VISION 360

A TREASURY OF KEY TAX & REGULATORY DEVELOPMENTS!

APRIL 2024

EDITION 42

TCA TAXCRAFT ADVISORS

GLS

VMGG & ASSOCIATES

tiol ONE-STOP DESTINATION FOR TAXMAN AND TAXPAYER

EDITORIAL

Vision 360: A Bright Beginning to 2023-24!

The World Bank's latest India update indicates continued growth that demonstrates resilience. The overall growth remains robust, with the full-year estimate standing at 7.2 percent for F.Y. 2023-24, the real GDP grew by 7.5 percent year-on-year during the initial three quarters. The world's 5th largest economy seems well on its way to become the 3rd largest by 2027 as pledged by the Government.

In March 2024, GST collections rose by 11.5% annually to reach INR 1.78 lakh crore, the second highest since its inception in July 2017. The increase was primarily driven by a significant surge in GST collections from domestic transactions, which grew by 17.6%. After refunds, GST revenue grew by 18.4% year-on-year to INR 1.65 lakh crore. Additionally, due to increased compliance measures and being the final month of the financial year, a substantial collection surge was anticipated. This growth underscores the economic resilience of the country and reflects government's endeavors to encourage compliance.

In addition to fostering economic growth, the Indian judiciary has issued notable judgments in the realm of taxation, such as rulings on GST applicability to intermediary services, and addressed the issue of multiple litigation initiated by various GST authorities.

Speaking of the Direct Tax developments, CBDT has expanded avenues for filing of appeal by the Revenue but has retained monetary limits. The mechanism ultimately results in increased compliance measures, reinforcing the enforcement of laws, which is inherently the responsibility of the government.

There have been significant changes under Customs law as well which witnessed improvements like outlining import requirements for Advance Authorization holders, EOUs, and SEZ Units from a BIS (Bureau of Indian Standards) standpoint. Along with covering the above developments, we have also written articles addressing the contentious matter of timely payments to MSMEs as well as the utilization of electronic credit ledger for pre-deposit in filing an appeal under the GST framework.

As these developments make their way to headlines and boardrooms, we at **TIOL**, in association with **Taxcraft Advisors LLP**, **GLS Corporate Advisors LLP** and **VMGG & Associates**, are glad to publish the **42nd** edition of its exclusive monthly magazine '**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.

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ARTICLE

ENSURING TIMELY PAYMENTS TO MSMEs: CAN SECTION 43B(H) STRIKE THE RIGHT BALANCE?

Introduced vide the Finance Act, 2023, Section 43B(h) of the Income Tax Act, 1961, aims to be a game-changer for Micro and Small Enterprises in India. This provision seeks to improve their cash flow by linking tax deductions for businesses to timely payments made to MSMEs. But is it as straightforward as it seems? Let's delve deeper into the nitty-gritty of Section 43B(h), exploring the challenges businesses face in complying with it.

MSMEs is defined as any entity engaged in production, processing of any goods or employing plant and machinery in the process of value addition to the final product having a distinct name and use. They are the backbone of the Indian economy, contributing significantly to employment generation and national output. However, their growth and sustainability are often hampered by delayed payments from larger businesses. These delays create a vicious cycle, where MSMEs struggle with cash flow limitations, hindering their ability to invest in growth and meet their own financial obligations. Section 43B(h) seeks to address this issue by creating a financial incentive for businesses to settle dues with MSMEs promptly.

The heart of Section 43B(h) lies a simple principle: ensuring timely payments to MSMEs. This is achieved by disallowing tax deductions for business expenses owed to MSMEs if the payments are not settled within the timeframe mandated by the MSMED Act. As per Section 15 of the MSMED Act, payments to MSMEs must be settled within 15 days unless a written agreement specifies otherwise. Even this written agreement cannot extend the timeline beyond 45 days. If a business fails to adhere to these deadlines, the expense owed to the MSME won't be deductible in the year it was incurred for tax purposes. The deduction is only allowed in the year the payment is actually made. This, in theory, incentivizes businesses to settle dues with MSMEs swiftly, boosting the cash flow of MSME. This amendment by the government would ensure timely payments to the micro and small enterprises, leading to better working capital management.

One important thing to note is that this amendment does not covers traders registered under the MSMED Act as they are allowed to register under the act only for the purpose of availing Priority Sector Lending and not covered under the provisions related to “Delayed payment to MSMEs”.

While the intention behind Section 43B(h) is undoubtedly positive, complying with it throws up some roadblocks for businesses. Keeping track of due dates for numerous MSME vendors can be a significant administrative burden, especially for businesses with large vendor database. Unforeseen delays in payments due to disputes or clarifications can lead to unintended tax disallowances, creating unnecessary complications. Just an inaccurate classification on the portal could lead to ineligibility for benefits under Section 43B(h) for genuine MSMEs.

Additionally, there's a potential scenario where businesses may seek to reduce or limit their commercial engagements with MSMEs due to concerns about year-end deductions. Typically, credit terms in many industries span 90 days, but the imposition of a 15-day limit (in the absence of an agreement) or a 45-day limit (with an agreement) could deter them from conducting business with MSMEs. This would particularly impact sectors with credit periods exceeding 45 days.

It could also negatively affect taxpayers who regularly make contractual payments to MSMEs. The proposed amendment requires a robust system for tracking various due dates when making payments to multiple micro and small enterprises to avoid disallowance of substantial amounts. This would necessitate a laborious process of closely monitoring disallowances and allowances in subsequent years to comply with the Act's provisions, thereby increasing operational costs for taxpayers.

Moreover, as the regulations in this section do not apply to "Trader" registered under the MSMED Act, and the UDYAM Portal does not distinguish between "Trader" and "Manufacturer" during verification, accurately identifying the parties to whom these rules apply becomes challenging.

Yet another hurdle lies in maintaining the current status of MSME Vendors. If a vendor transitions between categories outlined in the act, updating their status in records becomes a manual task. This process of revalidation is not only time-consuming but also escalates the administrative expenses for the company.

Unforeseen delays in payments can occur due to genuine disputes or clarifications regarding invoices or deliverables. Under Section 43B(h), even if the business is ultimately not at fault for the delay, it could still

face tax disallowances. This can create unnecessary complications and cash flow disruptions for both the MSME and the larger business.

Furthermore, the provision of disallowance of interest on delayed payments to MSMEs for tax purposes already existed. This raises the question of whether Section 43B(h) adds significant value or simply creates an additional layer of complexity. Looking beyond India's borders, there are several other countries that have also implemented measures to ensure timely payments to MSMEs. However, there's no single, universally adopted approach. Some countries, like the UK and Australia, have similar legislative frameworks mandating prompt payments. In case of late payments both these countries allow the MSME vendor to claim interest from the buyer. However, the specific timelines and consequences for non-compliance may vary. This suggests that there might be alternative approaches to consider and that there can be a middle ground that can make both MSMEs and businesses happy.

The rationale behind Section 43B(h) is clear: to ensure timely financial resources for MSMEs, which are the lifeblood of many economies. A steady cash flow is crucial for their growth and survival. However, the feasibility of enforcing strict compliance with the current form of Section 43B(h) can be debated. Striking a balance between protecting MSMEs and creating undue compliance burdens for businesses is critical. Exploring alternative measures like awareness campaigns or interest penalties for delayed payments, which is already in place, could be a more workable solution. After all, the ultimate goal is to create a robust financial ecosystem that empowers both MSMEs and the businesses they interact with.

INDUSTRY PERSPECTIVE

HARMEET CHOPRA

Head- Tax

Jubilant Foodworks Limited

01 As the Tax Head of one of the leading QSR brands, can you provide insights into the unique tax challenges and considerations specific to the fast-food industry?

One area that commands significant attention is the GST landscape. Under the GST regime, restaurants, including ours, face a flat tax rate of 5% without access to Input Tax Credit benefits, presenting both advantages and challenges. While the simplicity of a single GST rate and the absence of ITC complexities simplifies our tax obligations, the inability to claim credits increase the impact of higher GST rates on our procurement costs, in turn escalating our product pricing.

To address this, it's crucial that the government shall provide taxpayers with the flexibility to choose between two options: either opting for the 5% tax rate without ITC benefits or selecting the 18% tax rate with access to such benefits, depending on the demands of their business operations. Moreover, the requirement under the CGST Act and Rules to value intra-company or related-party transactions at 110% of manufacturing costs further increases the cost burden without corresponding increase in revenue. Given the complexities in the GST framework, it is imperative for businesses to prioritize effective GST management and develop smart strategies to navigate this domain successfully.

02 What role does corporate social responsibility play in your approach to tax planning and compliance within the QSR industry?

Ensuring CSR remains a cornerstone of our code, especially concerning tax practices within the Quick QSR sector. We are deeply committed to giving back to the community and promoting positive societal impacts. Hence, in our approach to tax planning and compliance, we prioritize ethical and responsible conduct. This involves not solely focusing on tax minimization but also carefully evaluating the societal and environmental implications of our tax decisions. Our commitment extends beyond our products and services; we uphold principles of good corporate citizenship in our financial and tax management practices.

Currently, our CSR initiatives include diverse projects spanning the healthcare, education, and livelihood support sectors, with a particular emphasis on aiding farmers. These efforts underline our unwavering dedication to making meaningful contributions to society while upholding the highest standards of integrity and accountability in all aspects of our operations.

03 How does technology and data analytics support your team in identifying tax optimization opportunities and mitigating risks?

Utilizing technology and using the power of data analytics are fundamental pillars of our tax strategy. We rely heavily on cutting-edge technological solutions to streamline our tax processes and maximize efficiency. By using these tools, we can carve through large volumes of data with ease, swiftly identifying opportunities for tax savings while minimizing the likelihood of errors. This integration of technology and data analytics empowers us to make well-informed decisions and capitalize on areas where we can optimize our tax obligations. Operating under a B2C business model, our operations involve numerous transactions of relatively small amounts but substantial in volume. Considering this dynamic, it becomes essential for us to use the full potential of available technology to monitor and address any gaps across our processes. In essence, technology serves as a trusted friend in our tax endeavours, supplementing our understanding of intricate tax concepts and helping our confidence grow in navigating the complexities of tax matters. It's like having a trusted companion by our side, guiding us through the intricacies of the tax landscape and helping us achieve our financial objectives with precision and clarity.

04 Looking ahead, what do you anticipate will be the key priorities and challenges for tax management within the QSR industry, and how do you plan to address them?

As we look to the future, our primary goals centre on maintaining a keen watch over tax regulations and forming strategies to enhance our tax efficiency. It's crucial that we diligently fulfil all tax obligations promptly and thoroughly to eliminate any potential fines or penalties. To effectively address these challenges, we prioritize close collaboration with our tax partners, ensuring ongoing awareness of any updates or amendments to tax laws and regulations. Furthermore, we are firm in our commitment to finding avenues to simplify and streamline our tax management processes. We constantly try to enhance our tax handling procedures and operational efficiency. Our relentless pursuit of improvement underlines our dedication to optimizing our tax practices and ensuring seamless operations across the board.

05 As Quick Service Restaurants expand into new regions within India, what impact do these expansions have on local economies?

