VISION 360

JAN 2024

EDITION 39

A TREASURY OF KEY TAX & REGULATORY DEVELOPMENTS!

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EDITORIAL

Vision 360: 2024 New Beginnings!

As the nation gears up for the Lok Sabha elections, all eyes are focused on the imminent budget announcement slated for February 1, 2024. The Hon'ble Finance Minister, Nirmala Sitharaman, is poised to take the centre stage, presenting an opportunity to address lingering concerns and lay the groundwork for sustained economic growth in the coming years.

The prevailing expectation is that the budget will prioritize potential relief in the area of personal income tax, especially for those under the New Tax Regime. This could potentially bring about changes aimed at easing the tax burden on individual taxpayers.

Interestingly, the spotlight of Budget 2024 is projected to concentrate on streamlining Customs law compliance rather than delving extensively into GST law, which is typically addressed in GST Council meetings. While the Central GST Act may witness amendments to align with recent changes in GST Rules, the broader expectations for Budget 2024 encompass significant aspects that will shape the economic landscape. As we await the unveiling of Budget 2024, the nation anticipates a critical moment that will not only impact economic policies but also contribute to the discourse leading up to the elections.

Albert Einstein once famously remarked, "*The hardest thing in the world to understand is the tax*." As we reflect on the six years since the implementation of GST, it becomes apparent that navigating the complexities of taxation remains a perpetual challenge. However, with each passing day, we witness a collective preparedness to confront these challenges head-on.

On the Direct Tax front, the CBDT has extended time for processing validly e-filed ITRs in non-scrutiny cases for AYs 2018-19 to 2020-21 till January 31, 2024. Also, the CBDT has notified the ITR-1 & ITR-4 for Assessment Year 2024-25 effective April 1, 2024.

On the Indirect Tax front, the CBIC has extended the time limit for issuance of notices of F.Y. 2018-19 and 2019-20. As for the judicial developments, the SC has quashed the GST department's plea against HC order on ITC. The High Court held that the action against the selling dealer should be taken before directing the recipient to reverse the ITC. In another interesting judgment, the Calcutta High Court has highlighted the applicability of the Limitation Act in the absence of a non-obstante clause in Section 107.

On the international front, the UAE Federal Tax Authority has issued guides to determine natural persons subject to corporate tax. Like many other countries, now Qatar and Kuwait establish accord to avoid double taxation.

In all, we the entire team of **TIOL**, in association with **Taxcraft Advisors LLP**, **GLS Corporate Advisors LLP** and **VMGG & Associates**, are glad to publish the **39th edition** of its exclusive monthly magazine '**VISION 360**'. We hope that, as always, you will find it an informative and interesting read. We look forward to receiving your inputs, thoughts and feedback, in order to help us improve and serve you better!

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ARTICLE

Time Extension for issuance of notices under GST: A Comprehensive Analysis

The Central Board of Indirect Taxes and Customs vide Notification No. 56/2023 has cast a long shadow over the Indian GST landscape. Under the guise of alleviating administrative burdens, the notification extends the deadlines for tax assessments and input tax credit reclaims for financial years 2018-19 and 2019-20. However, this seemingly pragmatic measure has ignited a fierce legal and procedural debate, exposing potential cracks in the GST framework and raising critical questions about its legality and impact on taxpayer rights.

The revised deadlines – April 30, 2024, and August 31, 2024, respectively – effectively push back the issuance of Show Cause Notices. This extended liability horizon casts a long shadow on businesses, breeding insecurity and potentially impacting economic growth. However, the crux of the controversy lies in the justifications for the extension.

Justifications and limits of Section 168A

The crux of the controversy lies in the questionable justifications for the extension itself. Section 168A of the CGST Act empowers the CBIC to grant such extensions only under exceptionally turbulent circumstances – war, epidemics, natural disasters, or critical events significantly impeding the Act's implementation. Section 168A of the CGST Act was inserted through Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 (38 of 2020) dated 29.09.2023, w.e.f 31.03.2020. As under -

168A: Power of the Government to extend time limit in special circumstances

1) *Notwithstanding anything contained in this Act, the Government may, on the recommendations of the Council, by notification, extend the time limit specified in, or prescribed or notified under, this Act in respect of actions which cannot be complied with due to force majeure.*

2) *The power to issue notification under sub-section (1) shall include the power to give retrospective effect to such notification from a date not earlier than the date of commencement of this Act.*

Explanation – For the purpose of this section, the expression "force majeure" means a case of war, epidemic, flood, drought, fire, cyclone, earthquake or any other calamity caused by nature or otherwise affecting the implementations of any of the provisions of this Act.

Upon reviewing Section 168A, it becomes evident that the Government cannot arbitrarily invoke this provision based on its convenience. Notably, the Notification No. 56/2023 lacks any mention of such force majeure events, raising red flags about the very validity of the extension. This opacity is further compounded by the absence of the GST Council's recommendation, a mandatory prerequisite under the Act. This procedural lapse fuels concerns about potential deviations from established procedures and sets a perilous precedent for future, eroding trust in the system's predictability and fairness.

These concerns have galvanized a wave of legal challenges, in the matter of the cases of **M/s. New India ACID Baroda Pvt. Ltd. vs. Union of India (R/Special Civil Application No. 21165 of 2023)** and **M/S Gajanand Multishop Through Pankajkumar Roshanlal Gandhi (R/Special Civil Application No. 20227 of 2023)** were presented before the Hon'ble High Court of Gujarat. The contention raised was regarding the absence of grounds in the impugned notification no. 9 of 2023 dated 31.03.2023, which extended the time limit for issuing SCN u/s 73(10) of the CGST Act. The argument emphasized that, as of the year 2022, there was no existing COVID Pandemic, making Section 168A of the Act inapplicable for time extension. The explanation to Section 168A was referred to, stating that none of the mentioned conditions applied during the issuance of the impugned notification by the CBIC. The Hon'ble High Court, in its order dated 21.12.2023, issued notices to the respondents and scheduled further proceedings for 08.02.2024

- The absence of compelling justifications under Section 168A raises substantial questions about the extension's validity and adherence to the statutory map. Critics argue that invoking the provision without meeting its threshold renders the extension void.

- The absence of the GST Council's guiding light and the retrospective application of Section 168A fuel concerns about procedural vulnerabilities within the administrative apparatus, potential abuse of power, and an erosion of the delicate balance between tax authorities and taxpayers. This creates fertile ground for arbitrariness and undermines the principles of transparency and accountability within the GST regime.

- The extended liability period and the possibility of arbitrary extensions in the future create a state of uncertainty for businesses, hindering both investment decisions and overall economic decisions. This prolonged uncertainty can negatively impact business planning, disrupt financial projections, and ultimately stifle economic growth, leaving businesses adrift in a sea of uncharted fiscal waters.

The High Court's verdict in these cases will have far-reaching consequences, setting a crucial precedent for the permissible limits of the CBIC's extension power under the GST regime. Its ramifications will significantly impact the future course of extensions and shape the delicate dance between administrative efficiency and taxpayer rights within the GST framework.

Building a balanced framework

The CBIC's extension serves as a stark reminder of the need for a robust and well-balanced framework that upholds the principles of fairness and predictability within the GST regime. To achieve this, critical steps include:

- Clearly defined parameters for invoking Section 168A are essential to prevent misinterpretations and potential abuse of power. This could involve setting specific thresholds for exceptional circumstances, outlining a transparent process for invoking the extension power, and mandating prior consultation with the GST Council and business stakeholders.

- Open communication with the GST Council and the business community can foster trust and build a more collaborative relationship. Regular consultations on policy changes and procedural updates can help prevent future controversies, ensure that the GST system is responsive to the needs of all taxpayers, and foster a sense of shared ownership in its functioning, ensuring smooth functioning for all.

- Streamlining Administrative Processes: Addressing the underlying administrative leaks that led to the need for the extension can help minimize the need for future unwarranted litigation. This might involve investing in technology upgrades, optimizing internal processes, ensuring adequate staffing levels within the tax authorities, and improving data management systems to address any backlogs or inefficiencies, ensuring the machinery of taxation runs smoothly and efficiently.

Conclusion

CBIC's time limit extension has unveiled a labyrinth of legal complexities and exposed potential weaknesses in the Indian GST framework. The ongoing legal battles and the looming court verdict hold the key to navigating this intricate landscape and shaping the future of extensions within the regime. Ultimately, the quest for a fair, predictable, and transparent GST system necessitates a collaborative approach that prioritizes robust legal safeguards, fosters trust among stakeholders, and ensures that the tax system serves the needs of both the government and the business community.

INDUSTRY PERSPECTIVE

Mr. Fulesh Bansal

Finance Controller

Sigma Byte Computers Private Limited

01 How is a company such as yours which deals in the niche of providing Information Technology Infrastructure Solutions dealing with the evolving tax framework and what are the recurring tax issues faced by it?

The Information Technology Infrastructure Industry is a very dynamic industry and one of the fastest-growing industries in India. Therefore, there are bound to be varied challenges under not only GST law but with any other law which is evolving along with the landscape of our country. The introduction of GST was welcomed as a simplification move which turned out to be true to a large extent, though there still exist lots of challenges in implementation.

It is no secret that the industry is facing issues regarding notices & assessment from the GST department for the same accounting year even though the audit has been completed. Moreover, GST officers are continuously issuing notices without considering the online responses filed on the portal. Furthermore, the department is issuing a plethora of notices to the industry, most of which are without basis, just to comply with the timeliness for the assessment year which are about to expire.

02 What will be the future of automation in tax compliances? Will it increase efficiency or simply be an alternative to the manual workforce?

The future of tax compliance automation in India holds significant potential for transforming the way businesses manage their tax obligations. As the economy evolves into the digital age, businesses are adapting accordingly. Gone are the days when a company's customer base was limited by geography; now, any business can easily sell its goods or services online, reaching customers worldwide. For example, in GST, e-invoicing and e-way bills require automation tools to generate and manage them efficiently. This automation will undoubtedly facilitate tasks such as digital tax filing, real-time data integration, and

Fulesh Bansal
Finance Controller - Sigma Byte Computers Private Limited

cloud-based solutions. However, adopting this automation presents challenges due to the complexity and diversity of tax regulations and processes. It requires a comprehensive approach that involves careful planning, collaboration with technology providers, engagement of tax experts, and on-going monitoring and updates to keep up with regulatory changes.

03 The Government has undertaken major changes in the tax system by introducing E-Waybill, E-Invoicing, Faceless Assessment etc. How do you see these changes in bringing transparency and efficiency in the tax system?

The implementation of the e-invoicing system has proven to be a valuable tool in addressing tax leakages and fraud associated with fake invoices. By closely monitoring B2B transactions and verifying ITC claims, the system has significantly enhanced transparency, discipline, governance and strengthened efforts to curb tax evasion. However, it is important to acknowledge that this increased scrutiny and compliance comes with their own set of challenges, potentially adding to the burden faced by taxpayers. Consequently, the compliance burden for industries has unsurprisingly increased as they are now required to reconcile e-invoicing data with their books of accounts. In the case of e-way bills, they provide transparency regarding the movement of goods.

04 The tax space is fast evolving over the last few years. What has been the impact of such changes on your industry? Do you believe that such changes are aligned with overall long -term growth objectives?

The recent changes in the tax landscape have brought about significant shifts, impacting both the economy and the service industry. These changes have aimed to broaden the tax base, ensuring a more robust revenue stream for developmental initiatives while also influencing consumer spending through revised tax structures. However, the alignment of these changes with long-term growth objectives is a nuanced matter. While they hold the potential to foster transparency and sustainable revenue, especially for infrastructure and social welfare, their implementation needs to strike a balance. Overly burdensome taxation could potentially hinder growth, particularly for businesses like ours who provide ICT infrastructure solutions. The key lies in achieving a synergy where evolving tax policies incentivize investment, entrepreneurship, and innovation, allowing industries to contribute optimally to the nation's broader economic goals.

