

EY Tax and Regulatory Alert

March 2023

Prepared for ACMA

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2.	EUNIKE GENERAL TRADING Vs COMMISSIONER OF GOODS AND SERVICE TAX, WEST, DELHI (2023-VIL-173-DEL)	The Hon'ble High Court held that if the department is of the view that the refund has been erroneously granted, they would be required to take appropriate action under Section 73 or 74 of the Act. Recourse to Section 107(2) may be necessary only if the Adjudicating Authority has adjudicated any contentious issue, which in the opinion of the Commissioner requires to be reviewed
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INDIRECT TAX

Part A - Key Indirect Tax updates

Goods and Services Tax

This section summarizes the regulatory updates under GST for the month of March 2023:

▶ **Notification No. 01/2023 -Central Tax (Rate)**

Dated: 28.02.2023 was issued by CBIC to extend the exemption available to educational institutions and Central and State educational boards for conduct of **entrance examination** to any authority, board or a body set up by the Central Government or State Government including **National Testing Agency** for conduct of **entrance examination** for **admission to educational institutions**.

▶ **Notification No. 02/2023-Central Tax (Rate)**

Dated 28.02.2023 was issued by the CBIC to extend the dispensation available to Central Government, State Governments, Parliament and State Legislatures with regard to payment of GST under reverse charge mechanism (RCM) to the Courts and Tribunals also in respect of taxable services supplied by them such as renting of premises to telecommunication companies for installation of towers, renting of chamber to lawyers etc.

▶ **Further amendments pertaining to Indirect taxes as proposed in Finance Bill, 2023:**

▶ The Finance Bill, 2023 was presented by the Hon'ble Finance Minister Smt. Nirmala Sitharaman on 1 February 2023. While moving the Bill for approval in Lok Sabha, the FM introduced certain amendments to the said Bill. The summary of which has been provided as below:

▶ Earlier, it was proposed that the provisions of compulsory registration will not apply where the person is engaged exclusively in making exempt supplies or exempted from obtaining registration through a specific notification.

▶ As per the revised provision, compulsory registration will not be required only in cases where the person is exempted from obtaining registration through a specific notification issued under section 23(2) of Central Goods and Services Tax Act, 2017.

▶ At present, the timelines for making application for revocation of registration is 30 days from the date of service of cancellation order. The provision is being amended to empower the Central Government to prescribe the timelines. Consequently, the proviso empowering the Commissioner and Additional/ Joint Commissioner to extend the time limit has been omitted.

▶ Currently, if the taxpayer furnishes a valid return within 30 days of passing of the best judgment assessment order, the said order shall be deemed to be withdrawn.

▶ The time period of 30 days is being extended to 60 days.

▶ Also, a further extension of 60 days is now being made available to submit the valid return upon payment of late fees.

▶ Basis the recommendation of the GST Council, the provisions relating to GST Appellate Tribunal are being amended.

▶ The Principal Bench at Delhi shall have a President, a Judicial member, a Technical Member (Centre) and a Technical Member (State).

- ▶ The State Bench shall have two Judicial Members, a Technical Member (Centre) and a Technical Member (State).
- ▶ The cases in appeal where any of the issues relate to place of supply, the same shall be heard by the Principal Bench only.
- ▶ Where the disputed amount does not exceed INR 50 lakhs and the matter does not involve question of law, the appeal shall be heard by a single member.
- ▶ In all other cases, appeal shall be heard together by one Judicial Member and one Technical Member.

Customs and Foreign Trade Policy (FTP)

This section summarizes the regulatory updates under Customs and FTP for the month of March 2023

- ▶ **Notification No. 13/2023-Customs Dated 23.02.2023** was issued by the CBIC was issued by the CBIC to Exempted Customs Duty and IGST leviable on 'vessels and other floating structures for breaking up'.
- ▶ **Notification No. 14/2023-Customs Dated 28.02.2023** was issued by the CBIC whereas the following explanation is inserted.

"A device such as tag, tracking device or data logger already affixed on the container at the time of import shall also be eligible for exemption from the duty of customs and the integrated tax as is available to the said container under this notification."
- ▶ **Notification No. 15/2023 Customs Dated 03.03.2023** was issued by the CBIC to in order to discontinue the specified **TRQ** rate after the 31st March 2023.

