



Tax & Regulatory Updates – Key Developments of December 2023

DIRECT TAXATION

1. Income tax department introduces new 'Discard ITR' facility on its website from AY 24: - CBDT

The Income Tax department has recently introduced a significant functionality on its website, enabling taxpayers to discard previously filed but unverified Income Tax Returns (ITR). Unlike the previous practice, where ITR revision was limited to correcting errors or omissions, this new feature allows users to 'Discard ITR' for unverified original, belated, or revised ITRs, starting from the assessment year 2023-24. It is a good move by the income tax department as it will increase the scope for taxpayers for the revision of their income tax return, which was earlier limited to omission and error. The 'Discard' option can be utilized repeatedly, provided the ITR status remains unverified or pending verification. This facility is applicable for AY24 onwards for

the respective ITR, within the specified time limit for filing ITR under section 139(1)/139(4)/139(5). Once an ITR is discarded, it becomes irrevocable, essentially indicating that the ITR was not filed at all.

To access the 'Discard' option, users can follow the website pathway: www.incometax.gov.in → Login → e-File → Income Tax Return → E-Verify ITR → “Discard.”

The FAQs released by the income tax department clarify that users can avail the option of 'Discard' for the ITRs being filed u/s 139(1)/139(4)/139(5) if they do not want to verify it. The user is provided a facility to file an ITR afresh after discarding the previous unverified ITR. However, if the 'ITR filed u/s 139(1)' is discarded, and the subsequent return is filed after the due date u/s 139(1), it would attract implications of belated return like 234F, etc. Thus, it is advised to check whether the due date for filing the return u/s 139(1) is available or not before discarding any previously filed return. It is not mandatory to file a subsequent ITR after discarding a previously unverified ITR. However, considering that the taxpayer has already uploaded the return data, it is generally expected that they would file another ITR subsequently. Additionally, if users have dispatched ITR V to CPC, and it is in transit, but realized that the details were not reported correctly, it is explicitly advised not to discard such returns.

2. UN Tax Committee Approves Transfer Pricing of Carbon Offsets and Credits Guidance: - UN Tax Committee Paper for approval from the Transfer Pricing Subcommittee

The 27th session of the UN Committee of Experts on International Cooperation in Tax Matters took place in Geneva from 17 to 20 October 2023 and was co-chaired by Ms Liselott Kana and Mr Mathew Gbonjubola of the UN Tax Committee. Subcommittees dealing with various areas of taxation presented updates to the Tax Committee on their progress. The UN Tax Committee agreed and adopted the 27th Session agenda. The full agenda and all relevant documents to which reference are available on the UN website. The key highlights of the said session are summarized below for a ready reference:

Taxation and Sustainable Development Goals

Ms Shari Spiegel, Acting Director, Financing for Sustainable Development Office of the United Nations, Department of Economic and Social Affairs, stressed the pivotal role of tax in the social contract between a government and its citizens. She shared examples of areas where tax supports the sustainable development goals (SDGs). She added that the Secretary-General insists on including international tax cooperation as part of the SDGs reform agenda, given the critical importance of fully inclusive and more effective international tax cooperation, and linking that to advancing efforts for increased fiscal transparency and accountability to combat tax-related illicit financial flows, with the goal of supporting the SDGs.

Transfer Pricing

The Subcommittee on Transfer Pricing (TP) presented for approval guidance on transfer pricing during the COVID-19 economic downturn, transfer pricing compliance assurance and the transfer pricing of carbon offsets and credits. The subcommittee also presented draft papers on industry guidance for primary products and on sector guidance for the pharmaceutical industry. The

Subcommittee on TP has been working on drafting interstitial guidelines in six workstreams, as summarized below.

a) Transfer Pricing During COVID-19 Economic Downturn: The interstitial guidance provides further details on:

- The accurate delineation and recognition of the actual transaction,
- Comparable and multiple year data, and
- Additional guidance in respect of advance pricing agreements (APAs).

Mr Rasmi Ranjan Das, member of the UN Tax Committee, asked to specifically include a disclaimer that the TP manual prevails over the interstitial guidance. Mr Mathew Gbonjubola stressed that within the Subcommittee everything was done to ensure that no conflict arises between the TP Manual and this interstitial guidance. Ms Ingela Willfors added that if a disclaimer is to be added then all interstitial guidelines will have to include a specific disclaimer in order to remain consistent. This interstitial guidance was approved by the UN Tax Committee.

b) Transfer Pricing Compliance Assurance: The toolkit on compliance assurance is aimed at tax administrations facing resource and capacity constraints in a highly specialized and relatively new area of international tax law. The interstitial guidance provides further details on:

- The potential use of safe harbours and iterative approaches to risk case selection,
- The potential sources and uses of information, and
- Added questions regarding intra-group services.

This interstitial guidance was approved by the UN Tax Committee.

c) Transfer Pricing of Carbon Offsets and Credits: The interstitial guidance provides:

- Practical guidance on aspects to consider from a TP perspective while performing a TP analysis involving carbon credits/offsets,
- A list of typical transactions and TP issues involved in different carbon credit/offset projects, and
- A discussion on potential changes of TP regulation that developing countries might want to anticipate, to ensure proper treatment of carbon credits/offsets.

Understanding the processes in place to generate carbon credits and the value chain of carbon emission abatement activities that serve to generate carbon credits will help with considering how transfer pricing rules apply to generation, transfer, and sale of carbon credits in the event associated enterprises are involved. Understanding the value chain is relevant to help accurately delineate the actual transactions based on the economically relevant characteristics of the transactions. These consist of the conditions of the transactions and the economically relevant circumstances in which the transactions take place.

The carbon credit business as such does not necessarily require any transfer pricing considerations different from those that already exist, but it does require awareness of the industry and of the aspects that make the carbon credit business complex. These aspects include the intangible fungible nature of carbon credits, the regulatory system that includes both compliance and voluntary markets for carbon credits, the capital intensive nature of carbon credit generation, the price volatility of carbon credits, the use of carbon financing and

a great political sensitivity, namely that they are one of the mechanisms available to assist with combating climate change, market driven and subject to fast changing (international and domestic) rules and regulations.

To this extent, developing countries that are setting themselves up to participate in international carbon markets and accommodate climate change projects that lead to carbon credits may want to consider in particular whether they will publish additional clarification on 38 whether they treat carbon credits as intangibles for transfer pricing purposes (consistent with the GAAP/IFRS analysis), how subsidies for carbon projects are treated in the value chain and whether cost incurred with respect to mandatory and voluntary projects are treated consistently and follow a regular business cost analysis for corporate income tax purposes.

Ms Ingela Willfors highlighted that this interstitial guidance is linked to the SDGs and to the Environmental Tax Subcommittee's work. She stressed that there is no other guidance available in this area. Mr Rasmi Ranjan Das supports the interstitial guidance pending a disclaimer being added, as this topic is not yet fully navigated. Ms Elisângela Rita and Mr Muhammad Ashfaq Ahmed, members of the UN Tax Committee, noted the importance of having proper cross-references with other subcommittees' work. Ms Liselott Kana concluded that the Subcommittee will look for an appropriate location to add a disclaimer. This interstitial guidance was approved by the UN Tax Committee.

d) Industry/Sector Guidance for Primary Products: The interstitial guidance provides:

- Practical guidance on how to apply the arm's length principle to cross border transactions involving agricultural products,
- Details on the global value chain of the coffee and soybean industry with a focus on relevant TP related issues and practical cases,
- The Subcommittee presented the guidance for comments and suggestions.

Mr Enrique Bolado Muñoz, member of the UN Tax Committee, suggested including practical and illustrative examples related to the coffee and soybean industries. Mr Mathew Gbonjubola, member of the TP Subcommittee, added that more commodities will be included at a later stage (i.e. wheat, cotton).

e) Industry/Sector Guidance for Pharmaceutical Industry: The interstitial guidance provides:

- Practical guidance on how to apply the arm's length principle to cross border transactions in the pharmaceutical industry; and
- Details on the global value chain of the industry.
- The Subcommittee presented the guidance for comments and suggestions.

Mr Enrique Bolado Muñoz and Ms Trude Trude Steinnes Sønvisen, member of the UN Tax Committee, suggested adding examples on generic medication. Mr Mathew Gbonjubola stressed that some low-income countries do not have the capacity to raise the required number of auditors to tackle the specificities of each industry.

f) Dispute Avoidance and Resolution: The TP Subcommittee announced that it intends to look at identifying current issues with respect to bilateral APAs in developing countries, including resource constraints and lack of trust between taxpayers and tax authorities, and outlying pragmatic approaches for how to deal with these constraints. The work has been coordinated

with the group on Dispute Avoidance and Resolution. The Subcommittee presented the work for comments and suggestions. Mr Rasmi Ranjan Das advised to contribute more resources to this work to build more robust APAs programmes. Mr Aart Roelofsen, member of the UN Tax Committee, echoed Rasmi's comment, stressing that the special needs and resources of developing countries make it worth advancing this work. Ms Stephanie Smith stated that she does not see this work as a priority considering that it could be addressed by the group on Dispute Avoidance and Resolution. Mr Carlos Protto highlighted that the TP Subcommittee works closely with the group on Dispute Avoidance and Resolution.

Taxation of Extractive Industries

The Subcommittee on Taxation of the extractive industries (the Subcommittee) has been working on two workstreams, both of which were presented for discussion and comment.

- a) **Permanent Establishment (PE) and Other Income:-** The paper describes how the current UN Tax Convention Model (UN MTC) addresses extractive PE and other income issues. It presents different Articles that have some link to taxation of income related to PE determination. Such Articles include Article 3 on Contracting State, Article 5 on PE, Article 6 on Income from Immovable Property, Article 8 on Shipping Income, Articles 12A and 12B on Fees for Services Income, Article 13 on Capital Gain, Article 15 on Income from Employment. After a review of several deviations from some of the Articles in dealing with taxation of the extractive industries, the paper presents some key considerations for the design of a standalone Article encompassing most of those issues. After hearing all of the input provided, Ms Liselott Kana summarized that the paper is fine as it is and the UN Tax Committee agreed to go one step further and asked the Subcommittee to come up with a draft standalone article for the next session.
- b) **Tax Incentives and the Global Minimum Tax:-** The paper focuses on the potential impact on tax incentives in the Extractive Sector of Pillar 2 of the OECD and Inclusive Framework on BEPS' "Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalization of the Economy". This paper received extensive feedback and comment, including that as the OECD's work is still a work in progress the UN Tax Committee should not be addressing it yet. It was also mentioned that the paper could be seen as endorsing the use of tax incentives, which some UN Tax Committee members oppose. The Subcommittee concluded that comprehensive work has already been done by the UN with regard to incentives but this issue related to Pillar Two needs to be addressed, and looking at other fora's developments is a common approach within the UN Tax Committee. The paper will be revised for the next session.

3. Supreme Court to examine interplay of SIDBI Act & DDT, Grants leave on Revenue's SLP: - Revenue's SLP against the Bombay HC decision in case of Small Industries Development Bank of India vs CBDT [2021] 133 taxmann.com 158 (Bombay) dated 02 December 2021

The Apex court of India grants leave on Revenue's SLP against Bombay HC judgment in case of **Small Industries Development Bank of India vs CBDT**. The facts and summary of decision of Bombay High court (HC) in the said case is presented below for a ready reference:

Facts of SIDBI:

- The assessee was a financial institution established under Small Industries Development Bank, Act (SIDBI Act). It had transferred a certain amount in accordance with the provisions of section 29(2) of the SIDBI Act out of the profits for the years under consideration and made a deposit to meet its liability towards payment of dividend to its shareholders.
- Assessee received Revenue's response that any amount declared or distributed or paid by Petitioner by way of dividend is liable for additional income tax u/s 115-O as the revenue was of the view that any amount declared or distributed or paid by assessee by way of dividend was liable for additional tax under provisions of section 115-O. The assessee paid additional tax under section 115-O on said liability however, under protest.
- The assessee filed an instant petition and sought for a refund of said additional tax paid on ground that tax on payment of dividend was exempted by virtue of section 50 of SIDBI Act and, therefore, assessee was entitled to refund of such income tax paid under protest.
- Section 50 of SIDBI Act states that: Notwithstanding anything to the contrary contained in the Income-tax Act, 1961 or in any other enactment for the time being in force relating to income-tax or any other tax on income, profits or gains, the Small Industries Bank shall not be liable to pay income-tax or any other tax in respect of:
 - a) any income, profits or gains accruing or arising to the Small Industries Development Assistance and or any amount received in that Fund, and
 - b) any income, profits or gains derived or any amount received by the Small Industries Bank.

Decision of Bombay HC:

- Bombay HC allows writ petition of Assess (SIDBI), holding it eligible for exemption from DDT due to overriding provisions of Section 50 of Small Industries Developments Bank of India Act, 1989 (SIDBI Act).
- On analysis of Section 115-O, HC observes that the charge u/s 115-O(1) is on the part of the profits which is declared, distributed or paid by way of dividend and not on income by way of dividend in the shareholders' hands, thus, holds that additional income-tax payable on profits of a domestic company u/s 115-O is not a tax on dividend.
- HC holds that Section 115-O it applies where total income is computed under the Income-tax Act whereas for the Assessee, the income is not computed at all under the Income-tax Act due to overall overriding effect of Section 50 of the SIDBI Act.
- HC takes note of Section 50 of SIDBI Act and observes, "Section 50 of the SIDBI Act contains non-obstante clause giving overriding effect over provisions of Income Tax Act in respect of any income, profits, gains derived or any amount received by the company...It is equivalent to saying that despite the provisions of the Act mentioned in the non-obstante clause, the provision following it will have its full operation or the provisions embraced in the non-obstante clause will not be an impediment for the operation of the enactment of the provision in which the non-obstante clause occurs. But the same principle cannot be applied, ipso facto,

when one comes across two or more enactments containing similar non-obstante clauses operating in the same or similar direction.

- Thus, HC observes that for interpretation of non-obstante clause, the subject, object and purpose of the statute and the context in which the legal fiction is created have an important bearing and since SIDBI Act was meant to establish SIDBI to boost small-scale sector, the exemption from payment of income-tax was to provide an impetus to achieve its objects in the formative years.
- HC, further takes cue from Section 115R where UTI was specifically held liable for additional income tax and holds that the absence of provision akin to Section 115R in relation to Section 50 of SIDBI Act indicates that at the relevant time, the legislature did not intend to impose tax on the Assessee.
- Thus, HC holds that the Assessee is not liable to pay DDT and directs Revenue to refund the payments made under protest.

The matter is before the Division Bench of the Supreme Court comprising Justice B.V. Nagarathna and Justice Ujjal Bhuyan. ASG N. Venkataraman is appearing for the Revenue.

4. CBDT extends time for processing 'non-scrutiny ITRs' for AYs 2018-19 to 2020-21 to Jan'24: - CBDT's order u/s 119 of the Income Tax Act, 1961 dated 01 December 2023

Central Board of Direct Taxes (CBDT) issued an order under Section 119 on December 1, 2023, granting an extension for the time-frame specified in Section 143(1) for Assessment Years (AYs) 2018-19, 2019-20, and 2020-21. According to the order, the intimation of processing Income Tax Returns (ITRs) can now be sent to the taxpayers by January 31, 2024. The CBDT directs that all electronically filed ITRs with refund claims for AYs 2018-19, 2019-20 and 2020-21, for which the date of sending Section 143(1) intimation has expired, can be processed. However, this processing requires prior administrative approval from the Principal Chief Commissioner of Income Tax (Pr. CCIT) or Chief Commissioner of Income Tax (CCIT).

It is important to note that this relaxation does not apply to ITRs under scrutiny, unprocessed ITRs indicating payable demand or potential demand after processing, and ITRs that remain unprocessed for reasons attributable to the assessee. The issuance of this order is in response to pending grievances of taxpayers regarding the delay in issuing refunds for AYs 2018-19, 2019-20, and 2020-21. Additionally, the CBDT had previously extended the time frame for electronically filed ITRs with refund claims up to AY 2017-18 to January 31, 2024, through an order dated October 16, 2023.

5. No 'spectacular announcements' in interim Budget, says FM Sitharaman: - News Report

Finance Minister Nirmala Sitharaman has downplayed the expectations for the upcoming interim Budget in February, asserting that it will primarily serve as a "vote on account" due to the approaching general elections. Speaking at a Confederation of Indian Industry (CII) event, she ruled out any "spectacular announcements" during this budget and explained that the budget's purpose would be to cover essential expenditures until a new government takes office, with

significant policy measures potentially deferred until July. Sitharaman criticized the imposition of a border adjustment tax by developed countries to finance their green commitments, deeming it ethically questionable and against the interests of developing nations. She emphasized the necessity for each country to independently generate resources to meet global green commitments and expressed disapproval of cross-border tax imposition for another country's green agenda.

Responding to discussions on the economy in the Rajya Sabha, Sitharaman highlighted India's economic growth across sectors, the stability of the Indian rupee against the US dollar, and refuted concerns regarding household savings. She noted a trend of households directing savings towards asset creation, such as homeownership and increased participation in the retail market rather than traditional avenues like mutual funds. Additionally, Sitharaman pointed out a notable surge in net demat accounts, exceeding 130 million, representing a sixfold increase since 2014 and a threefold increase since the onset of the Covid-19 pandemic. These developments, she argued, underscore the resilience and dynamism of India's economic fundamentals.

6. SC dismisses Revenue's SLP on software taxation: - *The Supreme Court of India, Diary No.- 45081 - 2023, The Commissioner of Income Tax, International Taxation 1, New Delhi Vs. Bentley Nevada Inc Corporate Trust Centre*

The Supreme Court on 11.12.2023 dismissed an Income Tax Department's SLP in Bentley Nevada Inc. case involving the issue of software taxation. SLP was filed by Revenue against the Delhi HC judgment wherein the High Court, having regard to the Apex Court judgment in Engineering Analysis, closed the Revenue appeals in this case with a liberty given to the appellant/ revenue to revive the appeal in case the review petition in Engineering Analysis succeeds. The Delhi HC before closing the appeals in favour of assessee, noted that following question arose for its consideration: "*whether receipts earned from supply of software are taxable in India under Section 9(1)(vi) of the Income Tax Act, 1961, read with Article 12 of the India-USA Double Tax Avoidance Agreement (DTAA)*".

The brief facts and judgement of the ITAT in the above case (i.e. Bentley Nevada Inc) are presented below for a ready reference.

Facts of Bentley Nevada Inc

The assessee, a non-resident company, was engaged in the business of supplying goods and software to its various customers in India. The Assessing Officer based on preceding years assessment orders was of the opinion that the assessee had business connection as well as Permanent Establishment [PE] in India and that PE was engaged in activities which could not be termed as auxiliary and preparatory. Accordingly, he initiated proceedings under section 147 and issued a notice under section 148. On the assessee's appeal to the Tribunal challenging proceedings initiated under section 147 on ground that there was no material on record during considering year on the basis of which a belief could be formed that income has escaped assessment for considering year.

Decision of Delhi ITAT

The Assessing Officer was of the opinion that the assessee was having business connection as well as Permanent Establishment (PE) in India and the PE was engaged in activities which cannot be termed as auxiliary and preparatory. Further, strong reliance was placed on the reasons recorded for issue of notice under section 148 issued in earlier assessment years. It is further found that the Assessing Officer has also derived support from the submissions made by the assessee during the proceedings for assessment year 2012-13 that there has been no change in their business activities as compared to earlier years.

After considering the facts in totality, in light of the reasons recorded for reopening assessment and after considering the specific objections raised by the assessee, it is of the considered view that for the assessment years under challenge, no new tangible material has been brought by the Assessing Officer to justify the reopening and as mentioned elsewhere, the reason why reopening was upheld by this Tribunal in assessment year 2001-02 which was followed by it in subsequent years i.e. 2002-03 to 2006-07 are totally distinguishable, inasmuch as, in those years in the reasons itself, as mentioned elsewhere, the Assessing Officer had given specific findings in respect of expat employees present in India, which fact finding is absent in the assessment years under consideration. This means that the reasons for reopening the assessment cannot be improved in the body of the assessment order. Therefore, the notice issued under section 148 is liable to be quashed and so also, the orders consequent to such notice.

7. Huawei challenges constitutionality of search related reassessment provisions under new regime before Delhi HC:- *Delhi HC order dated 12 December 2023 in the case of M/S Huawei Telecommunications (India) Company Pvt. Ltd. Vs Assistant Commissioner of Income Tax, Central Circle-2, Delhi & Anr.*

The Delhi High Court entertains the writ petitions preferred by Huawei Telecommunications (India) Company Pvt. Ltd. ("the Assessee"), challenging the reassessment notices issued u/s Section 148 of the Income Tax Act, 1961 (the Act) for notices for AYs 2012-13 and 2015-16 to 2018-19 pursuant to a search and seizure operation conducted on the Assessee on February 15, 2022 u/s 132 of the Act as well as notices dated May 25, 2023 issued u/s 143(2) of the Act. The Assessee has also challenged the constitutional validity of Explanation 2 to Section 148 and the proviso to Section 148A of the Act. The learned senior counsels appearing for the petitioner refers to the order of the HC passed in case of *Oppo Mobiles India Private Limited vs. Union of India & Anr.*, dated 13 January, 2023, wherein it has been held as under:-

*"1. The above-captioned matters concern Assessment Years (AYs) 2016- 17, 2014-15 and 2015-16.
2. Mr Kamal Sawhney, who appears on behalf of the petitioner in the above-captioned matters, says that there are several flaws in the commencement of assessment/reassessment proceedings against the petitioner. Broadly, Mr Sawhney's submission can be paraphrased as follows:*

(i) First, the concerned specified authority, as defined in Section 151(ii) of the Income Tax Act, 1961 [in short, "Act"] has not approved the impugned action.

(ii) Second, since the notice had been issued beyond the period of three years, the prerequisites for triggering the assessment/reassessment proceedings, as provided under Section 149(1)(b) of the Act were required to be fulfilled.

(iii) Third, as the assessment/reassessment proceedings are pivoted on a search action carried out by the respondent/revenue in exercise of powers under Section 132 of the Act, it had to have the approval of the authority specified under Section 151(ii) of the Act and to provide, inter alia, the relevant information/material to the petitioner as also the quantum of the escaped income, which, according to the respondent/revenue would be chargeable to tax.

3. Submissions have been made in the context of the fact that because the assessment/reassessment proceedings were triggered on account of a search action, the deeming fiction created by explanation 2 appended to Section 148, is limited to three assessment years.

4. Mr Abhishek Maratha, who appears on behalf of the respondent/revenue in the above-captioned matters, on the other hand, submits that assessment/reassessment proceedings, which were commenced based on a search action carried out in exercise of power under Section 132 of the Act, it side steps the entire procedure which is engrafted in Section 148A of the Act and therefore, the authorities specified in Section 151(ii) of the Act are not the authorities which need to grant approval for commencement of the impugned action.

