schedules referred to in sub-rule (1), shall be approved and adopted by the Authority or a Committee, authorised by the Authority on its behalf and for the purpose of authentication, the same shall be signed by the Chairperson and **one Member** of the Authority. The proviso has been amended vide this notification by substituting the words "**one Member**" with the words "**the chief executive officer**".

With the Amendment Rules 2024, the signing mandate has been changed, the same to be signed by the Chairperson and the Chief Executive Officer (CEO) of the Authority instead of a Member, so as to make the CEO more accountable in the affairs of the Company.

Companies (Adjudication of Penalties) Second Amendment Rules, 2024

Notification dated October 09, 2024

Sub-Rule (1) of Rule 3A of Companies (Adjudication of Penalties) Rules, 2014 states that on the commencement of the Companies (Adjudication of Penalties) Amendment Rules, 2024 ('Amendment Rules, 2024'), all proceedings (including issue of notices, filing replies or documents, evidences, holding of hearing, attendance of witnesses, passing of orders and payment of penalty) of adjudicating officer and Regional Director under these rules shall take place in electronic mode only through the e-adjudication platform developed by the Central Government.

MCA vide this notification has confirmed that any proceedings pending before the Adjudicating Officer or Regional Director as on the date of commencement of Amendment Rules, 2024 shall continue as per provisions of Rules existing prior to sub-rule (1) of Rule 3A.

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Important Updates - RBI

Gold loans - Irregular practices observed in grant of loans against pledge of gold ornaments and jewellery

RBI/2024-25/77 DoS.CO.PPG.SEC.10/11.01.005/2024-25 dated September 30, 2024

RBI had conducted an onsite examination of selected Supervised Entities ('SEs') with respect to adherence to prudential guidelines as well as practices being followed by the SEs with regard to loans against pledge of gold ornaments and jewellery. RBI observed several irregular practices and the major deficiencies identified were:

i. shortcomings in use of third parties for sourcing and appraisal of loans;

ii. valuation of gold without the presence of the customer;

iii. inadequate due diligence and lack of end use monitoring of gold loans;

iv. lack of transparency during auction of gold ornaments and jewellery on default by the customer;

v. weaknesses in monitoring of Loan to Value ('LTV');

vi. incorrect application of risk-weights, etc.

RBI has instructed all SEs to comprehensively review their policies, processes and practices on gold loans and to identify gaps, including those highlighted in the RBI findings and initiate appropriate remedial measures in a timebound manner.

Effective date: Three (3) months from the date of Circular

Due diligence in relation to non-resident guarantees availed by persons resident in India

RBI/2024-25/79 A.P. (DIR Series) Circular No. 18 dated October 04, 2024

RBI has been observing several instances of guarantees (including Standby Letters of Credit [SBLCs] and / or performance guarantees) issued by Persons Resident outside India, in favour of Persons Resident in India which are in violation of the extant FEMA regulations.

RBI has cautioned AD Category-I banks to ensure that guarantee contracts advised by them to, or on behalf of, their resident constituents are in accordance with the FEMA regulations and necessary diligence is taken prior to issuance of such instruments.

Effective date: Immediate

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

RBI/2024-25/80 DOR.STR.REC.45/04.02.001/2024-25 dated October 9, 2024

Government of India, vide Trade Notice No.18/2024-2025 dated September 30, 2024, has granted extension of the Interest Equalization Scheme for Pre and Post Shipment Rupee Export Credit ('Scheme') for three months up to December 31, 2024. The same has been ratified by the RBI, subject to the terms and conditions/provisions of the extant instructions issued by the Bank on the captioned Scheme remaining unchanged.

Effective date: Extension only

Implementation of Credit Information Reporting Mechanism subsequent to cancellation of licence or Certificate of Registration

Important Updates - RBI

RBI/2024-25/81 DoR.FIN.REC.47/20.16.042/2024-25 dated October 10, 2024

As per Section 17(1) of the Credit Information Companies (Regulation) Act, 2005 (CICRA), only Credit Institutions (CIs) can furnish credit information to Credit Information Companies (CICs). Further, CICRA mandates that CICs can collect credit information from its member CIs or member CICs only.

