KRESTON SGCO

Newsletter

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CONTENT

1. DIRECT TAXES

- Press Release and Notifications....Page 2
- Income Tax....Page 3 to 08
  - Case laws
- International Tax & Transfer pricing....Page 09 to 13
  - Case laws

2. IDTX

- IDTX Notifications....Page 14 to 17
  - GST
  - Customs
  - Maharastra State Tax-PTEC
  - Advance Ruling

3. SEBI,MCA & RBI/FEMA

- SEBI & MCA....Page 18 to 21

4. Due Dates

- Due Dates....Page 22 to 23

5. CONTACT

- CONTACT....Page 24

DIRECT TAXES

Press Release and notifications

Extension of date for filing of Income Tax Returns and Audit Reports to 31st October 2018

CBDT has further extended the due date for filing of income tax returns as well as all reports of audit (which were required to be filed by the said specified date) from 30th September to 31st October 2018. However, the Liability to pay interest u/s 234A will remain

CBDT Notifies Rule 11UAB: Determination of fair market value for inventory and amends Rule 11U related to meaning of expressions used in determination of FMV

- Applicable from AY 2019-20 onwards
- Rule 11U(b)(ii): balance-sheet", in relation to any company, means: (ii) in any other case,—
  - Indian company - Balance-sheet of such company (including the notes annexed thereto and forming part of the accounts) as drawn up on the valuation date which has been audited by the auditor of the company appointed under the laws relating to companies in force; and
  - A company, not being an Indian company:- the balance-sheet of the company (including the notes annexed thereto and forming part of the accounts) as drawn up on the valuation date which has been audited by the auditor of the company, if any, appointed under the laws in force of the country in which the company is registered or incorporated
- Rule 11UAB: -For the purpose of section 28(via) (Determination of FMV of Inventory on the date on which it is converted to Capital Asset):-

Nature of Inventory	Value
Immovable property, being land or building or both	Value adopted/ assessed/ assessable by any authority of the Central Government or a State Government for the purpose of payment of stamp duty in respect of such immovable property on the date on which the inventory is converted into, or treated, as a capital asset;
Jewellery, archaeological collections, drawings, paintings, sculptures, any work of art, shares or securities referred to in rule 11UA	Value determined in the manner provided in sub-rule (1) of rule 11UA and for this purpose the reference to the valuation date in the rule 11U and rule 11UA shall be the date on which the inventory is converted into, or treated, as a capital asset
Property, other than those specified above	Price that such property would ordinarily fetch on sale in the open market on the date on which the inventory is converted into, or treated, as a capital asset

- Exemption to interest income on specified off-shore Rupee Denominated Bonds

Interest payable by an Indian company or a business trust to a non-resident, including a foreign company, in respect of rupee denominated bond issued outside India during the period from 17th September, 2018 to 31st March, 2019 shall be exempt from tax, and consequently, no tax shall be deducted on the payment of interest in respect of the said bond under section 194LC of the Act

- CBDT notifies following entities for exemption u/s. 10(46) for specific AYs:-

1. State Load Dispatch Centre Unscheduled Interchange Fund
2. Tamil Nadu Water Supply and Drainage Board
3. Jharkhand State Electricity Regulatory Commission
4. West Bengal State Council of Science & Technology
5. Tripura Electricity Regulatory Commission
6. Gujarat Water Supply and Sewerage Board
7. Kandla Special Economic Zone Authority
8. Rajasthan State Dental Council
9. Petroleum and Natural Gas Regulatory Board
10. Uttar Pradesh Electricity Regulatory Commission
11. Tamil Nadu Pollution Control Board
12. Uttarakhand Real Estate Regulatory Authority

FEMA

External Commercial Borrowings (ECB) Policy - Liberalisation Some aspects of the ECB policy including policy on Rupee denominated bonds as indicated below:

i. ECBs by companies in manufacturing sector: As per the extant norms, ECB up to USD 50 million or its equivalent can be raised by eligible borrowers with minimum average maturity period of 3 years. It has been decided to allow eligible ECB borrowers who are into manufacturing sector to raise ECB up to USD 50 million or its equivalent with minimum average maturity period of 1 year

ii. Underwriting and market making by Indian banks for Rupee denominated bonds (RDB) issued overseas: Presently, Indian banks, subject to applicable prudential norms, can act as arranger and underwriter for RDBs issued overseas and in case of underwriting an issue, their holding cannot be more than 5 per cent of the issue size after 6 months of issue. It has now been decided to permit Indian banks to participate as arrangers/underwriters/market makers/traders in RDBs issued overseas subject to applicable prudential norms

Direct Tax

The Chemplast Sanmar Ltd v/s Assistant Commissioner of Income-tax, Madras HC

Facts

- The assessee was engaged in the business of manufacture of PVC and caustic soda and also in the business of shipping
- The assessee intended to start a textile business and since the project did not materialize, the Assessee decided to abandon the project. The expenditure incurred on new project was treated as revenue expenditure by the assessee.
- However AO was of the view that the expenditure for the abandoned project was capital in nature and could not be claimed as revenue expenditure and consequently disallowed the same.
- Aggrieved, the assessee appealed before CIT(A). The Assessee submitted that though a new unit of expenditure was to produce a different product from that of the existing unit, the decisive factors for allowance were unity of control, management and common fund, etc. and that the assessment was for the company as a whole and not unit wise and the expenditure that could be normally allowed should be allowed even if the same was incurred for a new project
- The CIT(A) relying on the decision of EID Parry (India) Ltd. Vs. CIT [reported in (2002) 257 ITR 0253] rejected assesses claim stating that since the expenditure was incurred for the purpose of setting up a new project, which was subsequently abandoned, the nature of expenditure will not change from capital to revenue
- Aggrieved, the Assessee appealed before ITAT. The ITAT affirmed the disallowance made by the AO, CIT(A) and rejected the appeal filed by the assessee
- Aggrieved, the Assessee appealed before High Court

Held

- The HC distinguished the ITAT and CIT(A)'s reliance on SC ruling in the case of EID Parry (India) Ltd. wherein the issue was allowability of expenditure incurred by the assessee in connection with establishment of a new project in the earlier years and held that both the CIT (A) as well as the Tribunal wrongly applied the decision in the case of EID Parry (India) Ltd., which revolved around a different factual matrix
- It was clear that if unity of control, management and common fund were with the assessee, then it was no matter as to whether a totally different line of business was started by the assessee. Thus, unity of control was the decisive test and not the nature of two lines of business. In fact, the CIT (Appeals) and the Tribunal failed to apply this decisive test and rejected the case of the assessee
- Therefore, the proper test to be applied was not the nature of new line of business, which was commenced by the Assessee, but unity of control, management and common fund
- The Revenue Authorities concurrently held that it was the assessee, who had commenced business and the Assessee would mean the Assessee-company as a whole and not a different entity. Therefore, when there is commonality of control, management and fund, those would be the decisive factors to be taken into consideration and not the new line of business namely textile business
- It was observed from the order of the CIT (Appeals, that all the heads, under which, expenditure relating to textile project was incurred, were generally revenue expenditure. The HC was unable to understand what made the Authority to take a different decision after having accepted that they were revenue expenditure and conclude that on account of new line of business, the expenditure was a capital expenditure, which has been held as not a decisive test
- In the instant case, as admitted by the CIT (Appeals), the preoperative expenses were all generally revenue expenditure and by applying a wrong test, which was not the decisive test, the Revenue authorities had concurrently committed an error in treating the expenditure as capital expenditure
- The HC relied on Delhi HC ruling in the case of Jay Engineering Works Ltd. and co-ordinate bench ruling in Sakthi Sugars Ltd., Tamil Nadu Magnesite Ltd., and Delhi HC ruling in Indo Rama Synthetics (I) Ltd, rejected Revenue's reliance on co-ordinate bench ruling in Mascon Technical Services Limited;