05 What are your views on the Government's objective of faceless scheme of tax? Do you think it is achievable?

Despite certain hiccups in the implementation, the new Faceless Customs procedure seems to be fairly running, albeit with some obstacles. We have seen that instead of cutting down on the time it takes to clear goods from the port, the authorities are taking longer to clear the regular shipments. As regards the faceless assessments in Direct Tax and GST, a number of taxpayers from all the industries have been facing certain issues such as non-granting of personal hearing, issuance of ex-parte orders before the due date for making submissions, etc. This unnecessarily adds to litigation burden on the taxpayers and the Courts. I believe that the solution to these issues lies in better training for officers to conduct faceless assessments among others.

Fulesh Bansal
Finance Controller - Sigma Byte Computers Private Limited

06 The Government recently released a clarification vide Policy Circular No. 09/2023-24 regarding the import of laptops, Tablets, etc. What are your thoughts regarding the same?

The clarification issued by the Government is of much importance and has clarified the ambiguity regarding import of laptops, desktops, etc. The Circular has clarified that the import of Laptops, Tablets, All -in-one Personal Computers, ultra small form factor Computers and Servers is under the 'restricted' category. This definitely gives a boost to similar products which are made In India. Further, the clarification that such an import restriction is not applicable to goods such as Desktop Computers, etc. covered under Tariff Head 8741 settles the ambiguity regarding the Government's position on the same. This indicates the Government's approach of creating an atmosphere of constructive dialogue in aligning policy decisions with ground realities.

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HC closes writ petitions on MFN Clause controversy, follows SC's Nestle judgment

Societe De Participations Financieres Et Industrielles Spafi

W.P.(C) 9316/2022 and 11624/2022

The Assessees were the Indian subsidiaries of certain companies that had filed writ petitions before the HC against the denial of lower withholding tax on dividend payable by them. Before the HC, the Assessees conceded that as the issue was covered by the SC judgment in **Nestle SA [2023-TII-11-SC-INTL],** they would be carrying the issue further in appeal. Observing that as far as the HC was concerned, it was bound by the judgment of the SC, the HC closed the writ petitions.

SC rules on "market value" of electricity for Section 80-IA deduction, allows switching depreciation method via ITR

Jindal Steel and Power Limited

2023-TIOL-165-SC-IT

The Revenue had filed an appeal before the SC challenging the order of the HC that set aside the re-computation of the deduction under Section 80IA of the IT Act by the AO. Before the SC, the Revenue contended that the re-computation of deduction made by the AO was interfered with by the ITAT and affirmed by the HC without appreciating the fact that the profits of eligible business of captive power generation plants of the Assessee were inflated by adopting an excessive sale rate per unit for power supply to the Assessee's own industrial units for captive consumption as opposed to the rate per unit at which the power was supplied by the Assessee to the power distributing companies i.e. the State Electricity Boards which was the actual "market value". Moreover, the Assessee had changed the method of depreciation by mere claim in the ITR and therefore the re-computation of the deduction made by the AO was ought to be allowed.

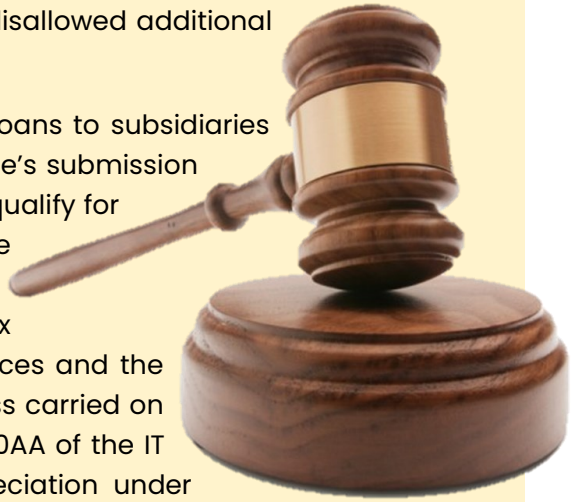
Noting that "market value" was an expression which denoted the price of a good arrived at between a buyer and a seller in the open market i.e., where the transaction took place in the normal course of trading and such pricing was unfettered by any control or regulation, rather, it was determined by the economics of demand and supply, the SC observed that the price at which the electricity was supplied to the State Electricity Boards was a contracted price under the law governing the supply of electricity and therefore, as the Assessee had no room for negotiation, the price was non-competitive. Moreover, absent captive power plants, the Assessee would have purchased electricity at ordinary market rate and not the rate at which the State Electricity Board purchased electricity from the Assessee. Further, with regards to the change of method of depreciation, the SC observed that there was no requirement that any particular mode of computing the claim of depreciation had to be opted for before the due date of filing of the return and all that an Assessee was required to do was opt for depreciation under one method or the other before or at the time of filing ITR which the Assessee in the present case had done. Thus, upholding the rate at which the State Electricity Boards supplied electricity to the Assessee as "market value" as opposed to the rate at which the State Electricity Boards purchased power from the Assessee, the SC set aside the re-computation of the deduction by the AO under Section 80IA of the IT Act and accordingly, dismissed the Revenue's appeal.

ITAT holds Infosys ineligible for depreciation under Section 32AC of the IT Act, rules on scope of deduction under Section 10AA of the IT Act

Infosys Ltd.

ITA Nos. 342 and 343/Bang/2023

The Assessee was a company that had filed its return of income for AY 2017-18, which was processed under Section 143(1) of the IT Act. During the pendency of the Assessee's appeal against the intimation under Section 143(1) of the IT Act before the CIT(A), the Assessee was subjected to scrutiny assessment and the Revenue noting that the Assessee included income from various sources while computing profits of business of SEZ units, whereon deduction under Section 10AA of the IT Act was claimed, disallowed the Assessee's claim on the ground that the nature of the said income and how they were connected with Assessee's business carried out by the SEZ units was not explained and therefore, the said income did not qualify for deduction under Section 10AA of the IT Act, and accordingly, made disallowance in the hands of the Assessee, with respect to the incomes from interest on NCDs, tax refunds and loans to subsidiaries. Further, the Revenue also disallowed additional depreciation under Section 32AC of the IT Act on the ground that the Assessee was not a manufacturer but a service provider and therefore, not eligible for the deduction. The assessment order was upheld by the CIT(A), aggrieved by which, the Assessee preferred an appeal before the ITAT challenging the disallowance of income from interest on NCDs, tax refunds and loans to subsidiaries under Section 10AA of the IT Act and the disallowed additional depreciation under Section 32AC of the IT Act.



On the issue of disallowance of interest on NCDs, tax refunds and loans to subsidiaries under Section 10AA of the IT Act, the ITAT concurred with the Revenue's submission that, only the income arising out of the business undertaking would qualify for the deductions under Section 10AA of the IT Act and any other income earned by the Assessee, would not qualify for the said deduction and as the Assessee offered the income from interest on NCDs, tax refunds and loan to subsidiaries, to tax as income from other sources and the said income was not directly connected with the Assessee's business carried on by SEZ units, the same did not qualify for deduction under Section 10AA of the IT Act. Further, with regards to the disallowance of additional depreciation under Section 32AC of the IT Act, the ITAT placed reliance on the co-ordinate bench ruling in Assessee's own case for AY 2014-15, wherein it was held that the benefit of deduction under Section 32AC of the IT Act was available only to the manufacturing sector and not to the service sector and accordingly, observed that the Assessee was ineligible for the said deduction. Thus, upholding the disallowance of income from interest on NCDs, tax refunds and loans to subsidiaries under Section 10AA of the IT Act and the disallowance of additional depreciation under Section 32AC of the IT Act, the ITAT dismissed the Assessee's appeal.

ITAT expounds on scope of interest on refund under Section 244A (1)/(1A) of the IT Act, accepts Tata Sons' plea

Tata Sons Pvt. Ltd.

ITA No. 2362/Mum/2023

The Assessee was a principal investment holding company and promoter of Tata group of companies that

had filed its return of income for AY 1993-94 and was subject to assessment/reassessment and rectification over a period of time. The co-ordinate bench had allowed Assessee's appeal through orders dated February 4, 2015 and January 1, 2016 and in compliance with the same the Revenue issued an appeal effect order dated March 8, 2016 granting refund which was received by the Assessee on August 18, 2022.Aggrieved, the Assessee preferred an appeal before the ITAT challenging the short credit of interest on refund arising on account of the incorrect adjustment of the earlier refunds by the Revenue, the short credit of interest for the interim period from when the appeal effect order was passed on March 8, 2016 and the actual receipt of refund i.e. August 18, 2022 under Section 244A(1) of the IT Act and the short credit of additional interest under Section 244A(1A) of the IT Act which were not calculated by the Revenue.

With regards to the incorrect adjustment of earlier refund, the ITAT observed that the interest under Section 244A(1) of the IT Act was to be calculated by first adjusting the amount of refund already granted towards the interest component and balance left, if any, was required to be adjusted towards the tax component and accordingly, directed the Revenue to re-calculate the interest correctly, after providing the Assessee with a proper opportunity of being heard. Further, with regards to the short credit of interest resulting from not granting of interest from the date of issue of appeal effect order till the date of receipt of refund, the ITAT placing reliance on a plethora of HC judgments observed that the Assessee was justified in seeking interest under Section 244A(1) of the IT Act upto the date of receipt of the refund order and accordingly, directed the Revenue to re-calculate the interest up to the date of actual receipt of refund by the Assessee i.e. August 18, 2022.

Additionally, with regards to the additional interest under Section 244A(1A) of the IT Act, the ITAT noting that Section 244A(1A) of the IT Act was introduced as a remedial measure to compensate the Assessee in cases where there were delays in granting refunds on account of delay in passing the appeal effect order or revisional orders, observed that the Assessee was eligible for interest under Section 244A(1A) of the IT Act from June 1, 2016 (date of enactment of the provision) till the date of actual receipt of refund i.e. August 18, 2022, as it was settled law that the provisions of Section 244A(1A) of the IT Act applied only prospectively with effect from June 1, 2016 and accordingly, remitted the matter back to the Revenue to calculate the additional interest in accordance with law.

NOTIFICATIONS

CBDT amends Rule 10TA and Rule 10TD of the IT Rules pertaining to the Safe Harbour Rules effective April 1, 2024

Notification No. 104/2023 dated December 19, 2023

The CBDT notifies the Income-tax (Twenty-Ninth Amendment) Rules, 2023, to amend Rules 10TA and 10TD of the IT Rules.

In Rule 10TA of the IT Rules, among other things, the definition of intra-group loans and circumstances in which they are treated as Safe Harbour has been revised to include loans extended to "associated enterprises" rather than the wholly owned subsidiaries and the condition for the loans to be advanced to be sourced in INR has been removed. The definition of intra-group loan has therefore been updated as follows: -

Intra-group loan means a loan advanced to an associated enterprise being a non-resident, where the loan—is not advanced by an enterprise, being a financial company including a bank or a financial institution or an enterprise engaged in lending or borrowing in the normal course of business and does not include credit line or any other loan facility which has no fixed term for repayment.

Further, Rule 10TD of the IT Rules has *inter-alia* been amended to replace the conditions for Safe Harbour in the event of the advancement of intra-group loans denominated in a foreign currency and the reference to "CRISIL" credit rating has also been omitted from Rule 10TD of the IT Rules, allowing the credit rating of other entities to also be used while determining Safe Harbour.

However, such category of taxpayers are required to make statutory compliance of filing Form 10F till March 31, 2023 in manual form as was being done prior to issuance of the DGIT(Systems) Notification No. 3/2022 dated July 16, 2022.

The amended Rules come into effect from April 1, 2024.

