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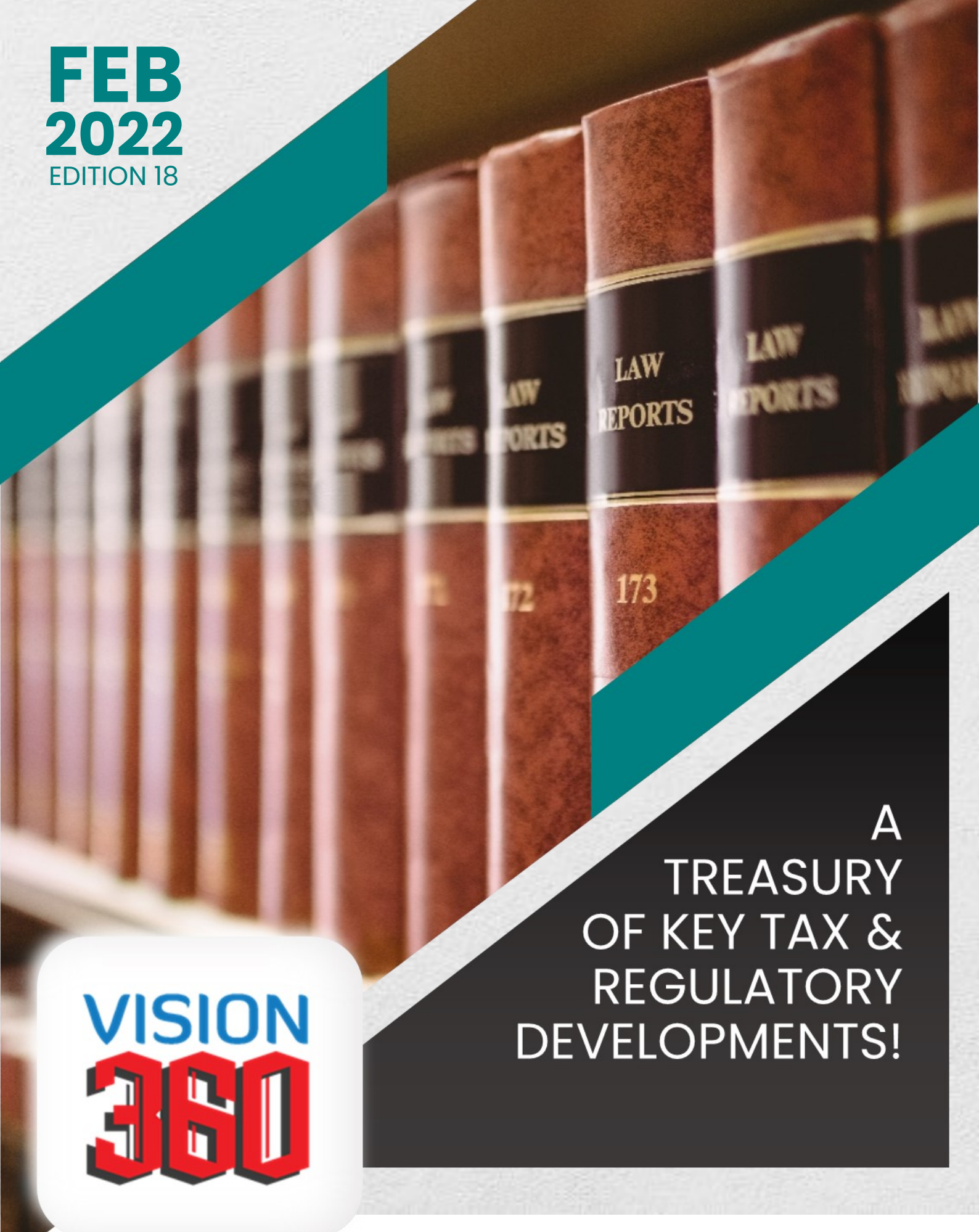

A TREASURY OF KEY TAX & REGULATORY DEVELOPMENTS!

VISION 360

TCA TAXCRAFT ADVISORS

GLS GST LEGAL SERVICES

VMG & ASSOCIATES

tiol ONE-STOP DESTINATION FOR TAXMAN AND TAXPAYER

EDITORIAL

VISON 360: Budget & Beyond...

The month of February is mostly driven by the aftereffects of the Budget. Yet, it becomes important not to lose track of developments other that Budget, which tend to skip our attention and then remind us *'Devil Lies in the Details'!*

In our January Edition we covered the decision of Hon'ble Apex Court in the case of M/s Westinghouse Saxby Farmer Ltd. where the Apex Court set aside Tribunal's decision to classify 'Parts' of Railway as an independent article and not as a 'part of Railway' under Chapter 86. The decision categorically noted that overlooking 'Sole or Principal use test' was unjust. The decision of Hon'ble Court is latest in the series of classification disputes concerning Section XVII (Automobile, Railway and Locomotives and Aircraft industry). The issue seems to be never ending given that Railway and its parts attract concessional rate of 5% while Auto/Auto-ancillary industry is by and large covered under 18%/28% category. This breadth leads to deviation in revenue approach, in that they tend to invoke 'Sole or Principal use test' in case of Auto/Auto-ancillary industry and then classify the product under Chapter 87 and levy higher tax rate. On the contrary, in case of railways and Tramways, the revenue tends to overlook the same test and conclude the classification away from Chapter 86 to deprive the assessee from concessional rate.

By now this phenomenon has turned into a rat race and disputes get settled on case-to-case basis only when they reach before Apex court. However, to restrict the spill over effect of Apex Court's decision in Westinghouse (*Supra*) the board has issued its Instructions citing the decision pertained only to Chapter 86 and that some of the other decisions of Supreme Court itself were not put before its for consideration. The revenue seems to indirectly attack on the binding force of the Decision in Westinghouse and create a deterrent. This coupled with the various DRI investigations into classification issues of Automobile industry, one thing is crystal clear, Government is hell bent to tax the Automobile industry!

So much for ease of doing business...

Speaking of which brings us to another Board Circular which indeed seems to bring some harmony to importers. It clarified relaxation on necessity of Bank Guarantee for Authorised Economic Operators (AEOs). This relaxation is one of the key benefits to AEOs and the same is now aligned with the provisions under the CAROTAR, 2020. Reference to these provisions would not only make the process seamless but also more liberal.

Another interesting development to watch out from India's EXIM side is the recent challenge to the removal of management consultancy/testing & certification services from the scope of SEIS. There exist two school of thoughts on this issue. One protests for a vested right in this benefit whereas other claims this to be a concession that can be offered at the discretion of the legislature! An interesting debate to look up to.

Over the last month the Judiciary too has delivered more eventful decisions, including Apex Court's decision to restore order extending limitation period for judicial proceedings, yet again! In another case it also laid down the obvious - Goods cannot be detained for contravention beyond taxpayer's control. Something that revenue ought to have taken note of themselves. With respect to ITC, the Calcutta High Court held that ITC cannot be

Editorial

denied if the documents are valid. The decision comes amidst continuous changes to credit eligibility being determined based on events beyond tax payers control - such as return filing or tax payment by the supplier, etc.

International landscapes were largely occupied by a stirring yet not so surprising decision by the UAE. The Ministry of Finance, UAE, has announced the introduction of Corporate Tax @ 9% on the profits earned within the UAE effective from June 1, 2023. While the relevant regulations are yet to be released, the Federal Tax Authority has issued a flyer and FAQs to make the stakeholders aware about the scheme of Corporate Tax. Another news from Switzerland Jurisdiction brings forth the ordinance to implement minimum tax rate by January 2024 by Switzerland's Federal Council, which will be followed by constitutional amendments.

In all, we the entire team of **TIOL**, in association with **Taxcraft Advisors LLP**, **GST Legal Services LLP** and **VMG & Associates**, have made an attempt to capture all these changes developments and many more in this edition '**VISION 360**'. We hope that, as always, you will find it an informative and interesting read. We look forward to receiving your inputs, thoughts and feedback, in order to help us improve and serve you better!

Happy Reading!

P.S.: This document is designed to begin with couple of articles peeking into recent tax/regulatory issues allowed by stimulating perspective of leading industry professionals. It then goes on to bring to you latest key developments, judicial and legislative, from Direct tax, Indirect tax and Regulatory space. Don't forget to check out our international desk and sparkle zone for some global and local trivia.

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ARTICLE

BUDGET 2022: KEY POLICY INITIATIVES

Hon'ble Prime Minister recently while addressing *'Aatmanirbhar Arthvyavastha'* referred to Budget 2022 as *'a step towards a modern and self-reliant India'.* The remark appears to be pointing to some of the contemporary Budget proposals such as taxing digit assets, creation of digital currency, self-reliance in defence, so on and so forth.

This article attempts to take a brief look and present author's thoughts around some of these contemporary announcements.

Battery Swapping Policy

Encouraging electronic vehicles has been Government's prime agenda for some time now. Extending this endeavour, the Hon'ble Finance Minister announced Battery Swapping Policy to be introduced soon.

The process lets vehicle owners exchange a discharged battery with a charged battery, much like exchange of LPG cylinders. This will eliminate need for charging time and increases adoptability of electronic vehicles. This model has already seen wide acceptance in the US and Europe and is supported by policies that standardise usage of batteries. In India, only a handful OEMs provide for replaceable batteries while many others prefer non-removable batteries. A uniformity is needed to effectively implement the Battery Swapping Policy which will be catered by standardisation of removable/disposable batteries. One thing however remains unattended globally and that is appropriate disposal of waste batteries. In absence of concrete framework, battery waste can soon turn electronic vehicles from being a green initiative to an environmental hazard. While there are announcements relating to circular economy for electronic waste, end-of-life vehicles, used oil waste, and toxic/hazardous industrial waste, etc. it is silent about vehicle battery wastage.

It is a just time to remember 'a stitch in time saves nine!'.

Digital Rupee

In a move to step-up with competing futuristic currencies, the budget announces India's own Central Bank Digital Currency to be known as 'Digital Rupee'. It would be backed by blockchain and other technologies and will be issued by the RBI in 2022-23. Definition of 'bank note' provided under the RBI Act is also proposed to be suitably amended to include digital note issued by a bank. Surprisingly, the legality of currencies backed by blockchain widely known as cryptocurrencies is still unclear and ambiguous, yet the Government has announced introduction of similar currency of its own, which is a bold move indeed. This digital currency is hoped to boost digital economy and lead to a more efficient and cheaper currency management system. The Minister however did not delve into any further details.

Taxation of Digital Assets

As the economy evolves, so does the tax policy. Given the magnitude of transactions in digital assets, the Minister announced 'scheme of taxation' for virtual digital assets. To start with, any income from transfer of any virtual digital asset shall now be taxed at the rate of 30%. Historically, digital assets were limited to mere photos and videos. This ambit is however widened, and it now covered within its fold anything ranging from documents and presentations to Non-Fungible Token i.e., NFT which can represent high value real-world items such as artwork and real-estate, etc. The proposed taxation scheme is a bit stringent since it does not allow deduction of any expenditure other than cost of acquisition and even bars set-off of any loss incurred towards other income. It also proposes to tax gift of digital assets in the hands of recipient and introduces 1% TDS. Introduction of TDS on digital asset will substantially increase transparency and help government track every transaction as buyers shall be liable to deduct taxes and report the transaction to the authorities.

Atmanirbharta in Defence

'Make in India' and 'Armanirbhar Bharat' have been given a major impetus during planning and procurement of equipment for Indian Army. Atmanirbharta in defence is aimed at enhancing domestic manufacturing and making the country a net exporter in this field. The endeavour has furthered its way into defence sector, more particularly equipment for the Armed Forces. The Government has earmarked 68% of its capital procurement budget for domestic industry in 2022-23. This is a 10% increase from 58% in 2021-22. The Minister also announced opening of defence R&D for industry, start-ups and academia and earmarked 25% of the defence R&D budget for the same. Private industry is being encouraged to take up design and development of military platforms and equipment in collaboration with DRDO and other organizations through SPV model.

While the Budget 2022 provides for traditional development through its ambitious Proposals of infrastructure projects viz. expansion of highways by 25,000 kilometres, allocating INR 60,000 crore to the *'Nal-se -Jal'* scheme, five river link projects, etc. the pathway is also being set for some cutting-edge developments like blockchain backed currency, taxing digital assets, etc. This indeed provides an ambitious set of proposals for the next 25 year's run up of *'Amrit Kaal',* and in this if anything else that will matter the most – display of a strong intent and meticulous execution of these proposals.

BUDGET 2022: KEY CUSTOMS PROPOSALS

Budget 2022 clearly came with a central theme of laying strong foundation for next century of independence. Naturally, it emphasised on some solid infrastructure development. But as the time passes, the concept of development and its pace undergoes a change. Merely building infrastructure is not good enough to pave the long-term development. It requires focused impetus. The budget 2022 has indeed displayed its intent to cater to this necessity and has announced some nimble developments.

