Tax & Regulatory Updates – Key developments of August 2023

DIRECT TAXATION

1. CBDT notifies Form 3AF pursuant to Section 35D amendment by Finance Act 2023:- *CBDT Notification no. 54 of 2023 dated 01 August 2023*

Section 35D of the Income Tax Act, 1961 ("the Act") provides that an Indian company or any resident person can claim a deduction under this provision in respect of preliminary expenses. The preliminary expenditures are those incurred before the business's commencement or after the business's commencement in connection with the extension of an undertaking or in connection with setting up a new unit. One of the conditions for claiming a deduction of such expenses is that the work in connection with these activities should be carried out within the organization of the assessee. Where it is entrusted to an outside concern, that concern should be approved by the CBDT.

The Finance Act 2023 eased the condition for claiming amortization of such preliminary expenses. The amendment was made to make it mandatory for the assessee to furnish a statement containing the particulars of this expenditure within the prescribed period to the prescribed authority in the prescribed Form and manner. Following this amendment, the CBDT vide this notification has inserted Rule 6ABBB requiring the assessee to furnish the statement in Form No. 3AF. The Form is required to be furnished one month before the due date for furnishing the return of income as specified under section 139(1). The Form must be furnished electronically under digital signatures or through an electronic verification code. Further, the Form 3AE for the audit report by a CA has also been substituted. Form 3AF requires the following disclosures:

- General information (Name, Residential Status, PAN, TAN, Aadhar Number, Address etc.),
- Relevant Previous Year
- Expenditure in connection with the nature of the Activity (Preparation of feasibility report, project report, conducting market survey or any other survey necessary for business of the assessee, Engineering services relating to the business of the assessee)
- Name, PAN and Address of the person carrying out the activity.
- Amount of Expenditure (whether paid in cash or any other mode)
- Respective section or amount of tax, in case tax deducted at source.

2. Government exempts IFSC Unit's shipping lease rental receipts from TDS:- *CBDT Notification no. 57 of 2023 dated 01 August 2023*

The CBDT, vide Notification No. 57/2023 dated 01 August 023, notifies that the Central Government has exempted TDS under Section 194-I on payment in the nature of lease rent or supplemental lease rent made by a person to an IFSC Unit for lease of a ship. The exemption is subject to the condition that the IFSC Unit i.e., lessor shall:

- furnish a statement-cum-declaration in Form No.1 to the lessee with details of previous years relevant to the ten consecutive AYs for which the lessor opts for claiming deduction under sub-sections (1A) and (2) of Section 80LA, and
- such statement-cum-declaration shall be furnished and verified in the manner specified in Form No.1, for each previous year relevant to the ten consecutive AYs for which the lessor opts for claiming the deduction.

The lessee shall: (i) not deduct tax on payment made or credited to lessor after the date of receipt of copy of statement-cum-declaration in Form No. 1 from the lessor, and (ii) also furnish the particulars of all the payments made to lessor on which tax has not been deducted in view of this Notification in the TDS statement.

The Notification also provides that the relaxation shall be available to the lessor only during the said previous years relevant to the ten consecutive AYs as declared by the lessor in Form No. 1 for which deduction under Section 80LA is being opted and that the lessee shall be liable to deduct tax on payment of lease rent for any other year. CBDT also notifies Form No. 1 and casts responsibility of laying down procedures, formats and standards for ensuring secure capture and transmission of data, uploading of documents, evolving and implementing appropriate security, archival and retrieval policies on PDGIT (Systems) or DGIT (Systems). The Notification comes into effect from September 01, 2023.

3. ITAT Special Bench to decide assessment time-limit pursuant to rectification in DRP directions.

The ITAT President constitutes a Special Bench in the case of Uber India Research and Development Pvt. Ltd. to decide the question of time-limit prescribed to AO for completing assessment under Section 144C(13) where DRP directions are supplemented by rectification. The Revenue had relied on Mumbai ITAT ruling in Michael Page and requested Hyderabad ITAT for remanding the matter back to the AO and alternatively contended that a Special Bench may be constituted as there are conflicting decisions on question of date of reckoning the limitation period where DRP directions are rectified i.e., whether the limitation period should be reckoned from the date of original directions or from the date of corrigendum.

Question framed for Special Bench's consideration:

On the facts and circumstances of the case, whether the time limit prescribed for the Assessing Officer to complete the assessment under Section 144C(13) of the Act shall be reckoned from the date of original directions passed by the Dispute Resolution Panel under Section 144C(5) of the Act or the subsequent corrigendum to the directions passed in terms of Rule 13 of the Income Tax (Dispute Resolution Panel) Rules, 2009?

4. CBDT issues clarification on Scrutiny Guidelines on transfer of cases to Central Charges for non-search persons:- *Notification No. 225/66/2023, dated 03 August 2023*

CBDT issued Guidelines for selecting returns for complete scrutiny during FY 2023-24 vide F. No. 225/66/2023 dated 24-05-2023. The Guidelines list different parameters and corresponding procedures for compulsory selection. The board has laid down the parameters for selection & conducting assessment in the following circumstances:

- Cases pertaining to survey under section 133A;
- Cases pertaining to Search and Seizure;
- Cases where notice under section 142(1), calling for return, has been issued or no returns have been furnished;
- Cases where notice is issued under Section 148;
- Cases related to registration/approval under sections 12A, 35, 10(23C), etc.;
- Cases involving additions in earlier AYs on a recurring issue of law and/or fact; and
- Cases related to specific information regarding tax evasion.

Pertaining to the cases in which notices under section 148 have been issued. These cases shall be selected for compulsory scrutiny with prior administrative approval of Pr.CIT/Pr.DIT/CIT/DIT concerned. The officer shall ensure that such cases if lying outside Central Charges, are transferred to Central Charges under section 127 within 15 days of service of notice under section 143(2)/142(1) calling for information by the Jurisdictional Assessing Officer concerned. Now, the CBDT clarified the transfer of cases to Central Charges.

During the Search & Seizure action, information related to other persons may have one-off/ very few or limited financial transactions with the assessee group covered in the search u/s 132/132A may be found. Such persons are not integrally connected with the assessee's core business and do not belong to the business group. Often such persons also do not reside in the same city as the assessee.

In such cases, the relevant information is generally passed on to the jurisdictional AO for assessing them under section 148. Therefore, the board has clarified that all such non-search cases selected are not required to be transferred to the Central Charges unless covered by the guidelines.

5. Delhi High Court to examine validity of BMA proceedings under twin jurisdictional challenge:- *Delhi HIgh court order case number* W.P.(C) 9641/2023 & CM Nos.36956-58/2023 *dated 21 July 2023*

The Delhi High Court entertained a challenge against a notice issued under Section 10(1) of the Black Money Act (BMA) and allowed the continuation of proceedings. However, the court restrained the passing of the final order until further directions. The assessee assails the notice on two grounds:

- the aspects on which the notice is based were already examined by the AO in the proceeding under Section 153A of the Income-tax Act and

- the notice was issued by an officer who is not empowered to do so under Section 6(3) of the BMA.

The Revenue contends that the notice refers to two bank accounts maintained by the assessee with HSBC Ltd., Singapore, and the aspects concerning the monies found credited in those accounts were not examined in the proceeding under the Income-tax Act.

The High Court noted that the issue of the exercise of powers under Section 6(3) of the BMA is also being examined in the case of Bhupinder Singh. The court issued a notice and granted time for completion of pleadings and listed the matter for hearing on November 06, 2023.

https://dhcappl.nic.in/dhcorderportal/GetFile.do

6. CBDT extends the applicability of TP Safe Harbour Rules till AY 2023-24:- *Notification No. 58/2023 dated 09 August 2023*

The CBDT has extended the validity of provisions of Rule 10TD(1) & Rule 10(2A) till Assessment Year 2023-24. Rule 10TD(1) and Rule 10TD(2A) prescribe a list of eligible international transactions where the transfer price declared by the assessee shall be required to be accepted by the Income-tax Authorities.

Sub-rule (3A) to Rule 10TD sets the time limit for the application of the provision of sub-rules (1) and (2A). It provides that provisions shall apply for the Assessment Year 2017-18 and two Assessment Years immediately following that. In other words, the provisions applied for Assessment Years 2017-18 to 2019-20. Later the Board inserted a new sub-rule 3B to Rule 10TD(3B) to extend the applicability of provisions of sub-rules (1) and (2A) till Assessment Year 2022-23.

The Board has now amended Rule 10TD(3B) to further extend the applicability of Safe Harbour Rules until Assessment Year 2023-24.

7. DTAA benefit on TDS allowable for rightful beneficiary as error in Form 15CA/CB 'clerical':- *Gujarat HC order in case of Commissioner Of Income Tax (International Taxation And Transfer Pricing) Vs Star Rays dated 31 July 2023 [R/TAX APPEAL NO. 77 of 2023]*

Gujarat HC dismisses the Revenue's appeal against ITAT ruling absolving the Assessee from TDS liability due to beneficial treaty provisions, where entity other than the payee was mentioned in Forms 15CA & 15CB and relies on co-ordinate bench ruling in *Bell Ceramics* wherein it was held that an appeal before the High Court can be admitted if the High Court is satisfied that the case involves substantial question of law. In the present case, Assessee was engaged in the business of cutting, polishing and export of diamonds and entered into a customer services agreement with Gemological Institute of America (GIA US) which certifies the diamond on request. GIA US set up a laboratory in Hong Kong under a separate company called GIA Hong Kong Laboratory Ltd. (GIA HK) with which Assessee had no direct relation. During AY 2015-16, Assessee sent certain diamonds to Hong Kong for certification by GIA US and the invoices were raised by GIA US, payment was also made to the offshore bank account of GIA US in Hong Kong. However, while filing Form 15CA/CB, Assessee inadvertently mentioned the name of beneficiary as GIA HK. Revenue held that since payment is made to GIA HK, Assessee is not eligible to claim the beneficial provisions of India-US DTAA or India-China DTAA. Assessee was thus held to be in default for non-deduction of tax at source for alleged payment made to GIA HK and demand of Rs.4.43 Cr was raised u/s 201 read with Section 201(1A). Revenue contended that since diamonds were shipped to Hong Kong for certification, testing and payment were done in Hong Kong, thus the services were rendered by GIA HK and the payments were merely routed through GIA US only to obtain benefit of India-US DTAA.

HC observes the ITAT order wherein the customer service agreement is discussed with respect to the GIA "take in window" in Dubai and GIA's Laboratories in Hong Kong and Israel which specifically mentions that the agreement shall be between the client and GIA US and not with GIA's local business entity established in such countries. HC thus notes that: - *"there is a "take in window" where articles are delivered but the service agreement is between the assessee and GIA USA. The rightful owner of the remittances as also made in the account of the USA entity is the GIA Inc. USA"*. HC takes note of ITAT ruling wherein the facts have been thoroughly examined and holds that:- " *Apparently reading the orders under challenge would indicate that based on factual appreciation especially the condition in the customer service agreement, the bank invoice and the Bank remittance advice, a finding of fact has been arrived at that the assesse's case was protected under the India-USA DTAA and that mere rendering of services cannot be roped into FTS unless the person utilizing the services is able to make use of the technical knowledge etc. S*imple rendering of services as in the present case is not sufficient to qualify as FIS/FTS".

It is important to keep a note of this decision to understand the importance of correct and appropriate reporting in Form 15CA and CB as the matter went till High Court for the sole reason of error in incorrect reporting of the beneficiary in the Form due to which the Revenue denied the Make available benefit under India US DTAA and the taxpayer had to fight till High Court to have the matter resolved.

8. Investors from Mauritius, Singapore, Cyprus under Taxman's lens for CCD gains:- *News Report*

Foreign investors in Mauritius, Cyprus, and Singapore have been receiving notices for gains from investment in fully or compulsorily convertible debentures (CCDs) issued by Indian companies. The tax treaties amended in 2017 aim to tax capital gains on shares in India and tax authorities believe that capital gains accruing to or arising from a tax resident are now taxable in India, regardless of the nature of the instruments being sold.

The treaties post-amendment made capital gains on shares taxable in India, but they do not apply to debt instruments. Debt instruments fall under the residual clause in the tax treaties, meaning gains on such instruments will be taxable only where the resident is based. FDI guidelines treat CCDs as equity for reporting to the Reserve Bank of India, but as debt for income tax until the time of conversion. Any attempt by tax authorities to tax gains on CCDs would not be in accordance with the law and would create unnecessary litigation, adversely impacting FDI flows in India. Industry players argue that there may be funds selling CCDs to a friendly third party when the life of a CCD is about to end, taking advantage of the treatment of capital gains and claiming an exemption under the treaty.

The Delhi High Court has previously struck down this argument, holding that the classification of an instrument under income tax laws and the RBI need not be the same. Investors in CCDs are legitimately using these instruments to earn interest income and do not have the rights enjoyed by equity holders until converted. It is critical to demonstrate substance in the resident country to claim a tax treaty benefit and a tax exemption on capital gains on debt instruments. The notices received by investors may become litigious, with the Courts determining the outcome.

https://www.thehindubusinessline.com/news/foreign-investors-from-mauritius-singapore-under-taxmans-lens/article67172459.ece

9. Parliamentary panel recommends relaxation in criteria for recognised startups to avail tax benefits:- *News Report*

A parliamentary panel has suggested the relaxation of eligibility criteria for startups seeking income tax benefits, as only 1% of recognized startups have taken advantage of the benefits available u/s 80-IAC of the Income Tax Act, 1961. Despite the existence of 98,119 recognized startups, only 10,165 of them (10.4%) have applied for income tax exemption under this section. The inter-ministerial board has issued the Certificate of Eligibility to only 1,173 applicants as of March 31, 2023.

The committee has urged the government to simplify the application process, raise awareness through educational initiatives, and expand the eligibility criteria to encompass more startups. The committee has also emphasized the need for clarity in determining the fair market value of shares for addressing the Angel tax issue and recommended the creation of a comprehensive database of startups. Additionally, the panel has proposed easing the regulatory framework to enable direct overseas listing of Indian startups and encouraging their listing on foreign stock exchanges for the growth of the ecosystem. In a separate report, the committee highlighted the need to address the low foreign direct investment (FDI) in the north-east region of India and recommended assessing and enhancing schemes to attract more FDI to the region.

https://economictimes.indiatimes.com/tech/startups/parliamentary-panel-eases-criteria-for-recognised-startups-to-avail-tax-benefits/articleshow/102620789.cms?from=mdr

10. CBDT invites public comments on Inventory Valuation Report in Special Audit:- *CBDT F. No. 370142/29/2023-TPL dated 16 August 2023*

Section 142(2A) of the Income Tax Act, 1961 ("the Act") provides that if at any stage of proceedings before him, the Assessing Officer (AO), having regard to the nature and complexity of the accounts, volume of the accounts, doubts about the correctness of the accounts, multiplicity of transactions in

the accounts or specialized nature of business activity of the assessee, and the interests of the revenue, is of the opinion that it is necessary so to do, he may, with the previous approval of PCCIT/CCIT/PCIT/ CIT can direct the assessee to have their accounts audited by an accountant. Form No. 6B has been prescribed in the Income-tax Rules 1962 ("the Rules") in this regard.

The Finance Act, 2023 substituted Section 142(2A) of the Act to empower the AO to appoint a cost accountant for the valuation of inventory. The AO can issue the direction for the valuation of inventory with the prior approval from PCCIT/CCIT/PCIT/ CIT, if he is of the opinion that it is necessary in the interest of the revenue to do so. The AO cannot direct the assessee to get the inventory valued unless he is given an opportunity of being heard. To implement the amendment, the CBDT has released draft Form no. 6C for submission of the inventory valuation report. Relevant amendments in Rule 14A and Rule 14B of the Rules will also be carried out to make the amendment operational. The Board has requested all the stakeholders and the general public to provide suggestions/comments on draft Form No. 6C and send them to ustpl3@nic.in by August 31, 2023.

11. CBDT rejigs valuation of 'Rent Free Accommodation' perquisite:- *CBDT Notification No. 65/2023 dated 18 August 2023*

As per Section 17(2) of the Act, the value of rent-free accommodation provided by an employer to the employee is treated as a perquisite in the hands of employees. The valuation of such perquisites is made as per the valuation method prescribed under Rule 3 of the Income Tax Rules, 1962. The Finance Act, 2023 amended section 17(2) to rationalize the provisions relating to the valuation of such accommodation and Now, the CBDT has amended Rule 3 providing the revised method for valuation of rent-free accommodation. Significant changes with respect to the valuation method have been prescribed in cases where the accommodation is provided by an employer (other than Central Government or State Government) to its employees. It is to be noted that the above changes in Rule 3 shall be effective from 01-09-2023, therefore, valuation for the period before 01-09-2023 shall continue to be made as per existing rules. The changes are as follows:

- **In cases where the accommodation is owned by the employer and the population of the city as per the 2011 census is-**
  (a) Above 40,00,000: The valuation rate is reduced to 10% (from 15%) of the salary.
  (b) 25,00,000 to 40,00,000: The valuation rate is reduced to 7.5% (from 15%) of the salary.
  (c) 15,00,000 to 24,99,999: The valuation rate is reduced to 7.5% (from 10%) of the salary.
  (d) 10,00,000 to 14,99,999: The valuation rate is reduced to 5% (from 10%) of the salary.
  (e) Below 10,00,000: The valuation rate is reduced to 5% (from 7.5%) of the salary.

- **In cases where the accommodation is taken on lease or rent by the employer-**
  The amount of perquisite shall be lower of the actual amount of lease rental or 10% (reduced from 15%) of the salary.

- **In case the same accommodation is provided for more than one year-**
  Where the same accommodation is continued to be provided to the same employee for more than one year, the valuation in subsequent years will not exceed the first year's valuation adjusted by the Cost Inflation Index. In this context, the "first year" means the financial year 2023-2024, or the financial year in which the accommodation was provided to the employee, whichever is later.

Thus, the perquisite value of rent-free accommodation in the subsequent year shall be lower of following: (a) Perquisite value computed as per the above rules, or (b) First year's perquisite value as

adjusted by the Cost Inflation Index (CII). The adjusted first year's perquisite value shall be computed as per the following formula: **Adjusted first year's perquisite value** = First year's perquisite value * CII of the subsequent year/ CII of the first year

Exemptions:

- The valuation rule do not apply to temporary accommodation of an employee working at a mining site or an on-shore oil exploration site or a project execution site, or a dam site or a power generation site or an off-shore site if the plinth area is upto 1000 sq.ft. (increased from 800 sq.ft.) where located beyond 8 kms from the local limits of any municipality or a cantonment board.

- The rule also do not apply to accommodation located in a remote area and the definition of remote area is also amended to mean any area other than an area which is located: (i) within the local limits of, or (ii) within a distance, measured aerially, of 30 kilometers from the local limits of, any **municipality** or a cantonment board having a population of 1 Lac or more based on the 2011 census. Earlier, the remote area meant an area located at least 40 kilometres away from a town having a population not exceeding 20,000 based on the latest published all-India census.

12. CBDT introduces Rule 11UACA for computing Sec.56(2)(xiii) to compute taxable income in respect of sum received under life insurance policies:- *CBDT Notification No. 61/2023 dated 16 August 2023*

The Finance Act, 2023 inserted a new clause (xiii) to section 56(2) of the Act. This new clause provides for the taxability of any sum received under a life insurance policy (other than Unit Linked Insurance Policy (ULIP) and Keyman Insurance Policy), to which exemption under Section 10(10D) does not apply. Any income arising from such receipt shall be chargeable to tax under the head *'Income from Other Sources'*. Pursuant to such amendment, the CBDT has notified Rule 11UACA prescribing the manner of computation of the income for the purpose of section 56(2)(xiii). Income arising from the sum received from such policies is calculated in the following manner:

- Where **the sum is received for the first time under the life insurance policy during the previous year (hereinafter referred to as first previous year),** the income chargeable to tax in the first previous year shall be computed in accordance with the formula: **A-B,** where,

  A = the sum or aggregate of sum received under the life insurance policy during the first previous year; and

  B = the aggregate of the premium paid during the term of the life insurance policy till the date of receipt of the sum in the first previous year that has not been claimed as deduction under any other provision of the Act.

- where **the sum is received under the life insurance policy during the previous year subsequent to the first previous year (hereinafter referred to as subsequent previous year)**, the income chargeable to tax in the subsequent previous year shall be computed in accordance to the formula: **C-D,** where,

  C = the sum or aggregate of sum received under the life insurance policy during the subsequent previous year; and

D = the aggregate of the premium paid during the term of the life insurance policy till the date of receipt of the sum in the subsequent previous year not being premium which (a) has been claimed as deduction under any other provision of the Act; or (b) is included in amount 'B' or amount 'D' of this rule in any of the previous year or years

Note: For the removal of doubts, it has been clarified that the sum received under a life insurance policy would mean any amount, by whatever name called, received under such policy which is not to be excluded from the total income of the previous year in accordance with the provisions of clause (10D) of section 10, other than the sum– (a) received under a unit linked insurance policy; or (b) being the income referred to in clause (iv) of sub-section (2) of section 56.

13. CBDT issues Guidelines on 'life insurance policy' tax exemption pursuant to FA 2023 amendments:- *CBDT Circular no. 15 of 2023 dated 16 August 2023*

Section 10(10D) of the Act provides an exemption with respect to any sum received under the life insurance policy. However, no exemption is allowed if the premium payable for any of the years during the term of the policy exceeds 10% of the actual capital sum assured ('excess premium policy'). With effect from AY 2024-25, It is amended to provide an additional restriction that no exemption with respect to any sum received under any life insurance policy, other than Unit Linked Insurance Policy (ULIP), issued on or after 01-04-2023 shall be allowed if the amount of premium payable for any of the previous years during the term of the policy exceeds Rs. 5,00,000. Thus, exemption under section 10(10D) in respect of life insurance policies issued on or after 01-04-2023 shall be allowed only when the premium payable for any of the years during the term of the policy does not exceed Rs. 5,00,000, and the premium should not exceed 10% of the sum assured.

Further, where the premium is payable by a person for more than one life insurance policy issued on or after 01-04-2023, the aggregate premium of all such life insurance policies should not exceed Rs. 5,00,000 during the term of any of those policies. Where the aggregate premium of such life insurance policies exceeds Rs. 5,00,000 in any year during the term of such policies, the exemption shall be allowed only for those life insurance policies, the aggregate of which does not exceed the threshold of Rs. 5,00,000. This condition is specified in the seventh proviso. To clarify these amendments, the CBDT has issued a circular to provide guidelines on different situations that may arise while looking for exemption for life insurance policies issued on or after 01-04-2023 ('eligible life insurance policies'). Same are as follows:

Situation 1: Where no consideration is received, or no exemption is claimed:

Where the assessee receives no consideration on eligible life insurance policies during any previous year preceding the current previous year or consideration has been received on such eligible life insurance policies but has not been claimed as exempt. The exemption under section 10(10D) shall be determined as under:

- If consideration is received from one life insurance policy, the exemption shall be available to the assessee only if the premium payable on such eligible life insurance policy doesn't exceed Rs. 5,00,000.
- If consideration is received from more than one eligible insurance policy and the aggregate of the amount of premium payable on such eligible life insurance policies exceeds Rs 5,00,000 for any previous year during the term of such policies. In that case, the exemption shall be available only for those life insurance policies where the aggregate amount of the premium payable does not exceed Rs 5,00,000.

Situation 2: Exemption claimed for consideration received for eligible Life insurance Policy in any previous year:

Where the assessee has received consideration in respect of eligible life insurance policies in any previous year preceding the current year, and it has been claimed to be exempt u/s 10(10D) ('old eligible life insurance policies'). In such a situation, the exemption for the remaining policies whose term coincides with the old eligible life insurance policies shall be determined as under:

- If consideration is received from one or more than one eligible life insurance policies, the exemption shall be available only if the aggregate amount of premium payable on such eligible life insurance policies and old eligible life insurance policies does not exceed Rs 5,00,000 for any of the previous years during the term of such eligible life insurance policies.
  (b) If the aggregate of premium payable on eligible life insurance policies and old eligible life insurance policies exceeds Rs. 5,00,000, the exemption shall be available only for those eligible life insurance policies where the aggregate amount of premium along with the aggregate amount of premium of old life insurance policies does not exceed Rs. 5,00,000 for any of the previous years during the term of any of such eligible life insurance policies.

- Further, it is clarified that the premium payable or aggregate premium payable for a life insurance policy shall be exclusive of the amount of the Goods and Service Tax payable on such premium. In addition, it is clarified that these provisions shall not be applicable on term life insurance policies, i.e., where the sum under a life insurance policy is only paid to the nominee in case of the death of the person insured during the term of the policy, and no amount is paid to anyone if the insured person survives the policy tenure.

14. New Functionality for 'Challan Correction' on Income Tax e-Filing Portal:- *Income* Tax Department *update on e-filing portal*

The Income Tax department has introduced a groundbreaking feature for taxpayers "the Challan Correction functionality" on its e-filing portal. This transformative addition offers taxpayers a convenient and efficient way to correct errors in their challans such as Assessment Year, Major Head, and Minor Head for Advance Tax, Self-Assessment Tax, and Demand Payment as Regular Assessment Tax Specifically for the Assessment Year (A.Y.) 2020-21 onwards. This new feature, accessible through the path: **Dashboard > Services > Challan Correction.**

The introduction of this functionality marks a significant step towards reducing the burden on taxpayers when it comes to correcting errors or making amendments to their challans. Traditionally, rectifying errors in tax-related transactions could be a cumbersome and time-consuming process, often involving the submission of numerous documents, including Indemnity Bonds, which aimed to protect the authorities from potential misuse.

The Income Tax India portal empowers taxpayers to correct inadvertent errors in a more convenient and efficient manner. The scope of this feature covers challans pertinent to A.Y. 2020-21 onwards, ensuring that recent tax transactions are subject to easier correction processes. This development comes as a welcome initiative, reflecting the tax authority's commitment to embracing digital innovation for the benefit of taxpayers and stakeholders alike.

15. CBDT Chairman releases 'Handbook on Board for Advance Rulings':- *Press Release from Ministry of Finance dated 19 August 2023*

CBDT through a press release dated August 19, 2023, has officially communicated the release of a comprehensive Handbook of the Board for Advance Rulings (BAR). The Chairman of the CBDT introduced this handbook on August 18, 2023, with the primary objective of furnishing taxpayers with comprehensive guidance and support regarding the process of seeking Advance Rulings. This development aligns with the operationalization of the Boards for Advance Rulings in Delhi and Mumbai, facilitated through email-based protocols and virtual hearings.

