VISION 360

A Treasury of Key Tax & Regulatory Developments

May 2024 | Edition 43

TCA TAXCRAFT ADVISORS
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EDITORIAL

VISION 360: ONWARD AND UPWARDS!!

- With GST collections sky-rocketing to an all-time high to Rs. 2.10 lakh crore in April 2024, the Revenue generations have surged new heights. This represents a significant 12.4% Y-on-Y growth, driven by a strong increase in domestic transactions (up 13.4%) and imports (up 8.3%). This is also testament to the significant developments in the judicial, legislative and regulatory front in the past month, which have been covered in this Newsletter.

- On the Direct Tax front, the Punjab & Haryana High Court ruled on proper service of notices, directing direct communication. The Gujarat High Court upheld a search against a lawyer and clarified attorney-client privilege. While CBDT issued clarifications on return verification, enabled e-filing, and granted relief to TDS deductors regarding inoperative PANs.

- On the Indirect Tax front, HC rulings clarified various aspects of GST, addressing concerns such as interest on late payments, taxation of ocean freight, and the submission of trial balances while the Judicial decisions diverged on issues like interest application, refund eligibility, and director liability. Additionally, customs updates encompassed flexible reassessment practices and clarifications regarding duty drawbacks.

- On the Regulatory front, SEBI allows reporting entities to use Aadhaar e-KYC in securities market. RBI broadens gold hedging scope. Legal decisions reinforce resolution plan integrity, audit quality, stamp duty regulations, corporate entity distinctions, recovery of dues, and clarify corporate guarantor status in insolvency.

- We have also penned down articles on NFRA strengthening auditing in India, fostering investor trust and economic stability. GST penal provisions, like Section 122, lack clarity, necessitating Government intervention for transparent enforcement.

- International landscape in the field of taxation across the globe witnessed numerous modifications and amendments. India and Mauritius update tax treaty with principal purpose test to curb abuse. New rules target all MNEs in New Zealand with consolidated revenue exceeding €750 million. UAE and Oman announce $35 billion investment partnership, boosting cooperation in various sectors like renewable energy and technology.

In all, we the entire team of **TIOL**, in association with **Taxcraft Advisors LLP**, **GLS Corporate Advisors LLP** and **VMGG & Associates**, are glad to publish the **43rd 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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STRENGTHENING INDIA'S AUDITING LANDSCAPE: NFRA'S IMPACT AND THE PATH AHEAD

One of the significant changes brought about in the most important law relating to companies in India was in 2013 when the erstwhile Companies Act, 1956 was taken over by the CA 2013. As is always with any other law, most of the provisions were implemented thereupon while some of them requiring cross-industry consultations and having wider impact, were delayed for apt times and conditions. One such provision was Section 132 which empowered the Union Government to establish the NFRA. Once established, the duties of NFRA were supposed to include recommending accounting and auditing standards and policies for adoption by companies, monitoring and enforcing their compliance, overseeing quality of services provided by professionals, suggesting ways to improve them and the most important: investigating professional or other misconduct by audit firms and their members, either on its own or on a reference by the Central Government.

Up until the introduction of NFRA, the ICAI was the sole body for regulating the audit firms and maintaining the quality of audit. Introduction of an outside agency under the direct control of the Union in this area was met with furore. It was debated at length whether there is actually any need to establish such an agency when the ICAI was already in existence and working as fine.

While the provisions related to establishment of NFRA surfaced in CA 2013, it was not established until 2018. With its establishment since then, it has transformed into a more assertive regulator in recent years. The increased energy is evident in the rising number of enforcement actions taken against auditing firms due to derelictions in following the auditing standards. This shift aligns with India's increased emphasis on encouraging corporate governance and placing a premium on safeguarding investor interests. This article explores into various factors contributing to the surge in NFRA activity, highlights recent prominent cases, and analyses how these advancements will ultimately foster an improved landscape for auditing agencies in India.

The collapse of major corporations like Satyam Computer Services in 2009 exposed vulnerabilities in India's auditing practices. This triggered demands of stricter regulations and increased scrutiny, which aimed at preventing similar debacles from re-occurrence. Built in the backdrop of the (in) famous $2Bn PNB fraud, NFRA recognizes those lapses in auditing that can have a domino effect and erode investor confidence, destabilizing the financial sector.

India's corporate landscape is evolving at a rapid pace, with businesses embracing intricate financial instruments, expanding globally, and employing advanced technologies. Conventional auditing methods may prove inadequate in detecting and mitigating the emerging risks arising from these evolving business paradigms. NFRA underscores the importance of auditors adjusting their approaches accordingly. This entails integrating new auditing methodologies, utilizing sophisticated data analytics tools, and staying

updated on the most recent financial reporting guidelines.

With the Indian stock market drawing increased domestic and foreign investments, the assurance of accurate and dependable financial statements assumes utmost importance. NFRA's proactive stance seeks to enhance investor trust in the credibility of financial reporting by addressing audit shortcomings. Investors heavily depend on audited financial statements to guide their investment choices. When investors trust the thoroughness of audit procedures, they are inclined to engage more actively in the market, thereby maintaining heightened liquidity and capital formation.

Successful corporate governance revolves around strong internal controls and a commitment to transparency. Vulnerabilities in these domains can open possibilities for manipulation of financial reporting. NFRA acknowledges the pivotal role of auditors in upholding corporate governance through impartial examination of financial statements. By enforcing accountability among auditors, NFRA deters any collusion between auditors and management, thereby fortifying corporate governance standards within organizations.

To comprehend the nature of NFRA's interventions, let's scrutinize some recent high-profile cases that illuminate the types of non-compliances the regulator is targeting:

RELIANCE CAPITAL (APRIL 2024): NFRA took stringent action against the auditing firm of Reliance Capital. The firm was penalized for failing to fulfil its statutory duties and ethical obligations during the audit. These shortcomings included lapses in areas like risk assessment and internal control procedures. The consequences for the firm were severe, encompassing financial penalties and a ban on the firm's partners from practicing for a specific period. This case sends a strong message to auditing firms about the gravity of non-compliance with auditing standards and the potential repercussions. .

BRIGHTCOM GROUP AND CMIL (APRIL 2024): NFRA's investigations identified audit shortcomings in the financial statements of Brightcom Group. The responsible auditors faced debarment from practicing, essentially preventing them from carrying out audits for a significant period. Additionally, NFRA imposed substantial financial penalties to underscore the seriousness of the non-compliance. These cases exemplify NFRA's focus on holding individual auditors accountable for the quality of their work. Auditors have a professional obligation to maintain meticulous work ethics and uphold auditing standards throughout the engagement.

RELIANCE HOME FINANCE (APRIL 2024): Three auditors involved in Reliance Home Finance's audit were penalized by NFRA for inadequately addressing risk assessment procedures and overlooking potential signs of fraud. This case highlights NFRA's concern about audit quality and its commitment in ensuring that auditors strictly follow due diligence procedures to detect potential financial misstatements. A robust audit process includes a healthy dose of skepticism and a critical eye for identifying red flags that might signal fraudulent activities.

Although stricter enforcement measures may present short-term challenges for auditing firms, NFRA's endeavours will ultimately enhance the auditing profession in the long term by nurturing a stronger and more ethical auditing atmosphere.

NFRA's decisive measures establish a definitive standard for ethical behaviour within the auditing sector. This prompts auditing firms to emphasize quality and integrity at every stage of the audit, promoting an ethos of ethical conduct. Through penalties and the possibility of debarment, NFRA discourages non-compliance, encouraging auditing firms to give priority to ethical principles in their operations. This includes maintaining professional independence from clients, ensuring transparent communication, and cultivating an environment conducive to whistleblowing.

Article

Strengthening India's Auditing Landscape: NFRA's Impact and the Path Ahead

Through uniform enforcement of auditing standards, NFRA establishes a just and competitive playing ground. This discourages unethical behaviours that certain firms may resort to for a competitive advantage, such as aggressive pricing or compromising audit quality. When all auditing entities are held to identical standards, it promotes an equitable landscape, favouring ethical firms that consistently deliver top-notch audits. Consequently, this cultivates a more professionalized auditing sector, attracting and retaining talent dedicated to upholding ethical benchmarks.

The heightened engagement of NFRA signifies a positive advancement for India's financial domain. A strengthened auditing environment cultivates confidence in financial statements, safeguards investors, and advocates for sound corporate governance practices. Consequently, it bolsters economic growth by establishing a more stable and dependable landscape for businesses. Nonetheless, sustaining long-term success necessitates concerted collaboration among diverse stakeholders.

The increased scrutiny by NFRA has made the audit industry a bit more wary, especially in terms of their clients. The auditors have now become more vocal in their audit reports and far more qualified opinions are being issued than before. This in a way signifies a crucial transition towards more stringent auditing norms in India. Though short-term hurdles are evident, the ultimate objective is to fortify the auditing profession ethically and substantively. Theses concerted efforts presents a promising future for both auditing entities and the broader Indian financial sector, marked by augmented investor trust, enhanced corporate governance, and a heightened level of predictability in the business realm.

INDUSTRY PERSPECTIVE

Ms. Dinal Dedhia

India Tax Head,
Atos Syntel

01 As the Tax Head of one of the leading IT Company, can you provide insights into the unique tax challenges and considerations specific to the IT industry?

Certainly, while the implementation of GST has simplified the taxation process by bringing all indirect taxes under one umbrella, it has also introduced a layer of complexity. Now classifying services, understanding GST rates, and ensuring compliance with regulations all demand meticulous attention to detail.

It is essential to streamline the POS rules and the refund processes to support the IT industry's growth and facilitate smoother operations.

Also transfer pricing scrutiny on a regular basis is a significant consideration due to the global nature of IT operations. India's tax authorities often scrutinize inter-company transactions to ensure that margins are in India are at arm's length which can be subjective, leading to disputes over transfer pricing adjustments.

Ms. Dinal Dedhia
India Tax Head, Atos - Syntel

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

I believe that technology and data analytics are indispensable tools for modern businesses attempting to navigate the complex landscape of tax regulations while also maximizing their financial efficiency.

One of the primary benefits of technology and data analytics is their ability to aggregate and manage vast amounts of financial data from different sources and by consolidating and organizing this data, businesses can gain comprehensive insights into their financial activities, enabling them to identify tax optimization opportunities and mitigate potential risks.

Another powerful application of technology is predictive analytics which empowers businesses to predict future tax liabilities accurately. By analysing historical data and trends, it can anticipate tax obligations, allowing businesses to proactively plan and budget for them.

