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kcm Insight

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Dear Reader,

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

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

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No scrip wise reporting for intra-day transactions in ITR

Press Release dated September 26, 2020

CBDT has notified that it is not mandatory to undertake scrip wise reporting of transactions in shares of intra- day trading, short-term sale or purchase of listed shares and long-term purchase or sale (other than eligible for grandfathering provision) in ITR. This will ease the process of filing ITR. Further, in view of this relaxation, only desirable cases will be selected for verification of long-term capital gain eligible for grandfathering provision.

Extension of due date for filing ITR of AY 2019-20

Instruction dated September 30,2020

Due date for filing belated or revised ITR for the AY 2019-20 has been further extended from September 30, 2020 to November 30,2020.

CBDT enables "ITR Filing Compliance Check Functionality" to Scheduled Commercial Banks

Press Release dated September 02, 2020

The FA 2020 introduced section 194N whereby it is provided that TDS shall not be required to be deducted in case of any person if aggregate cash withdrawal during the year is not exceeding Rs. 20 lacs and the customer is filing ITR. In order to facilitates Schedule Commercial Banks to verify the applicability of TDS in bulk customers, the tax department has now released a new functionality "ITR Filing Compliance Check" which will enable the Scheduled Commercial Banks to check the IT Return filing status of up to 10,000 PANs through one consolidated file for deciding whether TDS is deductible on cash withdrawals or not.

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Disallowance for earning tax free income cannot be made for any hypothetical or assumed expenditures

Celebrity Fashion Ltd, TCA 26 of 2018 dated September 21, 2020, Madras HC

Applicability of section 14A and determination of quantum of disallowance as per Rule 8D qua actual expenditures is matter of debate over the years. Whether a disallowance u/s 14A can be made in absence of any actual expenditures incurred or there being no exempt income is still matter of debate within judiciary.

In the present case, the HC has an occasion to decide an issue whether in absence of any finding of incurrence of any actual expenditures for earning any tax-free income whether the disallowance u/s 14A is maintainable or not. The Taxpayer company had made certain investment into growth Mutual Fund. Incidentally, it had also incurred finance cost towards interest on term loan and working capital facilities. The AO, among the other issues, specifically observed that investment is capable of generating dividend income and therefore, section 14A is applicable.

Before the AO, the Taxpayer stated that it had not incurred any expenditure in making the investment and thus section 14A cannot be applied. The AO rejected the said contention and invoked the provision of section 14A and carried out the disallowance of interest cost as per Rule 8D. Both the CIT(A) as well as ITAT set aside the finding of AO and accepted the contention of the Taxpayer that investments were in growth fund and therefore it did not constitute tax-free income.

Before the HC, the Revenue contended that in view of the decision of Bombay HC in case of Godrej and Boyce Manufacturing Co. Ltd. (328 ITR 81) section 14A is constitutionally valid and therefore, disallowance u/14A read with Rule 8D is inevitable.

The HC after considering the facts and provision of 14A held that the AO cannot straightaway apply Rule 8D without first satisfying about the correctness of the claim of the Taxpayer. The AO is required to establish that actual expenditures were incurred for earning or making any tax-free income. The HC therefore held that expenditures actually incurred or proved to have been incurred for making/earning of any exempt income alone are hit by section 14A and disallowance u/s 14A cannot be extended to cover any expenditures which are presumed to have been incurred. The HC ultimately held that since the Taxpayer has not earned any exempt income, the provision of section 14A shall not apply.

It is important to note that recently the Mumbai ITAT in case of M/s Future Retail Ltd. v. ACIT (ITA. No. 5959/Mum/2016), while adjudicating the issue of applicability of section 14A in case of strategic investments, held that the investments made in group concerns do require monitoring and thus an element of administrative cost is embedded in total administrative cost. The ITAT, however suggested some alternation in the existing method prescribed under Rule 8D for making disallowance of administrative cost attributable to tax-free investment which may result into lower disallowance as compared to the existing method.

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Considering the litigative nature of such issue, it is imperative to maintain the proper records and to file detailed submission at the lower authority where the fact suggests that no expenditure has been incurred for earning exempt income. This will be beneficial while arguing the matter before higher appellate authority.

TDS provision inapplicable on year-end provision if the parties are unidentifiable

HDFC Sales Pvt. Ltd, ITA No. 852 of 2019, Mumbai ITAT

The Taxpayer is engaged in the business of marketing and selling of home loan and other financial products and providing financial services. At year end, the Taxpayer has made various provision towards year-end liability without deducting tax at source. During the scrutiny assessment, the AO observed that year-end provision made by the Taxpayer is merely an adhoc provision without any reliable basis. The AO stated that the said amount is reversed immediately at beginning of the next year and therefore, the said provision is contingent in nature. The AO accordingly held that said provision is not admissible deduction u/s 37. The AO also stated that since tax has not been deducted, these expenditures were not allowable as deduction u/s 40(a)(ia) of the ITA. The CIT (A), however, accepted the claim of the Taxpayer that the amount of provision is created based on reliable data and it is not contingent claim. The CIT (A) further held that the recipient of the income is not known to the Taxpayer at the time of passing the accounting entry and therefore, TDS not deductible.

Before ITAT, the Revenue argued that the Taxpayer had created year-end provision of expenses towards unascertained liabilities. The Revenue also argued that if the contention of the Taxpayer is accepted then the provision is created for ascertain liability the TDS provision is applicable to it. The Taxpayer, however contended that the year-end provision for expenses has been quantified on fair and reliable basis towards past obligation. The provision is crated since the complete details could not be available immediately at the end of the year and certain details/ bills etc. would be received much after the finalization of Books of Account. The accounting treatment is also in conformity with prevailing statutory requirements.

With respect to non-applicability of TDS, the Taxpayer relied upon the decision of Hon'ble Apex Court in the case of Bharat Earth Movers (Civil Appeal No. 9271 of 1995) and Rotork Controls India (P.) Ltd (Civil Appeal No. 3506-3524 of 2009) and decision of Delhi HC in the case of Triveni Engg & Industries Ltd (Write Petition no. 346 of 2009) to support its claim that TDS is not applicable on year-end provision since the parties are not identifiable.

The ITAT held that year-end provision towards various expenses cannot be treated as contingent in nature merely because the said liability is to be discharged at future date. These expenditures have already been incurred by the Taxpayer and the provision has been made based on past trends and after due diligence using reliable data. The accounting policy followed by the Taxpayer is also in conformity

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with accounting standards and thus, the year-end provision is allowable deduction u/s 37 of the ITA. On the issue of TDS on year-end provision, the ITAT categorically distinguished the decisions relied upon by Revenue and held that in case of provision of expenses the recipients of the said amount are not ascertainable or identifiable and hence, TDS is not deductible on amount of year-end provision.

