Tax Digest

Quarterly newsletter

June 2020

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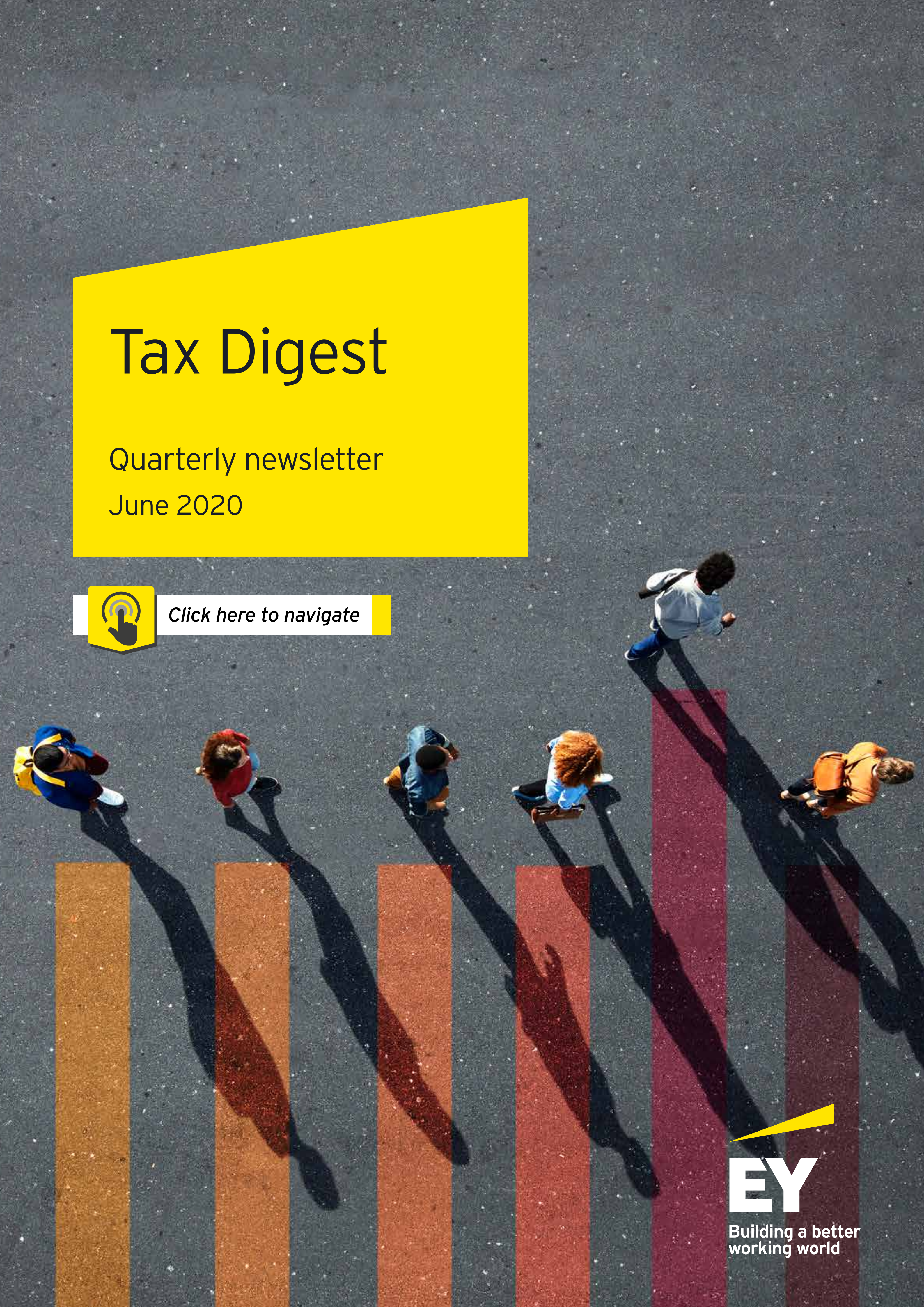

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Editorial

Dear readers,

We are pleased to present the June 2020 edition of our quarterly newsletter, Tax Digest, which summarizes the significant tax and regulatory developments during the quarter, April to June 2020.

This newsletter is designed as a ready reckoner and covers landmark tax judgments, updates on tax treaties and alerts on topical developments in the tax arena. The "In the Press" section includes published articles on various issues in the tax realm over the last quarter. It also details key thought leadership reports and other topics of interest for tax professionals.

We hope you find this edition timely and insightful.

Best regards,
EY Tax Update team

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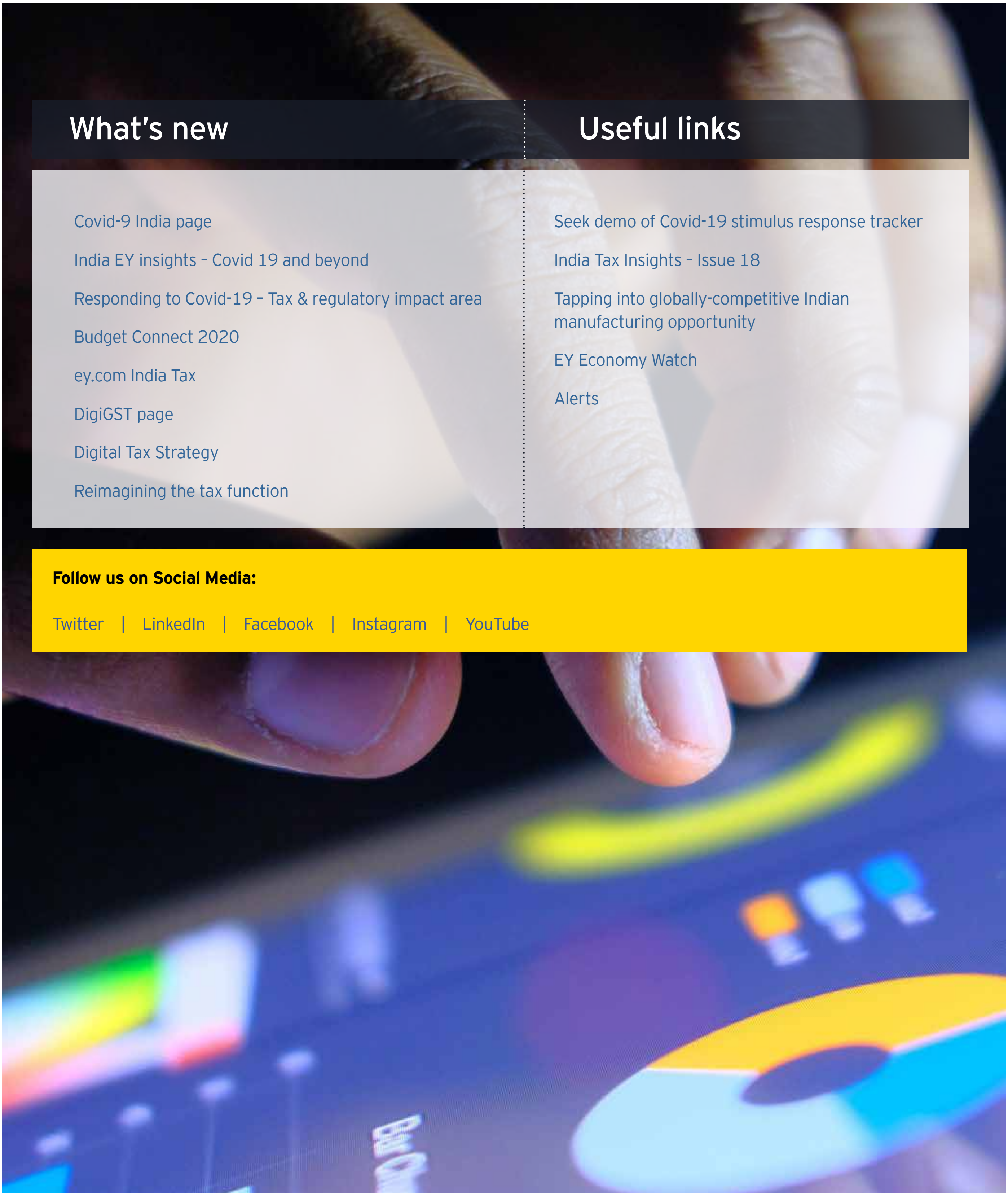

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Direct tax

Case laws, Administrative developments and Global developments

Case laws

Supreme Court

Supreme Court grants profit-linked deduction on infrastructure development to successor company basis the agreement of erstwhile partnership firm with the State Government

In the case of Chetak Enterprises Pvt. Ltd. (Taxpayer company), the issue under consideration before the Supreme Court (SC), was the eligibility to avail the benefit of profit-linked deduction as applicable to the infrastructure sector under the provisions of the Income Tax Act, 1961 (ITL).

In order to avail the profit-linked deduction under the ITL, two of the conditions to be fulfilled are that the enterprise should be owned, *inter alia*, by an Indian company and that an agreement should be entered into between such enterprise and the relevant Government/statutory authority for carrying out the qualifying activities of infrastructure development, operation and maintenance.

In the facts of the case, a partnership firm had entered into an agreement with the Government of Rajasthan (State Government) for road development, operation and maintenance. Subsequently, the firm converted into a company (being the Taxpayer company) under the provisions of Part IX of the erstwhile Companies Act, 1956 (ICL).

The issue referred to the SC was whether the Taxpayer company is eligible to claim the profit-linked deduction on the basis of the agreement entered into by the predecessor partnership firm. The SC allowed claim for deduction to the Taxpayer company on the ground that, by operation of Part IX of ICL, by legal implication, there is a statutory vesting of all the properties of the firm in the company and, hence, the agreement entered into by the predecessor partnership firm assumes the character of an agreement entered into by the Taxpayer company itself. Furthermore, the factual matrix of the case supported that the initial agreement was entered into by the predecessor partnership firm with the State Government based on an explicit understanding between the parties that the firm shall be converted into a company. Furthermore, the text of the agreement itself provided for the benefit and obligation of the agreement to be passed on to the successors/assignees of the firm, being the Taxpayer company. Post conversion, the State Government noted the change, cancelled the predecessor partnership firm's registration and granted fresh registration to the Taxpayer company. This also supported compliance of the eligibility condition of the incentive provision under the ITL.

For details, refer our alert dated 9 March 2020

SC denies benefit of mutuality when contribution is received from non-member to common fund and involves profit motive

In the case of Yum! Restaurants Marketing[1] (Taxpayer), the issue before the SC was whether the Taxpayer was a mutual concern and, accordingly, if income/surplus of the Taxpayer was exempt from income tax.

The principle of mutuality works on the proposition that no income accrues when a common group of persons contributes to and participates in a common fund with an expectation that the contribution would be spent for a common good or on objectives that will benefit all the contributors. This is on the principle that no one can derive any income from themselves, as income comes from an outside source.

The Taxpayer was incorporated by Yum! Restaurants India Private Limited (YRIPL) and was formed for economization of the cost of advertising and promotion of franchisees. In this regard, approval was obtained from the Secretariat for Industrial Assistance (SIA). One of the important conditions in the approval was that the Taxpayer shall be non-profit making and governed by the principle of mutuality. Subsequently, a tripartite agreement was entered into between the Taxpayer, YRIPL and the franchisees, wherein the franchisees were required to contribute a fixed percentage of their revenue while YRIPL was to make a contribution at its discretion.

During tax year 1999-00, the Taxpayer received a contribution from the franchisees, as well as Pepsi Foods Ltd. (Pepsi Co) which was a non-member and was not part of the tripartite agreement. As per a separate marketing agreement with Pepsi Co, the franchisees were required to keep drinks of Pepsi Co at their outlets. For tax year 1999-00, the Taxpayer filed 'NIL return of income by claiming itself to be a mutual concern. This position of the Taxpayer was rejected by the Tax Authority on the ground that YRIPL

1 Yum! Restaurants Marketing Private Limited v. CIT [TS-211-SC-2020] / [2020] 116 taxmann.com 378 (SC)

had absolute discretion to contribute the amount and had no obligation to contribute. The action of the Tax Authority was upheld by the First Appellate Authority (FAA), the Income Tax Appellate Tribunal (Tribunal) and the High Court (HC). Aggrieved, the Taxpayer appealed before the SC.

In the facts of the case, the SC held that the Taxpayer was not a mutual concern, by observing as under:

- Realization of money by the Taxpayer from both members as well as non-members (Pepsi Co) was in the course of the same activity and is tainted with commerciality. Accordingly, it was held that the Taxpayer did not satisfy this test of mutuality relating to commonality of identity of members and beneficiaries of the concern.
- Under the tripartite agreement, YRIPL may not contribute, but reap the benefit at the cost of the contribution of the franchisees. This was held to be against the concept of mutuality.
- Under the tripartite agreement, the franchisees did not have right to participate in surplus or an entitlement to get back the unspent portion of their respective contributors. This was also held to be against the concept of mutuality.

For details, refer our alert dated 27 April 2020

SC rules on the obligation to withhold taxes on guarantee fees paid to various non-resident sports associations

In the case of PILCOM[2] (Taxpayer), the SC ruled on the obligation to withhold taxes on certain payments in the nature of guarantee fees paid to various non-resident (NR) sports associations related to the cricket matches played in India, Sri Lanka and Pakistan under a tournament. The Taxpayer made such payments without deduction of tax at source (TDS) as per the provisions of the ITL.

The Tax Authority contended that the payments are covered under the special provisions of the ITL, whereby any amount guaranteed to be paid or payable to such association or institution in relation to any game or sport played in India, is liable to withholding tax @ 10% in India. The Tax Authority held the Taxpayer to be an assessee- in-default (AID) for the failure to withhold such tax.

The SC held that once it is established that the payments made to the NR sports associations were "in relation to" the matches played in India, such guarantee money can be said to be earned from a source in India and, hence, the income is deemed to accrue or arise in India attracting the corresponding withholding obligation for the payer.

On the applicability of the provisions of the Double Taxation Avoidance Agreement (DTAA or tax treaty), the SC held that the obligation to withhold taxes under the special provision providing for specific rate of withholding is not affected by the DTAA. The benefit of the DTAA can be considered by the payee and if found valid the taxes withheld can be claimed as a refund with interest. However, such a treatment does not absolve the payer from carrying out withholding obligations under the ITL.

For details, refer our alert dated 1 May 2020

SC rules reassessment beyond four years is not warranted where the taxpayer has disclosed primary facts in original assessment

In this case [3], the issue before the SC was the validity of the reassessment notice under Section (u/s) 148 of the ITL which was issued after completion of four years from the relevant assessment year (AY). For the said year, the original assessment was concluded through a scrutiny assessment.

In the original assessment, the Taxpayer had disclosed the particulars of step-up coupon bonds with tenure of five years issued by its UK subsidiary to various investors under corporate guarantee from the Taxpayer. The Taxpayer had disclosed names and addresses of investors, number of bonds issued and total consideration received. During the original assessment, the Tax Authority did not doubt the validity of the transaction but made TP addition in respect of corporate guarantee fees which the Taxpayer ought to have charged from UK subsidiary.

Subsequently, in the scrutiny assessment proceedings for subsequent year, i.e., AY 2009-10, the Tax Authority doubted the genuineness of funds raised by the Netherlands subsidiaries on the basis of allegations of "round tripping" made by certain minority shareholders of the Taxpayer. On the basis of such developments, the Tax Authority issued reassessment notice for the year under reference doubting genuineness of funds raised by UK subsidiary.

The Tax Authority asserted its jurisdiction to reopen the assessment on the grounds that:

a. It had reason to believe that the Taxpayer's income had escaped assessment.

b. The escapement on account of the Taxpayer's failure to fully and truly disclose all material facts necessary for assessment and hence it was permitted to reopen the assessment after four years despite original assessment being a scrutiny assessment and

2 TS-219-SC-2020
3 (Appeal No. 1008 of 2020)

c. Since the escaped income was in relation to foreign asset, the Tax Authority had extended time limit of 16 years to reopen the assessment.

On a writ petition filed by the Taxpayer before the HC against order passed by the Tax Authority rejecting objections to reasons recorded for reopening the assessment, the HC upheld the validity of reassessment on the ground that the Taxpayer had failed to make a full and true disclosure of all material facts.

On further appeal by the Taxpayer to the SC, the SC upheld the first ground for reopening the assessment but rejected the other two grounds for reopening the assessment and struck down the reassessment proceedings. The SC relied upon a number of its earlier rulings for the legal principles involved in adjudication of such issues. The SC made it clear that it was not going into merits of the case and was adjudicating on the jurisdictional issue whether the Tax Authority had a prima facie case for reopening the assessment.

On the first ground viz. whether the Tax Authority had valid reason to believe that undisclosed income has escaped assessment, the SC held that merely because the original assessment is a detailed one, the powers of the Tax Authority to reopen the assessment is not affected and information which comes to the notice of the Tax Authority during proceedings for subsequent AYs can definitely form tangible material to reopen the assessment.

On the second ground viz. whether there was failure on the part of the taxpayer to make a full and true disclosure of all the relevant facts during the original assessment proceedings, the SC held that the Taxpayer has duty to disclose only "primary facts" and not the "secondary facts" or inferences to be drawn from primary facts. It is for the Tax Authority to decide what inference should be drawn from the facts. The SC held, in the present case, that the Taxpayer has disclosed all the primary facts that was necessary for the assessment and thus, the Tax Authority cannot take the benefit of extended period of six years for initiating reassessment proceedings.

On the third ground whether the Tax Authority had extended period of 16 years to reopen the case since the escaped income pertained to foreign asset, the SC held that since this was not raised against the Taxpayer either in the first notice for reopening or in the reasons furnished to the Taxpayer, the Tax Authority could not rely on this ground for reopening the assessment. But the SC clarified that it had not expressed any opinion whether on the facts of the case, the Tax Authority could not take the benefit of extended time limit of 16 years and hence the Tax Authority could issue fresh notice if it was otherwise permissible under law.

SC rules that issuance of scrutiny notice u/s 143(2) is enough to defer refund processing u/s.143(1D) – Pre-AY 2017-18

In this case[4], the issue before the SC was whether processing of return u/s 143(1) read with S.143(1D) of the ITL and, consequently, granting refund to the Taxpayer is required where a scrutiny notice u/s 143(2) has been issued to the Taxpayer. S. 143(1D), which was operative up to AY 2016-17, provided that the processing of a return shall not be necessary where a notice has been issued to the taxpayer under S. 143(2). Consequently, refund due as per return of income to a taxpayer stands withheld until the completion of scrutiny assessment. Finance Act (FA) 2017 inserted S. 241A w.e.f. 1 April 2017 in place of S.143(1D) retaining powers to withhold refund in a situation where a case is selected for scrutiny and the Tax Authority is of the opinion that having regard to the pendency of scrutiny, grant of the refund is likely to adversely affect the revenue until the completion of the scrutiny. The Tax Authority can do so for reasons to be recorded in writing and with previous approval of Principal Commissioner of Income Tax/ Commissioner of Income Tax.

In the case of the Taxpayer, assessments for Assessment Year (AY) 2014-15 to AY 2017-18 were in scrutiny and the Tax Authority had not processed tax returns of 3 out of 4 years within the applicable time as permissible under S.143(1) and, consequently, did not grant refunds due as per the tax returns. The Taxpayer challenged such inaction of the Tax Authority in the matter of grant of refund before the Delhi HC and upon its dismissal, to the SC primarily on the ground that after the lapse of the time prescribed u/s 143(1), the right to claim a refund gets vested with the taxpayers, independent of the Tax Authority's power to issue a scrutiny notice u/s 143(2).

The SC, in respect of AY 2014-15 to AY 2016-17, held that once scrutiny notice u/s 143(2) was issued, the Tax Authority is not bound in terms of S.143(1D) and it is not necessary for the Tax Authority to process the return u/s 143(1) and consequently, issue refund during the pendency of the scrutiny assessment. Refund may get determined in such case on completion of the assessment. In respect of refund for AY 2017-18, the SC acknowledged that a different regime has been introduced by the legislature. S. 241A of the ITL requires a separate recording of satisfaction on the part of the Tax Authority. The SC held that once an order for withholding refund is passed after recording due satisfaction u/s 241A, the Tax Authority was well within its right to withhold refund by exercising discretion u/s 241A.

4 Civil Appeal No. 2377 of 2020

Supreme Court upholds constitutional validity of deduction of leave encashment expenditure on actual payment basis

In this case[5], the issue before the SC was on constitutional validity of insertion of clause (f) in S.43B of the ITL. The Taxpayer challenged the constitutionality of S. 43B(f) inserted vide Finance Act, 2001 which regulated deduction of leave encashment expenditure in the hands of employer to allow it on actual payment basis.

The Single-Judge Bench of the Calcutta HC had upheld the constitutionality of S. 43B(f). However, on appeal, the Division Bench of the HC reversed the Single-Judge Bench decision and held that the clause (f) of S. 43B is arbitrary and violative of Article 14 of the Constitution of India mainly on the following three grounds:

a. Nondisclosure of objects and reasons behind the enactment of S. 43B(f).

b. Inconsistency of clause (f) with other clauses of S. 43B and absence of nexus of the clause with the original enactment

c. Clause (f) of S. 43B was introduced solely to nullify the dicta of the SC ruling in the case of Bharat Earth Movers[6]

The SC held that process of examining validity of a duly enacted provision is mainly based on two premises viz.

a. The existence of enacting power of the legislature

b. Whether the enacted provision impinges upon any right enshrined in Part III of the Constitution

The SC noted that S. 43B neither puts an embargo on taxpayer for adopting a particular method of accounting nor deprives deduction of any lawful expenditure. S. 43B operates as an additional condition for availing deduction of leave encashment expenditure. S. 43B was enacted in 1983 and initially it included only statutory payments. However, new and dissimilar entries have been inserted therein from time to time to cater to different needs, which were best determined by the government of the day. Thus, it cannot be urged that S. 43B only covers cases concerning statutory liabilities.

The SC observed that an employer seeking deduction of leave encashment on accrual basis without actually making such payment to the employee may lead to abhorrent consequences. When the time for such payment arise in future upon retirement (or otherwise) of the employee, an employer may simply refuse to pay. Thus, the employer enjoys dual benefit viz. advance deduction from tax liability and without any burden of the actual payment. SC held that it is this mischief that clause (f) of s. 43B of ITA seeks to subjugate and accordingly, clause (f) of s. 43B of ITA is constitutionally valid. The SC further held that the presence or absence of objects and reasons has no impact upon the constitutional validity of a provision as long as the literal features of the provision enable a Court to comprehend its true meaning with sufficient clarity. The SC also held that, there cannot be any declaration of invalidating a judgment of a Court without altering the legal basis of the judgment as a judgment is delivered with strict regard to the enactment as applicable at the relevant time. However, once the enactment itself stands corrected, the basic cause of adjudication stands altered and necessary effect follows the same. Thus, the plea that clause (f) has been enacted with the sole purpose to defeat the judgment of SC in the case of Bharat Earth Movers (supra) is misconceived.

High Court

Madras HC rules payment to foreign law firm in connection with acquisition of business abroad taxable as FTS, not eligible for source rule exclusion under domestic law

In the case of Shriram Capital Ltd. (Taxpayer)[7], the issue adjudicated by the Madras HC was whether the payment made by the Taxpayer to a law firm in Indonesia (Indonesian Firm) for the purpose of acquisition of an insurance business in Indonesia, is taxable as "Fees for Technical Services" (FTS) under the Indian Tax Laws (ITL), as well as the India-Indonesia DTAA.

The Taxpayer sought to claim source rule exclusion under the ITL, as per which FTS paid by a resident to a NR for earning a source of income outside India, would not be taxable in India. In the present case, FTS was paid for services procured for a future business to be carried on by the Taxpayer outside India and the same is not taxable in India.

The HC rejected the Taxpayer's contention and held that the payments constituted FTS and the same are taxable in India under the ITL. As per the HC, the source of income of the Indonesian Firm is where the payer is located i.e., the Taxpayer and the services are also utilized in India. If the services were utilized by the Taxpayer abroad for a pre-existing business outside India, the Taxpayer could have legitimately stated that the service provided was utilized for a business or profession carried out outside India or for the purpose of making or earning any income from any source from outside India, which is not the case.

For details, refer our alert dated 27 March 2020

5 Civil Appeal No. 3545/2009 dated 24 April 2020] [TS-212-SC-2020] / [2020] 116 taxmann.com 78
6 [2000] 245 ITR 428
7 TS-178-HC-2020(MAD)

Gujarat High Court upholds benefit test for taxability u/s 2(22)(e) in the hands of substantial shareholder

In the case of Taxpayer A[8], the issue before the Gujarat HC was whether deemed dividend provisions u/s 2(22)(e) of the ITL is attracted.