5. This argument is also made by Mr Maratha with respect to provisions of Section 147 of the Act.

6. In our view ("the Delhi HC"), the matter requires examination as the notice issued under Section 148 of the Act in each of these cases, which is dated 06.09.2022, does not, inter alia, advert to what is the escaped income.

In view of the aforesaid order, Mr. Sanjeev Menon, Advocate accepts notice on behalf of the respondent-revenue. He states that the petitioner's objections are being considered by the Assessing Officer and an order shall be passed shortly in accordance with the judgment of the Supreme Court judgment in *GKN Driveshafts (India) Ltd. vs. ITO, (2003) 259 ITR 19 (SC)*. HC grants time for completion of pleadings and lists the writ petitions for hearing with Oppo Mobile's case on March 15, 2024. For the interim, HC states, "although the Assessing Officer will have liberty to continue with the assessment proceedings, however, if any order is passed which is averse to the interest of the petitioner, it shall not be given effect to, till further directions of this Court."

- Explanation 2 to Section 148 provides that in search, survey and requisition of assets cases, the AO shall be deemed to have information suggesting income escapement.
- Section 148A states that the income tax officer shall provide the taxpayer with an opportunity to explain their case before issuing the notice. In other words, it provides the taxpayer with an opportunity to be heard. The assessing officer can grant a minimum of 7 days and a maximum of 30 days to the taxpayer to furnish his/her explanation. If the income tax department still suspects tax evasion, then it can issue a notice under section 148, intimating the taxpayer about the reopening of the case.
- Proviso to Section 148A excludes the applicability of Section 148A procedure in the cases where reassessment proceedings are initiated pursuant to search, requisition of assets or based on information under Section 135A i.e. Faceless Collection of Information.

8. Supreme Court to examine validity of reassessment proceedings in deceased person's name:- Ghanyashyam Anil Dhanani vs The Income Tax Officer Ward 17(1)(1), Mumbai dated 11 December 2023

The case of Ghanyashyam Anil Dhanani vs the Income Tax Officer Ward 17(1)(1), Mumbai is a significant one as it brings to the forefront the issue of reassessment proceedings in the name of a deceased person. The Supreme Court issued notice to the Revenue against Bombay High Court judgment upholding reassessment proceedings in the name of a deceased assessee which were challenged by his legal heir. The Supreme Court observed that pendency of this proceeding before this Court would not come in the way of the proceedings to be taken up pursuant to the impugned notices, however, the same shall be subject to the result of this petition.

The Bombay High Court rejected the plea that the reassessment notices and section 148A(d) order were non-est which have been passed in the name of the deceased assessee, stating that the details of the deceased assessee were suppressed by his legal heir. The High Court agreed with the Revenue's order, stating that the legal heir had attempted to suppress the assessee's details. The court also noted that the Revenue issued a notice in the deceased's name but directed the heir to respond and correct its record to reflect the name of the deceased as C/o Legal Heir. The court also clarified that the Revenue could issue a fresh notice u/s 148, for which time up to the date of the HC judgement has to be excluded.

9. Interim Budget may indicate plan to tweak NPS: - News report

The Indian government is reportedly considering unveiling plans to enhance pension benefits for its staff under the National Pension System (NPS) in the forthcoming interim Budget on February 1. The proposed plan may incorporate a carefully designed guarantee component to avoid imposing an unsustainable fiscal burden. A committee, chaired by Finance Secretary TV Somanathan, was established earlier to explore ways of increasing pension benefits without reverting to the financially challenging old pension system. Despite speculation of potential adjustments before state assembly elections in November, the government refrained from hasty decisions, recognizing the diminished political sensitivity surrounding the OPS issue. Under the existing non-contributory OPS (for pre-2004 staff), government employees receive a pension equivalent to 50% of their last salary after completing 20 years of uninterrupted service. With NPS, a minimum of 40% of the accumulated corpus must be invested in annuities to generate a monthly pension, linked to annuity returns and lacking guarantees. The remaining 60% can be withdrawn tax-free.

While the committee's recommendations remain undisclosed, analysts predict a balanced strategy, potentially featuring a graded guarantee component relative to years of service. The government is anticipated to announce modifications to NPS sustainability in the interim budget, providing an update on the committee's work. Despite earlier expectations of NPS adjustments prior to state elections, the government has avoided precipitous decisions. The Reserve Bank of India (RBI) has warned against reverting to the old pension system, citing potential fiscal burdens and negative impacts on state finances and capital expenditures that enhance growth.

10. Woman can be 'Karta' of HUF; Hindu Law affirms women's right to assume the role of HUF Karta without restrictions: - Manu Gupta v. Sujata Sharma - [2023] 157 taxmann.com 234 (Delhi)

In the instant case, question that arose before the High Court was whether a daughter can be karta of HUF since recognition of a daughter as coparcener by section 6 of the Hindu Succession Act encompasses all incidents of a Coparcener including the right to become karta of HUF? The High Court observed that a woman can serve as the "karta" of a Hindu Undivided Family (HUF). This upholds a significant 2016 judgment expanding women's inheritance rights under Section 6 of the Hindu Succession Act.

The Court emphasized that there are no legislative or traditional Hindu law restrictions on a woman's right to be a Karta. Also, societal pressure cannot be a reason to deny the rights expressly conferred by the legislature.

In the present case, the respondent, the family patriarch's granddaughter, was appointed as the Karta, given that all his sons had passed away. Disputes arose with opposing grandsons contesting the respondent's Karta status. The Court acknowledged objections based on societal perspectives, arguing against a woman assuming the role of Karta.

Dismissing objections from a grandson, the Court was of the view that societal practices undergoing systemic changes may face resistance. Time transforms them into tools for social change. The Court held that the test of popular acceptance cannot override statutory rights protected by the Constitution. Further, the court added that the claim that the husband of a female Karta would have indirect control over the activities of the HUF of her father's family is "only a parochial mindset."

The High Court reflected on historical gender equality, highlighting societal shifts that classified women into predetermined roles. The court expressed sadness about an equal society turning into a place where unfairness and discrimination thrive. Laws were needed to stop harmful practices like sati, child marriage, harassment, and violence, aiming to free women from societal restrictions. The High Court held that a daughter can serve as the Karta of a HUF, as the acknowledgement of daughters as coparceners by Section 6 of the Hindu Succession Act includes all aspects of coparcener rights, including the right to become the Karta of the HUF.

11. OECD reports 54000 information exchanges under BEPS Action 5; India's peer review remains unchanged: - *OECD Press Release*

The OECD/G20 BEPS Inclusive Framework has revealed the 2022 Peer Review Reports on the Exchange of Information on Tax Rulings. According to the reports, more than 54,000 exchanges of information occurred until December 2022, encompassing over 24,000 tax rulings cumulatively. This marks the seventh annual peer review, assessing the implementation of the BEPS Action 5 minimum standard on tax rulings. The objective is to equip tax administrations with essential information to effectively combat tax avoidance and other BEPS risks.

Further, the reports highlight India's challenges in the exchange of information on future Advance Pricing Agreements (APAs), recommending that India intensify efforts to expedite the exchange of all information on future APAs. This recommendation has persisted since the 2017-2021 peer review reports. Conversely, India's processes for information gathering and exchange related to intellectual property regimes were deemed sufficient to meet the minimum standard, resulting in India's continued compliance. The peer review covers 131 jurisdictions, with 100 fully aligning with the BEPS Action 5 minimum standard. The remaining 31 jurisdictions received 58

recommendations to enhance their legal or operational frameworks for identifying relevant tax rulings and exchanging information. Eight jurisdictions, namely Anguilla, the Bahamas, Bahrain, Bermuda, the British Virgin Islands, the Cayman Islands, the Turks and Caicos Islands and the United Arab Emirates, were not assessed due to the absence of corporate income tax during the review year.

Key Findings:

- As of December 31, 2022, more than 24,000 tax rulings within the scope of the transparency framework were issued by the reviewed jurisdictions, representing a cumulative figure that includes certain past rulings since 2010. In the year 2022 alone, 1,800 tax rulings within the transparency framework were issued by the 131 jurisdictions.
- Over the course of 2022, there were over 54,000 exchanges of information, with approximately 5,000 exchanges undertaken in 2022, and similar figures observed in 2021 and 2020. Exchange volumes ranged from 6,000 exchanges in 2016 to 14,000 exchanges in 2017.
- 100 jurisdictions demonstrated full compliance, receiving no recommendations as they met all terms of reference. Further, 7 jurisdictions received only one recommendation, indicating a relatively high level of compliance.
- A total of 58 recommendations for improvement were made based on the comprehensive evaluation conducted during the year under review.
- Peer input questionnaires, totaling 115 submissions, were voluntarily provided, offering valuable feedback on the conduct of exchanges by Inclusive Framework members. Although peer input is not mandatory, it has, in several instances, empowered jurisdictions to revise processes, leading to improvements in the clarity and quality of exchanged information.
- The peer review process proved instrumental in helping jurisdictions identify areas requiring improvement. In response, several jurisdictions took proactive measures to implement changes during 2023 while the peer review was ongoing. Changes implemented in 2023, though generally not factored into the recommendations for the year 2022, will undergo thorough review in a subsequent peer review, ensuring a comprehensive assessment of evolving practices.

12. CBDT revises definition of 'intra-group loan' and outlines its 'Safe Harbour' conditions under Rule 10TD: - CBDT vide Notification No.104/2023/ F. No. 370142/26/2023-TPL dated 19 December 2023

The Central Board of Direct Taxes (CBDT) has implemented significant amendments to the Safe Harbour provisions in the Income Tax Rules, 1962. These amendments, slated to take effect from April 1, 2024, for the assessment year 2024-25, are pertinent to the ongoing financial year 2023-24. The key modifications are outlined below:

1. Revised Definitions in Rule 10TA:

The definition of "intra-group loan" has been redefined. Previously limited to loans advanced to wholly owned subsidiaries that are non-residents and denominated in Indian rupees, the new definition encompasses loans to any non-resident associated enterprise, excluding financial companies or entities engaged in regular lending or borrowing operations. The requirement for the loan to be in Indian rupees has been removed.

The definition of operating income and operating expenses has undergone slight modifications. Income or loss on the transfer of assets or investments, whose depreciation is included in operating expenses, is now considered operating in nature. This aligns with the disposal of capital assets with depreciation, incorporating the gain or loss into operating income or costs.

2. Revamped Rule 10TD: Intra-group Loan Advancements Redefined:

Intra-group Loans in Indian Rupees: Updated Approach: The interest rate for loans in Indian Rupees, previously linked to the one-year SBI lending rate with a basis points adjustment based on "CRISIL" credit rating, now excludes the requirement for the credit rating to be from CRISIL.

Intra-group Loans in Foreign Currencies: New Determination Method: The base interest rate determination for intra-group loans in foreign currencies has shifted from six-month London Inter-bank Offer Rate (LIBOR) to specific reference rates. The interest rate is now based on the reference rate of the relevant foreign currency as of September 30 of the financial year.

Basis Points Adjustment: The adjustment of basis points in the new framework follows a dual structure, contingent upon the loan amount. For aggregate loans up to INR 250 crores, the additional basis points over reference rates vary, ranging from 150 basis points for high credit ratings to 400 basis points for lower or unavailable ratings. In the case of loans surpassing this threshold, the basis points over the reference rate experience an increase, reaching up to 600 basis points. This dual categorization recognizes the diverse levels of risk inherent in lending activities, presenting a more customized and risk-sensitive approach. These amendments not only conform to international financial standards but also introduce a risk assessment dimension into the domain of transfer pricing. This strategic shift holds the potential to mitigate disputes and elevate compliance transparency, particularly for multinational enterprises operating in India.

3. Defining Reference Rates and Credit Ratings:

The notification provides clear definitions of "reference rate" and "credit rating" for the purposes of the amended rules. Reference rates for various major currencies like US Dollar, Euro, UK Pound Sterling, Japanese Yen, Australian Dollar, and Singapore Dollar have been detailed.

Further, the credit rating is defined as the rating assigned by a SEBI-registered and RBI accredited credit rating agency, applicable for the relevant financial year. This requirement ensures that the credit ratings used for determining transfer prices for intercompany financing are reliable and recognized by the key financial regulatory authorities in India.

13. Key changes introduced in new ITR forms 1 and 4 notified for Assessment Year 2024-25: - CBDT Notification No. G.S.R. 908(E) dated 22 December 2023

ITR forms for the financial year are usually announced by end of March or early April. However, this year, they are announced early. These ITR Forms will be applicable for filing income tax returns for income earned during the previous year 2023-24 (between 01-04-2023 to 31-03-2024). The Income Tax Department has released ITR forms 1 and 4 for individuals and entities with an annual total income of up to ₹50 lakh for the assessment year (AY) 2024-25. Individuals, including Hindu Undivided Families (HUFs), firms with income up to ₹50 lakh, and those earning from business and profession in the current fiscal (April 2023-March 2024), can commence filing returns for the income earned this financial year.

Key changes in the new ITR Form 1, Form 4

- An assessee filing ITR 1 is only required to indicate his choice of tax regime in the return of income. An assessee filing ITR 4 will be required to file Form 10-IEA to opt out of the new tax regime.
- A new column has been added to claim deduction under section 80CCH in new ITR Forms 1 and 4. The Finance Act 2023 added a new Section 80CCH, which states that individuals enrolled in the Agnipath Scheme and subscribing to the Agniveer Corpus Fund or after 01-11-2022 will be eligible for a tax deduction for the total amount deposited in the Agniveer Corpus Fund.
- The "Receipts in Cash" column has been added to ITR-4 to claim an enhanced turnover limit. The Finance Act, 2023 has enhanced the turnover threshold limit from ₹2 crore to ₹3 crore for opting for the presumptive taxation scheme under Section 44AD if the receipts in cash do not exceed 5% of the total turnover or gross receipts for the previous year.

14. OECD/G20 BEPS IF releases Administrative Guidance on GloBE; Commits for final Amount A-MLC by Mar'24: OECD's Press Release

The OECD/G20 BEPS Inclusive Framework has recently unveiled Administrative Guidance on the Global Anti-Base Erosion (GloBE) Rules, which are scheduled to become effective in 2024. This new guidance offers further elucidation on crucial aspects to assist Multinational Enterprise (MNE) Groups in smoothly transitioning into the GloBE Rules.

One significant aspect clarified in the guidance is the application of the Transitional Country-by-Country Reporting (CbCR) Safe Harbour. This provision aims to facilitate the transition for MNE Groups by providing a safe harbour during the initial implementation of the GloBE Rules. Additionally, the guidance provides a refined definition of revenues to determine whether an MNE Group falls within the scope of the GloBE Rules. For MNE Groups with short Reporting Fiscal Years, the Administrative Guidance introduces transitional relief to facilitate the filing of the GloBE Information Return and notifications. This addresses practical challenges that may arise due to shorter reporting periods.

In cases where mismatches occur between Fiscal Years or financial and tax years of Constituent Entities, the guidance outlines how to apply the GloBE Rules. Furthermore, it provides direction on the allocation of taxes in a Blended Controlled Foreign Company (CFC) Tax Regime when certain Constituent Entities do not compute their Effective Tax Rate (ETR) under the GloBE Rules. To streamline the process for Non-material Constituent Entities, the Administrative Guidance introduces the Simplified Calculations Safe Harbour. This provision aims to expedite compliance for entities with minimal impact, offering a more straightforward approach.

It's important to note that the Administrative Guidance will be integrated into a revised version of the Commentary, scheduled for release in 2024. This updated Commentary will replace the original version issued in March 2022. In reaffirming its commitment to a consensus-based solution, the Inclusive Framework aims to finalize the text of the Multilateral Convention (MLC) for Amount A of Pillar One by the end of March 2024. The intention is to conduct a signing ceremony by the end of June 2024. This initiative also involves addressing differences related to the standstill on new Digital Service Taxes and other similar measures, emphasizing a collaborative approach to international tax challenges.

15. CBDT issues TDS Guidelines for e-commerce operators and clarified 5 major items to ease implementation: - CBDT Circular No. 20 of 2023 dated 28 December 2023

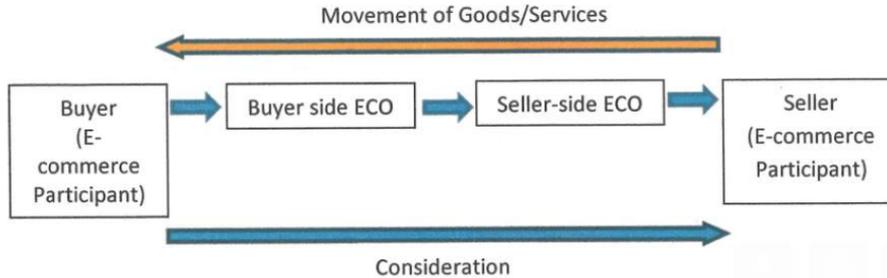
The Finance Act of 2020 introduced section 194-O into the Income Tax Act, mandating that an e-commerce operator (ECO) deduct income tax at a rate of one percent from the gross amount of the sale of goods or provision of services, facilitated through its digital or electronic platform. However, certain individuals or Hindu Undivided Families meeting specific conditions are exempted from this deduction. The deduction is required to be made at the time of crediting the amount of such sale or service to the account of an e-commerce participant or at the time of payment to such e-commerce participant, whichever occurs earlier. In transactions facilitated by the e-commerce operator, any payment made by a buyer to a seller, both being e-commerce participants, is deemed to be a payment by the e-commerce operator to the seller. This deemed payment is included in the gross amount of the sale of goods or provision of services for the purpose of tax deduction at source, hereinafter referred to as the 'deemed payment.' The provision aims to regulate and ensure the deduction of income tax at source in transactions conducted through digital or electronic platforms, with specific provisions for exemptions and the timing of deductions.

Guidelines

a) Who should deduct tax at source where there are multiple e-commerce operators (ECO) involved in a transaction?

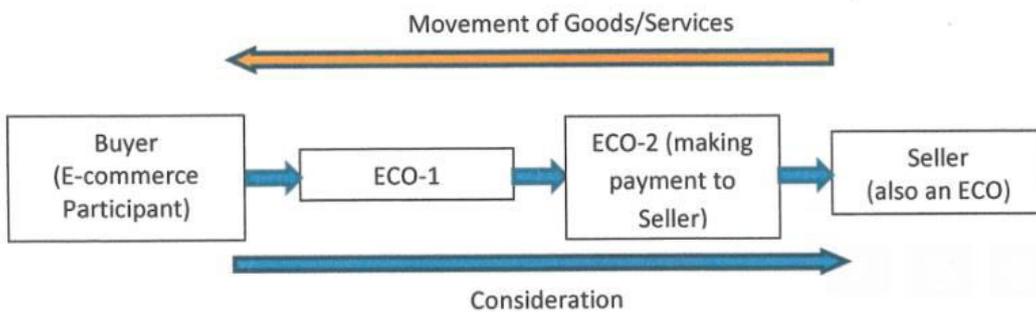
Section 194-O of the Act stipulates that tax deduction is mandatory when the sale of goods or provision of services by an e-commerce participant (buyer or seller) is facilitated through a digital platform operated by an e-commerce operator (ECO), regardless of the platform's nomenclature. There may be a platform or network (e.g. the Open Network for Digital Commerce) on which multiple e-commerce operators are participating in a single transaction. For example: there could be a buyer side ECO involved in buyer side functions and a seller side ECO Involved in seller side functions. In this case there may be two situations.

Situation 1: Where multiple ECOs are involved in a single transaction of sale of goods or provision of services through ECO platform or network and where the seller-side ECO is not the actual seller of the goods or services



In the situation where a buyer-side ECO provides an interface to the buyer, and a seller-side ECO provides an interface to the seller, the compliance under section 194-O of the Income Tax Act is the responsibility of the seller-side ECO. This is the case when the seller-side ECO is the entity that ultimately makes the payment or deemed payment to the seller for the goods sold or services provided through the e-commerce transaction. Tax is to be deducted on the gross amount of sales of goods or provision of services. The deduction should occur at the time of crediting the account of the seller (being an e-commerce participant) or at the time of payment or deemed payment, whichever takes place earlier. Also, the seller-side ECO is required to file the necessary TDS return in Form 26Q to report the tax deducted at source. Subsequently, the seller-side ECO should issue a certificate to the seller under Form 16A, acknowledging the tax deduction.

Situation 2. Where multiple ECOs are involved in a single transaction of sale of goods or provision of services through ECO platform or network and where the seller-side ECO is the actual seller of the goods or services



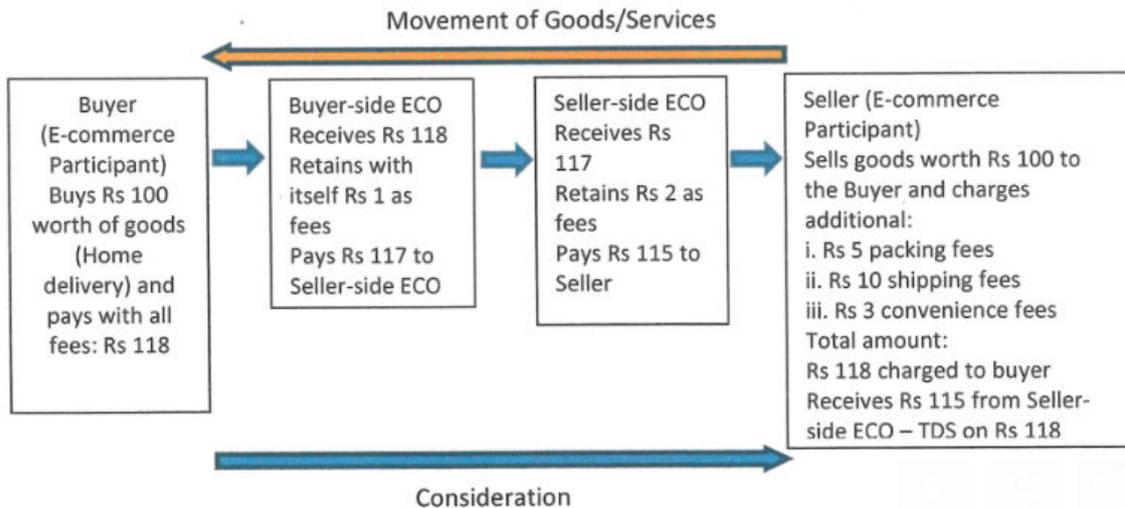
In the scenario where an e-commerce operator (ECO) on the buying side provides an interface to the buyer, and on the selling side, the seller itself is an ECO directly interacting with another ECO, compliance under section 194-O of the Income Tax Act is the responsibility of the ECO that finally makes the payment or deemed payment to the seller. In this case, the responsibility lies with ECO-2, which is the e-commerce operator making the payment or deemed payment to the seller for the goods or services sold. Tax is to be deducted on the gross amount of the sale of goods or provision of services. The deduction should occur at the time of crediting the account of the seller or at the time of payment or deemed payment, whichever occurs earlier. ECO-2 is required to file the necessary TDS return in

Form 26Q to report the tax deducted at source. Subsequently, ECO-2 should issue a certificate to the seller under Form 16A, acknowledging the tax deduction.