Additionally, technology enables real-time monitoring of key financial metrics and tax indicators which can help businesses identify and address potential risks or opportunities as they arise, ensuring optimal financial performance and regulatory compliance.

03 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?

One of the most significant trends is the integration of AI and machine learning into tax management systems. These technologies empower tax authorities to analyze vast datasets efficiently, predict tax liabilities, and identify potential non-compliance more effectively than ever before.

Digitalization is a key focus area for the Indian government, and it extends to taxation as well. Initiatives such as e-invoicing and digital payments are becoming popular for simplifying tax compliance for businesses and individuals. Also, the growth of online tax filing platforms and mobile applications is making it easier than ever for taxpayers to fulfil their obligations and access relevant tax information conveniently. These innovations hold immense promise in creating a more transparent, efficient, and taxpayer-friendly tax ecosystem in India.

04 What are your views on the Faceless assessment scheme under the Income Tax?

I think the introduction of this scheme was much needed to bring about a fair and just tax assessment system. The Faceless Assessment scheme was introduced to bring relief to the honest taxpayers and curb corruption and other mal-practices. Earlier, the taxpayers had to visit the Department for scrutiny resulting in tremendous wastage of

time and resources. This is where faceless assessment comes in, it is an electric mode through which the assessee does not have to visit tax offices but can make submissions from his office.

The faceless tax assessment provides more transparency and efficiency to the system, yet it faces several challenges. These include difficulties in understanding the process, ensuring data accuracy without direct oversight, and interpreting complex cases. Limited communication channels may impede clarification. Essentially, an assessment is a dialogue between an officer and a taxpayer. The effectiveness of such communication decides the outcome of such a dialogue. Thus, the absence of personalized interaction could complicate appeals and redressal by not giving the assessee an opportunity to reason with an officer. Overcoming these hurdles requires clear guidelines, extensive trainings and effective mechanisms for communication and dispute resolution within the faceless assessment system.

05 As regards GST, do you think it has been revolutionary, considering the revenue collected in the past few months ?

Yes. It has streamlined tax compliance by replacing multiple indirect taxes with a unified tax regime, reducing administrative burdens and eliminating cascading tax. The impact of GST on India's IT Sector is that while the tax rate on software and related services have increased to 18%, we are now able to avail ITC on a wider spectrum of expenses which helps to maintain cost-effectiveness due to fungibility of credit. Additionally, the implementation of GST has led to the simplification of taxation on software by way of the elimination of double taxation issues prevalent in the pre-GST Era, wherein both VAT and Service Tax authorities looked to tax revenue from software services, which gave rise to unnecessary litigations.

Moreover, GST's online portal and digital infrastructure have eased tax filing and refund processes, promoting overall efficiency and reduced compliance costs. The unified market created by GST benefits the IT sector by enhancing market access and facilitating interstate trade, fostering growth.

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DIRECT TAX
From the Judiciary

HC holds placing notice on e-portal not service, communication cannot be 'presumed'

Munjal BCU

2024-TIOL-604-HC-P&H-IT

The Assessee was issued a show cause notice for initiating proceedings u/s 12A(1)(ac)(iii) of the IT Act by the CIT(Exemptions) which was not sent on the Assessee's email or otherwise and was only reflected on the e-portal. Thereafter, two reminders were also published only on the e-portal. Aggrieved, the Assessee preferred a writ petition before the HC praying for the stay of the show cause notice.

Before the HC, the Revenue contended that the communication of notice electronically would also include placing it on e-portal and as the Assessee, itself, had submitted form on the said e-portal, Assessee must be presumed to have knowledge of the notice/ reminders placed on the e-portal as there was no requirement of submitting notice personally through e-mail or otherwise.

Noting that it was an admitted position that the said notice and reminders were not served upon the Assessee as there was no e-mail sent, the HC rejecting the Revenue's contention, referred to Section 282(1) of the IT Act & Rule 127 of the IT Rules to observe that before any action can be taken, it was essential that a communication of the notice must be made in terms of those provisions. The said provisions do not mention of communication to be 'presumed' by placing notice on the e-portal. Moreover, an Assessee could not be expected to keep the e-portal open at all times so as to have knowledge of what the Department is supposed to be doing with regard to the submissions of forms etc.

Holding that the Assessee was not given sufficient opportunity to represent his case, the HC allowed the writ petition.

HC remits stay application with direction to follow NASSCOM judgment, holds 40% deposit as 'harsher burden'

National Stock Exchange of India Limited

W.P.(C) 4413/2024

The Assessee was subjected to a search operation u/s 132 of the IT Act whereupon consequent notices were served for relevant assessment years and the assessment was completed raising demand u/s 156 of the IT Act.

The Assessee filed stay application before the AO seeking interim protection against enforcement of demand which was rejected referring to the CBDT Office Memo dt. 31.07.2017 and requiring 20% pre-deposit. Against assessee's second application for stay which was again met with rejection, a notice u/s 220(1) declaring him assessee-in-default was issued. Aggrieved, the assessee approached PCIT which increased the pre-deposit to 40% and hence the present writ.

The HC while remitting the matter back to the AO for fresh examination of the stay application, observed that both the authorities failed to deal with the aspect of prima facie merits, likelihood of success and

undue hardship while adjudicating the application. Referred to the NASSCOM judgement **[NASSCOM v. DCIT (Exem.) Circle 2(1), New Delhi & Ors 2024:DHC:2078-DB]** of the co-ordinate bench which held the CBDT OM can't possibly be read as mandating a pre-deposit of 20% of outstanding demand without reference to the prima facie merits of a challenge that may be raised by an Assessee in respect of an assessment order. Demolishes Department's stand that stay application can't be entertained until 20% pre -deposit.

Swiss Court rules on 'relevance' of information exchanged under DTAA, rejects 'fishing expedition' plea

X Furnishing AG

Abteilung I A-744/2022

A Furnishing SA ('Portuguese company' or 'PC') was engaged in producing wood-based furnishings as per the supply contracts entered with its group company, X Furnishing AG ('Swiss company' or 'SC'). The Portuguese Tax Authorities (PTA) undertook tax audit of the PC wherein it was found that PC was undertaking intra-group transactions having arm's length price based on TNMM. With a view to check its veracity, PTA under Article 25b of the Swiss-Portugal DTAA requested Swiss Tax Authorities (STA) to provide certain intra-group transaction related information of the SC. Considering the requests as genuine, STA requested SC to provide necessary information.

While SC responded that majority of information sought by PTA was irrelevant for the taxation of PC, and submitted only limited information as deemed relevant for that purpose, STA insisted upon furnishing all the information along with the documentation as requested by PTA. Aggrieved, the SC filed an appeal with the Federal Administrative Court (FAC) stating that the above request was a 'fishing expedition', that period for some of the information was barred by limitation & that PC was ceased to be associated enterprise in the interim.

The FAC, while rejecting the appeal by SC, noted that the principle of trust between cross-border authorities under international law did not preclude requesting State from demanding additional explanations from the other State if there were serious doubts about the likely relevance of the information requested. However, such principle of trust could only be overturned based on established circumstances. In the present set of facts, the PAT had well explained the probable relevance of the information requested for the taxation of the PC, hence there was no question of a 'fishing expedition'.

Gujarat HC upholds search against lawyer, rules on Attorney-Client privilege

Maulikkumar Satishbhai Sheth

R/SPECIAL CIVIL APPLICATION NO. 20187 of 2023

The Assessee was a practicing advocate enrolled with the Bar Council of Gujarat. Revenue authorities conducted search operation at her residence and office premises under proper authorization warrant. During search operation, authorities took away copies of digital data from electronic devices of the Assessee along with some loose paper files relating to her clients. Aggrieved, the Assessee filed a writ before the HC challenging the search operations as well as seizing of petitioner's client data.

The HC, while upholding the search operation by the Revenue, observed that the Court is only required to be satisfied as to whether the satisfaction recorded by the investigating authorities for initiation of search

are justified. In this case, it was found to be justified. It also referred to the provisions of Section 132(4A) of the IT Act to state that Revenue was entitled to seize the materials available during the course of search.

On the taking away of assessee's clients' data and attorney-client privilege, it was held that Section 126 of the Evidence Act (i.e. about attorney-client privilege) would not be applicable to the facts of the case in entirety as the communication or documents in possession of the Petitioner would continue to be protected by the authorities and such provision is essentially a right of the client and not of the advocate.

DIRECT TAX
From the Legislature

NOTIFICATIONS

Notification	Key Updates
Notification No. 02/2024 dated March 31, 2024 and Corrigendum dated April 04, 2024	**CBDT issues clarification on time limit for verification of return** The CBDT has clarified that where the return of income is e-verified / ITR-V submitted within 30 days of its upload, the date of upload shall be considered as the date of furnishing of return whereas in case such e-verification/ ITR-V submission is done post 30 days, then the date of furnishing will be the date of such e-verification/ ITR-V submission & the late filing consequences under the Act shall follow. Further, it was clarified that where the return is not verified within the aforesaid specified time limit, such return shall be treated as invalid.