As per the current provisions of CICRA, entities whose license or Certificate of Registration (CoR) has been cancelled by the RBI are no longer deemed as CIs under CICRA and their credit information are not accepted by the CICs. However, this led to hardships to borrowers whose repayment history with these entities was not updated even where such borrowers continued to repay/ clear their dues.

To redress the hardship faced by such borrowers, all CIs whose license or CoR has been cancelled by the RBI will continue to be categorized as "Credit Institutions" under Section 2(f)(vii) of CICRA. These CIs shall continue to report credit information of the borrowers on-boarded and reported to CICs prior to cancellation of their license or CoR but carry the tag as "License Cancelled".

Effective date: Six (6) months from the date of Circular

Facilitating accessibility to digital payment systems for Persons with Disabilities – Guidelines

RBI/2024-25/83 CO.DPSS.POLC.No.S-708/02-12-004/2024-25 dated October 11, 2024

RBI has taken cognizance and duly provided instructions to scheduled commercial banks to ensure banking services for Persons with Disabilities going back to nearly a decade by the release of *Master Circular on Customer Service in Banks dated July 01, 2015*.

The scenario has changed much since then with all sections of population, including differently abled persons increasingly adopting digital payment systems. To ensure effective access, payment system participants ('PSPs') that include banks and authorised non-bank payment system providers have been instructed by the RBI to review their payment systems / devices in terms of accessibility to Persons with Disabilities.

Based on the review conducted by the PSPs, they may undertake the necessary modifications, such that all their payment systems and devices, such as Point-of-Sale machines, can be accessed and used by Persons with Disabilities with convenience while at the same time ensuring that security of the system is not compromised.

Effective date: Action plan to be submitted by PSPs to RBI within One (1) month from the date of Circular

Directions - Compounding of Contraventions under FEMA, 1999

RBI/FED/2024-25/78 A.P. (DIR Series) Circular.No.17/2024-25 dated October 01, 2024

RBI has released the Directions on Compounding of Contraventions in context of the supersession of the Foreign Exchange (Compounding Proceedings) Rules, 2000 subsequent to the notification of the Foreign

Important Updates - RBI

Exchange (Compounding Proceedings) Rules, 2024 on September 12, 2024.

A detailed analysis of the erstwhile Compounding Rules 2000 vis a vis Compounding Rules 2024 notified now has already been shared by way of KCM Flash dated September 19, 2024.

Our objective here will be to share the salient features in the Directions notified herewith so as to provide a broad perspective of the way the Compounding Proceedings under FEMA, 1999 will be carried hereon.

General Guidelines:

- In terms of Section 15 of the FEMA, 1999 ('the Act'), any contravention under section 13 of FEMA, 1999 {except that of Section 3(a) of the Act} may be compounded on application made by the contravener, within one hundred and eighty (180) days from the date of receipt of the application, by the RBI.
- In terms of Section 13(1) of the Act, any person contravening any of the provision of FEMA, 1999, or any rule, regulation, notification, direction or order, he shall, upon adjudication, be liable to a penalty:
  - up to thrice the sum involved in such contravention, where the amount is quantifiable.
  - where the amount is not directly quantifiable penalty may be levied up to Rupees Two lakhs, and;
  - where the contravention is a continuing one, further penalty which may extend to Rupees Five thousand for every day after the first day during which the contravention continues.
- Contraventions of serious nature, including transactions suspected of money laundering, terror financing or affecting sovereignty and integrity of the nation or in cases where the contravener does not pay the sum for which contravention was compounded are to be referred to the Directorate of Enforcement ('DoE') for further investigation.
- In terms of the Rule 9 of Compounding Rules, 2024, the following transactions shall not be eligible for compounding by the RBI:
  - transactions in which the amount involved is not quantifiable; or
  - attract the provisions of Section 37A of the Act; or
  - Adjudicating Authority has already passed an order imposing penalty under section 13 of the Act; or
  - DoE is of the view that the compounding proceeding relates to a serious contravention suspected of money laundering, terror financing or affecting sovereignty and integrity of the nation.
- Further, in terms of Rule 4(1) of the Compounding Rules, 2024, transactions involving contravention of Section 3(a)

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of the Act shall are also not eligible for compounding.

