



Tax & Regulatory Updates – Key developments of July 2023

DIRECT TAXATION

1. Revenue to explain scope of "Risk Management Strategy" & "Information" under Section 148 before the Bombay High Court

Bombay HC, in a writ petition challenging the reassessment proceedings, asks the Revenue to submit a response on several crucial aspects affecting the Assessee under the new reassessment regime. As per the HC's directions, Revenue is required to give its submission on:

- (i) scope of 'Risk Management Strategy' as specified in Explanation 1 to Section 148 with description of areas covered within its ambit,
- (ii) what constitutes information for the purpose of Section 147 and whether it is only restricted to conditions enumerated in Explanation 1 to Section 148,
- (iii) scope of 'Information', whether restricted to information already available with AO or includes information derived from an external source, and

(iv) whether 'change of opinion' is now permissible for initiating reassessment proceedings.

The case pertains to AY 2016-17 where the Assessee-Individual was subjected to regular assessment on a certain set of facts and was subjected to reassessment proceedings on the basis of the same set of facts. Assessee's objections were disposed of by Section 148A(d) order and a notice under Section 148 was issued which led the Assessee to challenge the proceedings by a writ petition. The writ petition is before the Division Bench of Bombay High Court comprising Justice K.R. Shriram and Justice Firdosh P. Pooniwalla. Advocates Tejveer Singh and Rutuja Pawar are appearing for the Assessee.

2. CBDT issues corrigenda to TCS Circular for correcting legal provisions's references:- *CBDT Circular no. 11/2023 dated 06 July 2023*

The Central Board of Direct Taxes (CBDT), vide Circular No. 10/2023 dated 30 June, 2023, issued clarification for implementation of changes relating to TCS on Liberalised Remittance Scheme (LRS) and on purchase of overseas tour program package. CBDT, in order to address several issues concerning the new TCS regime, answered in detail the 8 different scenarios/ questions on the new regime. In the said circular, the CBDT made a reference of clause (i) & clause (ii) of section 206C(1G) under paragraph 4(i) and 5 of the Circular in order to provide the provide the clarity on applicability of the new TCS provisions instead of referring original Clause (a) and (b) of the said section 206C(1G). Now, the CBDT in order to correct the legal provision reference, issued a corrigendum through this circular dated 06 July 2023 and replaced the following phrases used in paragraph 4(i) and 5 of the Circular: (i). In paragraph 4(i) and 5 of the Circular 'clause (i) of sub-section (1G) of section 206C' with 'clause (a) of sub-section (1G) of section 206C' and (ii) In paragraph 4(i) of the circular, 'clause (ii) of sub- section (1G) of section 206C' with 'clause (b) of sub-section (1G) of section 206C'.

Clause (a) of section 206C(1G) specifies the liability of collection of TCS @ 20% by every person being an authorised dealer, who receives an amount, for remittance from a buyer, being a person remitting such amount under the Liberalised Remittance Scheme of the Reserve Bank of India and clause (b) of the said section specifies the liability of collection of TCS @ 20% by every person being a seller of an overseas tour program package, who receives any amount from a buyer, being the person who purchases such package.

3. Bangalore ITAT enquires into pending cases under MAP & APA category:- *Bangalore ITAT Notice dated 06 July 2023*

Bangalore ITAT issues notice under the approval of the Vice-President, seeking information on cases pending in four categories viz., (i) MAP, (ii) APA, (iii) Appeal challenged against the DRP order for the reason the same is without DIN, (iv) Blocked Cases. The notice requests Assessee's and Department's representatives to provide the required information to the Registry.

4. CBDT amends notification exempting NRs from ITR filing incorporating amended definition of 'Investment Fund':- *Notification No. 49/2023, dated 14th July 2023*

Section 139 of the Income-tax Act 1961 deals with filing return of income (ITR). It defines various criteria which mandate the filing of ITR by different people. Sub-section (1C) of section 139 empowers the Central Government to exempt any class or classes of persons from furnishing ITR having regard to such conditions as may be specified in that notification.

The Central Board of Direct Taxes (CBDT) vide Notification No. 55/2019, dated 26-07-2019, granted exemption from filing Income Tax Returns (ITR) to non-resident individuals (including

foreign companies) who earned income from investments in an investment fund established within an International Financial Services Centre (IFSC) situated in India.

Said notification also defined the meaning of 'investment fund'.

The Finance Act 2023 amended the definition of 'investment fund' to include funds regulated under International Financial Services Centres Authority (Fund Management) Regulations 2022 under International Financial Services Centres Authority (IFSCA) Act 2019.

