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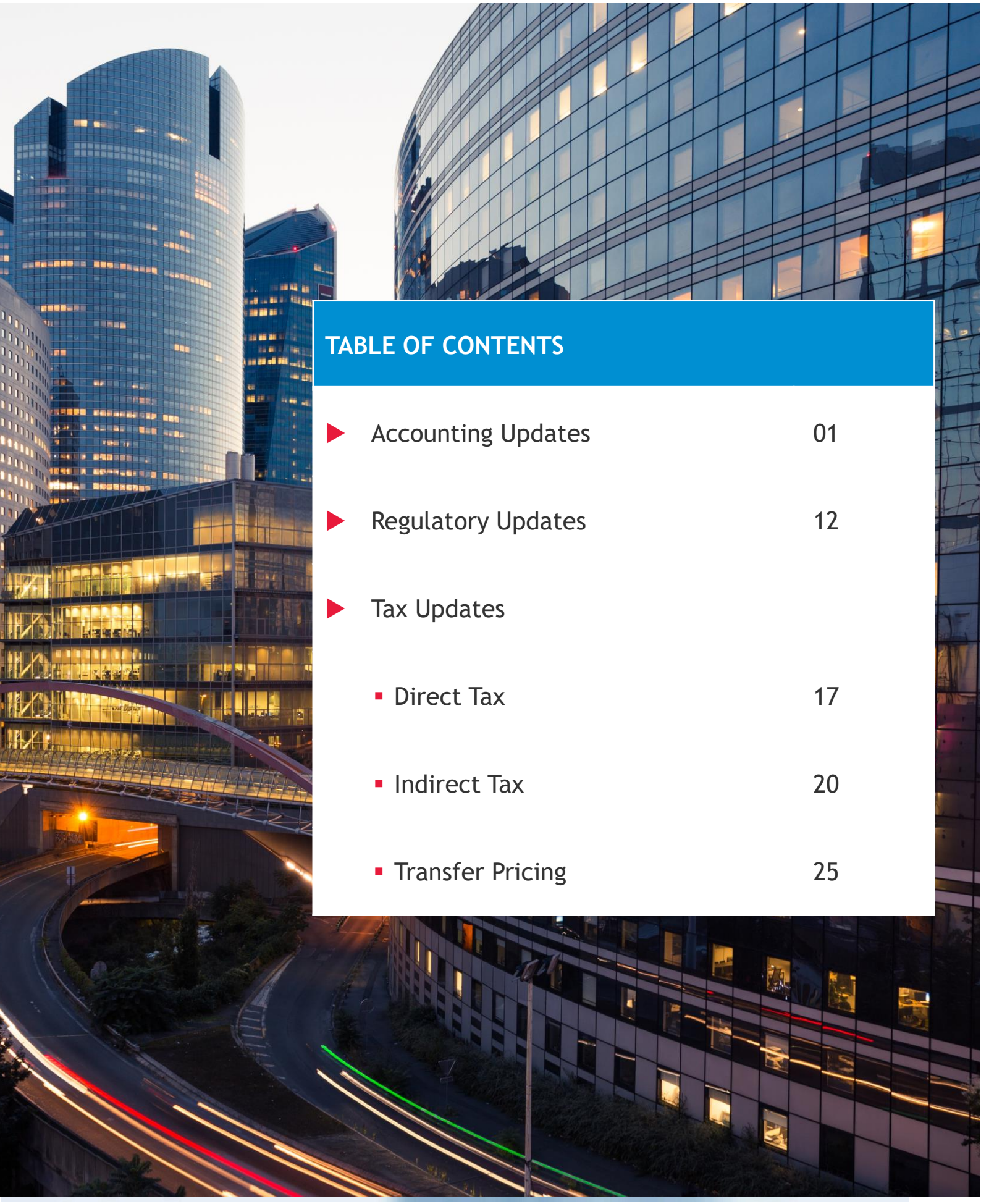

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INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA (ICAI)

EAC OPINION

Capitalisation of ATS Charges due on Intangible Asset under development (ERP)

Facts of the Case

A company (hereinafter referred to as 'the Company'), a Schedule 'A' and a Mini Ratna (Category-I) Company, was incorporated on 23 August 1974. It has an authorised capital of INR 1000 crore and a paid-up capital of INR 490.58 crore out of which the Government of India's share is 74.71 % and 25.29 % is held by financial institutions and others. The Company has five gas-based Ammonia-Urea plants. The Company currently has a total annual installed capacity of 35.68 Lakh Metric Tonnes (LMT) (re-assessed capacity of 32.31 LMT) and is the 2nd largest producer of Urea (fertiliser) in the country with a share of about 16% of total Urea production in the country. The Company is engaged in the manufacturing and marketing of Neem Coated Urea, three strains of Bio-Fertilisers (solid and liquid) and other allied industrial products like ammonia, nitric acid, ammonium nitrate, sodium nitrite and sodium nitrate. Urea is a controlled product, and its price is controlled by the Government under its subsidy scheme. The MRP of Urea is fixed by the Government and is the same for all companies. The Company is also importing and trading various agro inputs like non-urea fertilisers, certified seeds, agrochemicals, bentonite sulphur, and city compost through its existing PAN India dealer's network under a single window concept.

Compliance with Ind AS

The financial statements are prepared on an accrual basis, as a going concern and comply in all material aspects, with Indian Accounting Standards (Ind ASs) notified under section 133 of the Companies Act, 2013 (the Act) [Companies (Indian Accounting Standards) Rules, 2015] (as amended) and other relevant provisions of the Act. The financial statements up to the year ended 31 March 2016 were prepared in accordance with the Accounting Standards notified under Companies (Accounting Standards) Rules, 2006 (as amended) and other relevant provisions of the Act.

Background of the Present Case

The Company, vide work order dated 30.07.2020, has awarded the contract to M/s Tech M for implementation of SAP – ERP solutions at the Company for a total value of INR 76.73 crore, which includes IT Infrastructure & cloud hosting, ERP License, ERP License Annual Technical Support (ATS), ERP Application Support, SDWAN Solution etc.

As per the agreed terms of the work order, the implementation of SAP – ERP solutions was to be completed within 12 months from the date of the work order, i.e., 29.07.2021. However, due to unavoidable delays on the part of implementing agency M/s Tech M and other issues, the implementation of SAP – ERP solutions got delayed and implementation is still under process.

Accounting Treatment by the Company

After the start of the implementation of SAP – ERP solutions at the Company, it has incurred an amount of INR 30.44 crore up to 31.03.2023 and has capitalised the same including ATS Charges of INR 7.42 crore based on the value of work executed as per terms of the contract. The year-wise break-up of costs incurred is as under:

PARTICULARS	LESS THAN 1 YEAR	1-2 YEARS	2-3 YEARS	MORE THAN 3 YEARS	TOTAL
ERP-SAP	4.10	4.44	21.42	0.48	30.44

About ATS Charges

The ATS Charges comprise of following:

a. ATS for core ERP Functions.

b. ATS for E-Office solutions including DMS and workflow (if applicable).

Work order details relating to ATS

As per the work order dated 30.07.2020 for implementation of ERP, referring to the scope of the work order with regard to ATS, the clause is as below:

ERP License ATS is due one year after delivery of the License up to 5 years (a copy of the Work Order dated 30.07.2020 has been supplied separately by the Company for the perusal of the Committee).

Further, Sr. No. 9 of payment terms of the work order dated 30.07.2020 placed on M/s Tech M for implementation of ERP provides the following regarding ATS for ERP:

ATS for ERP and all other Licenses shall be paid from second year onwards (1 year after delivery of Licenses) on submission of the following documents:

a. Proof of payment made by M/s Tech M to the OEM(s) for the respective year's ATS Charges being claimed from the Company.

b. Submission of certificate by M/s Tech M for commencement of ATS services for the respective year.

c. Submission of the preceding year's report by the OEMs containing details of support services delivered, updates, upgrades and patches installed for the ERP software solution and License (as applicable).

The Company has stated that no invoice has been raised by M/s Tech M for ATS and no payment has been made to M/s Tech M. However, based on principle of conservatism, a provision of INR 7.42 crore (INR 3.73 crore per year) is being made in the books of account and charged to capital work in progress (CWIP).

Government Audit observation on the annual accounts for the financial year (F.Y.) 2022-23: However, during the course of audit of the annual accounts of the Company for the financial year (F.Y.) 2022-23, audit observed that the Company has to release ATS price to the tune of INR 7.42 crore for the un-implemented period of ERP project, which had not given any benefit to the Company. Since ATS has to be paid on a yearly basis which is of a recurring nature and not directly attributable cost of the development of ERP, the same should not be capitalised under the head "Intangible assets under development". The detailed Audit Observation issued by the Govt. Audit on Capitalisation of ATS Charges due on Intangible Asset under development (ERP) is reproduced below:

Audit Observation

"Ind AS 38, Intangible Assets states that "the cost of a separately acquired intangible asset comprises:

(a) Its purchase price, including import duties and non-refundable purchase taxes, after deducting trade discounts and rebates; and

(b) Any directly attributable cost of preparing the asset for its intended use".

BoD approved (June 2020) the implementation of ERP in the Company and subsequently, Notification of Award (NOA) of the contract and the work order for implementation of ERP solution at the Company was issued in favour of M/s Tech M on 30.07.2020. As per the terms and conditions of the work order, the ERP project was to be implemented within 12 months from the date of the work order i.e., 30.07.2020.

As per the schedule of rate for implementation of ERP for the Company, ATS price of INR 3.73 crore (exclusive of GST) for licenses was payable to M/s Tech M. Accordingly, the Company has created a provision of INR 7.42 crore for ATS for the years 2021-22 and 2022- 23 and same has been shown under the head "Intangible assets under development".

In this regard, audit observed that the Company has to release ATS price to the tune of INR 7.42 crore for the un-implemented period of the ERP project, which had not given any benefit to the Company.

Further, ATS was to be paid during the operations & maintenance phase, which was not the part of "Development/Implementation Phase". Moreover, ATS has to be paid on a yearly basis which is of a recurring nature and not directly attributable cost of the development of ERP. Hence, the same should not be capitalised under the head "Intangible assets under development". Thus, this has resulted into an understatement of 'provision for expenses' and an overstatement of profit by INR 7.42 crore. The above facts and figures may please be confirmed and remarks of the management/ statutory auditor along with supporting papers may please be furnished within 2 days of receipt of this audit observation."

Management Reply to Audit Observation: The Company submitted the following reply to the government audit in respect of the aforesaid audit observation:

"Paragraph 27 of Ind AS 38 states as under:

"The cost of a separately acquired intangible asset comprises:

(a) Its purchase price, including import duties and non-refundable purchase taxes, after deducting trade discounts and rebates; and

(b) Any directly attributable cost of preparing the asset for its intended use."

Further, paragraph 30 of Ind AS 38 states as under:

"Recognition of costs in the carrying amount of an intangible asset ceases when the asset is in the condition necessary for it to be capable of operating in the manner intended by management. …"

Further, paragraph 8 of Ind AS 38 inter-alia states as under:

"Development is the application of research findings or other knowledge to a plan or design for the production of new or substantially improved materials, devices, products, processes, systems or services before the start of commercial production or use."

It is informed that for the development of ERP software, ERP licenses are purchased and these licenses are used for coding, programming and testing etc. till go-live.

Annual Technical Support is in relation to the above-mentioned licenses on which ERP development, testing etc. is still continuing. Therefore, the provisional expenditure of INR 7.42 crore on Annual Technical Support is being capitalised as an Intangible Asset (ERP).

As the ERP is still under development stage and ATS to be paid is in relation to licenses procured, which are currently being used and will continue to be used for development of ERP till milestone of Go-Live is achieved. Therefore, no benefit has arisen or generated to the Company from licenses during the period, as those are being used for the development of Intangible Asset "ERP".Accordingly, expenditure to the tune of INR 7.42 crore on ATS has been correctly recognised under "Intangible assets under development"."

Government Audit Supplementary Observation through Provisional Comment (PC) No.1:

The Company has to release ATS price to the tune of INR 7.42 crore for the un-implemented period of the ERP project, which had not given any benefit to the Company. Further, ATS was to be paid during the operations & maintenance phase, which was not the part of "Development/Implementation Phase". Moreover, ATS has to be paid on a yearly basis which is of recurring nature and not directly attributable cost of the development of ERP. Hence, the same should not be capitalised under the head "Intangible assets under development".
Thus, it has resulted in understatement of 'provision for expenses' and overstatement of profit by INR 7.42 crore."

Management Reply to Provisional Comment:

The Company submitted the following reply to the Govt. Audit in respect of aforesaid PC:

These licenses were procured in year 2020-21 to start the development of ERP software and without these licenses, intended use of SAP i.e. coding, programming and testing etc. till go-live is not possible. As the intangible asset is still under development stage and licenses are continued to be used for intended use (yet to be achieved), therefore ATS has been correctly classified as Intangible Asset under development.

The ERP is still under development stage and ATS to be paid is in relation to licenses procured, which are currently being used and continue to be used for intended use of intangible assets. Further, with respect to recurring annual cost as mentioned in the PC, it is a fundamental principle under Ind AS, whether development of tangible or intangible assets, any cost incurred till intended use is achieved, has to be capitalised till 'intended use' is achieved; thereafter similar cost capitalised earlier in relation to development of those assets become recurring revenue costs i.e. interest, annual charges etc."

Query

In the above background, opinion on the subject matter is requested for the following:

(i) Whether the capitalisation of ATS Charges due on intangible assets under development in the books of account of the Company is in accordance with the provisions of Ind AS 38.

(ii) Any other advice for proper accounting of the above assets.

Points considered by the Committee

The Committee notes that the basic issue raised in the query relates to accounting for ATS charges due on intangible assets under development in the financial statements of the Company. The Committee has, therefore, examined only this issue and has not examined any other issue that may arise from the Facts of the Case. The Committee has answered the issue only from an accounting perspective and not from a legal perspective. Further, the Accounting Standards referred to in the opinion are Indian Accounting Standards notified under the Companies (Indian Accounting Standards) Rules, 2015, as revised or amended from time to time.

