ACCOUNTING, REGULATORY & TAX NEWSLETTER

VOLUME 90

www.bdo.in
July 2024

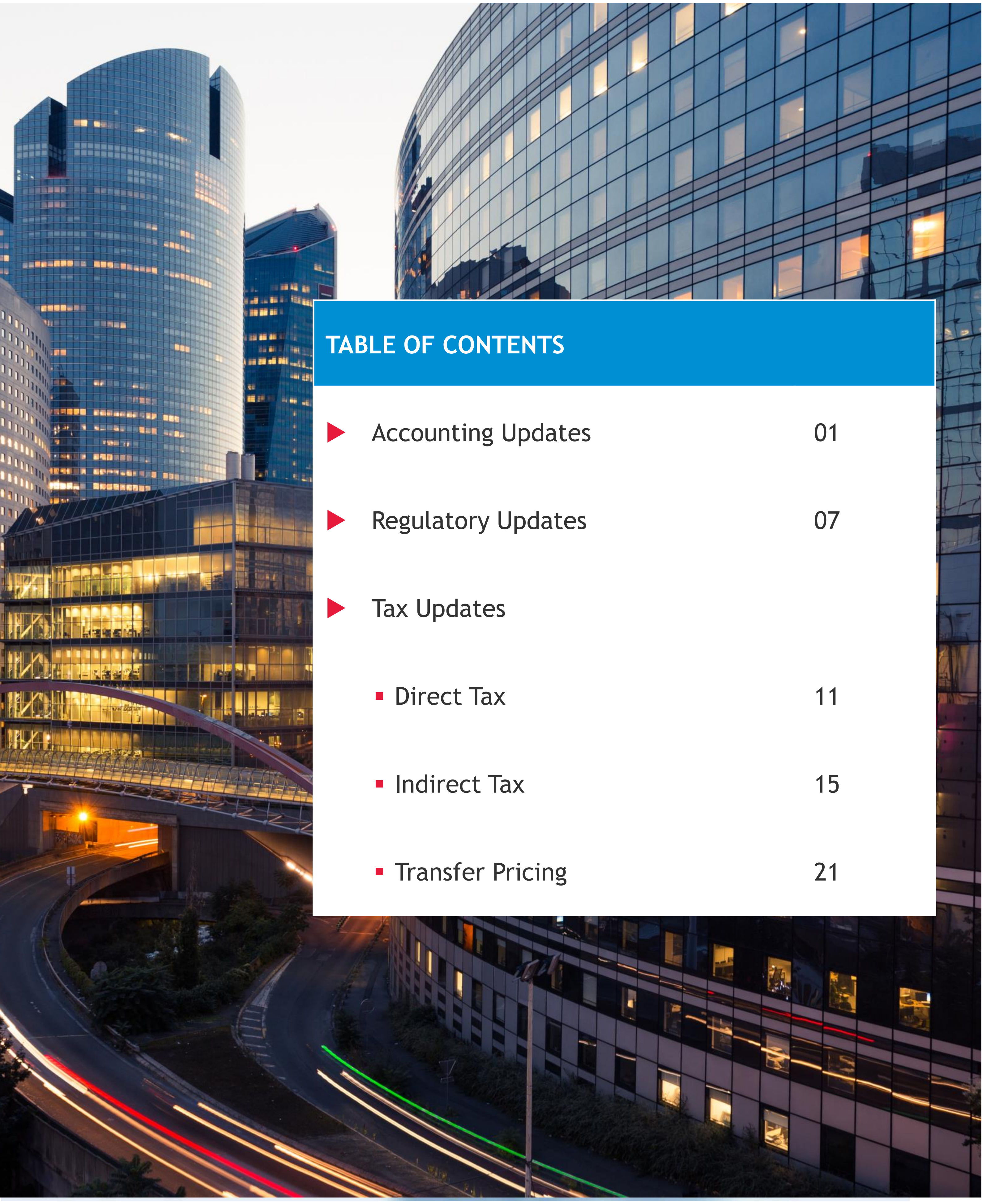


TABLE OF CONTENTS

ACCOUNTING UPDATES

REGULATORY UPDATES:

INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA (ICAI)

Exposure Draft On Proposed Revisions To 'IES 2, 3, And 4 - Sustainability' - For Public Comments

The International Panel on Accountancy Education (IPAE), an advisory body to the International Federation of Accountants (IFAC) has issued an Exposure Draft on Proposed Revisions to International Education Standards (IESs) 2, 3, and 4 – Sustainability seeking public comments from various stakeholders across the IFAC Member Bodies. ICAI being a member of IFAC represents in the IPAE. IPAE acts as a strategic advisor for IFAC's accountancy education work plan and advocates for high-quality accountancy education globally. It recommends IESs and their revisions to IFAC. As an IFAC Member Body, ICAI considers these IESs for developing its entry-level requirements, Chartered Accountancy course curriculum including practical training requirements and its assessment.

Accordingly, inputs/ comments are sought from all the stakeholders of ICAI on the Exposure Draft issued by IPAE by 10 July 2024.

SECURITIES AND EXCHANGE BOARD OF INDIA (SEBI)

Enhancement Of Operational Efficiency And Risk Reduction - Payout Of Securities Directly To Client Demat Account

SEBI has issued a circular dated 05 June 2024, on Enhancement of operational efficiency and Risk Reduction - Pay-out of securities directly to clients' demat accounts.

This circular aims to protect clients' securities and to ensure that the stockbroker segregates securities of the client or clients so that they are not vulnerable to misuse.

The direct payout to the client account was already facilitated on a voluntary basis vide circular dated 01 February 2001. It has been decided that the process of securities payout directly to the client demat account shall now be mandatory.

SEBI after discussions with Stock Exchanges, Clearing Corporations (CCs) and depositories, decided the following:

- The securities for payout shall be credited directly to the respective client's demat account by the CCs.
- CCs shall provide a mechanism for Trading Members (TM)/Clearing Members (CM) to identify unpaid securities and funded stocks under the margin trading facility.
- Funded stocks held by the TM/ CM under the margin trading facility shall be held by the TM/ CM only by way of pledge. For this purpose, the TM/ CM shall be required to open a separate demat account tagged 'Client Securities under Margin Funding Account' in which only funded stocks in respect of margin funding shall be kept/ transferred, and no other transactions shall be permitted. Such funded stocks shall be transferred to the respective client's demat account followed by the creation of an auto-pledge (i.e., without the requirement of specific instructions from the client) with suitable reason, in favour of 'Client Securities under Margin Funding Account'.

This shall not be applicable to clients having arrangements with custodians registered with SEBI for the clearing and settlement of trades.

The provisions of this circular shall come into force with effect from 14 October 2024. This circular impacts all recognised Stock Exchanges and Clearing Corporations, All Depositories."

Framework Of "Financial Disincentives For Surveillance Related Lapses" At Market Infrastructure Institutions

SEBI issued a circular dated 06 June 2024, laying down the framework for "Financial Disincentives for Surveillance Related Lapses" (FDSRL) at Market Infrastructure Institutions (MIIs) (i.e., Stock Exchanges, Clearing Corporations and Depositories) with the objective of monitoring the market to detect and deter manipulation or abusive trading that affects the integrity of the market, and providing information that supports the Regulator's enforcement actions, in view of the significant increase in trading activity during the past few years, increased participation by retail individual investors, increased trading activity in the derivatives segment and deployment of new trading techniques and strategies by market participants.

The circular defines Surveillance Related Lapses and provides that the amount of financial disincentives shall be determined on the basis of total annual revenue of the MII during the previous financial year as per the latest audited and consolidated annual financial statement and the number of instances of Surveillance Related Lapses during the Financial Year. Market surveillance by MIIs includes monitoring the day-to-day activities in the market, reporting abnormal or suspicious activities, and monitoring the conduct of market intermediaries through the generation and processing of alerts, seeking trading rationale, and carrying out snap analysis.

Further, listed MIIs make appropriate disclosures required in terms of the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015, regarding any financial disincentive(s)imposed by SEBI.

The framework of FDSRL at MIIs shall not be applicable to matters/ instances wherein it has:

- Made market-wide impact.
- Caused losses to a large number of investors.
- Affected the integrity of the market, and any such matter shall be subject to appropriate proceedings under the SCRA/ SEBI Act, 1992/ Depositories Act, 1996.

The circular also prescribes the procedure upon identification of Surveillance Related Lapses, the disclosures required and the applicability of the circular.

This circular shall come into effect from 01 July 2024, and the framework shall be applicable for any surveillance-related lapse occurring on or after the said date.

This circular impacts all Recognised Stock Exchanges, all Clearing Corporations and all Depositories.

Uploading Of KYC Information By KYC Registration Agencies (KRAs) To Central KYC Records Registry (CKYCRR)

SEBI has issued a circular dated 06 June 2024, on Uploading of Know Your Customer (KYC) information by KYC Registration Agencies (KRAs) to Central KYC Records Registry (CKYCRR) for streamlining the KYC process.

The KYC record of a client is uploaded on the system of KRAs by the intermediaries performing client due diligence as per the provisions of SEBI KRA Regulations, 2011. Additionally, the KYC information is uploaded on CKYCRR by the intermediaries in terms of SEBI master circular dated 12 October 2023, on KYC norms in the securities market. The following clauses of the SEBI Master Circular on KYC norms have been modified:

- iPara114 (a) has been inserted: Registered intermediaries shall continue to upload/ download/ modify the KYC information with proper authentication on the systems of KRA, as per the provisions of SEBI KRA Regulations, 2011.
- Para115 of the master circular is to be read as: KRAs shall upload the verified/ validated KYC information on to the system of CKYCRR within 7 days of receiving the same from the intermediaries or any other timelines notified under PML Rules and integrate their system with CKYCRR commencing the uploading of KYC records from 01 August 2024.
- Para116 of the master circular is to be read as: KRAs to ensure that existing KYC records of legal entities and of individual clients are uploaded onto CKYCRR within a period of 6 months from 01 August 2024.

This circular impacts all intermediaries registered with SEBI under Section 12 of the Securities and Exchange Board of India Act, 1992, Stock Exchanges, Association of Mutual Funds in India (AMFI), Association of Portfolio Managers in India (APMI), BSE Administration & Supervision Ltd. (BASL)

Master Circular For Bankers To An Issue

SEBI has issued a Master Circular dated 03 June 2024 for Bankers to an Issue registered with SEBI. This consolidates all relevant circulars and directions issued under the SEBI (Bankers to an Issue) Regulations, 1994.

With the issuance of this Master Circular, all directions/ instructions contained in the circulars listed out in the Appendix to this Master Circular shall stand rescinded to the extent they relate to Bankers to an Issue, but actions taken under them remain valid. Pending applications and existing rights or liabilities under the rescinded circulars are unaffected.

The circular is divided into the following three chapters and contains seven annexures:

- Chapter I – Registration Related Matters
- Chapter II - General Obligations/ Responsibilities and Reporting Requirements
- Chapter III – Other Guidelines

This circular impacts all registered Bankers to an Issue.

Master Circular For Portfolio Managers

SEBI has issued a Master Circular dated 07 June 2024 for Portfolio Managers with the objective of effective regulation within the industry. This circular consolidates guidelines and directions issued until 31 March 2024, and supersedes the Master Circular for Portfolio Managers dated 20 March 2023.

The guidelines/ directions contained in the circulars listed out in the Appendix to this Master Circular, to the extent they relate to the Portfolio Managers, shall stand rescinded. With respect to the directions or other guidance issued by SEBI, as specifically applicable to Portfolio Managers, the same shall continue to remain in force in addition to the provisions of any other law for the time being in force. Terms not defined in this Master Circular shall have the same meaning as provided under the relevant Regulations.

Anything done or any action taken under the rescinded circulars shall be deemed to have been done or taken under the corresponding provisions of this Master Circular.