Application and Procedure for compounding:

- Compounding of contraventions can be filed with the RBI either:
  - Suo moto by the contravener
  - On the basis of Memorandum of Contraventions issued by the RBI.
- The methods / forms in which the Compounding Application may be filed with the RBI are:
  - Physical submission of the application, along with the relevant documents; or
  - Online filing through **PRAVAAH Portal** of RBI
- All compounding applications have to be submitted along with the prescribed fee of ₹10,000/- (plus applicable GST, currently @18%) by way of:
  - Demand draft in favour of "Reserve Bank of India" and payable at the concerned Regional Office/ CO Cell, New Delhi/ Central Office; or
  - through National Electronic Fund Transfer (NEFT) or other permissible electronic or online modes of payment.
- Intimation of payment of application fee (to respective Regional Office, CO Cell, or Central Office, as the case may be) has to be made not later than 2 hours from time of payment, through an email in the prescribed format.
- The Compounding Application (in the prescribed format) has to be annexed with the particulars of contraventions (FD / ODI / LO /PO / ECB) as per the Annex II which is the prescribed format of RBI, along with an undertaking (also in prescribed format as per Annex III) about enquiry/ investigation/ adjudication by Directorate of Enforcement.
- Compounding application will be returned by the RBI to the applicant in the following cases:
  - where any administrative action / formalities[1] have not been completed by the applicant; or
  - the application is incomplete; or
  - the application fee has not been paid by the applicant.
- For cases of incomplete application, wherever the RBI seeks any additional/ necessary information or documents, then in such cases, the date of receipt of

[1] *Administrative action shall mean such action as may be necessary with respect to the transactions involved in such contravention (as per Rule 8(1) of the Compounding Rules, 2024) and shall include such corrective action that shall be undertaken by the applicant to bring the transaction involved in contravention in compliance with applicable provisions of FEMA.*
An indicative (but not exhaustive) list of such administrative actions include:
(i) Obtaining requisite approvals/ permissions from the Government or Reserve Bank or any other statutory authority concerned, as case may be;
(ii) Unwinding/ reversing the transaction;
(iii) Repatriating the receivables due;
(iv) Compliance with pricing guidelines or submission of valuation certificate;
(v) Compliance with reporting requirements;
(vi) any other such corrective action as may be required

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such information or documents, will be considered as the date of receipt of the application (*for the timeline to RBI for completion of compounding within 180 days from receipt of application*).

- On receipt of duly filled application, the RBI shall examine the same based on the documents and submissions made and assess whether contravention can be compounded in terms of Compounding Rules, 2024 and, if so, the sum involved in the contravention.
- The following factors (indicative not exhaustive) will be taken into consideration for passing the compounding order and determining amount on payment of which contravention shall be compounded:
    - Undue gains i.e., the amount of gain of unfair advantage, wherever quantifiable, made as a result of the contravention (or) economic benefits accruing to the contravener from delayed compliance or compliance avoided;
    - the amount of loss caused to any authority/ exchequer as a result of the contravention;
    - the repetitive nature of the contravention, the track record and/or history of non- compliance of the contravener;
    - contravener's conduct in undertaking the transaction and in disclosure of full facts in the application and submissions made during the personal hearing; and
    - any other factor as considered relevant and appropriate.

