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ACCOUNTING UPDATES

ACCOUNTING UPDATES

INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA (ICAI)

EAC OPINION

Accounting Treatment Of Shareholder’s Loan Provided To Joint Venture Company Under Ind AS Framework

Facts of the Case

A Government of India Undertaking (hereinafter referred to as ‘the Company’), is engaged in refining crude oil. The Company is jointly owned by O Limited, Government of Assam (GoA) and E Limited. O Ltd. holds 69.63% whereas GoA and E Ltd. own 26% and 4.37% respectively. The refinery is located in the state of Assam.

The Board of Directors of the Company earlier approved a shareholder’s loan amounting to INR 654 crore to be given to its joint venture company, A Limited for the implementation of a biorefinery project. A Ltd. has also obtained a term loan from Punjab National Bank (PNB) amounting to INR 2,170 crore for financing its project cost.

The above shareholder loan is provided under two different agreements for an amount of INR 261 crore and INR 393 crore respectively. The Company has disbursed an amount of INR 443.50 crore to a Ltd. in various tranches till 31 March 2023. The salient features of both the shareholder’s loan agreement are as under:

TERMS	1ST LOAN AGREEMENT (INR 261 CRORE)	2ND LOAN AGREEMENT (INR 353 CRORE)
Nature	Unsecured	Unsecured
Commencement date	6 August 2020	15 August 2022
Repayment	At once, at the end of 15 years from the date of agreement i.e. 5 August 2035.	At once, at the end of 11 years from the Commercial Operation Date (COD).
Rate of Interest	Annualised Term Loan Interest Rate of PNB + 0.85%. Shareholder’s Loan interest rate shall be subject to changes in the Term Loan Interest Rate.	Annualised Term Loan Interest Rate of PNB + 0.73%. Shareholder’s Loan interest rate shall be subject to changes in the Term Loan Interest Rate.
Interest Accrual and Payment	Interest up to COD shall not be accrued and paid. After COD interest will be paid out of project cash flows on a yearly basis at the end of every financial year till repayment of the loan	Interest up to COD shall not be accrued and paid. After COD interest will be paid out of project cash flows on a yearly basis at the end of every financial year till repayment of the loan.

Note: Premium over Annualised Term Loan interest rate is subject to revision till the actual COD of the project which has not yet started.

Accounting Treatment applied by the Company:

Since the shareholder's loan is a financial asset for the Company as there is a contractual right to receive cash from another entity, provisions of Ind AS 109, 'Financial Instruments' were applied to accounting for the shareholder's loan in the financial books of the Company.

As per paragraph B5.1.1 of Ind AS 109, the fair value of a financial instrument at the time of initial recognition is normally the transaction price (i.e. the fair value of the consideration given or received). However, if part of the consideration given or received is for something other than the financial instrument, an entity shall measure the fair value of the financial instrument. For example, the fair value of a long-term loan or receivable that carries no interest can be measured as the present value of all future cash receipts discounted using the prevailing market rate(s) of interest for a similar instrument (similar as to currency, term, type of interest rate and other factors) with a similar credit rating.

As per paragraph B5.1.2, if an entity originates a loan that bears an off-market interest rate (eg 5 % when the market rate for similar loans is 8 %), and receives an upfront fee as compensation, the entity recognises the loan at its fair value, i.e. net of the fee it receives.

Further, as per paragraph B4 of Ind AS 113, 'Fair Value Measurement', the transaction price might not represent the fair value of an asset or a liability at initial recognition if the transaction is between related parties, although the price in a related party transaction may be used as an input into a fair value measurement if the entity has evidence that the transaction was entered into at market terms.

Considering the above provisions of Ind AS, the shareholder's loan should initially be recognised at fair value. In the instant case, the transaction price is not the fair value as the shareholder's loan agreement includes interest holiday during construction period which is generally not offered by financial institutions to its borrowers and hence, the instrument needs to be fair valued based on market observable data, i.e., interest rate for a 15-year loan (since loan is repayable after 15 years) (Refer paragraph B5.1.2A of Ind AS 109). Subsequently, financial assets would be measured at amortised cost using interest rate used for fair valuation for the total receipt in the form of interest during the tenure of loan and discount it to derive the effective rate of interest and interest accrual is made accordingly.

Based on the above, the Company calculated the fair value (INR 400.54 crore) of loan disbursed (INR 443.50 crore) till 31 March 2023 as mentioned above resulting into a difference between fair value and transaction value (INR 42.96 crore). The fair value of the loan (INR 400.54 crore) has been presented as a financial asset and the difference between the transaction value and the fair value has been presented as 'Investment in Joint Venture'. Fair value of the loan has been worked out by considering the discount rate based on the annualised term loan interest rate plus a premium (considered to be the market rate).

Interest on loan (INR 39.34 crore) up to 31 March 2023 has been calculated considering the fair value of the loan from the date of disbursement. The interest income is reflected as 'Other non-operating income' under the head 'Other Income' in the Statement of Profit and Loss of the Company with corresponding additions to financial assets and added to the loan value.

During a supplementary audit of the financial statements for the financial year (F.Y.) 2022-23, the Comptroller and Auditor General of India (CAG) has raised observation in regard to the recognition of interest income on shareholder's loan by the Company as under:

Balance Sheet

Non-current assets

(g) Financial Assets

(ii) Loans (Note No. 8): INR 491.90 crore

Statement of Profit and Loss for the year ended 31 March 2023

Other Expenses (Note No. 42) - Provision for Doubtful debts, Advances and claims: Nil

Profit before Tax for the year: INR 4,953.23 crore

'Non-current financial assets - Loan' includes INR 39.34 crore (INR 34.15 crore for the financial year 2022-23 and INR 5.19 crore for the financial year 2021-22) as interest receivable on Shareholders' loan given to M/s A Ltd., a joint venture of the Company.

According to clause 4 (c) of the Shareholder's Loan Agreement (August 2020), up to COD of the bio-refinery, interest shall not be accrued and paid for the Shareholder's Loan. After COD, interest would accrue and be paid on a yearly basis, till the repayment of the outstanding Shareholder's Loan. It was further observed that M/s A Ltd. has not yet (June 2023) declared COD as the overall physical progress of the Project was only 85% (as of 15 May 2023).

Thus, in view of clause 4 (c) of the Shareholder's Loan Agreement, the Company would not be able to recover INR 39.34 crore from M/s A Ltd., as interest is not accruable up to the date of COD. Accordingly, a suitable provision should be made in the books of the Company to cover the same.

Thus, non-provision of this non-realisable interest income from the joint venture company (M/s A Ltd.) has resulted in an understatement of 'Other Expenses – Provision for Doubtful debts, Advance and Claims' by INR 39.34 crore and overstatement of 'Profit before Tax for the year' and 'Non-current financial assets -Loan' by INR 39.34 crore each.

To the above observation, management of the Company submitted the reply as under:

The Company has provided a shareholder's loan to its joint venture company A Limited for the implementation of a biorefinery project. As per the provision of the shareholder's loan agreement, the loan is repayable after 15 years from the date of the agreement. The agreement also states that interest on the loan will be accrued and paid from the date of commencement of commercial operation (COD). The Company has disbursed an amount of INR 443.50 crore to A Ltd. in various tranches till 31 March 2023. It may be noted that irrespective of whether interest is accrued or not as per the provisions of the agreement, interest accrual has to be made as per the provision of Ind AS 109.

Shareholder's loan and interest accrued thereon is a financial asset as there is a contractual right to receive cash from another entity as per provisions of Ind AS 109 and should initially be recognised at fair value (paragraph 5.1.1 of Ind AS 109).

In the instant case, transaction price is not the fair value as the shareholder's loan agreement includes interest holiday during construction period which is not offered by financial institutions to its borrowers and hence the instrument needs to be fair valued based on market observable data i.e. interest rate for a 15-year loan (since the loan is repayable after 15 years) (Ref: paragraph B5.1.2A of Ind AS 109). Subsequently, financial assets would be measured at amortised cost using interest rate used for fair valuation for the total receipt in the form of interest during the tenure of loan and discount it to derive the effective rate of interest and interest accrual is made accordingly.

Based on the above, the Company has calculated the fair value (INR 400.54 crore) of the loan disbursed (INR 443.50 crore) resulting into a difference between fair value and transaction value (INR 42.96 crore). The fair value of the loan disbursed has been presented as a financial asset in the Company's balance sheet and the difference between the present value and transaction value is presented under Investment in joint venture. Interest on loan (INR 39.34 crore) up to 31 March 2023 has been calculated considering the fair value of the loan from the date of disbursement. The amount is reflected as a financial asset in the Company's balance sheet as a loan to joint venture. The interest income for the year is accounted as other non-operating income under the head 'Other Income'.

As regards audit observation on the creation of provision towards accrual of interest up to the period of COD, the Company is of the view that the same is not required since the entire loan amount and interest would be recovered, and nothing would remain unrecovered by the end of the tenure of the loan.

Query

On the basis of the above, the Company seeks the opinion of the Expert Advisory Committee (EAC) of the ICAI on the following issues:

- Whether the accounting treatment of the shareholder's loan made by the Company is in line with provisions of applicable Ind AS.
- If not, EAC is requested to provide necessary guidance backed by sample calculation along with the relevant journal entries.
- Whether as opined by C&AG, the Company is required to make suitable provision towards recognition of non-realisable interest income up to COD from the shareholder's loan extended to the joint venture company.

Points considered by the Committee

The Committee notes that the basic issue raised in the query relates to the accounting treatment of shareholder's loan provided to joint venture company in the Company's separate financial statements. The Committee has, therefore, considered only this issue, and has not examined any other issue that may arise from the Facts of the Case. Further, the Committee has examined the query only from an accounting perspective and not from any other perspective, such as legal interpretation of shareholder's loan agreement etc. The Committee wishes to point out that the opinion expressed hereinafter is in the context of Indian Accounting Standards, notified under the Companies (Indian Accounting Standards) Rules, 2015 and as applicable on 31 March 2024.

The Committee notes from the Facts of the Case that the Company is providing a shareholder's loan to its joint venture company (A Limited) for the implementation of a biorefinery project. The loan provided to a joint venture company (A Limited), being a financial asset, should be recognised and measured as per Ind AS 109. In this regard, the Committee notes the following paragraphs of Ind AS 109 and Ind AS 113:

Ind AS 109

"4.1.1 Unless paragraph 4.1.5 applies, an entity shall classify financial assets as subsequently measured at amortised cost, fair value through other comprehensive income or fair value through profit or loss on the basis of both:

- The entity's business model for managing the financial assets and
- The contractual cash flow characteristics of the financial asset.

4.1.2 A financial asset shall be measured at amortised cost if both of the following conditions are met:

- The financial asset is held within a business model whose objective is to hold financial assets in order to collect contractual cash flows and
- The contractual terms of the financial asset give rise on specified dates to cash flows that are solely payments of principal and interest on the principal amount outstanding.

Paragraphs B4.1.1 - B4.1.26 provide guidance on how to apply these conditions.

"Amortised cost of a financial asset or financial liability:

The amount at which the financial asset or financial liability is measured at initial recognition minus the principal repayments, plus or minus the cumulative amortisation using the effective interest method of any difference between that initial amount and the maturity amount and, for financial assets, adjusted for any loss allowance.

"5.1.1 Except for trade receivables within the scope of paragraph 5.1.3, at initial recognition, an entity shall measure a financial asset or financial liability at its fair value plus or minus, in the case of a financial asset or financial liability not at fair value through profit or loss, transaction costs that are directly attributable to the acquisition or issue of the financial asset or financial liability.