CIRCULARS/ GUIDELINES

Circulars/ Guidelines	Key Updates
Press Release dated April 04, 2024	**CBDT enables e-filing for ITR-1, 2, 4 & 6 for AY 2024-25** The CBDT through this Press Release has informed that ITR-1, ITR-2 and ITR-4 for AY 2024-25 are available on the e-filing portal from April 1, 2024, onwards. It also apprised that the companies will also be able to file their ITRs through ITR-6 from April 1, 2024 onwards and the facility to file ITR – 3, ITR – 5 and ITR – 7 will soon be made available. Further, the JSON Schema for ITR-1, ITR-2, ITR-4 and ITR-6 and Schema of Tax Audit Reports are also available for AY 2024-25 to facilitate the e-Return Intermediaries.
Circular No. F. No. 380/01/2024-IT(B) dated April 05, 2024	**CBDT releases 'Interim Action Plan for FY 2024-25', requiring immediate action on grievance redressal & refund approval** With a view to enhance the efficiency of tax administration and provide a structured approach for disposing various tax matters, the CBDT has issued The Interim Action Plan for FY 2024-25 to lay down accountability across various departments. The Plan delineates tasks, defined as Key Result Areas, which encompass assessment charges, refund-related actions, grievance redressal, audit objections , rectification processes, sharing of information with law enforcement

Circulars/ Guidelines	Key Updates
	agencies, release of seized assets, international tax matters, exemption units, etc. and the deadlines for their completion. The Plan also addresses appellate matters, vigilance-related issues, HRD matters, and other administrative tasks. It emphasizes the importance of timely action and strict compliance to ensure effective tax governance and transparency.
Press Release dated April 16, 2024	**CBDT signs record number of 125 APAs in FY 2023-24** The CBDT has highlighted the remarkable success of the Advance Pricing Agreements (APA) regime in FY 2023-24, stating that, a total of 125 APAs were signed by the CBDT with the taxpayers in FY 2023-24 including 86 Unilateral APAs and 39 Bilateral APAs. It marks the highest ever record APA signings in any FY since inception of the APA regime and represents a 31% increase in APA signings versus the last FY. Further, as a consequence of entering into Mutual Agreements with India's treaty partners – Australia, Canada, Denmark, Japan, Singapore, the UK and the USA, the CBDT also signed the maximum number of Bilateral APAs in any FY till date. The APA Scheme endeavours to provide certainty to taxpayers, especially MNCs having large cross-border group transactions, in the domain of transfer pricing by specifying methods of pricing and determining arm's length price of international transactions in advance for a maximum of five future years. Further, with an option to roll-back the APA for four preceding years, tax certainty is achieved for nine years. The signing of Bilateral APAs additionally provides the taxpayers with protection from any anticipated or actual double taxation.
Circular No. 06/2024 dated April 23, 2024	**CBDT grants relief to TDS deductors in respect of inoperative PAN** With a view to redress various grievances faced by deductors/ collectors who have deducted/collected TDS/ TCS at normal rates but were required to do the same at a higher rate on account of the latter's PANs being inoperative for non-linkage with Aadhar, the CBDT has decided that those deductors/ collectors shall not be treated as defaulters (for short deduction/ collection) for transactions entered up to March 31, 2024, if in such cases, the PAN of deductees/ collectees are linked to Aadhar on or before May 31, 2024. Further, in such cases, there will be no liability on the deductor/ collector to deduct/ collect the tax under Sections 206AA/ 206CC of the IT Act at a higher rate for inoperative PANs and hence such deductors/ collectors will not be required to pay the difference in such cases.

DIRECT TAX
From the Legislature

Circulars/ Guidelines	Key Updates
Circular No. F. No. 380/01/2024-IT(B) dated April 05, 2024	**CBDT further extends due date for filing Forms 10A/10AB** Considering various representations received requesting for further extension of due date for filing of Forms 10A/ 10AB beyond September 30, 2023, and with a view to avoid genuine hardships to taxpayers, the CBDT further extended the date to June 30, 2024 in respect of trusts, institutions or funds. It also clarified that where the existing trusts, institutions or funds had failed to file Form 10A for AY 2022-23 within such extended due date, and subsequently, applied for provisional registration as a new entity and received Form 10AC, they could now avail this opportunity to surrender the said Form 10AC and apply for registration for AY 2022-23 as an existing trust, institution or fund, in Form 10A till June 30, 2024 Further, those trusts, institutions or funds whose applications for re-registration were rejected solely on the grounds of late filing or filing under wrong section code, they can also now submit fresh application in Form 10AB within the aforesaid extended due date.

TRANSFER PRICING
From the Judiciary

ITAT accepts Tata Sons' 'other method' for share valuation, holds DCF not the only method

Tata Sons Private Limited

ITA No. 1093/Mum/2019

The Assessee sold 10 Mn shares of Tata Global Beverages Capital Ltd. (TGBCL) to an overseas subsidiary based on valuation carried out by an independent valuer adopting combination of Comparable Companies Multiple (CCM) and Discounted Cash Flow (DCF) methods by assigning 50% weightage to each of them. However, TPO rejected the valuation and insisted on application of a pure DCF method as per IT Rules. Aggrieved, the Assessee approached the ITAT.

The ITAT, while upholding the valuation by the assessee, noted that in TP analysis, the key was to determine arm's length price (ALP) of an international transaction by employing the most appropriate prescribed method. In cases where any of the prescribed methods on standalone basis can't be applicable, the method used in combination thereof shouldn't be disregarded unless there is any evident fundamental flaw. It reasoned that the comparables chosen by the valuer (on standalone basis) lack comparability or adequate information within beverages segment, with some not even involved in tea industry. Despite these shortcomings, valuer assigned 50% weightage to CCM method which emphasizes the importance of selecting appropriate comparables for an acceptable valuation.

It further noted that valuation of shares was based on audited financials of the assessee and certified by a chartered accountant, thus, adhering to the requirements mandated by the RBI Circular. Therefore, hybrid method adopted by the Assessee in any combination should be accepted if there are justifiable reasons for allocating weightage to each of them. Hence, TPO actions were held to be devoid of any merit.

ITAT examines ALP of royalty payment, considers consistency in conduct while interpreting agreements

CRM Services India Pvt Ltd.

ITA No(s). 1518 & 1519/Del/2022

The Assessee was a wholly owned subsidiary of its AE in US which renders voice based tele-services to its customers. The assessee entered into an IP sharing agreement with its AE mandating payment of royalty on accumulated gross revenue. The TPO initially determined ALP of royalty payment at 'Nil' holding that no recognizable benefit was received by the Assessee whereas DRP held that the Assessee was obliged to pay royalty w.r.t sales made to third parties, but royalty paid to its AE qua revenues received from the AE for rendering services to third parties was disallowed.

Aggrieved, the Assessee approached the ITAT. While the proceedings going on, the assessee filed an (undated) addendum to the main agreement as an additional evidence. ITAT accordingly sent the matter back to TPO for considering the additional evidence. TPO however followed DRP's earlier directions & disallowed royalty in proportion to the revenue generated through the AE. The ITAT, holding the parties' right to formulate any kind of arrangement under the law, observed that the rule of consistency is very

material in the present case. The consistency in the conduct of the parties was relevant to interpret and construe the transaction, agreement and the addendum. There was consensus ad idem between the parties that royalty was to be paid with respect to the entire sales revenue of the Assessee including from third party customers of the AE. It was established that the addendum was entered upon to just bring more clarity to this understanding and it could not be said that this post facto addendum was made with intention to undo the findings of the DRP.

Thus, finding that the TPO/DRP had erred in rejecting the addendum as a piece of evidence showing consistency of parties' conduct, and also that the clauses in the Agreement was erroneously interpreted to conclude that the Assessee was providing services only to its AE and not to third parties on behalf of the AE where the AE had in fact, acted as an intermediary. ITAT accordingly allowed the appeal.

ITAT holds corporate guarantee as international transaction, determines ALP @0.5%

Tega Industries Ltd.

ITA No. 539/Kol/2022

The Assessee had set up a Special Purpose Vehicle (SPV) in Singapore for acquiring 2 companies and, in order to fund the acquisition, the SPV had obtained a loan from a third-party bank backed by a corporate guarantee from the Assessee. In its TP study, the Assessee did not offer any income with respect to corporate guarantee fees, however, the TPO viewed it as an international transaction and calculated ALP @ 6.96%.

Aggrieved, the Assessee approached the ITAT which referring to the explanation to sub-section (2) of Section 92B of the IT Act, observed that since the inclusive definition of international transaction included the activities relating to capital financing and borrowings, the new corporate guarantee transaction also fell under the category of international transactions. Moreover, in the present case, the corporate guarantee for loan borrowed effectively reduced the interest burden of the AE and although the Assessee saved immediate use of its own funds (since AE paid the interest), it did not exempt the transaction of giving corporate guarantee from being classified as an international transaction. Under the TP provisions, the Assessee was required to recognize the corporate guarantee fee as income and therefore, the transaction fell in the category of an international transaction.

Thus, holding the corporate guarantee as an international transaction, the ITAT directed the TPO to compute the corporate guarantee fee @ 0.5% and delete the excess amount added in the hands of Assessee.

ARTICLE

EXCESSIVE DELEGATION OF PENAL PROVISIONS UNDER GST

The GST law is rather new compared to other tax statutes in India. Enacted only in 2017, the Legislature is well drafted in terms of being a complete statute. Learning from the hits and misses of erstwhile laws, the GST law has attempted to overcomes the same. Despite great efforts, there still remain some anomaly in certain penal provisions. Particularly, the problem of issuance of penal notices u/s. 122 of the CGST Act, which appears to be without authority of law.

SHORT DESCRIPTION ABOUT RECOVERY PROVISION AND PENAL PROVISION UNDER CGST ACT, 2017

- The first step towards the answer to this question is that we need to understand what are the recovery sections under the CGST Act. On one hand Section 73 states that the proper officer shall serve the Notice to the person chargeable to tax in case of default other than willful misstatement or fraud while on other side the act has given power to issue notice to proper officer in case of default involving fraud or willful misstatement under Section 74.

- Secondly, we need to understand what Section 122 of CGST Act, 2017 talks about. Sub Section 2 of Section 122 talks about the levy of penalty in case of short payment of tax and excess utilization of ITC.

- Thus, from the above two statements, it can be inferred that the provisions for issuance of Notice and recovery of GST are contained under Sections 73 and 74 of the CGST Act. Section 73 and 74 gives power to the proper officer to serve the Notice to the person and initiate the recovery of tax. While, unlike the provisions of Section 73 and 74, there is no such power given to any officer in Section 122(2)(a) or Section 122(2)(b) of the CGST Act. Sub Section 2 of Section 122 talks about the levy of penalty in case of short payment of tax and excess utilization of ITC. No power given to any authority to impose the penalty to the Taxable Person under Section 122.

RECOVERY UNDER C. EX. AND ST, CUSTOMS

To understand the recovery provisions under the CGST Act, Firstly, we need to deep dive into the recovery and penal provisions of other indirect taxes.

- Central Excise Act, 1994 – As Section 73 and 74 are recovery provisions under CGST Act, similarly for the Central Excise Act, 1994, the applicable section for the recovery of duty is Section 11A. Section 11A of Central Excise Act, 1994 give rights to the Central Excise Officer to issue Notice in case of any short – paid, short-levied or erroneously refunded duty. Similar to Section 122 of CGST Act, Section 11AC talks about the levy of penalty in case of any short – paid, short-levied or erroneously refunded duty.

- Chapter 5 of Finance Act, 1994 – Section 73 of Chapter 5 of Finance Act pertaining to Service Tax talks about the recovery of short paid service tax and for the same the authorized person here is Central Excise Officer while Section 76 talks about the levy of penalty in case of short payment of tax.