Jurisdiction and Compounding Penalty:

- Jurisdiction:
    - Foreign Direct Investment ('FDI') related reporting contraventions under erstwhile Regulations and the current Rules, including (*Regulations under Notification No. FEMA 20/2000-RB dated May 3, 2000; Regulations under Notification No. FEMA 20(R)/2017-RB dated November 07, 2017; Rules under FEM (Non–Debt Instruments) Rules, 2019 dated October 17, 2019 and Regulations under Notification No. FEMA 395/2019-RB dated October 17, 2019*) have been delegated to the Regional Offices of RBI.
    - Contraventions of Rules and/or Regulations related to Liaison/ Branch/ Project office (LO/ BO/ PO), Non-Resident Foreign Account (NRFAD) and Immovable Property (IP) will be compounded by the FED, CO, Cell at New Delhi office of RBI.
    - All other contraventions (other than those specified above) will be handled by Cell for Effective implementation of FEMA (CEFA),

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Foreign Exchange Department, Reserve Bank of India, 11th Floor, Central Office Building, Shahid Bhagat Singh Road, Fort, Mumbai – 400001.

Compounding Penalty:

- As per section 13 of FEMA, 1999, the compounding amount can be up to three times the sum involved in the contravention.
- Given the upper limit of three times of the quantum of offence as the maximum compounding amount, the RBI has provided a Computation Matrix for the applicant to determine an indicative amount of penalty based on the nature of contravention, the quantum of contravention and the period of such contravention.
- The Compounding matrix though indicative gives a fair idea to applicant of the possible penalty which will be levied by the RBI. The two components of each compounding amount are as follows:
    - Fixed Amount – which is stated upfront for each type of contravention (differs for contravention)
    - Variable amount – which is based on duration on the contravention and the amount of contravention
- In addition, the following will also be considered by the RBI while determining the compounding amount:
    - Where it is established by the RBI that the contravener has made undue gains, the amount of gains thereof may be neutralized to a reasonable extent by adding the same to the compounding amount calculated as per matrix above. This implies that the undue gains will be recovered from the applicant in form of penalty.
    - If an applicant against whom a compounding order had been passed but the applicant did not pay the compounding amount but reapplies for compounding of contravention relating to the same transaction, the compounding amount calculated by the RBI earlier may be enhanced by 50% (i.e.) 1.5 times of the earlier compounding amount.
    - The period of contravention for reporting contraventions will be considered proportionately {(approx. rounded off to next higher month ÷ 12) X amount for 1 year}. The total no. of days does not exclude Sundays/holidays, hence all days are considered for determining the compounding amount.

Compounding Order:

- The Compounding Authority will pass the compounding order after giving the applicant an opportunity of being heard, within a period of 180 days from the date of receipt of such compounding application by RBI duly completed in all respects.

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- During the Compounding proceedings, the applicant will be called for a personal hearing (*wherein the RBI advises the applicant to appear either personally or through a virtual mode rather than being represented / accompanied by legal experts / consultants*).
- Appearing for or opting out of personal hearing does not have any bearing whatsoever on the compounding amount that may be specified in the compounding order, as compounding is a voluntary process and only for admitted contraventions.
- The Compounding Order provides details of the provisions of the FEMA, 1999 or any rule, regulation, notification, direction, or order issued under FEMA, 1999 in respect of which the contravention / (s) have taken place along with details of the contravention / (s).
- The compounding amount as stated in the compounding order has to be paid by way of demand draft in favour of the "Reserve Bank of India" or through National Electronic Fund Transfer (NEFT), or Real Time Gross Settlement (RTGS), or such other permissible electronic or online modes of payment, within 15 days from the date of the order of compounding of such contravention.

Contributed by

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

Important Updates - SEBI

Usage of UPI by individual investors for making an application in public issue of securities through intermediaries

SEBI/HO/DDHS/DDHS-PoD-1/P/CIR/2024/128 dated September 24, 2024

To streamline and ease the process for individual investors applying in the public issue of debt securities, non-convertible redeemable preference shares, municipal debt securities and securitised debt instruments, SEBI has made it mandatory for the usage of Unified Payment Interface ('UPI') for the purpose of blocking of funds and provide his/ her bank account linked UPI ID in the bid-cum-application form submitted with intermediaries (viz. syndicate members, registered stock brokers, registrar to an issue and transfer agent and depository participants) for application amount up to Rs 5 lakh.

This provision was already existing for individual investors applying for public issue of equity shares and convertibles.