- ▶ **Circular No. 06/2023-Customs Dated 01.03.2023** was issued by the CBIC where attention is drawn to Postal Export (Electronic Declaration and Processing) Regulations, 2022 issued under **Notification no. 104/2022-Customs (N.T.) dated 09.12.2022** and the Guidelines for their implementation in **Circular no. 25/2022-Customs dated 09.12.2022**.

- ▶ In terms of Regulation 6(1), the Department of Post O.M. dated **09.02.2023** has authorized **122 Booking Post Offices** to accept consignments for export.

- ▶ **Public Notice No. 58/2015-2020 DGFT Dated 24.02.2023** was issued by the DGFT hereby making one time relaxation in procedure in respect of acceptance of fee for excess duty utilised under the EPCG Scheme.

- ▶ For Ease of Doing Business, Public Notice No. 03 dated 13.04.2022 was issued amending para 5.16(a) of HBP, 2015-20 to allow the EPCG authorization holder to furnish additional fee, to cover excess duty utilised, to RA concerned at the time of application for EODC.

- ▶ To facilitate the Ease of Doing Business, it has been decided to permit the RAs to allow the authorisation holder to furnish additional fee to cover excess duty utilized for the EPCG authorizations issued under the FTP 2009-14 (extended upto 31.03.2015) also at the time of application of EODC subject to the condition that excess duty utilized was not more than 10% of duty saved value of the authorization.

- ▶ **Public Notice No. 59/2015-2020 DGFT Dated 28.02.2023** was issued and the Director General of Foreign Trade hereby makes the following amendments in the provisions of Para 4.42 of the Handbook of Procedures 2015-2020:

- ▶ Under Para 4.42 of HBP 2015-2020, a new sub-para (j) is added, as mentioned below:

4.42 Export Obligation (EO) Period and its Extension: (j) For implementation of all PRC decisions involving levy of Composition Fee while allowing extension in EOP and/or regularization of exports already made, the applicable Composition Fee shall be as prescribed hereunder:

CIF VALUE OF ADVANCE AUTHORIZATION (AA) LICENSES ISSUED	COMPOSITION FEE TO BE LEVIED (IN ₹)
Up to ₹2 Crores	25,000.00
More than ₹2 Crores to ₹10 Crores	50,000.00
Above ₹10 Crores	1,00,000.00

- ▶ No refund of earlier paid Composition Fee shall be admissible.
- ▶ Effect of this Public Notice: Para 4.42 of the Handbook of Procedures 2015-2020 has been amended to integrate a uniform and transparent system for implementation of all PRC decisions including previous decisions involving process of levying Composition Fee in case of extension of Export Obligation Period (EOP) and/or regularization of exports already made under Advance Authorization Scheme, for ease of doing business and reduction of transaction cost.
- ▶ **Trade Notice No. 26/2022-23 Dated 08.02.2022** was issued by the CBIC whereas It is informed that there is an existing permanent platform wherein daily video conference facility for interaction between **DGFT Regional Authorities officials** and **members of trade & industry** in lieu of physical interactions at DGFT Regional Authorities is convened.
- ▶ Every RA's permanent VC link is operational on every working day between **10:30 AM to 11:30 AM** and is attended by an Officer not less than a Deputy.
- ▶ DGFT is accessible on DGFT website (<https://dgft.gov.in>)- About DGFT-VC Facility for Trade Facilitation w.e.f 2nd October 2022.

- ▶ Members of trade can also seek assistance/guidance with regard to the filing of application of Advance Authorisation cases for fixation/finalization of **Standard Input Output Norms (SION)** through this facility to ensure completeness of application for faster fixation of SION.

▶ **Further amendments pertaining to Indirect taxes as proposed in Finance Act, 2023:**

- ▶ At present, all customs duties on goods imported in a customs bonded warehouse under Manufacture and Other Operations in Warehouse Regulations(MOOWR) are deferred.
- ▶ The deferment is now being restricted to duties other than integrated tax (IGST) and compensation cess (Cess). In other words, IGST and Cess are payable on import of goods under MOOWR. The amendment will not apply in respect of goods deposited or permitted to be removed for deposit in the warehouse prior to the effective date of the provision.
- ▶ Basic customs duty rates are being amended for certain goods.