At the outset, the Committee wishes to mention that the Committee has not examined whether the intangible asset under development meets the definition and recognition criteria of 'Intangible Asset' as per Ind AS 38 and the Committee has proceeded on the premise that the Company has correctly recognised the same as 'Intangible Asset under development'. Further, the Committee wishes to point out that not all costs incurred during the development of an intangible asset can be capitalised. The costs or expenses during the development of an intangible asset are capitalised as per the requirements of Ind AS 38.

Further, the Committee notes that the Company has submitted that due to unavoidable delays on the part of the implementing agency and other issues, the implementation of SAP – ERP solutions got delayed and implementation is still under process. The Committee wishes to mention that, if an entity incurs cost during an extended period in which there is a suspension of the ERP implementation activities necessary to prepare the asset for its intended use, the costs incurred during such a period do not qualify for capitalisation. If there are delays on account of substantial technical and administrative work necessary for getting the asset ready for its intended use, an entity may continue to capitalise costs during such as period. In the absence of anything to the contrary, the Committee has not examined whether the ATS costs after 12 months of work order even without the SAP implementation due to suspension/ no active development towards activities for SAP implementation or substantial technical/ administrative activities necessary for SAP implementation. It has been assumed that the nature of the ATS charges in question is not due to suspension / no active development towards activities for SAP implementation.

'The Committee notes the following features of ATS Charges from the work order:

"Key Information for Implementation of ERP in the Company

ERP type and ERP Name	COTS (Commercial off the Shelf) – SAP S4/HANA
Number of ERP User Licenses	1500 (Including DR Site)
...	...
Implementation Period	12 Months from the date of work order
ERP License ATS	5 Years (One year after delivery of licenses)

General Scope of Work

Provide ATS including the implementation of latest upgrades, service packs, enhancements and patches to the offered SAP S4/HANA product and other products during the 5-year ATS period post-implementation.
Provide support services including a full-fledged help desk solution postimplementation until the end of the Post Implementation Support Period (2 years post Implementation).

Implementation of SAP S4/HANA Application:

a) Implementation of SAP S4/HANA Application: this includes design, customisation, configuration, deployment and commissioning of COTS process(s)/ sub-process(s)/ functionalities to comply with the business needs of the Company. The implementation shall be based on the approved business blueprint and design. (FRS Requirement)
b) The SAP S4/HANA application will be based on the configuration/ customisation of the COTS product.
d) Identify and Integrate with all Internal and external systems and services as per the requirement of the proposed system.

Development:

Developments shall be in the nature of enhancements to existing applications, additional applications, additional reports form changes etc. M/s Tech M shall validate and confirm the need for any such developments that are required in order to meet the functionality of processes.

Post-Implementation Support:

In addition to the clause above, M/s Tech M is required to provide post-implementation technical & functional support services which include the rectification of all the latent or identified defects, bugs and Improvements for two years from the end of implementation. All the enhancements, patches, latest version upgrades, service packs etc. (as applicable) are to be installed within 3 months of release of a stable version in consultation with the Company.

Supply of Software/ Licenses:

a) M/s Tech M shall supply all the software with an adequate number of licenses, required for the proposed SAP S4/ HANA system. All system software, licenses etc. have to be procured in the name of the Company.

b) The licenses should be perpetual. The software licenses shall not be restricted based on location and the Company should have the flexibility to use the software licenses for other requirements (if required).

c) The software provided should have the OEM support for a period of not less than 5 years from the date of implementation.

d) Tools, software for implementation, data migration, testing etc. shall be part of the offered solution.

e) All support services including updates, upgrades and patches for all SAP S4/HANA processes shall be provided by M/s Tech M till the end of the warranty/ ATS Period."

Licenses

M/s Tech M should provide the requisite types of licenses for selected SAP S4/HANA applications, related databases, middleware, any additional bolt-on third-party tools (if proposed) and all other required tools and/ or applications with a sufficient number of user and product licenses. … The supplied licenses should be valid for the latest/current version as of the date of actual procurement. The licenses should be supplied only on the basis of written confirmation from the Company.

M/s Tech M should propose all the required processes/functions from a single SAP S4/HANA suite to meet the Company requirements. In case any specific function(s) are not available in the proposed standard SAP S4/HANA suite, M/s Tech M may propose additional SAP S4/HANA product vendor processes or third-party bolt-on tools. M/s Tech M will ensure that the entire solution is seamlessly integrated and users should be able to perform their business roles through a single sign-on.

Configuration, Customisation & COTS

Preferably, changes should be kept as minimal as possible to the SAP S4/HANA core processes. This is important to ensure that future upgrades, enhancements and bug fixes are not impacted. Any customisation as may be necessary should be done only after confirmation from the SAP S4/HANA product vendor of the non-availability of standard functionality and obtaining prior written approval from the Company. Every custom development must be documented in detail and the script ownership should be passed on to the company as soon as this becomes part of the production environment.

Payment Terms

PROJECT MILESTONE	SAP S4/ HANA APPLICATION LICENSE	TIMELINES FROM THE DATE OF WORK ORDER (TO)
a. Yearly ATS Payment of ERP, Licenses (1500) as per contract (Annexure-A-: Sr. No. 2-a of price schedule)	100% of respective year	One year after the License delivery date and subsequently for 4 years"

"Payment Terms – Instructions

ATS for ERP and all other Licenses shall be paid from the second year onwards (1 year after delivery of licenses) on submission of the following documents:

a. Proof of payment made by M/s Tech M to the OEM(s) for the respective Year's ATS Charges being claimed from the Company.

b. Submission of certificate M/s Tech M for commencement of ATS services for respective Year.

From the above and the facts supplied, the Committee understands that for the implementation of SAP-ERP software solution/ system in the Company, in the beginning, certain perpetual ERP licenses (SAP S4/ HANA) have been procured from OEM in the name of the Company, which will be installed, customised and integrated as per the Company's requirements and functions/operations by M/s Tech M. In respect of such licenses, yearly ATS payment after one year of license delivery date (i.e. from second year onwards) and subsequently for a period of 4 years has to be made by the Company (for 5 years in total). Further, ATS services include delivery of support services, implementation of latest updates, upgrades, service packs, enhancements and installation of patches for the ERP software solution and licenses. Initially, as the implementation of the ERP software was to take place within 12 months from date of work order, payment for ATS was to be made during 5 years post-implementation of ERP. However, since the implementation could not be achieved in the specified period of 12 months, the Company understands that the payment of ATS is due after 12 months and therefore, has created an accrual for the same and is capitalising the same with the cost of intangible asset (ERP software) under development. Presuming that the Company's understanding with regard to its obligation towards ATS after twelve months is correct, the Committee examines the issue of accounting for the same in subsequent paragraphs.

In the context of the issue raised, the Committee notes the following requirements of Ind AS 38, 'Intangible Assets':

"An intangible asset shall be recognised if, and only if:

(a) It is probable that the expected future economic benefits that are attributable to the asset will flow to the entity; and

(b) The cost of the asset can be measured reliably."

"Cost of an internally generated intangible asset

The cost of an internally generated intangible asset for the purpose of paragraph 24 is the sum of expenditure incurred from the date when the intangible asset first meets the recognition criteria in paragraphs 21, 22 and 57. Paragraph 71 prohibits the reinstatement of expenditure previously recognised as an expense.

The cost of an internally generated intangible asset comprises all directly attributable costs necessary to create, produce, and prepare the asset to be capable of operating in the manner intended by management. Examples of directly attributable costs are:

(a) Costs of materials and services used or consumed in generating the intangible asset;

(b) Costs of employee benefits (as defined in Ind AS 19) arising from the generation of the intangible asset;

(c) Fees to register a legal right; and

(d) Amortisation of patents and licences that are used to generate the intangible asset."

(d) Amortisation of patents and licences that are used to generate the intangible asset.

Ind AS 23 specifies criteria for the recognition of interest as an element of the cost of an internally generated intangible asset."

From the above, the Committee notes that the cost of an internally generated intangible asset comprises all directly attributable costs necessary to create, produce, and prepare the asset to be capable of operating in the manner intended by management. It includes costs, such as the cost of material and services used or consumed cost of employee benefits in generating the intangible asset, amortisation of patents and licenses that are used to generate the intangible asset etc. The Committee is of the view that 'directly attributable' costs are generally such costs which are necessary to generate the asset and without the incurrence of these costs, the asset cannot be created, produced or prepared to be capable of operating in the manner intended by management.

The Committee notes that in the extant case, with regard to ATS Charges, it is informed by the Company that ERP licenses were procured for the development of ERP software and without these licenses, intended use of SAP-ERP software solution/ system i.e. coding, programming and testing etc. till go-live is not possible. Further, Annual Technical Support is in relation to these licenses on which ERP development, testing, etc. is still continuing. Thus, it appears that incurring license charges including ATS Charges are necessary for the development of ERP (intangible asset) in the extant case.

Further, as discussed in paragraph 10 above, it appears that in the extant case, the ERP license is the base over which the SAP-ERP software solution/ system of the Company is to be developed and ATS ensures the upgradation/updation of the licenses over which ERP system will be developed. Therefore, it appears that ATS Charges are directly attributable to costs necessary to create, produce, and prepare the updated/upgraded ERP software/system for it to be capable of operating in the manner intended by management. Accordingly, to the extent and till the ERP software/system is under development and ATS Charges relate to that period, the same may be capitalised to the cost of ERP software/ system under development. Thus, capitalisation of ATS Charges due on intangible assets under development in the books of account of the Company appears to be in accordance with provisions of Ind AS 38.

Opinion

On the basis of the above, the Committee is of the following opinion on the issues raised:

(i) Capitalisation of ATS Charges due on intangible assets under development (ERP) in the books of account of the Company appears to be in accordance with provisions of Ind AS 38, as discussed above.

(ii) In view of (i) above, this issue does not arise.

REGULATORY UPDATES

Institute of Chartered Accountants of India (ICAI)

Extension of last date of CPE hours' compliance for the Calendar year 2024 - From 31 December 2024 to 28 February 2025

The Statement on Continuing Professional Education, 2023 has been made effective from Calendar year 2024 onwards, which has introduced consequential provisions for non-compliance with CPE hours requirements applicable to various categories of members on a yearly basis. These consequential provisions are applicable w.e.f. 1 January 2025 for non-compliance arising from the calendar year in 2024 with regard to CPE requirements.

As consequential provisions arising due to non-compliance with CPE requirements are coming into effect for the first time in the Calendar year 2024, to assist members, it has been decided to extend the last date for complying with the CPE hours requirements for the Calendar year 2024 from 31 December 2024 to 28 February 2025. This extension also applies to filing Unstructured Learning Activities (ULA) for the same period.
Further, the consequential provisions for non-compliance at Level I will now apply from 1 March to 30 June 2024, instead of 1 January to 30 June, with subsequent levels (II, III, IV) remaining unchanged.
Members with a shortfall in CPE hours for the Calendar year 2024 can complete the remaining hours by 28 February 2025, and those CPE hours will be counted towards the Calendar year 2024 requirement. Further, CPE hours completed between 1 January and 28 February 2025, will be credited/ counted for Calendar year 2025 for members who have already met the Calendar year 2024 requirements by 31 December 2024.

The above may be noted by the Members for timely compliance with CPE Hours requirements for the Calendar year 2024 and **latest by 28 February 2025.**

Ministry of Corporate Affairs (MCA)

Companies (Accounts) Second Amendment Rules, 2024

MCA vide notification dated 31 December 2024, has issued further amendments regarding the Companies (Accounts) Rules, 2014 (hereinafter referred to as "Rules"). The Central Government, in exercise of powers conferred under Section 128(1) and (3), Section 129(3), Section 133, Section 134, Section 135(4), Section 136(1), Section 137 and Section 138 read with Section 469 of the Companies Act, 2013 (Act), amends the said Rules, which shall be enforceable with immediate effect.

The amendments to the Rules state that, for the financial year 2023-2024, Form CSR-2 shall be filed separately on or before 31 March 2025 [instead of 31 December 2024] after filing Form No. AOC-4 or Form No. AOC-4-NBFC (Ind AS), as specified in the rules or Form No. AOC-4 XBRL as specified in the Companies (Filing of Documents and Forms in Extensible Business Reporting Language) Rules, 2015 as the case may be.

These Rules shall come into force on the date of their publication in the Official Gazette.

Reserve Bank of India (RBI)

Inoperative Accounts / Unclaimed Deposits in banks

RBI vide dated 2 December 2024 has issued clarification on Inoperative Accounts / Unclaimed Deposits in banks. RBI mandates banks to address the issue of inoperative and frozen accounts, focusing on reducing their number and improving the activation process. Banks are required to:

1. Conduct annual reviews of inactive accounts and segregate scholarship/DBT/EBT accounts in Core Banking Systems to ensure uninterrupted credit, even if these accounts are inoperative.
2. Take measures to trace customers, conduct public awareness campaigns, and display activation procedures on websites and branches.
3. Enable seamless KYC updates via mobile/internet banking, non-home branches, and Video Customer Identification Process to prevent accounts from freezing due to pending updates.
4. Adopt an empathetic approach to activating frozen DBT/EBT accounts, particularly for underprivileged customers, and organise special activation campaigns. Facilitate Aadhaar updates at branches offering related services.
5. Banks are also advised to report the same on a quarterly basis to the respective Senior Supervisory Manager (SSM) through the DAKSH portal, starting from the quarter ending 31 December 2024. Further, reported progress through the portal will be monitored by the Customer Service Committee (CSC), starting from 31 December 2024.

A copy of this Circular shall also be placed before the CSC of the Board in its next meeting along with a monitorable action plan for ensuring full compliance in this regard.

Credit Flow to Agriculture - Collateral free agricultural loans

RBI has issued a notification dated 6 December 2024 on Credit Flow to Agriculture – Collateral-free agricultural loans. The RBI has raised the limit for collateral-free agricultural loans, including loans for allied activities from INR 1.6 lakh to INR 2 lakh per borrower, considering the overall inflation and rise in agriculture input cost over the years. Banks are advised to waive collateral security and margin requirements for such loans up to this revised limit and implement the changes by 1 January 2025.