Applicability:

Applicable to public issues of debt securities, non-convertible redeemable preference shares, municipal debt securities and securitised debt instruments opening on or after November 01, 2024

Reduction in the timeline for listing of debt securities and Non-convertible Redeemable Preference Shares to T+3 working days from existing T + 6 working days

SEBI/HO/DDHS/DDHS-PoD-1/P/CIR/2024/129 dated September 26, 2024

As per the Master Circular dated May 22, 2024, the listing of debt securities and Non-convertible Redeemable Preference Shares [NCRPS] issued through public issues was mandated to be completed within T+6 working days from the date of closure of issue. Regulation 37(2) of SEBI (Issue and Listing of Non-Convertible Securities) Regulations, 2021, further mandates issuers to refund application money if they fail to list within the specified timeline. In case the refund is delayed, the issuer is liable to pay interest at 15% per annum.

SEBI has now decided to reduce the listing timeline from T+6 working days to T+3 working days to not only facilitate faster access to funds to the issuers but to also provide the investors with early credit and liquidity for their investments.

The revised timelines for listing of debt securities and NCRPS and various activities involved in the public issue process have also been provided in the said notification.

Applicability:

1. On voluntary basis to public issues of debt securities and NCRPS opening on or after November 01, 2024.

2. Mandatory for public issues of debt securities and NCRPS opening on or after November 01, 2025.

Operational Guidelines for Foreign Venture Capital Investors (FVCIs) and Designated Depository Participants (DDPs)

SEBI/HO/AFD/AFD-PoD-3/P/CIR/2024/130 dated September 26, 2024

SEBI (Foreign Venture Capital Investors) Regulations, 2000 ("FVCI Regulations") were amended *vide* notification dated September 05, 2024. The amendment notification specified the provisions related to registration of FVCI through Designated Depository

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Participants, eligibility conditions, renewal of registration, etc.

For ensuring a smooth transition to the adoption of amended FVCI Regulations, SEBI has issued necessary guidance in the form of operational guidelines.

Some of the key guidelines for FVCI registration are as follows:

- Engagement of Dedicated Depository Participant ('DDP') by the existing FVCIs for conducting due-diligence / assessment with respect to continuance of registration as an FVCI prior to the applicability date.
- Existing FVCIs that fail to meet the eligibility criteria will not be permitted to take fresh commitments or make new investments.
- Existing FVCI with nil holdings/investments that fail to meet the eligibility criteria will have to surrender their registration within 30 days of assessment by DDP.
- Post due diligence / assessment and subject to meeting the requisite criteria for registration, the DDP shall grant the certificate of registration, bearing registration number generated by SEBI.
- In case of change in name by the FVCI, the request for updation/ incorporation of a new name has to be submitted to the DDP accompanied by documents of effecting name change.
- If a jurisdiction that was compliant at the time of grant of registration as a FVCI, becomes non-compliant subsequently, either because of
    - ceases to be a member of IOSCO/ Bilateral Memorandum of Understanding with SEBI/ BIS; or
    - becomes listed in FATF public statement as a "high risk" and "non-cooperative" jurisdiction,

then the Custodian will not permit such FVCIs to make fresh purchases until the jurisdiction/FVCI is compliant.

- FVCIs are required to provide Know Your Client ('KYC') related documents to intermediaries. On completion of KYC process, the intermediary will upload the Form on the KYC Registration Agencies ('KRA') portal.
- In case an FVCI holds separate depository accounts in both NSDL and CDSL, it is allowed to appoint only one custodian.
- Beneficial Owners ('Bos') are the natural persons who ultimately own or control an FVCI and shall be identified in accordance with Rule 9 of the PML Rules.

Applicability:

January 01, 2025

Measures to Strengthen Equity Index Derivatives Framework for Increased Investor Protection and Market Stability

SEBI/HO/MRD/TPD-1/P/CIR/2024/132 dated October 01, 2024

SEBI vide this circular has issued regulations for the stock exchanges and clearing corporations

Important Updates - SEBI

so as to focus on enhancing investor protection and bolstering market stability. With increased retail participation and speculative trading in index derivatives, SEBI has been introducing various checks and balances to maintain the integrity of the derivatives market.