  The High court thus allowed the claim of the assessee

ACIT Vs. M/s Golden Line Studio Private Limited, Mumbai ITAT

Facts

- The Assessee was engaged in the business of film production in the field of providing visual effects and animation facilities
- The Assessee issued 6,10,825/- non-cumulative non-convertible redeemable preference shares on 1.4.2010 to its holding company M/s. Sahara India Commercial Corporation Limited, having face value of Rs. 10/- each at a premium of Rs. 490/- (i.e. at Rs.500), redeemable at Rs. 750/- per share after expiry of 5 years from date of issue
- The Assessing Officer ('AO') asked the Assessee to justify huge premium collected on issue of preference shares. The Assessee explained that preference shares stand on different footing from equity shares and hence the tests applied to equity shares should not be applied to preference shares.
- The AO was not convinced with the contention of the Assessee. The AO took the view that the fair market value of unquoted shares should be determined on the basis of balance-sheet of the Assessee. The AO arrived at a FMV of shares at Rs.38/- per share, based on the net asset value and stated that the share premium should be Rs.28/- per share

only and accordingly assessed the balance Rs. 462/- per share as excess premium and assessed the income accordingly.

- The CIT (A) deleted the addition made by the AO
- Aggrieved, the Revenue filed appeal before the ITAT

Held

- Before the ITAT, the Revenue submitted that the AO, nowhere invoked the provisions of sec.56(2)(viib) of the Act but had invoked the provisions of sec.68 of the Act, as he did not agree with the "nature" of receipts as the assessee had not given any basis for charging high premium
- The Assessee submitted
  - It had received the funds towards preference shares in the earlier years and during the year under consideration, the assessee had only allotted the shares. The provisions of sec.68 shall apply only in the year in which the funds were received
  - Share premium is a capital receipt and hence the same cannot be subjected to tax, since the AO accepted the identity & creditworthiness of the Investor and also genuineness of transactions
  - AO was not right in applying the tests applicable to equity shares to preference shares

The ITAT held as follows

- Equity shares and Preference shares stand on different footing. While the equity share holders are the real owners of the company, the preference share holders are not in fact, the owners of the company. Net asset value of the company really represents the value of Equity shares and not "Preference shares". The AO has misdirected himself in comparing the Net Asset value of the company with the Preference Shares
- The AO had not taken support of any of the provisions of the Income tax Act to assess the alleged excess premium. No receipt could be assessed to income tax unless there was authority under the law to assess the same
- Since the AO did not specify any section of the Act under which he assessed the alleged excess premium, the Revenue contended that the AO has presumably invoked the provisions of sec.68 of the Act
- On the basis that the share premium was in far excess of book value, the "nature" of receipt of share premium could not be doubted with, as equity shares and preference shares stand on different footing. Hence the ITAT did not agree with the contentions of the Revenue that the assessee did not prove the "nature" of receipt
- The "nature" of the transaction had been explained by the assessee as Share Premium, which could not be contradicted by the revenue with any other material.
- There was no dispute with regard to the "Source". Hence, in effect, the conditions prescribed in sec. 68 of the Act had been fulfilled by the assessee
- The assessee had received funds in the earlier years and not during the year under consideration. During the year under consideration, the assessee had just transferred the funds to "preference shares account" and "shares premium" account by passing journal entries. Provisions of sec.68 shall apply only in the year in which the cash credit was found
- There was no justification in assessing the alleged excess premium as income of the assessee. Thus, the ITAT upheld the order of the CIT(A) of deleting the addition

ITO Vs. Ramal P. Advani, Mumbai ITAT

Facts

- The Assessee was a partner in an unregistered partnership firm M/s Vinky Developers ('the Firm') with Mrs. Vandana Punwani, with a 50:50 profit sharing ratio
- The Firm had acquired developement rights in a plot in Bandra in the year 1989 owing to a result of dispute between the partners, the matter was referred to a sole arbitrator. The arbitration consent was awarded and the Assessee retired and received Rs. 3.33 crores in the form of post dated cheques towards settlement of his account. Since the cheques were not honoured, the Assessee moved the High Court
- The other Partner was directed by the High Court to make a payment of Rs.2.95 Crores to the Assessee
- The Assessee submitted that there were only two partners in the above partnership firm and there was deemed dissolution of said firm pursuant to retirement of the appellant as per the consent decree/arbitration award
- Sec 45(4) was applicable to the present facts as there was transfer/distribution of capital assets, being development right of Bandra plot, by the firm in favour of the other partner, Mrs. Punwani
- The money received by the Assessee from retirement/dissolution of a firm was not taxable in his hands and was a capital receipt and if at all any tax had to be paid, it had to be paid by the firm. The Assessee also claimed deduction u/s.54F of the Act.

Held by AO

- The AO did not accept the contention of the Assessee and stated that the firm, Vinky Developers was not registered, did not carry on any activity, not filed any return of income.
- Therefore, there was no existence of the above firm.
- In view of the above facts, the AO held that the acquisition of development right in the Bandra plot was held jointly by

two individuals i.e. Assessee and Mrs. Punwani. The AO further held that in lieu of relinquishment of Assessee's right in the development right of the Bandra property, he had received amount of Rs. 2.95 crores and such amount was taxable u/s 45 of the Act and accordingly computed LTCG

Decision of CIT(A)

- On perusing the copies of partnership deed, agreement for the development right in respect of the plot between the Vinky Developers and St. Peter's Church, order of the arbitration award and the order of the Hon'ble Bombay High Court, the CIT (A) observed there was a valid partnership deed and that the partnership firm cannot be doubted and the same was established
- He observed that the Assessee had received a sum of Rs.2.95 crs. for retirement from the partnership firm and not for relinquishment of right in property at Bandra
- He observed that Assessee did not have any right in the property at Bandra and only the partnership firm, M/s. Vinky Developers had a right in the impugned property. Since the assets and liabilities of the firms were taken over by Mrs. Punwanit, the same amounts to distribution of assets by the firm on dissolution to her. The CIT (A) opined that the provisions of section 45(4) of the Act would apply
- Relying on various cases laws, the CIT(A) held that the liability of capital gain cannot be fastened in respect of payment of Rs.2.95 crores received by the assessee from the other partner
- Aggrieved, the Revenue filed appeal before the ITAT

Held

- The ITAT observed that the basis of A.O.'s order was that according to him there is no existence of partnership firm. However, this finding was not in accordance with the documents on records as follows:-
  - a valid written partnership deed, wherein profit sharing ratio is 50:50
  - equal contribution of Capital initially
  - the firm had opened bank account also after incorporation
  - The agreement and supplementary agreement for acquisition of the development right in respect of the plot at Bandra was executed by the Assessee as agent on behalf of the firm, M/s. Vinky Developers
  - In the arbitration proceedings also both the partners admitted that they were partners. In the concerned award passed, it was clearly mentioned that the assessee was to retire from the said firm in lieu of the consideration to be given to him by Mrs. Vandana Suresh Punwani who was to continue as proprietor of the said firm thereafter

Thus, the AO's premise that there was no existence of the partnership firm, was not sustainable