The Handbook, an extensive document exceeding 100 pages, endeavors to provide an exhaustive repository of information concerning the pertinent provisions of laws and procedures related to the Board for Advance Rulings, as encapsulated in Chapter XIX-B (sections 245N to 245W). It also meticulously delineates the procedural framework articulated in Rules 44E and 44FA. Notably, the Handbook extends its purview to encompass the prerequisites necessary for obtaining advance rulings, including the mandatory statutory forms, in addition to incorporating pertinent notifications issued by the CBDT and other official orders issued by the Government of India. The CBDT underscores the significance of mechanisms such as the Board for Advance Rulings, emphasizing their pivotal role in furthering the government's priorities in the arena of dispute prevention and expeditious resolution of disputes.

16. 'Telegraphic Transfer Buying Rate' applicable for TDS on foreign currency income:- CBDT *vide Notification No. 64/2023 dated 17 August 2023*

CBDT has substituted new Rule 26 whereby the 'telegraphic transfer buying rate' is prescribed as foreign exchange rate for the purpose of Tax Deducted at Source (TDS) on income payable in foreign currency in the following scenarios: (i) to an assessee situated outside India, (ii) to a Unit located within an International Financial Services Centre (IFSC), and (iii) by a Unit located within an IFSC to an assessee in India.

Further, the 'telegraphic transfer buying rate' to be used for calculating the Indian Rupee equivalent of foreign currency income will be the rate prevalent on the date when the tax is required to be deducted as per the relevant provisions applicable to the payer. As per the definition provided, the 'telegraphic transfer buying rate' signifies the exchange rate adopted by the State Bank of India (SBI) for purchasing foreign currency. This rate is determined in accordance with the guidelines periodically specified by the Reserve Bank of India (RBI) for the purchase of such currency where the said currency is made available to the bank via a telegraphic transfer process.

17. Mutuality doesn't exempt interest income of clubs even if banks are corporate members:- *Secundrabad Club etc. vs. CIT - [2023] 153 taxmann.com 441 (SC)*

Assessee-club was a mutual association of persons existing solely for the benefit of its members. The main object of the club was to promote social activities, including sports and recreation, amongst its members and various services can be availed by its members. The surplus income generated by the club consists of payments made by the members deposited in as fixed deposits, post office deposits, national savings certificates etc. The issue before the Supreme Court was: *"Whether the deposit of*

surplus funds by Clubs by way of bank deposits in various banks wouldn't be subject to tax in the hands of the Clubs considering the principle of mutuality?"

The Supreme Court held that the principle of mutuality is rooted in common sense. This implies that a person cannot earn profit from an association that he shares a common identity with. The essence of the principle lies in the commonality of the contributors and the participants who are also beneficiaries. There has to be a complete identity between the contributors and the participants. Therefore, it follows that any surplus in the common fund shall not constitute income but will only be an increase in the common fund meant to meet sudden eventualities. The principle of mutuality would not apply to interest income earned on fixed deposits made by the Clubs in the banks, irrespective of whether the banks are corporate members of the club or not.

If there is an entry of a third party or non-member to utilize the funds of the club and return the same with interest, then the parties' relationship is not on the basis of privity of mutuality. The essential condition of mutuality, i.e., identity between the contributors and participators, would end. The relationship would then be like any other commercial relationship, such as that between a customer and a bank where the customer makes a fixed deposit to earn an interest income.

If the principle of mutuality is to apply, where many people who contribute to a fund are ultimately paid the surplus from the fund. In that case, it is a mere repayment of the contributors' own money. However, if the very same surplus fund is not applied for the common purpose of the club or towards the benefit of the members of the club directly but is invested with a third party who has the right to utilize the said funds, subject to payment of interest on it and repayment of the principal when desired by the club, then, in such an event, the club loses its control over the said funds.

When surplus funds of a club are invested as fixed deposits in a bank, and the bank has a right to utilize the said fixed deposit amounts for its banking business subject to repayment of the principal along with interest, the identity is lost. Thus, the interest income earned on fixed deposits made in the banks by the Clubs has to be treated like any other income from other sources.

18. CBDT notifies selection procedure & appointment terms for Dispute Resolution Committee:- *Ministry of Finance office order no.1 of 2023 dated 14 August 2023*

In accordance with the statutory provisions outlined in Section 245MA and Rule 44DAA, CBDT has issued Office Order No. 1/2023 dated August 14, 2023. This order serves the purpose of constituting the Dispute Resolution Committee (DRC). The contents of this order encompass the framework for the committee's formation, the meticulously outlined selection process for its members, and the operational guidelines governing its functions. Aligned with the directives of this order, the selection process for the DRC, composed of three members, is meticulously structured. Oversight of this process is entrusted to a three-member panel, featuring the Principal Director General of Income Tax (HRD) and two officers of Chief Commissioner of Income Tax (CCIT) rank. This procedure is executed transparently through an open advertisement.

The composition of the DRC is to be constituted by two distinguished individuals who have retired from the Indian Revenue Services, having served in the capacity of Commissioner of Income Tax (CIT) rank or higher for a minimum of five years. Additionally, an active-duty officer, occupying a rank not below that of Principal Commissioner of Income Tax (PCIT) or CIT. The tenure of engagement for DRC members is defined by a span of three years or reaching the age of 65, whichever occurs earlier. However, it is crucial to acknowledge that the tenure remains amenable to

premature termination as per the guidelines stipulated in Rule 44DAA.

The order underscores the authoritative nature of CBDT's determinations in the interpretation of relevant rules. Furthermore, the CBDT retains the discretion to introduce relaxation to the provisions. For matters that extend beyond the scope of explicit provisions, this order establishes a mechanism for case-specific referral, necessitating the involvement of the CBDT for resolution.

19. CBDT issues guidelines for re-opening post SC judgment in Abhisar Buildwell:- *CBDT Instruction No. 1 of 2023 dated 23 August 2023*

Notices u/s 153A were issued for block period (six assessment years prior to year of search) and orders were passed considering incriminating material and other material available with the Assessing Officer (AO). Further, for a search initiated or requisition made after 1.4.2017, notices for four more years (7th to 10th) could also be issued, if the income represented in the form of asset, which has escaped assessment amounts to or is likely to amount to **fifty lakh rupees or more** in the relevant AY. In some cases, orders were passed considering only other material available in the record in the absence of incriminating material. The Delhi High Court delivered a decision on 28.08.2015 in the case of Kabul Chawla [ITA No. 707 of 2014] wherein it was held that the AO does not have jurisdiction for passing order under Section 153A in the absence of incriminating material found during the search under Section 132 or requisition made under Section 132A of the Act. Further, the Supreme Court, in the case of **Principal Commissioner of Income-tax, Central-3 vs Abhisar Buildwell Pvt. Ltd.** *[(2023) 149 taxmann.com 399 (SC)]* vide judgement dated 24.04.2023 provided the powers to the AO to reopen the completed/unabated assessments, subject to fulfillment of the conditions as mentioned under sections 147/148 of the Act if no incriminating material is found during the search. The relevant facts involved in the said case and the judgement of the Apex court are quickly summarised below for a ready reference:

Facts: The core issue involved in the instant appeal filed by revenue was the scope of assessment under section 153A. According to the revenue, the AO was competent to consider all the material that was available on record including that found during the search, and make an assessment of 'total income'. However, according to the assessee if no assessment proceeding was pending on the date of initiation of the search, the AO might consider only the incriminating material found during the search and was precluded from considering any other material derived from any other source.

Judgement: The Apex court held that:

- In case of search under section 132 or requisition under section 132A, the AO assumes the jurisdiction for block assessment under section 153A,
- All pending assessments/reassessments shall stand abated,
- In case any incriminating material is found/unearthed, even, in case of unabated/completed assessments, the AO would assume the jurisdiction to assess or reassess the 'total income' taking into consideration the incriminating material unearthed during the search and the other material available with the AO including the income declared in the returns; and
- In case no incriminating material is unearthed during the search, the AO cannot assess or reassess taking into consideration the other material in respect of completed assessments/unabated assessments. Meaning thereby, in respect of completed/unabated

assessments, no addition can be made by the AO in absence of any incriminating material found during the course of search under section 132 or requisition under section 132A. However, the completed/unabated assessments can be reopened by the AO in exercise of powers under section 147/148, subject to fulfilment of the conditions as envisaged/mentioned under section 147/148 and those powers are saved.

Accordingly, exercising powers under section 119, the CBDT issued the mentioned instruction dated 23 August 2023 for AOs to implement the above judgment while framing assessments. The AOs are directed to divide the cases impacted by the judgment into two broad categories:

1. **Pending/abated assessments:**

AO would be required to ascertain assessments falling in the category of assessments that became abated on the date of the search or requisition. In such cases, if any proceedings initiated or any order of assessment or reassessment has been annulled in appeal or in any other legal proceedings, the same shall stand revived from the date of receipt of the order of annulment as per the provisions of section 153A(2). The AO would need to take necessary action as per the provisions of section 153A(2) read with section 153(8), in respect of such pending/abated assessments.

2. **Completed/unabated assessments:**

In respect of assessments that were unabated/completed at the time of issue of notices under section 153A/153C, the following scenarios will emerge:

- **In the lead and all the tagged cases:**
  AO will be required to reopen the cases following the procedure prescribed under section 148A in accordance with the law laid down by the Hon'ble Supreme Court. In view of the specific provisions of section 153(6), all the cases reopened under section 147/148 will be required to be completed by 30th April 2024.

- **Cases where an appeal is pending (filed either by the Department or the assessee or both) before:**
  - **CIT(A):** The said judgment is required to be brought to the notice of CIT(A).
  - **ITAT:** The departmental representative should bring the said judgment to the notice of the ITAT in the cases covered by the judgment.
  - **High Court:** The Standing Counsel should bring the said judgment to the notice of the High Court in the cases covered by the judgment.

- **In all the cases where the decisions of appellate authorities rendered after the Supreme Court judgment are inconsistent with the same:**
  Necessary action may be taken to file Miscellaneous Application (MA) and Notice of Motion (NoM) (Specimen MA & NoM Annexed to the circular for ready reference) to the ITAT and High Court respectively, requesting the review of the decision in line with the Abhisar judgment, with a prayer for condonation of delay, wherever necessary. It is brought to attention that the time limit for filing a Miscellaneous Application before the ITAT is 6 months from the end of the month in which the order is passed by the ITAT, as per section 254. On receipt of the decision of the Hon'ble ITAT/High Court, as the case may be, necessary action as per law and extant instructions should be taken.

The CBDT also enlists the procedure to be adopted along with necessary actions by the AO in order to implement the judgment of the Supreme Court which is as follows:

- Every AO would have to ascertain which assessments fall in the category of abated assessment and unabated assessment.
- Out of abated assessment cases, those that have been annulled by an appellate authority on some technical ground or otherwise, may be potential cases for revival u/s 153A(2) of the Act.
- In respect of unabated assessment cases, the AO shall ascertain the facts of the case in hand and take necessary actions.
- The SC has held that completed/unabated assessments can be reopened by the AO in exercise of powers u/s 147/148 of the Act, subject to fulfillment of the conditions specified in those sections. The time limit for the issue of notice u/s 148 would be in accordance with the provisions of Section 150 of the Act.
- For the issue of applicability of the conditions for reopening the assessments at the relevant time, the monetary limits applicable at present would apply while reopening assessment of earlier years.
- Regarding sanction for issue of notice u/s 151 of the Act, the current provisions of the section will apply.
- Action would be required to be taken under sections 147/148 of the Act read with section 150 of the Act, in cases pending before any appellate authority and depending on the decision, as and when the appellate orders are passed under sections 251, 254, and 260A of the Act.

Field authorities need to take necessary actions within time limits as mentioned below:

- In lead and tagged cases:
  - 148A proceedings to be initiated by: 30th September 2023
  - proceedings u/s 147/148 to be completed by: 30th April 2024

- In cases where decisions given by appellate authorities after 24.04.2023 are not in consonance with the Supreme Court decision in the case of Abhisar Buildwell:
  - Identification of cases where action is to be taken by: 30th September 2023.
  - Filing of Miscellaneous Application/Notice of Motion by: 30th November 2023.

20. Supreme Court releases Guidelines for filing submissions before Constitution Benches and in important final-hearing cases:- *SC Circular F.No. 57 /Judl./2022, dated 22 August 2023*

The Supreme Court registry has issued a circular detailing comprehensive guidelines to streamline the process of filing written submissions and compilations before constitution benches and important final hearing cases.The guidelines, laid out in a Standard Operating Procedure (SOP), are set to provide for filing soft copies of written submissions and common compilations of documents, rules, and precedents; and calls for fixed timelines for arguments. It commands that the concerned bench will in advance nominate a Nodal Counsel - an Advocate-on-Record (AoR) or an advocate each from both parties. The said nodal counsel will coordinate with all lawyers appearing in the case and compile and file in the electronic form five duly indexed volumes as set out below:

- Volume I - Written Submissions of Petitioners/ Appellants
- Volume II - Written Submissions of Respondents
- Volume III - Documents that shall include pleadings, affidavits, and orders which are a part of the record but compiled for the convenience of reference.

- Volume IV - Statutory Enactments and Research Material- This will comprise statutes, rules, regulations, legislative debates, reports of Commissions, and other material such as research articles.
- Volume V - Precedents. The judgments can be organized either by topic or chronologically, as determined by the nodal counsel. Also, Counsel relying on foreign cases must provide PDF copies of such decisions to the nodal counsel. Neutral Citations to be attached necessarily.

Further, Volumes III, IV and V will comprise material relied on by both parties. Additional written submissions, documents, statutory material, and precedents will be added only with the Court's permission. It also specify the format in which the volumes will be filed. It has been stated that the arguing counsels, through their AoRs, are required to inform the nodal counsel about the "tentative timelines" for their oral arguments at least five days before the commencement of the hearing following which the latter shall, present before the court a statement of the proposed timelines for all counsels. Accordingly, the court shall finalize and prescribe the timelines for oral arguments.

21. New data law may make the trip tough for travel sector considering the Regulatory and Tax implications:- *News Report*

On 11 August 2023, the President of India formally enacted the “Digital Personal Data Protection (DPDP) Bill” following its approval from both houses of the Indian Parliament. This enactment establishes a dedicated legal framework in India, marking a significant milestone, India’s first-ever privacy Act aimed at safeguarding the personal data of citizens. With this new enchantment coming into effect the hotels as well as offline and online travel companies that have access to a lot of personal customer data through check-ins, loyalty programmes and visa application requirements are grappling with the compliance requirements that could get triggered under the new DPDP Act. Significant data fiduciaries will also have to assess implications not just from a compliance standpoint, but the cash flow impact in tax laws as well under the law that came to effect earlier this month, experts said. The travel and hospitality sector has traditionally had access to a lot of customer data which could all come under scrutiny now.

Significant data fiduciaries in the sector would have to assess the kind of major implications it would trigger not just from a compliance standpoint, but the cash flow impact in tax laws as well. If the significant data fiduciary is based in territories that are blacklisted by the government, the data of individuals would be barred from access by such entities which would require them to set up their physical business presence for continuity of operations. This is apart from other requirements such as appointing a data protection officer in India who would be directly responsible to the board of foreign entities in the sector. All these requirements need to be delved in detail if the same would also trigger a taxable presence in India (if it involves a core activity versus an auxiliary one) and the resultant tax liabilities to discharge with Indian IRS.

https://cfo.economictimes.indiatimes.com/news/new-data-law-may-make-the-trip-tough-for-travel-sector/103003571

22. Taxman takes affidavit route to uncover undisclosed foreign assets:- *News Report*

Till now many bought time and tried to dodge the tax office by denying ownership or links with any overseas assets with false submissions, often made in letterheads of their chartered accountants and lawyers but now the taxman is changing tracks and is asking for an affidavit - a declaration under

oath - to corner those with hidden foreign bank accounts, properties and other offshore assets. Later, if tax officials called their bluff, such plain submissions gave them the leeway to escape harsh consequences, that ploy would no longer work. In an affidavit, containing affirmative statements made on a stamp paper or a notarised declaration, most would refrain from holding back information due to fear of punishment under the criminal law. The Income tax department, which is inundated with information shared by other countries on foreign assets of Indians, has sensed that insisting on an affidavit would be a quicker way to handle the cases, said persons aware of the development. The sequence of events in such matters runs like this:

- After receiving information under the common reporting standard, the international mechanism for collecting and sharing information on foreign tax residents, the department issues a basic notice under Section 131(1)(A) of the Income Tax Act. The affidavit is typically sought when the taxpayer denies the information.
- Based on the taxpayer's response, the tax office decides whether to open the case under the Black Money Act, which came into force on July 1, 2015, to tax undisclosed wealth stashed abroad. Based on the response, the department reaches out to its counterpart in the foreign jurisdiction to obtain additional information to strengthen a case.
- Tax officials approach other wings of the government to check the non-resident status of assessees if the latter claim that the assets in question were acquired when they were NRIs.
- In distancing themselves from assets mentioned in I-T notices, assesses often claim that the money lying in a bank account belongs to NRI relatives or they are simply unaware of how their names are linked to bank accounts or overseas trusts. Failing to disclose an asset in the FA (foreign assets) schedule, introduced in the IT return form a decade ago, could trigger a penalty of ₹10 lakh while not reporting any income for tax could mean forking out 120% of the tax amount.

https://cfo.economictimes.indiatimes.com/news/tax-legal-accounting/taxman-takes-affidavit-route-to-uncover-undisclosed-foreign-assets/103002400

23. CBDT notified Form 71 to allow TDS credit in respect of income disclosed in ITR filed in earlier years:- *CBDT Notification No. 73/2023 dated 30 August 2023*

Multiple representations have been made by the assessees to the Government in many instances, where tax is deducted by the deductor in the year in which the income is actually paid to the assessee. However, following accrual method, the assessee may have already disclosed this income in earlier years in their return of income. This results in TDS mismatch, since the corresponding income has already been offered to tax by the assessee in earlier years, however, TDS is only being deducted much later when actual payment is being made. The assessee cannot claim the credit of TDS in the year in which tax is deducted since income is not offered to tax in that year. It may also not be possible to revise the return of the past year in which the corresponding income was included since time to revise the return of income for that year may have lapsed. This results in difficulty to the assessee in claiming credit of TDS.

The Finance Act 2023 inserted sub-section (20) to Section 155 with effect from 01-10-2023 to deal with such difficulties. This new sub-section is applicable where any income has been included in the Return of Income u/s 139 filed by the assessee for any specific assessment year (the relevant AY), and tax was deducted on such income and paid by the deductor to the government in a subsequent financial year.

Section 155(20) enables the assessee to apply to the AO within two years from the end of the financial year in which the tax was deducted at source, and the AO will amend the assessment and

allow credit for the tax. To implement this provision, the CBDT has issued Income-tax (Twentieth Amendment) Rules, 2023 and inserted Rule 134. This Rule mandates the assessee to furnish an application in Form No. 71. This form shall be furnished electronically under digital signature or through the electronic verification code. It seeks the following information from the assessee:

- Personal details (Name, Address, PAN, Aadhaar, Residential Status, E-mail Id, Mobile Number and relevant assessment year, date of furnishing return of income etc).
- Total income of the assessee returned in the relevant assessment year
- Amount of specified income included in the returned income (i.e. the income which has been included in the return of income of relevant assessment year and tax on such income is deducted at source and paid in a subsequent financial year)
- Nature of the specified income
- Rate at which such specified income was subject to tax.
- Amount of tax deducted on specified income in subsequent FY, date of deduction of tax, section and rate at which tax deducted, date of payment of tax deducted to the central Government and amount of tax claimed for the relevant assessment year.
- Name, PAN and TAN of deductor.

For each relevant assessment year, a separate form should be furnished and the total income/deemed total income/loss should be reported as per latest intimation/ assessment/ reassessment/ rectification / re-computation order, as the case may be.

24. CBDT runs Special Drive for disposal of pending audit/draft paras:- *Internal communication*

CBDT is running a special drive for disposal of pending audit/draft paras from September 1, 2023 to October 31, 2023. The special drive is for addressing the huge pendency of audit/draft paras which is being closely monitored at multiple levels including Revenue Secretary and Monitoring Cell. Based on the different stages involved in disposal of audit/draft para, the pendency of the audit/draft paras upto audit report year 2021 has been divided cases in the following categories:

where response to draft paras in Proforma Report A and B is pending from field authorities (Pr. CCITs to AOs),

- where response to clarification/further information/revised report in Proforma A and B is sought by Audit & PAC Division due to ambiguities/ deficiencies in original Proforma A and B report,
- where rejoinders/vetting comments are received from the office of C&AG and provided to field authorities in which further response is pending from field authorities, which are pending for processing in A&PAC Division,
- which are pending in the office of ADG (Audit & Inspection) for preparation of draft Action Taken Notes (ATN), and
- which are pending for Hindi translation of Final ATNs in Hindi Section, Department of Revenue.

All the aforementioned stakeholders are required to dispose of the initial pendency by Sep 15, 2023. The A&PAC Division is required to prepare an updated list of pendency in each of the aforementioned categories after expiry of first fortnight on 15 Sep 2023 and communicate the same to field authorities, ADG (A&I) and Hindi Section, Department of Revenue by Sep 19, 2023 for

disposal and the said authorities would be required dispose of the updated pendency by Sep 29, 2023. A&PAC Division is required to submit the response to all pending audit/draft paras to C&AG and upload the draft/final ATNs on AMPS portal by Oct 31, 2023. CBDT requested all the stakeholders to make their best efforts to complete the exercise by Oct 31, 2023.

25. CBDT notifies Rules & Forms for operationalising 2023 amendments to search & seizure provisions:- *CBDT Notification No. 70/2023 dated 28 August 2023*

Section 132 of the Income Tax Act empowers search and seizure subject to the fulfilment of conditions specified therein. The CBDT, vide this Notification No. 70/2023 dated 28 August 2023, inserts Rules 13 and 13A pursuant to amendments in sub-sections (2) and (9D) of Section 132 made by the Finance Act, 2023. The pre-amended sub-section (2) allows the authorized person to request services from a police officer or any other officer of the Central Government to assist in conducting work. Similarly, the pre-amended section (9D) empowers the authorized officer to make a reference to a valuation officer under section 142A for estimating the fair value of the property.

The Finance Act 2023 amended sections 132(2) and 132(9D) to increase the scope of the respective powers of the authorized officers. Section 132(2) was amended to include that the authorized person may requisition for the services of any person or entity from different walks and strata with the prior approval from CIT/PCIT/CCIT/PCCIT, Principal Director General or Director General. Similarly, section 132(9D) was amended, empowering the authorized officer to request the services of any person or entity or any registered valuer in addition to the reference made to the Valuation Officer in accordance with section 142A with the prior approval from CIT/PCIT/CCIT/PCCIT, Principal Director General or Director General. The CBDT has inserted Rules 13 and 13A to the Income-tax Rules, 1962 to implement the said amendments.

Rule 13 prescribes the procedure to requisition services under section 132(2) and to make a reference u/s 132(9D). It provides that any person or entity whose services may be requisitioned or any person or entity or registered valuer to whom reference may be made shall make applicable in Form No. 6C to the Principal Chief Commissioner, the Chief Commissioner, the Principal Director General, or the Director General. Such application must be disposed of within six months from the end of the month in which such application was made by accepting or rejecting the same.

Further, Rule 13A relates to the procedure and valuation method adopted for the valuation of any property for the purpose of section 132(9D). It provides as follows:

- The value of immovable property, being land or building or both, will be based on the value adopted or assessed or assessable by any Central Government or State Government authority for stamp duty payment related to the property. This includes construction and improvement costs, if applicable, on the dates specified under the reference from section 132(9D).

- The value of jewellery, archaeological collections, drawings, paintings, sculptures, any work of art, shares or securities referred to in rule 11UA will be determined as per sub-rule (1) of rule 11UA and for this purpose the reference to the valuation date in the rule 11U and rule 11UA shall be the date(s) on which such property is required to be valued as per the reference made under sub-section (9D) of section 132.

- For properties not covered by (i) or (ii) above, or if the valuation isn't feasible, the value shall be the sale price in the open market on the relevant valuation date. The Valuation report must be submitted by such person, entity or registered valuer in Form No. 6CA.

26. CBDT covers 'leased or rented house' for inflation-linked valuation of rent free accommodation:- *CBDT's Notification No. 72/2023/F. No.370142/21/2023 dated 29 August 2023*

CBDT through Notification No. 72/2023 dated August 29, 2023, has issued a corrigendum to Notification No. 65/2023 dated August 18, 2023. The CBDT revised Rule 3(1) of the Income Tax Rules, 1962 in order to give effect to the amendments made by the Finance Act, 2023. The rule was revised to provide a revised procedure for the computation of Rent-free accommodation valuation. This included revised rates for the computation of the value of perquisite in the cases where the accommodation was owned by the employer or taken on lease or rental. The effective date of this amendment is September 1, 2023.

In Notification No. 65/2023, a new proviso was introduced regarding the valuation of rent-free accommodation owned by the employer and occupied by the same employee for more than one previous year. According to the corrigendum, this new proviso shall also be applicable to accommodations taken on lease or rent by the employer. In such cases, the valuation, which is calculated as per the prescribed rates, should not exceed the valuation for the first previous year. This initial valuation is determined by applying the change in the Cost Inflation Index.

Further, an inflation-linked cap was introduced. It is provided that in case the same accommodation is provided to an employee for more than one year, the valuation in subsequent years will not exceed the first year's valuation adjusted by the Cost Inflation Index. Now, the CBDT has issued a corrigendum to clear the confusion. The board has amended the notification to provide that the benefit of the inflation-linked valuation for computing rent-free accommodation shall be available even if the employer takes the accommodation on lease or rent.

27. FASB approves income tax reporting standard:- *News Report*

The Financial Accounting Standards Board (FASB) voted on August 30, 2023 to require companies to tell the public more about the taxes they pay. Starting as early as 2025, companies' annual financial reports will need to include the year-to-date amount of income tax paid, net of refunds received, to state, federal and foreign taxing authorities. FASB proposed an AS update in March to address requests from investors for better income tax disclosures from public companies.

During its consultations in 2021 on its future agenda, the board heard concerns from investors and analysts that the existing income tax disclosures didn't offer enough information to help them understand the tax position of a company that operates in multiple jurisdictions. Investors currently rely on the rate reconciliation table and other disclosures, including total income taxes paid in the statement of cash flows, to evaluate income tax risks and opportunities. There were several changes from the original proposal, which had included a proposal for quarterly reporting on taxes paid. Instead, it will be on an annual basis. The effective date for public business entities will be in 2025, and investors can expect to see in companies' 2025 10-K annual reports some additional information because of FASB's new guidance. For interim reporting, it will start in the first quarter

of 2026. For private companies and other types of companies, it would be starting with their annual reports in 2026 and interim reports in 2027.