Interest Rates on Foreign Currency (Non-resident) Accounts (Banks) [FCNR(B)] Deposits

RBI issued a circular dated 6 December 2024, regarding the interest rates on Foreign Currency (Non-resident) Accounts (Banks) [FCNR(B)] Deposits.

As per this circular, with effect from 6 December 2024, the ceiling on interest rates for fresh FCNR(B) deposits has been increased as follows:

PERIOD OF DEPOSIT	PRESENT RATE	INCREASED CEILING RATE
Deposits with a maturity of 1 year to less than 3 years	Overnight Alternative Reference Rate (ARR) for the respective currency/swap, plus 250 basis points	Overnight ARR for the respective currency/ Swap plus 400 basis points
Deposits with a maturity of 3 years to 5 years	Overnight ARR for the respective currency/ Swap plus 350 basis points	Overnight ARR for the respective currency/ Swap plus 500 basis points

The above relaxation shall be available till 31 March 2025.

Reporting Platform for transactions undertaken to hedge price risk of gold

RBI has issued a notification dated 27 December 2024, mandating Authorised Dealer Category-I (AD Category-I) Banks to report transactions in gold derivatives as follows:

1. **Reporting of OTC Transactions:**
   With effect from 1 February 2024, Banks shall report all over-the-counter (OTC) gold derivative transactions to trade repository (TR) of Clearing Corporation of India Ltd. (CCIL), both undertaken by the banks and their eligible customers/constituents in domestic markets, International Financial Services Centers (IFSC), and outside India. All transactions must be reported to the TR before 12:00 noon on the next business day. Banks must also report amendments and unwinding of these transactions to the TR.
2. **One-time Reporting for Outstanding Transactions:**
   As a one-time measure, banks must report all matured and outstanding OTC transactions in gold derivatives from 15 April 2024 to 28 February 2025, to the TR. This includes both transactions undertaken by banks and their eligible customers/constituents in domestic markets, IFSC, and outside India.
3. **Quarterly Reporting:**
   Banks are required to submit a quarterly report on gold derivative transactions undertaken by them at exchanges in IFSC and overseas, as well as by their eligible customers/constituents in IFSC, within ten days following the end of each quarter, starting from the quarter ending 31 December 2024.

Securities and Exchange Board of India (SEBI)

Repository of documents relied upon by Merchant Bankers during the due diligence process in Public issues

SEBI issued a circular dated 5 December 2024 on the Repository of documents relied upon by Merchant Bankers during the due diligence process in public issues. SEBI has mandated merchant bankers to upload and maintain due diligence records for public issues on an online Document Repository platform set up by stock exchanges. Key points include:

1. Merchant bankers must electronically upload documents for pre-issue and post-issue due diligence on the platform and inform other stock exchanges where securities are listed.
2. Implementation timelines:
   i. **From 1 January 2025:** Upload within 20 days of filing draft offer documents or listing on stock exchanges.
   ii. **From 1 April 2025:** Upload within 10 days of filing draft offer documents or listing.
3. Only merchant bankers can access their uploaded documents, but SEBI can request access for supervisory purposes.
4. Uploaded documents must be relevant, complete, and legible.
5. Effective for draft offer documents filed on or after 1 January 2025, for listing on Mainboard or SME exchanges.

The provisions of this circular shall be applicable for the draft offer documents filed on or after 1 January 2025 with SEBI/Stock exchanges for listing on Mainboard/ SME exchanges.

Master Circular for Depositories

SEBI vide circular dated 3 December 2024 has issued a Master Circular for Depositories. This Master Circular covers the relevant applicable circulars/communications pertaining to depositories issued by SEBI up to 30 September 2024.

1. Actions taken under the rescinded circulars including registrations or approvals granted, fees collected, registration or approval suspended or cancelled, any inspection or investigation or enquiry or adjudication commenced or show-cause notice issued, prior to such rescission shall be deemed to be under the corresponding provisions of this Master Circular;
2. Any pending applications and legal proceedings related to the rescinded circulars with SEBI will be processed as per the provisions of this Master Circular.
3. Any rights, obligations, privileges, liability and penalties under the rescinded circulars remain unaffected.
4. The Master Circular consists of four sections:
   i. Beneficial Owner (BO) Accounts,
   ii. Depository Participants (DP) Related
   iii. Issuer related and
   iv. Depositories Related.

This Master Circular shall come into force from the date of its issuance.

Prior approval for change in control: Transfer of shareholdings among immediate relatives and transmission of shareholdings and their effect on change in control

SEBI has issued a circular dated 27 December 2024 regarding the Transfer and transmission of shareholdings among immediate relatives and their effect on change in control. This circular provides clarity on the transfer and transmission of shareholding/control for certain intermediaries, including investment advisers (IAs), research analysts (RAs) and KYC (Know Your Client) registration agencies (KRAs):

1. **Transfer/ transmission of shareholding in case of unlisted body corporate intermediary**:
   a) Transfer of shareholding among immediate relatives will not be considered as a change in control. Immediate relative includes any spouse of that person or any parent, brother, sister or child of the person or of the spouse.
   b) Transmission of shareholding to immediate relative or not, will not be considered as a change in control.
2. **Transfer/ transmission of shareholding in case of a proprietary firm-type intermediary:**
   Transfer or transmission of ownership is considered a change in control, requiring prior approval and fresh registration in the name of the legal heir or transferee.
3. **Transfer/ transmission of ownership interest in case of partnership firm type intermediary**:
   a) In firms with more than two partners, transfers of ownership interest among partners will not be considered as a change in control.
   b) In firms with two partners, the firm dissolves on the death of a partner. If a new partner is added, it is treated as a change in control, requiring prior approval and fresh registration.
   c) Transmission of partnership rights to legal heirs shall not be considered as a change in control.
4. Incoming entities/ shareholders becoming part of controlling interest need to satisfy the fit and proper person criteria stipulated in SEBI (Intermediaries) Regulations, 2008.
5. IAASB and RAASB are directed to Inform the IAs and RAs about the provisions of this circular, publish the same on its website and make necessary amendments to relevant procedures.

The provisions of this circular shall be applicable with immediate effect.

Allowing subscription to the issue of Non- Convertible Securities during the trading window closure period

SEBI has issued a circular SEBI/HO/ISD/ISD-PoD-2/P/CIR/2024/180 dated 30 December 2024 addressing the issue of subscription to the issuance of Non-Convertible Securities (NCS) during the trading window closure period. This circular outlines updates to the trading window restrictions under SEBI's Prohibition of Insider Trading Regulations, 2015 (PIT Regulations):

1. The trading window restrictions shall not apply to certain transactions, such as acquisition by conversion of warrants or debentures, subscribing to rights issue, further public issue, preferential allotment or tendering of shares in a buy-back offer, open offer, delisting offer or such other transactions which are undertaken in accordance with the mechanisms as may be specified by the Board from time to time.
2. In addition to the above, the trading window restrictions shall not apply in respect of Offer for Sale and Rights Entitlements Transactions and to subscription to the issue of non-convertible securities, carried out in accordance with the framework specified by the Board from time to time
3. Stock Exchanges are advised to bring the provisions of this circular to the notice of all listed companies and also disseminate the same on their websites.

Master Circular for Stock Exchanges and Clearing Corporations

SEBI has issued a Master Circular dated 30 December 2024 for Stock Exchanges and Clearing Corporations consolidating all relevant circulars and directions issued by SEBI up to 31 October 2024. This Master Circular provides a centralised reference for all applicable circulars and communications for Stock Exchanges and Clearing Corporations, rescinding previous circulars and communication which are listed in Schedule 1 of the Circular. The master circular states as below:

1. Actions taken under the rescinded circulars including registrations or approvals granted, fees collected, registration or approval suspended or cancelled, any inspection or investigation or enquiry or adjudication commenced or show-cause notice issued, prior to such rescission, shall be deemed to be under the corresponding provisions of this Master Circular.

2. Any pending applications and legal proceedings related to the rescinded circulars will be processed as per the provisions of this Master Circular.

3. Any rights, obligations, privileges, liability and penalties under the rescinded circulars remain unaffected.

4. Words and expressions used but not defined in this Circular shall have the same meanings as may be defined in the Securities Contracts (Regulation) Act, 1956 the Securities and Exchange Board of India Act, 1992 or the Depositories Act, 1996 or Regulations made thereunder 5. This Master Circular supersedes the previous Master Circular issued on 16 October 2023

This Master Circular shall come into force from the date of its issue.

Securities And Exchange Board of India (Intermediaries) (Second Amendment) Regulations, 2024

SEBI issued a notification dated 4 December 2024, to further amend SEBI (Intermediaries) Regulations, 2008. These amendments provide a more streamlined procedure for summary proceedings against certain intermediaries, particularly stockbrokers, clearing members, and other entities that fail to comply with relevant regulations.

These regulations shall come into force on the date of their publication in the Official Gazette.

Securities and Exchange Board of India (Prohibition of Insider Trading) (Third Amendment) Regulations, 2024

SEBI has issued a notification dated 4 December 2024, to amend the Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015. These amendments are designed to broaden the definition of "connected persons," and "relative" and improve the regulatory framework around the access and misuse of unpublished price-sensitive information (UPSI).

Key Amendments include:

1. **Expansion of Definition of Connected Person:**
   - Persons sharing a household or residence with a connected person
   - Firm or its partner or its employee in which a connected person is also a partner
2. **Revised Definition of Relative**
   - Revised definition of "Relative" has replaced the definition of "Immediate Relative"
   - Include spouse, parents (including of spouse), siblings (including of spouse) and children of a connected person (including children of spouse) and further expands to include spouse of children and siblings as well. Reference to "dependent financially on such person or consults such person in taking decisions relating to trading in securities" is not there in the definition of relative.
   - This definition is intended to extend the connected person status to relatives of individuals already defined as connected, establishing a rebuttable presumption that they too may have access to UPSI.
   - Hence, reference to immediate relative is replaced with relative expanding scope of "deemed connected persons" from only "immediate relative" to "relative" as per the revised definition.

These amendments will come into force on the date of their publication in the Official Gazette.

Industry Standards on Reporting of BRSR Core

SEBI vide circular dated 20 December 2024, has issued industry standards for effective implementation of the requirement to disclose the Business Responsibility and Sustainability Report (BRSR). The Industry Standards Forum (ISF) has developed the industry standards in consultation with SEBI. These standards are designed to ensure that listed entities comply effectively with the BRSR Core disclosure requirements under Regulation 34(2)(f) of SEBI (Listing Obligations and Disclosure Requirements Regulations, 2015. The standards will be made available on the websites of ISF members—ASSOCHAM, CII, FICCI—and the stock exchanges, serving as a valuable resource for companies.

Hence, all listed entities shall follow the above industry standards to ensure compliance with SEBI requirements on disclosure of BRSR Core.

This circular shall be applicable for FY 2024-25 and onwards.

Securities and Exchange Board of India (Mutual Funds) (Third Amendment) Regulations, 2024

SEBI vide notification dated 16 December 2024, to further amend SEBI (Mutual Funds) Regulations, 1996. With this notification, SEBI has introduced framework for Specialised Investment Funds (SIFs) and Mutual Funds Lite (MF Lite) by inclusion of Chapter VIC and XI respectively.

Specialised Investment Funds (SIFs) - SIFs shall be a distinct category of mutual fund schemes designed to cater exclusively to Accredited Investors.

Key Features

1. **Minimum Investment Amount** - SIFs shall not accept from an investor, an investment amount less than 10 lakh rupees except from an accredited investor.
2. **Restriction on Investment**

   Debt Instruments - An investment strategy under SIFs shall not invest more than 20% of its NAV in debt instruments. Such investment limit may be extended to 25% of the NAV of the investment strategy with the prior approval of the Board of Trustees and Board of Directors of the asset management company. Further, this 20% restriction does not apply if the strategy invests in government securities and treasury bills.

   Equity - SIFs can invest up to 15% of the company's paid-up capital with voting rights. Also, they can only invest up to 10% of their NAV in equity shares of any company. The 15% limit gives an advantage to the SIFs over traditional mutual funds, where the CAP is 10%.

   REITs and InVITs - An investment strategy under a Specialised Investment Fund shall not invest.

   (i) More than 20% of its NAV in the units of REITs and InvITs; and

   (ii) More than 10% of its NAV in the units of REIT and InvIT issued by a single issuer

MF Lite - It aims at passive investment schemes like index funds and Exchange-Traded Funds (ETFs)

1. **Net-worth requirement**

   The minimum net worth of INR 35 crores for the AMC provided that it can be reduced to INR 25 crores if the AMC reports profits for 5 consecutive years. For sponsors not meeting eligibility criteria at the time of application, a higher net worth of INR 50 crores is required, subject to the same reduction clause.

2. **Eligibility Requirement (highlighted a few conditions herein)**
   Sponsor should have a soundtrack record and general reputation of fairness and integrity in all business transactions. This includes conditions relating to positive net worth, liquid net worth and net profit.
   - Sponsor has contributed or contributes at least 40% to the net worth of the MF Lite asset management company.
   - Sponsor or any of its directors or the principal officer to be employed by MF Lite should not have been guilty of fraud or has not been convicted of an offence involving moral turpitude or has not been found guilty of any economic offence.

Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) (Third Amendment) Regulations, 2024

SEBI vide notification dated 12 December 2024 has brought significant amendments to SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015. Following are the key amendments:

i. **Related Party Transactions (RPTs)**

Exclusions from the definition of RPTs

- Retail purchases by its directors or its employees from any listed entity or its subsidiary with terms uniformly applicable and without establishing business relationships
- Uniformly applicable/ offered corporate actions undertaken by any entity not only the listed entity (such as a subsidiary of the listed entity)
- Acceptance of current account deposits and savings account deposits by banks in compliance with the directions issued by the RBI. This is in addition to the acceptance of fixed deposits which was already exempted.

Ratifications of RPTs

- Who can ratify – Independent Directors of the Audit Committee
- Time Limit – within 3 months from the date of RPT or the next audit committee meeting whichever is earlier
- Value of ratified RPTs - shall not exceed INR 1 crore during a financial year whether entered into individually or taken together
- Consequences - Failure to seek ratification shall render the transaction voidable at the option of the audit committee.