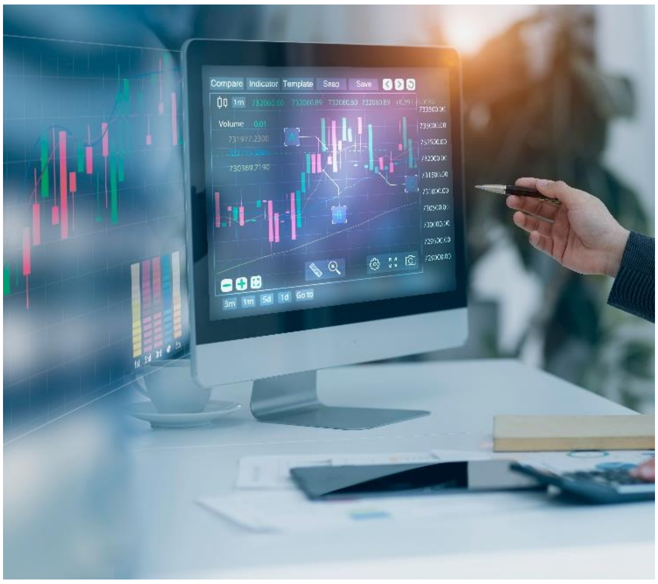
The entities which are required to ensure compliance with various provisions shall submit necessary reports as envisaged in this Master Circular on a periodic/ continuous basis.

The Circular includes guidelines on the following and contains 17 annexures:

- Registration And Post-Registration Activity
- Operating Guidelines
- Investments By Portfolio Managers
- Disclosure Requirements
- Reporting Requirements
- Fees and Charges
- Grievance Redressal

To provide further guidance, the Circular also includes policy-related letters and emails issued by SEBI.

This circular impacts all Portfolio Managers and the Association of Portfolio Managers in India.



Ease Of Doing Investments - Non-submission Of 'Choice Of Nomination' (i) Doing Away With Freezing Of Demat Accounts And Mutual Fund Folios For Existing Investors;(ii) To Remove Freeze On Payment Of Corporate Benefits And Service Of Physical Folios; (B) Only 3 Fields To Be Provided Mandatorily For Updating Nomination Details

SEBI has issued a circular dated 10 June 2024 aimed at easing the process of compliance and for investor convenience. The following has been decided for existing investors/ unitholders:

- **No freezing of Demat Accounts:** Non-submission of 'choice of nomination' shall not result in the freezing of Demat Accounts as well as Mutual Fund Folios.
- **Service Continuation:** Securityholders holding securities in physical form shall be eligible for receipt of any payment including dividend, interest or redemption payment as well as to lodge grievance or avail any service request from the Registrars to an Issue and Share Transfer Agents (RTAs) even if 'choice of nomination' is not submitted by these securityholders.
- **Processing of existing claims:** Payments including dividend, interest or redemption payment withheld presently by the Listed Companies/ RTAs, only for want of 'choice of nomination' shall be processed accordingly.

However, all new investors/ unitholders shall continue to be required to mandatorily provide the 'Choice of Nomination' for demat accounts/ MF Folios (except for jointly held Demat Accounts and Mutual Fund Folios).

This circular impacts all Recognised Stock Exchanges, all Recognised Depositories, all Mutual Funds, all Asset Management Companies, all Trustee Companies/ Board of Trustees of Mutual Funds, Stockbrokers (Trading Members) through Recognised Stock Exchanges, Depository Participants through Depositories, all RTAs, all Listed Companies through Recognised Stock Exchanges and Association of Mutual Funds in India.

The provisions of this circular, except clause 7 which requires to provide pop-up for "choice of nomination", shall come into effect immediately in supersession of existing provisions. Further, Clause 7 of this circular shall be applicable from 01 October 2024.

Modification in Framework for Offer for Sale (OFS) of Shares to Employees through Stock Exchange Mechanism

SEBI vide circular dated 14 June 2024 outlines modifications in the framework for the Offer for Sale (OFS) of shares to employees through the stock exchange mechanism.

As per this circular, employees will now place bids at the cut-off price of T Day instead of T+1 day. All other provisions of previous circulars remain unchanged. The allotment price will be based on the cut-off of the T Day, subject to any applicable discount.

The new provisions will take effect 30 days from issuance. This circular impacts all Recognised Stock Exchanges, all Recognised Clearing Corporations and all Depositories.

Modification In Duration For Call Auction In Pre-open Session For Initial Public Offer (IPO) And Relisted Scrips

SEBI has issued a circular dated 20 June 2024 to modify the call auction provisions and introduce additional surveillance measures at stock exchanges to curb misuse of the call auction session. Following are the key modifications:

- **Duration of the session:** The session shall be for a duration of 60 minutes from 9 am to 10 am. This session is divided into three parts:
  - 45 minutes for order entry, modification, and cancellation.
  - 10 minutes for order matching and trade confirmation.
  - A 5-minute buffer period to transition to normal trading.

  The session shall close randomly during the last ten minutes of order entry i.e. anytime between 35th and 45th minute of the order entry window. Such random closure shall be system-driven.
- Additional surveillance mechanisms: The Circular provides indicative parameters based on which the stock exchanges shall generate alerts. For the alerts generated based on the said parameters, stock exchanges shall provide a report to SEBI by the 'End of Day'. Further, based on analysis, stock exchanges shall seek an explanation from the clients for the cancellations or modifications done by them during the pre-open session. Details of the number and quantity of cancelled orders shall also be displayed on the website of the stock exchange and terminals of Trading Members on a real-time basis for investors to make informed decisions on the pricing of such stocks.

The Circular includes an annexure that provides guidance on Duration of Session, Eligible Scrips, Risk Management, and Surveillance Mechanisms.

The provisions of this Circular shall be applicable from the 90th day of its issuance. This Circular impacts all Recognised Stock Exchanges.

Introduction Of A Special Call Auction Mechanism For Price Discovery Of Scrips Of Listed Investment Companies (ICs) And Listed Investment Holding Companies (IHCs)

SEBI has issued a circular dated 20 June 2024 introducing a special call auction mechanism for price discovery of scrips of listed Investment Companies (ICs) and listed Investment Holding Companies (IHCs). It is observed that scrips of a few listed ICs and IHCs are being traded infrequently and at a price significantly lower than their book value. The variance in the market price and book value of such ICs and IHCs is adversely affecting liquidity, fair price discovery and the overall interest of investors in scrips of such companies.

To address this, SEBI decided to implement a "special call auction with no price bands" for effective price discovery. The circular prescribes operational guidelines in this regard, which includes criteria for identification of ICs or IHCs eligible for special call auction and the procedure for special call auction mechanism.

Eligibility criteria include that ICs and IHCs must have been listed and traded for at least one year, with at least 50% of their assets invested in other listed companies' scrips. The 6-month volume-weighted average price (VWAP) of the scrip must be less than 50% of the book value per share.

The first special call auction shall be conducted in October 2024 by stock exchanges based on the latest available audited financial statements of such companies and subsequently shall be done as and when the annual audited financial statements are published by the companies.

This circular impacts all Recognised Stock Exchanges.

System Audit Of Professional Clearing Members (PCMs)

SEBI has issued a circular dated 20 June 2024, laying down the framework for System Audit of Professional Clearing Members (PCMs) based on discussions with Clearing Corporations (CCs) and the Technical Advisory Committee (TAC). PCMs are required to conduct audits as per the enclosed framework and submit reports, including compliance status and exceptional observations, to CCs within one month of completion.

The first audit shall be conducted for FY 2023-24.

The circular includes the following four Annexures:

Annexure 1: System Audit Framework

Annexure 2: System Audit Program – Terms of Reference (TOR)

Annexure 3: Format for monitoring compliance with requirements emanating from SEBI and Clearing Corporation (CC) circulars/ guidelines/ advisories related to technology

Annexure 4: Exception Observation Reporting format

The provisions of the Circular shall come into force with immediate effect. This circular impacts all Clearing Corporations and all Professional Clearing Members.

Statutory Committees at MIIs

SEBI has issued a circular dated 25 June 2024 detailing the formation and functioning of statutory committees at Stock Exchanges, Clearing Corporations and Depositories (hereinafter collectively referred as Market Infrastructure Institutions (MIIs). Based on the recommendations of the Committee on Strengthening Governance of MIIs, the functions, composition and Terms of Reference (TOR) of the statutory committees of MIIs were deliberated.

Regulation 29 of Securities Contracts (Regulation) (Stock Exchanges and Clearing Corporations) Regulations, 2018 & Regulation 30 of Securities and Exchange Board of India (Depositories and Participants) Regulations, 2018, state that, MIIs shall have the following statutory committees:

- Functional Committees: Member Committee and Nomination and Remuneration Committee
- Oversight Committees: Standing Committee on Technology, Regulatory Oversight Committee, Risk Management Committee
- Investment Committee

The circular prescribes that such committees should include Key Management Personnel (KMP), Non-Independent Directors (NIDs), Independent External Professionals (IEPs), and Public Interest Directors (PIDs). Each committee must be chaired by a PID with relevant expertise. Further, PIDs must form at least half of the committee members. Further, voting on any resolution requires PID participation equal to or greater than other members combined.

The revised TOR of statutory committees of MIIs is provided in the Annexure to the circular.

The principles for composition and quorum for the statutory committees at MIIs have also been provided in the circular which shall be applicable from the 30th day of its issuance. This circular impacts all Recognised Stock Exchanges, all Recognised Clearing Corporations, and all Depositories

Facility For Basic Services Demat Account (BSDA) For Financial Inclusion And Ease Of Investing

SEBI has issued a circular dated 28 June 2024 on Facility for Basic Services Demat Account (BSDA) for Financial Inclusion and Ease of Investing. To further boost participation in the securities market, ease of doing investments and based on representations from market participants, the facility has been comprehensively reviewed. The circular includes provisions on the following:

- Eligibility for BSDA: An individual shall be eligible to opt for BSDA if the individual has or proposes to have only one demat account where he/ she is the sole or first holder. The individual shall have only one BSDA in their name across all depositories and the value of securities held in the demat account shall not exceed INR 10 lakh for debt and other than debt securities combined at any point of time.
- Opening of BSDA and conversion of existing eligible demat accounts into BSDA.
- Charges: The annual maintenance charges (AMC) for a demat account depend on the value of holdings in the account:
  - **Up to INR 4 lakh:** No annual maintenance charges (NIL).
  - **More than INR 4 lakh but up to INR 10 lakh:** INR 100 maximum annual maintenance charges.
  - **More than INR 10 lakh:** Regular AMC may be levied, as it does not qualify as a BSDA. This structure indicates that the charges vary based on the value of securities held in the demat account.
  - **Services for BSDAs:** This circular shall come into effect from 01 September 2024 in supersession of para 1.8.1 to para 1.8.5 of the Master Circular for Depositories dated 06 October 2023. This circular impacts the Depositories and the Depository Participants (DPs).

Securities And Exchange Board Of India (Prohibition Of Insider Trading) (Second Amendment) Regulations, 2024

SEBI vide notification dated 25 June 2024 issued an amendment to Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015. These Regulations may be called the Securities and Exchange Board of India (Prohibition of Insider Trading) (Second Amendment) Regulations, 2024.

These regulations introduced several key changes aimed at refining insider trading regulations, few of those amendments are summarised as follows:

- Cool-off period before an insider can commence trading has been reduced from 6 months to 120 calendar days. The Amendment has explained that companies declare their results quarterly and there exists a trading restriction from the end of the quarter to two days after the declaration of quarterly results, typically around one month for most companies. Thus, 120 days cool-off period is considered reasonable.
- It is now optional to disclose the upper price limit for a buy trade and the lower price limit for a sell trade. However, such limits are to be 20% of the closing price on the day prior to the submission of the trading plan.
- The Amendment Regulations now allow for deviations from the trading plan due to permanent incapacity, bankruptcy, or operation of law, removes the requirement for compliance officer confirmation for deferring the plan's commencement due to unpublished price-sensitive information, and includes new conditions for executing trades within specified price limits.
- If the trading plan is not implemented, the insider must report the non-implementation to the compliance officer within two trading days of the end of its tenure. Thereafter, the compliance officer shall present the aforementioned information to the audit committee to determine whether the non-implementation was bona fide.
- The compliance officer shall approve or reject the trading plan within two trading days of receipt of the trading plan and notify the approved plan to the stock exchanges on which the securities are listed, on the day of approval.

They shall come into force on the 90th day from the date of their publication in the Official Gazette. This circular impacts all Listed Entities.