The expansion of QSR into new tier II and tier III cities present a multi-layered boon to the local economy, unleashing a number of positive impacts. First, it serves as a source of employment opportunity, resulting in a number of job openings that not only provide livelihoods but also elevate the standard of living within

the community. This increase in employment acts as a catalyst for increased consumer spending, it starts a good cycle where businesses nearby get more customers and make more money, which helps the whole area's economy grow. Expanding QSRs also usually means they spend a lot on local stuff like buildings and utilities. These investments not only strengthen the physical landscape of the region but also lay the groundwork for sustained economic growth and development. Investing in local infrastructure, QSRs play a crucial role in driving economic development and improving the overall quality of life for residents. Ultimately, the presence of QSRs greatly benefits the local economy by generating numerous opportunities for individuals to thrive, thus contributing to overall improvement in the area.

06 In your opinion, what emerging trends or technological innovations in the field of finance and taxation are likely to have a significant impact in the near future?

In the years ahead, major changes are expected in finance and taxation, thanks to exciting technologies like blockchain, AI and automation. These developments will make data mining and data handling tasks easier and more accurate while providing useful insights for better decision-making. Our revenue authorities are already using AI and Machine Learning in detecting and flagging the suspicious transactions. Currently the preliminary assessment of filed returns is done by use of AI. Even Faceless Assessment Scheme which was introduced in India recently has the primary objective of elimination of human interface in direct taxation functioning of the country with the widespread adoption and usage of data analytics and AI. AI is great at crunching numbers and finding patterns, but human input is still crucial for understanding complex situations and dealing with unexpected issues. So, the best results come when AI and people work together. AI can handle data analysis, while people provide guidance, leading to smarter financial choices.

07 India is the fifth largest economy now. What do you think of India's tax system? Is it in line with its peers?

Aligning India's income tax system specially Transfer Pricing regulations with global taxation standards marks a pivotal step toward attracting international investment and strengthening domestic businesses. Similarly, the implementation of the Goods and Services Tax (GST) signifies India's commitment to adopting globally recognized practices in indirect taxation. This monumental step, despite the vast demographic landscape of the country, underlines India's potential to lead progressive transformations on the global stage. Additionally, the integration of technology into various areas of tax administration, including litigation, compliance, data processing, and communication, characterises India's effort to enhance efficiency, transparency, and accountability within the tax framework. While acknowledging that the system may encounter its share of limitations, it is imperative to acknowledge the trajectory it charts for the future. As we navigate forward, it is crucial to observe the evolution and direction of these initiatives, recognizing their potential to shape India's tax landscape in the days ahead.

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HC holds no TDS on business support services as FTS given that 'make available' not satisfied

Shell India Markets Private Limited

2024-TII-24-HC-MUM-INTL

The Assessee was engaged in the business of operating a chain of retail fuel stations in India and had entered into a cost contribution agreement for availing general business support services from its AE which was a UK resident. On seeking determination from the AAR as to the tax liability, the AAR ruled that the payment was taxable as FTS and therefore liable to TDS u/s 195 of the IT Act. Aggrieved, the assessee filed writ before the HC.

The HC reckoned the cost contribution agreement between the Assessee and its AE to examine the nature of the business support services and found that the agreement was essentially related to managerial services and do not make available 'technical knowledge' or consist of development / transfer of a technical plan or design to the Assessee. It further analysed Article 13 of the India-UK DTAA to observe that the term 'FTS' used therein meant the kind of 'consultancy' services necessarily related to make available technical or any other knowledge, experience, skill, know-how or processes and not merely managerial issues since Article 13 specifically provided that consultancy services sans any technical nature were not taxable as FTS. Further, placed reliance on a plethora of judgments to hold that true meaning of the term 'services' necessary to determine its true technical nature and if the 'make available' condition was satisfied then the contract would stand concluded as once the services and the know-how, skill etc. was transferred to the Assessee, the need for continuing to render said services would end. Since in the case of the assessee, no such technical consultancy or knowledge has been provided, held no liability to deduct Tax. Hence the AAR ruling was set aside.

HC holds rejection of books of account, with irregularities, pre-requisite for best judgment assessment

Forum Sales Private Limited

2024-TIOL-412-HC-DEL-IT

The Assessee was engaged in the business of corporate gifting. A search operation was conducted u/s Section 132/ 133A of the IT Act on various office premises of the Assessee and a notice under Section 153A of the IT Act was also issued for filing return of preceding six years. Subsequently, an assessment was completed making additions, inter alia, on account of estimated unaccounted profit, disallowance of expenses, inflated purchases and cash seized. On appeal, while CIT(A) deleted additions on account of disallowance of expenses and inflated purchases as genuineness of books was never doubted and also deleted additions on account of cash seized as it was made on protective basis, ITAT upheld deletions by

CIT(A) while remitting back additions made based on estimation of unaccounted profits with direction to obtain information from third parties.

Aggrieved, the Revenue appealed to HC which upheld the deletions made by CIT(A) and directions of the ITAT with regard to re-estimation of unaccounted profits. The HC referred to Sections 145(3) and 144 of the IT Act along with a plethora of judgments holding that once the AO was satisfied about the existence of irregularities in the books of account as per Section 145(3) of the IT Act, they should have proceeded in the manner provided under Section 144 of the IT Act as the rejection of books of accounts was sine qua non for making best judgment assessment under Section 144 read with Section 145(3). It also took note of findings by ITAT that while requisite bills, vouchers and addresses of third parties were furnished, Revenue did not make efforts to confirm their veracity before alleging them bogus or inflated. Unjustified cherry-picking approach of rejecting certain entries without rejecting books of account was completely arbitrary and led to an incomplete, unreasonable and erroneous computation of income. Revenue's appeal was dismissed.

HC upholds rectification initiated on issues not considered during 'limited scrutiny' assessment

Sabari Alloys & Metals India Private Limited

Writ Petition No. 6143 of 2023

The Assessee had filed a return of income for AY 2018-19 which was subjected to a limited scrutiny of 'agricultural income' under Section 143(3) of the IT Act. Subsequently, the Revenue issued a notice under Section 154 of the IT Act seeking to rectify the assessment order on certain issues that were not considered or reflected in the assessment order. Aggrieved, the Assessee filed a writ before the HC challenging the rectification proceedings by contending that the rectification notice issued was without jurisdiction since the Revenue was only empowered to rectify a mistake which was apparent from the record.

Placing reliance on a plethora of judgments, the HC observed that the expression "error apparent on the fact of record" was wider than the expression "mistake apparent from the record" and an AO was competent to invoke the jurisdiction under Section 154 of the IT Act, if they had committed a glaring mistake of fact or law while passing the assessment order. Moreover, the word "record" for the purpose of Section 154 (1) of the IT Act was the "record" available with the authorities at the time of initiation of proceedings for rectification, and not merely the record of the original proceedings sought to be rectified. Accordingly, if the Revenue failed to do what was required under the law at the time of passing the assessment order and passed an assessment order with the defects, such assessment orders could be rectified under Section 154 of the IT Act. The HC upheld the rectification proceedings by the Revenue to assess the issues not considered or reflected in the assessment order under Section 143(3) of the IT Act, which the Revenue was bound to assess under the law.

HC holds Revenue bound by CBDT's Digital Evidence Investigation Manual, directs re-adjudication in post-search assessment

Saravana Selvarathnam Retails Private Limited

Writ Petition No. 9753 of 2023

A search was conducted on different dates between December 01, 2021 and January 27, 2022 by the Revenue on the premises of the Assessee during which, digital data was seized and consequentially an assessment order was passed. Aggrieved, the Assessee filed a writ before the HC contending that while conducting the search and seizure of the digital data from the premises of the Assessee, the procedures, which were laid down by the CBDT in the DI Manual issued u/s 119 of the IT Act for the purpose of conducting the search and seizure had not been followed.

Setting aside the order, the HC observed that the digital data extensively relied upon in the assessment order was collected in complete contravention of the procedures laid down in DI Manual and the same was also not corroborated by additional evidences. Further, the data collection & its preservation by the Revenue was also entirely suspicious as the assessments were made by virtue of mere guess work without bringing any additional evidences on record in support thereof. It also observed that the evidence could not be nullified based on technical clutches and there must to be something more than the suspicion to support the assessment. It also noted that the data and the sworn statements relied upon were not produced and the orders were passed hurriedly within a short span of time without providing opportunity of hearing and cross-examination of witnesses when according to a plethora of judgments such an opportunity ought to be provided to the Assessee. Moreover, one of the two witnesses present during the search was a GST officer, thereby failing even the requirement of independent witnesses. Accordingly, matter remitted back to Revenue for re-adjudication.

HC holds Revenue's stay powers 'discretionary', not 'cabined' by CBDT OMs, rejects 20% pre-deposit as prerequisite

National Association Of Software And Services Companies (NASSCOM)

2024-TIOL-454-HC-DEL-IT

The Assessee filed return for AY 2018-19 claiming refund of INR 6.46 Crores on account of excess TDS deducted. Subsequent to issue of notices under Sections 143(2) and 142(1) of the IT Act, during the pendency of assessment proceedings, the return was processed under Section 143(1) intimating a refund of INR 6.42 Crores to the Assessee. However, the final assessment order u/s 143(3) was framed creating a demand of INR 10.27 Crores. Aggrieved, the Assessee preferred appeal before CIT(A), NFAC. During its pendency, the Assessee moved application u/s 154 and also for stay of demand u/s 220. The Revenue rejected the application u/s 154 contending there was no such mistake apparent from record. It further ignored the stay application filed by the Assessee and proceeded to adjust the above demand of INR 10.27 Crores against the refunds of earlier AYs aggregating to INR 11.72 Crores contending that the application

for stay was not accompanied by any challan evidencing pre-deposit which is a pre-condition as per CBDT's relevant OM No. 404/72/93-ITCC6 dated July 31, 2017.

The Assessee moved writ petition before the HC contending Revenue's action of making above adjustments sans examining Assessee's stay application as wholly arbitrary and illegal. Rejecting Revenue's arguments, the court observed the premise taken by the Revenue that the extant OM mandates deposit of 20% of outstanding demand as a pre-condition for putting the demand in abeyance is completely erred and finds no place in the extant OM. Further, placing reliance on a catena of judgments by apex court, it observed that an administrative circular would not operate as a fetter upon the power otherwise conferred on a quasi- judicial authority and that it would be wholly incorrect to view the OM as mandating the deposit of 20%, irrespective of the facts of an individual case.

Further, the discretion vested in the hands of the Revenue under Section 220(6) of the IT Act could not be fettered by the terms of the extant OM and the requirement of pre-deposit would have to be examined bearing in mind factors such as the prima-facie case, undue hardship and likelihood of success. Also, the intimation of refund adjustments being proposed was irrelevant once it was found that the application for stay remained pending and the said fact was not an issue of contestation. Petition allowed with matter remitting back for re-consideration.