- b) E-commerce operators may be levying convenience fees or charging commission for each transaction and seller might levy logistics & delivery fees for the transaction. Payments may also be made to the platform or network (e.g. ONDC) provider for facilitating the transaction. Would these form part of the "gross amount" for the purposes of TDS under section 194-O of the Act?**

In e-commerce, it is common for an order to be shipped to the buyer from the seller. It is therefore common for the sellers to charge the buyer additionally for shipping in the form of logistics/delivery/shipping/packaging fees. Further, the buyer-side ECO and seller-side ECO may charge a commission to the seller to enable the online transaction, and the seller may choose to recoup all or part of that amount from the buyer.

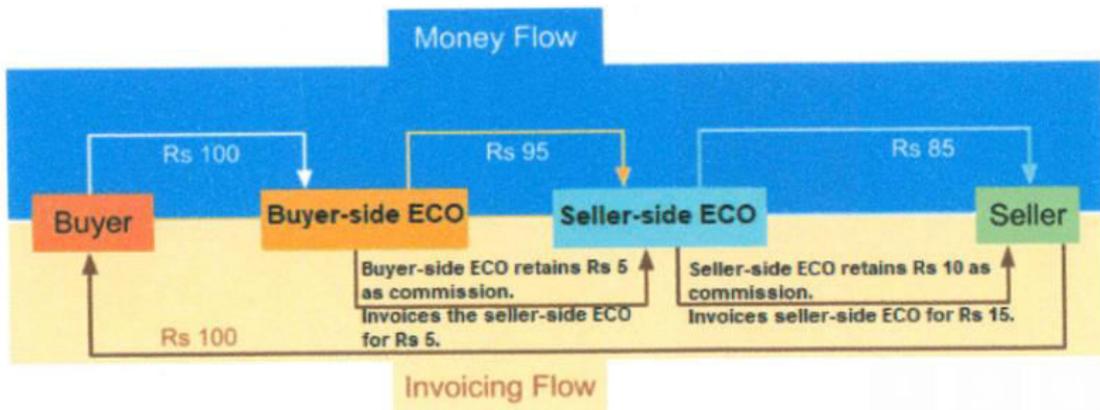
Scenario 1



A buyer purchases goods worth Rs 100 from a seller with home delivery. The seller charges an additional Rs 5 for packing, Rs 10 for shipping, and Rs 3 as a convenience charge (to recoup fees from the seller-side ECO). The total invoice issued to the buyer is Rs 118 (Rs 100 + Rs 5 + Rs 10 + Rs 2 + Rs 1). TDS under section 194-O of the Act is to be deducted by the seller-side ECO on the gross amount of Rs 118 at the time of payment or credit. The seller-side ECO files TDS return in Form 26Q and issues a certificate to the seller under Form 16A.

Fees charged by the seller-side and buyer-side ECO for services (Rs 3 and Rs 1) would typically be subject to TDS under section 194H. However, as TDS is deducted under section 194-O on the gross amount of sales, no additional TDS applies. Payments to platform providers (e.g., ONDC) facilitating transactions are included in the "gross amount" for TDS under section 194-O if linked to the transaction. If paid on a lump-sum basis unrelated to a specific transaction, they need not be included in the "gross amount."

Scenario 2



Where the Seller's label-price for a product is Rs 85, the seller-side ECO's fee (for listing the Seller catalogue and facilitating the transaction) is Rs 10, and the Buyer-side ECO's fee (to provide an interface to enable the Buyer to discover the seller/product and to enable them to place an order) is Rs 5. The Seller charges the Buyer a total of Rs 100 (Rs 85+ Rs 10+ Rs 5) and issues an invoice for Rs 100 (gross amount). The TDS under section 194-O of the Act will be calculated on Rs 100 (gross invoice value) at the rate of 1%, and that the responsibility of withholding and depositing it would be on the seller ECO. The buyer ECO's fees (Rs 5) charged to seller-side ECO and seller ECO's fees (Rs 15) charged to the Seller will not be subject to further TDS (say under Section 194H of the Act.).

c) How will GST, various state levies and taxes other than GST such as VAT/ Sales tax/ Excise duty/CST be treated when calculating gross amount of sales of goods or provision of services as per the provisions of section 194-O of the Act?

In Paragraph 4.3.2 of Circular No. 13 of 2021, addressing TDS on the purchase of goods, specific guidance is provided regarding the treatment of the GST component when tax is deducted at the time of crediting the seller's account. If the GST is separately indicated in the invoice, the deduction under section 194-O of the Income Tax Act is to be applied to the amount credited without including the GST.

Similarly, a parallel clarification is extended to state levies and taxes in Paragraph 5.2.3 of Circular No. 20 of 2021. It emphasizes that, for goods not covered under GST, when tax is deducted upon crediting the seller's account and the VAT/Sales tax/Excise duty/CST component is separately indicated in the invoice, the deduction under section 194-O should be based on the amount credited without including these state levies and taxes.

However, if tax is deducted on a payment basis before the credit, it should be on the entire amount as it is not possible to identify that the payment with GST/VAT/ Sales tax/ Excise duty/CST component of the amount to be invoiced in future.

d) How will adjustment for purchase-returns take place?

Paragraph 4.3.3 of Circular No. 13 of 2021 clarifies the process concerning purchase returns under section 194-Q of the Income Tax Act. In instances where tax has already been deducted before the purchase return, adjustments can be made by offsetting the deducted tax against

the next purchase involving the same seller. This adjustment is not necessary if the purchase return is replaced.

Similarly, under section 194-O of the Act, tax is mandated to be deducted at the time of payment or credit, whichever occurs first. Therefore, before a purchase return takes place, the tax should have already been deducted pursuant to section 194-O on that specific purchase. If this is the case, and money is refunded against this purchase return, any tax deducted can be adjusted against the next transaction involving the same deductor and deductee within the same financial year. Importantly, the tax deducted and deposited will be recognized as a credit to the seller.

Furthermore, if the purchase return is replaced by goods, no adjustment is necessary, as the transaction, for which tax was deducted under section 194-O of the Act, is considered completed with the replacement of goods.

e) How will discounts given by seller as an e-commerce participant or by any of the multiple e-commerce operators be treated while calculating "gross amount"?

Seller Discount: When a discount is provided by the seller directly, it results in a reduction of the product's or service's selling price. For instance, if a product is labeled at Rs 100 and the seller offers a Rs 10 discount, the buyer is required to pay only Rs 90. Invoicing will be done based on the discounted amount of Rs 90, and consequently, TDS will be calculated on this reduced value.

Buyer ECO or Seller ECO Discount: In scenarios where the discount is offered by the buyer ECO or seller ECO, the seller typically receives full consideration for the product. However, a portion is collected from the buyer, and the balance is settled by the buyer ECO or seller ECO as the case may be. For example, if the seller quotes a price of Rs 100 and the buyer ECO provides a Rs 10 discount, Rs 90 (i.e., 100 - 10) is collected from the buyer and transferred to the seller. The remaining Rs 10 is paid to the seller through the seller ECO. The invoice issued to the buyer reflects the original price of Rs 100. Therefore, tax will be deducted by the seller-side ECO on the gross amount of sales, which is Rs 100.

16. Income tax department advisory on high-value transaction discrepancy: - News Report

The Income Tax Department has issued an advisory to certain taxpayers regarding discrepancies between high-value transactions and filed Income Tax Returns for the AY 2023-24. The advisory is not a notice sent to all taxpayers, but is sent only in cases where there is an apparent mismatch between disclosures in the ITR and information as received from the Reporting Entity. The objective of the communication is to provide an opportunity to taxpayers and facilitate them to provide their feedback online on the Compliance Portal of ITD. If any taxpayer receives such a message, they can view the information on the compliance portal and submit their response online under the e-Campaign tab.

Understanding Communication: Recently, many taxpayers have received SMS messages or emails from the income-tax department.

Attention XXXXXXXX (XXXXXXXXXXXXX)

The Income Tax Department has identified certain information related to high-value transactions, which does not appear to be in line with the Income Tax Return filed by you for the Assessment Year 2023-24 (relating to FY 2022-23). You can view the information on the compliance portal. Please submit your response online under the e-Campaign tab on the Compliance Portal, or revise your ITR. After logging in to the e-filing portal (<https://www.incometax.gov.in>), please go to the "Pending Actions" tab and Click on "Compliance Portal." On the Compliance Portal, navigate to the "e-Campaign tab" and view the campaign type "High Value Transactions" to submit a response. If the information has been correctly accounted for, in your ITR, you may ignore this message. Thank you, Income Tax Department.

Department's Clarification: The Income Tax Department has sent a communication to taxpayers about their transactions, aiming to inform them about the information available with the ITD. This is not a notice to all taxpayers, but an advisory sent in cases where there is a mismatch between disclosures in the ITR and information received from the reporting entity. The communication aims to provide an opportunity for taxpayers to provide feedback online on the ITD's compliance portal and, if necessary, respond to it on a priority basis. The department has collected massive data on various financial transactions, reporting them against the PAN of each person who entered the transactions. The details of these transactions are now available in Form AIS, and it is advisable to check the AIS immediately and match it with the income and transactions reported in the ITR.

Verification Steps for Taxpayers: In light of the above, the taxpayer or the assessee follow the following steps to check the AIS and verify whether there is really a mismatch between the reported items and the data in the ITR.

- Log in using your PAN and password and click on "Pending Actions." and Select "Compliance Portal"
- A small window will open that will be redirected to the Compliance Portal. There are two options: "Cancel" and "Proceed." Click on "Proceed."
- Select "e-Campaign" So, now need to go back to the AIS by clicking on the "Provide Feedback in the AIS" tab
- Proceed further by clicking on "OK" and will then get the AIS data on your screen.
- If you select "SFT Information" in this Part B, and will get on screen details of the various financial transactions entered during the year, as reported by various agencies and bodies.
- For each such entry in the SFT information, you can click on that item, and it will expand to complete details. On the right end of the information, there is a heading "Feedback." Under this, normally, the word "optional" appears.
- Click on "Optional," and a new screen appears.
- In the tab for "Feedback Type"
- If the concerned information matches records and IT return, then click on the first option, i.e., "Information is correct" and then move onto the next item in the SFT Information.
- If the information is not correct and select any of the other options mentioned above, then further details are required to be provided.

17. Tech helps I-T department recover Rs 36,000 crore: - News Report

The Income Tax Department has effectively utilized data analytics and cutting-edge technology to recover ₹36,000 crore from outstanding tax liabilities / demands in the ongoing fiscal year. This includes ₹27,000 crore from corporate tax and ₹9,000 crore from personal income tax up until December 20. The department anticipates an increase in this recovery, aiming for a total of at least ₹50,000 crore by the end of the fiscal year. The detection of tax evasion has been significantly enhanced by technology, particularly generative AI, advanced AI, and machine learning. The department employs specially designed automated artificial intelligence software to scrutinize income tax returns, leveraging a wealth of data from banks, digital transactions, and financial instruments.

This approach allows the AI-driven regression models to identify discrepancies and errors in tax filings, facilitating swift assessment and notifications to taxpayers in case of suspected shortfalls. As of December 17, India's direct tax collection amounted to ₹13.70 lakh crore, reflecting a substantial year-on-year increase of 20.66%. The government's emphasis on technological integration highlights its commitment to efficient tax administration and compliance.

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INDIRECT TAXATION

1. GSTN Advisory on procedure related to the amnesty scheme for appeals under GST: - GSTN Update dated 28 November 2023

The Government has issued Notification No. 53/2023 to introduce amnesty scheme for taxpayers who could not file an appeal under Section 107 of the CGST Act, 2017 against the demand order passed on or before March 31, 2023, or whose appeal was rejected due to not being filed within the specified time frame. Now, the GSTN has issued advisory to inform that the taxpayers can now file an appeal in FORM GST APL-01 on the GST portal on or before January 31, 2024, for the order passed by the proper officer on or before March 31, 2023. It is further advised that the taxpayers should make payments for entertaining the appeal by the Appellate Officer as per the provisions of Notification No. 53/2023.

However, the taxpayers who have previously filed an appeal but it was rejected as time barred in APL-02 by the Appellate authority, then the taxpayer would be able to refile the appeal. In case, the taxpayers face any issue while re-filing APL-01, a ticket shall be raised on the Grievance Redressal portal.

2. CBIC issues directions to upload summary of notices and orders electronically on the portal: Instruction: - Instruction No. 04/2023 dated 23 November 2023

It has been brought to the notice of CBIC that some of the field formations are serving such notices and orders manually only and non-issuance of the summary of such notices/ orders electronically on the portal is in clear violation of the explicit provisions of CGST Rules.

Therefore, the CBIC has issued directions to ensure that summary of the notices shall be served electronically on the portal in FORM GST DRC-01. Also, summary of the order shall be uploaded electronically on the portal in FORM GST DRC-07.

3. GSTN Advisory for Pilot Project of Biometric-Based Aadhaar Authentication & Document Verification in Andhra Pradesh: - GSTN Update dated 01 December 2023

The GSTN has issued an advisory to inform that new functionality of biometric-based aadhaar authentication and document verification for GST Registration for the applicants of Andhra Pradesh will be rolled out on 4th December, 2023. The applicant shall receive the link for OTP-based Aadhaar Authentication or a link for booking an appointment with a message to visit a GST Suvidha Kendra (GSK) along with the details of the GSK and jurisdiction, for Biometric-based Aadhaar Authentication and document verification.

4. GSTN Advisory on Two-factor Authentication for Taxpayers to be introduced: - GSTN Update dated 01 December 2023

Currently, GSTN has introduced two-factor authentication (2FA) for taxpayers to strengthen the login security in GST portal for state of Haryana and it is working seamlessly. Where taxpayers would need to provide one-time password (OTP) post entering user id & password and the OTP will be delivered to their Primary Authorized Signatory "Mobile number and E-mail id". Now,

2FA to be rolled out for Punjab, Chandigarh, Uttarakhand, Rajasthan and Delhi in 1st phase from December 1st, 2023. In 2nd phase, it is planned to be rolled out all states across India.

5. Delhi GST Department Implements Digital DIN: - GST Circular File No. F.6 (4)/GST/Policy/2022/1122-28 dated 29 November 2023

The Delhi Goods and Services Tax (GST) Department has introduced a transformative initiative, focusing on transparency and accountability in tax administration. The circular mandates the implementation of a Digital Document Identification Number (DIN) for all communications issued by the department to taxpayers and individuals. DIN/RFN is introduced for the digital generation of document identification, providing recipients with a means to verify the authenticity of communications.

The Principal Commissioner (State Tax) directs that certain communications must prominently display the computer-generated DIN/RFN, ensuring the authenticity of critical communications such as search authorizations, summonses, arrest memos, inspection notices, and letters issued during inquiries. However, the circular acknowledges exceptional circumstances where communications may be issued without an auto-generated DIN/RFN, with reasons recorded in writing. Exigent situations where DIN/RFN may be exempted include technical difficulties in electronic generation or urgent situations where the authorised officer is outside the office during official duties. However, the circular emphasises that such exemptions are limited and these exceptions are limited and subject to specific conditions.

Communications issued without electronically generated DIN/RFN under exceptional circumstances must be regularized within 15 working days, involving obtaining post-facto approval, generating DIN/RFN, and filing the electronically generated pro-forma in the relevant file. The circular emphasizes the genuineness verification mechanism for recipients by entering the DIN or RFN on the GST Portal. Any document issued without the electronically generated DIN or RFN is deemed invalid, emphasizing the transformative nature of this initiative.

6. Kerala SGST Dept. issues SOP for IBC cases before NCLT:- Notification SGST/973/2023-LEGAL3 dated 21 November 2023

The Kerala GST Department has issued Standard Operating Procedure (SOP) for the Insolvency and Bankruptcy Code (IBC), 2016 cases before the National Company Law Tribunal (NCLT). The Insolvency and Bankruptcy Board of India (IBBI) is expected to regularly share the details of the public announcement with an identified officer designated as the Nodal Officer at the Commissionerate. The primary purpose of designating a Nodal Officer is to receive notifications from the IBBI and ensure the timely filing of claims with the Interim Resolution Professionals/ Resolution Professional within the time limit provided in Form A/Public announcement, which starts from the insolvency commencement date. In the interest of revenue and facilitating a seamless and effective process, the Deputy Commissioner, Legal Cell, Office of the Commissioner of State GST, Kerala, has been appointed as the State Nodal Officer for the SGST Department. His role involves receiving information about the initiation of the insolvency resolution process and disseminating it to the field formations for necessary action in accordance with the provisions of the Insolvency and Bankruptcy Code, 2016. The following procedures, as outlined below, are issued in view of the appointment of the State Nodal Officer and the District Nodal Officers:

- The State Nodal Officer will receive information regarding the initiation of the insolvency resolution process for a unit/company from the IBBI through a dedicated email ID: cstlglibbi.sgst@kerala.gov.in.
- The State Nodal Officer will promptly distribute the received information, via the aforementioned official email, to all Joint Commissioners (Taxpayer Services) within three working days.
- The District Joint Commissioner (Taxpayer Services) shall in turn communicate the same to the respective Taxpayer Services Circle/ Division, accompanied by necessary instructions regarding the time limit and by marking a copy to the District Nodal Officer.
- The District Nodal Officer shall collaborate with the officer of the respective Taxpayer Services Circle/Division, along with the Joint Commissioner, to ensure the timely filing of claims before the Resolution Professional and for subsequent follow-up actions.

It shall be the responsibility of each officer belonging to the Tax Payer Services Circles/ Divisions to check the public announcement for any new parties going into insolvency at the website www.ibbi.gov.in. This is particularly important, given that the officer with jurisdiction can readily distinguish the companies within their jurisdiction from the list of insolvency proceedings. The specific webpage to access the public announcements is located under “Corporate Process→ Public Announcement” on the Home Page. This proactive approach aims to facilitate the timely submission of the claims. The Taxpayer Services Circle/Division concerned, in cases where there are pending arrears against the unit/ company mentioned in the list, shall appropriately submit their claims using Form B along with all relevant documents to the Interim Resolution Professionals/Resolution Professionals. This action is taken to safeguard revenue and facilitate the collection of government dues. Additionally, they are required to communicate this matter to the respective District Nodal Officer. Correspondences with the Resolution Professional (RP) should be made by all Taxpayer Services Circles/ Divisions regarding the finalisation of the Resolution Plan.

7. Corrigendums correcting quantification of tax recoverable not require specific approval of Monitoring Committee:- *Bedi & Bedi Associates v. Commissioner of CGST, Delhi Audit-1 - [2023] 157 taxmann.com 113 (Delhi)*

The assessee had availed exemption from payment of GST in respect of outward supplies made to Polytechnic (vocational institution) in terms of Notification No. 12/2017-Central Tax (Rate), dated 28-6-2017. The department issued show cause notice alleging that assessee was not entitled to exemption and was liable to pay GST along with interest and penalty. Thereafter, two corrigendum were issued and demand raised was amended. The assessee challenged the SCN on ground that impugned corrigendums were not approved by Monitoring Committee.

The High Court noted that the corrigendums only purported to correct quantification of tax recoverable and any alteration in amount of tax on account of computational error might not require specific approval of Monitoring Committee. Moreover, the impugned corrigendums were later placed before Monitoring Committee and were specifically approved. Therefore, the Court held that the premise on which the present petition was founded, did not hold good and liable to be dismissed.

8. HC directed dept. to resolve issue of placing notice under "View Additional Notices and Orders" or "View Notices and Orders": - *East Coast Constructions and Industries Ltd. v. Assistant Commissioner (ST)* - [2023] 157 [taxmann.com](#) 66 (Madras)

The petitioner was aggrieved by assessment order passed by the GST department since the notice was uploaded in "View Additional Notices and Orders" in Dashboard of GST Portal. The petitioner filed writ petition and contended that it failed to notice the notices/communications uploaded since right from inception of GST, all notices/communications were sent/hosted on GST portal under "View Notices and Orders".

The High Court noted that in the present case, the dispute was on account of mismatch between details in Form GSTR-1 and Form GSTR-3B and required explanation from petitioner. Therefore, it would deserve fair chance to explain as admittedly there appeared to be discrepancy in turnover in Form GSTR-1 and Form GSTR-3B. Thus, the order was directed to be set aside and issue was remitted back to the GST Authority to pass a fresh order on merits. The Court also directed department to address issue arising out of hosting of information in Menu in Dashboard for "View Additional Notices and Orders" when already there is another drop Menu for "View Notices and Orders".

9. HC set aside unsigned order uploaded on portal and directed department to pass fresh order: - *SRK Enterprises v. Assistant Commissioner (ST)* - [2023] 157 [taxmann.com](#) 93 (Andhra Pradesh)

In the present case, the assessee had filed writ petition and challenged the adjudication order on ground that it was unsigned. It was also contended that the ground on which order was passed was different from one mentioned in show cause notice. However, the GST Authority contended that order was valid because it was uploaded on common portal, which could only be done by competent authority.

The High Court noted that the unsigned order could not be covered under any mistake, defect or omission therein as used in Section 160 of CGST Act, 2017. Moreover, Section 169 of CGST Act, 2017, which deals with service of orders would not apply because the issue in this case was not service of order but of signature and validity of order itself. Therefore, the Court held that the order was invalid because it was unsigned and petition was liable to be allowed on ground that order did not contain signatures. Thus, the impugned order was set aside with direction to revenue authority to pass fresh order in accordance with law.

10. CBIC issues instructions on applicability of SC decision in case of Northern Operating Systems under GST: - *Instruction No. 05/2023 dated 13 December 2023*

The CBIC has noted that many field formations have initiated proceedings for the alleged evasion of GST on the issue of secondment after decision of Supreme Court in the case of Northern Operating Systems Private Limited (NOS).

Now, the CBIC has issued instruction to clarify that there may be multiple types of arrangements in relation to secondment of employees of overseas group company in the Indian entity.

Therefore, the decision of the Hon'ble Supreme Court in the NOS judgment should not be applied mechanically in all the cases and investigation in each case requires a careful consideration of its distinct factual matrix, including the terms of contract between overseas company and Indian entity, to determine taxability or its extent under GST.

11. Assessee's request to amend/rectify Form GSTR-1 could not be rejected if wrong GSTIN mentioned inadvertently: - *Star Engineers (I) (P.) Ltd. v. Union of India - [2023] 157 taxmann.com 285 (Bombay)*

In the present case, the assessee carried out delivery of goods under "Bill-to-Ship-to-Model" in line with instructions received from its customer during period July 2021, November 2021 and January 2022 and GSTIN of third party were wrongly mentioned instead of its customer. It filed an application before Deputy Commissioner seeking approval to modify/amend Form GSTR-1 for financial year 2021-22 but Deputy Commissioner informed that matter was time barred and accordingly, petitioner's application was rejected. It filed writ petition seeking permission to amend GSTR-1.