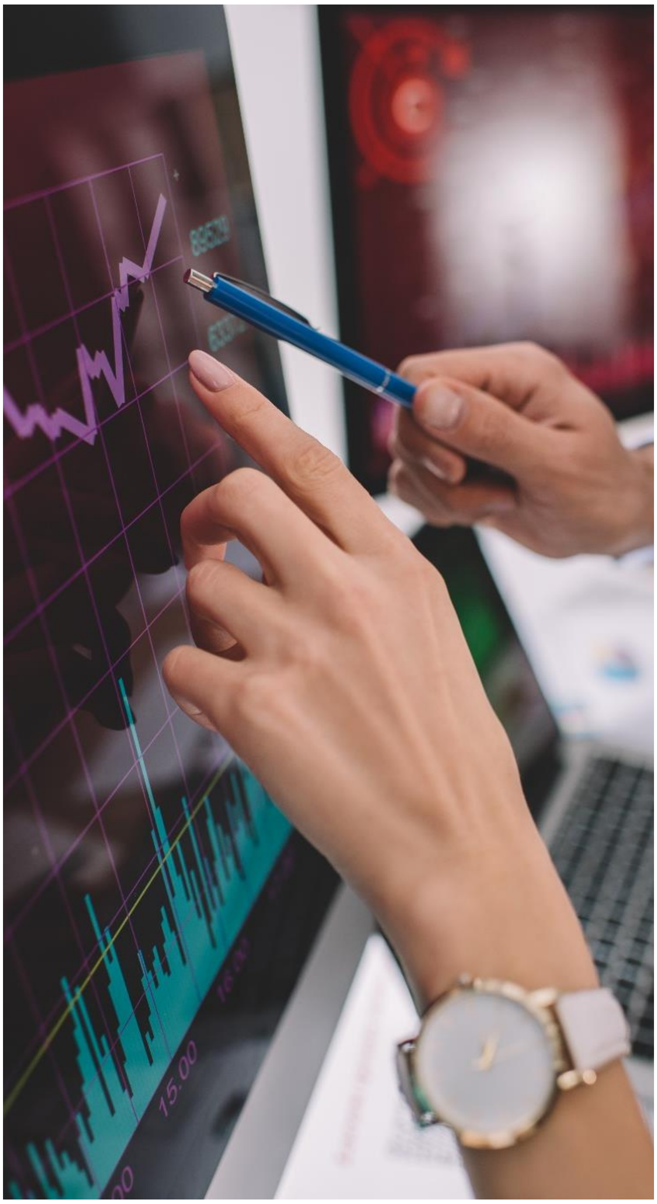
Securities And Exchange Board Of India (Foreign Portfolio Investors) (Second Amendment) Regulations, 2024

SEBI vide notification dated 26 June 2024, issued an amendment to Securities and Exchange Board of India (Foreign Portfolio Investors) Regulations, 2019. These regulations may be called the Securities and Exchange Board of India (Foreign Portfolio Investors) (Second Amendment) Regulations, 2024.

Few key amendments are summarised as follows:

- Contribution Limits: The amendments modify regulation 4 to impose specific limits on contributions by NRIs, overseas citizens of India (OCIs), and resident Indian individuals. Their contributions must be below 25% individually and below 50% collectively of the total corpus of the applicant. Additionally, resident Indian contributions must comply with the Reserve Bank of India’s Liberalised Remittance Scheme and be in global funds with less than 50% Indian exposure.
- Registration Fees: A new fee structure requires foreign portfolio investors (FPIs) to pay registration fees every three years. They are allowed a 30-day grace period to pay these fees along with a late fee, failing which they must dispose of their securities or wind up their derivative positions within 360 days.
- Enforcement and Compliance: The amendments clarify that FPIs granted additional compliance periods are not exempt from SEBI’s enforcement actions. FPIs that fail to comply within the stipulated periods will face consequences, including deemed write-off of securities.
- Regulation Adjustments: Various sub-regulations have been updated to remove specific timelines and instead allow SEBI to specify timelines as necessary. This includes updates to regulations regarding material changes, information submission, and handling of securities by FPIs.

They shall come into force on the date of their publication in the Official Gazette. This circular impacts all Listed Entities.



REGULATORY UPDATES

SECURITIES AND EXCHANGE BOARD OF INDIA (SEBI)

Circular Dated 05 June 2024: Disclosures Of Material Changes And Other Obligations For Foreign Portfolio Investors (FPI), (The Circular)

The Circular is addressed to FPI, Designated Depository Participants (DDPs), Custodians, Depositories, Stock Exchange and Clearing Corporations.

SEBI (FPI) Regulations, 2019, were amended *vide* SEBI (FPI) (Amendment) Regulations, 2024 dated 03 June 2024, to relax the timelines for disclosure of material changes/ events and other obligations by FPI. In view of these amendments, the FPI Master Circular has also been amended as below.

In case of any changes in the material information previously furnished by the FPI to DDPs and/ or SEBI, which has a bearing on the certificate granted by the DDP on behalf of the Board, it shall inform the DDP and/ or the Board in writing, in the following manner:

- 'Type I' material changes, i.e., critical material changes impacting FPI's eligibility for registration, purchase of securities, and/ or impacts any privileges or exemptions granted to the FPI, shall be informed by FPIs within seven working days and any supporting documents shall be provided within 30 days of such change.
- 'Type II' material changes, i.e., other material changes not classified under Type I, shall be informed and supporting documents (if any) shall be provided by FPIs within 30 days of such change.

DDPs are mandated to re-assess FPI eligibility based on the material changes reported, including requiring FPIs to seek fresh registration. For Type I changes, fresh registration shall be required. DDPs shall inform SEBI of any delays in receiving intimation from the FPI, along with reasons as soon as possible, but not later than two working days.

Circular Dated 05 June 2024: Framework For Providing Flexibility To Foreign Portfolio Investors (FPI) In Dealing With Their Securities Post Expiry Of Their Registration (The Circular)

The Circular is addressed to FPI, Designated Depository Participants (DDPs), Custodian, Depositories, Stock Exchange and Clearing Corporations.

SEBI (FPI) Regulations, 2019, were amended vide SEBI (FPI) (Amendment) Regulations, 2024, dated 03 June 2024, to ensure FPI compliance with regulatory requirements, particularly for registration, KYC and management or disposal of securities, during and post the expiry of the registration period.

The relevant paragraphs of FPI Master Circular have also been amended to this extent, pertaining to below:

- Continuance of registration of FPI after its expiry;
- Reclassification of FPI under particular category/ sub-category, if it fails to comply with eligibility requirements;
- Change in the status of Compliant Jurisdiction;
- Dealing with securities after expiry of their registration and/ or elapse of time period for disposal of securities; and
- Dealing with securities written-off/ deemed to be written-off by FPI.

Further, the Master Circular for Custodians has been modified by adding reporting requirements relating to securities dealt under specified conditions.

The Master Circular for Custodians and FPI stands effective from immediate effect i.e. 05 June 2024, except for amendments dealing with Point D above, which shall come to effect after 60 days from date of this Circular.

Circular dated 19 June 2024: Contribution to Core Settlement Guarantee Fund (Core SGF) and Default Waterfall for Limited Purpose Clearing Corporation (LPCC)

SEBI has issued a circular to update the guidelines for contributions to the Core SGF and the default waterfall mechanism for LPCCs. The new amendments include provisions for participants to directly contribute to the Core SGF bypassing the requirement to do so through a Clearing Member (CM). The contributions made by such individual participants shall be risk-based and equivalent to deficit in Minimum Required Corpus (MRC) post contribution by Issuers and CMs. Participants' exposure-free collateral may also count towards their Core SGF contributions. The LPCCs have the flexibility to collect participants' primary contributions upfront or in a staggered manner over time. Further, if immediate contributions are not sought from the participants, the LPCC must cover the shortfall to maintain the Core SGF's adequacy.

In the event of usage of Core SGF during a calendar month, the contributors (CM/ participants) shall immediately replenish the SGF to its MRC. However, such use of replenishment is restricted to only once during a period of 30 days calendar month regardless of the number of defaults. The period of these 30 days shall commence from the date of notice of default by Clearing Corporations (CC) to market participants.

The default waterfall sequence has been revised, prioritising the use of monies from defaulting members/ participants, followed by insurance, issuer contributions, LPCC resources, and the Core SGF. There is also a cap on additional contributions from non-defaulting participants which can be called once within a 30-day period.

CCs are instructed to amend their bylaws to reflect these changes and to communicate the implementation status to SEBI through a monthly development report. This circular aims to safeguard investors and uphold market integrity.

Circular Dated 27 June 2024: Participation By Non-resident Indians (NRIs), Overseas Citizens Of India (OCIs) And Resident Indian (RI) Individuals In SEBI Registered FPIs Based In International Financial Services Centres In India (Circular No. SEBI/HO/AFD/AFD-POD-2/P/CIR/2024/89)

This circular amends the SEBI (Foreign Portfolio Investors) Regulations, 2019.

Key Updates:

Increased Participation Limits:

FPIs based in International Financial Services Centres (IFSCs) and regulated by the International Financial Services Centres Authority (IFSCA) can now have up to 100% aggregate contribution from NRIs, OCIs and RI individuals.

Declaration Requirements:

IFSC-based FPIs must declare their intent to have 50% or more contribution from NRIs/ OCIs/ RIs when registering, or within 6 months for existing FPIs.

This declaration can be reviewed only at the time of registration renewal.

Documentation:

FPIs must provide PAN cards of all NRI/ OCI/ RI individual constituents to their Designated Depository Participants (DDPs). For constituents without PAN, alternative documentation is required.

For non-individual constituents controlled by NRIs/ OCIs/ RIs, FPIs must provide additional documentation and ownership details.

The following requirements are not applicable to the applicant that is set up as a fund in IFSCs in India and regulated by IFSCA, subject to the following conditions:

- Mandatory pooling of all investments into one FPI-registered vehicle.
- Pari-passu and pro-rata rights for all investors.
- Investment diversification: Maximum 20% of corpus in a single Indian listed entity.*
- Investor diversification: Minimum 20 investors, with each contributing no more than 25% to the corpus.*
- Independent investment management by a qualified asset management company.

***Compliance Timelines:**

New applicants have 3 months from registration to comply with diversification requirements.

Existing FPIs must rectify any passive breaches within 3 months.

Holding Threshold:

The holding threshold for these FPIs has been increased to 33% from the previous 50%.

RESERVE BANK OF INDIA (RBI)

Circular Dated 7 June 2024: Amendment To Master Direction - Reserve Bank Of India (Interest Rate On Deposits) Directions, 2016

These instructions are issued under the authority of Section 35A of the Banking Regulation Act, 1949. The RBI has revised the definition of "Bulk Deposits" for Scheduled Commercial Banks (excluding Regional Rural Banks), Small Finance Banks, and Local Area Banks. Effective immediately, the term "Bulk Deposit" now refers to single rupee term deposits of INR 3 crore and above for Scheduled Commercial Banks and Small Finance Banks, and INR 1 crore and above for Regional Rural Banks and Local Area Banks. These changes have been incorporated into the Master Direction - Reserve Bank of India (Interest Rate on Deposits) Directions, 2016. All other provisions remain unchanged.

Circular Dated 7 June 2024: Foreign Exchange Management (Overseas Investment) [FEM (OI)] Directions, 2022 - Investments In Overseas Funds

RBI has issued notification on FEM (OI) Directions, 2022 - Investments in Overseas Funds to provide clarity and broaden the scope of permissible overseas investments for Indian entities and individuals.

Based on the same, existing Paragraph 1(ix)(e) and existing Paragraph 24(1) of FEM (OI) Directions, 2022 have been amended. As per the amended norms, the definition of Overseas Portfolio Investment (OPI) will also include investments in any other instruments (by whatever name called) issued by an investment fund overseas. Earlier, investment was only limited to 'units'.

Further, an explanation has also been added in the existing Paragraph 1(ix)(e) of FEM (OI) Directions, 2022 that defines 'investment fund overseas, duly regulated' to include funds regulated by a financial sector regulator through a fund manager in the host country or jurisdiction.

Circular Dated 11 June 2024: India-supported Line Of Credit Of USD 23.37mn To The Government Of The Co-operative Republic Of Guyana

The Export-Import Bank of India (Exim Bank) has signed an agreement with the Government of the Co-operative Republic of Guyana (GO-GUY) on 15 March 2024, to extend a Government of India-supported Line of Credit (LoC) amounting to USD 23.37mn. This LoC aims to finance GO-GUY's procurement of two Hindustan 228-201 aircraft from Hindustan Aeronautics Ltd. Under the agreement, eligible exports from India must conform to India's Foreign Trade Policy and be agreed upon for financing by Exim Bank.