It is to be note that the coordinated bench of ITAT in the case of Tata Sky Ltd (ITA No. 3214/Mum/ 2014) also had an occasion to decide applicably of TDS on year end provision for specific expenses. The Mumbai ITAT in such case held that once the expenses or provision of expenses are debited to Profit & Loss Account, TDS is applicable even though the same are not credited to the respective party's accounts. The ITAT observed that mere reversal of this provision in subsequent year does not alter the legal position. The facts as to whether the parties are identifiable or not was not discussed in such decision.

We believe that as per ICDS also the provision is allowable if the same is created based on reliable and scientific basis. Usually the recipients of such amounts are possible to identify at the time of making of such provision unless one can able to demonstrate otherwise. Therefore, it is advisable that one should comply with TDS provision with respect to such year-end provisions. The arguments that parties are not identifiable and still such provision is not a contingent one requires contemporaneous documents as to basis of making such provision in books of accounts.

Stamp Duty Value of the land sold represents fair market value where consideration of transfer is unascertainable

Shri. Vivekanand Padegal, ITA Nos.923/Bang/2018 dated September 03, 2020, Bangalore ITAT

The Taxpayer, owner of land, entered into a Joint Development Agreement (JDA) with Developer. Pursuant to such JDA, the Taxpayer would be entitled to receive 50% of super built up area in the commercial complex to be constructed in lieu of transfer of land. While computing the capital gain, the Taxpayer considered the Stamp Duty Value (SDV) of the such land on the date of transfer as "Fair Value" of the land as per the provision of section 50D of ITA and offered the capital gain income to tax.

During the assessment proceeding, the AO observed that section 50D is not applicable as full value of consideration can be ascertained from actual cost of construction incurred by the developer. The AO accordingly determined the actual cost of construction at the stage of passing of assessment and replaced the SDV with actual cost and re-computed the capital gain.

The CIT(A) accepted the claim of Taxpayer that full value of consideration is required to be determined as per 50D and accordingly deleted the addition made by the AO.

The ITAT after considering the facts and provision of section 50D held that at the time of transfer of land any future cost of construction

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to be incurred by the developer-builder cannot be determined. The action of the AO to determine cost of construction from the books of developer is therefore not correct and full value of consideration is required to be determined as per section 50D only. The ITAT accordingly upheld the order of CIT(A) and deleted the addition made by AO.

In terms of section 50D of the ITA, fair value of capital asset transferred is assessable as deemed full value of consideration. There is a difference between fair market value and SDV. The ITAT however for the purpose of section 50D has considered the SDV as the fair market value of land. It is also important to mention that in terms of section 45(5A) introduced with effect from 1st April 2018, SDV of the land transferred under specified agreement is regarded as full value of consideration only. Considering the facts of each case, one can explore the applicability of this decision where the benefit of provision of section 45(5A) is not available.

TDS Credit is allowable even if the corresponding income is passed through or not chargeable to tax

ABB AB, ITA No. 464 & 2878/Bang/2018 dated August 31, 2020, Bangalore ITAT

Milestone Real Estate Fund, ITA No.1144 &1145/Mum/2018, dated September 22, 2020 Mumbai ITAT

In the case of ABB AB, the Taxpayer is a tax resident of Sweden, engaged in power and automation technologies for utility and industry customers. No part of income was taxable in India from offshore supplies to India. Since, TDS has already been deducted by the payer on offshore supplies, the Taxpayer filed ITR and claimed TDS credit as refund. The AO is of the view that income from offshore supplies is taxable in India. Accordingly, as per section 199 read with Rule 37BA, TDS credit is admissible in the year in which such income is offered to tax. The AO accordingly denied credit of TDS attributable to offshore supplies and passed the order. This order of the AO was upheld by the CIT(A). With regards to the taxability of offshore supplies in India, the Taxpayer had invoked the Mutual Agreement Procedure. As per the resolution passed by CBDT u/s 90 of the ITA, it was resolved that offshore supplies of the taxpayer were not chargeable to tax in India.

Before the ITAT, the Taxpayer contended that credit of TDS corresponding to income not chargeable to tax in India is required to be allowed in year of deduction only. Whereas the Revenue, while relying on the orders of the lower authorities, submitted that the credit for TDS has to be given in the year in which the income was offered for taxation.

The ITAT duly considered the provision of section 199 and decisions relied upon by Taxpayer as well as revenue. After considering the same, the ITAT accepted the claim of the Taxpayer that TDS credit is admissible in the year of deduction since the amount of income is not taxable at all. It is settled position of law that if the credit of TDS is not allowed then the Taxpayer would not be in a position to claim credit in any year. The ITAT heavily placed

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reliance on decision of the Mumbai ITAT in the case of Arvind Murjani Brands (P.) Ltd. v. ITO (ITA No. 6708 of 2010) wherein the Mumbai ITAT discussed in detail the provision of section 199 and Rule 37BA and held that the credit for TDS shall be allowed to a person in whose name the tax was deduced where such person receives the same on behalf of someone else in trust.

Further the Mumbai ITAT in the case of Milestone Real Estate Fund (ITA No.1144 & 1145/Mum/2018) also allowed the credit of TDS to a Venture capital fund (a passed through entity exempt from tax) though the income of such funds is taxable in the hands of its beneficiaries. The Mumbai ITAT also held that it is not necessary for the venture capital funds to establish that the beneficiaries has paid necessary tax on such income so as to claim the refund of TDS by such venture capital fund.

There are numerous transactions entered into by companies, for commercial purposes, where the payments to be made to the ultimate beneficiary are routed through an entity having pass through status or through and internal arrangements. In such cases, the same income would be subject to TDS at two points despite the fact that it would only be taxable in the hands of the ultimate beneficiary. This leaves the passthrough entity in jeopardy as the payment so routed through him is not his income, however it has suffered the tax deduction, the credit for which may not be available to him if one applies the Rule 37BB literally. The above decisions are therefore very helpful to claim the credit of such TDS in the hands of passthrough entity or where the income is not chargeable to tax at all in India.

However to avoid any such litigation of claim of TDS credit in the hands of pass through entity, such entity may provide a declaration to the payer of income in accordance with Rule 37BA to deduct the tax in the name of ultimate beneficiary and in that case such TDS credit shall be available to such beneficiary.

Proportionate allotment of shares to the existing shareholders outside the scope of deemed gift

Veena Goyal, ITA No. 75/JP/2020, Jaipur ITAT

The Taxpayer is a shareholder of a private limited company. Considering the existing shareholding , the Taxpayer was entitled and applied certain number of shares of such company at a vale which is lower than its fair market value [FMV] for the purpose of section 56(2)(vii) [now section 56(2)(x)] of ITA.