Earlier, the Government had announced the much revered 'Production Linked Incentive' Schemes for various industries. The scheme is leading into building domestic capacities and in coming few years it will yield the results too. However, given the length and breadth of investment called for under PLI, its benefit is most likely limited to OEMs. It leaves most crucial segment of MSME's out of its gambit, which is notably the key segment for the country to develop its supply chain efficiency. Without its inclusion, the OEMs would continue to remain dependent on overseas suppliers for the key inputs.

Phased Manufacturing Program

Having identified this phenomenon, the Government has now announced the scheme of Phased Manufacturing Program. This initiative is announced with respect to electronic goods such as Wrist Wearable Devices (smart watches), Hearable Devices and Smart Meters. It is aimed at increasing share of locally procured components in the manufacturing ecosystem in India. This initiative, originally introduced for Mobile Handset manufacturing was received well and is now being replicated for other electronic devices.

The PMP is designed to gradually impose Customs Duty on parts required for the manufacture of Wrist Wearable Devices (smart watches), Hearable Devices and Smart Meters. This increase is proposed in phased manner over next four years till FY 2025-26. The discouraging increase in import duties will create additional opportunities for domestic capacity building. It typically follows a pattern of first focusing on low value component manufacturing and then slowly graduate towards high value component manufacturing.

Interesting part of PMP is that it is still in its nascent stage and is being experimented on segments which have assured growth potential. This strategic approach can ensure domestic capacity building simultaneously eliminating the drag on growth of OEMs. Over the period and with sufficient experience, PMP can become a full -blown initiative which can be replicated for various other industries including Pharma, Textile and Automobile, etc. Not to mention its potential to uplift the MSME segment and bring the policy level benefits to grass root level.

Given that PMP discourages imports, it also attracts challenges from various member countries of World Trade Organisation. Historically, Chinese Taipei contested the raise in tariffs under the PMP for mobile handsets. This dispute appears pending for conclusion, yet it sufficiently creates a precedence to gauge how the expanding horizon of PMP in India will be looked at on global platform. Nonetheless, it is only just that Indian industries optimistically leverage on this scheme for now.

Capital goods

It is a common practice to support domestic industries by making imports more expensive. A similar approach is being adopted for development of capital goods manufacturing in India.

The National Capital Goods Policy, 2016 was aimed at doubling the production of capital goods in the country by 2025. This ambitious target aims at creating additional employment opportunities and increased economic activity. Nonetheless, umpteen duty exemptions have been granted (and have existed for donkey's years now) to capital goods to numerous sectors viz., power, fertilizer, textiles, leather, footwear, food processing and fertilizers. Said exemptions have presumably hindered the growth of the domestic capital goods sector. The Hon'ble FM in this context categorically stated that reasonable tariffs are conducive to the growth of domestic industry and 'Make in India' without significantly impacting the cost of essential imports.

In this backdrop, the GoI proposes to phase out the concessional rates on capital goods and to apply a moderate tariff of 7.5%. Nonetheless, certain exemptions for advanced machineries not manufactured within India have been chosen to be continued. At the same time, a few exemptions have been proposed on inputs, like specialised castings, ball screw and linear motion guide, in order to encourage domestic manufacturing of capital goods.

Notably, the Export Promotion Capital Goods scheme (which allows manufacturers/service providers to import capital goods without custom duty against export obligation equivalent to six times of duties and taxes saved on capital goods) is being examined for its viability so as to promote domestic capital goods industry. The GoI is mulling over to gradually phase it out given its potential to hamper growth of domestic capital goods industry.

While there exist strong arguments in favour of continuation of EPCG scheme including GoI's own admission that impressive growth in engineering goods exports in recent years has largely been owing to the Zero duty EPCG *[reference drawn to Press Release dated Jan 24, 2022; source: https://pib.gov.in/PressReleaseIframePage.aspx?PRID=1792226]*, the GoI's overall endeavour appears to be phasing out the concessional import duty rates on capital goods (including elimination of EPCG scheme) in order to encourage domestic manufacturing of capital goods.

Concessional rate of duty rules

The Budget 2022 has proposed ambitious plans on many levels. One of them is proposed modification to the Customs (Import of goods at concessional rate of duty) Rules, 2017 (**'IGCR'**). Exemptions from import duties have always attracted a slurry of compliance measures and has caused hurdles in seamless transactions. Noting these issues, the IGCR is proposed to be amended. A glimpse into these amendments is summarised below:

- Introduction of automation in the entire process. This calls for submission of all necessary details electronically, through a common portal. The introduction of the portal is being introduced as a part of the statutory provision in the IGCR itself;
- Standardization of forms;
- Leveraging the advantage of such submissions electronically, the need for any transaction-based permissions and intimations are all being done away with;
- Consequently, the procedure to claim the notification benefit is being simplified and automated;
- For effective monitoring of the use of goods for the intended purposes, a Monthly Statement is being proposed which is to be submitted by the importer on the Common Portal; and
- An option for voluntary payment of the necessary duties and interest, through the Common Portal is being provided to the importer.

Overall, these proposed changes to IGCR are clearly aimed at *'trade facilitation'* and to serve the purpose of *'Ease of doing business'*. These changes are proposed to be brought into effect from March 01, 2022. This is unlike many of the benevolent amendments, where date of effect is deferred owing to one reason or the other. A conclusive date of IGCR amendment means, taxpayers can fathom benefits of the same sooner than their anticipation.

INDUSTRY PERSPECTIVE

Mrs. Meghna Joshi

Director & Chief Financial Officer

Nobel Biocare India Private Limited

1 Recently, the Hon'ble Finance Minister has announced the Union Budget 2022-23, basing the theme of Amrit Kaal! How well do you think the Government has fared in setting-up the tone for the coming 25 years?

Well, in a bid to lay down the foundation for the coming 25 years, the Hon'ble Finance Minister Smt. Nirmala Sitharaman has indeed announced an ambitious Budget. From proposing highway connectivity projects, to allocating resources for the 'Nal Se Jal' Scheme, and boosting infrastructure development in the North East, the Union Budget '22 has undoubtedly laid down the stepping stone for the future.

Notably, the Government has made great strides towards achieving the objective of 'Digital India'. The proposal to introduce the Digital Rupee, a currency backed by blockchain technology and setting-up of 75 digital banking units in 75 districts, stand testament to such objective.

As regards the developments on the tax front, it is refreshing to see the FM urge the Revenue to defer filing of repetitive appeals against an assessee until the substantial question of law is decided by the jurisdictional High Court or the Supreme Court, which would considerably reduce the burden on the Judiciary.

On the GST front, while the FM has commendably proposed to extend the final date for availment of credit from September to November, there have also been certain underwhelming proposals such as additional restrictions on ITC availment by the recipients, basis the GST compliances of the suppliers. Overall, it seems that the Government has focused more on economic development vis-à-vis tax rationalization.

2 In lines with the objective of Digital India, as you say, what are your views on Faceless Assessment?

No doubt that Faceless Assessment is a stride towards the Digital India objective. However, the underlying objective of this scheme is understood to be elimination of corruption. The move to have faceless litigation at ITAT level, though commendable, comes with certain underwhelming aspects. Litigations, hearings, arguments, without a physical hearing is just not the same as the litigators find it difficult to explain complex transactions to the Officers and judges.

It is no secret that the digitalization and faceless schemes are rather foreign for both the taxpayers and tax collectors in India. Thus, until the trade as a whole become familiar with the faceless system, the opportunity of physical hearings shall be extended. Over a gradual period of time, faceless systems in nearly all aspects of life are inevitable. However, I believe the implementation shall be in a gradual manner. I always go by a saying I heard once that "Slow is smooth and smooth is fast!"

3 What are the major challenges and barriers for the growth which your Company or the industry face as a whole?

Well, dental hygiene has always taken a back-seat in India when it comes to health and personal well-being. Given the non-popularity, the dental industry is not quite as large as its counterparts such as the eye-care or dermatology industries, which today, are well-organised in the Indian market.

Also, one major issue with the dental industry is that the same is not covered in health insurance policies. Therefore, there is a stigma in the Indian market that since it is not covered by insurance, it might not be very important. Therefore, people tend to be reactive rather than proactive in their approach and visits to dentists only for treatments and rarely ever for check-ups. Moreover, there is a false belief that dental treatments are expensive and time-consuming. Thus, people generally avoid such treatments unless it is absolutely necessary.

4 What is dental tourism and how is it shaping up post the COVID effect?

Before the pandemic hit, the dental tourism had really picked-up well in India. Simply put, it is a phenomenon where patients travel abroad for dental treatment. This trend started as a response to the increasingly high costs of healthcare and long waiting lists facing patients in many Western countries.

However, as the pandemic hit, the global travel took a huge blow. People could not come to India for their treatments. This also meant lower demand for dental goods by the dentists, who make up a large chunk of our clientele. Thus, it is needless to say that the COVID-19 has hugely impacted our business. Nonetheless, after every dark night, comes a glorious morning! Thus, we are positive that the business will soon be at its best levels!

5 How do you see Government policies shaping up for medical sector?

Today, the Country is catapulting towards becoming a nation with high-end diagnostic services and tremendous capital investment for advanced diagnostic facilities for its citizens, thanks to the important initiatives introduced by the incumbent government in recent years. Some major initiatives undertaken by the Government which aim at providing accessible, cost-friendly and quality healthcare services to the majority of the citizens along with providing a holistic view of the health system in the country are: Pradhan Mantri Jan Arogya Yojana, Ayushman Bharat-National Health Protection Mission, and Mission Indradhanush.

With a population of over a billion people, there is no doubt that the medical sector will always be a top priority, as it should be. As they say, a nation is only as great as its citizens are healthy!

6 The tax space has fast evolved over the last few years. What has been the impact of such changes on the economy and the service industry? Do you believe that such changes are aligned with overall long-term growth objectives?

The tax space of any country evolves over a period of time. In India, we have witnessed times when there were no transfer pricing provisions and a catena of litigations arose as they were introduced in 1990's. It is likely that

Industry Perspective

equalisation levy on global income of techno-giants may lead to a similar situation.

The most recent tax revolution in India came with the introduction of GST in 2017. While this law was a subject matter of great discussion in the Parliaments for more than 10 years, it still seemed to be implemented in haphazard manner. Given the number of issues arising on a daily basis, be it credit availment or e-way bill mechanism or applicability on certain transactions, shows that the law still has a long way to go in becoming efficient. However, many of the issues have been resolved in the past 4-5 years and it its contemplated that the same will become more effective in the coming years.

NOTIFICATIONS

CBDT notifies rules for computing exempt income for specified funds under Section 10(4D) & 115AD(1B) of the IT Act effective from April 1, 2022

Notification No. 6/2022

January 14, 2022

CBDT notifies Income Tax (1st Amendment) Rules, 2022 through which it inserts Rules 21AJA and 21AJAA along with the Forms 10-IK and 10-IL which shall come into force from April 1, 2022.

Rule 21AJA prescribes a formula for computation of exempt income of specified fund, attributable to the investment division of an offshore banking unit, for the purposes of Section 10(4D) of the IT Act. The Rule also lays down the conditions to be complied with by an investment division of an offshore banking unit. Under Rule 21AJA, an investment division of an offshore banking unit shall also furnish a CA's report in Form 10-IL regarding maintenance and audit of separate books of account.

Rule 21AJAA prescribes a formula for the determination of income of a specified fund attributable to the investment division of an offshore banking unit under Section 115AD(1B) of the IT Act.

The eligible investment division shall furnish an annual statement of exempt income in Form No. 10-IK electronically under digital signature on or before the due date under Explanation 2 to Section 139(1) of the IT Act.

CBDT notifies e-Advance Rulings Scheme, 2022 applicable with effect from January 18, 2022

Notification No. 7/2022

January 18, 2022

CBDT notifies e-Advance Rulings Scheme, 2022 ('Scheme') which shall apply to the applications for advance rulings made or transferred before the Board for Advance Rulings with immediate effect.

CBDT states that it shall devise a process to randomly allocate or transfer the applications for the advance ruling to the Board for Advance Rulings through an automated allocation system. Procedure for filing and processing the application under the Scheme has also been prescribed.

Further, CBDT states that the applicant shall not be required to appear either personally or through an authorised representative before the Board for Advance Rulings or the Secretary, ministerial staff, executive or consultant posted with the Board for Advance Rulings. The proceedings of Advance Rulings shall not be open

to the public. Accordingly, the Scheme bars any person other than the applicant, his employee, the concerned officers of the Board for Advance Rulings, the Income Tax Authority, or the authorised representatives from being present during such proceedings, even on video conferencing or video telephony. Appeal against an order for advance ruling passed by the Board for Advance Rulings under this Scheme shall lie before the HC.

CBDT notifies Rule 8AD for computation of capital gains from specified ULIP

Notification No. 8/2022

January 18, 2022

CBDT notifies Income tax (2nd Amendment) Rules, 2022 to inserts Rule 8AD for computation of capital gains under Section 45(1B) of the IT Act.

Accordingly, CBDT prescribes a formula to calculate capital gains on any amount received under a specified unit linked insurance policy ('ULIP'), including the amount allocated by way of bonus on such policy at any time during any previous year.

Further, CBDT states that the capital gains so computed shall be deemed to be the capital gains arising from the transfer of a unit of an equity-oriented fund set up under a scheme of an insurance company comprising ULIP.