The terms specify that at least 75% of the contract's value must be fulfilled through goods, works, and services sourced from India, with the remainder sourced internationally. The LoC, effective from 8 April 2024, allows disbursement up to 48 months after the project's scheduled completion date. Shipments must comply with Reserve Bank guidelines, and no agency commission is payable unless specified by the exporter, who can use their own foreign exchange resources for such payments.

Authorized Dealer (AD) Category-I banks are mandated to inform exporters about these terms and guide them to obtain further details from the Exim Bank's office or website. These directives are issued under the Foreign Exchange Management Act (FEMA), ensuring adherence to regulatory requirements while facilitating bilateral economic cooperation between India and Guyana.

Circular Dated 11 June 2024: International Trade Settlement In Indian Rupees (INR) – Opening Of Additional Current Account For Settlement Of Trade Transactions (The Circular)

The Circular is addressed to all Authorised Dealer Category – I (AD Category – I) banks.

Earlier, constituents of AD Category – I banks, maintaining Special Rupee Vostro Account on international trade transactions in INR were permitted to open an additional special current account exclusively for export transactions.

In order to provide operational flexibility, such facility of opening additional special current account has now been extended to import transactions as well.

Circular Dated 21 June 2024: Priority Sector Lending – Amendments To The Master Directions

Recent updates to the Master Directions on Priority Sector Lending (PSL) introduce significant changes aimed at refining credit allocation strategies across districts and sectors. Here is a concise summary:

- **District-wise Credit Allocation:**
  - Districts are now categorised based on per capita credit flow to the priority sector.
  - Effective FY 2024-25, districts with lower credit flow (< INR 9,000 per capita) will receive higher weight (125%), incentivising increased lending. Conversely, districts with higher flow (> INR 42,000 per capita) will have lower weight (90%), reflecting a dis-incentive.

- **MSME Definition Clarification:**
  - The definition of Micro, Small & Medium Enterprises (MSMEs) now aligns with the latest Master Direction, ensuring clarity and consistency in lending practices. All loans to qualifying MSMEs contribute to priority sector lending targets.
- **UCBs Reporting Requirements:**
  - Reporting formats for Urban Co-operative Banks (UCBs) on priority sector advances have been streamlined under updated supervisory directives, enhancing reporting efficiency and compliance.

These amendments aim to optimise credit distribution, support inclusive growth, and streamline regulatory compliance.

INSURANCE REGULATORY AND DEVELOPMENT AUTHORITY OF INDIA (IRDAI)

Circular On Insurance Claims Relating To Cyclone Remal And Subsequent Heavy Rains/ Floods, Dated 04 June 2024

In response to Cyclone Remal and subsequent heavy rains/ floods in May 2024, insurance companies have been instructed to mobilise resources swiftly.

Directives include appointing a Nodal Claims Officer and District Claims Service Heads, activating 24x7 helplines, and setting up special claims desks at district levels for expedited processing and interim payments.

Emphasis is placed on immediate surveying of claims, prompt payment disbursement, and encouraging electronic communication for streamlined claim handling.

Insurers have been urged to review and optimise claims processes, while offering flexibility in documentation requirements, especially for claims involving challenges in obtaining death certificates.

These efforts reflect the insurers' commitment to efficiently supporting affected individuals and businesses during the recovery phase.

CIRCULARS/ NOTIFICATIONS/ PRESS RELEASE

CBDT Specifies Certain Forms To Be Furnished Electronically

Pursuant to the power conferred under Rule 131[1] of the Income-tax Rules, 1962 (IT Rules), the Directorate of Income Tax (Systems), with the approval of Central Board of Direct Taxes (CBDT), has notified that the following forms shall be furnished and verified electronically.

SR. NO.	FORM	DESCRIPTION
1	3CN	Application for notification of affordable housing project as specified business under section 35AD of the Income-tax Act, 1961 (IT Act)
2	3CS	Application for notification of a semiconductor wafer fabrication manufacturing unit as specified business under section 35AD of the IT Act
3	3CEC	Application for a Pre-filing meeting
4	3CEFB	Application for Opting for Safe Harbour in respect of Specified Domestic Transactions
5	59	Application for approval of issue of public companies under section 80C(2)(xix) of the IT Act
6	59A	Application for approval of Mutual funds investing in the eligible issue of public companies under section 80C(2)(xx) of the IT Act

This notification shall be effective from 27 June 2024.

[Notification No. 01/2024-25, dated 24 June 2024]

[1] Rule 131 of the IT Rules grants power to Principal Director General of Income-tax (Systems) or the Director General of Income-tax (Systems), to specify any of the Forms, returns, statements, reports, orders, etc to be furnished electronically.

CBDT Directs The PCIT For Acceptance Of Delayed Payment Of Requisite Taxes Under The Direct Tax Vivad Se Vishwas Act, 2020

To address the difficulties faced by taxpayers and for the purpose of collection of revenue, CBDT, in exercise of the powers conferred under Section 10(2)[2] of the Direct Tax Vivad se Vishwas Act, 2020 (DTVsV Act), has directed that the delayed payment of requisite taxes may be accepted in the following cases:

- The taxpayer has made full payment of taxes (including amount payable after due date as prescribed in Form-3[3] of the DTVsV Rules) on or before 28 February 2022 under the DTVsV Act, and
- The appeal(s) mentioned in Form-1[4] of the DTVsV Rules has either been withdrawn or has not been decided as on date of full payment of taxes (including the amount payable after due date as prescribed in Form-3 of the DTVsV Rules).

The concerned Principal Commissioner of Income-tax (PClT) shall issue modified Form-3 manually, if required and allow the taxpayer to file Form-4[5] manually. Thereafter, Form-5[6] shall be issued manually after examining the conditions as per the DTVsV Act. Further, it has been directed that the entire process should be completed by 30 September 2024.

[F.No.173/03/2021-ITA-I(Pt.2), dated 27 June 2024]

The Validity Of Transitional Approach On Equalisation Levy 2020 Between India-usa Extended To 30 June 2024

On 8 October 2021, India and the USA joined 134 other members of the OECD/G20 Inclusive Framework (including Austria, France, Italy, Spain, and the United Kingdom) to agree on the Statement on a Two-Pillar Solution to address the tax challenges arising from the Digitalization of the Economy.

Pursuant to this, on 24 November 2021, a press release was issued wherein India and the USA agreed a political compromise on the transitional approach to the unilateral measures in force while Pillar 1 is implemented[7].

Subsequently, on 15 February 2024, the USA and Austria, France, Italy, Spain, and the United Kingdom agreed to extend this political compromise to 30 June 2024.

Consequently, recently, the Ministry of Finance has recently issued a press release stating that India and the USA have decided to extend the validity of transitional approach as agreed in November 2021, till 30 June 2024. Further, it also mentions that there is no change in the terms of the transitional approach.

[Press Release dated 28 June 2024]

JUDICIAL UPDATES

Himachal Pradesh High Court Holds That Conversion Of Loan Into Equity Does Not Trigger Rigors Of Section 56(2)(viib) Of IT Act

The taxpayer, a company, issued 22.5 million equity shares having face value of INR 10 per share for a premium of INR 90 per share to M/s Shri Bajrang Power & Ispat Ltd. and Shri Bajrang Energy Private Ltd. Prior to 23 February 2017, both the entities were partners in the taxpayer firm and their balances were shown as Partners Capital. As on 1 April 2017, the taxpayer-company had an opening balance of unsecured loans which was converted into share capital as per the agreement.

In terms of the method prescribed in Rule 11UA[8] of the IT Rules, valuation was done as per the Discounted Cash Flow (DCF) Method and a Certificate was also obtained from the Chartered Accountant. The tax officer rejected the valuation report furnished by the taxpayer on the ground that the DCF valuation used by the taxpayer is bogus, done with fictitious figures and has no connection with the actual figures. Accordingly, the tax officer made an addition of INR 2,025mn under Section 56(viib)[9] of the IT Act, being premium exceeding the face value.

The First Appellate Authority deleted the additions made by the tax officer which was further confirmed by the Second Appellate Authority. Aggrieved, the tax officer filed an appeal before the Hon'ble Himachal Pradesh High Court. The Himachal Pradesh High Court while dismissing the appeal, confirming the order of the First Appellate Authority and Second Appellate Authority, made the following observations:

- Since no money or consideration was received by the taxpayer on issue of shares and the shares are allotted merely on account of the conversion of outstanding loans received in earlier years and source whereof was accepted to be satisfactorily explained into share capital, Section 56(2)(viib) of the IT Act is not applicable.
- Section 56(2)(viib) of the IT Act would apply only if consideration was received for such a transaction.
- The tax officer does not have jurisdiction to substitute the Net Asset Value (NAV) method of assessing the valuation of shares, once the taxpayer had exercised the option of a DCF valuation method as per Rule 11UA(2) of the IT Rules.
- The tax officer is not authorised to pick and choose a particular method of valuation of shares, since the option in that regard is specifically given only to the taxpayer as per Rule 11UA(2) of IT Rule.
- Rejecting the DCF method and proceeding to value the shares by NAV method merely on the ground that there was a huge difference in projected figures and actual results available for some years, is unacceptable.

[PCT v. M/s I.A. Hydro Energy (P) Limited, ITA No.4 of 2024 (Himachal Pradesh High Court)]

[2] Section 10(2) of the DTVsV Act empowers CBDT to issue such directions or orders to the income-tax authorities, as it may deem fit, for the purpose of DTVsV Act.
[3] Form for certificate under section 5(1) of the DTVsV Act. Section 5(1) provides for the time & manner of payment under DTVsV Act.
[4] Form for filing declaration
[5] Form for intimation of payment under section 50F(2) the DTVsV Act.
[6] Order for full and final settlement of tax arrears under section 5(2) read with section 60F of the DTVsV Act)
[7] To read our analysis on this, please go to https://www.bdo.in/en-gb/insights/alerts-updates/direct-tax-alert-india-usa-agree-on-a-transitional-approach-on-equalisation-levy
[8] Rule 11UA of the IT Rules provides the methods for determination of fair market value
[9] Section 56(2)(viib) of the IT Act provides that where a closely held company issues shares at premium and the issue price is more than the FMV, excess of premium shall be taxable in the hands of issuer company as Income from Other Sources.

Ahmedabad Tax Tribunal Holds That Belated Filing Of Tax Return And Form 10IC Will Not Invalidate Claim For Concessional Tax Rate

The taxpayer, a company, filed its tax return for fiscal year (FY) 2021-22 on 1 December 2022, i.e., after the prescribed deadline but within the deadline for filing belated tax return. The tax return was processed under section 143(1)[10] of the IT Act wherein the returned income was accepted but taxpayer's claim for concessional tax rate under section 115BAA[11] of the IT Act was rejected on the ground that both the tax return and Form 10-IC were filed after the due date. Accordingly, the tax liability was recomputed at the rate of 30% instead of the concessional rate of 22%.