CBDT notifies ITR-1 & ITR-4 for Assessment Year 2024-25 effective April 1, 2024

Notification No. 105/2023 dated December 22, 2023

The CBDT notifies 'ITR-1 Sahaj' and 'ITR-4 Sugam' for AY 2024-25 effective April 1, 2024. ITR-1 Sahaj is typically used by individuals with income from salary, one house property, other sources (like interest), and agricultural income up to INR 5,000 whereas ITR-4 Sugam is applicable to individuals, HUFs, and firms (other than LLPs) with total income up to INR 50 Lakhs and income from business and profession computed under Sections 44AD, 44ADA, or 44AE of the IT Act.

CIRCULARS

CBDT extends time for processing validly e-filed ITRs in non-scrutiny cases for AYs 2018-19 to 2020-21 till January 31, 2024

Order dated December 01, 2023

The CBDT through an Order dated October 16, 2023, had earlier extended the time frame for processing the validly e-filed ITRs up to AY 2017-18 with refund claims in non-scrutiny cases which could not be processed and became time-barred and were subsequently, required to be processed by November 30, 2021, from November 30, 2021 to January 31, 2024. Given this backdrop, with a view to mitigate the genuine hardship being faced by taxpayers in view of the pending taxpayer grievances in relation to the validly e-filed ITRs for AYs 2018-19, 2019-20 and 2020-21, with refund claims in non-scrutiny cases, the CBDT also relaxes their time-frame, providing that intimation of processing ITRs can be sent to the Assessee by January 31, 2024 and accordingly, directs that all ITRs validly filed electronically with refund claims for AYs 2018-19, 2019-20 and 2020-21 for which date of sending an intimation had lapsed, can now be processed with the prior administrative approval of the PCCIT/CCIT.

However, the CBDT clarifies that this relaxation shall be inapplicable to the ITRs selected in scrutiny, the ITRs remaining unprocessed, where either demand is shown as payable in the return or is likely to arise after processing it and the ITRs remaining unprocessed for any reason attributable to the Assessee.

CBDT issues TDS Guidelines for e-commerce operators

Circular No. 20/2023 dated December 28, 2023

The CBDT issues TDS Guidelines under Section 194-O of the IT Act applicable to e-commerce operators. The Guidelines addresses issues such as:

- TDS liability in case of multiple e-commerce operators in a transaction;
- Scope of gross amount with reference to convenience fees or commission or logistics & delivery fees;
- GST and other state levies vis-a-vis gross amount for TDS;
- Adjustment of purchase returns; and
- Treatment of discounts.

TRANSFER PRICING
From the Judiciary

ITAT directs AO to pass assessment order in conformity with DRP's directions, follows precedents

Hitachi Astemo Haryana Private Ltd

2023-TII-319-ITAT-DEL-TP

The AO had passed the draft assessment order after incorporating the TPO's recommendations, subsequently, the DRP issued certain directions with reference to the TP-adjustments, however, the final assessment order was passed without incorporating the DRP's directions for the reason that the AO had not received the order giving effect to the DRP's directions from the TPO.

Aggrieved, the Assessee approached the ITAT which placing reliance on a plethora of HC rulings, remitted the matter to the AO, directing the AO to pass the final assessment order after incorporating the DRP's directions.

ITAT confirms CIT(A)'s guarantee commission ALP at 0.35%, follows earlier order

Macrotech Developers Limited

2023-TII-333-ITAT-MUM-TP

The Assessee was a resident company that was engaged in the business of real estate construction and development for AY 2015-16 that had originally not benchmarked its guarantee transaction stating that it was not an international transaction and even otherwise, issuing guarantee to its AEs along with other two entities was merely a shareholder activity. However, during the course of assessment proceedings, the Assessee benchmarked the transaction at 0.35% by adopting interest saving approach by determining interest saving on the whole transaction considering the credit rating of AEs, the tenure of the agreement, the interest saving computed on the basis of interest difference between guarantee deal and non-guarantee deal and finding the creditworthiness of the AEs by applying Moody's calculation risk method and further, applying a search by adopting filter on timeline, currency and tenure.

Not convinced, the TPO rejected the aforesaid computation and adopted the guarantee commission rate of 3 banks and reduced it by half percent to compute ALP guarantee fee commission rate of 1.16% and the CIT (A) thereafter, upheld the computation of the guarantee commission rate at 0.35% by the Assessee.Aggrieved, the Revenue approached the ITAT against the order of the CIT(A), which following coordinate bench ruling in Assessee's own case for AYs 2017-18 and 2018-19, observed that there was no change in the instrument as well as in the benchmarking methodology and accordingly, confirming the guarantee commission rate at 0.35%, thereby, upheld the CIT(A)'s decision and dismissed the Revenue's appeal.

ITAT holds Assessee can plead exclusion of comparables included in TP study report, follows Pfizer Ruling

Juniper Networks India Private Limited

ITA No.1223/Mum/2021

The Assessee was engaged in rendering market support services to its AE on a cost-plus basis and the margin earned by the Assessee for the year under consideration was 11%. The TPO issued an SCN to the Assessee for considering Axis Integrated Systems Limited as a comparable. In its response the Assessee submitted that Axis Integrated Systems Limited was not functionally comparable and therefore should be rejected. However, the TPO did not agree with the response of the Assessee and stated that the DRP in its direction for AY 2015-16 had upheld this company as functionally comparable, therefore, the same was included by the TPO in the final list of comparables. After taking the aforesaid comparable, the ALP of the marketing and sales support services rendered by the Assessee was worked out by the TPO and accordingly, a TP adjustment was made. Thereafter, the Assessee approached the DRP which upheld the inclusion of Axis Integrated Systems Limited as a comparable basis its decision in AY 2015-16.

Aggrieved, the Assessee approached the ITAT which accepting the Assessee's plea, excluded functionally dissimilar Axis Integrated System Limited, following coordinate bench ruling in Assessee's own case for AY 2013-14 and 2014-15. Further, noting the Assessee's submission that it had inadvertently considered Killick Agencies and Marketing Limited and Majestic Research Services and Solution Limited companies in its transfer pricing study report for comparative analysis for marketing support services segment and had requested to exclude these companies as comparable because of functional dissimilarity, the ITAT placing reliance on the HC ruling in **Pfizer Ltd.[2019-TII-24-HC-MUM-TP]** observed that merely because the Assessee had included a particular company as a comparable it would not by itself stop the Assessee from withdrawing it from the list of comparables and if on facts the Assessee was able to establish that the company was not comparable, it was not to be included in the list of comparables.

Accordingly, considering the different function and revenue and activity of the Killick Agency and Marketing Ltd. and the fact that Majestic Research and Solution Ltd. was engaged in various activity like study, design, data collection etc. and the function was not comparable with the Assessee, the ITAT excluded the above two comparables citing functional dissimilarity.

ITAT holds L&T cannot escape TP-applicability merely by pleading commercial expediency

Larsen & Toubro Limited

ITA No. 6589/MUM/2013

The Assessee had made payment to its Sri Lankan AE, claiming the same to be reimbursement of overrun expenses incurred by AE with reference to execution of the power project. The TPO, however, observed that since the Assessee held 80% equity share capital in the AE (with remaining 20% being held by Ceylinco Insurance Co Ltd, Sri Lanka) but reimbursed 100% of the overrun expenses, the cost sharing arrangement was not equitable, accordingly the TPO determined ALP of the transaction at 80% of the total expenses remitted by the Assessee which was upheld by the CIT(A).

Aggrieved, the Assessee approached the ITAT which observed that as per the guarantee and coordination agreement executed between the Assessee and its AE for the power project, the overall responsibility for execution/performance was fixed on the Assessee, however, it could not be said that the Assessee was under obligation to bear 100% of the project overrun cost and though the Assessee was required to provide

funds to its AE, the Assessee chose to directly reimburse the project cost overrun expenses instead of providing funds by way of loan or capital.

Further, rejecting the Assessee's submission that that TP provisions would not apply since the impugned transaction arose out of a contract executed prior to the introduction of TP provisions, the ITAT observed that no exception had been carved out in relation to international transactions pertaining to or arising out of contracts/agreements/arrangements which were executed/existing prior to April 1, 2002 and Section 92 of the IT Act as it existed on the date of the execution of the agreement under consideration provided for determination of ALP with reference to the arrangement for allocation or apportionment of cost or expenses.

Thus, holding that the Assessee could not avoid applicability of TP provisions by simply pleading commercial expediency, the ITAT remanded the matter back to the file of the TPO/AO for determination of ALP of the transaction of reimbursement of project cost overrun expenses by the Appellant to its AE and re-computation of TP adjustment, if any.

ARTICLE

INPUT TAX CREDIT–A BRITTLE BACKBONE?

The GST regime of taxation is built on the premise of better and efficient credit fungibility, in every link of the chain of transactions that any goods or service may become part of in its value addition journey, from its inception till its consumption. It is rightly said that ITC is the backbone of the GST regime.

The entitlement of a recipient to avail the ITC is governed by the rigors of Sub-section (2) of Section 16 which commences with a non-obstante clause stating that, notwithstanding anything contained in Section 16, no registered person shall be entitled to credit of any input tax in respect of any supply of goods or services or both to him, unless the rigours as specified in subclause to Section 16(2) are fulfilled.

However, a wave of notices issued by the GST Department, seek to reverse the credit availed by the registered persons and to deposit the tax which has already been paid to the supplier at the time of availing the goods/ services despite having fulfilled all the conditions as has been enumerated under Section 16(2) of the Act for defaults on part of the supplier.

The press release October 18, 2018 categorically stated that furnishing of outward details in Form GSTR-1 by the corresponding supplier(s) and the facility to view the same in Form GSTR-2A by the recipient was in the nature of taxpayer facilitation and did not impact the ability of the taxpayer to avail ITC on self-assessment basis in consonance with the provisions of Section 16 of the Act. It further stated that any apprehension of the Registered taxpayer that ITC could be availed only on the basis of reconciliation between Form GSTR-2B and Form GSTR-3B conducted before the due date for filing of the return in Form GSTR-3B for the month of September 2018 was unfounded.

Further, as per press release dated May 04, 2018, it was clarified that there shall not be any automatic reversal of input tax credit from buyer on non-payment of tax by the seller. The press release further specified that in case of default in the payment of tax by the supplier, an attempt to recover the same shall be made from the said erring supplier and reversal of credit from buyer shall be an option available with the revenue authorities only to address exceptional situations like missing dealer, closure of business by supplier or supplier not having adequate assets etc.

However, the Department seems to have not paid any heed to the clarifications issued in this regard and issued a spate of Notices on the basis of non-payment of tax by the supplier/retrospective cancellation of the registration of supplier on a complete non-application of mind to the prevailing section and the clarifications issued in this regard.

In the absence of the GST Tribunal, the Constitutional Courts have, yet again, safeguarded the rights of such bonafide registered persons who have availed ITC upon complying with the rigours of Section 16 of the CGST Act. The Madras High Court in m/s. **D.Y. Beathel Enterprises Versus The State Tax Officer (Data Cell), (Investigation Wing) Commercial Tax Buildings, Tirunelveli. [2021 (3) TMI 1020 - MADRAS HIGH COURT]** deprecated the action of the Department in seeking to unilaterally reverse the ITC claimed by the Registered person without conducting an inquiry on the erring supplier who had failed to remit the

appropriate amount of taxes to the Government Exchequer.

Further the Calcutta High Court in **M/S LGW Industries Limited & Ors. Versus Union Of India & Ors. [2021 (12) TMI 834 - CALCUTTA HIGH COURT]** also dealt with an issue with regard to availment of ITC where the suppliers were found to be fake and GSTN registration had been cancelled; the ITC in respect of supplies received from such supplier was sought to be denied to the bonafide purchaser. The Hon'ble Court was of the opinion that ITC could not be sought to be denied outright and that genuineness of the transaction should be looked into prior to adjudicating on the purchaser's eligibility to avail such ITC.