Taxpayer A, an individual, held substantial interest in a lender company and its sister concerns, wherein the lender company advanced unsecured loans to its sister concerns. The Tax Authority initiated proceedings u/s 148 of the ITL, after a gap of four years, to tax loan transactions between the sister concerns in the hands of Taxpayer A as deemed dividend on the premise that all material facts were not disclosed at the time of assessment.

The Gujarat HC, based on the decision of the SC in the case of Mukundray[9], ruled that for the purpose of attracting deemed dividend provisions there should be a benefit flowing to the shareholder with respect to loan transaction. In the facts of the case, the Tax Authority has not demonstrated that loan transaction between the sister concerns resulted in any benefit to the shareholder Taxpayer A and hence, deemed dividend provisions are not triggered. Accordingly, there was no obligation cast on Taxpayer A to disclose such transaction in the return of income and hence, the proceedings u/s 148 were quashed by the HC on the technical ground that it was not a case of failure on the part of Taxpayer A to disclose truly and fully all material facts relevant to computation of income.

Tribunal

Tribunal allows set-off of business losses against dividend income received from specified foreign company taxable at special rates

In the case of Tata Motors Ltd. [10] (Taxpayer), the issue before the Mumbai Tribunal was whether set-off of business loss is permissible against dividend income received from a specified foreign company.

As per the provisions of the Indian Tax Laws (ITL), dividend income received from a specified foreign company is taxable at a lower rate of 15% on gross basis. The issue was whether business losses can be set-off against the dividend income taxable at a concessional rate under the ITL.

The Tribunal ruled in favor of the Taxpayer and observed that taxable income must be first determined by allowing set-off of permissible losses. Only when there is any taxable income after set-off of losses, income is to be taxed as per the rates prescribed under the applicable provision of the ITL. The Tribunal concluded that unlike other provisions of the ITL, in the absence of any specific restriction on set-off of losses, taxable dividend income needs to be determined after set-off of the business losses.

For details, refer our alert dated 20 March 2020

Mumbai Tribunal holds that subscription of debenture by a company in which taxpayer holds substantial interest does not trigger provisions of S. 2(22)(e)

In the case of Company Z (Taxpayer)[11], the issue before the Mumbai Tribunal was whether the three transactions entered into by certain companies, during the tax year 2012-13, were covered by the provisions of S. 2(22) (e) of the ITL, which deem certain payments as dividend. The Taxpayer held 23.75% shares in Company A and 26.76% in Company B, two closely held companies. The three transactions were: (i) inter corporate deposit taken by the Taxpayer from Company B; (ii) payment made by Company B for purchase of machinery on behalf of the Taxpayer; (iii) debentures issued by Taxpayer to Company A. The Tax Authority held that all the three transactions were covered by S. 2(22)(e) of the ITL and, hence, was taxable as deemed dividend income. The Mumbai Tribunal held that:

- **As regards intercorporate deposit:** The Tribunal noted that Company B had substantial accumulated profits and was a closely held company. The Tribunal held that any credit advantage taken, under any name, by person having substantial interest will trigger provisions of S. 2(22)(e) of the ITL. The Tribunal, relying on SC ruling in case of P Sarda v CIT [1986] 229 ITR 444, also held that even where loan is repaid at the end of previous year, provisions of S. 2(22)(e) will be triggered.
- **With regard to purchase of machinery:** The Tribunal noted that Company B had purchased machinery on behalf of the Taxpayer in subsequent year also and accordingly, it was a business transaction which is not within the purview of S. 2(22)(e).
- **As regards issuance of debenture:** The transaction involved issuance of securities, even though on a private placement basis, cannot be considered as loan transaction. Securities are separate scripts and having stand-alone capital liability which cannot be equated with loan which is a current liability. Accordingly, provisions of S. 2(22)(e) were not triggered.

8 TS-206-HC-2020(GUJ)
9 (2007) 290 ITR 433 SC
10 ITA No. 3424/Mum/2019
11 ITA No. 7519/Mum/2016 dated 6 March 2020

Mumbai Tribunal rules NR celebrity performing at promotional event outside India, has business connection in India, where such performance benefits business carried out in India

In the case of Volkswagen Finance Pvt. Ltd.[12] (Taxpayer), the issue before Mumbai Tribunal, was whether taxes were required to be withheld on appearance fees paid. The Taxpayer organized a promotional event in Dubai for the launch of a product, for which the Taxpayer invited a US celebrity, Nicholas Cage, to perform. The Taxpayer had full rights to use all the event footage/material/films/ stills/ interviews etc., capturing the celebrity's performance, across all platforms for 'below the line publicity' on the internet, in press releases, news reports and social media.

For such performance, the Taxpayer had paid certain 'appearance fees' to the NR celebrity. The issue under consideration was whether taxes were required to be withheld on appearance fees paid by the Taxpayer to the NR celebrity for his performance outside India.

Under the Indian Tax Laws (ITL), taxes are required to be withheld on a payment made to an NR of the amount which is chargeable to tax under the ITL. Furthermore, in case of an NR, the income is taxable in India if the same accrues or is deemed to accrue in India. Furthermore, the income is regarded as deemed to accrue or arise when the NR has a business connection (BC) in India through which or from which such income accrues or arises. Relying on a SC decision in the case of R.D. Aggarwal & Co.[13], the Tribunal noted that a mere 'relationship' can be considered as BC if such relation is real and intimate and from or through which income arises to the NR.

Basis facts, the Tribunal noted that there was a relationship between the Dubai event and the business of the Taxpayer in India, because of which the income (appearance fees) accrued to the NR celebrity. In this case, the BC of the NR is intangible since it is a 'relationship', rather than an object. However, it is a significant BC which has resulted in income accruing to the NR celebrity as, without such relationship, there would not have been any business expediency in making payment of the appearance fees. Thus, such fees were held to be taxable in India and the Taxpayer was required to withhold taxes.

Furthermore, the Tribunal held that under the India-USA DTAA as well, such income was not covered specifically under any other provisions and, hence, by virtue of the "Other Income" article in the DTAA, India had the right to tax such income.

For details, refer our alert dated 24 March 2020

Delhi Tribunal holds disallowance u/s 40(a)(ia) for default in withholding tax at source inapplicable in the absence of expense being claimed in the Profit and Loss Account

In the case of Conwood Medipharma Pvt. Ltd.[14] (Taxpayer), the issue before the Tribunal was whether the professional fee payments which have not been claimed as an expense in the Profit and Loss (P&L) Account, can be subjected to disallowance u/s 40(a)(ia) in case of default in withholding of taxes at source on such payments. In the facts of the case the Taxpayer incurred professional expenses and capitalized the same to the fixed assets schedule as work-in-progress under the head "Building Under Construction". The Tax Authority sought to disallow such payment on account of non-deduction of taxes, which was rejected by the Tribunal on Appeal.

In this regard, the Tribunal held that provisions of S. 40(a)(ia) are attracted only if expenses are claimed in the P&L Account and not when same are capitalized. Therefore, the instant facts do not merit a disallowance due to non-deduction of taxes, since not being a part of the P&L account, the sum was never claimed as a deduction in the first place.

Tribunal rules on determining foreign tax rate by considering "Profits" and not "Gross-receipts" for claiming relief u/s 91

The Taxpayer[15] is a public limited company and engaged in the business of customized software development and maintenance. They rendered software services to parties based in Afghanistan and these parties deducted TDS@7% of the income received by the Taxpayer.

The Taxpayer claimed relief u/s 91 of the ITL with respect to doubly-taxed income for the entire amount of TDS deducted on gross receipts in foreign country being lower rate of tax. However, the Tax Authority disallowed the claim of the Taxpayer for foreign tax credit (FTC) u/s 91 of the ITL by observing that the rate of tax can be worked out against the net receipts of the income and not based on gross receipts as claimed by the Taxpayer.

The Tribunal observed that the doubly taxed income shall be construed with respect to the net amount of receipts, i.e., gross receipts minus the expenses. It observed that as per Explanation (iii) to Section (S.) 91 of the Act, the amount of tax/super tax needs to be divided by the "whole amount of income" to work out the rate of tax in foreign country. The phrase "whole amount of income" denotes the net income which signifies income left after deducting the expenses.

12 [TS-172-ITAT-2020 (Mum)]
13 [(1965) 56 ITR 20 (SC)]
14 [TS-228-ITAT-2020(DEL)]
15 Virmati Software & Telecommunication Limited [TS-164-ITAT-2020(Ahd)]

Even under the normal parlance, the income denotes only the net profit, i.e., gross receipts minus the expenses.

The Tribunal held that only the profit should be considered while determining the rate of tax in the foreign country and the same needs to be compared with the rate of tax in India. Foreign tax rate for determining relief u/s 91 should be ascertained considering the "profit", not the "gross receipts".

Further, it is held that the amount of tax paid in a foreign country which is not eligible for benefit under S. 91 of the ITL, is expenditure eligible for deduction under S. 37(1) of the ITL. This is because such tax was paid in the course of the business and the corresponding business receipts were liable to tax in India.

Tribunal rules that technical handling services provided by French company under pool arrangement is exempt in India under Article 8 of Indian-France Treaty

In this case[16] , the issue before Delhi Tribunal was whether technical services provided by the Taxpayer under the pool arrangement to other pool members are covered under Article 8(2) of the India-France treaty (Treaty) as also under the definition of "operation of aircraft" as defined under Article 8(4) of the Treaty.

The Taxpayer is a foreign company engaged in the operation of aircraft in international traffic and is a tax resident of France. The Taxpayer is member of "International Airlines Technical Pool" (IATP) and provided "technical handling services" to other IATP Members.

The Tax Authority argued that the Taxpayer provided ground "handling services" and not "technical handling services"; it also provided service to non IATP members; also the Taxpayer did not receive any reciprocal services in India. Thus, it has not provided services under a "pool arrangement" so as to fall under Article 8(2) of the Treaty. Relying on Delhi Tribunal decision in the case of British Airways PLC v. DCIT[17], the Tax Authority contended that the services provided by the Taxpayer does not fall under Article 8(2) of the Treaty and the said services are independent commercial & business activity which is in no way ancillary or connected to the business in the operation of aircraft as defined under Article 8(4) of the Treaty.

The Tribunal held that there is no bar on member airlines to provide service to a non-IATP member and if services are provided to non-IATP Pool members, such service would be considered as a pool service to them. The Tribunal further held that "ground handling" as well as "technical handling" both are covered under Article 8(2) of the Treaty. The Tribunal further held that the ratio of British Airways case (supra) is not applicable in the present case since the Taxpayer is a member of IATP and the DTAA between India & France clearly set out that those who are members of pool are exempt from tax in India. Further, out of other things, British Airways had a separate establishment to monitor ground handling services that did not form part and parcel of the operation of aircrafts in international traffic. There is no such finding in the present appeals. For this purpose, the Tribunal relied on Delhi HC decision in case of KLM Royal Dutch Airlines[18] and Lufthansa German Airlines[19] where the ratio of British Airways was distinguished.

Bangalore Tribunal allows deduction under S. 80JJAA on satisfaction of threshold test of 300 days in succeeding year

In this case[20], the issue before the Tribunal was whether the Taxpayer would be eligible for deduction u/s 80JJAA for additional wages paid to new regular workmen who were not employed for more than 300 days in the first year of employment but are employed for more than 300 days in the subsequent year (spill over employees). The Tribunal was concerned with tax year prior to liberalization of deduction under s.80JJAA w.e.f. tax year 2016-17, *inter alia*, reducing 300 days condition to 240 days and specific provision inserted with effect from tax year 2018-19 which deems spill over employees as being newly employed from the second year onwards.

The Taxpayer, an Indian company, is engaged in the business of software development. During tax year 2006-07, 287 new regular workmen joined the company. Such workmen did not complete 300 days or more during tax year 2006-07. Accordingly, the Taxpayer did not claim deduction u/s 80JJAA for tax year 2006-07 in relation to such employees. The Taxpayer claimed deduction in subsequent year, i.e., tax year 2007-08 in respect of such spill over employees who continued to be employed in the company for more than 300 days. The Tax Authority rejected the Taxpayer's claim, firstly on the ground that the employees engaged in software development work were not workmen and secondly, since the employees were not employed for more than 300 days during the first year of their employment, i.e., tax year 2006-07, the additional wages paid to such employees will also not qualify for deduction u/s 80JJAA for remaining two subsequent tax years.

On the first issue, the Tribunal held that employees employed in software industry can be regarded as workmen for the purpose of the Section. On the issue of spill over employees, the Tribunal noted that the approach adopted

16 [TS-246-ITAT-2020(DEL)]
17 (2002) (80 ITD 90)
18 (2017) (78 taxmann.com 1) (Delhi)
19 (2004) (90 ITD 310) (Del)
20 [TS-191-ITAT-2020(Bang)]

by Tax Authority in the present case is contrary to the stand taken by Tax Authority on similar claim for deduction u/s 80JJAA for earlier year. Further, the Tribunal relied on its coordinate bench ruling in the case of Bosch Ltd.[21] wherein the Tribunal held that the deduction u/s 80JJAA of the ITL is admissible for three years including the year in which the employment is exercised. Hence, for all three years it is relevant to test the threshold of 300 days. Accordingly, the Tribunal allowed the Taxpayer's claim for deduction u/s 80JJAA in the tax year 2007-08 holding that although in the first year of employment, deduction was not allowed on account of non-satisfaction of minimum number of work days, it will not preclude the Taxpayer from claiming deduction in the subsequent two years if new regular workmen work for more than 300 days in those years.

Authority for advance rulings

AAR rules that 50% benchmark to evaluate "substantial value" for indirect transfer taxation in India, applies retrospectively

In the ruling of Authority for Advance Rulings (AAR) [22], the issue under consideration is on the retrospective application of certain amendments made to the indirect transfer provisions of the Indian tax laws (ITL).

In the facts before AAR, 100% shares of a British Virgin Islands based company (BVI Co.) were sold by sellers outside India during the tax year 2013-14.

BVI Co. holds indirectly 100% stake in an Indian company (I Co) and as per the valuation report submitted by the sellers, BVI Co's shares derive directly or indirectly 26.38% of its value from the shares of I Co.

The ITL was amended in 2015 which provided that shares of foreign company are taxable in India only if the shares derive 50% of its value from assets located in India. Further, an exemption was provided to small shareholders of the foreign company as specified. The issue before AAR was whether the above 2015 amendments can be applied to the sale of shares of BVI Co, effected in tax year 2013-14, to claim the exemption from indirect transfer taxation in India.

AAR ruled that the amendment, which inserted 50% benchmark in terms of valuation commanded by India, is clarificatory in nature. AAR also held that small shareholder exemption is inserted to address the genuine concerns of small shareholders. The above should apply retrospectively to give a true meaning and make the indirect transfer provisions workable. Hence, on principles, the 50% benchmark and small shareholder exemption can be applied to the transfer of shares of BVI Co during tax year 2013-14.

AAR restricted itself to pronounce the principles as may be relevant in applying indirect transfer provisions of the ITL. AAR did not go into the correctness of the valuation report of BVI Co but, for the said purpose the matter was remanded to the Indian Tax Authority to ascertain the taxability of the sale transaction.

For details, refer our alert dated 21 April 2020

AAR ruled that salary reimbursement of expat employees is not in the nature of FTS

In this case[23], the issue before the AAR was whether the reimbursement of part salary cost to foreign company is in the nature of FTS and hence taxable in India in the hands of such foreign company?

Applicant, an Indian company entered into an agreement with one of its group company, SwissCo (Switzerland based company) to provide skilled employees. It was proposed that SwissCo would disburse the social security contribution, insurance and relocation expenses to employees in Switzerland and recover it from the Applicant. The Swiss Co also charged some administrative fee for managing the disbursement. The applicant deducted salary withholding tax u/s 192 on the entire salary payment including the reimbursement made to the group company and it also proposed to deduct general withholding tax u/s 195 on the administrative fees paid to SwissCo.

Applicant argued that expatriate employees are rendering service in their own capacity and not on behalf of SwissCo. Further, there exists an employer and employee relationship between the Applicant and expatriate employees. Thus, the payment is in the nature of salary and not FTS. On the other hand, Tax Authority contended that the Applicant hired the employees with expertise and familiarity with the group's methodology and process. The main intention to hire these employees was to ensure the quality and safety standards of the group. Hence, the services are technical in nature.

The AAR after noting various factors from the inter-company agreement and appointment letter concluded that the relationship between the expatriate employees and Applicant is of employer and employee and thus, no service has been provided by SwissCo as to qualify as FTS. The AAR *inter alia* noted that Applicant exercises control and supervision over the employees, Applicant has made the selection of employee and the reimbursement of Swiss social security contributions, insurance, etc. constitute only 10-15% of overall salary cost. The AAR also distinguished on

21 (2016) 74 taxmann.com 161 (Bangalore Tribunal)
22 AAR nos. 1555 to 1564 of 2013
23 AAR No. 1366 of 2012. Order dt. 8 January 2020

facts Tax Authority's reliance on Delhi HC ruling in the case of Centrica India offshore Pvt Ltd. In the said case, although it was claimed that the seconded employees worked as employees of Indian entity, they continued to remain on the payroll of the overseas entity who used to pay and recover their salary from Indian entity. Further, in the said case, the payment (towards salary of expats) accrued to the overseas company which may or may not apply the payment to seconded employees based on its contractual relationship with the employees.

Administrative developments

VSV related developments

Government of India (GoI) notified rules and forms for settlement under the Direct Tax Vivad se Vishwas Act, 2020

The Central Board of Direct Taxes (CBDT) issued a Notification [24] notifying the "Direct Tax Vivad Se Vishwas Rules, 2020 (VSV Rules)" in relation to the Direct Tax Vivad Se Vishwas Act, 2020 (VSV Act).

VSV Rules, *inter-alia*, prescribe:

(i) The computation of the losses, unabsorbed depreciation, Minimum Alternate Tax (MAT) credit and Alternative Minimum Tax (AMT) credit that can be carried forward when the dispute settled under VSV Act pertains to such losses, unabsorbed depreciation and MAT/AMT credit.

(ii) The computation of disputed taxes when some of the issues in appeal are covered in favor of the taxpayer.

(iii) Forms in which declaration, waiver of right to appeal and intimation of payment are required to be made by the taxpayer.

(iv) The forms in which the certificate and order are to be issued by the Designated Authority (DA) under VSV Act.

For details, refer our alert dated 20 March 2020

CBDT issues Revised Frequently Asked Questions in relation to Vivad Se Vishwas Act, 2020

The Direct Tax Vivad Se Vishwas Bill, 2020 (VSV Bill) was introduced in the lower house of Parliament (Lok Sabha) on 5 February 2020. VSV, as introduced, resulted in various concerns among stakeholders. Some of these concerns were addressed by way of an amendment to VSV, which was passed by the Lok Sabha on 4 March 2020. VSV Scheme provides an opportunity to taxpayers to settle direct tax disputes by making an application in the prescribed form to the designated authority and by paying the prescribed amount before a specified date. Once litigation is settled under VSV scheme, taxpayer is entitled to waiver from interest levied and immunity from penalty and prosecution.

However, there were also certain other concerns which required redressal by way of clarifications from the GoI. In this regard, pending enactment of Bill into Act, The CBDT issued Circular No. 7/2020 on 4 March 2020 (Circular) to clarify certain issues raised by stakeholders relating to the operation of the VSV Bill. Circular clarified that FAQs are subject to final approval and passing of the Bill and receiving presidential assent.

The CBDT, through the said Circular, sought to clarify such concerns in the form of 55 questions and answers in relation to the scope of VSV. The clarifications dealt with the issues of the eligibility of a taxpayer to settle its case under VSV in different situations, the manner of computing the quantum of disputed tax payable, consequences under VSV and certain procedural aspects etc.

Subsequently, the VSV Bill was passed by the parliament and received presidential assent and was enacted into The Direct Tax Vivad Se Vishwas Act, 2020 (VSV Act). CBDT also issued Notification No. 18 of 2020, F. No. IT(A)/1/2020-TPL notifying the Direct Tax Vivad Se Vishwas Rules, 2020 (VSV Rules) as well as Forms prescribed under such Rules.

There could have been a scope to challenge validity of the Circular issued prior to enactment of law and its binding effect.

In light of the subsequent enactment and notification of the Rules/forms, and with a view to give legal effect to clarifications issued earlier, the CBDT has now reissued the Circular[25] (revised Circular) reiterating 55 FAQs with following modifications to old Circular.

- Reference to VSV Bill has been replaced with VSV Act and accordingly the reference to clauses of the VSV bill has been replaced with sections of the VSV Act.
- References to declaration form have been substituted by the relevant forms issued under VSV wherever relevant.

In addition, the Revised Circular has modified question 22 of the old Circular. Question 22 of the old Circular suggested that cases where notice for initiation of prosecution has been issued with reference to tax arrears, such taxpayer has a choice to compound the offence under the ITL and

24 Notification No. 18 of 2020, F. No. IT(A)/1/2020-TPL
25 Circular No 9 of 2020

opt for VSV. However, a case where prosecution has been instituted and is pending in court, is not eligible for being settled under VSV. The revised circular now clarifies that the disqualification from VSV applies only in case where prosecution has been instituted and not in case where mere notice of prosecution has been issued. In cases where prosecution has been instituted with respect to an assessment year, a taxpayer is not eligible to file declaration for such assessment year unless the prosecution is compounded before filing the declaration.

The time period for making declaration without payment of additional tax under VSV was extended from 31 March 2020 to 30 June 2020 by the Taxation and Other Laws (Relaxation of Certain Provisions) Ordinance, 2020.

The Revised Circular has been issued under S. 10 and S. 11 of the VSV Act. S. 10 of the VSV Act authorizes the CBDT to issue such directions as it deems fit in relation to the operation of VSV. A circular issued under authority of law is binding on the tax authority though, does not bind the taxpayer.

S. 11 of the VSV Act, authorizes the GoI to remove any difficulties in the operation of the VSV by way of an order which is not inconsistent with the provisions of the VSV Act. Any such order is required to be laid before each house of the parliament as soon as may be possible. Revised Circular does not bring out any clarity as to which of the FAQs are issued under S. 10 and which are under S. 11.

For details, refer our alert dated 22 April 2020

COVID-19 pandemic related tax measures

COVID-19 Impact – FM announces reliefs in respect of direct tax statutory and compliance requirements

The rapid spread of COVID-19 has caused a lockdown in various parts of the world including India. This has resulted in a rapidly slowing economy, which some believe is showing recessionary trends. In this backdrop, there was an increasing clamor from the industry for a bailout package (especially in the tourism and hospitality segments). Considering this, the Prime Minister Narendra Modi had in his address to the nation on 19 March 2020 announced the setting up of a task force to consider comprehensive measures to alleviate the distress.

While the task force was yet to present its recommendations, given the rapidly deteriorating situation, the FM Nirmala Sitharaman on 24 March 2020 announced various measures to ease the burden of statutory and compliance requirements under various laws. The coverage of the relaxations is wide; including taxes [such as Income Tax, Goods and Services Tax, Securities Transaction Tax (STT) and Commodities Transaction Tax (CTT)], corporate affairs, trade and commerce measures.

For details, refer our alert dated 24 March 2020

COVID-19 impact - extension of applicability of certificate for lower or nil TDS and TCS

The COVID-19 pandemic has caused disruptions across the world, including India. To alleviate some of the difficulties faced by the taxpayers in complying with the statutory and compliance requirements under the ITL, the FM announced certain measures on 24 March 2020 to ease the statutory and compliance burden.

The disruptions caused are restricted not only to businesses but also to the regular functioning of tax department that have led to delays in processing various applications filed by the taxpayers with the tax department. For instance, it has been noticed that there has been delay in processing applications for issuing the certificates of lower/nil tax deducted at source (TDS) or tax collected at source (TCS).

In continuation of measures to ease statutory and compliance burden, the CBDT, in exercise of its powers under the ITL, issued directions/clarifications vide an Order[26] in relation to extension of applicability of the existing certificates issued for lower or nil TDS and TCS as well as revised procedure for making an application for issue of fresh certificates.