5.1.1A However, if the fair value of the financial asset or financial liability at initial recognition differs from the transaction price, an entity shall apply paragraph B5.1.2A."

"B5.1.1 The fair value of a financial instrument at initial recognition is normally the transaction price (ie the fair

value of the consideration given or received, see also paragraph B5.1.2A and Ind AS 113). However, if part of the consideration given or received is for something other than the financial instrument, an entity shall measure the fair value of the financial instrument. For example, the fair value of a long-term loan or receivable that carries no interest can be measured as the present value of all future cash receipts discounted using the prevailing market rate(s) of interest for a similar instrument (similar as to currency, term, type of interest rate and other factors) with a similar credit rating. Any additional amount lent is an expense or a reduction of income unless it qualifies for recognition as some other type of asset.

B5.1.2A The best evidence of the fair value of a financial instrument at initial recognition is normally the transaction price (i.e. the fair value of the consideration given or received, see also Ind AS 113). If an entity determines that the fair value at initial recognition differs from the transaction price as mentioned in paragraph 5.1.1A, the entity shall account for that instrument at that date as follows: (a) At the measurement required, by paragraph 5.1.1 if that fair value is evidenced by a quoted price in an active market for an identical asset or liability (i.e. a Level 1 input) or based on a valuation technique that uses only data from observable markets. An entity shall recognise the difference between the fair value at initial recognition and the transaction price as a gain or loss.

(b) In all other cases, at the measurement required by paragraph 5.1.1, adjusted to defer the difference between the fair value at initial recognition and the transaction price. After initial recognition, the entity shall recognise that deferred difference as a gain or loss only to the extent that it arises from a change in a factor (including time) that market participants would take into account when pricing the asset or liability."

Ind AS 113

"B4 When determining whether fair value at initial recognition equals the transaction price, an entity shall take into account factors specific to the transaction and to the asset or liability. For example, the transaction price might not represent the fair value of an asset or a liability at initial recognition if any of the following conditions exist:

(a) The transaction is between related parties, although the price in a related party transaction may be used as an input into a fair value measurement if the entity has evidence that the transaction was entered into at market terms.

(b) …"

From the above, the Committee notes that Ind AS 109 requires financial assets to be initially recognised at their fair value plus transaction costs (if not classified as subsequently measured at fair value through profit or loss)

Further, based on reading of paragraph B5.1.1 of Appendix B of Ind AS 109, the fair value of a financial instrument at initial recognition is normally the transaction price. However, if part of the consideration given or received is for something other than the financial instrument, an entity shall measure the fair value of the financial instrument, for example, the fair value of a long-term loan or receivable that carries no interest can be measured as the present value of all future cash receipts discounted using the prevailing market rate(s) of interest for a similar instrument (similar as to currency, term, type of interest rate and other factors) with a similar credit rating; and the difference between the amount lent and the fair value of an interest-free loan is generally recognised as a gain or loss unless it qualifies for recognition as some other type of asset. The fair value of a loan at market rates would normally consider the interest rates charged by market participants for loans with similar remaining maturities, cash flow patterns, currency, credit risk, collateral, interest basis, etc. The Committee further notes that as per paragraph B4 of Ind AS 113, the transaction price might not represent the fair value of an asset or a liability at initial recognition if the transaction is between related parties, although the price in a related party transaction may be used as an input into a fair value measurement if the entity has evidence that the transaction was entered into at market terms.

On the basis of the above, the Committee is of the view that in the extant case, the overall contractual interest on the loan to the joint venture during the loan tenure, which bears no interest for a certain period, cannot be considered to be at market terms. The financial asset should be initially recognised and measured at its fair value, which should be measured as the present value of all future cash receipts discounted using the prevailing market rate(s) of interest for a similar instrument (similar as to currency, term, type of interest rate and other factors) with a similar credit rating as per the requirements of paragraph B5.1.1 of Ind AS 109. With regard to the difference between the amount lent and the fair value of the loan (hereinafter also referred to as the 'below market element'), the Committee is of the view that where a loan to a related party is not on normal market terms, the substance of the below-market element should be ascertained, to determine the accounting for this part of the loan receivable. The Committee is of the view that if a loan is made by an equity holder, for example, by parent to a subsidiary/ joint venture on favourable terms, the substance of the transaction is that the subsidiary/joint venture has received a contribution from the parent to the extent that the cash advanced exceeds the fair value of the subsidiary's/joint venture's financial liability or lender's fair value of the financial asset.

Accordingly, in the extant case, in substance, the below-market interest element may be construed as a non-reciprocal capital contribution by the Company to JV (A limited) and should be recognised by the Company as an investment in joint venture (as a component of the overall investment in the joint venture) in its separate financial statements.

Further, subsequently, as per the requirements of paragraphs 4.1.1 and 4.1.2 of Ind AS 109, the financial asset shall be measured at amortised cost since the financial asset (loan receivable) in the extant case appears to be held to collect contractual cash flows and the contractual terms of the financial asset give rise on specified dates to cash flows that are solely payments of principal and interest on the principal amount outstanding.

The interest income on financial assets should be accrued and calculated by the Company by using an effective interest method considering the imputed rate(s) of interest for a similar instrument (similar as to the currency, term, type of interest rate and other factors) with a similar credit rating, which was used to determine the fair value on initial recognition and the same should be recognised in the profit or loss.

The Committee also wishes to clarify that the difference in the interest as per the contractual terms and interest accrued in the financial statements as per effective interest rate, is due to accounting as per applicable Ind AS. Further, the Committee also notes that the interest is realisable when the actual payout starts from the joint venture; therefore, at this stage, there is no non-realisable interest income which is required to be accounted for.

Opinion

On the basis of the available facts and figures and the discussions mentioned herein above, read along with the observations given above, the Committee is of the following opinion on the issues raised:

- The accounting treatment of the shareholder's loan made by the Company is in line with provisions of applicable Ind AS;
- In view of the opinion at (a) above, this issue becomes infructuous. And hence not answered;
- The interest accrued will be received when the actual payout starts from the joint venture. Since there is no non-realisable interest income reported at this stage, the question of making any provision does not arise.

REGULATORY UPDATES

Institute of Chartered Accountants of India (ICAI)

Hosting of Multipurpose Empanelment Form (MEF)- 2024-25

ICAI has issued an announcement dated 17 September 2024 which states that announcement, the Professional Development Committee (PDC) is to host the MEF for the year 2024-25. Before filling the MEF for the year 2024-25, Members are advised to go through the Advisory. Information provided through MEF is shared by ICAI with RBI, NABARD and other authorities for the purpose of empanelment for professional work.

The last date for submission of the online form was 7 October 2024, which is extended to 21 October 2024.

Ministry of Corporate Affairs (MCA)

Investor Education and Protection Fund Authority (Accounting, Audit, Transfer and Refund) Second Amendment Rules, 2024

MCA vide notification dated 9 September 2024 has issued amendments to the Investor Education and Protection Fund Authority (Accounting, Audit, Transfer and Refund) Rules, 2016 (IEPF Rules). These rules may be called the Investor Education and Protection Fund Authority (Accounting, Audit, Transfer and Refund) Second Amendment Rules, 2024.

Following are the key amendments:

- One of the key amendments includes replacing the word “shares” with “securities” throughout Schedule II (Documents to be submitted to the Authority to register transmission of securities) and Schedule III (Documents to be submitted to the Authority in case of loss of securities held in physical mode) of the IEPF Rules, hence including all forms of securities rather than just shares.
- It also included the option of submitting a legal heir certificate issued by a revenue authority (not below the rank of Tahsildar) in lieu of a tribunal order for transferring securities in the event of the holder's death.

- It also clarified that in cases where a copy of the Will is submitted as may be applicable in terms of the Indian Succession Act, 1925 (39 of 1925), the same shall be accompanied by a notarised indemnity bond from the claimant to whom the securities are transmitted.
- In cases where a copy of the legal heir certificate issued by the revenue authority, not below the rank of Tahsildar having jurisdiction is submitted, the same shall be accompanied by:
  - (a) A notarised indemnity bond from the legal heir or claimant to whom the securities are transmitted; and
  - (b) A no objection certificate from all legal heirs other than claimants, stating that they have relinquished their rights to the claim for transmission of securities, duly attested by a notary public or by a gazetted officer.
- The value of the securities as of the date of application shall be quantified by the applicant on the basis of the closing price of such securities at any one of the recognised stock exchanges a day prior to the date of such submission in the application, for listed securities and for unlisted securities, the value shall be quantified basis on the face value or the maturity value of the security, whichever is more.
- Schedule III of these Rules is also amended to add the procedures for foreign nationals or non-resident Indians (NRIs), allowing them to submit self-declarations for lost, misplaced, or stolen securities, which shall be duly notarised or apostilled or consularised in their country of residence, along with self-attested copies of valid passport and overseas address proof.
- The amendment has raised the monetary threshold from INR 5 lakh to INR 15 lakh for securities-related claims.
- Schedule IV (Procedure to be followed while disposing of the claims) is also amended which mandates companies to take contingency insurance policies to cover potential risks arising from claims related to unclaimed securities.

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

Companies (India Accounting Standards) Second Amendment Rules, 2024

MCA vide notification dated 9 September 2024 has issued amendments to the Companies (Indian Accounting Standards) Rules, 2015 by introducing updates in Ind AS 116 - "Leases" with regard to accounting for sale and lease back transactions. These rules may be called the Companies (Indian Accounting Standards) Second Amendment Rules, 2024.

As per the amendment after the commencement date in a sale and leaseback transaction, the seller-lessee applies paragraphs 29 to 35 of Ind AS 116 to the right-of-use asset arising from the leaseback and paragraphs 36 to 46 of Ind AS 116 to the lease liability arising from the leaseback. In applying paragraphs 36 to 46, the seller-lessee determines 'lease payments' or 'revised lease payments' in such a way that the seller-lessee would not recognise any amount of the gain or loss that relates to the right of use retained by the seller-lessee. Applying these requirements does not prevent the seller-lessee from recognising, in profit or loss, any gain or loss relating to the partial or full termination of a lease, as required by paragraph 46(a) of Ind AS 116.

As part of the amendments, Appendix D has been added to Ind AS 116 which contains two illustrative examples to illustrate the Sale and leaseback transaction with fixed payments and above-market terms and the subsequent measurement of a right-of-use asset and lease liability in a sale and leaseback transaction with variable lease payments that do not depend on an index or rate. The second illustrative example clarifies two approaches a seller-lessee may adopt to determine subsequent lease payments.

These amendments are applicable with effect from 1 April 2024. Further, a seller-lessee will need to apply the amendments retrospectively to sale and lease-back transactions entered into on or after the date of the initial application.

Companies (Compromises, Arrangements and Amalgamations) Amendment Rules, 2024

MCA vide notification dated 9 September 2024 has issued amendments to the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016. These rules may be called the Companies (Compromises, Arrangements and Amalgamations) Amendment Rules, 2024.

The amendment is intended to clarify the procedure for merger or amalgamation involving the transferor foreign company incorporated outside India being a holding company and the transferee Indian company being a wholly owned subsidiary company incorporated in India. Following are the requirements for these transactions:

- **Prior Approval of RBI** - Both the transferor foreign company and transferee Indian Company shall obtain the prior approval of the Reserve Bank of India;
- **Compliance with Section 233** - The transferee Indian company shall comply with the provisions of section 233 of the Companies Act, 2013

- Application to Central Government - The application shall be made by the transferee Indian company to the Central Government under section 233 of the Companies Act, 2013 and provisions of rule 25 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, shall apply to such application; and
- Submission of Declaration - The declaration in Form No. CAA-16 shall be made at the stage of making an application under section 233 of the Companies Act, 2013.