CBDT amends Securities Transaction Tax Rules, 2004 for Insurance Companies

Notification No. 9/2022

January 18, 2022

CBDT notifies Securities Transaction Tax (1st Amendment), Rules, 2022 to amend Securities Transaction Tax Rules, 2004.

CBDT prescribes Form No. 2A as 'Return of taxable securities transactions for Insurance Company'. Further, Rule 5A has been inserted to prescribe that the person responsible for collection and payment of Security Transaction Tax in case of Insurance Company shall be the managing director or a whole-time director, as defined under the Companies Act, duly authorised by the Board of Directors of such company in this behalf.

CIRCULARS

CBDT provides one-time relaxation for verification of all ITRs e-filed for AY 2020-21, applicable upto February 28, 2022

Circular No. 1/2022

January 11, 2022

Taking cognizance of the difficulties reported by the taxpayers and other stakeholders, CBDT extends the due dates for filing of Income Tax returns and various audit reports for the Assessment Year 2021-22 under the IT Act as mentioned below:

Compliance	Revised Due -Date
Audit Report of the assessees referred in clause (a) of Explanation 2 to sub-section (1) of section 139 of the IT Act	February 15, 2022
Audit Report of the assessees referred in clause (aa) of Explanation 2 to sub-section (1) of section 139 of the IT Act	February 15, 2022
Report from Accountant by persons entering international transactions or specified domestic transactions under section 92E of the IT Act	February 15, 2022
Return of Income under Section 139(1) of the IT Act – where Tax Audit is applicable*	March 15, 2022
Return of Income under Section 139(1) of the IT Act – where Transfer Pricing provisions are applicable*	March 15, 2022

Clarification (*) - Where the amount of net tax payable exceeds one lakh, the extension shall not apply to Explanation 1 to Section 234A of the IT Act thereby the interest of 1% per month or part thereof under Section 234A shall apply considering the original due date. Further, in case of an individual resident in India referred to in sub-section (2) of section 207 of the Act, the tax paid by him under section 140A of the Act within the due date provided in that Act, shall be deemed to be the advance tax.

CBDT issues Guidelines for exemption under Section 10(10D) of the IT Act

Circular No. 2/2022

January 19, 2022

CBDT issues Guidelines under Section 10(10D) of the IT Act for computation of exempt income from one or more unit linked insurance policies issued on or after February 1, 2021.

The guidelines explain with examples, the applicability of provisions under two situations where:

- No consideration is received under any eligible ULIPs during any previous year preceding the current previous year or consideration has been received on such eligible ULIPs but has not been claimed exempt; or
- Consideration is received under any one or more eligible ULIPs during any previous year preceding the current previous year and has been claimed to be exempt under Section 10(10D) of the IT Act.

ITAT holds fees for technical know-how paid to US Company, revenue expenditure, not hit by Section 32(1)(ii) of the IT Act

Frick India Ltd

ITA Nos. 2072/Del/2008 & 330/Del/2012

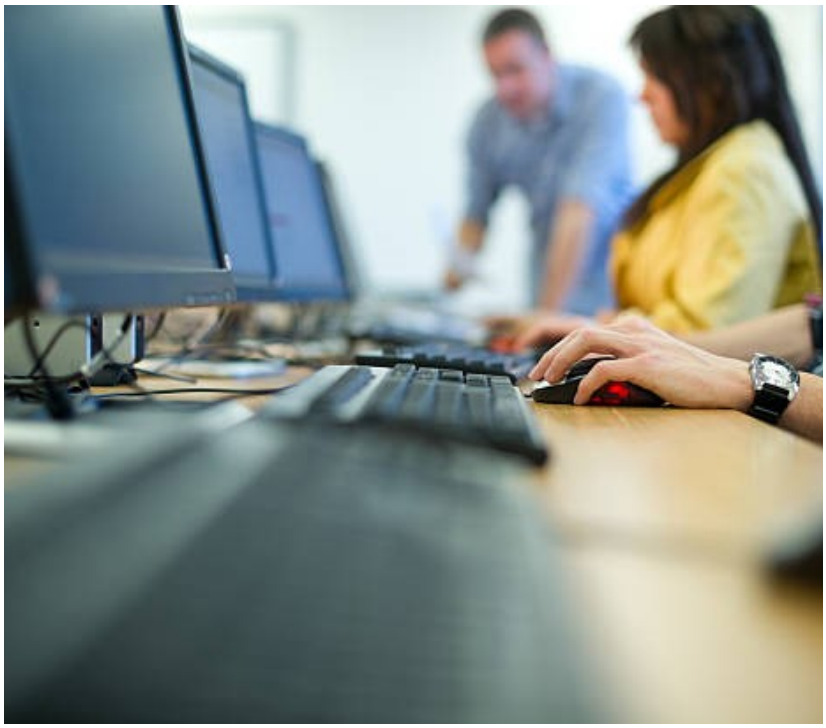
The Assessee was engaged in the business of manufacturing and sale of air conditioning and refrigeration equipment. It had entered into an agreement with a US based Company to acquire a non-transferable licence to use technical know-how for manufacturing the products and parts in India and to market them. A fee of INR 82.73 Lakhs paid during previous years and the same was claimed as revenue expenditure.

The AO held that pursuant to the amendment in Section 32(1)(ii) of the IT Act, the expenditure incurred towards technical know-how became capital expenditure eligible for depreciation @25%.

Aggrieved, the Assessee approached the CIT(A) who upholding the order of the AO, further observed, that the Assessee had paid royalty for the acquisition of an exclusive privilege of manufacturing and selling the products. Therefore, the CIT(A) held that the royalty and fees for using technical know-how were for establishing new factory paid and thus, should have been taken to the capital account on which 25% depreciation would be allowed.

Aggrieved, the Assessee approached the ITAT which set aside the observation made by CIT(A) regarding payment of royalty and observed that the payment of royalty as stipulated in the agreement was after a period of 5 years from the date of commercial production and no royalty was paid during the current AY.

Further, with regards to the disallowance of fees towards usage of technical know-how, the ITAT remarked that both the lower authorities had failed to appreciate the scope and gamut of Clause (ii) to Section 32(1) of the IT Act that was made available on the statute. The ITAT thereby, observed that mere expenditure towards fees for technical know-how would trigger the application of Section 32(1)(ii). Fees for technical know-how being in the nature of a capital expenditure would attract Section 32(1)(ii).



The ITAT rejected the observation of the CIT(A) that the fees for using technical know-how was for establishing new factory and perusing the agreement. Thus, the ITAT observed that the payment was made for running Assessee's ongoing business already in existence in a more technically viable manner and to facilitate improvements for yielding larger profits.

Accordingly, The ITAT held that fees for using technical know-how paid to US based Company was allowable as revenue expenditure and was not hit by Section 32(1)(ii) of the IT Act.

Hon'ble HC affirms ITAT's order adopting guidance value as full value of consideration for capital gains under Joint Development Agreement

Shankar Vittal Motor Co. Ltd. & Another

ITANo.653/2016 &I.T.A.No.11/2017

The Assessee entered into a Joint Development Agreement for AY 2006-07, under which it was entitled to receive 25% of the built-up area with proportionate undivided share in common areas and facilities. The same was transferred for a consideration of INR 3 Crores, however, was not reflected in the books of account since it was not realized.

The AO, in the reassessment proceedings treated the cost of construction as the full value of consideration.

Aggrieved, the Assessee approached the CIT(A) who directed the Revenue to adopt the FMV as consideration.

Aggrieved, the Revenue approached the ITAT which adopted guidance value as full value of consideration for capital gains under Joint Development Agreement. Thereby, the ITAT dismissed the Revenue's appeal causing the Revenue to prefer an appeal before the HC.

The HC observed that in the instant case, the Revenue had adopted the rate merely on the basis of letter given by the developer which was not supported with any particulars. Further, the possibility of the developer giving an inflated figure to suit his requirements and to gain minimum tax on his profits by inflating his costs could not be ruled out. Therefore, the determination of full value of consideration based on developer's letter was not appropriate.

Further, the HC observed that the cost of construction, as adopted by the Revenue, would not be the appropriate method to arrive at the full market value of consideration. Thereby, the HC held that the guidance value of the land or building as adopted by the ITAT was the appropriate mode to determine the full value of consideration where consideration for the transfer of a capital asset was not attributable or determinable.

ITAT disallows depreciation on enhanced goodwill resulting from assets' revaluation pursuant to slump sale

Middle by Celfrost Innovations Pvt. Ltd

ITA Nos.953 to 955/Bang/2019<TIOL Citation Needed>

The Assessee had acquired the assets and liabilities of the refrigeration business of Celfrost Innovations Pvt. Ltd. (referred as 'Seller') on slump sale basis through business transfer agreement. After conclusion of the slump sale, the Assessee obtained an independent valuation report and recorded the assets and liabilities at its fair value. In this report, an allocation was made towards brand value and the excess of purchase price was recognised as goodwill which was subjected to adjustments on account of valuation of certain assets (sundry debtors & inventory).

The AO accepted that the goodwill arose from the slump sale, however, held that goodwill arising on adjustments in the value of debtors and inventory was not eligible for depreciation. Accordingly, the depreciation claimed by the Assessee

was disallowed.

Aggrieved, the Assessee approached the CIT(A) who upheld the order of the AO which caused the Assessee to prefer an appeal before the ITAT.

The ITAT observed that there was no provision in the Act to provide as to how the purchaser in a slump sale had to record the value of assets/rights acquired. Further, the ITAT observed that cost/consideration allocated to various assets had to be and had been recorded as bargained between the Assessee and the Seller. It was only after such allocation that the Assessee undertook the valuation exercise and noticed a higher value of debtors and inventory.

The ITAT further observed that both the items of sundry debtors and inventory were part of the business that was acquired by the Assessee on slump sale basis and they would thereby, retain the same character as they had with the seller. Therefore, the Assessee would be entitled to claim bad debts as well as fall in value of inventory as deduction, subject to satisfaction of the conditions for such allowance laid down in the IT Act. Since the Assessee was denied goodwill adjustment and depreciation, the Assessee would suffer a loss as it will perpetually lose its right claim of a deduction on account of bad debts written off to which it was legally entitled to. However, placing reliance on SC ruling in ***Smifs Securities*** *[2012-TIOL-53-SC-IT]* the ITAT observed that the Assessee could not seek to vary the quantum of goodwill based on an exercise carried out by its subsequent to the slump sale and by-passing entries in the books of accounts towards the end of the financial year, even though there may be valid reasons for doing so.

Thus, dismissing Assessee's appeal, the ITAT denied depreciation on enhanced value of goodwill arising on acquisition of the undertaking as a going concern on a slump sale basis.

ITAT holds capital gains not taxable in year of JDA but in the year of possession by Assessee of its share

NG Balu Reddy, HUF

ITA No.651/Bang/2020

The Assessee had filed its return of income for in the capacity of HUF represented by his wife as the manager of the HUF and had entered into Joint Development Agreement ('JDA') with a real estate developer in respect of land in Bangalore.

On verification of the income tax return filed for AY 2009-10, it was noticed that the Assessee had not paid capital gains tax on account of JDA entered by the Assessee in respect of the said land.

In the above circumstances, being of the opinion that income had escaped assessment, the AO issued a notice under Section 148 of the IT Act to the Assessee, to assess the escaped capital gains tax. Thereby, reopening the assessment.

Aggrieved, the Assessee approached the CIT(A) challenging the reopening of the assessment. The CIT(A), considering the reopening of the assessment to be bad in law as the chargeability arose in AY 2005-06 i.e. the year in which the Assessee entered into the JDA and not in AY 2009-10, deleted the addition and cancelled the reopening of the assessment.

Aggrieved, the Revenue preferred an appeal before the ITAT submitting that the assessment was reopened on

the reason that the Assessee had entered into JDA without paying capital gain tax on account of this transaction.

Before the ITAT, the Assessee contended that date of transfer was to be considered from the year of entering into JDA and not the year in which Assessee received his share of constructed area.

The ITAT noted that the transaction took place in AY 2005-06 and the possession given under the JDA was not to be construed as possession in part performance of the Transfer of Property Act ('TPA'). Also, no progress took place in AY 2005-06 except receipt of INR 30 Lakhs as refundable security deposit in terms of the JDA.

Therefore, the ITAT placing reliance on the SC ruling in ***Seshasayee Steels Pvt Ltd.*** *[2020-TIOL-54-SC-IT-LB]* observed that merely giving license to the developer could not be said to be the possession within the meaning of Section 53A of TPA and the developer had to get the control over the land and not actual physical occupation of land.

The ITAT further remarked that though it was initially held by various Courts that the capital gains were to be assessed in the year in which the development agreement had been entered into between the land owner and the developer, considering the fact that in many cases, the development agreement was not acted upon by the developer, different views had been expressed as to the year of assessibility, based on the facts and circumstance of each case.