RPTs do not require Audit Committee approval -
Remuneration and sitting fees paid by the listed entity or its subsidiary to

1. Director,
2. Key managerial personnel or
3. Senior management

who is not part of the promoter or promoter group, and amounts are not material.

ii. **Disclosure Requirements**

Relaxation in Timelines

- Board meeting closes after the normal trading hours but more than 3 hours before the beginning of the next normal trading hours - Disclosure will be made within 3 hours from the closure of the board meeting as against the existing timeline of 30 minutes.

- Non-tax litigation against a listed entity – Disclosure shall be made within 72 hrs as against the earlier timeline of 24 hrs.

Changes in Schedule III

- Explanation added to clarify disclosure of fraud by senior management limited to instances only in relation to the listed entity.
- The threshold limit for disclosure in case of acquisition of shares or voting rights in any company by a listed entity, increased from the existing threshold of 5% to 20%, and in case of any subsequent changes increased from 2% to 5%.

Newspaper advertisement

- The listed entity shall publish an advertisement in the newspaper containing a Quick Response code and the details of the webpage where the complete financial results of the listed entity, as specified in regulation 33, along with the modified opinion(s) or reservation(s), if any, expressed by the auditor, is accessible to the investors.

Secretarial Auditor - Conditions aligning with Statutory Auditor (applicable with effect from 1 April 2025)

- Secretarial auditor appointment for a fixed term of 5/ 10 years. Also, there is a cooling-off period.
- Appointments to be made in the Annual General Meeting. Removal also requires shareholders' approval.
- Restrictions on rendering certain services by Secretarial Auditor.

Pro-rata and pari-passu rights of investors of AIFs

SEBI vide circular dated 13 December 2024, has issued amendments to AIF Regulations. Below is a summary of the key amendments:

1. As per Regulation 20(21) investors of a scheme in an AIF must have rights proportional to their commitment in each investment of the scheme and in the distribution of proceeds, unless specified otherwise by SEBI. It is hereby clarified that pro-rata rights do not apply in the following situations:
   - An investor is excluded from participating in the said investment.
   - An investor defaults on their pro-rata contribution for an investment.
   - Returns shared with the AIF manager or sponsor (such as carried interest or additional returns), as per the contribution agreement, are excluded from pro-rata rights.
2. To provide flexibility in fundraising from investors with varied risk appetite, the managers or sponsors of the fund, development financial institutions, or government-owned entities may accept returns lesser or share losses more than their pro-rata rights in investments of an AIF/scheme of an AIF, i.e., may subscribe to classes of units which are junior/subordinate to other class(es) of units of the AIF/scheme of AIF.
3. AIFs to ensure that if the sponsors subscribe to a junior class of units (lower rights) in AIFs, the amount invested should not be used by an investee company to repay any liability to the sponsor or associates.

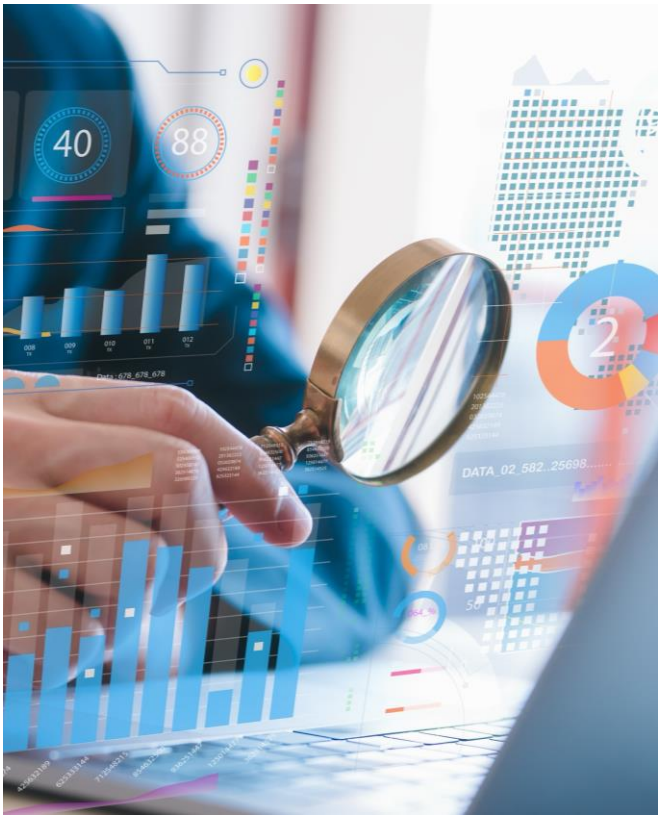
This circular shall come into force with immediate effect.

Classification of Corporate Debt Market Development Fund (CDMDF) as Category I Alternative Investment Fund

SEBI has issued a circular dated 13 December 2024 issuing clarification on the classification of the Corporate Debt Market Development Fund (CDMDF) under the SEBI (Alternative Investment Fund) Regulations, 2012 (AIF Regulations).

While a separate framework has been laid down for CDMDF under chapter III-C of Regulation 19 of AIF Regulations, the fund has been set up with the broader economic objective of development of the corporate bond market, inter-alia, to act as a Backstop facility during times of market stress.

In view of the above, SEBI has officially clarified that CDMDF qualifies as a Category I AIF under Regulation 3(4)(a) of the AIF Regulations.



REGULATORY UPDATES

REGULATORY UPDATES:

RESERVE BANK OF INDIA (RBI)

Notification No. RBI/2024-25/92 dated 4 December 2024 in connection with update to United Nations Security Council's (UNSC) Sanction Lists

The Notification is addressed to Regulated Entities (REs) which are required to ensure they do not have any account in the name of individuals/ entities appearing in the lists of individuals and entities, suspected of having terrorist links, which are approved and periodically circulated by the UNSC.

The said RBI Notification addresses amendments made to the UNSC's 1267/1989 ISIL (Da'esh) and Al-Qaida Sanctions List, which involves updates to the entries of three individuals or entities, which are subject to the assets freeze, travel ban, and arms embargo.

The REs are advised to take appropriate action in terms of Paragraph 51 of the Master Direction on KYC and strictly follow the procedure as laid down in the UAPA Order dated 2 February 2021 (amended on 22 April 2024)

This is to ensure that no financial or economic activity takes place with the listed individuals or entities, helping counter terrorism financing and other unlawful activities related to global terrorist networks.

Further, as per the instructions from the Ministry of Home Affairs (MHA), any request for de-listing received by any RE is to be forwarded electronically to Joint Secretary (CTCR), MHA for consideration. Individuals, groups, undertakings, or entities seeking to be removed from the UNSC Sanctions List can submit their request for delisting to an independent and impartial Ombudsperson who has been appointed by the United Nations Secretary-General

Notification No. RBI/2024-25/93 dated 4 December 2024 in connection with amendment to framework for facilitating small-value digital payments in offline mode.

The Notification is addressed to authorised payment system operators and participants (banks and non-banks).

The said RBI Notification amends the framework and increases the per transaction limit in UPI Lite from INR 500 to INR 1000, and the daily transaction limit from INR 2000 to INR 5000 with immediate effect.

This amendment enhances the overall scope of UPI Lite product which is meant for offline digital payments and is expected to expand the digital access in remote areas and unlock additional use cases.

Notification No. RBI/2024-25/94 dated 6 December 2024 in connection with maintenance of cash reserve ratio (CRR)

The Notification is addressed to all banks.

As per this Notification, banks are required to maintain the CRR at 4.25% of their net demand and time liabilities (NDTL) effective from reporting fortnight beginning 14 December 2024 and 4% of their NDTL effective from fortnight beginning 28 December 2024.

The said reduction is expected to provide additional liquidity into the banking system enabling them to boost credit availability in the economy.

Notification No. RBI/2024-25/97 dated 27 December 2024 in connection with Unified Payments Interface (UPI) access for Prepaid Payment Instruments (PPIs) through third-party applications.

The Notification is addressed to all PPI issuers, NPCI and system participants.

The Notification enables the PPIs to be linked with UPI, allowing them to be used for UPI transactions.

The requirements for achieving the interoperability through UPI have to be implemented by PPI issuer.

Notification No. RBI/2024-25/99 dated 30 December 2024 in connection with introduction of beneficiary account name look-up facility for Real Time Gross Settlement (RTGS) System and National Electronic Funds Transfer (NEFT) System.

The Notification introduces a facility that would enable a remitter to verify the beneficiary bank account name before initiating a transaction using RTGS or NEFT system. Accordingly, National Payments Corporation of India (NPCI) has been advised to develop the facility and onboard all banks.

Accordingly, the banks which are participants of RTGS and NEFT Systems, shall make this facility available to their customers through internet banking and mobile banking. The facility shall also be available to remitters visiting branches for making transactions.

This will enable avoidance of mistakes and prevention of frauds as the participants can verify the name of transferee of funds.

All banks who are direct members or sub members of RTGS and NEFT are advised to offer this facility no later than 1 April 2025.

Notification No. RBI/2024-25/100 dated 31 December 2024 in connection with Government Debt Relief Schemes.

The Notification is addressed to all Regulated Entities including banks, NBFCs, and financial institutions.

It aims to provide a comprehensive framework for Government Debt Relief Schemes (DRS).

The REs participating as lenders under such DRS shall comply with guidelines w.r.t. alignment of DRS participation with board-approved policies, selection of borrowers under DRS, sacrifice by RE, loan account status, and government dues.

A model operating procedure (MOP) has also been shared with the State Governments for their consideration while designing and implementing such DRS with provisions for pre-notification consultation with State Level Bankers' Committee (SLBC)/ District level Consultative Committee (DCC) for coordinated action plan for conceptualisation, design, and implementation of the DRS.

This notification is to ensure credit discipline is maintained and compliance with prudential norms.

SECURITIES AND EXCHANGE BOARD OF INDIA (SEBI)

Circular dated 10 December 2024: Revised Guidelines for Capacity Planning and Real Time Performance Monitoring Framework of Market Infrastructure Institutions (MIIs).

The Circular is addressed to MIIs (i.e., stock exchanges, clearing corporations [except commodity derivative segment] and all depositories).

This Circular is aimed to ensure effective capacity planning and continuous performance monitoring of their essential IT systems in real time considering the increase in volume of activities over the years.

Pursuant to the said Circular, SEBI has advised MIIs to *inter alia* adopt proactive capacity planning methodologies, maintain installed capacities at 1.5x projected peak loads, and implement automated real-time performance monitoring systems.

Immediate action is required if IT utilisation exceeds 75% of capacity, with quarterly stress testing and Standing Committee on Technology (SCOT) approval mandated for planning and policy, etc.

MIIs are required to take necessary steps to put in place systems for implementation of the Circular, including necessary amendments to the relevant bylaws, rules, and regulations, if any.

All the requirements must be implemented immediately, except certain provisions effective in three months.

Circular dated 10 December 2024: Enhancement in the scope of optional T+0 rolling settlement cycle in addition to the existing T+1 settlement cycle in Equity Cash Markets.

The Circular is addressed to recognised stock exchanges, recognised clearing corporations, all depositories, all qualified stockbrokers, and all custodians).

SEBI had earlier introduced a beta version of T+0 rolling settlement cycle on optional basis in addition to the existing T+1 settlement cycle in Equity Cash Markets, for a limited set of 25 scrips and with a limited number of brokers.

Pursuant to the said Circular, it has been decided to enhance the scope of optional T+0 settlement cycle to include top 500 scrips in terms of market capitalisation as on 31 December 2024 in a phased manner, in addition to the existing 25 scrips.

Guidelines have been issued for participation by stock brokers, qualified stock brokers, and custodians in the optional T+0 settlement cycle.

For this, a mechanism for Block Deal window shall be put in place by the Stock Exchanges under the optional T+0 settlement cycle.

To ensure smooth implementation, the MIIs shall publish the operational guidelines (including mechanism for trading, clearing and settlement, risk management, etc.) and Frequently Asked Questions (FAQs) along with the list of eligible scrips and list of QSBs for the optional T+0 settlement cycle and disseminate the same on their respective websites.

MIIs shall provide a fortnightly report on the activities under optional T+0 settlement cycle until further direction.

Certain requirements in this Circular like increase in number of scrips, participation by stockbrokers, requirements for MIIs for smooth functioning will come into effect from 31 January 2025. Provisions in relation to participation by QSB, custodians and mechanism for block deal window, will come into effect from 31 May 2025.

All the requirements must be implemented immediately, except certain provisions effective in three months.

Circular dated 13 December 2024: Relaxation from the ISIN restriction limit for issuers desirous of listing originally unlisted ISINs (outstanding as on 31 December 2023).

The Circular is addressed to issuers of listed non-convertible debt securities, recognised stock exchanges and registered depositories.

Pursuant to the said Circular, in order to encourage issuers to list their grandfathered outstanding unlisted ISINs, it has been decided that unlisted ISINs outstanding as on 31 December 2023, converted to listed ISINs, subsequent to introduction of Regulation 62A (which mandates listing of all non-convertible debt securities issued on or after 01January 2024 and provides an option to list unlisted non-convertible debt securities issued on or before 31 December 2024), shall be excluded from ISIN maturity limits specified in clause 1 of Chapter VIII of the Master Circular for issue and listing of Non-convertible Securities, Securitised Debt Instruments, Security Receipts, Municipal Debt Securities and Commercial Paper dated 22 May 2024 (NCS Master Circular).

Clause 4A has been added to Chapter VIII of the NCS Master Circular to formalise this relaxation.

Notification dated 16 December 2024: SEBI (Research Analysts) (Third Amendment) Regulations, 2024.

SEBI, *vide* its Notification, has amended the regulations applicable to research analysts on aspects which *inter alia* include the following –

- Definition of research analyst
- Scope of research services
- Concept of part-time research analyst
- Dual registration (i.e., investment adviser and research analyst) subject to fulfilment of certain prescribed conditions
- Prohibition on providing distribution services by a research analyst
- Qualification and certification requirements for research analyst as well as for persons associated with research services
- Maintenance of deposit-related requirements
- Regulations relating to provision of model portfolio services subject to SEBI guidelines, use and disclosure of use of AI tools, etc.
- Maintenance of functional website
- Limit on number of clients
- Appointment of compliance officer

These amendments focus on updating the regulations governing the conduct of research analysts and their operations.