They shall come into force from 17 September 2024.

Declaration of National Bank for Financing Infrastructure and Development (NaBFID) as a Public Financial Institution

MCA issued a notification dated 10 September 2024 wherein the Central Government, in consultation with the Reserve Bank of India, notified the “National Bank for Financing Infrastructure and Development” as a public financial institution.

Clarification On The Holding Of Annual General Meeting (AGM) And EGM Through Video Conference (VC) Or Other Audio Visual Means (OAVM) And Passing Of Ordinary And Special Resolutions By The Companies Under The Companies Act, 2013 Read With Rules Made Thereunder - Extension Of Timeline-reg.

MCA issued a General Circular dated 19 September 2024, allowing companies whose AGMs are due in the Year 2024 or 2025, to conduct their AGMs through VC or OAVM on or before 30 September 2025 in accordance with the requirements of the General Circular dated 5 May 2020.

However, it is clarified in the circular that this shall not be construed as conferring any extension of the statutory time for holding AGMs by the companies under the Companies Act, 2013 and the companies which have not adhered to the relevant statutory timelines shall be liable to legal action under the appropriate provisions of the Act.

Further, it has been decided to allow companies to conduct their EGMs through VC or OAVM or transact items through the postal ballot in accordance with the framework provided in the earlier circulars, up to 30 September 2025. All other requirements provided in the earlier circulars issued in this regard shall remain unchanged.

The Companies (Prospectus and Allotment of Securities) Amendment Rules, 2024

MCA vide notification dated 20 September 2024 has issued amendments to the Companies (Prospectus and Allotment of Securities) Rules, 2014. These rules may be called the Companies (Prospectus and Allotment of Securities) Amendment Rules, 2024.

A proviso has been inserted with this amendment allowing producer companies, an extended time period of five years, to comply with the provisions relating to allotment and dematerialisation of securities.

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

Companies (Accounts) Amendment Rules, 2024

MCA vide notification dated 24 September 2024 has issued amendments to the Companies (Accounts) Rules, 2014. These rules may be called the Companies (Accounts) Amendment Rules, 2024.

Amendment states that for the financial year 2023-2024, a report on Corporate Social Responsibility in Form CSR-2 shall be filed separately on or before 31 December 2024 after filing Form AOC-4 or Form AOC-4-NBFC (Ind AS), as specified in these rules or Form AOC-4 XBRL as specified in the Companies (Filing of Documents and Forms in Extensible Business Reporting Language) Rules, 2015 as the case may be.

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

Insurance Regulatory and Development Authority (IRDAI)

Master Circular on Protection of Policyholders' Interests 2024

IRDAI has issued a Master Circular dated 5 September 2024 on the Protection of Interests of Policyholders. This circular consolidates policyholder entitlements into a single document focusing on enhancing claims settlement efficiency and improving service standards within the insurance sector. This is the second of two Master Circulars issued under the 2024 regulations.

Key provisions of the circular are broadly divided into 2 sections:

Section 1 - It contains a summary of important and relevant information at various stages of an insurance contract for the prospects/ policyholders/ customers. A prospect or policyholder to know his/ her rights and obligations at various stages of an insurance policy may visit this Section. Important and relevant information at various stages of

- Life Insurance Policies are in Part A,
- Health Insurance Policies are in Part B,
- Retail General Insurance Policies are In Part C

Separate Master Circulars on certain relevant and important aspects of the insurance business are also issued for the Life Insurance Business; Health Insurance Business and General Insurance Business.

Section 2 - Outlines compliance requirements for insurers under the regulations.

Following are the key provisions of this Master Circular:

- All insurance policies must be issued in electronic format. Policies issued in electronic form shall be digitally signed by the insurer. The customers can request the insurance company if they want policies to be issued in a physical format.
- Insurers must issue the life insurance policy within 15 days of accepting the proposal form. As per the new rules, insurers cannot collect the initial premium along with the proposal form unless the policy can be issued immediately based on a declaration of good health.

- Insurers shall, within 15 days of acceptance of a proposal, furnish the following to the prospect without any additional charge::
  - Covering letter for the policy document informing the free look period
  - Policy document
  - A copy of the proposal form submitted by the prospect
  - Copy of benefit illustration
  - Customer Information Sheet
  - Copy of need analysis document under suitability assessment, if any,
  - Any other document as may be required by the specific product.
- The Customer Information Sheet (CIS) is an important statement that insurers mandatorily provide to their customers along with their insurance policies. It serves as a summary of the policy's key features and benefits, ensuring that policyholders are well-informed about their coverage. According to regulations, the CIS must be provided in the format specified in 'Schedule D' of the Insurance Act for life insurance policies. Where the policyholder finds any Inconsistency in the coverage or scope of the policy, the same may be taken up with the insurer either directly or through the distribution channel engaged in procuring the policy for suitable rectification. A Customer Information Sheet is also mandatory for health insurance policyholders.
- For the life insurance policy of one year or more, a policyholder will have a free look period of 30 days. In case the policyholder is not satisfied with policy terms or conditions, he has the option to return the policy within these 30 days to the insurer for cancellation. Irrespective of the reasons mentioned, insurer must accept the request of the policyholder to exercise the option of free look cancellation. The policyholder shall be entitled to a refund of the premium paid subject only to a deduction of a proportionate risk premium for the period of cover and the expenses, if any, incurred by the insurer on medical examination of the proposer and stamp duty charges.
- Death claims, except the cases where investigation is required, should be settled within 15 days of initiating the claim. In death claims where investigation is required, the settlement should be done within 45 days of intimation of the claim. Surrender or partial withdrawal requests should be settled within seven days of initiating the claims.
- According to the new guidelines, insurers must make a decision on cashless authorisation within one hour of receiving the request. Additionally, final authorisation for discharge must be granted within three hours of receiving the request from the hospital. As per IRDAI, "In no case, the policyholder shall be made to wait to be discharged from the hospital." If there is a delay beyond three hours, the insurer will be responsible for any additional charges incurred by the hospital.

  In the event of a policyholder's death during treatment, insurers are required to:
  - Process the claim settlement request immediately.
  - Ensure the release of the deceased's mortal remains from the hospital without delay.
- Policyholders with multiple health insurance policies from different insurers now have more flexibility in filing claims. The individuals can choose to file claims under any of their policies. The insurer chosen by the policyholder will be considered the primary insurer. If the coverage under the chosen policy is insufficient to cover the full claim amount, the primary insurer will coordinate with other insurers to ensure that the balance is settled without causing any inconvenience to the policyholder.
- Insurers are required to make available products/add-ons/riders to provide a wider choice to the policyholders/prospects catering to all ages, all types of existing medical conditions, Pre-existing diseases chronic conditions etc.
- This circular impacts all Life Insurers, General Insurers, Health Insurers and Distribution Channels.

Circular - Subscribers to Other Forms of Capital

IRDAI vide circular dated 6 September 2024, issued amendments in the Master Circular on Registration, Capital Structure, Transfer of Shares and Amalgamation of Insurers, 2024, dated 15 May 2024. Amendment is in relation to Regulation 50 of the IRDAI (Registration, Capital Structure, Transfer of Shares and Amalgamation of Insurers) Regulations, 2024.

As per the amendment, the other forms of capital (OFC) issued by any insurer may be subscribed by any of the following entity(ies), subject to compliance with all other applicable laws including but not limited to laws pertaining to taxation, foreign exchange, anti-money laundering, combating the financing of terrorism:

- Any entity incorporated, set up or registered under any law for the time being in force in India; or
- Any entity incorporated, set up or registered under any law for the time being in force in any Financial Action Task Force compliant jurisdiction.

This Circular will come into force from the date of issuance. Any OFC issued prior to this Circular will continue to be governed by the terms of issuance of the said OFC.

Securities and Exchange Board of India (SEBI)

Enabling T+2 Trading Of Bonus Shares Where T Is The Record Date

SEBI issued a circular dated 16 September 2024 to streamline the process of the Bonus issue of equity shares, wherein, it has been decided to reduce the time taken for credit of bonus shares and trading of such shares, from the record date of the Bonus Issue under SEBI (ICDR) Regulations, 2018.

The operational procedure to implement the above is as given below:

- The Issuer proposing a bonus issue shall apply for the in-principle approval to the Stock Exchange within 5 working days from the date of the board meeting approving the Bonus issue.
- The Issuer while fixing and intimating the record date (T Day) to the Stock Exchange for the proposed bonus issue, shall also take on record the deemed date of allotment on the next working date of record date (T+1 day).
- Upon receipt of intimation of the record date (T Day) and requisite documents from the Issuer, the Stock Exchange(s) shall issue a notification accepting the record date and notifying the number of shares considered in the bonus issue. The notification shall include the deemed date of allotment (T+1 day).
- After issuance of notification by the Stock Exchange, the Issuers shall Submit the requisite documents to Depositories for credit of bonus shares in the depository system by 12 P.M. of the next working day of the record date (i.e. T+1 day).
- The Issuer shall upload the distinctive number (DN) ranges before credit of bonus shares.
- The shares allotted pursuant to the bonus issue shall be made available for trading on the next working date of allotment (T+2 day).
- Bonus shares will be directly credited in permanent ISIN (existing ISIN) without using a temporary ISIN.

This circular shall be applicable for all bonus issues announced on or after 1 October 2024.

This circular impacts all listed entities, all nationwide stock exchanges, all depositories, all registered registrars & share transfer agents.

Securities and Exchange Board of India (Issue and Listing of Non-Convertible Securities) (Second Amendment) Regulations, 2024

SEBI vide notification dated 17 September 2024 has issued amendments to the Securities and Exchange Board of India (Issue and Listing of Non-Convertible Securities) Regulations, 2021. These regulations may be called the Securities and Exchange Board of India (Issue and Listing of Non-Convertible Securities) (Second Amendment) Regulations, 2024.

Following are the key amendments:

- **Regulation 27(2) - “Filing of draft offer documents”** - Following amendments have been included:
  - Earlier, the draft offer document filed with the stock exchange was supposed to be made public by posting the same on the website of the stock exchange for seeking public comments for a period of 7 working days from the date of filing the draft offer document with stock exchange. Now, the time period for the same has been reduced to 5 days.
  - A new proviso has been inserted which states that the issuers whose specified securities are listed on the recognised stock exchange and have nationwide trading terminals, will post the draft offer document for 1 day immediately after the date of filing the draft offer document with the stock exchange.
  - Regulation 30 - “Advertisements for public issuers” - Included a provision which focuses on the issuers that opt to advertise the public issue through electronic modes. Such shall should publish a notice in English national daily and regional daily newspaper with wide circulation at the place where the registered office of the issuer is situated, exhibiting a QR Code and link to the complete advertisement.
- **Regulation 33A - “Period of Subscription”** - Earlier, the period for which the public issue of debt of securities or non-convertible redeemable preference shares was kept open for a minimum of 3 working days and a maximum of 10 working days. Now, the number of minimum working days has been revised to 2 and the maximum remains the same.
- **Schedule I - Disclosures for the issue of securities** - Certain amendments have been made to include and clarify a few disclosure requirements as specified in this Schedule such as the inclusion of specific declarations by the Board of Directors and who are the authorised persons in case of body corporate.

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

This notification impacts all listed entities.