Further, The ITAT placing reliance on the commentary to the TPA noted that 'willingness to perform' for the purposes of Section 53A was something more than a statement of intent and was the unqualified and unconditional willingness to perform its obligations. In the instant case, the transferee had neither performed nor was willing to perform its obligation under the agreement in AY 2005-06, and thus, there was no transfer of proportionate land by the Assessee under the JDA. Therefore, as the conditions of Section 53A of TPA were not satisfied in AY 2005-06, Section 2(47)(v) of the IT Act could not be invoked in the instant case.

In addition to the above, the ITAT also noted that there was no evidence to show that the right to receive the sale consideration actually accrued to the Assessee in AY 2005-06 and without accrual of the consideration, the Assessee was not expected to pay capital gains on the entire agreed sale consideration in the said AY. Therefore, the Revenue rightly taxed the capital gain in the year of receipt share of duly developed and constructed area by the Assessee.

Thus, allowing Revenue's appeal, the ITAT held that where municipal authority's sanction was received in the subsequent year and no development activity took place in the project during the year of entering into JDA, capital gains on the JDA was not taxable in year of agreement but in the year of possession of Assessee's share.

FROM THE JUDICIARY
TRANSFER PRICING

ITAT deletes AMP adjustment towards alleged Hyundai Motor Corp's brand enhancement, follows Assessee's own case in previous years

Hyundai Motor India Ltd

I.T.(TP).A.No .39/CHNY/2021

The Assessee was a wholly owned subsidiary of M/s. Hyundai Motor Company, Korea that had filed its income tax return and had entered into various international transactions with its AEs.

During the course of assessment proceedings, a reference was made to the TPO for determination of ALP of international transactions entered into by the Assessee with its AEs.

The TPO had proposed TP adjustment on notional brand fees receivable from AE towards enhancement of brand value of the parent company of the Assessee. While arriving at TP adjustment, TPO used Spearman's Rank Correlation method to conclude that there is a positive correlation between the brand value of the Assessee and market capitalization of its AE. Based on such analysis, the TPO computed incremental brand value and attributed 50% of the AMP expenses to be recovered from the AE towards brand promotion along with a mark-up of 9.15% as brand fee adjustment.

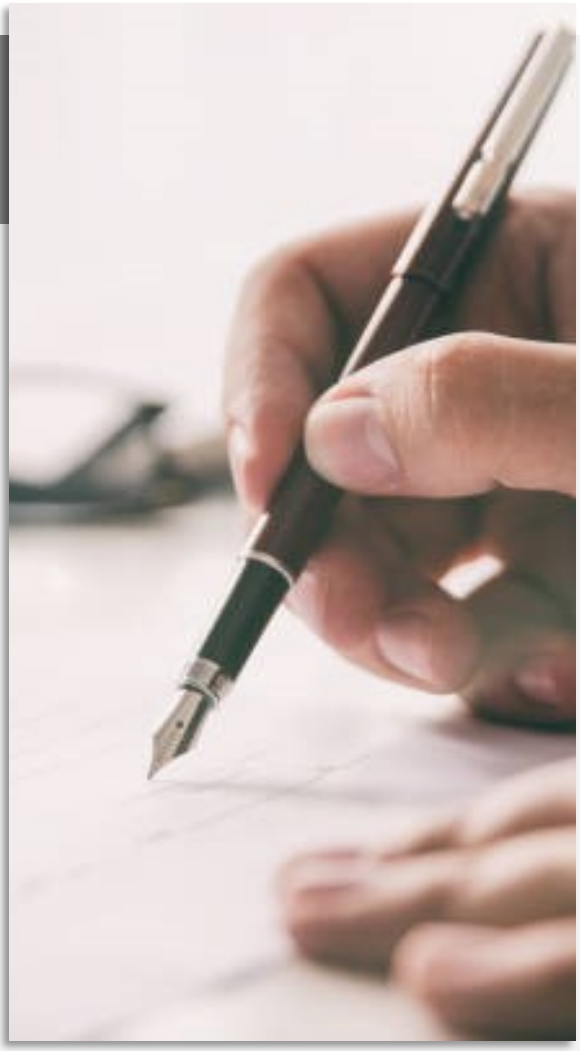
Pursuant to the TPO order, the AO passed a draft assessment order which was challenged by the Assessee before the DRP which rejected objections filed by the Assessee and directed the AO to pass final adjustment order.

Aggrieved, the Assessee approached the ITAT challenging TPO's jurisdiction of *suo-moto* considering the incurring of AMP expenses as an "international transaction" in the absence of agreement to undertake the same as primary or ancillary activity by the Assessee.

The ITAT placing reliance on the coordinate bench ruling in Assessee's own case in previous years, wherein, on identical issue, the coordinate bench had deleted the brand fee adjustment and, observed that the definition of 'international transaction', in Indian context required rendering of services, as against only accruing of benefits. Further, in absence of formal agreement or arrangement for rendering of service, any benefit arising in the form of the accretion in global brand value of its parent company was held not to be attributable to the Assessee.

Thus, adopting a view consistent with the view taken by the coordinate bench in previous years, ITAT directed the AO to delete addition made towards brand fee adjustment.

ITAT upholds internal TNMM for ALP determination; Directs segmental costs calculation basis CA's certificate



In Trading Pvt Ltd

ITA No. 3712/Del/2018

During the course of assessment proceedings, the AO made an addition on account of TP adjustment to the international transaction entered into by the Assessee with its AE basis the segment accounts duly certified by a CA submitted by the Assessee. The segment accounts to the rationale of the TPO proved that the Assessee had earned margin of 0.74% on overall export sales to AE segment as against the margin of 0.39% on export sales to non-AE segment.

Aggrieved, the Assessee approached the CIT(A) which placing reliance on the judgment of the ITAT in ***Birla Soft India Ltd,*** *[ITA No. 284/Del/2013],* directed the AO to determine the ALP of the international transactions with the AE by making internal comparison of the net margins earned by the Assessee from international transaction with AE and margin earned by the AE from international transactions with unrelated parties. The AO was further directed to calculate the costs of the segments on the basis of the certificate of the CA.

Aggrieved, the Revenue approached the ITAT contending that the CIT(A) erred in accepting internal TNMM method when Assessee itself offered adjustment under external TNMM during TP proceedings and further contended that no revenue distribution between foreign AE and non-AE could be established since no segmental reports were furnished by the Assessee at the time of original TP proceedings.

The ITAT finding no error of law or facts in the directions of the CIT(A) given to the AO, held the appeal filed by the revenue to be infructuous and thereby, dismissed the appeal of the Revenue.

Hon'ble HC quashes reassessment proceedings holding it to be a change of opinion not permissible in law

Skoda Auto Volkswagen India Private Limited

Writ Petition No.1320 of 2013

The Petitioner had received a notice dated March 23, 2011 wherein the Revenue informed the Petitioner that it had reasons to believe that Assessee's income chargeable to tax for the AY 2004-05 had escaped assessment. The Assessee's objections to the notice were disposed and other notices were issued. The Revenue completed the assessment and passed an assessment order.

Aggrieved, the Petitioner preferred a writ petition before the HC challenging the assessment order passed along with other notices and an order dated January 23, 2013 passed by the TPO to whom a reference was made in furtherance to the notice dated March 23, 2011.

Before the Hon'ble HC, the Revenue contended that on account of failure on the Assessee's part to disclose truly and fully the material facts necessary for its assessment for the concerned year, reassessment proceedings were needed to be initiated.

In response to this contention of the Revenue, the Assessee contended that Form 3CEB filed by the Assessee disclosed all the details and description of international transactions in respect of know-how and patents details regarding royalty paid and lump sum fees for know-how paid and fees for technical services paid to its AEs. The Assessee further contended that these details were considered by TPO and consequently by AO while passing the original assessment order.

The Hon'ble HC noting that reassessment was proposed after expiry of 4 years from the end of relevant assessment year and that the reasons quoted by Revenue did not indicate which material facts the assessee failed to truly and fully disclose and observed that the assumption of jurisdiction by the Revenue to be *ultra vires*.

The Hon'ble HC further observed that the Assessee had filed Form 3CEB wherein the details of international transactions and details regarding royalty paid and lump sum fees for know-how paid and fees for technical services paid to its AEs were fully disclosed. Therefore, the HC placing reliance on its ruling *in* ***Ananta Landmark Pvt Ltd,*** *[2021-TIOL-1971-HC-MUM-IT]* deemed the reasons given by the Revenue for reopening the proceedings amount to change of opinion and thus, not permissible.

The Hon'ble HC allowed the Writ Petition while quashing the reassessment proceedings, notices and orders.

FROM THE LEGISLATURE
GOODS & SERVICES TAX

Sr. No.	Notification / Circular	Summary
1	GSTN Advisory	**Revamped Search for HSN Code functionality** The GSTN issued an advisory on revamped to search the technical description of any particular HSN code of any goods or service used in the trade provided in HSN description in the Customs Tariff Act, 1975. As the taxpayers faced challenges for finding the corresponding HSN codes, the GSTN ameliorated this challenge and to make the functionality user friendly. 'Search HSN' functionality has been revamped by linking it with e-invoice database and Artificial Intelligence tools. Taxpayer can search HSN/ Description using either of the two options which are provided as radio buttons. In the search results, the taxpayer will be able to view the top three most commonly used trade descriptions of the said goods or services in the database along with their respective technical descriptions. In case taxpayers are not able to find HSN of any goods or services, then they can raise a ticket on GST Self-Service Portal.
2	Circular No. 1081/02/2022-CX dated January 19, 2022	**Recovery and write-off of arrears of revenue** Circular aimed to expedite recovery of confirmed demands under erstwhile and present Indirect Tax laws. Calls for formation of a 'Tax Recovery Cell' headed by Joint / Additional Commissioner level officer in each Commissionerate. It classifies arrears into five categories depending upon forum. Following are the key guidelines: **Cases pending before Supreme Court / High Court / CESTAT** • Jurisdictional officers need to identify all cases where department has strong case and amount involved exceeds Rs. 1 Crore; • Department will file early hearing applications with the Registrar of relevant Court. **Cases pending before Commissioner (Appeals)** Commissioner (Appeals) need to take up cases with revenue implications exceeding Rs.10 Lacs for immediate disposal.

Sr. No.	Notification / Circular	Summary
2		**Cases of restrained arrears due to financial viability of defaulter, pending before National Company Law Tribunal / Debt Recovery Tribunal / Official Liquidator etc.** • Department will file affidavits for first charge under respective tax laws. • Jurisdictional officers will attend meetings of Committee of Creditors to raise points for protection of Government revenue as Operational Creditors **Cases where appeal period is not over** These cases will be closely monitored. **Cases where appeal period is over** • Where taxpayer and its property are identified, recovery would be done on priority by attaching its movable and immovable properties. For attachment of property, methods prescribed under relevant laws will be followed. • Comprehensive enquiries will be conducted to identify properties of defaulters
3	Instruction No. 01/2022-GST dated 7 January 2022	**Guidelines for recovery proceedings under Section 79 of the CGST Act** • Explanation was inserted in Section 75(12) of the CGST Act through the Finance Act, 2021 and was made effective from January 1, 2022. It provides that supplies declared in GSTR-1 but not in GSTR-3B, would be treated as self-assessed tax and can be recovered without issuing SCN. • In this context, CBIC has issued guidelines that proper officer needs to send communication bearing DIN to taxpayer to explain reasons for short payment of GST in GSTR-3B as compared to liability declared in GSTR-1. If proper officer is satisfied with reasons given by taxpayer, then recovery proceedings under Section 79 need not be initiated. However, if taxpayer fails to reply or make payment, then recovery proceedings under Section 79 shall be initiated.
4	GSTN Advisory dated 8 January 2022	**Interest calculator in GSTR-3B** Now, taxpayers can submit period wise tax liability in GSTR-3B as a voluntary option. If period wise break-up of tax liability declared in Table 3.1 is not given, liability shall be deemed to be of current tax period. Basis period, GSTN portal will compute interest liability for delayed payment of GST. Interest amount will be auto-populated in Table 5.1 of GSTR-3B of next tax period.