The High Court noted that the assessee had correctly issued e-invoices by appropriately citing GSTIN. However, at time of filing of Form GSTR-1, inadvertently GSTIN of third parties to whom shipment was delivered, was reported instead of its customer. The Court further noted that these errors of assessee were inadvertent and bonafide and there was not an iota of an illegal gain being derived by assessee. Therefore, the Court held that the instant petition was to be allowed and GST authorities were directed to permit assessee to amend/rectify Form GSTR-1 for relevant period either through online or manual means within a period of four weeks.

12. SLP dismissed against HC order where demand of ITC reversal was set aside holding that investigation against supplier is a pre-requisite: - *Assistant Commissioner of State Tax v. Suncraft Energy P. Ltd - [2023] 157 taxmann.com 352 (SC)*

The taxpayer was asked to reverse the Input Tax Credit ('ITC') on the supplies on which the tax was alleged to be not paid by the supplier. The department contended that the ITC was not getting reflected in Form GSTR-2A of the taxpayer, hence, the condition of Section 16(2) of the CGST Act, 2017 was not met and the ITC was required to be reversed. Calcutta High Court noted that the taxpayer has produced the tax invoice, the bank statement proving that they have made payment in respect of the supplies and tax to the seller thereby demonstrating that all other conditions of 16 of the CGST Act are satisfied.

Further, no action was taken by the department against the supplier. It noted that where a tax is not paid by the supplier, an action is required to be taken against him first. Reversal of ITC by the recipient should be the last resort in extreme cases. Hence, the High Court set aside the demand order. The Supreme Court held that having regard to the facts and circumstances of the case and that the amount of tax involved is on the lower side, it was inclined not to interfere in the matter and upheld the decision of the High Court.

13. Petitioner challenges GST liability on online fantasy sports; HC directs to issue notice to Govt. seeking Section 15(5) as unconstitutional: - *Playerzpot Media (P.) Ltd. v. Union of India* - [2023] 157 [taxmann.com](#) 342 (Bombay)

The petitioner, engaged in the business of online fantasy sports games, was issued a Show Cause Notice ('SCN') to pay tax on the consideration received from the participants of the fantasy sports. The petitioner contended that the activities are not chargeable to GST as neither it constitutes supply of goods nor supply of services. It also challenged that Section 15(5) of the CGST Act, 2017 is unconstitutional.

It contended that the provisions of the law have been challenged in other cases as well before the Courts wherein a similar issue is involved. Notably, Courts have admitted those petitions considering the challenge in the provisions of the law. The Courts have restrained the revenue from taking any further actions in such cases and time is granted to the petitioners to file a reply. Accordingly, the High Court held that it needs to pass a similar Order that has been passed by the Court in similar matter. Accordingly, a Notice is to be issued to the Attorney General in so far as the challenge to the provisions of the law is concerned. Further, on the one hand, it directed the petitioner to file a reply to the SCN, and, on the other hand, directed the revenue to not pass an Order without the leave of the Court. Also, it provided a liberty to the Revenue to apply before the Hon'ble Chief Justice for clubbing the matters to be heard by an appropriate division bench.

14. Validity of SCN can't be challenged merely because SCN issued did not refer to a particular statutory provision: - *Global Plasto Wares v. Assistant State tax Officer* - [2023] 157 [taxmann.com](#) 184 (Kerala)

In the present case, the adverse order was passed against assessee imposing penalty under Section 73(11) on grounds that entire tax dues were not paid within 30 days from date of show cause notice. The assessee filed petition against the order which was dismissed by Single Judge on ground that assessee had not paid tax collected from its customers to department and differential tax was paid only when same was demanded from it. It filed appeal against the decision of Single judge and submitted that notice issued to assessee mentioned only possibility of a penalty under Section 73(9) and, therefore, it was not open to Assessing Authority to travel beyond SCN and impose penalty under Section 73(11).

The High Court noted that while paying tax due to State along with returns filed, the assessee had failed to include tax amounts covered by several invoices which were considered by Assessing Authority for issuance of demand for differential tax. Under those circumstances, the demand for differential tax came to be made against assessee and the assessee could not be said to have been prejudiced merely because SCN did not refer to a particular statutory provision when facts leading to invocation of statutory provision concerned were admitted by assessee. Therefore, the appeal filed by the assessee was dismissed.

15. Refund of accumulated ITC is admissible even if principal input & output have same GST but other inputs have different rate: - *Indian Oil Corporation Ltd. v. Commissioner of Central Goods & Services Tax - [2023] 157 taxmann.com 431 (Delhi)*

In the present case, the assessee procured Liquefied Petroleum Gas (LPG) in bulk and same was refilled and bottled in cylinders after being compressed into liquid and sold. It filed application for refund of accumulated ITC but the refund of accumulated ITC was denied on ground that input and output attract same rate of GST of 5%. It filed writ petition against the rejection of refund. The department contended that the refund of accumulated ITC was rejected relying on CBIC Circular No.135/5/2020-GST dated 31-3-2020, which stated that refund of accumulated ITC under section 54(3)(ii) of CGST Act would not be applicable in cases where input and output supplies are same.

The High Court noted that various items were used for production including accessories required for safety and such goods were essential for production of bottled LPG and making it suitable for retail supply such as valves, nylon thread, clips and plastic seals which were chargeable to different rate of GST of 18%.

The word 'inputs' used in plural in provision indicated refund of accumulated ITC was not confined to ITC accumulated on a single input and the law did not require comparing tax rate of principal input with tax rate of principal output supply. The Court further noted that tax rate of other inputs could not be disregarded and there were no reason or scope for confining refund of unutilized ITC to cases where tax rate on main input was higher than tax rate of principal output. Moreover, the aforementioned Circular was not applicable in the instant case as it was related to ITC accumulated on account of different rates applicable at different points of time. Thus, the Court directed GST authorities to process refund applications along with interest.

16. CBIC extends time limit for passing order u/s 73 for FY 2018-19 & 2019-20: - *Notification No. 56/2023- Central Tax dated 28 December 2023*

The Government has extended the time limit for passing order under Section 73 for FY 2018-19 and FY 2019-20 till 30-04-2024 and 31-08-2024 respectively. Earlier, the said time limits were extended till 31-03-2024 and 30-06-2024 respectively vide Notification No. 09/2023-Central Tax, dated 31-03-2023. Notably, the said time limit has not been extended for FY 2017-18 and will remain 31-12-2023. It should further be noted that the above time limit is applicable for the issuance of order in case of tax not paid, short paid, or ITC wrongly availed or utilised and is not applicable in the cases of erroneous refunds.

17. Date extended for reporting opening balance for ITC reversal: - *GSTN Update dated 29 December 2023*

The GSTN has issued an update to inform that the opportunity to declare opening balance for ITC reversal in the statement has been extended till 31st January, 2024. Notably, 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 was introduced on the GST portal.

It is also provided that facility to amend declared opening balance for ITC reversal will be available till 29th February, 2024. Kindly note that after declaring the opening balance for ITC reversal, only three amendment opportunities post the declaration will be provided to correct declared opening balance in case of any mistakes or inaccuracies in reporting.

REGULATORY

1. NCLAT ordered NFRA has 'retrospective' jurisdiction; Auditing Standards applicable to Branch Audits, dismisses DHFL auditors appeals: -NCLAT's Judgement no. LSI-1125-NCLAT-2023(NDEL) dated 01 December 2023

The National Company Appellate Law Tribunal (NCLAT) ruled that the National Financial Reporting Authority (NFRA) has retrospective powers to investigate allegations of misconduct by financial auditors. A coram of Judicial Member Rakesh Kumar Jain and Technical Member Naresh Salecha added that while Institute of Chartered Accountants of India (ICAI) has concurrent disciplinary powers to deal with allegations of professional misconduct by Chartered Accountants or auditors, the NFRA has overriding and superior powers in certain respects as laid down in Section 132 (4) of the Companies Act, 2013. The NCLAT passed a 156-page landmark order by which it dismissed all four appeals and upheld the NFRA's decision. In doing so, the NCLAT also arrived at the following findings:

- On the role of NFRA versus ICAI on disciplinary matters of Chartered Accountants- The role of ICAI cannot be underestimated since it still exclusively deals with checks on auditors engaged by private companies. 95.95 percent of total registered companies in India as on March 31, 2022, are private companies and the auditors of such large number of companies are still regulated by ICAI exclusively. However, on a careful reading of the provisions of the Companies Act, 2013 and the ICAI Act, “the NFRA has superior and overriding powers in matters relating to professional misconduct of the Chartered Accountants in terms of Section 132 of Companies Act, 2013,” the NCLAT held.
- NFRA has retrospective powers- One of the arguments by the appellants was that since the alleged misconduct occurred in 2017-18, which was before the NFRA’s constitution was notified in October 2018, the NFRA could not launch an investigation into the same. The NCLAT rejected the submission and held that with effect from October 24, 2018, all proceedings concerning professional misconduct by auditors (in public companies to which the NFRA jurisdiction is made applicable) would lie in the exclusive domain of the NFRA. The NCLAT reasoned that no new offence or liability has been created and that it is simply a case where the forum has shifted from the ICAI to the NFRA. “Change in forum due to change in law has no bar on being implemented with retrospective effect. The litigant has vested right in action but does not have any vested right on forum. Retrospective application in such procedural law and change in forum is barred only if express provision is made in new law,” the NCLAT explained.
- There was no violation of natural justice simply because the NFRA investigation and adjudication was not conducted by a “division”. The NCLAT agreed with the NFRA that there was little that the financial audit watchdog could do when the legislature has not prescribed

any division. The NCLAT added that such matters cannot be allowed to be avoided only on pure technicalities.

- The NCLAT rejected an argument by the appellant-branch auditors that they should have minimum responsibility, which is confined only to the branch that they audited. The NCLAT opined that the branch auditor's role is also critical to the overall audit of a company. The NCLAT held that Auditors of the Branch cannot absolve his responsibilities. They cannot overlook the fact that the allegations of fraud involving Rs. 31,000 Crores by the DHFL including banking fraud of about 3,700 Crores by Directors of DHFL happened and the Auditors clearly failed in their duties.
- Standards of Auditing (SA) are mandatory and not advisory or a guidance note to auditors.
- There is no bar on the ICAI or NFRA to restrict its investigations only to “professional misconduct” as defined under Section 22 of the Chartered Accountants Act, 1949. “The powers are far more and wider and any conduct which makes an auditor unbecoming of such profession will make him liable for suitable investigation and if found guilty may face punishment as per law,” the NCLAT held. The tribunal added that the “NFRA has far more powers and authority for professional misconduct of members of ICAI in comparison to powers and authority of ICAI itself.” On a factual analysis, the NCLAT also concluded that the appellants had fallen short of complying with various Standards of Auditing and the Code of Ethics issued by the ICAI and upheld the NFRA's findings on these aspects. The NCLAT went on to hold that the penalty imposed by the NFRA for such lapses cannot be termed as “excessive”, particularly considering the enormity of the DHFL scam.

“We consider the penalty as imposed by NFRA on all four Appellants as deterrent, perhaps keeping in mind all facts, including limited role as branch auditors. This cannot be considered excessive after all; it is fact that there has been fraud in DHFL of Rs. 31,000 Crores and Auditors can't pretend to be ignorant of what was happening,” the NCLAT held. Therefore, the appellate tribunal dismissed the appeals and upheld the NFRA's decisions.

2. ICAI proposes 35 Standards on Auditing for LLPs, Invites Comments by 06 January: - ICAI Press Release dated 22 November 2023

Section 34A of the Limited Liability Partnership (LLP) Act, 2008 prescribes that the Central Government may, in consultation with the National Financial Reporting Authority (NFRA), prescribe the Standards of Auditing (SAs) as recommended by the Institute of Chartered Accountants of India (ICAI), for a class or classes of limited liability partnerships. The ICAI had submitted its recommendations to NFRA regarding 35 Standards on Auditing for their notification under Section 143(10) of the Companies Act, 2013 for audit of companies. ICAI is of the view that the aforesaid Standards on Auditing applicable to audit of companies recommended by it to NFRA, should apply mutatis mutandis to audit of LLPs. In this regard, the Auditing and Assurance Standards Board (AASB) of ICAI has issued the Exposure Draft of Standards on Auditing for LLPs for public comments. The ICAI has invited comments from stakeholders on the exposure drafts latest by January 6, 2024. Comments can be submitted electronically through a web form, by email to the AASB Secretariat or by post. The comments received will be considered by the AASB of ICAI to finalize the SAs before recommending them to the government for

notification and applicability to LLP audits. The standards on which exposure drafts is issued by ICAI is presented as follows:

- Exposure Draft of SA 200, “Overall Objectives of the Independent Auditor and the Conduct of an Audit in Accordance with Standards on Auditing”
- Exposure Draft of SA 210, “Agreeing the Terms of Audit Engagements”
- Exposure Draft of SA 220, “Quality Control for an Audit of Financial Statements”
- Exposure Draft of SA 230, “Audit Documentation”
- Exposure Draft of SA 240, “The Auditor’s Responsibilities Relating to Fraud in an Audit of Financial Statements”
- Exposure Draft of SA 250, “Consideration of Laws and Regulations in an Audit of Financial Statements”
- Exposure Draft of SA 260(Revised), “Communication with Those Charged with Governance”
- Exposure Draft of SA 265, “Communicating Deficiencies in Internal Control to Those Charged with Governance and Management”
- Exposure Draft of SA 299 (Revised), “Joint Audit of Financial Statements”
- Exposure Draft of SA 300, “Planning an Audit of Financial Statements”
- Exposure Draft of SA 315, “Identifying and Assessing the Risks of Material Misstatement through Understanding the Entity and Its Environment
- Exposure Draft of SA 320, “Materiality in Planning and Performing an Audit”
- Exposure Draft of SA 330, “The Auditor’s Responses to Assessed Risks”
- Exposure Draft of SA 402, “Audit Considerations Relating to an Entity Using a Service Organisation”
- Exposure Draft of SA 450, “Evaluation of Misstatements Identified during the Audit”
- Exposure Draft of SA 500, “Audit Evidence”
- Exposure Draft of SA 501, “Audit Evidence - Specific Considerations for Selected Items”
- Exposure Draft of SA 505, “External Confirmations”
- Exposure Draft of SA 510, “Initial Audit Engagements—Opening Balances”
- Exposure Draft of SA 520, “Analytical Procedures”
- Exposure Draft of SA 530, “Audit Sampling”
- Exposure Draft of SA 540, “Auditing Accounting Estimates, Including Fair Value Accounting Estimates, and Related Disclosures”
- Exposure Draft of SA 550, “Related Parties”
- Exposure Draft of SA 560, “Subsequent Events”
- Exposure Draft of SA 570(Revised), “Going Concern”
- Exposure Draft of SA 580, “Written Representations”
- Exposure Draft of SA 600, “Using the Work of Another Auditor”
- Exposure Draft of SA 610(Revised), “Using the Work of Internal Auditors”
- Exposure Draft of SA 620, “Using the Work of an Auditor’s Expert”
- Exposure Draft of SA 700(Revised), “Forming an Opinion and Reporting on Financial Statements”
- Exposure Draft of SA 701, “Communicating Key Audit Matters in the Independent Auditor’s Report”
- Exposure Draft of SA 705(Revised), “Modifications to the Opinion in the Independent Auditor’s Report”

- Exposure Draft of SA 706(Revised), “Emphasis of Matter Paragraphs and Other Matter Paragraphs in the Independent Auditor’s Report”
- Exposure Draft of SA 710, “Comparative Information - Corresponding Figures and Comparative Financial Statements”
- Exposure Draft of SA 720(Revised), “The Auditor’s Responsibilities Relating to Other Information”

3. IRDAI Forms Task Force for Impact of DPDP Act, 2023 on Insurance: - IRDAI vide Order Ref. IRDAI/GA&HR/ORD/207 /11/2023 dated 24 November 2023

The Insurance Regulatory and Development Authority of India (IRDAI) has proactively responded to the Digital Personal Data Protection Act, 2023 (DPDP Act, 2023, introduced by the Ministry of Law and Justice), by instituting a Task Force to evaluate the impact of the DPDP Act on the insurance sector. Following are the important highlights in this regard:

- **Constitution of the Task Force:** IRDAI has convened a distinguished Task Force comprising key industry stakeholders. Mr. Randip Singh Jagpal, Executive Director (Non-Life) at IRDAI, leads the Task Force as its Chairperson. Other members include representatives from life and general insurance companies, legal experts, and IT professionals.
- **Scope and Objectives:** The primary goal of the Task Force is to assess the impact of the DPDP Act, 2023, on the insurance sector. It aims to identify potential challenges, ensure compliance, and provide recommendations to align the industry with the new data protection framework.
- **Timeline for Report Submission:** The Task Force is mandated to submit its comprehensive report within one month of the order's issuance. This underscores the urgency and gravity with which IRDAI is addressing the implications of the DPDP Act on the insurance landscape.
- **Draft Order Approval:** The Draft Order, proposed by the Task Force, is subject to approval. This step is crucial for implementing any changes or recommendations arising from the Task Force’s analysis.

In conclusion, IRDAI's establishment of a Task Force reflects a proactive stance in navigating the evolving landscape of data protection laws. The insurance sector's adaptation to the DPDP Act, 2023, is pivotal for maintaining the delicate balance between protecting individual privacy and facilitating lawful data processing. As the Task Force diligently works towards its mandate, stakeholders eagerly anticipate insights and recommendations that will shape the future of data protection in the insurance industry.

4. Allocation of Indian Financial System Code (IFSC code) to IBUs: - IFSCA Circular No. IFSCA-FMPPoBR/9/2023/Banking/1 dated 28 November 2023

The International Financial Services Centres Authority (IFSCA) in consultation with the Reserve Bank of India has made a significant decision regarding the allocation of Indian Financial System

Code (IFSC code) to International Banking Units (IBUs). This move aims to streamline and regulate cross-border remittances through a standardized process.

- i. **Procedure for obtaining IFSC Code:** IBUs are required to submit applications for issuance, deletion, or modification of IFSC codes to IFSCA. Following details are required to be submitted along with the application;
 - Request type (Issuance, Deletion, Modification)
 - Purpose of Request
 - Name of Parent Bank
 - IFSC of the Bank in Domestic Payment Systems
 - IBU Name
 - Branch Name
 - Address
 - Contact Name
 - Contact Number
 - Email ID
- ii. **Communication of Response:** IFSCA will communicate the success or failure of the application to IBUs along with any applicable conditions. The issued IFSC codes are exclusively for cross-border remittances and must be used in relevant fields of cross-border payment systems messages.
- iii. **Closure Procedures:** In case of IBU closure, an application for IFSC code deletion must be filed with IFSCA before the closure.
- iv. **3. Restrictions on Domestic Usage:** The IFSC code issued to the IBUs shall not be used in domestic payment systems. To prevent any confusion, IBUs shall inform their parent banks to ensure that these codes are not advertised to the public.
- v. **Queries:** Any queries regarding the allocation process can be addressed through banking-queries@ifsc.gov.in.

This development by IFSCA marks a crucial step in enhancing the efficiency and transparency of cross-border remittances through IBUs. The outlined procedures and restrictions aim to ensure the responsible use of IFSC codes and prevent any potential confusion in the financial ecosystem. IBUs are urged to adhere to the guidelines and communicate any queries through the provided channels for a seamless implementation of this allocation system.

5. Consultation Paper on Regulatory Framework For Accredited Investors in IFSC: - IFSCA dated 23 November 2023

IFSCA has released a consultation paper on the Regulatory Framework for Accredited Investors in the International Financial Services Centre (IFSC) and seeks public comments on the proposed framework by 07 December 2023.

The paper proposes a comprehensive framework for accredited investors, including government and government-related investors in India and foreign jurisdictions, central banks, sovereign wealth funds, and agencies, , including entities controlled by or at least 75% directly or indirectly

owned by such government and government-related investors, shall be deemed to be accredited investors. The Authority also suggests that regulated entities that accept accredited investors must establish adequate procedures and internal policies for verifying and periodically reviewing their eligibility.

While regulated entities are responsible for complying with all requirements, they may delegate the verification task to certain entities. The paper also suggests that regulated entities accepting investments from accredited investors must inform them that investor protection measures may not be available or may be limited to an accredited investor. The accredited investor must also confirm in writing that they understand the risks, costs, and benefits of investing in a specific capital market product or service and wish to be treated as an accredited investor.

6. ICAI highlights key findings from Audit Quality Reviews conducted upto 31 March 2023: - ICAI QRB

The Quality Review Board (QRB) of ICAI has released an 83-page report on Audit Quality Review (2022-23), outlining key findings from audits of private limited companies up to 31 March 2023. The report provides an overview of the QRB's approach, expectations, selection of audit firms, and conduct of audit quality review. It also provides an overall trend of audit engagements reviewed from FY 2012-13 to FY 2022-23, analysis of reviewed audit files in terms of technical standards, and findings in major focus areas for reviews.

The report categorizes observations under various sections, including Standards on Auditing, Accounting Standards and Ind AS, and Other Relevant Laws and Regulations. It covers topics such as audit quality control systems, auditor independence, audit evidence, related party transactions, auditor responsibilities relating to fraud, accounting estimates, materiality and audit sampling, audit documentation, risk assessment procedures, audit conclusions and reporting, financial instruments, revenue from contracts with customers, Statement of Cash Flows, Income Taxes, Leases, employee benefits, and CARO, 2016.

The QRB has made several decisions to improve audit quality during FY 2022-23, including renewed emphasis on compliance with the Standard on Quality Control, updated technical standards questionnaires, and an expanded basket of entities selected for review. The report also mentions matters of general guidance for audit firms and an analysis of the observations vis-à-vis the number and percentage of audit firms.

7. International Monetary Fund - Carbon Pricing Should Balance Fiscal Incentives to Combat Climate Change, IMF Study Says: *IMF Fiscal Monitor October 2023*

Global warming threatens the planet and human livelihoods, with 2023 set to become the warmest year on record. Recognizing the threat, countries have set climate goals, for example, many countries have committed to reducing greenhouse gas emissions to net zero by midcentury and have taken a range of policy actions. However, current and announced policies will fall short of achieving the 2015 Paris Agreement's temperature goals. Containing global warming will ultimately benefit everyone by mitigating the potential catastrophic consequences of climate change. However, it necessitates a radical economic transformation that could impose costs and benefits unevenly across people, firms, regions, and countries. With private financing playing a

decisive role, the transition to low-carbon energy sources will require strong complementarities between public and private actors.

The IMF has published the first chapter of its October 2023 Fiscal Monitor (the Study) addressing the topic of the use of fiscal policies to face climate change. The Study outlines that reaching climate goals can increase public debt at excessive levels, especially if it relies on public investment and subsidies for renewable energy. However, carbon pricing can be a cost-effective solution that counterbalances it by reducing emissions and at the same time raising revenues. In this respect, each year of delay in introducing carbon pricing adds between 0.8% to 2% of GDP to public debt.

The Study underlines the importance of encouraging firms to transition towards low-carbon technologies through the grant of fiscal incentives, which need to comply with the World Trade Organization (WTO) rules to avoid unintended distortions to trade. The Study concludes that climate change entails a shared responsibility and coordination among policymakers. Countries must coordinate their actions by setting minimum carbon prices, removing trade barriers, avoiding costly subsidy races and developing international rules to crowd-in private financing to ensure a sustainable world for future generations.