For details, refer our alert dated 31 March 2020

COVID 19 Impact - GoI extends various timelines up to 30 June 2020 and provides relaxations under various direct tax laws in India

The GoI through the President of India promulgated the Taxation and Other Laws (Relaxation of Certain Provisions) Ordinance, 2020 (the Ordinance) on 31 March 2020 to provide relaxation in the compliance requirements under taxation laws in India. In view of the outbreak of COVID-19 pandemic across many countries of the world, including India, the GoI felt it imperative to relax certain provisions, including extension of time limit in the taxation and other laws. Since Parliament was not in session, the President promulgated the Ordinance due to existing circumstances necessitating immediate action. Broadly, the Ordinance provides for extension of time limits of certain compliances and actions falling due between 20 March 2020 and 29 June 2020 (specified period). This includes reduction of

26 F. No. 275/25/2020-IT(B) dated 31 March 2020

interest, waiver of penalty and prosecution on payment of any tax falling due during the specified period if paid by 30 June 2020, relaxation of time limits under the Direct Tax Vivad Se Vishwas Act, 2020 (VSVA), statutory recognition of Prime Minister's Citizen Assistance and Relief in Emergency Situations Fund (PM CARES Fund) for 100% tax deduction to donors, relaxation under the certain indirect tax laws including the Goods and Services Act, 2017.

For details, refer our alert dated 1 April 2020

Extension of validity of Form 15G and Form 15H applicable for tax year 2019-20 for non-withholding of tax to 30 June 2020

The ITL provides specific mechanism and procedure wherein a person responsible for paying certain specified income to a taxpayer (recipient) can remit such income without withholding any taxes which are otherwise required to be withheld.

For instance, a recipient being a resident individual may receive income in the nature of interest on bank deposit without withholding of taxes if such recipient makes a declaration in prescribed form (i.e. Form 15G) to the deductor to the effect that tax on his/her estimated total income for respective tax year will be nil. Similar benefit is also available for other taxpayers (not being a company or a firm) in relation to certain specified incomes such as income being interest on securities, rent etc. But the benefit is not available if the amount of income to be paid exceeds the maximum amount not chargeable to tax in the hands of the taxpayer.

The scope of variety of income which is eligible for aforesaid benefit of non-withholding of taxes is wider for recipient being an individual who is at the age of 60 years or more. Such taxpayers are also required to submit similar declaration in the prescribed form (i.e. Form 15H).

The aforesaid declarations are valid for a particular tax year. Recipients are required to make a fresh declaration for subsequent years if eligible to do so.

Due to the huge disruption caused by the global pandemic COVID-19 and in order to mitigate the genuine hardship of taxpayers, the CBDT has issued directions extending the validity of such declarations vide its order[27] dated 3 April 2020.

For details, refer our alert dated 5 April 2020

E-mail procedure for disposal of pending application of lower withholding of taxes of tax year 2019-20

Income-tax laws (ITL) empower Tax Authority to give a certificate of lower withholding of taxes if the Tax Authority is satisfied that the total income of the recipient justifies withholding of taxes at any lower rates or no deduction of tax, as the case may be. For obtaining such certificate, the recipient of income is required to make an application before the Tax Authority in a prescribed form through TRACES portal with digital signature or electronic verification code. The CBDT is authorized to prescribe the conditions, procedure and mode under which an application can be made and conditions subject to which certificate may be granted to the recipient.

A similar provision is present under the ITL for obtaining lower withholding certificate in a case where payment is made to a NR i.e. NR payee is required to apply for lower tax deducted at source (TDS) certificate. Also, similar application may be made by buyer/licensee/lessee in a case where the seller or licensor or lessor is required to collect taxes.

Due to global pandemic of COVID-19 and its impact in India, Government of India has taken multiple unprecedented measures including complete lock-down of entire country. This has created severe disruption in normal functioning of almost all sectors of the economy including the Tax Authority. Consequently, the applications filed by the taxpayer for obtaining Nil/lower withholding certificates are not attended in timely manner by the Tax Authority.

Vide its earlier order dated 31 March 2020, the CBDT granted certain reliefs in respect of pending applications as on 31 March 2020 for tax year 2020-21 as also applications to be made till 30 June 2020 for tax year 2020-21.

Even for pending applications for tax year 2019-20, non-disposal may cause genuine hardship to the taxpayers who have raised invoices for tax year 2019-20 but have not received payments since the deductee is not able to intimate the reduced rate of deduction. It may be noted that time limit for depositing TDS during the month of March is 30 April.

27 Order under S. 119 of the ITL

In order to mitigate the genuine hardship of such taxpayers, CBDT has directed/ clarified[28] that:

a. Cases where taxpayer has timely filed an application for nil/lower withholding of taxes for tax year 2019-20 on TRACES portal and such applications are pending for disposal as on 3 April 2020, the taxpayer shall intimate the Tax Authority (via e-mail) about the pendency of such application along with all the required documents/ evidences for filing their application in TRACES portal.

b. Tax Authority is directed to dispose of such applications (which are intimated via e-mail) on or before 27 April 2020 and communicate the same to the taxpayer. Certificate issued over e-mail shall be applicable for the amount paid/credited during tax year 2019-20 after the date of making of application but remained unpaid till date of issuance of the certificate by the Tax Authority.

c. Once certificate is issued, the taxpayer being deductee shall share the same with deductor for applying the same.

For more details, refer our alert dated 6 April 2020

GoI directs to provide immediate refunds due under the Income-tax law for cases where refund is up to INR0.5M

The GoI is proactively taking various steps to ease the tax compliance burden for taxpayers during COVID-19 disruption period.

So far, the GOI has taken following steps on direct tax reliefs:

a. Taxation and Other Laws (Relaxation of Certain Provisions) Ordinance 2020 promulgated on 31 March 2020 to extend timelines for various compliances, reduce rate of interest and waive penalties and prosecution for delay during COVID-19 disruption period.

b. Orders issued for interim reliefs in respect of lower withholding certificate application for tax year 2020-21, disposal of pending applications over e-mail for tax year 2019-20 and interim relief for furnishing nil withholding declarations in Form 15G/Form 15H for tax year 2020-21.

As a further measure to ease liquidity constraints faced by taxpayers, the GOI has, vide Press Release dated 8 April 2020 announced that that all pending refunds under the Income-tax law amounting up to INR0.5 million shall be issued immediately. As per the Press Release, this direction will benefit approximately 1.4 million taxpayers. The GOI has also decided to issue all pending Goods and Service Tax and Custom refunds which would provide benefit to around 0.1 million business entities, including micro, small and medium sized businesses. As per the Press Release, the total refund granted might be approximately INR180 billion.

The expeditious release of tax refunds is a positive move on the part of the GOI which may ease liquidity constraints faced by taxpayers due to amounts stuck in tax refunds and enable businesses to pay salaries to their employees during the current challenging period.

For details, refer our alert dated 9 April 2020

GoI clarifies employer can make consolidated donations to PM CARES Fund on behalf of employees and issue receipts to them

Keeping in mind the need for having a dedicated national fund with the primary objective of dealing with any kind of emergency or distress situation, like the one posed by the COVID-19 pandemic, and to provide relief to the affected, a public charitable trust by the name of 'Prime Minister's Citizen Assistance and Relief in Emergency Situations Fund' (PM CARES Fund)' has been set up. The Prime Minister is the Chairman of this trust and its members include the Defence Minister, Home Minister and Finance Minister.

The Taxation and Other Laws (Relaxation of Certain Provisions) Ordinance, 2020 (Ordinance' promulgated by the President on 31 March 2020 conferred the PM CARES Fund with the same status as the Prime Minister's National Relief Fund. Hence, any income received by the PM CARES Fund would be exempt from income tax. Furthermore, any donation made to the PM CARES Fund will be eligible for 100% deduction (without any cap of 10% of gross total income) from the taxable income of the payer under the ITL.

As per the Government of India (GOI) Press Release dated 31 March 2020, any donation made to the PM CARES Fund up to 30 June 2020 shall qualify for tax deduction for tax year 2019-20. Furthermore, even a domestic company claiming concessional tax rate for tax year 2020-21 under special provisions of the ITA can claim such deduction for tax year 2019-20, without losing its eligibility for claiming concessional tax rate in tax year 2020-21.

Many organizations have announced contributions by their employees from their salaries to the PM CARES Fund. In this context, vide Circular No. 2/2005 dated 12 January 2005, the Central Board of Direct Taxes (CBDT) had clarified in the past that, in cases where employees make donations to the Prime Minister's National Relief Fund, the Chief Minister's Relief Fund or the Lieutenant Governor's Relief Fund through

28 Order No. F.No. 275/25/2020-IT(B) dated 3 April 2020

their respective employers, the claim in respect of such donations will be admissible on the basis of the certificate issued by the employer in this behalf.

An FAQ on the PM CARES Fund website clarifies that in respect of donations made by employees of an organization to the PM CARES Fund, benefit will be admissible on the basis of the certificate issued by the employer in this behalf.

CBDT clarification on the PM CARES Fund

The GOI has issued a formal clarification dated 9 April 2020, through the CBDT, clarifying that the donations made to the PM CARES Fund are eligible for deduction under Section 80G of the ITA. In cases where donation is made to the PM CARES Fund by an employee through his/her employer, the PM CARES Fund may not be able to issue a separate certificate to every such employee in respect of the donation so made, as contributions made to the PM CARES Fund are in the form of a consolidated payment. It is clarified that the deduction in respect of such donations made through a consolidated payment will be admissible on the basis of salary withholding certificate (Form 16)/certificate issued by the employer in this regard.

For more details, refer our alert dated 10 April 2020

CBDT issues clarifications on relaxation for lower withholding certificates for tax years 2020-21 and 2019-20

The ITL empower the Tax Authority to give a certificate of lower withholding/ deduction or collection of taxes (LDC) if the Tax Authority is satisfied that the total income of the recipient or payer, as the case may be, justifies withholding/ collection of taxes at a lower or nil rate. For obtaining such LDC, the taxpayer is required to make an application before the Tax Authority in prescribed form through TRACES portal with digital signature or electronic verification code. The CBDT is authorized to prescribe the conditions, procedure and mode under which an application can be made and conditions subject to which LDC may be granted to the taxpayer.

Due to the global pandemic of COVID-19 and its impact in India, GoI has taken multiple unprecedented measures including complete lock-down of the entire country for 21 days. This has created severe disruption in the normal functioning of almost all sectors of the economy including the Tax Authority. Consequently, the LDC applications filed by the taxpayers are not attended in a timely manner by the Tax Authority.

As a part of package of measures to provide short-term relief from various direct tax compliances, the CBDT issued two orders dated 31 March 2020 and 3 April 2020 granting certain reliefs in relation to pending or fresh LDC applications for tax years 2020-21 and 2019-20 respectively.

Though, the aforesaid CBDT orders provide substantial relaxations to taxpayers, the stakeholders sought clarifications from the CBDT on nuances of the reliefs provided. In this backdrop, the CBDT vide order dated 9 April 2020 has now clarified as under:

a. **Validity of LDC applicable for tax year 2019-20 which is extended till 30 June 2020:** Even if LDC of tax year 2019-20 was applicable for a specific period (and not for entire year), the same LDC will be effective for tax year 2020-21 i.e. 1 April 2020 to 30 June 2020, subject to the satisfaction of other conditions specified in the CBDT Order dated 31 March 2020. For instance, if LDC was issued for a period from 1 October 2019 to 15 December 2019, the same shall additionally apply for tax year 2020-21 for the period from 1 April 2020 to 30 June 2020, subject to conditions referred in the CBDT Order dated 31 March 2020.

b. **Threshold/transaction limit of LDC applicable for tax year 2019-20 which is extended to 30 June 2020:** The threshold/transaction limit for tax year 2020-21 will be the same as specified in LDC for tax year 2019-20, but as a fresh limit for the period 1 April 2020 to 30 June 2020 subject to other conditions referred in the CBDT Order dated 31 March 2020.

c. **Obtaining LDC for new deductors or revision in rates approved for tax year 2019-20:** Extension of LDC of tax year 2019-20 till 30 June 2020 is only in relation to the same deductor with the same Tax Deduction Account Number (TAN) for the same transactions. In case of new deductors or new TAN, the relaxation provided by way of extending the validity of LDC of tax year 2019-20 shall not apply and the taxpayer is required to follow the e-mail procedure as prescribed in the Annexure to CBDT Order dated 31 March 2020. Also, in cases where the taxpayer wants to apply for a rate lower than the rate permitted in LDC of tax year 2019-20, the taxpayer is required to follow said e-mail procedure.

d. **Issue of approval and communication of LDC:** Official emails will be used by the Tax Authority for internal approvals for issuing LDC and for communicating the same.

For details, refer our alert dated 11 April 2020

CBDT defers reporting of GAAR and GST particulars in the Tax Audit Report till 31 March 2021

The ITL require specified persons to furnish tax audit report (TAR) in Form 3CD. The CBDT last amended TAR vide Notification No. 33/2018 dated 20 July 2018 to enhance the reporting requirements in TAR to be furnished on or after 20 August 2018. Amongst others, it introduced following two additional reporting requirements in TAR:

a. **Clause 30C of TAR:** General Anti Avoidance Rule (GAAR) – TAR requires to report whether a taxpayer has entered into an impermissible avoidance arrangement and if yes, it further requires to report the nature of such impermissible avoidance arrangement and the amount of tax benefit in the tax year arising, in aggregate, to all the parties to the arrangement.

b. **Clause 44 of TAR:** Details relating to Goods and Service Tax (GST) –TAR requires reporting of details of GST viz. break-up of total expenditure with GST registered and non-registered entities and for the former, it further requires the break-up of expenditure relating to exempt supply covered under the composition scheme and other registered entities.

Stakeholders perceived the above reporting requirements to be highly subjective and/or onerous. Hence, various representations were made to CBDT for deferring GAAR and GST reporting obligations. In response to such representations, CBDT initially deferred the aforesaid reporting obligations till 31 March 2019 vide Circular No. 6/2018 dated 17 August 2018 and further till 31 March 2020 vide Circular No. 9/2019 dated 14 May 2019.

CBDT order dated 24 April 2020

In wake of various representations made before CBDT for difficulty in reporting compliances in relation to aforesaid clauses in view of the global pandemic due to COVID-19, CBDT has deferred the reporting obligation in respect of GAAR (i.e., Clause 30C of TAR) and GST law (i.e., Clause 44 of TAR) till 31 March 2021.

Thus, TAR issued till 31 March 2021 for any tax year (including tax year 2019-20) need not contain GAAR and GST particulars, reducing compliance burden on taxpayers and tax auditors.

For more details, refer our alert dated 28 April 2020

CBDT defers applicability of revamped registration procedure for existing and new charitable and research institutions from 1 June 2020 to 1 October 2020

The Legislature, vide FA 2020, has introduced a completely revamped registration procedure for all the existing registered charitable institutions and for taxpayers seeking new registration. Under the revamped registration procedure, in order to enjoy continuity of the tax exemption for tax year 2020-21 and onwards, the existing registered charitable institutions are required to make an intimation to the Tax Authority within a period of three months from the date of applicability of revamped registration procedure (i.e. on or before 31 August 2020). Similarly, for all fresh registration applications made on or after 1 June 2020, registrations are to be granted only if such applications are made as per the revamped registration procedure.

Similar provisions were also introduced in relation to registered research institutions and funds and institution for continuing/grant of registration for receiving donations which qualify for deduction in the hands of donors.

CBDT Press Release dated 8 May 2020

In deference to various representations made to the GoI expressing concerns over implementation and for deferment of revamped registration procedure from 1 June 2020 due to the outbreak of COVID-19 and consequent lockdowns in the country and in view of the present unprecedented humanitarian and economic crisis, the CBDT has deferred the implementation of revamped registration procedure for approval/registration/notification of specified charitable and research institutions from 1 June 2020 to 1 October 2020.

Accordingly, the existing registered charitable and research institutions would now be required to file an intimation within three months from 1 October 2020 (i.e. by 31 December 2020). Further, the revamped registration procedure for fresh registrations will also apply from 1 October 2020.

The necessary legislative amendments shall be made in due course.

For more details, refer our alert dated 9 May 2020

GoI announces first tranche of COVID-19 direct tax relief measures under "Self-Reliant India Movement" announced by Prime Minister

In the present unprecedented and difficult times due to the global pandemic COVID-19, the Hon'ble Prime Minister announced on 12 May 2020 that the GoI is rolling out an INR 20 trillion economic stimulus package (equivalent to 10% of India's Gross Domestic Product) under the theme of 'Self-Reliant India Movement' to provide relief to various sectors and drive the country towards self-reliance. The details of the package are to be announced in various tranches by the FM.

In the first tranche of 15 measures announced by the FM on 13 May 2020 covering the various sectors like micro, small and medium industries, social security (provident fund), liberalized credit to various sectors, etc., the FM announced the following direct tax relief measures. These are in addition to the measures announced earlier such as promulgation of the Taxation and Other Laws (Relaxation of Certain Provisions) Ordinance, 2020 for various compliance reliefs during the lockdown period, extension of applicability of certificate for lower or nil withholding or collection of tax, etc.

1. **Reduction in the rate of withholding of tax:** the rate of withholding/collection of taxes for non-salaried specified payments (such as payment for contract, professional fees, interest, rent, dividend, commission, brokerage, etc.) made to residents shall be reduced by 25% of their existing rates. The reduced rate will be effective from tomorrow (i.e., 14 May 2020) and will be applicable till 31 March 2021.
2. **Grant of immediate refunds:** all pending refunds to charitable trusts and non-corporate businesses/ professions including proprietorship, partnership, Limited Liability Partnerships and co-operatives societies shall be issued immediately.
3. **Extension for furnishing tax returns for tax year 2019-20:** due date of furnishing tax returns for tax year 2019-20 for all taxpayers (whether corporate or non-corporate) shall be extended from 31 July 2020/31 October 2020, as the case may be, to 30 November 2020.
4. **Extension for furnishing tax audit report for tax year 2019-20:** due date of furnishing tax audit report for tax year 2019-20 for all taxpayers shall be extended from 30 September 2020 to 31 October 2020.
5. **Extension for period of limitation for completion of assessments:** the period of limitation in relation to assessments which are getting time barred on 30 September 2020 (i.e., for tax year 2017-18) shall be extended to 31 December 2020. Further, the period of limitation in relation to assessments which are getting time barred on 31 March 2021 shall be extended to 30 September 2021.
6. **Extension for benefit of settlement under the Direct Tax Vivad se Vishwas Act 2020 (VSV Act) without payment of additional tax:** the benefit of settlement under VSV Act without payment of additional amount shall be extended from 30 June 2020 to 31 December 2020. Therefore, any settlement under VSV Act made on or before 31 December 2020 shall not require payment of additional 10% of the tax amount.

For more details, refer our alert dated 13 May 2020

CBDT provides guidance on reduction in withholding tax rates for residents announced by the FM

In the present, unprecedented and difficult times, due to the global pandemic COVID-19, the Hon'ble Prime Minister announced, on 12 May 2020, that the GoI is rolling out an INR20trillion economic stimulus package (equivalent to 10% of India's Gross Domestic Product) under the theme of "Self-Reliant India Movement" to provide relief to various sectors and drive the country towards self-reliance. The details of the package are to be announced in various tranches by the FM.

In the first tranche of 15 measures announced by the FM on 13 May 2020, the FM announced direct tax relief measures by way of reduction in withholding tax rates for residents, expeditious release of refunds for non-corporates and deferment of dates for certain compliances.

The CBDT provided further guidance on reduction in withholding tax rates for residents through a press release date d 13 May 2020 (Press release)

For details, refer our alert dated 14 May 2020

Other key developments

Key amendments to Finance Bill, 2020 at enactment stage

The Finance Bill, 2020 (FB 2020 or Bill) was presented by the Hon'ble Finance Minister (FM) Nirmala Sitharaman on 1 February 2020.

In the wake of representations received from various stakeholders, while moving the Bill for approval by the Lok Sabha, the FM introduced amendments to FB 2020 (Amended FB 2020). The amendments are generally intended to address certain ambiguities arising from the wording of proposals as contained in the Bill, defer the introduction of new tax withholding and tax collection provisions and to extend equalisation levy to e-commerce transactions through NR e-commerce operators.

For more details, refer our alert dated 24 March 2020

Foreign investors need to consider impact of India's new dividend withholding tax

On 1 February 2020, the FM tabled the FB 2020 in Parliament as part of the Union Budget for the tax year 2020-21.

On 27 March 2020, the FB 2020, after approval by Parliament, received Presidential assent and is enacted with effect from 1 April 2020. The Finance Act, 2020 (FA 2020) introduces a significant change to the current system of dividend taxation under the Indian Income Tax Law (ITL) by abolishing the dividend distribution tax (DDT) which was levied on a domestic company distributing dividends. Instead, the ITL will now revert to the classical system of taxing dividends in the hands of the shareholder.

The classical system of taxing dividend will require the payer domestic company to withhold tax on the gross amounts of dividends paid to a shareholder. The ITL provides for withholding tax (WHT) at the rate of 20% on the gross dividends, in the case of NR shareholders. Reduced WHT rates may apply if an NR shareholder is eligible for benefits under an applicable tax treaty. Number of India's tax treaties provide for dividend WHT rates of 10%/ 15%. Some tax treaties may even provide for a 5% dividend WHT, either directly or indirectly, by application of the "most favored nation (MFN)" clause in the tax treaties. However, benefits of lower dividend WHT under the tax treaty is subject to satisfactory fulfillment of tax treaty eligibility criteria. These conditions primarily include qualifying as a resident as per the tax treaty provisions, meeting the criteria set out for anti-abuse tests such as beneficial ownership, Principal Purpose Test (PPT) and/ or Limitation on Benefits (LOB), as may be applicable as well as specific conditions that may exist in certain tax treaties for the lower WHT (e.g., minimum shareholding requirement, minimum holding period, etc.).

Hence, a careful review of tax treaties, including the wording of the MFN clause, along with synthesized texts incorporating the multilateral instrument (MLI) modifications, would be necessary to determine treaty eligibility and appropriate WHT rate.

Foreign investors would need to evaluate the impact of the change in dividend taxation system on their Indian legal entity and holding structures and give a careful consideration to its implications on taxation of cross-border dividend flows from Indian operations.

For details, refer our alert dated 30 March 2020

India's Finance Act, 2020 introduces amendments to transfer pricing provisions

The FM presented the FB 2020 (the Bill) as part of India's Union Budget for the tax year 2020-21 (Budget 2020) on 1 February 2020. The Bill, with certain amendments, was enacted as the Finance Act, 2020 (the Act) on 27 March 2020, after receiving approval of the Parliament and the President's assent.

The Act amends certain transfer pricing (TP) provisions of the Indian Tax Law (ITL). Specifically, the Act extends the applicability of the safe harbor and advance pricing agreement (APA) provisions regarding the determination of income attributable to a business connection or a permanent establishment (PE) of an NR in India. The Act also amends the due date for TP compliance.

Further, the Minister announced the GoI's intention to introduce a process to enable taxpayers to resolve pending tax disputes in an expeditious manner. Pursuant to the announcement, the GoI introduced the Direct Tax Vivad Se Vishwas Bill, 2020 (VSV Bill) in the Parliament on 5 February 2020. The VSV Bill with certain amendments was enacted as the Direct Tax Vivad Se Vishwas Act, 2020 (VSV Act or Direct Tax Settlement Process or the Process) on 17 March 2020, after receiving approval of the Parliament and the President's assent. The VSV Act seeks to resolve direct tax appeals pending before various appellate forums, such as Supreme Court, High Courts, Income Tax Appellate Tribunals, the Commissioner (Appeals) and the Dispute Resolution Panel as on 31 January 2020. The Direct Tax Settlement Process enables taxpayers to settle appeals by paying the entire amount of the disputed tax liability or 50% of the disputed tax liability in certain situations, if the payment is made by 30 June 2020. Beyond this date, taxpayers would need to pay the entire amount of the disputed tax liability plus an additional amount of 10% of the disputed tax. The Process is open until such time as may be notified by the GoI. The Process covers all pending direct tax disputes, including TP disputes.

For details, refer our alert dated 3 April 2020

India extends equalization levy scope to cover e-commerce supply or services

Under Action Plan 1 of the Organization for Economic Co-operation and Development's (OECD) Base Erosion and Profit Shifting (BEPS) Project, the OECD had considered, *inter alia*, an equalization levy (i.e., a tax to equalize the tax burden on remote and domestic suppliers of similar goods and services) as one option to tax digital transactions. While the Action Plan 1 Report released in October 2015, did not recommend introducing such a levy as an internationally agreed standard at that stage, it did state that countries could introduce one in their domestic laws as an additional safeguard against BEPS, provided they respect existing treaty obligations, or include them in their bilateral tax treaties. In India, the Finance Act, 2016 (FA 2016) introduced EL with effect from 1 June 2016. The EL, as introduced by the FA 2016, is levied at 6% on the gross consideration received by NRs for online advertisement and related services from specified persons (Ad EL).