The AO observed that since the FMV of such shares were higher than the allotment price, the AO made an addition of differential value u/s 56(2)(vii)(c) of the ITA. The first appellant authority accepted the claim of the Taxpayer by following the decision of ITAT, Mumbai in case of Sudhir Menon HUF (ITA No. 4887/Mum/2013) wherein it was held that the differential amount cannot be assessed as "inadequate consideration" u/s 56(2)(vii)(c) of the ITA.

Before the ITAT, the Revenue contended that as the allotment of shares is for inadequate consideration, the said amount is assessable u/s 56(2). The ITAT duly considered the facts of case and categorically held that the allotment of shares amongst all the shareholder was in equal proportion and that even after the allotment, the shareholding remained same. The ITAT also

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stated that in case of allotment of shares taking place amongst all the shareholders, the value of share is getting proportionately apportioned amongst the larger number of shares and no individual shareholder gets any additional benefit over the others. The ITAT accordingly held that ratio laid down by ITAT, Mumbai in case of Sudhir Menon HUF (supra) is squarely applicable to the present case and deleted the addition.

The subject provision is introduced as a counter evasion mechanism to prevent laundering of unaccounted income under the garb of gifts or issue/transfer of shares or acquisition of property etc. Though the provision has been enacted with specific objectives, it is not possible to bypass such rigorous test even in case of genuine transaction in shares. However, the decision of ITAT will be relevant in all cases of issue of rights or bonus shares amongst existing shareholders.

Here it is important to mention that section 56(2) (x) is applicable if a person "receives" property for inadequate consideration. The decision of ITAT has not considered the issue as to whether the provision of such section is applicable for receipt of existing shares since in case of allotment of new shares the shares were not in existence in the hands of the company issuing such shares. Here, one may refer to the decision of Khoday Distilleries Ltd. (307 ITR 312 SC) wherein it the hon'ble SC explained that there is vital difference between "creation" of share i.e. allotment of new shares and "transfer of shares" i.e. existing shares and hence, it is possible to draw an inference that unless the share comes into existence, transaction falls outside the scope of section 56(2)(vii)/(x).

Important Updates

United Nations (UN) Tax Committee invited public comments on proposal to include software payments in the definition of Royalties

The UN Committee of Experts on International Cooperation in Tax Matters invited public comments by October 2, 2020 on the discussion draft which included a proposal by the members of the Committee for a change to the definition of royalties included in Article 12 of the UN Model Double Taxation Convention Between Developed and Developing Countries.

The members of the Committee argued that advancements in means of communication and information technology, computer programs or other software did constitute a key tool in the conduct of most businesses and it could not be denied that there was an increasing level of engagement of computer programs and other software in the economic life of States where they were used. That increasing engagement with the State where the software is used justifies the allocation of taxing rights to that State. The Committee is of the view that the proposed change would remove the blurred distinction between payments towards use of copyright in software or copyrighted software and would thus promote tax certainty and reduction of disputes.

Several members of the committee also opposed the proposal on various reasons; one of many being that the sale of software should be treated as par with sale of goods and were of the view that it would lead to additional cost being passed to the end users.

It is important to note that India already treats payment for right to use computer software as royalties as per section 9(1)(vi) of the ITA which means that currently the meaning of the term 'royalties' is more exhaustive under the Act as compared to the tax treaties. While various Benches of ITAT have held in favour of Taxpayers considering the beneficial provisions of DTAA, days are not far when DTAAs, especially the ones entered into by India are likely to factor use of software within the purview of "royalties".

Four more countries deposit MLI ratification documents

During September 2020, Albania, Bosnia & Herzegovina, Costa Rica and Jordan have become the latest countries to deposit their instruments of ratification for the Multilateral Convention to implement tax treaty related measures to prevent base erosion and profit shifting. With 94 jurisdictions currently covered by the Multilateral Convention, these latest ratifications bring to 53 the number of jurisdictions that have already deposited their acceptance or ratification instrument

As part of the ratification process, each country is required to publish its position and reservations on the articles of the MLI and the ratification of the MLI allows the amendment of existing Tax Treaties without the necessity to conduct additional negotiations between two countries. While Albania and Jordan have included India in the covered list and vice versa, India does not have DTAA with Bosnia & Herzegovina and Costa Rica.

Important Rulings - India

ITAT allows carry forward of past capital losses and rejects revenue plea to set off such losses against capital gain exempt under the tax treaty

Goldman Sachs Investments (Mauritius) Limited, ITA No. 2201 of 2017, Mumbai ITAT

As per the erstwhile provisions of India-Mauritius DTAA, any capital gain arising to a Mauritius resident on alienation of shares of an Indian Company was exempt from India and was liable to tax in Mauritius.

The present case relates to setting off of brough forward capital losses claimed as losses under the ITA in the earlier years by a Taxpayer resident of Mauritius against the capital gains, not taxable in India by virtue of beneficial provisions of the DTAA. The taxpayer had sold shares of an Indian Company and claimed that since the capital gains were exempt under Article 13 of India-Mauritius DTAA, brought forward capital losses were to be carried forward i.e. without setting off the same against current year's capital gains u/s 74 of the ITA. However, Revenue declined the claim of the taxpayer and set-off the losses against the exempt capital gains. Also, it did not allow carry forward of long-term capital losses.

The judgment is on a situation of set-off of brought forward losses from sources that are non-exempt against gains from exempt income. The taxpayer in the earlier years had incurred capital losses and claimed the same for carry forward under ITA and in the next year when there was a capital gain, the taxpayer claimed the same as exempt under DTAA. While the source of income in both the years remained the same without any difference in its nature under the ITA, recourse to DTAA provisions lead to a situation wherein, losses of one year did not get set off against gains of other year, exempt under the DTAA. A very important observation that has been made by the Bench is that a DTAA could not be thrust upon the Taxpayer and a Taxpayer could take recourse to the same in the year in which it is more beneficial.

ITAT after relying on the decision of Mumbai ITAT in the case of Flagship Indian Investment Company (Mauritius) Ltd. held that since the capital gains were exempt from tax under DTAA, there could not be any occasion for seeking adjustment of brought forward capital losses against such income. The ITAT further concluded that it was for the Taxpayer to examine whether the provisions of ITA or DTAA were more beneficial to him as per section 90(2) of the ITA.

PoEM not constituted in India where the directors and shareholders were living outside India and board meetings were held outside India, Revenue's PE claim rejected

Overseas Transport Co. Ltd., ITA No. 3129 of 2002, Mumbai ITAT

In the given case, the Taxpayer was a Mauritius resident engaged in shipping business through two agents in India, did not offer any income in India by claiming benefit of Article 8 (Shipping and Air Transport) of India-Mauritius DTAA which states that profits from the operation of ships in the international traffic should be taxable in the country in which the POEM is situated.