- Furthermore, the arbitration award clearly mentions that the amount is being paid to the assessee upon his retirement from the partnership firm. Since the partnership firm consists of two partners which got dissolved upon retirement of one of the partner and the proceeds received by the assessee have to be considered as sum received pursuant to the dissolution of the partnership firm and/or retirement of the assessee from the partnership firm
- The matter has even travelled to the Hon'ble Bombay High Court and the arbitration proceeding has been considered by the Hon'ble Bombay High Court
- The sum received by the Assessee was clearly pursuant to the retirement of the Assessee from the firm which cannot be taxed as capital gain
- The AO's reference that the same was received by the Assessee pursuant to his relinquishment of his right in the development right is not sustainable, as the Assessee has no individual right in the said agreement
- On the basis of the above and relying on various judgements, the ITAT held that the AO's view that there was no partnership firm and the amount received by the Assessee cannot be said to be receipt on account of his retirement from the firm, was not sustainable. Thus, CIT(A) order was upheld

Gabs Investments Pvt. Ltd. ('GIPL') (Transferor Company) and Ajanta Pharma Limited ('APL') (Transferee Company), NCLT Mumbai Bench

Facts

- Merger of GIPL with APL (a listed company)
- GIPL, the Transferor Company is engaged in the business of making investments and primarily holds shares in APL, the Transferee Company
- APL is a specialty pharmaceutical company engaged in development, production and marketing of branded and generic formulations
- GIPL had been purchasing shares of APL in the secondary market at various points of time and at various prices
- Group Structure;
  - GIPL had 4 shareholders (Agarwal family) each having 25% paid up share capital in GIPL.
  - GIPL held 9.54% shares in APL. The Agarwal family also held 61.17% shares in APL.
- Rationale for the scheme:- Simplification of shareholding structure and Reduction of shareholding tiers
- GIPL held 83,92,262 equity shares of the transferee company and pursuant to the merger, APL was to issue the same number of New Equity Shares i.e. 83,92,262 to the shareholders of the GIPL.

Objections raised by Income-tax Department

- Loss of DDT of INR 134.16 Crores if amalgamation scheme approved:- GIPL being a private limited company has to be considered as separate entity and any assets of the Pvt. Ltd. company cannot be transferred and distributed directly. The company has to pay the Divided Distribution Tax (DDT) @ 20% and accordingly the DDT will be INR 134.16 crores

- Loss of tax on business income on sale of shares (since GIPL is an investment company) of INR 287.50 crores

- In view of GAAR provisions, the scheme of amalgamation was a deliberate measure to avoid tax burden by using the via media of NCLT and this scheme is a purely Imperm issible Avoidance Agreement (IAA) and should not be allowed by the NCLT

- Proposed scheme of arrangement a Round trip financing which includes transfer of funds among the parties to the arrangements through the series of transactions

NCLT observations and judgement

- With an equity share capital of only 1,91,100 the promoters/shareholders of GIPL who were also the common promoters of APL, by way of this proposed scheme of amalgamation and arrangement would get the shares of APL worth INR 1477.50 Crores (market value as on 31.03.2017) without paying any Income Tax, Stamp Duty etc. The same was not in the public interest, of thousands of shareholders of APL especially retail shareholders

- The scheme was devised only to benefit the common promoters and it did not serve any public interest as envisaged, also unfair advantage would flow only to the common promoters

- Relying upon the recent Judgment of the Hon 'ble NCLAT in the matter of Wiki Kids Ltd. V/s Aventel Ltd decided on 21.12.2017 in Company Appeal (AT) No. 285 of 2017, wherein the Hon 'ble NCLAT held that if the scheme is not in public interest, the same can be rejected by NCLT. Accordingly, relying upon the above Judgment of Hon'ble NCLAT, the NCLT held that the proposed scheme was devised only for the benefit of the few common promoters/ shareholders of both the petitioner companies and no larger public interest was being served, and also huge amount of tax loss would occur to the Government's exchequer

- Any allotment of the shares other than to the original shareholders would amount to transfer/sale of shares and that would attract applicable provisions of tax. In the instant case shares of the transferee company (APL)were not directly allotted to indi v idual shareholders of Transferor Company (GIPL), or it was not bonus shares to be allotted to the individual shareholders of the transferor company, nor it was transmission of shares to the individual shareholders of the transferor company. Therefore NCLT agreed with the objection raised by the Income Tax Department. Any scheme of amalgamation/merger has to be in compliance with the Section 2(1B) of the Income-Tax 1961.

- Proposed scheme was a deliberate measure to avoid tax burden, it resulted directly and indirectly, in the misuse or abuse of the provisions of Income Tax Act etc.

- The scheme was also not in compliance with the provisions of Income Tax Act 1961 and of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations 2011

- Accordingly, NCLT did not sanction the Scheme

The Dy. CIT- 5(1) New Delhi v/s M/s B.S. Infrosolution Pvt Ltd, New Delhi ITAT

Facts

- During the A.Y. 2012-13, B.S Infosolution Pvt Ltd ('assessee') sold a property in Noida to M/s Q.A Infotech Pvt Ltd (QIPL), for a consideration of Rs. 9.6 cr. Though there was no formal agreement between the assessee and QIPL, the assessee first received Rs. 2 crore on 31.12.2010 and another Rs. 2 crore on 30.03.2011. The assessee declared a capital gain of Rs. 3.48 cr on the said transaction

- Subsequently, on 28.02.2011, the assessee entered into a collaboration agreement with Charmwood Realtech Pvt Ltd (CRPL), a group company, to develop the same property and against which it received part consideration of Rs. 9 crore as refundable security deposit. After receiving sum of Rs. 9 crore from CRPL, the assessee transferred Rs. 7.50 crore to the account of M/s Venkateshwara Buildtech Pvt Ltd (VBPL), a group company against which VBPL allotted 3,75,000 shares having face value of Rs. 10 per share at a premium of Rs. 190/- per share

- Thereafter on 22.07.2011 the assessee entered into a deed of cancellation of collaboration agreement with (CRPL) resulting which the assessee returned the refundable security deposit by way of 3,75,000 VBPL shares at a book value of Rs. 82.5 per share amounting to Rs. 3,09,37,500/- and balance payment of Rs. 5,90,62,500/- was made through bank

- The capital gain of Rs. 3.48 Cr on sale of property was set off against the claim of loss of Rs. 5.19 cr incurred on the sale of shares

- Examining the sequence of events AO came to the conclusion that the purchase and sale of shares was nothing but a colourable device to generate loss to be set off against capital gain resulting which AO did not allowed the setting off of loss of Rs. 5.19 cr against the capital gain of Rs. 3.48 cr.