On 1 February 2020, the FM tabled the FB 2020 in the Parliament as part of the Union Budget for the tax year 2020-21. The FB 2020, however, did not contain a proposal to expand the EL's scope at the time of its introduction. At the enactment stage of the FB 2020, an amendment was introduced to FA 2016 to expand the scope of EL to cover gross consideration received by NR e-commerce operators (e-com EL). With the presidential assent to the FB 2020 accorded on 27 March 2020, the e-com EL provisions will take effect from tax year starting 1 April 2020. The e-com EL will apply at the rate of 2% on the gross consideration received or receivable by the NR e-commerce operator from specified transaction where such receipts exceed INR20 million (approx. US$265,000) during the relevant tax year. The income of NR (which is subject to EL) is exempt from the income tax.

Further, the FA 2020 has extended the source rule under the Income-tax Law (ITL) to cover certain digital transactions. These changes introduced by the FA 2020 may overlap to cover certain digital transactions under the ITL as well as under e-com EL potentially resulting in conflicting claims on characterization of certain transactions. Accordingly, the interplay and coordination between these provisions need to be evaluated in detail. Further, the wide scope of e-com EL is likely to have an impact on a number of multinational enterprises (MNEs), whether operating using digital business models or not, given the increasingly pervasive nature of digitalization. The procedures relating to collection and recovery of e-com EL are expected to increase the compliance obligation for NR taxpayers in India. Therefore, the MNEs would need to evaluate in detail the implications of the FA 2020 changes on their operating models and monitor the compliance obligations. Overall, the implementation of such unilateral measures to tax digital transactions, indicates India's inclination to address the broader tax challenges posed by digitalization by seeking additional taxing rights to the user or market jurisdiction. This could set the stage for intense deliberations on the OECD/G20 Inclusive Framework Pillar One proposal for revised nexus and profit allocation rules.

For details, refer our alert dated 5 April 2020

CBDT permits employers to consider new optional concessional tax regime for salary withholding

The FA 2020 introduced a new concessional tax rate (CTR) regime for individuals and Hindu Undivided Family (HUF) wherein such taxpayers can offer their total income at lower slab rate prescribed under the regime provided they forgo certain specified deductions, exemptions, brought forward losses and unabsorbed depreciation (new CTR regime).

New CTR regime is optional for the taxpayers and the option can be exercised in every tax year where the taxpayer does not have business or professional income. Such taxpayers need to exercise the option along with filing of the return of income on or before the due date provided under the provisions of the ITL.

In other cases, the option once exercised is irrevocable until business/profession ceases and if opted out in any year, such taxpayer cannot opt in again till the business/profession ceases. For such taxpayers, the CBDT shall prescribe the form and manner of exercise of option under new CTR regime.

While FA 2020 enabled taxpayers desiring to opt for new CTR regime to pay advance tax as per new CTR regime, there was ambiguity whether the employer can consider new CTR regime for salary withholding purposes if the employee desires to opt for CTR.

- In the wake of representations from various stakeholders, the CBDT noted that since the employees (not earning any income from business or profession) can exercise the option along with return of income, the employer, at the beginning or during the tax year is not aware whether the employees would opt for new CTR regime.

- In order to alleviate the hardship, the CBDT has clarified the following manner of withholding taxes at source on total income of the employees opting for new CTR regime:

  Scenario 1:

  Where the employee does not earn any income from business or profession and intends to opt for new CTR regime:

  - The employee should furnish an intimation to his/her employer of his/her intent of availing new CTR regime. Once the intimation is filed, it cannot be modified subsequently.
  - Such intimation shall be valid for the tax year for which it is filed.
  - On receipt of the intimation, the employer shall withhold tax at the lower slab rates prescribed under new CTR regime.
  - The CBDT has clarified that such intimation shall only be for the purposes of salary withholding during the relevant tax year. Since the option has to be exercised while filing the return of income, intimation to employer would not amount to exercising the option for the purposes of filing return of income and the option at the time of filing return can be different than the intimation made to the employer.

  Scenario 2:

  Where the employee earns any income from business or profession and intends to opt for new CTR regime:

  - The employee may furnish an intimation to his/her employer of his/her intent of availing new CTR regime. Once the intimation is filed, it cannot be modified subsequently.
  - On receipt of the intimation, the employer shall withhold tax at the lower slab rates prescribed under new CTR regime.
  - Since the option once exercised by employee having business/ professional income is irrevocable, the intimation to the employer for subsequent tax years must not deviate from the option in favor of CTR once exercised in a tax year.

  Scenario 3:

  Where employee does not furnish any intimation to the employer

  If no intimation is filed by the employee, then the employer shall withhold tax on salary income without considering new CTR provisions.

For more details, refer our alert dated 13 April 2020

CBDT exempts taxpayers carrying on only B2B transactions from providing prescribed mandatory electronic modes of payment

The CBDT issued a Circular[29] (Circular) clarifying that the taxpayers engaged only in business- to-business (B2B) transactions are not required to provide mandatory electronic modes of payment as prescribed for the purpose of newly inserted S. 269SU of the Indian Tax Law (ITL), which came into effect from 1 November 2019 but was operationalized from 1 January 2020.

Pursuant to various representations made by stakeholders, the CBDT has granted relaxation to taxpayers engaged in B2B transactions. The Circular further states that the relaxation is available provided a taxpayer, during the tax year, does not undertake any transaction with retail customers and the cash receipts during the tax year does not exceed 5% of the aggregate of all amounts received, including the sum received for sales, turnover or gross receipts.

For details, refer our alert dated 21 May 2020

India amends Mutual Agreement Procedure rules

On 6 May 2020, the Indian CBDT issued a notification on amending its Mutual Agreement Procedure (MAP) rules (Amended MAP Rules).

The amendments are in response to the recommendations of the Organisation for Economic Co-operation and Development's (OECD) peer review report on India1 with respect to Action 14 (making dispute resolution mechanisms more effective) (the OECD Peer Review Report).he Amended MAP Rules underscore India's commitment to resolve MAP cases within 24 months and provide additional guidance to taxpayers making use of the MAP in India.

For details, refer our alert dated 21 May 2020

29 Circular No. 12/2020 dated 20 May 2020

CBDT Circular provides relief to the taxpayers from being regarded as assessee-in-default for short deduction/collection of tax due to enhanced surcharge rate notified by FA (No.2) 2019

The Finance (No.2) Act, 2019 (FA 2019) notified the enhanced surcharge rate for individual, Hindu Undivided Family, association of persons, body of individual or artificial judicial persons as proposed by the FM in Finance (No. 2) Bill (FB 2019), 2019 on 5 July 2019. The enhanced rates of surcharge were made applicable from 1 April 2019.

The retrospective enhancement of surcharge resulted in hardships where taxpayers were held to be an assessee in default (AID) for short deduction of tax/ short collection of tax even in cases where transactions were completed before introduction of FB 2019 on 5 July 2019. To alleviate the difficulty, the CBDT has provided clarification through circular[30] laying down following conditions in which taxpayers shall be relieved from being treated as AID:

- The transaction has been completed and entire payment has been made to the deductee/payee on or before 5 July 2019
- There are no subsequent transactions, i.e., after 5 July 2019, between the deductor/collector and the deductee/payee in tax year 2019-20 from which the shortfall of tax could have been deducted/collected
- Tax has been deducted/collected on such sum as per the rates in force as per the provisions prior to the enactment of the FB 2019
- Tax has been deposited in the account of GoI on or before the due date
- TDS/TCS statement has been furnished by such person on or before the due date of filing of the said statement

The above conditions need to be satisfied on cumulative basis

The circular also clarifies that penal interest will not be levied for delay in deduction/collection of tax in case such shortfall of tax has been deducted/collected after 5 July 2019 from the transaction(s) made subsequently after the said date

The above relaxations are provided in case of deductor/ collector of tax and hence, such relaxations will not absolve deductee/payee from paying appropriate amount of tax including enhanced surcharge by way of advance tax or self-assessment tax while filing income tax return.

CBDT notifies the rules prescribing the minimum remuneration to be paid to Indian fund managers under the safe harbor regime for onshore management of offshore funds (S. 9A)

Section 9A in the ITL provides a safe harbor (from permanent establishment and place of effective management risks) for offshore funds managed by an onshore fund manager, subject to certain conditions.

Basis several industry representations, the Finance Act, 2019 had replaced one of the conditions requiring an arm's length remuneration to be paid to the eligible fund manager (EFM) for performing fund management activities, with a minimum remuneration to be paid in accordance with a prescribed methodology.

In this context, the CBDT released a draft notification seeking comments with respect to the rules to be framed in connection with the prescribed methodology for minimum remuneration to be paid to the EFM in India for the purposes of S.9A.

Pursuant to industry consultations, CBDT vide Notification has issued the Income-tax (10th Amendment) Rules, 2020 (amended Rules) prescribing the minimum renumeration to be paid by the eligible investment fund (EIF) to the EFM as well as providing for related compliances to be undertaken by the EFM. The amended Rules are effective from 1 April 2019.

The amended Rules, while providing the minimum thresholds, take into consideration different remuneration models generally prevalent in the asset management industry and also provides a window for applicants to seek an approval for receipt of remuneration lower than that prescribed, having regard to the facts and circumstances of the case.

For details, refer our alert dated 29 May 2020

CBDT issues revised Form 26AS to include additional information relating to specified financial transactions, demands and refunds, completed and pending assessments etc.

The CBDT issues Notification No. 30/2020 dated 28 May 2020 (Notification) on revised Form 26AS. Prior to the amendment by the (FA 2020, the Indian Tax Laws (ITL) required the Tax Authority to issue Form 26AS to a taxpayer, capturing information relating to taxes deducted at source and other tax payments.

30 Circular No. 8/2020 dated 13 April 2020

But, in practice, Form 26AS also captures additional information like specified financial transactions. FA 2020 amended the ITL, with effect from 1 June 2020, with a view to statutorily require the Tax Authority to issue Form 26AS capturing additional information, as may be prescribed by the Rules.

Pursuant to such amendment, the CBDT has revised the details of Form 26AS to provide details of date of birth/ incorporation, mobile number, email address, tax demand and refunds, pending proceedings, completed proceedings, specified financial transactions and details of information received from foreign jurisdictions under Exchange of Information (EOI) agreements . The revised Form 26AS applies with effect from 1 June 2020.

For details, refer our alert dated 29 May 2020

Global developments

OECD releases Sweden Stage 2 peer review report on implementation of Action 14 minimum standard

On 9 April 2020, the Organisation for Economic Co-operation and Development (OECD) released the Stage 2 peer review report of Sweden relating to the outcome of the peer monitoring of the implementation of the Base Erosion and Profit Shifting (BEPS) minimum standard under Action 14 on improving tax dispute resolution mechanisms. Stage 2 focuses on monitoring the follow-up of any recommendations resulting from Sweden's Stage 1 peer review report.1 Sweden requested the OECD to also provide feedback concerning the adoption of the Action 14 best practices, and therefore, in addition to the peer review report, the OECD has released an accompanying document addressing the implementation of best practices.2

Overall, the report concludes that Sweden has addressed almost all the shortcomings identified in its Stage 1 peer review report.

For details, refer our alert dated 21 April 2020

OECD releases Germany Stage 2 peer review report on implementation of Action 14 minimum standard

On 9 April 2020, the Organisation for Economic Co-operation and Development (OECD) released the Stage 2 peer review report of Germany relating to the outcome of the peer monitoring of the implementation of the Base Erosion and Profit Shifting (BEPS) minimum standard under Action 14 on improving tax dispute resolution mechanisms. Stage 2 focuses on monitoring the follow-up of any recommendations resulting from Germany's stage 1 peer review report.

Overall, the report concludes that Germany addressed almost all the shortcomings identified in its Stage 1 peer review report.

For details, refer our alert dated 15 April 2020

OECD releases Luxembourg Stage 2 peer review report on implementation of Action 14 minimum standard

On 9 April 2020, the Organisation for Economic Co-operation and Development (OECD) released the Stage 2 peer review report of Luxembourg relating to the outcome of the peer monitoring of the implementation of the Base Erosion and Profit Shifting (BEPS) minimum standard under Action 14 on improving tax dispute resolution mechanisms. Stage 2 focuses on monitoring the follow-up of any recommendations resulting from Luxembourg's Stage 1 peer review report. Luxembourg requested that the OECD also provide feedback concerning their adoption of the Action 14 best practices, and therefore, in addition to the peer review report, the OECD has released an accompanying document addressing the implementation of best practices.1

The outcome of the Stage 1 peer review process was that overall Luxembourg met most of the elements of the Action 14 minimum standard. Where deficiencies were identified, Luxembourg worked to address them, which has been monitored in Stage 2 of the process. In this respect, Luxembourg has addressed almost all identified deficiencies.

For details, refer our alert dated 15 April 2020

OECD releases second batch of Stage 2 peer review reports on dispute resolution

On 9 April 2020, the Organisation for Economic Co-operation and Development (OECD) released the second batch of Stage 2 peer review reports relating to the outcome of the peer monitoring of the implementation by Austria, France, Germany, Italy, Liechtenstein, Luxembourg and Sweden (the batch 2 jurisdictions) of the Base Erosion and Profit Shifting (BEPS) minimum standard on dispute resolution under Action 14 of the BEPS project. Stage 2 focuses on monitoring the follow-up of any recommendations that resulted from the batch 2 jurisdictions' Stage 1 peer review reports that were released on 15 December 2017.

The outcome of the Stage 1 peer review process for the batch 2 jurisdictions was that overall, the seven jurisdictions met most of the elements of the Action 14 minimum standard with respect to dispute resolution. Where deficiencies were identified, the Stage 2 monitoring showed that the jurisdictions have worked to address them. The Stage 2 reports for the batch 2 jurisdictions conclude that the assessed jurisdictions have addressed almost all or some of the identified deficiencies.

For details, refer our alert dated 14 April 2020

OECD Secretariat issues guidance on impact of the COVID-19 crisis on treaty-related issues

On 3 April 2020, the Organisation for Economic Co-operation and Development (OECD) published on its website an OECD Secretariat Analysis of Tax Treaties and the Impact of the COVID-19 Crisis (the guidance).

Governments around the globe are taking increasingly stringent containment measures to slow the spread of the COVID-19 virus. As a result of these measures, many cross-border workers are unable to physically perform their duties in their country of employment. This unusual situation raises tax issues that could affect how the right to tax is divided between countries, which is governed by international tax treaty rules that delineate taxing rights.

At the request of concerned countries, the OECD Secretariat has issued guidance on these issues based on an analysis of the international tax treaty rules. The guidance deals with issues related to:

(i) Creation of permanent establishments

(ii) Residence status of companies (based on place of effective management)

(iii) Treatment of cross-border workers

(iv) Residence status of workers

In the guidance, the OECD encourages countries to work together to alleviate the unplanned tax implications and potential new burdens arising due to effects of the COVID-19 crisis.

For details, refer our alert dated 10 April 2020

OECD Secretariat issues Analysis of Tax Treaties and the Impact of COVID-19

The Organisation for Economic Co-operation and Development (OECD) Secretariat issued Analysis of Tax Treaties and the Impact of COVID-19 (the OECD analysis) on April 3. OECD has broadly covered four major concerns relating to: creation of PE, residence of companies, residence of individuals and taxability of employment income of cross-border employees. In analysing the issues, OECD has relied mainly on the commentary on tax treaties and provided its guidance on the issues arising in the current, unprecedented situation. The analysis generally observes that these exceptional circumstances should not cause meaningful changes in the tax position (under a treaty) of employees or employers regarding PE, residence and the taxation of employment income. The OECD has recommended that tax administrations should produce directions or regulations to address tax issues which could be created by the cross-border employees due to various restrictions imposed in connection with the COVID-19 pandemic.

For details, refer our alert dated 9 April 2020

OECD releases second annual peer review report on BEPS Action 6 relating to prevention of treaty abuse

On 24 March 2020, the Organisation for Economic Co-operation and Development (OECD) released the second peer review report (the Report) relating to the compliance by members of the Inclusive Framework on Base Erosion and Profit Shifting (BEPS) with the minimum standard on BEPS Action 6 for prevention of treaty abuse. The Report includes information available as of 30 June 2019 (the cut-off date) and covers 129 jurisdictions1 that were members of the Inclusive Framework by the cut-off date.

Overall, the Report concludes that the majority of the Inclusive Framework members have begun to translate their commitment to prevent treaty shopping into actions and are now in the process of modifying their treaty networks. According to the Report, the peer review results show the efficiency of the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS (MLI) in implementing the treaty-related BEPS measures. The Report also notes that the MLI is by far the preferred tool of the Inclusive Framework members for implementing the BEPS Action 6 minimum standard. By the cut-off date, 91 jurisdictions had some double tax agreements that either were already compliant with the minimum standard or were subject to a complying instrument (i.e., the MLI or a protocol/treaty). Once the complying instrument takes effect, the agreements that are subject to it will come into compliance with the minimum standard.

The minimum standard on treaty shopping requires jurisdictions to include two components in their tax agreements:

(i) an express statement that their common intention is to eliminate double taxation without creating opportunities for non-taxation or reduced taxation through tax evasion or avoidance; and

(ii) one of three methods to address treaty shopping. The Report indicates that, of the three alternative methods, the vast majority of the jurisdictions have chosen to implement a Principal Purpose Test (PPT).

For details, refer our alert dated 27 March 2020

Indirect tax

Case laws

Goods and Services Tax (GST)

High Court, Bombay

Time limit to transition credit not ultra-vires; extended period not applicable where evidence of error is not available on system log

Central Goods and Services Tax Act, 2017; in favor of Revenue

Assessee is engaged in the business of supplying and undertaking network related services. On implementation of GST, the assessee intended to transition the accumulated CENVAT credit as envisaged under Section 140 of the Central Goods and Services Tax Act, 2017 (CGST Act). Rule 117 of the Central Goods and Services Tax Act, 2017 (CGST Rules) provided time limit for file TRAN-1. Subsequently, Rule 117(1A) was inserted to provide further extension for persons facing technical difficulties on the GST common portal.

The assessee attempted to file TRAN-1 on 27 December 2017 but could not file the same due to problems on the common portal. It then raised a complaint with appropriate authority to resolve the issue. However, system logs maintained on the portal showed that no such attempt was made by the assessee and hence, the benefit of extended period was denied. Aggrieved, the assessee filed writ petition before the Bombay High Court (HC) challenging the vires of Rule 117.

The assessee contended that Rule 117, so far as it prescribes the time limit to submit TRAN-1, is ultra-vires the CGST Act since the said power cannot be traced to Section 140 or Section 164 or any other provisions of the CGST Act. Moreover, assuming there is a general rule-making power, it cannot be exercised to take away substantive right. Imposing time limit under Rule 117 is arbitrary, unreasonable and in violation to Article 14 of the Constitution.

Further, insisting on system log as proof for allowing extended time from the very system on which technical difficulties were faced, is arbitrary and unworkable.

The Revenue argued that Section 164(2) has the general rule-making power and Rule 117 is traceable to this section. Further, input tax credit (ITC) in the transitionary provision is in nature of exemption and not a matter of right. If time limit to avail transitional credit was not imposed, the concept of transitional provisions would become nugatory.

Further, since the assessee did not produce any proof of technical difficulty encountered, benefit of extended period cannot be given to the assessee. No evidence of error was found on system log of the common portal.

The HC observed that it is clear from Section 164(2) that the Government has the power to make rules not only for the matters prescribed but also for those that may be prescribed in the future or in respect of which provisions are to be made by rules. Thus, the impugned Rule is traceable to the power conferred under the said Section.

Further, prescribing the time limit for availing transitional credit under the impugned Rule cannot be said to be contrary to the object of the Act since even under GST regime, time limit is stipulated for availing ITC. Furthermore, even CENVAT Credit Rules prescribed conditions for availing credit. Going by the scheme of the GST law, reference to ITC under Section 140(1) is not by way of right, but as a concession. Therefore, the time limit under Rule 117(1) is not ultra-vires the Act.

The HC also observed that doing away with the time limit for making declaration could cause multiple large-scale claims tricking in for years together after the new tax structure is put in place. This would also affect the revenue collection estimates. Thus, Rule 117 is not arbitrary, unreasonable or in violation to Article 14 of the Constitution.

The extended period for filing TRAN-1 applies only to registered persons who could not submit the form by due date on account of technical difficulties. Thus, insisting on system log as proof of technical difficulties, is not arbitrary.

Basis above, the HC concluded that the time limit stipulated under Rule 117 is not ultra vires the Act and is neither arbitrary nor unreasonable. Further, the assessee's case doesn't fall within the ambit of Rule 117(1A).

[TS-196-HC-2020(BOM)-NT]

High Court, Delhi

Doctrine of promissory estoppel not applicable to budgetary support scheme

Budgetary Support Scheme; in favor of Revenue

Assessee is engaged in the business of manufacturing two-wheelers in Uttarakhand. In 2002, Ministry of Commerce and Industry issued an Office Memorandum detailing the package of incentives, which *inter alia* included 100% ab initio central excise duty exemption to new industrial units for a period of 10 years from the date of commencement of commercial production. Notification No. 50/2003 – CE dated 10 June 2003 (exemption notification) was issued to give effect to the same.

The assessee established new industrial unit in the specified area of Uttarakhand on 7 April 2008 and availed benefit of the exemption notification till the introduction of GST, i.e., 1 July 2017. Notification No. 21/2017 - CE was issued by the Revenue to rescind various area-based exemption notifications, including Notification No. 50/2003 – CE. Subsequently on 5 October 2017, the Revenue notified Budgetary Support Scheme for eligible units to provide reimbursement of Central Government's share of the cash component of central tax (CGST) and integrated tax (IGST) paid (i.e., 58% of CGST and 29% of IGST paid through debit in electronic cash ledger) in lieu of exemption provided under the exemption notification.

The assessee filed a writ petition before Delhi HC to seek complete exemption by way of reimbursement of full CGST and IGST for the residual period of exemption notification.

The assessee argued that action taken pursuant to the promise made by the Revenue confers a vested right in favor of it. The Revenue cannot resile from such a promise and will have to adhere to the doctrine of promissory estoppel. Even though GST enactments have taken the place of Central excise law from 1 July 2017, the burden of GST should have been relieved for the balance period.

It also argued that although the exemption notification used the words "for a period not exceeding 10 years", the period of exemption has to be understood in line with the industrial policy statement, which provided exemption "for a period of 10 years". In case the notification is found to be repugnant to the industrial policy, then the declared policy decision would take precedence over the said notification. It relied on various case laws in support of its arguments.

The Revenue argued that there was no bar in suspending the exemption notification before a period of 10 years since the notification was clear in providing that the said exemption will be granted "for a period not exceeding 10 years". The Office Memorandum relied by the assessee for its industrial policy argument was meant only for internal communication and was not released in the public domain. Moreover, Notification No. 21/2017 – CE was not challenged by the assessee. Therefore, the concession granted by exemption notification cannot be claimed as a vested right in light of proviso to Section 174(2)(c) of the CGST Act.

The HC observed that with introduction of GST, entire indirect tax structure has been overhauled. Parliament, while repealing the earlier legislations, vide proviso to Section 174(2)(c) of the CGST Act, have specifically provided that incentives against investment under notification shall not continue as privileges if the notifications are rescinded on or after 1 July 2017. Therefore, vide Notification No. 21/2017 – CE, the assessee lost all such privileges.

The HC further observed that since the said policy was envisaged in previous regime and can no longer be invoked, the exemption notification issued implementing the said policy have also lost the mandate.

Moreover, the plea of promissory estoppel cannot be enforced against an act done in accordance with the statutory provisions of law. In absence of any challenge to the rescission of exemption notification or to the vires of the proviso to Section 174(2)(c), no plea of promissory estoppel is maintainable.

Merely because the Revenue introduced Budgetary Support Scheme, it cannot be said that assessees, as a matter of right, are entitled to insist that the support should be on the entire fiscal benefits that were originally envisaged under the industrial policy. The rationale of providing support to the extent of Central Government's share of CGST and the IGST is also based on a reasoning, which cannot be questioned by the assessee.

Accordingly, the HC dismissed the writ petition.

[TS-157-HC-2020(DEL)-NT]

High Court, Delhi

Rectification of GSTR-3B of the period to which ITC claim was due allowed

Central Goods and Services Tax Act, 2017; in favor of assessee

Circular No. 26/26/2017-GST dated 29 December 2017 issued by Central Board of Indirect taxes and Customs (CBIC), while keeping the earlier circular dated 1 September 2017 in abeyance, clarified that errors in GSTR-3B of any period can be corrected in GSTR 3B of any subsequent month in which the errors were noticed.