Securities and Exchange Board of India (Delisting of Equity Shares) (Amendment) Regulations, 2024

SEBI vide notification dated 25 September 2024 has issued amendments to the Securities and Exchange Board of India (Delisting of Equity Shares) Regulations, 2021. These regulations may be called the Securities and Exchange Board of India (Delisting of Equity Shares) (Amendment) Regulations, 2024.

Following are the key amendments:

- **Fixed Price Process as an alternative to Reverse Book Building (RBB) Process:**
  - For publicly listed companies whose equity shares are frequently traded, a fixed price delisting offer mechanism has been introduced as an alternative to the RBB process.
  - The fixed price offered shall be at least 15% more than the floor price.
  - The acquirer shall be bound to accept the equity shares tendered or offered in the delisting offer if the post-offer shareholding of the acquirer along

with the shares tendered by the public shareholders reaches 90 % at the fixed delisting price, offered by the acquirer.

- **Determination of Floor Price -** The floor price of the equity shares proposed to be delisted through the reverse book building process or through a fixed price process, as the case may be, shall not be less than the highest of the following:
  - Volume weighted average price paid or payable for acquisitions by the acquirer along with persons acting in concert, during the 52 weeks immediately preceding the reference date;
  - The highest price paid or payable for any acquisition by the acquirer along with persons acting in concert during the 26 weeks immediately preceding the reference date;
  - Adjusted book value (considering consolidated financials) as determined by an independent registered valuer. The adjusted book value will be computed as per the explanation to Regulation 19A of these regulations;
  - The volume-weighted average market price for a period of 60 trading days immediately preceding the reference date on the stock exchange where the maximum trading volume of the equity shares is recorded, provided such shares are frequently traded;
  - The price determined by an independent registered valuer taking into account valuation parameters such as the book value, comparable trading multiples and any other customary valuation metrics for the valuation of shares of companies in the same industry where the shares are not frequently traded.
- **Reference Date -** The reference date for computing the floor price shall be the date of the initial public announcement (IPA) or the next trading day if the IPA is made after market hours or on a non-trading day.
- **Counteroffer -** In case of delisting through the reverse book-building process; a counteroffer may be made by the acquirer to the public shareholders provided that
  - The post-offer shareholding of the acquirer, along with the shares tendered by public shareholders, is not less than 75%; and
  - Not less than 50% of the public shareholding has been tendered.
  - The counter-offer price shall not be less than the higher of i. Volume weighted average price of the shares tendered/offered in the reverse book building process; and
  - The indicative price, if any, offered by the acquirer.
- **Special Provisions for Delisting of Investment Holding Company -** Regulation 38A has been inserted under Part E of these regulations which contains detailed provisions relating to delisting if an entity qualifies as an IHC under the prescribed parameters.

They shall come into force on the date of their publication in the Official Gazette. These regulations shall be applicable to such delisting offers whose initial public announcement is made on or after the date of coming into force of these regulations.

This notification impacts all listed entities.

REGULATORY UPDATES

REGULATORY UPDATES:

SECURITIES AND EXCHANGE BOARD OF INDIA (SEBI)

Circular dated 24 September 2024: Parameters for Performance Evaluation of Market Infrastructure Institutions, (the Circular)

The Circular is addressed to every recognised stock exchange, recognised clearing corporation and depository, [collectively referred to as Market Infrastructure Institutions (MIIs)] and is effective from 30 days of issuance of the Circular.

MIIs shall appoint an independent external agency (agency) to evaluate its performance along with the performance of its statutory committees within such periodicity and in such manner as may be specified by SEBI.

Further, to bring consistency and uniformity to evaluations to be conducted by an agency, the following are the broad parameters (refer to Circular for detailed parameters) identified by SEBI in consultation with Industry Standard Forums:

- Minimum criteria for performance evaluation and weightage;
- Broad framework for performance evaluation of MIIs, Managing Director and Key Management Personnel is provided in Annexure-A of the Circular;
- Judgement on performance of MIIs, would be reflected in the form of rating, framework for which is provided in Annexure-B of the Circular;
- Principles for appointment of agency and timelines for external evaluation, etc.

Circular dated 26 September 2024: Operational Guidelines for Foreign Venture Capital Investors (FVCIs) and Designated Depository Participants (DDPs), (the Circular)

The Circular is addressed to FVCIs, DDPs, Custodians, Depositories and recognised stock exchange and Clearing Corporations.

It provides operational guidelines for a smooth transition to the amendment notified on 5 September 2024 of SEBI (Foreign Venture Capital Investors) Regulations, 2020 (FVCI Regulations), effective from 1 January 2025.

FVCIs are required to provide KYC-related documents to intermediaries. On completion of the process, the intermediary shall upload the form and supporting documents on the KYC Registration Agencies (KRA) portal for other market intermediaries to access.

Guidelines w.r.t registration of FVCIs and Know Your Client (KYC) requirements for FVCIs are specified in Annexure 1 of the circular in detail, and are broadly listed as under:

- Engagement of DDPs by existing FVCIs;
- Compliance with eligibility criteria by existing FVCIs;
- Transfer of existing FVCI data to DDP;
- Processing of application for registration, continuance/renewal of registration, surrender of registration, etc.;
- KYC documentation requirements for FVCIs and documents to be shared with banks for opening of bank accounts;

- Other reporting, etc.;

Circular dated 13 September 2024: Reporting by Foreign Venture Capital Investors (FVCIs) (the Circular)

The Circular is addressed to all FVCIs and Custodians.

FVCIs are required to submit quarterly reports (report) in the prescribed format to SEBI with respect to their venture capital activity as a FVCI. SEBI has now revised the format (refer Annexure 1 of the Circular) for such quarterly reporting to be made by FVCIs.

FVCIs shall submit the report irrespective of any investment made during the quarter and Custodians shall be responsible for timely submission of the quarterly report.

FVCIs are to submit reports in revised format for quarters ending 30 September 2024 and 31 December 2024 by 15 November 2024 and 15 January 2025, respectively through email at fvci-report@sebi.gov.in

From the quarter ending 31 March 2025, FVCIs shall submit a report on the SEBI intermediary portal. The report shall be submitted within 15 calendar days from the end of each quarter.

Circular dated 13 September 2024: Optional mechanism for fee collection by SEBI registered Investment Advisers (IAs) and Research Analysts (RAs) (the Circular)

The Circular is addressed to all Registered Investment Advisers, Registered Research Analysts, Investment Adviser Administration and Supervisory Body (IAASB) and Research Analyst Administration and Supervisory Body (RAASB)

Pursuant to public consultation and various discussions with stakeholders, the “Centralised Fee Collection Mechanism for IA and RA” (CeFCoM) is being operationalised to facilitate the collection of fees by registered IAs and RAs from their clients.

As per this mechanism, clients shall pay fees to IAs/Ras via a designated platform/portal administered by a recognised Administration and Supervisory Body (ASB).

The mechanism has been co-created by BSE Limited with the help of various stakeholders and shall be operational from 1 October 2024.

Though, this mechanism is optional, but Registered IAs and RAs may encourage their clients to use this mechanism.

Circular dated 12 September 2024: Modifications in Guidelines for Business Continuity Plan (BCP) and Disaster Recovery (DR) of Market Infrastructure Institutions (MIIs) (the Circular).

SEBI has updated the guidelines vide the Circular for BCP and DR which are applicable to Stock Exchanges, Clearing Corporations, and Depositories. The key changes/modifications include the following:

- **Near Site Requirement:** All Stock Exchanges must implement a Near Site (NS) to ensure near zero data loss while Clearing Corporations and Depositories must achieve zero data loss.
- **Staff Expertise:** Personnel at Disaster Recovery Sites (DRS) must possess the same expertise as those at Primary Data Centers (PDC) to enable independent operations.
- **Recovery Point Objective (RPO):** MIIs must ensure an RPO close to zero and have a documented data reconciliation methodology.
- **Solution Architecture:**
  - Stock Exchanges: High availability and near zero data loss requirements for system architecture.
  - Clearing Corporations and Depositories: Zero data loss in architecture.
- **Replication Requirements:**
  - Stock Exchanges: Synchronous replication for near-zero data loss between PDC and NS.
  - Clearing Corporations and Depositories: Synchronous replication for zero data loss between PDC and NS.
- **Standardisation of Definitions:** MIIs are encouraged to define “near zero data loss” collaboratively and submit it to SEBI.

Implementation Timeline: Immediate effect for staff expertise requirements only whereas all other provisions are effective within two months.

Circular dated 20 September 2024: Flexibility in participation of Mutual Funds in Credit Default Swaps (CSD), (The Circular)

The Circular is addressed to all Mutual Funds, Asset Management Companies (AMCs), Trustee Companies, Boards of Trustees of Mutual Funds and Association of Mutual Funds in India (AMFI).

In India, Mutual Funds can only use Credit Default Swaps (CDS) to hedge credit risk on corporate bonds within Fixed Maturity Plans (FMP) that have a tenor of over one year.

On 10 February 2022, the Reserve Bank of India introduced a revised regulatory framework for CDS, expanding the role of protection sellers to include major non-bank regulated entities, such as Mutual Funds, to encourage the development of the CDS market.

Following recommendations from a Working Group set up deliberately for the issue, the Advisory Committee on Mutual Funds, AMFI, and feedback received from the consultation paper, it has been decided to allow Mutual Funds greater flexibility to buy and sell CDS with proper

risk management. This change aims to provide Mutual Funds with an additional investment product and enhance liquidity in the corporate bond market.

Consequently, **Clause 12.28: Participation of Mutual Funds in Credit Default Swaps** of the Master Circular for Mutual Funds dated 27 June 2024, will be amended accordingly such that it provides provisions for Mutual Fund Schemes to act both as buyers as well as sellers of CDS and other conditions therein as mentioned in the Circular which shall take effect immediately.

Relevant changes made to the Scheme Information Documents based on this circular will not be considered as "Fundamental Attribute Change" under Regulation 18(15A) of SEBI (Mutual Funds) Regulations, 1996.

The Circular was issued under the authority of Section 11(1) of the Securities and Exchange Board of India Act, 1992, alongside Regulation 43(1) and Regulation 77 of SEBI (Mutual Funds) Regulations, 1996, to protect investor interests and regulate the securities market.

Circular dated 20 September 2024: Ease of Doing Business in the context of Market Infrastructure Institutions (MIIs) – Relaxation in payment of 'Financial Disincentives' as a result of Technical Glitch (the Circular).

The Circular is addressed to recognised stock exchanges, recognised clearing corporations and recognised depositories (*collectively referred to as Market Infrastructure Institutions (MIIs)*).

The Standard Operating Procedure (SOP) provided in the aforesaid master circulars, required payment of financial disincentive by the MII, and individuals (i.e., its Managing Director (MD) and Chief Technology Officer (CTO)) for inefficiencies in dealing with technical glitches.

In view of the ease of doing business with MIIs, the circular has been issued:

- To restrict the imposition of existing financial disincentives to MIIs only (i.e. excluding individuals like their MDs and CTOs) and,
- To provide an opportunity to the concerned MII to make its submission in respect of glitch, which shall be considered before the imposition of any financial disincentive.

Further, vide the Circular, SEBI has:

- Required the MIIs to disclose the details of financial disincentives paid by them on account of technical glitches, on their website and in annual reports and,
- Retained the right to initiate enforcement action against the individuals at MIIs, where sufficient grounds are found.

The above amendments are effective from the date of the Circular.