Key measures for strengthening the derivatives segment includes:

- Upfront Collection of Option Premiums from options buyers;
- Removal of Calendar Spread Treatment on Expiry Day;
- Intraday monitoring of position limits;
- Contract size for index derivatives;
- Rationalization of Weekly Index derivatives products, Increase in tail risk coverage on the day of options expiry.

Applicability:

November 20, 2024 to April 01, 2025 – for different action items

Relaxation from compliance with certain provisions of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015

SEBI/HO/CFD/CFD-PoD-2/P/CIR/2024/133 dated October 3, 2024

SEBI had relaxed regulation 36(1)(b) of the of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 ("LODR Regulations") for Annual General Meetings (AGMs) and regulation 44(4) of the LODR Regulations for general meetings to be conducted in electronic mode, for such meetings held up to September 30, 2024 . SEBI has further extended this provision for meetings held up till September 30, 2025.

This relaxation is in context of the MCA General Circular dated September 19, 2024, which had extended the relaxation from sending physical copies of financial statements (including Board's report, Auditor's report or other documents required to be attached therewith) to the shareholders, for the AGMs to be conducted till September 30, 2025.

Specific due diligence of investors and investments of AIFs

SEBI/HO/AFD/AFD-POD-1/P/CIR/2024/135 October 08, 2024

Securities and Exchange Board of India ("SEBI"), vide notification dated April 25, 2024 had amended the SEBI (Alternative Investment Funds) Regulations, 2012, by inserting a new sub-regulation (20) in Regulation 20, requiring Alternative Investment Fund ("AIFs"), managers of AIFs ("Managers") and their Key Management Personnel ("KMPs"), to exercise specific due diligence with respect to their investors and investments so as to prevent circumvention of laws.

SEBI has now issued guidelines on the specific due diligence to be carried out by the AIFs to prevent facilitation of circumvention of the following regulatory frameworks, including benefits and relaxations provided under:

1. SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018 ('ICDR Regulations') provided to entities designated as Qualified Institutional Buyers ('QIBs').
2. 'Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002' ('SARFAESI Act') provided to entities designated as Qualified Buyers ('QBs') Investment from countries sharing land border with India through AIFs.

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3. Prudential norms specified by RBI for regulated lenders with respect to Income Recognition, Asset Classification, Provisioning and restructuring of stressed assets.
4. Rule 6 of Foreign Exchange Management (Non-Debt Instruments) Rules, 2019 (NDI Rules) for investment from countries sharing land border with India (read along with Press Note 3 dated April 17, 2020 of FDI Policy 2020).

Applicability:

Immediate effect

Change in timing for securities payout in the Activity schedule for T+1 Rolling Settlement

SEBI/HO/MRD/MRD-PoD-2/P/CIR/2024/137
October 10, 2024

SEBI vide circular reference number SEBI/HO/MIRSD/MIRSD-PoD1/P/CIR/2024/75 dated June 5, 2024, had mandated pay-out of securities to be credited directly to the client account by the Clearing Corporations ('CC'). As per the June Circular, under Phase -1, the securities for pay-out in the equity cash segment (including netted cash and F&O Physical Settlement) were to be credited directly to the respective client's demat account by the Clearing Corporations.

The consequence of the above action is that the timing of the payout of securities has been revised from 1:30 PM to 3:30 PM. The extant Activity Schedule for T+1 Rolling Settlement, under Para 1.4 of the Chapter 3 of the SEBI Master circular on Stock Exchanges and Clearing Corporations dated October 16, 2023 also stands revised w.r.t to the timing of pay-out of securities.

Monitoring of position limits for equity derivative segment

SEBI/HO/MRD/MRD-PoD-2/P/CIR/2024/140
dated October 15, 2024

SEBI, vide Master Circular dated October 16, 2023, had specified the overall position limit at the Trading Member level to be the higher of Rs 500 crores or 15% of the total Open Interest[1] ('OI') in the market. This position limits were to be applied separately for all open positions on futures and options contracts in a particular underlying index.