Aggrieved, the taxpayer filed an appeal before the First Appellate Authority who dismissed the appeal stating that the beneficial provisions should be strictly interpreted. Hence, the taxpayer filed an appeal before the Ahmedabad Bench of Tax Tribunal. While granting the concessional tax rate, the Ahmedabad Tax Tribunal made the following observations:

- Section 115BAA of the IT Act was introduced for the purpose of granting benefit of reduced corporate tax rate for the domestic companies. To avail the benefit, companies are required to exercise the option in the prescribed manner on or before the due date of furnishing the return of income under section 139(1) (i.e. 31 October 2022 in the instant case).
- As per Rule 21AE of the IT Rules, such option can be exercised by filing Form 10-IC. Section 115BA(5) of the IT Act makes it mandatory to file form 10-IC on or before the due date of furnishing the return of income specified under section 139(1) of the IT Act.
- Reliance placed by the tax authorities on the Hon'ble Supreme Court Ruling in case of Wipro Limited[12] is misplaced. This decision was rendered on a set of different facts wherein the taxpayer had claimed the benefit of section 10B[13] of the IT Act in the original return of income and thereafter a revised return was filed forgoing the benefit of section 10B of the IT Act and claiming carry forward of loss.
- In the instant case, the intention to opt for lower rate was unambiguously declared in the tax audit report filed on 30 September 2022, (i.e., before the due date specified under section 139(1) of the IT Act) indicating the taxpayer's bona fide commitment to the concessional tax regime. Therefore, there is a clear distinction between the facts of the case.
- Further, reliance is also placed on the Ahmedabad Tax Tribunal's decision in case of Croygas Equipments (P.) Ltd[14] wherein it was held that the principles laid out in Wipro Limited (supra) cannot be applied uniformly to all cases.
- Reliance was also placed on the Hon'ble Gujarat High Court in the case of Zenith Processing Mills[15] wherein it was held that the provisions of section 80J(6A) of the IT Act, to the extent it requires furnishing of auditor's report in prescribed form along with the tax return, is directory and not mandatory in nature.
- The tax authorities have denied the benefit of concessional tax rate under section 115BAA of the IT Act on account of an inadvertent error on the part of the taxpayer in not filing Form 10-IC before the specified due date.
- Since Form 10-IC was filed during the course of assessment proceeding, there is a sufficient compliance on the part of the taxpayer. There does not seem to be any material objective to be achieved in not filing the form within the due date since the taxpayer had already declared its intent to avail the benefit of concessional tax regime in Form 3CD.
- According to the principle of beneficial interpretation, the procedural requirements should not override substantive benefits. Various courts have taken a tolerant view in case of procedural lapses when substantive benefits are involved.
- Reliance is placed on the Hon'ble Supreme Court's decision in case of G.M. Knitting Industries (P.) Ltd[16] wherein it was held that it is mandatory to make a claim for deduction but the timing to make the claim is directory. Even if the claim is made during the assessment proceedings, such a claim is to be allowed.
- The CBDT circulars extending the due dates for filing such forms issued in the past recognise procedural difficulties. These circulars indicate a degree of administrative flexibility and also recognise that procedural lapses should not indicate denial of substantive benefits.
- Denial of benefit on the basis of procedural lapse would be against the principles of equity and justice, especially when there is no dispute regarding the taxpayer's eligibility for a lower tax rate.

[Aprameya Engineering Limited v ITO, ITA No. 456/Ahd/2024 (Ahmedabad ITAT)]

[10] Section 143(1) of the IT Act provides mechanism for processing of income-tax returns by the Centralised Processing Centre (CPC).

[11] Section 115BAA of the IT Act provides that in case of specified domestic company, subject to the fulfilment of certain conditions, the income tax shall be calculated at the rate of 22%.

[12] Civil Appeal No. 1449 of 2022

[13] Section 10B of the IT Act provides for a deduction of profits or gains derived by a hundred percent export oriented unit subject to fulfilment of certain conditions.

[14] DCIT v. Croygas Equipments (P.) Ltd (ITA No. 415/Ahd/2020)

[15] Zenith Processing Mills v CIT, 219 ITR 721 (Gujarat HC)

[16] CIT v. G.M. Knitting Industries (P.) Ltd. [(2015) 376 ITR 456 (SC)]

Telangana High Court Holds That GAAR Provisions Can Be Invoked Despite SAAR Under Section 94(8) Of The Income-tax Act, 1961

Over the years, various provisions have been introduced in the IT Act to deal with tax avoidance through specific and identifiable types of transactions which are collectively known as ‘Specific Anti-Avoidance Rules’ (SAAR). Further, with effect from FY 2017-18, General Anti-Avoidance Rules (GAAR) were introduced wherein an arrangement is treated as an Impermissible Avoidance Arrangement (IAA) when its main purpose is to obtain a tax benefit and it contains any of the tainted elements in an arrangement. While SAAR as well as GAAR tackle tax avoidance, one could say that transactions covered by SAAR would not be examined under GAAR since ‘specific prevails over general’. On the other hand, if a transaction does not pass the parameters for invoking SAAR but gets covered under the ambit of GAAR, one can question the underlying intent and bring such a transaction to tax by invoking GAAR. In this regard, recently, the Telangana High Court has held that the GAAR provision can be invoked even though there is a specific SAAR provision in the IT Act (i.e. section 94(8) of the IT Act in the instant case). To read our detailed analysis, please go to https://www.bdo.in/en-gb/insights/alerts-updates/direct-tax-alert-gaar-can-be-applied-despite-saar-under-section-94(8)-of-the-income-tax-act,-1961

[Ayodhya Rami Reddy Alla (Writ Petition Nos. 46510 and 46467 of 2022) (Telangana High Court)]

Delhi High Court Holds That Voluntary Payment Made For Indemnification Of Loss Due To Diminution In The Value Of Unexercised ESOP Is A Capital Receipt

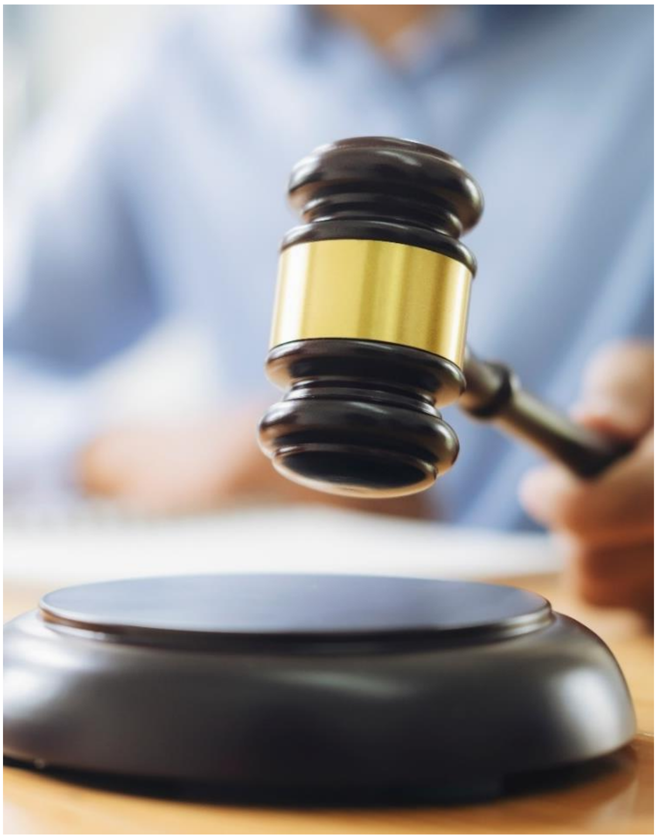
Taxation of Employee Stock Option Plan (ESOPs) is governed by section 17 of the IT Act. As per Section 17(2)(vi) of the IT Act, the value of any specified security or sweat equity shares allotted or transferred, directly or indirectly, by the employer, or former employer, free of cost or at a concessional rate to the taxpayer is taxable in the hands of employees as ‘perquisite’. In other words, any difference between the Fair Market Value (FMV) and exercise price shall be regarded as perquisite. The value of ESOPs may fall due to events like demerger, dividend, buybacks, etc. Pursuant to such diminution, the company may provide for some compensation (although it may not be required to compensate its employees). In this regard, the Delhi High Court has held that voluntary compensation paid for loss due to diminution in the value of unexercised ESOP is a capital receipt and will not be taxable as perquisite under section 17 of the IT Act. To read our detailed analysis, please go to https://www.bdo.in/en-gb/insights/alerts-updates/direct-tax-alert-delhi-hc-holds-that-voluntary-payment-made-for-indemnification-of-loss

[Sanjay Baweja [W.P.(C) 11155/2023 (Delhi HC)]

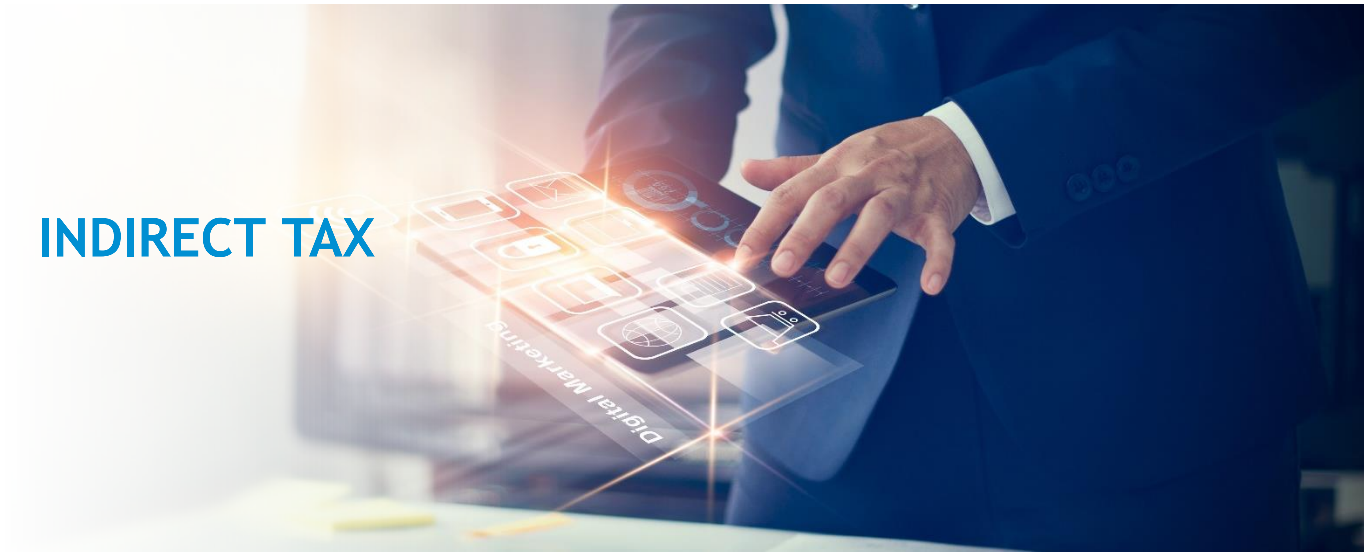
Delhi High Court Holds That IBNR Claims And Provision For Unsettled Claims Are Not Contingent Liabilities And Allows Deduction Under Section 37 Of The IT Act

The insurance companies are required to create a “specific provision incurred but not reported (IBNR)” in their books of accounts in accordance with the Insurance Regulatory Development Authority of India (IRDAI) Regulations. These provisions are made based on the scientific calculations and are “ascertained liability’ in the books of accounts as per the specified regulations. The tax authorities have, however, considered it as an unascertainable liability and accordingly disallowed the amount as contingent liabilities under section 37 of the IT Act. In this regard, the Delhi High Court has held that the provision made in respect of IBNR is an ascertainable liability and hence, it cannot be considered as a contingent liability, thereby allowing deduction under Section 37 of the IT Act. The Delhi High Court also held that the provision made for outstanding unsettled claims cannot be termed as ad hoc merely because of the fact that these claims are to be adjudicated subsequently. To read our detailed analysis, please go to https://www.bdo.in/en-gb/insights/alerts-updates/direct-tax-alert-ibnr-claims-and-provision-for-unsettled-claims

[Principal Commissioner of Income Tax v. M/S Care Health Insurance Limited (ITA 304/2024 and other)(Delhi HC)]



INDIRECT TAX



Breakwater Wall Constructed For Ensuring The Safety Of Ships Cannot Be Construed As 'Plant And Machinery', Making It Ineligible To Claim Input Tax Credit (ITC)

Facts of the case

- Konkan LNG Limited (Taxpayer) is *inter alia* engaged in the regasification of Liquified Natural Gas (LNG) at its regasification plant situated in Dabhol.
- The Taxpayer discharges CGST and State (Maharashtra) GST (MGST) and furnishes periodical GST returns, by treating the activity of regasification of LNG as the supply of taxable services.
- The Taxpayer imports the LNG from various countries by sea through LNG carriers containing large cryogenic tanks onboard. The LNG is received at the Taxpayer's captive jetty situated 1.8 km into the sea. Tugs are used to tow the LNG carriers towards the jetty and after alignment, anchoring and mooring, the LNG carrier is berthed at the jetty. From there, the LNG is transferred to cryogenic storage tanks located in regasification plants with the help of insulated plant pipelines.
- Adjacent to the jetty, there exists a partially constructed breakwater primarily to absorb or throw back the energy of the maximum sea waves assailing the coast and to ensure that the swell and wave height are kept within the desired limit, thereby preventing damage to the jetty and other structures on the shore.
- Since the Taxpayer was not allowed to berth and unload LNG during monsoon and rough weather conditions, the Taxpayer decided to reconstruct the existing breakwater to ensure safety of the jetty and LNG carriers.
- The Taxpayer filed an application before the Maharashtra Authority for Advance Ruling (AAR) *to inter alia* determine the eligibility to claim input tax credit (ITC) on the procurement of goods/ services used for the construction of the breakwater wall and whether the same would be restricted under Section 17(5) of the Central Goods and Services Tax Act, 2017 (CGST Act).
- The AAR held that breakwater would not qualify for inclusion in the term "plant and machinery" under Section 17(5)(d) of the CGST Act and hence, the Taxpayer will not be entitled to claim ITC on construction/ reconstruction of a breakwater.
- Against this, the Taxpayer filed an appeal before the Maharashtra Appellate Authority for Advance Ruling (AAAR) wherein the order passed by AAR was confirmed.
- Aggrieved by the order passed by AAAR, the Taxpayer filed a Writ Petition before the Bombay High Court.