- Customs Act – Section 28 of the Customs Act, 1962 talks about the recovery of short paid Custom duty by the proper officer. And the penal provisions for the Customs Act is covered under Section 114AA of the Customs Act, 1962.

In each of the Act cited above there are separate for recovery of Tax and levy of penalty, Thus, it is clear from the above provisions that the recovery cannot be initiated without the authority of law and there is no authority to any person in penal provision of the acts cited above. Therefore, the Notice issued under the penal provision of the said act is void-ab-initio.

ISSUES IN ISSUING NOTICE U/S 122 OF CGST ACT

It can be seen that the department are continuously issuing Notices under the Section 122. Firstly, we need to understand what can be the major issues in serving of Notice u/s. 122. The major issues are:

Proper Officer: Unlike Section 74 and Section 75 of CGST Act in which power to issue Notice has been given to the Proper Officer, there is no such officer or authority who is in rights of issuing the Notice and initiating the recovery of Tax under Section 122 of CGST Act, 2017. Notice issued without any authority and jurisdiction are not sustainable in the eyes of law, Therefore, need to be set aside.

Limitation: The second major question that need to be taken into consideration while issuing the Notice under this section is what could be the time limit of issuing the Notice as the time limit is important to ensure the proper justice and fair treatment for the Taxpayer. In Section 122 of CGST Act, there is no specification of any prescribed time limit of initiating recovery. What can be the implied meaning for this? Is that the Notice can be issued anytime be it after 15 years or 20 years from the relevant date? If it is so, then it will be truly unjust to the Tax Payer.

RULE 142 OF CGST RULES, 2017

If we read rule 142 of CGST Rules it can be inferred that the Notice can be issued in Form DRC -01 under Section 122 of the CGST Act. It can be seen that there is a contradictory statement between the CGST Act and CGST Rules as there is no power given to any authority in Section 122 of CGST Act. Section 122 is merely a penal provision specifying the amount of the penalty that should be levied on certain offenses. There is not even mention of any person authorized or any time limit for issuing the Notice. So, without these specifications, how a notice can be issued under this section. Therefore, it is clear that the Section 122 of CGST Act and Rule 142 of CGST Rules are contradictory to each other. However, it is settled principal of law that the rule cannot override the Act. To justify this statement let us take references of some case laws:

The Delhi High Court Vide the Para 12 of the case **Intercontinental Consultants & Technocrats Pvt. Ltd. Vs Union of India [2013 (29) S.T.R. 9 (Del.)]** mentioned that there is ample preposition that the rules cannot override or overreach the provisions of the main enactment.

Also, In the Judgement for **Green Infra Clean Wind Power Ltd. [(2023) 5 Centax 31 (A.A.R. - Cus. - Del.)]**, The A.A.R. in its para 6 mentioned that in the absence of any changes in the Act, rules cannot override Act.

Thus, from these judgements, it is clear that between the contradiction of Act and the rule made thereunder, provision of the Acts need to be taken into consideration and rules need to be set aside.

JURISPRUDENCE

Contradictory to the above interpretation that Notice should not be issued under Section 122 of CGST Act, 2017, still there are some case laws from which can be implied that the Department can issue notice under Section 122. The relevant case laws are cited below:

Rajkamal Builder Infrastructure Pvt. Ltd. Vs Union of India [2021 (50) G.S.T.L. 153 (Guj.)]

"9. Thus, the plain reading of the aforesaid rules indicates that Form GST DRC-01 can be served by the proper officer along with the notice issued under Section 52 or Section 73 or Section 74 or Section 76 or Section 122 or Section 123 or Section 124 or Section 125 or Section 127 or Section 129 or Section 130 and that too, electronically as a summary of notice."

From the above cited para of the case, it is expressively mentioned that the Department can issue the notice under Section 122 of the CGST Act.

Further, the judgements in the case of **Shyam Sel and Power LTD. Vs. State of U.P. [2023 (78) G.S.T.L. 283 (All.)]** and **J.K. Cement LTD. Vs State of U.P. [2023 (77) G.S.T.L. 323 (All.)]**, it is held that the proceedings can be done under Section 122 of CGST Act.

CONCLUSION

NARROW INTERPRETATION BY GUJ. HC

The Gujarat High Court in its judgment of **Rajkamal Builder Infrastructure Pvt. Ltd. Vs Union of India [2021 (50) G.S.T.L. 153 (Guj.)]** held that the Notice can be issued under Section 122 which is contradictory as per our understanding and arguments presented above, from this case law the Narrow interpretation of the Act and Rules by Gujarat High Court can be clearly seen as Gujarat high court passed the said judgement by mere reading of rule 142 without clearly understanding the provisions of Section 122.

MISUTILIZATION OF POWERS BY DEPARTMENT

Now-a-days, it can be seen that the department are continuously issuing notices under Section 122 of CGST Act, 2017 without any authority of law. Here, the misuse of power by the department can be clearly seen. The department has power to issue the Notices and initiate recovery under the provisions of Section 73 and Section 74 of CGST Act and not the Section 122 of the CGST Act. Thus, the Notice issued by the department under this section should be declared null and void and therefore, not sustainable in the eyes of law.

GOVERNMENT TO TAKE COGNIZANCE AND ISSUE CLARIFICATION

From the above, it can be noticed that the issue involves a question of interpretation of law. Therefore, the Government should issue appropriate clarifications regarding the said point of law to settle all uncertainties surrounding the relevant section and avoid burdening taxpayer were unnecessary litigation.

GOODS & SERVICES TAX
From the Judiciary

HC clarifies mere presence of funds in ECL does not amounts to payment of Tax

Sincon Infrastructure Private Limited vs UOI

Civil Writ Jurisdiction Case No.11621 of 2023

The Petitioner had been subjected to peremptory recovery sought in relation to demand of interest on late payment of tax for the Assessment year 2017-18 and 2018-19. Aggrieved, the Petitioner challenged the demand of interest on late payment of tax on the ground that there was sufficient credit in the Credit Ledger before the Patna HC. The HC while dismissing the writ petition held that mere presence of funds in the Credit Ledger does not constitute the actual payment of tax or liability. Interest under Section 50(1) is applicable for late payment, regardless of whether the debit is made from the credit or cash ledger. The credit in the Credit Ledger is recognized only upon filing a return, and the supplier's tax remittance does not automatically credit the ledger. The balance in credit ledger can only offset output tax liability upon furnishing returns for the relevant tax period when the debit is made.

Author's note:

The Patna HC's ruling appears to be in conflict with previous Madras HC rulings on two key aspects, first that the tax liabilities are only considered to be paid upon filing the GST return which is in contrast from Madras HC in RE: ***Eicher Motors [2024-TIOL-133-HC-MAD-GST]*** *where it was held that tax liability is discharged as the amount is deposited in ECL even if the GSTR-3B return is filed late.*

While the Madras HC took a more taxpayer friendly view that cash deposited in ECL counts as tax paid and ITC should not be denied due to supplier defaults, the Patna HC appears to take a stricter stance tying both payment of tax and availment ITC to the filing of GST return. This divergence could lead to further litigation on interest implications for delayed GST returns.

GST not applicable on Ocean Freight in FOB Contracts

Agarwal Coal Corporation Private Limited

2024-TIOL-624-HC-MUM-GST

The Hon'ble Bombay HC quashed the SCN demanding GST on Ocean Freight for transportation of good from outside of India. The HC relied on the decision held by the Hon'ble Gujarat HC in RE: **Mohit Minerals Private Limited [2020-TIOL-164-HC-AHM-GST]**, which held that the IGST cannot be levied on the Ocean Freight component in CIF contracts.

The Revenue's contention was that the Mohit Minerals decision should only be applied on CIF Contracts in the cases and not in the case of FOB Contracts, which the Court dismissed since the Mohit Mineral case involved both CIF and FOB Contracts. The HC further held that since the Notification was not available to the GST Authorities on account being declared as ultra vires, rendering the SCN without jurisdiction. The HC allowed the petitioner to seek a refund under protest, with interest @7% per annum.

Author's Notes:

Notably, the Gujarat HC had struck down the RCM notification that Indian importer is not the recipient in case of CIF imports and therefore, the levy cannot be imposed on Indian importer through RCM mechanism. On the other hand, the SC had held that tax cannot be levied separately on a component of composite supply.

Nonetheless, the instant judgement is a relief to importers, who may claim the refund of IGST paid under RCM for past periods in case of FOB imports.

Demand cannot be imposed for absence of state-wise trial balance

TMF Business Services Limited

2024-VIL-355-MAD

The Petitioner had been subjected to an order inter alia confirming demand on the premise that Trial Balance for the state of Tamil Nadu had not been provided. Aggrieved, the Petitioner preferred a Writ before the Madras HC. The HC considered the reconciliation statement submitted by the Petitioner to contend the correct turnover figure. It was further held that confirmation of demand solely for the reason of the non-furnishing of the is trial balance is unsustainable. Therefore, the HC set aside the order and remanded the matter for fresh consideration.

Chhattisgarh HC upholds dismissal of Appeal under condonation amnesty, where there is no tax demand

Bharat Aluminium Company Limited vs UOI

W. P. No. 53 to 65 of 2024

The Petitioner appealed against the denial of a refund for unutilized ITC of compensation cess paid on the coal imports. The appeal was rejected as time barred u/s 107 of the CGST Act, because it was filed after a delay of one year and one month beyond the prescribed limit, without any cogent reason. The Appellate Authority dismissed the appeal based on clause 5 of Notification No. 53/2023-CT dated 02.11.2023 which prescribes that no appeal shall be admissible in respect of demand not involving tax.

The Chhattisgarh HC upheld the validity of clause 5 of the Notification No. 53/2023-CT and found no error in the decision of the Appellate Authority and ruled that clause 5 of the notification cannot be declared ultra vires merely because it does not benefit an individual or party, especially when it aims to bypass available legal remedies.

Bombay HC: Recovery of GST dues from Former Director of a Company, a violation of constitutional rights

Prasanna Karunakar Shetty

2024-VIL-358-BOM

The Petitioner, a former director of a Company was faced with recovery actions by the Revenue after resigning from the position. He was held liable u/s 89 of the MGST Act and his current account and immovable property were attached. Aggrieved, the Petitioner preferred a writ before the Bombay HC challenging the validity of such attachment for the recovery of dues of the Company.