The Regulations came into force on the day of its publication in the Gazette.

Notification dated 16 December 2024: SEBI (Investment Advisers) (Second Amendment) Regulations, 2024.

SEBI, *vide* its Notification, has amended the regulations applicable to investment advisers on aspects which *inter alia* include the following –

- Concept of part-time investment adviser
- Regulations and disclosure requirements in relation to use of AI tools
- Principal officer and governance-related requirements
- Maintenance of deposit-related requirements
- Qualification and certification requirements for investment advisers as well as for persons associated with research services
- Dual registration (i.e., investment adviser and research analyst) subject to fulfilment of certain prescribed conditions
- Limit on number of clients
- Maintenance of functional website
- Appointment of compliance officer

These amendments focus on updating the regulations governing the conduct of investment advisers and their operations.

The Regulations came into force on the day of its publication in the Gazette.

Circular dated 17 December 2024: Measures to address regulatory arbitrage with respect to Offshore Derivative Instruments (ODIs) and FPIs with segregated portfolios vis-à-vis FPIs.

This Circular is addressed to Foreign Portfolio Investors (FPIs), Designated Depository Participants (DDPs), Custodians, Depositories, Stock Exchanges, and Clearing Corporations.

The Circular mandates separate FPI registration for issuing ODIs, prohibits ODIs with derivatives as underlying, and requires ODIs to be fully hedged with the same scrips on a one-to-one basis. Further, additional disclosures from ODI subscribers meeting specified criteria are prescribed, *inter alia* including granular details of ownership and economic interest and control. Such details are required to be submitted by ODI issuing FPIs to the concerned depositories within prescribed timelines.

The Circular also clarifies the application of 50% concentration criteria to each segregated portfolio(s) of the FPI, i.e., the investment of each of the segregated portfolio in a single Indian corporate group would be checked individually and in case of any breach, the consequences of the breach would be applicable only to the segregated portfolio breaching the prescribed criteria.

The detailed mechanism for independently validating conformance of the ODI subscribers with the conditions, exemptions, and format for disclosures shall be spelt out in the Standard Operating Procedure (SOP) framed and adopted by Depositories, DDPs/ Custodians, and ODI issuing FPIs in consultation with SEBI.

Depositories are required to put necessary systems, procedures, and mechanisms in place to capture and maintain the details of ODI subscribers based on the information provided by ODI issuing FPIs.

Transitory measures have been introduced which allow existing positions to align with the new requirements within a year, with operational provisions effective in stages over a period of five months from the date of this circular.

Circular dated 20 December 2024: Policy for Sharing Data for the Purpose of Research/ Analysis.

The Circular is addressed to all recognised stock exchanges, all depositories, and all clearing corporations.

It has been decided to have a uniform data sharing policy for research/ research publications undertaken by accredited academic institutions. Data shared with vendors for commercial purposes shall not fall under this policy.

The data available is required to be segregated into two baskets –

First basket will contain publicly shareable aggregate and analysed data, including mandatory regulatory reporting and disclosures related data.

Second basket will contain information that cannot be shared with public [for example, KYC details, holding details, trade logs, and other confidential information].

All stock exchanges, depositories, and clearing corporations are accordingly required to frame their data sharing policies.

MIIs are required to share the data list under each basket with SEBI for approval, within 60 days of the issuance of this Circular and the same shall be reviewed annually or on need basis, whichever is earlier.

The provisions of this Circular shall come into force with immediate effect.

Circular dated 20 December 2024: Upload of draft scheme information documents

This circular is addressed to all mutual funds, all asset management companies (AMCs), all trustee companies, board of trustees of mutual funds, Association of Mutual Funds in India (AMFI).

It has been decided that the Scheme Information Document on which observations are issued by SEBI shall be uploaded on the SEBI website for at least eight working days for receiving public comments on the adequacy of disclosures made in the document. Thereafter, AMC may file final offer documents in line with the provisions of SEBI Master Circular on Mutual Funds dated 27 June 2024.

SEBI has also deleted certain clauses from the SEBI Master Circular on Mutual Funds.

The provisions of this circular shall come into force with immediate effect.

Circular dated 31 December 2024: Introduction of a Mutual Funds Lite (MF Lite) framework for passively managed schemes of Mutual Funds.

The MF Lite Framework has been introduced only for passive mutual fund schemes, with an intent to promote ease of entry, encourage new players, reduce compliance requirements, increase penetration, facilitate investment diversification, increase market liquidity, and foster innovation.

The first phase of implementation will cover the categories of schemes such as passive funds based on only domestic equity passive indices (broad indices tracked by passive funds or act as primary benchmark for actively managed funds), all G-Sec/ T-bills/ SDL based domestic target maturity debt passive funds, and domestic constant duration passive funds based on such debt indices, all Gold ETFs, Silver ETFs and FoFs based on only Gold or Silver ETFs, Overseas ETFs and FoFs having single underlying overseas passive fund, etc. Please note that the framework outlines certain quantitative thresholds for these funds to qualify under the MF Lite Framework.

The MF Lite Framework lays down the relaxed eligibility criteria for sponsors, permits private equity funds fulfilling prescribed conditions to become a sponsor of MF Lite, net-worth requirements, deployment of liquid net-worth by AMC, norms for shareholding, roles and responsibilities of various parties such as trustee, board of AMCs, registration of MF Lite schemes, ease of compliance, and relaxed disclosures requirements.

Further, this Circular also provides the following [these shall be applicable to all AMCs, whether registered under MF Lite or the extant MF Regulations] –

1. AMCs can now launch a new class of passive fund i.e., hybrid passive funds which shall replicate a composite index comprising of equity and debt and enable investors to invest in a single product having exposure to equity and debt. It also lays down the conditions and requirements for such funds.
2. Disclosure requirements for debt oriented passive schemes for 'Debt Index Replication Factor' (DIRF) of the underlying index by the portfolio along with the Tracking Error and TD on their AMC's website.

3. AMCs may also launch close ended debt passive schemes.

The provisions of this circular shall come into effect from 16 March 2025.

Circular dated 31 December 2024: Clarifications to Cybersecurity and Cyber Resilience Framework (CSCRF) for SEBI Regulated Entities (REs).

This Circular is addressed to all Alternative Investment Funds (AIFs), all Bankers to an Issue (BTI) and Self-Certified Syndicate Banks (SCSBs), all clearing corporations, all collective investment schemes (CIS), all credit rating agencies (CRAs), all custodians, all debenture trustees (DTs), all depositories, all designated depository participants (DDPs), all depository participants through depositories, all investment advisors (IAs) research analysts (RAs), all KYC registration agencies (KRAs), all merchant bankers (MBs), all mutual funds (MFs)/ asset management companies (AMCs), all portfolio managers, all registrar to an issue and share transfer agents (RTAs), all stock brokers through exchanges, all stock exchanges, and all venture capital funds (VCFs).

This Circular provides that regulatory forbearance is provided till 31 March 2025. For any non-compliance during this period that comes to the notice of the regulator, no regulatory action shall be taken provided the REs are able to demonstrate meaningful steps taken/ progress made in implementation of CSCRF.

The compliance timeline for CSCRF for KRAs and DPs is extended from 01 January 2025 to 01 April 2025.

The guidelines and provisions with regard to data localisation have been kept in abeyance till further notification.

The provisions of this Circular shall come into force with immediate effect.

Circular dated 31 December 2024: Implementation of recommendations of the Expert Committee for facilitating ease of doing business for listed entities.

The Circular is addressed to all listed entities that have listed their specified securities, all Recognised Stock Exchanges, all Depositories, and the Institute of Company Secretaries of India (ICSI).

In order to facilitate ease of filing and compliance for listed entities, it has been decided to introduce Integrated Filing for the following Governance and Financial related periodic filings required under the LODR –

- Statement on redressal of investor grievances
- Compliance Report on Corporate Governance
- Disclosure of Related Party Transactions (RPTs)
- Quarterly disclosure of outstanding default on loans/ debt securities
- Statement of Deviation and Variation
- Financial results

The format of quarterly Integrated Filing i.e., Integrated Filing (Governance) and Integrated Filing (Financial) is given in the said Circular.

The timelines for filing are as under –

- **Integrated Filing (Governance):** within 30 days from the end of the quarter;
- **Integrated Filing (Financial):** within 45 days from the end of the quarter, other than the last quarter, and 60 days from the end of the last quarter and the financial year.

These provisions shall be applicable for the filings to be done for the quarter ending 31 December 2024 and thereafter.

Certain prescribed material events are required to be disclosed on a quarterly basis as a part of Integrated Filing (Governance) such as acquisition of certain % of shares or voting rights in unlisted entity, imposition of fines or penalties, and updates on ongoing tax litigations or disputes.

Further, this Circular has added a specified list of services that a Secretarial Auditor cannot render to the listed entity.

The Circular also prescribes the requirements for disclosure of employee benefit scheme related documents.

The Circular provides that the Stock Exchanges, in consultation with SEBI, shall specify the process and timelines for system-driven disclosure of the filing / disclosure requirements under particular regulations applicable to listed entities under the LODR Regulations.

In order to give effect to certain recommendations of the Expert Committee, changes have been carried out to the provisions of the Master Circular.

Notification dated 24 December 2024: Gazette Notification for withdrawal of recognition granted to the Indian Commodity Exchange Limited (ICEX)

ICEX was initially recognised as an 'associate' under the Forward Contracts (Regulation) Act, 1952, ICEX became a deemed stock exchange under the Securities Contracts (Regulation) Act, 1956 post-merger of Forward Market Commission with SEBI.

Now, following ICEX's voluntary request for voluntary surrender of recognition, SEBI has *vide* its order dated 10 December 2024 permitted its exit as a stock exchange.

Accordingly, pursuant to the Notification, SEBI hereby notifies that, the recognition granted to the ICEX stands withdrawn with effect from the date of publication of this Notification in the Official Gazette.

DIRECT TAX

CIRCULARS/ NOTIFICATIONS/ PRESS RELEASE

Vivad Se Vishwas Scheme 2024 - Additional guidance issued, and deadline extended

The Direct Tax Vivad Se Vishwas Scheme, 2024 (VsV 2024) was introduced with a motive to reduce pending income tax litigations, generate timely revenue for the Government, and benefit taxpayers by providing peace of mind, certainty and savings on account of time and resources. In order to address queries of taxpayers, the Central Board of Direct Taxes (CBDT) initially issued 35 FAQs. Recently, the CBDT issued second set of 27 FAQs *vide* circular 19/2024.
To read our detailed alert, please go to:
https://www.bdo.in/en-gb/insights/alerts-updates/cbdt-issues-further-guidance-on-direct-tax-vivad-se-vishwas-scheme-2024

[Circular No. 19 of 2024 dated 16 December 2024]

Further, the CBDT has extended the due date under the scenario of minimum tax impact for filing declaration under VSV 2024 from 31 December 2024 to 31 January 2025.

[Circular No. 20 of 2024 dated 30 December 2024]

CBDT launches e-Campaign to address income and transaction mismatches reported in Annual Information System (AIS) vis-a-vis Tax Return for Fiscal Year (FY) 2023-24 and FY 2021-22

The CBDT has launched an electronic campaign to assist taxpayers in resolving mismatches between income and transactions reported in AIS and those disclosed in Tax Returns (ITRs) for FY 2023-24 and 2021-22. This campaign also targets individuals who have taxable income or significant high-value transactions reported in their AIS but have not filed ITRs for the respective years.

As part of this campaign, informational messages have been sent *via* SMS and email to taxpayers and non-filers where mismatches have been identified. The purpose of these messages is to remind and guide individuals who may not have fully disclosed their income in their ITRs to take this opportunity to file revised or belated ITRs for FY 2023-24 by 31 December 2024. For cases pertaining to FY 2021-22, taxpayers can file updated ITRs by 31 March 2025.

Taxpayers can also provide their feedback, including disagreeing with the information reported in AIS, via the e-filing website (https://www.incometax.gov.in/iec/foportal/).

[Press Release dated 17 December 2024]

CBDT extends due date for furnishing belated/ revised tax return

With respect to resident individual taxpayers, the CBDT has extended the due date for furnishing belated tax return and revised tax return for FY 2023-24 from 31 December 2024 to 15 January 2025.

[Circular No. 21of 2024 dated 31 December 2024]

JUDICIAL UPDATES

Delhi HC holds that Liaison Office (LO) do not constitute Permanent Establishment (PE) in India

The taxpayer, USA company, is engaged in the business of rendering Money Transfer Services. It set up a LO in India to facilitate its business and undertake promotional activities. Additionally, the taxpayer had appointed agents in India (such as Department of Posts, commercial banks, etc.) in relation to transferring money to persons in India. For FY 2000-01, the tax officer issued a notice to the taxpayer for filing tax return in India. In response to the said notice, the taxpayer filed a NIL tax return. The tax officer opined that the Taxpayer had Fixed Place PE as well as Dependent Agency PE (DAPE). Further, the tax officer considered the software installed in the office of the Indian agents and the facility of connectivity so provided to result into a PE in India and accordingly taxed the taxpayer.

Aggrieved, the taxpayer preferred an appeal, and the matter ultimately reached Delhi High Court (Delhi HC), which ruled in favour of taxpayer and made following observations:

Fixed Place PE

- The LO is only engaged in activities relating to liaising with governmental authorities, training of personnel and undertaking various other peripheral functions in aid of the business of the taxpayer. This cannot be described as undertaking an essential or significant part of principal activity of taxpayer.
- In order to constitute a Fixed Place PE, LO would have to satisfy the tests of virtual projection, a takeover of the premises, as well as the precepts of control and disposal and the undertaking of core business activity of the enterprise.
- Even if the establishment meets the test of fixed PE, it would stand exorcised if activities were confined to preparatory and auxiliary work.
- The transaction pertaining to transfer of funds was concluded in the USA itself and it was the Indian agents which undertook and discharged the essential functions required for completion of those transactions. The LO was not even remotely involved in the conclusion of those transactions.
- The permission granted by RBI forbids the LO from undertaking any commercial trading or similar activity in India, entering any business contracts in its own name.
- Since the activities were far removed from the core business of the taxpayer, tests of preparatory and auxiliary stand satisfied. Activities such as market research, promotional activities, training or deployment of software would not breach the threshold of auxiliary functions as are envisaged under the India-US DTAA.