8. SC tones down PMLA rigours vis-a-vis Sec. 120-B of IPC, rejects ED's unconstitutional interpretation: - *Pavana Dibbur V. The Directorate Of Enforcement [LSI-1112-SC-2023(NDEL)]*

The Supreme Court clarified that an offence of criminal conspiracy punishable under Section 120-B of the Indian Penal Code will be deemed a scheduled offence under the Prevention of Money Laundering Act (PMLA) only if the alleged conspiracy is directed towards committing an offence specifically included in the schedule of the PMLA. The bench pronounced the judgment in an appeal against a judgment of the Karnataka High Court which refused to quash the proceedings in a case pending before Special Judge, Bangalore for the offence of money laundering against her under PMLA. "An offence punishable under section 120-B will become a scheduled offence only if the conspiracy alleged is of committing an offence specifically included in the schedule. On that ground, we've quashed the proceedings," ruled the Court.

In the present case, a complaint filed by the Enforcement Directorate (ED) on March 7, 2022, against the former Vice-Chancellor of Alliance University has stirred controversy. The ED has charged the petitioner under sections 44 and 45 of the Prevention of Money Laundering Act (PMLA), citing offenses defined under section 3 read with sections 8(5) and 70, which are punishable under section 4 of PMLA. The allegations suggested that during her tenure as VC of Alliance University from 2014 to 2016, the appellant acquainted with Madhukar Angur (Accused no.1), conspired to execute a sham and nominal sale deed without any consideration, involving properties belonging to Alliance University. It was further claimed that she facilitated Accused No. 1 in using her bank accounts to conceal money siphoned from the university. Taking cognizance of the allegations, the Special Judge proceeded with the case. In response, the petitioner approached the Karnataka High Court, seeking to quash the proceedings under Section 482 of the Criminal Procedure Code (CrPC).

However, the High Court, relying on the judgment in *Vijay Madanlal Choudhary v. Union of India & Ors.*, emphasized that the phrase used by the Apex Court is "any person" and not "any accused."

Therefore, one need not be accused in the principal offense to be subject to proceedings under the Act. The court further held that even assisting in the process or activity constitutes a part of the crime of money laundering.

9. Special Economic Zones (Fifth Amendment) Rules, 2023 issued allowing partial denotification of the SEZ premises by Developers for mixed use: - Ministry of Commerce Industry Notification No. G.S.R. 881(E) dated 06 December 2023

The Ministry of Commerce and Industry has notified the Special Economic Zones (Fifth Amendment) Rules, 2023. Highlighting the further development of Information Technology (IT) and Information Technology Enabled Services (ITES) Special Economic Zones (SEZs), by introducing non-processing areas. A new Rule 11B has been inserted after Rule 11A which inter alia provides as follows allowing co-existence of SEZ units and non-SEZ IT/ITeS business in the same SEZ premises;-

Demarcation of non-processing areas for IT/ITES SEZs:

- Developers can request the Board of Approval for demarcation of a portion of a portion of the built-up area of an IT/ITES SEZs as non-processing area. Non-processing areas can host businesses engaged in IT or ITES services subject to conditions set by the Board of Approval.
- A non-processing area must consist of complete floors, with appropriate access control mechanisms and part of a floor shall not be demarcated as a non-processing area.
- Appropriate access control mechanisms shall be set up for the units engaged in IT/ITES services in non-processing areas to ensure adequate screening of movement of persons as well as goods in and out of their premises, Rule 11B(4).

Conditions for demarcation:

- Repayment of Tax Benefits without interest (Rule 11B(5))
 - Developers must repay tax benefits attributable to the non-processing area. The repayment is calculated based on the benefits provided for the processing area as specified by the Central Government.
 - Repayment of tax benefits availed for creation of social and commercial infrastructure if such infrastructure is proposed to be used for providing IT/ITES services by both SEZ Units and business in non-processing area.
- The above repayment amount shall be calculated based on a certificate issued by a Chartered Engineer.
- Area Requirements as per Rule 11B(7): The demarcation shall not be allowed if the processing area is below Fifty Percent of the total area or minimum specified thresholds based on city categories as per Column 3 in the below table:

| Sr. No. | Categories of cities as per | Minimum built-up processing |
|---------|-----------------------------|-----------------------------|
|---------|-----------------------------|-----------------------------|

| (1) | Annexure IV-A (2) | Area (3) |
|-----|-------------------|----------------------|
| 1. | Category 'A' | 50,000 square meters |
| 2. | Category 'B' | 25,000 square meters |
| 3. | Category 'C' | 15,000 square meters |

Restrictions for Non-Processing Area Businesses:

- Businesses in non-processing areas shall not avail any rights or facilities available to SEZ Units, Rule 11B(8).
- No tax benefits are available for the operation and maintenance of common infrastructure in such SEZs, Rule 11B(9).
- Businesses in non-processing areas must adhere to Central Acts, rules, and orders as applicable to the entities operating in the domestic tariff area, Rule 11B(10).

10. FASB Issues New Segment Reporting Guidance: - FASB Media Advisory dated 27 November 2023

The Financial Accounting Standards Board (FASB) has issued a final Accounting Standards Update (ASU) that improves disclosures about a public entity's reportable segments and addresses requests from investors and other allocators of capital for additional, more detailed information about a reportable segment's expenses. "The new segment reporting guidance is based on the FASB's extensive outreach with stakeholders, including investors, who indicated that enhanced disclosures about a public company's segment expenses would enable them to develop more decision-useful financial analyses," stated FASB Chair Richard R. Jones. "It will improve financial reporting by providing additional information about a public company's significant segment expenses and more timely and detailed segment information reporting throughout the fiscal period." The amendments in the ASU improve reportable segment disclosure requirements primarily through enhanced disclosures about significant segment expenses. The key amendments:

- Require that a public entity disclose, on an annual and interim basis, significant segment expenses that are regularly provided to the chief operating decision maker (CODM) and included within each reported measure of segment profit or loss.
- Require that a public entity disclose, on an annual and interim basis, an amount for other segment items by reportable segment and a description of its composition. The other segment items category is the difference between segment revenue less the significant expenses disclosed and each reported measure of segment profit or loss.
- Require that a public entity provide all annual disclosures about a reportable segment's profit or loss and assets currently required by FASB Accounting Standards Codification® Topic 280, Segment Reporting, in interim periods.

- Clarify that if the CODM uses more than one measure of a segment's profit or loss in assessing segment performance and deciding how to allocate resources, a public entity may report one or more of those additional measures of segment profit. However, at least one of the reported segment profit or loss measures (or the single reported measure, if only one is disclosed) should be the measure that is most consistent with the measurement principles used in measuring the corresponding amounts in the public entity's consolidated financial statements.
- Require that a public entity disclose the title and position of the CODM and an explanation of how the CODM uses the reported measure(s) of segment profit or loss in assessing segment performance and deciding how to allocate resources.
- Require that a public entity that has a single reportable segment provide all the disclosures required by the amendments in the ASU and all existing segment disclosures in Topic 280.

The ASU applies to all public entities that are required to report segment information in accordance with Topic 280. All public entities will be required to report segment information in accordance with the new guidance starting in annual periods beginning after December 15, 2023.

11. IFSCA seeks public suggestions on review of IFSCA (Finance Company) Regulations, 2021: - IFSCA dated 06 December 2023

The International Financial Services Centres Authority (IFSCA) issues a consultation paper seeking comments/ views/ suggestions from the public and/or stakeholders on any amendments or additions to the IFSCA (Finance Company) Regulations, 2021 (as amended) by 26 December 2023. Stating that subsequent to the issuance of Finance Company Regulations, there has been one amendment to the same, the Authority apprises that, as per the IFSCA (Procedure for Making Regulations) Regulations, 2021, all regulations issued by the IFSCA are required to be reviewed 3 years from the date of their notification, and as part of the review process, the IFSCA invites comments from the public on any suggested modifications or changes to the said Regulations.

12. SEBI mandates AIFs to invest in Demat form & to appoint Custodian: - SEBI Board Meeting dated 25 November 2023

The SEBI amended the SEBI (Alternative Investment Funds) Regulations, 2012, during its 203rd meeting held on 25 November 2023 to enhance compliance ease and fortify investor protection within Alternative Investment Funds (AIFs). The Board approved the following proposals:

- Any fresh investment made by an AIF beyond September 2024 shall be held in dematerialized form. The existing investments made by AIFs have been exempted from the said requirement, except in cases where:
 - The investee company has been mandated under applicable law to facilitate the dematerialization of its securities.
 - Investments where the AIF, on its own or along with other SEBI-registered intermediaries or entities that are mandated to hold their investment in dematerialized form, has control over the investee company.

Further, the said requirement is exempted for investments held by

- liquidation schemes of AIF.

- Schemes of an AIF whose tenure (not including permissible extension of tenure) ends within one year from the date of issuance of the necessary notification in this regard.
 - Schemes of an AIF that are in extended tenure as of the date of issuance of the notification.
- The mandate for a custodian, currently applicable to schemes of Category III AIFs and schemes of Category I and II AIFs with a corpus greater than INR 500 crores will be extended to all AIFs. The AIFs can appoint a custodian who is an associate manager or sponsor of the AIF, subject to conditions similar to those prescribed under the SEBI (Mutual Funds) Regulations, 1996 and the Board also noted that the average annual cost of compliance for schemes falling under this mandate is approximately INR 88,000 per annum for availing custodial services.

13. RBI Governor proposes to setup Fintech Repository, Cloud Facility to enhance data-security, business-continuity: - *Press release*

RBI Governor Shaktikanta Das, during his press briefing on December 8 following the Monetary Policy Committee (MPC) meeting held from December 6 to 8, announced that all members of the MPC unanimously decided to maintain the policy repo rate at 6.50%. In acknowledging the global economy's fragility and the deceleration of world trade amid rising protectionism, Governor Das emphasized that the easing of inflation in advanced economies has fostered expectations of an early conclusion to the monetary tightening cycle, thereby boosting market sentiments. He noted that sovereign bond yields are softening as markets do not factor in any further rate hikes. Expanding on the MPC's rationale for its policy rate decisions, Mr. Das explained that recent pre-emptive measures by the Reserve Bank targeting banks and NBFCs aimed to address potential risks and preserve the financial sector's resilience. He underscored the guiding philosophy of prudence for both regulators and regulated entities, with the RBI employing micro and macro-prudential tools judiciously to safeguard financial stability. Governor Das outlined specific proposals, including-

- strengthening the pricing and management of credit by regulated entities through a unified regulatory framework on connected lending,
- introducing a regulatory framework for web-aggregation of loan products to enhance customer centricity and transparency in digital lending, and
- establishing a Fintech Repository and a cloud facility for the financial sector to enhance data security, privacy, scalability, and business continuity.

In terms of economic projections, he stated that the real GDP growth for 2023-24 is projected at 7.0%, with CPI inflation projected at 5.4%. Additionally, he announced an acceleration of e-mandates usage by increasing the limit to Rs. 1 lakh per transaction for recurring payments and raising the UPI Transaction Limit for hospitals and educational institutions to Rs. 5 lakh. Governor Das concluded by noting that in a global economy marked by uncertainties, monetary policy actions and communication can serve as stabilizing forces by anchoring the expectations of economic agents. He expressed confidence in India's resilience compared to many other countries and concluded with a quote from Mahatma Gandhi, emphasizing the assurance of progress in the presence of unalterable determination.

14. SEBI floats Consultation Paper on changes in Special Situation Funds framework: - SEBI's Consultation Paper dated 28 November 2023

The Securities and Exchange Board of India (SEBI) has released a consultation paper proposing modifications to the regulatory framework governing Special Situation Funds (SSFs), a subset of Category I Alternative Investment Funds (AIFs). The objective is to enable SSFs to acquire stressed loans in accordance with the Reserve Bank of India (RBI) (Transfer of Loan Exposures) Directions, 2021 ("RBI Master Directions"). In January 2022, SEBI had introduced SSFs specifically to invest in special situation assets including stressed loans. Each SSF scheme is required to have a minimum corpus of Rs. 100cr. According to Regulation 19I(3) of SEBI (AIF) Regulations, 2012, "special situation fund" refers to a Category I AIF that invests in special situation assets based on its investment objectives and can act as a resolution applicant under the Insolvency and Bankruptcy Code, 2016 (IBC).

Accordingly, SSFs were allowed to acquire stressed loans in accordance with Clause 58 of the RBI Master Directions, once included in the Annexure of the RBI Master Directions. Such acquired stressed loans are subject to a minimum lock-in period of six months, exempted in cases of recovering the loan from the borrower. To include SSF in RBI Master Directions by Reserve Bank of India (RBI), who is the principal regulator for sale and purchase of stressed loans in India, SEBI must establish a framework in consultation with the Central Bank. Accordingly, SEBI submitted its draft of the regulatory framework for SSFs to purchase stressed loans to Reserve Bank of India (RBI), which then responded with its requirements for the framework. The consultation paper by the market regulator proposes amendments to the definition of special situation assets, eligibility of investors in SSFs in terms of Section 29A of IBC, restrictions with regard to investment in connected entities, minimum holding period and subsequent transfer of loans, monitoring of SSFs and supervision of SSFs.

15. SEBI issues revised framework for NDCF computation by REITs/InvITs effective from 01 April 2024: - SEBI's Circular No. SEBI/HO/DDHS/DDHS-PoD/P/CI R/2023/185 dated 06 December 2023

SEBI has come out with revised frameworks for the computation of Net Distributable Cash Flows (NDCFs) by the Real Estate Investment Trusts (REITs) and Infrastructure Investment Trusts (InvITs). The frameworks will be operative w.e.f. April 1, 2024. This decision has been taken with a view to promote ease of doing business. As per SEBI (Real Estate Investment Trusts) Regulations, 2014 and SEBI (Infrastructure Investment Trusts) Regulations, 2014, a minimum of 90% of the NDCF of the special purpose vehicle (SPV) has to be distributed to the trust in proportion to its holding in the SPV. This is subject to the provisions of the Companies Act, 2013, and the Limited Liability Partnership Act, 2008.

The regulations also mandate that a minimum of 90% of the NDCF of the trust has to be distributed to the unit holders. Here, the NDFC amount is arrived after deducting expenses including debt repayment, etc. from the income. The manner in which such NDFC has to be computed at the holding company or SPV level and at the trust level respectively has been provided under SEBI's master circulars and to standardize the same, the revised frameworks have been rolled out. The maximum amount that can be retained by SPVs and the trust together would be 10% of the amount arrived at upon deduction of the amount distributed by SPVs (to the trust)

from the combined NDCFs of the trust and SPVs. It is specified that the “*trust along with its SPVs needs to ensure that minimum 90% distribution of NDCF be met for a given financial year on a cumulative periodic basis as specified for mandatory distributions*” in the REIT and InvIT regulations.

16. RBI to come up with a unified regulatory framework on connected lending for all the regulated entities: - *Press Release*

The RBI has released a Statement on Developmental and Regulatory Policies. Since, the extant guidelines on the issue are limited in scope and are not applicable uniformly to all regulated entities, the RBI decided to come out with a unified regulatory framework on connected lending for all the regulated entities of the RBI. Also, the RBI has accepted the recommendation of the Working Group on Digital Lending to come up with a regulatory framework for web aggregators of loan products. Further, to encourage the use of UPI for medical and educational services, it is proposed to enhance the limit for payments to hospitals and educational institutions from ₹1 lakh to ₹5 lakh per transaction. Separate instructions to be issued shortly.

The limits for execution of e-mandates without the Additional Factor of Authentication (AFA) currently stands at INR 15,000/-. Now, it is proposed to exempt the requirement of AFA for transactions up to ₹1 lakh for the following categories, viz., subscription to mutual funds, payment of insurance premiums and payments of credit card bills. Further, the RBI has also proposed to set-up a Repository for capturing essential information about Fintech’s, encompassing their activities, products, technology stack, financial information etc.

FinTechs would be encouraged to provide relevant information voluntarily to the Repository which will aid in designing appropriate policy approaches. The Repository will be operationalised by the Reserve Bank Innovation Hub in April 2024 or earlier.

17. RBI keeps the policy repo rate under the liquidity adjustment facility (LAF) unchanged at 6.50%: - *Press Release*

The RBI’s Monetary Policy Committee (MPC) at its meeting today on 08.12.2023 decided to keep the policy repo rate under the liquidity adjustment facility (LAF) unchanged at 6.50 %. Further, the Standing Deposit Facility (SDF) rate remains unchanged at 6.25 % and the Marginal Standing Facility (MSF) rate and the Bank Rate at 6.75 %. The MPC also decided to remain focused on withdrawal of accommodation to ensure that inflation progressively aligns to the target, while supporting growth.

18. Karnataka amends Stamp Act to enhance rate of Stamp Duty: - *The Karnataka Stamp (Amendment) Bill, 2023 (LA Bill No. 22 of 2023)*

The Karnataka government on Thursday introduced a bill in the assembly to hike stamp duty for the execution of legal documents such as powers of attorney, deeds and affidavits, in a move that is aimed at mobilising financial resources. The Karnataka Stamp (Amendment) Bill proposes to double all duty levies and the increase is five-fold for some instruments.

As per the bill, Stamp duty on powers of attorney will be hiked from Rs 100 to Rs 500. When more than five but not more than 10 persons are authorised to act jointly, the stamp duty will go up from Rs 200 to Rs 1,000.

For partition deeds of properties located in urban areas, stamp duty is proposed to go up from Rs 1,000 per share to Rs 5,000. For properties located outside urban limits, it will be Rs 3,000 per share instead of the current Rs 500. Partitioning agricultural properties will attract a stamp duty of Rs 1,000 per share, up from Rs 250, according to the bill. Registering trusts will also get costlier as the government, through the bill, wants to hike stamp duty from Rs 1,000 to Rs 2,000.

For deeds related to amalgamation of companies, the proposed amendment advocates an increase in stamp duty from the current 3% of a company's market value to 5% or an amount equal to 1% of the value of the company's shares, with a cap at Rs 25 crore for such transactions. For property partitions converted for non-agricultural purposes, the proposed escalation is anticipated to surge from Rs. 1,000 per share to Rs. 5,000 per share in urban areas. The proposed increase is maximum in case of enrolment certificates, where stamp duties could go up from the current Rs. 500 to Rs. 2,000. The revised stamp duty rates are expected to come into effect from January 1.

19. IAASB issues New Standard for Audits of Less Complex Entities: - IAASB Press Release

The International Auditing and Assurance Standards Board (IAASB) has officially released the International Standard on Auditing for Audits of Financial Statements of Less Complex Entities, commonly referred to as the ISA for LCE. Tailored specifically for smaller and less complex businesses and organizations, the ISA for LCE is a standalone global auditing standard. Rooted in the foundation of the International Standards on Auditing (ISAs), audits conducted under this standard provide a consistent level of assurance—reasonable assurance—for eligible audits. The standard is set to become effective for audits beginning on or after December 15, 2025, for jurisdictions that choose to adopt or permit its use.

IAASB Chair Tom Seidenstein expressed the board's commitment to ensuring the credibility and reliability of financial reporting for entities of all sizes. Leveraging the ISAs as a starting point, the IAASB aims to cultivate an environment where audits are conducted globally in a consistent and high-quality manner, especially for the smallest entities. The board's actions are intended to inspire greater confidence and contribute to the overall stability and trustworthiness of information in the external reporting ecosystem.

To support this initiative, the IAASB has released additional materials alongside the ISA for LCE, including a Basis for Conclusions detailing feedback from the public consultation period, a high-level fact sheet, and a frequently asked questions document. Further resources to aid jurisdictions in navigating adoption will be issued in 2024, including supplementary guidance, a fact sheet on adoption, and a first-time implementation guide. All materials can be accessed on the IAASB website: <http://www.iaasb.org/ISAforLCE>

20. SEBI proposes 'fast-track' public issuance, other changes to enhance participation in debt market: - *SEBI's consultation paper on review of provisions of NCS regulations and LODR regulations dated 11 December 2023*

To enhance ease of doing business for listed debt issuers, the Securities and Exchanges Board of India (Sebi) is mulling to introduce the concept of 'fast track' public issuance for debt securities and further reduce the face value of debt securities, including non-convertible debentures (NCDs) issued on a private placement basis to ₹10,000 from present ₹1 lakh so that more non-institutional investors can enter the market. The capital market regulator has invited public comments on these proposals until December 30, 2023.

"The main intention of a Fastrack public issuance of debt securities is to facilitate frequent issuers with a consistent track record, to make public issues of debt securities with reduced time, cost and effort," the consultation paper said. The capital market regulator has "proposed to permit issuers to launch NCDs (non-convertible debentures) or NCRPS (non-convertible redeemable preference shares) with the face value of ₹10,000" to increase the participation of the non-institutional investors in the corporate bond market. However, in such cases, the issuer shall appoint a merchant banker who shall carry out due diligence for issuance of such privately placed NCDs or NCRPS and disclosures in the private placement memorandum, the release said.

- **QR code of Audited Financials:** Sebi suggested that instead of inserting the audited financials for the last three financial years and Stub period financials in the offer document, the same can be provided as a QR code scanning which opens the web link to the financials on the issuer's website.
- **Digital statutory advertisement:** The issuers opting for the fast-track public issue route may be allowed to utilise the electronic modes including advertisement on issuer's website, the stock exchange's website, and the debenture trustee's website etc. to advertise the public issue and the requirement of advertising in newspapers may be done away with. This will save time and costs for the issuer.
- **Listing of fast-track public issues of debt securities:** Also, it proposed the timeline for listing fast-track public issues of debt securities should be T 3 as opposed to T 6 for a regular public issue, a move aimed at considerably bringing down the timelines for raising funds through debt securities. The issuers opting for the route should be allowed to utilize electronic modes to advertise the public issue. The requirement of advertising in newspapers should be done away with.
- **Period of subscription:** The fast-track public issue of debt securities may be kept open for a minimum of one working day and a maximum of 10 working days. Further, in case of revision in the price band or yield, the extant bidding period may be extended by one more working day instead of three working days for a normal public issue.
- **Standardized Record Date:** Inconsistency of shut periods or record dates was noted and Sebi proposed to standardize record dates 15 days before payment due dates, ensuring uniformity. The record date is the date on which the investor must be the owner of the debt securities for corporate actions. In market parlance, the shut period refers to the number of

days between the Record Date and the interest payment date/ redemption date.

- **GID and KID:** The GID filed for fastrack public issuance of debt securities shall consist of all necessary disclosures as specified under Schedule I of NCS Regulations. The KID for a fast track public issue of debt securities shall contain the following information: (a) Part A – all disclosures that are relevant for a public issue but not in the GID e.g. Material changes from the GID, Material Developments, Risk Factors if any, not disclosed in the GID; (b) Part B – details of the offer of debt securities in respect of which the KID is being issued;
- **Retention Limit:** Further, the retention limit should be fixed at a maximum of five times of base issue size to provide more flexibility to the issuers in terms of fundraising.
- **Public comments on the draft offer:** The Sebi proposal includes reducing the time for public comments on draft offer documents to two days.