The HC held that Section 89 requires clear evidence that the person was the director of the Company during the relevant period for liability to be imposed. The HC observed that the recovery sought to be made under the impugned order was for the period from April 2018 to March 2019, whereas the Petitioner was not an active Director from March 2018. The HC asserted that SCN must be issued to verify all factual issues before attachment orders are passed, which did not occur in this case. The Bombay HC set aside the impugned order and held that such orders breach the Petitioner's right to property guaranteed under Article 14 and 300A of the Constitution.

Madras HC: Revenue must consider all contentions raised by the Petitioner objectively without any pre - determination

BASF Catalysts India Private Limited

2024-VIL-346-MAD

The Petitioner had been served SCN u/s 74 of the CGST Act, inter alia for classification dispute on catalysts. Aggrieved the Petitioner preferred a writ before the HC contesting the validity of invocation of Section 74 for classification disputes.

The Madras HC observed that the Petitioner may respond to the SCN and contend that the criteria of Section 74 were not met and they could challenge any adverse order. The HC agreed that the Petitioner's contentions were being disregarded, as it was evident from the undue reliance on the judgement of the Hon'ble SC in RE: **Westinghouse Saxby [2021-TIOL-121-SC-CX-LB]** in the intimation and SCN. The HC disposed the writ and the Respondent was directed to objectively consider all contentions raised by the Petitioner.

Uttarakhand HC sets aside Order demanding an amount more than that mentioned in GST DRC-01

Horizon packs Private Limited

2024-VIL-330-UTR

The Petitioner challenged the validity of the order on the ground that the demand of tax, interest and penalty was more than the amount mentioned in the show cause notice issued in Form GST DRC-01.

The Uttarakhand HC held that the impugned order is not as per the provision contained under Section 75 (7) of the state GST Act and is unsustainable on the ground that the amount mentioned in the show cause notice is less than the amount ordered to be paid by the petitioner. The impugned order was set aside and the writ petition was allowed.

PRE-GST

CESTAT Hyderabad upholds cash refund of CVD and SAD under GST

Granules India Limited vs. Commissioner of Central Tax, Hyderabad – Customs, Telangana

Customs Appeal No. 30323 of 2021

The Appellant aggrieved due to rejection of refund claim of CVD and SAD on the grounds that there is no provision in the existing law prior to 01.07.2017, allowing the cash refund of cenvatable component during the alternate taxation regime u/s 142(3). The Hon'ble Tribunal held that provisions u/s 142(3), (5) and (8A) of the CGST Act clearly provide that refund of CVD & SAD paid after 01.07.2017 can be claimed under the existing law. Furthermore, since the CENVAT Credit of the CVD and SAD paid, which is unavailable after GST implementation, the Appellant is entitled to cash refund of the said amount. The Tribunal directed the Revenue to grant refund of CVD and SAD along with interest u/s 11BB of the Central Excise Act.

Author's notes:

It may be noted that the Hon'ble Mumbai CESTAT in RE: Clariant Chemicals India Limited [Appeal No. 87606 of 2019] had similarly allowed the cash refund of CVD and SAD u/s. 11B of the Excise Act, which was paid by the Appellant post implementation of GST.

GOODS & SERVICES TAX
From the Legislature

Sr. No	Notification	Summary
1.	**Notification No. 07/2024- Central Tax dated April 08, 2024**	**CBIC Notifies Nil Interest Rate for Late GSTR-3B Filings for Specific Taxpayers** The CBIC has notified 'Nil' interest rate for certain registered persons who had failed to furnish their returns in FORM GSTR-3B by the due date due to technical glitches on the portal. The notification specifies the registered persons identified by their GSTIN who are eligible for this provision.
2.	**Notification No. 08/2024- Central Tax dated April 10, 2024**	**Timeline for Implementation of Central Tax Notification No. 04/2024-CT Extended** The CBIC extended the timeline for the implementation of special procedure for registered persons engaged in manufacturing of pan masala and tobacco products from the April 01, 2024 to the May 15, of 2024.
3.	**Notification No. 09/2024- Central Tax dated April 12, 2024**	**Due Date for Furnishing of GSTR-1 for March 2024 Extended** The CBIC has announced an extension of the deadline for furnishing the details of outward supplies in FORM GSTR-1 to the April 12, 2024 for the tax period of March 2024 due to technical glitches experienced on the GST portal.

CUSTOMS & FTP
From the Judiciary

No limit on reassessment of BoE under Customs Act

Human Health Distribution vs. Commissioner of Customs Patparganj

Customs Appeal No. 51855 of 2021

The Principal Bench, Delhi CESTAT held that u/s 17 of the Customs Act, there is no restriction on the number of times a proper officer can re-assess a BoE. The Appellant's contention that re-assessment can be done only once after the initial self-assessment by the importer is incorrect. Assessment is not a one-time process, and the assessing officer can revise it multiple times based on additional information until the order of clearing of goods for home consumption is issued u/s 47 of the Customs Act.

Mumbai CESTAT upholds classification of quick-lime under Tariff Entry 2522

Mukand Limited

2024-VIL-396-CESTAT-MUM-CU

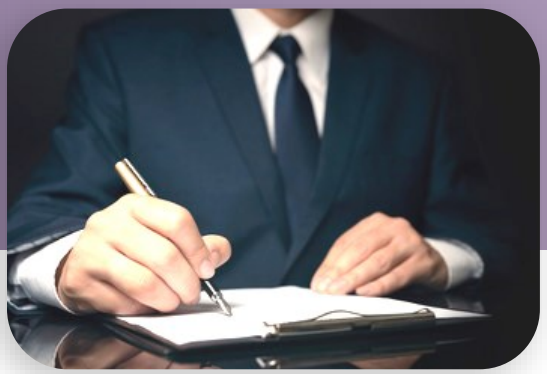
The Appellant imported 'quicklime' between and sought classification under CTH 2522 1000. However, the Commissioner of Customs classified the goods under tariff item 2825 9090, leading to a demand for differential duty. Aggrieved, the Appellant filed an Appeal before Mumbai CESTAT.

The Tribunal observed that the imported goods did not meet the purity benchmark necessary for classification under tariff item 2825 and referenced international standards, previous decisions, and the Bureau of Indian Standards specifications to support its judgment. The Tribunal held that the imported goods should be classified under Chapter heading 2522, aligning with their nature and intended use. Accordingly, CESTAT asserted that 'quicklime' fell under Chapter heading 2522 rather than 2825.

CUSTOMS & FTP
From the Legislature

Sr. No	Refernce	Summary
1.	**Public Notice No. 16/2024 dated April 10, 2024**	**Exporters advised to upload self-declaration for duty drawback clarification** The notification refers to para 9 (iii) and 9 (iv) of Notification No. 77/2023-Customs (NT) dated October 20, 2023, concerning revised duty drawback rates. It states that certain commodities or products manufactured or exported by specific units are exempt from these rates. Queries regarding the origin of goods being exported were raised by the Drawback Section, CH-IV Commissionerate. During a PTFC meeting, the CCBA proposed a solution to streamline this process, suggesting a system-based reply to clarify whether items were purchased from EOU/SEZ. Consequently, exporters are advised to upload a signed self-declaration certifying the origin of goods on the e-Sanchit platform while filing shipping bills.
2.	**Instruction No. 08/2024-Customs dated April 05, 2024**	**New import regulations exempting high-end medical equipment, excluding critical care devices** The CBIC permits importation of high-end medical equipment, except critical care devices, under specific conditions. These conditions include importation by actual users, OEMs, Indian subsidiaries of OEMs, or traders acting on behalf of actual users, subject to MOEFCC approval.
3.	**Instruction No. 09/2024-Customs dated April 22, 2024**	**CBIC extends exemption period for Ortho-phosphoric Acid in fertilizer manufacturing** The exemption period, which lasts for three months, aims to provide flexibility to manufacturers during this transition period. This instruction follows the Ortho Phosphoric Acid (Quality Control) Order, 2021, and its subsequent amendments.
4.	**Policy Circular No. 01/2024-DGFT dated April 12, 2024**	**DGFT clarifies Export Obligations for Advance Authorisation holders** DGFT clarifies the discharge of export obligations for AA holders. For AA holders under Customs Notification No. 18/2015-Customs, issued on or after April 1, 2015, they can choose between physical exports or making domestic supplies, with various options outlined in the circular. For AA holders under Customs Notification No. 21/2015-Customs, similar options are available for fulfilling export obligations, including physical exports and domestic supplies.

REGULATORY
From the Judiciary



Hon'ble SC holds resolution applicant can't unilaterally amend or withdraw resolution plan post CoC approval

Deccan Value Investors L.P. & Anr. vs. Dinkar Venkatasubramanian & Anr.

Civil Appeal No. 2801/2020

The Appellant was the successful resolution applicant of the Corporate Debtor that had filed an application for withdrawal of its resolution plan before the NCLT after it had been approved by the CoC and consequently the NCLT refused to approve the resolution plan holding that that the IBC did not confer any power and jurisdiction on the Adjudicating Authority to compel specific performance of a plan by an unwilling resolution applicant. On appeal, the NCLAT upheld the NCLT order which caused the parties to approach the SC.

Placing reliance on its judgment in **Ebix Singapore Pvt. Ltd. vs. CoC of Educomp Solutions Ltd. & Anr. [(2022) 2 SCC 401]**, wherein it was held that the NCLT/NCLAT lacked the authority to allow Resolution Plan withdrawal, the Hon'ble SC observed that the scrutiny by the adjudicating authority for grant of approval in terms of Section 31(1) of the IBC, read with other provisions of the IBC, was limited and restricted. Moreover, resolution plans were not prepared and submitted by lay persons. They were submitted after the financial statements and data were examined by domain and financial experts, who scanned, appraised and evaluated the material as available for its usefulness, with caution and skepticism and it would be rather strange to believe that super specialists and financial experts were gullible and misunderstood the details, figures or data as the assumption was that the resolution applicant would submit the revival/resolution plan specifying the monetary amount and other obligations, after in-depth analysis of the fiscal and commercial viability of the corporate debtor and accordingly, pointing out of ambiguities or lack of specific details or data, post acceptance of the resolution plan by the CoC, was required to be rejected, except in an egregious case were data and facts were fudged or concealed.

Thus, holding that the IBC did not allow the resolution applicant to unilaterally amend/modify, or withdraw the resolution plan post approval by the CoC, the Hon'ble SC quashing the orders of the NCLT/NCLAT, disposed of the matter.