DAPE

- For being viewed as DAPE, it should be established that the LO was acting on behalf of taxpayer and its functions fell within the four corners of Article 5(4)[1] of the DTAA. However, none of these conditions are met in the facts of the present case. In the absence of these conditions being found to exist, it would be wholly incorrect in law for the LO to be classified as a DAPE.

Deployment of Software

- Plain reading of Article 5(1) and 5(2) of India-USA DTAA suggests only tangible premises and establishment as PE. An intangible property, which software is, clearly lacks the physical attributes which underlie and constitute an integral part of the concept of PE.
- The software only constituted a medium of communication which enabled the Indian agents to talk and communicate with the servers of taxpayer housed in USA. The Voyager software merely enabled the Indian agents to verify details and correlate data relevant to the remittance. There was no installation of hardware in the premises of those agents or a placement of their premises or a part thereof at the disposal of taxpayer. Accordingly, deployment of software cannot be treated as PE.

[DIT (International Tax) vs. Western Union Financial Services Inc. (ITA 1288/2006 & Connected matters) (Delhi HC)]

Mumbai Tax Tribunal holds that Indexation benefit is available on transfer of foreign company's shares

The taxpayer, a private limited company, has two wholly-owned subsidiaries – one Indian Company and another Foreign Company. During FY 2015-16, the Foreign Company bought back its shares under a scheme of buy back. In this context, the taxpayer computed capital gains by deducting the indexed cost of acquisition, resulting in long-term capital loss. The tax officer denied the indexation benefit on the ground that the cost of inflation index is determined on the basis of inflation taking place in India and not in respect of foreign assets. The First Appellate Authority ruled in favour of the taxpayer. Aggrieved by the order, the tax authorities filed an appeal before the Hon'ble Mumbai Tax Tribunal.

The Mumbai Tax Tribunal, while allowing indexation benefit, made the following observations:

- The mode of computation of long-term capital gain is prescribed in section 48 of the IT Act and the second proviso to section 48 of the IT Act provides the benefit of cost inflation index.
- The said proviso does not distinguish between the assets held in India and held outside India.
- Once the capital gain is required to be computed as per section 48 of the IT Act, then, the full effect of the said section should be given. Since IT Act levies tax upon the taxpayer, the provisions of the said Act should be applied strictly.
- Further, under the principles of interpretation, there is no scope for referring to internal or external aids for interpretation, when the language of the section is clear. Only when there is ambiguity, one has to refer to internal aids and external aids for interpreting the provisions.
- In the instant case, there is no ambiguity in the provisions of second proviso to section 48 of the IT Act and further, there is no place for equity in taxation.

[Aarav Fragrances and Flavors Private Limited vs. Dy. CIT (ITA No. 546/MUM/2024)]

[1] Article 5(4) of India-USA DTAA, a US entity shall be deemed to have a PE (i.e. agency PE) if Indian agent habitually maintains/ exercises/ secures/ concludes contract on behalf of U.S. entity.

Delhi Tax Tribunal holds that receipts from services of cloud-native machine data analytics solution is not FTS

The taxpayer, a company registered in USA, operates a cloud-native machine data analytics solution (Sumo Logic Solution). It offers a software platform that enables organisations to address the challenges and opportunities presented by digital transformation, modern applications, and cloud computing. It enables to automate the collection, ingestion and analysis of application, infrastructure, security, and IT data to derive actionable insights.

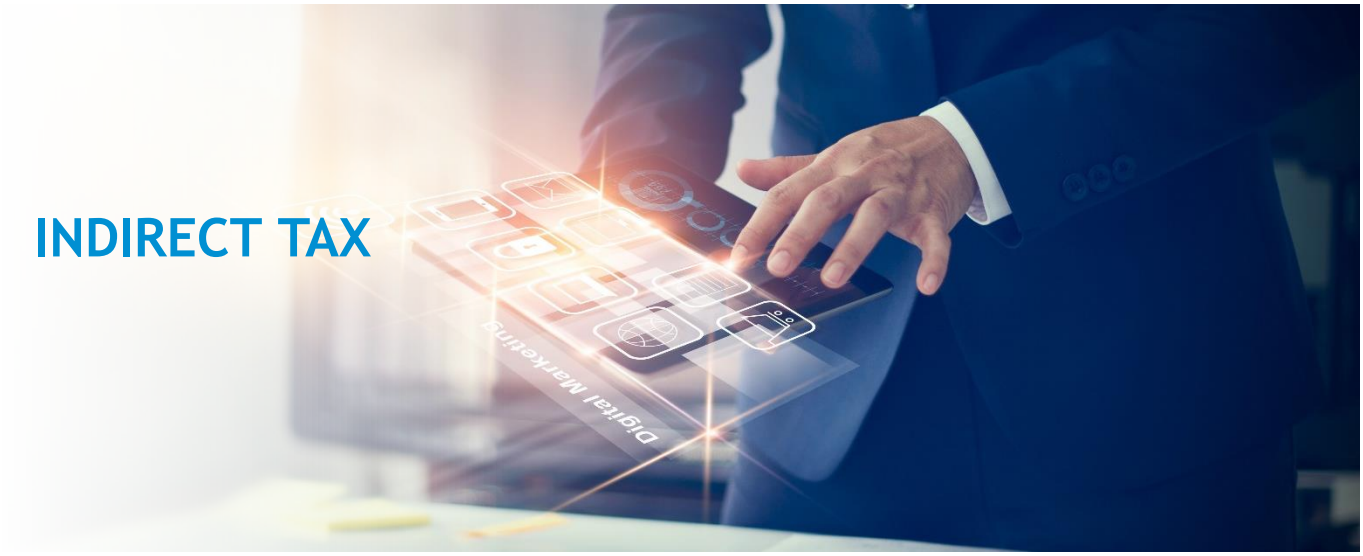
During FY 2020-21, the taxpayer received subscription fees of INR 140.9mn for providing Sumo Logic Solution. The tax officer observed that in tax returns filed for FYs 2018-19 to 2020-21, the taxpayer did not pay tax in India. Further, in tax returns filed in USA for the years 2018 to 2020, the income received by the taxpayer from Indian customers and end-users was also not effectively taxed in USA. The tax officer observed that financial data of the taxpayer showed huge losses. Considering the said income is effectively neither taxed in India nor USA, the tax officer treated the said income as FTS under the IT Act and India-USA tax treaty.

Aggrieved, the taxpayer filed objections before the Dispute Resolution Panel (DRP), who dismissed it. The taxpayer, therefore, preferred an appeal to the Hon'ble Delhi Tax Tribunal, which held in favour of the taxpayer, making the following observations:

- The taxpayer has not made available the relevant technology nor transferred the same to its customers in India.
- Relied on the case of Coursera Inc[2], wherein it was held that subscription fee received by the taxpayer towards provision of global online learning platform cannot be considered as FTS or royalty as said payment was for use of copyrighted article rather than use of copyright. The contents of such courses and degrees are created by the concerned universities and companies and the taxpayer, being a facilitator, merely provides access to through the platform.
- The taxpayer has submitted Tax Residency Certificate and also offered income generated in India in the resident country and it does not make any difference whether the global income assessed to tax is income or loss, as long as the income generated is offered in the resident country as business income.
- Therefore, the receipt does not qualify as FTS under Article 12(4) of India-USA tax treaty.

[Sumo Logic Inc. vs. ACIT (ITA No. 3350/DEL/2023)]

[2] Coursera Inc. v. ACIT (ITA nos. 2416 & 3646/Del/2023)



Appeal not barred by limitation if filed online within the statutory period, despite delay in filing Certified copy of the order

Chegg India Private Limited vs. Union of India and Ors [TS-864-HC(DEL)-2024-GST]

Legislative Background

- Section 107 of the Central Goods and Services Tax Act, 2017 (CGST Act) provides that the time limit for preferring appeal before the First Appellate Authority (Appellate Authority) is four months (i.e., three months plus extended period of one month).
- Rule 108 of the Central Goods and Services Tax Rules, 2017 (CGST Rules) providing the manner of filing appeal before the Appellate Authority was amended with effect from 26 December 2022. The relevant provisions prior to and post amendments is set out hereunder:
  - **Pre-Amendment**:
    - An appeal could be filed either electronically or otherwise. Upon filing of the appeal along with relevant documents, provisional acknowledgement was to be issued. Thereafter, under Rule 108(3) of CGST Rules, certified copy of order (appealed against) could be filed within seven days from the date of filing of appeal, post which, the final acknowledgment indicating appeal number would be issued.
    - If the certified copy of order was filed within seven days, the date of issuance of provisional acknowledgement would be the date of filing of appeal. In other cases, the date of filing of certified copy of order would be the date of filing of appeal.
  - **Post-Amendment:**
    - The provisional acknowledgement will be issued in the same manner as was prevailing prior to the amendment to Rule 108 of CGST Rules. However, post-amendment, the decision/ order appealed against can be uploaded on the common portal upon which, the appeal number would be issued by Appellate Authority.
    - The date when the order is uploaded on the common portal was to be considered as the date of filing of appeal. However, if the order was not uploaded, the self-certified copy of the order can be filed within seven days from the date of filing of online appeal, post which, the final acknowledgment would be issued.
    - If the self-certified copy of order was filed within seven days, the date of issuance of provisional acknowledgement would be the date of filing of appeal. In other cases, the date of filing of self-certified copy of order would be the date of filing of appeal.

Facts of the Case

- Chegg India Pvt. Ltd. (Taxpayer) had filed applications claiming refund of accumulated input tax credit (ITC) under Section 54 of the CGST Act for the period May 2019 to May 2020, on a monthly basis.
- The tax authorities had rejected the refund applications filed by the Taxpayer *vide* orders dated 18 April 2023 (for May 2019 to March 2020) and 28 April 2023 (for April and May 2020).

- Against this, the Taxpayer proceeded to file online appeals before the Appellate Authority. While all these appeals (except for the month of April 2020) were filed within the statutory period prescribed under Section 107 of CGST Act, the Taxpayer failed to file the physical copy of the certified order with the Appellate Authority within the said period.
- In this regard, the Appellate Authority considered the date of physical filing of certified order as the date of filing of appeal and disregarded the date of online filing of appeal. Accordingly, the appeals filed by the Taxpayer were rejected on the ground that these appeals are barred by limitation.
- Aggrieved by the above, the Taxpayer filed a Writ Petition before the Delhi High Court.

Contentions of the Taxpayer

- Reliance in this regard was placed on the following judicial precedents:
  - In M/s. PKV Agencies[1] and M/s Atlas PVC Pipes Ltd.[2], the Madras and Orissa High Courts have examined Rule 108 of CGST Rules (prior to amendment) and condoned delays in filing physical copy of certified order by holding the same to be merely a '***procedural requirement***'.
  - Similarly, in M/s Star Health and Allied Insurance Company Ltd.[3], Oaknorth (India) Pvt. Ltd.[4] and M/s. Suman Industries[5], Punjab and Haryana High Court has examined Rule 108 of CGST Rules (post-amendment) and held that the amendment in effect eliminates the requirement of filing a certified copy of the decision/ order while filing appeal. Further, delay in filing self-certified copy of the order was condoned by the High Court.
- In ***Hitachi Energy India Limited Vs. State of Karnataka & Ors. [2024 (7) TMI 53 (Kar.)]***, it was held that the amendment to Rule 108 of CGST Rules is clarificatory in nature and would apply retrospectively.
- Since the amendment to Rule 108 was to merely provide clarity to the requirement of submission of the certified copy of the order, being a procedural requirement, the Taxpayer cannot be non-suited on the ground of limitation.

Contentions of the Tax Authorities

- The benefit of the amended Rule 108 of CGST Rules should not be extended to the Taxpayer as there is a clear delay in filing physical certified copy of the order.

Observations and Ruling of the High Court

- A perusal of Rule 108 of CGST Rules (prior to and post amendment) indicates that the appeal could be filed electronically. Further, the filing of certified/ self-certified copy of the order was only to ensure that the copy of the order which is filed is of reliable nature. In the present case, there is no doubt as to the genuineness of the copy of order filed by the Taxpayer.
- The amended Rule 108 of CGST Rules along with the decisions relied upon by the Taxpayer suggests that the requirement of physical filing of certified copy of order is not mandatory. Accordingly, delay may be condoned in case of an appeal filed prior to amendment where certified copy was submitted with delay, if online filing was completed within the prescribed period.
- It would be retrograde to opine that online filing which was complete in all respects including electronic copy of the order is not a valid filing.
- Considering the above, the Writ Petition is allowed, except in respect of appeal for April 2020 which was filed beyond the prescribed limitation period. Accordingly, the matter was remanded back to Appellate Authority for considering the appeal on merits.
- Considering that there was a substantial delay in physical filing of order, the High Court had partly allowed the above writ petitions by imposing costs to the tune of INR 25,000 to be deposited with the Delhi High Court Legal Services Committee, subject to which, the Appellate Authority shall consider the appeals remanded before it on merits.