- Aggrieved, the assessee appealed before CIT(A).The CIT(A) accepted the transaction as genuine and allowed the claim of set off of loss

- Aggrieved, the revenue appealed before Delhi ITAT

Held

- Referring to the sequence of events which took place, ITAT stated that "It is not understood that once the property was agreed to be sold to QIPL and part consideration was received, then why the same property was entered into a collaboration agreement with CRPL, which is a group company?"
- ITAT noted that the assessee paid a premium of Rs. 190/- on the shares of a company, which was incorporated on January 3, 2011 and its first FY ended on March 31, 2011 and date of purchase of shares was March 15, 2011. ITAT stated that though the premium was justified by a valuation report, but the same appeared to be a self-serving document because a company which was incorporated in January 2011 cannot fetch a hefty premium of Rs. 190/- in a span of three months
- ITAT noted that the book value of shares of VBPL on March 31, 2011 was Rs 82, thus ITAT held that no prudent person with some commercial prudence would pay a hefty premium of Rs. 190/- on a book value of Rs. 82/-, hold it for one year, and then sell the same shares at book value. ITAT relied on SC ruling in Durga Prasad more [82 ITR 540 (SC)] and Sumati Dayal [214 ITR 801]
- ITAT noted that in the given case same, the same property was the subject matter of two distinct transactions – one with QIPL and the other with CRPL, though ultimately the property was sold to QIPL. ITAT stated that when assessee received part consideration from QIPL, it was well aware that the transaction was going to result into capital gains and to avoid the same, the assessee used CRPL and VBPL as conduits to generate loss in shares to be set off against the capital gain
- ITAT thus remarked that, "…the surrounding circumstances and human probabilities are to be taken into account while considering the evidences emanating from the records."
- Thus, ITAT held that the share transaction was nothing but a sham transaction, a colourable device to avoid capital gains tax liability and, therefore, had to be ignored
- ITAT stated that CIT(A) had accepted the transaction without considering the fact that what was 'apparent' was not 'real' on the facts of the case in hand
- ITAT thus set aside the order of the CIT(A) and restored that of the AO i.e. ruled in favour of Revenue

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Tax Alert: CBDT Notification; Non STT scenarios for applicability of 10% LTCG u/s 112A notified

With the recent amendment in the Finance Act, 2018, exemption under Section 10(38) of the Income Tax Act, 1961 ('IT Act') has been withdrawn and a new section 112A introduced, to provide that Long Term Capital Gains (LTCG) arising from a transfer of Long Term Capital Asset, the same being an equity share in a company and or a unit in an equity oriented mutual fund or a unit of a business trust would be taxed @10% of such capital gains exceeding Rs. 1,00,000. The said provisions would be applicable only if, Securities Transaction Tax (STT) has been paid on acquisition and transfer of the capital asset

In order to adhere to genuine cases wherein STT could not have been paid, Section 112A(4) states that, the Central Government may at any time, by notification in the Official Gazette specify, the nature of acquisition in respect of which payment of STT shall not apply. The stated scenarios are largely similar to the erstwhile Section 10(38) regime

In exercise of powers conferred by section 112A(4) of the IT Act, the CBDT has recently issued a notification specifying the nature of acquisitions in relation to which payment of STT provisions would not apply. The same are as follows:-

Acquisition of equity shares entered into either:-

- Before 1st of October 2004, OR
- On or after 1st of October 2004, wherein transactions are not chargeable to STT under Chapter VII of the Finance (No. 2) Act, 2004 (23 of 2004)

  However, the following have been excluded from condition (II) specified above;

  a. Where acquisition of existing listed equity shares in a company whose equity shares are not frequently traded on a recognized stock exchange is made through a preferential issue

     However, the above provision shall not apply to acquisition of listed shares in a company:-

     - Which has been approved by the Supreme Court, High Court, National Company Law Tribunal, Securities and Exchange Board of India or Reserve Bank of India;
     - By any non-resident in accordance with the Foreign Direct Investments (FDI) guidelines issued by the Government of India;

"frequently traded shares" means shares of a company, in which the traded turnover on a recognised stock exchange during the twelve calendar months preceding the calendar month in which the acquisition and transfer is made, is at least ten per cent. of the total number of shares of such class of the company:
Provided that where the share capital of a particular class of shares of the company is not identical throughout such period, the weighted average number of total shares of such class of the company shall represent the total number of shares

- By an investment fund referred to in clause (a) of Explanation 1 to section 115UB of the IT Act or a venture capital fund referred to in section 10(23FB) of

- the IT Act or a Qualified Institutional Buyer; and Through preferential issue to which the provisions of chapter VII of the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009 does not apply

b **Where transaction for acquisition of existing listed equity share in a company is not entered through a recognized stock exchange in India**

However, the above provision shall not apply to the acquisition of listed equity shares in a company made in accordance with, provisions of the Securities Contracts (Regulation) Act, 1956, and is;

- Through an issue of share by a company other than the issue referred to in clause (a);
- By scheduled banks, reconstruction or securitisation companies or public financial institutions during their ordinary course of business;
- Approved by the Supreme Court, High Courts, National Company Law Tribunal, Securities and Exchange Board of India or Reserve Bank of India in this behalf; under employee stock option scheme or employee stock purchase scheme framed under the Securities and Exchange Board of India (Employee Stock Option Scheme and Employee Stock Purchase Scheme) Guidelines,1999;
- Under employee stock option scheme or employee stock purchase scheme framed under the Securities and Exchange Board of India (Employee Stock Option Scheme and Employee Stock Purchase Scheme) Guidelines,1999;
- By any non-resident in accordance with foreign direct investment guidelines of the Government of India;
- In accordance with Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulation, 2011;
- From the Government;
- By an investment fund referred to in clause (a) to Explanation 1 to section 115UB of the IT Act or a venture capital fund referred to in clause (23FB) of section 10 of the IT Act or a Qualified Institutional Buyer; and
- By mode of transfer referred to in section 47 or section 50B or section 45(3) or section 45 (4) of the IT Act, if the previous owner or the transferor, as the case may be, of such shares has not acquired them by any mode referred to in clause (a) or clause (b) or clause(c) [other than the transactions referred to in the proviso to clause (a) or clause (b)]

c Acquisition of equity share of a company during the period beginning from the date on which the company is delisted from a recognised stock exchange and ending on the date immediately preceding the date on which the company is again listed on a recognised stock exchange in accordance with the Securities Contracts (Regulation) Act, 1956 read with Securities and Exchange Board of India Act, 1992 (15 of 1992) and the rules made thereunder

The said notification shall come into force with effect from the 1st April, 2019 and shall accordingly apply to the AY 2019-20 and subsequent AYs thereafter

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International Tax & Transfer pricing

International Tax

Case Laws

M/s. Panasonic Corporation vs The Deputy Commissioner of Income Tax International Taxation-2(2), Chennai ITAT

Facts

- M/s. Panasonic Corporation, a company incorporated in Japan was engaged in the business of development, production and sale of electrical and electronic products, systems and components for a wide range of consumer, business and industrial uses

- During the course of business activity, the assessee company deputed some of its employees to Panasonic India Pvt Ltd. The assessee-company paid salary initially which was reimbursed by M/s Panasonic India Pvt. Ltd.

- The assessee did not offer it to tax since it was only reimbursement. The TPO held that no adjustment was required on the reimbursable expenditure received by the assessee

- However, the AO while passing the draft assessment order disallowed the claim of the assessee on the ground that the assessee received fee for technical service and not reimbursement of salaries on which it failed to deduct tax

  The AO's observations were as follows:-

  - The personnel seconded were all in senior Technical / Managerial positions who reported to the president and vice president who in turn reported to the assessee and hence the ultimate responsibility and the direction, control and supervision of the personnel vested with Panasonic Japan

  - The case of employment with Panasonic India was, unlike an independent employment comes with a lien marked on the employment with the parent and the employee has to only go back to the parent on expiry of their tenure

  - There was no termination of employment with Panasonic Corporation, hence the salary paid to the employees of Panasonic Corporation has borne out of the inherent obligation in the Panasonic Corporation as the employer

  - The deputed personnel had come to India, to imbibe the culture of the group and ensure the application of the Panasonic group policies /processes and other quality standards in Panasonic India which clearly demonstrates once the processes and policies are imbibed / retained, there was no need for the personnel again and Panasonic India can apply the same by itself. the services have also made available the technical knowledge / skill and experience

The Assessee filed objections before the Dispute Resolution Panel. The Dispute Resolution Panel after considering the objections of the assessee, found that the assessee was liable to pay tax. The AO and the DRP also found that the technical knowledge was made available to Panasonic India. The assessee also could not file reconciliation with regard to receipt and the actual payment made by the assessee before the DRP. The DRP concluded that the receipt has to be considered as fee for technical services in respect of non-resident irrespective of the fact whether it was received with mark up or cost to cost basis.