Circular dated 19 September 2024: Modification in framework for valuation of investment portfolio of Alternative Investment Funds (AIFs)

SEBI has amended the framework for the valuation of investment portfolios of AIFs in line with recent industry feedback. Key modifications include:

Valuation Norms: Securities not covered under existing guidelines will now follow norms prescribed under SEBI (Mutual Funds) Regulations, 1996 for non-traded and thinly traded securities.

Also, the regulator said changes in valuation methods to comply with these rules will not be considered "material changes," but must be disclosed to investors.

Independent Valuer Criteria: New eligibility criteria for independent valuers have been established. The independent valuers of AIF portfolios are now required to be registered with IBBI and the authorised person of such valuer shall be required to be a member of the ICAI, ICSI, ICMAI or a CFA charter.

Reporting Timeline: The timeline for AIFs to report valuations based on audited data requiring compliance with specific terms in investment /subscription agreements with the investee company has been extended from six months to seven months.

Compliance Reporting: AIF managers must ensure that compliance reports include adherence to these new provisions.

These changes shall come into force with immediate effect with an aim to enhance transparency and standardisation in the valuation process for AIFs.

Modification in the timeline for submission of status regarding payment obligations to the stock exchanges by entities that have listed commercial papers

SEBI has amended paragraph 8.4 of Chapter XVII (Listing of Commercial Papers) of the NCS Master Circular to include that a certificate confirming the fulfilment of payment obligations for listed non-convertible securities and listed Commercial Paper must be provided to Stock Exchanges within **one working day** of the payment due date.

Prior to this amendment, the said certificate was required to be provided within two working days of the payment due date.

Circular dated 24 September 2024: Usage of UPI by individual investors for making an application in public issue of securities through intermediaries (the Circular)

Chapter I of the Master Circular issued by SEBI on 22 May 2024, prescribes the application process for the public issue of various types of securities under SEBI such as non-convertible securities, municipal debt securities, securitised debt instruments, etc.

In order to streamline and align the process of applying in public issue for the above-stated securities, individual investors are now mandated to use Unified Payments Interface (UPI) for blocking funds, while applying through intermediaries with an application amount of up to INR 5 lakhs. The investors are required to provide their bank account-linked UPI ID in the bid-cum-application form.

Such individual Investors will still have an option of availing modes, such as Stock Collector Service Banks (SCSBs) and the Stock Exchange Platform for making an application in the public issue.

These provisions will take effect for public issues from 1 November 2024.

Circular dated 11 September 2024: Permitting securities funded through cash collateral as maintenance margin for Margin Trading Facility (MTF)

SEBI had received representations from market participants to allow securities funded through cash collateral to be considered as maintenance margins for MTF.

Pursuant to the same, in the interest of investors and to alleviate the burden of additional collateral towards maintenance margin for MTF and in order to promote the objective of 'Ease of Doing Business, SEBI has amended clauses in the master circular dated 16 October 2023 to include the following:

Stocks or Exchange Trade Funds (ETF) deposited as collateral with a broker for margin trading and stocks purchased from MTF (funded stocks) shall be kept separate so that the same are identifiable and no comingling will be allowed for the purpose of computing funding amount. If the broker collects cash as collateral in the form of a margin for availing MTF and the trading member uses the same to settle trades with the Clearing Corporation (CC), the stocks received in return can be considered as a maintenance margin to the extent the stocks are pledged to the broker as part of the funded stock arrangement.

Further, a new Clause 4.3.3.5 has been included for Stock Exchanges and Clearing Corporations, which states:

Funded stocks can be used as part of the maintenance margin, but only if they are classified as Group 1 securities. This means these stocks must meet specific quality and liquidity standards. The margin requirement for these securities is calculated using Value at Risk (VaR) plus five times the Extreme Loss Margin (ELM). This calculation applies regardless of whether the funded stocks are available in the futures and options (F&O) segment, ensuring a consistent approach to risk management across different types of securities.

Additionally, clause 4.8.1, is modified to allow reporting of exposure under Margin Trading Facility by the Trading Members on or before 6:00 PM on T+1 day.

In view of the amendments and changes as per the Circular, the Stock Exchanges are advised to make necessary amendments to the relevant bye-laws, rules and regulations for the implementation and bring the provisions of the Circular to the notice of their members and to disseminate the same on their website.

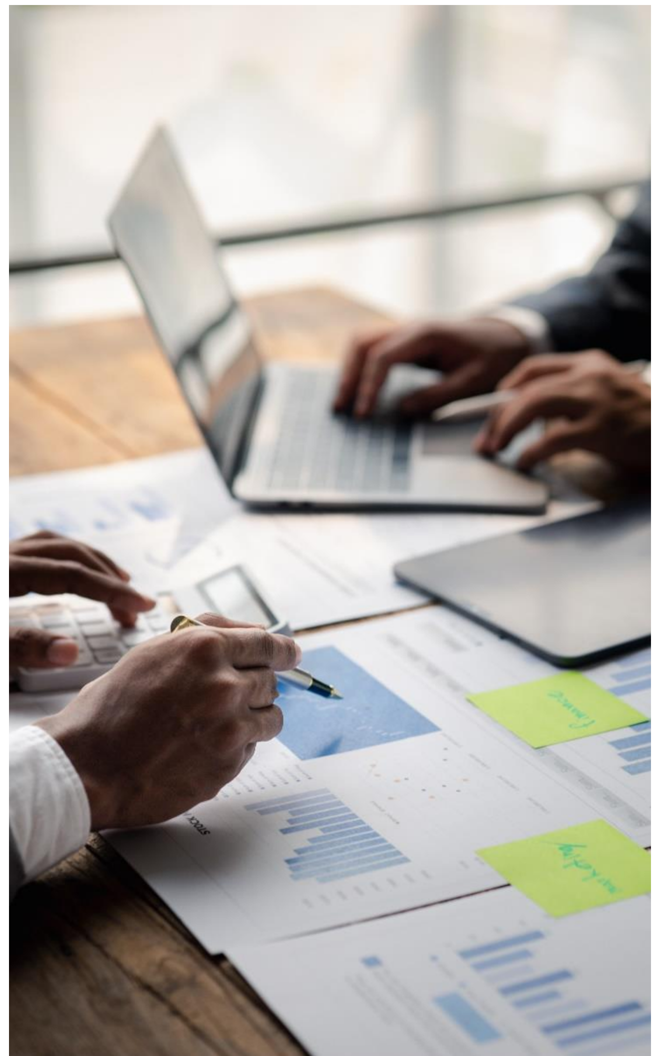
The circular shall come into effect from 1 October 2024.

Circular dated 26 September 2024: Reduction in the timeline for listing of debt securities and Non-Convertible Redeemable Preference Shares (NCRPS) to T+3 working days, (the Circular)

The Circular is addressed to issuers who propose to list debt securities or NCRPS, Recognised Stock Exchanges, Registered Merchant Bankers, Registered Stockbrokers, Depositories and Registered Depository participants, Registered Bankers to an Issue, Registered Registrar to an issue and Share Transfer Agents and Self Certified Syndicated Banks.

The timeline for listing of debt securities and NCRPS has been revised to T+3 working days from the existing T+6 working days. The above timeline can be adopted on a voluntary basis from 1 November 2024 and shall be mandatory from 1 November 2025.

Stock exchanges will be responsible for monitoring compliance with the new timeline.



RESERVE BANK OF INDIA (RBI)

Notification dated 3 September 2024: Review of Extant Instructions – Withdrawal of Circulars

The Reserve Bank of India (RBI) has conducted an internal review and announced the immediate withdrawal of several outdated circulars which were issued between 1987 and 2011.

These circulars covered various banking practices, including credit facilities for minority communities, the establishment of "No-Frills" accounts for students, and guidelines related to microcredit.

The RBI's decision is based on the fact that the instructions in these circulars have been superseded or updated by newer guidelines. For example, the earlier circulars regarding credit facilities for minority communities have been replaced by the Master Circular issued in April 2023. Additionally, the "No-Frills" accounts have been phased out in favour of Basic Savings Bank Deposit Accounts (BSBDA), which serve as the primary banking service for all customers.

The guidelines on microcredit have been incorporated into the revised Master Circulars on Self-Help Group (SHG) Bank Linkage and Non-Banking Financial Company (NBFC) regulations, demonstrating the RBI's commitment to modernising and streamlining its regulatory framework.

Circular dated 19 September 2024: Communication to Regulated Entities (REs) w.r.t amendments made in Weapons of Mass Destruction and their Delivery Systems (Prohibition of Unlawful Activities) Act, 2005 (the Act), (the Circular)

Regulated Entities i.e. REs are defined in Regulations 3(b)(xiv) of Master Direction on Know Your Customer (Master Direction) dated 25 February 2016. The Circular is addressed to Chairpersons/CEOs of all REs, who shall ensure the following compliances:

- Procedure for prohibition on financing laid down in Section 12A of the Act vide Order dated 1 September 2023, by the Ministry of Finance, Government of India (Order) [Annexure III of the Master Direction].
- Implementation of Security Council Resolution on Democratic People's Republic of Korea Order, 2017. Verify every day, the 'United Nations Security Council (UNSC) Resolutions 1718 Sanctions List of Designated Individuals and Entities' to take into account any modifications to the list in terms of additions, deletions or other changes to ensure compliance.

Circular dated 6 September 2024: Liberalised Remittance Scheme (LRS) for Resident Individuals Discontinuation of Reporting of monthly return

The Reserve Bank of India has announced the discontinuation of the monthly reporting requirement for the Liberalised Remittance Scheme (LRS) by Authorised Dealer Category-I (AD Category-I) banks, effective from September 2024.

Previously, these banks were mandated to submit data on the number of applications and total amounts remitted under LRS monthly in the Centralised Information Management System (CIMS). However, going forward, banks will only need to provide daily transaction-wise information under LRS daily return. In case no data is to be furnished, AD Category-I banks shall upload a 'NIL' report. AD Category-I Banks are instructed to inform their constituents about this update.