Revenue contended that the taxpayer had fixed place PE in India under Article 5(1) of the DTAA

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on the premise that PoEM of the Mauritian company was in India. Further, the Revenue contended that agents of the taxpayer in India constituted Dependant Agent PE of the Taxpayer in India under Article 5(5) of the DTAA and thus income earned by the Taxpayer in India is taxable in India.

In relation to the argument of the revenue of that the taxpayer had fixed place PE in India as per Article 5(1) of the DTAA, the ITAT noted that there was no fixed place of the taxpayer in India as it did not had any permanent infrastructure, office, supervisory staff, tangible or intangible assets in India to constitute fixed place PE in India.

The ITAT further observed that the income of both the agents from the taxpayer constituted a meagre 12.14% and 2.79% of their total income which clearly established the fact that the agents were not exclusively working for the taxpayer and thus were having an independent status. Thus, the ITAT held that the exception mentioned in Article 5(5) of the DTAA was clearly applicable and there could not be any possibility of creation of Dependent Agent PE of the taxpayer in India.

Revenue contended that POEM of the taxpayer was not in Mauritius but in India as majority of the board meetings happened in UAE instead of Mauritius as the shareholders were from UAE. The ITAT rejected the contention of the revenue and held that the allegation that the directors/shareholders of the taxpayer are staying in UAE and are exercising their control over the affairs of the company from UAE, under no circumstances, creates POEM in India.

There has been extensive jurisprudence in India over the past few years on interpretation of the PE principle. The current ruling seeks to reinforce some existing principles around the concept of a fixed place PE and the agency PE rule. Given the factual nature of the definition of PE under a given treaty, the court has relied on the extensive factual analyses presented by the taxpayer. The ruling highlights the potential PE risks that could arise from the activities of agents in India.

Payment to non-residents for inspection of raw materials does not constitute FTS

Jeans Knit Pvt. Ltd., ITA No. 383 of 2012, Karnataka HC

The taxpayer was engaged in the business of manufacturing of fabrics and for the said purpose it imported certain raw materials from outside India. It had hired a Hong-Kong based company to inspect the quality of the raw materials, timely dispatch of materials etc. and paid certain percentage of import value as charges for the said services.

The taxpayer made the payment to the non-resident without deducting any tax, however, the revenue was of the view that since the services were in the nature of FTS under the ambit of section 9(1)(vii) of the ITA, the taxpayer had failed to deduct tax.

After considering the facts of the case, the Hon'ble HC observed that the FTS as defined u/s 9(1)(vii) of the ITA meant any consideration for rendering of any managerial, technical or

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consultancy services. Since these words were not defined in the Act, the meaning had to be interpreted in their popular sense. The court relied on Delhi HC judgement in the case of Bharti Cellular Ltd. and held that the word 'consultancy' would mean that the services must be rendered in the form of an advice or consultation given by the non-resident and would not involve instances where the non-resident was only acting as a link between the resident and another party, facilitating the transactions between them, etc.

HC observed that from the agreement entered between the taxpayer and the non-resident, it was evident that non-resident company was required to inspect that correct quality of the materials as approved by the taxpayer and were shipped to the taxpayer within stipulated time. Further, the taxpayer consults with the supplier for the quality and price of the goods and the non-resident company is only involved for physical inspection to see if the material resembles the quality specified by the taxpayer. Thus, the HC upheld the Tribunal order that for rendering the services of the non-resident, no technical knowledge was required and held that the services did not form part of technical or consultancy services.

In the present case, the Court has reiterated the position that services that do not involve technical expertise of the service provider cannot be considered as "consultancy" or "technical" in nature and thereby would go out of the purview of FTS

Important Rulings - Global

New Zealand court invokes anti-avoidance rule in respect of financing agreement entered by the Taxpayer; held the loan agreement is dressed up for equity subscription

Frucor Suntory New Zealand Ltd., CA740/2018 [2020] NZCA 383, Court of Appeal of New Zealand

The case concerns application of the New Zealand´s general anti-avoidance rule. The taxpayer, resident of New Zealand, borrowed sum of NZ$ 204 million from Deutsche Bank in exchange of a fee of NZ$ 1.8 million and issuance of a 5 year convertible note with rate of interest at 6.5% p.a. by issue of 1,025 non-voting shares of the taxpayer at maturity.

At the same time, the taxpayer's immediate parent company and the Deutsche Bank entered into a forward purchase agreement in respect of the shares. Under the agreement, the Parent was required to make a NZD149 million upfront payment to the Bank in return for the transfer of the Shares on maturity of the note. The balance of NZD 55 million was contributed by Deutsche Bank.

During the tenure of the 5 years, the taxpayer paid interest of NZ$ 66 million and claimed interest deduction. At maturity, Deutsche Bank exercised its option to accept repayment by the issue of the shares, which were then transferred immediately to taxpayer's parent company, in accordance with the forward purchase agreement. The revenue denied the interest deduction of NZ$ 66 million on the basis that the taxpayer only borrowed sum of NZ$ 55 million form the bank and thus limited the interest deductions to NZ$ 11 million.

In reaching the conclusion the court noted that the financing arrangement entered by a taxpayer was a tax avoidance arrangement to obtain a tax advantage through interest deductions and held that in fact arrangement was, in substance, a "dressed-up" subscription for equity, and that it was "tax driven", "repackaged" and "engineered" in an artificial and contrived way. Thus, the court held that the Inland Revenue was entitled to invoke the anti-avoidance provisions of the New Zealand's income tax law.

The decision handed down by the Court of Appeal will impact upon taxpayers who enter into a tax-driven financing arrangement having artificial features, as the decision strengthens the Inland Revenue's position on anti-avoidance.

Australian Court prioritizes economic ties to apply Tie-Breaker Test of Australia-Thailand DTAA

Pike, QUD 35 of 2020, Federal Court of Australia

The taxpayer was born in Zimbabwe and moved to Australia with his family in 2005 and was granted Australian permanent residency in 2009 and citizenship in 2013 and was tax resident in Australia from 2009 to 2016. In 2009, the taxpayer moved to Thailand for employment purpose while his family lived in Australia and he travelled to Australia to visit his wife and family at their family home.

The Court observed that the taxpayer was a resident of Australia for the period under review

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Important Rulings - Global

under the ordinary concepts and was also resident of Thailand for the same period. As the taxpayer had dual residency of Australia and Thailand during those income years, it was necessary to consider the application of the tiebreaker provisions in Art 4(3) of the Australia-Thailand DTAA. As per the tie-breaker rule, the residency of the taxpayer needs to be determined first on the basis of domicile test, then on the basis of habitual abode and at last depending upon his personal & economic relations with the country.