- Aggreived, the Assessee filed appeal before the ITAT

Held

The ITAT held as follows:-

- The AO noted that the personnel seconded were all in Senior Technical/Managerial positions who reported to the President and the Vice President who, in turn, was expected to report to the Assessee and hence the seconded employees had to work as per the direction, control and supervision of the assessee company

- Since the employees deputed by the assessee were high level technical executives and they were rendering highly technical services to Panasonic Corporation India Pvt. Ltd., the payments for such services would fall within the ambit of fee for technical services as defined in Explanation 2 to Section 9(1)(vii) of the Act

- Moreover, as rightly observed by the AO, the technology was made available to the subsidiary in India, therefore, there was no need for the employees of the assessee to come again

- The ITAT held that the amounts received by Panasonic Corporation were taxable in India

Transfer pricing

Case Laws

Topcon Singapore Positioning Pte Ltd Vs Deputy Director of Income Tax - 3(1)(1), Delhi ITAT

Facts

- The Assessee, Topcon Singapore Positioning Pte Ltd, a Singapore based Company held 7,49,999 shares in an Indian Company and 1 share was held by its director Suntaro Tanka i.e. on behalf of the Company

- All these shares were sold to a non-resident company, Topcon Corporation, Japan by way of entering into a "Stock Purchase Agreement", wherein, the transfer was to take place at Net Asset Value. The parties had agreed to the formula on the basis of which the sales consideration was to be worked out

- The sale finally took place at US $ 35,08,000, as authorised by the board of directors resolution dated 9th May 2011, which worked out to Rs 206.88 per share - as against the value of Rs 224 per share on the net asset value basis. This sale price was, in any case, more than the fair market value of Rs 187 per share as ascertained by the independent valuer on discounted cash flow method

- The TPO noted that based on the NAV of the shares, the shares ought to have been sold for US $ 37,98,298.50, whereas the actual sale consideration of shares was only US $35,08,000. The TPO thus concluded that "arm's length price for transfer of shares" was US $ 37,98,298.50, and proceeded to compute capital gains on sale of the shares at Rs 4,96,54,075- as against capital gains of Rs 3,57,37,7840 disclosed by the assessee

- Based on the observations made by the TPO, The AO proposed to make an addition of Rs 1,39,16,235 in respect of understatement of capital gains on sale of shares. The DRP also confirmed the stand taken by the AO

- Aggreived, the Assessee filed appeal before the ITAT

Held

The ITAT held as follows:-

- The role of TPO was to determine ALP and not go beyond this role and intrude in the exclusive domain of the Assessing Officer to determine the income taxable in the hands of the assessee. The ITAT while arriving at said conclusion relied on jurisdictional HC ruling in Cushman & Wakefield (ITA No. 2624/Del./2013)

- On a technical note, a price decided, even if that be so, between the AEs- as the assessee and the buyer of shares were, can never be a valid CUP input for the simple reason that it was only the transaction value for transactions between the independent enterprises that the transaction value can be considered as a comparable uncontrolled price. In an intra AE situation, the transaction value cannot be said to be an uncontrolled price at all. Nothing, therefore, turns on the original agreement terms and it had no relevance in determination of arm's length price

- In the present case, the company in which the shares were transferred, was neither in winding up stage nor was it going into liquidation. Thus, NAV or book value method was not warranted. It was infact a going concern and the valuation on the basis of future earnings would have been justified in the present case

- The TPO determined the ALP of the shares sold by the assessee at USD 37,98,298.50 based on NAV method agreed between the parties

- Since the TPO had not examined that aspect of the matter at all and simply proceeded on the basis of net asset value, the ITAT remitted the matter for fresh determination of ALP

Transfer pricing

Case Laws

IKA India Pvt. Ltd Vs. DCIT, Bangalore ITAT

Facts

- The Assessee was engaged in the business of manufacturing and trading of laboratory and processing equipment, research and development services, marketing and technical support services to Group companies

- The assessee imported products from IKA Group for sale in the domestic market and also undertook manufacturing operations locally to export the products to IKA Group. In addition, the assessee also provided research and development services and marketing and technical support services to Group companies

- The Assessee entered into various transactions with it AE in AY 2012-13. The TPO accepted that all international transactions carried out by the assessee was at arm's length, except the international transaction of export of finished goods by the assessee to its AE

- The Assessee chose TNMM as the most appropriate method and selected 3 comparables. The Assessee, being in its 3rd year of commercial operations with a significant under-utilization of its installed capacity made an adjustment for the same. Also, the operating margins of the comparable companies were adjusted to account for differences in the level of trade receivables and trade payables of the comparable companies vis-a-vis the Assessee

- The TPO did not accept the economic analysis undertaken by the company. The TPO rejected 2 of 3 comparables chosen by the assessee and selected 5 new companies in the final set

- Further, the TPO considered foreign exchange gain/losses as non-operating in nature while computing the operating margin of the comparable companies. However, he considered the foreign exchange gain/losses as operating in nature while computing the operating margin of the Assessee. Also, the TPO did not make adjustments to account for differences in the working capital position of the assessee vis-à-vis the comparable companies and under-utilized capacity of the assessee vis-a-vis the comparable companies. The TPO make an addition of INR 1.50 crores to the total income

- The CIT (A) also did not provid any relief to the Assessee on the above mentioned transfer pricing matters. The CIT(A) directed the TPO to re-compute the operating margins of the Assessee and the comparable companies, follow a consistent approach in treatment of foreign exchange fluctuation and to recompute the ALP and TP adjustment on the entire manufacturing segment instead of restricting the adjustment to AE transaction

- Aggrieved, the assessee filed an appeal with the ITAT

Held

Selection of Comparables

- It was acceptable to broaden the scope of the comparability analysis to include transactions involving products that are different, but functionally similar

- it cannot be said that product difference is a factor which needs to be either ignored or strictly followed. It depends on facts and circumstances of each case

- The relevancy of the end use of equipment whether by consumer or as component may be relevant while evaluating functional dissimilarity, Assets employed and risks assumed but not on the basis of characteristics of the property transferred under Rule 10B(2)(b) of the Rules

- All the 4 new additional companies taken by the TPO were accepted. Also, the TPO was directed to include the 2 companies accepted by the Assessee in the list of comparable companies for comparison

Foreign Exchange Fluctuation

- Considering the same as a settled legal position, the ITAT directed the TPO to compute the margins applying the principle of treating foreign exchange fluctuation as operating in nature under both situations, when there is a loss as well as when there is a gain and to apply the same principle to determine the profit margins of the assessee and the comparable companies

Capacity Under-utilization Adjustment

- The Indian transfer pricing regulations, OECD Guidelines and the US transfer pricing regulations call for an adjustment to be made in case of material differences in the transactions or the enterprises being compared so as to arrive at a more reliable arm's length price/ margin. While the Indian transfer pricing regulations refer to the adjustments on uncontrolled transactions, however the same has to be read with Rule10B(3) of the Rules which clearly emphasizes the necessity and compulsion of undertaking adjustments. Hence in case appropriate adjustments cannot be made to the uncontrolled transaction, due to lack of data, then in order to read the provisions of transfer pricing regulations in harmony, the adjustments should be made on the tested party