Direct Tax

This section summarizes the regulatory updates under DT for the month of March 2023

Key Takeaways

- ▶ The following key amendments have been introduced in the Finance Bill, 2023 ('FB 2023'):
 - ▶ The tax rate on royalty and fees for technical services (FTS) paid to non-residents (NRs) is enhanced from the existing rate of 10% to 20% for amounts payable on or after 1 April 2023. Corresponding amendments also made to withholding tax rates.
 - ▶ Effective date of proposed withholding tax provision on net winnings from online games advanced from 1 July 2023 to 1 April 2023.
 - ▶ Punitive rate of withholding tax in case of non-filers of return of income not applicable in case of proposed withholding on net winnings from online games.
 - ▶ Tax collected at source (TCS) leviable on any amount remitted under Reserve Bank of India's (RBI's) Liberalised Remittance Scheme (LRS), not restricted to remittances made "out of India".
 - ▶ Higher rate of TCS leviable on non-filers of return of income and non-furnishing of permanent account number (PAN), capped at 20%.
 - ▶ Similar to market-linked debentures (MLDs), gains from transfer, redemption or maturity of units of specified mutual funds (SMFs) also to be taxed as deemed short-term capital gains.
 - ▶ **Amendments related to business trusts:**
 - ▶ *Computation mechanism provided to arrive at the amount of certain distribution to be taxed as "other income" in the hands of business trust unit holder:*
 - ▶ *The computation mechanism factors the distribution made prior to tax year (TY) 2023-24, and the distribution made to the old unit holders in case of units acquired through secondary purchase transaction.*
 - ▶ *Notified sovereign wealth fund (SWF) and pension fund will be exempt from such taxation.*
 - ▶ *Cost of acquisition of units in business trusts for computing capital gains to be determined by reducing amount of certain distribution made to unit holders.*
 - ▶ *No withholding is required on payment of interest on securities by SPV to business trust.*
 - ▶ New provision introduced under capital gains for exempting swap of interest in joint venture (JV) held by public sector company with shares of foreign company formed by foreign government.
 - ▶ Marginal relief in rebate for resident individuals covered under new concessional tax regime (CTR regime) introduced for net taxable income over INR 0.7 Mn.
 - ▶ Increase in securities transaction tax (STT) levy on:
 - ▶ Sale of an option in securities from 0.05% to 0.0625%
 - ▶ Sale of a futures in securities from 0.01% to 0.0125%
- payable by seller on value of the transaction.

Detailed discussion around some of the key amendments mentioned above

► **Enhancement of domestic tax rates on income from royalty/FTS for NR**

- Under the Indian Tax Laws (ITL), NRs' income from royalty/ FTS which is not effectively connected with a permanent establishment (PE) in India is taxed at the rate of 10% (plus applicable surcharge and cess).
- Amended FB 2023 increases the rate of tax rate on royalty and FTS income of NRs from 10% to 20% (plus applicable surcharge and cess) for amounts payable on or after 1 April 2023.
- However, NRs from countries or jurisdictions with which India has Double Tax Avoidance Agreements (DTAAs) can avail lower treaty rate subject to compliance of treaty eligibility conditions.

► **Amendments related to new withholding tax provisions on net winnings from online games**

- Under the existing provisions of the ITL, income from winnings from games, racehorses etc. are taxable at the rate of 30% and appropriate withholding provisions are also applicable, where such amount of winnings exceeds INR 10,000. FB 2023 proposed that taxes will be required to be withheld if the winning amount or aggregate of winning amounts during relevant TY exceeds INR 10,000. The amendment was proposed to be effective from 1 April 2023.
- Further, due to increase in the users of online games and also different nature of such games, being easily accessible vide the Internet and computer resources, with a variety of playing options and payment options, FB 2023 proposed to bring in

specific provisions regarding taxability and withholding of online games.

- Accordingly, FB 2023 proposed to tax the net winnings from online games at 30% (excluding surcharge and cess) and the manner of computation of net winnings from online games will be prescribed. The provision is proposed to be effective from TY 2023-2024 (assessment year 2024-2025). Further, FB 2023 also proposed to introduce withholding on net winnings from online games of the user account at the rates in force. The provision was proposed to be effective from 1 July 2023.

► **Effective date of withholding tax provisions on net winnings from online games preponed from 1 July 2023 to 1 April 2023**

- Amended FB 2023 advances the effective date of new withholding tax provisions on net winnings from online games from 1 July 2023 to 1 April 2023.