DIRECT TAX

CIRCULARS/ NOTIFICATIONS/ PRESS RELEASE

CBDT Enhances The Monetary Thresholds For Filing Income-tax Appeals By The Revenue

In pursuance to the powers conferred under section 268A of the Income-tax Act, 1961 (IT Act), the Central Board of Direct Taxes (CBDT) from time to time has issued various circulars prescribing monetary limits for filing tax appeals by the Revenue. In March 2024, the CBDT issued Circular No. 5/2024 to provide detailed guidelines with respect to departmental appeals. As a step towards managing litigation, the CBDT has amended the said circular and has hiked the minimum threshold for filing appeals by the tax department/authorities. The revised monetary limits would also apply for appeals relating to Tax Deducted at Source (TDS)/ Tax Collected at Source (TCS) matters as also to the appeals pending before the Supreme Court/ High Court/ Tax Tribunal and the pending Special Leave Petitions (SLPs). Further, the exceptions as stated in Circular No. 5/2024, continue to be in force. To read our detailed analysis, please go to: https://www.bdo.in/en-gb/insights/alerts-updates/direct-tax-alert-cbdt-enhances-the-monetary-thresholds-for-filing-income-tax-appeals-by-the-revenue

[Circular No. 9/2024, dated 17 September 2024]

CBDT Notifies The Direct Tax Vivad Se Vishwas Rules,2024

Taking note of the success of Direct Taxes Vivad se Vishwas Scheme (VsV 2020), Finance (No.2) Act, 2024 (Finance Act) introduced the Direct Tax Vivad Se Vishwas Scheme 2024 (VsV 2024) to tackle the backlog of pending tax litigation. As per VsV 2024, it shall be applicable to all appeals filed after 31 January 2020 and are pending for disposal as of 22 July 2024. The taxpayers will be required to pay a specified amount if they opt to settle the dispute under the VsV 2024. Recently, the Central Board of Direct Taxes (CBDT) has issued a Notification to notify "Direct Tax Vivad se Vishwas Rules, 2024" (VsV Rules). To read our detailed analysis, please go to: https://www.bdo.in/en-gb/insights/alerts-updates/direct-tax-alert-cbdt-notifies-the-direct-tax-vivad-se-vishwas-rules2024

[Notification No. 104/2024, F. No. 370142/16/2024-TPL, dated 20 September 2024]

JUDICIAL UPDATES

Delhi High Court Quashes Final Assessment Orders Passed Without Passing A Draft Assessment Order Under Section 144C Of The IT Act

A batch of writ petitions were filed before the Delhi HC with similar facts that the final assessment orders were passed in the case of 'eligible taxpayers' under section 143(3) read with section 144C(13) of the IT Act in the first round of proceedings. The said proceedings were challenged before the Delhi Tax Tribunal and the final assessment orders were remanded back to the Transfer Pricing Officer (TPO)/ Tax Officer for de-novo assessment/re-computation of total income. In compliance with the directions given by the Tax Tribunal, the TPO/tax officer was required to pass draft assessment orders since the taxpayers qualified as 'eligible taxpayers' under section 144C(13) of the IT Act. However, the tax officers straight away passed the final assessment order under section 143(3) read with section 254 of the IT Act along with demand notice and penalty proceedings. In these writ petitions, the following principal question of law was raised before the Delhi High Court:

- Whether the tax officers were justified in framing the final assessment order without passing a draft assessment order in accordance with provisions of section 144C(1) of the IT Act?
- Whether the Court can remand the matter to the tax officer for continuing the assessment even after the time limit for passing of order under section 153 of the IT Act had expired?

The Delhi High Court made the following observations while ruling in favour of the taxpayers:

- In a catena of judgements[1] passed by this Court, a consistent view has emerged that a failure to frame a draft assessment order is clearly violative of the mandatory provisions of section 144C of the IT Act. Therefore, any final assessment order framed in violation thereof would be a nullity.
- The contention of the revenue authorities that erstwhile section 144B of the IT Act was *pari-materia* to section 144C of the IT Act thereby a failure to frame a draft assessment order was merely a procedural irregularity which could be remedied by restoring the file to the tax officer to pass a draft assessment order is rejected. The power of the Dispute Resolution Panel (DRP) is not only corrective but extends to enhancing or reducing the proposed variations, subject to the rider that the DRP is not empowered to set aside a proposed variation which is clearly distinct from the powers for guidance conferred upon the Deputy Commissioner under section 144B of the IT Act, which was merely in the nature of an additional tier of internal review and oversight mechanism.
- Section 144C of the IT Act is a distinct assessment mechanism entailing two separate components wherein the TPO has the power to compute and assess arm's length price under section 92CA of the IT Act and the tax officer has the power to assess other segments of income in a particular assessment year.
- Section 144C of the IT Act is a special assessment mechanism wherein the tax officer is bound by the views of the TPO recognised in the draft assessment order and further, the directions of the DRP are also binding on the tax officer compelling the tax officer to frame an assessment order in terms thereof.
- A failure to frame a draft assessment order not only curtails the right of the taxpayer to adopt corrective measures but also deprives the taxpayer of a statutory right to challenge the draft in terms of the salutary mechanism laid in place.
- On the issue of whether Courts could enlarge/ expand the period of limitation by remitting the matter to tax officers after the period of limitation, it is held that where legally permissible, courts may consider condonation of delay. However, in the present case, the period for completion of the assessment exercise in terms of sections 153(3) and 153(4) of the IT Act had already been expired in the batch of cases, it would be wholly impermissible to expand or enlarge the period prescribed for completion of assessment.

[Principal Commissioner of Income Tax vs. Sumitomo Corporation (P.) Ltd (ITA No. 52/2023 & CM Appl. 3673/2023) (Delhi HC)]

Transfer Of Self-generated Trademark Is Taxable As Capital Gains

- Taxpayer company transferred and assigned the brand name 'Rath' to ITC Agro Tech Ltd. under an agreement which contained a non-compete clause for not competing directly or indirectly with ITC in Hydro Generated Vegetable Oil i.e. Vanaspati for a period of 60 months and using the brand name 'Rath' for any product category.
- Taxpayer had registered the trade name 'Rath' in 1984 and it was used by the taxpayer as intellectual property for selling the Vanaspati in the market till the same was transferred to ITC in the year 2000. Further, it had already claimed the cost of registration and other relevant costs during the course of business and admitted that the trademark was a capital asset under section 2(14) of the IT Act during assessment proceedings.
- During the assessment proceeding, the tax officer observed that taxpayer has disclosed the aforementioned income in the profit & loss account as an exceptional income but also claimed the same to be non-taxable on account of being a capital receipt. The tax officer concluded that the receipts were on account of the sale of its trademark 'Rath' and the taxpayer continued the business of Vanaspati. Therefore, declining the claim of taxpayer that the receipts in question are capital receipts, the tax officer held the same as trade receipts with respect to consideration in lieu of a decline in sales.
- Aggrieved, the taxpayer filed an appeal before the First-Appellate Authority which upheld the order of the tax officer. Further aggrieved, the taxpayer filed an appeal before the Delhi Tax Tribunal which made the following observations while ruling in favour of the tax authorities:
  - The taxpayer had registered the 'Rath' trademark and had incurred certain costs which was claimed as revenue expenditure and not were not capitalised. Hence, the taxpayer had claimed 100% of the cost as expenditure which was nothing but a claim of 100% depreciation. The trade name was an asset of the company without being capitalised in the balance sheet.
  - The taxpayer has admitted that the trademark was a capital asset and hence transfer of capital asset would come under the heads 'Capital Gains'. Since the cost of registration was already claimed as an expense, the trademark would be a Short Capital Asset chargeable to tax as Short-term capital gains.
  - Regarding the head of income, the relevant fact is a transfer of intellectual property like a trademark and not the consequential non-compete clause stated in the agreement. Hence the transfer would be taxable under the head Capital gains and not under 'Profits and gains from business or profession'

[M/s Mawana Sugar Ltd. vs. DCIT (LTU), ITA No. 4519/Del/2009 (Delhi Tax Tribunal

[1] JCB India vs. DCIT and another [2017] SCC Online Del 10424; Turner International India Pvt. Ltd. vs. DCIT [2017] SCC Online Del 8441; Nokia India Private Limited vs. ACIT [2017] SCC Online Del 13027

Full Bench Of Delhi HC Holds That PE Is An Independent Taxable Entity And Global Income Is Not Relevant For-profit Attribution

Double Taxation Avoidance Agreements (DTAA or Tax Treaty or Treaties) provide taxation of income either on the basis of Source Rule or Residence Rule. Unless the income (such as royalty, fees for technical services, etc) is specifically taxed, income of a Foreign Company can be taxed only if it has a Permanent Establishment (PE) or business connection in India and the business of the foreign company is carried out through such PE. Where a Foreign Company has a PE in India, only the income that is attributable to such PE is taxable in India.

A situation may arise that the Foreign Company would have incurred a loss at the global level even though at the PE level it has positive income. In such cases, a question may arise about the attribution of profits to the PE in India and its taxability. Recently, the Full Bench of Hon'ble Delhi High Court held that PE is an independent taxable entity, and global income is not relevant for attribution. To read our detailed analysis, please go to: https://www.bdo.in/en-gb/insights/alerts-updates/full-bench-of-delhi-hc-holds-that-pe-is-an-independent-taxable-entity-and-global-income

[Hyatt International Southwest Asia Ltd v ADIT (ITA 216/2020 & other connected matters) (Delhi HC)]

Delhi Tax Tribunal Holds That US LLC Is Entitled For India-us Tax Treaty Benefits

'DTAAs' or 'tax treaties' allocate the taxing rights amongst the Treaty Countries. One of the key conditions that need to be satisfied to access the DTAA is that the taxpayer should be a tax resident of either or both the Treaty Countries and is liable to tax.

In this regard, a question may arise as to whether a Limited Liability Corporation, which is a Fiscally Transparent Entity (FTE) can claim the tax treaty benefit or not, since such entity may not be a taxable unit in one or both the Treaty Countries. Recently, the Delhi Tax Tribunal held that to the extent that the income derived by such partnership (i.e. FTE) is subject to tax in the country of its incorporation as the income either in the hands of the partnership itself or in the hands of its partners or beneficiaries, the said partnership shall be treated as 'Resident' for the purpose of the Tax Treaty. To read our detailed analysis, please go to: https://www.bdo.in/en-gb/insights/alerts-updates/direct-tax-alert-delhi-itat-held-that-us-llc-is-entitled-for-india-us-tax-treaty-benefits

[General Motors Company USA vs ACIT, Circle International Taxation (I.T.A. No. 2359/Del/2022) (Delhi Tax Tribunal)]

INDIRECT TAX

Textile Committee Is Not An Expert To Determine Classification Of Goods

Principal Commissioner, Customs, New Delhi Vs. Om Sai Ram Trading [2024 (22) Centax 395 (Tri-Del)]

Facts of the case

- M/s Om Sai Ram Trading filed a Bill of Entry to clear 'men's woven quilted/padded polyester polyfill (unpopular brands)' with self-assessed duty on the imported goods and also requested for first check for the classification of the said imported goods.
- Before examination by the proper officer, on the day subsequent to the date of filing the Bill of Entry, a different wing of the tax authorities received intelligence that the imported goods were mis-declared with respect to their description and classification. Accordingly, the tax authorities examined the imported goods under a panchnama, and it was held that the imported goods were correctly classifiable under a different heading of the Customs Tariff.
- Thus, samples were drawn and sent to the Textile Committee seeking following clarifications:
  - Nature and composition of the fabric of the jackets;
  - Whether either the upper side of the fabrics of the jackets was impregnated, coated, covered or eliminated with plastics or some other materials; and
  - Proper HSN classification of the jackets.

  The Textile Committee, in its test report, provided an opinion on the classification of imported goods.
- After recording statements and further investigations, the tax authorities observed that the Taxpayer had misclassified the imported goods and was therefore liable for confiscation under Section 111(m) of the Customs Act, 1962 (Customs Act). Further, while imposing penalties under Section 114A, the tax authorities also demanded differential duty along with interest.
- In response, the Taxpayer waived the requirement for show cause notice and personal hearing and agreed to pay the differential duty under protest.
- Subsequently, the tax authorities issued the Order-in-Original re-classifying the imported goods and confirming the demand for differential duty along with interest and penalty. Further, the imported goods were also proposed to be confiscated under Section 111(m) by providing an option to redeem the same on payment of the redemption fine.
- Against this, the Taxpayer filed an appeal before the Commissioner (Appeals) who upheld the classification of the goods but inter alia set aside the imposition of penalty, confiscation of goods, and consequently, the imposition of redemption fine.
- Aggrieved by the above, the tax authorities filed an appeal before the CESTAT.

Contentions of the Tax Authorities

- The goods which do not correspond to the value, or any other particulars declared in the Bill of Entry are liable for confiscation under Section 111(m) of the Customs Act and the Commissioner (Appeals) erred in setting aside the confiscation and redemption fine.