NFRA slaps INR 3 Crores penalty on Reliance Capital joint-auditor, for gross negligence in audit despite other auditor's red-flags

In the matter of Pathak H.D. & Associates

NFRA Order No. 008/2024

The audit firm - Pathak H.D. & Associates (PHD) was acting as the joint auditor of one Reliance Capital Ltd. (RCL) along with Price Waterhouse & Co LLP (PwC) along with a CA as an EP and another CA as an EQCR Partner for FY 2018-19. Subsequently, PwC resigned from the audit without issuing an audit report for the FY and had filed a report with the MCA, reporting suspected fraud in RCL, while the audit report issued by PHD stated that there were no matters attracting Section 143(12) of the Companies Act.

Thereafter, NFRA conducted a suo-motu examination wherein it noted that RCL had loans from banks of around INR 12,000 Crores and other external borrowings of around INR 32,000 Crores, which it had used for extending loans and investment to other group companies, and that PwC had reported suspected fraud regarding loans and investments to the tune of around INR 12,571 Crores to some group companies and despite such reporting of suspected fraud and the resignation by PwC, the EP, PHD and the EQCR Partner did not perform adequate procedures as required by the Standards of Auditing as PHD indulged in self-review by preparing material information for the financial statements of RCL which subsequently became the subject matter of their audit opinion and concluded without any regard to the merits of the transactions that there were no matters attracting Section 143(12) of the Companies Act, despite evidence of documented irregularities in RCL, whereas the EP did not question the management and the actual valuation of investments, the rationale for sanctioning loans and investments to potential non-creditworthy entities and the adequacy of provisions remained unverified in all cases, and cumulatively these factors contributed to the risk of material misstatements due to fraud, which PHD, the EP and the EQCR Partner ruled out without adequate audit procedures.

Therefore, the NFRA observed that the EP, the EQCR Partner and PHD did not exercise due diligence in ensuring the audit quality expected in an audit of a public interest entity and were grossly negligent in the conduct of their professional duties failing to adhere to the requirements laid down in the relevant statutes. It further found that serious issues of credit impairment, and going concern issues relating to the borrowers were completely ignored by the EP, the EQCR Partner and PHD, despite the red flags raised by PwC, before resignation, which indicated gross negligence and non-compliance with the statutory duties of an auditor.

Therefore, since such acts were in violation of the Code of Ethics and Standards of Auditing, the NFRA slapped a penalty of INR 3 Crores on PHD, INR 1 Crore on the EP and INR 50 Lakhs on the EQCR Partner. Further, the EP and the EQCR Partner were barred for a period of 10 years and 5 years respectively from being appointed as auditor or internal auditor, or from undertaking any audit in respect of financial statements or internal audit of the functions and activities of any company or body corporate.

Hon'ble SC holds stamp-duty not applicable on every individual increase in share-capital once INR 25 Lakhs cap paid

State of Maharashtra & Anr. vs. National Organic Chemical Industries Ltd.

Civil Appeal No. 8821 of 2011

National Organic Chemical Industries Ltd. (Respondent) had passed a resolution for a further increase in its share capital to INR 1,200 Crores and paid INR 25 Lakhs as stamp duty when it filed its Notice in Form No.5, pursuant to Section 97 of the Companies Act, 1956, however, this was done inadvertently as it was soon realised that stamp duty was not liable to be paid by them since the maximum stamp duty which was of INR 25 lakhs payable as per the provisions of the Stamp Act, had already been paid by them when they increased their capital in 1992.

Consequently, the Respondent wrote a letter to the Deputy Superintendent of Stamps (Appellant) seeking a refund of the payment of stamp duty of INR 25 lakhs and the said request was turned down by the Appellant through an order stating that whenever the authorised share capital of a company was increased, stamp duty was payable on each such occasion at the time of filing of Form No. 5 and it was not a one-time measure. Aggrieved, the Respondent filed a writ petition before the Hon'ble HC which was allowed causing the Appellant to approach the Hon'ble SC.

Perusing the provisions of Stamp Duty Acts of a few other States where Articles of Association were

chargeable, the SC rejecting the Appellant's contention that stamp duty paid before the amendment (Maharashtra Stamp (Amendment) Act, 2015 which amended the charging section for Articles of Association i.e., Article 10 of the Stamp Act to bring a cap of INR 25 Lakhs) could not be taken into account, observed that although the amendment did not have retrospective effect, since the instrument 'Articles of Association' remained the same and the increase was initiated by the Respondent after the cap was introduced, the duty already paid on the same very instrument would have to be considered. Moreover, the effect of adding "increased share capital" was therefore, that the stamp duty would be charged on subsequent increases in the authorised share capital, subject to the maximum cap of INR 25 Lakhs, in other words, the ceiling of INR 25 lakhs was applicable on Articles of Association and the increased share capital therein, and in case stamp duty equivalent to or more than the cap had already been paid, no further stamp duty could be levied.

Thus, upholding the HC order which allowed the Respondent's writ petition and setting aside the order of the Appellant, the Hon'ble SC directed the Appellant to refund INR 25 Lakhs paid by the Respondent along with interest @ 6% per annum.

Hon'ble HC affirms Director's acquittal in cheque-bounce case, since company a 'separate entity'

S. Selvakumari Perulmal vs. Kaushal Realtors Pvt. Ltd. & Ors.

Criminal Appeal No. 1675 of 2019

The husband of the Complainant and the Accused (Director) were acquaintances. In the month of May 2014, the Accused was in need of financial help, and he came to the house of the Complainant. The Complainant advanced to him a hand-loan totally amounting to INR 5 Lakhs. Thereafter, towards discharge of that liability, the Accused issued 5 cheques drawn on one Bassein Catholic Co-operative Bank Ltd. All these cheques were deposited by the Complainant in the joint account standing in her name and in the name of her husband in Federal Bank Ltd., however, those cheques were dishonored and there were 5 cheque return memos issued by the Federal Bank Ltd. dated October 18, 2014, and reason was that the account was closed. This caused the Complainant to issue a demand notice to the Accused. However on non-payment, the Complainant approached the Trial Court which observed that the Accused had not issued the cheques in his personal capacity on an account maintained by him in his person, but had chosen to draw the cheques on a bank account maintained by his company in his capacity as a Director of that company and since the law recognized both these entities as separate and demand notice was not issued to the company, the Trial Court acquitted the Accused.

Aggrieved, the Complainant approached the Hon'ble HC which noted that there was a liability between the Complainant and the company, as the Accused had not issued the cheques in his personal capacity on an account maintained by him in his person but had chosen to draw the cheques on a bank account maintained by the company. Moreover, a demand notice was not issued to the company and the Complainant had failed to adhere to the provisions of the proviso (b) of Section 138 of the Negotiable Instruments Act, 1881 by not issuing a demand notice to the company as the law recognized the company and the Accused as separate entities. Accordingly, finding it not fit to interfere in the judgment of acquittal, the Hon'ble HC dismissed the appeal.

Hon'ble HC directs ED to recover Noida Authority's dues from company's promoters after "piercing corporate veil"

Nirmal Singh & Ors. vs. State Of U.P. & Ors.

2024/AHC/36190-DB

The Petitioners were the promoters of one Hacienda Projects Pvt. Ltd., (HPPL) which was the builder of a delayed residential project 'Lotus 300' in Noida that had filed a writ petition before the Hon'ble HC seeking the quashing of the impugned recovery notice issued by Noida Authority (Respondent) for an amount of INR 63 Crores for the levy of additional compensation for land and towards time-extension charge for the delayed project.

Noting that the builders had collected INR 636 Crores from the booking of flats, out of which the promoters of HPPL had siphoned away almost INR 190 crores and interest-free loans were given to other companies of the promoters, which diversion was substantiated by the balance sheet of HPPL , making this a classic case of conning, where the promoters, without investing any amount got huge tracts of prime land allotted, defrauded the home buyers, Noida Authority, banks and other creditors and then resigned from directorship of the company and pushed it into insolvency to get away with all civil or criminal liabilities and where the only way to ascertain whether their resignation was genuine or was made as a part of the conspiracy to avoid any civil and criminal liability while secretly having full control over the company, was by "piercing the corporate veil", the HC placing reliance on a catena of judgments wherein the doctrine of "piercing the corporate veil" was crystallized and expanded, observed that it would fail in its duty if it kept its eyes shut and allowed the promoters to go scot-free after having defrauded everyone and siphoning off funds from HPPL and investing in other companies as it was surprising that even after conning everyone they had been going scot-free and neither the State nor the authorities were in a position to recover the said amount. Moreover, the Noida Authority had given enough long rope for the promoters to siphon away all the funds of the company and leave the company absolutely in an insolvent condition.

Further noting that the promoters after siphoning away huge amounts from HPPL had placed it into different companies, by layering through the corporate web and ultimately integrating to some other entity where they all had personal interest, the Hon'ble HC observed that entire transaction through the web of different companies showed that the Petitioners had used HPPL and other similarly situated companies to siphon and layer the funds which they had diverted or invested in various other entities/ companies owned or controlled by them and after piercing the corporate veil, it was clear that even after resigning they had full control of the company.

Accordingly, finding that these transactions fell within the ambit of the PMLA and the appropriate agency, which was competent to look into and investigate these transactions, was the ED, the Hon'ble HC, directing the ED to proceed against all the directors/promoters/companies/other entities who were in default to recover the amount and pay off dues to all the creditors and also directing the Noida Authority to put up all their claims before the RP and issue occupancy certificates/registered deeds in favor of the flat buyers, dismissed the writ petition.

Hon'ble SC holds corporate guarantor's claim against new management doesn't make it 'financial creditor'

Skil Infrastructure Ltd. vs. Sudip Bhattacharya

Civil Appeal No. 9244/2022

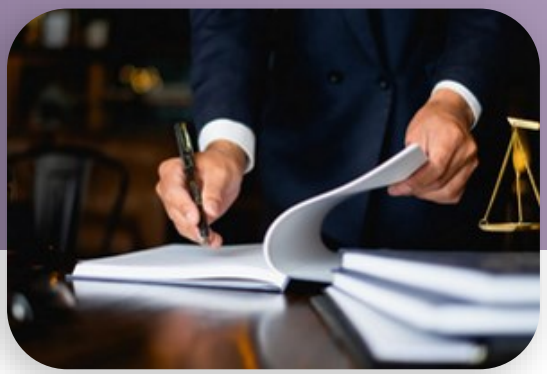
The Appellant was a promoters of the corporate debtor and had executed deed of personal and corporate guarantees to secure financial facilities extended to the corporate debtor by creditors and the corporate debtor committed default in repayment, therefore, the creditors of the corporate debtor invoked the said corporate/personal guarantees and called upon the Appellant to pay the outstanding amount and also initiated proceedings against the corporate debtor and the Appellant before the DRT and an application under Section 7 of the IBC was also filed against the corporate debtor, which was admitted by the NCLT.