Thus, the CBDT has amended the definition of 'investment fund' of said notification to include the above fund within the meaning & give the benefit of exemption from filing of return of income.

5. CBDT amends Circular on Sec.115UB scope, includes Fund under IFSCA:- CBDT Circular No. 12/2023, dated 12th July 2023

The CBDT issued a Circular No.14/2019 dated 03.07.2019 to clarify the taxability of income earned by a non-resident investor from outside India (off-shore investment) routed through investment fund as defined in Explanation 1(a) to Chapter X11-FB of the Income-tax Act,1961 ("the Act"). The said Circular was made applicable to Category I or Category II Alternative Investment Funds (AIFs), regulated under Securities and Exchange Board of India (SEBI) regulations. By Finance Act 2023, the definition of 'investment fund' under the Act was amended to include reference to International Financial Services Centres Authority (Fund Management) Regulations, 2022 under International Financial Services Centres Authority (IFSCA) Act, 2019.

Now, the CBDT vide this Circular No. 12/2023 dated 12 Jul, 2023, amended Circular No. 14/2019, pursuant to the amendments made by the Finance Act, 2023, in the definition of 'investment fund'. CBDT amended the 2019 Circular to include "any fund established or incorporated in India regulated by the Financial Services Centres Authority (Fund Management) Regulations, 2022 under IFSCA Act". Thus, now the provisions of Section 115UB apply to Category I or Category II AIFs regulated by SEBI or **IFSCA**. CBDT Clarified that all other content of 2019 Circular would remain the same.

6. IT Dept. creates 'Know Your Refund Status' facility:- CBDT Press release

The Income Tax Department provided a "Know Your Refund Status" online facility that enables taxpayers to track the status of their Income Tax Refund. Taxpayers can access this facility approximately 10 days after their refund has been dispatched. To check the refund status, taxpayers need to enter their PAN number and select the relevant Assessment Year. However, it is important to note that in order to receive an Income Tax Refund, taxpayers must complete the e-filing process. This involves filing their income tax return electronically and submitting it to the Income Tax Department. Once the return is processed, and if eligible for a refund, taxpayers can use the online tracking service to monitor the progress of their refund. By utilizing this online facility, taxpayers can stay updated on the status of their Income Tax Refund and gain transparency regarding the processing of their tax return.

7. Tax compliance boost. Income Tax Department targets 50 cases per AO for survey and TDS verification:- News report dated 09th July 2023

The Income Tax Department has set a target of selecting 50 cases per Assessing Officer (AO) for survey/online TDS verification. This is part of the government's efforts to collect over ₹18.23 lakh crore in direct taxes, which is 10% more than the actual collection during FY23.

To identify these cases, the department has established 16 parameters. These parameters include situations where there is negative growth in TDS payment while there is healthy growth in Advance

tax payment, cases of sick units or units with negative operating margins, and cases showing a negative trend in payment. Other parameters include instances where TDS/TCS is not deposited after deduction, cases reported by the AO with significant disallowance, habitual late filers/non-filers of TDS statements, and instances of tax evasion petitions.

The selection of cases will be based on reports from various sources, including the Central Processing Centre for TDS (CPC-TDS) and information from the investigation wing. The department aims to complete all new online TDS verifications initiated in FY 2023-24 within six months of initiation. Notice under section 201/201(1A) may be issued based on the preliminary examination of selected cases. Section 201 of the Income Tax Act deals with the consequences of failure to deduct or pay taxes, and section 201(1A) prescribes penal interest at the rate of one percent per month or part of a month on the due tax amount.

The timeline for completing the action is also specified. The passing of the order under section 201/201(1A) should be completed within six months from the end of the month in which the survey took place or before the end of the financial year in which the survey is conducted. These measures aim to improve the TDS mechanism and enhance tax collection efforts.

<https://www.thehindubusinessline.com/economy/policy/income-tax-department-targets-50-cases-per-ao-for-survey-and-tds-verification/article67060123.ece>

8. IT Dept. releases 'Common Offline Utility' for Tax Audit Reports:- *Press release*

The Income Tax Department releases Common Offline Utility for Form 3CA-3CD and 3CB-3CD i.e. Tax Audit Reports to be filed under Section 44AB.

Form 3CA-3CD: Audit report under section 44AB of the Income -tax Act, 1961, in a case where the accounts of the business or profession of a person have been audited under any other law and Statement of Particulars required to be furnished under Section 44AB of the Income-tax Act, 1961.