The assessee challenged para 4 of the circular and argued that GSTR-3B has no inbuilt checks and balances by which it can be ensured that the data uploaded by each registered person is accurate, verified and validated. Thus, rectification should be allowed in the original return itself.

The Revenue contended that rectification was allowed in the subsequent period only to avoid complexities involved in modification of the particulars furnished in GSTR 3B, if allowed to be reflected in the relevant previous tax period.

The HC observed that the statutory provisions not just laid down the procedure, but gave a right and facility to the taxpayer, by which it can be ensured that ITC availed can be corrected in the very month to which they relate to.

Further, there is no provision under the Act which restricts rectification in the previous tax period. The restriction if any, introduced by way of a circular, has to be in conformity with the scheme of the Act and the provisions contained therein.

Accordingly, the HC read down the para 4 of the impugned circular and permitted the petitioner to rectify GSTR-3B for the period to which the error relates.

[TS-257-HC-2020(DEL)-NT]

High Court, Telangana

Incorrect destination of goods not a ground to levy penalty or detain vehicle

Central Goods and Services Tax Act, 2017; in favor of assessee

Assessee is a proprietary concern engaged in the business of iron and steel, having registration in Telangana. It purchased goods from Karnataka and paid applicable IGST on it. The consignment was detained at a place beyond the destination mentioned in the documents. Notice under Section 129(3) of the CGST Act was issued by the Revenue on the ground that incorrect destination was reflected on invoice and CGST and State Goods and Services Tax (SGST) along with penalty equal to tax on purchase value of goods was demanded. Aggrieved, the assessee filed writ petition before Telangana HC.

Assessee contended that collection of taxes was arbitrary and highhanded. The Revenue could have at best collected a security equivalent to the amount prescribed under Section 129(1) of the CGST Act. Further, penalty cannot be levied unless there is a willful and contumacious conduct by the assessee. Reason of "wrong destination" given by the Revenue is not a sufficient ground for the course of action undertaken by them.

The Revenue argued that there was no pressure on the assessee to pay tax and penalty and principles of natural justice were complied. No objections were raised against the impugned notice and the amount mentioned on it was paid without any protest.

The Revenue also contended that even if the goods were coming from Karnataka, there was a possibility that the same were sold to third party as a local sale or not intended to be delivered at the correct place indicated in the documents being carried in the conveyance. If the goods were intended to be delivered at the location specified in the documents, there was no reason for the vehicle to be present at the place where it was detained.

It was alleged that in the guise of inter-state supply, assessee tried to sell the goods in the local market evading tax.

The HC noted that "wrong destination" is not a ground to detain vehicle or levy tax and penalty under the CGST Act. Mere possibility of local sale cannot clothe the Revenue to take impugned action without any material to show that attempt of tax evasion was made by the assessee. There can be numerous reasons for the vehicle to be at the location where it was detained instead of its destination and the same does not automatically lead to any presumption that there was an intention to sell the goods in the local market to evade tax.

Relying on the case of Dabur India Ltd. v. State of Uttar Pradesh [(1990) 4 SCC 113], the HC held that assessee cannot be coerced by the Revenue to make payment of taxes which assessee is contending not to be leviable. It also held that the impugned action of the Revenue was clearly arbitrary and violative of articles 14, 265 and 300A of the Constitution.

Accordingly, the HC allowed the petition and directed the Revenue to refund the amount of tax and penalty recovered from assessee along with interest. It also imposed a cost of INR 25,000 on the Revenue.

Commercial Steel Company v. The Assistant Commissioner of State Tax [TS-251-HC-2020(TEL)-NT]

Appellate Authority for Advance Ruling, Karnataka

Supply of access cards based on contents provided by customers is supply of goods

Central Goods and Services Tax Act, 2017; in favor of assessee

Assessee supplies access cards to its customer who provides mass queue management system services at pilgrim destinations. Access cards contain pilgrim's digital photo, thumb impression, and certain other related information. Contents to be printed on the access cards are provided to the assessee by the customer. Physical inputs such as paper, machinery, ink, etc. required for printing belong to the assessee.

It sought an advance ruling on classification of access card printed and supplied based on contents provided by customers. The Authority for Advance Ruling (AAR) held that it is a supply of service under SAC 9989 and liable to tax at the rate of 18%.

Aggrieved, the assessee filed an appeal before the Appellate Authority for Advance Ruling (AAAR).

The assessee submits that the condition stipulated in the contract is condition for goods and not service. If the agreed quantity of access cards is not supplied in the stipulated time, then customer can enforce the contract for non-supply of items (i.e., goods) and not non-supply of services. Thus, essential aspect is supply of goods, not services. Further, it referred to Section 2(52) of the CGST Act, Section 3(26) and Section 3(36) of the General Clauses Act, 1897, to contend that access cards are goods.

Further, import of access cards are specifically classified under chapter heading 4901 as goods by Customs. Earlier, Value Added Tax (VAT) was levied on sale of access cards. Thus, intention of legislature all along has been to classify the access cards as supply of goods. This should continue in GST. Further, the cost of material constitutes 74% of the total cost of production of the access cards. Therefore, in the composite supply of printed access cards, principal supply is that of goods, being the predominant element.

As per paragraph 4 of Circular no. 11/11/2017-GST dated 20 October 2017, in the case of printing of books, pamphlets, brochures, annual reports and the like, where only the content is supplied by the publisher while the physical inputs including paper used for printing belong to the printer, supply of printing (of the content supplied by the recipient) is the principal supply and, therefore, such supplies would constitute supply of service.

Further as per para 5, in case of supply of printed envelopes, letter cards, etc. printed with design or logo supplied by the recipient of goods but made using physical inputs including paper belonging to the printer, predominant supply is that of goods and the supply of printing of the content (supplied by the recipient of supply) is ancillary to the principal supply of goods and, therefore, such supplies would constitute supply of goods.

The AAAR observed that printing brings into existence a specific new product known as access card in common parlance. Printing is ancillary to the main activity of making access cards. Principal supply is not that of printing, but of supply of access cards which is a product emerging out of the printing activity. Thus, printing and supply of access cards is supply of goods as per paragraph 5 of the circular.

Further, access cards are classifiable under sub heading 49011020 under the category of pamphlets, booklets, brochures, leaflets and similar printed matter and will attract GST at the rate of 5%.

Pattabi Enterprises [2020-VIL-13-AAAR]

ITC eligible on detachable sliding and stacking glass partition

Central Goods and Services Tax Act, 2017; in favor of assessee

Assessee is engaged in providing shared workspace/office space on rent to various companies and individuals. It procures goods and services from various contractors for creating the workspaces. Of the procurements, detachable engineered wood, detachable sliding and stacking glass partition are the major components used in the assessee's buildings.

It sought an advance ruling on whether ITC can be availed on detachable wood, detachable sliding and stacking glass partition which are capitalized as "furniture and fixture" and not as "immovable property".

The AAR held that ITC can be availed in respect of the detachable wood. However, ITC was denied in respect of the detachable sliding and stacking glass partition (items). Aggrieved, the assessee filed an appeal before the AAAR.

The assessee referred Section 17(5)(d) of the CGST Act as per which ITC is not available in respect of goods or services received by a taxable person for construction of an immovable property. It submitted that the word "for" denotes that credit will be restricted if the goods/services are used directly for construction of immovable property. As per the business model of the assessee, fixation of glass partitions can be done quickly and any alteration can be made with great flexibility since the same are not permanent. Thus, the items are not inextricably linked to construction.

Since immovable property is not defined under GST, the AAAR referred Section 3(26) of the General Clauses Act, 1897, as per which "immovable property" includes things attached to the earth, or permanently fastened to anything attached to the earth. It also referred Section 3 of the Transfer of Property Act which defined the term "attached to earth" as rooted or imbedded in the earth or attached to what is so imbedded for permanent beneficial enjoyment of that to which it is attached.

To ascertain as to whether an item is permanently attached to earth, courts have used the tests of extent of annexation and object of annexation. As per the object of annexation, where a movable property gets annexed with an immovable property, if the intent of the annexation is permanent beneficial enjoyment of the immovable property, then the fixture becomes an immovable property. If the intent is beneficial enjoyment of the movable property, then the property still remains movable.

Applying this test, the AAAR observed that the goods in the present case are not permanent and are not embedded to earth. They can be dismantled and moved as required, without demolishing the civil structure. Thus, they do not qualify as immovable property. The items are movable and their addition does not amount to construction of immovable property. Thus, the assessee can avail ITC on detachable sliding and stacking glass partition.

[2020-VIL-24-AAAR]

Authority for Advance Ruling, Karnataka

Supply, installation and maintenance of streetlights is a composite supply and principal supply is of goods

Central Goods and Services Tax Act, 2017; in favor of Revenue

Assessee has been awarded an energy saving contract (ESCO) as per which it has to provide street lighting to Thane Municipal Corporation (TMC) for seven years. It has to remove the existing streetlights and hand them to the TMC, install LED street lights and new smart feeder electrical panels, and operate and maintain the LED street lights during the tenure of the contract.

The old streetlights and streetlight poles will continue to remain under the ownership of TMC. The assessee will remain the owner of the newly installed LED lights which shall be surrendered to TMC at the end of the contract, i.e., seven years. Consideration is computed in terms of energy savings and performance. The assessee receives energy savings fee, which is equal to 90% of the actual energy saved multiplied by standard electricity tariff.

It sought an advance ruling on:

- Classification of street lighting activity as supply of goods or service
- Tax rate applicable
- Time of supply and taxable value

The assessee contended that the activity amounts to supply of pure service since dominant object of the contract was street lighting and energy saving, not supply of LED lights. Further, no separate consideration is received for installation of LED lights. Remuneration is computed purely on the basis of energy savings and performance. The LED lights are not considered as saleable inventory in books of accounts of the assessee but are capitalized as fixed assets.

Further, entry 3/3A of notification no. 12/2017-CT (Rate) exempts supply of pure services/composite supply of goods and services where value of goods is less than 25% of total contract value, provided to local authorities by way of any activity in relation to any function entrusted to a Municipality under Article 243W of the Constitution.

On examination of the tender notice, the AAR observed that the nature of work includes design, supply, installation, operation and maintenance of LED streetlights. The entire contract depends on supply of LED lights without which the other aspects of the contract cannot be fulfilled. The contract involves more than two taxable supplies such as supply of LED lights, fixtures and other equipment, their installation, commissioning, operation and maintenance, etc. The impugned supplies of goods and services are in conjunction with each other in the ordinary course of business and hence satisfies the ingredient of composite supply, as defined under Section 2(30) of the CGST Act.

Referring Section 2(90) of the CGST Act which defines "principal supply", the AAR stated that the principal factor is to supply and install LED lights and then to perform the day-to-day management of the said lights by operating and maintaining such equipment to achieve energy savings. Operation and maintenance of the LED lights can only take effect after their supply and installation. Thus, the principal supply is that of goods, i.e., LED streetlights and the supply of service is incidental.

LED lights are classified under Chapter Heading 9405 and attract GST at the rate of 12%.

Further, the present case is a continuous supply of goods since the assessee needs to supply the LED lights during the entire contract period of seven years as and when required. The time of supply of goods in terms of Section 12(2)(a) of CGST Act is the date of issuance of invoice.

[2020-VIL-72-AAR]

Salary received by executive director is not taxable under GST

Central Goods and Services Tax Act, 2017; partly in favor of assessee

Assessee, being an unregistered person, has different sources of income including partner's salary from partnership firm, salary as director from private limited company, interest income on partner's fixed and variable capital, interest received or accumulated on loan, advance, fixed deposit, debentures and other investments, maturity proceeds of life insurance policies, dividend on shares, rent for commercial and residential property and capital gain/ loss on sale of shares.

Advance ruling was sought to determine which income shall be considered in computing aggregate turnover for assessing registration requirement. Further, if any supply is exempt, then whether the same needs to be considered for aggregate turnover.

The assessee made following submissions:

- Salary as a partner and director are not includable in the aggregate turnover because salary is not in the purview of GST
- The income received towards renting of commercial and residential property is to be included in the aggregate turnover
- All the remaining types of income are not be included in the aggregate turnover, as they are not under the purview of GST and hence do not amount to supply under GST law

The AAR referred the definition of aggregate turnover as per Section 2(6) of CGST Act and noted that aggregate turnover is the sum of all supplies including taxable and exempt. Any income to be included in the aggregate turnover needs to be related to a transaction that amounts to supply in terms of Section 7(1)(a) of the CGST Act. In view of this, the AAR analyzed the income received from each source as follows:

- Services by way of extending deposits, loans or advances in so far as the consideration represented by way of interest or discount is exempt. Thus, receipt of interest is to be included in the aggregate turnover.
- If the assessee is a working partner and is getting salary from partnership firm, then the said salary is neither supply of goods nor supply of service in terms of para 1 of Schedule III of CGST Act. Further, if the assessee is in receipt of the amount towards his/her share of profit from the said partnership firm, then also the said income is not under the purview of GST as the share of profit is nothing but application of money and hence the same is not required to be included in the aggregate turnover.
- With respect to salary received as director, if the assessee is employee of the said company, i.e. executive director, then the services of the assessee as an employee to the employer is neither treated as supply of goods nor services, in terms of Schedule III of CGST Act.

  However, If the assessee is the nominated director, i.e. non- executive director, then remuneration paid by the company is exigible to GST in the hands of the company under reverse charge.
- The transaction of rental/lease amounts to supply and value of such supply is to be included in the aggregate turnover.
- Securities are explicitly excluded from the purview of GST. In the instant case, the dividend on shares, capital gains/losses on sale of shares are relevant to the shares (securities) and the income earned in this relation is nothing but application of money. Therefore, this income earned out of shares, which are excluded from the definition of goods or services, also gets excluded from the said definition of goods or services.
- Further, the amounts received on maturity of the insurance policies are not required to be added to the aggregate turnover.

Anil Kumar Agarwal [TS-269-AAR-2020-NT]

Mere rooms with attached toilets do not qualify as residential dwelling

Central Goods and Services Tax Act, 2017; in favor of Revenue

Assessee, along with four others, collectively let out a residential complex. The lessee entered into a sub-lease agreement with students for providing affordable residential accommodation for a period varying from 3 to 11 months, along with provision of a host of other services like maintenance, food, WiFi, etc. (generally called as paying guest accommodation).

The assessee sought an advance ruling on whether the lease service can be described as "services by way of renting of residential dwelling for use as residence" and thus, exempt.

The assessee submitted that a residential complex has been let out to the lessee to conduct business and thus, GST should be charged.

The AAR observed that as per the layout of the leased premises, what was leased was an immovable property consisting of only rooms with attached toilets. They are like hotel rooms and do not fit into the meaning of a dwelling which means a house. The entire leased property has 42 rooms which by no imagination can be termed as a residential dwelling. Even if the same is given for residential purposes, it is not used for residence by the lessee.

The AAR held that the service in the present case does not fall under "services by way of renting of residential dwelling for use as residence" and thus, the same is taxable.

Taghar Vasudeva Ambrish [TS-231-AAR-2020-NT]

In absence of fixed establishment, separate registration not required in the state where works contract is executed

Central Goods and Services Tax Act, 2017; in favor of assessee

Assessee is registered in Rajasthan as a works contractor and wholesale supplier. It has been awarded a contract for complete electrical and instrumentation jobs, installation, testing and commissioning, i.e., works contract, at Karnataka. The service recipient will provide the assessee a small space in their premises temporarily to use as an office.

The assessee has sought an advance ruling on the following matters:

- Whether separate registration is required in Karnataka?
- Tax to be charged if goods are purchased from a dealer in Rajasthan and are directly shipped to Karnataka
- Tax to be charged if goods are purchased from a dealer in Karnataka and are used in that state
- Documents required to transit the goods at site from the dealer in Rajasthan/Karnataka

The assessee submitted that as per Section 22 of the CGST Act, every supplier is liable to be registered in the state/ union territory from where the assessee makes a taxable supply. Further, as per Section 2(71), the location of the supplier of services (i.e. assessee) will be Rajasthan i.e. state where the principal place of business is registered. Thus, separate registration is not required in Karnataka.

Further, in case registration is not taken in Karnataka,

- CGST and SGST should be charged by the dealer when goods are purchased from Rajasthan and shipped directly to the site at Karnataka
- IGST should be charged if goods are purchased from a dealer in Karnataka and shipped to the site, in terms of Section 10(1)(b) of the IGST Act.

The AAR observed that the assessee intends to supply goods or services from assessee's principal place of business, which is located in Rajasthan. It has only one principle place of business and does not have any other fixed establishment other than the principal place of business. Therefore, location of the supplier is the principal place of business which is Rajasthan. Thus, separate registration is not required in Karnataka for the execution of the contract. However, if they are able and intend to have a fixed establishment at the project site in Karnataka, then they have liberty to obtain the registration.

Further, in case, the assessee purchases goods from a dealer in Rajasthan and ships them directly to the site at Karnataka, it becomes an intra-state supply as per Section 8 of the IGST Act. The said supply gets covered under Bill-to-Ship-to transaction as per Section 10(1)(b) of the IGST Act. Thus, the dealer has to charge CGST and SGST while supplying the goods to the assessee.

Similarly, in case the assessee purchases goods from a dealer in Karnataka and ships them directly to the site at Karnataka, it becomes an inter-state supply and the dealer has to charge IGST.

The question related to documents required to be carried by the transporter of goods was not answered as the same does not get covered under the issues on which advance ruling can be sought.

T & D Electricals [TS-237-AAR-2020-NT]

Authority for Advance Ruling, Rajasthan

Water charges collected from society members through a separate contract liable to GST

Central Goods and Services Tax Act, 2017; in favor of Revenue

Assessee proposes to be engaged in providing maintenance services to housing societies for which it will enter into an agreement (Contract I) with the societies. In cases where proper water supply is not there, societies may request the assessee to check with the individual members (customers) for water supply arrangement. In pursuant thereto, the assessee will enter into a contract (Contract II) with the customers for supply of water for personal use.

The assessee will obtain the water from tanker water suppliers (vendors) and supply it "as such" to the customers.

It may collect water charges based on the square feet area occupied by customers or other suitable means. Contract II will be optional and, hence, will be entered into only if customers desire to procure water from the assessee.

It sought an advance ruling on whether it is required to pay GST on water charges recovered.

The assessee submits that since water is movable, it qualifies as goods as per Section 2(52) of the CGST Act. Further, Notification no. 2/2017-CT (Rate) dated 28 June 2017 (exemption Notification for goods), exempts supply of water (other than specified categories) from the levy of GST.

Further, even if it is assumed that there is supply of goods (water) and services in Contract II, it will be a composite supply where principal supply is that of water. Since water is exempt, the whole Contract II is exempt.

The AAR referred the Notification no. 12/2017-CT (Rate) and Circular no. 109/28/2019-GST which provided that GST is leviable on services provided by Resident Welfare Association (RWA) to members when maintenance charges collected is more than INR7,500 per month per household.

In the instant case, assessee is making supplies in two parts viz. maintenance services and supply of water. As a general practice across trade and market, maintenance services is inclusive of water supply. Hence, supply of water through a separate agreement raises a suspicion.

Even though assessee will have a separate agreement for water supply and will receive water charges on the basis of per square feet area occupied by customers, it is not possible to supply water to each apartment separately as mentioned in Contract II. This is because apartments do not have their own separate water storage tanks. Supply of water is actually to the RWA. Assessee is trying to split the contract into Contract I and Contract II to avoid GST by keeping maintenance charges below INR7,500.

Further, water charges are collected from the customers on per square feet basis, instead of per water tanker, which is similar to collection of maintenance charges by RWA. Thus, it is quite evident that supply of maintenance services and water as per Contracts I and II are to the same person, i.e., the RWA. Hence, there appears no case of direct supply of water to the customers by the assessee.

Thus, the AAR held that Contracts I and II appear to be directly linked with each other and the assessee is required to pay GST on water charges collected from individual residents of the society.

Latest Developers Advisory Ltd [TS-219-AAR-2020]

Authority for Advance Ruling, Uttarakhand

Transfer of under-construction project can be treated as transfer of going concern

Central Goods and Services Tax Act, 2017; in favor of Assessee

Assessee is a partnership firm engaged in construction and sale of building. It got the site map approved from the competent authority.

A buyer, engaged in the same business, approached the assessee to take over the under-construction project to further carry out the business of construction and sale of the said building. The assessee entered into an agreement with the buyer for transfer of the business and the main asset of the business being the land, the incomplete flats constructed on the land and the approved map were transferred. Out of the area of 1.25 lakhs sq. feet, a total carpet area of 85 thousand sq. feet was constructed.

The assessee sought an advance ruling on whether the transfer of business as a going concern, which involves transfer of the under-construction project, is exempt from GST in terms of sl. no. 2 of Notification No. 12/2017-Central Tax (Rate).

On perusal of the sale deed, the AAR observed that the buyer:

- Can use and sell the flats as per buyer's will
- Has a right to construct other building/floor in the premises
- Cannot demolish the existing flats
- Has a right to replace the name of seller (i.e., assessee) in the records of Nagar Nigam
- Has to follow the procedures/provisions of law issued by the competent authority from time to time

Further, as per Section 2(17) of the CGST Act, acquisition of goods/services for commencement of business is covered under the definition of business. Transfer of a business as a going concern is the sale of a business including assets. "Going concern" means that at the point in time to which the description applies, the business is live or operating and has all parts and features necessary to keep it in operation. Thus, "transfer of a going concern'", in a simple way, can be described as transfer of a running business which is capable of being carried on by the purchaser as an independent business.

Reference was made to internationally accepted guidelines issued by Her Majesty's Revenue & Customs (HMRC) to treat transfer of business as a going concern, which are as under:

- Assets must be sold as part of a business as a "going concern"
- The purchaser intends to use the assets to carry on the same kind of business as the seller
- Where only part of a business is sold, it must be capable of separate operation
- There must not be a series of immediately consecutive transfers

As per the records, the assessee came into existence particularly for the said project. It sold the under-construction building with all its assets and transferred the rights of the same to the buyer including the approved map. The buyer purchased the under-construction building/ business to carry on the same kind of business. As on date, there was no series of immediately consecutive transfers of the said business.

Thus, the AAR held that the assessee has transferred the business as a going concern and the same is exempt from GST.

Rajeev Bansal & Sudershan Mittal [2020-VIL-83-AAR]

National Anti-Profiteering Authority

DGAP can suo-moto investigate even those products against which no complaint has been lodged

Central Goods and Services Tax Act, 2017; in favor of Revenue

Assessee is engaged in manufacture and supply of consumer goods. On 14 November 2017, GST rates were reduced on various products, including those sold by the assessee. Subsequently, Standing Committee received a complaint from a customer, alleging that assessee had not passed on the benefit of tax reduction on one of the products sold by it. Accordingly, Director General of Anti-Profiteering (DGAP) received a reference from Standing Committee to conduct a detailed investigation.

DGAP carried out investigation on all the products sold by assessee, which were impacted by the rate reduction and in its report to the National Anti-Profiteering Authority (NAA) stated that the assessee profiteered INR 21,84,79,790 by not commensurately reducing the prices of its products.

The assessee argued that the complaint was lodged only in respect of one product. However, DGAP expanded the scope and investigated more than 250 products without any power to do so. It cannot *suo-moto* expand the scope of investigation as only NAA can do so in terms of Rule 133 (5a) of CGST Rules. Moreover, apart from the product against which the complaint was lodged, DGAP, in its notice, had nowhere mentioned the description of other goods intended to be investigated by it.

NAA observed that there is no provision in the Act or the Rules which provides that the investigation shall be limited to the products against which the complaint is lodged. On the contrary, DGAP is legally bound to investigate all the products as per the provisions of Section 171 of the Act and Rules framed thereunder. Further, the notice issued by DGAP for initiating investigation nowhere stipulated that the investigation would be restricted to the objected product.

Basis above, NAA confirmed the profiteered amount computed by DGAP.

Director General of Anti-Profiteering vs. McNROE Consumer Products Pvt Ltd [2020-VIL-25-NAA]

Customs

Supreme Court

Post-importation activities not includible in assessable value if they are not a condition of sale

Customs Act 1962; in favor of assessee

Assessee imported certain items under two contracts in connection with modernization, expansion and modification of their plant. As per the contract, the consortia were to supply plant, equipment, spares and also certain basic designs and supervisory services at site. Revenue added the cost for design and supervisory services to the invoice value of imported items.

The Customs Excise and Service Tax Appellate Tribunal (CESTAT) decided in favor of assessee and held that the drawings and technical documents are related to post importation activities for assembly, construction, erection, operation and maintenance of the plant and thus could not be included in the value of imported goods. Aggrieved, the Revenue preferred an appeal before the SC.