28. CBDT releases fourth Annual Report on APA for FYs 2019-20, 2020-21 and 2021-22:- *Press release*

CBDT releases fourth Annual Report on APA programme, highlights progress made in three FYs: 2019-20, 2020-21 and 2021-22. Highlights that a total of 57 APAs were entered into during FY 2019-20, 31 APAs during FY 2020-21 and 62 during FY 2021-22. Reveals that though the number of APAs entered into had come down in FY 2020-21 primarily due to the impact of the COVID-19, however the number showed an impressive upswing in FY 2021-22, due to the efforts of the CBDT and its officers working in the Foreign Tax & Tax Research Division and in APA teams. Report indicates that on an average, over the said three FYs, APA programme has provided tax certainty to more than 300 AYs annually. Highlights that 50 Unilateral APAs (UAPAs) entered into provided tax certainty for 232 APA years & 5 months and 98 rollback years (26 APAs had a rollback). Further, highlights that in 2020-21, 18 agreements signed have provided tax certainty of 90 APA years and 19 rollback years (5 APAs had a rollback). In 2021-22, 49 agreements signed have provided tax certainty of 240 APA years & 6 months and 39 rollback years (12 APAs had a rollback).

It mentions that the average duration for closure of applications ranges from 52 to 58 months during the AYs 2019-20 to 2021-22. Also points out that majority of UAPAs signed in the three FYs pertain to IT industry, banking & insurance, and engineering services which reflects that "India is a major outsourcing destination for information technology and business processes, and significant number of foreign MNEs have presence in I-T clusters of India such as Bengaluru, Hyderabad, Chennai, Gurgaon, and Noida". Highlights that "a diversified basket of international transactions indicates the maturity of the APA programme and competence of the APA teams in processing applications that include complex transactions". Also highlights that TNMM method was the most widely used method used in APAs for benchmarking international transactions with other methods lagging far behind. Further, it has been pointed out that 117 UAPAs entered into during the three years have AEs across 83 countries, majorly located in the United States, United Kingdom, Australia, France, Germany, Japan, etc. Report highlights that half of Bilateral APA applications are with one treaty partner, i.e. the USA while other treaty partners with whom large number of applications have been filed are the UK, Japan, and Singapore.

The Report concludes on a positive note stating that "Though revenue mobilisation has never been the primary objective of the Indian APA programme, it is a positive externality flowing out from the programme that provides assured revenues to the Government of India. It is estimated that the 421 signed APAs have resulted in providing certainty for income of about Rs. 14,000 Crore. This translates into a tax and interest payment of about Rs. 4,000 Crore without getting into any litigation or there being any dispute."

29. IT Dept. enables e-filing of audit report for charitable trusts or institutions:- *CBDT Press release*

CBDT has introduced significant changes in its notification dated February 21, 2023, with the release of new Form 10B and Form 10BB. These changes were scheduled to take effect from April 1, 2023. Form 10B serves as the crucial audit report for various entities, including funds, institutions, trusts, universities, educational institutions, hospitals, and medical institutions. Pursuant to the

notification, the Income Tax department has provided instructions for e-filing these forms for Assessment Year (AY) 2023-24. For Form 10B, taxpayers can utilize the offline mode and download the necessary utility through the 'Downloads' menu option. On the other hand, Form 10BB can be e-filed through the online mode. Further, The CBDT urges taxpayers to use the latest utility available for filing both Form 10B and Form 10BB for AY 2023-24 and onwards. These changes signify the tax department's commitment to streamlining reporting processes and ensuring compliance with the evolving tax regulations.

30. Companies allege getting show-cause notice for prosecution after depositing TDS with late penalty:- *News Report*

Companies are receiving show-cause notices from the Income Tax Department for initiation of prosecution, even after depositing TDS with penal interest. This trend is not a general trend and is initiated only when the amount is major. Tax experts argue that this will put additional burden on companies as they may be asked to pay TDS plus penal interest as a compounding fee. Section 276B and 276BB of the Income Tax Act deal with instances where a company has deducted withholding taxes but failed to deposit them with the government within the prescribed time limit.

However, show-cause notices are being issued even in cases where the company inadvertently fails to deposit withholding tax within the time limit but later deposits it along with interest on its own. The department usually serves a notice u/s 2(35) of the Act to company officials before making them an accused in a criminal prosecution. Many directors have received show-cause notices when prosecution proceedings have been initiated against the company and its directors for such default. The real problem lies in the process of compounding, which is a way to defuse prosecution proceedings, which otherwise are criminal proceedings in nature.

https://www.thehindubusinessline.com/economy/companies-allege-getting-show-cause-notice-for-prosecution-after-depositing-tds-with-late-penalty/article67244567.ece

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INDIRECT TAXATION

1. **Action against supplier is essential for non-reflection of invoices before seeking reversal from recipient:-** ***Suncraft Energy (P.) Ltd. v. Assistant Commissioner, State Tax - [2023] 153 taxmann.com 81 (Calcutta)***

   In the present case, the department disallowed appellant's input tax credit (ITC) after alleging non-reflection of supplier invoices in GSTR 2A for FY 2017-18. The appellant argued that it had made payment to supplier through valid tax invoice but the demand was confirmed. It file writ petition but the Court directed to file appeal before the Appellate Authority. Therefore, it filed intra Court appeal against the decision.

   The High Court noted that Press Release dated 18-10-2018 clarifies GSTR-2A does not impact input tax credit of buyers. However, the reversal of credit from buyer shall also be an option available with the revenue authorities to address exceptional situations like missing dealer, closure of business by supplier or supplier not having adequate assets etc.

   In the instant case, the appellant had already submitted invoices and showed that payments were made through bank to the suppliers. However, the department failed to inquire on supplier despite clarifications submitted by the appellant and directed appellant to reverse ITC. The Court further noted that in such cases, action against supplier would be essential before seeking reversal from recipient. Therefore, it was held that the Revenue's action was deemed to be arbitrary and the impugned order was liable to be set aside & demand raised on the appellant was not sustainable.

2. **Special procedure for filing appeal against the order rejecting transitional credit is notified:-** ***Notification No. 29/2023-Central Tax dated 31 July 2023***

   The CBIC has notified the special procedure which shall be followed by a registered person or an officer who intends to file an appeal against the order passed by the proper officer in accordance with Circular No. 182/14/2022-GST, dated 10th November 2022.

   It has been provided that appeal against the order shall be made in duplicate and shall be presented manually before the Appellate Authority. The appellant shall not be required to deposit any amount as a pre-condition for filing an appeal against the said order.

3. **CBIC notified special procedure for persons engaged in manufacturing of Pan Masala & Tobacco products:-** ***Notification No. 30/2023-Central Tax dated 31 July 2023***

   The CBIC has notified special procedure which shall be followed by registered persons engaged in manufacturing of Pan Masala & Tobacco products along with additional records which shall be maintained by the registered persons manufacturing these goods.

   It is provided that all the existing registered persons engaged in manufacturing of these goods shall furnish the details of packing machines being used for filling and packing of pouches or containers in FORM SRM-I, within 30 days of issuance of this notification, electronically on the common portal. They shall also submit a special statement for each month in FORM SRM-IV on the common portal, on or before the tenth day of the month succeeding such month.

4. Biometric based authentication for GST registration is mandatory in State of Puducherry:- ***Notification No. 31/2023-Central Tax dated 31 July 2023***

The CBIC has issued to provide that proviso to Rule 8(4A) will be applicable on State of Puducherry and now biometric based Aadhar authentication for GST registration is mandatory in the State of Puducherry.

5. CBIC exempts filing of annual return for taxpayers having aggregate turnover in FY 2022-23 up to 2 crores rupees:- ***Notification No. 32/2023-Central Tax dated 31 July 2023***

The CBIC has issued a notification to exempt the registered persons whose aggregate turnover in the financial year 2022-23 is up to two crore rupees, from filing annual return.

6. "Account Aggregator" under GST shall be same as defined in the NBFC- Account Aggregator (Reserve Bank) Directions, 2016:- ***Notification No. 33/2023-Central Tax dated 31 July 2023***

The CBIC has notified "Account Aggregator" as the systems with which information may be shared by the common portal based on consent under Section 158A of CGST Act, 2017 and it shall be same as defined in the NBFC- Account Aggregator (Reserve Bank) Directions, 2016. This notification shall come into force with effect from the 1st October, 2023.

7. No GST registration required for small dealers to supply goods through ECOs:- Notification ***No. 34/2023-Central Tax dated 31 July 2023***

The CBIC has issued notification to exempt dealers from taking GST registration whose turnover does not exceed the threshold limit of registration and making supplies of goods through an electronic commerce operator subject to certain conditions such as such persons shall not make any inter-State supply of goods; such persons shall not make supply of goods through electronic commerce operator in more than one State or Union territory etc. This notification shall come into force with effect from 1st October 2023.

8. CBIC notifies special procedure for ECOs in respect of supply of goods made by Composition Dealers:- ***Notification No. 36/2023- Central Tax dated 04 August 2023***

The CBIC has issued notification to notify special procedure for the electronic commerce operators (ECOs) in respect of supply of goods made through them by Composition Dealers. It is provided that the ECOs shall not allow any inter-State supply of goods through it by composition dealers. ECOs shall collect tax at source in respect of supply of goods made through it & pay to the Government and ECOs shall furnish the details of supplies of goods made through it in the statement in FORM GSTR-8. This notification shall be effective from October 1st, 2023.

9. Special procedure notified which shall be adopted by ECOs w.r.t supplies made by unregistered persons:- ***Notification No. 37/2023- Central Tax dated 04 August 2023***

The CBIC has issued notification to notify a special procedure for electronic commerce operators (ECOs) in respect of supply of goods made through it by the persons exempted from obtaining registration. In the notification, it is provided that ECOs shall allow the supply of goods through it by such persons only if enrolment number has been allotted on the common portal to them and shall not allow them any inter-State supply of goods through it. Also, the ECOs shall not collect tax at source from them but furnish the details of supplies of goods made through it by such persons in the statement in FORM GSTR-8. This notification shall be effective from October 1st, 2023.

10. CBIC issued Central Goods and Services Tax (Second Amendment) Rules, 2023:- ***Notification No. 38/2023- Central Tax dated 04 August 2023***

The CBIC has issued notification to issue CGST (Second Amendment) Rules, 2023 for implementation of recommendations of GST Council. The changes include specifying revised time period for furnishing bank details after GST registration on the common portal; extending time for filing application for revocation of cancellation of registration to 90 days; uploading verification report of physical verification of business premises within 15 days on portal and providing manner of dealing with difference in ITC.

11. GST Council recommends GST on valuation of supply of online gaming and actionable claims in casinos at entry level:- ***Press Release dated 2 August 2023***

The 51st GST Council met under the Chairpersonship of Union Minister for Finance & Corporate Affairs Smt. Nirmala Sitharaman via video conferencing in New Delhi. The GST Council in its 51st meeting has recommended that valuation of supply of online gaming and actionable claims in casinos may be done based on the amount paid or payable to or deposited with the supplier, by or on behalf of the player (excluding the amount entered into games/ bets out of winnings of previous games/ bets) and not on the total value of each bet placed.

The Council has also recommended that CGST Rules, 2017 may be amended to insert specific provisions for valuation of supply of online gaming and supply of actionable claims in casino accordingly. It has also been decided by the Council that effort will be made to complete the process of making amendments in the Act at the earliest and bring the amendments into effect from 1st October 2023.

12. GST notices from different states make life difficult for many companies:- ***News Report***

Companies are currently grappling with a formidable challenge in managing the escalating number of GST notices issued by various state departments. Taxation, predominantly handled in a centralized manner within most companies, poses complexities, especially for service companies, when it comes to segregating their operations based on individual states. Following the conclusion of GST compensations for states in July 2022, there has been a significant surge in the issuance of such notices. States, now responsible for generating their own revenue, have become exceptionally

proactive in dispatching notices to companies, even for minor reasons. Experts anticipate that this trend is likely to persist in the future.

Further, states have intensified their efforts by meticulously examining GSTN data, cross-referencing it with income tax records, and conducting reconciliations, resulting in a notable increase in the issuance of notices to businesses. As per the GST law, companies are mandated to register individually in every state, submit monthly returns, and make separate tax payments to each state. Consequently, individual states issue notices to companies, in contrast to the previous tax regime where only those selling goods in a state required registration. Even service providers are now obliged to register in every state. This situation presents significant challenges, particularly for companies operating in the service sector, including banks, mortgage lenders, technology firms, back offices, and insurance companies. The timeframes provided for responding to these notices from various states often prove inadequate, given the extensive volume of information required and the necessity to provide reconciled data. Upon review, it is evident that most of these GST notices demand data spanning five years, which is excessively voluminous. Consequently, many corporations encountered difficulties in locating and reconciling data from five years ago.

13. HC set aside SCN and order cancelling GST registration since SCN was merely uploaded on Portal:- *Mayel Steels (P.) Ltd. v. Union of India - [2023] 153 taxmann.com 50 (Bombay)*

The department issued a show cause notice (SCN) to the petitioner calling upon it to remain present next day. The petitioner submitted reply to SCN a week later after it became aware of SCN since it was uploaded in GST portal. In the meanwhile, the department also issued orders under FORM GST DRC-22 for provisional attachment of bank account/property under Section 83 of the CGST/SGST Act, 2017. It filed writ petition and contended that the adjudication of SCN overlooked the basic principles of natural justice, and it was never granted an opportunity of being heard.

The High Court noted that despite being put to notice of filing of this petition, the Superintendent, CGST proceeded to pass order cancelling petitioner's registration. The Superintendent acted in an arbitrary manner in exercising powers vested in him when he passed the impugned order in breach of the principles of natural justice. Therefore, it was held that the impugned SCN and cancellation order were liable to be set aside.

The Court also held that whenever action is intended to be taken by the department in respect of registration of dealers, it is expected that SCN in that regard should not be merely uploaded on Web-portal but also copy of the same be forwarded to dealers by e-mail and/or by hand delivery, so that same are effectively replied.

14. Intention to evade tax is a prerequisite for imposing a penalty under section 129:- *Bhawani Traders v. State of U.P. - [2023] 153 taxmann.com 86 (Allahabad)*

The department passed penalty order upon the petitioner by not treating the petitioner to be the owner of goods. It filed writ petition against the order and contended that the goods were duly accompanied by the tax invoice, e-way bill and bilty issued in the name of the petitioner as the consignor but the department passed penalty order under section 129(1) (b) of CGST Act, 2017.

The High Court observed that penalty was imposed under section 129(1)(b) and the petitioner was not considered owner of goods in transit from Kolkata to New Delhi, despite possessing valid documents. The Court further noted that intention to evade tax is a prerequisite for imposing a penalty under section 129.

In the present case, e-way bills being the documents of title to the goods were accompanying the goods. Therefore, it was held that the conclusion of the department that the petitioner was not the owner of the goods was patently erroneous.

15. Indian units of foreign companies face GST queries on ESOPs:- *News Report*

Indian subsidiaries of foreign companies are facing inquiries from GST authorities regarding the allotment of shares to their staff under schemes like ESOP and ESPP. The issue is particularly prevalent in the technology sector, where ESOP is a popular employee incentive. The GST authorities' position is that the overseas entity providing the shares is not the employer, and the obligation to provide shares under the employment contract rests with the Indian subsidiary. As such, it is considered an import of service by the Indian entity, subject to 18% GST. However, some tax experts argue that ESOP is part of an employee's salary and should not be subject to GST. Employees covered by ESOP plans still pay income tax on their shares.

Tax experts, however, assert that ESOP is part of an employee's salary and should be outside the purview of GST. Alternatively, they propose clarifying that ESOPs are in the nature of securities, falling outside the ambit of GST. Employees participating in ESOP plans already pay income tax on the same. Some Indian subsidiaries are currently entangled in litigation related to this issue. While some have responded to show-cause notices, others have progressed to filing appeals with the GST Commissioner (Appeals). The matter remains under discussion, and stakeholders are eagerly anticipating the forthcoming GST council meeting for possible resolutions and clarifications.

https://timesofindia.indiatimes.com/business/india-business/indian-units-of-foreign-companies-face-gst-queries-on-esops/articleshow/102258210.cms?from=mdr

16. FIU-Director to share suspicious transaction data with GSTN to curb tax evasion:- *News Report*

The Indian government has enabled the Director of the Financial Intelligence Unit (FIU)-India to send reports like cash transaction reports and suspicious transaction reports to the Goods and Services Tax Network (GSTN) for access by GST authorities. This move aims to curb the issue of GST evasion in the country. According to the Minister of State (MoS) for Finance, this action was taken through a recent notification. However, there are no plans to bring GSTN under the scope of the Prevention of Money Laundering Act (PMLA). The main objective of GSTN is to provide IT infrastructure and services for the implementation of GST, while the purpose of PMLA is to prevent money laundering and confiscate property related to money laundering. The two entities serve different purposes, and there is no ongoing consideration to bring GSTN under PMLA.

Further, the FIU and the Enforcement Directorate (ED) will share information with GSTN regarding suspicious foreign exchange transactions, fake input tax credits, and fake invoices. Notably, the information flow will be from FIU and ED to GSTN, rather than the other way around. This development was influenced by India's upcoming review by the Financial Action Task Force (FATF),

a global watchdog on money laundering. Despite concerns raised by certain state Finance Ministers, including Delhi and Punjab, about GSTN's direct connection to ED, Finance Minister Nirmala Sitharaman clarified that GSTN will not share information with ED.

17. High Court directed dept. to pass fresh order since ITC claimed in GSTR-3B due to non-availability of Form ITC-02 on portal:- *Tikona Infinet (P.) Ltd. v. State of U.P. - [2023] 153 taxmann.com 170 (Allahabad)*

The assessee entered into a Business Transfer Agreement with a company under which business was transferred to assessee. The company had accumulated ITC balance of more than Rs. 3.13 crores which was unutilized and, thus, assessee was entitled to transfer the same. However, the functionality for filing Form ITC-02 was not available on common portal, which was communicated to jurisdictional Assessing Authority but no response was received. Therefore, it availed ITC through GSTR-3B and department issued notice demanding reversal of ITC with interest. It filed writ petition and challenged the demand of ITC reversal.

The High Court noted that the Form ITC-02 for transfer of ITC was not available on GST Portal as portal was in nascent stage during initial months after its implementation on 1-7-2017. It was incumbent upon assessee to have raised a proper grievance on GST portal help-desk and ought to have waited for relevant Form to go live on GST portal instead of making illegal adjustment. However, it was admitted fact that the form was not available on GST common portal and rejecting the claim of the assessee in the wake of this fact cannot be justified. Therefore, the Court directed authority to pass fresh order after taking into consideration objections of petitioner and affording it opportunity of hearing, strictly in accordance with law.

18. ITC would not be allowed on demo vehicles to car dealers who are retaining demo vehicles for their workshop:- *Authority for Advance Rulings, Telangana Sai Service (P.) Ltd., In re - [2023] 153 taxmann.com 231 (AAR- TELANGANA)*

The applicant-automobile dealer required demo vehicles which would be registered & used for demonstration & test drive for a period of 2 years or 40,000 kms whichever would be earlier. It filed an application for advance ruling to determine whether ITC would be allowed to applicant or not.

The Authority for Advance Ruling noted that as per Section 17(5) of the CGST Act, 2017, ITC would not be allowed on purchase of motor vehicles for transportation of persons unless purchased for further supply of such motor vehicles. Therefore, it was held that if applicant would make further supply of demo vehicle, it would be eligible for ITC but in case the applicant would retain vehicle for its workshop as replacement vehicle as mentioned in sales policy of car manufacturer, it shall not be eligible for ITC as there would be no further supply.

19. Appeal can't be denied if assessee failed to submit certified copy in a timely manner: *Rama Shanker Modi v. Assistant Commissioner, Central Goods and Services Tax and Central Excise - [2023] 153 taxmann.com 326 (Calcutta)*

The petitioner had filed appeal electronically within specified time limit, but due to a genuine mistake, it failed to submit certified copy in a timely manner. The department rejected of the petitioner on the technical ground of non-filing of certified copy of the order against which appeal was filed within prescribed time. It filed the writ petition against the rejection of appeal.

The High Court noted that the appeal of the petitioner was dismissed only on the technical ground without going into the merit of case. It was admitted position that the appeal had been filed electronically within time but due to bonafide mistake of the petitioner, the copy of order could not be filed within time. Therefore, after considering the facts and circumstances of this case and in the interest of justice, the Court held that order of appellate authority was liable to be set aside and the concerned appellate authority was directed to accept certified copy submitted by petitioner, even though it was filed beyond stipulated time.

20. Limitation period to file appeal under Section 107 will start from date of service of manual order:- Britannia *Industries Ltd. v. Union of India - [2023] 153 taxmann.com 255 (Gujarat)*

In the present case, the petitioner's application for refund of accumulated ITC was rejected and order-in-original was served manually. It filed fresh application of refund which was rejected on the ground that appeal was not filed against earlier order and therefore it attained finality.

The petitioner filed writ petition against the rejection of application and submitted that it could not file appeal electronically which is only mode of filing appeal against order due to non-receipt of an electronic copy of the order. The question placed before the High Court was to decide whether the petitioner’s contention that it was handicapped in filing the appeal, which can only be filed through electronic mode, in absence of uploading of the order-in-original, was an acceptable stand or not.

The High Court noted that as per Section 169, any decision or order shall be served by giving or tendering it directly or by a messenger including a courier to addressee of taxable person. In the present case, the petitioner also admitted that the order was served manually, and the Rule 108 prescribes that appeal has to be filed electronically, but it is nowhere prescribed that the same is to be filed only after impugned order is uploaded on GSTN Portal.

Further, the Court noted that merely because orders were subsequently uploaded will not render or save their appeals from same having been time barred. Therefore, it was held that the limitation period to file appeal under Section 107 will start from date of service of manual order, even if order was not uploaded online and petitioner's contention that it was handicapped in filing appeal, which can only be filed through electronic mode, in absence of uploading of such order on portal, was not acceptable. The Court also held that the petition was liable to be dismissed with no order as to costs

21. Superintendent (Anti-Evasion) can’t direct bank to block debit from assessee’s bank account:- *Vikas Enterprises v. Commissioner of Central Tax (GST) - [2023] 153 taxmann.com 332 (Delhi)*

In the present case, the petitioner filed writ petition against the communication issued by the Superintendent (Anti-Evasion) to the Bank Manager to furnish certain documents pertaining to the petitioner and directed the bank not to permit any debit from the petitioner's bank account without prior permission of the Department. It was contended that the impugned communication was without authority of law.

The High Court noted that in the instant case, the impugned communication emanated from Superintendent (Anti-evasion) and not by Commissioner exercising jurisdiction in respect of tax payer. Also, the impugned communication did not indicate that it was issued with authority of

Commissioner since the law provided that no order under Section 83 can be passed by any officer other than the Commissioner.

The Court further noted that the orders of provisional attachment of bank accounts or other assets of a taxpayer has a serious adverse effect on the business of the taxpayer. Therefore, the impugned communication was to be set aside and since the concerned revenue authority had not acted in accordance with statutory provisions, cost of Rs. 5000 was levied on Revenue which will be recovered from the concerned officer.

22. Gaming apps converting earnings to crypto, Rs 700 crore moved out of India, reveals GST probe: *News* Report *dated 16 August 2023*

In a concerning development, Indian authorities are grappling to curtail the growing prevalence of overseas gaming and betting applications that are evading taxes in India through the conversion of earnings into cryptocurrency and the utilization of networks of shell companies. As per a TOI report, at the center of one of the largest such networks under investigation stands Parimatch, a Cyprus-based group, that even engages in advertising during local sports leagues on television.

The Directorate General of Goods & Services Tax Intelligence (DGGI) in Mumbai has recently managed to uncover and dismantle one such network linked to Parimatch. The network was responsible for amassing Rs 700 crore from Indian users of gaming apps, and the funds were subsequently funneled out through conversion into cryptocurrency. The DGGI tracked the network's activities for months, scrutinized the backgrounds of 50 entities and individuals in Delhi, along with 350 in Kolkata, TOI report stated.

Dubai plays a pivotal role in facilitating the flow of funds through cryptocurrencies. The workers for these applications receive remuneration online without formal contracts. Parimatch, for instance, interacts with its Indian contacts solely through email, phone calls, or unidentified individuals. The DGGI has recently apprehended the director of an unregistered payment aggregator that facilitated the collection of money in shell company accounts from users of Parimatch's gaming and betting services. The amassed funds were then channeled from the payment aggregator to the bank accounts of shell companies. In the process, more than 400 bank accounts were frozen.

The operator revealed that Rs 96 crore collected from app users had been transformed into cryptocurrency. However, the investigation reached an impasse as the accused had no knowledge of the recipient of the wallet to which the crypto money was transferred. The accused maintained that the entire operation was executed based on explicit instructions received via email and phone calls from an "unknown person."

The DGGI also interrogated the dummy directors of the shell firms, who were paid meager amounts to represent the companies through which cryptocurrency was purchased and sent overseas. Most of these individuals were drivers, street vendors, or individuals in miscellaneous roles who had shared their details with a book-entry operator (also involved in hawala payments) in exchange for a modest sum. The dummy directors disclosed they were aware that money was entering their accounts/wallets through Parimatch apps. They indicated that "video KYC of their family members were used for opening the accounts/wallets" by the crypto exchange operator. They maintained ignorance regarding the amounts credited to their accounts and the recipients of the transferred funds.

During their inquiry, DGGI officials discovered that Parimatch had disseminated advertisements featuring celebrity endorsements during live broadcasts of local sports leagues. A high-ranking executive from a television network informed DGGI officials that they had received email instructions for broadcasting Parimatch ads and entered into an online agreement accordingly. Similarly, media management companies were directed by Parimatch, via email, to enlist celebrities for the ads.

The Enforcement Directorate (ED) is actively investigating numerous such gaming and betting companies. Many are believed to be operating through shell companies registered abroad in tax havens. These companies lack a physical presence in India and solely communicate through email, phone calls, or intermediaries. Sources have revealed that the Union Ministry of Home Affairs has been informed about this trend to consider potential restrictions on these apps and websites, citing national security concerns.

Despite the existence of advanced tools developed by Israeli companies to trace cryptocurrency movements within wallets, these efforts have yielded limited success in this case. An expert familiar with such tools has explained that interoperability between blockchains permits users to access various platforms' applications and move cryptocurrency between exchanges. Nevertheless, the movement of cryptocurrency can still be traced using advanced tools, the expert noted.

https://economictimes.indiatimes.com/news/india/gaming-apps-coverting-earnings-to-crypto-rs-700-crore-moved-out-of-india-reveals-gstprobe/articleshow/102761710.cms?utmsource=-ETTopNews&utm_medium=HP&utm_campaign=TN&utm_content=23

23. Money e-gaming companies face Rs 45,000 crore tax demand:- *News Report*

Gaming companies operating in the online realm, which offer games reliant on skill, could potentially encounter a substantial tax liability exceeding Rs 45,000 crore. The Central Board of Indirect Taxes and Customs (CBIC) has undertaken an assessment of tax obligations for these companies, commencing from the inception of the GST in 2017. These e-gaming enterprises, responsible for generating revenue, were initially subjected to an 18% tax rate on their gross gaming proceeds, due to the skill-based nature of their games. This rate deviated from the legally mandated 28% rate, resulting in a tax deficit of Rs 45,000 crore. The differential tax treatment based on the distinction between skill-oriented and chance-based games has now been abolished.