[1] M/s PKV Agencies Vs. Appellate Deputy Commissions (GST) (Appeals) [2023 (2) TMI 932 – Madras High Court]
[2] M/s Atlas PVC Pipes Ltd. Vs. State of Orissa & Ors. [2022 (7) TMI 130 – Orissa High Court]
[3] M/s Star Health and Allied Insurance Company Ltd. Vs. State of Haryana & Ors. [2024 (2) TMI 591 – Punjab & Haryana High Court]
[4] Oaknorth (India) Private Limited Vs. Union of India & ors [2023 (9) TMI 781 – Punjab & Haryana High Court]
[5] M/s Suman Industries Vs. State of Haryana [2023 (2) TMI 1261]

Limitation of Section 54(1) of CGST Act not applicable to voluntary payment under mistake

Aalidhra Texcraft Engineers and another vs. Union of India [TS-853-HC(GUJ)-2024-GST]

Facts of the Case

- Aalidhra Texcraft Engineers (Taxpayer) is *inter alia* engaged in manufacturing of various types of textile machinery and equipment. For this, the Taxpayer undertakes domestic procurement and import of various inputs, raw materials, and capital goods.
- During the period May 2019 to March 2020 (relevant period), the Taxpayer *inter alia* imported various inputs and raw materials by filing 33 Bills of Entry (BoEs) wherein the total quantum of IGST paid by the Taxpayer was INR 24.82mn. The Taxpayer duly claimed ITC on such imports.
- Subsequently, on undertaking reconciliation of ITC claimed in Form GSTR-3B vis-à-vis the corresponding reporting in Form GSTR-2A, the Taxpayer, under a wrong notion, observed that it had inadvertently claimed excess ITC of INR 4mn on imported goods.
- As a result, on 13 November 2020, the Taxpayer deposited the sum of INR 4mn through Form GST DRC-03 against such erroneously availment of ITC. In response, the tax authorities did not issue any communication/ letter acknowledging the deposit of INR 4mn as voluntary payment. The said payment was shown on the GST portal as 'pending for action by Tax Officer'.
- In January/ February 2024, the tax authorities commenced verification and audit of the Taxpayer's records. During scrutiny, it was identified that there is a discrepancy of INR 4mn which was deposited *vide* Form GST DRC-03 although there was apparently no such tax liability that was required to be discharged in FY 2019-20.
- Accordingly, on 23 February 2024, the tax authorities issued a notice in Form GST ASMT-10 calling upon the Taxpayer to clarify about the aforesaid payment of INR 4mn. *Vide* letter dated 20 March 2024, the Taxpayer clarified that inadvertently, there was an excess payment of INR 4mn. This clarification was accepted by the tax authorities and the matter was closed by issuing an order dated 24 April 2024 in Form GST ASMT-12.
- Independent of the above, on 30 March 2024, the Taxpayer filed an application claiming refund of excess GST paid by mistake. Subsequently, the tax authorities issued a show cause notice (SCN) seeking rejection of refund application on the ground of limitation since the refund application was filed after 2 years from the date of payment.
- Although the Taxpayer did not file any written reply to the above notice, a personal hearing was attended wherein the Taxpayer had clarified the circumstances resulting in the refund application. However, the tax authorities issued the Impugned Order rejecting the refund application as being barred by limitation.
- Aggrieved by the above, the Taxpayer filed a Writ Petition before the Gujarat High Court.

Contentions of the Taxpayer

- It is undisputed as is also accepted by the tax authorities in their Affidavit-in-Reply that the payment made by the Taxpayer was not recovered as tax by the tax authorities but was a voluntary payment. Consequently, the limitation period of two years provided under Section 54(1) of the CGST Act shall not apply to refund of the amount voluntarily deposited by the Taxpayer in Form GST DRC-03. Further, the tax authorities have not issued the acknowledgement in Form GST DRC-04 recognising the voluntary payment made by the Taxpayer.
- The issue of refund of voluntary payments is no more *res integra* in view of the decisions of the Gujarat High Court in M/s. Joshi Technologies International[6] and M/s. Gujarat State Police Housing Corporation Ltd.[7] wherein it was held that GST paid as a self-assessment which was not required to be paid is required to be refunded by the tax authorities and the refund cannot be rejected on the ground of limitation under Section 54(1) of the CGST Act.
- In view of the above, the tax authorities are liable to refund INR 4mn along with statutory interest, if any.

[6] M/s Joshi Technologies International Vs. Union of India [2016 (339) ELT 21]
[7] M/s Gujarat State Police Housing Corporation Ltd. Vs. Union of India & Anr [2024 (1) TMI 1409 - Gujarat High Court]

Contentions of the Tax Authorities

- Although the Taxpayer had deposited the sum of INR 4mn in the year 2020, the refund application was filed only in 2024, after calling upon the Taxpayer to give clarification for the deposit of such amount. Accordingly, the said amount cannot be refunded after the expiry of two years as per Section 54(1) of the CGST Act.
- In addition to the above, *vide* the Affidavit-in-Reply, the tax authorities have submitted that:
  - The payment made by Taxpayer was not recovered as 'tax' by the tax authorities but was a voluntary payment as is evident from the section 'cause of payment' in Form GST DRC-03.
  - Since the refund application was not filed within the prescribed limitation period, the tax authorities had issued a SCN in Form GST RFD-08. However, the Taxpayer failed to submit a reply and also failed to appear for personal hearing. Consequently, the tax authorities had issued the Impugned Order.
  - As regards the contention raised by the Taxpayer that the cause of action for claiming refund has arisen in April 2024 based on Form GST ASMT-12, the same is misplaced in as much as Form GST ASMT-12 was issued after the refund application was filed by the Taxpayer. Even if it is assumed (without admitting) that upon the intimation in Form GST ASMT-10, the mistake came to Taxpayer's knowledge, the same would not be of any relevance as the limitation period of two years would not commence from the date of knowledge of such mistake but would start from the date of payment of tax.
  - The proceedings under Section 61 of CGST Act are initiated with respect to many discrepancies and not just regarding the excess payment of INR 4mn. Hence, this proceeding is completely different than the proceedings under Section 54 of the CGST Act, and consequently, no reliance can be placed on those proceedings. Accordingly, mere pendency of audit proceedings would not entitle the Taxpayer to claim refund beyond the statutory period.
  - As regards the Taxpayer's contention pertaining to non-issuance of Form GST DRC-04, the same is completely misleading as the Taxpayer has made voluntary payment through Form GST DRC-03. As a result, the corresponding liability has not been verified by the tax authorities with the underlying documents and hence, no acknowledgement in Form GST DRC-04 can be issued without due verification and scrutiny. Hence, non-issuance of Form GST DRC-04 would not have any relevance in respect of the present matter.
- In view of the above, the Taxpayer's refund application is not sustainable as the same is barred by limitation as per Section 54 of CGST Act.

Observations and Ruling of the High Court

- It is undisputed that the amount deposited by the Taxpayer was made voluntarily under a mistake and the same was not towards any tax, interest or penalty.
- The ratio laid down by the Gujarat High Court in ***M/s Joshi Technologies International*** *(Supra)* and ***M/s Gujarat State Police Housing Corporation Ltd.*** *(Supra)* is squarely applicable to the present case, more particularly when the Taxpayer has deposited voluntarily an amount of INR 4mn, the same would not be covered under the provisions of Section 54 of CGST Act.
- As a result, the amount paid by the Taxpayer is required to be refunded by the tax authorities without raising the ground of limitation under Section 54 of CGST Act. However, the Taxpayer will not be entitled to any interest on such amount as the same was deposited voluntarily by mistake.
- In view of the above, the Writ Petition filed by the Taxpayer was allowed with a direction to the tax authorities to refund the amount in a time-bound manner.

Interest on wrong availment of duty credit scrips cannot be imposed under Section 28AA of Customs Act

Braddock Infotech Pvt. Ltd. Vs. Joint Director General of Foreign Trade, Ernakulam and Ors. [2024 (12) TMI 18 - Kerala High Court]

Facts of the Case

- Braddock Infotech Pvt. Ltd. (Taxpayer) is *inter alia* engaged in 'placement and supply services of personnel' and was entitled to claim the duty credit scrips under the Service Exports from India Scheme (SEIS) formulated under Chapter 3 of Foreign Trade Policy - 2015-2020 (FTP). Accordingly, the Taxpayer was granted SEIS scrips to the tune of INR 8,91,934/-.
- Subsequently, based on certain audit objections, the Competent Authority had observed that the Taxpayer was not entitled to claim the benefit of SEIS scrips because the services rendered by the Taxpayer could not be considered as '***placement and supply services of personnel***'. Accordingly, the Taxpayer was required to remit the amount covered by SEIS scrips. Pursuant to the above, the said amount was forthwith paid by the Taxpayer.
- Subsequently, the Taxpayer was in receipt of the communication intimating that the Taxpayer is also liable to pay interest as per Section 28AA of the Customs Act, 1962 (Customs Act) read with Para 3.19(a) of the FTP.
- Aggrieved by the above, the Taxpayer filed a writ petition before the Kerala High Court.

Contentions of the Taxpayer

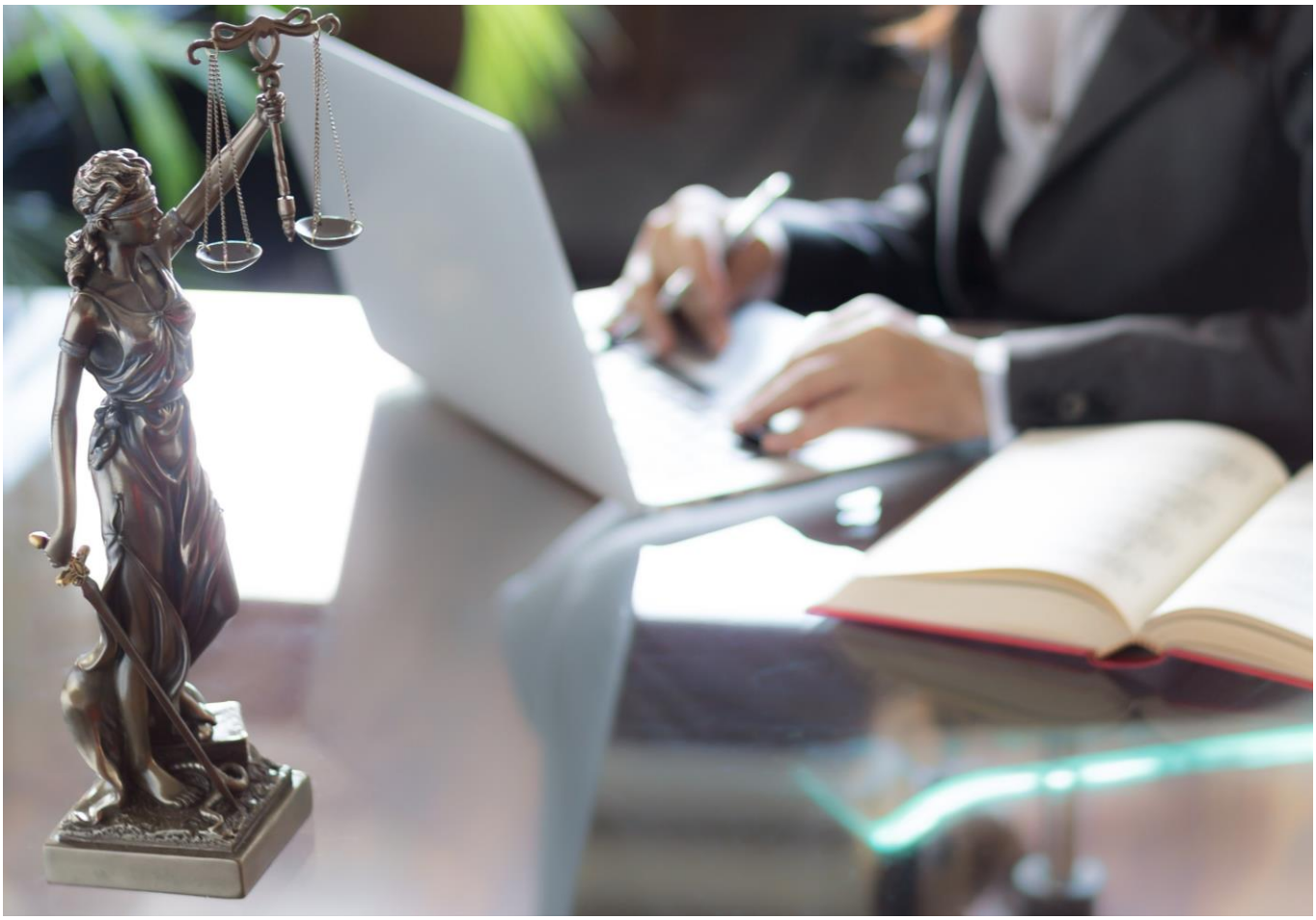
- The tax authorities are basing their demand for interest on the provisions of Section 28AA of Customs Act. However, since the said provision has not been made applicable by any provision in the Foreign Trade (Development and Regulation) Act, 1992 (FTDR Act), the levy of interest is unsustainable in law.
- Reliance was placed on ***J.K. Synthetics Limited vs. Commercial Tax Officer [(1994) 4 SCC 276]***, ***V.V.S. Sugars vs. Government of Andhra Pradesh & Ors [(1999) 4 SCC 192]*** and ***Bimal Chandra Banerjee vs. State of Madhya Pradesh [(1970) 2 SCC 467]*** wherein it was held that unless the right to collect interest is supported by plenary provisions, the demand for interest cannot be justified.

Contentions of the Tax Authorities

- Para 3.19(a) of the FTP clearly provides that if any amount is found to be payable by any person who has been granted a benefit under the Scheme, such amount will have to be repaid along with applicable interest as contemplated under Section 28AA of Customs Act.
- When the FTP clearly specifies that the provisions of Section 28AA of Customs Act will apply, it is not open to the Taxpayer to contend that the amount of benefit obtained by him is not liable to be refunded together with interest calculated in terms of Section 28AA of Customs Act.

Observations and Ruling of the High Court

- The tax authorities have not pointed out any provision of the FTDR Act (under which the FTP is framed) to show that the provisions of Section 28AA of Customs Act have been made applicable for levying interest on any person who is found ineligible for any benefit received in terms of any Scheme under the FTP.
- Although Chapter 3 of the FTP contemplates that if any person is found to be ineligible for claiming the benefit under the FTP, the same will have to be refunded along with interest under Section 28AA of Customs Act, going by in-cases laws relied upon by the Taxpayer, it must be held that the provisions of FTP cannot by itself authorise levy of interest under Section 28AA of the Customs Act and such levy must be supported by plenary legislation.
- In view of the above, the writ petition was allowed and the demand for interest was quashed by holding that the Taxpayer is not liable to pay interest under Section 28AA of Customs Act on the availment of ineligible benefits under the FTP.