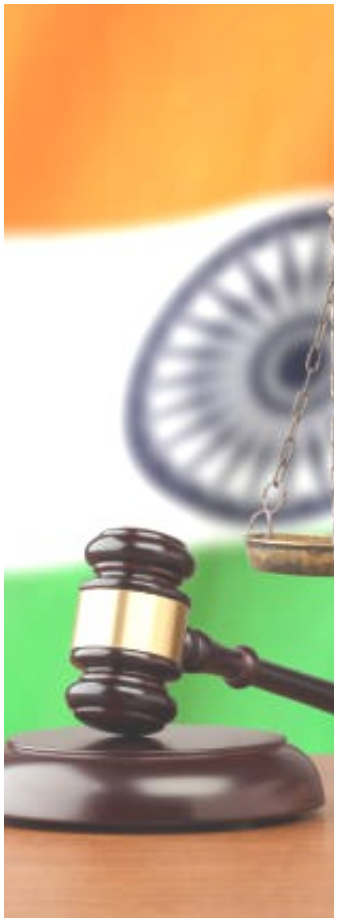
FROM THE LEGISLATURE
CUSTOMS & TRADE LAWS

Sr. No.	Notification / Circular	Summary
1	Instruction No. 01/2022-Customs dated 05 January 2022	**Implication of the judgement of the Hon'ble Apex Court in the case of M/s Westinghouse Saxby Farmer Ltd.** The classification of various parts of Section XVII is to be decided taking into account all facts, details of individual cases, all the decisions on the subject, and arrive at the appropriate classification. The practice of assessment of 'parts' or any change in it may holistically keep in view and in a speaking manner, all relevant aspects including HS Explanatory Notes, the relevant section and chapter notes and the various decisions of Hon'ble Supreme Court, such as those illustrated.
2	Notification No. 2/2022-Customs (ADD) dated 13 January 2022	**ADD on Colour coated / pre-painted flat products of alloy or non-alloy steel removed** Rescinds Notification levying ADD on Colour coated / pre-painted flat products of alloy or non-alloy steel.
3	Notification No. 1/2022-Customs dated 18 January 2022	**Exempts BCD & IGST on goods imported for AFC Women's Asian Cup India** The levy of BCD and IGST has been exempted on following goods imported for AFC Women's Asian Cup India: • Kelme Referee kits, ball boy uniform and match-day bibs • Competitions goods shipped using Aramex • Molten official match balls • Kelme AFC delegations / volunteers attire • Country Flags vi. Sleeves Badges • WAC mini-Trophy
4	Circular No. 02/2022-Customs dated 19 January 2022	**Alignment of AEO Circulars with CAROTAR** It has been clarified that with the insertion of Section 28 DA of Customs Act, relating to procedure regarding claim of preferential rate of duty, and the issuance of CAROTAR, 2020, these provisions prevail over dispensation extended vide the prescribed paras of Circular No. 33/2016–Customs dated 22 July 2016 and Circular No. 54/2020- Customs dated 15 December 2020 and the latter stand suitably aligned to the former.

FROM THE JUDICIARY
GOODS & SERVICES TAX

Apex Court restores order extending limitation period for judicial proceedings

Miscellaneous Application No. 21 of 2022]



In light of the spread of the new variant of the COVID-19 and the drastic surge in the number of COVID cases across the country, the Supreme Court Advocates on Record Association ('SCAORA') had sought restoration of the order in RE: Suo Motu Writ Petition (C) No. 3 of 2020. The Apex Court, taking cognizance of the same, passed the following order dated 10 January 2022:

- The period from 15 March 2020 till 28 February 2022 shall stand excluded for the purposes of limitation as may be prescribed in respect of all judicial or quasi-judicial proceedings;
- Consequently, the balance period of limitation remaining as on 03 October 2021, if any, shall become available with effect from 01 March 2022;
- In cases where the limitation would have expired during the period between 15 March 2020 till 28 February 2022, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 01 March 2022. In the event the actual balance period of limitation remaining, with effect from 01.03.2022 is greater than 90 days, the longer period shall apply;
- The period from 15 March 2020 till 28 February 2022 shall also stand excluded in computing the periods prescribed under the Arbitration and Conciliation Act, Commercial Courts Act, Section 138 of the Negotiable Instruments Act, 1881 and any other laws, which prescribe period(s) of limitation for instituting proceedings, outer limits (within which the court or tribunal can condone delay) and termination of proceedings.

TRAN-1 rectification allowed citing technical issues

Vikas Elastochem Agencies Private Limited [2022-TIOL-47-HC-MAD-GST]

The Petitioner had attempted to transition the credit of ITC of goods lying in stock in by filing Form TRAN-1. Instead of making a proper entry against 7(a) of TRAN-1, the Petitioner had made an entry in 7(d). As the Petitioner was unable to elicit any favourable response from the respondent, the Petitioner had filed the petition before the Madras HC for requesting the correction of the mistake made in TRAN-1.

The Petitioner relied on the decision of the Delhi HC in **RE: Blue Bird Pure Private Limited [2019-TIOL-1564-HC-DEL-GST]**, wherein, dealing with an identical situation, the HC granted the relief to the Petitioner by opening the online portal so as to enable the petitioner to again file the rectified TRAN-1 Form. The HC observed that there was a difficulty in making proper declarations in TRAN-1 at the initial phase of implementation of the GST wherein the Petitioner made a bonafidemistake.

It was further observed that the technical issues arose at the time of initial implementations of GST which resulted in difficulties both for the Petitioner as well as the Department, the Madras HC allowed writ petition against rejection of rectification application for correction of mistakes in TRAN-1.

AUTHORS' NOTES

Post implementation of GST, various assessee had been subjected to technical issues in transitioning their erstwhile credit to the GST regime. The HC of Gujarat in the case of ***Siddharth Enterprises [2019-TIOL-2068-HC-AHM-GST]*** *had held that Transitional credit cannot be denied only because form TRAN-1 could not be availed. Requirement of filing form TRAN-1 is procedural in nature and not mandatory and therefore right of transitional credit cannot be denied to those taxpayers who could not file such returns. Procedure provided cannot overtake law.*

Following suit, various other HCs had allowed the assesses to avail transitional credit, who had failed to do so within the due date, on account technical glitches. Notably, the Madras HC in the case of ***Samrajyaa and Company [2020-TIOL-381-HC-MAD-GST]*** *had allowed filing of TRAN-1 after the due date, even where the assessee did not have evidence of technical glitches. There is no denying the fact that there were several glitches on the GSTN Portal which was also in a nascent stage. Therefore, the Government ought to take a liberal view on such matters to avoid unnecessary long-drawn litigations, especially when the Courts have already consistently held in multiple judgments, that such glitches or procedural lapses should not curtail the assessee's right to carry forward such transitional credit.*

Availment of common input supplies on behalf of branch office qualify as 'supply'

Cummins India Limited [2022-TIOL-02-AAAR-GST]

The Applicant had sought an advance ruling before the Maharashtra AAR to ascertain inter alia whether availment of ITC of tax on common input supplies on behalf of other units registered as distinct person, and further allocation of the cost incurred for same to such other units, qualifies as supply and attracts levy of GST. The Maharashtra AAR had ruled that availment of ITC on common input supplies on behalf of other units registered as distinct person qualifies as supply and attracts GST, however, HO shall not be eligible to avail the ITC. Aggrieved, the Applicant preferred an Appeal before the Maharashtra AAAR.

The AAAR held that the HO is not entitled to avail ITC on common services received from BO. It was held that the HO is required to distribute ITC on common services to BOs through ISD registration being mandatory u/s. 24 of the CGST Act. It was further held that support provided by HO's employees to BOs would qualify as supply and accordingly, HO is required to charge GST thereon. As regards the valuation, it had been held that the same can be determined as per Rule 28 of the CGST Rules, which provides that value of the tax invoice will be deemed as the open market value of the services.

AUTHORS' NOTES

It would be pertinent to note that under the pre-GST regime, the supply transactions between head offices and branch offices were not taxable. However, this question has always been contentious under the GST regime. The instant ruling, instead of bringing about a clarification, is expected to cause more litigation as it has not considered certain business practices. Notably, Employees are appointed and working for Company as whole and not employed for head office or branch specifically, which is distinct person under the GST. It shall be further noted that the Salary paid to employees are in relation to employment, which is neither a supply of goods nor services under Para 1 of the Schedule 3 of the CGST Act. Accordingly, it would be interesting to see the outcome of the instant ruling.

No proportionate reversal of ITC is required in respect of credit note for Cash discount

Rakesh Kumar Gupta [2022-TIOL-23-AAR-GST]

The Applicant had sought an advance ruling before the MP AAR to ascertain inter alia whether volume discount received on purchases is liable for GST and whether company has to issue taxable invoice to this effect. The AAR observed that commercial credit notes issued post the supply, did not satisfy conditions laid down in Section 15(3)(b) of the CGST Act, which provides the value of the supply shall not include any discount which is given before or at the time of the supply if such discount has been duty recorded in the invoice issued in respect of such supply.

Accordingly, it was held that their value cannot be reduced from value of supply. It was further held that as the supplier does not reduce his output tax liability, there is no need for ITC reversal by the recipient. The AAR further held that it is mandatory for the recipient to ensure that supplier has not reduced its output tax liability at time of filing annual return and if done, then recipient shall be liable to reverse proportionate ITC. It was also held that as the recipient did not provide any service to supplier and only received discounts which impacted sale price of goods originally purchased, GST is not leviable on receipt of discounts.

AUTHORS' NOTES

*The AAR has commendably held that neither the ITC is required to be reversed on commercial credit notes, nor there is any supply by the recipient when it receives cash or quantity discount from supplier. However, it shall be noted that there is no statutory provision casting **liability on recipient**, to ensure that supplier does not reduce its output tax liability post issuance of commercial credit notes. However, in an underwhelming development by the FM in the Budget '22, it has proposed which provides additional restrictions on ITC availment, basis the GST compliances of the suppliers.*

One-to-one corelation not required for ITC availment

Aristo Bullion Private Limited [Advance Ruling No. GUJ/GAAAR/

The Applicant had sought an advance ruling before the Gujarat AAR to ascertain whether they can use ITC balance available in the Electronic Credit Ledger legimately earned on the inputs/raw-materials/inward

supplies (meant for outward supply of Bullions) towards the GST liability on 'Castor Oil Seed' which were procured from Agriculturists and subsequently meant for onward supply. The AAR had ruled in the negative citing that the basic condition u/s. 16 of the CGST Act relating to furtherance of business, was not fulfilled. Aggrieved, the Applicant preferred an appeal before the Gujarat AAAR.

The AAAR held that held that there is no statutory provision mandating one- to-one correlation of inward supply with outward supply for utilization of ITC. The AAAR noted that after availment, ITC becomes part of the common pool in Electronic Credit Ledger which can be used for payment of any output tax liability under Section 49 of the CGST Act. Therefore, ITC of any inward supply can be utilized for payment of output tax.

AUTHORS' NOTES

> *The question regarding to one-to-one corelation of input with output, persisted even under the Excise regime. However, it has since been settled by a plethora of judgements, wherein it had been categorically held that there is no requirement to co-relate the input with output for credit availment. The Apex Court in RE:* ***Dai Ichi Karkaria Limited [2002-TIOL-79-SC-CX-LB]*** *had held that the credit may be taken against the excise duty on a final product manufactured on the very day that it becomes available, without corelating it with the input.*

Goods cannot be detained for contravention beyond taxpayer's control

Satyam Shivam Papers Private Limited [2022-TIOL-07-SC-GST]

The Petitioner had dispatched goods along with the tax invoice and E-Way Bill with the driver of the vehicle. While the vehicle was in transit, there was a political rally opposing CAA and NRC by political parties, and therefore, the roads were blocked and the traffic could not move. Pursuant to waiting for a few hours, the driver of the vehicle took the goods to his residence until he could resume his journey on the following day.

The driver resumed the journey on the next working day however, the vehicle had been intercepted and detained by the Respondents. The Respondents alleged that the validity of the E-Way bill had expired and accordingly, demanded tax and penalty from the Appellant, vide Order in Form MOV-09, mentioning that the Appellant had admitted to the same. Aggrieved, the Petitioner preferred a Writ before the Telangana HC.

The HC observed that Respondent had blatantly ignored the representations filed by the Petitioner, explaining the reasons for expiry of the E-Way Bill. It was further observed that the ignoring the representations of the Appellant on the premise that that there is clear evasion of tax is plainly arbitrary and illegal and violates Article 14 of the Constitution. The HC further observed that on account of non-extension of the validity of the E-Way Bill, no presumption can be drawn that there was an intention to evade tax.

The Apex Court affirmed order of Telangana High Court holding that Section 129 of the CGST Act cannot be invoked for contravention beyond taxpayer's control and in absence of intent to evade tax.

AUTHORS' NOTES

It is a well settled principle of law that procedural lapses / infractions, should not lead to denial of substantial benefits to the taxpayers or assessees. However, it is seen that the Revenue authorities seldom abide by this principle and often subject the assesses with demand notices. It would be pertinent to note that the CBIC vide ***Circular No. 64/38/2018-GST dated 14 September 2018*** *had clarified that the penalties shall not be levied on minor infractions in E-Way Bills.*

Although the said circular pertained clerical errors on the E-Way Bills, an analogy can be drawn that the Board, as well as the Government do not wish to penalize assesses in cases where the procedural infractions are caused by bona fide reasons.

Interest and penalty on wrongly availed transitional credit

Aathi Hotel [W.P.No.3474 of 2021]

The Petitioner had filed TRAN-1 and wrongly availed credit which was, however, never utilized. Thereafter, notices had been served upon the Petitioner for reversal, which had not been replied to. The Petitioner reversed the credit in the month of January 2020. Subsequently, the Revenue demanded the Petitioner to pay interest and penalty on such reversal. Aggrieved, the Petitioner preferred a Writ before the Madras HC.

The HC observed that proceedings under Section 73 or 74 of the CGST Act can be initiated for mere wrongful availment of ITC. However, interest and penalty under Section 73 or 74 can be imposed only if wrongly availed ITC is utilized. However, the HC levied general penalty of Rs 10,000/- u/s. 125 of the CGST Act considering Petitioner's attempt to wrongly utilize ITC.