The Hon'ble Calcutta High Court in the case of **Suncraft Energy Private Limited And Another Versus The Assistant Commissioner, State Tax, Ballygunge Charge And Others [2023 (8) TMI 174 - CALCUTTA HIGH COURT]** categorically held that before directing a registered person to reverse the input tax credit and remit the same to the government, the GST Department ought to have taken action against the supplier in the first instances.

Therefore, the Constitutional Courts, already overburdened, have been compelled to use their Writ Jurisdiction, to curb and curtail the badgering and intimation of registered persons, through the incessant and unscrupulous issuance of show cause notices and orders, by the GST department, seeking to deny ITC to such bonafide persons on such flimsy grounds.

Unless the GST department takes cognizance of issuance of such notices being issued and orders being passed on flimsy grounds, small businesses may become collateral damage and Constitutional Courts will continue to be overburdened due to lack of procedural adherence by the GST Department.

GOODS & SERVICES TAX
From the Judiciary

Delhi HC allows ITC refund on IDS where rate of tax on certain inputs and output is same

Indian Oil Corporation Limited

2023-TIOL-1669-HC-DEL-GST

The Petitioner, involved in bottling and distributing LPG for domestic and industrial use, had filed an application for a refund of accumulated ITC, which was rejected on the premise that both bulk LPG (input) and bottled LPG (output) were considered the same product, attracting a 5% GST rate, and the higher tax rate on some inputs formed only a small portion of their total utilized inputs.

The Revenue argued that bulk LPG and bottled LPG were essentially the same, referring to para 3.2 of Circular No. 135/5/2020, asserting that the Petitioner's claim did not meet the criteria of input tax being higher than output tax. The Hon'ble Delhi HC observed that Circular 135 sought to address an issue where the ITC is accumulated on account of different rates being applicable at different points of time. It does not seek to address any issue where the principal input and output is the same. Basis the said observation, it was held that Circular 135 has no bearing in the instant case.

Limitation Act applicable in absence of a non-obstante clause in Section 107

S.K. Chakraborty & Sons

M.A.T. 81 of 2022

The Appellant had sought condonation of a delay exceeding four months in filing an appeal before the appellate authority u/s. 107 of the CGST Act.

The Calcutta HC clarified that section 107 of the CGST Act, neither expressly nor impliedly excludes the applicability of the Limitation Act. It further observed that Section 108 of the CGST Act, which provides for the power of revision against an order of adjudication, does not imply exclusion either. The absence of a non-obstante clause in Section 107 makes Section 29(2) of the Limitation Act, applicable. The HC further emphasized that the prescribed 60-day period for filing an appeal is not final, and the Appellate Authority has the discretion to extend it based on the circumstances of the case. Accordingly, the HC set aside the order and held the Appellate Authority to consider the application for condonation of delay on its merits.

Bombay HC directs Revenue to place suggested mechanism for ITC matching

Tata Motor Limited

D.B. Civil Writ Petition No. 19966/2023

The Petitioner had submitted CA certificates before the Revenue Department substantiating issuance of credit notes to the customers and corresponding ITC reversals. However, the Department challenged the credit reversal as being insufficient in absence of debit entries in credit ledger / books of accounts, etc. The

demand for ITC reversal on credit notes had been confirmed. The Petitioner challenged the demand order and validity of Section 15(3)(b)(ii) of the CGST Act, arguing that the absence of a proper mechanism for matching credit notes from suppliers with corresponding ITC reversals violated Article 14 and 19(1)(g) of the Constitution.

The HC held that it could not prematurely adjudicate on the statutory validity of Section 15(3)(b)(ii) when an alternate remedy of appeal was available to the Petitioner. Instead, the court directed the Respondent to present a suitable mechanism for matching credit notes from suppliers. Following the observations in RE: Hindustan Unilever Limited, the Court directed the Respondent to place appropriate suggested mechanism with utmost expedition.

SC quashes GST department's plea against HC order on ITC

Suncraft Energy Private Limited

SPL (C) No. 27827-27828/2023

The Calcutta High Court had held that the action against the selling dealer should be taken before directing the recipient to reverse the ITC. Aggrieved, the Department had filed an SLP challenging the High Court order. The Supreme Court, considering the facts and the lower extent of demand, chose not to interfere, and the SLP was dismissed.

Calcutta HC upholds the constitutional validity of ITC condition prescribed u/s. 16(4) of CGST Act

BBA Infrastructure Limited

MAT NO. 1099 OF 2023

The Appeallant's ITC was denied on the grounds of filing GSTR-3B returns beyond the statutory time limit specified in Section 16(4) of CGST Act. The Appellant preferred a writ before the Calcutta HC challenging the order by arguing that the time limit under Section 16(4) of CGST Act should not override the scheme of the statute, and further Section 16(2) of CGST Act has an overriding effect on Section 16(4) of CGST Act. On the other hand, the Department contended that filing beyond the statutory time limit makes the Appellant ineligible for ITC, necessitating the reversal of credit and the payment of a penalty.

The HC noted that Section 16(2) of the CGST Act prescribes mandatory eligibility criteria, and non-fulfillment of these criteria renders a dealer ineligible to claim ITC. Section 16(2) of CGST Act does not appear to be a provision that allows ITC rather, Section 16(1) is the enabling provision, and Section 16(2) restricts the credit to dealers who satisfy the prescribed conditions. The Court noted the decision in the case of Gobinda Construction, wherein it was held that Section 16 does not suffer from ambiguity and clearly stipulates the grant of ITC subject to the conditions and restrictions outlined. Accordingly, the HC emphasized that Section 16(4) of the CGST Act is one of the conditions that entitles a registered person to ITC, and it is not violative of Article 300A of the Constitution of India. Consequently, the appeal was dismissed

GST registration cannot be cancelled with retrospective effect

Sanchit Jain

W.P.(C) 16211/2023 & CM APPL. 65181/2023

The Petitioner's GST registration was cancelled on the ground of failure to furnish the returns for a continuous period of six months. However, the impugned order cancelled the GST registration with retrospective effect without providing reasons. Aggrieved the Petitioner preferred a writ before the Delhi HC.

The court noted that while the Petitioner had no objection to the cancellation of GST registration, it cannot be done with retrospective effect due to its cascading effect on the Petitioner's customers. Accordingly, the order was set aside to the extent that it directed cancellation with retrospective effect.

Bombay HC allows rectification of GSTR-1 in revenue neutral situation

Star Engineers India Private Limited

2024-TIOL-03-HC-MUM-GST

The Petitioner, supplying electronic components, mistakenly reported a third party's GSTIN in their GSTR-1 for the periods July 2021, Nov 2021, and Jan 2022, preventing the recipient from claiming ITC. The error was noticed in November 2022, and despite attempts, the GST portal did not allow modifications. The HC ruled that, in cases of genuine mistakes without revenue loss and when the Department is aware of the same, corrections in GSTR-1 should be permitted.

Erstwhile Regime

CESTAT Divided on GST Applicability to Salary Component in Secondment Agreement, Refers Matter for Resolution

Nissan India Private Limited

Interim Order Nos. 40016-40018/2023 dated 11 December 2023

The Appellant had entered into a secondment agreement with its group company located outside India to obtain expatriates to carry out work in India on a full-time basis. As per the agreement, the secondees continued to be employees of the group company, and the group company had complete discretion over the salary, bonus and allowances to be paid to the secondees. The taxpayer, while discharging the service tax, did not include the salary and allowances paid in INR to the secondees. However, the Revenue was of the view that the taxpayer is liable to pay service tax on the entire remuneration paid to the secondees and not only the salary reimbursed to the group company for the period from October 2008 to March 2014. Accordingly, demand had been confirmed by invoking the extended period of limitation.

The Division Bench of the Chennai Tribunal had a difference of opinion. While the judicial member held that Indian salary and other allowances paid directly by the taxpayer to secondees are not includible in the taxable value, the technical member has held otherwise. The matter has now been referred to third member.

GOODS & SERVICES TAX
From the Legislature

NOTIFICATIONS

Time-limit extension for issuance of Notices

Notification No. 56/20230-Central Tax dated December 28, 2023

CBIC has extended the time limit for issuance of order u/s 73(10) of CGST Act -

- For FY2018-19, up to the 30th day of April 2024.
  - ◊ Revised time limit for issuance of SCN u/s 73 is January 31, 2024.
- For FY2019-20, up to the 31st days of August 2024.
  - ◊ Revised time limit for issuance of SCN u/s 73 is May 31, 2024.

CBIC extends the due date for filing of return in FORM GSTR-3B for the Month of November 2023

Notification No. 55.2023/Central Tax dated December 20, 2023

Due date for furnishing the return in FORM GSTR-3B for the month of November 2023 till December 27, 2023. Only for the registered persons who are required to furnish return u/s 39(1) CGST Act r/w Rule 61(1)(i) of CGST Rules, 2017 and whose principal place of business is in districts in the state of Tamil Nadu -

- Chennai
- Tiruvallur
- Chengalpattu
- Kancheepuram for FY2018-19, up to the 30th day of April 2024.

ADVISORY

Andhra Pradesh GST Registration Pilot Project with Biometric Aadhaar Authentication and Document Verification

GSTN Advisory dated December 1, 2023

Rule 8 of CGST Rules, 2017 has been amended. Now, during GST registration, Applicants' identity can be verified using Biometric-based Aadhaar Authentication. This includes taking a photo and verifying your original documents. This new feature is created by GSTN and starts in Andhra Pradesh on December 4, 2023.

- After submitting Form GST REG-01, the Applicant will receive an email with either:
  - ◊ a link for OTP-based Aadhaar Authentication, or
  - ◊ a link to book an appointment at a GST Suvidha Kendra (GSK) for Biometric-based Aadhaar

Authentication and document verification.

- If the applicant receives the OTP link for Aadhar based verification, follow the usual process. If it's an appointment link, use it to book your visit to the GSK.
  - ◊ When confirmed, carry:
  - ◊ appointment confirmation (hard/soft copy)
  - ◊ jurisdiction details
  - ◊ Aadhaar Number
  - ◊ original documents uploaded with the application.
- At GSK, biometric authentication and document verification will happen as per GST Form REG-01.
- Choose a biometric verification appointment within the specified time in the email. ARNs will be generated once the process is complete.
- This appointment feature is currently for Andhra Pradesh applicants only.
- GSKs operate based on guidelines from your state administration.

Two-factor Authentication Pilot Project successfully rollout in Haryana

GSTN Advisory dated December 1, 2023

Implementation of two-factor authentication (2FA) to enhance login security on the GST portal, initial rollout successful, first phase includes Punjab, Chandigarh, Uttarakhand, Rajasthan, and Delhi. The second phase aims to extend 2FA to all states in India.

Taxpayers will now use a OTP after entering their user id and password. The OTP will be sent to their Primary Authorized Signatory's mobile number and email.

Taxpayers are urged to update their authorized signatory's email and mobile number on the GST Portal to receive OTPs. The OTP is required when changing the system or location. The implementation of this solution is scheduled for December 1, 2023.

Date extended for reporting opening balance for ITC reversal

GSTN Advisory dated December 29, 2023

To support taxpayers in accurately reporting ITC reversal and reclamation, a new ledger called the Electronic Credit and Reclaimed Statement is now available on the GST portal. This assists in tracking ITC reversed in Table 4B(2) and subsequently reclaimed in Table 4D(1) and 4A(5). Kindly refer to the detailed advisory provided earlier pertaining to changes in Table 4 of GSTR-3B reporting of ITC availment, reversal and ineligible ITC.

To further assist taxpayers, the opportunity to declare the opening balance for ITC reversal in the statement has been extended until January 31, 2024. After declaring the opening balance for ITC reversal, only three opportunities for amendments will be provided to correct any mistakes or inaccuracies in reporting. The facility to amend the declared opening balance for ITC reversal will be available until February 29, 2024.