► **Punitive rate of withholding tax in case of non-filers of return of income not applicable in case of proposed tax withholding provision on net winnings from online games**

- The existing provisions of ITL state that any person making payment or receiving any sum from a specified person will be required to deduct/collect taxes at rates higher of the following:
 - at twice the rate of tax mentioned in relevant provision of ITL; OR
 - at twice the rate in forces; OR
 - at the rate of 5%
- However, such punitive rates are not applicable in case of specifically excluded provisions where withholding

tax rate is already at maximum rate of 30%.

- ▶ While proposed withholding tax provision on net winnings from online games requires tax to be withheld at the rate of 30%, FB 2023 did not propose to consequently add such provision in exclusion list of punitive rate of withholding tax provision. This could have resulted in punitive rate of withholding tax being 60% in case of online game winnings.
- ▶ Amended FB 2023 addresses this anomaly by extending the carve out from non-applicability of punitive rates of tax for non-filers of return of income to withholding provisions on net winnings from online games.
- ▶ **Amendment to the definition of ‘rates in force’ under the ITL to include reference to withholding provisions on income by way of winnings from online games**
- ▶ FB 2023 proposed introduction of withholding provisions on net winnings from online games at the rates in force.
- ▶ The definition of “rates in force” under existing provisions of ITL, inter alia, provides that for specific withholding provisions [such as withholding provisions on income from winnings from lotteries and crossword puzzles etc.], rates in force shall mean rate of tax specified in the Finance Act of the relevant year for such income.
- ▶ In case of withholding provisions on net winnings from online games, rates provided in tax withholding rate schedule of FB 2023 provided for 30% rate. However, no modification was proposed to definition of “rates in force” to include reference to the new withholding provision.
- ▶ To rectify such anomaly, Amended FB 2023 provides to add reference to withholding provisions on income by way of winnings

from online games in definition of “rates in force”.

- ▶ **TCS leviable on any remittances made under LRS, not restricted to remittances made out of India**
- ▶ Presently, TCS is applicable at the rate of 5% on remittances made outside India under LRS subject to de minimis threshold of INR 0.7M. Such TCS is collected by the Authorized Dealer (AD) in case of remittances made “out of India” under LRS.
- ▶ FB 2023 proposed to enhance the rate of tax collection at source to 20% on such foreign remittances, without any threshold limit, with effect from 1 July 2023.
- ▶ Amended FB 2023 now further requires TCS levy on all remittances made under the LRS and not just remittances made “out of India”.
- ▶ This will expand the scope of TCS on LRS to transactions not involving remittance outside India – illustratively, grant of INR gifts or loan to NRI/PIO relative for use in India.
- ▶ **TCS leviable at higher rate in certain circumstances, capped at 20%**
- ▶ Hitherto, where a person (collectee) responsible for making a payment on which TCS is leviable, does not furnish his/her PAN to the collector who is responsible to collect such TCS, the collector is required to collect tax at a higher of 5% or twice the rate specified under the relevant provisions of ITL.
- ▶ Likewise, TCS at higher of 5% or twice the rate specified under the ITL applied where payments are made by a person who has not filed his/her return of income (ROI) for the year preceding the year in which TCS is leviable and the aggregate of TDS/TCS for

such person is more than INR 0.05M in such preceding year.

▶ In this respect FB 2023 proposed increased rate of TCS for remittances made under LRS and payments for overseas tour packages from 5% to 20%. With increase in TCS rate on LRS to 20%, the higher rate for TCS (computed at twice the rate specified under the relevant ITL provision) came up to 40% (viz. much higher than the highest tax slab rate of 30%).

▶ Considering the various representations made on this aspect, the Amended FB 2023 now seeks to redress this anomaly by capping the higher rate of TCS at 20%. The amendment will come into effect from 1 July 2023.

▶ **Shares issued by a private company to specified fund located in IFSC will not be subjected to angel taxation**

▶ Prior to FB 2023, shares issued by a closely held company to non-resident in excess of the company's prescribed fair market value was not liable to tax in the hands of the closely held company issuing the shares ("angel tax"). Additionally, angel tax did not apply to with respect to (i) shares issued to a resident being a venture capital fund or a specified fund; or (ii) shares issued by a notified start-up.

▶ FB 2023 extended the provisions of "angel tax" in respect of shares issued by closely held companies to non-resident also with effect from TY 2023-24. Amended FB 2023 does not change this position.