Further, during the recently concluded Monsoon session of Parliament, amendments were ratified for the Central Goods and Services Tax (CGST) and Integrated Goods and Services Tax (IGST) laws. These amendments were introduced to eliminate the disparate tax treatment applied to games categorized as skill-based or chance-based. Since the GST's implementation in 2017, online gaming companies have contributed less than Rs 5,000 crore in GST payments. Reports indicate that the gaming sector has been subject to a significant shortfall of Rs 45,000 crore in tax revenue since the inception of GST. Notably, the Directorate General of Goods and Services Tax Intelligence (DGGI) had issued a notice to Gameskraft in September of the previous year, demanding a GST payment of Rs 21,000 crore. However, this notice was nullified by the Karnataka High Court in May of the current year. Subsequently, the Central government has submitted a special leave petition to the Supreme Court, challenging the Karnataka High Court's decision to invalidate DGGI's tax demand notice on Gameskraft.

Moreover, the classification of online gaming into either skill-based or chance-based categories has been the subject of debate. Some online gaming entities have contended that the services they provide are rooted in skill-based activities, warranting an 18% tax rate instead of the 28% rate designated for chance-based games. Considering the same, the GST Council took action to rectify this differentiation by mandating a uniform 28% levy based on the entire betting value. The amendments to the CGST and IGST laws have recently received approval and the e-gaming industry has advocated for the non-retrospective application of these amendments.

https://cfo.economictimes.indiatimes.com/news/tax-legal-accounting/money-e-gaming-companies-face-rs-45000-crore-tax-demand/102756245

24. Provisions under sections 129 and 130 are independent provisions and could be invoked separately:- *Muhammad Saleem Shemsudeen v. Enforcement Officer - [2023] 153 taxmann.com 479 (Kerala)*

The appellant sold iron scrap to a dealer in Goa and the consignment was intercepted. The Enforcement Officer served notices on driver for physical verification of conveyance, goods and documents. Thereafter, the Enforcement Officer issued report on physical verification of conveyance and immediately issued show cause notice to confiscate goods and conveyance.

The appellant submitted reply but the confiscation order was issued. It filed writ petition and contended that the department was obliged to proceed sequentially through provisions of section 129 before confiscating goods under section 130. The Single Judge directed appellant to file appeal against the confiscation order but the appellant challenged the order before the High Court.

The High Court noted that the provisions under sections 129 and 130 are independent provisions and there is no requirement in law that confiscation proceedings under section 130 should be preceded by proceedings under section 129. In the present case, the department permitted the appellant to seek a release of the goods and the conveyance on payment of penalties and fine within a period of fourteen days from the date of the order. Therefore, it was held that the order passed by Enforcement Officer permitting petitioner to seek a release of goods and conveyance on payment of penalties and fine was suffice to obtain an immediate release.

25. GST registration can’t be cancelled with retrospective effect if no such proposal was there in SCN:- *Virender Kumar Jain v. Delhi GST Officer, Ward 76 - [2023] 153 taxmann.com* 546 *(Delhi)*

In the present case, the petitioner applied for cancellation of his GST Registration on 20-11-2020 with effect from the said date on account of ill-health due to cancerous ailment. The department rejected the application. Thereafter, the department issued a notice dated 4-2-2021 to cancel the registration which petitioner failed to reply, and the registration was cancelled with retrospective effect from 1-7-2017. It filed an appeal for cancellation with retrospective effect, but the appeal was rejected and it filed writ petition.

The High Court noted that SCN did not indicate that the concerned officer had proposed to cancel registration with retrospective effect. It also did not indicate that any inquiries were made, which revealed that the petitioner had never existed at his declared place of business. The Court also noted

that the petitioner had already applied for cancellation due to closure of business due to ill-health and therefore, the question of petitioner being available at principal place of business did not arise.

The Court further noted that this could not have been a ground for cancellation of petitioner's GST registration that too with retrospective effect from date of its issuance i.e. 1-7-2017 without mentioning it in the notice. Therefore, the Court allowed the petition and it was held that the cancellation of petitioner's GST Registration would be effective from 20-11-2020.

26. No ITC allowed if supplier didn't pay GST to Government even if tax was collected from buyer:- Aastha *Enterprises v. State of Bihar - [2023] 153 taxmann.com 491 (Patna)*

In the present case, the purchases were made by the petitioner from supplier after making payments through bank accounts. However, the selling dealer had not paid up the tax liability to the Government and the department denied Input Tax Credit (ITC) to the petitioner. It filed writ petition and contended that the department should proceed against the selling dealer to recover the collected amount of tax.

The High Court noted that for availment of ITC, its conditions are to be strictly followed by the purchaser and the purchasing dealer could only claim ITC benefit if supplier who collected tax from the purchaser has paid it to Government and not otherwise. Moreover, as long as the tax paid by the purchaser to the supplier, is not paid up to the Government by the supplier; the purchaser cannot raise a claim of Input Tax Credit under the statute.

The Court further noted that mere production of a tax invoice, establishment of movement of goods and receipt of same and consideration having been paid through bank accounts would not enable ITC. Therefore, it was held that claim of ITC raised by the petitioner cannot be sustained when supplying/selling dealer had not paid up the amounts to Government; despite collection of tax was done from the petitioner.

27. Goods which are returned need not be necessarily accompanied with a Credit Note:- *Luminous* Power *Technologies (P.) Ltd. v. State Tax Officer, Adjudication-I - [2023] 153 taxmann.com* 623 *(Madras)*

The petitioner dispatched goods to consignee/buyer by four different invoices which were accompanied with e-way bills. However, those goods were not received by consignee/buyer as goods got wet due to heavy down pour and re-transported back by petitioner after generating four different e-way bills. The goods were detained by Roving Squad when goods were transmitted back to petitioner's factory in Chennai on the ground that no Credit Note was issued for return of goods. The petitioner filed writ petition against the detention of goods.

The High Court noted that the credit note under Section 34 is not required to be issued at stage when goods were being returned without receiving by recipient. The issuance of Credit Note and/or Debit Note under Section 34(1) of CGST Act, is required only for adjustment of tax liability and goods which are returned need not necessarily accompany a Credit Note.

In this case, goods that were detained were covered by four invoices and therefore, the Court held that detention of goods was per se illegal and unwarranted particularly in light of fact that goods accompanied e-way bills, which were generated for return of goods.

28. Govt. launches Invoice Incentive Scheme "Mera Bill Mera Adhikaar" from 1st September 2023:- *Press Release dated 24 August 2023*

The Government of India, in association with State Governments, is launching an 'Invoice Incentive Scheme' by the name 'Mera Bill Mera Adhikaar' to encourage the culture of customers asking for invoices/bills for all purchases. This scheme will be launched on September 1st, 2023.

This scheme will initially be launched as a pilot in the States of Assam, Gujarat & Haryana and UTs of Puducherry, Dadra Nagar Haveli and Daman & Diu. All B2C invoices issued by GST registered suppliers to consumers will be eligible for the scheme and the minimum value for invoices to be considered for lucky draw has been kept at Rs. 200.

29. GSTN introduces Electronic Credit Reversal and Reclaimed Statement on GST portal:- GSTN *Update* dated *31 August 2023*

The Government has earlier notified certain changes in Table 4 of Form GSTR-3B to enable taxpayers in reporting correct information regarding ITC availed, ITC reversal, ITC re-claimed and ineligible ITC vide Notification No. 14/2022 – Central Tax dated 5th July, 2022. Now, In order to facilitate the taxpayers in correct and accurate reporting of ITC reversal and reclaim thereof and to avoid clerical mistakes, a new ledger namely Electronic Credit and Re-claimed Statement is being introduced on the GST portal.

This statement will help the taxpayers in tracking of their ITC that has been reversed in Table 4B(2) and thereafter re-claimed in Table 4D(1) and 4A(5) for each return period, starting from August return period. The taxpayers have the opportunity to declare their opening balance for ITC reversal till 30th November 2023.

30. GSTN issued advisory for applicants whose registration application marked for Biometric-based Aadhaar Authentication:- *GSTN Update dated 28th August, 2023*

The GSTN has issued an advisory for those applicants who had opted for authentication of Aadhaar number and identified on the common portal for biometric-based Aadhaar authentication. Those applicants who get the link on Mobile & Email ID for Aadhaar Authentication, they can proceed for completing their application as per existing implementation.

However, those applicants who get message for visiting GSK, will be required to visit at the designated GSK as conveyed on Mobile/Email and get biometric authentications for all required persons as per the GST Application Form REG-01. The applicants are requested to visit GSK before the TRN expiry date as detailed in the Email for Biometric-based Aadhaar Authentication process. In this case, Application Reference Number (ARN) will be generated only after the completion of Biometric-based Aadhaar Authentication process.

REGULATORY

1. The Digital Personal Data Protection Bill, 2023 introduced in the Indian Parliament:- *Press release dated 03 August 2023*

The new Data protection bill termed as The Digital Personal Data Protection Bill, 2023 ("DPDP Bill") has been introduced by the Central Government in the Indian Parliament. The DPDP Bill is the fifth iteration of the personal data protection legislation and appears to be based on the draft Bill released by the Ministry of Electronics and Information Technology on November 18, 2022, titled Digital Personal Data Protection Bill, 2022, which was open for public consultations. The DPDP Bill focuses on digital personal data and does not apply to non-personal data. Once enacted, the DPDP Bill will replace Section 43A of the Information Technology Act, 2000 ("IT Act") and the Information Technology (Reasonable Security Practices and Procedures and Sensitive Personal Data of Information) Rules, 2011 ("SPDI Rules"). The Key Highlights of the Digital Personal Data Protection Bill, 2023 are as follows:

i. Applicability and scope:

- Only Material scope: The Bill applies to personal data that is collected in digital form or in non-digital form but digitized subsequently. This is clearer than the 2022 Bill, which used terms such as 'online' and 'offline' data, which were ambiguous.

- The Bill does not apply to: non-digital data, data processed for personal or domestic purposes, and data made publicly available by a data principal or any other person under a legal obligation. The list is clearer and narrower than the 2022 Bill, which did not apply to 'non-automated' processing and 'offline' data.

- Territorial scope: The 2023 Bill applies to personal data outside India only if such processing is in connection with offering of goods and services to data principals within India. In contrast, the 2022 Bill also applied outside India if the processing was in connection to 'profiling' of Indian data principals.

- Data Protection Principles: The DPDP Bill encapsulates the purpose of limitation that is Personal data should only be processed for a lawful purpose for which the data principal has given her consent and in accordance with the DPDP Bill and collection limitation that is Only such personal data should be collected which is necessary.

ii. No sub-classification of personal data:

The provisions of the DPDP Bill apply to all kinds of personal data and does not envisage sub-categories of personal data, such as sensitive personal data or critical personal data. Accordingly, the requirements of the DPDP Bill will be applicable equally to all forms of personal data agnostic of the nature or type of the personal data. This approach deviates from the current Indian data protection law contained under the SPDI Rules, which make a distinction between 'personal information' and 'sensitive personal data or information' and prescribes incremental compliance requirements for processing of sensitive personal data or information.

iii. Consent and Notice:

- Affirmative Consent: Consent is the underlying basis for processing personal data and needs to be free, specific, informed, unconditional and unambiguous. Such consent has to be provided by a clear affirmative action, and signify the data principal's agreement for processing of her personal data for the specified purpose. Along with voluntary submission of personal data, other processing by the Government for state benefits, fulfilling obligations under existing laws, medical emergencies, etc., do not require consent. The data principal has the right to withdraw consent at any time with the same level of ease with which she gave her consent. Such withdrawal of consent will not affect the legality of processing of the personal data based on consent before its withdrawal.

- Notice: A notice needs to be provided to the data principal, along with or preceding every request for consent, informing the data principal about the personal data and the proposed purpose of processing; and the manner in which she may exercise her rights to withdraw consent, avail the grievance redressal mechanism and make a complaint to the DPB (defined below). Where the data principal has given consent for processing her personal data before the law comes into force, a similar notice needs to be provided to her, as soon as it is reasonably practicable. The data principal should have the option to view the notice and consent form in English or in any other language specified in the Eighth Schedule of the Constitution of India (which includes Urdu, Tamil, Telugu, Sanskrit, Punjabi, Marathi, Hindi, Kannada, Bengali, Gujarati, Kashmiri, etc.).

- Legitimate Uses (for processing without consent): The 2023 Bill moves away from the 'deemed consent' framing for non-consent-based processing. These are now called 'legitimate uses'. However, the 2023 Bill provides a narrow list of 'legitimate uses', since both the 'fair and reasonable purposes' the residuary ground and the 'public interest' grounds have been removed. Further, under the 2023 Bill, data fiduciaries can process data without consent when the data principal voluntarily provides their data and does not indicate unwillingness to consent to its use. According to illustrations provided in the Bill, this would enable entities to process data without consent in scenarios when data is provided in exchange for a service such as phone numbers shared with a pharmacy for obtaining a receipt or data provided for services related to finding rental accommodation. Other legitimate uses include data processed for performance of state functions, or in the interest of sovereignty, integrity and security of the State, or for providing/issuing benefits, disclosures for fulfilling legal obligation/court order, assistance in a health emergency, disaster or public order situation, and in relation to employees. Grounds such as processing for 'performance of contract' and 'legitimate interests' found in global data protection laws like the EU GDPR are not provided in the 2023 Bill.

iv. Obligations of Data Fiduciary:

Data fiduciaries are responsible for compliance with the 2023 Bill, even for any processing undertaken on their behalf by a data processor and must establish grievance redressal mechanisms and ensure accuracy and completeness of personal data, if it is used to make a decision that affects a user or is to be shared with another data fiduciary. Data fiduciaries must delete data, and cause its data processor to delete it, if the user withdraws their consent or if it is reasonable to assume that the specified purpose is no longer being served, i.e., when the user does not contact the fiduciary for the performance of the purpose or exercise their rights for a specified period. The fiduciary can continue retaining the data if required by law. The 2022 Bill allowed data fiduciaries to retain data for undefined 'business and legal' purposes. Personal data breaches need to be intimated by the data fiduciary to the DPB and each affected data principal in such manner as may be prescribed. Finally, data fiduciaries must report data breaches which retains its broad definition from the 2022 Bill to both the DPB and users. Also, a shaveific exclusion for startups has been added to the current Bill for compliance with the

retention, notice, accuracy, access, and significant data fiduciary obligations. The Government has also self-imposed a deadline of five years within which the Government will have to notify exemptions under the Bill.

v. **Data processors:**

Data fiduciaries can engage data processors under a valid contract. The 2022 Bill appeared to require user consent for engaging a data processor, which has now been done away with. The requirement to set security safeguards falls on data fiduciaries only, unlike the 2022 Bill, which required data processors to also adhere to it. Similarly, data fiduciaries must report data breaches to authorities and users. The liability for not reporting breaches or failing to institute safeguards falls on data fiduciaries only.

vi. **Significant data fiduciaries:**

The government may notify ‘significant data fiduciaries’ (SDFs) by assessing factors like volume and sensitivity of the personal data processed, risk to the rights of the data principals (this was previously harmful to DPs), potential impact on the sovereignty and integrity of India, among other things. The 2022 Bill allowed the government to also consider ‘other factors’, but this has been removed. Like the 2022 Bill, SDFs must:

- appoint a data protection officer (DPO) based in India who will be responsible to the board of directors of the SDF;
- appoint an independent data auditor to evaluate the SDF’s compliance with the Bill;
- undertake data protection impact assessments (DPIA) and periodic audits, as may be prescribed under rules.

vii. **Data of Children and Persons with Disability:**

Verifiable consent of parent/ lawful guardians is required to process personal data of children and persons with disabilities. The DPDP Bill prohibits tracking or behavioural monitoring of, and targeted advertising directed at, children, and processing of children’s data that is likely to cause any detrimental effect on the well-being of a child. Notably, the DPDP Bill provides an enablement for the Central Government to exempt classes of data fiduciaries and processing for certain purposes from the requirement of obtaining parental consent and prohibiting behavioural monitoring. It also empowers the Central Government to exempt data fiduciaries for processing data of children above a certain age but under 18 years in certain situations without the specific obligations attached to processing children’s data.

viii. **Cross-border transfer of personal data:**

Personal data can be transferred by a data fiduciary to any other country or territory for processing, unless the Central Government restricts such transfer to any notified countries. In other words, the DPDP Bill adopts a blacklisting approach which implies that personal data is freely transferable unless the transfer is proposed to be made to a territory or a country which is ‘blacklisted’ by the Central Government. That said, the DPDP Bill clarifies that if there is any other law or sectoral regulation, which provides for a higher degree of protection for, or restriction on, transfer of personal data outside India, whether it is in relation to certain personal data or a class of data fiduciaries, such law or regulation will apply.

ix. **Rights of data principals:**

The DPDP Bill provides certain rights to data principals, which include right to access information about personal data including a summary of personal data being processed, the underlying processing activities and any other information as prescribed, and identities of all data fiduciaries and data principals with whom such data was shared, right to correction and erasure of personal data,right to nominate an individual to exercise rights on their behalf in the event of their death or incapacitation etc. As per the DPDP Bill, the data fiduciaries need to offer readily available grievance redressal mechanisms to data principals. In this regard the data principal must exhaust all options for grievance redressal before approaching the DP Bill. The principals will now have to mandatorily exhaust their option of getting their grievances redressed by the fiduciary in accordance with the procedure provided by such fiduciary before they approach the Board. While a similar right existed in the 2022 bill, there was a time period of 7 days prescribed for the data fiduciaries to respond to the queries otherwise the principal could approach the Board. The prescribed time period is absent in the current draft.

x. Data Protection Board of India:

The DPDP Bill contemplates the establishment of a Data Protection Board ("DPB"), as an enforcement body, which will have powers, inter alia, to direct any urgent remedial or mitigation measures on receipt of intimation regarding a personal data breach, inquire into such breach, impose penalties for non-compliances, inspect any document, summon and enforce attendance of any person etc. An appeal may be preferred against an order of the DPB before the Telecom Disputes Settlement and Appellate Tribunal ("TDSAT") established under the Telecom Regulatory Authority of India Act, 1997 within specified timelines, and in the prescribed manner. An appeal against the order of the TDSAT may be preferred before the Supreme Court of India.

xi. Power to call for information and block access:

The DPDP Bill empowers the Central Government to call for any information from the DPB, the data fiduciary or any intermediary. Where the Central Government receives a reference from the DPB that it has imposed monetary penalties on a data fiduciary in two or more instances and advises blocking of access by public to any information transmitted on any computer resource, direct blocking of access by public to such information on the grounds of public interest. This order has to be passed in writing and after giving the data fiduciary an opportunity to be heard.

xii. Penalties:

- Monetary penalties for breach: Depending on the nature of contravention, monetary penalties up to INR 2.5 billion may be levied by the DPB on the conclusion of an inquiry while the monetary penalty upto INR 2 billion may be levied for non-fulfilment of obligations for children. Several factors may be taken into account to determine the quantum of penalties including – nature, gravity and duration of breach, type of personal data affected, repetitive nature of breach, etc. In the 2022 Bill, the DPB could levy a maximum penalty of INR 500 crore. Now, the government has the power to amend the schedule to increase the penalties but cannot increase to more than double of the existing figures as mentioned in clause 42(1) of the Bill, 2023.

- No Compensation: The DPDP Bill does not provide for payment of compensation to data principals whose personal data has been compromised. This is a deviation from the IT Act which allows affected data principals to claim compensation from a data fiduciary who failed to

implement reasonable security safeguards and as a consequence, have caused wrongful loss or gain. That said, the DPDP Bill casts certain duties on the data principals, amongst others, to furnish only verifiably authentic information, not to impersonate another person while providing personal data for a specified purpose, not to register a false or frivolous grievance or complaint with a data fiduciary or the DPB, etc. For any breach in observance of such duties, the data principals may be penalized up to INR 10,000 whereas any non-compliance by significant data fiduciary may be penalized up to INR 1.5 billion.

xiii. Voluntary Undertaking:

The DPDP Bill also allows the DPB to accept from a person facing action for non-observance under the law a voluntary undertaking, which may include a commitment to take action within a time frame as determined by the DPB, or to refrain from taking specified action, and/ or to publicize the voluntary undertaking. Once such voluntary undertaking is accepted by the DPB, it will constitute a bar on proceedings under the law as far as it relates to the contents of the voluntary undertaking.

xiv. Exemptions:

The DPDP Bill exempts from applicability of all of its provisions, in case of processing by certain notified instrumentalities of State, in the interests of sovereignty and integrity of India, maintenance of public order, etc., and some of its provisions, in case processing is necessary for enforcement of a legal right or claim, merger or amalgamation, investigation or prosecution of an offence, etc. The Bill proposes a staged implementation, with the government notifying the clauses that will take effect periodically. However, no specific timelines are provided in the Bill. The DPDP Bill also provides an enablement for the Central Government to exempt by notification certain data fiduciaries including startups from specified obligations such as notice and retention requirements, those applicable to significant data fiduciaries, etc.

xv. Retention period to be prescribed:

The government will prescribe a standard retention period when the purpose of collecting data will be deemed to be served where the data principal neither approaches the fiduciary for the fulfillment of the specified purpose nor exercises any rights for a specified time frame. This would ensure that data is periodically deleted by the fiduciary and its processors.

xvi. Rules:

The 2023 Bill continues to give the Government broad powers to make subordinate legislation or decisions on any aspect permitted under the Bill, including consent manager, process and format for reporting data breaches, matters related to processing of children's data, significant data fiduciaries and process for impact assessment, among others. It is unclear if the rules will be put to stakeholder consultation. Further, all the sums realized from the Bill will now be credited to the Consolidated Fund of India. However, it still remains to be seen how compensation clauses for data principals whose rights have been violated, turn out to be in the current Bill.

2. **MCA to launch 'Refund form' on V3 portal for availing of refunds against forms filed in V2 Portal:-** ***MCA News; Dated: 01 August 2023***

The MCA has informed the stakeholders that they are launching a refund form on the V3 portal, effective on 04.08.2023. Refund forms on the V2 portal will continue to be available for availing of refunds against forms filed in V2 Portal.

3. **MCA to launch Beta Version of 'View Public Documents' service in V3 w.e.f 16.08.2023:-** ***MCA News; Dated: 01 August 2023***

MCA has informed the stakeholders that the Beta Version of the View Public Documents (VPD) service in V3 shall be launched on 16th August 2023 for V3 documents. Till date, VPD Service was not available on the V3 Portal. Also, the existing V2 VPD Service shall remain available for the stakeholders.

4. **MCA mandates disclosure of transferor company details under Form No. RD-1:-** ***MCA Notification dated 02 August 2023***

Ministry of Corporate Affairs vide Companies (Incorporate) Second Amendment Rules, 2023, substitutes Form No. RD-1 (application to RD for seeking approval certain matters) in the Companies (Incorporation) Rules, 2014, inter alia requiring specific disclosure of whether the purpose of filing Form No. RD-1 was pursuant to notice of approval of the scheme of merger in CAA-11 (Notice of approval of the scheme of merger to be filed by the transferee company to RD). Under the substituted form, the Ministry requires the disclosure of details of the transferor company, inter alia including the number of transferor companies, name and Corporate Identity Number (CIN) transferor company.

https://www.mca.gov.in/bin/dms/getdocument?mds=jYQ0wTBvMQwmTluXHncG0A%253D%253D&type=open

5. **Import curbs on laptops, PCs to come into force from November 1:-** ***DGFT Notification No. 23/2023 dated 03 August 2023***

The Central government has deferred its decision to restrict the import of certain categories of laptops and computers until November 1, allowing companies three-months' time to import these devices.

The Directorate General of Foreign Trade (DGFT) through the notification announced that the restriction on import of certain category of laptops and computers will come into effect from November 01, 2023, onwards. No entity will be allowed to import laptops, computers, and related items without a license after November 01, 2023. Pursuant to the said notification, import consignments can be cleared till October 31, 2023, without a licence for restricted imports and liberal transitional arrangements will be notified for the import of laptops, tablets, all-in-one personal computers, and servers till October 31.

This is a partial reversal from its August 03, 2023 order, which had imposed import restrictions on these devices with immediate effect. The Centre has said the restrictions were imposed for security reasons and also for promoting the Atmanirbhar Bharat clause.

https://www.dgft.gov.in/CP/?opt=notification

6. Last date for submitting claims under Vivad se Vishwas – II Scheme on October 31: *Press Release dated 02 August 2023*

The government has launched the Vivad se Vishwas-2 scheme to address contractual disputes involving the government and government undertakings. This initiative, which was announced in the Union Budget 2023-24, aims to effectively resolve disputes with private parties, reduce the backlog of litigation, and enhance the business environment. Under the scheme, parties involved in domestic contractual disputes where either the Government of India or an organization under its control is a party can submit their claims until 31 October 2023. The government's objective is to resolve approximately 500 cases, involving an estimated value of Rs 1 trillion, through this voluntary settlement scheme. In addition, the scheme encompasses cases with court orders issued by 30 April 2023, and arbitral orders given by 30 January 2023. Depending on the date of the court or arbitral order, eligible contractors may receive settlement amounts up to 85 per cent or 65 per cent of the net amount awarded or upheld.

Further, government entities such as the Oil and Natural Gas Corporation (ONGC) and the National Highways Authority of India (NHAI) have numerous disputes with private contractors, making this scheme particularly relevant for them. The Department of Expenditure has issued comprehensive guidelines, stating that the scheme is applicable to all types of procurement, including goods, services, and works. Additionally, it covers contracts under Public Private Partnership (PPP) arrangements and "earning contracts," where the government receives remuneration for goods, services, rights, etc. To ensure streamlined processing, eligible claims will be handled solely through the government e-marketplace. During the budget speech, Finance Minister Nirmala Sitharaman emphasized that the voluntary settlement scheme would introduce standardized terms for resolving contractual disputes involving the government and government undertakings, especially when arbitral awards are under court challenge. The settlement terms offered will be based on the pendency level of the disputes, providing a graded approach to resolution.

https://pib.gov.in/PressReleasePage.aspx?PRID=1945072

7. SEBI issues Master Circular on 'Alternative Investment Funds':- *Master Circular No. SEBI/HO/AFD/PoD1/P/CIR/2023/130, Dated: 31 July 2023*

The SEBI had issued multiple circulars, directions, and operating instructions for Alternative Investment Funds (AIFs) on a regular basis for necessary compliance. In order to ensure that all market participants find all provisions at one place, Master Circular on AIFs has been issued. This Master Circular is a compilation of all the existing circulars, and directions issued by SEBI up to 31.03.2023 for AIFs.