DIRECT TAX
From the Legislature

NOTIFICATIONS

Sr No	Notification	Summary
1.	Notification No. 24/2024 dated March 01, 2024	**CBDT notifies ITR-7 for AY 2024-25** The CBDT notifies ITR-7 for AY 2024-25 for filing of return of Income by designated entities such as firms, companies, local authorities, AOPs, and artificial judicial persons .
2.	Notification No. 27/2024 dated March 05, 2024	**CBDT notifies amendments in forms for tonnage tax & cooperative societies** The Finance Act 2023 extended benefits of concessional tax rate of 15% u/s 115BAE of the IT Act to newly set-up resident co-operative societies engaged in the manufacturing or production of an article or thing. Simultaneously, to curb any tax evasion in this respect, the transactions of these societies with closely connected entities have been covered under the realm of Specified Domestic Transactions under transfer pricing provisions. With a view to, inter alia, align various reporting forms under the IT Act, viz. Forms 3CD & 3CEB with the aforesaid new dispensation, the notification makes amendments to their certain clauses, including changes to incorporate reporting for such cooperative societies. Further, Form 65 i.e. the application for exercising/ renewing option for the tonnage tax scheme has also been updated to include certain details in case the applicant is an IFSC unit.
3.	Notification No. 28/2024 dated March 07, 2024	**CBDT notifies 'No TDS' receipts for IFSC units availing deduction under Section 80LA of the IT Act** Extending continued benefits to the IFSC units, CBDT vide the notification outlined various types of payments made to IFSC Units that are now exempt from TDS. The payment includes Interest income on ECBs and Loans, Professional fees, Commission income, Dividend income, Referral fees, etc.

Sr No	Notification	Summary
		To avail this benefit, both the IFSC Unit (payee) and the payer must adhere to specific procedural requirements listed therein. This exemption applies for ten consecutive assessment years starting from April 1, 2024.
4.	Notification No. 33/2024 dated March 19, 2024	**CBDT invokes MFN Clause, notifies lower Royalty & FTS tax-rate in India-Spain DTAA** The CBDT has issued the notification to give effect to MFN clause for lower tax rate under India – Spain DTAA. The amendment in Article 13 (relating to Royalty & FTS) in the DTAA has been announced to lower tax rates on Royalties and Fees for technical services. In terms of the amendment, the tax charged will not exceed 10% of the gross amount of royalties or fees for technical services instead of the existing treaty rates which was up to 20%. The amendment is effective from AY 2024-25.
5.	Notification No. 34/2024 dated March 19, 2024	**CBDT issues Corrigendum to Tax Audit Report amendment regarding Section 43B(h) of the IT Act** The CBDT issues Corrigendum which amends certain aspects of the tax audit report notified by Notification No. 27/2024 dated March 05, 2024. After the Corrigendum, clause 22 of Form 3CD should now read as: *"Amount of interest inadmissible under Sec. 23 of the MSME Act, 2006 [or any other amount not allowable under clause (h) of section 43B of the Income-tax Act, 1961]"*
6.	Notification No. 37/2024 dated March 27, 2024	**CBDT notifies ITR verification & acknowledgment forms for AY 2024-25** The CBDT, has introduced revisions to the verification (i.e. ITR – V) & Acknowledgement for AY 2024-25, especially for those taxpayers who submit their returns through electronic mode but fail to verify them electronically. It highlights the penal consequences of late filing of ITR in case ITR-V acknowledgement doesn't reach on time.

CIRCULARS

Sr No	Circulars/Orders/ Press Releases	Summary
1.	CBDT Order dated March 01, 2024	**CBDT extends timeframe for processing 'non-scrutiny ITRs' for AY 2021-22 till April 30, 2024** To mitigate the genuine hardships being faced by taxpayers based on pending grievances of taxpayers related to issue of refund where delay is not attributable to them and the ITRs are otherwise filed validly under Section 139 or Section 142 or Section 119 of the IT Act for AY 2021-22, the CBDT extends the time-frame for the processing of such 'non-scrutiny ITRs' for AY 2021-22, stating that the intimation of the processing of ITRs can be sent to the Assessee by April 30, 2024, and all ITRs validly filed electronically with refund claims for AY 2021-22 for which date of sending intimation under Section 143(1) of the IT Act, had lapsed can now be processed with prior administrative approval of the Principal Chief Commissioner of Income-tax/ Chief Commissioner of Income-tax concerned. However, the relaxation is not applicable to ITRs selected in scrutiny, ITRs remaining unprocessed, where either demand is shown as payable in the return or is likely to arise after processing it, and ITRs that remain unprocessed for any reason attributable to the Assessee.
2.	Press Release dated March 04, 2024	**CBDT apprises of 'mismatch communication' exercise for AY 2021-22 under e-Verification Scheme** The CBDT issues Press Release apprising that under e-Verification Scheme, 2021, the IT Department is in the process of sending communication to the taxpayers for the mismatches in information between the ITR vis-à-vis specified financial transactions available with the Department pertaining to AY 2021-22. The Department is sending this information to taxpayers urging them to view their AIS and file ITR-U, wherever found necessary. Eligible non-filers can also submit ITR-U & the last date for filing for AY 2021-22 is March 31, 2024.

Sr No	Circulars/Orders/ Press Releases	Summary
3.	Circular No. 02/2024 dated March 05, 2024	**CBDT allows trust & institutions to file AY 2023-24 audit report by March 31, 2024, over Form 10B/10BB conundrum** Taking cognizance of the instances brought to its notice where trusts and institutions furnished audit report in Form No.10B instead of Form No. 10BB and vice versa, the CBDT allows trusts and institutions to furnish audit report for AY 2023-24 in the applicable form i.e. Form 10B or 10BB upto March 31, 2024. Further, the CBDT clarifies that non-furnishing of audit report in the prescribed form would result in denial of exemption as it is one of the conditions which is required to be satisfied for claim of exemption, therefore, trusts and institutions which have furnished audit report on or before October 31, 2023, are allowed to furnish the audit report under clause (b) of the tenth proviso to Section 10(23C) of the IT Act and clause 12A(1)(b)(ii) of the IT Act in the applicable Form No. 10B or 10BB for AY 2023-24 on or before March 31, 2024.
4.	Circular No. 03/2024 dated March 06, 2024	**CBDT clarifies trusts' exemption eligibility on inter-trust donations** The CBDT has issued the circular to address concerns and provide clarity on the taxation aspects of donations made by trusts or institutions to other trusts or institutions in the light of the provisions of the Finance Act 2023. Under the existing provisions of IT Act, at least 85% of the income of the trust or institution should be applied towards charitable or religious purposes to avail exemption. The Finance Act 2023 introduced amendments in these provisions wherein it was specified that donations made by a trust or institution, excluding corpus donations, shall be considered as application for charitable or religious purposes only to the extent of 85% of such donations. This amendment created a confusion with regard to the treatment of the remaining 15% of the donation. Vide the circular, the CBDT clarified that the remaining 15% of the amount transferred to other trusts or institutions will not be taxable. To ensure clear understanding, an illustrative numerical is also provided in the said circular. It further clarified that when a trust or institution donates to another trust or institution, 85% of the donation amount will be considered as application for charitable or religious purposes. Therefore, the entire donated amount, including the 15%, will be exempt from taxation under the respective regime.

Sr No	Circulars/Orders/ Press Releases	Summary
6.	Circular No. 04/2024 dated March 07, 2024	**CBDT waives late fee & interest on delayed Form 26QE filing for July 2022-February 2023 till May 30, 2023** The CBDT grants a retrospective extension for filing of Form 26QE upto May 30, 2023, for TDS under Section 194S of the IT Act (Payments on VDA transfer) pertaining to period from July 1, 2022, to February 28, 2023. The specified deductors couldn't file Form 26QE because of its non-availability on the portal which resulted in consequential imposition of fee u/s 234E along with interest charged under Section 201(1A)(ii) at the time of its filing once it became available. With this Circular, both fee and interest are sought to be waived. However, this waiver will only be available to those deductors deducting tax during the period from July 1, 2022, to February 28, 2023.
7.	CBDT Order dated March 13, 2024	**CBDT allows successor companies to e-file ITR for the period of June 01, 2016, to April 1, 2022, in case of business reorganizations, till June 30, 2024** The SC in **Dalmia Power [Civil Appeal Nos. 9496-99 of 2019]** held that ITR filed by the successor companies, after taking into account the business reorganizations sanctioned by the NCLT shall be received by the Department. However, the CBDT noted that Section 170A of the IT Act (effective from April 01, 2022) did not allow ITR filing for business reorganizations sanctioned prior to April 01, 2022, causing genuine hardships to taxpayers. Given this backdrop, taking cognizance of the difficulties faced by the entities in e-filing of modified returns pursuant to business reorganizations sanctioned by a court or the NCLT after June 01, 2016 but prior to April 01, 2022, the CBDT issued the order allowing successor companies to submit modified returns for the relevant assessment years. In this regard, a step-wise approach has been formulated through which the taxpayers in the instant cases can furnish returns till 30.06.2024

Sr No	Circulars/Orders/ Press Releases	Summary
8.	Circular No. 05/2024 dated March 15, 2024	**CBDT expands avenues for Revenue's appeal-filing but retains monetary limits** With a view to reduce unnecessary litigation & ensure justice and interest of revenue, the CBDT vide this circular aimed to streamline the process of filing of appeals by Revenue before various judicial authorities. While retaining the existing monetary limits for appeals by Revenue, it expanded its scope to include cases, among others, involving TDS, International tax, information received from other government agencies, etc. It further clarifies that appeal should not be filed merely because of the monetary limits, but only in cases specified in the Circular with overall objective to reduce unnecessary litigation & providing certainty to taxpayers. It also lists down scenarios where the decision to file appeal/ SLP shall be taken on merits without regard to tax effect, like where any notification, order, etc. declared illegal, action taken based on information received from other govt. agency (like CBI, DRI), strictures/ cost levied on the Dept., etc

TRANSFER PRICING
From the Judiciary

ITAT Holds issuance of letters of comfort/ support as international transaction

Asian Paints Ltd

ITA No 5363/Mum./2017

The assessee during AY 2012-13 issued non-contractual letters of comfort/support to banks on behalf of some of its subsidiaries (AEs) from time to time against which loans were granted by the banks to those AEs. For providing letters of comfort/ support, the assessee did not charge anything from the AEs. During assessment, the TPO didn't accept assessee's contention & accordingly computed TP adjustment of 0.5% of the loans availed by subsidiaries based on such letters. On appeal, CIT(A) reduced the adjustment to 0.4%. Aggrieved, both parties appealed before the ITAT.

The ITAT while considering various aspects of the transaction stated that while issuing letters of comfort/ support for the subsidiaries, it has satisfied first condition for being an international transaction as per Sec.92B of the IT Act. It further noted that the assessee has not only considered the corporate guarantees issued on behalf of its subsidiaries as its contingent liability but has also considered the letters of comfort/ support to banks on behalf of some of its subsidiaries as its contingent liability as well.

It also noted that during the proceedings, the assessee already accepted corporate guarantee to be an international transaction, therefore the letters of comfort / support issued by it which has been admitted to be a liability by assessee itself and thus have a bearing on its assets also constitutes an international transaction within the realm of Sec.92B. Rejecting assessee's contention that it is not financially obligated to bear the cost in case subsidiaries defaults as assessee itself treated letters of comfort issued as its contingent liability. It also observed that vide letters of comfort, the assessee not only undertook to use its best endeavor to see that obligations of the subsidiary are met, but also treated the liability as a contingent liability in its financial statements. It further confirmed CIT(A)'s computation of ALP to be @0.04%.

ITAT holds interest on outstanding receivables not "eligible international transaction" for Safe-Harbor applicability

Iomedia India Pvt Ltd.