No confiscation of goods u/s 111(m) of Customs Act in case of miss-classification

Daxen Agritech India Private Limited

Customs Appeal No. 50961 of 2020

The Appellant imported Bulk Reishi Ganoderma powder and Bulk Ganocelium powder as Ayurvedic Medications under CTH 3003 90 11 of the CETA. The Department's argument was that the subject goods were subject to classification under CTH 2106 90 99 which covers Food Preparations and that the petitioner deliberately mis-declared the subject goods in order to evade the Customs duty.

The Hon'ble Tribunal re-classified the goods as food preparations under CTH 2106 90 99 as the classification issue was no longer res-integra. However, Tribunal acknowledged the Department's awareness of the declared classification and the absence of evidence of deliberate misdeclaration or suppression of facts by the importer, thus rendering order of the Department unjustified. Similarly, the attempt to confiscate the goods under section 111(m) was deemed unwarranted, as the case involved misclassification, not misdeclaration.

Delhi HC sets aside CAAR's classification of Amazon's Echo devices, upholds eligibility for exemption benefit

Amazon Wholesale India Private Limited

CUSAA 76/2022 & CM APPL. 23914/2022 (Stay)

The Hon'ble Delhi High Court has granted customs duty exemptions to Amazon's eleven "Echo family devices," categorizing them as convergence devices under CTH 8517 62 90. Initially labelled as speakers under Tariff Heading 8518 by the Customs Authority for Advance Rulings, the court rejected this classification, citing a "narrow, if not myopic" approach. Echo devices, with capabilities beyond speakers, were acknowledged for functionalities like video calling and messaging. The Delhi High Court upheld Amazon's position, classifying the devices under the custom tariff category related to the "apparatus for transmission or reception of voice, images, or other data" and also held that the devices meet the criteria for claiming exemptions as outlined in Serial Number 20 of the Notification issued on June 30, 2017, taking into account amendments introduced in the Notification dated February 1, 2021. The court criticized the Authority for overlooking guiding principles, emphasizing that Echo devices embody "technological convergence" by integrating diverse functionalities into a single tool.

CUSTOMS & FTP
From the Legislature

CUSTOMS

Sr No	Notification/ Circular	Summary
1	Notification No. 64/2023-Customs dated 07th December, 2023	**Import Exemption for Yellow Peas (0713 10 10)** The notification grants an exemption for the import of Yellow Peas (0713 10 10) into India from both customs duty and the Agriculture Infrastructure and Development Cess. This notification will be effective starting from December 8, 2023, and will remain in force until and including March 31, 2024.
2	Notification No. 65/2023-Customs dated 21st December, 2023	**CBIC Amends Notification No. 49/2021-Customs: Extension of Deadline to March 31, 2025, with Exemptions for Specific Goods** CBIC has made and amendment in an earlier notification, i.e. Notification No. 49/2021-Customs, dated the 13th October, 2021. This amendment, effective from December 21, 2023, until March 31, 2025, extends the earlier deadline of March 31, 2024. Notably, specified goods (serial numbers 1, 2, and 3 of the Table) are exempted from this extension after April 1, 2024.
3	Notification No. 66/2023-Customs dated 22nd December, 2023	**Amendment to IEC and TRQ Authorization in Customs Rules** This Notification amends Condition No. 2 of the Customs (Import of Goods at Concessional Rate of Duty or for Specified End Use) Rules, 2022. The IEC mentioned in the TRQ authorization now requires the IEC of nominated agencies by the RBI or the DGFT, or qualified jewelers notified by the IFSCA. Additionally, valid India UAE TRQ Holders, as notified by IFSCA through IIBX, can obtain physical delivery of imports through IFSCA registered vaults in Special Economic Zones. However, a proviso states that these rules do not apply if the importer and the TRQ Holder are the same entity.
4	Notification No. 67/2023-Customs dated 29th December, 2023	**CBIC Adds Democratic Republic of Congo to Customs Notification No. 96/2008** CBIC introduces a amendment through this notification, adding the "Democratic Republic of Congo" to the list of countries as a new entry (serial number 38) in the Schedule of the previous Notification No. 96/2008-Customs, dated August 13, 2008.

DGFT

Sr No	Notification/ Circular	Summary
1	Notification No. 47/2023 dated 7th December, 2023	**DGFT Grants Exception for Rice Export to Aid Nepal Earthquake Victims** This Notification grants a one-time exemption from the prohibition on the export of 20 metric tons of Non-basmati white rice to the Indian Rice Exporters Federation. The exemption, under HS Code 1006 30 90, is specified as a donation to the National Disaster Risk Reduction & Management Authority (NDRMA) in Nepal for earthquake victims.
2	Notification No. 48/2023 dated 7th December, 2023	**DGFT Allows Non-Basmati White Rice Export to Five Countries** Through this notification, DGFT permits the export of Non-Basmati White Rice (ITC-HS Code 10063090) to Comoros, Madagascar, Equatorial Guinea, Egypt, and Kenya through the National Cooperative Exports Limited (NCEL). This decision outlines specific quantities for each country, ranging from 20,000 MT to 1,00,000 MT.
3	Trade Notice No. 35/2023-24 dated 5th December, 2023	**Amnesty Scheme for Closure of Export Obligation Cases under AA and EPCG Schemes** This Trade Notice provides an update on the Amnesty Scheme for the closure of cases of default in Export Obligation (EO) under Advance Authorisation (AA) and EPCG Schemes. Originally notified through Public Notice No. 02/2023 on April 1, 2023, the Amnesty Scheme's application deadline was extended to December 31, 2023, as per PN No. 20/2023 on June 30, 2023. The notice emphasizes that Policy Relaxation Committee (PRC)/EPCG Committees evaluate applications on a case-by-case basis, and since policy relaxation is not guaranteed, authorization holders should not delay in submitting applications for EO closure under the Amnesty Scheme by the prescribed date. The DGFT urges all AA/EPCG authorization holders to utilize the scheme, as the deadline will not be extended beyond December 31, 2023. Regional Authorities and DGFT are also urged to expedite the processing of pending applications under the Amnesty Scheme before the specified deadline.

REGULATORY
From the Judiciary

HC holds cheque dishonour case unaffected by pending arbitral proceedings, given separate causes of action

Newton Engineering & Chemicals Ltd. & Ors. vs. UEM India Pvt. Ltd.

CRL.M.C. 5931/2023 & CRL.M.A. 22290/2023 (Delay)

The Petitioner was a company that had filed a petition before the HC seeking the quashing of a complaint against it by the Respondent under Section 138 of the NI Act.

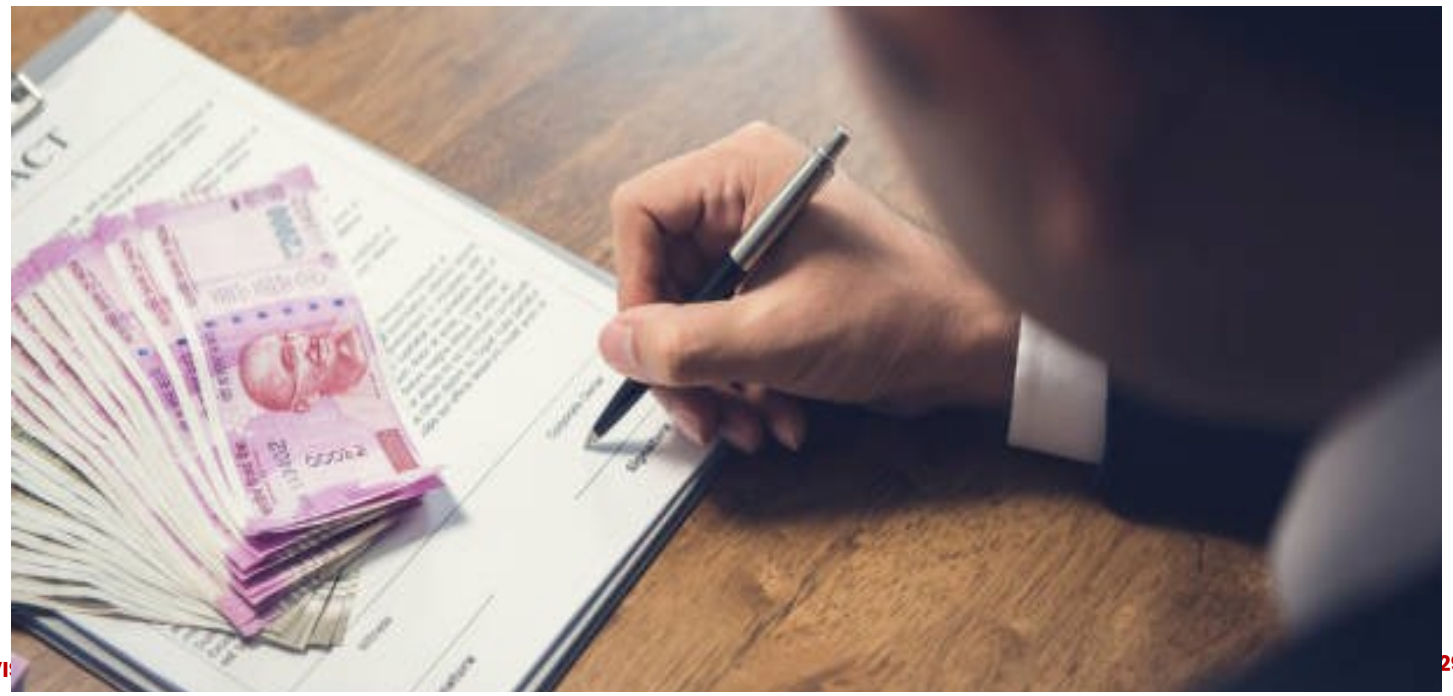
Noting that an arbitration proceeding was pending between the parties in accordance with an MoU, the Petitioner's submission that the amount due from Petitioner to the Respondent would be crystalized only upon conclusion of the arbitration proceedings and therefore, the deposit of the Petitioner's post-dated cheque by the Respondent was premature and accordingly dishonored, and the submission of the Respondent that that the arbitration proceedings and proceedings under Section 138 of the NI Act were separate and independent proceedings and both could proceed simultaneously, the HC observed that the arbitration proceedings and the proceedings under Section 138 of the NI Act arose from separate causes of action i.e. the MoU and the dishonor of cheque respectively. , hence, were not affecting each other.

Accordingly, finding no merit in the Petitioner's contention that the complaint under Section 138 of the NI Act was not maintainable in view of the ongoing arbitration proceedings between the parties, the HC dismissed the petition.

NFRA tears apart DHFL statutory audit for FY 2017-18, imposes 10 years ban on EP and monetary penalty of INR 5 Lakhs

In the matter of CA Jignesh Mehta

No. 63/2023



In 2019, some media reports brought to light the alleged siphoning by the Directors of one Dewan Housing Finance Corporation Ltd. (DHFL) of around INR 31,000 Crores of public money, accordingly, the NFRA took up the audit quality review of the statutory audit of DHFL for FY 2017-18 basis which it came to the prima facie conclusion that the EP had not discharged his professional duties in accordance with the Companies Act as well as the Standard on Auditing. Aggrieved, the EP filed a writ petition before the HC objecting to the powers and jurisdiction of the NFRA under the Companies Act in which the HC instructed NFRA to decide its own jurisdiction and emphasized that NFRA had the required jurisdiction under Section 132(4)(c) of the Companies Act.