AUTHORS' NOTES

It should be noted that the GST Council in its 45th Meeting concluded on 17 September 2021 had recommended amendment in the CGST Act, to provide that interest ought to be payable only if ineligible ITC has been utilized and not merely availed. The said amendment u/s. 50(3) of the CGST Act has been proposed to be made applicable retrospectively w.e.f. 01 July 2017.

Further, vide the Finance Bill, 2022 for the Union Budget 2022-23, the Hon'ble Finance Minister has also recommended to substitute Section 50(3) of the CGST Act, retrospectively, w.e.f. 01 July 2017 so as to provide for levy of interest on ITC wrongly availed and utilized. Thus, it can be inferred that the Legislature wishes to collect interest only on the portion of wrongly utilized credit and not merely availed.

ITC cannot be refused if the documents are valid

LGW Industries Limited & Ors. [2021-TIOL-2308-HC-KOL-GST]

The Petitioners were purchasers of goods and services. The Respondent refused to grant ITC on the said goods, basis the facts that the suppliers from whom the Petitioners claimed to had purchased the said goods was all fake and non-existing and the bank accounts opened by those suppliers was fake as well. Therefore, the documents submitted by the Petitioners were not accepted by the Respondent.

Basis the documents submitted by the Petitioners, the Calcutta HC observed that the at the time of the transaction, the suppliers were genuine and valid

by relying upon all the supporting relevant documents required under law and the Petitioner with their due diligence had verified the genuineness and identity the names of the suppliers as registered taxable person. Further observed that the supplier was available at the Government portal showing their registrations as valid and existing at the time of transactions.

In the view of the above observations, the Calcutta HC held that it cannot be said that there was any failure on the part of the Petitioners in compliance of any obligation required under the statute before entering the transactions in question or for verification of the genuineness of the suppliers in question. The case was disposed of by the Respondent concerned in accordance with law.

AUTHORS' NOTES

*As a matter of principle, credit cannot be denied to recipient on default of compliances by the supplier. It shall be noted that the Delhi HC in **RE: Arise India Limited [TS-314-HC-2017-DEL-VAT]** had held Section 9 (2)(g) of Delhi VAT Act to the extent it disallows ITC to purchaser due to default of selling dealer in depositing tax, as violative of Articles 14 and 19(1)(g) of the Constitution of India. Thereafter, the Revenue had also preferred an SLP before the SC, against the Delhi HC judgement. The same came to be dismissed by the Apex Court in **RE: 2018-TIOL-11-SC-VAT.***

Erstwhile Regime

Service recipient can utilize CENVAT-credit to discharge reverse-charge liability

Toyota Kirloskar Motors [2022-TIOL-30-HC-KAR-ST]

The Respondent had received intellectual property services, commissioning and installation services and maintenance and repair services from their parent company situated abroad and Goods and Transport Agency services from logistical company situated in India. After receiving said services, the Respondent utilized the CENVAT credit on inputs, input services and capital goods for payment of service tax. The Revenue opined that CENVAT credit can be utilized only on the output service, whereas the services on which the respondent has paid the service tax are not the output service provided by the Respondent. Hence, SCN was issued which culminated into the order confirming demand which CESTAT quashed.

The HC observed that the dispute relates to the period from April to August, 2006 and therefore, the explanation inserted to Rule 3(4)(e) w.e.f., 1. July 2012 is not applicable to the present case. The HC further observed that the coordinate bench in other cases had found the Assessee utilized the CENVAT credit to pay tax on the service he had received. The SLP preferred by the Revenue against these decisions were dismissed for low tax effect.

Basis the above, the HC held that that they cannot agree to the arguments advanced by the Revenue in view of the fiction created under Section 68(2) of the Finance Act, read with Rules 2(1)(d) of the Service Tax Rules, and Rule 3(4)(e) of the CENVAT Credit Rules. Accordingly, the HC allowed the Appeal.

FROM THE JUDICIARY
CUSTOMS & TRADE LAWS

Retrospective removal of management consultancy/testing & certification services from SEIS challenged before Delhi HC

Intertek India Private Limited

The Petitioner filed the instant writ petition with stay application against Notifications No. 57/2015-2020 (extending the FTP 2015-20 to March 31, 2021 as well as validity of DFIA and EPCG authorizations) and Notification No. 29/2015-20 (inter alia imposing limit on SEIS entitlement and capping at Rs 5 crore per IEC) o the extent they retrospectively deny the Petitioner benefit of SEIS under the FTP.

The Petitioner, engaged in export of management consultancy and testing, inspection and certification services has been claiming benefit of SEIS under the FTP from 2015-16 onwards. However, for the relevant AY 2020-21, the SEIS benefit was denied citing the said Notifications. Aggrieved, the Petitioner has preferred a Writ before the Delhi HC inter alia on the following grounds:

- Any amendment to the FTP can only be prospective in nature as Section 5 of the FTDR Act does not allow the DGFT to frame policy with retrospective effect;
- The power exercised by the DGFT u/s 5 of the FTDR Act is a power delegated by the Legislation and in absence of an express provision enabling a delegate to make delegated Legislation with retrospective effect, no such power can be inferred;
- A vested right had already accrued in favour of the Petitioner, when it had exported the subject services in accordance with the FTP then prevalent. Accordingly, the said vested right cannot be disturbed arbitrarily through Impugned Notifications and that too retrospectively as it would be violative of Article 300A of the Constitution of India.

Basis the above submissions, the HC has issued a Notice to the Revenue.

CESTAT denies exemption benefit on Oil-Rig Imported without Essentiality Certificate & BoE

Sedco Forex International Drilling Inc [2022-TIOL-112-CESTAT-DEL]

The Appellant had imported an oil drilling rig in 1988 called the Rig Trident-II for carrying out offshore oil exploration under contract with ONGC and subsequently with Enron. The rig was tugged by M.V. Mighty Servant-2 (heavy lift ship) and said fact was indicated in the IGM filed. Since there was ambiguity surrounding the filing of BoE regarding the Rig Trident-II, the Customs Department did not insist for the same during the full operation period from May 1988 to January 1998. However, on July, 1999, a show cause notice was issued for confiscation of the Rig on the ground that bill of entry was not filed, with the option to redeem the same on payment of Redemption fine (Rs. 15 crore) and penalty (Rs. 5 crore). When the matter travelled to the Tribunal, vide final order dated February 2, 2001 it reduced the fine to Rs. 25 lakh and penalty to Rs.5 lakhs

while stipulating a pre-deposit of Rs. 3 crore. The order was challenged by the Appellant and revenue before the Supreme Court.

In the meantime, Appellant paid duty under protest and informed the Department that said payment is subject to their right to apply for Essentiality Certificate and to claim refund upon getting such Certificate. Thereafter, with ONGC support, the Appellant was granted the Essentiality Certificate on December, 2001 on ex-post facto basis by the Director General of Hydrocarbons (DGH) so as to claim exemption from duty under Notification No.516/86–Cus. However, when said certificate was submitted alongwith BoE claiming exemption under the Notification and refund of duties paid, same was rejected on the ground that the matter was pending before Supreme Court. The Order was confirmed by the Commissioner (A) and shortly thereafter, the Supreme Court rejected both the appeals and as a result Tribunals order, attained finality. In 2006, the Ministry of Petroleum and Natural Gas clarified that since the Empowered Committee under Notification No.516/86 had ceased to exist, the grant of Essentiality Certificate was examined and it was found to be in order and therefore re-issued on December, 2011. However, the Revenue still rejected the Appellant's exemption claim on grounds that the DGH was not the authority prescribed under the Notification No.516/86 and the Essentiality Certificate was issued after the rescission of said Notification.

The Tribunal derived that Notification No.516/86 grants exemption subject to the following conditions: (i) the importer produces a certificate from an officer not below the rank of Deputy Secretary to the Government of India in the Ministry of Petroleum and Natural Gas to the effect that the goods imported are of a type and kind required for off-shore oil exploration or exploitation and will be used for such purposes; (ii) the importer produces a certificate certifying that the goods in respect of which the exemption claimed are such as are not manufactured in India.

Further, citing the SC decision Dilip Kumar & Company, where it was held that 'notification should be strictly interpreted and the conditions of the notifications should be strictly complied with', CESTAT opined that "This leaves no doubt whatsoever in our minds that the appellants have not complied with the conditions of the Notification No.516/86 and hence are not eligible to avail the exemption contended. On the Appellant's alternative claim of exemption under Notification No.17/2001, CESTAT held that the conditions of the Notification are also not satisfied, even assuming that the conditions of Notification existing as on the date of filing the Bill of Entry would have to be satisfied. Basis the above, the Appeal had been set aside.

SC holds invocation of Promoter's personal-guarantee by any creditor, makes Promoter ineligible to submit resolution plan under Section 29A of the IBC

Bank of Baroda & Anr. vs. MBL Infrastructures Ltd. & Ors

Civil Appeal No. 8411 of 2019

The Corporate Debtor (Respondent No.1) was set up in the early 1990s. Loans/credit facilities were obtained by the Corporate Debtor from a consortium of banks. On the failure of the Corporate Debtor to act in tune with the terms of repayment, some of the respondent banks were forced to invoke the personal guarantees extended by the Promoter (Respondent No.3) for the credit facilities availed by the Corporate Debtor.

Thereafter, by way of the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2017, Section 29A was introduced to the Code and the Promoter filed an application before the NCLT, praying for a declaration that he was not disqualified from submitting a resolution plan under sub-section (c) and (h) of Section 29A of the IBC.

The NCLT held that the Promoter was eligible to submit a resolution plan, regardless of the fact that he extended his personal guarantees on behalf of the Corporate Debtor which were duly invoked by some of the creditors. Though NCLT took note of Section 29A(c) of the IBC, it did not give any specific findings on it, however, ruled that inasmuch as the personal guarantee having not been invoked and the Promoter merely having extended his personal guarantee, there was no disqualification per se under Section 29A(h) of the IBC as the liability under a guarantee arose only upon its invocation.

Aggrieved, the Appellant approached the NCLAT which affirmed the decision of the NCLT which caused the Appellant to prefer an appeal before the SC challenging the decision of both the authorities on the ground that the premise on which it was held that the Promoter was eligible to submit a resolution plan was erroneous.

The SC, while purposively interpreting Section 29A of the IBC, observed that the Promoter of the Corporate Debtor was ineligible to submit resolution plan, in terms of Section 29A (c) and (h) of the IBC as what was required to earn a disqualification under the said provision was a mere existence of a personal guarantee that stood invoked by a single creditor, irrespective of the application being filed by any other creditor seeking initiation of CIRP.

Thus, the SC held that invocation of Promoter's personal-guarantee by any creditor, made the Promoter ineligible from submitting resolution plan under Section 29A of the IBC.

AUTHORS' NOTES

It would be interesting to note that in the instant case, Although the SC observed that the very resolution plan submitted by the Promoter, being ineligible was not maintainable, the SC considering over 23,000 shareholders' interest, along with the fact that the Corporate Debtor was now a going concern, refrained from disturbing the Promoter's resolution plan that led to the operation of the Corporate Debtor as a going -concern.

HC quashes complaint implicating Directors for defamation, holds no provision for 'vicarious liability' under IPC

Aroon Purie & Ors. vs. State of Kerala & Anr.

Crl.Mc No.8 of 2020

The Petitioners were Directors of a media company against whom criminal proceedings for the offence of defamation had been initiated by the Respondent for allegedly telecasting a news item showing one Manikkuttan as the main accused in the murder of one Rajesh in which the photo of the Respondent was shown stating it to be the photograph of the said Manikkuttan.

It is averred by the Respondent that the telecasting of the said news item along with his photograph with the wrong description, mentioned as above, continued for about three days and consequently, a notice was issued and thereafter, a complaint was submitted by the Respondent before the learned Magistrate and cognizance was taken thereof.

Aggrieved, the Petitioners approached the HC pleading it to quash all further proceedings in the said complaint by raising the contention that the averments in the said complaint did not disclose any offence as against the Petitioners.

The Petitioners further contended the averments contained in the complaint did not disclose the role of Petitioners in preparing, editing or telecasting the news item and the concept of vicarious liability was not applicable in criminal law unless the same was specifically mentioned in the statute itself.

The HC, taking note of the fact that all the allegations in the complaint were general in nature and conspicuously, the persons who were directly responsible for airing the programme and had presented the news item were not made as accused persons, observed that the offence of defamation under the IPC was person centric and only if the particular accused had made any act with the specific intention or knowledge of its consequences, could he be prosecuted for the said offence and accordingly in such circumstances, it was absolutely necessary that the complaint should have contained specific averments, pointing out the specific role played by each of the accused persons.

The HC further observed that in the absence of any provision imposing criminal liability upon the Directors of the media company merely because of the positions which they were holding in the company, the question of limiting the liability would not arise.

Thus, quashing the criminal proceedings initiated under the IPC for defamation against the 3 Directors, the HC observed that it was not possible to implicate the Directors, in the absence of specific averments indicating their role in commission of the offence and there was also no provision in the IPC, providing for vicarious liability upon the Directors of the company.