ITA No.995/Del/2021

The Assessee was engaged in the business of outsourcing software and 3D visualization services and rendered services to its AE during AY 2016-17. Pursuant to the directions of the DRP, the AO/TPO imputed interest on outstanding receivables from the AE, in respect of invoices which had been realized beyond the agreed credit period of 60 days, @ LIBOR + 400 basis points. Aggrieved, the assesee moved ITAT.

Before the ITAT, the Assessee contended that since it had already offered the income by having a markup of 25%, which was the rate prescribed under the Safe Harbor Rules, no other ALP adjustment could be made by the Revenue.

While referring to Rule 10TC of the IT Rules which defined "eligible international transaction", the Tribunal reckoned various types of transactions and concluded that the transaction of the assessee (viz., interest on outstanding receivables) finds no place in any of the items listed in Rule 10TC. Accordingly, it opined that although the Assessee could not get the benefit of ALP adjustment getting subsumed in such 25% markup, however, consistent with various other ITAT decisions, it held that interest @ LIBOR + 200 basis points was required to be adopted as against LIBOR + 400 basis points so as to meet the ends of justice for both sides, accordingly, partly allowing the Assessee's appeal.

HC holds change of opinion' no reason to believe income escapement, disposes of writ petition

Sanofi India Limited

Writ Petition No. 1657 of 2015

The Assessee had filed a writ before the HC challenging the notice issued by the Revenue u/s 148 of the IT Act to reopen the assessment for AY 2007-08 alleging that the Assessee had imported certain raw materials from its AE by paying prices far exceeding ALP.

The HC while quashing the notice, observed that the Assessee had submitted a copy of agreements entered into with its AE and justified the selection of TNMM over CUP. While placing reliance on a plethora of SC judgments, it also observed that the Assessee was under an obligation to disclose only all basic facts and could not be expected to draw any inference or disclose any inference to be made from these basic facts. Further, in the present matter, there was not even an allegation that the Assessee was aware of the prices at which the third-party companies imported the raw materials and there were no reasons recorded as to how the Assessee must have been aware of those facts. Accordingly, there was nothing to indicate that there was any failure on the Assessee's part to truly and fully disclose any material fact.

The HC further observed that once a query was raised during the assessment and the Assessee had replied, the query raised was a subject of consideration of the AO while completing the assessment. From the reasons recorded, it appeared apparent to the HC that the attempt of reopening the assessment was merely on the basis of a 'change of opinion' which did not constitute justification and/or reasons to believe for reopening case under escape assessment.

ARTICLE

DECIPHERING THE PUZZLE: UTILIZING THE ELECTRONIC CREDIT LEDGER FOR PRE-DEPOSIT IN APPEAL FILING

In the ever-evolving landscape of GST, businesses often find themselves grappling with complexities, particularly when it comes to navigating the appeals process. One critical aspect that warrants attention is the pre-deposit mechanism and the role of the ECrL. Section 107 and Section 112 of CGST Act provides that, no appeal shall be filed unless a sum equal to 10% of disputed amount of tax has been paid. The next question that arises in the mind is how to pay this pre-deposit? Can the credit in the ECrL be utilised for payment of this deposit?

Concurrently, the ECrL is a ledger maintained on common portal wherein every claim of ITC under the CGST Act is credited. However, the utilization of credits from the ECrL is restricted by Section 49(4) of the CGST Act, which specifies that these credits can only be used for making payments towards output tax. This restriction confines the scope of utilizing credits from the ECrL to settling liabilities related to output tax. Moreover, Sections 107 and 112 of the CGST Act employ the phrase 'sum equal to percentage of tax', rather than explicitly referring to 'tax' itself. Therefore, it becomes imperative to scrutinize whether the pre-deposit amount qualifies as output tax or merely constitutes a monetary sum.

Legal Interpretations and Judicial Scrutiny

The interpretation of these statutory provisions has precipitated legal debates and judicial scrutiny. In RE: Oasis Realty v. UOI [2022-TIOL-1287-HC-MUM-GST], the Bombay High Court opined that pre-deposit is akin to tax payment, thereby elucidating its nature and implications. Similar view was taken by the Allahabad High Court in the case of RE: Tulsi Ram and Company vs. Commissioner, reported in [(2022) 1 Centax 26 (All.)], wherein it was held that the Appellate Authority cannot insist on making payment of disputed tax through ECL only.

In contrast, the Orissa High Court in the case of RE: Jyoti Construction [2021-TIOL-2007-HC-ORISSA-GST] did not accept that pre-deposit could be equated to 'output tax' as defined in Section 2(82) of CGST Act and accordingly ECrL cannot be used

to make the pre-deposit payments. Similarly, in the case of RE: Flipkart Internet Private Limited [Civil Writ Jurisdiction Case No.1848 of 2023] the Patna High Court ruled that pre-deposit for maintaining an appeal under Section 107(6)(b) of the CGST/SGST Act is permissible solely by utilizing amounts from the ECL and not the ECrL.

Precedents from the Central Excise Regime

In the preceding era governed by the Central Excise Act, 1944, Section 35F stipulated that appeals could not be entertained without the Appellant depositing a percentage of the duty amount. The issue of payment of pre-deposit through CENVAT credit saw evolution through various judicial pronouncements and administrative directives. Circular No. 15/CESTAT/General/2013-14 dated August 28, 2014 issued by the CESTAT, clarified that mandatory deposits of confirmed duty could be made from the CENVAT account for filing appeals. This set a precedent for utilizing CENVAT credit for pre-deposit payments under Section 35F of the Excise Act.

Subsequent judgments further solidified this stance. In cases such as Gujarat High Court in the case of Cadila Health Care Pvt. Ltd. vs. UOI [2018 (18) G.S.T.L. 30 (Guj.)], decision of Jharkhand High Court in the case of Akshay Steel Works Pvt. Ltd vs. UOI [2014 (304) ELT 518 (Jhar)] and decision of Hon'ble Apex Court in the case of Eicher Motors Ltd. v. UOI [1999 (106) ELT 3] it was established that CENVAT credit could indeed be utilized for payment of pre-deposit under Section 35F. The reasoning behind this interpretation lay in Rule 3 of the Cenvat Credit Rules, 2004, which did not expressly prohibit such adjustments. The Hon'ble Apex court in the case of Chandrapur Magnet Wires (P) Ltd. vs. CCE, Nagpur [(1996) 2 SCC 159] under similar circumstances has held that credit under the erstwhile MODVAT scheme was "as good as tax paid". Thus, where the deposit is made using credit from ECRL, it ought to be considered as payment of tax.

The ECrL Conundrum and CBIC Circular

It is pertinent to note that in the erstwhile regime, pre-deposit took on the characteristics of tax liability, allowing payment through the CENVAT Credit account. However, under the GST law, the utilization of the ECrL for payment towards output tax is restricted by Section 49(4) of the CGST Act. Sections 107 and 112 of the CGST Act refer to a "sum equal to percentage of tax" rather than explicitly stating "tax" itself.

The issue regarding utilization of amount in the ECrL stands concluded with the issuance of the Circular No. 172/04/2022-GST dated July 06, 2022 by the CBIC under Section 168 of the Act. The same clarifies that payment towards output tax, whether self-assessed in the returns and payable as a consequence of any proceedings instituted under the provisions of GST laws can be made by utilization of amount available in the ECrL. Perusal of Form GST APL-01 (Appeal to Appellate Authority) and Rule 108 of the CGST Rules leaves no room for doubt that pre-deposit can be made either from the ECL or the ECrL. The form contains columns providing option and facilitating indication of payment to be made through each register separately. Accordingly, the contention that pre-deposit 10% cannot be made through ECrL seems to be in contrary to the statute/Rules, read with the statutory form.

Conclusion

Furnishing pre-deposit through cash becomes undesirable when the taxpayer has accumulated ITC available at its disposal. ITC is equivalent to tax paid, and the rationale to not permit its usage for payment of pre-deposit for maintaining an appeal is unreasonable. It's puzzling why a part of the tax payment cannot be made from the ECrL when the entire payment of tax could have been made from it. In conclusion, the pre-deposit mechanism in GST appeals is a crucial aspect that demands clarity and consistency in interpretation. While the legal landscape continues to evolve, it's imperative to navigate these complexities with a clear understanding of statutory provisions and judicial precedents.

GOODS & SERVICES TAX
From the Judiciary

HC: Electronic Credit Ledger can be used for paying pre-deposit during filing of appeal

Shiv Crackers

R/Special Civil Application No. 22979 of 2022

The Petitioner had filed an appeal against the demand order u/s. 107 of the CGST Act. The said appeal had been disposed by the Additional Commissioner relying upon the judgement of the Orissa HC in the matter of **Jyoti Construction [2021 (10) TMI 524]** on the ground that that the ECrL cannot be used for the purpose of filing an appeal under the GST and the payment for the pre-deposit must be done through ECL only. Aggrieved, the Petitioner filed a writ before the Gujarat HC.

The Court relying upon the case of **Oasis Realty [Writ Petition No.23507 of 2022]** and the CBIC Circular dated July 6, 2022 held that the pre-deposit required under Section 107(6) of the CGST Act can be paid using the ECrL. The HC ruled that amount available in the ECrL can be utilized for payment of IGST, CGST, SGST, or UTGST. The HC further emphasised that it is not necessary to reply upon the case of **Jyoti Construction ('supra')** because subsequent to the said order the CBIC has issued clarification in the form of a circular which allowed the utilization of the amount available in the ECrL for payment of pre-deposit. Consequently, the impugned order-in-appeal was quashed, and the appeal was restored.

Authors' Notes

> *It is pertinent to note that in the erstwhile regime, pre-deposit took on the characteristics of tax liability, allowing payment through the CENVAT Credit account. However, under the GST law, the utilization of the ECrL for payment towards output tax is restricted by Section 49(4) of the CGST Act. Sections 107 and 112 of the CGST Act refer to a "sum equal to percentage of tax" rather than explicitly stating "tax" itself. Therefore, it becomes imperative to delve into whether the pre-deposit qualifies as output tax or is merely an amount to be deposited.*

Holding Shares in a Subsidiary by a Holding Company is not a Supply of Service

Metro Cash and Carry Private Limited

Writ Petition No.25142 OF 2022 (T-IT)

The Petitioner sought relief before the Karnataka HC against four SCNs proposing a demand for IGST, alleging that the levy of GST on the activity of holding equity capital by the parent Company. The Petitioner relied upon the judgment of the Karnataka HC in **RE: Yonex India Private Limited [W.P.No.2301/2023],** wherein it was held that the mere holding of shares by a holding Company in its subsidiary cannot be construed as a supply of service for GST purposes.

The HC further noted that the **Circular No. 196/08/2023-GST dated July 17, 2023** and state **Circular No. 09/2023 dated July 21, 2023** also clarifies that securities, including shares, are neither goods nor services under the GST framework. Moreover, the purchase or sale of shares does not inherently amount to a supply of goods or services unless specified conditions under the GST law are met. Therefore, the HC quashed the impugned SCNs, deeming them without jurisdiction or authority of law, and allowed the petition accordingly.

HC sets aside order issued without considering the submissions made by the assessee

Bhagyam Exports

W.P. No. 6619 of 2024 and W.M.P. Nos. 7346 & 7347 of 2024

The Petitioner was subjected to an assessment order. However, the said order did not discuss the reply or record any findings regarding the objections raised. Aggrieved, the Petitioner preferred a writ before the Madras HC.