Accordingly, finding that the EP had failed to obtain sufficient audit evidence regarding the appropriateness of management's use of the going concern basis of accounting in the preparation of financial statements, NFRA observed that Section 134(5) of the Companies Act required the Board to state specifically in its report that the annual accounts were prepared on a going concern basis and hence, the EP was required to obtain the basis for such an assessment by the management and to evaluate the entity's ability to continue as going concern, but instead of doing so, the EP, based on his knowledge, concluded that the Company was a going concern. Moreover, the EP failed to ensure that the financial statements were prepared, in all material respects, in accordance with the applicable financial reporting framework, and therefore the audit opinion issued by the EP was rendered baseless.

Further, finding that the EP failed to obtain sufficient information which was necessary for the expression of an opinion on ICFR, NFRA observed that a baseless audit report on ICFR under Section 143(3)(i) of the Companies Act was issued by the EP who also did not maintain professional skepticism, professional competence, and due care during the audit of the ICFR. Accordingly, observing that the EP had made a series of serious departures from the Standard on Auditing and the Companies Act, in the conduct of DHFL's audit for FY 2017-18, NFRA imposed a penalty of INR 5 Lakhs on the EP debarring him from being appointed as an auditor or internal auditor for 10 years, considering the professional misconduct on his part.

HC holds SFIO investigation doesn't extend to group companies basis mere reference to connected activities

Alchemist Healthcare Ltd. & Ors. vs. Union of India & Ors.

W.P.(C) 2385/2020

The Petitioners were constituents of the Alchemist group of companies that had filed a writ petition before the HC against the Respondents *inter-alia* challenging the summons issued by SFIO intimating them of initiation of investigation under Section 212 of the Companies Act, 2013. Before the HC, the Petitioners contended that since the proceedings against them under the erstwhile Companies Act, 1956 had been initiated prior to the enforcement of Section 212 of the Companies Act, 2013, the Respondents stood denuded of SFIO's jurisdiction. Moreover, since the investigations against all companies in the group had commenced prior to enforcement of Section 212 of the Companies Act, 2013, it could only have proceeded according to the erstwhile Companies Act, 1956. Further, by virtue of an earlier litigation initiated by one Alchemist Infra Realty Ltd., the Respondents already stood restrained from initiating proceedings under the Companies Act, 2013 against all companies in the Alchemist group.

Noting that the investigation under Section 212 of the Companies Act, 2013 was not by the Union Government but by SFIO, the HC observed that the power of investigation which was originally exercisable by the Government was ultimately and in terms of Section 211 and 212 of the Companies Act, 2013 placed in the hands of SFIO, and therefore the submission that an investigation initiated by SFIO under Section 213 of the Companies Act, 2013 would stand eclipsed by Section 234 and 235 of the Companies Act, 1956 could not be sustained. Moreover, since SFIO itself came to be constituted only pursuant to the provisions of Section 211 of the Companies Act, 2013, and as the initiation of an investigation under Section 235 of the Companies Act, 1956 demanded a strict interpretation and since the RoC reports also did not suggest an intent to extend the investigation to all Alchemist group entities, the investigation as envisaged under Section 235 of the Companies Act, 1956 had commenced only against Alchemist Infra Realty Ltd. and it was the said investigation alone which would fall within the safe harbor as constructed in terms of Section 212(16) of the Companies Act, 2013.

Thus, holding that the SFIO investigation in earlier litigation by Alchemist Infra Realty Ltd. was explicitly limited to Alchemist Infra Realty Ltd. and the same could not possibly be countenanced as extending to other group companies in other writ petitions, the HC dismissed the writ petition.

SC rejects SEBI's SLP against HC-order directing disclosure of documents to company's minority- shareholders

SEBI vs. Ashok Dayabhai Shah

Petition(s) for Special Leave to Appeal (C) No(s). 26890-26891/2023

SEBI had filed an SLP before the SC challenging the HC order that directed the disclosure of documents relating to the SEBI proceedings against a company to its minority shareholders. Before the SC, SEBI submitted that Regulation 29(1) of the SEBI (Settlement Proceedings) Regulations, 2018 stipulated that all information submitted in pursuance of settlement proceedings shall be deemed to have been received in a fiduciary capacity and may not be released to the public, if it prejudiced the Board or the Applicants.

Noting that 2 earlier SLPs filed by SEBI in the matter were also dismissed, the SC held that there was no material before it to indicate that the disclosure would cause prejudice and it was common ground that the settlement itself had been revoked in which case the provisions of Regulation 29 of the SEBI (Settlement Proceedings) Regulations, 2018 could not be attracted. Moreover, the HC order requiring disclosure of

documents would not fall for interference in these proceedings and henceforth, cases bearing demonstrable prejudice to SEBI or the Applicants within Regulation 29 of the SEBI (Settlement Proceedings) Regulations, 2018 would be adjudicated upon their own merits. Thus, directing SEBI to comply with the order of the HC, the SC dismissed the SLP.

HC holds secured creditor has priority charge over Revenue's claims, quashes Revenue's attachment order

City Union Bank Ltd. vs. Tax Recovery Officer & Ors.

W.P.(MD). No. 14573 of 2021

The Petitioner was a bank that had filed a writ petition before the HC seeking the quashing of an attachment order and call for the records on the file of the Tax Recovery Officer (Respondent) with reference to certain mortgaged properties by way of deposit of title deeds. Before the HC, the Petitioner challenged the attachment order and contended that the borrower had executed mortgage by deposit of title deeds and subsequently executed the memorandum of extension of equitable mortgage, hence the Petitioner had priority over the Respondent, in contrast, the Respondent contended that the alleged deposit of title deeds was not registered and moreover the alleged mortgage was not referred to in the demand notice and the mortgage was executed by the Petitioner during the pendency of assessment proceedings and therefore was invalid and hence the Respondent had priority over the Petitioner.

Placing reliance on a catena of judgements, the HC observed that a mortgage by deposit of title deeds may be liable for registration, but the instrument written subsequently evidencing the agreement of deposit of title deeds was not liable for registration and accordingly, when the Respondent had no power to declare the transfer as void, he had no authority to claim the charge or attachment over the property as automatic. Moreover, it was a statutory duty of the Respondent to attach property as and when the bank claimed and exercised its first charge over the property and the Respondent was therefore liable to issue a no objection certificate and also lift the attachment. Further, the mortgage by the Petitioner was prior to the attachment by the Respondent and therefore, when the charge over the property was created much prior than the notice issued by the Respondent, then the Petitioner had a higher charge than the Respondent. Thus, reiterating that the Petitioner had a priority charge over the claim of the Respondent, the HC held that the attachment order was liable to be quashed and accordingly, allowing the writ petition, directed the Respondent to lift the attachment and the Sub-Registrar to strike the name of the Respondent from the encumbrance certificate.

SC holds Companies Act does not override or deal with law of succession

Shakti Yezdani & Anr. vs. Jayanand Jayant Salgaonkar & Ors.

Civil Appeal No. 7107 of 2017

The Appellants were the legal heirs of a shareholder of the company that had filed an appeal before the SC contending that nominations under Section 109A of the Companies Act, 1956 and Bye-law 9.11 of the Depositories Act, 1996 suggested the intention of the shareholder, to bequeath the shares/securities absolutely to the nominee, to the exclusion of any other persons (including legal representatives) and constituted a 'statutory testament'. However, it was not acceptable as the Companies Act, 1956 did not contemplate a 'statutory testament' that stood over and above the laws of succession as it was concerned with regulating the affairs of corporates and not the laws of succession. Moreover, the

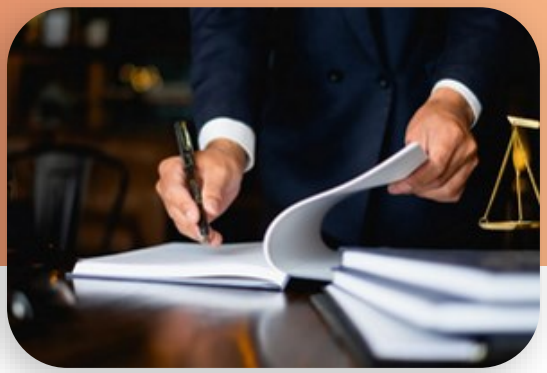
'statutory testament' by way of nomination was not subject to the same rigours as was applicable to the formation & validity of a will under the succession laws, for instance, Section 63 of the Indian Succession Act, wherein the rules for execution of a will were laid out.

Noting that the Companies Acts did not deal with the law of succession nor did it override the laws of succession, therefore, a departure from this settled position of law was not at all warranted and also that there was a complex layer of commercial considerations that were to be taken into account while dealing with the issue of nomination pertaining to companies or until legal heirs were able to sufficiently establish their right of succession to the company, the SC observed that, offering a discharge to the entity once the nominee was in picture was quite distinct from granting ownership of securities to nominees instead of the legal heirs, and the nomination process therefore did not override the succession laws.

Moreover, there was no third mode of succession that the scheme of the Companies Acts and the Depositories Act, 1996 aimed or intended to provide and the vesting of securities in favour of the nominee contemplated under Section 109A of the Companies Act, 1956 (similarly, Section 72 of Companies Act, 2013) and Bye-law 9.11 of the Depositories Act, 1996 was for a limited purpose i.e., to ensure that there existed no confusion pertaining to legal formalities that were to be undertaken upon the death of the shareholder and by extension, to protect the subject matter of nomination from any protracted litigation until the legal representatives of the deceased shareholder were able to take appropriate steps.

Thus, observing that it was beyond the scope of Company law to facilitate succession planning of the shareholder and holding that, in case of a will, it was upon the administrator or executor under the Indian Succession Act, 1925, and in case of intestate succession, the laws of succession, to determine the line of succession, the SC dismissed the appeal.

REGULATORY
From the Legislature



SEBI revises framework for calculation of NDCF by InvITs and REITs

Circular No. SEBI/HO/DDHS/DDHS-PoD/P/CIR/2023/184 & 185 dated December 06, 2023

With a view to promote ease of doing business, SEBI through multiple circulars revises the framework for calculation of available NDCF. The revised framework for computation of NDCF by REITs, InvITs, and its holding companies/SPVs shall be as per the computation formula provided in the circulars. Further, the minimum distribution shall be 90 % of the NDCF at the trust level as well as the holding companies/SPV level. This is subject to applicable provisions in the Companies Act or the LLP Act and the trust along with its SPVs shall ensure that minimum 90% distribution of NDCF be met for a given FY on a cumulative periodic basis as specified for mandatory distributions in the InvIT & REIT regulations. Moreover, any restricted cash shall not be considered for NDCF computation by the SPV, REITs or InvITs.

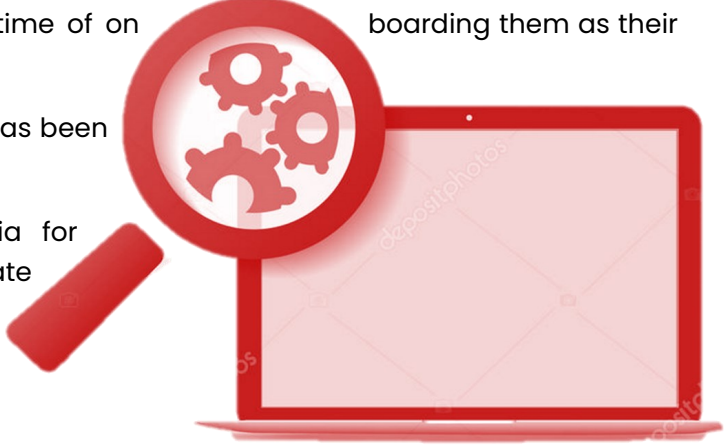
The revised framework shall be applicable from April 1, 2024, and shall supersede the framework for calculation of NDCF provided in the Master Circulars for InvITs and REITs dated July 06, 2023.