- The purpose or intent of the comparability analysis is to examine as to whether or not, the values stated for the international transactions are at ALP i.e., whether the price charges is comparable to the price charges under an uncontrolled transaction of similar nature. The regulations don't restrict or provide that the adjustments cannot be made on the results of the tested party. Therefore, keeping in mind the aforesaid objective, the net profit margin of the tested party drawn from its financial accounts can be suitably adjusted to facilitate its comparison with other uncontrolled entities/transactions as per sub-clause (i) of rule 10B(1)(e) of the Rules itself. The absence of specific provision in Rule 10B(1)(e)(iii) of the Rules does not

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impede the adjustment of the profit margin of tested party

- On the basis of the above and relying on various judgements, the ITAT accepted that the assessee had under-utilized capacity during the subject AY and was legally eligible to an adjustment for the same. Therefore, such a benefit could not be denied to the assessee only for the reason that the data about comparable companies was not available. Requiring the assessee to produce such a data which was not available in public domain would tantamount to requiring the Appellant to perform an impossible task

- Thus, the TPO was directed to exercise its powere u/s. 133 (6) and call for details of capacity utilization of comparable companies

Working Capital Adjustment

- The ITAT accepted the claim of working capital adjustment made by the Assessee

Transfer Pricing Adjustment on the entire manufacturing segment or just the value of international transactions with the AE

- In view of the above transfer pricing provisions and various judicial precedents, the ITAT held that the transfer pricing adjustment should be restricted only to the AE related transactions of the assessee

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Notifications under GST

Eighth Amendment to the Central Goods & Service Tax Rules, 2017 (CGST Rules, 2017).

- GST Registration cancellation:
  GST registration cancellation proceeding shall be drop by proper officer, in case taxpayer furnishes all the pending returns and making full payment of tax due.

- Relaxation in invoicing requirements to avail Input Tax Credit (ITC):
  Chapter VI of CGST Rules, 2017 lays down a detailed list of particulars, which a tax invoice should contain. Proviso has been inserted to provide that ITC can be availed by the taxpayer if the relevant document contains the following particulars:

  o Amount of tax charged;
  o Description of goods/services;
  o Total value;
  o GSTIN of the supplier and recipient;
  o Place of supply in case of inter-state supply.

- Change in definition of 'adjusted total turnover' for computing refund of unutilized ITC

- "Adjusted Total Turnover" for the purpose of computing refund of unutilized ITC shall mean the sum total of the value of:

  a The turnover in a state or a union territory, as defined under Clause (112) of Section 2, excluding the turnover of services; and

  b The turnover of zero-rated supply of services determined in terms of Clause (D) above i.e. and non-zero-rated supply of services, excluding:

    i. The value of exempt supplies other thanzero-rated supplies; and

    ii. The turnover of supplies in respect of which refund is claimed under Subrule (4A) or Sub rule (4B)or both, if any, during the relevant period

- The government has notified the Annual Return i.e. GSTR 9. Annual Return is to be filed once in a year by the registered taxpayer under GST.

- Changes in Form GST ITC – 04 (Details of Goods / Capital Goods sent to job worker and received back):

- Additional disclosures required:

  o The details of losses and wastages (if any) in the process of job work would be required to be furnished in GST ITC-04

  o Goods received from some other job-worker - The details of inputs/ capital goods received back from job worker other than the job worker to whom such goods were originally sent.

  o Goods supplied from premises of job-worker - Goods sent to job worker and subsequently supplied from the premises of the job worker.

- Government vide Notification No. 41/2018-Central Tax, dated 04 September 2018 waives Late Fees paid by certain taxpayers under the following special circumstances:

For Return	Issues faced by the taxpayers
GSTR- 3B	Return for the month of October 2017, was submitted but not filed on the common portal, after generation of the application reference number.
GSTR-4	Return for the period October 2017 to December 2017, was filed within due date but the late fee was erroneously levied on the common portal.
GSTR-6 (Input Service Distributor)	Input service distributor who have paid a late fee for filing or submission of the return for any tax period between 1 January 2018 to 23 January 2018.

- Government vide Notification No. 43/ 2018 and 44/2018-Central Tax dated

- 10 September 2018, extends due dates of the GST – returns as follows:

Return	Period	Period
GSTR 1 (Quarterly) Taxpayers having an aggregate turnover of up to INR 1.5 Crore	All quarters from July 2017 to September 2018	31 October 2018
	October 2018 to December 2018	31 January 2019
	January 2019 to March 2019	30 April 2019
GSTR 1 (monthly) – Taxpayers having an aggregate turnover of more than INR 1.5 Crore	All months from July 2017 to September 2018	31 October 2018
	All months from October 2018 to March 2019	11th of the succeeding month

- **GST Audit Form Notified:**
    - The government vide Notification No. 49/2018-Central Tax dated 13 September 2018 has notified the reconciliation statement i.e. GSTR-9C.
    - GSTR 9C is applicable on every registered person whose aggregate turnover during a financial year exceeds two crore rupees. He shall get his accounts audited as specified under section 35(5) and shall furnish a copy of audited annual accounts and a reconciliation statement, duly certified, in FORM GSTR-9C, electronically.
- **Tax Deduction at Source (TDS) provisions notified:**
    - The government vide Notification No. 50/2018-Central Tax dated 13 September 2018 has notified 1 October 2018 as the date for bringing into force TDS provisions.
    - TDS Provisions requires government departments, local authorities etc. to deduct tax at source at the rate of 2% from payment made or credited to the supplier of taxable goods or services under a contract exceeding INR 2.5 lakh.
- **Tax Deduction at Source (TDS) provisions notified:**

  The government vide Notification No. 51/2018-Central Tax dated 13 September 2018 and 52/2018 -Central Tax dated 20 September 2018 has notified 1 October 2018 as the date for bringing into force TCS provisions and notified e-commerce operators, not being agent, to collect tax at source on supplies made through it by other suppliers at the rate 1%.

- **Circulars under GST**

  Circular No. 57/31/2018-GST dated 4 September 2018

  The principal-agent relationship in the context of entry in Schedule I of CGST Act, 2017:

    - Under Schedule I of the CGST Act, 2017 activity of supply of goods between a principal and agent is to be treated as a 'supply' even if it is made without consideration.
    - Now, it has been clarified that the said entry refers only to a situation wherein, the invoice for further supply, i.e. supply from the agent to a third party is being raised by the agent in his name.
- **Circular No. 59/33/2018-GST dated 4 September 2018**

  Refund related issues

    - Submission of GSTR-2A:
      In case of refund claims concerning accumulated ITC, it has that the claimant should provide a printout of GSTR-2A for the relevant period. Also, it has further that the proper officer should not insist on submission of the invoices that under the said GSTR-2A. For the invoices not visible in GSTR-2A, the claimant is required to submit copies of invoices and statement in the prescribed format.

    - Rejection of refund claim on account of ineligibility:
      In case of refund claim on account ineligibility of the said credit, the rejected amount would be re-credited in the Electronic Credit Ledger (ECL) of the claimant. Subsequently, a demand notice would to the claimant for recovery of such ineligible ITC.
    - Rejection of refund claim on account of other reasons:
      In case, refund claim rejected on account of other than eligibility of credit, the rejected amount would be re-credited in the ECL of the claimant, provided that the claimant gives an undertaking that he will not file an appeal against the said rejection order. In case he decides to file, the amount will be re-credited to the ECL when the said appeal finally decided against the claimant.