A public announcement was made by the IRP, in pursuance of which, the Appellant filed its claim as a financial creditor which was rejected by the NCLT causing the Appellant to approach the NCLAT challenging the order of the NCLT, however as no payments had yet been made by the Appellant towards the invocation of the guarantee, which could be construed as a 'financial debt' owed by the corporate debtor, the NCLAT observed that the claim by the Appellant was not a financial claim within the meaning of Section 5(8)(h) of the IBC. Further, the NCLAT also observed that it was not open for the Appellant to file any claim as a financial creditor in the CIRP of the corporate debtor and, therefore, the claim of the Appellant was rightly rejected by the NCLT.

Aggrieved, the Appellant approached the Hon'ble SC which observed that the Appellant was a corporate guarantor as per Section 5(5A) of the IBC and its claim against the new promoters/management would not make it a financial creditor against the corporate debtor itself and Section 140 of the Contract Act which stipulated that where a guaranteed debt had become due, or default of the principal debtor to perform a guaranteed duty had taken place, the surety upon payment or performance of all that he was liable for, was invested with all the rights which the creditor had against the principal debtor, could not be pressed and was not applicable in the present case.

Thus, finding no good ground to interfere with the findings of the NCLAT, the Hon'ble SC dismissed the appeal and disposed of the matter.

REGULATORY
From the Legislature



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/2024/21 dated April 05, 2024

The Ministry of Finance had earlier allowed 24 reporting entities to perform Aadhaar authentication services under the Aadhaar Act, 2016.

Given this backdrop, SEBI through a Circular clarifies the entities allowed to utilize Aadhaar e-KYC services for KYC verification in the securities market. This builds upon the provisions outlined in the **Master Circular on KYC norms [SEBI/HO/MIRSD/SECFATF/P/CIR/2023/169]** dated October 12, 2023, which detailed the use of Aadhaar e-KYC for Resident Investors.

The earlier notified 24 reporting entities are now allowed to perform authentication services of UIDAI in the securities market. The Circular mandates that these entities adhere to the processes delineated in SEBI's **Master Circular on KYC norms [supra]** and any directives issued by UIDAI. Additionally, KUAs are tasked with facilitating the onboarding of these entities as 'sub-KUAs' to provide the services of Aadhaar authentication with respect to KYC.

SEBI relaxes the requirement of publishing 'fit and proper' text on contract notes to enhance ease of doing business

Circular No. SEBI/HO/MRD/MRD-PoD-2/P/CIR/2024/25 dated April 24, 2024

In view of the representations from market participants received by SEBI via the Industry Standards Forum to relax the requirement outlined in Chapter 6 at Para 2.4.2.2.2 of the Master Circular dated October 16, 2023, regarding the publication of text related to 'fit and proper' on contract notes, SEBI through a Circular waives the requirement of publishing 'fit and proper' text on contract notes as a step to enhance the ease of doing business. Therefore, now instead of text only a reference of the applicable regulation with regard to fit and proper status of shareholders needs to be made part of the contract note.

Accordingly, the stock exchanges have thereby been advised to make necessary amendments to the relevant bye-laws, rules and regulations for the implementation of the above decision immediately, as may be necessary/applicable, bring the provisions of this Circular to the notice of their members, to disseminate the same on their website and communicate to SEBI the status of implementation of the provisions of this Circular in the Monthly Development Report.

Earlier, as per Chapter 6 at Para 2.4.2.2.2 of the Master Circular dated October 16, 2023, the text of Regulation 19 and 20 of SECC Regulations, 2018 was to be made part of the contract note which provided for the eligibility criterion to be satisfied by persons desirous of holding or acquiring shares or voting rights in a recognized stock exchange or clearing corporation which included but was not limited to- financial integrity, good reputation and character, honesty, not having been convicted by a court for any offence involving moral turpitude or any economic offence or any offence against the securities laws, not having an order of winding up been passed against the person, not having been declared insolvent, not having an order, restraining, prohibiting or debarring the person, from dealing in securities or from accessing the

securities market, not have any recovery proceedings initiated under the SEBI Act against him or being unsound financially or mentally among others.

RBI issues Master Circular consolidating instructions/ guidelines on guarantees, co-acceptances and letters of credit till March 31, 2024

Notification No. RBI/2024-25/04 dated April 01, 2024

The RBI issues a revised Master Circular on guarantees, co-acceptances & letters of credit with reference to Master Circular No. DoR.STR.REC.4/09.27.000/2023-24 dated April 1,2023, on the above subject. The revised Master Circular consolidates and updates all the instructions/guidelines on the subject issued up to March 31, 2024 and does not contain any new instructions/guidelines.

RBI broadens scope for hedging against gold price volatility overseas

Notification No. RBI/2024-25/17 dated April 15, 2024

The RBI issues a directive easing rules to allow resident entities to hedge their exposures to the price risk of gold using over-the-counter derivatives in the IFSC in addition to the derivatives on the exchanges in the IFSC.

Resident entities such as banks were earlier permitted to only hedge their exposure to the price risk of gold on the exchanges in the IFSC that were recognised by the IFSCA, and through this new directive, the RBI provides them with further flexibility to hedge their exposures to the price risk of gold using over-the-counter derivatives in the IFSC, in addition to the derivatives on the exchanges in the IFSC, subject to the stipulations set out in the Master Direction - Foreign Exchange Management (Hedging of Commodity Price Risk and Freight Risk in Overseas Markets) Directions, 2022, as amended from time to time which now has also been updated to reflect this change.

This new directive issued by the RBI comes into force with immediate effect.

RBI specifies norms for mode of payment and remittance of sale proceeds for equity shares of Indian companies listed on international exchanges

Notification No. FEMA. 395(2)/2024-RB dated April 23, 2024

The RBI had earlier notified the Foreign Exchange Management (Non-debt Instruments) Amendment Rules, 2019, whereby a new Rule 34 in Chapter X had been inserted, which permitted the investment by permissible holders in equity shares of public companies incorporated in India and listed on international exchanges.

Given this backdrop, the RBI has amended Regulation 3.1 of the Foreign Exchange Management (Mode of Payment and Reporting of Non-Debt Instruments) Regulations, 2019 which deals with the instructions on the mode of payment and remittance of sale proceeds by adding a new schedule XI after Schedule X. Schedule XI prescribes the norms regarding the mode of payment and remittance of sale proceeds for the purchase/subscription of equity shares of an Indian company listed on an international exchange.

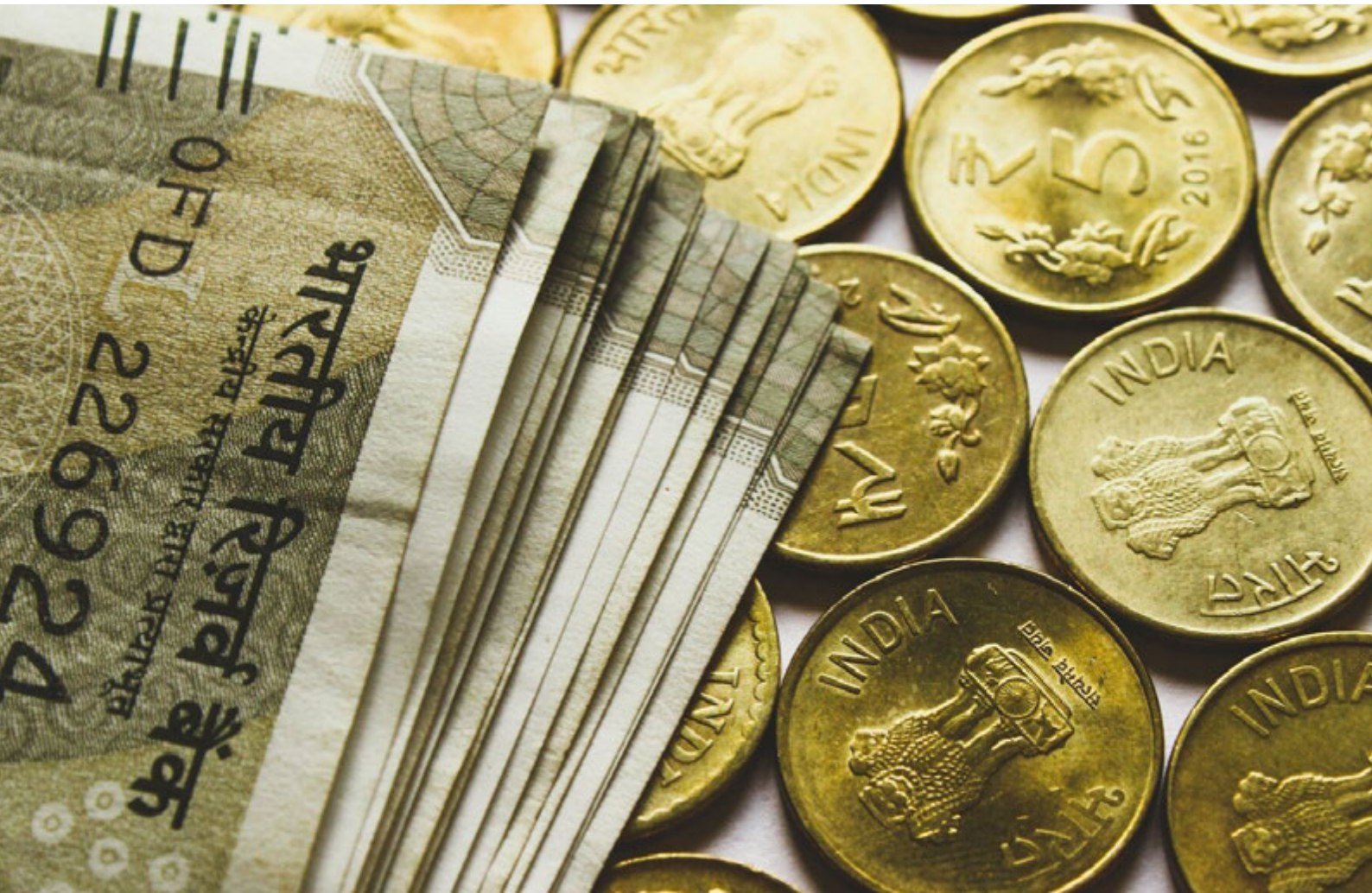
Further, Regulation 4 which deals with the reporting requirement has now been amended and states that the investee Indian company shall be under an obligation to report (through an Authorised Dealer Category I bank) to the Reserve Bank in Form LEC (FII) the purchase/subscription of equity shares (where such purchase/subscription is classified as Foreign Portfolio Investment under the rules) by permissible holder, other than transfers between permissible holders, on an international exchange.