The revenue challenged that the taxpayer was resident of Australia as well as Thailand pursuant to the domicile test and habitual abode which was duly accepted by the Court. The Court rejected the revenue's findings that the taxpayer's personal and economic relations were closer to Australia as his family was in Australia. The Court found that although the taxpayer's personal relations were closer to Australia to Thailand but held that on balance his personal and economic relations were more closer to Thailand than to Australia as he was based in Thailand for his employment and had a range of personal relations in that country. Further, he supported his family financially out of his income from Thailand and not from Australia. On the other hand, he had never been employed in Australia except that his wife and children resided in Australia. The Court held that the taxpayer is resident of Thailand as his economic relation was closer to Thailand than Australia.

Important Rulings

Coverage

Management fees and license fees aggregated and benchmarked under TNMM

M/s Adcock Ingram Limited, Appeal No. 2052 & 2053 of 2019, Bangalore ITAT

The Taxpayer, engaged in the business of manufacture (including contractual manufacture) of pharmaceutical formulations, had undertaken various international transactions with its AE(s) which included, among others, management fees and license fees.

While the Taxpayer considered these expenses as inter-linked with other transactions and aggregated them for benchmarking under TNMM, the TPO rejected the stand and proceeded to consider ALP of these two transactions as nil citing non-compliance with *need test* and *duplicating services test* using CUP as MAM.

Remarking on the TPO's selection of CUP, the ITAT remarked that to hold the arm's length price as Nil under CUP method, the TPO had to necessarily demonstrate that the same services were available for nil consideration in an uncontrolled situation.

In the context of *need test*, the ITAT has noted that the requirement of services should be judged from the perspective of taxpayer as a businessman, and that without concrete reasoning, the revenue could not lose sight of various benefits which may flow to the Indian JV partner due to provision for making payment for use of license. The TPO's view on *duplication test* was also rejected in absence of evidence relating to similar services availed by the Taxpayer from third parties.

In support of the selection of most appropriate method by the Taxpayer, the ITAT further held that such transactions are closely linked and cannot be analysed separately, hence requiring aggregation.

It is evident that the ITAT favours aggregating of transactions (including singular transactions like management fees, license fees, etc.) where they are closely interlinked or related to other transactions. However, the Taxpayer needs to ensure that robust documentation is maintained in order to justify rendition and benefit test, and commercial considerations regarding need for services.

Corporate Guarantee held to be an International transaction; guarantee commission limited to the extent of facility availed

M/s Associated Capsules Pvt Ltd, Appeal No. 2750 of 2014, Mumbai ITAT

The Taxpayer engaged in manufacture of empty hard gelatine capsules had provided Corporate Guarantee to its AE. The bank had sanctioned a loan facility of INR 15.19 crores to the AE; however, the AE had availed a loan facility of only INR 2.48 crores during the year under consideration. The Taxpayer had given corporate guarantee on behalf of its AE to the bank sanctioning the said loan facility.

The Taxpayer's claim that Corporate Guarantee is not an International Transaction was rejected by all level of authorities, however the rate of guarantee commission was restricted to 0.5% based on various judicial pronouncements as against 2.5% upheld by CIT(A).

Important Rulings

Further, the ITAT has observed that usages of loan facility being contingent in nature and the extent of exposure being dependent on the amount of loan taken, it would be justified if guarantee commission is charged to the extent of actual exposure of facility availed instead of gross amount of facility extended.

Excludes comparable though retained in earlier-year stressing on importance of year-to-year comparability

Elcome Technologies Private Limited, IT Appeal No. 2051 of 2016, Mumbai ITAT

The Taxpayer is engaged in trading of positioning technologies, which include geodesy, high-end GPS and the highly specialized Industrial Measurement Systems (IMS) and high definition surveying systems.

The Taxpayer, before the ITAT, has contended that the DRP has excluded PAE Ltd. as comparable on the reason that this company is engaged into trading of auto batteries, solar and power back systems which is different from the Taxpayer. However, the same comparable had been retained by the TPO as well as by the DRP in the previous year. Therefore, it should be included as a comparable in the impugned assessment year.

The ITAT has held that Comparability of a case has to be considered on year to year basis and, therefore, merely because a case has been held to be comparable for one year cannot per se be considered as comparable for succeeding year as well. Whether a particular company is a comparable or not is an exercise which has to be carried out every year in case of the Taxpayer considering facts of that specific year. In view of the factual scenario prevailing during the year under consideration and principles governing RPM, the ITAT has upheld the decision of AO in excluding such comparable in the final set of comparables.

Accordingly, any company should not be considered as comparable only because the same has been considered as comparable in previous year, it is necessary to evaluate the comparability on year to year basis.

ITAT treats business advance to loss-making JV as capital contribution and rejects recharacterization as loan

KEC International Ltd., IT Appeal No. 17 of 2018, Mumbai ITAT

The Taxpayer is engaged in the business of designing, fabrication, galvanizing and testing of transmission lines & telecom towers, supply and erection of sub-station structures and overhead equipment for railway electrification and managing infrastructure sites for telecommunication services. The Taxpayer has given advances to one of its AE at South Africa, being a joint venture of the Taxpayer. The advances were given out of Taxpayer's accumulated / undistributed profits and the Taxpayer did not avail any external commercial borrowings (ECB).

The Taxpayer explained that during year under consideration, the joint venture (JV) faced cash crunch due to huge operational losses in the project. It was submitted by the Taxpayer that the funds were advanced to meet the deficit in

Important Rulings

cash flow while executing projects in South Africa. The advancement was nothing but a matter of commercial prudence primarily to protect the business interest of the Taxpayer in projects of JV. This was just a fulfilment of the obligation of being a JV partner as any financial incapacitation of JV would adversely affect the continuation of the project and ultimately jeopardize the interest of the Taxpayer. Since the advances were purely in the nature of business advances to fulfil the obligations of the Taxpayer as a JV partner, the Taxpayer has not charged any interest on the said advance. It was also submitted by the Taxpayer that relationship on account of advancing funds could not be considered in isolation without considering crucial business scenarios and expediency.

The ITAT has held that the advances were more in the nature of capital contribution and by advancing the same, the Taxpayer had protected its own business interest which is evident from the financial statements of JV. The advances were towards fulfilment of the Taxpayer's obligation of being a JV partner as any financial incapacitation of JV would adversely affect the continuation of the project and ultimately jeopardize the interest of the Taxpayer. Therefore, the said advances could not be put in the category of loans as done by the lower authorities. Further, it could not be said that JV entity derived / gained certain benefits out of such advances but rather it was the Taxpayer who would ultimately gain by continuing with the projects and taste the fruits of the success of project. Accordingly, the ITAT has deleted the adjustment made.