- The differential duty was correctly confirmed and recovered under Section 28(4) of Customs Act as the Taxpayer suppressed facts by not disclosing the correct description of the goods and their classification with an intent to evade duty. Consequently, penalty was correctly imposed under Section 114A of the Customs Act.
- In view of the above, it was argued that the Impugned Order passed by the Commissioner (Appeals) be set aside and the Order-in-Original passed by the tax authorities be restored.

Contentions of the Taxpayer

- There is no case to impose a penalty or to confiscate the goods. Further, the appeal filed by the tax authorities deserves to be dismissed considering the monetary limits laid down by the Government.
- The Textile Committee's reports, based on which the goods were re-classified and confiscated, were also not supplied to the Taxpayer.
- Section 28(4) of the Customs Act does not apply to this case as the goods had not been cleared for home consumption when the tax authorities began their investigation. Further, the Taxpayer himself was unsure of the classification and had sought examination of the goods on first check basis.
- Since Section 28(4) of the Customs Act does not apply to this case, no penalty under Section 114A of the Customs Act can be imposed on the Taxpayer.

Observations and Ruling of the CESTAT

- The Taxpayer was unsure of the classification of the goods and the type of goods which were imported and wanted the goods to be examined. Had the goods been examined by the proper officer, the nature of the goods and the classification could have been ascertained and the Bill of Entry could have been re-assessed by the tax authorities under section 17 of the Customs Act. After payment of duty, the goods could have been cleared for home consumption. Instead of letting the proper examine the goods, a different wing of the tax authorities intervened, examined and assessed the imported goods.
- Although the classification of the goods itself is not assailed by the Taxpayer, the manner in which the classification was done certainly is not correct. The tax authorities have classified the goods based on advice given by the Textile Committee.
- The Textile Committee is an expert body on textiles and is not an expert on classification of goods under the Customs tariff. It can give its opinion on the nature of the goods, composition of fabrics, etc. but not on their HSN classification. If at all, there are any experts in classification it will be the tax authorities who deal with the classification of the goods day in and day out.
- Assessment should be undertaken either by the Importer himself, (as a part of self-assessment under Section 17(1) of Customs Act), or by the proper officer during re-assessment, (under Section 17(4) of Customs Act), or by any appellate authority in an appeal assailing the assessment. The Textile Committee is neither the Importer nor the proper officer nor the appellate authority. Thus, it has no locus standi or authority under Section 17 of the Customs Act in deciding the HSN classification of goods.
- Classification of goods under the Customs Tariff is based on the nature of goods, the Customs Tariff and the General Interpretative Rules for interpretation of the Tariff and cannot be based on an expert opinion. While experts can give test reports on the nature of the goods, type of material, etc., classification, which is a part of assessment, has to be done by the 'proper officer'. The tax authority also concluded that since the Taxpayer had not classified the goods in self-assessment in conformity with the views of the Textile Committee, it had misclassified the goods and such misclassification had rendered the goods liable for confiscation.
- Goods will be liable to confiscation under section 111(m) of the Customs Act if they do not correspond to the Bill of Entry filed either in respect of value or in any other particular. Evidently, the expression 'goods correspond to entry made' can only mean correspond to any facts. In addition to various facts such as the nature of the goods, quality, quantity, etc., the Bill of Entry also contains some particulars such as the classification of the goods, exemption notification applicable, etc. which are a matter of opinion.
- The importer, for instance, may classify the goods under a particular heading and the proper officer may classify them under a different heading during reassessment and further appellate authorities from the Commissioner (Appeals) all the way up to the Supreme Court may hold different views on the classification. Nothing in section 111(m) of the Customs Act indicates that the goods can be confiscated if they are classified by the importer and such classification is not in conformity with the views of any officer or any expert.
- The tax authorities clearly misunderstood the scope of section 111(m). Hence, the Commissioner (Appeals) was correct in setting aside confiscation of the goods and the consequential imposition of a redemption fine.
- After an order for clearance of goods for home consumption is given, the assessment can be modified either by the Commissioner (Appeals)/ proper officer by issuing notice under section 28. Such notice is in the nature of review of the assessment. It pre-supposes that the assessment was completed, and some duty escaped assessment. For this reason, the relevant date to calculate the limitation under section 28 of the Customs Act is the date on which the goods have been cleared for home consumption. Before completion of the assessment and clearance of goods for home consumption, the question of demand under section 28 does not arise.
- In this case, the process of assessment and clearance of goods for home consumption was not completed. Consequently, the imported goods were still in the process of assessment even though the tax authorities undertook the assessment instead of letting the proper officer do it in the normal course. However, the Taxpayer did not challenge the assessment of duty through any cross-appeal and paid duty as per the assessment.

- Since section 28(4) of Customs Act does not apply in this case, neither would be the imposition of penalty under section 114A of the Customs Act. In a nutshell, this is a simple case of assessment on first check basis on the request of the Taxpayer (importer) but before the proper officer could examine the imported goods and complete the assessment in the normal course, the tax authorities took over and completed the assessment. It is certainly not a case where the tax authorities detected any fraud or mis-declaration. Consequently, Sections 28(4), 111(m) and 114A of Customs Act are not applicable in the present case. Hence, the Commissioner (Appeals) was correct in setting aside the confiscation and penalty through the impugned order.
- Thus, the Impugned Order is upheld, and appeal filed by tax authorities was set aside.

Development Of E-learning Courses For Further Sale Is Not An OIDAR Service

M/s Focus Edu Care Pvt Ltd Vs. The Principal Commissioner of Service Tax, Bangalore [TS-440-CESTAT-2024(Bang)-ST]

Facts of the case

- The Taxpayer is *inter alia* engaged in the carrying out the following activities:
  - Development and export of E-learning courses to Focus Care Inc, USA (FCI) for its further sale by FCI to its clients;
  - Providing tutors to Advance Tech Enterprises, UAE (ATE) for online tutoring on ATE's Online Tutoring Platform;
  - Acting as a project implementation authority in Bihar, Uttar Pradesh, Gujarat and Rajasthan for Skill Development programmes of the Government; and
  - Sale of fabrics.
- The Taxpayer filed 'Nil' Service tax returns in Form ST-3. On scrutiny by the Anti-Evasion Wing the tax authorities sought copies of the Taxpayer's balance sheet and Profit & Loss Account for the period 2013-14 to 2017-18 along with other relevant documents. Further, statements were also recorded by the tax authorities.
- Consequently, a show cause notice was issued to the Taxpayer demanding Service tax to the tune of INR 9,96,07,280/- along with interest and penalty. However, on adjudication, the alleged demand attributable to non-payment of Service tax was reduced to INR 8,90,70,549/-.
- Aggrieved by the above, the Taxpayer filed an appeal before the CESTAT.

Contentions of the Taxpayer

- **Service provided to FCI and ATE**
  - The consideration for export of E-learning courses offered to FCI and ATE.
  - **Services provided to FCI:**
    - As regards the allegation that these services are classifiable as "Online Information and database access retrieval" (OIDAR) service for which, the place of provision of service would be determined as per Rule 9(b) of Place of Provision of Service Rules, 2012 (POPS Rules) it was submitted that the same is ex-facie erroneous as held by Dewsoft Overseas Pvt. Ltd. Vs. CST [2008 (12) STR 730] and its was contended that an E-learning course is an interactive teaching/ training course which cannot be equated with mere access to online information and data and cannot be held to be OIDAR service.
    - The Taxpayer does not host the E-learning course on any web platform. Further, the Taxpayer merely develops the course which entails analysis, designing, scripting and testing of the courses and then sends the same via email to FCI who host the same on their learning web platform. Consequently, the said service cannot be classifiable as OIDAR services.
    - Reliance placed by the tax authorities on Para 5.9.5 of the CBEC Education Guide is misplaced in as much as the said para nowhere contemplates that developing an E-learning course and supplying it via email to a client amounts to OIDAR service. On the contrary, the example given in the said para of an architect preparing a drawing/ plan and sending it by email as being not covered by OIDAR service supports the Taxpayer's case.
  - **Services provided to ATE:**
    - Online tutoring, being interactive teaching conduct by the Tutors does not amount to OIDAR services. Further, as per Para 5.9.5 of the Education Guide, OIDAR services covers online automated web-based services that are completely automated and require minimal human intervention (See ***Dewsoft Overseas Pvt. Ltd. (supra))***.
    - In the present case, the Web Platform for online tutoring was hosted by and belonged to ATE and the Taxpayer merely provides tutors to ATE. Further, the Taxpayer does not provide any access to the Web Platform and hence, the services under consideration cannot be classified as OIDAR services.
  - Since these services cannot be considered OIDAR services, Rule 9(b) of POPS Rules is inapplicable to the present case. Therefore, by applying Rule 3 of POPS Rules, the place of provision of service would be the location of the recipient. Thus, the transaction qualifies as an export of service as per Rule 6A of the Service Tax Rules, 1994 (ST Rules).
- **Acting as a project implementation authority**
  - As regards Project Aajevika Skills Development Programme, since the Taxpayer was project implementation authority on behalf of the State Government under a Centrally Sponsored Scheme, the same was not liable for Service tax.

- The Taxpayer also acts as the Project Implementation Authority on behalf of the Gujarat Government and imparts training under the ***'Sant Shiromani Ravidas High Skill Development'*** programme under the Skill Development Initiative, being a Centrally Sponsored Scheme.
- As per Circular No. 125/7/2010-ST dated 30 July 2010 (Circular), it was clarified that State Governments are bound to implement Centrally Sponsored Schemes of the Central Government and that the relation between the State Government/ implementing agencies and the Central Government is not one of service provider and service recipient. Accordingly, the Taxpayer is not liable to pay Service tax for acting as project implementation authority.
- Further, the courses conducted by the Taxpayer under the Skill Development program were Modular Employable Skill Courses (MES) approved National Council for Vocational Training (NCVT) and hence, covered under the purview of Negative List under Section 66D(l) of the Finance Act, 1994 (Finance Act) and hence, not leviable to Service tax. Reliance in this regard was also placed ***on Centre for Research & Industrial Staff Performance Vs. CGST [2019 (22) GSTL 385]***.

- **For sale of fabrics**
  - Since the trading activity of sale of fabrics is not a service, the question of payment of Service tax would not arise. It is ex-facie erroneous to treat the income from sale of fabrics as the being consideration for provision of service and demand Service tax thereof.
  - It is well settled that merely on the basis of figures appearing in financial statements/ records, it cannot be presumed that the same pertains to provision of service. Further, without any evidence of the nature of alleged service provided and without identifying service recipients, Service tax cannot be demanded on presumptions. In the present case, no service or service recipients were identified by the tax authorities.
  - The tax authorities had disregarded purchase and sales invoices as well as the Chartered Accountant's certificate substantiating that it has sold fabrics.
  - The contention of the tax authorities that since no VAT return was filed for the said turnover of fabrics, the same cannot be accepted as sale of fabrics is devoid of merits. Applying the same rationale, it would also follow that since no Service tax return was filed in respect of the same, there cannot be said to be a rendition of any service.
- Further, the extended period of limitation cannot be invoked in the present case in as much as the non-payment of Service tax was under a bonafide belief and no facts were suppressed / mis-declared by the Taxpayer.

Contentions of the Tax Authority

- The reliance on Dewsoft Overseas Pvt. Ltd. (supra) is misplaced and inapplicable to the present case because the dispute in that case was pertaining to the classification of service between OIDAR service and 'Commercial training and coaching classes' service. However, the issue in the present is totally different.
- Reference was placed on Circular No. 202/12/2016-ST dated 9 November 2016 which inter alia contained an indicative list of OIDAR Services wherein supply of Distance teaching was specifically mentioned at Sl. No. 16(5) of the said circular.
- The ratio in Centre for Research & Industrial Staff Performance (supra) is misplaced and inapplicable to the present case in as much as the Taxpayer has nowhere produced documentary evidence in respect of Grants in Aid received as consideration, neither in the reply to the show cause notice nor before the adjudicating authority.