▶ However, considering that specified fund located in IFSC is now governed by International Financial Services Centre Authority (Fund Management) Regulations, 2022, Amended FB 2023 provides that shares issued by closely held companies to specified fund

located in IFSC governed by said Regulations, 2022 will not be subject to "angel tax".

▶ Gains from transfer, redemption or maturity of units of specified mutual fund (SMF) also to be taxed as short-term capital gains

▶ FB 2023 introduced a special tax regime to tax the gains on transfer, redemption or maturity of MLDs as short-term capital gains (STCG), irrespective of the period for which the MLDs are held.

▶ Such gains are to be computed by reducing the cost of acquisition of such debentures and also any expenses incurred in connection with the transfer. However, the benefit of indexation is not available while computing such gains.

▶ Amended FB 2023 extends the scope of the special tax regime to unit of an SMF. SMF is defined to mean a mutual fund of which not more than 35% of total proceeds is invested in the equity shares of domestic companies.

▶ Considering the judicial precedents in the context of capital gains arising on depreciable assets under a comparable provision, it is possible to take view that the new provision merely modifies the method of computation of gains (by denying indexation benefit in case of SMF units) and does not change the long term character of the asset (MLD or SMF units) for other purposes like lower rate of tax on long term capital gains or roll over capital gains exemption and set off of losses.

▶ **Exemption on swap of interest in JV held by public sector company with shares of foreign company**

▶ Amended FB 2023 introduces a new provision for exempting any transfer of a capital asset being an interest in a JV, held

by a public sector company, in exchange of shares of a company incorporated outside India by a foreign government, in accordance with laws of that foreign government, from capital gains. For this purpose, a JV shall mean a business entity, as may be notified by the Central Government.

- ▶ Consequential amendment is also made to provide that cost of acquisition of such shares shall be deemed to be cost of acquisition of the interest in JV. However, there is no consequential amendment to include the holding period of interest in JV in the holding period of such shares.
- ▶ The amendment shall apply from Tax Year 2022-23.

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Part B- Case Laws

Goods and Service Tax

1. AJAY KUMAR JINDAL PROP. OF M/s A.S. FASTENER Vs SUPERINTENDENT, WARD 71, CENTRAL GOODS AND SERVICES TAX, DELHI (2023-VIL-192-DEL)

Background and Facts of the case

- ▶ Petitioner challenged the denial of ITC refund consequent to the cancellation of its GST registration ab-initio.
- ▶ Rejection of refund of accumulated input tax credit under inverted duty structure was made on the ground the petitioner was found to be non-existent and non-functional at the registered place of business.

Discussions and findings of the case

- ▶ The petitioner had over a period from August 2017 to November, 2022 filed its return and paid the necessary taxes. Further, the Petitioner had transferred the business and continued it under the same name, albeit in partnership with another individual, with effect from 31.07.2021. The firm constituted on 31.07.2021 had applied for and obtained GST registration in respect of its principal place of business in Haryana and Petitioner was carrying on the business from its principal place of business till July, 2021 and thereafter from its principal place of business in Haryana. Therefore, there no ground for Respondent to believe that the Petitioner was non-existent from the date of its registration.
- ▶ Further, there is no allegation that the petitioner had obtained its registration by means of fraud, wilful misstatement or suppression of facts. The only ground on which the petitioner's registration has been cancelled is that he has contravened the provisions of the Act in as much as he has not filed the requisite returns for transfer of stock and capital goods. He has also not filed the requisite information disclosing transfer of business to the

firm. Thus, it is assumed that the petitioner was non-existent.

- ▶ However, record indicates that the petitioner was carrying on its business from its principal place of business in Delhi and had shifted it to Haryana. In these facts, the petitioner's registration cannot be cancelled from the date he had obtained the same and petitioner cannot be denied the refund of accumulated ITC solely on the ground that he had not filed the necessary information regarding transfer of business and other returns to establish the transfer of stocks and capital goods more so when the petitioner's claim for inverted tax structure as well as the accumulation of ITC has been verified by respondent.

- ▶ The impugned order cancelling the petitioner's registration with effect from 02.07.2017 was set aside.