The Court observed that the impugned order failed to address the Petitioner's objections raised in their reply. Despite the Petitioner's contention that the audit report was issued beyond the prescribed period of limitation, the impugned order did not record any findings on this matter. Consequently, without expressing any opinion on the merits of the Petitioner's contentions, the Court deemed it necessary to interfere with the impugned order and remanded the matter for reconsideration.

Authors' Notes

> *It is a settled principle that there is an implicit requirement of observance of the principles of natural justice that the order or decision must be expressed in such a manner that reasons can be spelt out from such decision. Taking similar stance,* ***RE: M/s. Engineering Aids Vs. State Tax Officer [W.P.No.28124 of 2022],*** *the Madras High Court had held the order invalid which was passed without considering assessee response. It is pertinent to note that it's a settled principle that the unreasoned order or the order passed without recording reasons amounts to violation of principles of natural justice.*

HC invalidates the imposition of GST on trade payables as per the financial statements

DSV Air and Sea Private Limited

W.P.No.8153 of 2024 and W.M.P.Nos.9102, 9103 & 9105 of 2024

The Petitioner was served with an assessment order, imposing a significantly higher tax liability, than proposed in the SCN. Aggrieved, the Petitioner preferred a writ before the Madras HC. The Petitioner argued that the increase in tax liability was beyond the scope of the SCN. Specifically, the Petitioner contested the

imposition of GST on their entire trade payables asserting that they had complied with ITC norms by making timely payments for goods and services received within 180 days.

The court observed that levy of GST on total trade payables from financial statements is prima facie untenable given the Petitioner's response that statutory requirements for availing ITC had been met. Consequently, the court remanded the matter back for fresh consideration.

HC: Rejection of assessee's submission basis non-furnishing reconciliation statement deemed unjustified

Subasri Realty Private Limited

W.M.P. Nos. 7697 & 7698 of 2024

The Petitioner was in receipt of a notice in Form ASMT-10, to which the Petitioner had replied by submitting documents, including a reconciliation statement and sample invoices. Thereafter, another SCN was issued, to which the Petitioner has also responded. Despite the Petitioner's submissions, an order was issued, citing the Petitioner's reply as incomplete due to the absence of required reconciliation statements. Aggrieved, the Petitioner preferred a writ before the Madras HC.

The HC observed that the Petitioner's reply in Form GST ASMT-11 refers categorically to a re-conciliation statement being attached along with sample invoices for review. However, it is unclear as to whether the Petitioner submitted the audited balance sheet, trial balance and annual report. Further, although the Petitioner failed to provide all relevant invoices to justify the exclusion of certain expenses from the taxable turnover, the court deemed the assessing officer's rejection unjustified as the Petitioner's explanation was not duly considered. Consequently, the impugned order was quashed, and the matter was remanded for reconsideration. The Petitioner was granted permission to submit additional documents clarifying the disparity between the taxable turnover reported in its returns and the details in Form 26AS.

HC: Bona fide error of claiming ITC under different head must be rectified within the statutory time limit

M Trans Corporation

WP(C) NO. 7731 OF 2024

The Petitioner was subjected to a notice alleging excess ITC claims for the F.Y. 2017-18. In response, the Petitioner filed its reply stating that instead of claiming the CGST/SGST claimed IGST and it was not a bona fide mistake committed by the Petitioner. However, the assessing authority rejected the contention of the Petitioner and directed to pay the tax, interest and penalty etc. Aggrieved, the Petitioner preferred a writ before the Kerala HC.

The Petitioner relied on the judgment of the Karnataka High Court in the case of **Orient Traders, [[2023 (1) TMI 838]** allowing ITC claimed erroneously as IGST instead of CGST/SGST. However, the court observed that the statute prescribes a specific time limit for moving applications to correct such errors or claim refunds. As the petitioner failed to adhere to this timeline, the court could not intervene beyond its jurisdiction to

amend statutory provisions. Further, the court found that the relied judgment did not consider statutory provisions similar to those in the present case. Consequently, the Karnataka HC judgment lacked binding precedent. Accordingly, considering the Petitioner's failure to comply with statutory timelines and the absence of binding precedent from the Karnataka HC judgment, the court dismissed the writ petition.

HC: Two separate proceedings cannot be initiated for the same assessment period and issue

South India Steels

W.P. No. 7129 of 2024 & W.M.P. Nos. 7981 & 7982 of 2024

The Petitioner was in receipt of a notice in Form ASMT - 10, followed by two assessment orders, respectively, for the same assessment period. Aggrieved the Petitioner preferred a writ before the Madras HC. The Petitioner contented that they had intimated the Assessing Officer about the voluntary payment to certain extent towards a difference between Form GSTR-3B and Form GSTR-2A returns. Subsequently, a rectification order was issued for one of the assessment orders after considering this payment. Accordingly, the Petitioner contended that since the impugned order pertained to the same period and issue, it was unsustainable.

The Court held that considerable confusion arose from initiating two separate proceedings for the same assessment period and issue. Moreover, the rectification order lacked clarity regarding the reasons for rectification, indicating no tax liability. Consequently, the Petitioner deserved another opportunity to explain. As a result, the impugned order was quashed.

GOODS & SERVICES TAX
From the Legislature

Sr No	Instruction	Summary
1.	Instruction No. 01/2023-24-[GST-INV]dated March 31 2024	**Guidelines for CGST Investigation: Ensuring Compliance & Ease of Business** The Central Board of Indirect Taxes and Customs issued guidelines for uniform procedures in conducting enforcement activities within CGST Zones. Key points include: • Responsibilities of Principal Commissioner for developing and approving intelligence and conducting investigations. • Requirement for prior approval from zonal Chief Commissioner for certain categories of cases. • Referral to relevant policy wings of the Board for cases involving conflicting interpretations. • Adoption of official letters instead of summons for listed companies, PSUs, corporations, and government departments initially. • Clarity in the nature of inquiries in letters or summons and avoidance of vague expressions. • Limitations on the scope of summoning information and documents. • Requirement for prior approval and recording of reasons for issuing summons. • Relevance and propriety of information sought must be recorded before summoning taxpayers. • Timely conclusion of investigations within one year and issuance of show cause notices. • Grievance redressal mechanisms through designated officers within the jurisdiction. • Timely closure of investigations and preventive vigilance to deter malpractices

CESTAT: CA certificate deemed sufficient for proving unjust enrichment

Festo Controls Private Limited

Customs Appeal No. 1562 of 2011

The Appellant had claimed SAD refund, which was rejected by the Adjudicating Authority and such rejection was upheld by the Appellate authority rejected on the ground that the Appellant failed to comply with the mandatory condition of Notification No. 102/2007-Cus dated September 14, 2007 and also not discharged the onus of unjust enrichment. Aggrieved, the Appellant filed an appeal before the Bangalore Tribunal.

The Appellant contented that they had provided a CA certificate stating that they had not collected additional levy from customers for the imported goods. The CA also compared the prices of items before and after the introduction of the 4% SAD, confirming that the duty burden had not been passed on to customers. The Tribunal noted that the only objection to the refund application was the alleged failure to show the due amount of refund as receivable in the books of account, which the tribunal found insufficient to reject the claim. Given the absence of any other objections and the sufficiency of the CA certificate, the court deemed the CA certificate sufficient to meet the requirements of unjust enrichment and compliance with the conditions of Notification No. 102/2007. As a result, the rejection of the refund claim was deemed unsustainable, and the appeal was allowed.

CAAR: Classification of Tyre Pyrolysis Oil and Recovered Carbon Black

Finster Black Private Limited

CAAR/CUS/APPL/124/2023 - O/o Commr-CAAR-MUMBAI

The Applicant sought an advance ruling regarding the classification of the following products under the Customs Tariff Act:

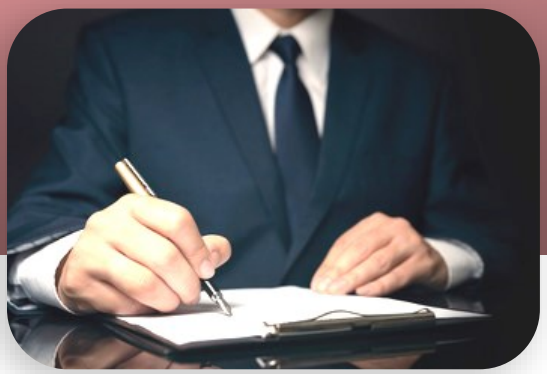
- **'Tyre Pyrolysis Oil (Depolymerisation Oil)'** - Produced through a process called pyrolysis, which involves heating of used tires in an oxygen-free environment to obtain oil. The characteristics of this oil vary depending on factors such as the feedstock and process variables;
- **'Tyre Pyrolysis Recovered Carbon Black'** - Obtained as a by-Product of the pyrolysis process, specifically from the incomplete combustion of hydrocarbons present in used tires.

The Mumbai CAAR observed that Tyre Pyrolysis Oil does not fit into a standard category of oil due to its variable characteristics dependent on factors like feedstock and process variables. Therefore, it was classified under the residual subheading 2710 19 90, as an industrial liquid fuel oil suitable for use in

burners, reactors, boilers, and heat furnaces. Further the classification of Tyre Pyrolysis Recovered Carbon Black, the CAAR noted that it is not a natural carbon form but is produced from the incomplete combustion of hydrocarbons in used tires. As a result, it was determined that the product should be classified under sub-heading 2803 00 10, as it does not fall under the exclusion of heading 2701 20.

CUSTOMS & FTP
From the Legislature

Sr No	Notification/ Circular	Summary
1.	Notification No. 15/2024-Customs dated 12 March, 2024	**Amendments to Import Duty Rates for Goods under Chapter 90** Vide this Notification, CBIC is amending the import duty rates for goods categorized under Chapter 90 of the Customs Tariff Act, 1975. This amendment, effective from April 1st, 2024, increases import duty rates for specific tariff items, namely 9022 30 00 and 9022 90 90, substituting the previous entry in column (4) with "15%
2.	Notification No. 17/2024-Customs dated 14 March, 2024	**Revised Scope and BCD Rates for Smart Wearable Devices** The amendment modifies the BCD rates on specific smart wearable devices. It expands the scope of the notification. The amendment substitutes the existing description of smartwatches in item (a) of S. No. 20 with a broader description covering smartwatches and other smart wearable devices, including smart rings, shoulder bands, neck bands, or ankle bands.
3.	Notification No. 18/2024-Customs dated 14 March, 2024	**CBIC amends notification to implement Fourth Tranche of India-Mauritius CECPA** CBIC vide this notification has notified the fourth tranche of the India-Mauritius Comprehensive Economic Cooperation and Partnership Agreement (CECPA) for the public interest. The key changes include adjustments in tariff rates for various goods, detailed in Tables 1 and 2 of the notification which is to promote economic cooperation between India and Mauritius. They come into effect from 1st April 2024.
4.	Notification No. 19/2024-Customs dated 15 March, 2024	**Amendments for Electric Vehicle imports under Ministry of Heavy Industries' Scheme** This notification provide concessions to electric vehicles (EVs) imported under the Ministry of Heavy Industries' Scheme aimed at promoting the manufacturing of electric passenger cars in India. The revisions adjust tariff rates and import conditions for electrically operated vehicles, including those imported as knocked -down kits. Additionally, it specifies the eligibility criteria for exemption, requiring a valid Approval Letter from the Ministry of Heavy Industries and compliance with specified scheme limits. The amendments in this notification will be effective until March 31st, 2031.