8. SEBI directs MIIs to make joint efforts to develop a common 'Online Dispute Resolution Portal':- *Circular No. SEBI/HO/OIAE/OIAE_IAD-1/P/CIR/2023/131, Dated: 31 July 2023*

SEBI has directed market infrastructure institutions (MIIs) to set up & operate a common Online Dispute Resolution (ODR) portal. MIIs i.e. stock exchanges, depositories and clearing corporations will have to make joint efforts to develop and operationalize the ODR Platform. All listed companies, specified intermediaries and regulated entities collectively called market participants in the securities market shall enroll on the ODR Portal.

The enrolment process shall also include executing electronic terms/agreements with MIIs and ODR Institutions. The facility to register market participants into the ODR portal by utilising the credentials used for the SEBI SCORES portal/SEBI Intermediary portal may also be provided. All MIIs and ODR Institutions must ensure that the number of arbitrators and conciliators on the panel of the ODR Institutions is commensurate with the number of references of complaints/disputes received so that a conciliator/arbitrator/panel of arbitrators handle a reasonable number of references simultaneously and that all references are disposed of within the prescribed time.

Disputes between investors and listed companies, specified intermediaries and regulated entities would come under the ambit of ODR. With regard to the initiation of the dispute resolution process, an investor/client is required to first take up his/her grievance with the market participant by lodging a complaint directly with the concerned market participant. If the grievance is not redressed satisfactorily, the investor/client may escalate the same through the SCORES portal.

After exhausting all available options for the resolution of the grievance, if the investor is still not satisfied with the outcome, he/she can initiate dispute resolution through the ODR Portal. Alternatively, the investor/client can initiate dispute resolution through the ODR Portal if the grievance lodged with the concerned market participant was not satisfactorily resolved or at any stage of the subsequent escalations.

Moreover, concerned market participants can also initiate dispute resolution through the ODR platform after having given due notice of at least 15 calendar days to the investor/client for the resolution of the dispute which has not been satisfactorily resolved between them.

Further, the ODR Portal must have the necessary features and facilities to enrol the investor/client and the market participant and to file the complaint/dispute and to upload any documents or papers pertaining thereto. It must also have a facility to provide status updates on the complaint/dispute which would be obtained from the ODR Institutions. The provisions of this circular will be implemented in phases –

The first phase shall include –

- Development of the ODR Portal, empanelment of ODR Institutions by the MIIs, and empanelment of conciliators and arbitrators by such ODR Institutions on or before 01 Aug 23.
- Registration of Trading Members and Depository Participants on the ODR Portal by 15 Aug 23
- Commencement of registering of complaints/disputes against brokers and depository participants and their resolution on and from August 16, 2023.

The second phase shall include –

- Registration of all other Market Participants on the ODR Portal by September 15, 2023
- Commencement of registering of complaints/disputes against all other Market Participants and their resolution on and from September 16, 2023.

9. **SEBI reduces time limit for making overseas investments by AIFs and VCFs from 6 months to 4 months:-** ***Circular No. SEBI/HO/AFD/PoD/CIR/P/2023/137, Dated: 04 August 2023***

Earlier, Venture Capital Funds (VCFs) and Alternative Investment Funds (AIFs) were provided with a time limit of 6 months for making allocated investments in offshore venture capital undertakings, starting from the date of obtaining prior approval from SEBI.

Based on recommendations of the Alternative Investments Policy Advisory Committee, SEBI has now decided to reduce the aforesaid time limit for making overseas investments by AIFs/VCFs from 6 months to 4 months. The aim of the amendment is to optimize the utilization of allocated limits, ensuring efficient use.

The reduction of the time limit for making overseas investments by AIFs/VCFs from 6 months to 4 months is expected to expedite investment decisions, foster increased competition, drive efficient capital deployment, and necessitate streamlined processes for risk management and documentation.

10. **SEBI permits 'Online Dispute Resolution' for IBC disputes, including moratorium and liquidation cases:-** ***Circular No. SEBI/HO/OIAE/OIAE_IAD-1/P/CIR/2023/135, Dated: 04 August 2023***

Earlier, SEBI vide Circular dated July 31, 2023, directed market infrastructure institutions (MIIs) to establish and operate a common Online Dispute Resolution (ODR) portal. Now, SEBI has introduced some additional conditions for initiating dispute resolution through the Online Dispute Resolution (ODR) Portal.

These new conditions allow for dispute resolution to be initiated even when the complaint/dispute falls under certain circumstances related to the Insolvency and Bankruptcy Code.

11. **SEBI allows 'Offer for Sale' for units of private listed InvITs via a stock exchange mechanism:-** ***Circular No. SEBI/HO/MRD/MRD-PoD-3/P/CIR/2023/134, Dated: 03 August 2023***

Earlier, SEBI vide circular no. dated January 10, 2023 specified the framework for 'Offer for Sale' (OFS) of shares including units of REITs and InvITs via a stock exchange mechanism. Based on feedback received from market participants, SEBI has allowed an Offer for sale for units of private listed InvITs via stock exchange mechanism. In the case of OFS for listed InvITs, the trading lot will be the same as the trading lot prescribed for such InvITs in the secondary market. The provisions shall be effective immediately.

12. **SEBI specifies standardized 'Terms of Reference' for audit of firm-level performance data of Portfolio Managers:-** ***Circular No. SEBI/HO/IMD/IMD-PoD-1/P/CIR/2023/133, Dated: 02 August 2023***

Earlier, SEBI vide Master Circular dated March 20, 2023, mandated Portfolio Managers to submit audit reports on firm-level performance data to SEBI within 60 days from the end of each FY. As per

the aforesaid requirement, portfolio managers are obligated to consider all clients' portfolios managed (i.e. clients of both discretionary and non-discretionary portfolio management services) for the purpose of audit of firm-level performance data.

In order to bring uniformity, the Association of Portfolio Managers in India (APMI), in consultation with SEBI, has specified standardized Terms of Reference (ToR) for the aforesaid audit of firm-level performance data. The standard ToR shall include the requirement for portfolio managers to consider clients' portfolios under all services for the purpose of audit of firm-level performance data.

However, the performance of advisory clients can be excluded only if the performance of such clients, either individually or cumulatively, is not reported or published in any marketing material or website. Portfolio managers are required to submit the confirmation of compliance with the requirement of an annual audit of firm-level performance data in line with the standard ToR specified by APMI, to SEBI within 60 days from the end of each financial year.

The report on confirmation of compliance to SEBI needs to be certified by directors/partners of the portfolio manager or by persons authorised by the Board of Directors/partners of the portfolio manager. Further, the standard terms specified by APMI shall be applicable w.e.f 01.10.2023 and are required to be mandatorily followed by all portfolio managers for the purpose of the annual audit of firm-level performance data.

This move by SEBI to mandate portfolio managers in India to submit audit reports on firm-level performance data and follow standardised terms marks a significant step towards enhancing transparency, accountability and uniformity in the portfolio management industry. The inclusion of clients' portfolios and the requirement for timely compliance reporting will likely promote investor trust and reinforce market credibility.

13. SEBI issues Master Circular for 'Commodity Derivatives Segment':- *Master Circular No. SEBI/HO/MRD/MRD-PoD-1/P/CIR/2023/136, Dated: 04.August 2023*

The SEBI had issued multiple circulars, directions, and operating instructions for Commodity Derivatives Market or Segment on a regular basis for necessary compliance. In order to ensure that all market participants find all provisions at one place, Master Circular on Commodity Derivatives Market has been issued. This Master Circular is a compilation of all the existing circulars, and directions issued by SEBI up to 31.03.2023 for the Commodity Derivatives Market.

14. Indian President grants assent to Digital Personal Data Protection Bill, 2023 to get it enacted as law

The President of India Droupadi Murmu on Friday granted assent to the Digital Personal Data Protection Bill, 2023 (DPDP Bill) after it was passed by both the houses of the parliament. The DPDP bill was passed unanimously by the Rajya Sabha on August 9 while the Lok Sabha passed the bill on August 7 by voice-vote even as opposition leaders opposed it.

The Bill aims to manage digital personal data by balancing individuals' right to safeguard their data with the need to lawfully process such data for relevant purposes.

"A Bill to provide for the processing of digital personal data in a manner that recognises both the right of individuals to protect their personal data and the need to process such personal data for lawful purposes and for matters connected therewith or incidental thereto," the Bill's text says.

The Bill applies to digital personal data processing in India, including online and digitized offline data. It extends to processing outside India for offering Indian goods or services.

Personal data needs consent for lawful processing, with exceptions like voluntary sharing or state-related processing. Data fiduciaries will bear the responsibility of maintaining data accuracy, ensuring data security and deleting data once its intended purpose has been fulfilled. The Bill bestows certain rights upon individuals, encompassing the right to access information, request data correction and erasure and seek resolution for grievances. Under certain circumstances, government agencies may be exempted by the Central government from adhering to the provisions of the Bill. These circumstances typically revolve around specific grounds, such as safeguarding the state's security, maintaining public order and preventing offences.

To oversee compliance with the Bill's provisions, the Central government will establish the Data Protection Board of India, which will be tasked with adjudicating cases of non-compliance. Concerns have been raised regarding the potential violation of the fundamental right to privacy due to exemptions granted for data processing by the State, particularly under the grounds of national security. These exemptions could potentially result in data collection, processing, and retention beyond what is deemed necessary.

It has also been pointed out that the Bill does not regulate risks of harms arising from processing of personal data. Notably, the Bill is the first law in India to use she/her pronouns while referring to all genders. The Bill's "Interpretation" provision clarifies that the pronouns “her” and “she” in the proposed legislation have been used for an individual, irrespective of gender.

15. SEBI floats Consultation Paper proposing to amend framework for borrowings by Large Corporates:- *SEBI Consultation Paper dated 10 August 2023*

SEBI issues Consultation Paper on review of framework for borrowings by Large Corporates (LC) proposing changes to the existing framework for mandatory borrowings by LCs and solicits public comments in this regard by August 31, 2023. While perusing the extant regulatory provisions that define an LC as all listed entities (except for Scheduled Commercial Banks) which as on last day of the FY inter alia having an outstanding long term borrowing of Rs. 100 cr. or above, Regulator underscores industry’s suggestion to increase the minimum threshold of Rs. 100 cr. w.r.t. long-term outstanding borrowing for being brought under the framework of LC and accordingly, proposes to increase the threshold to Rs. 500 cr. or above. SEBI states that under the extant regulatory provisions for LCs, a listed entity fulfilling the criteria of an LC shall raise not less than 25% of its incremental borrowings, during the FY subsequent to the FY in which it is identified as an LC, Regulator suggests to introduce incentives for achieving surplus in the actual borrowings when compared to specified level of borrowings viz. 25%, by way of issuance of debt securities.

In light of the present provision for penalty of 0.2% of the shortfall in the borrowed amount in the event of non-compliance by the LC w.r.t. shortfall in the requisite borrowing (the actual borrowing through debt securities is less than 25% of incremental borrowings), Regulator recommends to remove the provision for levying penalty and further suggests that in case of shortfall or surplus in

the actual borrowings when compared to the specified level of borrowings by way of issuance of debt securities, additional or lower contribution respectively to the core Settlement Guarantee Fund of the Limited Purpose Clearing Corporation shall be made by the LC. Lastly, w.r.t. the current framework that requires credit rating as a criterion for identifying an entity as LC, SEBI proposes that the requirement of rating as a criterion for identifying any entity as LC may be removed.

16. SEBI reduces time limit for AIFs, VCFs to make overseas investments:- *SEBI circular no. SEBI/HO/AFD/PoD/CIR/P/2023/137 dated 04 Aug 2023*

The Securities and Exchange Board of India (SEBI) has reduced the validity period of approval granted to Alternative Investment Funds (AIFs) and Venture Capital Funds (VCFs) for making overseas investments. The new validity period is four months, down from the previous six months. According to the updated rule, if AIFs and VCFs do not utilize their allocated investment limits within the reduced four-month timeframe, SEBI has the authority to allocate the unutilized limits to other AIFs and VCFs.

This change was made based on a recommendation from the Alternative Investments Policy Advisory Committee. Previously, AIFs and VCFs had six months from the date of prior approval from SEBI to make investments in offshore venture capital undertakings. With this reduction, the aim is to ensure more efficient utilization of allocated time limits and to make any unutilized limits available to the AIF industry more efficiently.

17. FPIs to provide information in relation to persons with any ownership, economic interest:- *SEBI Notification No. SEBI/LAD-NRO/GN/2023/143, dated 10 August 2023*

SEBI has mandated enhanced disclosures for a certain class of Foreign Portfolio Investors (FPIs), including furnishing details about ownership and economic interests. In addition, the regulator has tweaked rules pertaining to the eligibility criteria for FPIs.

The information or documents will be provided in the manner specified by the Securities and Exchange Board of India. Further, applicants with investors contributing 25% or more in the corpus that are mentioned in the Sanctions List by the United Nations (UN) Security Council are ineligible for registration as FPIs, the regulator had said in June.

The Prevention of Money Laundering (PML) Rules threshold requirements for identifying Beneficial Owners (BO) in FPIs were amended in March. Subsequently, the threshold is 10% for companies and trusts, and 15% for partnerships and unincorporated associations or bodies of individuals. BOs are the natural persons who ultimately own or control an FPI and are identified in accordance with the PML Rules. The rules have been amended by SEBI to align the eligibility criteria for FPIs with the one prescribed under the PML rules.

In its notification, SEBI has tweaked rules pertaining to the eligibility criteria for FPIs as it has substituted the 25% or more clause with more than the threshold prescribed under the Prevention of Money Laundering (Maintenance of Records) Rules, 2005. The rules pertain to entities that are mentioned in the Sanctions List notified by the UN Security Council. Meanwhile, SEBI has amended settlement proceedings rules. "In case of specified proceedings which may be initiated or are proposed to be initiated, the Panel of Whole Time Members shall dispose of such proceedings on the basis of the approved settlement terms," the market regulator said in a separate notification.

18. SEBI settlements proceedings to be disposed of by panel of Whole Time Members:- ***SEBI notification No. SEBI/LAD-NRO/GN/2023/142, dated 10 August 2023***

SEBI has introduced an amendment to the Securities and Exchange Board of India (Settlement Proceedings) Regulations, 2018, via the Securities and Exchange Board of India (Settlement Proceedings) (Second Amendment) Regulations, 2023. As per the notification, Settlement Proceedings will now be overseen and managed by a Panel of Whole Time Members. This amendment marks a significant shift in how settlement proceedings are conducted within SEBI's regulatory framework. This notification shall be deemed to have come into force from January 17, 2023.

The authority to enact this amendment was derived from various sections within different acts. The Securities and Exchange Board of India (SEBI) has exercised its powers under Section 15JB of the Securities and Exchange Board of India Act, 1992, Section 23JA of the Securities Contracts (Regulation) Act, 1956, and Section 19-IA of the Depositories Act, 1996. This amendment has been introduced in conjunction with Section 30 of the Securities and Exchange Board of India Act, 1992, Section 31 of the Securities Contracts (Regulation) Act, 1956, and Section 25 of the Depositories Act, 1996.The said notification mentions:

"In the Securities and Exchange Board of India (Settlement Proceedings) Regulations, 2018, in regulation 23, after sub-regulation 2, following sub-regulation shall be inserted-

(2A) In case of specified proceedings which may be initiated or are proposed to be initiated, the Panel of Whole Time Members shall dispose of such proceedings on the basis of the approved settlement terms."

The Securities and Exchange Board of India (Settlement Proceedings) Regulations, 2018 were published in the Gazette of India on 30.11.2018 vide Notification No. SEBI/LAD-NRO/GN/2018/48, with effect from 01.01.2019. It was subsequently amended in 2020, 2022 and 2023.

19. SEBI reduces IPO timeline to T+3 days w.e.f. December 1:- ***SEBI circular no. SEBI/HO/CFD/TPD1/CIR/P/2023/140 dated 09 August 2023.***

SEBI has taken significant steps to expedite the listing process of specified securities following the closure of a public issue. The current waiting period of 6 working days (T+6 days, with "T" denoting the issue's closing date) will be reduced to just 3 working days (T+3). These revised T+3 listing timelines will be clearly disclosed in the Offer Document of public issues. To ensure transparency and adherence to these timelines, SEBI has directed that the submission deadline for applications, allotment of securities, unblocking of application funds, and the listing process must be prominently featured in pre-issue, issue opening, and issue closing advertisements issued by the Issuer for public issues, in accordance with the SEBI ICDR Regulations.

For applications processed through Direct Bank Application Supported by Blocked Amount (ASBA) and Syndicate ASBA, SEBI mandates that Self Certified Syndicate Banks (SCSBs) must verify that the PAN provided in the application matches the PAN associated with the applicant's bank account before blocking ASBA application funds. Additionally, Registrars to an Issue will be responsible for third-party verification of applications by cross-referencing the PAN details available in the demat account with those in the bank account of the applicant. In cases where a mismatch occurs, such applications will be considered invalid for the purpose of finalizing the allotment basis. This circular's applicability is outlined as follows: It will be voluntary for public issues opening on or after

September 1, 2023, and mandatory for public issues opening on or after December 1, 2023. These measures aim to enhance efficiency and accuracy in the public issue process while maintaining regulatory integrity, aligning with SEBI's commitment to ensuring a fair and transparent capital market ecosystem.

20. SEBI streamlines the procedure of seeking prior approval for change in control:- *SEBI circular No. SEBI/HO/CFD/PoD-2/P/CIR/2023/141 dated 10 Aug 2023*

SEBI issued a circular outlining the procedure for seeking prior approval for changes in control of certain intermediaries, including Merchant Bankers and Bankers to an Issue. The provisions of this circular become applicable from September 1, 2023. To streamline the process of obtaining approval for such changes, SEBI has specified the following procedure:

- Intermediaries (Merchant Bankers and Bankers to an Issue) seeking prior approval for changes in control must submit an online application through the SEBI Intermediary Portal (https://siportal.sebi.gov.in).

- The online application must include detailed information and declarations regarding the intermediary, the acquiring entity/person, and directors/partners of the acquiring entity/person. This information includes:

  - Current and proposed shareholding pattern of the intermediary.
  - Past applications to SEBI for registration and details if not granted.
  - Any actions initiated or taken under relevant regulations and the status thereof, along with corrective actions.
  - Confirmation that the acquiring entity/person will honor past liabilities/obligations of the intermediary.
  - Status of pending investor complaints and steps taken for resolution.
  - Details of any litigation.
  - Confirmation of payment of all fees due to SEBI.
  - Declaration cum undertaking (Annexure A) of the intermediary and acquiring entity/person regarding board changes, informing investors about the change, and compliance with 'fit and proper person' criteria.
  - For registered intermediaries, approval/NOC from relevant stock exchanges/clearing corporations/depositories.

- SEBI's prior approval will be valid for six months from the date of approval, during which the intermediary must apply for fresh registration reflecting the change in control.

- For matters involving scheme(s) of arrangement requiring National Company Law Tribunal (NCLT) approval under the Companies Act, 2013, the following steps are outlined:

  - Application for SEBI approval should precede the NCLT filing.
  - Upon satisfying regulatory requirements, SEBI grants in-principal approval, valid for three months.
  - Within 15 days of the NCLT order, the intermediary must submit an online application to SEBI along with specified documents for final approval.

21. SEBI publishes Master Circular for Commodity Derivatives Segment, mandates use of Unique Client Code:- ***Master Circular No. SEBI/HO/MRD/MRD-PoD-1/P/CIR/2023/136 dated 04 August 2023***

SEBI issues Master Circular for Commodity Derivatives Segment inter alia specifying the timings for trading agricultural and agri-processed commodities, wherein, the trade start time is at 9 AM and the trade end time is at 9 PM. Market Regulator mandates members of the stock exchanges to use Unique Client Code (UCC) for all clients, and stipulates that the stock exchanges shall not allow execution of trades without uploading of the UCC details by the members of the stock exchange. SEBI permits stock exchanges to introduce Liquidity Enhancement Scheme in commodity derivatives segment subject to the following:

- the scheme shall have the prior approval of the board of directors of the stock exchange and its implementation and outcome shall be monitored by them at quarterly intervals,
- the scheme shall be objective, transparent, non-discretionary and non-discriminatory,
- the effectiveness of the scheme shall be reviewed by the exchange every 6 months and the exchange shall submit half-yearly reports to SEBI.

Further, the regulator requires stock exchanges to adopt risk management framework compliant with the Committee on Payments and Market Infrastructures- International Organization of Securities Commissions Principles for Financial Market Infrastructures including the margining model and quantum of initial margins.

SEBI lays down that for any dispute between the member and the client relating to or arising out of the transactions in stock exchange, which is of civil nature, the complainant / member shall first refer to the complaint to the Investor Grievance Redressal Committee and/ or to arbitration mechanism provided by the stock exchange before resorting to other remedies available under any other law.

22. SEBI releases FAQ on SEBI-registered Investment Advisors:- ***FAQs released on 07 August 2023***

SEBI issues FAQ on SEBI-registered Investment Advisors (IA) inter alia aiming to guide market participants on the IA Regulations, while highlighting that SEBI notified the IA Regulations in 2013 which specify the conditions for registration, certification, capital adequacy, risk profiling and sustainability, disclosures to be made etc., pertaining to IAs.

The FAQs underscore that the term “investment advisor” is defined in Reg. 2(2)(m) of the IA Regulations and means any person, who for consideration, is engaged in the business of providing investment advice to clients or other persons or group of persons and includes any person who holds out himself as an investment advisor, by whatever name called. Specifies that a non-individual person other than a bank or NBFC, which proposes to undertake investment advisory services in addition to its existing activities including but not limited to distribution services, is required to apply for certificate of registration as an IA through a separately identifiable department or division.

Notable, SEBI clarifies that members of ICSI, ICAI, ICWAI and ASI who provide investment advice to their clients incidental to their professional services are exempted from seeking certificate of registration under the IA Regulations, however, stipulates that if members of ICSI, ICAI, ICWAI and ASI are engaged in providing investment advisory services in securities as an activity or business to

clients or investors which is not incidental to their main activity, then they are required to get registration as an IA.

Regulator states that an IA may provide implementation services to advisory clients in securities market and specifies that SEBI registered IAs can provide investment advisory services to Foreign Portfolio Investors.

23. SEBI puts in place a mechanism to remedy erroneous transfers in Demat Accounts:- SEBI *Circular No. SEBI/HO/MIRSD/MIRSD-PoD-1/P/CIR/2023/139 dated 08 August 2023*

Earlier, the SEBI vide circular dated May 17, 2023, titled "Master Circular for Stock Brokers" has specified the following:

"35.11 All off-market transfer of securities shall be permitted by the Depositories only by execution of Physical Delivery Instruction Slip (DIS) duly signed by the client himself or by way of electronic DIS. The Depositories shall also put in place a system of obtaining client's consent through One Time Password (OTP) for such off market transfer of securities from client's demat account."

The SEBI has received representations from depositories regarding the challenges faced w.r.t obtaining OTP in case of reversal of erroneous transfers.

Considering the challenges involved and in order to facilitate the reversal of erroneous transfers, it is decided that a well-balanced and operational mechanism for exemption from OTP may be provided for reversal of such erroneous transfers in the demat accounts.

SEBI has now prescribed that depositories shall constitute an internal & joint committee for examining the intra and inter depository erroneous transfers. Such committee shall be headed by a Public Interest Director of Depository and have a minimum of 3 members including the head. The depositories shall place before the committee all such instances of erroneous transfers pending for reversal. Further, depositories shall provide a facility to the investors & DPs to add and verify beneficiaries before execution of off-market transfers from 01-01-2024 onwards. The circular shall be effective immediately.

24. SEBI proposes formation of an 'Industry Standards Forum' to facilitate ease of implementation of regulations:- *Press Release No.16/2023, Dated: 07 August 2023*

In line with SEBI's commitment to facilitate capital formation in the economy and ease of doing business, SEBI has proposed the formation of an Industry Standards Forum, to be formed by Industry Associations and chaired by an Industry leader under the aegis of the Stock Exchanges.

The industry associations have conveyed that they would like to take up more than one pilot and the following have emerged as priority areas to start with:

- Rumour Verification requirements
- Disclosure requirements under Regulations 30 and 30A of LODR Regulations
- BRSR Core / ESG assurance requirements
- Structured Digital Database requirements under PIT Regulations

The Forum would formulate standards for the implementation of specific regulations & circulars. Further, the industry associations have indicated a timeline of three to four months to design standards for the effective implementation of regulations.

Further, the standards would be designed at a level of detail to demonstrate compliance with the said regulations and circulars.

25. RBI launches pilot project for 'Public Tech Platform' enabling frictionless credit processing:- *Press Release 2023-2024/750 dated 14 August 2023*

The Reserve Bank Innovation Hub (RBIH), a wholly owned subsidiary of the RBI, is launching a pilot project for the Public Tech Platform for Frictionless Credit starting 17th August 2023 which aims to facilitate the delivery of frictionless credit by facilitating a seamless flow of digital information to lenders. The end-to-end digital platform will have an open architecture, APIs, and standards, allowing all financial sector players to connect seamlessly in a 'plug and play' model. The pilot project will focus on products like Kisan Credit Card loans of up to Rs 1.6 lakh per borrower, dairy loans, MSME loans, personal loans, and home loans through participating banks.

The platform will enable linkage with services like Aadhaar e-KYC, land records from onboarded state governments, satellite data, PAN validation, transliteration, Aadhaar e-signing, account aggregation by account aggregators, milk pouring data from select dairy cooperatives, and house and property search data. The initiative aims to reshape India's credit landscape by fostering seamless connections among stakeholders through an open digital platform, reducing costs, and facilitating faster disbursements, thereby advancing financial inclusivity.

26. RBI launches centralized web portal "UDGAM" for searching unclaimed deposits:- *Press Release 2023-2024/765 dated 17 August 2023*

RBI has launched a centralized web portal called "UDGAM" (Unclaimed Deposits Gateway to Access Information) to help the public identify their unclaimed deposits across multiple banks. RBI emphasizes that the portal will enable the public to claim deposit amounts or make deposit accounts operational at their respective banks. and informs that Reserve Bank Information Technology Pvt. Ltd. (ReBIT), Indian Financial Technology & Allied Services (IFTAS), and participating banks have collaborated on developing the portal.

Users can access details of their unclaimed deposits for seven banks (State Bank of India, Punjab National Bank, Central Bank of India, Dhanlaxmi Bank Ltd., South Indian Bank Ltd., DBS Bank India Ltd., and Citibank N.A.) at present, with search facilities for remaining banks to be made available in a phased manner by 15th October 2023.