21. SEBI floats Consultation-Paper on issuance of subordinate units and unit-based employee benefits for REITs/InvITs: - SEBI Consultation Paper Dated 09 December 2023

SEBI releases a Consultation Paper on the Framework for issuance of subordinate units and unit-based employee benefits for REITs and InvITs. SEBI Proposes that subordinate units by REITs and InvITs can be issued only to the sponsors, its associates and sponsor group, the units shall carry only inferior voting or any other inferior rights as compared to ordinary units and the terms and conditions governing subordinate units shall be included in the Trust Deed of the REIT/InvIT. SEBI suggests that the minimum time gap between issuance of subordinate units and entitlement date for conversion of subordinate units to ordinary units shall be 1 year and that the converted units shall be listed and tradeable on the stock exchanges on receipt of approval from the stock exchange.

Also, SEBI shall provide an enabling framework for Unit Based Employee Benefits (UBEB) by implementing the scheme through a separate Employee Benefit Trust which shall be created by Manager of REIT/Investment Manager of InvIT, moreover, provides that the trustee of the EB Trust shall not be eligible to vote on account of the units of the REIT/InvIT held by it. Any suggestions / comments on the report can be submitted by 29th December 2023 through online or offline mode by following the instructions provided by SEBI in para 7.1.1.2 of this report.

22. SEBI sets forth process for dematerializing units issued with pending investors demat details: - Circular No. SEBI/HO/AFD/PoD1/CIR/2023/186 dated 11 December 2023

SEBI notifies the process to be followed for dematerializing / crediting the units issued, in cases where investors are yet to provide demat account details to AIFs. SEBI states that the Managers of AIFs shall continue to reach out to existing investors to obtain their demat account details and credit the units issued to them to their respective demat accounts. The regulator stipulates that the schemes of AIFs with corpus of more than Rs. 500 crores shall credit units already issued to existing investors (on-boarded prior to November 1, 2023) who have not provided their demat account details, into Aggregate Escrow Demat Account latest by January 31, 2024. Further, SEBI mentions the schemes of AIFs with corpus less than Rs. 500 crores shall credit units issued to

their investors who have not provided their demat account details by April 30 2024, into Aggregate Escrow Demat Account latest by May 10, 2024. Also, the units of AIFs held in Aggregate Escrow Demat Account can be redeemed and proceeds shall be distributed to respective bank accounts of the Investors with full audit trail of the same. SEBI clarifies that Managers of AIFs shall maintain investor-wise KYC details of units held in Aggregate Escrow Demat Account, including name, PAN and bank account details, along with audit trail of the transactions.

23. Unstamped arbitration agreements are 'enforceable': - *In Re interplay between arbitration agreements under the Arbitration and Conciliation Act 1996 and The Indian Stamp Act, 1899. [LSI-1166-SC-2023(NDEL)]*

In a landmark ruling, a seven-judge bench of the Supreme Court on Wednesday (December 13) ruled that arbitration clauses in unstamped or inadequately stamped agreements are enforceable. Insufficiency of stamping does not make the agreement void or unenforceable but makes it inadmissible in evidence. However, it is a curable defect as per the Indian Stamp Act, the Court pointed out. The Court overruled the judgment rendered by a 5-judge bench in April this year in *M/s. N.N. Global Mercantile Pvt. Ltd. v. M/s. Indo Unique Flame Ltd. And Ors* which had by a 3:2 majority held that unstamped arbitration agreements are not enforceable.

- **Background:** The case emerged from a curative petition challenging the 2020 ruling in *Bhaskar Raju and Brothers v. Dharmaratnakara Rai Bahadur Arcot Narainswamy Mudaliar Chattram & Ors*. A 5-judge bench had referred the matter to a seven-judge bench to reconsider the correctness of *NN Global*, wherein the Hon'ble Supreme Court had by majority of 3:2 held that an unstamped instrument exigible to stamp duty containing an arbitration clause cannot be said to be a contract enforceable in law as per the provisions of Indian Contract Act, 1872, and is therefore not enforceable in law as a result of which the arbitration clause too was held to be unenforceable.
- **Arguments Before the Court:** The petitioners argued that existence of an arbitration agreement and validity of the arbitration agreement were two different concepts. Further, under Section 11 of the Arbitration and Conciliation Act, 1996, the power of the court was confined to the examination of the existence of the agreement and not to the validity of the same. Thus, the court only had to determine if an agreement existed. The same, as per the petitioners, could be done by dissecting the nature of correspondence between the parties, including telecommunication, statements, zoom calls etc. However, the validity of the agreement was for the arbitrator to decide upon. Petitioners added that the ambit of Section 16, which deals with the competence of an arbitral tribunal to rule on its jurisdiction, was wide enough to allow the Arbitrator to make considerations with respect to the stamping of the document. They also relied upon the 'doctrine of separability' to argue that even if an agreement was null and void, the arbitration agreement within it would still survive as it was 'separate'. Per contra, the respondents questioned the Supreme Court five judge bench's decision of referring the matter to a seven judge bench in its curative jurisdiction. It was asserted that the court's curative jurisdiction could only be exercised with regards to injustice done in an individual cause.
- **Decision of the Court:** The Hon'ble Supreme Court in its Judgment has held that the Stamp Act is a substantive law and an agreement shall be unenforceable on account of a violation of /

non-compliance with such substantive law, on account of non-payment of sufficient stamp duty. Therefore, such an unstamped or insufficiently stamped agreement would not be a contract, under Section 2(h) of the Contract Act and would not be enforceable. Further, such unenforceable agreements cannot be enforced by the Court under Section 11 of Act, when stamp duty has not been paid to the State for it to recognise and enforce the rights of the Parties to an agreement. The Court in clarifying the position of stamp duty vis-à-vis arbitration agreements, held that:

- An instrument containing an arbitration agreement and which is exigible to stamp duty, if not sufficiently stamped as per the Stamp Act shall not be considered as a contract under the Section 2(h) of the Indian Contract Act and hence not enforceable in law.
- The doctrine of kompetenz-kompetenz recognises the existence of the Arbitration Clause /Agreement to be separate from the contract, however, the same would only be enforceable when the stamp duty on the underlying contract is duly paid.
- The powers of the Court while deciding a Section 11 application, includes the power to examine the existence and validity of an arbitration agreement.
- While determining an application under Section 11 of the Act, the Court is duty-bound to act in accordance with Section 33 of the Stamp Act and impound the insufficiently stamped/unstamped instrument. In light of Section 35 of the Stamp Act, the arbitration agreement cannot be acted upon by the Court.
- Letter, telex or telegrams or other means of communication in writing which result in an arbitration agreement would also have to be properly stamped, in accordance with Section of the Stamp Act.
- The Court however clarified that it could proceed further with the Section 11 Application if the defect in payment of stamp duty is cured as per the provisions of the Stamp Act.
- The Supreme Court in holding the above has overruled NN-1 and has held the findings of the Court in SMS Tea and Garware to be the correct positions in law. It is pertinent to note that Judgment has not been pronounced with reference to Section 9 of the Act and the Court has limited its scope to Section 11 of the act.

24. SEBI outlines procedures for demat/crediting of units by AIFs when investors haven't provided demat account details: - Circular SEBI /HO/AFD /PoD1/CIR/2023 /186 dated 11 December 2023

In June 2023, SEBI mandated AIFs to dematerialize units within a specified timeframe. SEBI has now provided guidelines for dematerializing/crediting units in cases where investors haven't provided demat account details. As per the said circular the AIF managers shall continue to reach out to existing investors to obtain their demat account details and credit the units issued to them to their respective demat accounts.

In this regard, AIF industry and depositories shall adopt implementation standards as formulated by the pilot Standard Setting Forum for AIFs (SFA) along with the two depositories, in consultation with SEBI. Further, the units already issued by schemes of AIFs to existing investors who have not provided their demat account details, shall be credited to a separate demat account named "Aggregate Escrow Demat Account". This account shall be opened by AIFs for the sole purpose of holding demat units of AIFs on behalf of such investors. New units to be issued in demat form shall be allotted to such investors and credited to the Aggregate Escrow Demat Account. As and when such investors provide their demat account details to the AIF, their units

held in Aggregate Escrow Demat Account shall be transferred to the respective investors' demat accounts within 5 working days.

Further, the Schemes of AIFs with corpus INR 500 Crore shall credit units already issued to existing investors (on boarded prior to November 01, 2023) who have not provided their demat account details, into Aggregate Escrow Demat Account latest by January 31, 2024. Whereas, the Schemes of AIFs with corpus INR 500 Crore shall credit units issued to their investors who have not provided their demat account details by April 30, 2024, into Aggregate Escrow Demat Account latest by May 10 2024. The units of AIFs held in Aggregate Escrow Demat Account can be redeemed and proceeds shall be distributed to respective investors bank accounts with full audit trail of the same.

Also, the managers of AIFs shall maintain investor wise KYC details of units held in Aggregate Escrow Demat Account, including name, PAN and bank account details, along with audit trail of the transactions. The same shall also be reported to Depositories and Custodians on a monthly basis.

25. REs shall not invest in AIFs with direct or indirect downstream investments in its debtor companies: - RBI Notification No. RBI/2023-24/90 dated 19 December 2023

The RBI issued directives on Tuesday instructing banks, NBFCs, and other lenders to refrain from investing in alternative investment fund (AIF) schemes with downstream investments in debtor companies in an effort to counteract the perpetuation of stressed loans through evergreening practices. AIF refers to any fund established in India, acting as a privately pooled investment vehicle that collects funds from sophisticated investors, both domestic and foreign, to invest according to a defined policy for the benefit of investors.

The RBI highlighted regulatory concerns surrounding certain transactions by regulated entities (REs) involving AIFs. These transactions involve substituting direct loan exposure to borrowers with indirect exposure through AIF unit investments. Evergreening of loans, a temporary measure to revive loans on the brink of default, is a process whereby a lender extends additional loans to the same borrower. As of December 19, there were 1,220 registered AIFs with the Securities and Exchange Board of India (SEBI), with a total investment commitment of Rs 8.44 lakh crore as of June 30, 2023. To address apprehensions regarding potential evergreening, the RBI stipulated that regulated entities should avoid investments in AIF schemes with downstream investments, either directly or indirectly, in a debtor company of the RE. Downstream investments refer to AIFs investing funds raised from investors into a company. The RBI specified that the debtor company of the RE includes any company to which the RE currently has or had a loan or investment exposure in the preceding 12 months. Instances have arisen where regulated entities used the AIF route to evergreen stressed loans, delaying their classification as non-performing assets (NPAs).

Further, in cases where an AIF scheme, in which an RE is already an investor, makes a downstream investment in a debtor company, the RBI requires the RE to liquidate its investment within 30 days. Failure to do so mandates a 100 percent provision on such investments by the RE. The RBI's amendments regulate the investment by its entities into AIFs and establish principles regarding what AIFs cannot do when an RBI-regulated entity is a unitholder. Also, the RBI's directive aims to close the loophole of misusing additional borrowed funds through the AIF route

to bypass guidelines related to restructuring advances and NPA declaration. The requirement for a 100 percent provision on outstanding debt is expected to act as a significant deterrent to such irregularities in transactions.

26. RBI amends Foreign Exchange Management (Manner of Receipt and Payment) Regulations: - Notification No. FEMA 14(R)/2023-RB dated 21 December 2023

The RBI has introduced Foreign Exchange Management (Manner of Receipt and Payment) Regulations, 2023 which replace the existing Foreign Exchange Management (Manner of Receipt and Payment) Regulations, 2016. As per regulation 3 of newly introduced regulations, unless permitted by RBI or allowed by the Act, Rules or Directions under the FEMA, no person in India can make payment or receive payment from a person resident outside India. This regulation further provides that all the receipts and payments between a person resident in India and a person resident outside India shall be made through an Authorised Bank or Authorised Person and bifurcated the transactions for receipt and payment into two categories: (a) Trade Transactions (b) Transactions other than Trade Transactions.

Manner of receipt and Payment in case of Trade Transactions: The receipt and payment for export to or import from the following countries in respect of eligible goods and services shall be as under:

- **Receipt and Payment from Nepal and Bhutan:** The receipt/payment for export to or import from Nepal and Bhutan of eligible goods and services shall be in Indian Rupees however, in case of exports from India receipts towards the amount of the export may be in foreign currency where the importer in Nepal has been permitted by the Nepal Rastra Bank to make payment in foreign currency.
- **Receipt and payment from member Countries of ACU, other than Nepal and Bhutan:** The receipt/payment for export to or import from Member Countries of Asian Clearing Union (ACU), other than Nepal and Bhutan of eligible goods and services shall be made through ACU mechanism or as per the directions issued by the Reserve Bank to authorised dealers from time to time. However, in case of imports where the goods are shipped to India from a member country of the ACU (other than Nepal and Bhutan) but the supplier is a resident of a country other than a member country of the ACU, the payment may be made in INR or in any foreign currency.
- **Receipt and Payment from countries other than members of ACU:** The receipt/payment for export to or import from countries other than member countries of ACU of eligible goods and services shall be made In Indian Rupees or in any foreign currency.

Transactions other than trade transactions: For transactions outside of trade activities, all receipts and payments from Nepal and Bhutan are to be conducted in Indian Rupees. However, in the case of overseas investments in Bhutan, payments may also be made in foreign currency. Whereas, for transactions involving countries other than Nepal and Bhutan, payments can be made in either Indian Rupees or any foreign currency. Further, for any current account transaction, excluding trade transactions, between a resident in India and a person visiting from outside India, payments and receipts in India must be made solely in Indian Rupees.

27. RBI enables Card-on-File Tokenisation directly through card issuing banks / institutions:- RBI Circular No. RBI/2023-2024/91 CO.DPSS.POLC.No.S-919/02-14-003/2023-24 dated 20 December 2023

RBI has expanded the scope of card tokenisation for both debit and credit cards, as announced in the Statement on Development and Regulatory Policies dated October 6, 2023. Formerly limited to merchant applications or websites, individuals can now tokenize their cards via internet and mobile banking services. In an effort to make digital payments more secure, safe and sound, RBI has now enabled card-on-file tokenisation (CoFT) through card issuing banks and institutions. Further, CoFT shall be enabled directly through card-issuing banks/institutions also. This will provide cardholders with an additional choice to tokenize their cards for multiple merchant sites through a single process and CoFT generation should be done only on explicit customer consent, and with Additional Factor of Authentication (AFA) validation. If the cardholder selects multiple merchants for which to tokenize his/her card, AFA validation may be combined for all these merchants.

28. ICAI Invites Comments on IFRS' Proposals to Improve Accounting Requirements for Financial Instruments with Debt & Equity Features: - Exposure Draft on Financial Instruments with Characteristics of Equity - Proposed amendments to IAS 32, IFRS 7 and IAS 1 dated 12 December 2023

The Institute of Chartered Accountants of India (ICAI) has released the exposure draft on financial instruments with characteristics of equity and proposed amendments to IAS 32, IFRS 7 and IAS 1. Indian Accounting Standards (Ind AS) are based on the IFRS Standards issued by the International Accounting Standards Board (IASB) of IFRS Foundation. The IASB, before issuing the new/amendments to IFRS Standards, issues consultative documents such as Discussion Paper (DP), Exposure Draft (ED) etc. seeking public comments from across the globe. The Accounting Standards Board (ASB) of ICAI with the aim to provide an opportunity to the various stakeholders in India to raise their concerns at the initial International Standard-setting stage itself, invites comments on the consultative documents issued by the IASB. Recently, the IASB has issued the following Exposure Draft for public comments:

In view of challenges in classifying complex financial instruments that combine some characteristics of both debt financial liabilities and ordinary shares equity instruments, the proposals in the Exposure Draft include:

- clarification of the underlying classification principles of IAS 32 to help companies distinguish between financial liabilities and equity,
- disclosures to further explain complexities around instruments that have both financial liability and equity characteristics, and
- presentation requirements for amounts - including profit and total comprehensive income - attributable to ordinary shareholders separately from amounts attributable to other holders of equity instruments.

29. SEBI amends norms relating to social audit in ICDR & LODR Regulations: - Notification No. SEBI/LAD-NRO/GN/2023/161 & 162 dated 21 December 2023

The SEBI has notified amendment in LODR & ICDR Regulations. Amendment has been notified in Regulation 91E i.e., Disclosures by a Social Enterprise in respect of social impact. Now, the annual impact report shall be assessed by a Social Impact Assessment Firm employing Social Impact Assessor. Further, in Regulation 292G of ICDR Regulations, a Not-for-Profit Organization may raise funds on a SSEs through issuance of ZCP Instruments to Eligible Investors instead of Institutional Investors.

30. RBI shift submissions of various forms from XBRL mode to Centralized Information Management System: - Circular No. RBI/2023-24/95 A.P. (DIR Series) Circular No.09/10/11/12 dated 22 December 2023

With the introduction of Centralized Information Management System (CIMS), the RBI has now decided that with effect from December 26, 2023, submission of the statement E on total remittances received every quarter, by AD Category – I banks through the XBRL site will be discontinued and shifted to the Centralized Information Management System (CIMS), which is Bank’s new data warehouse. AD Category – I banks have already been onboarded on CIMS portal and are currently submitting the return on XBRL site as well as CIMS portal. The statement has been assigned return code - ‘R129’ on CIMS portal.

Further, the submission of the returns reporting monthly and daily transactions under LRS through the XBRL site will be discontinued and shifted to the Centralised Information Management System (CIMS).

AD Category-I banks have already been onboarded on CIMS portal, and are currently submitting both the returns on XBRL site as well as CIMS portal. The LRS monthly return and LRS daily return have been assigned return codes- ‘R089’ and ‘R010’ respectively on CIMS portal. Also, Statement on half yearly and monthly basis showing the quantity and value of gold imported by the nominated banks/ agencies/ EOUs/ SEZs in Gem & Jewellery sector, has been now shifted to Centralised Information Management System (CIMS).

The returns have been named ‘Import of gold by EOUs, units in SEZ/EPZ and nominated agencies(M)’, ‘Import of gold by EOUs, units in SEZ/EPZ and nominated agencies (HY)’ and has been assigned return codes- ‘R132’ & ‘R133’ respectively on CIMS portal. Further, it has also been decided to shift the arrangement for reporting of quarterly data on issuance of guarantees for trade credits by AD banks, from XBRL platform to CIMS.

31. CCI invites feedback on Draft Competition Commission of India (Calculation of Turnover or Income) Regulations, 2023: - Press Release

The Competition Commission of India (CCI) seeks comments on the draft of CCI (Determination of Turnover or Income) Regulations, 2023. The Competition (Amendment) Act, 2023, amended Section 27, 48 and Section 64 of the Act, consequent to which the CCI is required to frame regulations regarding the manner of determining turnover or income u/s 27 and the manner of determining income u/s 48. CCI invites stakeholders to submit written comments from 22.12.2023 to 12.01.2024.

32. SEBI amends guidelines for online resolution of disputes in the Indian securities market: - Circular No. SEBI/HO/OIAE/OIAE_IAD-3/P/CIR/2023/191 ated 20 December 2023

Earlier, the SEBI vide circular dated August 11, 2023 had consolidated the norms relating to the guidelines for online resolution of disputes in the Indian securities market. Pursuant to feedback received for providing clarity on certain aspects, the SEBI has notified various additions and amendments. After para 3(b), it has been added that the seat and venue of mediation, conciliation and/or arbitration shall be in India and can be conducted online. Further, various other changes were notified.

33. SEBI unveils SaaS framework for clearing corporations to enhance business resilience: - Circular No. SEBI/HO/MRD/TPD/P/CIR/2023/192 dated 20 December 2023

To strengthen the business continuity framework of Clearing Corporations (CCs) for handling major software malfunctions, the SEBI directed CCs to establish their critical Risk Management Systems (RMS) using a software-as-a-service (SaaS) model. Non-availability of RMS poses a major risk to the continuity of trading on stock exchanges. In the first phase, systems would be designed to provide an additional tool for business continuity in case of issues with RMS of clearing corporations.

34. Financial Market Infrastructures must periodically self-assess against PFMI and disclose results on their websites: - Circular No. SEBI/HO/MRD/MRD-PoD-3/P/CIR/2023/190 dated 19 December 2023

Earlier, the issue of assessment of Principles of Financial Market Infrastructures (PFMI) by SEBI-regulated FMI was deliberated in the Secondary Market Advisory Committee of SEBI (SMAC). Based on the recommendations, SEBI has decided that FMI shall carry out self-assessment on a periodic basis against the PFMI and disclose the same on their websites. For this purpose, the 24 principles for FMI have been classified as “quantitative” and “qualitative”.

The periodicity of self-assessment and disclosure by the FMI for Quantitative shall be Quarterly (within 30 days from the end of the quarter – June, September, December and March) and for Qualitative, it shall be Annually (within 30 days from the end of the financial year). Also, FMI shall be monitored and assessed against the PFMI on annual basis by the Regulatory Oversight Committee (ROC) of the FMI and the ROC shall submit a report to the governing board of the FMI and SEBI within 60 days from the end of the financial year. The provisions of this Circular shall come into force from the quarter end December, 2023.

35. An arrestee under PMLA is to be informed of the grounds of his arrest within 24 hrs of arrest: - Ram Kishor Arora v. Directorate of Enforcement - [2023] 157 taxmann.com 363 (SC)

In the instant case, an appeal was directed against the order of the High Court, Delhi whereby the High Court dismissed the said petition seeking a declaration that the arrest of the appellant by the respondent Directorate of Enforcement (hereinafter referred to as the ED) was illegal and

violative of the fundamental rights guaranteed to the appellant under Articles 14, 20 and 21 of the Constitution of India.

The contravention centers around the interpretation of Section 19 of the Prevention of Money Laundering Act, 2002 (PMLA) which deals with the Power of the Enforcement Directorate (ED) to arrest. The Counsel appearing on behalf of the appellant placing heavy reliance on the recent decision of this Court in Pankaj Bansal vs. Union of India and Others, submitted that merely informing the accused orally about the grounds of arrest and making him read the same and obtaining his signature thereon, and not furnishing in writing the grounds of arrest to the accused has been held to do not comply with the provisions contained in Section 19(1) of the PMLA.

The Supreme Court held that whereas the present case is concerned, it was not disputed that the appellant was handed over the document containing grounds of arrest when he was arrested, and he also put his signature below the said grounds of arrest, after making an endorsement that “I have been informed and have also read the above-mentioned grounds of arrest. The appellant in the rejoinder filed by him has neither disputed the said endorsement nor his signature below the said endorsement. The only contention raised by the learned Senior Counsel, was that he was not furnished a copy of the document containing the grounds of arrest at the time of arrest.