Contentions of the Taxpayer

- The breakwater was covered under the purview of "plant and machinery" under Section 17(5)(d) of the CGST Act and hence, ITC in respect of the goods/ services procured for its construction/ reconstruction is not restricted, on account of the following:
  - While breakwater is an "immovable property", Section 17(5)(d) of the CGST Act carves out an exception for plant and machinery and hence, if goods or services or both are received from the taxable person for construction of plant and machinery, ITC shall be available.

- Explanation of Section 17 of the CGST Act defines "plant and machinery" to mean apparatus, equipment and machinery fixed to the earth by foundation and structural support that are used for making outward supply of goods or services or both.
- "Apparatus" is defined in various dictionaries as an integrated group of materials or devices used for a particular purpose or a collection or set of materials, implements or utensils for a given work. On perusal of the dictionary definitions, it can be construed that "apparatus" is a combination of materials and other things having a particular function or intended for a specific use.
- The complete breakwater shall comprise of accropodes to be installed on the core structure of rocks and 1.5 to 3 MT secondary armour layer of boulders. The uneven surface of accropodes leads to the improvement of inter-locking capacity and hence, breakwater is covered by the term "apparatus" since it is a collection of materials with the specific function of absorbing or throwing back the energy of the maximum sea waves assailing the coast.
- Since the breakwater is considered as "apparatus", the breakwater was a "plant and machinery" as all immovable structures are not disqualified from being covered in terms of "plant and machinery".

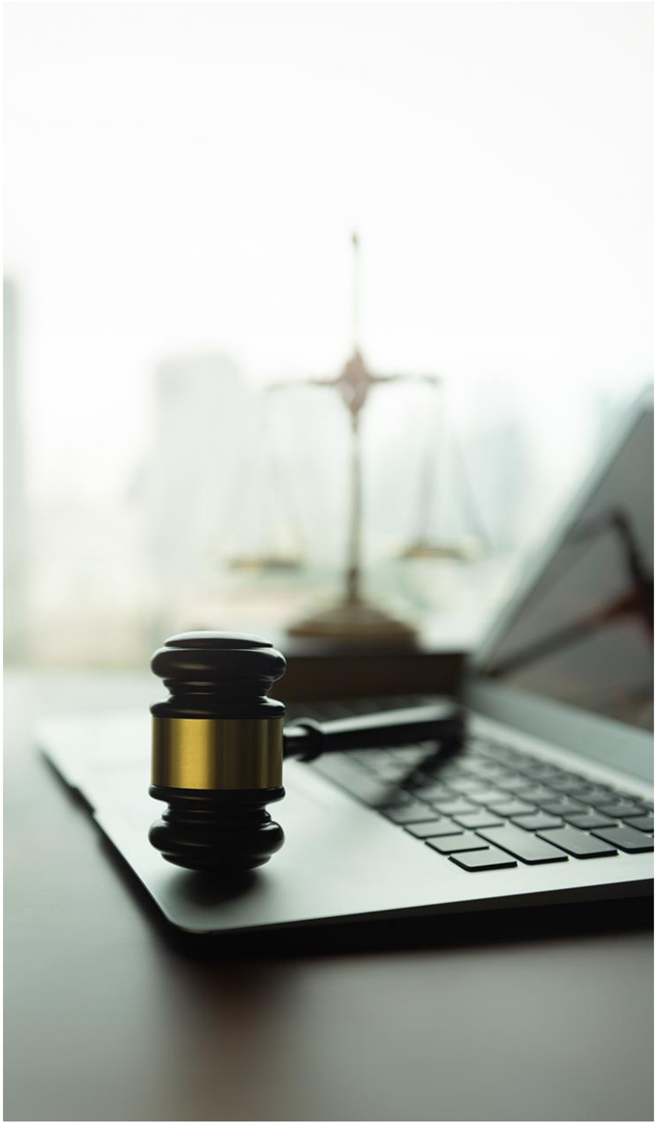
Contentions of the Tax Authority

- The "plant" would mean where industrial activity takes place or a factory where certain material is produced, or where machinery is used to carry out certain processes or for production. The breakwater wall constructed on the sea to protect the ship from high waves can hardly be called machinery or apparatus or equipment.
- Breakwater not only comprises of piling of accropodes on top of each other but also involves extensive civil work and foundation laying to build the breakwater wall and the accropode is only a part of it. As a result, breakwater is a "civil structure" and not "plant and machinery".
- Extensive earthwork as well as civil work has gone into the making of the breakwater wall. Even if it is assumed to be "plant and machinery", the same must be excluded by virtue of it being a "civil structure".

Observations and Ruling by the Hon'ble High Court

- The breakwater is constructed to ensure the safety of the ships that are berthed at the jetty and to allow the ship to reach the jetty and remain safe at any point in time, irrespective of the severity of weather conditions.
- Perusal of the dictionary definition of the term "plant" relied upon by the tax authorities indicates that it would mean and include a place where industrial activity takes place and/ or a factory where certain material is produced, or machinery is used to carry out processes or production.
- If both the terms "plant" and "machinery" are taken together, it should be interpreted to mean a place where certain manufacturing activities of production are carried out with the help of inputs. In the present case, the breakwater wall or accropodes that are essential, certainly do not qualify as plant and machinery. The accropode loses its identity when a breakwater wall is constructed using accropodes.
- The Explanation to Section 17 of the CGST Act provides that plant and machinery should be used for making outward supply of goods or services. In the instant case, breakwater wall is used for protecting the vessel from tides while unloading the LNG received and not for making outward supply of goods or services. Thus, the Taxpayer does not satisfy the condition provided in Explanation to Section 17 to be eligible for ITC.
- There is no infirmity in the order passed by AAR and AAAR and hence, the Writ Petition is dismissed being devoid of merits.

  [Konkan LNG Ltd Vs. The Commissioner of State Tax and Ors. [TS-397-HC(BOM)-2024-GST]]



Supply Of Aggregates And Recovery Of Royalty Charges Are Not Composite/ Mixed Supply But Are Leviable To GST As Independent Supply Of Goods And Services

Facts of the case

- M/s. R.V. Minerals (Taxpayer) is engaged in the business of manufacturing aggregates from the boulders purchased from quarries with mining permits. The aggregates are classifiable under the tariff heading 2517 attracting GST @ 5%.
- M/s. Sudhakar Infra (Sudhakar) is the collecting agency that acquired rights from the mining department for collection of royalty from leaseholders of the mining quarries. For this, Sudhakar paid consideration to the Government of Andhra Pradesh, on which applicable GST liability was discharged by Sudhakar under the Reverse Charge Mechanism (RCM)[1].
- Accordingly, Sudhakar collects royalty from M/s. Pranathi Metals and M/s. Pavithra Metals (quarry leaseholders) and charges GST @ 18% under forward charge. The quarry leaseholders mine boulders which are then supplied to the Taxpayer by discharging GST liability as under:
  - Royalty charges (HSN 997335) attracting GST @ 18%
  - Value of boulder (HSN 251710) attracting GST @ 5%
- Subsequently, the Taxpayer manufactures aggregates from boulders for its onward supply to its customers. While issuing invoices to customers, the Taxpayer adopts differential pricing for royalty charges and the value of aggregates and discharges applicable GST @ 18% and 5% respectively.
- However, the customers are not willing to pay GST @ 18% on the portion of royalty charges and hence, the Taxpayer has filed an application for Advance Ruling with respect to the following issues:
  - What is the classification of goods and services (viz., aggregates and royalty charges) supplied by the Taxpayer to its customers?
  - What is the applicable GST rate on goods and services supplied by the Taxpayer to its customers?

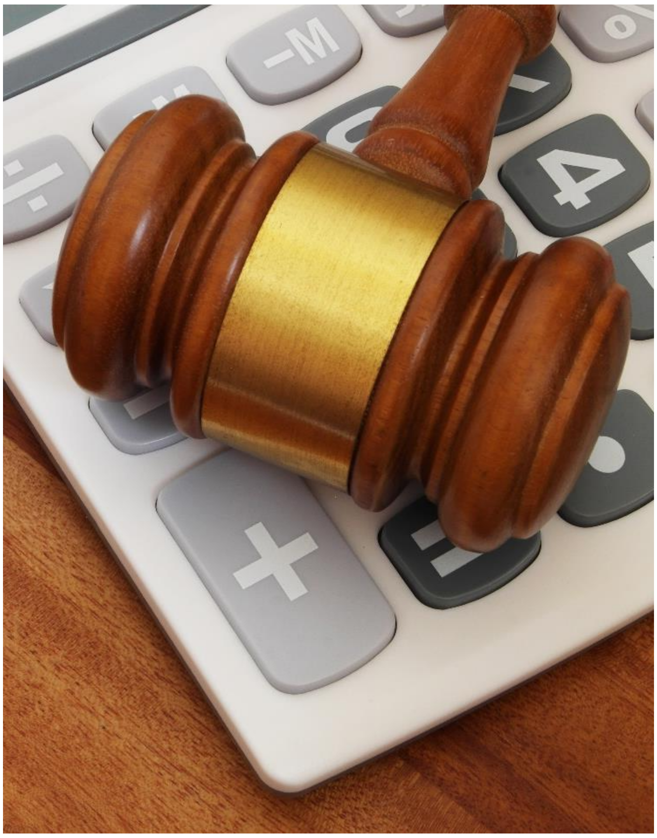
Contentions of the Taxpayer

- Royalty on minerals is a universal concept based on the premise that mineral resources are "wasting assets". Royalty is a form of tax for using mineral resources, which is passed on to all parties in the supply chain and is ultimately borne by the final consumer.
- The royalty charged by the Taxpayer from its customers is a mere reimbursement of royalty charges paid to the Government and the same is required to be passed on to the final customer. Further, there exists a prescribed trail for transportation of minerals from the leaseholder to the final customer in the form of endorsed transit forms. Supplying aggregates without an underlying transit form would be illegal as the same substantiates payment of royalty.
- **Composite supply or mixed supply:**
  - The two supplies involved in the present case are predominant and hence, these supplies should be classified and taxed separately (See ***Madhya Pradesh Power Generating Company Ltd. [TS-992-AAR(MP)-2019-NT]***).
  - The Taxpayer does not charge a single consideration and the consideration for each supply is separately determined on a reasonable basis, and hence, the same cannot be treated as mixed supply.

Observations and Ruling by the AAR

- The Taxpayer is collecting tax on the supply of aggregate and recovery of royalty charges separately in the tax invoice. The submission of the Taxpayer is that the supply of aggregate and recovery of royalty charges do not fall under the purview of "composite supply" or "mixed supply" but are two different and separate supplies.
- Para 9 of the Circular No. 164/20/2021-GST dated 6 October 2021 *inter alia* clarified that service by way of grant of mineral exploration and mining rights most appropriately fall under HSN 997337, attracting GST @18%.
- In view of the above, it can be concluded that the royalty charges collected by the Taxpayer would fall under HSN 997337 attracting GST @ 18% (9% CGST and 9% SGST) whereas the supply of aggregates manufactured from boulders would fall under HSN code 251710 attracting GST @ 5% (2.5% CGST and 2.5% SGST).