The assessee submitted that impugned items were in relation to post importation activities for implementation of their project. Further, it was not a condition for them to take design and engineering, which related to post importation activities from the same supplier only.

Further, Rule 9(1)(e) of the Valuation Rules, 1988 read with the interpretative note did not permit addition of value of post-importation items to the price of imported equipment.

The Revenue contended that since the contracts were integrated from basic planning and designing till implementation at site, the execution involved importation of turnkey projects and not merely equipment. Therefore, entire contract value has to be treated as the transaction value for the purpose of charging customs duty.

The design and the other items were integrally linked with equipment and supply of such services were conditions for import of such equipment. As per Rule 9(1)(e) all other payments made as a condition of sale of imported goods to satisfy an obligation of seller were to be added to the price of such imported goods.

The SC noted that the expression "condition" conveys the idea that something could be done only if another thing is also done. In the given context, it would imply that import of equipment could be allowed by the other party provided the design features for post importation activities were also obtained from the same supplier or from a firm as per the overseas supplier's direction. But there was no material to suggest that import of equipment was affected with simultaneous obligation on assessee that the designs relating to post importation activities should also be obtained from the same entity.

An importer of equipment could always choose to obtain drawings and designs for undertaking post importation activities from an overseas consortium supplying the equipment. This may confer on such arrangements the attributes of a turnkey contract, but that fact by itself would not automatically attract the "condition" clause contained in Rule 9(1)(e).

Just because different components of a contract or multiple contracts give the shape of turnkey project to the imported items, without a specific finding on the existence of "condition", value of all these components could not be added to arrive at the assessable value. In view of the above, the appeal was dismissed.

[2020-VIL-15-SC-CU]

High Court, Madras

Method of accounting irrelevant for doctrine of unjust enrichment

Customs Act 1962; in favor of assessee

Assessee is engaged in the manufacture and sale of bakery fats, fatty acids, deoiled cakes and special fats. It regularly imports crude vegetable oils and palmolein oil which are used as raw materials in manufacturing products as well as are traded as such. It imported goods in July 2001 and filed two ex-bond bills of entry for home consumption on 3 August and 4 August 2001. Meanwhile, a new rate of duty was prescribed by Notification No. 36/2001 dated 3 August 2001 which was published in the Gazette on 6 August 2001.

Revenue re-assessed the ex-bond bills of entry on the basis that revised rate would be applicable to the imports, whereas, assessee opposed the same on the ground that revision of duty will come into effect only from date of publication of such revision in the Gazette. Notwithstanding the aforesaid submission, the differential duty had been remitted under protest. The assessee then succeeded in its challenge and claimed refund of duty paid. Though the refund was sanctioned, it was credited to the Consumer Welfare Fund on the ground of doctrine of unjust enrichment.

On appeal against the above action of the Revenue, CESTAT remanded the issue back to the Assessing Authority, who then passed an order rejecting the claim of the assessee. Aggrieved, the assessee filed a writ petition before the Madras HC.

The assessee submitted that the entire sale of imported products was completed in August 2001 itself whereas the differential duty was remitted under protest in September 2001. Therefore, incidence of duty was not passed to the customers and there was no question of unjust enrichment. Accordingly, it is eligible to the refund of differential duty along with interest.

The HC noted that the assessee had submitted all the required documents and information to the Assessing Officer to prove that differential duty was not recovered from customers since the entire sale of imported products was completed before payment of disputed duty. The Revenue rejected the refund claim merely on the basis of methodology of accounting followed by the assessee and overlooked the facts of the case.

Thus, the Revenue ought not to have credited the amount of refund to Consumer Welfare Fund but should have paid the same to the assessee. Accordingly, the HC set aside the impugned order and directed the Revenue to refund the amount within four weeks along with interest.

[TS-1280-HC-2019(MAD)-CUST]

Central Excise

CESTAT, New Delhi

Company and partnership firm with common directors and partners are not related persons

Central Excise Act, 1944; in favor of assessee

Assessee, a private limited company, sold goods to a partnership firm. Show cause notice (SCN) was issued contending that one of the directors of the assessee company is a partner in the firm. Hence, it was alleged that the assessee and the firm are sister concerns and are related in terms of Section 4(3)(b)(i) of the Central Excise Act, 1944 (Act).

The Revenue invoked Rules 8 and 9 of the Central Excise Valuation Rules, 2000, in terms of which the transaction was valued at 110% of cost of production. Consequently, differential duty was demanded and later confirmed along with interest and penalty. Aggrieved, assessee filed the present appeal.

The assessee contended that the private limited company, being an artificial person cannot be related with a natural person i.e. the partner or the firm. As per Rule 9, interconnected undertakings as mentioned in Section 4(3)(b)(i) of the Act are not treated as related persons. Thus, entire basis of disputing the transaction value on the ground that both the concerns are interconnected undertaking will not sustain. Further, excise duty payable, if any, will be available as CENVAT credit to the firm. Thus, the entire exercise is revenue neutral. Assessee placed reliance on various judgements in support of its contentions.

CESTAT observed that the entire case was made out only on the limited facts that one of the partners in the firm is a director in the assessee's company, therefore, both the concerns are interconnected undertaking. Except this so-called relationship, there is no other allegation of mutual interest between both concerns. Referring to Section 4(3)(b)(i) and Rule 9, it observed that Rule 9 considers only the relationships mentioned under sub-clauses (ii), (iii) or (iv) of Section 4(3)(b) for the purpose of related person. Therefore, even if the seller and buyer are interconnected undertaking, but not related person as per sub-clauses (ii), (iii) or (iv) of Section 4(3)(b), the same cannot qualify as related person.

The natural relationship between the partner of a firm and director of private limited company cannot be the only criteria to decide the relationship between a firm and private limited company. Thus, merely for the reasons that the partners of the buyer firm are director/relative of the director, the firm and the assessee company cannot become related person for the purpose of Section 4(3)(b). The impugned order was set aside.

Ramdev Stainless Strips Pvt Ltd vs. Commissioner, Central Goods and Services Tax, Jodhpur [2020-VIL-193-CESTAT-DEL-CE]

CESTAT, New Delhi

CENVAT credit cannot be denied even if the invoice is not in the name of the assessee

CENVAT Credit Rules, 2004; in favor of assessee

The assessee is engaged in manufacture of pure lead and lead alloys. It imports inputs on high seas basis through principal importers and files bill of entry. During the course of audit, the Revenue observed that the principal importers were receiving certain cargo handling services. The service providers were raising invoices in respect of the said services on such importers. The importers would then send those invoices to the assessee for the purpose of passing the CENVAT credit.

The Revenue noted that the assessee had neither availed the cargo handling service nor paid any amount in lieu of the said service but had availed CENVAT credit of the tax paid. SCN was issued proposing the reversal of credit with appropriate interest and penalty, which was then confirmed by an order. The appeal filed by the assessee before first appellate authority was rejected. Aggrieved, the assessee filed the present appeal.

The assessee submitted that credit has been denied on the sole ground that the invoices issued by the service provider are not in the name of the assessee, but the principal importer. Further, the Revenue has wrongly observed that the assessee has not made any payment in lieu of the services. Though services were availed by the principal importer, but it is the assessee who had paid the Service tax. Since the relevant documents for the purpose of availing CENVAT credit contain all details as mentioned in proviso to Rule 9(2) of CENVAT Credit Rules 2004, (CCR 2004), it is entitled to claim the credit.

CESTAT referred Rule 9(2) of the CCR, 2004 as per which CENVAT credit cannot be taken unless all the particulars as prescribed are contained in the prescribed documents. However, the proviso to the said Rule extends power to specified authorities to allow the credit even if the document does not contain all the prescribed particulars, but contains details of service tax payable, description of taxable service, assessable value, service tax registration number and address of the person issuing the invoice.

It observed that the assessee had made available to the Revenue, all the requisite details as mentioned in the proviso to Rule 9(2) vide documents furnished at the time of availing the credit. In such circumstances, denial of credit for the sole reason that the invoices issued were not in the name of the assessee was not justifiable. It relied on the judgement of CESTAT Ahmedabad in case of Century Dying & Printing Mills vs. Commissioner of Central Excise [2013 (298) ELT 558 (Tri-Ahmd)] wherein it was held that name of the consignee was not one of the essential requirements as per the proviso to Rule 9(2) of CCR, 2004.

CESTAT noted that the other conditions for availing the credit were fulfilled by the assessee who admittedly had paid the Service tax. There remained no more requirement of invoice to be in assessee's name only. Further, the availability of CENVAT credit is a substantial relief. The same cannot be denied merely on the ground of procedural lapse. Thus, CESTAT held that the order under challenge was erroneous as being passed in sheer ignorance to proviso to Rule 9(2) of CCR, 2004 and the same was set aside.

Sumetco Alloys Pvt Ltd vs. Commissioner of Customs, Central Excise & Central GST, Alwar [2020-VIL-158-CESTAT-DEL-CE]

Service tax

CESTAT, Bangalore

Collection of contribution to build a corpus fund to secure the depositors' interest is not a mere transaction in money and hence, will be liable to Service tax

Finance Act, 1994; in favor of Revenue

Assessee is constituted for the administration of cooperative deposit fund by the Government of Kerala under the Kerala Cooperative Deposit Guarantee Scheme, 2012. Th purpose of the scheme is to provide a guarantee for the deposits made in the credit societies. All the credit societies have to contribute to the fund a sum of money at the rate specified. The fund is to be utilized for settlement of claims in respect of the deposits which are guaranteed.

The Revenue issued SCNs alleging as to why the activity of the assessee must not be charged to Service tax which were later confirmed. Aggrieved, the assessee filed the appeal.

Revenue relied on the case of Deposit Insurance & Credit Guarantee Corporation v. Commissioner of Central Excise & Service Tax [2015 (5) TMI 143 - CESTAT MUMBAI], wherein the CESTAT had held that deposit insurance undertaken by Deposit Insurance And Credit Guarantee Corporation (DICGC) falls within ambit of general insurance business as defined in Section 65(49) read with Section 65(105)(d) of the Finance Act, 1994.

The assessee submitted that the demand was built upon on a wrong premise that its activity is identical to the service rendered by the DICGC. The DICGC is an insurance company whereas the assessee is constituted for rendering necessary assistance to the depositors of the societies which contribute to the fund. The nature of collection of contribution to the fund is to create a corpus and not to levy a fee or provide a service to any business entity.

The contribution to the fund is not in the nature of insurance premium or guarantee fee which could be termed as a "service" as defined under Section 65B(44) of the Finance Act, 1994. As per Section 65B(44)(a)(iii), transaction in money is not considered as a service. Explanation 2 to Section 65B(44) provides for activities which will not be considered as transaction in money. Service tax would be charged only on activities which are not considered as transaction in money as per the said Explanation and for which a separate consideration is charged. It, accordingly, follows that all other cases of transaction in money shall be excluded from the charge of Service tax.

The CESTAT observed that as per paragraph 2.8.1 of the Educational Guide to Service tax, transaction only in money would include activities such as the principal amount of deposits in or withdrawals from a bank account, advancing or repayment of principal sum on loan to someone, conversion of INR 1,000 currency note into one-rupee coins to the extent amount is received in money form. Going by the same, the collection of contribution to build a corpus fund to secure the depositors' interest is not a mere transaction in money. The service rendered by the assessee does not find place either in the exclusion or in the negative list.

It further noted that the Revenue had rightly observed that DICGC is also providing guarantee for the deposits made by the public in commercial banks. The only difference between the activity performed by DICGC and the assessee is that whereas the former is extending guarantee to the deposits made by the public in commercial banks, the assessee is extending guarantee in respect of deposits made by the public in cooperative credit societies. The nature of the service is same. Also, the assessee is getting a consideration for the activity performed at the rate of 10 paisa for every 100 rupees of deposit.

CESTAT held that the activity of the assessee is same as that of DICGC and the assessee is liable to pay Service tax.

Further, penalties imposed are set aside as the assessee is a body constituted by the Government and hence, mens rea cannot be attributed to it as evident from a number of decisions by the Tribunal and HCs.

Kerala Cooperative Deposit Guarantee Fund Board vs. Commissioner of Central Tax and Central Excise, Thiruvanthapuram [2020 (2) TMI 569 - CESTAT BANGALORE]

Sales Tax/ Value Added Tax

High Court, Gujarat

Amendment of VAT laws to extend time limit for revision of assessment is ultra-vires

Gujarat Value Added Tax Act, 2003; in favor of assessee

Vide VAT Amendment Act, 2018, Section 84A was inserted in the Gujarat VAT Act, 2003 retrospectively w.e.f. 1 April 2006. As per the said section, if any assessment order involves an issue on which the HC has given a decision prejudicial to the Revenue's interest and in some other proceedings an appeal is pending before the SC against such HC decision, then the period spent between the date of the decision of the HC and date of decision of the SC shall be excluded in computing the period of limitation under Section 75 for revision of assessment.

A revision notice was issued to the assessee basis the Section 84A for revising assessment of financial year (FY) 2008-09. The assessee challenged constitutional validity of Section 84A before the Gujarat HC.

The assessee submitted that the impugned section is without any legislative competence. Further, it is arbitrary and violative of Articles 14 and 19(1)(g) of the Constitution of India. When the assessment for a particular year attains finality, the same creates a vested right in favor of the dealer. The dealer would accordingly arrange its affairs. The alteration of such position without any definite time limit, only on the ground that a judgment has been pronounced in favor of the Revenue in another case, is manifestly arbitrary and illegal.

The Revenue submitted that it was never the intention of the Parliament to take away the power of the State Legislature to enact laws with respect to intra-state sale or purchase of goods. However, the intention as discernible from the language of Article 246A, clearly appears to confer simultaneous powers on the Union and the State Legislature to make laws for levying tax on every transaction of supply of goods or services.

The HC observed that Entry 54 was amended vide Constitution (101st Amendment) Act, 2016 to extinguish the power of states to levy taxes on sale or purchase of goods except the taxes on six specified products. Therefore, the power to amend any law with respect to levy of tax on the sale or purchase of other goods could be said to have been abolished with the said amendment.

Under the common law, a statute after its repeal is completely obliterated as if it has never been enacted, except as to transactions past and closed. Thus, a statute become non-existent on its repeal, unless saved by some saving provision. Section 6 of the General Clauses Act, which provides saving for the repealed enactments, will not apply to repeal of the Entry in legislative list since the said section applies only to enactments, whereas the Constitution is not an enactment but the foundation of all enactments. Further, insertion of Section 84A is not saved by Article 246A.

Accordingly, the HC declared Section 84A of the Gujarat VAT Act as ultra-vires and beyond the legislative competence of the State Legislature. The said section was also declared to be violative of Article 14 of the Constitution of India on the ground of being manifestly arbitrary, unreasonable and oppressive. Thus, the impugned revision notices were quashed and set aside.

[TS-225-HC-2020(GUJ)-VAT]

High Court, Jharkhand

Provision deeming trade discount as 'sale' is ultra-vires

Jharkhand Value Added Tax Act, 2005; in favor of assessee

Assessee is a manufacturer and seller of heavy and medium commercial vehicles along with its spare parts and accessories. In normal course of its business, it allows targets-based trade discounts in the form of free supply of goods, cash incentives or reduction in price to its purchasers. Similarly, it also receives such incentives in respect of raw materials purchased by it.

In 2011, Section 9(5) was inserted in Jharkhand VAT Act, 2005 (JVAT Act) by way of retrospective amendment effective from 1 April 2010. Pursuant to insertion of the said section, the assessee became liable to pay tax on the above-mentioned discounts and incentives as the same were brought within the purview of sale by a deeming fiction. Assessee filed a writ petition challenging the vires of Section 9(5) of JVAT Act.

It submitted that the State Legislature is not empowered to make any addition in the list of taxable sales or purchase as given under Article 366(29A) of the Constitution, so as to treat any transaction as sale or purchase by a deeming fiction, which actually is not a sale or purchase.

Relying on various judgements, it also submitted that there are three essential components to constitute a transaction of sale viz. an agreement to transfer title, consideration and actual transfer of title in the goods. There can be no sale in absence of any of the above elements. State Legislature cannot enact a law to give meaning of deemed sale to the transactions, which are not sales either under any of the clauses of Article 366(29A) of the Constitution or within any provisions of the Sales of Goods Act, for the purpose of levy of sales tax.

The Revenue submitted that provisions of JVAT Act have automatically come to an end after GST regime coming into force, and there is no scope of any challenge to the vires of any provision of said Act, which is no more in force. Without prejudice to the above submission, it argued that the trade discount or incentives are given in relation to bulk sales made by the selling dealer to the purchaser. Consideration for such discount or incentive shall be deemed to be the bulk sale, and this interpretation satisfies all the conditions of sale.

Further, only apprehending danger is challenged and no assessment order is challenged by the assessee. Judicial review is not available to a stage prior to making of a decision, only on the ground of *quia timet* action.

The HC observed that it is a well-settled law that in order to levy tax on sale, the transactions must fall within any of the clauses of Article 366 (29A) of the Constitution, or within the meaning of the Sales of Goods Act. It is not within the legislative purview or competence of the State Legislature to treat any transaction as sale or purchase, by merely enacting that they shall be deemed to be so.

Explanation III to Section 2(xlviii) of the JVAT Act defining "sale price", clearly states that sale price shall not include the cash discount, if shown separately, and allowed by the dealer in the ordinary course of trade practice. Further, it is also a well-settled law that even *quia timet* actions can be challenged, if the actions of the State are arbitrary and violative of the rights of the citizens.

Accordingly, the HC allowed the petition and held Section 9(5) of the JVAT Act as ***ultra-vires***.

[TS-194-HC-2020(JHAR)-VAT]

Goods and Services Tax

Notifications – CGST (non-rate)

Amendment in the method for calculating value of supply of lottery

Pursuant to increase in rate of lottery to 28%, with effect from 1 March 2020, the value of supply of lottery run by State Government shall be deemed to be 100/128 of the face value of ticket or of the price notified in the Official Gazette by the Organising State, whichever is higher.

Notification no. 08/2020-CT dated 2 March 2020

CBIC exempts foreign airline companies from furnishing Form GSTR-9C

CBIC has exempted foreign airline companies, covered by notification issued under Section 381(1) of the Companies Act, 2013 and who have complied with Rule 4(2) of the Companies (Registration of Foreign Companies) Rules, 2014, from furnishing of the reconciliation statement in Form GSTR-9C.

However, such companies will be required to submit a statement of receipts and payments for the financial year in respect of its Indian business operations, duly authenticated by a Chartered Accountant or a firm of Chartered Accountants for each GST registration by 30 September of the succeeding financial year.

Notification no. 09/2020-CT dated 16 March 2020

CBIC notifies transition plan considering merger of union territories of Daman & Diu and Dadra & Nagar Haveli

CBIC has issued notification specifying special procedure to be followed till 31 May 2020 (transition date) by registered persons having businesses in the erstwhile union territories (UT) of Daman and Diu (DD) and Dadra and Nagar Haveli (DNH).

The tax period for January and February 2020 shall be from 1 January to 25 January 2020 and 26 January to 29 February 2020, respectively.

Such persons shall pay applicable tax under an appropriate head in Form-GSTR 3B irrespective of the tax charged in the invoices issued on or after 26 January 2020.

Taxpayers who have registrations in the existing UT of DD as well as DNH, have an option to transfer the balance of ITC from the existing registration in DD to the registration in new UT of Daman and Diu and Dadra and Nagar Haveli in the following manner:

- Jurisdictional tax officers of transferor and transferee should be intimated regarding ITC transfer, within one month of obtaining new registration
- Transfer shall be carried out through Form GSTR-3B for April 2020. Transferor should debit the amount under the head "ITC Reversed-Others" and transferee should credit the same under "ITC Available-All other ITC"
- Balance credit of UT tax, where principal place of business lies in Daman and Diu as on 25 January 2020, shall be transferred as credit of UT tax

Notification no. 10/2020-CT dated 21 March 2020

CBIC notifies special procedure for corporate debtors undergoing insolvency resolution process

CBIC has issued a notification prescribing special procedure to be followed by corporate debtors covered under the Insolvency and Bankruptcy Code, 2016. These entities should be undergoing corporate insolvency resolution process (CIRP), where the management of affairs are being undertaken by interim resolution professionals (IRP) or resolution professionals (RP).

As per the Notification, the corporate debtor shall be treated as distinct person with effect from the date of appointment of IRP/RP and will need to take new registration within 30 days of such appointment, in each state where it was earlier registered. In such cases, corporate debtors are required to obtain separate registration within thirty days of the appointment of RP or by 30 June 2020, whichever is later.

IRP/RP is required to file first return for the period beginning the date on which it became liable to take registration till the date on which the registration is granted.

In the first return, ITC can be claimed in respect of supplies received after the appointment of IRP/RP even if the invoice bears Goods and Services Tax Identification Number (GSTIN) of the erstwhile registration. In claiming such credit, time limit for availment of ITC as per Section 16(4) of CGST Act and restriction on availing unmatched ITC as per rule 36(4) of CGST Rules, shall not be applicable.

In respect of supplies made by the corporate debtor using erstwhile GSTIN, from the date of appointment of IRP/RP till date of registration or 30 days from the Notification date, whichever is earlier, recipients shall be eligible to avail ITC on such invoices. Restriction under rule 36(4) shall not be applicable in these cases.

Amount deposited in cash ledger of erstwhile registration from date of appointment of IRP/RP till date of new registration shall be available as refund.

The notification shall not apply in cases where the corporate debtor had furnished Form GSTR-1 and GSTR-3B for all the tax periods prior to the appointment of RP.

Notification no. 11/2020-CT dated 21 March 202; Circular no. 134/04/2020-GST dated 23 March 2020; Notification no. 39/2020-CT dated 5 May 2020

Composition taxpayers not to furnish Form GSTR-1 or Form GST CMP-08 for financial year 2019-20 in certain cases

Persons who have opted for the composition scheme (notification no. 2/2019-CT) and furnished GSTR-3B instead of GST CMP-08 for tax periods of FY 2019-2020, need not furnish GSTR-1 or GST CMP-08 for all tax periods of FY 2019-20.

Notification no. 12/2020-CT dated 21 March 2020

Implementation of e-invoicing and QR code postponed till 1 October 2020

The implementation of e-invoicing and QR Code has been deferred till 1 October 2020. The same was earlier proposed to be introduced from 1 April 2020.

Further, following persons have been exempted from issuing e-invoices or capturing dynamic QR code:

- Insurance company;
- Banking company;
- Financial institution;
- Non-banking financial institution;
- Goods transport agency;
- Passenger transportation service provider;
- Person supplying services by way of admission to exhibition of cinematograph films in multiplex screens
- Supplier of online information and database access or retrieval services located in a non-taxable territory, for supplies made to non-taxable online recipient.

Notification no. 13 and 14/2020-CT dated 21 March 2020

Amendment to CGST Rules

The key amendments are as follows:

- From 1 April 2020, Aadhar authentication shall be mandatory for obtaining registration under GST. Persons required to undergo Aadhar authentication are:
  - Authorized signatory of all types
  - Managing and authorized partners of a partnership firm
  - Karta of a Hindu Undivided Family
- The provisions for Aadhar authentication shall not apply to a person who is not a citizen of India and to persons other than those specified above
- If a person fails to undergo Aadhar authentication, then the registration shall be granted only after physical verification of the principle place of business in the presence of the said person, not later than 60 days from the date of application
- Mechanism for computing ITC reversal in case of capital goods used for effecting both, taxable and exempt supplies, has been rationalized
- Filing of Form GSTR-9C for FY 2018-19 has been relaxed for entities having aggregate turnover below INR5 crore
- Sub-rule 4A is inserted in Rule 86 to provide that if tax was paid wrongly or in excess by utilizing credit, then the refund amount shall be re-credited to the electronic credit ledger of the taxpayer. Tax liability discharged by utilizing credit, shall be refunded by re-crediting the electronic credit ledger. Outstanding tax demand shall be adjusted against amount of refund to be paid in cash
- For calculating refund of ITC in case of export of goods, the value of zero-rated supply is capped at 1.5 times the value of like goods supplied domestically
- Restriction on tax refund contained in Rule 96(10) shall not apply, if exemption is not claimed with respect to IGST or compensation cess at the time of import of inputs

- If sale proceeds w.r.t. export of goods are not realized within the period allowed under the Foreign Exchange Management Act, 1999 (FEMA), the refund amount shall be recovered from taxpayer along with interest. Subsequently, if sales proceeds are realized within the extended period permitted by Reserve Bank of India (RBI), the amount so recovered shall be refunded back

Notification no. 16-19/2020-CT all dated 23 March 2020

CBIC extends due date for filing of forms for certain taxpayers

The due date for filing Form GSTR-1, GSTR-3B and Form GSTR-7 by persons having principal place of business in UT of Jammu and Kashmir or UT of Ladakh or erstwhile state of Jammu and Kashmir has been extended for certain tax periods.