SC calls for amendment to prescribe "specific" limitation period to apply for arbitrator appointment

Arif Azim Co. Ltd. vs. Aptech Ltd.

Arbitration Petition No. 29 of 2023

The Petitioner was a Kabul based company that had entered into a contract with the Respondent which envisaged all claims and disputes to be settled by arbitration. Subsequently, the Petitioner due to certain disputes sent a notice of invocation of arbitration to the Respondent, however, the Respondent did not comply with the said notice. Aggrieved, the Petitioner filed an arbitration petition before the SC seeking the appointment of an arbitrator for the adjudication of disputes and claims arising from the contract entered into between the Petitioner and the Respondent.

Noting that Section 11(6) of the Arbitration Act which provided for the appointment of arbitrators, prescribed no time-limit for filing an application, however, Section 43 of the Arbitration Act, provided that the Limitation Act would apply to arbitrations as it applied to proceedings in court, the SC observed that since none of the Articles in the Schedule to the Limitation Act provided a time period for filing an application under Section 11(6) of the Arbitration Act, it would be covered by Article 137 of the Limitation Act which was the residual provision. Further, the SC observed that while considering the issue of limitation in relation to a petition under Section 11(6) of the Arbitration Act, the courts should satisfy themselves on two aspects by employing a two-pronged test – first, whether the petition was barred by limitation and secondly, whether the claims sought to be arbitrated were ex-facie dead claims and were therefore barred by limitation on the date of commencement of arbitration proceedings, and that if either of these issues were answered against the party seeking referral of disputes to arbitration, the court could refuse to appoint an arbitral tribunal.

Moreover, as the limitation period for filing a petition under Section 11(6) of the Arbitration Act could only commence once a valid notice invoking arbitration had been sent by the applicant to the other party, and there had been a failure or refusal on part of that other party in complying with the requirements mentioned in such notice and since the instant arbitration petition had been filed within a period of 3 years (as prescribed by Article 137 of the Limitation Act) from the date when the Respondent failed to comply with the notice of invocation of arbitration issued by the Petitioner, it was not hit by limitation.

Thus, calling upon the Parliament to consider bringing an amendment to the Arbitration Act by prescribing a specific period of limitation within which a party may move the court for making an application for appointment of arbitrators under Section 11 of the Arbitration Act, the SC allowed the arbitration petition.

HC holds declaration of account as 'fraud' without opportunity of being heard, "illegal"

Sanjay Tiku & Ors. vs. RBI & Anr.

W.P. (C) No. 2543 of 2024

The IDBI Bank ('the bank') had declared the account of the Petitioner as fraud in terms of the Master Direction on Frauds-Classification and Reporting by Commercial Banks, without giving the Petitioner an opportunity to be heard.

Aggrieved, the Petitioner approached the HC submitting that the action of the bank, of declaring the account as 'fraud' in terms of Master Direction on Frauds-Classification and Reporting by Commercial Banks, was patently illegal as the same was done without following the principles of natural justice as directed to be read in the Master Circular by the SC through its judgment in the case of **State Bank of India & Ors. vs. Rajesh Aggarwal & Ors. [2023 SCC OnLine SC 342].**

Noting that the declaration of 'fraud' of the Petitioner's account by the bank was clearly in violation of the SC judgment in **State Bank of India & Ors. vs. Rajesh Aggarwal & Ors. [supra],** wherein the SC had categorically held that the principles of natural justice, particularly the rule of Audi Alteram Partem, had to be necessarily read into the Master Directions on 'Fraud' to save it from the vice of arbitrariness as the classification of 'Fraud' entailed serious civil consequences for the borrower, and therefore, a reasonable opportunity had to be granted to the concerned persons, the HC held the declaration of the Petitioner's account as 'Fraud' by the bank in the absence of any opportunity of being heard or opportunity of submitting any representation as clearly illegal and set the same aside, however, the HC also granted the liberty to the bank to initiate requisite proceedings against the Petitioner in accordance with law, after granting the opportunity to be heard in line with the SC's directions in **State Bank of India & Ors. vs. Rajesh Aggarwal & Ors. [supra].**

SC holds no universal rule that director is in-charge of everyday affairs, quashes cheque-dishonour proceedings against director

Susela Padmavathy Amma vs. Bharti Airtel Ltd.

Special Leave Petition (Criminal) No.12390-12391 of 2022

The Appellant was the director of one Fibtel Telecom Solutions (company) whose plea for quashing of criminal complaints initiated by Bharti Airtel Ltd. (the Respondent/Complainant) under Section 138 read with Section 142 of the NI Act had been rejected by the Madras HC. Aggrieved, the Appellant approached the SC contending that she was not involved in the day-to-day affairs of the company and was also not a signatory to the cheque in question, therefore, the HC had grossly erred in not allowing her petition, per contra, the Respondent argued that the HC had rightly dismissed the plea of the Appellant since the grounds raised as defense of the accused can only be raised at the stage of the trial, therefore, no interference was warranted in the present appeal.

Perusing a catena of judgements, the SC reiterated its earlier stance that simply because a person was a director of the company, it did not necessarily mean that they fulfilled the twin requirements of Section 34 (1) of the NI Act so as to make them liable, as a person could only be made liable if, at the material time, they were in-charge of and were also responsible to the company for the conduct of its business. Moreover, there was no universal rule that a director of a company was in charge of its everyday affairs and in the present case there was no averment to the effect that the Appellant was in-charge of and responsible for the day-to-day affairs of the Company, hence, the averments made were not sufficient to invoke the provisions of Section 141 of the NI Act qua the Appellant as merely reproducing the words of the section without a clear statement of fact as to how and in what manner a director of the company was responsible for the conduct of the business of the company, could not ipso facto make the director vicariously liable.

Thus, quashing the cheque-dishonor proceedings against the director, the SC allowed the appeal.

NCLT holds absence of signed-contract when part-payment made to creditor, no ground for raising 'pre-existing dispute'

ASR Logistics India Pvt. Ltd. vs. Leo Creations Pvt.

C.P. No. (IB) 2830 of 2019

The Applicant (operational creditor) had filed an insolvency application against the Corporate Debtor before the NCLT on finding that the default amount was more than the minimum amount stipulated under Section 4(1) of the IBC at the relevant point of time. Before the NCLT, the Corporate Debtor contended that there had been no written and signed contract between the parties, and therefore, it disputed the very existence as well as nature of invoices so raised by the operational creditor.

Noting that the instant application was filed before March 24, 2020, when the pecuniary jurisdiction was INR 1 Lakh for application under Section 9 of the IBC, the NCLT observed that the instant application met the pecuniary threshold limit of INR 1 Lakh, in terms of Section 4 of the IBC. Further, with regards to the Corporate Debtor's contention that there had been no written and signed contract between the parties, therefore, the very existence as well as nature of invoices so raised by the operational creditor were required to be disputed, the NCLT observed that this contention was not rational, inasmuch as on one hand, the Corporate Debtor questioned the authenticity of the said invoices and on the other hand, it had made part-payment to the operational creditor, and a catena of SC rulings had already laid down the principle that 'pre-existing dispute' which may be a ground to thwart an application under Section 9 of the IBC had to be a real dispute, a conflict or a controversy and the absence of a signed contract when part-payment was made to the creditor was no ground for raising a 'pre-existing dispute'.

Moreover, the Applicant had placed sufficient documents to show that the debt was due and that there had been a default in payment to the said invoices, therefore, the claim of the Applicant was arising out of the provisions of services rendered and was an operational debt rather than related to a pre-existing dispute between the parties.

Thus, finding that, despite the fact that the Corporate Debtor had raised a dispute, the said dispute raised by the Corporate Debtor was a patently feeble argument, moonshine and not genuine, the NCLT holding that the present petition filed by the operational creditor fulfilled the criteria laid down under the provisions of the IBC and therefore, established that the Corporate Debtor was in default of a debt, arising out of services rendered by the operational creditor and the same was payable, admitted the insolvency application of the operational creditor.

HC quashes Bank of Baroda's 'wilful defaulter' tag on Moser Baer's ex-director, absent fund-diversions under RBI Master-Circular

Ratul Puri vs. Bank of Baroda

W.P.(C) No. 4128 of 2023

The Respondent was a bank that had issued an SCN to the Petitioner (ex-director of Moser Baer Solar Ltd.) under a Master Circular, classifying him as a wilful defaulter when Moser Baer Solar Ltd. defaulted to meet its loan repayment obligations. Aggrieved, the Petitioner filed a writ petition before the HC contending that the Respondent had full access to inspect and review Moser Baer Solar Ltd.'s books of accounts but it placed Moser Baer Solar Ltd. in Class-B borrower, and not Class-C, which applied to diversion of funds, and the Respondent issued the SCN to the Petitioner only by referring to the forensic audit report, which was not in conformity with the scheme of the Master Circular.

Noting that under the Master Circular, a lender bank was required to record a finding of an act of default to be wilful if the same was "intentional, deliberate and calculated" on objective assessment of facts and circumstances, however, the said burden could not be discharged by merely quoting the forensic audit report, which itself had not drawn any conclusion of diversion of funds, the HC observed that in the present case, the lender banks were fully aware of all the transactions, which were now alleged to be acts of wilful default and by merely quoting the forensic audit report, which itself had not drawn any conclusion of diversion of funds, the decision to declare wilful defaulter was highly vulnerable. Moreover, the lender banks had an obligation to comply with the inbuilt safeguards in the Master Circular, lest the line between persons who commit mere default in repayment of loan obligations and those who commit wilful default, would get obliterated and the Respondent's documents which earlier found Moser Baer Solar Ltd.'s investments to be strategic and required to be retained, could not now subsequently become "intentional, deliberate and calculated" acts of wilful default.

Further, the Respondent by merely quoting a part of the forensic audit report to give a finding of diversion of funds without any supporting material, did something highly inappropriate, as the identification of wilful default was required to be made keeping in view the track record of the borrower and not on the basis of isolated transactions/incidents and the forensic audit report, at best, could only act as a piece of corroboration for the said exercise, but not the sole basis. Thus, quashing the order of the Respondent, classifying the Petitioner as a wilful defaulter, absent any evidence for diversion of funds, the HC allowed the writ petition.

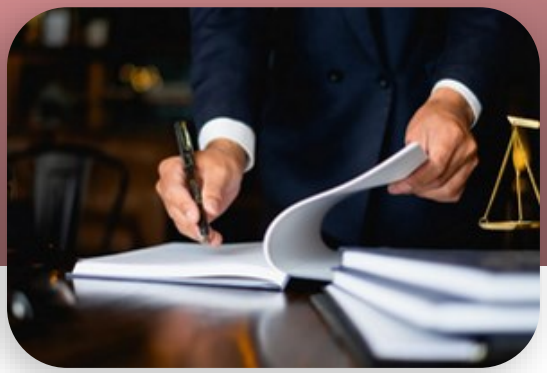
HC holds ED must return seized property if investigation continues beyond 365 days

Mahender Kumar Khandelwal vs. Directorate of Enforcement & Anr.