Supreme Court Judgement

Civil Appeal No. 3327 of 2007

Commissioner of Customs (Import), Mumbai V/s M/s Dilip Kumar and Company & Ors.

- M/s Dilip Kumar and Company & Ors (taxpayer) imported a consignment of vitamin – E50 powder (feed grade). Relying on the ratio laid down in Sun Export Corporation v CC [1997] 6 SCC 564 (Sun Export), the respondent had claimed the benefit of concessional rate of customs duty of 5 per cent vide notification no. 20/1999 and had classified the product under CH 2309.90 which admittedly pertains to 'prawn feed'. Whereas, the standard rate of customs duty prescribed 30 per cent.
- In Sun Export (Supra), following judgement was given:
  - Assuming that there are two views possible, it is well settled that one favorable to the assessee in the matters of taxation has to be preferred.
- However, in current case, the benefit of the exemption was denied by the adjudicating authority (AA) to the taxpayer. Department had contended that the goods imported contained chemical ingredients for animal feed and not animal feed/prawn feed as such.
- However, the appellate authority had reversed the order of the AA.
- Aggrieved, the department had filed an appeal and accordingly, the matter was placed before the Bench of two-judges of the Supreme Court.
- The Bench in its order doubted the ruling of Sun Exports. The gist of the observation made is as under:
  - Exemption notification has to be strictly construed i.e. if the person claiming exemption notification does not fall strictly within the letter of the Notification, he cannot claim notification.
  - If two views are possible, for matters in connection with the charging section of a statue, one favorable to the taxpayer has to be preferred.
  - Sun Export case was not concerned with the charging section of a taxation statute but was concerned with the interpretation of an Exemption Notification.

    The matter was thereafter placed before Hon'ble Chief Justice of India to constitute an appropriate Bench to resolve the doubts raised in the order.
- Five Judge Constitution Bench of the Supreme Court (constitution bench) was setup to examine the correctness of the ratio laid down in case of Sun Export Corporation.
- The constitution bench has analysed various Supreme Court decisions and basis the same has overruled the ratio laid down by the three judge bench of Supreme Court in Sun Export case. Supreme Court decision placed following Principles of interpretation:
  - Acts and Regulations are either made by the act of Parliament or by Legislature. While forming the Acts/Regulations, words, phrases and principles of interpretation as laid down in the General Clauses Act are kept in view.
  - In case of conflict between the General Clauses Act and the statutory provision, the court must necessarily refer to the intent of the statute. The purpose of interpretation is essentially to know the intention of the legislature.
  - Statutory provision if open to more than one meaning, the Court has to choose the interpretation which represents the intention of the Legislature. When words in a statute are clear, plain and unambiguous and only one meaning can be inferred, the courts are bound to give effect to the said meaning irrespective of the consequences. Hardship or inconvenience caused cannot form a basis to alter the meaning to the language employed by the legislation.
  - Where legislature mandates taxing certain persons/objects in certain circumstances, it cannot be expanded/interpreted to include this, which were not intended by the legislature. In a Taxation statue, there is no room for any intendment, regard must be had to the clear meaning of the words and the matter should be governed wholly by the language of the notification. Equity has no place in the interpretation of tax statue.
- **Accordingly, the Constitution Bench held that:**
  - Exemption notification should be interpreted strictly; the burden of proving applicability would be on the taxpayer to show that his case comes within the parameters of the exemption clause or exemption notification.
  - The ratio in Sun Export case is not correct and all the decisions which took a similar view as in Sun Export Case stands over- ruled.
  - When there is ambiguity in exemption notification which is subject to strict interpretation, the benefit of such ambiguity cannot be claimed by the subject/taxpayer and it must be interpreted in favour of the revenue.

SEBI, MCA & RBI/FEMA

SEBI UPDATES

AMENDMENT TO SEBI (CREDIT RATING AGENCIES) REGULATIONS, 1999

- CRA may undertake the rating of financial instruments under the respective guidelines of the financial sector regulators/ authorities as specified in Annexure A
- CRAs may also undertake research activities, incidental to rating, such as research for Economy, Industries and Companies

KNOW YOUR CLIENT REQUIREMENTS FOR FOREIGN PORTFOLIO INVESTORS (FPIS)

- Identification and verification of Beneficial Owners For Category II & III FPIs
- Periodic KYC review
- KYC documentation for Category III FPI
- Exempted documents to be provided during
- investigations/ enquiry
- Data Security
- Period for Maintenance of Records
- Timelines for Compliance

APPLICABILITY OF CIRCULARS ISSUED FOR COMMODITY DERIVATIVES MARKETS

- After taking over the regulation of commodity derivatives market, SEBI has issued various circulars applicable to Commodity derivatives exchanges.
- As per the amendments in Securities Contracts (Regulation) (Stock Exchanges and Clearing Corporations) Regulations, 2012 as notified on April 02, 2018 in the Gazette of India, there would be no separate category of 'Commodity Derivatives Exchanges w.e.f. October 1, 2018
- Accordingly, it is clarified that all the norms issued for Commodity Derivatives Exchanges till date shall be applicable to Commodity Derivatives Segments of Recognised Stock Exchanges/Recognised Clearing Corporations to the extent applicable.

MCA UPDATES

RELAXATION OF ADDITIONAL FEES AND EXTENSION OF LAST DATE OF FILING FORM BEN-2 DATED 6 SEPTEMBER,2018

- MCA has extended the time limit for filing the BEN-2 form and has given the relaxation of additional fees
- The time limit would be 30 days from the date of deployment of BEN-2 e-form on the MCA-21 portal
- No additional fee shall be levied if the same is filed within 30 days from the date of deployment of the said e-form

RELAXATION OF ADDITIONAL FEES AND EXTENSION OF LAST DATE OF FILING FORM BEN-2 DATED 6 SEPTEMBER,2018

- MCA gave clarification in filing FORM BEN-1
- Form BEN-l would be revised
- As such, the due date of 10 September, 2018 for filing BEN-1 declaration would be revised and a revised BEN-l form would be notified shortly
- Stakeholders are advised to file declaration as per the revised form only and adhere to the time lines which will be specified therein

COMPANIES (PROSPECTUS AND ALLOTMENT OF SECURITIES) THIRD AMENDMENT RULES 2018

- This rule shall come into force on the 2nd day of October, 2018
- In the Companies (Prospectus and Allotment of Securities) Rules, 2014, after rule 9, the following rule shall be inserted
- Issue of securities in dematerialized form by unlisted public companies
- Every unlisted public company shall
  - Issue the securities only in dematerialized form and
  - Facilitate dematerialization of all its existing securities in accordance with provisions of the Depositories Act, 1996 and regulations made there under

COMPANIES (PROSPECTUS AND ALLOTMENT OF SECURITIES) THIRD AMENDMENT RULES 2018

- The Central Government hereby makes the following rules further to amend the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014, namely
  - In rule 6, (a) for the heading 'application to the Central Government' the heading 'Parameters for consideration of remuneration' shall be substituted

- The words 'Central Government shall be omitted
- In rule 7, sub-rule (2) shall be omitted
- Revised version of Form no.MR-2, shall be substitute

COMPANIES (PROSPECTUS AND ALLOTMENT OF SECURITIES) THIRD AMENDMENT RULES 2018

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- Every unlisted public company shall
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COMPANIES (APPOINTMENT AND REMUNERATION OF MANAGERIAL PERSONNEL) AMENDMENT RULES 2018

- The Central Government hereby makes the following rules further to amend the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014, namely
  - In rule 6, (a) for the heading 'application to the Central Government' the heading 'Parameters for consideration of remuneration' shall be substituted
  - The words 'Central Government shall be omitted
  - In rule 7, sub-rule (2) shall be omitted
  - Revised version of Form no.MR-2, shall be substitute

AMENDMENT TO SCHEDULE V OF THE CA 2013

- The Central Government hereby makes the following amendments to amend Schedule V of the said Act, namely,
  - In PART l :- APPOINTMENTS
  - para (d) shall be omitted
- In PART II, under heading" REMUNERATION", in Section II,
- In PART ll, under the heading "REMUNERATION', in Section III,

COMMENCEMENT NOTIFICATION OF THE COMPANIES (AMENDMENT) ACT 2017

- The Central Government hereby appoints the 12th September, 2018 as the date on which the provisions of sections 66 to 70 (both inclusive) of the said Act shall come into force.