27. FRC consults on Revisions to Ethical Standard for Auditors:- *FRC Ethical Standard*, dated *August, 2023*

The FRC's Ethical Standard (ES) sets fundamental principles, supporting ethical provisions, and general requirements for the conduct of audits and other public interest assurance engagements. In 2016 the ES was revised to implement more robust requirements for the auditors of Public Interest

Entities (PIEs) as a result of the 2016 EU Audit Regulation, and to merge the previously separate ethical rules for auditors and reporting accountants. The 2019 version of the standard is a product of our post implementation review (PIR) of the 2016 changes.

The context for our 2018/19 review was one of significantly increased public and political concern about audit, and increased scrutiny of the non-audit related fees auditors earn from the companies they audit. During the course of our review several firms made voluntary public commitments to the BEIS Select Committee to limit the provision of non-audit services other than those that were 'essential' to the FTSE 350 companies they audit in order to address perceptions of conflicts of interest. Responses to our consultations and wider stakeholder outreach in 2018 and 2019 were generally supportive of further restricting the types of non-audit services which external auditors can provide, alongside the existing fee cap for PIE auditors. Given the experience of corporate and audit failures outside the world of PIEs, there was also strong support for stronger independence rules for the auditors of other types of entities, which although not PIEs themselves, are of significant public interest.

As a result, our revision of the Ethical Standard focussed on:

- Enhancing the role and status of Ethics Partners within the firms, as well as the requirement to report to the FRC where there have been ethical breaches

- Strengthening the *Objective, Reasonable and Informed Third Party* (ORTIP) test, where auditors are required to consider possible external perception of threats to independence

- For PIE auditors, moving from a list of prohibited non-audit services to a more narrowly defined list of permissible services that are audit related or required by law and regulation

- The development of a new defined term of *Other Entity of Public Interest* (OEPI) to be applied to entities which do not meet the PIE definition, but where the level of public interest is heightened. Auditors of those entities will only be able to provide non-audit services from the permitted services list

- Introducing additional prohibitions applying to non-audit services to all audited entities. These were informed, in part, by stricter rules introduced into the IESBA Code (for example in respect of recruitment services and playing a 'management role' in an entity).

The measures to enhance the role and status of Ethics Partners are central to our overall objective, which is to encourage the firms to deal with ethical matters in a more holistic way, and to provide a focal point for the practical application of the ethical principles. It is the day-to-day application of principles by those firms that is critical to the achievement of ethical outcomes in the public interest. Since it would be impossible to anticipate every possible set of circumstances, and therefore to write an Ethical Standard with a complete set of 'rules' covering every possible situation, a deep commitment to and understanding of the fundamental principles of Integrity, Objectivity and Independence is of paramount importance.

28. Supreme Court launches 'Handbook on Combating Gender Stereotypes':- ***dated 16 August 2023***

The Apex Court has launched a handbook that contains a glossary of gender unjust terms and suggests alternative words and phrases which may be used. The 30-page Handbook on Combating Gender Stereotypes aims to free the judiciary and the legal community from the mechanical application of gender stereotypical language in judgments, orders, and court pleadings.

The handbook on Combating Gender Stereotypes specifically upheld the importance of avoiding stereotypes by judges. It elucidates that "With respect to the judiciary, it is vital that judges not only avoid relying on stereotypes in their decision making and writing, but also actively challenge and dispel harmful stereotypes. If harmful stereotypes are relied on by judges, it can lead to a distortion of the objective and impartial application of the law". The Handbook on Combating Gender Stereotypes released by Supreme Court helps with the following:

- Identifying language that promotes gender stereotypes and offering alternative words and phrases;
- Identifying common reasoning patterns that are based on gender stereotypes (particularly about women) and discussing why they are incorrect;
- Highlighting binding decisions of the Supreme Court of India that have rejected these stereotypes and can be utilised by judges to dispel gender stereotypes.

The said handbook on Combating Gender Stereotypes defines stereotypes as "a set idea that people have about what someone or something is like, especially an idea that is wrong", gives a glimpse of how stereotypes function, and their impact on judicial decision making. It categorizes the different types of gender stereotypes as: Stereotypes based on the so-called 'inherent characteristics' of women, Stereotypes based on gender roles and stereotypes concerning sex and sexual violence.

29. RBI permits 'Infrastructure Debt Funds-NBFCs' to raise funds through loan route under ECBs:- ***Circular No. RBI/2023-24/54 DoR.SIG.FIN.REC.31/03.10.001/2023-24, Dated 18.August 2023***

With a view to harmonising the regulations governing the financing of the infrastructure sector by NBFCs, RBI has issued revised guidelines on IDF-NBFCS. As per revised guidelines, the exposure limits for IDF-NBFCs shall be 30% of their Tier 1 capital for a single borrower/ party and 50% of their Tier 1 capital for a single group of borrowers/ parties. Further, in addition to the bond route, IDF-NBFCs can also raise funds through loan routes under ECBs.

Further, Under the earlier guidelines, an IDF-NBFC was required to be sponsored by a bank or an NBFC-Infrastructure Finance Company (NBFC-IFC). The requirement of a sponsor for an IDF-NBFC has now been withdrawn and shareholders of IDF-NBFCs shall be subjected to scrutiny as applicable to other NBFCs, including NBFC-IFCs.

All other regulatory norms including income recognition, asset classification and provisioning norms applicable to NBFC-ICCs shall be applicable to IDF-NBFCs.

30. RBI directs banks to allow flexibility to borrowers to change loan tenure/EMIs and to switch to a fixed rate of interest:- *Circular No. RBI/2023-24/55 DOR.MCS.REC.32/01.01.003/2023-24, Dated 18 August 2023*

Earlier, the RBI issued various guidelines pertaining to Fair Practices Code for lenders have been issued to SCBs, NBFCs and HFCs, respectively. After receiving several consumer grievances related to the elongation of loan tenor and/or increase in EMI amount, without proper communication, the RBI has now advised Regulated Entities (REs) to put in place an appropriate policy framework. Some of the key takeaways are:

- REs shall clearly communicate to the borrowers about the possible impact of a change in the benchmark interest rate on the loan leading to changes in EMI and/or tenor or both.
- Any increase in the EMI/ tenor or both on account of the above shall be communicated to the borrower immediately through appropriate channels.
- At the time of reset of interest rates, REs shall provide the option to the borrowers to switch over to a fixed rate as per their Board approved policy.
- The borrowers shall also be given the choice to opt for enhancement in EMI or elongation of tenor or for a combination of both options; and, to prepay, either in part or in full, at any point during the tenor of the loan.
- All applicable charges for switching of loans from floating to fixed rate and any other service charges/ administrative costs incidental to the exercise of the above options shall be transparently disclosed in the sanction letter.
- REs shall ensure that the elongation of tenor in case of a floating rate loan does not result in negative amortisation.

REs shall ensure that the above instructions are extended to the existing as well as new loans suitably by December 31, 2023. All existing borrowers shall be sent a communication, through appropriate channels, intimating the options available to them.

31. Person resident in India can maintain accounts in foreign currencies with Banking Unit:- IFSCA *Circular dated 14 August 2023*

IFSCA notifies the consolidated IFSCA (Banking) Regulations, 2020, inter alia states that Indian Banks and Foreign Banks shall require licence or permission from the Authority to set up a Banking Unit in an IFSC.

Highlighting that the Authority may grant licence or permission to the applicant subject to such conditions as provided under these regulations or such other conditions as it may deem fit, after considering an application for setting up a Banking Unit, IFSCA specifies that where the Authority is of the opinion that licence or permission cannot be granted, it may give 30 days' time to the applicant, setting out the grounds based on which it cannot grant licence or permission, to enable the applicant to make written submissions, if any.

Further, IFSCA underscores that Banking Units may open accounts in the specified foreign currencies for individuals and corporate or institutional entities, resident in India or outside India, subject to such conditions as may be specified by the Authority, and permits individuals who are

person resident in India, to open, hold and maintain accounts in the specified foreign currencies, with a Banking Unit, for undertaking transactions connected with or arising from any permissible current or capital account transaction or a combination of both as specified in the Liberalised Remittance Scheme (LRS) of the Reserve Bank. Barring cash transactions in foreign currency accounts, IFSCA outlines that a Banking Unit shall follow the Anti Money Laundering, Counter-Terrorist Financing and Know Your Customer Guidelines issued by the Authority.

If the Parent Bank applicant or the Banking Unit fail to fulfil the conditions subject to which the licence under Reg. 3 has been granted, the Authority may withdraw the licence, after giving an opportunity of 30 days to the Banking Unit to make its submissions, if any.

https://ifsca.gov.in/Viewer?Path=Document%2FLegal%2Fconsolidated-ifsca-banking-regulations-as-on-july-14-202314082023111415.pdf&Title=Consolidated%20IFSCA%20%28Banking%29%20Regulations&Date=14%2F08%2F2023

32. SEBI said clients can open account with intermediaries, transact in market post KYC-process completion:- *Circular No. SEBI/HO/MIRSD/FATF/P/CIR/2023/0144 dated 11 August 2023*

In the interest of investors and for ease of transacting in securities market, SEBI allows clients to open an account with intermediaries and transact in securities market as soon as the KYC process is completed. Thereafter, as a part of risk management framework, the KYC Registration Agencies (KRAs) shall verify the following attributes of records of all clients within 2 days of receipt of KYC records –

(i) PAN (including PAN Aadhaar linkage),

(ii) Name, and

(iii) Address.

Further, underscoring that in case of PAN exempt records, the other attributes i.e. name, address, mobile number and e-mail id shall be verified by the KRAs, SEBI highlights that the records of those clients in respect of which all attributes are verified by KRAs with official databases (such as Income Tax Department database on PAN, Aadhaar XML/Digilocker/ M-Aadhaar) shall be considered as 'Validated Records'.

Elucidating that validated records shall be allowed portability i.e. the client need not undergo the KYC process again when he approaches different intermediary in securities market and the intermediary shall fetch the validated records from the KRA database, SEBI outlines that the systems of intermediaries and the KRAs shall be integrated to facilitate seamless movement of documents/information to and from the intermediary to the KRAs for verification/ validation of attributes under risk management framework.

KRAs shall develop systems/mechanisms, in coordination with each other, and shall follow uniform internal guidelines/standards detailing aspects of identification of attributes and procedures for verification/ validation, in consultation with SEBI.

https://www.sebi.gov.in/legal/circulars/aug-2023/simplification-of-kyc-process-and-rationalisation-of-risk-management-framework-at-kras_75250.html

33. SEBI releases Master Circular for online dispute resolution in securities market:- *SEBI Master Circular No. SEBI/HO/OIAE/OIAE _IAD-1/P/CIR/2023/145 dated 11 August 2023*

SEBI has released a significant master circular aiming at enhancing the resolution of disputes within the Indian securities market. This circular introduces a comprehensive framework for Online Dispute Resolution (ODR) to streamline the resolution process and protect the interests of investors, companies, and intermediaries. The master circular highlights the establishment of a common Online Dispute Resolution Portal (ODR Portal) that facilitates online conciliation and arbitration for resolving disputes arising in the Indian securities market. The framework encompasses various stakeholders, including Recognized Stock Exchanges, Clearing Corporations, Depositories, Stock Brokers, Depository Participants, Listed Companies, and SEBI Registered Intermediaries. The circular emphasizes the usage of online conciliation and arbitration mechanisms, offering investors and market participants an efficient way to resolve disputes.

The ODR Portal will be managed by Market Infrastructure Institutions (MIIs), which include Stock Exchanges and Depositories. Empaneled ODR Institutions, capable of time-bound online conciliation and arbitration, will play a crucial role in this process. The process is outlined in a step-by-step manner, starting from dispute initiation and escalation through the ODR Portal, to the appointment of independent conciliators and arbitrators. The circular emphasizes the importance of impartiality and expertise of these professionals in the dispute resolution process.

34. SEBI allows unitholders of REITs holding at least 10% of total units to nominate one director on Board:- *Notification No. SEBI/LAD-NRO/GN/2023/144., Dated 16 August 2023*

SEBI has notified an amendment to the SEBI (REIT) Regulations, 2014. A new proviso has been inserted into regulation 4, which defines eligibility criteria. A new sub-regulation (qa) has been introduced to regulation 2 defining 'group entities of the Manager'. Also, the definition of 'Self-Sponsored Manager' under sub-regulation (zra) has been introduced.

Further, unitholders holding at least 10% of total outstanding units of REIT have been entitled to nominate one director on the board of directors of the Manager. Further, Also, the 'stewardship code' has been introduced for compliance by unitholders.

Also, amendment has been notified in Regulation 11(3). Now, the sponsor(s) and sponsor group(s) shall collectively hold not less than:

- 15 % of the total units of the REIT, for three years from the date of listing of units in the initial offer.
- 5 % of the total units of the REIT, from the beginning of fourth year and till the end of fifth year from the date of listing of the units issued in the initial offer.
- 3 % of the total units of the REIT, from the beginning of sixth year and till the end of tenth year from the date of listing of the units issued in the initial offer.
- 2 % of the total units of the REIT, from the beginning of eleventh year and till the end of twentieth year from the date of listing of the units issued in the initial offer.
- 1 % percent of the total units of the REIT, after completion of the twentieth year from the date of listing of units issued in the initial offer.

Further, the SEBI has now prescribed the condition for existing sponsor(s) proposing to disassociate as sponsor(s) by seeking to convert the Manager to Self-Sponsored Manager. Such conditions include:

- The REIT has been listed for a period of at least five years.
- The REIT has undertaken not less than twelve distributions on a continuous basis and has complied with the distribution norms.
- The REIT is rated AAA by a registered credit rating agency for a continuous period of five years.
- The Manager is meeting the net worth criteria for the sponsor as specified.

The SEBI has introduced Schedule IX for 'stewardship code'. The following principles of stewardship code shall be complied with by any unitholder holding not less than ten percent of the total outstanding units of the REIT:

- They must act in the best interests of the REIT and its unitholders as a whole;
- They should formulate a comprehensive policy on the discharge of their stewardship responsibilities, review and update the same periodically;
- They should have a policy to manage issues of conflict of interest while fulfilling their stewardship responsibilities;
- They should periodically monitor the REIT and its investee entities viz. Holding Co. and SPV(s).

35. SEBI introduces 'Stewardship Code' for Infrastructure Investment Trusts:- *Notification No. SEBI/LAD-NRO/GN/2023/145., Dated 16 August 2023*

The SEBI has notified amendment in SEBI (Infrastructure Investment Trusts) Regulations, 2014. Regulation 2(1)(sa) & (zxc) has been introduced defining 'group entities of the Investment Manager' and 'sponsor group'. Also, the unitholder holding not less than 10 % of the total outstanding units of the InvIT, either individually or collectively, shall be entitled to nominate one director on the board of directors of the Investment Manager.

Further, Regulation 3A has been introduced defining the holding norms for the sponsors and sponsors group. The sponsors and sponsor groups shall collectively hold not less than:

- 5 % of the total outstanding units of the InvIT, from the beginning of the fourth year and till the end of the fifth year from the date of listing of the units issued in the initial offer.

- 3 % of the total outstanding units of the InvIT, from the beginning of the sixth year and till the end of the tenth year from the date of listing of the units issued in the initial offer.

- 2 % of the total outstanding units of the InvIT, from the beginning of the eleventh year and till the end of the twentieth year from the date of listing of the units issued in the initial offer.

- 1 % of the total outstanding units of the InvIT, after the completion of the twentieth year from the date of listing of units issued in the initial offer.

Also, the Stewardship Code under Schedule VIII has been introduced for compliance by certain unitholders. The code shall be applicable to the unitholder holding 10% of the total outstanding units of the InvIT. Some of the principles of the stewardship code which need to be complied with are as follows:

- They must act in the best interests of the InvIT and its unitholders as a whole.

- They should formulate a comprehensive policy on the discharge of their stewardship responsibilities and review and update the same periodically.
- They should have a policy to manage issues of conflict of interest while fulfilling their stewardship responsibilities.
- They should have a policy on voting.

36. SEBI tweaks 'Grievance Redressal Mechanism' for stock market intermediaries:- *Notification No. SEBI/LAD-NRO/GN/2023/146., Dated 16 August 2023*

The SEBI has notified amendments in various Regulations such as Merchant Bankers Regulations, Debenture Trustees Regulations, Mutual Funds Regulations, Collective Investment Schemes Regulations, AIFs Regulations, etc. the entity shall redress investor grievances promptly but not later than 21 calendar days from the date of receipt of the grievance and in such manner as may be specified. Also, the Board may recognize a body corporate for handling and monitoring the process.

37. MCA grants one-time relaxation in additional fees to LLPs for filing Form-3, 4, 11:- *MCA General Circular No. 08/2023 dated 23 August 2023*

Representations have been received by the Government that certain LLPs are finding difficulties in filing Form- 3 (LLP Agreement and changes therein), Form- 4 (Notice of appointment, cessation, change in name/ address/designation of a designated partner or partner and consent to become a partner/designated partner) and Form- 11 (Annual Return of LLP) for various reasons including due to mismatch in the master data in electronic registry of the Ministry. Due to this, the records/data in the electronic registry are also not being updated.

To address these difficulties faced by the LLPs and as part of Government's constant efforts to promote ease of doing business, the Ministry, in exercise of its power under section 67 of the Limited Liability Partnership Act, 2008, has decided to grant one-time relaxation in additional fees to those LLPs who could not file the Form-3, Form-4 and Form-11 within due date and provide an opportunity to update their filings and details in Master-data for future compliances.

Accordingly, the MCA has introduced the Limited Liability Partnership (**"LLP"**) Amnesty Scheme. This scheme aims to grant a condonation of delay to LLPs regarding the filing of Form-3, Form-4, and Form-11 under section 67 of the Limited Liability Partnership Act, 2008 read with section 460 of the Companies Act, 2013 from September 1, 2023, to September 30, 2023. The salient features are as follows: -

- The Form-3 and Form-4 would be processed under Straight Through Process (STP) mode for all purposes except for change in business activities. The stakeholders are advised to file these forms in sequential manner i.e., the filing for old events date may be filed first and so on so as to update the master data in proper manner.

- At the time of filing these forms, the pre-filled data as per existing master data of the LLP shall be provided in each of above-mentioned forms but the same shall have the facility to edit. The onus of filing correct data would be on the stakeholders. In case of misrepresentation, the Designated Partner and the professional certifying the form may be liable for adverse action as per provisions of the law.

- The filing of Form-3 and Form-4 without additional fee shall be applicable for the event dates January 01, 2021 and onwards. For events dated prior to January 01, 2021, these forms can be filed with 02 times and 04 times of normal filing fees as additional fee for small LLPs and Other than small LLPs respectively.

- The filing of Form-11 without additional fee shall be applicable for the financial year 2021-22 onwards. Form-11 for previous years (prior to financial year 2021-22) can be filed with 02 times and 04 times of normal filing fee as additional fee for small LLPs and Other than small LLPs respectively.

- These forms shall be available for filing from September 01, 2023 onwards till September 30, 2023 (both dates inclusive).

- The LLPs availing the scheme shall not be liable for any action for delayed filing of the Form-3, Form-4 and Form-11.

https://www.mca.gov.in/bin/dms/getdocument?mds=Zt6foWsl%252BABAbU7Pid9NGg%253D%253D&type=open

38.NFRA may approach SC over power to probe pre 2018 cases:- *News Report*

The National Financial Reporting Authority (NFRA) is poised to challenge a directive issued by the Telangana High Court through a forthcoming appeal to the Supreme Court. This strategic move by NFRA follows the High court's assertion that NFRA lacks jurisdiction to investigate cases of professional misconduct that occurred before its establishment in 2018. This development stems from a specific case involving the auditor of Brightcom Group and holds the potential to significantly impact NFRA's authority to probe auditors implicated in significant controversies such as those surrounding IL&FS and DHFL. NFRA had previously taken decisive measures against certain auditors allegedly associated with the IL&FS crisis. These measures included restricting them from taking on new assignments and imposing financial penalties. However, these actions have been met with opposition by the affected auditors in the Delhi High Court. The central point of contention lies in the legality of Section 132(4) of the Companies Act, 2013, and the corresponding regulations that vest NFRA with investigative powers over auditor lapses.

Further, in related cases across multiple courts, NFRA is likely to assert that Section 132 of the Companies Act provides a robust foundation for initiating investigations and enforcing remedial measures against auditors of both listed and large unlisted public firms, even in cases predating 2018. A pivotal clause, proviso to Section 132(4)(a), stipulates that no other professional body or institute shall initiate or continue proceedings related to misconduct if NFRA has already initiated an investigation. NFRA's argument might hinge on the interpretation that the term "continue" in this provision signifies the legislative intent to extend NFRA's jurisdiction to cases already in progress before its establishment. Additionally, NFRA's stance could be grounded in the assertion that established accounting and auditing standards predated its establishment. Therefore, NFRA does not alter the fundamental responsibility of statutory auditors to fully adhere to the law.

Consequently, NFRA's mandate to enforce compliance with these pre-existing standards, which possess a legal foundation, should be binding upon statutory auditors. The source indicates that the shift in regulatory oversight does not translate into a retrospective application of the law, as the core substantive legal provisions remain unaltered.

Furthermore, recent developments indicate that the Telangana High Court has directed NFRA to abstain from seeking audit reports pertaining to Brightcom Group for the years 2014-15 to 2016-17. This judicial stay was granted in response to a writ filed by the auditor, P Murali & Co. The auditor's argument rests on the premise that since the audits were concluded prior to NFRA's establishment, the Institute of Chartered Accountants of India (ICAI) should be tasked with reviewing them under the Institute of the Chartered Accountants.

https://cfo.economictimes.indiatimes.com/news/nfra-may-approach-sc-over-power-to-probe-pre-2018-cases/103078421

39. RBI enhances transactions limits for small value digital payments to Rs. 500:- *RBI RBI/2023-24/57* dated *24 August 2023*

The Reserve Bank of India (RBI) has recently announced that it has increased the transaction limit for small value digital payments in offline mode from Rs.200 to Rs.500 per transaction, which means that customers can now make faster, reliable, and contactless payments for everyday small value purchases, transit payments, etc. without the need for internet or telecom connectivity or two-factor authentication, and to promote the use of the UPI-Lite wallet in areas where internet connectivity is weak or not available.

It was further noted that all other instructions related to small-value digital payments remain the same and it had been clarified that while the per-transaction limit was being raised to Rs.500, the overall limit would be retained at Rs.2000 to contain the risks associated with the relaxation of two-factor authentication.

40. SEBI tightens disclosure norms for Foreign Portfolio Investors:- SEBI Circular dated 24 August 2023

The Securities and Exchange Board of India (SEBI) issued a circular dated 24 August 2023 mandating additional disclosures by Foreign Portfolio Investors (FPIs) w.e.f. November 1, 2023, inter alia remarks that certain FPIs hold concentrated portions of their equity portfolio in a single investee company, raising the concern and possibility that promoters of such companies could be using the FPI route for circumventing regulatory requirements. To mitigate the concerns, the regulator directs disclosure of granular details of all entities holding any ownership, economic interest or control in the FPI on a full look through basis, up to the level of all natural persons, without any threshold, by FPIs that fulfill the following criteria -

- FPIs holding more than 50% of their Indian equity Assets Under Management (AUM) in a single corporate group,
- FPIs that individually or along with their investor group hold more than Rs. 25,000 cr. of equity AUM in the Indian markets

However, stating that FPIs having a broad based, pooled structure with widespread investor base, ownership interest by Government or Government related investors, etc. may not pose significant systemic risk, and considering that certain genuine circumstances may also prevent some FPIs from adhering to the limits specified above, SEBI lists down 7 exceptions, specifying that if the FPIs satisfy any of the listed criteria, they shall not be required to make the said additional disclosures. SEBI further stipulates that the constituents of FPI investor group which collectively hold more than Rs. 25,000 cr. of equity AUM in the Indian markets shall be exempted from making the additional disclosures if the FPIs qualify for exemption. Lastly, the Market Regulator posits that the said disclosures shall not be required to be made by FPIs in case their investments are realigned with the prescribed thresholds, within the timelines/ conditions mentioned under the circular.

41. SEBI modifies cyber security framework for stock exchanges, clearing corporations, depositories:- SEBI *Circular No. SEBI/HO/MRD/TPD/P/CIR/2023/147 dated 24 August 2023*

The SEBI has released an updated framework concerning Cyber Security and Cyber Resilience for stock exchanges, clearing corporations, and depositories. Historically, SEBI had laid down guidelines for Cyber Security and Cyber Resilience for the mentioned financial entities through its circulars dated July 06, 2015, and May 20, 2022. The current circular aims to make modifications to the framework. The key updates are:-

- **Cyber Audits:** Market Infrastructure Institutions (MIIs) are now obligated to carry out comprehensive cyber audits a minimum of two times in a fiscal year. In addition to these audit reports, MIIs must also submit a declaration from their Managing Director (MD) or Chief Executive Officer (CEO) confirming the following:

  - Comprehensive strategies and processes have been set up for the identification, detection, and resolution of vulnerabilities within their IT systems.
  - Suitable measures have been taken to ensure that the organization's Security Operations Center (SOC) is adequately staffed.
  - The MII has adhered to all SEBI circulars and advisories pertinent to cyber security.

- **Collaboration with National Authorities:** MIIs, recognized as holding Critical Information Infrastructure (CII) by the National Critical Information Infrastructure Protection Centre (NCIIPC), are now required to frequently update the NCIIPC on the status or resolution of vulnerabilities observed in their "protected systems."

- **Implementation Measures:** MIIs are expected to implement the measures outlined in the circular, making necessary changes to their bye-laws, rules, or regulations as needed.

- **Reporting:** Post-implementation, MIIs must inform SEBI about the status within a 30-day window from the issuance of this circular.

- **Implications:** The stipulations of the circular are to be effective immediately. These guidelines have been set in motion by the powers vested under Section 11 (1) of the SEBI Act, 1992, in conjunction with other relevant regulations. The primary objective of these revisions is to

safeguard investor interests and maintain the integrity of the securities market by enhancing cyber resilience.

In the face of increasing cyber threats, SEBI's decision to bolster cyber security norms for stock exchanges, clearing corporations, and depositories is both timely and crucial. Such measures underscore the importance of fortifying cyber infrastructure to shield both market participants and investors from potential risks.

https://www.sebi.gov.in/legal/circulars/aug-2023/modification-in-cyber-security-and-cyber-resilience-framework-of-stock-exchanges-clearing-corporations-and-depositories_75887.html

42. 10% unitholders to nominate one Director on Investment Manager's Board:- *SEBI vide Notification No. SEBI/LAD-NRO/GN/2023/144, dated 16 August 2023*

SEBI has introduced amendments to the SEBI (Real Estate Investment Trust) Regulations,2014. The changes include the insertion of a new proviso into regulation 4, which outlines eligibility criteria, and the introduction of a new sub-regulation (qa) in regulation 2, defining 'group entities of the Manager.' Additionally, a new definition for 'Self-Sponsored Manager' under sub-regulation (zra) has been introduced. Moreover, unitholders who hold a minimum of 10% of the total outstanding units of a Real Estate Investment Trust (REIT) are now entitled to nominate a director to the Manager's board of directors. The amendment also establishes a 'stewardship code' that obliges unitholders to adhere to certain compliance standards.