TRANSFER PRICING

ITAT: Deletes TP-adjustment qua sale of goods through Associate Enterprise (AE), the taxpayer demonstrated interest-saving benefit

The taxpayer is engaged in the business of manufacturing and selling of agrochemicals including pesticides and is a registered company under the Indian Companies Act. The taxpayer is a group entity of Tata Enterprise and is in the agriculture inputs industry. It has four production facilities of which two are located in Gujarat and two in Maharashtra.

During the Assessment Year (AY) 2020-21, the taxpayer has sold goods to its AE, Tata Chemicals International Pte. Ltd. Singapore (TCIPL). These goods are sold on **"Bill To Ship To Model"** basis i.e., the billing is done to TCIPL, and the goods are sold directly to third party i.e., Adama Agan Ltd. (AAL). The international transactions relating to sale of goods was to the tune of INR 178 crores and the taxpayer adopted another method as the more appropriate.

Facts of the case:

- From April to 29 August, the taxpayer has sold goods directly to AAL, but post 29 August, the taxpayer has sold goods through its AE i.e., TCIPL.
- When the goods were sold directly by the taxpayer, the credit period allowed to AAL was 150-180 days, whereas the credit period allowed to TCIPL is immediately on receipt of invoice or after 7-10 days of receipt of invoice.
- The taxpayer has to discount the bills from the banks and for which it had to pay the bill discounting charges.
- Justifying its sales through TCIPL, it was explained that considering the bill discounting charges, the cost of working capital etc., there is net benefit on sales to TCIPL.
- The taxpayer also furnished the entire party-wise calculation on the benefit of sales through TCIPL, thereby justifying the transactions with respect to the sale of goods to AE, consistent with the arm's length standard from the Indian transfer pricing perspective.

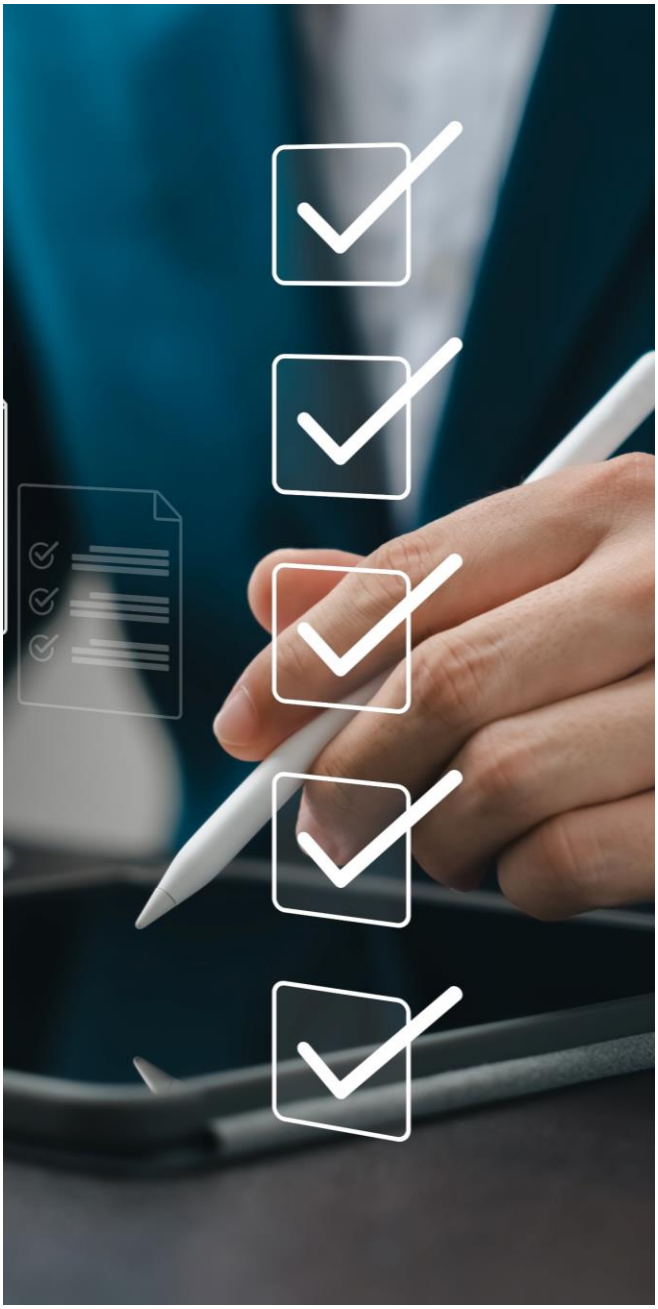
The contentions and submissions of the taxpayer did not find any favour with the Transfer Pricing Officer (TPO), who was of the firm belief that if the taxpayer had sold the goods directly to AAL, it would have sold at the prices which the AE, TCIPL, had sold the goods to AAL, and should be considered as ALP. Accordingly, the TPO proposed upward adjustment of INR 5.66 crores.

On further appeal by the taxpayer and on perusal of facts stated and arguments placed, Hon'ble Income Tax Appellate Tribunal (Tax Tribunal) opined as follows –

- The undisputed fact is that the taxpayer was selling goods directly to AAL. The credit period was between 150-180 days, and the taxpayer was bearing the cost of bill discounting and credit risk arising from non-payment of dues by customers. The taxpayer also faces market risk where prices keep fluctuating in the international market.
- Post 29 August, when the taxpayer started selling their goods through the AE, TCIPL, the actual days of credit were between 5-21 days with no credit risk and no market risk, as both ha been shifted to the AE, TCIPL.
- After considering the working capital cost chart submitted by the taxpayer and undisputedly, the Tax Tribunal found out that the benefit in working capital cost is at INR 6.18 crores whereas the difference in selling price is INR 5.49 crores, with the net benefit being INR 0.69 crores.

- As mentioned hereinabove, as per the chart, the taxpayer has clearly demonstrated the benefit in saving of interest. From the chart, it can be seen that the actual difference of credit when the sales are made by AE to AAL, is much less than the credit period when sales were made by the taxpayer directly to AAL. Accordingly, the Tax Tribunal directed the Assessing Officer (AO)/ TPO to delete the impugned TP adjustment.

Rallis India Limited [TS-523-ITAT-2024(Mum)-TP]



ITAT: Rejects Shell Global BV's arguments qua base-erosion, mirror-ALP; Follows Instrumentarium SB decision

The taxpayer is engaged in coordinating operations of a number of Royal Dutch Shell entities world-wide. The taxpayer provides research and technical services to a range of petroleum-related industry segments including additive process industries, automotive and supply, exploration and production, chemical, gas and liquefied natural gas (LNG) processing, motorsports, refining, marketing, and supply and distribution.

During the AY 2014-15 and 2015-16, the taxpayer has provided services to its AEs Hazira LNG P. Ltd. (HLPL) related to the operation of LNG storage and regasification terminal, and manpower services to another AE, Shell India Markets P. Ltd. (SIMPL).

The taxpayer's case was selected for audit and a reference was made to TPO for determination of arm's length price (ALP) of the international transactions. After detailed inquiries and verification of submissions made by the taxpayer, the TPO passed an order u/s 92CA(3), considering third-party rate as internal Comparable Uncontrolled Price (CUP) method. In the result, the TPO proposed a total upward adjustment of INR 220 crores to the international transaction entered by the taxpayer with its AEs, HLPL and SIMPL, which was upheld by the Dispute Resolution Panel (DRP) and incorporated in the Final Assessment Order by the AO. The taxpayer filed an appeal before the Tax Tribunal which was adjudicated in a manner provided below:

The taxpayer pointed out that it had argued that by virtue of upward adjustment made to the ALP of the international transaction in the hands of the taxpayer, a corresponding adjustment to the expenses incurred in the hands of the Indian AE was warranted and as a consequence, while the taxpayer would be liable to pay tax at the rate of 10% on the TP adjustment made, the Indian AE would be liable to a refund since it would be subjected to tax at the rate of 33% and the corresponding expense increase would result in a refund of tax to it. As a consequence, there was base erosion on account of ALP adjustment made in the hands of the taxpayer, and therefore, in terms of provision of section 92C(3) of the Act, the TP provisions were not attracted.

The taxpayer also contended that the argument of base erosion was rejected by the Special Bench of the ITAT in the case of Instrumentarium Corporation Ltd. Vs. CIT, ITA No.1548 and 1549/Kol/2009 (SB) where the taxpayer was an intervener in the said case noting that the Indian AEs were incurring loss, and therefore, it was held that on account of ALP adjustment made in the hands of the taxpayer there was no base erosion but there was a distinguishing fact in all these years with the impugned year is that the Indian AEs has made profits, and also paid taxes in the impugned year.

On appeal by the taxpayer and on review of facts stated and arguments, the Tax Tribunal held as follows –

The Special Bench, however, rejected outright this contention of the taxpayer, noting that in terms of provision of law, any adjustment to the ALP of the international transaction of a foreign entity did not warrant an adjustment in ALP of its Indian AE also. The Special Bench categorically noted that the deduction for the ALP adjustment will not be available to the Indian AE, because there is no provision enabling deduction for the ALP adjustment.

The taxpayer had referred to second provision to section 92C(4) for stating that in terms of second proviso, the Indian AE was not debarred from making the corresponding adjustment in ALP of the transaction, and this contention of the taxpayer was also rejected, noting that second proviso to section 92C(4) of the Act constituted a bar against lowering of the income of the non-resident AE as a result of lowering the deduction in the hands of the Indian AE, rather than as enabling higher deduction in the hands of Indian AE, as a result of increasing non-residents AE income.

Therefore, it is evident that the Special Bench had not rejected the base erosion argument of the taxpayer on any factual basis/ consideration of the Indian AE incurring losses but rather had held so as a matter of principle. The Tax Tribunal held that the Special Bench in the case of Instrumentarium (supra) has laid down principle of law to the effect that there is no base erosion by ALP adjustment in the income of the non-resident in respect of its transactions with the Indian AEs.

In view of the above the Tax Tribunal rejects the argument of the taxpayer that the decision of the Special Bench in the case of Instrumentarium rejecting the base erosion argument of the assessee would not apply in the facts of the present case.

The taxpayer also argued that since the TPO has accepted the ALP of the transaction in the case of HLPL and SIMPL, there was no cause of action to make any adjustment in the taxpayer's hands. This in substance was the **"mirror ALP"** argument of the taxpayer. The Tax Tribunal rejected this argument by referring to the case of Filtrex Technologies P. Ltd. that the ITAT has categorically held that in terms of provision of law relating to TP, there could not be any case of mirror ALP at all.

The taxpayer also has contention with respect to the adjustment made to the ALP of the transaction, that the CUP method had not been correctly applied. The taxpayer stated that this argument was applicable only to the international transaction with AE, HLPL, and not with SIMPL. In regard to this, the Tax Tribunal directs TPO to determine afresh, ALP w.r.t transactions with HLPL after making a proper TP analysis in accordance with Tax Tribunal's direction in the preceding year (concerning 'likes being compared with likes').

Shell Global Solutions International BV [TS-528-ITAT-2024(Ahd)-TP]

HC: Whopping INR 3000 crores TP addition on Samsung; HC directs expeditious disposal of stay application

In the present case, the petitioner (Samsung India) had filed stay application before ITAT (Delhi), seeking stay order on the outstanding demand of INR 1213 crores in respect of AY 2021-22.

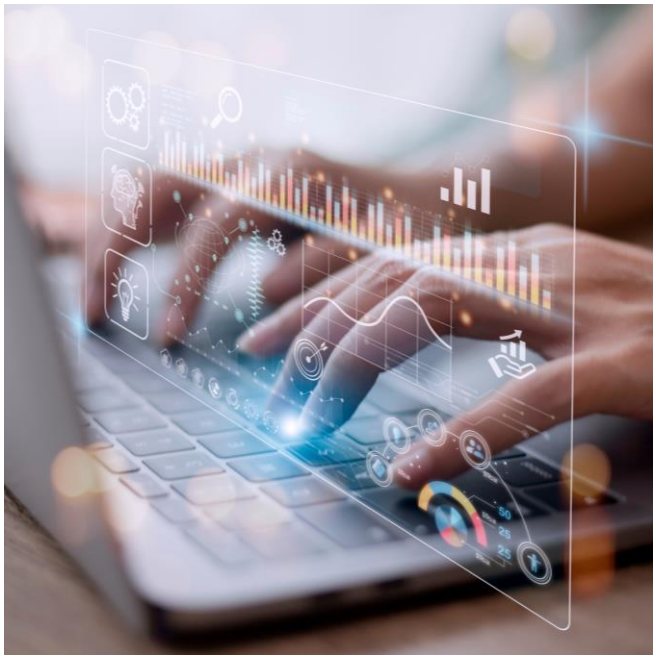
Petitioner had filed return of income for AY 2021-22 declaring a total come of INR 5941.47 crores. Return was selected for scrutiny, and for determination of arm's length price of the international transaction, a reference was made to the TPO by the AO. TPO made an upward adjustment on several heads of ₹37,53,32,72,723 including adjustment of INR 1029 crores as protective assessment. Thereafter, Faceless Assessment Unit (FAO) passed the assessment order determining the petitioner's total income as INR 10,020 crores. The petitioner then moved to DRP. Final assessment order was passed by FAO confirming the tax disallowance of INR 3326 crores, including INR 3000 crores on account of transfer pricing additions.

ITAT (Delhi) dismissed the stay application through its order dated 22 November 2024, on the grounds that the stay application is premature since no coercive action had been taken.

The petitioner filed a petition in the High Court against the order of the ITAT (Delhi). High Court dismissed the reasoning of the ITAT (Delhi), terming it as unsustainable. High Court ruled that there is no dispute that the demand was raised as outstanding and therefore, the petitioner's application cannot be considered as premature on the basis that no coercive or precipitative steps have been taken by the Revenue.

High Court set aside the order of ITAT (Delhi) and restored the petitioner's stay application before ITAT for consideration on merits, asking it to dispose it off as expeditiously as possible.

Samsung India Electronics Pvt. Ltd [TS-503-HC-2024(DEL)-TP]



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