2. EUNIKE GENERAL TRADING Vs COMMISSIONER OF GOODS AND SERVICE TAX, WEST, DELHI (2023-VIL-173-DEL)

Background and Facts of the case

- ▶ Refund was sanctioned and credited in the petitioner's bank account. Thereafter, the refund order was subject to an audit and a review, pursuant to which the petitioner was directed to deposit the amount which was erroneously refunded.
- ▶ The Petitioner's grievance is that it has voluntarily deposited the said amount as directed, however, notwithstanding having complied with the said direction, the balance amount of the refund granted by the respondent continues to be blocked

Discussions and findings of the case

- ▶ Petitioner's contention that it is necessary for the respondents to file a review or appeal against the order granting refund is not merited.
- ▶ Section 73 and 74 of the CGST Act also provide for recovery of refund where the same has been erroneously granted. Clearly, if the respondents are of the view that the refund has been erroneously granted, they would be required to take appropriate action under Section 73 or 74 of the Act.
- ▶ Recourse to Section 107(2) may be necessary only if the Adjudicating Authority has adjudicated any contentious issue, which in the opinion of the Commissioner requires to be reviewed.
- ▶ Further, it was held that insofar as the blocking of the bank account is concerned, the said action is taken under Section 83 of the Act. By virtue of sub-section (2) of Section 83 of the Act, the said order of attachment ceases to be operative on expiry of a period of one year from the date of the order and the respondents are required to adhere to the said discipline.
- ▶ The Hon'ble High Court directed that the respondent should reconsider the petitioner's request for lifting of the block placed on the petitioner's bank account and continue the same only if it is satisfied that the conditions as specified in Section 83 of the Act continue to exist.

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Direct Tax

1. Calcutta HC rules that deeming provision of substituting stamp duty value in computing capital gains tax levy not to apply to cases where transfer does not require stamp duty payment

Background

- ▶ Under the Income Tax Act (ITA), capital gains on transfer of capital asset are chargeable to tax with reference to the full value of the consideration received or accrued to the taxpayer. However, where the consideration received/accrued as a result of transfer of land/ building or both is less than the value adopted/assessed/assessable by the stamp valuation authority of the state government for the purpose of payment of stamp duty, then such stamp duty value of the property is deemed to be the full value of the consideration received/ accrued for the purpose of computing capital gains.
- ▶ Compensation received on compulsory acquisition of land is chargeable to tax under the ITA. However, provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (Fair Compensation Act) provide that no income tax or stamp duty shall be levied on any award or agreement made under the ITA, except in certain specified exceptions.

Facts

- ▶ The Taxpayer owned a land parcel which was compulsorily acquired by the National Highways Authority of India (NHAI) in tax year 2014-15. The Taxpayer received compensation from NHAI, which was lesser than the stamp duty valuation of such land parcel.
- ▶ The tax authority computed the Taxpayer's total income by adopting the stamp duty valuation as the "full value of consideration" and, accordingly, increased the Taxpayer's total income with deemed capital gains on transfer of land to NHAI.

- ▶ Being aggrieved, the Taxpayer filed an appeal before the first appellate authority which decided the appeal in favour of the Taxpayer. The tax authority's appeal before the Income Tax Appellate Tribunal was rejected. Being aggrieved, the tax authority filed an appeal before the HC.

HC's ruling

The HC rejected the tax authority's computation of capital gains on transfer of land parcel to NHAI by adopting stamp duty valuation for the following reasons:

- ▶ Computation adopting stamp duty value as the "full value of consideration" has no applicability where the government is party to the transaction.
- ▶ It is an admitted position that when compensation is determined by the authorities under the Fair Compensation Act, it is invariably lesser than the market value of the property as the determination is done in a particular manner by taking note of several factors. This is also evident from the fact that the Fair Compensation Act provides for an appellate remedy and further remedies to the landowner against inadequacy of determination of compensation.
- ▶ Provisions of Section 50C of the ITA have been designed to control transactions where the correct market value of the property being transferred is not mentioned and there is suppression of the correct value by the parties to the transactions. In case of compulsory acquisition of land by the government, there is no room for suppressing the actual consideration received on such acquisition.