Circulars & Notifications

Coverage

Customs

All India roll out of Faceless Assessment under Customs

Circular No. 40/2020 – Customs dated September 04, 2020

After successful launch of Turant Customs programme, the CBIC has decided to roll out the Faceless Assessment at all India level at all ports for all imported goods by October 31, 2020. The present circular prescribes the modalities for the same.

Auto Let Export Order (LEO) under ECCS

Circular No. 41/2020 – Customs dated September 07, 2020

To facilitate exports by courier, the CBIC has decided to allow the facility of Auto LEO to CSBs which are facilitated by RMS.

Goods and Service Tax (GST)

Extension for exemption on services by way of transportation of goods by air or by sea

Notification No. 04/2020 – CT (Rate) dated September 30, 2020

GST Exemption on services by way of transportation of goods by air or by sea from customs station of clearance in India to a place outside India, extended by one year i.e. up to September 30, 2021.

Extension for the time limit provided under Section 31(7) of the CGST Act 2017

Notification No. 66/2020-CT dated September 21, 2020

The time limit for issuance of invoice in case of goods sent or taken out of India on approval basis for sale or return, if falls during the period from March 20, 2020 to October, 30 2020 is extended up to the October, 31 2020.

Waiver in late fee for FORM GSTR-4 for 2017-18, 2018-19 and 2019-20

Notification No. 67/2020 – CT Dated September 21, 2020

In case of delay in filing Form GSTR -4 for the period July 2017 to March 2020 by taxpayers, late fees have been fully waived off completely in case of taxpayers composition taxpayers who having nil tax payable and late fees have been waived off in excess of Rs. 500 in other cases, if the return is filed between September 22, 2020 to October 31, 2020.

Relaxation in late fee for FORM GSTR-10

Notification No. 68/2020 – CT Dated September 21, 2020

The late fees in case of taxpayers who had failed to file the Final return in FORM GSTR – 10 within the due date, would be capped at Rs. 500 if the said return is filed between September 22, 2020 to December 31, 2020.

Circulars & Notifications

Extension for Annual return under section 44 of CGST Act

Notification No. 69/2020-CT dated September 30, 2020

Time limit for furnishing Annual Return in FORM GSTR-9 and FORM GSTR 9C for 2018-19 has been extended from September 30, 2020 to October 31, 2020.

Implementation of the requirement of Dynamic QR Code on B2C invoices

Notification No. 71/2020-CT dated September 30, 2020

Applicability of QR code for B2C transactions for E-Invoices has been postponed to December 01, 2020. Further, the requirement of generating a QR code shall apply if the turnover exceeds Rs. 500 Crore during any financial year from 2017-18

A special procedure for taxpayers for issuance of e-Invoices in the period October 01, 2020 to October 31, 2020.

Notification No. 73/2020-CT dated October 01, 2020

Considering the difficulties faced by taxpayers in generating the IRN, it has been notified that registered persons who are required to obtain an IRN and have not done so during the period October, 1 2020 to October 31, 2020, may upload the specified particulars in FORM GST INV-01 on the IRP, within 30 days from the date of invoice. However, in case of failure, the invoice generated without an IRN shall not be considered as valid.

Highlights of the 42nd GST Council Meeting held on 5th October (To be notified)

- Extension on levy of Compensation Cess till June 2022.
- Due date of filing quarterly GSTR 1 to be extended till 13th of the month succeeding the quarter instead of 31st day of the succeeding quarter with effect from January 01, 2021.
- Outward GST liability would be generated automatically from GSTR 1 with effect from January 01, 2021.
- Input Tax Credit would be automatically derived from FORM GSTR 2B from January 01, 2021 for monthly return filers and from April 01, 2021 for quarterly return filers.
- Mandatory filing of GSTR 1 before filing GSTR 3B with effect from April 01, 2021.
- Present system filing of FORM GSTR-1 and FORM GSTR 3B is extended till March 31, 2021.
- Facility to file GSTR 1 and GSTR 3B on quarterly basis for the taxpayers whose annual turnover is less than Rs. 5 Crores from January 01, 2021. However, tax is required to be paid on monthly basis with an option to pay 35% of net cash tax liability of the last quarter using an auto generated challan.
- Changes in declaration of HSN for goods and SAC for services in invoices and in FORM GSTR-1 with effect from April 01, 2021.

Circulars & Notifications

- 6-digit HSN/SAC for supply of Goods or Service for taxpayers having aggregate annual turnover above Rs. 5 crores
- 4-digit HSN/SAC for B2B transactions for supply of Goods or Service for taxpayers having aggregate annual turnover up to Rs. 5 crores

- Facility to file NIL FORM CMP-08 through SMS
- Refund will be paid in Pre-validated bank account linked with Aadhar and PAN with effect from January 01, 2021.
- Satellite launch services supplied by ISRO, Antrix Corporation Ltd. and NSIL would be exempted.

DGFT

Streamlining of UQCs in DGFT's EDI system and Customs' ICEGATE

Trade Notice No. 27/2020-21 dated September 14,2020

Export or Import of goods will not be permissible without Standard UQCs after November 01, 2020.

Case Laws

Refund of Input services inadmissible under Inverted duty structure

Transtonnelstroy Afcons Joint venture Vs Union of India, (Madras HC)

Writ Petition Nos. - 8596 of 2019

The taxpayers are engaged in supplying goods and services which suffer from ITC accumulation due to IDS. The taxpayer vide the present petition before the Hon'ble Madras HC argued that the provisions of the GST law which do not allow the refund of ITC accumulated on input services are not valid and are liable to be read down. While the proviso to Section 54(3) (ii) refers to only the words 'inputs', the taxpayer argued that the law has to be read to allow the refund of inputs and input tax credit and such provision restricting the refund only to inputs is in violation of Article 14 & 38 of COI. The taxpayer further argued that, Rule 89(5)(a) which excludes refund on input services, is contrary to the provisions of Section 54(3).

The department, on the other hand argued that that proviso to Section 54(3) distinguishes two assesses claiming refunds and entitlement to refund claim based on procurement of input goods and input services and is legitimate. The department also submitted that the CGST Act and the COI also clearly differentiate Goods & Services. Further, Rule 89(5) gives more clarity to refund entitled on basis of provisions contained in Section 54(3)(ii).

The Hon'ble HC concluded that importance is to be given to the words used in the statute and they are to be given the meaning in the manner in which they are read. The term 'Inputs' used in Sec 54(3)(ii) clearly means that the provision excludes Input services and Capital goods. Rule 89(5) has been amended in conformity with Sec 54(3)(ii). The Hon'ble HC accordingly held that Section 54 does not violate Article 14 of COI and that Rule 89(5) is intra-virus with parent statute.

The Hon'ble Madras HC also took a note on the judgement of Hon'ble Gujarat HC in case of VKC footsteps on the same subject but distinguished on the grounds that the said judgement did not discuss the provisions of Section 54 (3) (ii) in detail.