Observations and Ruling of the CESTAT

- **Service provided to FCI and ATE**
  - OIDAR services are essentially delivered over the Internet or an electronic network which relies on the Internet or similar networks for their provision. These are completely automated and require minimum human intervention.[1]
  - **Services provided to FCI:** In the present case, the courses developed by the Taxpayer are placed by FCI on its websites. Thus, allowing its users to access and retrieve data. Therefore, the services rendered by the Taxpayer to FCI cannot fall within the scope of OIDAR Service.
  - **Services provided to ATE:** The Taxpayer has merely provided tutors to ATE. Further, the web platform is neither owned nor hosted by the Taxpayer and access to the web platform is provided by ATE to its students. Hence, it does not constitute a web-based service which is completely automated and requires minimum human intervention, rather, is online tutoring which involves interaction between the tutors and the students.
  - Further, the Circular mentions automated teaching dependent on the internet which does not require human intervention or limited intervention including virtual classrooms. Therefore, the reliance placed on ***Dewsoft Overseas Pvt. Ltd.*** *(supra)* is not misplaced.
  - Consequently, as per Rule 3 of POPS Rules read with Rule 6A of the ST Rules, the services provided to FCI and ATE qualify as an export of service and hence, are not liable to Service tax.
- **Acting as a project implementation authority**
  - It is undisputed that the Sant Shiromani Ramdas High Skill Development Programme is an MES approved by NCVT. Consequently, the Impugned Order, in as much as it holds that the skill development scheme is not connected with NCVT or MES is incorrect.

[1] **Editor's Note:** The definition of OIDAR under Rule 2(l) of POPS is pari materia to the definition provided under Section 2(17) of the Integrated Goods and Services Tax Act, 2017 (till 30 September 2024). However, effective 1 October 2023, the definition of OIDAR has undergone a change whereby the phrase 'essentially automated and involving minimal human intervention' was deleted.

- This is also evident from the publication of the Government of Gujarat under the "Skill Development Initiative Scheme" under which training is given in MES leading to certification by NCVT. Thus, the Impugned Order is contrary to the same, and hence, unsustainable.

- **For sale of Fabrics**
  - The tax authorities' finding that the Taxpayer has not provided evidence is not correct despite the fact that the requisite documents/clarifications were duly provided by the Taxpayer.
  - Further, the rejection of the Taxpayer contention on the ground that the sale of fabrics was not declared in VAT returns is unsustainable in as much as the Taxpayer had also submitted that VAT is not leviable on the sale of fabrics and hence, it is not necessary to include its turnover in the periodical VAT returns.
  - As a result, the Impugned Order confirms the demand on sale of fabrics is not sustainable.
- In view of the above, the appeal is allowed, and the Impugned Order is set aside.

Handover Of Building / Civil Structure, Constructed On Leased Land, For Consideration, Is Supply Of Service

Essel Mining Industries Limited [TS-560-AAR(OD)-2024-GST]

Facts of the case

- The Taxpayer is i*nter alia* engaged in the business of mining, iron pellets, Noble Ferro Alloys etc.
- The Taxpayer had entered into a lease deed with the Government of Odisha (Government) wherein mining rights in the form of a mining lease were granted to the Taxpayer for the period starting from 1 October 1984 to 30 September 2004, which was further extended till 31 March 2020.
- For carrying out mining operations, the Taxpayer constructed Buildings and Civil Structures along with Railway Sidings and plant and machinery. The lease deed enabled the Taxpayer to carry out any operation on the said mines, necessary for carrying out mining operations.
- The Government, pursuant to a letter dated 11 January 2021, decided to grant the mining lease to Odisha Mining Corporation Limited (OMCL), a wholly owned corporation of the Government.
- OMCL approached the Taxpayer to acquire the infrastructure constructed by it on the said mines. Accordingly, the Taxpayer and OMCL agreed that OMCL would take over the buildings, including railway siding and plant and machinery constructed by the Taxpayer.
- Consequently, OMCL would make payment of the following consideration for 'handing over and taking over of building and civil structure and Plant and Machinery' on 'as is where is basis':

  A. INR 18,10,51,928/- for handing over the possession of Building and Civil structures

  B. INR 39,84,736/- for handing over the possession of Plant and Machineries

  C. INR 2,04,65,062/- for handing over the possession of Railway siding
- The Taxpayer applied to Odisha Authority for Advance Ruling to issue a ruling on whether such handover of Building and Civil structures including Railway Siding is covered under Clause 5 to Schedule III of the Central Goods and Services Tax Act, 2017 (CGST Act).

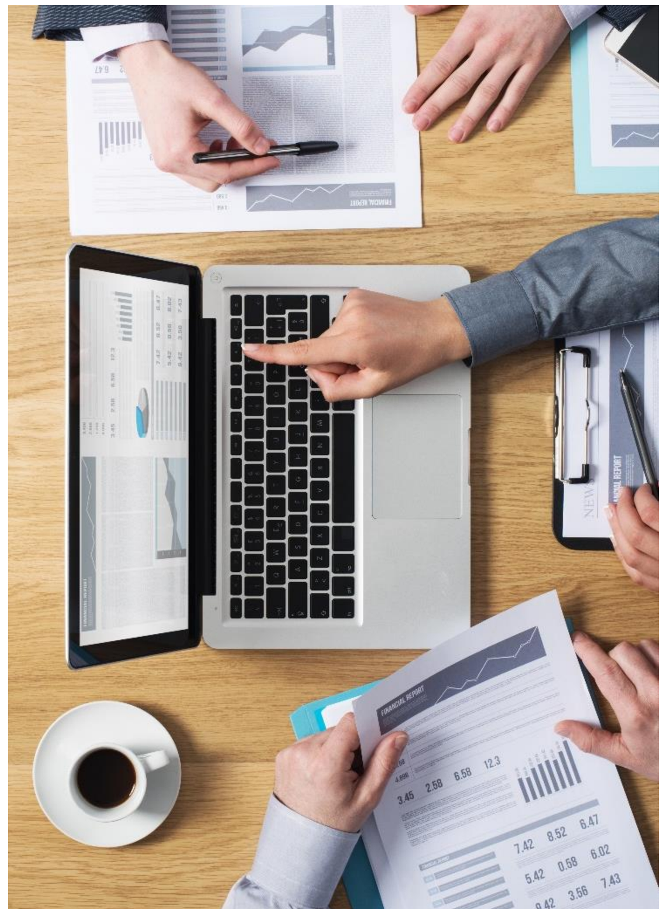
Contentions of the Taxpayer

- Section 7(2) of the CGST Act begins with a non-obstante clause and shall override the definition of supply given in Section 7(1) of the CGST Act. Since, handing over the possession of the Building and civil structures, including railway siding amounts to the sale and transfer of ownership of the building, the transaction under consideration is covered by Clause 5 of Schedule III to the CGST Act.
- The term 'sale' is not defined in the CGST Act and hence, reference can be made to its definition provided under section 54 of the Transfer of Property Act, 1882 (TOPA) which states that *'Sale is a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised'*.
- Reliance was placed on **Bhatia Cooperative Housing Vs. D.C. Patel [1953 AIR 16]** and **Thakoor Chunder Poramanick Vs. Ramdhone Bhuttacharjee [1958 AIR 789]**, to contend that a person who builds any structure on the land belonging to another person is entitled to either remove the structure or receive compensation in case the structure remains on the land for the benefit of the owner of the soil. This gives the lessee the right and ownership over the structure erected on the land. Hence, in the present case, the ownership of building and civil structure lies with the Taxpayer.
- The Taxpayer had constructed the Building and Civil Structure for its own use. Further, the Taxpayer is also in possession of a Completion Certificate. Hence, the entire transaction is out of the ambit of Schedule II to the CGST Act, as it is neither a supply of goods nor a supply of services.
- It is agreed between the parties to not remove the building for the future benefit of the owner of the soil / future lessee. Further, the Taxpayer has transferred the entire rights in the building to OMCL without retaining any benefit or right over the building. Thus, the entire transaction falls under the definition of sale under TOPA and consequently falls under the ambit of 'sale of building' which is neither a supply of goods nor a supply of service as per clause 5 of Schedule III to the CGST Act. Hence, consideration received for handing over the possession of the Building and Civil Structure including railway sidings, are in the nature of the 'building', and hence shall not be leviable to GST.

- Even if the Taxpayer assumes that the ownership of the building does not belong to him, the transaction will not fall under the purview of supply being neither a supply of goods nor a supply of services. Accordingly, the consideration received from OMCL is merely a transaction in money as there is no provision of service by the Taxpayer.

Observations and Ruling of the Authority for Advance Ruling, Odisha

- Since 'supply' is not defined exhaustively in the CGST Act, it is a wider concept and includes all forms of transactions which may constitute supply. Further, the term 'sale' is also not defined under the CGST Act and consequently, the definition given under section 54 of TOPA is considered.
- The Supreme Court, in CIT Vs. Motors and General Stores (P.) Ltd (1967 (66) ITR 692), relying on the definition of Sale under TOPA, held that sale is a transfer of ownership in immovable property for a monetary consideration.
- Building Structure and railway siding constructed on land is attached to it and is part of land. Without land, any building or any portion of building structure has no existence, and for transfer of ownership in building, some rights in land are essential. Building is in the nature of addition to land. After construction of building on land, the property has to be sold as land and building. Building cannot be sold without appropriate claim in land. Therefore, for selling Building or Building Structure or any portion / part of it, proportionate share in land is also to be transferred.
- In the instant case, the Taxpayer has no right or ownership in the land. In view of the above, the interpretation of the Taxpayer that handover of Building Structure and railway siding, by the Taxpayer to OMCL tantamounts to sale of building and is covered under clause 5 of Schedule III to the CGST Act is not correct.
- Further, the Taxpayer has received consideration on the handover of the Building Structure and railway siding. The Taxpayer's other interpretation that consideration received from OMCL is merely a transaction in money, is also not correct.
- On perusal of the lease deed, it is apparent that the Taxpayer has an obligation to remove the buildings/ structures and railway siding within the time specified in the lease deed. However, in the event the buildings/ structures and railway siding erected/set up by the Taxpayer are not removed by him, the State Government shall have the liberty to sell or dispose of the same in such manner as it deems fit, without having any liability to pay any compensation to the Taxpayer in respect of the said buildings/ structures and railway siding.
- Although it was obligatory on the part of the Taxpayer to remove the buildings/ structures and railway siding as per the Lease deed, upon the consent of the State Government, the Taxpayer has entered into an agreement with OMCL for handing over the possession of the Building and Civil Structures and Railway siding to OMCL against monetary consideration. This effectively implies that the Taxpayer has made a contractual promise to OMCL to refrain from removing the buildings/ structures and railway siding erected on the leased land such that the said structures can be put to use by OMCL.
- This contractual agreement is covered under the scope of supply under Section 7(1), being in the nature of *'agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act'* which is a supply of service as per Clause 5(e) of Schedule II to the CGST Act.
- In view of the above, the contractual agreement of handing over of building and civil structure, including railway siding by the Taxpayer would be treated as a supply of service classifiable under SAC 999792 attracting GST @ 18%.



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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

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