- ▶ The HC distinguished on facts, the decision of the Madras HC in the case of Ambattur Clothing Company Limited that was relied upon by the tax authority. In that case, the transaction of sale of immoveable property was between two private parties, where the sale consideration as per the agreement was lower than the stamp duty valuation.
- ▶ Adoption of stamp duty value instead of actual consideration will have no applicability to cases where transfer is not subjected to payment of stamp duty.
- ▶ Additionally, fiction of adoption of stamp duty value as the full value of consideration is applicable in cases where the transfer of a capital asset is required to be affected only upon payment of stamp duty. Since, in case of compulsory acquisition, transfer of property takes place by operation of law and not under the Transfer of Property Act, 1882 or the Indian Registration Act, 1908, and is without payment of stamp duty, such fiction has no application.
- ▶ Since compulsory acquisition of property by the government does not trigger payment of stamp duty, there is no requirement for assessment of valuation of property by the stamp duty authorities.
- ▶ Separately, the HC also held that capital gains on compulsory acquisition of land is not liable to tax under the ITA in view of the specific provision to that effect in the Fair Compensation Act which overrides the ITA. The HC noted that the Central Board of Direct Taxes (CBDT) had issued Circular No. 36/2016 dated 25 October 2016 which clarified that the compensation received in respect of award or agreement under the Fair Compensation Act is exempted from levy of income tax even where no specific exemption provision exists in the ITA for such type of compensation.

Our offices

Ahmedabad

2nd floor, Shavlik Ishaan
Near. C.N Vidyalaya
Amba wadi
Ahmedabad – 380 015
Tel: +91 79 6608 3800
Fax: +91 79 6608 3900

Bengaluru

12th & 13th floor
"U B City" Canberra Block
No.24, Vital Malia Road
Bengaluru - 560 001
Tel: +91 80 4027 5000
+91 80 6727 5000
Fax: +91 80 2210 6000 (12th floor)
Fax: +91 80 2224 0695 (13th floor)

Ground Floor, 'A' wing
Devisee Chambers
11, O'Shaughnessy Road
Langford Gardens
Bengaluru – 560 025
Tel: +91 80 6727 5000
Fax: +91 80 2222 9914

Chandigarh

1st Floor
SCO: 166-167
Sector 9-C, Madhya Marg
Chandigarh - 160 009
Tel: +91 172 671 7800
Fax: +91 172 671 7888

Chennai

Tidal Park
6th & 7th Floor
A Block, No.4, Rajiv Gandhi Salami
Tar Amani, Chennai – 600 113
Tel: +91 44 6654 8100
Fax: +91 44 2254 0120

Delhi NCR

Golf View Corporate
Tower – B
Sector 42, Sector Road
Gurgaon – 122 002
Tel: +91 124 464 4000
Fax: +91 124 464 4050

3rd & 6th Floor, Worldmark-1
IGI Airport Hospitality District
Atrocity New Delhi – 110 037
Tel: +91 11 6671 8000
Fax +91 11 6671 9999

4th & 5th Floor, Plot No 2B
Tower 2, Sector 126
NOIDA - 201 304
Gautam Bodh Nagar, U.P.
Tel: +91 120 671 7000
Fax: +91 120 671 7171

Hyderabad

Oval Office
18, labs Centre
Hitech City, Madhapur
Hyderabad – 500 081
Tel: +91 40 6736 2000
Fax: +91 40 6736 2200

Jamshedpur

1st Floor,
Shanti Niketan Building
Holding No. 1, SB Shop Area
Bistoury, Jamshedpur – 831 001
Tel: +91 657 663 1000

Kochi

9th Floor "ABAD Nucleus"
NH-49, Maraud PO
Kochi - 682 304
Tel: +91 484 304 4000
Fax: +91 484 270 5393

Kolkata

22, Camaca Street
3rd Floor, Block C"
Kolkata - 700 016
Tel: +91 33 6615 3400
Fax: +91 33 6615 3750

Mumbai

14th Floor, The Ruby
29 Senapati Bapat Marg
Dadar (west)
Mumbai - 400 028
Tel: +91 22 6192 0000
Fax: +91 22 6192 1000

5th Floor Block B-2
Nylon Knowledge Park
Off. Western Express Highway
Goregaon (E)
Mumbai - 400 063
Tel: +91 22 6192 0000
Fax: +91 22 6192 3000

Pune

C—401, 4th floor
Pinch-hit Tech Park
Yeravda (Near Don Bosco School)
Pune - 411 006
Tel: +91 20 6603 6000
Fax: +91 20 6601 5900

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EY contacts for ACMA Knowledge Partnership:

- ▶ Rakesh Batra, National Automotive Sector Leader –
rakesh.batra@in.ey.com / +91 124 464 4532