In terms of ownership requirements, the amendment affects Regulation 11(3). The sponsor(s) and sponsor group(s) are now mandated to collectively possess:

- 15% of the total units of the REIT for the first three years following the listing of units in the initial offer.
- 5% of the total units from the beginning of the fourth year until the conclusion of the fifth year from the date of listing.
- 3% of the total units from the beginning of the sixth year until the end of the tenth year from the listing date.
- 2% of the total units from the start of the eleventh year until the end of the twentieth year from the listing date.
- 1% of the total units after the completion of the twentieth year from the listing date.

Furthermore, SEBI has outlined conditions for existing sponsors looking to disassociate as sponsors by converting the Manager into a Self-Sponsored Manager. These conditions include the REIT being listed for a minimum of five years, maintaining consistent distributions over at least twelve periods, achieving a AAA credit rating for five consecutive years, and fulfilling specified net worth criteria for the sponsor. Also, to regulate unitholders' conduct, SEBI has introduced Schedule IX, which details the 'stewardship code.' Unitholders holding no less than ten percent of the total outstanding units of the REIT are required to:

- Act in the best interests of the REIT and its unitholders collectively.
- Develop a comprehensive policy for fulfilling their stewardship responsibilities, subject to periodic review and updates.

- Establish a policy for addressing conflicts of interest when carrying out stewardship responsibilities.
- Periodically monitor the REIT and its invested entities, including Holding Companies and Special Purpose Vehicles (SPVs).

43. SEBI notifies framework for voluntary delisting of non-convertible debt securities:- *SEBI* Notification *no. SEBI/LAD-NRO/GN/2023/149 dated 23 August 2023*

SEBI has introduced amendments to the SEBI (Listing Obligations and Disclosure Requirements) (Third Amendment) Regulations, 2023. A new Chapter VIA has been inserted to establish a framework for the voluntary delisting of non-convertible debt securities or non-convertible redeemable preference shares, along with the obligations of the listed entity during this delisting process. The listed entity is required to initiate the process of obtaining necessary approval from all holders of non-convertible debt securities or non-convertible redeemable preference shares within three working days of receiving in-principle approval from the stock exchange. Also, It shall not be applicable on certain listed entities like a listed entity that has outstanding listed non-convertible debt securities or non-convertible redeemable preference shares issued by way of a public issue etc.

SEBI emphasizes that all events related to the proposed delisting of non-convertible debt securities or non-convertible redeemable preference shares, from the initial presentation of the delisting agenda before the board of directors to the completion of the delisting, must be disclosed as material information to the stock exchanges according to Regulation 51 of these regulations. Additionally, in cases of delisting due to a resolution plan under the Insolvency Code, the details of the delisting must be disclosed to the relevant stock exchanges within one working day of the resolution plan's approval under the Insolvency Code. It's specified that the provisions of Regulation 59 do not apply to the voluntary delisting of non-convertible debt securities or non-convertible redeemable preference shares.

Furthermore, the stock exchange is required to process the final application for delisting within 15 working days from the date of receiving a complete and duly submitted application. In instances where the listed entity aims to delist its non-convertible debt securities or non-convertible redeemable preference shares under Regulation 64H(1), the provisions of Regulations 64B to 64G are not applicable, and the entity must obtain prior approval from its board for the delisting.

44. SEBI floats Consultation Paper on recognition of body corporate for administering, supervising Research Analysts:- *SEBI Consultation paper, dated 22 August 2023*

SEBI has issued a Consultation Paper on Recognition of Body Corporate for Administration and Supervision of Research Analysts. It has proposes to recognize a body, designated as Research Analyst Administration and Consultation Paper on Recognition of Body Corporate for Administration and Supervision of Research Analysts Supervisory Body ('RAASB'), to administer and supervise RAs and thereby extend the framework for administration and supervision to RAs as in the case of IAs.The proposed RAASB shall not place any additional financial burden on the member RAs and shall be fee neutral to them. The application fee and registration fee as specified presently in the RA Regulations is proposed to be rationalized accordingly. Further, it is proposed to amend the RA Regulations to provide that membership of RAASB shall be one of the eligibility

criteria for consideration of grant of certificate of registration as RA. The market regulator has sought comments from the public on the proposals till September 12.

"Considering the evolving nature of business of RAs, it is proposed that, on similar lines as IAASB, Sebi may recognise a body, designated as Research Analyst Administration and Supervisory Body to administer and supervise RAs and thereby extend the framework for administration and supervision to RAs as in the case of IAs," the consultation paper noted. Earlier, Sebi granted recognition to an entity designated as an Investment Adviser Administration and Supervisory Body (IAASB) for the administration and supervision of Investment Advisers (IAs). After seeking the interest of eligible stock exchanges, BSE Administration & Supervision Ltd (BASL), a wholly-owned subsidiary of stock exchange BSE, was granted recognition as IAASB for a period of three years from June 2021. Later, Sebi provided a framework for the administration and supervision of IAs specifying the role and responsibilities of IAASB.

45. SEBI merchant banker, debenture trustee to redress investor grievances within 21 days:- *SEBI's* Notification *No. SEBI/LAD-NRO/GN/2023/146 dated 16 August 2023*

SEBI has introduced the SEBI (Facilitation of Grievance Redressal Mechanism) (Amendment) Regulations, 2023 which bring changes to various rules including the Merchant Bankers Regulations, Debenture Trustees Regulations, Bankers to an Issue Regulations, and Mutual Funds Regulations. The entities like debenture trustees, bankers to an issue, and merchant bankers are required to address investor complaints promptly, ensuring resolution within 21 calendar days of receiving the grievance. Additionally, the amendment allows SEBI to authorize a corporate entity to oversee and manage the grievance redressal process within a specified time and method.

46. SEBI broadens the scope of 'Fit and Proper' criteria for Depositories and their Participants:- Notification *No. SEBI/LAD-NRO/GN/2023/147, Dated: 22 August 2023*

SEBI has notified an amendment to SEBI (Depositories and Participants) Regulations, 2018. An amendment has been made to Reg 23, which outlines the requirements and criteria for determining a 'fit and proper' person. Now, SEBI has prescribed detailed criteria for determining the status of a 'fit and proper' person in the regulation itself, thereby broadening the scope of this regulation. Earlier, these criteria were specified under the Stock Exchanges and Clearing Corporations Regulations, 2018.

47. SEBI amends 'Fit and Proper' criteria for Stock Exchanges and Clearing Corporations:- *Notification No. SEBI/LAD-NRO/GN/2023/148., Dated: 22 August 2023*

SEBI has notified an amendment to Securities Contracts (Regulation) (SEs and Clearing Corps.) Regulations, 2018. An amendment has been made to Reg 20, which outlines the requirement and criteria for determining a 'fit and proper' person. As per the amended norms, if any director or KMP of the stock exchange or clearing corporation is not deemed to be fit and proper, then the stock exchange or clearing corporation must replace such person within 30 days from date of the disqualification.

48. SEBI initiates third tranche of distribution of disgorged amount to 2.58 lakh investors in IPO irregularities:- *Press Release No.18/2023, Dated: 24 August 2023*

Earlier, SEBI conducted investigations into certain irregularities in the shares issued through 21 IPOs during the period 2003-2005 before their listing on the stock exchanges. Upon completion of the investigations, SEBI directed certain persons to disgorge the illegal gains. Now, after completing the disbursement of the first and second payment tranches, SEBI has initiated the third tranche for distribution of Rs. 14.87 crore to 2.58 lakh investors.

49. SEBI mandates MIIs to regularly report vulnerability status of their "protected system" to NCIIPC:- *Circular No. SEBI/ HO/MRD/TPD/P/ CIR/ 2023/147, Dated: 24 August 2023*

Earlier, SEBI prescribed a framework for Cyber Security and Cyber Resilience for stock exchanges, clearing corporations & depositories. Now, SEBI has modified the said framework. Now, MIIs are mandated to conduct comprehensive cyber audit at least 2 times in a financial year. Along with cyber audit reports, henceforth, MIIs are directed to submit a declaration from the MD/CEO certifying that:

- Comprehensive measures and processes including suitable incentive/disincentive structures, have been put in place for identification/detection and closure of vulnerabilities in the organization's IT systems.
- Adequate resources have been hired for staffing their Security Operations Center (SOC).
- There is compliance by the MII with all SEBI circulars and advisories related to cyber security.

Further, MIIs, whose systems have been identified as Critical Information Infrastructure (CII) by the National Critical Information Infrastructure Protection Centre (NCIIPC), are mandated to send regular updates/closure status of the vulnerabilities found in their respective "protected systems" to NCIIPC. The provisions of the circular shall come into force with an immediate effect.

50. SEBI mandates additional disclosures for certain Foreign Portfolio Investors:- *Circular No. SEBI/ HO/ AFD/ AFD – PoD – 2/ CIR/ P/ 2023/ 148; Dated: 24 August 2023*

SEBI has mandated the criteria for submission of additional disclosures by foreign portfolio investors under the FPIs norms. As per the criteria, details of all entities holding any ownership, economic interest, or exercising control in the FPIs need to be provided by certain FPIs.

These are FPIs that hold more than 50% of their Indian equity AUM in a single Indian corporate group and FPIs that individually, or along with others hold more than Rs. 25000 crore of equity AUM in the Indian markets. The provisions of this circular shall come into force w.e.f 01.11.2023.

51. Insurers must submit a board-approved reinsurance plan within 45 days from commencement of Financial Year:- *IRDAI Notification F. No. IRDAI/Reg/5/193/2023, Dated: 22 August 2023*

IRDAI has notified the IRDAI (Re-insurance) (Amendment) Regulations, 2023. The objective of these regulations is to harmonize the provisions of various regulations applicable to Indian insurers and reinsurers and encourage more reinsurers to set up business in India.

As per the amended norms, every insurer is now required to file its Board-approved final re-insurance programme within 45 days to the Authority. Earlier, the time limit was 30 days. These regulations shall come into force from 22.08.2023.

Further, a new regulation 13 i.e., Transition Provision has been inserted. As per the respective regulation, all reinsurance placements under any arrangements/ treaties for the financial year 2023-24 entered into by insurers prior to the date of notification of the Insurance Regulatory and Development Authority of India (Re-insurance) (Amendment) Regulations, 2023 shall continue for the remaining period of the year as per the terms therein.

Further, insurers must ensure that any new treaties/ arrangements entered into on or after the date of notification of the Insurance Regulatory and Development Authority of India (Re-insurance) (Amendment) Regulations, 2023 shall be compliant with the provisions of these regulations.

52. CCI releases draft 'Commitment' and 'Settlement' Regulations, 2023:- *Draft Regulations, dated 23 August 2023*

CCI has released draft commitment and settlement regulations, 2023. The commitment mechanism will enable an enterprise against whom an inquiry is initiated for an alleged contravention of competition law to offer commitments before the Commission. Similarly, the settlement mechanism permits enterprises to apply for settlement before the Commission. Further, stakeholders can submit their comments on draft regulations within 21 days from 24.08.2023 to 13.09.2023.

The objective of creating a procedure for commitment is to ensure quicker market correction while the objective of creating a procedure for settlement is to reduce litigation and ensure quicker market correction. Further, the 'Commitment' and 'Settlement' Regulations provide the procedures to be followed during commitment and settlement proceedings respectively including the following:

- Form and contents of the application for commitment and settlement along with fee payable;
- Procedure of commitment and settlement proceedings;
- Period during which commitment and settlements may be proposed;
- Manner in which the CCI will invite objections and suggestions to the commitment and settlement terms;
- Factors to be considered by the CCI in assessing the commitment and settlement terms;
- Manner of determining the settlement amount;
- Nature and effect of the commitment and settlement order;
- Implementation and monitoring of the terms of the commitment and settlement order; and
- Revocation of the commitment and settlement order.

53. CMM/DM can't pronounce any judgment on borrower's objections as they have only administrative powers u/s 14 of SARFAESI Act:- *L&T Finance Ltd. v. State of Maharashtra - [2023] 153 taxmann.com 34 (HC - Bombay)*

In the instant case, petitions were filed by the secured creditors who had applied under section 14 of the SARFAESI Act, 2002. Since the applications have not been disposed of, the petitioners have filed these petitions for directions for the early disposal of these petitions. The petitioners shared a common grievance that despite the ministerial power granted under section 14, meant to assist secured creditors in efficiently recovering their dues, their applications were unreasonably delayed.

Taking cognizance of the grievance, on the earlier dates, the State Government was called upon to place data of the pending applications filed under section 14 before various District Magistrates. The High Court observed that the powers of Chief Metropolitan Magistrate or District Magistrate (CMM/DM) under section 14 are merely administrative and do not involve pronouncing any judgment on the borrower's objections to a secured creditor taking possession of secured assets.

Further, once the secured creditor has met all requirements under section 14, it is the duty of CMM/DM to assist the secured creditor in obtaining possession of assets and related documents, with the help of any subordinate officer or appointed Advocate Commissioner. The High Court, further observed that the application filed by a secured creditor under section 14 with due compliance should be disposed of by CMM/DM not later than 30 days of the application is filed. The same option can also be considered by the Judicial Magistrate, if so permissible in law.

The High Court held that any party whose application is not disposed of within sixty days of its filing or whose order has not been implemented within sixty days of passing it, may make representation to the Divisional Commissioner. The Divisional Commissioner, shall within 15 days of receipt of representation consider the representation and after satisfying that there is no justifiable reason, will pass appropriate directions to ensure that the application is disposed of or order is implemented within fifteen days of direction.

The High Court further held that the State Government would take steps to implement an e-system placing information on an online platform regarding applications, such as the date of filing of the application, the date of passing the order on the application, and the date of implementation of the order, on an online platform.

54. EPFO Joint Declaration Process for Member Profile Updation:- *EPFO circular No. WSU/2022/Rationalisation of work areas/Joint Declaration (E-54018) /3638, dated 22 August 2023*

The Employees' Provident Fund Organisation (EPFO) has issued a comprehensive circular aimed at standardizing the procedure for rectifying and updating the particulars of Employees' Provident Fund (EPF) members. This newly introduced circular incorporates a standardized operating protocol (SOP) designed to facilitate the rectification of EPF member details, encompassing critical information such as names, dates of birth, gender, and more. This streamlined process not only simplifies the updating of EPF member profiles but also serves to prevent rejections during claims processing and mitigate the risks associated with fraudulent activities arising from data disparities. According to the EPFO circular, it has come to their attention that the lack of regulation and standardization in processes has resulted in the manipulation of member identities in certain instances, leading to instances of impersonation and fraudulent activities.

Under this new SOP, EPF members are empowered to modify 11 profile-related parameters, including name, gender, date of birth, father's name, relationship status, marital status, date of joining, reason for leaving, date of leaving, nationality, and Aadhaar number. These changes are categorized as either minor or major, with documentary evidence being mandatory for both categories of amendments.

Type of Changes:

S. No.	Parameter	Description of correction/change	
		Major Correction	Minor Correction
1	Name	- If more than two alphabets change and the name also gets changed phonetically. - If less than two alphabets change and the name also gets changed phonetically. -If expanding the name	-If 2 or less than alphabets get changed but the name does not get changed phonetically. -If adding surname after marriage in case female -Removing salutations like Shri, Dr etc
2	Gender	-	Male/ Female/ Any other change
3	Date of Birth	If the change exceeds more than three years	If the change is less and does not exceeds three years
4	Father's Name	- If more than two alphabets change and the name also gets changed phonetically. - If less than two alphabets change and the name also gets changed phonetically. -If expanding the name	-If 2 or less than alphabets get changed but the name does not get changed phonetically. -Removing salutations like Shri, Dr etc
5	Relationship	-	Father/Mother Change
6	Marital Status	Change after the death of the EPF member	Any Change when EPF member is alive
7	Date of Joining	Any Change after the death of the EPF member	Any Change when EPF member is alive
8	Reason for Leaving	Any Change after the death of the EPF member	Any Change when EPF member is alive
9	Date of Leaving	Any Change after the death of the EPF member	Any Change when EPF member is alive
10	Nationality	Non-SSA to SSA country	-Non-SSA to Non- SSA country change -SSA to SSA country change

			-SSA to Non-SSA country change
11	Aadhaar	All types of changes or updation related to Aadhaar	-
Note: ***SSA country refers to countries with which India has Social Security Agreement***			

Further, it is pertinent to note that a correction can be made only **once** in the EPF account holder profile for all 11 parameters. As per the circular, an EPF member may be allowed to correct or update up to five out of the 11 parameters normally, even if multiple applications are submitted. However, if more than five changes are made, then special attention must be given before the application is processed to avoid fraud in the future. The EPFO has stipulated specific timelines for processing these requests: minor updates will be processed within **T+7 days** from the date of receipt, while major changes will take **T+15 days**. Throughout this process, SMS and email notifications will be dispatched to the mobile number linked to the Aadhaar card, providing transparency and updates at each stage.

It's crucial to note that any changes initiated by EPF members require validation by their employers. As per the circular, employer validation is essential, but it is limited to accounts generated by the present employer. Employers do not possess modification rights for accounts from other or previous establishments. For those seeking to make changes in their EPF accounts, a step-by-step guide has been provided:

- **Step 1**: Access the Member Sewa portal and log in using your Universal Account Number (UAN) and password.
- **Step 2:** Upon successful login, click on the 'Joint Declaration (JD)' tab. An OTP will be sent to your UIDAI-linked mobile number.
- **Step 3:** Enter the OTP, and a joint declaration form will appear on your screen.
- **Step 4:** Complete the required details and submit them, along with supporting documents listed in the provided document list.

Following the submission of your request, your employer will review and verify the information against their records. If it aligns with their records, the joint declaration application will be forwarded to the EPFO office for further processing. Any discrepancies or missing information will be communicated to you and reflected in your EPFO account for your reference.

Furthermore, the EPFO has issued the list of documents that must be uploaded along with the application form to correct the login details. For instance, to correct name and gender, Aadhaar is mandatorily required to be submitted. For minor updation, along with Aadhaar one more document such as passport, PAN card, voter card etc, has to be uploaded. If the EPF member has died, then the death certificate would have to be submitted by the legal heirs for name correction. For major correction, two more documents along with Aadhaar will be required to be submitted. In case of major changes, three documents will be needed out of prescribed documents.

55. Inward remittance credit subject to MHA's clearance, permanent FCRA registration doesn't create 'right':- *Manasa Centre for Development and Social Action vs. The Managing Director & Ors. [LSI-785-HC-2023(KAR)]*

The Karnataka High Court Bench of Justice KS Hemalekha has held that the possession of a permanent registration under the Foreign Contribution (Regulation) Act of 2010 (FCRA), does not create any right in favour of a person or organisation to get the foreign donation amount credited in the bank account. The Court also clarified that the credit of the money is always subject to clearance from the Union Ministry of Home Affairs. The Court highlighted that mere possession of a permanent registration under the FCRA, 2010 does not grant automatic entitlement to receive foreign funds without additional clearance from the Ministry of Home Affairs (MHA). The facts of the case was that the Government of India's letter indicated that foreign donors could be placed under a 'Prior Reference/Permission Category' based on feedback from field or security agencies. The Reserve Bank of India (RBI) had issued a directive in 2013, based on MHA's communication, requiring banks to inform the Ministry about any fund flow from 'Dan Church Aid' before granting clearance. The MHA had specifically instructed the bank not to credit the amount received from 'Dan Church Aid' to the account without clearance. Given the MHA's clear instruction in a letter dated October 31, 2013, the Court concluded that Manasa was not entitled to the funds without obtaining clearance from the ministry. As a result, the Court found the petition lacking in merit and dismissed it.

Court Observations-

The Court emphasized that merely possessing a permanent registration under the FCRA, 2010 did not confer automatic entitlement for the reception of foreign funds, and it stressed that additional clearance from the Ministry of Home Affairs (MHA) was imperative. This stance was underscored by a letter from the Government of India, which revealed the possibility of categorizing foreign donors as subject to 'Prior Reference/Permission' based on inputs from field or security agencies. In 2013, the Reserve Bank of India (RBI) mandated banks to notify the Ministry before granting clearance for any fund inflow from 'Dan Church Aid', as per communication from the MHA. Notably, the MHA specifically directed the bank not to credit funds from 'Dan Church Aid' to any account without proper clearance. Given the unequivocal directive provided in the MHA's letter dated October 31, 2013, the Court reached the verdict that Manasa could not claim entitlement to the funds without obtaining clearance from the ministry. Consequently, the Court found the petition without merit and dismissed it.

56. IFSCA releases expert committee's report on onshoring Indian innovation to GIFT IFSC:- *IFSCA Report*

IFSCA publishes the Report of the Expert Committee on Onshoring Indian Innovation to GIFT IFSC, wherein the Committee has provided its recommendations that are critical to the development of GIFT IFSC as a global Fintech Hub. The e-commerce sector has transformed India's business landscape, opening various segments of commerce ranging from business-to-business (B2B), direct-to-consumer (D2C), consumer-to-consumer (C2C), and consumer-to-business (C2B). To make GIFT IFSC a preferred hub for global startups, the Authority recommends exempting investments by Indian AIFs and MFs into entities domiciled in GIFT IFSC from the aggregate limit set by RBI in Schedule IV of FEMA Overseas Investment Rules, 2022.

Offshore entities that flip into IFSCs will have to pay stamp duty for company setup and asset transfer. The Committee suggests providing stamp duty exemption to encourage offshore holding companies to consider GIFT IFSC for relocation. The Committee also recommends establishing a special court for adjudicating issues involving company laws and IPR faced by IFSC entities. This court can also enforce arbitration awards faster, making the overall dispute resolution framework at GIFT City a powerful incentive for entrepreneurs to stay in or return to India.

57. ICAI issues amended 'Clarification' w.r.t. Document Authority & 'Preface' to Auditing Standards:- ***ICAI dated 29 August 2023***

The Council of Institute of Chartered Accountant of India (ICAI) has made amendments to the Clarification regarding authority attached to documents and Paragraph 11 of the Preface to Quality Control, Auditing, Review, Other Assurance and Related Services which is based on recommendations from the Auditing and Assurance Standards Board (AASB). The changes aim to provide more clarity, make provisions more robust, remove irrelevant provisions, and align the Preface with the Clarification's changes.

https://www.lawstreetindia.com/news/10596/ICAI-issues-amended-Clarification-w-r-t-Document-Authority-Preface-to-Auditing-Standards

58. MCA issues FAQs on condonation of delay in filing of LLP Forms-3, 4, 11: ***MCA Update w.r.t. Circular No. 08/2023 dated 23 August 2023***

MCA granted a one-time relaxation in additional fees vide Circular dated August 23, 2023 to those LLPs who could not file the Form-3, Form-4 and Form-11 within due date by providing the LLPs an opportunity to update their filings and details in master-data for future compliances.

Further to the said circular, MCA releases a batch of 15 Frequently Asked Questions (FAQs) on Condonation of delay in filing of Form-3, Form-4 and Form-11 by LLPs. Explaining the processing type for Form 3/ 4 effective from September 1, 2023, inter alia states that w.r.t. initial agreement, Form-3 will be processed under Straight Through Process (STP) mode and for Change in agreement, specifies that in case 'Change in business activity is selected in field no. 17 (alone or in combination with any other purpose)', parent and linked forms would get processed under non-STP mode by jurisdictional ROC.

Regarding the period covered under LLP Condonation of delay, mentions that Form-3/4/11 filed between September 1, 2023 and November 30, 2023 will be covered under the circular (both dates inclusive), and also lists down the additional fee waiver/reduced additional fee for the filings done during the said relaxation period. Clarifying that Form 3 LLP can be filed with same event date again to correct the Master data, if required (applicable for change in agreement), specifies that Form-3 LLP needs to be filed in sequential manner based on event date/agreement date respectively, and that the stakeholder may ensure that the master data is correct before going for subsequent filings.

Outlining the major enhancements for LLP Form-3 during the relaxation period, MCA highlights that, during the relaxation period, LLP Form-3 will have a functionality to appoint/Cessate same Designated Partner/Partner with same event date in one form only, however, states that after the expiry of relaxation period, this facility shall not be available to the stakeholders.

https://www.mca.gov.in/content/dam/mca/documents/FAQs-on-condonation-of-delay-in-LLP-20230823.pdf

59. MCA amends LLP Form 3 and Form 4 from 1st September 2023:- ***MCA Notification dated 01 September 2023***

MCA has released the LLP Amnesty scheme vide circular 08/2023 for filing of Form 3/4/11 for those who could not file the same due to technicalities on the portal. The stakeholders are further informed that the Ministry has amended the said Form 3 (information with regard to LLP Agreement and any changes made therein) and 4 (notice of appointment / cessation of the Partner or designated partner) and the amended forms are effective from 1st September 2023. The Stakeholders are advised to go through the new forms before filing the same as there might be required to file additional particulars and attachments.

https://www.mca.gov.in/bin/dms/getdocument?mds=ywlii5hvZvLABylQ7KmtNA%253D%253D&type=open

60. Govt. proposes changes to Patent Rules, seeks suggestions:- ***DPIIT Notification No. G.S.R. 619(E), dated 22 August 2023***

The Department for Promotion of Industry and Internal Trade (DPIIT), Ministry of Commerce & Industry, the body responsible for administering Indian IP laws has published the Draft Patents (Amendment), Rules, 2023 (Draft Rules). The Draft Rules propose to amend the Patents Rules, 2003 and the DPIIT has sought comments from the stakeholders on these Draft Rules. Some of the important changes proposed under the Draft Rules are as under:

- **Duty to file details of corresponding applications on Form 3 (Section 8(1))**: The Draft Rules propose to relax the current continuous duty of the applicant to provide details of the corresponding application within six months of filing such application. The Draft proposes that the details of all corresponding applications be provided only once within 2 months from the date of issuance of the First Examination Report (FER). The Controller is also mandated to monitor the prosecution of corresponding applications based on publicly available information and can ask the applicant to submit details only with reasons to be recorded in writing.

- **Divisional application proposed to be filed based on invention disclosed in provisional application**: The Draft Rules provide that a divisional application can be filed in respect of an invention disclosed in provisional specification and hence there would be no limitation for the claims of the divisional to be drawn from the claims of the parent application.

- **Reduced timeline for Request for Examination (RFE)**: The date for filing of RFE is proposed to be reduced from the current 48 months to 31 months from the earliest priority date. This timeline will apply only to the applications filed after the notification of the new Rules.

- **Separate application to be filed for availing grace period**: The Draft Rules introduce Form 31 for filing an application to avail the grace period provided under Section 31 of the Act and prescribe an official fee of INR 84000 (approx. USD 1000) for such an application.