[In the matter of R.V. Minerals. [TS-392-AAR(AP)-2024-GST]]



[1] Entry No. 5 of Notification No. 13/2017-CGST(R) dated 28 June 2017

Interest Is Not Leviable On Belated Filing Of Form GSTR-3B From The Date Of Deposit Of Tax In Electronic Cash Ledger (ECL)[2]

Facts of the case

- Arya Cotton Industries (Taxpayer), initially a limited liability partnership, was converted into a limited company in 2017-18. Pursuant to the change in constitution, the Taxpayer had claimed for the transfer of unutilised ITC balance of the limited liability partnership to the limited company. However, owing to a technical glitch, the amount of transferred ITC was not reflected in Taxpayer's Electronic Credit Ledger (ECrL).
- As a result, the Taxpayer filed letters with the tax authorities with respect to the transferred ITC. Since the transfer of ITC was not permitted, the Taxpayer was unable to pay tax and file GST returns on time. However, to restrict its interest liability for delayed payment of tax, the Taxpayer had deposited tax in ECL.
- Subsequently, the transfer of ITC was granted, and the Taxpayer filed GST returns along with payment of applicable GST and late fees. Further, the Taxpayer had also paid interest from the due date of filing Form GSTR-3B till the date of deposit of tax in ECL.
- The Taxpayer received a letter from the tax authorities demanding interest on the late payment of tax under Section 50 of the CGST Act. Upon verification, the Taxpayers observed that the tax authority had calculated interest up to the date of filing of return instead of the date when the tax was deposited in ECL. Accordingly, the Taxpayer replied to the letter informing the tax authorities that it had already paid interest till the date of payment of tax in the ECL.
- Subsequently, a Show Cause Notice (SCN) was issued to the Taxpayer seeking recovery of interest on delayed payment of tax on the ground that interest was payable until the date of filing returns even if tax is deposited in ECL. The Taxpayer then filed a reply contending that interest is not leviable from the date of deposit of tax in ECL until the date of filing of return by the Taxpayer.
- Further, another SCN (2nd SCN) was issued to the Taxpayer demanding interest for the period after deposit of tax by the Taxpayer up to the date of filing return by relying upon Rule 88B of the Central Goods and Services Tax Rules, 2017 (CGST Rules)[3].
- Aggrieved by the above, the Taxpayer challenged the 2nd SCN before the Gujarat High Court.

Contentions of the Taxpayer

- Section 50 of the CGST Act provides for the imposition of interest on failure to pay tax. Where the taxpayer has sufficient balance in ECL, there is no failure to pay tax and hence, the levy of interest under Section 50 of the CGST Act is not to be attracted.
- On perusal of the scheme of the provisions of the GST law, there is an internal indication that credit amount in the ECL is nothing but payment of tax basis the following:
  - Section 49(1) provides that every deposit made towards tax, interest, penalty, fee, or any other amount shall be credited to the ECL.
  - Section 49(3) provides that the amount available in ECL may be used for making payment towards tax, interest, penalty, fees, or any other amount payable under the GST law.
  - Section 49(6) provides that the balance in ECL or ECrL may be refunded in accordance with provisions of Section 54.
  - There is a corresponding provision in proviso to Section 54(1) which requires the filing of a refund application. If the balance in ECL was not "tax" as sought to be canvassed by tax authorities, then the question of requirement of filing refund application would not arise.
  - Clause (a) of Explanation to Section 49 provides that the date of credit to the account of the Government in an authorised bank shall be deemed to be the date of deposit in ECL.
  - Challan for payment of tax is generated at the time of deposit of tax in ECL.
  - When Form GSTR-3B is filed, if there is sufficient balance in ECL, the liability as per return is simply offset against such balance. Thus, tax is paid at the time of deposit into ECL and the same is then adjusted against liability at the time of filing Form GSTR-3B. Thus, there cannot be any imposition of interest for the period beyond deposit of tax amount in the ECL.
- The Supreme Court ***in Commissioner of Income Tax-II Vs. Modipon Ltd. [2018 (13) SCC 426]*** had held that deposit in Personal Ledger Account (PLA) under the Excise regime is nothing but payment of tax, and therefore, is admissible as a deduction under Section 43B of the Income Tax Act, 1961 (IT Act) even if it is adjusted against excise duty liability at a latter stage. PLA under the Excise regime is equivalent to ECL under the GST regime and hence, the Supreme Court is applicable to the present case.
- The Gujarat High Court in ***State of Gujarat Vs. T.J. Agro Fertilizer Pvt. Ltd. [Tax Appeal No. 225 of 2015]*** had held that interest cannot be imposed for the period between the date of ad hoc payment of tax and the date of passing of assessment order as the State had already received the amount of tax.
- Since the amount gets credited to the ECL only after actual deposit of the amount into Government treasury, there is no loss of revenue to the Government merely because it gets adjusted against the actual liability at a later date, i.e., at the time of filing Form GSTR-3B. Hence, the imposition of interest is not justifiable in the present case.
- The Madras High Court after taking into consideration the entire scheme of the GST law in ***Eicher Motors Ltd. Vs. Superintendent of GST & Central Excise [W.P. No. 16866 of 2023]*** held that no interest is leviable under Section 50 of the CGST Act if sufficient balance is available in ECL.

[2] In this summary, wherever Section and Rules are used, the same is to be construed as the relevant provision of the CGST Act and CGST Rules respectively
[3] Inserted *vide* Notification No. 14/2022-Central Tax dated 5 July 2022 with retrospective effect from 1 July 2017

- Reliance placed by the tax authority on proviso to Section 50 is mechanical and without considering the purpose for which it was introduced basis the following:
  - In the 31st GST Council meeting, it was recommended to incorporate a *proviso* to Section 50 to clarify that interest was leviable only on the net tax liability.
  - Subsequently, in the 39th GST Council meeting, it was recommended that the *proviso* was required to be introduced with retrospective effect from 1 July 2017.
  - The purpose behind the introduction of the *proviso* was to clarify with regards to whether interest was leviable on gross tax liability or net tax liability. The proviso has nothing to do with the period for which interest is to be levied.
  - Interest can be levied only from the due date of payment of tax until deposit of such tax into the ECL and demand of interest for even subsequent period is not supported by the proviso. Further, a proviso cannot ordinarily be used to expand the scope of the main provision.
- Reliance was also placed by the tax authority on Rule 88B which was introduced pursuant to the amendment to Section 50(3). This is apparent from the discussion in the 47th GST Council meeting which was followed by the insertion of Rule 88B. In any case, the Rule cannot go beyond the statutory provision of the CGST Act, and if it does, the same needs to be struck down/ read down to bring it in conformity with the statutory provision.
- If at all the submission of the tax authority is accepted that there cannot be any tax payment before the same is adjusted against liability at the time of filing of returns, then as such the liability can be said to have arisen only at the time of filing of returns, and therefore, the question of delayed payment of tax cannot arise.
- In view of the above, the demand of interest for the period after deposit of tax in the ECL is wholly without jurisdiction and contrary to the provisions of the CGST Act. Reliance in this regard was *inter alia* placed on the following judicial precedents:
  - ***M/s. Megha Engineering & Infrastructures Ltd. Vs. The Commissioner of Central Tax [W.P. No. 44517 of 2018]***
  - ***Vishnu Aroma Pouching Pvt. LTD. VS. Union of India [TS-543-HC-2020(GUJ)-NT]***
  - ***M/s. RSB Transmissions (India) Ltd vs. UOI & Ors. [TS-589-HC(JHAR)-2022-GST]***

Contentions of the tax authority

- ECL is an account of the Taxpayer maintained by the GST system for reflecting cash deposits in recognised banks and payment of taxes and other dues. The Tax Deducted at Source (TDS) and Tax Collected at Source (TCS) are also accounted in the ECL as cash deposits and such deposits can be used for making payment of tax liability, interest, penalty, fee, and others.
- ECL has four major heads viz., IGST, CGST, SGST/ UTGST and Cess, each of which have five minor heads i.e., tax, interest, penalty, fees, and others. When the challans are created by the Taxpayer for making any payments, the Taxpayer is required to choose the amount to be added to each of the minor heads within the major heads, and the amount so deposited shall remain credited to be utilised for payment of tax liability, interest, penalty, fees and other charges for the respective major heads and minor heads.
- Circular No. CBEC-20/01/08/2019-GST dated 18 September 2020 had *inter alia* clarified that for the period 1 July 2017 to 31 August 2020, **interest shall be recovered only on the net cash liability** i.e., that portion of the tax that has been paid by debiting the ECL or is payable through ECL. Thus, the amount lying in ECL cannot be assigned to any liability unless a Taxpayer makes a debit entry from the cash ledger.
- Section 49(3) read with Rule 87 provides that the amount payable in ECL may be used for making any payment towards tax, interest, penalty, fees, or any amount payable under the GST law by debit in ECL. The deposit amount will be credited in ECL, and thereafter, the payment shall be made from the ECL by debiting the same towards tax, interest, and penalty on the date on which the return interest is filed. Hence, the Taxpayer is liable to pay interest up to the date of filing of return irrespective of deposit made in the ECL by the Taxpayer.
- After debiting the ECL, the amount is transferred to the Government account and the Taxpayer can claim a refund of the remaining amount of excess deposit lying in the ECL since the amount deposited in the ECL belongs to the Taxpayer.
- Thus, interest is rightly calculated up to the date of filing of the return as ECL was debited with the amount of tax as per the return. Mere deposit of cash in the ECL cannot be considered as payment of tax as per Section 50 read with Rule 86, and whenever there is delay in debit in ECL in respect of tax payment, the Taxpayer shall be liable for the interest in terms of Section 50.
- Mere credit in ECL and considering the date of credit of ECL as a date of payment of tax in respect of net cash liability cannot be considered in view of Section 50 which clearly stipulates that interest is payable until the date of debit of ECL for payment of tax, interest, penalty, etc.
- •As per Rule 88B, interest on tax is required to be calculated on the portion of tax which is paid by debiting the ECL for the period of delay in filing the return beyond the due date and at such rate as may be notified under Section 50(1).
- Section 39(7) requires full payment of tax due at the time of filing of return before the due date. When the Taxpayer filed a return, ECL was debited for payment of tax, and hence, the Taxpayer was liable to pay the interest until the date of filing of return as per proviso to Section 50(1).
- Thus, the return filing date is the only date required to be considered for calculating interest liability for any Taxpayer and accordingly, the demand raised against the Taxpayer is justified. Reliance was *inter alia* placed on the following judicial precedents:

  - ***M/s. Srinivasa Stampings Vs. The Superintendent of GST and Central Excise and others [TS-744-HC(MAD)-2022-GST]***
  - ***Sincon Infrastructure Private Limited Vs. Union of India [2024 SCC Online 896]***