W.P.(C) 10993/2023

The Petitioner was the IRP for one Bhushan Power and Steel Ltd. who had filed a writ petition before the HC seeking direction to the ED to release/return seized documents and properties. Noting that the ED had passed a provisional attachment order attaching the properties of Bhushan Power and Steel Ltd. and its promoters and other key managerial personnel and thereafter, filed an original application under Section 17(4) of the PMLA before the Adjudicating Authority seeking confirmation of the retention of the items, documents, records, and jewelry seized during the search and seizure, which was confirmed by the Adjudicating Authority and further, perusing Section 5(1) of the PMLA, the HC observed that the provision showed that the provisional attachment of the property could be ordered where there was a reason to believe that any person was in possession of any proceeds of crime and such proceeds of crime was likely to be concealed, transferred or dealt with in any manner which could result in frustrating any proceedings relating to confiscation of such proceeds of crime.

However, as the Adjudicating Authority itself had recorded that the retention of documents, digital devices, and the property seized from the Petitioner was to be retained for the purpose of continuing investigation/ adjudicating, but the investigation had not culminated into any complaint, nor had it culminated into a supplementary complaint to the original complaint filed against Bhushan Power and Steel Ltd. and others, the HC allowing the writ petition, held that the natural consequence of the investigation for a period beyond 365 days not resulting in any proceedings relating to any offence under the PMLA was the lapse of such a seizure and the property so seized was to be returned to the person from whom it was so seized.



CG amends the definition of the term 'unit' under Rule 2(aq) of the Foreign Exchange Management (Non-Debt Instruments) Rules, 2019

Notification No. S.O. 1361(E) dated March 14, 2024,

The CG notifies the Foreign Exchange Management (Non-Debt Instruments) (Second Amendment) Rules, 2024 as per which an amendment has been made to Rule 2(aq) of the Foreign Exchange Management (Non-Debt Instruments) Rules, 2019, which defines the term 'unit' as the beneficial interest of an investor in an investment vehicle. Through the amendment, an explanation has been inserted to the clause expanding the definition of 'unit' to also include a unit that has been partly paid up as permitted under regulations framed by SEBI in consultation with the Government of India.

By incorporating this explanation, the CG adapts the Foreign Exchange Management (Non-Debt Instruments) Rules, 2019 to the evolving dynamics of the financial markets. It accommodates scenarios where units are partly paid up, aligning with SEBI regulations while ensuring compliance with the Foreign Exchange Management Act, 1999, through fostering flexibility within the Foreign Exchange Management (Non-Debt Instruments) Rules, 2019, facilitating smoother transactions and investments involving non-debt instruments, and offering a clarity to the market participants regarding the treatment of partly paid-up units, thereby, enhancing transparency and investor confidence.

IEPFA invites comments from stakeholders to simplify, expedite and streamline claims settlement process

MCA Notice dated March 14, 2024

In line with its commitment to enhancing investor experience, the IEPFA is soliciting comments from various stakeholders, to reimagine the refund process under the Companies Act, 2013 by reaching out to stakeholders for their valuable insights to simplify, expedite and streamline the claims settlement process with an aim to ensure a seamless and efficient mechanism for refund claims from IEPFA. Accordingly, the IEPFA encourages stakeholders to provide their feedback through the following channels:

- Utilising the e-Consultation module accessible at the MCA website - www.mca.gov.in.
- Submitting suggestions via email to iepfa.consultation@mca.gov.in.

The IEPFA requests stakeholders to submit their feedback in the format prescribed in the notice, which includes the Para of Draft Rules, Comments, and Justification as provided. The deadline for the submission of comments has been set to April 15, 2024.

MCA advises all eligible companies to file e-form CSR-2 and incur prescribed CSR expenditure for FY 2022-23 by March 31, 2024 to avoid penalties/penal action

MCA Advisory dated March 28, 2024

The MCA advises all eligible companies i.e. every company covered under Section 135 of the Companies Act, 2013, to file e-form CSR-2 for the FY 2022-23 by March 31, 2024, to avoid penalties. Additionally, these companies must also meet the CSR expenditure requirements as per Section 135 of the Companies Act, 2013, and related rules by the end of the current FY i.e. March 31, 2024, to avoid penal action.

The e-form CSR-2 was introduced by the MCA through the Companies (Accounts) Amendment Rules, 2022, as a good corporate governance practice, prior to which there was no form prescribed to furnish a report on CSR. The Companies (Accounts) Amendment Rules, 2022, mandates every company covered under Section 135 of the Companies Act, 2013, to furnish a report on CSR in e-form CSR-2 to the Registrar from FY 2020-2021 onwards as an addendum to Form AOC-4/AOC-4 XBRL/AOC-4 NBFC (Ind AS), as the case may be, to ensure that companies are held to be socially accountable—to itself, its stakeholders, and the public.

SEBI repeals circulars outlining procedure to deal with cases where securities are issued prior to April 01, 2014

Circular No. SEBI/HO/CFD/PoD-1/P/CIR/2024/016 dated March 13, 2024

SEBI had earlier issued Circular No. CIR/CFD/DIL3/18/2015 dated December 31, 2015 and Circular No. CFD/DIL3/CIR/ P/2016/53 dated May 03, 2016 ('repealed circulars'), stating that in respect of cases under the Companies Act, 1956, involving issuance of securities to more than 49 persons but up to 200 persons in an FY, the companies may avoid penal action if they provide the investors with an option to surrender the securities and receive the refund amount at a price not less than the amount of subscription money paid along with 15% interest per annum thereon or such higher return as promised to the investors. This opportunity to avoid penal action was provided to the issuer companies considering the higher cap for private placement provided in the Companies Act, 2013.

Given that considerable time has elapsed since the repeal of the Companies Act, 1956, SEBI through a Circular announces the repeal of these circulars which outline the procedure to deal with cases where securities are issued prior to April 01, 2014, involving offer / allotment of securities to more than 49 but up to 200 investors in an FY, within 6 months from the issue of this Circular. Accordingly, all cases involving an offer or allotment of securities to more than the permissible number of investors in an FY shall now be dealt with in line with the provisions contained under the extant applicable laws. However, SEBI clarifies that the above said option shall still be available under the repealed circulars only to those companies who have completed the entire procedure and submitted the certificate in terms of the repealed circulars, within 6 months from the date of the issue of this Circular.

SEBI allows reporting entities to use e-KYC Aadhaar Authentication services of UIDAI in Securities Market as 'sub-KUA'

Circular No. SEBI/HO/MIRSD/SECFATF/P/CIR/2024/17 dated March 19, 2024

SEBI had earlier allowed certain reporting entities to perform Aadhaar authentication services under the Aadhaar Act, 2016. The permission was granted only for Aadhar authentication as required under Section 11A of PMLA.

Given this backdrop, SEBI now allows these entities to also perform authentication services of UIDAI in the securities market as sub-KUA. The KUAs shall facilitate the onboarding of these entities as sub-KUAs to provide the services of Aadhaar authentication with respect to KYC.

SEBI issues safeguards to address concerns of investors transferring securities in a dematerialised mode

SEBI/HO/MRD/MRD-PoD-2/P/CIR/2024/18 dated March 20, 2024

SEBI through a Circular issues safeguards to address the investors' concerns arising from the transfer of securities from the BO account. These safeguards aim to harmonise the classification of inactive/dormant accounts across stock exchanges and depositories and to strengthen the measures to prevent fraud and misappropriation of inoperative de-mat accounts. Some of the key safeguards are as follows:

- Depositories are now required to give more emphasis on investor education, particularly regarding the careful preservation of DIS by the BOs. The depositories may advise the BOs not to leave 'blank or signed' DIS with the DPs or any other person/entity.
- DPs are instructed not to accept pre-signed DIS with blank columns from the BOs and must also not issue more than 10 loose DISs to one account holder in an FY (April to March). Loose DIS can be issued only if the BOs come in person and sign the loose DIS in the presence of an authorised DP official.
- The DP are required to also ensure that a new DIS booklet is issued only on the strength of the DIS instruction request slip duly complete in all respects unless the request for a fresh booklet is due to loss, etc. and in case, the request for issuance of the DIS booklet is received in an inactive/dormant account, the DIS booklet must be delivered at the registered address of the BO as per the DP records. This helps to ensure the genuineness of the BO's request for the issuance of DIS. Such issuance of DIS must be authorized by the compliance officer or any other designated senior official of the DP.
- The DPs are also required to put in place appropriate checks and balances for the verification of the signatures of the BOs while processing the DIS and cross-check with the BOs under exceptional circumstances before acting upon the DIS.

The provisions of this Circular shall come into effect from April 01, 2024.

INTERNATIONAL DESK

UAE: Ministry of Finance Initiated A Digital Public Consultation Concerning The Adoption Of The Global Minimum Tax

On March 15, 2024, the MoF in the UAE announced the launch of a digital public consultation aimed at soliciting feedback from relevant stakeholders regarding the implementation of the GMT or GloBE Rules, as well as other tax-related issues in the UAE. This consultation, scheduled from March 15 to April 10, 2024, will be accessible via the Ministry's website or the UAE's Government Portal. By initiating this digital public consultation, the Ministry underscores its dedication to engaging with various stakeholders, including multinational groups, advisors, service providers, and investors, recognizing the importance of their input in shaping tax policies and regulations in the UAE.

The consultation comprises two primary aspects. Firstly, it aims to gather input from stakeholders concerning potential policy design options for implementing the Global GloBE Rules in the UAE, with a specific focus on developing a domestic minimum tax. Secondly, the consultation seeks to understand stakeholders' viewpoints on introducing substance-based incentives within the UAE Corporate Tax regime.

To facilitate well-informed feedback, the UAE MoF has issued a briefing document on the Global Minimum Tax. They encourage stakeholders to provide clear and concise comments, ideally supported by examples, data, or other relevant information. Responses should be submitted by April 10, 2024, through their website, and confidentiality will be maintained, with responses not published publicly.

UAE: Corporate Tax Registration may be submitted at Government Service Centers

The FTA has broadened its service scope, enabling Corporate Tax registration submissions at 23 Government Service Centres spread across the UAE. This aims to streamline the registration process, allowing taxpayers direct registration access via the 24/7 operational "EmaraTax" digital platform. Moreover, taxpayers can avail assistance from accredited tax agents listed on the FTA's official website.

On completion of application processes and ensuring data accuracy, FTA specialists internally assess submissions, and successful applicants receive their TRN via email. Multiple government service centres have obtained accreditation through cooperation agreements listed on the FTA's website to offer Corporate Tax registration services. Organizational and technical measures have been enacted to ensure efficient service delivery, including specialist training at accredited centres. Taxable individuals with licenses issued in January and February must submit their Corporate Tax registration applications by May 31, 2024, to avoid violating tax laws.

The FTA reiterated that Corporate Tax registration is accessible 24/7 through the EmaraTax digital platform, with registration typically taking around 30 minutes. Taxpayers already registered for VAT or Excise Tax can access their accounts on EmaraTax and submit the necessary documents for Corporate

Tax registration. New users must create a user profile on the FTA's e-Services portal before proceeding with registration.

Thailand: Granting Tax Exemption for Investment Tokens

Thailand has introduced a series of measures to enhance local capital raising, including recent tax exemptions for investment token holders. Approved by the country's Cabinet through adjustments to the Revenue Code via a royal decree, these measures enable investors to exclude income from investment tokens in their tax calculations, provided they undergo a 15% withholding tax deduction. Scheduled to come into effect in 2025, this initiative aims to invigorate fundraising activities and strengthen Thailand's position in capital mobilization within the expanding digital economy landscape.