RBI flags unauthorized forex entities offering exorbitant returns

Notification No. RBI/2024-25/25 dated April 24, 2024

Upon investigation, it was found by the RBI that to facilitate unauthorised forex trading, unauthorised entities had employed local agents to open accounts at various bank branches for the purpose of collecting money related to margins, investments, charges, and more.

These accounts were established under the names of individuals, proprietary concerns, trading firms, etc. and in several instances, the transactions conducted in these accounts did not align with the stated purpose for their establishment. Additionally, these entities were also found to be offering residents the option to remit or deposit funds in INR for engaging in unauthorised forex transactions via domestic payment systems such as online transfers and payment gateways. Accordingly, stating that there was a need for greater vigilance to prevent the misuse of banking channels in facilitating unauthorised forex trading, the RBI flags such unauthorised entities offering forex trading facilities with promises of exorbitant returns requiring the authorised dealers to promptly report such transactions to the ED when they detect such instances and also be more vigilant and exercise greater caution in this regard.



INTERNATIONAL DESK

India And Mauritius Sign Protocol Amending Tax Treaty, Introducing Principal Purpose Test

India and Mauritius have signed a protocol amending their double taxation avoidance agreement, which includes a principal purpose test ('PPT') to determine whether a foreign investor qualifies for treaty benefits. The updated protocol, which was signed on March 7 and made public recently, introduces a new article, "Article 27B Entitlement to Benefits."

The PPT aims to combat tax avoidance by ensuring treaty benefits are granted only for transactions with a legitimate purpose. It was stated that this amendment aligns India with global efforts to prevent treaty abuse, particularly under the BEPS Action 6 framework. However, it was noted that the application of the PPT to grandfathered investments remains unclear, necessitating explicit guidance from the CBDT.

Additionally, the removal of the phrase "for the encouragement of mutual trade and investment" from the treaty's preamble signals a shift towards preventing tax evasion rather than promoting bilateral investment flows. Historically, Mauritius has been a favored jurisdiction for investments in India due to the non-taxability of capital gains from the sale of shares in Indian companies until 2016.

In 2016, India and Mauritius signed a revised tax agreement granting India the right to tax capital gains in India on transactions in shares routed through Mauritius, effective from April 1, 2017. However, investments made before April 2017 were grandfathered.

This amendment applies to all forms of income, including capital gains, dividends, and fees for technical services. He advised that any Indian inbound or outbound cross-border structuring of investments through Mauritius should consider the impact of the BEPS and MLI, especially if the structuring involves using tax treaty benefits in India or Mauritius.

New Zealand: Integrates OECD Global Anti-Base Erosion Pillar Two Rules Into Domestic Legislation

The New Zealand Government has enacted legislation to incorporate the OECD's Global Anti-Base Erosion (GloBE) Pillar Two Rules into its domestic tax system. In an effort to ensure consistency, New Zealand has directly adopted the OECD Model Rules as a complete package in its tax legislation. These new rules target all multinational enterprise (MNE) groups operating in New Zealand that have consolidated accounting revenue exceeding €750 million in at least two of the past four years.

Both the Income Inclusion Rule (IIR) and

the Under Taxed Profits Rule (UTPR) will be implemented uniformly for MNE groups based in both New Zealand and abroad, starting January 1, 2025.

On the other hand, the Domestic Income Inclusion Rule (DIIR) will only apply to MNEs based in New Zealand and will take effect on January 1, 2026. This rule is distinct from the Qualifying Domestic Minimum Top-up Tax (QDMTT) defined by the OECD.

Companies making payments under a QDMTT will receive a foreign tax credit in New Zealand. Payments under the DIIR will earn imputation credits in New Zealand, whereas credits will not be provided for payments under the IIR or UTPR.

Significant compliance efforts are anticipated both within New Zealand and globally. Companies subject to these rules should assess whether their current resources, systems, and processes are adequate to handle these new regulations.

UAE And Oman Agree To $35 Billion In Investment Collaborations

The UAE and Oman have established an investment partnership totalling 129 billion dirham ($35.12 billion) to strengthen cooperation across various sectors such as railway projects and renewable energy. The agreements cover renewable energy, green metals, railway projects, and investments in digital infrastructure and technology, according to the UAE's Ministry of Investment. The investment deals include:

- A large-scale industrial and energy project worth AED 117 billion, involving renewable energy initiatives such as solar and wind projects, as well as facilities for producing green metals.
- The creation of a technology-focused fund by ADQ and Oman Investment Authority, valued at AED 660 million.
- A UAE-Oman railway connectivity project worth AED 11 billion.
- Collaboration across various sectors including digital infrastructure, food security, energy, transportation, and other areas of shared interest. The agreement was signed by the UAE Ministry of Investment and the Ministry of Commerce, Trade, and Investment Promotion in Oman.
- A shareholding partnership between Etihad Rail, Mubadala, and Omani Asyad Group Company, with an estimated investment value of AED 3 billion.

The UAE-Oman alliance to boost economic and trade relations between the two nations.

UAE: Track To Surpass CEPA Goal

UAE signed its 11th CEPA with Colombia, marking a significant milestone in its trade strategy. The UAE anticipates surpassing its initial goal of signing FTA with 21 countries and five economic blocs to double its foreign trade to Dh4 trillion by 2031.

The UAE-Colombia CEPA opens a promising new chapter in strengthening economic relations between the two nations, offering businesses access not only to each other's markets but also to their respective regions. The new UAE investment is expected to be directed towards sectors such as green hydrogen and

the digital economy.

The CEPA with Colombia aligns with the UAE's transformative CEPA Program, which aims to increase the country's non-oil foreign trade value to Dh4 trillion by 2031. Agreements with India, Israel, Indonesia, Turkey, and Cambodia are already operational, significantly contributing to the UAE's non-oil foreign trade, which reached a record Dh3.5 trillion in 2023. Colombia aims to attract investments of between $600 million and $700 million from the UAE following the CEPA.

The new agreement will strengthen trade and investment collaboration between the two countries, including their private sectors, across business, services, trade, investment, and other crucial areas, leading to positive economic outcomes.

GLOSSARY

Abbreviation	Meaning
AA	Adjudicating Authority
AAAR	Appellate Authority for Advance Ruling
AAR	Authority for Advance Ruling
ADD	Anti-Dumping Duty
ADG	Additional Director General
AE	Associated Enterprises
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
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
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 Imported Goods) Rules, 2023
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
CCIT	Chief Commissioner of Income tax
CG	Central Government
CGST Act	Central Goods and Services Act, 2017
CIT	Commissioners of Income Tax
CLB	Company Law Board
CPC	Centralized Processing Centre
Cus	Customs Act, 1962
CVD	Countervailing Duty
DDT	Dividend Distribution Tax
DGIT	Director General of Income Tax
DRC	Dispute Resolution Committee

Abbreviation	Meaning
DRI	Directorate of Revenue Intelligence
DRP	Dispute Resolution Panel
DTAA	Double Taxation Avoidance Agreement
ED	Enforcement Directorate
EOI	Expression of Interest
EP	Engagement Partner
EQCR	Engagement Quality Control Review
FATF	Financial Action Task Force
FDI	Foreign Direct Investment
FHTP	Forum on Harmful Tax Practices
Fin	Finance Bill Finance Bill, 2023
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
HUF	Hindu Undivided Family
IBC	Insolvency and Bankruptcy Code
ICAI	Institute of Chartered Accountants of India
ICDR	Issue of Capital and Disclosure Requirements Regulations, 2009
IFSC	International Financial System Code
IFSC	International Financial Services Centres
IFSCA	International Financial Services Centres Authority Act, 2019
IGST	Integrated Goods and Services Tax
IIM	Indian Institute of Management
IMC	Indian Medical Council Act, 1956
Ind AS	Indian Accounting Standards
InvITs	Infrastructure Investment Trusts
IRP	Interim Resolution Professional
IT Act/ Act	The Income-tax Act, 1961
ITAT	Income Tax Appellate Tribunal
ITC	Input Tax Credit
ITO	Income-tax Officer
ITR	Income Tax Report

GLOSSARY

Abbreviation	Meaning
KYC	Know Your Customer
KUA	KYC User Agency
LIC	Life Insurance Corporation
LLP	Limited Liability Partnership
LODR Regulations	Listing Obligations and Disclosure Requirements Regulations, 2015
LTC	Long-Term Capital Gains
MAT	Minimum Alternate Tax
MoF	Ministry of Finance
MSME	Micro Small and Medium Enterprises
NaFAC	National Faceless Assessment Centre
NBFC	Non-Banking Finance Company
NCCD	National Calamity Contingent Duty
NCLT	National Company Law Tribunal
NCS	Non-Convertible Securities
NCS Regulations	SEBI (Issue and Listing of Non-Convertible Securities) Regulations, 2021
NELP	New Exploration Licensing Policy
NFRA	National Financial Reporting Authority
NFT	Non-Fungible Tokens
NHB	National Housing Bank
NPA	Non-Performing Assets
NPS	National Pension System
NSWS	National Single Window System
OBU	Offshore Banking Unit
OEC	Organization for Economic Co-operation and Development
OPC	One Person Company
PAN	Permanent Account Number
PAN	Permanent Account Number
PBPT	Prohibition of Benami Property Act, 1988
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

Abbreviation	Meaning
RoC	Registrar of Companies
RP	Resolution Professional
RPT	Related Party Transactions
RTGS	Real Time Gross Settlement
RU	Review Unit
SAD	Special Additional Duty
SAED	Special Additional Excise Duty
SC	Supreme Court
SCN	Show Cause Notice
SCRA	Securities Contracts (Regulation) Act, 1956
SEBI	Securities and Exchange Board of India
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
SMF	Single Master Form
SPF	Specific Pathogen Free
STT	Security Transaction Tax
SWS	Social Welfare Surcharge
TAN	Tax Deduction Account Number
TOL Act	Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020
TPS	Tax performing system
UIDAI	Unique Identification Authority of India
UAPA	Unlawful Activities (Prevention) Act, 1967
UCB	Urban Co-operative Bank
UK	United Kingdom
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

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 Corporate 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.

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