Case Laws

The GST law was introduced and was touted to inter alia, remove the confusion between goods and services as existed under the VAT v/s Service Tax regime. Further, the important pillar on which the GST law was based was a seamless flow of ITC. The provisions of the GST law allowing refund of ITC only on inputs and not on input services, stand against the fundamentals of the GST law. While one would hope that the issue may finally resolved by the Hon'ble SC given that there are contradictory judgements by two HCs, it is desirable that the Government suitably makes amendments to the law to reflect the fundamental principles om which the entire GST framework is based upon.

Delayed manual GST Appeal allowed due to Lack of Clarity in GST Law

Gujarat State Petronet Ltd. Vs UOI (Gujarat HC), R/Special Civil Application No. 15607 of 2019

The taxpayer filed refund application in respect of GST paid on supplies made to an SEZ unit. Due to lack of documents, the department sanctioned only part refund and rejected the remaining as inadmissible. Due to technical issues, the order passed by the department could not be uploaded to GST portal. Further, the taxpayer was unable to file the fresh refund application as the portal did not allow to apply for a refund for the same period for a second time.

The taxpayer, therefore, filed a manual appeal against refund order which was rejected as being time barred. The taxpayer ultimately approached the Hon'ble HC and submitted that that they cannot file appeal electronically without receiving the electronic copy of the order and the time period of 3 months to file appeal starts from the date of communication of order received in electronic form.

The department argued that uploading of an order & filing of appeal are two separate processes and that the taxpayer could have filed an appeal through electronic form based on adjudicating order, whereas the taxpayer filed a manual appeal beyond the extended period of 4 months, hence appeal was rightly rejected.

The Hon'ble HC concluded that filing of appeal and uploading of order are intertwined activities and an appeal can be filed electronically only when order is uploaded online. The Hon'ble HC also observed that there is no provision under the law to file a manual appeal and accordingly, the period of limitation would not start till the order is uploaded on the portal. The Hon'ble HC concluded that there was no failure on part of the taxpayer and therefore it cannot be penalized for lack of clarity in provision.

One of the important of aspect of the GST law is the technology on which it was envisaged to function. While many aspects have been streamlined since the implementation of GST over the past 3 years, the taxpayers still face a lot of challenges due to frequent technical glitches on the GSTN portal. Since there is a lack of clarity on the procedures to be followed when the technology fails to perform as envisaged under the law, it is advisable for a taxpayer to take proactive necessary steps like

Questions?

Case Laws

approaching the department with manual submissions in such case to protect their interest.

SEZ Units allowed to claim Refund of accumulated ITC

Britannia Industries Ltd. Vs UOI (Gujarat HC), R/Special Civil Application No. 15473 of 2019

The taxpayer (an SEZ Unit) filed a claim for refund of IGST credit distributed by its HO having an ISD registration. The said claim was rejected by department on the grounds that an SEZ unit is not supposed to pay any tax and thus no question of refund of ITC arises. The department also argued that there is no provision in the law which allows an SEZ unit to claim refund of unutilized ITC.

The taxpayer, therefore, approached the Hon'ble HC and submitted that they are entitled to refund of ITC received from ISD in terms of Section 16. The taxpayer argued that the Service Tax regime also had a provision in place to allow refund in such cases. The taxpayer also submitted that the entire scheme of GST does not restrict an ISD from distributing common credit to an SEZ unit and thus, refund of unutilized ITC should be eligible as there is no express provision under GST Act to reject such refund.

The Hon'ble HC observed that it is not possible for a supplier to claim refund of ITC distributed by ISD and there is no supplier who can actually claim the refund as the ITC has been distributed by the ISD. The Hon'ble HC, accordingly, held that the taxpayer is eligible to refund and directed the department to process the refund claim.

While this judgement is specific to ITC distributed by an ISD to an SEZ unit, the principles laid down by the Hon'ble HC may be applied by SEZ units to claim refund of ITC which may have been accumulated due to varied reasons such as tax wrongly charged by supplier, etc.

Circulars & Notifications

Extension of various timelines by MCA

Considering the COVID 19 situation in India, MCA has extended various compliance related deadline and extended the timelines of opting of certain schemes as announced earlier which were ending on 30th September 2020. The same is summarised as under:

Sr. No.	Provisions	Revised / Extended Date	Circular No./Notification
1	Cost Audit Report for the FY 2019-20	November 30, 2020	General Circular No. 29/2020 dated September 10, 2020
2	Companies Fresh Start Scheme, 2020	December 31, 2020	General Circular No. 30/2020 dated September 28, 2020
3	LLP Settlement Scheme, 2020	December 31, 2020	General Circular No. 31/2020 dated September 28, 2020
4	Scheme for relaxation in filing forms for creation/modification of charges	December 31, 2020	General Circular No. 32/2020 dated September 28, 2020
5	Convening of Extra-ordinary General Meetings [EGM] through Video Conferencing [VC] or Other Audio-Visual Means [OAVM] or to transact items through postal ballot	December 31, 2020	General Circular No. 33/2020 dated September 28, 2020
6	Application for inclusion of name in databank of Independent Directors who has been appointed on the date of commencement of Companies (Appointment and Qualification of Directors) Fifth Amendment Rules, 2019	December 31, 2020	Notification dated September 28, 2020
7	Convening of Board Meeting through video conferencing or other Audio-Visual means for approval of Annual Financial statements, Board's Report, Prospectus, Matters relating to Merger, Demerger, Acquisition and Takeover, Audit Committee Meetings for consideration of Financial Statements including Consolidated Financial Statements	December 31, 2020	Notification dated September 28, 2020

8	Creation of Deposit Repayment Reserve of 20% of deposits and Investment or deposit of 15% of amount of debentures	December 31, 2020	General Circular No. 34/2020 dated September 29, 2020
9	Filing of various Forms: • Form IEPF-1 and IEPF- 1A [Statement of amounts credited to IEPF] • IEPF-2 [Statement of Unpaid and Unclaimed amounts] • IEPF-3 [Statement of shares and unclaimed or unpaid dividend not transferred to IEPF] • IEPF-4 [Statement of shares transferred to IEPF] • IEPF-5 [Application to authority for claiming unpaid amounts and shares out of IEPF] • IEPF-7 [Statement of amounts credited to IEPF on account of shares transferred to Fund]	December 31, 2020	General Circular No. 35/2020 dated September 29, 2020

Relaxations to Start-up Companies with respect to accepting Deposits

Companies (Acceptance of Deposits) Amendment Rules, 2020 dated September 7, 2020

The Companies (Acceptance of Deposits) Amendment Rules, 2020 has extended the time frame for Start-up Companies for accepting deposits.