SEBI simplifies requirements for grant of accreditation to investors

Circular No. SEBI/HO/AFD/PoD1/CIR/2023/189 dated December 18, 2023

In order to provide flexibility and facilitate ease of accreditation of investors, SEBI through a circular streamlines the requirements for grant of accreditation to investors. Some of the key changes brought about in the circular are as follows: -

- Accreditation Agencies, which are also KYC registration agencies, may access KYC documents of applicants available with them in the capacity of the registration agency and may also access the same from the database of other registration agencies, for the purpose of accreditation.
- The Accreditation agencies shall grant accreditation solely based on the KYC and the financial information of the applicants. To this effect, the accreditation certificate issued by accreditation agencies shall include the following disclaimer: "the assessment of the applicant for accreditation is solely based on the applicant's KYC and financial information and does not in any manner exempt market intermediaries and pooled investment vehicles from carrying out necessary due diligence of the accredited investors at the time of on boarding them as their clients."
- The validity period of the accreditation certificate has been revised as under: -
    - ◊ If the applicant meets the eligibility criteria for preceding one FY, the accreditation certificate issued shall be valid for a period of two years from the date of issuance (earlier the accreditation was valid for only one year).



- ◊ If the applicant meets the eligibility criteria in each of the preceding two FYs, the accreditation certificate issued shall be valid for a period of three years from the date of issuance (earlier the accreditation was valid for a maximum two years).
- ◊ If the applicant is a newly incorporated entity, which does not have financial information for the preceding financial year but meets the applicable net-worth criteria as on the date of application, the accreditation certificate issued shall be valid for a period of two years from the date of issuance.

The provisions of this circular shall come into effect immediately and the stock exchanges and depositories have been requested to bring the provisions of this circular to the notice of their subsidiaries recognized by SEBI as accreditation agencies.

SEBI revises norms for ODR in the Indian securities market

Circular No. SEBI/HO/OIAE/OIAE_IAD-3/P/CIR/2023/191 dated December 20, 2023

SEBI through a circular, tweaks the framework with respect to ODR in the securities market to provide clarity on certain aspects.

In its circular, SEBI provides clarity on the online arbitration process, and arbitrator's fee, among others and states that the market participant against whom the investor pursues the online arbitration will participate in the arbitration process and accordingly, within 10 days of the initiation of the online arbitration by the investor, the market participant will make the deposit of 100 % of the admissible claim value with the relevant MII and make the payment of the fees for online arbitration. Non-adherence to rule by market participants may result in action against them by MIIs or SEBI.

Further, in case the market participant plans to pursue online arbitration then they will have to inform the ODR institution within 10 days of the conclusion of the conciliation process of its intent to do so and within 5 days of this intimation, market participants will have to deposit 100% of the admissible claim value with the relevant MII and make the payment of fees for online arbitration for initiating the online arbitration. Moreover, SEBI modifies the slab of above INR 50 Lakhs for the fee of arbitration process as 'Above INR 50 Lakhs- INR 1 Crore' and states that the provisions of this circular shall come into effect immediately.

RBI raises automatic payment limit through UPI from INR 15,000 to INR 1 Lakh for certain categories of transactions

Notification No. RBI/2023-24/88 dated December 12, 2023

The RBI through a circular dated June 16, 2022, had earlier permitted relaxation in AFA while processing e-mandates/standing instructions on cards, prepaid payment instruments and UPI, for subsequent recurring transactions with values up to INR 15,000.

With a view to promote customer convenience and encourage the adoption and use of UPI in certain categories of transactions, the RBI now decides to further relax the requirement of AFA from INR 15,000 to INR 1 Lakh per transaction for the following categories of transactions, namely: (a) subscription to mutual funds, (b) payment of insurance premiums, and (c) credit card bill payments.

RBI notifies the Foreign Exchange Management (Manner of Receipt and Payment) Regulation, 2023

Notification No. FEMA 14(R)/2023-RB dated December 21, 2023

The RBI introduces the Foreign Exchange Management (Manner of Receipt and Payment) Regulations, 2023. The newly introduced regulations will replace the existing Foreign Exchange Management (Manner of Receipt and Payment) Regulations, 2016. As per Regulation 3 of the newly introduced regulations, unless permitted by RBI or allowed by the Acts, Rules or Directions under the FEMA, no person in India can make payment or receive payment from a person resident outside India.

The regulations further provide that all the receipts and payments between a person resident in India and a person resident outside India shall be made through an Authorized Bank or Authorized Person. Regulation 3 of the Foreign Exchange Management (Manner of Receipt and Payment) Regulations, 2023, has bifurcated the transactions for receipt and payment into two categories, trade transactions and transactions other than trade transactions.

In case of trade transactions, the receipt and payment for export to or import from the following countries in respect of eligible goods and services shall be as under:

- Receipt and Payment from Nepal and Bhutan: The receipt/payment for export to or import from Nepal and Bhutan of eligible goods and services shall be in Indian Rupees however, in case of exports from India receipts towards the amount of the export may be in foreign currency where the importer in Nepal has been permitted by the Nepal Rashtra Bank to make payment in foreign currency.
- Receipt and payment from member Countries of ACU, other than Nepal and Bhutan: The receipt/ payment for export to or import from Member Countries of ACU, other than Nepal and Bhutan of eligible goods and services shall be made through ACU mechanism or as per the directions issued by the Reserve Bank to authorized dealer from time to time. However, in case of imports where the goods are shipped to India from a member country of the ACU (other than Nepal and Bhutan) but the supplier is a resident of a country other than a member country of the ACU, the payment may be made in INR or in any foreign currency.
- Receipt and Payment from countries other than members of ACU: The receipt/payment for export to or import from countries other than member countries of ACU of eligible goods and services shall be made In Indian Rupees or in any foreign currency.

For transactions other than trade transactions, all receipts and payments from Nepal and Bhutan are to be conducted in INR. However, in the case of overseas investments in Bhutan, payments may also be made in foreign currency. Whereas, for transactions involving countries other than Nepal and Bhutan, payments can be made in either INR or any foreign currency. Further, for any current account transaction, excluding trade transactions, between a resident in India and a person visiting from outside India, payments and receipts in India must be made solely in INR.

RBI notifies new LRS mechanism for reporting of monthly return and daily transactions of resident individuals

Notification No. RBI/2023-24/93 dated December 22, 2023

AD Category-I banks were earlier required to upload data in respect of number of applications received and the total amount remitted under LRS on a monthly basis and the daily transaction-wise information undertaken by them under LRS on the XBRL site (URL : https://xbrl.rbi.org.in/orfsxbrl).

RBI now decides that with effect from December 26, 2023, the submission of both the returns through the XBRL site will be discontinued and shifted to the CIMS which is the Bank's new data warehouse. AD Category-I banks have already been onboarded on CIMS portal and are currently submitting both the returns on XBRL site as well as CIMS portal. The LRS monthly return and LRS daily return have been assigned return codes- 'R089' and 'R010' respectively on CIMS portal.

Accordingly, AD Category-I banks shall upload the LRS monthly return on or before fifth of the succeeding month commencing from the reporting month of December 2023, and LRS daily return from December 26, 2023 onwards on the next working day on CIMS portal (URL: https://sankalan.rbi.org.in). In case no data is to be furnished, AD Category-I banks shall upload a 'NIL' report.

INTERNATIONAL DESK

SAUDI ARABIA OFFERS 30-YEAR TAX RELIEF PLAN TO LURE REGIONAL CORPORATE HEAD QUARTERS

The Government of Saudi Arabia on December 05, 2023, unveiled a 30-year tax exemption plan for foreign companies establishing their Reginal Headquarters ('RHQ') in the country. This incentive forms a crucial component of Saudi Arabia's initiative to entice MNEs and encourage them to bring international investments into the Country.

The Ministry of Investment, in collaboration with the Ministry of Finance and the Zakat, Tax, and Customs Authority, announced the RHQ Program. This aims to enhance the efficiency of the process for MNCs in establishing their RHQ in Saudi Arabia. Further the programme also provides a 0% corporate tax rate for 30 years for companies starting from the day they obtain their RHQ license. This initiative aims to position Saudi Arabia as the premier commercial, industrial, and investment hub in the Middle East and North Africa (MENA) region by offering various benefits and premium support services.

In February 2021, the Country garnered investor attention and stirred controversy by introducing its RHQ campaign. The announcement stated that any foreign company not having its regional headquarters office in Saudi Arabia by the beginning of 2024 would face restrictions in conducting business with state entities.

UAE: FEDERAL TAX AUTHORITY ISSUES GUIDE TO DETERMINE NATURAL PERSONS SUBJECT TO CORPORATE TAX

The UAE Federal Tax Authority (FTA) has published the Corporate Tax Guide on the Taxation of Natural Persons under the UAE Corporate Tax Law, which addresses the criteria for identifying Natural Persons subject to the law effective from June 1, 2023. This guide offers a thorough and simplified explanation, providing instructions for natural persons earning income in the UAE to assess their eligibility for Corporate Tax. The FTA has strongly advised all individuals generating income in the UAE or engaging in business activities, whether wholly or partly within the UAE, to consult the newly released guide. This is to acquaint themselves with the Corporate Tax Law, implementation decisions, and other pertinent materials accessible on the FTA's website.

Emphasizing the significance of a thorough review, the FTA highlights the need to read the guide in its entirety to obtain a clear understanding of the comprehensive content and definitions provided. Further it incorporates practical examples elucidating how the Corporate Tax Law is applicable to natural persons involved in business activities in the UAE, regardless of their residency status for Corporate Tax purposes.

Corporate Tax applies to a natural person concerning their business or business activities only if the total turnover generated from those activities in the UAE surpasses AED 1 million within a Gregorian calendar year. However, income from specific activities such as wages, personal investment income, or real estate income is exempt from Corporate Tax and will not be considered when calculating the AED 1 million threshold related to income derived from a business or business activity. As outlined in the guide, non-resident natural persons will be liable for corporate tax if they possess a permanent establishment in the UAE, and the total turnover of the said establishment exceeds AED 1 million within a Gregorian calendar year, commencing from the calendar year 2024.

QATAR AND KUWAIT ESTABLISH ACCORD TO AVOID DOUBLE TAXATION

In a significant development, the Qatari Council of Ministers has granted its approval to a draft agreement between the governments of Qatar and Kuwait. The purpose of this agreement is to prevent double taxation and combat financial evasion related to taxes on income and capital. The decision was made during a recent Cabinet session, chaired by Dr. Khaled Al-Attiyah, the Deputy Prime Minister and Minister of State for Defense Affairs, at his headquarters in the Amiri Diwan, as reported by the Qatar News Agency.

According to the Qatar News Agency, the Council also endorsed Qatar's accession to the ARASAIA 2017 agreement. Furthermore, steps were taken to ratify an agreement between the governments of Qatar and Uzbekistan, focusing on eliminating double taxation related to income taxes and addressing the prevention of tax evasion and avoidance. Among various significant approvals, the Council authorized a memorandum of understanding (MoU) focused on fostering cooperation in the cybersecurity domain. This MoU entails collaborative efforts between the National Cybersecurity Agency of Qatar and the Cybersecurity Agency of Singapore. Another endorsed MoU aims to institute a political consultation mechanism between the foreign ministries of Qatar and Bolivia. The series of approvals underscores Qatar’s commitment to fostering international cooperation, strengthening economic ties, and addressing critical issues such as taxation, cybersecurity, and diplomatic collaboration.

VIETNAM'S PARLIAMENT ENDORSES GLOBAL MINIMUM CORPORATE TAX, POSTPONES OFFSETTING MEASURES

Vietnam's parliament has approved an increase in the effective tax rate for multinationals from January 1, raising it to 15%. This decision, made as part of a global tax reform and may pose a challenge to foreign investments vital for the country's economy. Although the corporate income tax in Vietnam is already at 20%, the country has traditionally offered lower effective rates to attract significant foreign investors. The new tax rate will significantly impact 122 foreign companies, potentially generating an additional 14.6 trillion dong ($601 million) annually for the state. Samsung, with its substantial revenues from Vietnamese factories, is expected to bear a considerable portion of this increase. In 2019, Samsung reportedly paid as little as 5.1% in tax in one of the provinces where it operates.