Since the appellant was indisputably informed about the grounds of arrest and he also put his signature and the endorsement on the said document of having been informed, we hold that there was due compliance of the provisions contained in Section 19 of PMLA and his arrest could neither be said to be violative of the said provision nor of Article 22(1) of the Constitution of India. The Court further held that if a person arrested by the ED is informed or made aware orally about the grounds of arrest at the time of his arrest and is furnished a written communication about the grounds of arrest as early as possible within reasonably convenient and requisite time of 24-hour of his arrest, that would be sufficient compliance of not only Section 19 (power of arrest) of PMLA but also of Article 22(1) (any person arrested must be informed of grounds of arrest) of the Constitution. Therefore, the said appeal was to be dismissed.

36. DGFT Policy Circular clarifies on Ad-hoc Norms Applicability: - *Policy circular No. 08/2023 dated 27 December 2023*

The Directorate General of Foreign Trade (DGFT), through its Policy Circular No. 08/2023 dated December 27, 2023, has issued a clarification regarding the applicability of ad-hoc norms. Attention is made to Paragraph 4.12 (vi) of the Handbook of Procedures 2023. In this context, it is explicated that ad-hoc norms, which have been legitimately ratified on or subsequent to April 01, 2015, will also be applicable to unresolved cases or applications lodged under the self-declaration scheme on or subsequent to April 01, 2015. These applications ought to have been registered prior to the application against which the ratification of such ad-hoc norms was executed. Nonetheless, it is crucial to underscore that this clarification does not pertain to items enumerated under Appendix 4P for other applicants.

37. Govt to extend duty, tax remission scheme benefits to e-comm exports: - *News Report*

In a significant move to boost e-commerce exports, the Union Minister of Commerce & Industry, Consumer Affairs, Food & Public Distribution, and Textiles, Shri Piyush Goyal has announced the

extension of export benefits under the Remission of Duties and Taxes on Exported Products (RoDTEP) scheme to e-commerce exports made through post or couriers. This announcement aims to provide a much-needed impetus to the MSME sector and enhance the country's overall export competitiveness.

The RoDTEP scheme, introduced by the government, serves as a crucial mechanism for refunding taxes, duties, and levies incurred by exporters during the manufacturing and distribution of goods. These costs, which are not reimbursed through any other central, state, or local mechanism, can now be claimed by e-commerce exporters, thereby reducing their overall export costs and improving their profitability. The extension of RoDTEP benefits to e-commerce exports is expected to have a significant impact on various sectors, including gem and jewellery, handloom, handicraft, AYUSH products, pharma, leather, and textiles. These sectors, which have a strong presence in the e-commerce space, are poised to benefit immensely from the reduced export costs and increased competitiveness.

E-commerce as a Growing Export Channel: The decision to extend RoDTEP benefits to e-commerce exports aligns with the government's recognition of e-commerce as an emerging and rapidly growing channel for international trade. With global e-commerce exports projected to reach USD 2 trillion by 2030, India aims to capitalize on this opportunity and achieve USD 200 billion in e-commerce exports by the same year.

Budgetary Allocation and Scheme Performance: The RoDTEP scheme operates within a budgetary framework, and for the current financial year (2023-24), a budget of Rs 15,070 crore has been allocated. As of December, approximately Rs 12,000 crore of this allocation has been utilized. In the previous financial year (FY23), the scheme supported exports worth USD 450 billion at a cost of Rs 13,020 crore, while in 2021-22, it aided exports worth USD 421 billion at a cost of Rs 12,100 crore.

Tax Refund Rates and Product Coverage: The rate of tax refund under the RoDTEP scheme varies from 0.5 per cent to 4.3 percent of the product's value. It currently covers business-to-business exports of 10,610 products, and the same products exported through e-commerce or courier will now be eligible for the RoDTEP benefit.

Handbook for MSME E-commerce Exporters: To further support MSMEs in harnessing the potential of e-commerce exports, the Commerce and Industry Minister, Piyush Goyal, released a comprehensive handbook specifically designed for MSMEs. This handbook, currently available in English, Hindi, Gujarati, and Kannada, provides valuable guidance and information to new entrepreneurs looking to venture into e-commerce exports. It aims to serve as a one-stop resource for understanding the intricacies of e-commerce exports and navigating the regulatory landscape.

Collaboration with E-commerce Platforms: Recognizing the importance of collaboration with e-commerce platforms and enablers, the Directorate General of Foreign Trade (DGFT) has signed an MOU with Shiprocket. This partnership aims to enhance capacity building and provide handholding support to e-commerce exporters through outreach sessions conducted by DGFT regional authorities under the Districts as Export Hubs Initiative. This initiative seeks to promote e-commerce exports by organizing training sessions in districts across the country. The extension of RoDTEP benefits to e-commerce exports is a significant step towards empowering MSMEs and

boosting India's overall export competitiveness. With a robust digital infrastructure, supportive government policies, and a growing online consumer base, the country is well-positioned to tap into the immense potential of the global e-commerce market. By providing financial incentives, capacity building support, and comprehensive resources, the government is paving the way for MSMEs to thrive in the dynamic landscape of e-commerce exports.

38. RBI to simplify licensing framework for authorised persons under FEMA: - *RBI vide Press Release 2023-2024/1543 dated 26 December 2023*

The Reserve Bank of India (RBI) has proposed to rationalise and simplify the licensing framework governing money changers. This initiative aims to explore models that facilitate foreign exchange-related services, aligning with the evolving needs of the rapidly expanding Indian economy. According to the draft licensing framework guidelines released by the RBI, a thorough review of the existing authorization framework under the Foreign Exchange Management Act (FEMA) has been conducted. The primary goal is to enhance the ease of conducting foreign exchange transactions for users while concurrently reinforcing the regulatory oversight and framework governing Authorized Persons (APs). The central objective, as stated by the RBI, is to achieve operational efficiency in providing foreign exchange facilities to individuals, tourists, and businesses, all while maintaining necessary safeguards. This decision by the central bank is influenced by the progressive liberalization under FEMA, the growing integration of the Indian economy with the global economy, the digitization of payment systems, and the evolving institutional structure.

Further, the existing Licensing framework for Authorized Persons (APs) under FEMA, 1999, was last reviewed in March 2006. The upcoming review will specifically focus on rationalizing the authorization framework for money changers, considering the widespread availability of banking services to the public and exploring alternative models for facilitating foreign exchange-related services. The proposed framework introduces a new category of money changers who can conduct money-changing business through an agency model by becoming forex correspondents (FxCs) of Category-I and Category-II authorized entities. Such entities will be exempt from seeking separate authorization from the RBI. Additionally, the RBI proposes perpetual authorization for existing AD Category-II entities to reduce regulatory burdens and enhance the ease of doing business. Transition provisions allow existing full-fledged money changers to apply for the upgrade of authorization as AD Category-II or for existing AD Category-II entities to seek permanent authorization two months before the expiry of the existing authorization.

Furthermore, the RBI suggests allowing AD Category-II entities to facilitate trade-related transactions up to ₹15 lakh per transaction. Furthermore, to expand the reach of foreign exchange services, the RBI proposes the introduction of a scheme known as FCS, based on a principal-agency model. Under this scheme, AD Category-I or AD Category-II authorized persons will act as principals for FxCs. Stakeholders are invited to provide feedback on the draft framework by January 31, 2024. It is worth noting that the RBI issues authorizations in the form of licenses to authorized persons, encompassing authorized entities and full-fledged money changers (FFMCs). Authorization is also granted to select institutions for specific foreign exchange transactions related to their business activities. Currently, there are 101 AD Category-I entities, 75 AD Category-II entities, and 1,763 AD Category-III entities in India.

39. SEBI Social Impact Assessment Firm to assess annual impact report: - SEBI's Notification no. SEBI/LAD-NRO/GN/2023/161 dated 21 December 2023

The Securities and Exchange Board of India (SEBI), has issued the SEBI (Listing Obligations and Disclosure Requirements) (Seventh Amendment) Regulations, 2023. The SEBI has notified amendments in LODR Regulations. Amendment has been notified in sub-regulation (2) of Regulation 91E i.e., Disclosures by a Social Enterprise in respect of social impact. Now, the annual impact report shall be assessed by a Social Impact Assessment Firm employing Social Impact Assessor. As per this amendment, the annual impact report is now required to be evaluated by a Social Impact Assessment Firm utilizing the services of Social Impact Assessors. This emphasizes the importance of a comprehensive assessment conducted by specialized entities in evaluating the impact of listed entities, aligning with SEBI's commitment to robust disclosure requirements and listing obligations.

40. SEBI amends ICDR Regulations, renames "Social Auditor" as "Impact Assessor": - SEBI's Notification no. SEBI/LAD-NRO/GN/2023/162 dated 21 December 2023

SEBI, the Securities and Exchange Board of India, has made amendments to the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018. One of the key changes is the renaming of "Social Auditor" to "Impact Assessor" under Regulation 292A(f). Additionally, the existing regulation 292K has been replaced with a new provision stating, "The procedure and other conditions in respect of public issuance of Zero Coupon Zero Principal Instruments by a Not-for-Profit Organization shall be as specified by the Board." In another significant modification, SEBI has eliminated Regulation 292N, which previously mandated that Zero Coupon Zero Principal Instruments be issued only in dematerialized form. This move reflects a shift in the regulatory framework concerning the issuance of such instruments by removing the stipulation on their form of issuance. This shall come into force on December 21, 2023.

41. SEBI Financial Market Infrastructure entities to carry out self-assessment on periodic basis: - SEBI CIRCULAR NO. SEBI/HO/MRD/MRD-PoD-3/P/CIR/2023/190 dated 19 December 2023

The Securities and Exchange Board of India (SEBI) mandates depositories and clearing corporations (CCs) will now have to comply with the Principles of Financial Market Infrastructures (PFMIs), which are global standards prescribed to ensure that the infrastructures supporting the global financial markets are robust and resilient. PFMIs have been prescribed by international bodies like the Committee on Payment and Settlement Systems (CPSS) and the International Organization of Securities Commissions (IOSCO). Depositories and CCs will also have to carry out self-assessments on their compliance with these standards and make disclosures periodically on their websites.

Earlier, the issue of assessment of PFMIs by SEBI-regulated FMIs was deliberated in the Secondary Market Advisory Committee of SEBI (SMAC). Based on the recommendations, SEBI has decided that FMIs shall carry out self-assessment on a periodic basis against the PFMIs and disclose the same on their websites. Issued in April 2012, PFMIs comprise 24 principles that are designed to ensure the infrastructure supporting global financial markets are robust and well placed to withstand financial shocks. For this purpose, the 24 principles have been classified as "quantitative" and "qualitative". Further, credit risk has been classified as quantitative and

applies only to CCs, settlement finality has been classified as qualitative and applies only to CCs, and exchange-of-value settlement systems have been classified as quantitative and qualitative and apply only to CCs.

The periodicity of self-assessment and disclosure by the FMIs for Quantitative shall be Quarterly (within 30 days from the end of the quarter – June, September, December and March) and for Qualitative, it shall be Annually (within 30 days from the end of the financial year). FMIs regulated by Sebi are depositories and clearing corporations. These systemically important FMIs provide essential facilities and perform systemically critical functions in the market and shall be required to comply with the PFMI specified by CPSS-IOSCO. Also, FMIs shall be monitored and assessed against the PFMI on an annual basis by the Regulatory Oversight Committee (ROC) of the FMI and the ROC shall submit a report to the governing board of the FMI and SEBI within 60 days from the end of the financial year. The provisions of the said Circular shall come into force from the quarter end December, 2023.

42. SEBI clarifies on applicability of contra trade provision in trades done by promoters: - *SEBI Informal Guidance SEBI/HO/ISD/ ISD-PoD 2/P/OW/2023/000029686*

A company sought informal guidance from SEBI on whether the provision of contra-trade applies to trades made by an individual promoter or whether the entire category of promoter & promoter group is considered for the same. SEBI clarified that the provision of contra-trade restrictions may apply to trades made by the promoter individually as per regulation 9 read with Schedule B of the SEBI (Prohibition of Insider Trading) Regulations, 2015.

Note that Rama Mines (Mauritius) Ltd. (RMML) and Australian Indian Resources Ltd. (AIRL) are promoters of Deccan Gold Mines Ltd. (DGML). AIRL was allotted shares of DGML, which are subject to a lock-in period of 18 months. In this context, RMML sought Informal Guidance on whether the provision of contra-trade would apply to trades made by an individual promoter or whether the entire category of Promoter & Promoter Group is considered for the same; SEBI states that consequent to the provisions of Regulation 9 of the PIT Regulations, and clause 3 and 10 of Schedule B thereunder, the provision of contra trade restrictions may apply to trades made by the promoter individually, however, in this case, both the promoters of DGML are corporates, which in turn have common promoter shareholders, thus RMML and AIRL are being controlled by same corporates; Thus holds that in the instant matter, the provision of contra trade restrictions shall apply to RMML and AIRL jointly, i.e. if AIRL has purchased the shared of DGML then restriction on contra trades shall apply to AIRL as well as RMML.

43. SEBI investment in MFs not covered under permissible investments by category III AIFs: - *SEBI Informal Guidance SEBI/HO/AFD/PoD/OW/2023/38073*

SEBI has issued an informal guidance that states that investment in mutual funds is not allowed under permissible investments by a Category III AIF. However, it specifies that in terms of Reg. 15(1)(f) of AIF Regulations, it allows an uninvested portion of investable funds and divestment proceeds pending distribution to investors to be invested in liquid mutual funds, bank deposits, or other higher-quality liquid assets, such as Treasury bills, Triparty Repo Dealing and Settlement, Commercial Papers, and Certificates of Deposits, until the funds are deployed according to the investment objective or the fund documents are followed. The regulator clarifies

that these views are based on the clarification sought under the AIF Regulations and do not affect any other laws or regulations.

44. RBI extends deadline for implementing penalty charge regulations on loan accounts: - Circular No. RBI/2023-24/102 DoR.MCS.REC.61/01.01.001/2023-24 dated 29 December 2023

RBI has decided to extend the timeline for implementation of the instructions on 'Fair Lending Practice - Penal Charges in Loan Accounts' by three months. Accordingly, REs shall ensure that the instructions are implemented in respect of all the fresh loans availed from April 1, 2024 onwards. In the case of existing loans, the switchover to new penal charges regime shall be ensured on the next review/ renewal date falling on or after April 1, 2024, but not later than June 30, 2024.

45. RBI issues master direction on Internal Ombudsman for Regulated Entities: - Press Release: 2023-2024/1588 dated 29 December 2023

RBI has issued Master Direction – RBI (Internal Ombudsman for Regulated Entities) Directions, 2023 to harmonise instructions applicable to various regulated entities on the Internal Ombudsman (IO) mechanism. Directions bring in uniformity in matters like timeline for escalation of complaints to the IO, exclusions from escalating complaints to the IO, minimum qualifications for appointing the IO etc. Instructions are expected to further strengthen IO mechanism.

46. RBI notifies Government Securities Lending Directions, 2023; permits lending & borrowing in govt. securities: - Circular No. RBI/2023-24/97 FMRD.DIRD.No.05 /14.03.061/2023-2024 dated 27 December 2023

Earlier, the RBI vide Statement on Developmental and Regulatory Policies dated 08.02.2023 notified about the introduction of Securities Lending and Borrowing in Government Securities. Later, the RBI introduced draft directions on Government Securities Lending (GSL) & same was kept open for public comments. Based on the comments received, RBI has finalised the Directions. The entities eligible to participate in GSL transactions as lenders of securities is entity eligible to undertake repo transactions in Government securities in terms of the Repurchase Transactions (Repo) (Reserve Bank) Directions, 2018 dated July 24, 2018 and any other entity approved by the Reserve Bank for this purpose.

Further, the Government securities issued by the Central Government excluding Treasury Bills shall be eligible for lending/borrowing under a GSL transaction. Securities obtained under a repo transaction, including through Reserve Bank's Liquidity Adjustment Facility, or borrowed under another GSL transaction shall also be eligible to be lent under a GSL transaction.

Whereas, the Government securities issued by the Central Government (including Treasury Bills) and the State Governments shall be eligible for placing as collateral under a GSL transaction. The minimum tenor of a GSL transaction shall be one day and the maximum tenor shall be the maximum period prescribed to cover short sales in terms of the Directions on 'Secondary Market Transactions in Government Securities – Short Selling' dated July 25, 2018. Further, the GSL transactions may be contracted using any mutually agreed trading process/platform, including

but not limited to, bilateral or multilateral, quote driven or order driven process, anonymous or otherwise. All GSL transactions shall settle on a Delivery versus Delivery basis. The first leg of all GSL transactions shall settle either on a T+0 or T+1 basis. Further, all GSL transactions shall settle through Clearing Corporation of India Ltd. (CCIL) or any other central counterparty or clearing arrangement approved by the Reserve Bank for the purpose. Also, the Securities/collateral under a GSL transaction shall be valued transparently at prevailing market prices in the first leg of the transaction. Whereas, the Haircut/ margins relating to GSL transactions shall be decided by the central counterparty settling the transactions.

CROSS BORDER

1. Pakistan Supreme Court taxes ‘right to use’ software as Royalty: - News Report

The Supreme Court turned down the Sindh High Court’s (SHC) judgment regarding the applicability of Article 7 or Article 12 of the Agreement for Avoidance of Double Taxation between Pakistan and The Netherlands with reference to sections 136(1) of the Income Tax Ordinance, 1979, and section 133(1) of the Income Tax Ordinance, 2001.

The impugned judgments of the SHC in all 14 appeals are not sustainable nor are the reasons given by the High Court to set aside the assessment orders, the appellate orders, and the Tribunal’s judgments, which are accordingly restored, said the verdict of a three-judge bench of the apex court, headed by Chief Justice Umar Ata Bandial and comprised Justice QaziFaez Isa, and Justice Syed Mansoor Ali Shah.

A Divisional Bench of the SHC on October 12, 2007, decided 13 references, filed by the respondent under section 136(1) of the Income Tax Ordinance, 1979 and section 133(1) of the Income Tax Ordinance, 2001 through a common judgment and one was decided vide judgment dated 11 November 2010, which relied on its earlier judgment. The respondent then assailed the assessment orders, the appellate orders and the judgments of the Tribunal before the High Court by filing references, respectively under section 136(1) of ITO 1979 and section 133(1) of ITO 2001.

Two questions were formulated for consideration by the High Court. Firstly, whether the said payment receipts were business profits under Article 7 of the treaty and, secondly, whether the same constituted income from royalties under Article 12 of the treaty, and as such were not business profits under Article 7. The High Court decided the questions in favour of the respondent, and held that the amounts received by the respondent did not constitute royalties. The judgments of the High Court were assailed before this Court under Article 185(3) of the Constitution. The respondent was a firm that was incorporated in The Netherlands, had its major place of business there, and had no presence in Pakistan, according to the case’s summary facts. The respondent files its income tax returns under various headings, and under the heading, Income Claimed to be Exempted and not Included in Total Income. The respondent requested an exemption for its receipts related to the rental of FLIC Software computer software, which it claimed was exempt under Article 7 of the Agreement for the Avoidance of Double Taxation between Pakistan and the Netherlands.

However, the income tax officer rejected the respondent’s argument and believed that this income constituted royalty and was subject to assessment under Article 12-3(a)(b) of the Tax Treaty

between Pakistan and the Netherlands. He asked the respondent to clarify why this income could not be subject to a 15 per cent royalty tax. The dispute was originally resolved internally within the department, after which the department appealed to the SHC, which ruled against the FBR. Hafiz Ahsaan further argued that the respondent had claimed in response to the notices from the Income Tax Officer that the payment receipts were rentals for tapes paid for by SSI and that they did not constitute a patent, trademark, trade name, secret formula or process, design or model, equipment, films, or tapes for television or broadcasting, despite the fact that the full definition of royalties in paragraph 3 (a) of Article 12 of the Convention included payments for information concerning such things.

He further argued that the respondent was required to prove that the receipts were not royalties in order to receive the benefit of an exemption when it was sought by the party making the claim. Since the matter was not clearly decided in the impugned judgments by the High Court, those judgments may kindly be set aside, which they have failed given right interpretation of convention and agreement. In the Indian context, the Apex Court of India, in the case of Engineering Analysis Centre of Excellence Pvt. Ltd. [TS-106-SC-2021] decided recently in favour of the taxpayer.

2. EU nearing full Implementation of Global Minimum Tax Next Year: - News report

EU nations are mostly ready to apply Pillar Two of the global tax deal by next year, but uncertainty surrounds the finalization of Pillar One, as stated by EU official Reinhard Biebel. The European Commission is hopeful about comprehensive adoption of the EU's minimum tax framework law by all member states. The minimum tax directive, agreed upon in 2022, sets a 15% minimum tax rate, aligning with Pillar Two of the OECD agreement.

However, Biebel expresses caution regarding Pillar One, emphasizing its dependence on U.S. signing and ratification. If the US does not sign and ratify Pillar One, it would be pointless for the EU to enforce the rule. The Department of the Treasury's consultation on Pillar One, ending on Dec. 11, could potentially raise new issues. If Pillar One is not implemented, it could lead to a fragmentation of the international tax landscape due to a surge of new digital service taxes. Pillar One would be enforced through a multilateral convention, and the EU had previously stated it would bolster this with an EU-wide law. However, there is currently not enough support for such an intermediary EU law.

3. Malaysia Introduces Global Minimum Tax Rules, Implements Capital Gains Tax in Finance Bill (No. 2) 2023: - Malaysia Finance Bill

The Finance (No. 2) Bill 2023 has been released subsequent to the Budget 2024 announcement in October 2023. This bill serves the dual purpose of translating the components of Budget 2024 into actionable measures and introducing the requisite legislative provisions to enact the alterations to the tax law. Following are the salient points of the Bill:

- **Capital Gain Tax:** The updated Capital Gains Tax regulations will come into effect starting 01 January 2024. CGT returns are mandated to be submitted electronically, and the corresponding payments must be made within 60 days from the date of disposal.

Scope: Capital assets situated in Malaysia, i.e., shares in unlisted companies incorporated in Malaysia; or (ii) shares in foreign incorporated company deriving value from real property in Malaysia. All types of capital assets situated outside Malaysia.

Taxable Persons: Companies, LLPs, Co-operatives, Trust Bodies (including Unit Trusts)

Tax Rates: Capital asset situated in Malaysia: Acquisition date before 1 January 2024 – 2 % on gross disposal price or 10 % on net gain (chargeable income). Gains from disposal of all types of capital assets situated outside Malaysia, remitted into Malaysia: Based on prevailing income tax rate of the taxpayer.

- **Acquisition and disposal date:**

Disposal Date: Date of agreement (where there is a written agreement) or Date of completion of disposal (where there is no written agreement)

Acquisition Date: Deemed to coincide with the date of disposal by the disposer to the acquirer.

Where the disposal or acquisition is subject to approval from the Government, the disposal or acquisition date will be the date of such approval, or where the approval is subject to conditions, the date of the last of all such conditions being satisfied.