Notification no. 20-26/2020-CT all dated 23 March 2020 and Notification no. 42/2020-CT dated 5 May 2020

CBIC issues notification relating to due dates for filing of Form GSTR-1

The persons, whose aggregate turnover is up to INR1.5 crores shall furnish details of outward supplies in Form GSTR-1 for the quarter April to June 2020 and July to September 2020 by 31 July 2020 and 31 October 2020 respectively.

For persons having an aggregate turnover of more than INR15millions, the time limit to file Form GSTR-1 from April 2020 to September 2020 shall be 11th of the succeeding month.

Notification no. 27 and 28/2020-CT dated 23 March 2020

CBIC issues notification relating to due dates for filing of Form GSTR-3B

In case of taxpayers having aggregate turnover more than INR50M in the previous financial year, the due date of filing Form GSTR-3B for the months April 2020 to September 2020 would be 20th of the subsequent month.

In case of taxpayers having aggregate turnover of up to INR50M in the previous financial year, the due date shall be as follows:

Notification no. 29/2020-CT dated 23 March 2020

Sr. No.	Taxpayers registered in the state / union territory	Due date
1.	Chhattisgarh, Madhya Pradesh, Gujarat, Maharashtra, Karnataka, Goa, Kerala, Tamil Nadu, Telangana, Andhra Pradesh, the Union territories of Daman and Diu and Dadra and Nagar Haveli, Puducherry, Andaman and Nicobar Islands or Lakshadweep	22nd of subsequent month
2.	Himachal Pradesh, Punjab, Uttarakhand, Haryana, Rajasthan, Uttar Pradesh, Bihar, Sikkim, Arunachal Pradesh, Nagaland, Manipur, Mizoram, Tripura, Meghalaya, Assam, West Bengal, Jharkhand or Odisha, the Union territories of Jammu and Kashmir, Ladakh, Chandigarh or Delhi	24th of subsequent month

CBIC notifies relief measures for statutory compliance under GST in view of COVID-19 outbreak

A registered person opting to pay tax under composition scheme for FY 2020-21 can file the intimation in Form GST CMP-02 up to 30 June 2020. The due date to furnish details in Form GST ITC-03 (declaration of ITC reversal) by such person has been extended up to 31 July 2020.

The provisions of rule 36(4) of the CGST Rules,2017 shall not apply while claiming ITC in Form GSTR-3B for the months February to August 2020. However, Form GSTR-3B for the month of September 2020 shall be furnished with cumulative adjustment of ITC for February to August 2020.

Taxpayers having aggregate turnover up to INR50M can file Form GSTR-3B for the months February to April 2020 after due date without payment of interest and late fee, if filed within the specified time.

Taxpayers having aggregate turnover of more than INR50M can file Form GSTR-3B for the said period with reduced interest (Nil for the first 15 days from due date and 9% thereafter) and without any late fee. Waiver of interest and late fee is subject to the condition that the return is filed within the dates specified in the notification.

Late fee for delayed filing of Form GSTR-1 for the months March to May 2020 and quarter January to March 2020 has been waived provided the same is filed by the specified date.

The due date of filing Form GSTR-3B for May 2020 has been extended as follows:

Aggregate turnover	Revised due date	Taxpayer having principal place of business in
More than INR50M	27 June 2020	Any state or Union territory
Up to INR50M	12 July 2020	Chhattisgarh, Madhya Pradesh, Gujarat, Maharashtra, Karnataka, Goa, Kerala, Tamil Nadu, Telangana, Andhra Pradesh, Daman and Diu and Dadra and Nagar Haveli, Puducherry, Andaman and Nicobar Islands and Lakshadweep
Up to INR50M	14 July 2020	Himachal Pradesh, Punjab, Uttarakhand, Haryana, Rajasthan, Uttar Pradesh, Bihar, Sikkim, Arunachal Pradesh, Nagaland, Manipur, Mizoram, Tripura, Meghalaya, Assam, West Bengal, Jharkhand, Odisha, Jammu and Kashmir, Ladakh, Chandigarh and Delhi

Due date of filing Form GST CMP-08 (payment of self-assessed tax) by a composition taxpayer for the quarter January 2020 to March 2020 has been extended till 7 July 2020. Also, the due date of filing Form GSTR-4 (return by composition dealer) for FY 2019-20 has been extended till 15 July 2020.

In case where the last date for issuance of notice, notification, filing of appeal, furnishing of return, statements, etc. falls between 20 March 2020 to 29 June 2020, the same has been extended till 30 June 2020.

Notification no. 30-36/2020-CT all dated 3 April 2020, Circular no. 136/06/2020-GST dated 3 April 2020, Notification no. 40/2020-CT dated 5 May 2020

Amendment to CGST Rules made effective

Rule 87(13) has been inserted vide Notification no. 31/2019-CT dated 28 June 2019, which provided a registered person can transfer any amount of tax, interest, penalty, fee available in the electronic cash ledger from one head to another head under CGST, SGST, UTGST and IGST in Form GST PMT-09. The same has been made effective from 21 April 2020.

Notification no. 37/2020-CT dated 28 April 2020

CBIC extends due date of filing annual return and announces further relief measures

Companies shall be allowed to furnish Form GSTR-3B through electronic verification code (EVC) during the period 21 April 2020 to 30 June 2020.

A registered person can electronically furnish a Nil return (Form GSTR-3B) through SMS using the registered mobile number and it shall be verified using one-time password facility (this provision will be effective from a date to be notified later).

Validity of e-way bill generated on or before 24 March 2020 and expiring during the period 20 March 2020 to15 April 2020, has been further extended till 31 May 2020.

Due date of filing annual return and reconciliation statement for financial year 2018-19 has been extended to 30 September 2020.

Notification no. 38, 40 and 41/2020-CT all dated 5 May 2020

CBIC notifies amendment to credit transition provisions under GST

CBIC has issued a notification appointing 18 May 2020 as the date on which provisions of Section 128 of the Finance Act 2020 shall come into force.

Section 128 of the Finance Act 2020 amended Section 140 of the CGST Act retrospectively w.e.f. 1 July 2017.

The amendment provides power to the Government to prescribe time limit and manner of transition of the credits of duties and taxes from earlier tax regime into GST.

Notification no. 43/2020-CT dated 16 May 2020

Notifications – IGST (non-rate)

Change in place of supply of MRO services in respect of aircrafts

The place of supply for B2B maintenance, repair and overhaul (MRO) services in respect of aircraft has been changed to location of recipient.

Notification no. 02/2020-IT dated 26 March 2020

Notifications – CGST (Rate)

Change in tax rates

- Lottery run by state governments shall attract tax @ 28% effective 1 March 2020. Earlier, the same was taxed @ 12%
- GST rate on MRO services in respect of aircraft has been reduced from 18% to 5% with full ITC, effective 1 April 2020
- GST rate on all types of matches has been rationalized to 12%, effective 1 April 2020. Earlier, handmade matches attracted 5% GST and other matches attracted 18% GST
- Telephones/parts for manufacture of telephones for cellular networks or for other wireless networks shall attract tax @ 18% effective 1 April 2020. Earlier, the same were taxed @ 12%

Notification no. 1/2020-CT (Rate) dated 21 February 2020, Notification no. 02/2020-CT (Rate) dated 26 March 2020 and Notification no. 03/2020-CT (Rate) dated 25 March 2020

Circulars – CGST

Appellate authorities to dispose pending appeals expeditiously without waiting for the constitution of the appellate tribunal

Since the GST Appellate Tribunal (GSTAT) is yet to be constituted in many states and UTs, an appeal cannot be filed against an order passed by the Appellate Authority or Revisional Authority, within prescribed time limit.

The GSTAT has not been constituted in view of the order by Madras HC in case of Revenue Bar Assn. vs. Union of India [2019 (30) G.S.T.L. 584 (Mad)].

The appellate process is being kept pending by several appellate authorities on the ground that the GSTAT has been not constituted and till the time no remedy is available against their Order-in-Appeal, such appeals cannot be disposed.

It has been provided vide Removal of Difficulty Order No. 9/2019-CT dated 3 December 2019 that the prescribed time limit shall start from the later of the following dates:

(i) Date of communication of order; or

(ii) Date on which President of GSTAT enters office, after its constitution

Hence, as of now, the prescribed time limit to make application to GSTAT will be counted from the date on which President enters office. The GSTAT while passing order may mention in the preamble that appeal may be made to the appellate tribunal whenever it is constituted within three months from the date the President enters office. It has accordingly been advised that the appellate authorities dispose all pending appeals expeditiously without waiting for the constitution of the GSTAT.

Circular no. 132/2/2020-GST dated 18 March 2020

CBIC clarifies apportionment and transfer of ITC in case of business reorganization

As per proviso to Rule 41(1) of the CGST Rules, in case of demerger, ITC shall be apportioned in the ratio of value of assets of the new units as specified in the demerger scheme.

The circular clarifies the following:

- While apportioning ITC as per the proviso, value of assets of new units shall be taken at the state level (i.e., at the level of each distinct person) and not at the entity level
- Proviso not only covers demerger but applies to all forms of business reorganizations resulting in partial transfer of business assets along with liabilities
- Ratio for apportionment of ITC need not be applied separately in respect of each tax head, viz. CGST, SGST and IGST
- Transferor is at liberty to determine the amount to be transferred under each tax head, subject to availability of ITC balance under such head
- Apportionment formula shall be applied on ITC balance available in the electronic credit ledger on the date of filing of Form GST ITC-02 by the transferor
- Further, the ratio of the value of assets shall be taken as on the appointed date of demerger

Circular no. 133/03/2020-GST dated 23 March 2020

CBIC clarifies issues relating to GST refund

The key clarifications are:

- The restriction on clubbing of tax periods, spread across different financial years, while filing refund claim has been removed

- Provisions of Section 54(3) of the CGST Act dealing with refund on account of inverted duty structure shall not apply in cases where the credit accumulation is due to change in the tax rate of the same goods (i.e., where input and output supplies are same)
- With a view to stop unintended encashment of ITC balances, refund of tax paid on supplies (other than zero-rated supplies) shall be admissible in proportion to the original mode of payment of such tax, i.e., through electronic cash or credit ledger
- Refund of unutilized ITC shall be restricted to cover only those invoices which are uploaded by the supplier
- in Form GSTR-1 and reflected in Form GSTR-2A of the applicant
- The applicant is also required to mention Harmonized System Nomenclature (HSN)/ Service Accounting Code (SAC) of the inward supplies in Annexure B (statement of invoices to be submitted along with application for refund of unutilized ITC)

The clarifications issued earlier stands modified accordingly.

Circular no. 135/05/2020-GST dated 31 March 2020

CBIC clarifies certain issues under GST law

In cases where GST is paid on advances received for a service contract which subsequently got cancelled:

- Credit note is required to be issued if invoice is issued before the supply of the service. However, if there is no output liability against which a credit note can be adjusted, then a refund claim can be filed through Form GST RFD-01
- Refund voucher is required to be issued if no invoice has been issued. Application for refund can be made by filing Form GST RFD-01

In relation to Notification no. 35/2020- CT dated 3 April 2020, it has been clarified that:

- The time limit for filing of LUT for FY 2020-21 stands extended to 30 June 2020. Taxpayers may quote the reference number of the LUT for FY 2019-20 in the relevant documents
- The due date for furnishing Form GSTR-7 along with deposit of tax deducted for the said period stands extended till 30 June 2020
- If the due date for filing a refund application falls during the said period, the same shall stand extended till 30 June 2020
- A registered supplier can supply goods to a merchant exporter at 0.1% provided the merchant exporter exports the goods within a period of 90 days from the date of invoice. If the completion of such 90 days falls within the said period, then the requirement of exporting the goods within 90 days gets extended to 30 June 2020
- The due date of furnishing Form GST ITC-04 (in relation to goods dispatched/received from a job worker) for the quarter ending March 2020 stands extended to 30 June 2020

Circular no. 137/07/2020-GST dated 13 April 2020 and Circular no. 138/08/2020-GST dated 6 May 2020

Customs

Notifications (Tariff)

Extension of the period of validity of Export Performance Certificates for FY 2019-20

The period of validity of export performance certificates issued for the FY 2019-20 and expiring on 31 March 2020, has been extended till 30 September 2020, for import of unutilized value and quantity of goods specified in the said certificate.

Notification no. 23/2020 – Customs dated 14 May 2020

Circulars

Measure to facilitate trade during lockdown period

In light of the difficulties faced by importers and exporters during the lockdown period in obtaining notarized stamp papers for furnishing bonds, the CBIC has relaxed the requirement to submit bonds under Sections 18, 59,143 and under Notifications issued in terms of Section 25 of the Customs Act, 1962, subject to compliance of certain conditions.

The above relaxation is currently available up to 15 June 2020 and till then Customs field formation may accept request for submission of an undertaking from the importer/exporter in lieu of a bond. Person availing the said facility shall submit a proper bond by 30 June 2020. The relaxations are subject to review by board at the end of the lockdown period.

Circular no. 17/ 2020 - Customs dated 3 April 2020; Circular no. 21/2020 - Customs dated 21 April 2020; Circular no. 23/2020 - Customs dated 11 May 2020; Circular no. 26/2020 dated 29 May 2020

PDF based Gatepass and Out of Charge copy of Bill of Entry

In order to make customs clearance process contact-less in light of COVID-19 pandemic, CBIC decided to enable electronic communication of PDF based eGatepass and final electronic Out of Charge (eOoC) copy of Bill of Entry (BoE) to the importers and customs brokers.

The Final eOoC copy of BoE and eGatepass copy will be emailed to the concerned customs broker and importer once the Out of Charge is granted. The eGatepass copy will be used by the Gate Officer or the Custodian to allow physical exit of the imported goods from the customs area.

The above measure is made effective from 15 April 2020.

Circular no. 19/ 2020 -Customs dated 13 April 2020

Extension of facility for correction of SB005 error

There were numerous shipping bills having invoice mismatches between the GST returns and the customs data presented along with the shipping bills resulting in SB005 error. This results in blocking of the IGST refund disbursal, which is otherwise fully automated, except for the refund scroll generation.

In view of the same, Circulars were issued to provide interim measures by extending the facility of SB005 error correction in the Customs EDI system. Considering the challenges faced due to COVID-19 pandemic, CBIC has decided to extend the above facility for shipping bills with date up to 31 December 2019.

Circular no. 22/2020 -Customs dated 21 April 2020

Circulars regarding RFID sealing of goods rescinded

Circular no. 19/2018 – Customs dated 18 June 2018 and Circular no. 10/2020 - Customs dated 7 February 2020 were issued to provide for RFID sealing of goods to be deposited in or removed from Customs Bonded Warehouse. However, implementation of the said Circulars was deferred.

CBIC is considering a comprehensive Circular by reviewing the modalities under the above Circulars. In view of the same, the aforesaid Circulars which were yet to be operationalized, are rescinded.

Circular no. 25/2020 - Customs dated 18 May 2020

Instructions

Special Refund and Drawback Disposal Drive

As a part of trade facilitation measure and to provide immediate relief to taxpayers in order to mitigate hardship caused due to COVID-19 situation, the Ministry of Finance decided to expeditiously process and dispose all the pending refund claims under Customs and Goods and Services Tax (GST).

Under Customs, there shall be a "Special Refund and Drawback Disposal Drive" with the objective of priority processing and disposal of all refund and drawback claims.

Under GST, while the law provides 15 days for issuing acknowledgement or deficiency memo and 60 days for disposing of refund claims without any liability to pay interest, all pending refund applications shall be taken up immediately for processing.

Due diligence, however, may be done before granting the refunds on merits, considering all the relevant legal provisions, notifications, circulars and instructions.

For facilitation of taxpayers, all communication shall be done using official email IDs. Since GST refund process does not warrant any physical submission of documents, any such practice must be avoided.

Instruction No. 3/2020-Customs and 2/1/2020-GST both dated 9 April 2020

Incidence of NCCD for calculation of brand rate of duty drawback

CBIC has clarified that the incidence of National Calamity Contingent Duty (NCCD), wherever applicable, is required to be factored in for the calculation of brand rate of duty drawback.

Instruction no. 5/2020 – Customs dated 12 May 2020

Foreign Trade Policy (FTP)

Notifications

FTP 2015-2020 extended till 31 March 2020

The validity of FTP, Handbook of Procedures (HBP) and export promotion schemes (except Service Exports from India Scheme) has been extended by one year from 31 March 2020 to 31 March 2021. Decision on continuation of Service Exports from India Scheme (SEIS) will be taken and notified subsequently.

Category of services eligible under SEIS and rate of reward on the said services for the period 1 April 2019 to 31 March 2020 will be notified separately.

Exemption from payment of IGST and compensation cess on imports made under Advance Authorisation (AA) and Export Promotion Capital Goods (EPCG) scheme has been extended from 31 March 2020 to 31 March 2021.

A similar extension is also given for imports made by Export Oriented Units (EOU), Electronic Hardware Technology Park (EHTP), Software Technology Park (STP) and Bio-Technology Park (BTP).

For all Duty-Free Import Authorisation (DFIA), AA and EPCG authorizations, where validity for import of goods and export obligation period (wherever applicable) is expiring between 1 February 2020 and 31 July 2020, extension of six months from the date of expiry has been provided. Further, procedural details regarding such extension has been clarified.

Amendments are also made in HBP for extending due dates for filing various applications and refund claims.

Notification No. 57/2015-2020 dated 31 March 2020;
Public Notice No. 67/2015-2020 dated 31 March 2020;
Policy Circular No. 35/2015-20 dated 23 April 2020;
Notification No. 16/2020 – Customs dated 24 March 2020;
Notification No. 18/2020 – Customs dated 30 March 2020

Public notice

Proformas for application and end use certificate for implementation of GAICT notified

Proformas of application and end use certificate has been notified to implement the Policy on Global Authorization of Intra-Company Transfers (GAICT) for export/re-export of dual use Special Chemical, Organisms, Materials, Equipment and Technologies (SCOMET) items/ software/ technology, between Indian subsidiary to its foreign parent company or to subsidiaries of such parent company.

Public Notice No. 65/2015-2020 dated 17 March 2020

Extension for date of implementation of track and trace system for export of pharmaceuticals and drugs consignment

The date for implementation of track-and-trace system for export of pharmaceuticals and drugs consignment with respect to maintaining parent-child relationship in packaging levels and its central portal has been extended from 1 April 2020 to 1 October 2020, for both SSI and non-SSI manufactured drugs.

Public Notice no.66/2015-2020 dated 30 March 2020

Extension of time limit for certain requests by EPCG holder

The time period to submit request to Regional Authorities for block-wise extension, extension in Export Obligation Period and submission of installation certificate under EPCG scheme has been further extended up to 31 March 2021.

Public Notice no.01/2015-2020 dated 7 April 2020

Trade Notice

Retrospective issuance of CoO under India's Trade Agreement

Due to COVID-19 pandemic, Indian agencies authorized to issue Certificate of Origin (CoO) under various trade are temporarily closed and unable to issue such certificates. In view of the same, certificates shall be issued retrospectively by the concerned agencies after re-opening of their offices.

Further, it has been informed that where the application for CoO has been raised on digital platform, the same would be processed by the authorized agencies and the digitally signed copies of certificate will be transmitted to the applicants. The physical copies of such CoO would be subsequently issued once offices of relevant agencies re-open.

In the interim period, it was requested to the competent authorities in the importing countries with whom India has a trade agreement to allow eligible imports with preferential treatment on a retrospective basis subject to subsequent production of CoO by Indian exporters. They may also allow such imports provisionally on submission of digitally signed certificates or physical certificates unsigned by competent authority subject to any other conditions.

India customs authorities would also clear consignments provisionally at preferential duty with digitally signed certificates or physical certificates unsigned by the competent authority of the exporting country subject to conditions.

Trade Notice No. 59/2019-20 dated 28 March 2020; Trade Notice No. 62/2019-20 dated 6 April 2020; Circular No. 18/2020 – Customs dated 11 April 2020; Instruction No. 4/2020 – Customs dated 4 May 2020

Extension of validity of RCMC

It has been decided that Regional Authorities of Directorate General of Foreign Trade (DGFT) shall not insist on valid Registration cum Membership Certificate (RCMC) from the applicants for any incentives/authorizations till 30 September 2020 where such certificate has expired on or before 31 March 2020.

Trade Notice No. 60/2019-20 dated 31 March 2020

Acceptance of scanned copies of documents for registration under EU GSP

Applicants are unable to visit the offices of local users to physically submit the pre-registration application form for registration under European Union's Generalised System of Preferences (EU GSP) due to restrictions imposed on account of COVID-19 pandemic.

In view of the same, it has been instructed to local users to accept scanned copies of pre-registration application and other relevant documents from the applicant exporters for processing their applications.

Trade Notice No. 61/2019-20 dated 2 April 2020

Electronic filling and issuance of preferential CoO for exports

With effect from 7 April 2020, preferential CoO for exports to certain countries, apart from the countries already notified earlier, under respective trade agreements, shall be issued only from such online platform.

In view of the movement restrictions in place due to COVID-19 pandemic in India, the designated agencies will issue digitally signed electronic CoO. As and when the functioning of the issuing agency offices resumes, the CoO so issued online will also be made available in hard copy with ink-signature of the issuing officer to the applicant exporter. However, the certificate issuance process will continue to remain online.

Trade Notice No. 1/2020-21 dated 7 April 2020

MEIS benefit available only up to 31 December 2020

Benefits under MEIS for any item/tariff line/HS Code currently listed in Appendix 3B, Table 2 (MEIS Schedule) will be available only up to 31 December 2020.

Prior to 31 December 2020 if an item/tariff line/HS code is notified to be covered under Remission of Duties or Taxes on Export Products (RoDTEP) Scheme, it would at the same time be removed from coverage under MEIS.

Detailed operational framework for the Scheme for RoDTEP will be notified separately in consultation with Department of Revenue, Ministry of Finance.

Trade Notice No. 3/2020-21 dated 15 April 2020

Application for Free Sale and Commerce Certificate

In view of the COVID-19 pandemic, applicants of Free Sale and Commerce Certificate are advised to send their applications, as per the format given in ANF 2H, to the official email ID of the concerned Regional Authority after payment of fees through e-MPS system.

Trade Notice No. 7/2020-21 dated 28 April 2020

Submission of scanned copy of PSIC

Import policy for metallic scrap and waste requires importer to furnish Pre-Shipment Inspection Certificate (PSIC) for customs clearance of metal scrap and waste. Due to COVID-19 related lockdown, importers have been facing difficulties in submitting the original copy of PSIC.

In view of the above, DGFT has decided that a scanned copy of PSIC may be accepted for the purpose of customs clearance on providing an undertaking to the to the concerned customs authority. However, the original copy of PSIC is required to be submitted to the Customs within 60 days of clearance.

The above facility is allowed till 30 June 2020.

Trade Notice No. 9/2020-21 dated 6 May 2020

Extension of Interest Equalisation Scheme for pre and post shipment Rupee Export Credit

Interest Equalisation Scheme for pre and post shipment Rupee Export Credit is further extended to 31 March 2021 with the same scope and coverage. Guidelines and notifications issued by RBI on the subject matter may be referred in this regard.

Trade Notice No. 11/2020-21 dated 14 May 2020

Circular

Institution or continuation of proceedings under FT (D&R) Act against companies against whom proceedings have been initiated by NCLT under IBC, 2016

It is clarified that proceedings under Foreign Trade (Development & Regulation) Act, 1992 (FT(D&R) Act) and Rules framed thereunder can be instituted or continued against companies in respect of which proceedings have been instituted under Insolvency and Bankruptcy Code, 2016.

ECA Circular No. 32/2015-20 dated 20 March 2020

Central Excise

Notifications (Non-tariff)

Government extends timelines prescribed under Sabka Vishwas (Legacy Dispute Resolution) Scheme Rules, 2019

CBIC has extended timelines prescribed under Sabka Vishwas (Legacy Dispute Resolution) Scheme Rules, 2019.