- **Changes proposed in procedure related to Pre-Grant Opposition**: As per the draft, the Controller has to first decide the maintainability of a pre-grant opposition and only if found to be meritorious, the Controller would notify the Applicant. The Controller can thus dismiss a pre-grant opposition at their end if found to be frivolous. The timeline to file a reply to the pre-grant Opposition by the applicant is proposed to be reduced from 3 months to 2 months from the date of notice. The Controller has to issue a decision ordinarily within 3 monthsThe hearing procedure currently applicable to the post-grant opposition is to be applied to the pre-grant opposition. If the pre-grant opposition is found to be maintainable, then the Controller has to follow the expedited examination procedure prescribed under Rule 24C.The official fee proposed for filing pre-grant opposition and such fees will cover the patent filing cost, including fees applicable for Form-2, Form-9, and Form-18.

- **Timeline reduced for the Opposition Board to submit the report**: For post-grant oppositions, the Opposition Board is proposed to submit its report within 2 months, instead of the current 3 months.

- **Increased Fees for Post-grant Opposition**: Increased official fee proposed for filing Post-grant Opposition, fee will be equal to the aggregate patent filing cost, including Form-2, Form-9, and Form-18.

- **Discount on payment of multiple advance annuity**: The patentees may avail a 10% discount on the official fee if they make online payment in advance for 4 or more years to maintain the patent.

- **Relaxed Requirements for working statement**: Working statements which currently are required to be filed annually are proposed to be filed only once every 3 years, for the previous 3 financial years. A provision to condone the delay in filing the statement is also introduced. Under the changes proposed in Form 27, the format of the working statement, the patentee and licensees are only required to state whether the patent is worked or not worked. No additional information as to the value or amount of working is required under the proposed changes.

- **Relaxed provision for extension**: The amendment proposed in Rule 138 is to cover all the provisions for which extension can be taken, for a period of up to 6 months. This would include extension for national phase entry and RFE which may be extended up to 6 months if a request for extension is filed before the expiry of the prescribed period. However, the Controller's discretion would still apply to such requests.

- **Age of Natural Persons**: New format of Form 1: Application of Patent will require the details regarding age of natural persons.

The changes proposed under the Draft Rules are highly significant and a result of long winding discussions of the stakeholders with the Government of India. The DPIIT has now sought comments on the Draft Rules by September 22, 2023, and we are hopeful that the spirit of the proposed rules will be carried forward in the final Rules to be notified by the Government.

61. SEBI issues informal guidance on gifting of shares to spouse:- *Informal Guidance in the matter of Vidli Restaurants Ltd. [LSI-791- SEBI-2023(MUM)] dated 23 June 2023*

In the matter of Vidli Restaurants Ltd. [LSI-791- SEBI-2023(MUM)], SEBI issues an Informal Guidance to Vidli Restaurants Ltd. (Applicant / Target Company) w.r.t. proposed transaction of gifting certain equity shares by a shareholder to their spouse. Applicant submitted that:

- its equity shares were listed and traded on the SME Platform of BSE Ltd., thereafter, the equity shares were admitted for dealings on BSE's Mainboard Platform,
- for more than 3 years, there has been no change in equity shareholding of VITS Hotels Worldwide Pvt. Ltd. and Kamats Worldwide Food Services Pvt. Ltd. (both Promoters of Target Company)
- as per the proposed transaction, one shareholder (holding 9,999 shares) of VITS Hotels intends to gift 9,998 equity shares held by her in VITS Hotels to another shareholder (her spouse – holding 1 share)
- accordingly, pursuant to the proposed transaction, her spouse would then hold 99.99% equity shareholding of VITS Hotels and indirectly acquire control over Target Company.

SEBI explains that on acquiring 9,998 equity shares in VITS Hotels, her spouse would be able to indirectly exercise 53.98% of the voting rights and control over the Target Company, thereby triggering the open offer requirements under Reg. 3 and 4 of the Takeover Regulations read with Reg. 5(1) thereof, unless such an obligation is expressly exempted under Reg. 10.

Further, states that the proposed acquisition shall not be eligible for automatic exemption as the exemption under Reg. 10(1)(a) of the Takeover Regulations would apply only if the acquisition of shares [of a target company as per Reg. 2(1)(v)] is pursuant to inter se transfer of shares amongst immediate relatives, where a spouse qualifies as an 'immediate relative' under Reg. 2(1) of the Takeover Regulations.

Lastly, underscoring that Reg. 2(1)(q)(2)(iv) & (v) of the Takeover Regulations inter alia specifies that 'promoters and members of the promoter group' and 'immediate relatives' are persons acting in concert, unless the contrary is established, hence, her spouse would be a person acting in concert with the others in promoter group of the Target Company.

https://www.sebi.gov.in/sebi_data/commondocs/jun-2023/Vidli_Restaurants_Ltd_IG_p.pdf

62. SEBI issues guidelines to boost cyber security and cyber resilience framework for MIIs:- *SEBI Circular No. SEBI/HO/MRD/TPD/P/CIR/2023/146 dated 29 August 2023*

Market Infrastructure Institutions (i.e. Stock Exchanges, Clearing Corporations and Depositories) are systemically important institutions as they provide infrastructure necessary for the smooth and uninterrupted functioning of the securities market. As a part of the operational risk management, these Market Infrastructure Institutions (MIIs) need to have robust cyber security framework to provide essential facilities and perform systemically critical functions relating to trading, clearing and settlement în securities market. It is also important that MIIs establish and continuously improve their Information Technology (IT) processes and controls to preserve confidentiality, integrity and availability of data and IT systems. With the change in market dynamics in the Indian Securities markets, the interdependence among the MIIs has seen significant increase. Considering the interconnectedness and interdependence of the Mll's to carry out their functions, the cyber risk of any given MIl is no longer limited to the MIl's owned or controlled systems, networks and assets.

In view of the above SEBI issues guidelines for MIIs to strengthen their existing cyber security and cyber resilience framework. MIIs require offline encrypted data backups and test these backups every three months to take a copy of confidentiality, integrity and availability. Regulator directs MIIs to explore the possibility of store extra spare hardware in an isolated environment to rebuild systems, in case, starting their operations from both the Primary Data Centre (PDC) and Disaster Recovery Site (DRS) is not feasible.They must conduct business continuity drills ensuring readiness

to tackle attacks. Further, MII's to conduct vulnerability scanning on internet-facing devices to curtail the attack surface, employ multi-factor authentication for all services, secure domain controllers and secure dark web monitoring services to monitor any brand abuse. Regulator stipulates that MIIs shall implement Domain name system (DNS) filtering services and ensure that their Endpoint Detection and Response (EDR)/ Endpoint Protection Platform (EPP), antivirus, anti-malware software and signatures are up to date. Regulator states that MIIs are required to take necessary steps to put in place systems for implementation of the circular, including necessary amendments to the relevant bye-laws, rules and regulations, if any, within 120 days from the date of the circular.

63. SEBI floats Consultation Paper on creation of Performance Validation Agency for intermediaries:- *SEBI Consultation paper dated 31 August 2023*

SEBI issues a Consultation Paper on creation of Performance Validation Agency (PVA) to validate any claims of performance by SEBI registered intermediaries and other entities, and seeks public comments on the same by September 21, 2023. SEBI highlighted that there has been a demand from registered intermediaries to showcase their performance to investors so as to establish/ enhance their credibility in the eyes of investors and to help grow the reach of their services to investors. In this regard the SEBI proposes to facilitate registered intermediaries to disclose their performance to investors, while at the same time having checks and balances to protect the interest of investors against unverified claims/ performance.

SEBI underscores that performance claims shall be validated by PVA based on specified parameters such as returns, risk, volatility and other suitable parameters as may be decided by industry forum in consultation with PVA and SEBI. The regulator suggested that, for this purpose, PVA may partner with other knowledge partners such as Credit Rating Agencies. Further, setting forth the types of claims permitted to be validated by PVA, SEBI also recommends that where registered intermediaries seek performance validation for recommendations made publicly, such recommendations shall be displayed on websites of the intermediaries and PVA on the same day. Lastly, suggesting that where registered intermediaries seek performance validation of a recommended security/ portfolio, the performance of such recommended security/ portfolio shall be appropriately displayed on the website of the intermediary and PVA in the format as may be decided by industry forum in consultation with PVA and SEBI, regulator proposes that such validation shall be done for a reasonable period prior to and after the date of the recommendation.

64. SEBI mulls limiting SEBI regulated entities' association with unregistered 'finfluencers': *SEBI Reports for Public Comments dated 25 August 2023*

SEBI issues a Consultation Paper laying down a proposal to restrict the association of SEBI registered intermediaries/ regulated entities with unregistered entities, including 'finfluencers', seeking public comments by September 15, 2023. *Inter alia* apprising that SEBI has come across instances where SEBI registered intermediaries/regulated entities may be relying on unregistered/unregulated finfluencers to promote their products and services. Regulator highlights that, besides undertaking enforcement action against unregistered finfluencers who breach SEBI regulations, this paper proposes to disrupt the revenue model for such finfluencers, so that the perverse incentives in the ecosystem are reduced. Accordingly, SEBI recommends barring:

- SEBI registered intermediaries/regulated entities or their agents/ representatives from, directly or indirectly, having any association/relationship in any form, whether monetary or non-monetary, for any promotion or advertisement of their services/products, with any unregistered entities (including finfluencers), and

- entities registered/regulated by SEBI or stock exchanges or AMFI from sharing any confidential information of their clients with any unregistered entities.

Market Regulator further proposes that finfluencers registered with SEBI or stock exchanges or AMFI in any capacity shall display their appropriate registration number, contact details, investor grievance redressal helpline, and make appropriate disclosure and disclaimer on any posts, and shall also fully adhere to the code of conduct under the terms of their relevant registration, as also comply with the advertisement guidelines issued by SEBI, stock exchanges and SEBI recognized supervisory body from time to time.

Lastly, recommending that limited referrals from retail clients, and payment of fees for such limited referrals by stockbrokers shall be allowed, SEBI suggests that registered intermediaries shall take active measures to dissociate themselves from any unregistered entity using their name, product or service, and take necessary action to bring it to the notice of enforcement agency concerned to take appropriate action.

https://www.sebi.gov.in/reports-and-statistics/reports/aug-2023/consultation-paper-on-association-of-sebi-registered-intermediaries-regulated-entities-with-unregistered-entities-including-finfluencers-_75932.html

65. SEBI proposes to introduce separate fee-collection mechanisms for Investment Advisors and Research Analysts:- *SEBI Reports for Public Comments dated 25 August 2023.*

SEBI issues a Consultation Paper on mechanisms for Fee Collection by SEBI registered Investment Advisers (IAs) and Research Analysts (RAs), proposing to create a closed ecosystem for fee collection by Its and RAs from their clients.

“This ecosystem will help investors ensure that their payments are reaching only registered IAs and RAs. As a corollary, this would also help investors identify, isolate and avoid unregistered entities, who would be unable to access this closed ecosystem.” SEBI Proposes to bring in a separate mechanism for fee collection by IAs and RAs, where the fees shall be paid by clients on designated centralised platform/s to be specified/administered by a SEBI registered supervisory body and that the IAs, RAs shall provide the details of designated bank account(s) in which fees shall be received through the proposed mechanism.

The “Process Flow Chart” depicting proposed mechanism for fee collection by IAs and RAs, is proposed seeking comments on 3 issues, viz:

- whether the proposed mechanism should be optional or mandatory,
- whether creation of awareness about the mechanism will make investors more cautious in approaching unregistered entities for availing investment advisory/research services, and
- whether any additional information in required to be captured in the mechanism, to make it more efficient and user friendly.

https://www.sebi.gov.in/reports-and-statistics/reports/aug-2023/consultation-paper-on-mechanism-for-fee-collection-by-sebi-registered-investment-advisers-and-research-analysts_75933.html

66.SEBI proposes norms to allow increased participation of NRIs, OCIs in IFSC based FPIs:- *SEBI's Consultation Paper dated 25 August 2023*

The Securities and Exchange Board of India (SEBI) has proposed to allow higher investments from Non-Resident Indians (NRIs) and Overseas Citizens of India (OCIs) through Foreign Portfolio Investors (FPIs) operating out of International Financial Services Centers (IFSC). Market experts believe that SEBI's proposal comes at a time when it is perceived that the market regulator looks at the NRI/OCI community through a lens of suspicion due some of the past events. By increasing the limit, it is giving out a message that it is comfortable with the community investing in Indian markets, provided they follow the guidelines imposed by the regulator. Further, it is seeking to strike a balance between higher foreign investments and risks associated with overseas entities controlled by Indian-origin people, owing to the possible proximity of such non-resident Indians (NRIs) with Indian companies and promoters.The current norms don't permit an FPI applicant to be an NRI or OCI. Accordingly, Regulator recommends a framework for channelizing NRI/ OCI investments in the Indian securities markets through the FPI route, whereby, *inter alia* –

- the contribution of a single NRI or OCI or RI shall be below 25% of the total contribution in the corpus of the applicant,

- at an aggregate level, NRIs and OCIs may be allowed to contribute 50% or more to the corpus of an FPI subject to certain conditions;

SEBI's new proposal comes with conditions that the FPI operate out of the IFSC and furnish granular details of ownership and control if the FPI has over Rs 25,000 crore in equity AUM or holds more than 33% of its equity assets in a single group. Also, the market regulator is proposing that FPIs/ FPI applicants based out of IFSCs in India, that are desirous of having more than 50% aggregate contribution from NRIs/ OCIs in their corpus, may opt to do so by submitting declaration in this regard to their DDPs. Regulator states that such declaration may be submitted at the time of seeking registration or anytime during the validity of their registration, and once an FPI submits such declaration, it shall comply with the specified conditions throughout the validity of its registration, irrespective of the actual aggregate NRI/ OCI contribution in the corpus of the FPI. It has invited comments on the recommendations by September 10, 2023.

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CROSS BORDER

1. Developing countries cast doubt on benefits of Global Tax Treaty:- *News Report*

The Group of 24 (G-24), a coalition of developing countries including India, Brazil, Argentina, and South Africa, has articulated their perspectives on the global tax pact that gained endorsement from 132 countries on July 1, 2023. This pact, spearheaded by the Organization for Economic Co-operation and Development (OECD), aims to reform the international tax system by establishing a global minimum corporate tax rate of 15% and redistributing taxing rights to the market jurisdictions where multinational corporations conduct business.

However, the G-24 has expressed reservations about the pact, outlining their discontent with its provisions. They are concerned that the agreement may not generate sufficient revenue for their economies and fails to adequately address critical issues related to tax avoidance, tax competition, and digital taxation. Additionally, the G-24 has raised concerns about the negotiation process, highlighting the lack of transparency and inclusiveness, as well as the perceived pressure exerted by certain OECD countries to secure acceptance of the deal. In response to these concerns, the G-24 has called upon OECD members to refrain from ratifying the multilateral treaty until other OECD countries, especially the United States, also commit to doing so. They have asserted their commitment to ongoing dialogue to pursue a fair and balanced resolution.

https://news.bloombergtax.com/financial-accounting/developing-countries-cast- doubt-on-benefits-of-global-tax-treaty

2. Vietnam looking to implement global minimum tax:- *News Report*

The Vietnamese government will submit its policy on global minimum tax to the National Assembly in October this year and is looking to implement Qualified Domestic Minimum Top-up Tax (QDMTT) and income inclusion rules (IIR) in its domestic tax law starting January 2024. The Pillar Two rules, ensure multinational enterprises pay a minimum tax rate on income in each jurisdiction. The tax rules provide a coordinated system of taxation, imposing a top-up tax on profits arising in a jurisdiction when the effective tax rate falls below the 15% minimum rate. Prime Minister Pham Minh Chinh emphasized the need for the global minimum tax to protect Vietnam's legitimate rights and interests, affecting hundreds of multinational enterprises in the country.

https://transferpricingnews.com/vietnam-looking-to-implement-global-minimum-tax/

3. US IRS to allow full digital document submissions for 2024 tax season:- *News Report*

The U.S. Internal Revenue Service (IRS) is planning to allow taxpayers to submit all documents and correspondence to the agency digitally for the 2024 tax filing season. The Treasury Department also announced that all paper tax returns will be converted to digital documents by the 2025 season. This initiative is part of a decade-long, $60 billion program to modernize systems and improve tax enforcement. The plan could eliminate handling of up to 125 million such documents per year.

Most U.S. tax returns are already filed digitally, which results in faster refunds. However, the COVID-19 pandemic and associated filing delays and staffing shortages saddled the IRS with a massive backlog of 22.5 million unprocessed paper tax returns by February 2022 that needed some

form of manual processing. The agency has been churning through the backlog, partly with the help of new scanning technology, reducing it to 2.15 million returns needing processing, reviews or corrections. U.S. Treasury Secretary Janet Yellen said in excerpts of remarks at an IRS facility in McLean, Virginia, that taxpayers will always have the choice to submit documents by paper. "For those taxpayers, by filing season 2025, the IRS is committing to digitally process 100 percent of tax and information returns that are submitted by paper – as well as half of all paper correspondence, non-tax forms, and notice responses," Yellen said.

Further, the new scanning technology and other improvements in IRS customer service were made possible by funds provided in last year's climate-focused Inflation Reduction Act, initially approved at $80 billion over a decade, but reduced to $60 billion by this year's bipartisan deal to increase the federal debt ceiling. The funds are separate from the IRS' annual operating budget, which some Republicans in Congress have vowed to cut. Yellen said "stable and sufficient annual appropriations" for the IRS were needed to sustain progress on initiatives to improve customer service, such as the paperless processing effort and reducing phone call response times.

https://www.reuters.com/world/us/us-irs-allow-full-digital-document-submissions-2024-tax-season-2023-08-02/

4. United States (New Jersey) enacts significant changes to Corporation Business Tax Law New Jersey:- *U.S. New Jersey State tax laws Amendments dated 3 July 2023*

On July 3, 2023, New Jersey Governor Phil Murphy signed A.B. 5323 into law, amending the Corporation Business Tax (CBT) with the following key provisions. These amendments aim to enhance the clarity and effectiveness of the CBT framework, impacting corporations operating within New Jersey.

- **Economic Nexus Threshold:** A new nexus provision imposes tax on corporations deriving over $100,000 New Jersey source receipts or 200 transactions delivered to New Jersey customers.

- **Revisions to Corporate Income Tax Base:**
  - **Increased GILTI Subtraction:** The bill enhances the subtraction for Global Intangible Low-Taxed Income (GILTI) by treating gross GILTI as a dividend, affecting New Jersey's dividends received deduction.
  - **Exemption for Treaty-Protected Income:** Income of corporations formed in countries with comprehensive tax treaties with the United States is exempted from taxation.
  - **Prioritizing NOLs over DRDs:** Taxpayers can now deduct Net Operating Losses (NOLs) before the Dividends Received Deduction (DRD), potentially accelerating NOL deductions.

- **Eliminating Related Party Addbacks:** The bill sunsets the related party addback provisions for related party interest and income from intangibles.

- **Revisions to Combined Reporting Rules:**
  - **Expand Water's-Edge Group Membership:** Non-United States corporations are included in New Jersey combined groups to the extent of their United States effectively connected income.
  - **Adopt Finnigan Combined Group Apportionment:** Combined groups now include all group members' New Jersey sales in the sales factor numerator, following a Finnigan apportionment approach.

- **Pooling of Prior NOL Conversion and NOLs:** Combined groups can track and apply NOLs on a combined basis, allowing for sharing and acceleration of NOL utilization.

https://www.state.nj.us/treasury/taxation/pdf/pubs/tb/tb107.pdf

5. Rollback of Foreign Tax Credit Rules Helps Companies, for now:- *News Report dated 16 August 2023*

The IRS and the Treasury Department said in July they were considering a revamp of their controversial rules on when companies can take the foreign tax credit, after a year and a half of taxpayers' complaints about the new rules and multiple smaller-bore attempts to fix them. The IRS and Treasury have granted taxpayers temporary relief (the relief) under sections 901 and 903 in determining whether a foreign tax qualifies as a creditable tax for purposes of the foreign tax credit (FTC). Notice 2023-55, issued July 21, 2023, gives taxpayers the option to temporarily apply:

- Former section 1.901-2(a) and (b) (i.e., before T.D. 9959), for the definition of a foreign net income tax and for purposes of satisfying the net gain requirement, but subject to a modified non-confiscatory gross basis tax rule, and
- Existing section 1.903-1 without the jurisdiction to tax excluded income and attribution requirements.

The relief applies to tax years beginning on or after Dec. 28, 2021, and ending on or before Dec. 31, 2023 (e.g., 2022 and 2023 calendar years). For the moment, the government's big rollback of foreign tax credit rules is a clear win for multinational drug makers, manufacturers, and companies doing business in Brazil. What happens next isn't so clear.

https://news.bloombergtax.com/daily-tax-report/rollback-of-foreign-tax-credit-rules-helps-companies-for-now

6. The US govt. wants rich companies to pay higher taxes:- *News Report*

The proposal to institute a 15% tax on the income of major U.S. corporations, intended to rectify their historically low federal tax payments, is encountering obstacles and strong corporate opposition. Despite a year having passed since its introduction, the new corporate alternative minimum tax has not yet been fully implemented. The central challenge lies in ensuring that President Biden's ambition to both reduce the federal deficit and establish equitable corporate taxation is realized through comprehensive regulations issued by the Treasury Department. Uncertainty surrounds the execution of this policy due to unresolved legal complexities. It remains unclear which specific companies will be impacted by the tax and how much revenue will be generated as a result. Corporations, including notable names like AT&T and Amazon, have been fervently lobbying to modify the tax's parameters, with the aim of minimizing its fiscal impact on their operations.

Further, acknowledging the intricate nature of the tax, the Internal Revenue Service (IRS) has deferred the requirement for companies to estimate and remit the tax on a quarterly basis. This pause reflects the intricate challenges that the government faces in designing and implementing a tax system that ensures both clarity and equitable corporate contributions. However, the Treasury Department remains committed to crafting regulations that provide lucidity and fairness amid the persistent challenges. This process involves navigating a complex landscape, considering not only

the legal intricacies but also the broader economic implications and corporate interests involved.

https://www.washingtonpost.com/business/2023/08/14/biden-corporate-tax/

7. Israel Tax Agency Issues Circular Explaining Mutual Agreement Procedure Rules Under DTAs:- Circular *no. 01/2023 dated 17 August 2023*

The Income Tax Circular No. 01/2023 issued by the Israeli Tax Authority on August 17, 2023, which provides guidance on the mutual agreement procedure (MAP) under double tax agreements (DTAs). The circular aims to assist taxpayers facing double taxation or taxation not in line with DTAs in seeking relief through the MAP mechanism. The procedure for filing a MAP request is outlined, including requirements such as submitting a written request to the Israeli competent authority within three years of the first notification of the action leading to double taxation or non-compliance with the DTA. The request should include relevant information and documents like the taxpayer's identity, contact details, tax identification number, treaty state, DTA circular, tax amount, and a description of the situation, along with supporting documents. Notably, the request must confirm the absence of other legal or administrative proceedings that could limit the MAP process.

The circular further explains that the Israeli competent authority holds the discretion to decide whether to initiate a MAP process, considering factors like case merits, available information, and the potential for agreement with the treaty state. The competent authority can also initiate a MAP process on its own initiative or upon request from the treaty state, provided there's a possibility of double taxation or non-compliance with the DTA circular. However, the MAP process may not proceed if the taxpayer does not cooperate, provide adequate information, or comply with DTA and domestic law obligations.

In terms of communication, the circular highlights that the Israeli competent authority will engage with the treaty state through written correspondence, phone calls, video conferences, or face-to-face meetings during the MAP process. The aim is to reach a mutually satisfactory solution within a reasonable timeframe, taking into consideration the intricacies of each case. Importantly, the taxpayer will be kept informed about the progress and outcome of the MAP process, and their consent will be sought before finalizing any agreement with the treaty state.

https://news.bloombergtax.com/daily-tax-report-international/israel-tax-agency-issues-circular-explaining-mutual-agreement-procedure-rules-under-dtas

8. Developing Countries Say OECD Tax Rules Don’t Guarantee Revenue:- *News Report*

The 15% global minimum tax rules included as part of the OECD-led international tax deal, which favour developed nations, are burdensome to administer and do not guarantee revenue collection, an advocacy group for developing nations said. The qualified domestic minimum top-up tax (QDMTT), which allows countries to apply a 15% levy domestically if they follow the global minimum tax model rules, is highly criticised for its lack of revenue collection.

https://news.bloombergtax.com/daily-tax-report-international/developing-countries-say-oecd-tax-rules-dont-guarantee-revenue

9. New U.S. Buyback Tax hits Companies with $3.5 Billion Burden:- *News Report*

The tax, aimed at restraining stock repurchases, has resulted in a substantial financial burden of approximately $3.5 billion for affected companies. This initiative is part of a broader strategy to address concerns regarding wealth inequality and capital distribution. The article provides a comprehensive analysis of the tax's provisions and its far-reaching impact across various industry sectors. It delves into how companies are responding to this regulatory shift, prompting them to undertake strategic and operational adjustments.

10. Tech giants to face 3% digital tax in New Zealand, will begin in 2025:- *News report*

New Zealand is on the verge of introducing legislation this week that will lay the groundwork for a digital services tax aimed at large multinational corporations. It's important to emphasize that this tax won't come into effect until 2025. Finance Minister Grant Robertson, addressing the matter in Wellington, outlined the fundamental aspects of this proposed tax. It will be applicable to multinational corporations that generate annual revenues surpassing €750 million ($810 million) from global digital services, with an additional threshold of over NZ$3.5 million ($2 million) from digital services provided to users within New Zealand. The proposed tax rate stands at 3% and would be applied to the gross taxable revenue generated by digital services within New Zealand. This approach aligns with taxation models already in place in other jurisdictions, such as France and the UK. Over a four-year period, it is estimated that this tax will generate around NZ$222 million in revenue.

Moreover, New Zealand has actively participated in negotiations within the Organization for Economic Co-operation and Development (OECD) to establish a multilateral agreement to tackle these tax challenges. Nonetheless, progress in these negotiations has been sluggish. Robertson stressed that while New Zealand remains committed to supporting a multilateral agreement, it is also prepared to take proactive measures in case the OECD process doesn't yield results. He stated, "While we will continue our efforts to facilitate a multilateral agreement, we are not inclined to merely wait indefinitely for its outcome. That is why we have drafted legislation that is poised for enactment should the OECD process fail to yield results."

https://www.business-standard.com/world-news/tech-giants-to-face-3-digital-tax-in-new-zealand-will-begin-in-2025-123082900138_1.html

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ASIRE
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Contact Us: -

Rahul Garg

Managing Partner

info@asireconsulting.com

connect@asireconsulting.com

+91 9891091307

529, Fifth Floor, Tower
B-4, Spaze i-Tech Park,
Sector-49 Sohna Road,
Gurgaon 122018,
Haryana

Tax | Regulatory | M&A

www.asire.in