- **Capital losses:** Capital losses may be used to offset against the gains from disposal of other capital assets. Any capital losses accumulated can be carried forward for up to 10 years of assessment to be offset against future gains from disposal of capital assets.
- **Global Minimum Tax:** The Finance Bill is set to incorporate the legislative framework of the Global Anti-Base Erosion (“GloBE Rules”) under BEPS Pillar 2, encompassing the regulations for Domestic Top-up Tax (“DTT”) and Qualified Domestic Minimum Top-up Tax (“QDMTT”) into Malaysian tax laws, with anticipated implementation in 2025. The GloBE Rules confer new authority for taxing undertaxed profits of any entity within a Multinational Entity (“MNE”) group with a global revenue of at least EUR 750 million per annum, which is currently taxed below the globally agreed minimum tax rate of 15%. Under the GloBE rules, a top-up tax will be instituted to account for the variance between the jurisdictional effective tax rate and the 15% minimum tax rate. This mechanism, facilitated through the Income Inclusion Rules (“IIR”), grants Malaysia the authority to collect the top-up tax when the group’s ultimate parent entity is situated in Malaysia.
- **In-Scope:** Constituent Entities (“CE”) of an MNE Group which has at least one entity or permanent establishment that is not located in the same jurisdiction as its ultimate parent entity, and the ultimate parent entity’s consolidated financial statement revenue is EUR 750 million or more in at least 2 of the 4 financial years immediately preceding the tested financial year.
- **Exclusion:** Government entities, international organisations, non-profit organisations, pension funds, investment fund that is an UPE, international shipping income, real estate investment vehicle that is an UPE, and (subject to conditions) an entity that is 85 % or 95 % owned by any of the above entities (except a Pension Service entity). Filing of GloBE Information Return (“GIR”): To be furnished no later than 15 months after the last day of the Reporting Financial Year.

- **Tax Treatment for Micro, Small and Medium Sized Companies (“MSME”)**: To be eligible for preferential tax treatment, an Micro, Small, and Medium Enterprise (MSME) must adhere to an additional condition. Specifically, the requirement is that no more than 20% of the company's paid-up capital, concerning ordinary shares at the commencement of the basis period for a year of assessment, should be owned directly or indirectly by one or more companies incorporated outside Malaysia, or by individuals who are not Malaysian citizens.
- **Claim for Double Tax Relief**: Unilateral tax credit will no longer be available for income that is treated as derived from Malaysia under the Malaysian Income Tax Act that has suffered foreign tax from a non-DTA country.
- **Tax Administration**: Effective YA 2024, companies, LLP, trust body or co-operative society will be allowed an extra chance of revising the estimate of tax payable for a YA in the 11th month of the basis period for that YA. Legislative provisions will be introduced to provide powers for a director or other individual (who are jointly responsible for doing all acts and things for a company or body of persons) to appoint employees to complete and submit the prescribed forms via electronic medium on their behalf.

Effective YA 2025, businesses will be required to submit their financial statements and tax worksheets through the Malaysian Income Tax Reporting System (“MITRS”) within 30 days after the due date for submission of the income tax returns. Mandatory electronic submission of prescribed forms by employers.

- **Real Property Gains Tax (“RPGT”)**: Effective 1 January 2025, a self-assessment system will be introduced for RPGT purposes. RPGT payable should be made to the Inland Revenue Board within 60 days from the date of disposal of the chargeable asset.
- **Stamp Duty**: Section 2 of the Stamp Act, 1949 introduces a new definition of 'writing' or 'written' to include electronic instruments effective from 1 January 2024. Effective from 1 January 2024, any instruments executed outside Malaysia relating to matters in Malaysia received via electronic transfer are subject to stamping within 30 days from the date of receipt (e.g. the date of receiving the email or any electronic transmissions). Effective from 1 January 2024, agreements in foreign currency are subject to ad valorem stamp duty at a rate of RM5 for every RM1,000 of the loan amount with the maximum stamp duty limit of RM2,000 being abolished.
- **Indirect Tax**: The Director General of the Royal Malaysian Customs Department is empowered to make public rulings on the application of any provision of the Tourism Tax Act 2017 to any person or class of persons or to any type of business activities. The definition of a seller of low-value goods for sales tax purposes will be amended to include a person selling low-value goods on their own online platform. No sales tax will be imposed on the importation of low-value goods where proof has been provided to the proper officer of sales tax that sales tax has been charged by the registered seller and paid accordingly.

4. Japan releases Technical Explanation on Global Minimum Tax Laws: - News Report

The Japanese National Tax Agency (NTA) has notified its interpretive position following the parliamentary and government enactment of the global minimum tax laws and regulations in the first half of this year. Although the NTA's notice itself is not a legally binding norm, in-scope multinational enterprises may rely on it, since the NTA will not take a different interpretive position from it until further notice. As the tax authority in Japan, the NTA has publicly notified its interpretive position on various Japanese tax laws. Likewise, the NTA updated the notice as of 21 September 2023 to add about 90 interpretive positions related to the newly enacted Japanese income inclusion rule (IIR), the main part of the OECD's global minimum tax proposal. Most interpretive positions are taken from OECD publications, while some provide more specific views by referring to current Japanese tax law provisions.

For example, Notice No.18-1-66 lists Japanese taxes imposed on corporations but excluded from the covered taxes; and Notice No.18-1-76 provides an illustrative formula for allocating corporate income tax borne by a domestic parent company under the Japanese controlled foreign company legislation to its foreign subsidiaries. Along with the updated notice, the NTA issued a statement summarizing the updates and, more importantly, justifying these interpretive positions by claiming that the Model Rules and other relevant documents have been fully considered. The statement also points out that the Japanese global minimum tax laws and regulations should not be interpreted in a manner inconsistent with the Model Rules and related documents.

5. Vietnam set to raise effective tax rate on multinationals as part of global deal: - News Report

Vietnam plans to increase the effective tax rate on multinationals from January 2024 as part of a global agreement to ensure fair taxation of cross-border businesses. Vietnam's parliament is expected to approve a top-up tax for multinationals on Wednesday, which will increase the effective corporate tax rate to 15% from the current rates of 5% to 20%. Vietnam had initially intended to offer some compensation to large foreign investors who would be affected by the higher tax rate, such as Samsung and Intel, but the separate resolution for that is not on the parliament's agenda.

The new tax rules are based on the OECD's proposal to reform the international tax system and prevent tax avoidance by multinationals. This new tax policy will affect 122 foreign firms that will have to pay a much higher tax bill in Vietnam, according to a government document that projected the annual increase in state revenue at 14.6 trillion dong (\$601.05 million). This shows the magnitude of the impact of the global tax reform on Vietnam's economy and its foreign investors.

6. Global Deal doesn't provide Tax Stability, Business Group Says: - News Report

The U.S. Chamber of Commerce ("Chamber") have submitted their comments on the draft text of the OECD/G20 Inclusive Framework's Multilateral Convention to Implement Amount A of Pillar One ("Pillar One MLC") and accompanying documents. The US Chamber of Commerce told the Department of Treasury, in a letter addressed to Assistant Secretary of Tax Policy at Treasury Lily Batchelder on 11th December 2023, the Chamber said the treaty makes mention of several

provisions - including the treatment of withholding taxes and the elimination of double taxation - that warrant more attention from the US government.

Further discussing on the model, the Chamber said, Pillar One MLC is designed to enhance stability and certainty in the international tax system by coordinating this reallocation of taxing rights with a corresponding obligation to relieve double taxation. However, the draft Pillar One MLC would fail to achieve these policy objectives in several material respects and, therefore, warrants further attention by the Treasury. The following comments discuss several such aspects of the draft Pillar One MLC and provide pragmatic, consensus-based recommendations for addressing them, consistent with Pillar One's underlying policy aims. The chamber discussed on the following fundamental items;

- Marketing and Distribution Profits Safe Harbour Adjustment
- De Minimis Threshold
- Jurisdictional Offset Percentage
- Treatment of Withholding Taxes
- Removal and Standstill of DSTs and Relevant Similar Measures
- Definition of DST and Relevant Similar Measure
- Elimination of Amount A Allocations for Parties Imposing DSTs and Relevant Similar Measures
- Removal of a DST or Relevant Similar Measure
- Elimination of Double Taxation – Relief for Amount A Taxation
- Enhancing Stability and Certainty in the International Tax System

Given the fundamental nature of the above concerns, the Chamber has counselled against the signing of any final Pillar One MLC that fails to materially address them and urged Treasury to engage constructively with the business community and Congress to address these and other issues critical to enhancing stability and certainty in the international tax system.

7. USA clarifies on Foreign Tax Credit under GloBE Model Rules: - News Report

A "Notice 2023-80" has been issued by the Internal Revenue Service (IRS) in the United States. It provides guidance on the foreign tax credit and dual consolidated losses with respect to the GloBE Model Rules. It also addresses the Extension and Modification of the Temporary Relief outlined in Notice 2023-55.

The notice informs that the Treasury Department and the IRS plan to issue proposed regulations regarding specific sections of the Internal Revenue Code. The regulations will address the application of provisions, including those related to foreign tax credits and dual consolidated loss rules, in response to certain taxes outlined in the "Tax Challenges Arising from the Digitalization of the Economy - Global Anti-Base Erosion Model Rules (Pillar Two)" (GloBE Model Rules).

The notice also extends the relief period for the temporary relief described in Notice 2023-55 in determining whether a foreign tax is eligible for a foreign tax credit under section 901 and 903. In addition, this notice addresses the application of the temporary relief with respect to partnerships and their partners. The Treasury Department and the IRS anticipate that the proposed regulations will follow the guidance provided in sections 2 and 3 of the notice.

The GloBE Model Rules create a coordinated system of minimum taxation intended to ensure that Multinational Enterprise Groups (MNE Groups) with annual revenue of EUR 750 million or more pay a minimum level of tax on the income arising in each jurisdiction in which they operate.

Certain jurisdictions have enacted, and others have proposed, legislation to implement the GloBE Model Rules for the IIR and Qualified Domestic Minimum Top-up Tax (QDMTT), effective for Fiscal Years beginning on or after December 31, 2023, and for the UTPR, effective for Fiscal Years beginning on or after December 31, 2024.

8. Japan Will Wait to Legislate Remaining Global Minimum Tax Rules: - *News Report*

Japan's ruling party has announced plans to delay the implementation of the remaining components of the global minimum tax framework until 2025 or later. The ruling party will continue discussions at the Organisation for Economic Cooperation and Development (OECD) on two of the framework's rules. The rules include a qualified domestic minimum top-up tax for local companies and an undertaxed profits rule as a backstop measure if other minimum tax rules fail to achieve a 15% effective minimum corporate tax.

9. France to tax turnover of music streaming platforms: - *News Report*

The French government has announced that it will tax the turnover of online music streaming platforms from 2024 and this tax will be based on a “very low rate” on the streaming platforms turnover and will finance the French music sector. The move was welcomed by some industry bodies but opposed by titans including Spotify as a “new production tax”. Critics of the tax have instead proposed voluntary contributions.

10. Bermuda tables corporate tax legislation, outlining the introduction of 15% corporate income tax: - *Govt. of Bermuda*

The Government of Bermuda, under the leadership of Premier and Minister of Finance, E. David Burt, has officially released a statement regarding the tabling of the Corporate Income Tax Act 2023 in parliament. The legislation outlines the introduction of a 15% corporate income tax applicable to taxpayers in Bermuda falling within the scope of the Pillar 2 global minimum tax (GloBE) rule. This includes members of a multinational enterprise (MNE) group with an annual revenue of EUR 750 million or more. The proposed corporate income tax is set to take effect from January 1, 2025.

In the ongoing effort to address Base Erosion and Profit Shifting (BEPS), the Organization for Economic Co-Operation and Development (OECD), in collaboration with the Group of Twenty Industrialized Countries (G20), has been working since 2015. In October 2021, a global agreement was reached to bring significant changes to the global tax system, instituting a minimum tax rate of 15% on the corporate profits of large multinational enterprise groups. This rate is intended to be applied in every jurisdiction where these enterprises have a corporate presence, commonly referred to as the Global Minimum Tax. Acknowledging the transformative global tax landscape, the Government of Bermuda, in response to the October 2021 agreement, deemed it prudent to seek input from tax experts across industries. Consequently, in January 2023, an international tax working group was convened. Comprising lawyers, accountants, and other corporate tax experts, this group was tasked with a detailed review of the Global Minimum

Tax. Their objective is to recommend an efficient framework that upholds Bermuda's value proposition while ensuring continued compliance with existing commitments to the OECD and the European Union (EU).

11. Singapore releases guide on "Tax Treatment of Gains or Losses from the Sale of Foreign Assets": - IRAS dated 08 December 2023

The Inland Revenue Authority of Singapore (IRAS) has released a new e-tax guide on the "Tax treatment of gains or losses from the sale of foreign assets" which provides detailed information on the revised income tax regulations governing the treatment of gains or losses arising from the sale or disposal of movable or immovable property located outside Singapore and will be effective from 01 January 2024. Currently, capital gains from foreign asset sales are not taxed and to address international tax avoidance risks, Singapore has amended its foreign-sourced income regime, subjecting foreign-sourced disposal gains to tax under specific circumstances. This move aligns with Singapore's commitment to promoting economic activity within its borders and adhering to international tax norms.

Singapore will treat gains from the sale or disposal of foreign assets as income chargeable to tax u/s 10(1)(g) of the Income Tax Act 1947 if the gains are not chargeable to tax u/s 10(1) of the Act or the gains are exempt from tax under the Act. Such gains are referred to in this guide as "foreign-sourced disposal gains". The amended regulations will tax foreign-sourced disposal gains u/s 10(1)(g) of the Income Tax Act, 1947, under the specific circumstances as below:

- The gains are received in Singapore from outside Singapore by a covered entity
- The gains are derived by an entity lacking adequate economic substance in Singapore.
- The gains result from the disposal of foreign Intellectual Property Rights ("IPRs").

12. Belgian Chamber of Representatives approve Pillar 2 Global Minimum Tax: - Dutch Parliamentary Document

The Belgian parliament has given its approval to the draft bill that implements the Pillar Two minimum effective tax rate of 15% for multinational enterprise groups or large domestic groups with consolidated annual revenues exceeding EUR 750 million. The bill closely mirrors the EU Pillar Two directive and introduces the qualified domestic minimum top-up tax (QDMTT), income inclusion rule (IIR), and undertaxed profits rule (UTPR) provisions in Belgium. The QDMTT and IIR will take effect on December 31, 2023 (i.e., starting from January 1, 2024, for calendar year taxpayers), while the UTPR will be enforced on December 31, 2024 (i.e., commencing from January 1, 2025, for calendar year taxpayers). The approved bill encompasses the proposed update to the research and development tax credit regime to align with the GloBE rule definition of a "qualifying refundable tax credit" and the prepayment system for the collection of certain new taxes payable.

Further, in anticipation of the introduction of the global minimum tax in Belgium in accordance with Pillar Two, the government announced a temporary amendment to the "basket limitation" rule in the Federal Budget 2023. This amendment stipulates that the relevant set of tax attributes would only be deductible from taxable profits up to 40%, instead of 70%, over the threshold of EUR 1 million for the tax year 2024 (i.e., for taxable periods starting on or after January 1, 2023). With the final approval of the bill on the implementation of Pillar Two in Belgium, it is anticipated that this rule will be replaced by the former basket rule (i.e., EUR 1 million + 70%)

from tax year 2025 for taxable periods starting on or after January 1, 2024. Groups falling within the scope of these regulations are advised to act promptly, assessing the potential impact of the new legislation and preparing for potential challenges in data collection posed by the implemented rules.

13. Switzerland introducing Pillar 2 Global Minimum Tax from 01 January 2024: - *Swiss Government Press Release*

The Federal Council of Switzerland has resolved to introduce the supplementary tax effective January 1, 2024, as a proactive measure to safeguard against the erosion of the tax base to the advantage of other countries. This decision comes in the wake of a decisive majority vote by the people and cantons on June 18, 2023, in support of a specialized tax regime for large corporate groups. The Federal Council, entrusted with the temporary implementation of the OECD/G20 minimum tax rate through an ordinance, has invoked a transitional provision in the Federal Constitution, mandating the submission of a parliamentary bill within six years to replace the Minimum Taxation Ordinance. The minimum tax rate, to be applied as a national supplementary tax, will ensure a minimum domestic tax rate of 15% for large multinational enterprises with a turnover exceeding EUR 750 million. The primary objective is to prevent the depletion of the Swiss tax base in favor of other jurisdictions. In formulating the implementation of the minimum tax rate in Switzerland, the Federal Council adhered to the following guiding principles:

- **International Compatibility:** The Swiss regulations aim to garner international acceptance, aligning with OECD/G20 regulations to provide Swiss-based businesses with optimal legal certainty.
- **Preserve Switzerland's Economic Interests:** Where explicitly allowed in the OECD/G20 regulations, Switzerland seeks to exercise flexibility and voting rights in the interest of its economic landscape.
- **Avoid Administrative Hurdles:** Striving for efficiency, the Federal Council aims to minimize the administrative burden on businesses and cantonal tax authorities.

While the proposed design of the national supplementary tax garnered broad acceptance during the consultation phase, adjustments were made by the Federal Council based on the feedback received. Notably, the prerequisites for enforcing the supplementary tax from January 1, 2024, have been met, particularly as a significant number of EU states, the United Kingdom, South Korea, and other Western industrialized nations have opted to implement similar regulations concurrently. However, the Federal Council has chosen not to immediately adopt the international supplementary tax rules IIR and UTPR at this stage.

14. US releases Draft Form for Corporate Alternative Minimum Tax: - *News Report*

The US Internal Revenue Services (IRS) has released a preview of Form 4626 - Alternative Minimum Tax - Corporations, which imposes a 15% minimum tax on the adjusted financial statement income (AFSI) of large corporations starting in taxable years after 31 December 2022. CAMT typically affects large corporations with an average annual financial statement income exceeding USD 1 billion. The form is divided into five parts:

- Part I seeks details for Applicable Corporation Determination (Net Income or loss as per Applicable Financial Statements followed with certain adjustments)
- Part II relates to Corporate Alternative Minimum Tax and its computation
- Part III seeks information on adjustment for certain taxes
- Part IV relates to Alternative Minimum Tax—Corporations Foreign Tax Credit
- Part V seeks information of the Members of a Controlled Group Treated as a Single Employer and Foreign-Parented Multinational Group (FPMG) Members Taken into Account in "Applicable Corporation" Determination.

15. New HMRC tax rules set to impact online sellers: - *News Report*

HMRC, commencing on January 1, 2024, will enact new tax regulations impacting individuals engaged in the sale of items on platforms such as Etsy, Depop, and Vinted. These regulations mandate these platforms to record and report their sellers' income directly to HMRC. This initiative is part of HMRC's broader efforts to address tax evasion associated with supplementary sources of income. The genesis of these new powers can be traced back to July 2020 when the OECD introduced the "Model Rules for Reporting by Platform Operators with respect to Sellers in the Sharing and Gig Economy (MRDP)." The UK actively participated in the development and consensus-building around these model rules. Subsequently, the rules were expanded to encompass the sale of goods. HMRC's new authority has been established to facilitate the implementation of these model rules through secondary legislation, following due consultation. In the Spring Budget of 2021, the UK government announced its intention to implement the MRDP, and a consultation on its implementation took place in the summer of 2021. Draft regulations, seeking technical feedback, were released on October 18, 2022, to ensure alignment with government intentions and to identify areas requiring further clarification.

Further, the impact of these regulations will be felt by digital platforms in the UK facilitating the sale of goods or provision of services by UK or other taxpayers. This measure will also affect UK taxpayers, including individuals and companies, engaging in services or goods transactions on digital platforms. These platforms include apps and websites involved in various services, such as taxi and private hire services, food delivery, freelance work, and short-term accommodation rentals. These regulations align with the government's objective to enhance tax compliance and combat tax evasion. While HMRC already possesses the authority to access information from UK-based platforms, implementing OECD rules will enable efficient exchange of information with tax authorities outside the UK.

Furthermore, the new regulations empower HMRC to require certain UK digital platforms to report seller income information. HMRC will then share this information with tax authorities in jurisdictions where sellers are tax residents. Non-compliance could expose sellers to unexpected tax liabilities. The estimated cost to HMRC is £36.69 million, including 24 Full-Time Equivalent (FTE) positions. The platform integration and tax compliance under these rules make platforms like Vinted, Depop, and Etsy responsible for recording and submitting seller information to HMRC. Failure to adhere to reporting obligations could result in significant fines. The first reporting deadline is set for January 31, 2025. UK platforms will need to verify, collate, and report information, ensuring seller identification and matching with HMRC data, determining seller residency, and specifying the jurisdiction of property location. Sellers earning less than £1,700 from fewer than 30 sales in a reporting period are exempt from providing information to HMRC, but compliance with tax reporting obligations remains imperative.

16. UAE amends Corporate Tax Law to introduce Global Minimum Tax: - *News Report*

The UAE released Federal Decree Law No. (60) of 2023 amending certain provisions of Federal Decree-Law No. 47 of 2022 on the Taxation of Corporations and Businesses. This amendment aims to streamline the implementation of domestic minimum taxes. The key amendments are as follows:

Two new Definitions shall be added: "Top-up tax" will be defined as an additional tax levied on Multinational Enterprises (MNEs) to guarantee their adherence to an effective tax rate of 15%, aligning with the Pillar Two rules. "Multinational Enterprises" MNE is defined as an entity and/or one or more of its member entities located in the State or in a foreign jurisdiction, as specified in a decision to be issued by the Cabinet at the suggestion of the Minister.

Tax Rate: In due course, A separate decision shall be issued detailing the mechanisms, terms, conditions, rules, and procedures for the application of the top-up tax on MNEs in accordance with the Pillar Two rules.

Commencement Date: The regulations concerning the top-up tax will come into force on the date of the Minister's forthcoming decision, as published in the Official Gazette.

17. EU Lawmakers Call for Phaseout of Transfer Pricing: - *News Report*

The European Parliament has called for the phasing out of transfer pricing, a practice that allows multinational corporations to shift profits to low-tax jurisdictions. The lawmakers have urged the European Commission to introduce a common consolidated corporate tax base (CCCTB) to prevent companies from exploiting loopholes in the tax system. The CCCTB would create a single set of rules for calculating the taxable profits of multinational corporations operating in the EU. The article highlights that the European Parliament's resolution is not binding, but it is expected to influence the European Commission's upcoming proposal on the CCCTB. The proposal is expected to be released in 2024.

Transfer pricing is a widely used practice by multinational corporations to shift profits to low-tax jurisdictions. The European Parliament's call for phasing out transfer pricing is aimed at preventing companies from exploiting loopholes in the tax system. The lawmakers have urged the European Commission to introduce a common consolidated corporate tax base (CCCTB) to create a single set of rules for calculating the taxable profits of multinational corporations operating in the EU. The CCCTB would help prevent companies from shifting profits to low-tax jurisdictions and ensure that they pay their fair share of taxes. The European Parliament's resolution is expected to influence the European Commission's upcoming proposal on the CCCTB, which is expected to be released in 2024.

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