As per the Notification, the revised due dates are as follows:

Particulars	Earlier due date	Revised due date
Issuance of Form SVLDRS-2 by designated committee indicating the estimate of amount payable	30 days from the receipt of declaration	1 May 2020
Issuance of Form SVLDRS-3 by designated committee indicating the amount payable	60 days from the receipt of declaration	31 May 2020
Payment by declarant	30 days from the issuance of Form SVLDRS-3	30 June 2020

Notification No.01/2020 - Central Excise (N.T.) dated 14 May 2020

Foreign Exchange Management Act, 1999 (FEMA)

1. Reserve Bank of India (RBI) amends the Foreign Exchange Management (Manner of Receipt and Payment) Regulations, 2016 (FEMA 14R)

RBI amends the provisions of FEMA 14R to permit Japanese Yen for facilitating transactions /settlements, amongst participants in the Asian Clearing Union (ACU). The key changes are provided as under:

- In terms of the erstwhile regulations, settlement of payments amongst the ACU member countries was permissible only through debit/credit to ACU Dollar Account and/or ACU Euro Account.
- However, pursuant to the amendment, the ACU member countries will have the option to settle their transactions in ACU Japanese Yen, in addition to ACU Dollar or ACU Euro.
- Accordingly, authorized dealer (AD) banks are allowed to open and maintain ACU Dollar, ACU Euro and ACU Japanese Yen accounts with their correspondent banks in other participating countries. All eligible payments are required to be settled by the concerned banks through these accounts.
- These amendments shall be effective from 6 March 2020.

Source: Foreign Exchange Management (Manner of Receipt and Payment) (Second Amendment) Regulations 2020 dated 4 March 2020 and notified in the Gazette of India on 6 March 2020 read with A.P. (DIR Series) Circular No. 22 dated 17 March 2020

2. RBI introduces Fully Accessible Route (FAR) for investment by non-residents in Government securities

In line with announcement made in the Union Budget 2020-21 that certain specified categories of Government of India (GoI) securities (G-Secs) would be opened fully for non-resident (NR) investors without any restrictions, apart from being available to domestic investors, the RBI in consultation with the GoI has introduced a separate route, viz., FAR for investment by NRs in securities issued by the GoI.

The scheme is applicable for G-Secs as periodically notified by the RBI for investment under the FAR route (Specified securities). This scheme shall operate along with the two existing routes, viz., the Medium Term Framework (MTF) and the Voluntary Retention Route (VRR). The details of the scheme are provided as under:

- Investment limits: Under the FAR, there shall be no quantitative limit on investment by NR investors in the Specified securities. Investments made under FAR shall also not be subject to applicable conditions related to minimum residual maturity, security-wise limit and concentration limits.
- Treatment of existing investments: Existing investments by NR investors in the Specified securities shall be reckoned under the FAR.
- Process for investment and reporting: Foreign portfolio investors (FPIs), Non-Resident Indians (NRIs), Overseas Citizens of India (OCIs) and other entities permitted to invest in G-Secs under the Debt Regulations can invest under this route as hitherto under the existing arrangements. All other NR investors may invest through International Central Securities Depositories. The process for such investments will be notified in due course.
- Transition for FPIs: FPIs who currently hold investments in the Specified securities shall, within one year from the date on which the FAR comes into effect, readjust their investments under the MTF to comply with the applicable requirements.

Source: A. P. (DIR Series) Circular No. 25 dated 30 March 2020 read with FMRD.FMSD.No.25/14.01.006/2019-20 dated 30 March 2020.

3. RBI extends the period of realization and repatriation of export proceeds

- In view of the pandemic COVID-19, the RBI in consultation with the GoI I has increased the present period of realization and repatriation to India of the amount representing the full export value of goods or software or services exported, from nine months to fifteen months from the date of export, for the exports made on or before 31 July 2020.

- However, the provisions with regard to period of realization and repatriation to India of the full export value of goods exported to warehouses established outside India remain unchanged.

Source: A. P. (DIR Series) Circular No. 27 dated 1 April 2020 read with Foreign Exchange Management (Export of Goods and Services) (Amendment) Regulations, 2020 dated 31 March 2020

4. RBI revises FPI investment limits in G-Secs for financial year (FY) 2020-21

- The limits for FPI investment in G-secs and State Development Loans (SDLs) shall remain unchanged at 6% and 2%, respectively, of outstanding stocks of securities for FY 2020-21.
- Further, the revised limits (in absolute terms) for the different categories is provided as under:

5. Foreign direct investment (FDI) from neighboring countries brought under government approval route

Department for Promotion of Industry and Internal Trade (DPIIT) amends the FDI policy by prescribing a requirement for prior government approval for any investment from India's neighboring countries, i.e., China, Bangladesh, Bhutan, Afghanistan, Myanmar, Nepal and Pakistan (Specified Investors). The key changes are provided as under:

- In terms of the extant FDI policy, FDI is permissible under two routes, i.e., automatic route and government approval route. Presently, majority of the sectors are under the automatic route implying that FDI can be received without any approval subject to complying with performance linked conditions (if any) prescribed with respect to that sector and the procedural requirements. Under the government approval route, investment in the capital of an Indian entity can only be made by a NR, subject to obtaining a prior government approval.

Revised Investment Limits for FY 2020-21 (INR Crore)

	G-Sec General	G-Sec Long Term	SDL- General	SDL - Long Term	Corporate Bonds
Current Limit	2,46,100	1,15,100	61,200	7100	3,17,000
Revised limit for half year Apr-Sept 2020	2,34,531	1,03,531	64,415	7100	4,29,244
Revised limit for half year Oct-Mar, 2020	2,34,531	1,03,531	67,630	7100	5,41,488

Source: A.P. (DIR Series) Circular No. 30 dated 15 April 2020 read with A.P. (DIR Series) Circular No.24 dated 30 March 2020

- In terms of the extant FDI policy, foreign investments only by a citizen or entity incorporated in Bangladesh and Pakistan are under the government approval route. In addition to that, any foreign investments from Pakistan are prohibited in sectors such as defense, space, atomic energy and other sectors prohibited for foreign investment in India.
- Considering the challenging business environment for the Indian entities due to the outbreak of COVID-19, the GoI in order to curb any crisis-driven takeover/acquisitions of any Indian entity has amended the extant FDI policy by restricting foreign investments from the Specified Investors.
- Pursuant to the amendment, FDI from any of the Specified Investors shall be under the government approval route.
- In addition, any FDI, wherein, beneficial ownership is vested with an entity or citizen of such countries, will also be covered under the government approval route.
- The requirement to obtain prior government approval will also be applicable on the transfer of ownership of existing or future FDI, directly or indirectly Indian entity, resulting in beneficial ownership in favor of the Specified Investors.
- The amendment has been made effective from 22 April 2020.

Source: Press note No. 3 (2020 Series) dated 17 April 2020 read with Foreign Exchange Management (Non-Debt Instruments) Amendment Rules, 2020 dated 22 April 2020.

6. GoI further amends the Foreign Exchange Management (Non-debt Instruments) Rules, 2019 (NDI Rules)

The GoI amends the NDI Rules and the key changes are provided as under:

- In terms of the erstwhile NDI rules, an investment by a person resident outside India in equity instruments issued by an Indian company as rights issue that were renounced by a person resident in India, was not subject to the specified pricing guidelines. However, pursuant to the amendment, such investments will now be subject to specified pricing guidelines as prescribed under the NDI Rules.
- The Press Note 1 of 2020 issued by DPIIT has been notified, thus allowing FDI up to 100% in intermediaries or insurance intermediaries, including, *inter alia*, insurance brokers, re-insurance brokers, insurance consultants, corporate agents, third party administrator, surveyors and loss assessors and such other entities, as may be notified by the Insurance Regulatory and Development Authority of India (IRDA) from time to time, subject to compliance with certain other conditions.
- In terms of the erstwhile FDI guidelines on single brand retail trading (SBRT), the date of opening of the first brick and mortar store was construed to be the date of commencement of business. However, given that entities engaged in SBRT have been allowed to start online retail business before opening the brick and mortar store, it has been further clarified that the sourcing norms shall not be applicable for a period of three years from commencement of business, which could be either opening of the first brick and mortar store or start of online retail, whichever is earlier.
- It has been clarified that, on account of breach of prescribed limits of investments by FPI, such FPIs shall have the option of divesting their holdings within five trading days from the date of settlement of the trades causing the breach. In case the FPI chooses not to divest, then the entire investment in the company by such FPI and its investor group shall be considered as investment under FDI and the FPI and its investor group shall not make further portfolio investment in the company concerned. The FPI, through its designated custodian, shall bring the same to the notice of the depositories as well as the concerned company for effecting necessary changes in their records, within seven trading days from the date of settlement of the trades causing the breach. The divestment of holdings by the FPI and the reclassification of FPI investment as FDI shall be subject to further conditions, if any, specified by Securities and Exchange Board of India (SEBI) and RBI in this regard. The breach of the said aggregate or sectoral limit on account of such acquisition for the period between the acquisition and sale or conversion to FDI within the prescribed time, shall not be reckoned as a contravention in terms of the NDI rules.

Source: Foreign Exchange Management (Non-Debt Instruments) (Second Amendment) Rules, 2020 dated 27 April 2020

7. **RBI provides relaxations under VRR for FPI**

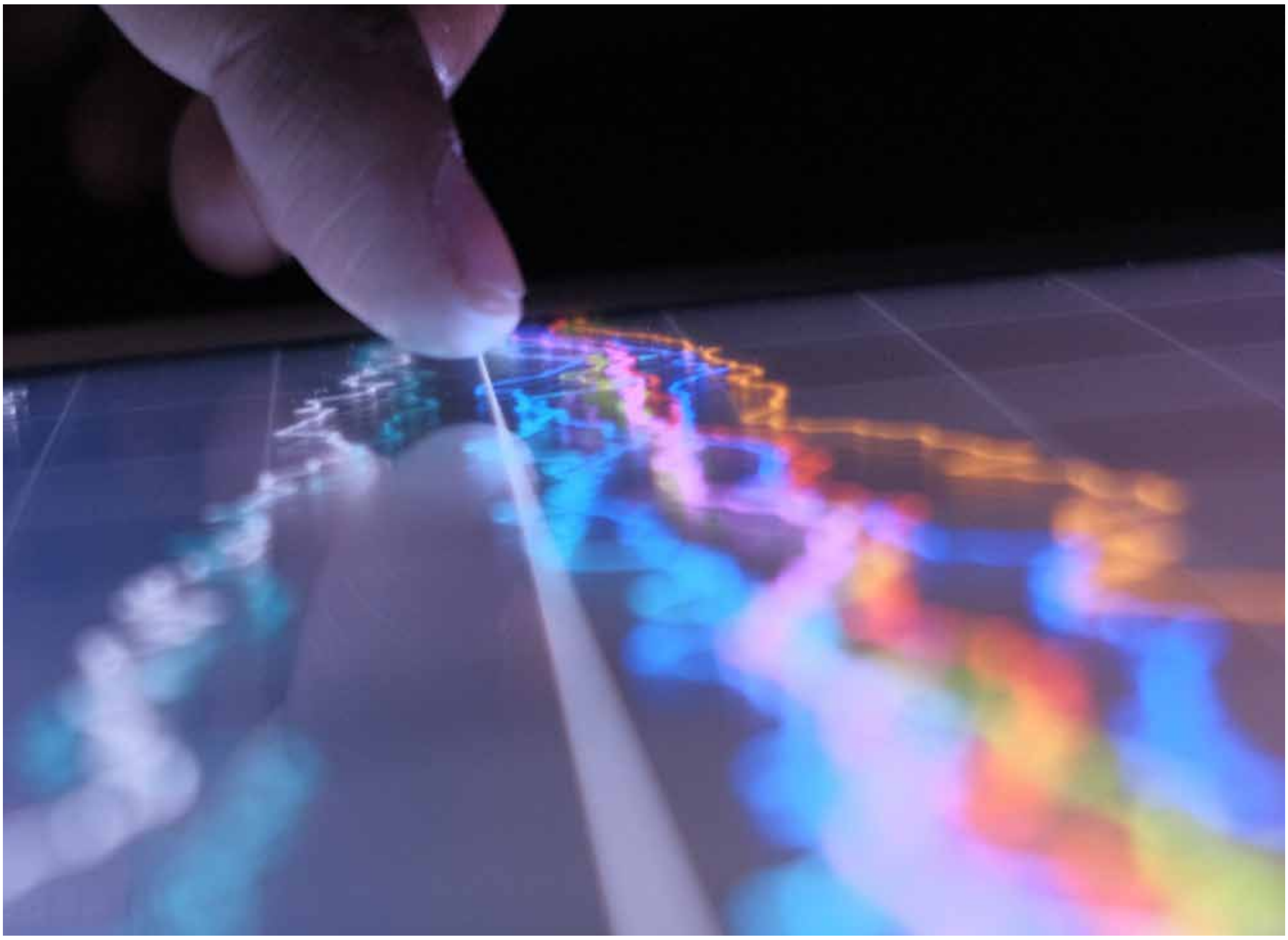
- In terms of the extant guidelines on VRR for FPIs, successful allottees are required to invest 75% of their Committed Portfolio Size (CPS) within three months from the date of allotment.
- In view of the disruptions caused by COVID-19 pandemic, the RBI has allowed FPIs that have been allotted investment limits, between 24 January 2020 (the date of reopening of allotment of investment limits) and 30 April 2020 an additional time of three months to invest 75% of their CPS.
- For FPIs availing the additional time, the retention period for the investments (committed by them at the time of allotment of investment limit) would be reset to commence from the date that the FPI invests 75% of CPS.

Source: AP (DIR Series) Circular No. 32 dated 22 May 2020 read with the Statement on Developmental and Regulatory Policies dated 22 May 2020

8. **RBI extends time limit for realization of import proceeds**

- In terms of the extant guidelines on imports of goods and services, remittances against normal imports (i.e. excluding import of gold/diamonds and precious stones/jewellery) should be completed not later than six months from the date of shipment, except in cases where amounts are withheld towards guarantee of performance, etc.
- In view of the disruptions due to outbreak of COVID-19 pandemic, the RBI has extended the time period for realization of such import proceeds from six months to twelve months from the date of shipment for such imports made on or before 31 July 31, 2020.

Source: AP (DIR Series) Circular No. 33 dated 22 May 2020 read with the Statement on Developmental and Regulatory Policies dated 22 May 2020



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Compilation of Tax Alerts

Direct Tax

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Sl. No.	Title	Date of the alert	Citation/Notification/ Circular
1	Central Government notified rules and forms for settlement under the Direct Tax Vivad se Vishwas Act, 2020	20 March 2020	CBDT Notification No. 18 of 2020 dated 18 March 2020
2	Tribunal allows set-off of business losses against dividend income received from specified foreign company taxable at special rates	20 March 2020	[ITA No. 3424/Mum/2019]
3	Key amendments to Finance Bill, 2020 at enactment stage	24 March 2020	Amendments introduced by FM while moving the bill for approval by Lok Sabha
4	COVID-19 Impact – Finance Minister announces reliefs in respect of direct tax statutory and compliance requirements	24 March 2020	Various measures introduced by FM on 24 March 2020
5	Mumbai Tribunal rules non-resident celebrity performing at promotional event outside India, has business connection in India, where such performance benefits business carried out in India	24 March 2020	[TS-172-ITAT-2020 (Mum)] Volkswagen Finance Pvt. Ltd. v. ITO
6	Madras High Court rules payment to foreign law firm in connection with acquisition of business abroad taxable as FTS, not eligible for source rule exclusion under domestic law	27 March 2020	[TS-178-HC-2020(MAD)] Shriram Capital Ltd. v. The Director of Income Tax
7	Foreign investors need to consider impact of India's new dividend withholding tax	30 March 2020	Significant change in the current system of dividend taxation under the ITL
8	COVID-19 impact - extension of applicability of certificate for lower or nil TDS and TCS	31 March 2020	CBDT order dated F. No. 275/25/2020-IT(B) dated 31 March 2020
9	COVID 19 Impact - Government extends various timelines up to 30 June 2020 and provides relaxations under various direct tax laws in India	1 April 2020	Taxation and Other Laws (Relaxation of Certain Provisions) Ordinance, 2020 promulgated by GoI on 31 March 2020
10	India's Finance Act, 2020 introduces amendments to transfer pricing provisions	3 April 2020	Amendments to TP provisions introduced by FA 2020
11	Extension of validity of Form 15G and Form 15H applicable for tax year 2019-20 for non-withholding of tax to 30 June 2020	5 April 2020	CBDT order F.No. 275/25/2020-IT(B) dated 3 April 2020
12	India extends equalization levy scope to cover e-commerce supply or services	5 April 2020	Expansion of scope of EL at the enactment stage of FB 2020
13	E-mail procedure for disposal of pending application of lower withholding of taxes of tax year 2019-20	6 April 2020	CBDT order dated 3 April 2020
14	Government of India directs to provide immediate refunds due under the Income-tax law for cases where refund is up to INR0.5M	9 April 2020	GOI Press release dated 8 April 2020
15	Government of India clarifies employer can make consolidated donations to PM CARES Fund on behalf of employees and issue receipts to them	10 April 2020	CBDT clarification F.No.178/7/2020-ITA-1 dated 9 April 2020

Sl. No.	Title	Date of the alert	Citation/Notification/ Circular
16	CBDT issues clarifications on relaxation for lower withholding certificates for tax years 2020-21 and 2019-20	11 April 2020	CBDT clarifications dated 9 April 2020
17	CBDT permits employers to consider new optional concessional tax regime for salary withholding	13 April 2020	CBDT Circular No. C1 of 2020 dated 13 April 2020
18	New labor codes, provident fund and other employment related updates on account of COVID-19	15 April 2020	New proposed labor codes, provident fund and other employment related updates on account of COVID-19
19	AAR rules that 50% benchmark to evaluate "substantial value" for indirect transfer taxation in India, applies retrospectively	21 April 2020	[AAR nos. 1555 to 1564 of 2013]
20	CBDT issues Revised Frequently Asked Questions in relation to Vivad Se Vishwas Act, 2020	22 April 2020	CBDT Circular No 9 of 2020 dated 22 April 2020
21	CBDT defers reporting of GAAR and GST particulars in the Tax Audit Report till 31 March 2021	28 April 2020	CBDT order dated 24 April 2020
22	SC denies benefit of mutuality when contribution is received from non-member to common fund and involves profit motive	28 April 2020	Yum! Restaurants Marketing Private Limited v. CIT - [TS-211-SC-2020]
23	SC rules on the obligation to withhold taxes on guarantee fees paid to various non-resident sports associations	1 May 2020	PILCOM v. CIT [TS-219-SC-2020]
24	CBDT defers applicability of revamped registration procedure for existing and new charitable and research institutions from 1 June 2020 to 1 October 2020	9 May 2020	CBDT Press release dated 8 May 2020
25	India publishes amended rules on mutual agreement procedure	9 May 2020	CBDT Notification dated 6 May 2020 amending MAP rules
26	Government of India announces first tranche of COVID-19 direct tax relief measures under "Self-Reliant India Movement" announced by Prime Minister	13 May 2020	First tranche of 15 measures announced by FM on 13 May 2020
27	CBDT provides guidance on reduction in withholding tax rates for residents announced by Finance Minister	14 May 2020	CBDT Press Release dated 13 May 2020
28	Global Tax Alert - India amends Mutual Agreement Procedure rules	21 May 2020	CBDT Notification dated 6 May 2020 amending MAP rules
29	CBDT exempts taxpayers carrying on only B2B transactions from providing prescribed mandatory electronic modes of payment	21 May 2020	Circular No. 12/2020 dated 20 May 2020
30	India Tax Administration extends applicability of transfer pricing safe harbor rules to financial year 2019-20	28 May 2020	Safe harbour rules amended by CBDT on 20 May 2020
31	CBDT notifies the rules prescribing the minimum remuneration to be paid to Indian fund managers under the safe harbor regime for onshore management of offshore funds	29 May 2020	CBDT Notification No. 20 of 2020 dated 27 May 2020
32	CBDT issues revised Form 26AS to include additional information relating to specified financial transactions, demands and refunds, completed and pending assessments etc.	29 May 2020	CBDT Notification No. 30/2020 dated 28 May 2020

Sl. No.	Title	Date of the alert	Citation/Notification/ Circular
1	GST Council recommends various trade facilitation measures and defers implementation of new return filing and e-invoicing system	16 March 2020	39th meeting of GST council on 14 March 2020
2	Cabinet approves scheme for Remission of Duties and Taxes on Exported Products	16 March 2020	Cabinet Committee on Economic Affairs' Press release dated 13 March 2020
3	AAAR modifies its earlier order and treats process of electricity generation using coal given by the principal as job work	18 March 2020	[2020- TIOL-AAAR-GST]
4	FM announces relief measures relating to compliance under Indirect taxes	25 March 2020	Relief measures announced by FM on 24 March 2020
5	CBIC issues Notification exempting foreign airline companies from furnishing Form GSTR-9C	24 March 2020	CBIC Notification No. 9/2020 – Central Tax dated 16 March 2020
6	CBIC amends CGST rules relating to refunds and input tax credit	28 March 2020	Notification Nos. 16 to 19/2020 – Central Tax dated 23 March 2020 and
7	CBIC clarifies apportionment and transfer of ITC in case of business reorganization	31 March 2020	CBIC Circular No.133/03/2020-GST dated 23 March 2020
8	HC upholds powers to conduct service tax audit even after introduction of GST	31 March 2020	AARGUS Global Logistics Pvt Ltd v. Union of India & ANR. [TS-192-HC-2020(DEL)-ST]
9	Government extends FTP 2015-2020 till 31 March 2021 and announces various relief measures	4 April 2020	DGFT Notification No. 57/2015-2020 and Public Notice No. 67/2015- 2020 dated 31 March 2020
10	CBIC clarifies issues relating to GST refund	6 April 2020	CBIC Circular No.135/05/2020 - GST
11	CBIC notifies relief measures for statutory compliance under GST	6 April 2020	CBIC Notification Nos. 30-36/2020-CT and Circular No. 136/06/2020-GST all dated 3 April 2020
12	CBIC notifies special procedure for corporate debtors undergoing insolvency resolution process	7 April 2020	Notification No.11/2020 – Central Tax dated 21 March 2020 and Circular No. 134/04/2020-GST dated 23 March 2020
13	CBIC issues instructions to expedite processing and disposal of all pending refund and drawback claims	13 April 2020	CBIC Instruction No. 3/2020-Customs and 2/1/2020-GST, both dated 9 April 2020

Sl. No.	Title	Date of the alert	Citation/Notification/ Circular
14	SC holds amendment to exemption notification in public interest is not hit by doctrine of promissory estoppel	1 May 2020	Union of India & Another Etc. v. V.V.F Limited & Another Etc. Etc. [TS-232-SC-2020-EXC]
15	CBIC extends due date of filing annual return and announces further relief measures under GST	8 May 2020	CBIC Notification Nos. 38-41/2020-Central tax dated 5 May 2020
16	HC allows transition of credits to all taxpayers till 30 June 2020	8 May 2020	Brand Equity Treaties Ltd. v. The Union of India & ORS. [2020-TIOL-900-HC-DEL-GST]
17	Government extends timelines prescribed under Sabka Vishwas (Legacy Dispute Resolution) Scheme	15 May 2020	CBIC Notification No.01/2020- Central Excise (N.T.) dated 14 May 2020
18	CBIC notifies amendment to credit transition provisions under GST	18 May 2020	CBIC Notification No. 43/2020- Central Tax dated 16 May 2020
19	HC allows rectification of GSTR-3B of the period in which ITC claim was due	25 May 2020	[2020-TIOL-901-HC-DEL-GST]

Regulatory

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1	Capital gains exemption for notified securities in the International Financial Services Centre	11 March 2020	CBDT Notification No. 16/2020 dated 5 March 2020, F. No. 370142/22/2019-TPL
2	Eligible foreign investors to be deemed as a foreign institutional investors for transactions in securities listed on a recognized stock exchange in the IFSC	18 March 2020	CBDT Notification No. 17/2020 dated 13 March 2020, F. No. 173/10/2014-ITA-I
3	Reserve Bank of India notifies 'Fully Accessible Route' for non-residents in specified G-secs, revises investment limits in corporate bonds for FPIs	3 April 2020	RBI circulars dated 30 March 20 - RBI/2019-20/200 A.P. (DIR Series) Circular No. 25; RBI/ 2019-20/201 FMRD. FMSD.No.25/ 14.01.006/ 2019-20; RBI/ 2019-20/ 199 A.P. (DIR Series) Circular No. 24
4	FDI from neighboring countries brought under the approval route	20 April 2020	DIPP Press Note No. 3 (2020 series) dated 17 April 2020
5	Reduced provident fund contribution for May, June and July 2020	19 May 2020	Official Gazette dated 18 May 2020 issued by Ministry of Labour and Employment
6	Reduced provident fund contribution for May, June and July 2020 - An update	20 May 2020	Press Release dated 19 May 2020 issued by Ministry of Labour and Employment

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