Form 3CB-3CD: Audit report under section 44AB of the Income -tax Act 1961, in the case of a person referred to in clause (b) of sub - rule (1) of rule 6G and Statement of Particulars required to be furnished under Section 44AB of the Income-tax Act, 1961. Edge browser installation is required before installing the utility.

To use the offline utility, taxpayers and their chartered accountants will need to have the taxpayer's PAN number, the assessment year for which the form is being filed, the name of the auditor who has audited the taxpayer's accounts and the date of the audit report. The offline utility will guide taxpayers and their chartered accountants through the process of filing Form 3CA-3CD and 3CB-3CD. The utility will also generate a JSON file that can be uploaded to the ITD website. The offline utility is a convenient way for taxpayers and their chartered accountants to file Form 3CA-3CD and 3CB-3CD.

<https://www.incometax.gov.in/iec/foportal/downloads/income-tax-forms#common-offline-utility-for-form-3ca-3cd-and-3cb-3cd>

9. Salaried individuals under I-T scanner as taxman serves notices asking assesses to submit evidences of claims made in ITR's:- *News Report dated 22nd July 2023*

A cavalier attitude towards filing of income tax returns (ITRs), complete with bogus rent receipts from close relatives, extra claims against home loans, false donations and a slew of dodgy practices encouraged by some of the tax practitioners with a promise to slash tax outgo and prop up refund, may come back to haunt many, particularly salaried individuals.

It was relatively easy to dodge tax authorities earlier, while at present many may face hard times because their returns are red-flagged by software used by the revenue department, the Economic

Times reported on July 22. According to industry circles, notices are being served by the Income tax (I-T) department asking assesseees to produce documentary proof for claiming exemption. These notices are for exemptions under house rent allowance under section 10 (13A) for salaried individuals, allowance under section 10 (14) for hiring a helper to perform official duties, or deduction under section 24 (b) of the I-T Act for interest paid on home loans.

The notices, pertaining to assessment years 2022-23, were issued as per section 133(6) of the law which empowers the tax assessing officer to call for information of certain details of transactions done during a particular year.

According to CBDT's directions outlined in the Central Action Plan for FY24, field officers have to leverage the best use of technology to widen the tax base. Not only taxpayers indulging in such practices but even people assisting them could be covered under the wider umbrella of prosecution allowed by the Income Tax law. So, individual taxpayers have to be more cautious in filings and lodge only genuine claims. Adverse actions (particularly prosecutions) could pose several challenges. For taxpayers including the risk of losing jobs as many employers and corporates tend to treat prosecution matters very differently. This may also help the government in nudging more and more individual taxpayers to migrate to a simpler regime of a lower tax rate with least possible exemptions / deductions on the lines of similar regimes implemented for corporates in the last few years.

https://cfo.economicstimes.indiatimes.com/news/tax-legal-accounting/salaried-individuals-under-i-t-scanner-as-taxman-serves-notices-asking-assesseees-for-documentary-proof-to-claim-exemption/102029150?action=profile_completion&utm_source=Mailer&utm_medium=newsletter&utm_campaign=etcfo_news_2023-07-22&dt=2023-07-22&em=Z2FyZy5yYWh1bEBhc2lyZS5pbG==

<https://www.moneycontrol.com/news/business/salaried-taxpayers-under-lens-for-rent-home-loan-frauds-in-i-t-returns-11007011.html>

10. CBDT notifies 18 Dispute Resolution Committees across the country, with immediate effect:- CBDT Office order no. 176 of 2023 dated 20 July 2023

The CBDT, vide Office Order 176 of 2023 dated 20 July, 2023, notifies 18 Dispute Resolution Committees under each regional Pr.CCIT headquarter and the order comes into effect immediately. Section 245MA of the Income Tax Act, 1961 ("the Act") read with Rule 44DAA provides for the constitution of the Dispute Resolution Committee. As per Section 245MA(2), the Dispute Resolution Committee shall have the powers to reduce or waive any penalty imposable under the the Act or grant immunity from prosecution for any offence punishable under the Act in case of a person whose dispute is resolved under Chapter XIX-AA of the Act pertaining to aggregate variations to the total income upto Rs. 10 lakhs.

11. Income Tax Department clarifies on NRs' concerns around inoperative PANs & consequences:- Income Tax Department tweet dated 18 July 2023

Non-resident Indians (NRIs) and Overseas Citizenship of India (OCIs) have raised concerns regarding their PANs becoming inoperative, despite being exempted from linking PAN with Aadhaar. Additionally, PAN holders whose PANs have become inoperative due to non-linking with Aadhaar have expressed concerns about the consequences.