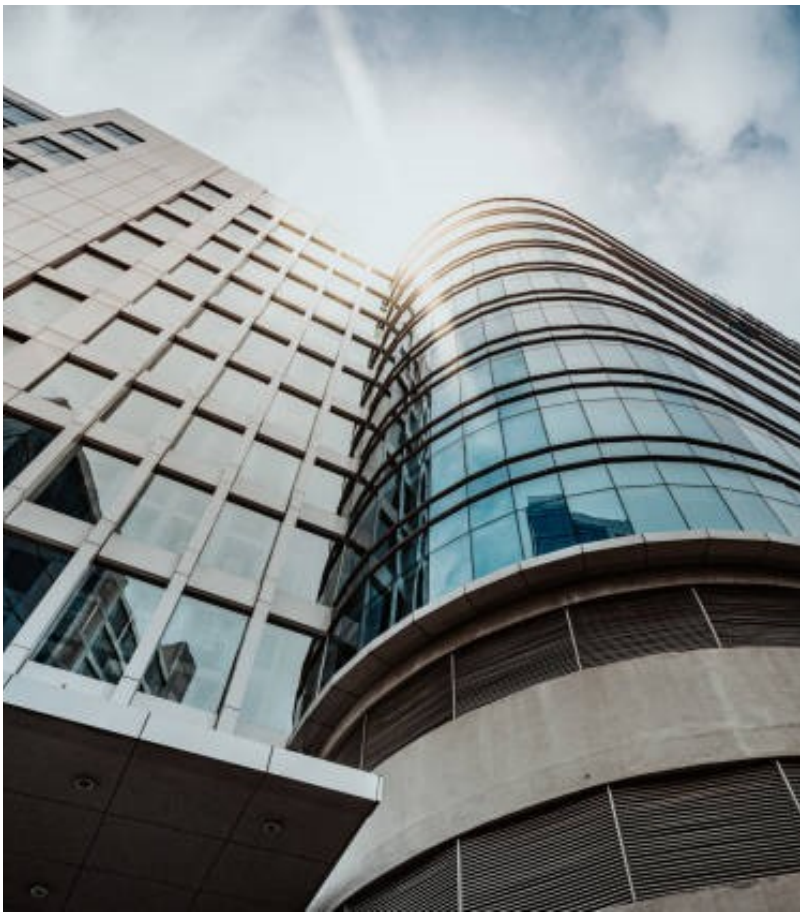
AUTHORS' NOTES

It would be interesting to note that in the instant case, a separate media company was also made an accused in the complaint submitted by the Respondent and the HC rightly held that the media company being a juristic person, could not be roped in as an accused, inasmuch as it did not have a mind of its own and hence could not be considered to have any mens rea, owing to which the offence of defamation which was punishable under Section 499 of the IPC could not be attracted.

SC holds commercial wisdom of CoC has paramount status, quashes NCLAT order directing resolution plan reconsideration

Ngaitlang Dhar vs. Panna Pragati Infrastructure Pvt. Ltd. & Ors.

Civil Appeal Nos. 3665-3666 of 2020



An application came to be filed under Section 7 of the IBC for initiation of CIRP in respect of the Corporate Debtor by one of its financial creditors. The NCLT admitted the petition and as such the CIRP came to be initiated in respect of the Corporate Debtor and an Interim RP came to be appointed, who was subsequently confirmed as the RP in the first CoC. In accordance with the provisions of the IBC, Expression of Interest was invited from the prospective Resolution Applicants by the RP and the Appellant submitted the same.

At the 7th CoC meeting, the CoC, with a 100% voting share, approved the resolution plan of the Appellant which was further approved by the NCLT. The Respondent contended that in the proceedings before the CoC it had sought for one- or two-days' time to submit its revised resolution plan, and accordingly it had also submitted the same but its resolution plan was not considered by the CoC, which caused the Respondent to file an application before the NCLT seeking a direction to the RP to take on record its revised resolution plan. This application filed by the Respondent came to be rejected by the NCLT.

Aggrieved, the Respondent preferred an appeal before the NCLAT challenging the approval of the Resolution plan of the Appellant and also the rejection by the NCLT of its application, seeking a direction to the RP to take on record revised resolution plan of the Respondent. The NCLAT allowed the appeal of the Respondent directing resumption of Corporate Debtor's CIRP from the stage of consideration of resolution plans.

Aggrieved, the Appellant approached the SC which observing that that NCLAT had grossly erred in interfering with the decision of the CoC, which was duly approved by the NCLT, held that it was trite law that 'commercial wisdom' of the CoC was to be given paramount status without any judicial intervention, for ensuring completion of the processes within the timelines prescribed by the IBC.

Thus, setting aside the order of the NCLAT, the SC allowed the Appellant's appeal.

AUTHORS' NOTES

It would be interesting to note that in the instant case, the SC also observed that the opinion expressed by the CoC after due deliberations in the meetings through voting, as per voting shares, was the collective business decision and that the decision of the CoC's 'commercial wisdom' was non-justiciable, except on limited grounds as enshrined under the IBC.

HC holds immunity from cheque-dishonour proceedings to Corporate Debtor not extendable to ex-Director

Vishnoo Mittal vs. Shakti Trading Company

CRM-M No. 10624 of 2020 (O&M)

In the instant case, the Respondent cast a complaint under Section 138 of the NI Act for dishonour of cheque of INR 1 Lakh against the Petitioner (Ex Director of Corporate Debtor) after issuing notice to the Petitioner, before the concerned Magistrate. After the Magistrate recorded the preliminary evidence, comprised in the affidavits, he made a summoning order upon the Petitioner.

Aggrieved, the Petitioner approached the HC challenging the summoning order of the Magistrate which placing reliance on the SC ruling in **P. Mohanraj [(2021) 6 SCC 258]** wherein it was inter alia held that a moratorium is applicable to cheque dishonour proceedings against the Corporate Debtor, observed that the said verdict provided immunity to any juristic person such as a Corporate Debtor, against hearings of proceedings under Section 138 of the NI Act, and, did not likewise cover any natural person, working as a Director in the corporate entity concerned nor covered erstwhile Directors.

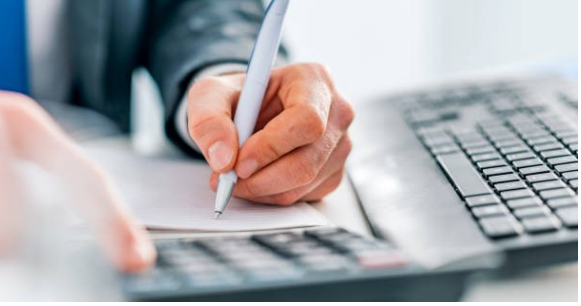
The Petitioner argued that the summoning order was passed after the insolvency proceedings were initiated against the Corporate Debtor and moratorium was declared, and the clout of moratorium prohibiting initiation of proceedings, also extended to proceedings under NI Act, and thus, the summoning order, was made with the completest lack of profound legal wisdom and was liable to be quashed.

The HC observed that as per SC ruling in **P. Mohanraj [(2021) 6 SCC 258],** proceedings under Section 138, though covered by Section 14 of the IBC, could not continue only against the Corporate Debtor accused, but could continue against the erstwhile Director/person in charge for the conduct of the business of the Corporate Debtor.

Thus, rejecting the Petitioner's arguments while holding that the immunity, as granted to a Corporate Debtor, could not be extended to him, the HC dismissed the petition filed by the Petitioner and allowed the issuance of summoning order upon the Petitioner by the Magistrate.

AUTHORS' NOTES

*In the instant case, the HC rightly placed reliance on the SC ruling in **P. Mohanraj [(2021) 6 SCC 258]**, wherein the SC had observed that the moratorium provision contained in Section 14 of the IBC would apply only to the Corporate Debtor, and the natural persons mentioned in Section 141 of the NI Act would continue to be statutorily liable under Chapter XVII of the said Act.*



Amendment in Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 to amend regulations in respect of Manager position, Monitoring Report, and Shares in Physical mode

Securities and Exchange Board of India vide notification no. SEBI/LAD-NRO/GN/2022/66 dated January 24, 2022 has notified Securities and Exchange Board of India (Listing Obligation and Disclosure Requirements) (Amendment) Regulations 2022 thru gazette notification. The regulations of Securities and Exchange Board of India (Listing Obligation and Disclosure Requirements) Regulations Act, 2015 have been amended to introduce regulations for appointment and re-appointment of Manager, Board of Directors, or Managing Directors; strengthening Monitoring report requirements; and elimination of shares in physical mode.

As SEBI (LODR) Regulations, 2022 has been introduced changes in norms and regulations for the listed entities, the salient changes have been discussed below:

SEBI

Monitoring Report

Now the monitoring report shall be placed before the audit committee on a quarterly basis and not on annual basis, where the listed entity has appointed a monitoring agency to monitor the utilization of proceeds of a public or rights issue.

Issuance / Transfer / Transmission of shares

SEBI has now restricted the entities that shares held in dematerialized form or physical form shall be only transferred or transmitted in dematerialized form. Further issuance of either new or duplicate certificate/receipt/advise shall be only in dematerialized form only.

Appointment/Re-appointment of Manager; or Board Of Directors; or Managing Director

In addition to appointment of Board of Directors or Managing Directors, for the appointment of Manager the approval of the shareholders needs to be taken in next General Meeting or within 3 months, whichever is earlier.

Incase such appointment/re-appointment of Manager; or Board of Directors; or Managing Directors was previously rejected by the shareholders in General Meeting then such appointment/re-appointment can only be done after prior approval of shareholders.

Also, for considering such appointment/ re-appointment certain details and explanations along with proposal need to be submitted by Nominations and Remuneration Committee And Board of Director for purposing such appointment/ re-appointment.

AUTHORS' NOTES

- *This move would bring in more safeguard for stakeholders of listed entities. This is a positive step towards good corporate governance.*
- *Another step in respect of Appointment/re-appointment and Monitoring Report were indeed very effective to have transparency and reliability over management of company and utilization respectively for the stakeholders of the entity.*
- *With such changes, it is evident that SEBI wants to promote transparent management of the entities. SEBI is more stringent in respect of misutilization of funds to protect the interest of stakeholders.*

Launch of New NSE Digital Portal for filling compliance with exchange

National Stock Exchange of India vide circular no. NSE/CML/2022/03 dated January 06, 2022 has notified launch of New NSE Digital Portal for filling compliance with exchange. The new Digital portal has been set up for disclosure compliance to be done by the listed entities which are currently being submitted via NSE Electronic Application Processing System (NEAPS).

AUTHORS' NOTES

This move would enhance companies' experience and operational excellence as it has re-designed the user interface. New Digital Portal will facilitate the smoothening of legal compliance for department as well as companies.

Amendment in Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 to amend regulations in respect of Authority & Powers of Investigating Authority and order passed by SEBI

Securities and Exchange Board of India vide notification no. SEBI/LAD-NRO/GN/2022/71 dated January 25, 2022 has notified Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade practices relating to Securities Market) (Amendment) Regulations 2022 thru gazette notification. The regulations of Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade practices relating to Securities Market) Regulations Act, 2003 have been amended to strengthen

the authority and powers held by Investigating Authority during investigation u/s 11C of SEBI Act, 1992 i.e. on ground that the transactions in securities are being dealt with in a manner detrimental to the investors or the securities market; or anyone associated with the securities market has violated the SEBI Law. Such amendment also amend provisions in respect of order passed,

As SEBI (PFUTP) Regulations, 2022 has been introduced changes in authority and powers of Investigating authority, the salient changes have been discussed below:

- To keep custody of books and other documents for 6 months instead of 1 month
- To do such acts without prior approval from chairman or member:
  - ◊ call for information & records
  - ◊ make an application to the Designated Court for the seizure of books and other documents
  - ◊ keeping custody until conclusion of investigation
  - ◊ search/seizure as in accordance to Code of Criminal Procedure
- To authorize someone to have access of the premise; reasonable facilities extended for examination and to take computer print-outs of the same.

Further the amendment has been made in respect to any order passed by SEBI issuing/taking any actions/ directions which shall now be put on website of SEBI instead of newspaper and website both, as before.

AUTHORS' NOTES

> *SEBI has promoted timely and transparent resolution for companies' matters time to time. With the delegation of power to Investigation Authority, SEBI has brought a step forward for timely conclusion for any investigation.*

Additional Fees for submission, filing, registering or recording of any document under Companies Act, 2013

Ministry of Corporate Affairs has notified notification nos. S.O. 147(E), S.O. 148(E), and G.S.R.12(E) dated January 11, 2022 has notified amendment in Section 403 of the Companies Act, 2013 which shall come into force on 1st July 2022 thru official gazette notification, which defines the applicability of additional fees or higher additional fees in respect to submission, filing, registering or recording of any document under the Company Law.