On feedback received from market participants and discussions held in the Secondary Market Advisory Committee (SMAC), SEBI has proceeded to raise the position limits for Trading Members in index futures and options contracts to Rs 7,500 crore or 15% of the total OI in the market and the position limits will be applicable for index futures and index options separately.

Applicability

Immediate Effect

Introduction of Liquidity Window facility for investors in debt securities through Stock Exchange mechanism

SEBI/HO/DDHS/DDHS-PoD-1/P/CIR/2024/141
October 16, 2024

SEBI has introduced the Liquidity Window facility for investors in debt securities through stock exchange mechanism. This initiative by SEBI is in continuation to the string of measures being taken to widen the investor base and also to encourage participation and transparency in the corporate bond market and to provide the

Important Updates - SEBI

much needed liquidity in the secondary market for debt securities.

Some of the measures introduced include electronic book Provider platform (EBP Platform) for debt securities issued on private placement basis exceeding issue size Rs 50 crores, 'Request for Quote' (RFQ) platform for secondary market transactions, reduction in the face value of debt securities issued on private placement basis (proposed to be listed), introduction of framework for Online Bond Platforms.

SEBI now has proposed to introduce a Liquidity Window facility framework by use of put options as specified under Regulation 15 of the SEBI (Issue and Listing of Non-Convertible Securities) Regulations, 2021 ('NCS Regulations') enabling an Issuer to provide a right of redemption of debt securities prior to the maturity date ('put option') to all the investors or only to retail investors.

The Liquidity Window facility framework provides the guidelines for use of put options as specified under Regulation 15 of the NCS Regulations, exercisable on pre-specified dates or intervals.

Some of the salient features and the conditions governing the Liquidity Window facility are as follows:

1. Issuer to ensure that Liquidity Window facility is transparent, non-discretionary, does not compromise on market stability or risk management, implementation and outcome is monitored by Stakeholders Relationship Committee and has the approval of Board.
2. Liquidity Window facility can only be provided after the expiry of one year from the date of the issuance of the debt securities.
3. Issuer to determine and specify the percentage of the issue size permitted to exercise the put options by investors through Liquidity Window facility, which in any case will not be less than 10% of final Issue size.
4. Issuer has to designate one of the Stock Exchanges as the 'Designated Stock Exchange' for the purpose of liquidity window facility.
5. The liquidity window has to be kept open for three working days and may be operated on a monthly / quarterly basis at the discretion of the Issuer.
6. Operationally, when the liquidity window opens, eligible investors are permitted to exercise the put option on debt securities by blocking the said securities in their demat account and utilizing the mechanism for notifying the exercise of put option to the issuer all of which has to be undertaken during trading hours.
7. Debt securities will be valued on 'T-1' day where T is the first day of the liquidity window and the said valuation has to be displayed at all times during the period of liquidity window.
8. Within three working days of the closure of Liquidity Window facility the Issuer has to submit a report to the Stock

[1]Open Interest is the total number of the Futures contracts (or Options) held by all market participants at any given point of time. Open interest thus represents the total number of active, open contracts rather than a sum of individual transactions, distinguishing it from trading volume metrics.

Important Updates - SEBI

Exchange(s) where such debt securities are listed as per the specified requirements.

Applicability:

On and from November 01, 2024

Inclusion of Mutual Fund units in the SEBI (Prohibition of Insider Trading) Regulations, 2015

SEBI/HO/IMD/IMD-PoD-1/P/CIR/2024/144
October 22, 2024

Securities and Exchange Board of India (SEBI) has issued a circular for strengthening the regulatory framework for insider trading in mutual fund (MF) units.