The Income Tax Department, via its Twitter Handle addresses the concerns of NRIs/ OCIs regarding their PANs becoming inoperative, despite exemption from linking it with Aadhaar. The department also addresses the concerns of PAN holders, whose PANs have become inoperative due to non-linking of PAN with Aadhaar. The Department clarifies that it has mapped the residential status of NRIs in case they have filed the ITR in any of the last 3 AYs or they have intimated their residential status to the Jurisdictional Assessing Officer (JAO). The PANs have been rendered

inoperative, in case any one of the above-mentioned criteria is not met, thus, requested NRIs whose PANs are inoperative to intimate their residential status to their respective JAO along with supporting documents with a request to update their residential status in the PAN database.

Details of JAO can be found at <https://eportal.incometax.gov.in/iec/fooservices>. Department refers to the CBDT Notification No. 15/2023 dealing with amended Rule 114AAA on Aadhaar-PAN linkage and further clarifies that an inoperative PAN is not an inactive PAN and one may file the ITR, irrespective of PAN becoming inoperative which entails following: (i) Pending refunds and interest on such refunds will not be issued and (ii) TDS/TCS at higher rate as per Sections 206AA/206CC.

12. CBDT amends Rule 21AK to include NRs income from offshore derivatives:- CBDT Notification No. 50 of 2023 dated 17 July 2023

The CBDT, vide Notification No. 50/2023 dated July 17, 2023, amends Rules 21AK, 114AAB and Form 10CCF of the Income tax law. Rule 21AK (conditions for Section 10(4E) exemption) now also includes income accrued or arisen to, or received by, a non-resident as a result of distribution of income on offshore derivative instruments, subject to conditions. Specified Fund in explanation to Rule 114AAB (exceptions to applicability of Section 139A) is expanded to include any fund regulated under International Financial Services Centres Authority (Fund Management) Regulations, 2022 made under the International Financial Services Centres Authority Act, 2019. The CBDT has also substituted the Form 10CCF i.e. Report under Section 80LA.

Rule 21AK of the Income Tax Rules, 1962 prescribes the conditions to claim exemption from income derived by a non-resident as a result of the transfer of non-deliverable forward contracts, offshore derivative instruments or over-the-counter derivatives under section 10(4E) of the Income Tax Act, 1961.

The Finance Act 2023 amended section 10(4E) to provide an exemption to any income distributed on the offshore derivative instruments entered into with an IFSC Banking Unit.

As a result of the said amendment, the Central Board of Direct Taxes (CBDT) has amended Rule 21AK to include income arising to a non-resident as a result of the distribution of income on offshore derivative instruments within the scope of exemption under section 10(4E).

13. 'Aircraft Leasing IFSC Unit' not liable for TDS on dividend paid inter se:- CBDT vide notification No. S.O. 3254(E), dated 20 July 2023

The Finance Act 2023 has introduced a new clause (34B) in Section 10 of the Income-tax Act. This clause exempts dividend income earned by an International Financial Services (IFSC) unit primarily engaged in the aircraft leasing business. The exemption is subject to the condition that the company paying the dividend should also be an IFSC unit engaged in the aircraft leasing business.

In order to bring uniformity with tax deduction provisions, CBDT issued a notification to exempt such dividend income from levy of TDS provisions. The CBDT granted exemption from tax deduction at source under section 194 from dividend income paid by a unit of IFSC engaged in aircraft leasing business to a unit of IFSC engaged in the same business.

Further, the notification specifies that the payee shall:

- a) Furnish a statement-cum-declaration in Form No. 1 to the payer giving details of previous year relevant to the assessment year in which the dividend income eligible for exemption under section 10(34B) of the Act is payable.
- b) Such statement-cum-declaration shall be furnished and verified in the manner prescribed in Form No. 1 for the previous year relevant to the assessment year in which the dividend income eligible for exemption under section 10(34B) of the Act is payable.

Accordingly, the payer shall:

- a) Not deduct tax on payment made or credited to the recipient of such dividend (payee) after the date of receipt of copy of statement-cum-declaration in Form No. 1 from payee; and
- b) Furnish the particulars of all the payments made to the recipient of such dividend on which tax has not been deducted in the statement of deduction of tax referred to in section 200(3), read with the rule 31A of the Income-tax Rules, 1962.

The notification shall be applicable from September 01, 2023.