While the Korean Chamber of Commerce in Vietnam expressed concerns about the new tax rate, it noted that its members had not indicated any intention to alter their investments in Vietnam. However, tax experts warn that Vietnam may experience a decline in foreign investment unless it provides alternative economic benefits to offset the impact of the higher tax. The draft plan from the investment ministry proposed tax offsets for high-tech companies with investments exceeding 12 trillion dong ($495 million). These offsets could include cash subsidies covering various costs such as training, research, and infrastructure. However, parliamentary delays have hindered the implementation of these measures, with lawmakers seeking additional time to ensure compliance with global rules and address potential legal risks for investors.

The new effective tax rate is part of a global reform agreed upon in 2021 by over 140 countries, mandating a minimum 15% tax on multinationals with annual global turnover exceeding 750 million euros ($825 million) from 2024. This reform aims to prevent companies and individuals from legally shifting profits to low-tax or tax-free countries, ensuring they pay a minimum levy in their home country.

GLOSSARY

Abbreviation	Meaning
AA	Adjudicating Authority
AAAR	Appellate Authority for Advance Ruling
AAR	Authority for Advance Ruling
ACU	Asian Clearing Union
ADD	Anti-Dumping Duty
ADG	Additional Director General
AE	Associated Enterprises
AFA	Additional Factor of Authentication
AGM	Annual General Meeting
AICD	Agriculture Infrastructure and Development Cess
AIF	Alternative investment Fund
AIFs	Alternative Investment Funds
ALP	Arm's length price
AMCs	Assets Management Companies
AMT	Alternate Minimum Tax
AO	Assessing Officer
AOP	Association of Persons
APA	Advanced Pricing Agreement
ARE	Alternate Reporting Entity
ASBA	Application Supported by Blocked Amount
AU	Assessment Unit
AY	Assessment Year
B2B	Business to Business
B2C	Business to Customer
BBT	Buy-Back Tax
BCD	Basic Customs Duty
BED	Basic Excise Duty
BEPS	Base Erosion and Profit Shift
BOI	Body of Individuals
BPSL	Bhushan Power Steel Limited
CA	Chartered Accountant
CAG	Comptroller and Auditor General of India
CASS	Computer Assisted Scrutiny Selection
CAT	Common Aptitude Test
CAVR 2023	Customs (Assistance in Value Declaration of Identified Imported Goods) Rules, 2023
CBCR	Country By Country Reporting
CBDT	Central Board of Direct Taxes
CBI	Central Board of Indirect Tax
CBIC	The Central Board of Indirect Taxes and Customs
CBLR	Custom Broker Licensing Regulations
CCI	Chief Commissioner of Income-tax
CCIT	Chief Commissioner of Income tax
CG	Central Government
CGST Act	Central Goods and Services Act, 2017
CIMS	Centralized Information Management System
CIT	Commissioners of Income Tax
CLB	Company Law Board
CPC	Centralized Processing Centre
Cus	Customs Act, 1962
CVD	Countervailing Duty
DDT	Dividend Distribution Tax
DGIT	Director General of Income Tax
DRC	Dispute Resolution Committee
DRI	Directorate of Revenue Intelligence
DRP	Dispute Resolution Panel

Abbreviation	Meaning
DTAA	Double Taxation Avoidance Agreement
ED	Enforcement Directorate
EOI	Expression of Interest
EP	Engagement Partner
EP	Engagement Partner
FATF	Financial Action Task Force
FDI	Foreign Direct Investment
FEMA	Foreign Exchange Management Act, 1999
FHTP	Forum on Harmful Tax Practices
Fin	Finance Bill Finance Bill, 2023
FIRMS	Foreign Investment Reporting and Management System
FM	Finance Minister
FMV	Fair Market Value
FY	Financial Year
G2B	Government to Business
GST	Goods and Services Tax
H&EC	Health and Education Cess
HC	High Court
HFC	Housing Finance Company
HNI	High Net Worth Individual
HUF	Hindu Undivided Family
IBC	Insolvency and Bankruptcy Code
ICDR	Issue of Capital and Disclosure Requirements Regulations, 2009
ICFR	Internal Controls Over Financial Reporting
IFSC	International Financial System Code
IFSC	International Financial Services Centres
IFSCA	International Financial Services Centres Authority Act, 2019
IGST	Integrated Goods and Services Tax
IIM	Indian Institute of Management
IMC	Indian Medical Council Act, 1956
Ind AS	Indian Accounting Standards
InvITs	Infrastructure Investment Trusts
InvITs	Infrastructure Investment Trusts
IRP	Interim Resolution Professional
IT Act/ Act	The Income-tax Act, 1961
ITAT	Income Tax Appellate Tribunal
ITC	Input Tax Credit
ITO	Income-tax Officer
ITR	Income Tax Report

GLOSSARY

Abbreviation	Meaning
KYC	Know Your Customers
LIC	Life Insurance Corporation
LLP	Limited Liability Partnership
LODR Regulations	Listing Obligations and Disclosure Requirements Regulations, 2015
LRS	Liberalized Remittance Scheme
LTC	Long-Term Capital Gains
MAT	Minimum Alternate Tax
MII	Market Infrastructure Institution
MoF	Ministry of Finance
MoU	Memorandum of Understanding
MSEFC	Micro, and Small Enterprises Facilitation Council
MSME	Micro Small and Medium Enterprises
MSMED Act	Micro, Small and Medium Enterprises Development Act, 2006
NaFAC	National Faceless Assessment Centre
NBFC	Non-Banking Finance Company
NCCD	National Calamity Contingent Duty
NCD	Non-Convertible Debentures
NCLT	National Company Law Tribunal
NCS	Non-Convertible Securities
NCS Regulations	SEBI (Issue and Listing of Non-Convertible Securities) Regulations, 2021
NDFC	Net Distributable Cash Flows
NELP	New Exploration Licensing Policy
NFRA	National Financial Reporting Authority
NFT	Non-Fungible Tokens
NHB	National Housing Bank
NPA	Non-Performing Assets
NPS	National Pension System
NSWS	National Single Window System
OBU	Offshore Banking Unit
ODC	Online Dispute Resolution
OEC	Organization for Economic Co-operation and Development
OPC	One Person Company
PAN	Permanent Account Number
PAN	Permanent Account Number
PBPT	Prohibition of Benami Property Act, 1988
PCCI	Principal Chief Commissioner of Income-tax
PCIT	Principal Commissioners of Income Tax
PFUTP	Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market Regulations, 2003
PIV	Pooled Investment Vehicle
PLR	Prime Lending Rate

Abbreviation	Meaning
REITs	Real Estate Investment Trusts
RoC	Registrar of Companies
ROMM	Risk of Material Misstatements
RP	Resolution Professional
RPT	Related Party Transactions
RTGS	Real Time Gross Settlement
RU	Review Unit
SAD	Special Additional Duty
SAED	Special Additional Excise Duty
SC	Supreme Court
SCN	Show Cause Notice
SCRA	Securities Contracts (Regulation) Act, 1956
SEBI	Securities and Exchange Board of India
SFIO	Serious Fraud Investigation Office
SFIO	Serious Fraud Investigation Office
SFT	Statement of Financial Transaction
SGST	State Goods and Services Tax
SIAC	Singapore International Arbitration Centre
SLP	Special Leave Petition
SMF	Single Master Form
SPF	Specific Pathogen Free
SPV	Special Purpose Vehicle
STT	Security Transaction Tax
SWS	Social Welfare Surcharge
TAN	Tax Deduction Account Number
TDS	Tax Deducted at Source
TOL Act	Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020
TPO	Transfer Pricing Officer
TPS	Tax performing system
UAPA	Unlawful Activities (Prevention) Act, 1967
UCB	Urban Co-operative Bank
UK	United Kingdom
UPI	Unified Payments Interface
UPSI	Unpublished Price Sensitive Information
USA	United States of America
UTGST	Union Territory Goods and Services Tax
VDA	Virtual Digital Assets
VsV	Vivad se Vishwas
VU	Verification Unit
WMD Act	Weapons of Mass Destruction and their Delivery Systems (Prohibition of Unlawful Activities) Act, 2005
WTO	World trade Organization
XBRL	eXtensible Business Reporting Langauge

FIRM INTRODUCTION

Taxcraft Advisors LLP ('TCA') is a multidisciplinary advisory, tax and litigation firm having multi-jurisdictional presence. TCA team comprises of professionals with diverse expertise, including chartered accountants, lawyers and company secretaries. TCA offers wide-ranging services across the entire spectrum of transaction and business advisory, litigation, compliance and regulatory requirements in the domain of taxation, corporate & allied laws and financial reporting.

TCA's tax practice offers comprehensive services across both direct taxes (including transfer pricing and international tax) and indirect taxes (including GST, Customs, Trade Laws, Foreign Trade Policy and Central/States Incentive Schemes) covering the whole gamut of transactional, advisory and litigation work. TCA actively works in trade space entailing matters ranging from SCOMET advisory, BIS certifications, FSSAI regulations and the like. TCA (through its Partners) has also successfully represented umpteen industry associations/trade bodies before the Ministry of Finance, Ministry of Commerce and other Governmental bodies on numerous tax and trade policy matters affecting business operations, across sectors.

TCA & **VMGG & Associates ('VMGG')** are group firms providing consulting and audit services. While TCA is a multidisciplinary advisory, tax and litigation firm, VMGG is a firm registered with the Institute of Chartered Accountants of India. VMGG is therefore primarily into audit and attestation services (including risk advisory and financial reporting).

With a team of experienced and seasoned professionals and multiple offices across India, TCA & VMGG as a combination offer a committed, trusted and long cherished professional relationship through cutting-edge ideas and solutions to its clients, across sectors.

Website: **www.taxcraftadvisors.com**

GLS Corporate Advisors LLP ('GLS') is a consortium of professionals offering services with seamless cross practice areas and top of the line expertise to its clients/business partners. Instituted in 2011 by eminent professionals from diverse elds, GLS has constantly evolved and adapted itself to the changing dynamics of business and clients requirements to offer comprehensive services across the entire spectrum of advisory, litigation, compliance and government advocacy (representation) requirements in the field of Goods and Service Tax, Customs Act, Foreign Trade, Income Tax, Transfer Pricing and Assurance Services.

Of-late, GLS has expanded its reach with offerings in respect of Product Centric Regulatory Requirements (such as BIS, EPR, WPC), Environmental and Pollution Control laws, Banking and Financial Regulatory laws etc. to be a single point solution provider for any trade and business entity in India.

GLS has worked with a range of companies and have provided services in the field of business advisory such as corporate structuring, contract negotiation and setting up of special purpose vehicles to achieve business objectives. GLS is uniquely positioned to provide end to end solutions to start-ups companies where we offer a blend of services which includes compliances, planning as well as leadership support.

With a team of dedicated professionals and multiple offices across India, it aspires to develop and nurture long term professional relationship with its clients/business partners by providing the most optimal solutions in practical, qualitative and cost-efficient manner. With extensive client base of national and multinational corporates in diverse sectors, GLS has fortified its place as unique tax and regulatory advisory rm with in-depth domain expertise, immediate availability, transparent approach and geographical reach across India.

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(Executive)

GAGANDEEP KAUR
(Executive)

ASHMAN BRAR
(Executive)

CHIRAG KATHURIA
(Executive)

GANESH KUMAR
(Managing Partner)

BHAVIK THANAWALA
(Partner)

RUSHABH LUHAR
(Manager)

SINI ISSAC
(Associate)

SUROSH QAZI
(Associate)

TEJAS LUHAR
(Associate)

KAJAL POKHARNA
(Associate)

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RICHA NIGAM, Marketing Head, TIOL Pvt. Ltd.