The amendments have introduced the following changes in norms and regulations for the listed entities, the salient changes have been discussed below:

Salient Changes	
Applicability of additional fees	*Then additional fees shall be paid for submitting, filing, registering or recording of such documents after prescribed period if the submission, filling, registering or recording is not done within prescribed time as the case may be.*
Applicability of higher additional fees	*Such higher additional fee as the case may be shall be paid if there is default on two or more occasions in respect to submission, filing, registering or recording of any aforementioned document.*
Minimum amount of additional fees	• *In respect of the annual returns and the copy of financial statement which is to be filed with Registrar after prescribed time then such additional fee shall not be less than one hundred rupees per day* • *In other cases, it may be prescribed later on.*

Salient Changes	
Minimum amount of higher additional fees	*It shall not be lesser than twice the additional fee as applicable.*
Amount of the additional fees and higher additional fees	• *Additional fee is notified to be in range from same as normal fees to 12 times of normal fees as the case may be* • *Whereas the higher additional fees is set at minimum of 3 times of normal fees and maximum of 18 times of normal fees* • *However, it clearly states wherever higher additional fee is payable, additional fee shall not be charged*

Amendment further clarifies that the company and the officers of the company who are in default shall also be liable to for the penalty or punishment as applicable in accordance to Act.

AUTHORS' NOTES

This amendment in relevant legislations was much expected as both of aforementioned sections were introduced earlier in their respective regulations but were awaited to be applicable. With such high additional fees the Ministry of Corporate Affairs have shown their interest in effective compliance of the due dates as may be applicable for any fillings, submissions, and registrations or recording by the company and its management. Such action definitely would be matter of concern for many of the stakeholders but was necessary for the purpose of making sure of efficient implementation of law.

INTERNATIONAL DESK

Corporate Tax @ 9% to be introduced in the United Arab Emirates from June 1, 2023

The Ministry of Finance, UAE, has announced the introduction of Corporate Tax @ 9% on the profits earned within the UAE effective from June 1, 2023. Accordingly, the businesses will be subjected to UAE Corporate Tax from the beginning of their first financial year that starts on or after June 1, 2023.

While the relevant regulations are yet to be released, the Federal Tax Authority ('FTA') has issued a flyer and FAQs to make the stakeholders aware about the scheme of Corporate Tax. Key highlights of which are captured below:

- Taxable income up to AED 375,000 shall be exempted from Corporate Tax and profits above the said threshold limit shall be taxed at 9%;
- Adjusted accounting net profit' of the business shall be considered as taxable income for the purpose of calculation Corporate Tax – this term has not been defined as yet;
- Benefit of Corporate Tax incentives is likely to be available to the businesses registered under Free Zones which meets the prescribed requirements;
- Withholding tax shall not apply on any domestic and cross border payments;
- Tax on capital gains and dividends received by the UAE businesses from its qualifying shareholdings shall be exempt;
- Credit of foreign tax shall be allowed as credit against the UAE Corporate Tax;
- Corporate Tax shall not apply on personal income from employment, real estate, and other investments, or on any other income earned by individuals which does not arise from any form of commercial activity.

AUTHOR'S NOTE

> *It is expected that the relevant Regulations will be rolled-out in the near future. Therefore, it is pivotal for the businesses operating with the UAE to closely follow the development in this space and prepare well in advance to ensure strict compliance and derive benefits of tax optimization, if any.*

Reference: https://www.mof.gov.ae/en/resourcesAndBudget/Pages/faq.aspx

UK HMRC releases consultation document for implementation of Pillar 2, invites comments by April 4, 2022

The UK HM Revenue and Customs ('HMRC') released a consultation document for implementation of Pillar Two consequent to the GloBE Model Rules released by OECD.

In the consultation document, the UK Government seeks views on the implementation of Pillar Two to ensure that multinational enterprises (MNEs) operating within the UK pay a global minimum level of tax of 15%. It is also expected that the legislation relating to the Income Inclusion Rule (IIR) would be included in Finance Bill 2022- 23 and would be effective from April 1, 2023.

Accordingly, through the consultation process which closes on April 4, 2022 the UK Government seeks views on:

- The translation of the Model Rules into UK law.
- The administration of the Globe Rules.
- The addressal of issues in the Implementation Framework.
- The introduction of a UK domestic minimum tax (DMT).
- The provision of wider reforms to existing UK BEPS measures.

The Government further invites views on the implementation of the Undertaxed Profits Rule ('UTPR') and on introducing a domestic minimum tax in the UK to complement Pillar Two and anticipates that both the UTPR and the domestic minimum tax would be introduced from April 1, 2024 at the earliest.

Reference: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1045663/11Jan_2022_Pillar_2_Consultation_.pdf

Switzerland's Federal Council decides on ordinance to implement minimum tax rate by January 2024, constitutional amendment to follow

Switzerland's Federal Council ('Council') decides to implement the minimum tax rate for qualifying companies as agreed upon by the OECD and G20 member states by means of a constitutional amendment. Accordingly, as a temporary measure, the Council announces for an ordinance to ensure that the minimum tax rate comes into force from January 1, 2024.

Further, the Council also states that it shall adopt parameters for minimum tax rate for multinational companies with annual turnover of at least EUR 750 million and on the implication for Switzerland as a business location, states that certain companies may face a heavier tax burden, however the minimum rate will spare them additional tax proceedings abroad and a fiscal policy leeway is in the works to counteract a possible loss of attractivity as a business location.

In addition to the above, the Council apprises that the Confederation, cantons, cities and communes would work closely together on the implementation of the proposal and a political consultative body representing all three levels of the government had already been set up by the Federal Department of Finance to carry out the implementation.

Reference: https://www.admin.ch/gov/en/start/documentation/media-releases.msg-id-86783.html?s=08

GLOSSARY

Abbreviation	Meaning
AA	Adjudicating Authority
AAAR	Appellate Authority for Advance Ruling
AAR	Authority for Advance Ruling
ADD	Anti-Dumping Duty
AE	Associated Enterprise
AGM	Annual General Meeting
AICD	Agriculture Infrastructure and Development Cess
AIF	Alternative investment Fund
AIFs	Alternative Investment Funds
ALP	Arm's length price
AMT	Alternate Minimum Tax
AO	Assessing Officer
AOP	Association of Persons
APA	Advanced Pricing Agreement
ARE	Alternate Reporting Entity
AU	Assessment Unit
AY	Assessment Year
B2B	Business to Business
B2C	Business to Customer
BBT	Buy-Back Tax
BCD	Basic Customs Duty
BED	Basic Excise Duty
BEPS	Base Erosion and Profit Shift
BOI	Body of Individuals
CAG	Comptroller and Auditor General of India
CAT	Common Aptitude Test
CBCR	Country By Country Reporting
CBDT	Central Board of Direct Taxes
CBI	Central Board of Indirect Tax
CBIC	The Central Board of Indirect Taxes and Customs
CG	Central Government
CGST	Central Goods and Services Tax
CGST Act	Central Goods and Services Act, 2017
CIT	Commissioners of Income Tax
Cus	Customs Act, 1962
CVD	Countervailing Duty
DDT	Dividend Distribution Tax
DRC	Dispute Resolution Committee
DRI	Directorate of Revenue Intelligence
DTAA	Double Taxation Avoidance Agrement
FDI	Foreign Direct Investment
Fin	Finance Bill Finance Bill, 2022
FM	Finance Minister
FMV	Fair Market Value
FPI	Foreign Portfolio Investors
FTP	Foreign Trade Policy
G2B	Government to Business
GST	Goods and Services Tax
H&EC	Health and Education Cess
HFC	Housing Finance Company
HNI	High Net Worth Individual
HUF	Hindu Undivided Family
IBC	Insolvency and Bankruptcy Code
IFSC	International Financial System Code
IFSCA	International Financial Services Centres Authority Act, 2019

Abbreviation	Meaning
IGST	Integrated Goods and Services Tax
IIM	Indian Institute of Managemen
IMC	Indian Medical Council Act, 1956
Ind AS	Indian Accounting Standards
InvITs	Infrastructure Investment Trusts
IT Act	The Income-tax Act, 1961
ITAT	Income Tax Appellate Tribunal
ITC	Input Tax Credit
ITO	Income-tax Officer
KYC	Know Your Customers
LIC	Life Insurance Corporation
LLP	Limited Liability Partnership
LTC	Long-Term Capital Gains
MAT	Minimum Alternate Tax
MoF	Ministry of Finance
MSME	Micro Small and Medium Enterprises
NaFAC	National Faceless Assessment Centre
NBFC	Non-Banking Finance Company
NCCD	National Calamity Contingent Duty
NCLT	National Company Law Tribunal
NEFT	National Electronic Funds Transfer
NELP	New Exploration Licensing Policy
NHB	National Housing Bank
NPA	Non-Performing Assets
NPS	National Pension System
NRI	Non-Resident Indian
OBU	Offshore Banking Unit
OEC	Organization for Economic Co-operation and Developent
OPC	One Person Company
PAN	Permanent Account Number
PBPT	Prohibition of Benami Property Act, 1988
PCIT	Principal Commissioners of Income Tax
PIV	Pooled Investment Vehicle
PMLA	Prevention of Money Laundering Act, 2002
PSU	Public Sector Undertaking
PY	Previous Year
RBI	Reserve Bank of India
REITs	Real Estate Investment Trusts
RIC	Road and Infrastructure Cess
RTGS	Real Time Gross Settlement
RU	Review Unit
SAD	Special Additional Duty
SAED	Special Additional Excise Duty

GLOSSARY

Abbreviation	Meaning
SCGT	State Goods and Services Tax
SCN	Show Cause Notice
SCRA	Securities Contracts (Regulation) Act, 1956
SEBI	Securities and Exchange Board of India
SFT	Statement of Financial Transaction
SPF	Specific Pathogen Free
SWS	Social Welfare Surcharge
TAN	Tax Deduction Account Number
TCS	Tax Collected at Source
TDS	Taxes Deducted at Source
TPO	Transfer Pricing Officer
u/s	Under Section
UCB	Urban Co-operative Bank
UK	United Kingdom
USA	United States of America
UTGST	Union Territory Goods and Services Tax
VsV	Vivad se Vishwas
VU	Verification Unit
WTO	World trade Organization
HC	High Court
SC	Supreme Court
FY	Financial Year
NFT	Non-Fuungible Tokens

FIRM INTRODUCTION

Taxcraft Advisors LLP ('TCA') is a multidisciplinary advisory, tax and litigation firm having multi-jurisdictional presence. TCA team comprises of professionals with diverse expertise, including chartered accountants, lawyers and company secretaries. TCA offers wide -ranging services across the entire spectrum of transaction and business advisory, litigation, compliance and regulatory requirements in the domain of taxation, corporate & allied laws and financial reporting.

TCA's tax practice offers comprehensive services across both direct taxes (including transfer pricing and international tax) and indirect taxes (including GST, Customs, Trade Laws, Foreign Trade Policy and Central/States Incentive Schemes) covering the whole gamut of transactional, advisory and litigation work. TCA actively works in trade space entailing matters ranging from SCOMET advisory, BIS certifications, FSSAI regulations and the like. TCA (through its Partners) has also successfully represented umpteen industry associations/trade bodies before the Ministry of Finance, Ministry of Commerce and other Governmental bodies on numerous tax and trade policy matters affecting business operations, across sectors.

With a team of experienced and seasoned professionals and multiple offices across India, TCA offers a committed, trusted and long cherished professional relationship through cutting-edge ideas and solutions to its clients, across sectors.

GST Legal Services LLP ('GLS') is a consortium of professionals offering services with seamless cross practice areas and top of the line expertise to its clients/business partners. Instituted in 2011 by eminent professionals from diverse -elds, GLS has constantly evolved and adapted itself to the changing dynamics of business and clients requirements to offer comprehensive services across the entire spectrum of advisory, litigation, compliance and government advocacy (representation) requirements in the field of Goods and Service Tax, Customs Act, Foreign Trade, Income Tax, Transfer Pricing and Assurance Services.

Of-late, GLS has expanded its reach with offerings in respect of Product Centric Regulatory Requirements (such as BIS, EPR, WPC), Environmental and Pollution Control laws, Banking and Financial Regulatory laws etc. to be a single point solution provider for any trade and business entity in India.

With a team of dedicated professionals and multiple offices across India, it aspires to develop and nurture long term professional relationship with its clients/ business partners by providing the most optimal solutions in practical, qualitative and cost-efficient manner. With extensive client base of national and multinational corporates in diverse sectors, GLS has fortified its place as unique tax and regulatory advisory rm with in-depth domain expertise, immediate availability, transparent approach and geographical reach across India.

VMG & Associates ('VMG') is a multi-disciplinary consulting and tax firm. It brings unique experience amongst consulting firms with its partners having experience of Big 4 environment, big accounting, tax and law firms as coupled with significant industry experience. VMG offers comprehensive services across the entire spectrum of transaction support, business and risk advisory, financial reporting, corporate & allied laws, Direct & Indirect tax and trade related matters.

VMG has worked with a range of companies and have provided services in the field of business advisory such as corporate structuring, contract negotiation and setting up of special purpose vehicles to achieve business objectives. VMG is uniquely positioned to provide end to end solutions to start-ups companies where we offer a blend of services which includes compliances, planning as well as leadership support.

VMG team brings to the table a comprehensive and practical approach which helps clients to implement solutions in most efficient manner. With a team of experienced professionals and multiple offices, we offer long standing professional relationship through value advice and timely solutions to corporate sectors across varied Industry segments.

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