14. 15% global minimum tax to come into effect next year - OECD:- News Report

The upcoming global minimum tax of 15 percent is set to take effect starting next year. According to a comprehensive report from the Organisation for Economic Cooperation and Development (OECD) addressed to the G20 finance ministers and central bank governors, by the year 2025, nearly 90 percent of multinational corporations (MNCs) with revenues exceeding 750 million euros will be subjected to this levy in all countries where they operate. The OECD has revealed that approximately 50 jurisdictions have already initiated measures to implement the global minimum tax. Notably, this number includes half of the G20 member nations and all the countries belonging to the European Union. The organization also highlighted its commitment to ensuring an effective application of consistent and well-coordinated rules. To achieve this, the OECD will provide comprehensive guidance and establish an administrative framework.

One crucial aspect of this framework is the creation of a common filing and exchange network. This network will operate based on a standardized GloBE (Global Anti-Base Erosion) Information Return. These measures aim to enhance transparency and facilitate smooth communication among the involved parties. The proposed two-pillar solution for the taxation of multinational corporations involves specific strategies. Pillar One entails reallocating an additional share of profits to the market jurisdictions. On the other hand, Pillar Two focuses on implementing a minimum tax and subject-to-tax rules, aimed at curbing tax avoidance practices.

<https://economictimes.indiatimes.com/news/international/world-news/15-global-minimum-tax-to-come-into-effect-next-year-oecd/articleshow/101834336.cms>

15. CBDT excludes fund relocation to IFSC from ambit of Sec.56(2)(x):- CBDT Notification No. 51/2023 dated 18.07.2023

CBDT has issued a notification introducing amendments to Rule 11UAC. This rule outlines exceptions to the applicability of Section 56(2)(x). As part of the amendment, a new sub-rule (5) has been inserted, specifying that Section 56(2)(x) will not be applicable to certain movable property, specifically shares, units, or interests in the resultant fund received by the fund management entity of the resultant fund. These assets are received in exchange for shares, units, or interests held by the investment manager entity in the original fund, following a relocation event. However, to qualify for this exemption, certain conditions must be met:

- A. not less than 90% of shares, units, or interests in the fund management entity of the resultant fund must be held by the same entity(ies) or person(s), in the same proportion as they were held in the investment manager entity of the original fund.
- B. not less than 90% of the aggregate of shares, units, or interests in the investment manager entity of the original fund should have been held by such entity(ies) or person(s).

The Notification provides clarity on some terms used in the sub-rule. For instance, 'relocation,' 'original fund,' and 'resultant fund' are defined in accordance with the Explanation to Section 47(viiac)/(viiad). Additionally, the term 'fund management entity' aligns with the meaning provided in Regulation 2(p) of the International Financial Services Centres Authority (Fund Management)

Regulations, 2022. Lastly, 'investment manager entity' refers to the fund manager of the original fund, regulated by the respective jurisdiction's regulation where the original fund is located.

This recent amendment aims to provide certain exemptions and guidelines pertaining to the taxation of movable property in the context of fund management entities and investment manager entities, offering clarity and facilitating smoother processes in the financial realm.

16. India and US close to reaching two-pillar tax reform agreement:- FM Sitharaman, US Treasury Secy Janet Yellen: News report dated 17th July 2023

India and the US are close to finalizing an agreement on implementing a two-pillar tax reform framework, as announced by Finance Minister Nirmala Sitharaman and US Treasury Secretary Janet Yellen during the G20 Finance Ministers and Central Bank Governors meeting in Gandhinagar. Both countries are actively engaged in constructive dialogues based on their shared democratic values, pluralism, and commitment to a rules-based global order and multilateralism.

The meeting followed Prime Minister Narendra Modi's recent visit to the United States, which further strengthened the partnership between India and the US, opening new avenues for collaboration and propelling the partnership to greater heights. The two nations also share commitments such as strengthening multilateral development banks (MDBs), coordinating climate action, and addressing the indebtedness of low and middle-income countries.

India and the US are currently discussing the framework for cryptocurrency and digital public infrastructure and exploring the opportunities they present. Additionally, India's G20 presidency efforts to reform MDBs could lead to unleashing \$200 billion over the next decade, as per US Treasury Secretary Yellen.

Both countries are working towards achieving an agreement on the two-pillar tax reform and expediting India's energy transition through investment platforms. The US also supports Ajay Banga's candidacy to the World Bank and has the largest Indian diaspora outside Asia, serving as India's largest export market.

Looking ahead, India and the US are committed to achieving substantial outcomes through close engagement, leveraging each other's expertise and resources to promote economic growth, innovation, and sustainable development and aims to create a prosperous and equitable future, serving as a catalyst for positive change worldwide.