Sr. No.	Particulars	Current Time Frame	Extended Time Frame
1	An amount of 25 lakh rupees or more received by a start-up company, by way of a convertible note in a single tranche, from a person.	convertible into equity shares or repayable within a period not exceeding 5 years	convertible into equity shares or repayable within a period not exceeding 10 years
2	Non applicability of limit of receipt of deposits from Members	5 years from the date of its incorporation	10 years from the date of its incorporation

System Driven Disclosure for trading in equity etc. by certain person connected to Promotors

SEBI / HO / ISD / ISD / CIR / P / 2020 / 168 dated September 9, 2020

SEBI has expanded the scope of system driven disclosures made under Regulation 7(2) of the SEBI (Prohibition of Insider Trading Regulations), 2015 ("PIT Regulations"). The mechanism will now cover all disclosures to be made to the company pertaining to trading in equity shares and equity derivative instruments by designated persons'[1] and members of the promoter group, in addition to Promoters and Directors of a listed entity, within two days of such transaction.

Initially the disclosures shall provide information on trading in equity shares and equity derivative instruments i.e. Futures and Options of the listed company. The Regulations shall come into effect from October 1, 2020 and run in parallel with the existing system of disclosure obligations as per PIT Regulations till March 31, 2021.

In the event of contravention of the same, SEBI shall have the authority to deal with the same in accordance with its powers under the Securities and Exchange Board of India Act, 1992.

Re-lodgment of Transfer Requests of Shares

SEBI / HO/MIRSD/RTAMB/CIR/P/2020/166 dated September 7, 2020

SEBI had discontinued the transfer of securities held in physical mode for transfer deeds lodged after April 1, 2019, barring cases of re-lodgment submitted up to April 1, 2019. The cut-off date for re-lodgment of such transfer deeds and shares has been extended up to March 31, 2021.

It has been clarified that such shares that are re-lodged for transfer (including those requests *that are pending with the listed company / RTA, as on date)* shall be issued only in demat mode.

Relaxation with respect to Validity of SEBI Observations and Revision in issue size

SEBI/HO/CFD/DIL1/CIR/P/2020/188 dated September 29, 2020

A one-time relaxation with respect to with respect to validity of SEBI Observations and filing of fresh offer document in case of increase or decrease of issue size beyond a particular threshold given in April 2020 up to September 2020 has been further extended till March 2021. The same is summarized as under:

- The validity of the SEBI observations expiring between October 1, 2020 to March 31, 2021 are being extended up to March 31, 2021 which by the earlier relaxation norms was extended by 6 months up to September 30, 2020 to public issue/ rights issue that

[1] There is no generic / specified list stated in the SEBI Regulations for 'Designated Persons'. The Designated Persons are identified by the Board of a Company, on the basis of their role and function and the access that such role and function would provide to unpublished price sensitive information, in addition to seniority and professional designation. The Promoter group on the other hand is specifically defined under the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009.

Synopsis

had expired / were to expire between March 1, 2020 and September 30, 2020

- The relaxation on change in fresh issue size by up to 50% (enhanced from 20% pre COVID-19) of the estimated issue size without requiring to file fresh draft offer document applicable for issues (IPO/ Rights Issues/ FPO) opening before December 31, 2020 has also been extended to March 31, 2021.

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

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

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Abbreviations

Back

Abbreviation	Meaning
AAAR	Appellate Authority of Advance Ruling
AAR	Authority of Advance Ruling
ASBA	Applications Supported by Blocked Amount
ADR	American Depository Receipts
AE	Associated Enterprise
AGM	Annual General Meeting
AIF	Alternate Investment Fund
AIR	Annual Information Return
ALP	Arm's length price
AMT	Alternate Minimum Tax
AO	Assessing Officer
AOP	Association of Person
APA	Advance Pricing Arrangements
AS	Accounting Standards
AY	Assessment Year
BBT	Buy Back Tax
BMA	Black Money (Undisclosed Foreign Income and Assets) and Imposition Tax Act 2015
BOE	Bill of Entry
BOI	Body of Individuals
BT	Business Trust
CBDT	Central Board of Direct Tax

Abbreviation	Meaning
CCA	Cost Contribution Arrangements
CESTAT	Central Excise and Service Tax Appellate Tribunal
CFC	Controlled Foreign Corporation
CGST	Central Goods and Services Tax
CIT(A)	Commissioner of Income Tax (Appeal)
CPC	Central Processing Centre
COI	Constitution of India
CPSE	Central Public Sector Enterprise
CSR	Corporate Social Responsibility
CTA	Covered Tax Agreement
CUP	Comparable Uncontrolled Price Method
CUP	Cost Plus Method
DDT	Dividend Distribution Tax
DGIT	Director General of Income Tax
DRP	Dispute Resolution Panel
DTAA	Double Tax Avoidance Agreement
ECB	External Commercial Borrowing
ECCS	Express Cargo Clearance System
EGM	Extra-ordinary General Meeting
EOU	Export Oriented Unit
EQL	Equalization Levy
FA	Finance Act

Abbreviation	Meaning
FAR	Function Assets and Risk
FEMA	Foreign Exchange Management Act, 1999
FII	Foreign Institutional Investor
FPI	Foreign Portfolio Investor
FOF	Fund of Funds
FTC	Foreign Tax Credit
FTP	Foreign Trade Policy
FTS	Fees for Technical Service
FY	Financial Year
GAAR	General Anti-Avoidance Rules
GDR	Global Depository Receipts
GOI	Government of India
GST	Goods and Service Tax
GVAT Act	Gujarat VAT Act, 2006
HC	High Court
Hold Co	Holding Company
ICAI	Institute of Chartered Accountant of India
ICDS	Income Computation and Disclosure Standards
ICDR	Issue of Capital and Disclosure Requirements
IDS	Inverted Duty Structure
IGST	Integrated Goods and Services Tax

Abbreviations

Abbreviation	Meaning
IRDA	Insurance Regulatory and Development Authority
ISD	Input Service Distributor
ITA	Income Tax Act, 1961
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
LEO	Let Export Order
LIBOR	London Inter Bank Offered Rate
LO	Liaison Office
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
MFN	Most Favored Nation clause under DTAA
MLI	Multilateral Instrument
MMR	Maximum Marginal Rate

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

Abbreviation	Meaning
RPM	Resale Price Method
SC	Supreme Court of India
SDT	Specified Domestic Transaction
SE	Secondary adjustments
SEBI	Securities Exchange Board of India
SEP	Significant economic presence
SEZ	Special Economic Zone
SFT	Specified Financial statement
SION	Standard Input Output Norms
SST	Security Transaction Tax
ST	Securitization Trust
STCG	Short term capital gain
STPI	Software Technology Parks of India
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
UQCs	Unit Quantity Codes
VCF	Venture Capital Fund
WHT	Withholding Tax