LLP AMENDMENT RULES 2018 DATED 18.09.2018

- This rule shall come into force on the 2nd day of October, 2018
  - Form RUN LLP (Reserve Unique Name Liability Partnership), Form FiLLip(Form for incorporation of Limited Liability Partnership) has been inserted by MCA for incorporation of LLP

COMMENCEMENT NOTIFICATION OF COMPANIES (AMENDMENT) ACT, 2017

- The Central Government hereby appoints the 19TH September 2018, as the date on which the provisions of section 37 of the said Act shall come into force.

COMPANIES (CSR) AMENDMENT RULES, 2018

- The Central Government hereby makes the following rules further to amend the Companies (Corporate Social Responsibility Policy) Rules, 2014, namely,
  - The Companies (Corporate Social Responsibility Policy) Amendment Rules, 2018
  - They shall come into force on the date of their publication in the Official Gazette

COMPANIES (APPOINTMENT AND QUALIFICATION OF DIRECTORS) 6TH AMENDMENT RULE,2018

- The Central Government hereby makes the following rules further to amend the Companies (Appointment and Qualification of Directors) Rules, 2014, namely
  - In the proviso to rule 12A, for the words and figures "before 15th September, 2018," the words and figures "before 5th October, 2018 " shall be substituted.
  - They shall come into force from the date of their publication in the Official Gazette

COMPANIES (APPOINTMENT AND QUALIFICATION OF DIRECTORS) 6TH AMENDMENT RULE,2018

- The Central Government hereby makes the following rules further to amend the Companies (Appointment and Qualification of Directors) Rules, 2014, namely
  - In the proviso to rule 12A, for the words and figures "before 15th September, 2018," the words and figures "before 5th October, 2018 " shall be substituted.
  - They shall come into force from the date of their publication in the Official Gazette

COMPANIES (INDIAN ACCOUNTING STANDARDS) SECOND AMENDMENT RULES,2018

- The Central Government, in consultation with the National Advisory Committee on Accounting Standards, hereby makes the following rules further to amend the Companies (Indian Accounting Standards) Rules, 2015, namely,
  - Indian Accounting Standard (Ind AS 20)
  - They shall come into force on the date of their publication in the Official Gazette

COMPANIES (INDIAN ACCOUNTING STANDARDS) SECOND AMENDMENT RULES,2018

- The Central Government, in consultation with the National Advisory Committee on Accounting Standards, hereby makes the following rules further to amend the Companies (Indian Accounting Standards) Rules, 2015, namely,
  - Indian Accounting Standard (Ind AS 20)
  - They shall come into force on the date of their publication in the Official Gazette

COMPANIES (REGISTRATION OFFICE AND FEES) 5TH AMENDMENT RULES,2018

- Late fees for DIR-3 KYC during the Financial year (2018-19) from 21.09.2018 to 5.10.2018 shall be Rs.500/-
- Fees of Rs.5000/- shall be payable on or after 06.10.2018

COMPANIES (REGISTERED VALUERS AND VALUATION)THIRD AMENDMENT RULES, 2018

- These rules may be called the companies (Registered valuers and Valuation) Third Amendment Rules, 2018
  - They shall come into force on the date of their publication in the official Gazette
  - In rule 11, 30th September, 2018" occurring at both the places, the figures, letters and word ,31st January, 2019" shall be substituted
  - In the said rules, in rule 14, in clause (f), for the words one year, the words " two years" shall be substituted

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Due Dates

Income Tax Department (ITD) Compliances

Sr No.	Due Date	Form No	Description
1	30.10.2018	Form 26QB	Due date for furnishing of challan-cum-statement in respect of tax deducted u/s. 194-IA for the month of September , 2018
		Form 26QC	Due date for furnishing of challan-cum-statement in respect of tax deducted u/s. 194-IB for the month of September, 2018
2	31.10.2018	ITR	Annual return of income for the assessment year 2018-19 for following assessee: (a) corporate-assessee or (b) non-corporate assessee (whose books of account are required to be audited) or (c) working partner of a firm whose accounts are required to be audited
3	31.10.2018	Form 26Q. Form 24Q, Form 27Q	Quarterly statement of TDS deposited for the quarter ending September 30, 2018.
4	07.11.2018	Challan No.281	Due date for deposit of Tax deducted/collected for the month of Oct 2018
5	14.11.2018	Form 26QB	Due date for deposit of Tax deducted/collected for the month of Oct 2018
		Form 26QC	Due date for issue of TDS Certificate for tax deducted u/s. 194-IB in the month of Sept, 2018
6	15.11.2018	Form 16A	Quarterly TDS certificate (in respect of tax deducted for payments other than salary) for the quarter ending September 30, 2018

Indirect Tax Compliances

Sr No.	Due Date	Authority	Form No	Description
1	20.10.2018	GST	GSTR-5	(Non-Resident Foreign Taxpayer) Monthly Filling (September 18)
2	20.10.2018	GST	GSTR-3B	Summary Return to be filed for the month of September -18
3	20.10.2018	GST	GSTR-5A	(Non-Resident OIDAR Service Provider) (September 18)
4	21.10.2018	State Government (Maharashtra)	VAT Return	Dealers not covered under GST (Eg:Alchohol)
5	21.10.2018	State Government (Maharashtra)	VAT Return (Quaterly)	Dealers not covered under GST (Eg:Alchohol)
6	18.10.2018	GST	GSTR - 4	Composition Dealers (July-Sept) 18
7	31.10.2018	State Government (Maharashtra)	IIIB	Monthly PTRC Return of Oct 18

Indirect Tax Compliances

Sr No.	Due Date	Authority	Form No	Description
8	30.10.2018	GST	GSTR-10	Cancellation of Registration
9	31.10.2018	GST	GSTR-1	Summary of Outward Supplies for the month of Septmber 18 in case of turnover exceeding INR 1.5 Crores
10	31.10.2018	GSTR-1 (Quaterly)	GSTR-5A	Summary of Outward Supplies for the month of July 18 to September 18 in case of turnover Not exceeding INR 1.5 Crores
11	11.11.2018	GST	GSTR-1	Summary of Outward Supplies for the month of October 18 in case of turnover exceeding INR 1.5 Crores

ROC Compliances

Sr No.	Due Date	Form No	Description
1	30.10.2018	Form 8	Statement of Account & Solvency
2	29.10.2018	AOC-4	Annual Accounts
3	Within 30 days from receipt of cost audit report	CRA-4	Cost audit report
4	within 30 days from date of board meeting or 180 days of the start of financial year, whichever is earlier	GST	Summary of Outward Supplies for the month of October 18 in case of turnover exceeding INR 1.5 Crores

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