<https://www.cnbc18.com/world/janet-yellen-nirmala-sitharaman-g20-summit-finance-ministers-gandhinagar-tax-reform-17235841.htm>

17. G20 FMs & CBGs reaffirm commitment to fair, sustainable & modern international tax system:- Press Release dated 18th July 2023

The third G20 Finance Ministers and Central Bank Governors Meeting held from 17 to 18 July 2023 in Gandhinagar with a reaffirmation for continued cooperation towards "a globally fair, sustainable and modern international tax system appropriate to the needs of the 21st century".

The Finance Ministers and Central Bank Governors of G20 countries met under the Indian Presidency's theme of "One Earth, One Family, One Future". They agree on numerous aspects on climate, economy and tax including, the well-being of people and the planet and reaffirm their commitment to enhancing international economic cooperation, strengthening global development for all and steering the global economy towards strong, sustainable, balanced, and inclusive growth.

The summary and outcome document includes the following:

- a) They welcomed the delivery of a text of a Multilateral Convention (MLC) on Amount A, significant progress of work on Amount B and the completion of the work on the development of the Subject to Tax Rule (STTR) and its implementation framework as set out in the July 2023 Outcome Statement of the OECD/G20 Inclusive Framework on BEPS (Inclusive Framework).
- b) Called on Inclusive Framework to swiftly resolve the few pending issues relating to the MLC to prepare it for signature in the second half of 2023 and complete the work on Amount B by end of 2023.
- c) Welcomed the steps taken by various countries to implement the Global Anti-Base Erosion (GloBE) Rules and recognised the need for coordinated efforts towards capacity building to implement the two-pillar international tax package effectively and in particular, a plan for additional support and technical assistance for developing countries.
- d) Welcomed the launch of the pilot programme of the South Asia Academy in India for tax and financial crime investigation in collaboration with OECD.
- e) Noted the 2023 update of the G20/OECD Roadmap on Developing Countries and International Taxation, Implementation of the 2021 Strategy on Unleashing the Potential of Automatic Exchange of Information for Developing Countries by the Global Forum on Transparency and Exchange of Information for Tax Purposes.
- f) Called for swift implementation of the Crypto-Asset Reporting Framework (CARF) and amendments to the CRS.
- g) The OECD Global Forum asked to identify an appropriate and coordinated timeline to commence exchanges by relevant jurisdictions, noting the aspiration of a significant number of these jurisdictions to start CARF exchanges by 2027, and to report the progress of its work in future meetings.
- h) Noted OECD Report on Enhancing International Tax Transparency on Real Estate and the Global Forum Report on Facilitating the Use of Tax Treaty Exchanged Information for Non-Tax Purposes.
- i) Noted the discussions held at the G20 High-Level Tax Symposium on Combating Tax Evasion, Corruption and Money Laundering.
- j) Agreed on presenting the handbook of OECD by Oct 2023 on Pillar Two to facilitate implementation through a common approach, especially to assist capacity-constrained jurisdictions.

<https://pib.gov.in/PressReleaseDetailm.aspx?PRID=1940584>

18. PAN-trading account freeze extended to all listed firms, says SEBI:- SEBI News Report dated 19 July, 2023

SEBI on Wednesday extended the framework for restricting trading by Designated Persons (DPs) during the "trading window closure" by freezing PAN at security level to all listed companies. Listed companies will be provided with a portal for updating the commencement and end of the trading window closure period. The Securities and Exchange Board of India (Sebi) has extended the practice of freezing trading accounts of top company executives during "trading window closures" to all listed companies in a phased manner. The trading window closure is a restriction period typically applicable from the end of every quarter until 48 hours after the declaration of financial results. During this period, key executives are not allowed to deal in shares of their companies to prevent the potential misuse of sensitive information.

The permanent account numbers (PANs) of key executives, identified as 'designated persons' (those who can have access to unpublished price-sensitive information), are also frozen during this period. The framework, however, is currently applicable to the companies that are part of the Sensex and the Nifty50 index. Sebi has introduced a glide path extending this framework to all listed companies under the Prohibition of Insider Trading (PIT) Regulations. The new rules will be applicable to the top 1,000 companies in terms of market capitalisation from October 1. The next 1,000 firms will be included from January 1, 2024, and the remaining from April 1, 2024. Experts said the extension of

the framework to all the listed companies would not only facilitate the ease of business but also prevent inadvertent trading by designated persons during the restriction period.