Anticipating an influx of approximately 18.5 billion baht ($519 million) in additional capital for Thai businesses, the government is optimistic about the impact of these tax exemptions. These efforts complement other proactive measures, such as tax-free issuance of investment tokens and the removal of VAT on digital asset trading, all geared towards positioning Thailand as a pivotal hub for digital assets in Southeast Asia.

In parallel, the Finance Ministry has launched the establishment of a fifth Advance APA team in Gurugram, dedicated to expediting bilateral agreements aimed at minimizing transfer pricing disputes. This specialized team aims to accelerate the resolution of pending bilateral APAs, recognizing the typically prolonged negotiation process involved.

South Korea: Urges Vietnam to provide Tax Incentives to its companies

South Korea's FM appealed to his Vietnamese counterpart, to tackle the hurdles faced by Korean companies investing in Vietnam. Stressing the need for policy interventions, FM advocated for enhanced tax incentives and measures to prevent double taxation to facilitate smoother investment processes. Further, FM also expressed optimism about expanding investment activities between the two countries, both of which are each other's third-largest trading partners.

The meeting occurred amid concerns voiced by multinational corporations, including South Korean firms, regarding the absence of subsidies to offset the impact of a new top-up tax introduced by Hanoi. Vietnam has become a significant destination for global companies relocating activities from China, with South Korean companies ranking among the leading direct investors in the country.

One prominent investor is Samsung, the largest foreign investor in Vietnam. The tech giant employs approximately 160,000 individuals and manufactures half of its smartphones within the country, making substantial contributions to Vietnam's total exports. This underscores the crucial role played by South Korean companies in Vietnam's economic landscape and underscores the importance of addressing their concerns to sustain continued investment and economic growth between the two nations.

Slovakia: Parliament approves legislation enacting pillar two GMT

On December 8, 2023, the Slovak Parliament made a significant decision by enacting legislation to introduce the "top-up tax." This move has been carefully designed to align Slovakia with important international tax frameworks, particularly the OECD Pillar Two initiative and the EU's global minimum tax directive.

The legislation, initially drafted and published in August 2023, officially took effect on December 31, 2023. This start date marked the beginning of Slovakia's adoption of the top-up tax system, demonstrating its commitment to meeting global tax standards and collaborating with international economic partners.

An important aspect of this legislative process was the adjustment made to the original deadline for filing top-up tax returns and notifications. Initially set at 13 months after the end of the respective tax period, this timeframe was extended to 15 months to ensure compliance with specific EU directives.

In essence, the passage of this legislation highlights Slovakia's proactive stance in addressing international tax issues and its dedication to establishing a strong and transparent tax framework aligned with global norms.

GLOSSARY

Abbreviation	Meaning
AA	Adjudicating Authority
AAAR	Appellate Authority for Advance Ruling
AAR	Authority for Advance Ruling
ACU	Asian Clearing Union
ADD	Anti-Dumping Duty
ADG	Additional Director General
AE	Associated Enterprises
AFA	Additional Factor of Authentication
AGM	Annual General Meeting
AICD	Agriculture Infrastructure and Development Cess
AIF	Alternative investment Fund
AIFs	Alternative Investment Funds
ALP	Arm's length price
AMCs	Assets Management Companies
AMP	Advertising, Marketing and Promotion
AMT	Alternate Minimum Tax
AO	Assessing Officer
AOP	Association of Persons
APA	Advanced Pricing Agreement
ARE	Alternate Reporting Entity
ASBA	Application Supported by Blocked Amount
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
BEPS	Base Erosion and Profit Shifting
BOI	Body of Individuals
BPSL	Bhushan Power Steel Limited
CA	Chartered Accountant
CAG	Comptroller and Auditor General of India
CASS	Computer Assisted Scrutiny Selection
CAT	Common Aptitude Test
CAVR 2023	Customs (Assistance in Value Declaration of Identified
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
CBLR	Custom Broker Licensing Regulations
CCI	Chief Commissioner of Income-tax
CCIT	Chief Commissioner of Income tax
CG	Central Government
CGST Act	Central Goods and Services Act, 2017
CIMS	Centralized Information Management System
CIT	Commissioners of Income Tax
CIT(A)	Commissioner of Income-tax (Appeals)
CIT(J)	Commissioner of Income-tax (Judicial)
CJI	Chief Justice of India
CLB	Company Law Board
CoC	Committee of Creditors
CPC	Centralized Processing Centre
CrPC	The Code of Criminal Procedure, 1973
CRS	Common Reporting Standard
CS	Company Secretary

Abbreviation	Meaning
Cus	Customs Act, 1962
CVD	Countervailing Duty
DCIT	Deputy Commissioner of Income Tax
DDT	Dividend Distribution Tax
DGIT	Director General of Income Tax
DIT	Directorate of Income Tax
DRC	Dispute Resolution Committee
DRI	Directorate of Revenue Intelligence
DRP	Dispute Resolution Panel
DTAA	Double Taxation Avoidance Agreement
DTCP	Director General, Department of Town and Country
ED	Enforcement Directorate
EDC	External Development Charges
EOI	Expression of Interest
EP	Engagement Partner
EP	Engagement Partner
EPSEPS	Employees' Pension Scheme
Evidence Act	Indian Evidence Act, 1872
FATCA	Foreign Account Tax Compliance Act, 2010
FATF	Financial Action Task Force
FDI	Foreign Direct Investment
FEMA	Foreign Exchange Management Act, 1999
FHTP	Forum on Harmful Tax Practices
FHTP	Forum on Harmful Tax Practices
Fin	Finance Bill Finance Bill, 2023
FIR	First Information Report
FIRMS	Foreign Investment Reporting and Management System
FM	Finance Minister
FMV	Fair Market Value
FY	Financial Year
G2B	Government to Business
GST	Goods and Services Tax
H&EC	Health and Education Cess
HC	High Court
HFC	Housing Finance Company
HNI	High Net Worth Individual
HSVP	Haryana Shahari Vikas Pradhikaran
HUF	Hindu Undivided Family
IBBI	Insolvency and Bankruptcy Board of India
IBC	Insolvency and Bankruptcy Code
ICAI	Institute of Chartered Accountants of India
ICDR	Issue of Capital and Disclosure Requirements Regulations,
ICFR	Internal Controls Over Financial Reporting
IFSC	International Financial Services Centres
IFSC	International Financial System Code
IFSCA	International Financial Services Centres Authority Act, 2019
IGST	Integrated Goods and Services Tax

GLOSSARY

Abbreviation	Meaning
IIM	Indian Institute of Management
IMC	Indian Medical Council Act, 1956
Ind AS	Indian Accounting Standards
InvITs	Infrastructure Investment Trusts
InvITs	Infrastructure Investment Trusts
IRP	Interim Resolution Professional
IT Act/ Act	The Income-tax Act, 1961
ITBA	Income Tax Business Application
JAO	Jurisdictional Assessing Officer
KYC	Know Your Customers
LIC	Life Insurance Corporation
LLP	Limited Liability Partnership
LODR Regulations	Listing Obligations and Disclosure Requirements Regulations, 2015
LRS	Liberalized Remittance Scheme
LTC	Long-Term Capital Gains
MAT	Minimum Alternate Tax
MII	Market Infrastructure Institution
MoF	Ministry of Finance
MoU	Memorandum of Understanding
MSEFC	Micro, and Small Enterprises Facilitation Council
MSME	Micro Small and Medium Enterprises
MSMED Act	Micro, Small and Medium Enterprises Development Act, 2006
NaFAC	National Faceless Assessment Centre
NBFC	Non-Banking Finance Company
NCCD	National Calamity Contingent Duty
NCD	Non-Convertible Debentures
NCLT	National Company Law Tribunal
NCS	Non-Convertible Securities
NCS Regulations	SEBI (Issue and Listing of Non-Convertible Securities) Regulations, 2021
NDFC	Net Distributable Cash Flows
NELP	New Exploration Licensing Policy
NFRA	National Financial Reporting Authority
NFT	Non-Fungible Tokens
NHB	National Housing Bank
NI Act	Negotiable Instruments Act, 1881
NPA	Non-Performing Assets
NPS	National Pension System
NSWS	National Single Window System
OBU	Offshore Banking Unit
ODC	Online Dispute Resolution
OEC	Organization for Economic Co-operation and Development
OECD	Organization for Economic Co-operation and Development
OFS	Offer for Sale
OPC	One Person Company
PAN	Permanent Account Number
PAN	Permanent Account Number
PBPT	Prohibition of Benami Property Act, 1988
PCCI	Principal Chief Commissioner of Income-tax

Abbreviation	Meaning
PCCIT	Principal Chief Commissioner of Income-tax
PCIT	Principal Commissioners of Income Tax
PFUTP	Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market Regulations, 2003
PIV	Pooled Investment Vehicle
PLR	Prime Lending Rate
REITs	Real Estate Investment Trusts
RoC	Registrar of Companies
ROMM	Risk of Material Misstatements
RP	Resolution Professional
RPT	Related Party Transactions
RTGS	Real Time Gross Settlement
RU	Review Unit
SAD	Special Additional Duty
SAED	Special Additional Excise Duty
SARFAESI Act	The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002
SC	Supreme Court
SCAORA	Supreme Court Advocates-on-Record Association
SCBA	Supreme Court Bar Association
SCN	Show Cause Notice
SCRA	Securities Contracts (Regulation) Act, 1956
SEBI	Securities and Exchange Board of India
SFIO	Serious Fraud Investigation Office
SFIO	Serious Fraud Investigation Office
SFT	Statement of Financial Transaction
SGST	State Goods and Services Tax
SIAC	Singapore International Arbitration Centre
SLP	Special Leave Petition
SLP	Special Leave Petition
SMF	Single Master Form
SPF	Specific Pathogen Free
STT	Security Transaction Tax
SWS	Social Welfare Surcharge
TAN	Tax Deduction Account Number
TCS	Tax Collected at Source
TDS	Tax Deducted at Source
TNMM	Transactional Net Margin Method
TPO	Transfer Pricing Officer
TPS	Tax performing system
UAPA	Unlawful Activities (Prevention) Act, 1967
UCB	Urban Co-operative Bank
UK	United Kingdom
UPI	Unified Payments Interface
UPSI	Unpublished Price Sensitive Information
USA	United States of America
UTGST	Union Territory Goods and Services Tax
VDA	Virtual Digital Assets
VsV	Vivad se Vishwas
VU	Verification Unit
WMD Act	Weapons of Mass Destruction and their Delivery Systems (Prohibition of Unlawful Activities) Act, 2005
WTO	World trade Organization
XBRL	eXtensible Business Reporting Langauge

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.

TCA & **VMGG & Associates ('VMGG')** are group firms providing consulting and audit services. While TCA is a multidisciplinary advisory, tax and litigation firm, VMGG is a firm registered with the Institute of Chartered Accountants of India. VMGG is therefore primarily into audit and attestation services (including risk advisory and financial reporting).

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

Website: **www.taxcraftadvisors.com**

GLS Coporate Advisors 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.

GLS 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. GLS 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.

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.

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