Observations and Ruling by the Hon'ble High Court

- On perusal of the legislative scheme of the CGST Act and CGST Rules, it appears that:
  - When the return is filed by the Taxpayer in Form GSTR-3B and if there is sufficient balance available in the ECL, then liability as per the return is simply offset against such balance by debit in the ECL.
  - Hence, the tax paid at the time of deposit into ECL adjusted against liability at the time of filing of return is merely setting off the amount from ECL for utilising towards payment of tax.
  - Thus, the amount in ECL is nothing but in the nature of advance tax lying in the account of the Taxpayer which cannot be withdrawn or utilised in any manner by the Taxpayer except for the payment of tax liability as per the return filed.
- *Proviso* to Section 50(1) provides for levy of interest on tax payable for supplies made during a tax period and declared in the return for the said period furnished after the due date (Section 39) and such interest is payable on the portion of the tax which is paid by debit in the ECL. It appears that the tax authorities have literally interpreted the ***words "interest shall be payable on that portion of the tax which is paid by debit in the ECL"***. The debit in ECL is on the date of filing of return and therefore, interest is calculated until the date of filing of the return, ignoring the fact that the Taxpayer might have deposited the amount in ECL prior to the date of filing of return and return may be filed belatedly for various reasons.
- Debiting of ECL is only an adjustment of the amount deposited in ECL. On plain reading of Section 50(1) which is applicable for calculating interest liability on delayed payment of tax, it cannot be literally interpreted to the effect that interest is payable on the amount which is already deposited and utilised for the payment and thereafter adjusted for payment of tax. Such interpretation is contrary to the fundamental principle for charging interest which is compensatory in nature. If such mechanical and literal interpretation as contended by the tax authority is accepted, the same would convert the interest in the nature of penalty.
- The *proviso* to Section 50(1) was introduced to remove the controversy that earlier existed as to whether interest is leviable on gross tax liability (without considering admissible ITC) or whether it was only applicable on net tax liability. The *proviso* to Section 50 was introduced only to clarify regarding liability of interest on net tax and not on gross tax liability of the Taxpayer. The *proviso* has nothing to do with the period for which interest is to be levied.
- Therefore, interest can be levied only from the due date of payment of tax until the deposit of such tax in ECL. The demand of interest for the subsequent period from the date of deposit in ECL until the date of filing of return is not tenable.
- Relying on ***Modipon Limited (supra)*** and ***T.J. Agro Fertilizer Pvt. Ltd.***, it can be construed that when the Taxpayer has deposited the amount, the same is credited to ECL after the actual deposit in the Government Treasury and hence, there is no loss to the Government revenue merely because such deposit gets adjusted against the actual liability at the time of filing of the GST return. Similar view was taken by Madras High Court in ***Eicher Motors (supra)***.
- The Supreme Court ***in Maruti Wire Industries Pvt. Ltd. Vs. S.T.O IST Circle Mattancherry and Others [AIR 2001 SC 1413]*** had held that there can be no interest liability if no return is filed at all by the Taxpayer and the tax liability would crystalise only upon the filing of return. Therefore, if the contention raised by the tax authority is accepted, then there cannot be any liability to pay the tax before the same is adjusted against the tax liability at the time of filing returns. Accordingly, the question of delayed payment of tax would not arise for imposition of interest under Section 50(1).
- ***Judgment of Megha Engineering (supra)*** and ***RSB Transmissions (India) Limited (supra)***, taking a contrary view are not in line of the provisions of the CGST Act and CGST Rules, and therefore, the same are not followed. However, the judgment in ***Vishnu Aroma Pouching Pvt. Ltd. (supra)*** is followed to uphold that the tax amount that was already credited to the Government by depositing in ECL is required to be considered as payment of tax which gets adjusted at the time of filing of the return. Consequently, the question of payment of interest would not arise for the period from the date of deposit of the amount in the ECL by the Taxpayer until the date of filing of the return.
- The amount deposited by the Taxpayer by generating Challan will be credited to the account of the Government immediately upon deposit and later the same shall be adjusted against the tax payable as per the return. Therefore, the tax liability of the registered person will be discharged to the extent of the deposit made to the Government.
- The debit in the ECL will be made only for the purpose of accounting at the time of filing of the return, otherwise the amounts get credited to the account of the Government immediately upon the deposit. Therefore, once the amount deposited by the Taxpayer is credited to the account of the Government, the tax liability of such registered person stands discharged on the said date, subject to setting off by debit in ECL for accounting purposes at the time of filing of return to set off liability against ECL. Thus, the Taxpayer cannot be made liable to pay the interest from the date of deposit in the account of the ECL until the date of filing of the return.
- In view of the above, the Writ Petition is allowed and the impugned SCNs are quashed and set aside.

  [Arya Cotton Industries & Anr. Vs. UOI & Anr. [TS-379-HC(GUJ)-2024-GST]]

TRANSFER PRICING

Hon'ble Tax Tribunal, Delhi: Upheld The Use Of Resale Price Method (RPM) As The Most Appropriate Method (MAM) For Benchmarking In Case Of A Reseller With No Value Addition, Dismissing The Transfer Pricing Officer's (TPO) Approach Of Aggregating Miniscule Warranty Claims And Reimbursement Of Expenses Along With The Same And Applying The Transactional Net Margin Method (TNMM)

The taxpayer is a reseller of solar goods, and during Assessment Year (AY) 2017-18, purchased solar goods from its associated enterprises (AEs) for the purpose of resale in India.

The taxpayer benchmarked the transaction by using RPM as the MAM, given that the goods in question were purchased and then sold unchanged (i.e., without any value addition). The taxpayer had also entered into transactions pertaining to warranty claims and reimbursement of expenses with its AEs, which were benchmarked separately using the Other Method.

In the course of Transfer Pricing (TP) proceedings, the Transfer Pricing Officer (TPO) rejected the methodology adopted by the taxpayer, and contended that the warranty claims and reimbursement of expenses were linked to the purchase of solar goods. Aggregating the transactions, the TPO applied the Transactional Net Margin Method (TNMM) for benchmarking and proposed an adjustment in this regard on the aggregated amount.

The Dispute Resolution Panel (DRP) upheld the stance of the TPO, and considered the aggregated approach for benchmarking under TNMM to be appropriate.

On appeal before the Hon'ble Tax Tribunal, the taxpayer contended that:

- The sole reason for TPO to reject RPM is that the warranty claims are to be clubbed with the transaction of purchase of solar goods.
- Warranty claims, where the goods are replaced on account of manufacturing defects, are taken care of by the AEs. The taxpayer is only a pass-through entity in this regard.
- The taxpayer's gross margin is 38.97%, whereas that of the comparables is 25.42%.
- DRP not only upheld the TPO's stance but also included two more comparables, which are not comparable to the taxpayer on functional grounds.
- Majority of solar goods are sold in rural and far-flung areas, where there is a scarcity of electricity. Therefore, the taxpayer has to bear substantial costs towards marketing and transportation of solar products.

Revenue's rebuttal revolved around their contentions that though the taxpayer had claimed that it had not made any value addition, the entire responsibility for developing market strategy is that of the taxpayer, and as per the taxpayer's own submissions, the replacement services are not backed by corresponding warranty by the AE.

The Hon'ble Tax Tribunal noted that:

- The reimbursement expenses and warranty claims constituted a very small portion (approximately 1.5%) of the purchase cost of solar products from AEs.
- The Revenue did not provide any cogent reasons to prefer TNMM over RPM.
- Even if the transactions of reimbursement of expenses and warranty claims are aggregated, it would not impact the method of benchmarking.

- The Revenue submitted no documentary evidence to substantiate that the taxpayer was engaged in any activities resulting in value addition to the solar goods purchased from AEs.
- The Hon'ble Tax Tribunal referred to the ruling of the jurisdictional Hon'ble High Court in Fujitsu India Private Limited, which relied on the judgement in the case of Matrix Cellular International Services Private Limited, wherein it was established that in case of no value addition before resale, RPM is typically the appropriate MAM.

Therefore, RPM is the MAM for benchmarking the taxpayer's international transactions for the relevant assessment year.

Citation: D Light Energy P. Ltd [TS-237-HON'BLE TAX TRIBUNAL-2024(DEL)-TP]

Hon'ble Tax Tribunal, Chennai: Quashed The Amp-related Adjustment, Ruling That Domestic Expenses Towards Sales Promotion Cannot Be Considered As AMP Expenses Incurred For Brand Building, And The Taxpayer's Transactions Were Completely In Line With The APA

The taxpayer is engaged in the distribution of cars in domestic and export markets, export of locally sourced automobile parts and components to its AE for resale, and export of parts/ components to its AE for manufacture.

During AY 2014-15, the taxpayer undertook marketing and sales promotion activities in India for the purpose of its domestic business. However, the TPO proposed an adjustment in an ad hoc manner by treating a part of the aforementioned expenses incurred by the taxpayer as Advertisement, Marketing, and Promotion (AMP) expenses for brand-building and levying a mark-up on the same for marketing support/ agency service. However, no nexus of an arrangement between the taxpayer and the AE in relation to brand-building services was established.

The DRP also upheld the contentions of the TPO, concluding that there is sufficient information to infer that there is an understanding between the taxpayer and its AE with regard to the AMP spend for brand promotion.

Aggrieved, the taxpayer appealed before the Hon'ble Tax Tribunal. The taxpayer contended that:

The expenses were domestic third-party expenses, incurred in relation to the taxpayer's domestic business of distribution of cars, and the Arm's Length Price (ALP) in this respect was concluded under an Advance Pricing Agreement (APA) concluded between the taxpayer and Central Board of Direct Taxes.

- Accordingly, these expenses were included in the cost base for the determination of operating margin in this regard.
- Specifically, reference was made in the APA pertaining to sales and marketing functions performed by the taxpayer (including marketing and dealer network development).
- On a without-prejudice basis, the sales promotion expenses do not constitute an international transaction as per Section 92B of the Income-tax Act, 1961. The TPO had not been able to demonstrate any 'arrangement' or 'understanding' in this regard.
- This is the only open issue for AY 2015-16, 2017-18, and 2018-19 as well, all of the said AYs being covered under the APA.
- Modified return basis APA was duly filed, wherein the shortfall of its margin earned for the impugned AY determined with reference to ALP as per the APA, was offered to tax.

The Hon'ble Tax Tribunal observed that:

- The APA clearly lays down the scheme of working which has to be followed by the taxpayer while reporting its business affairs.
- The taxpayer had reported its financial transactions in complete fulfilment of the stipulations postulated in the APA.
- Thus, there was no case for adjustments to be made by the TPO and to be upheld by the DRP.
- The addition is in conflict with the agreements made under the APA.

Consequently, the Hon'ble Tax Tribunal quashed and set aside the TP adjustment.

Citation: Nissan Motor India Pvt. Ltd [TS-249-HON'BLE TAX TRIBUNAL-2024(CHNY)-TP]

ABOUT BDO GLOBAL

BDO is a leading professional services organisation with a presence in 160+ countries and over 115,600 people working out of more than 1,750 offices. We endeavor to deliver an exceptional client experience through a tailored solutions approach, while partnering with our employees and clients globally.

ABOUT BDO IN INDIA

BDO in India offers Assurance, Tax, Advisory, Business Services & Outsourcing and Digital Services for both domestic and international clients across industries. The team at BDO in India consists of over 9,000 professionals led by more than 300 partners and directors operating out of 18 offices, across 12 key cities.

CONTACT US

For any content related queries, you may please write to the service line experts at taxadvisory@bdo.in

For any other queries or feedback, kindly write to us at marketing@bdo.in

BDO IN INDIA OFFICES

Ahmedabad
Westgate Business Bay, Floor 6
Office No 601, Block A, Makarba
Ahmedabad, Gujarat 380051, INDIA

Bengaluru - Office 1
Prestige Nebula, 3rd Floor,
Infantry Road,
Bengaluru 560001, INDIA

Bengaluru - Office 2
SV Tower, No. 27, Floor 4
80 Feet Road, 6th Block, Koramangala
Bengaluru 560095, INDIA

Chandigarh
Plot no. 55, Floor 5,
Industrial & Business Park,
Phase 1, Chandigarh 160002, INDIA

Chennai
No. 443 & 445, Floor 5, Main Building
Guna Complex, Mount Road, Teynampet
Chennai 600018, INDIA

Coimbatore
Pacom Square, Floor 3, 104/1, Sakthi
Main Road, Bharathi Nagar, Ganapathy
Coimbatore, Tamil Nadu – 641006

Delhi NCR - Office 1
The Palm Springs Plaza
Office No. 1501-10, Sector-54,
Golf Course Road, Gurugram 122001, INDIA

Delhi NCR - Office 2
Windsor IT Park, Plot No: A-1
Floor 2, Tower-B, Sector-125
Noida 201301, INDIA

Goa
701, Kamat Towers
9, EDC Complex, Patto Plaza
Panaji, Goa 403001, INDIA

Hyderabad
1101/B, Manjeera Trinity Corporate
JNTU-Hitech City Road, Kukatpally
Hyderabad 500072, INDIA

Kochi
XL/215 A, Krishna Kripa
Layam Road, Ernakulam
Kochi 682011, INDIA

Kolkata
Floor 4, Duckback House
41, Shakespeare Sarani
Kolkata 700017, INDIA

Mumbai - Office 1
The Ruby, Level 9, North West Wing
Senapati Bapat Marg, Dadar (W)
Mumbai 400028, INDIA

Mumbai - Office 2
601, Floor 6, Raheja Titanium, Western
Express Highway, Geetanjali, Railway
Colony, Ram Nagar, Goregaon (E),
Mumbai 400063, INDIA

Mumbai - Office 3
Floor 20, 2001 & 2002 - A Wing, 2001 F
Wing, Lotus Corporate Park, Western
Express Highway, Ram Mandir Fatak Road,
Goregaon (E) Mumbai 400063, INDIA

Mumbai - Office 4
The Ruby, Level 9, South East Wing
Senapati Bapat Marg, Dadar (W)
Mumbai 400028, INDIA

Pune - Office 1
Floor 6, Building No. 1
Cerebrum IT Park, Kalyani Nagar
Pune 411014, INDIA

Pune - Office 2
Floor 2 & 4, Mantri Sterling, Deep Bunglow,
Chowk, Model Colony, Shivaji Nagar
Pune 411016, INDIA