The market regulator has directed listed companies to confirm the designated depository details of listed ISIN of equity share of the company, name, PAN, and the demat account number of the designated persons on whom the freeze will be applicable. Listed companies will be provided with a portal for updating the commencement and end of the trading window closure period.

According to Sebi's annual report for 2021-22, nearly 29 per cent of the cases taken up for investigation by the market's regulator were related to insider trading. Further, Sebi completed adjudication proceedings against 20 entities for engaging in insider trading and levied penalties worth Rs 2.88 crore for such violations.

19. CBDT notifies 'Annexure II' to Form 34E, applicable to 'notified residents' seeking Advance Ruling:- CBDT Notification no. 53/2023 dated 27 July 2023

The CBDT, vide Notification No. 53/2023 dated 27 July, 2023, issues corrigendum to its earlier Notification No. 37/2023 dated 12 June, 2023 which notified new forms under the Advance Rulings regime. The current notification inserts a Annexure II to Form No. 34E which is to be furnished for filing of an application by notified resident person seeking to obtain an advance ruling under section 245Q(1) of the Income-tax Act, 1961. The Form contains a reference to Annexure I, which seeks details of the statement of the relevant facts having a bearing on the question(s), and Annexure II requires providing a Statement containing their interpretation of law or facts. However, Annexure II was absent from the Form 34E notified by the Board. Thus, the CBDT has now notified the missing Annexure II that is to be included in Form 34E.

20. IT Department addresses concerns on NRI's inoperative PAN, prescribes procedure:- Income Tax Department press release dated 21 July 2023

The Income Tax Department clarifies that "If any NRI's PAN is still inoperative, he/she is requested to intimate his/her NRI status along with supporting documents to respective jurisdictional Assessing Officer."

List of supporting documents required for making PAN operative for NRIs are as under:

- (A) Copy of PAN Card; and
- (B) Any of the following documents -
 - (a) Copy of passport showing stay confirming NRI,
 - (b) Copy of Person of Indian Origin (PIO) card issued by Government of India,
 - (c) Copy of Overseas Citizen of India (OCI) card issued by Government of India, or
 - (d) Copy of other national or citizenship Identification Number or Taxpayer Identification Number duly attested by - (i) "Apostille" (in respect of countries which are signatories to the Hague Convention, 1961) or (ii) by the Indian Embassy or (iii) Indian High Commission or (iv) Indian Consulate in the country where the applicant is located or (v) authorized officials of overseas branches of Scheduled Banks registered in India.

For information regarding Jurisdictional Assessing Officer (JAO), the NRIs can visit e-filing home page and go to tab "know your AO" to find their JAO.

<https://www.incometax.gov.in/iec/foportal//latest-news#a7ae8315-8031-4e92-80e9-21b46cdc6ac2>

21. CBDT modifies FATCA & CRS Guidance Note for 'certain funds':- Ministry of Finance clarification dated 26 July 2023

India has signed the Multilateral Competent Authority Agreement (MCAA) for exchanging information automatically under the Common Reporting Standard (CRS) on 3rd June 2015. The Central Board of Direct Taxes (CBDT) has issued guidance from time to time to provide clarifications, in respect of information to be reported by Reporting Financial Institutions (RFIs) in respect of reportable accounts. A comprehensive Guidance Note was issued on 31.08.2015 to provide guidance to the RFIs, regulators and officers of the Income Tax Department. This was updated on 31.12.2015, 31.05.2016 and 30.11.2016. In addition to the guidance and clarifications already issued in this regard, the CBDT issued the clarifications as a partial modification to the Guidance Note dated 30.11.2016, for the removal of doubts with respect to reporting of accounts other than U.S. reportable accounts. Now, the CBDT has issued the clarification dated 26 July, 2023 to modify the Guidance Note dated 30 Nov, 2016 dealing with Foreign Account Tax Compliance Act ('FATCA') and Common Reporting Standards ('CRS'). The Clarification pertains to:

1. Treaty Qualified Retirement Fund:

(i). A "Treaty Qualified Retirement Fund" means a fund established in India, provided that the fund is entitled to benefits under an agreement between India and the United States of America on income that it derives from sources within the United States of America (or would be entitled to such benefits if it derived any such income) as a resident of India that satisfies any applicable limitation on benefits requirement, and is operated principally to administer or provide pension or retirement benefits.

(ii). As per the Clarification a Treaty Qualified Retirement Fund shall not be treated as a non-reporting financial institution for the purposes of maintaining and reporting information in respect of any reportable account other than a US reportable account defined in Rule 114F(11).