The key Highlights of the Circular include:

- **Inclusion of Mutual Fund Units in SEBI (Prohibition of Insider Trading) Regulations, 2015 ('PIT Regulations'):** The PIT Regulations currently apply to trading in shares, bonds, and other securities. With the said notification, the PIT Regulations now includes units of mutual funds. The objective of the SEBI vide this notification is to ensure that those with privileged information regarding mutual fund schemes are subject to insider trading prohibitions, just as they would be for any other financial securities, governed by the PIT Regulations. The ultimate aim is to uphold market integrity and fairness for all investors.
- **Reporting Requirements:** AMCs are now required to disclose the holdings of designated persons, trustees, and their immediate relatives on a quarterly basis starting effective from November 1, 2024. The initial disclosure of holdings as of October 31, 2024 have to be made by November 15, 2024. For all subsequent quarters, AMCs must submit this information within 10 days of the quarter's end.
- **Transaction Reporting Threshold:** SEBI has set a threshold for reporting transactions in mutual fund units. Any transaction (or series of transactions) by designated persons, trustees, or their immediate relatives, aggregating in excess of Rs. 15 lakhs per quarter across all schemes, have to be reported. The report is required to be submitted to the AMC's Compliance officer within two business days of the transaction.
- **Format and Disclosure of Violations:** SEBI has prescribed specific formats for reporting of holdings and transactions. It has also prescribed a format for reporting violations related to Code of Conduct under SEBI (Prohibition of Insider Trading) Regulations, 2015 by the AMC or its designated personnel.

Applicability:

November 01, 2024

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Abbreviations

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
CESTAT	Central Excise and Service Tax Appellate Tribunal
CGST Act	Central Goods and Service Tax Act, 2017
CIT(A)	Commissioner of Income Tax (Appeal)
COO	Certificate of Origin
Companies Act	The Companies Act, 2013
CPSE	Central Public Sector Enterprise
CSR	Corporate Social Responsibility
CTA	Covered Tax Agreement
CUP	Comparable Uncontrolled Price Method
Customs Act	The Customs Act, 1962
DFIA	Duty Free Import Authorization
DFTP	Duty Free Tariff Preference
DGFT	Directorate General of Foreign Trade
DPIIT	Department of Promotion of Investment and Internal Trade
DRI	Directorate of Revenue Intelligence
DTAA	Double Tax Avoidance Agreement
ECB	External Commercial Borrowing
ECL	Electronic Credit Ledger
EO	Export Obligation
EODC	Export Obligation Discharge Certificate
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
LTCG	Long term capital gain
MAT	Minimum Alternate Tax
MCA	Ministry of Corporate Affairs
MeitY	Ministry of Electronics and Information Technology
MSF	Marginal Standing Facility
MSME	Micro, Small and Medium Enterprises
NCB	No claim Bonus
OECD	The Organization for Economic Co-operation and Development
OM	Other Methods prescribed by CBDT
PAN	Permanent Account Number
PE	Permanent establishment
PPT	Principle Purpose Test
PSM	Profit Split Method
PY	Previous Year
QDMTT	Qualified Domestic Minimum Top-up Tax
RA	Regional Authority
RMS	Risk Management System
ROR	Resident Ordinary Resident
ROSCTL	Rebate of State & Central Taxes and Levies
RoDTEP	Remission of Duties and Taxes on Exported Products
RPM	Resale Price Method
SC	Supreme Court of India
SCN	Show Cause Notice
SDS	Step Down Subsidiary
SE	Secondary adjustments
SEBI	Securities Exchange Board of India
SEP	Significant economic presence
SEZ	Special Economic Zone
SFT	Specified Financial statement
SION	Standard Input Output Norms
SOP	Standard Operating Procedure
ST	Securitization Trust
STCG	Short term capital gain
SVLDRS	Sabka Vishwas (Legacy Dispute Resolution Scheme) 2019
TCS	Tax collected at source
TDS	Tax Deducted at Source
TNMM	Transaction Net Margin Method
TP	Transfer pricing
TPO	Transfer Pricing Officer
TPR	Transfer Pricing Report
TRO	Tax Recovery Officer
UTPR	Undertaxed Profits Rules
u/s	Under Section
WOS	Wholly Owned Subsidiary