2. Non-public Fund of the Armed Forces:

(i). A non-public fund of the armed forces means a fund established in India as a regimental fund or non-public fund by the armed forces of the Union of India for the welfare of the current and former members of the armed forces and whose income is exempt from tax under clause (23AA) of section 10 of the Income-tax Act, 1961.

(ii). As per the Clarification, a Non-public Fund of the Armed Forces shall not be treated as a financial institution in case of any reportable account other than a US reportable account defined under Rule 114F(11).

3. Gratuity Fund:

(i). A Gratuity fund means a fund established under the Payment of Gratuity Act, 1972 (39 of 1972), to provide for the payment of a gratuity to certain types of employees of an Indian employer specified in the Payment of Gratuity Act, 1972.

(ii). With respect to Gratuity Fund, the Clarification provides that:

A. Gratuity funds which are only managed by either individual(s) and/or entity(ies) that is not a financial institution, are not capable of being classified as a Managed Investment Entity under Rule 114F(3)(c)(B), such Gratuity Funds will qualify as a passive non-financial entity as per Rule 114F(6)-Explanation (D)(i),

B. Where a Gratuity Fund is a Managed Investment Entity under Rule 114F(3)(c)(B), it will qualify as a Financial Institution and a Reporting Financial Institution under CRS,

C. In the event that a Gratuity Fund is a reporting financial institution based on the conditions contained in Rule 114F, relevant accounts held with such a Gratuity Fund fulfilling the conditions specified in clause (h)(i) or h(ii) of the Explanation to Rule 114F(1) will be treated as excluded accounts.

Generally, accounts held in gratuity funds will be treated as excluded accounts if they qualify as retirement or pension accounts as per clause h(i) of Explanation to clause 1 of the Rule 114F, subject to satisfaction of all the conditions laid out in that clause, however, accounts held in gratuity funds may also involve withdrawals conditioned on meeting specific criteria in circumstances beyond death, disability or retirement (e.g., gratuity funds that permit withdrawals upon resignation after a certain period of continuous service). Such accounts can be treated as excluded accounts under clause h(ii) of Explanation to clause 1 of the Rule 114F subject to satisfaction of all the conditions laid out in that clause including, inter alia, annual monetary limits in respect to contributions to the said funds.

22.CBDT notifies SOP for making application for recomputation of income of co-operative society u/s 155:- Circular No 14 of 2023, dated 27-07-2023

Sugar factories operating in the co-operative sectors in certain States pay sugarcane growers a final amount often referred to as Final Cane Price (FCP). This amount exceeds the Statutory Minimum Price (SMP) fixed by the Central Government under the Sugarcane Control Order, 1996. FCP is decided based on the factory's working results after considering all the revenues and expenditures incurred by the factory. The payment of FCP by the sugar co-operative societies over and above the SMP for the purchase of sugarcane often resulted in tax litigation.

Consequently, the Finance Act 2015 inserted a clause (xvii) in Section 36(1) with effect from the assessment year 2016-17. This provision provides a deduction for expenditure incurred by a sugar co-operative society for purchasing sugarcane at a price equal to or less than the price fixed or approved by the Government.

The said amendment came into force w.e.f. 01.04.2016 and was applicable from AY 2016-17 onwards. Pending demands and litigation still persisted regarding AYs before 2016-17. Therefore, to conclude the matter logically and to extend the relief to all the applicable years, the Finance Act 2023 inserted sub-section (19) in Section 155 with effect from 01-04-2023.

Section 155(19) provides that in the case of a sugar co-operative society, where any deduction in respect of any expenditure incurred for the purchase of sugarcane has been claimed by an assessee and such deduction has been disallowed wholly or partly, the Assessing Officer shall, based on an application made by such assessee, recompute the total income of such assessee for such previous year.

The following Standard Operating Procedure has been outlined to standardize the manner of filing an application and its disposal by the Jurisdictional Assessing Officer (AO) under section 155(19):

- a) The applicant must be a "co-operative society", as defined in section 2(19) of the Income-tax Act, engaged in manufacturing sugar.
- b) The application by such a co-operative society can be filed for AY 2015-16 or any earlier assessment year (AY).
- c) AO may seek the following documents for recomputation under section 155(19):
 - (i) Computation of Tax, Audit Report under section 44AB, Audited Profit & Loss Account and Balance Sheet.
 - (ii) Assessment Order/Appellate Order(s) of various appellate fora, as applicable, with respect to the disallowance made on account of the excess price paid for the purchase of sugarcane above the Statutory Minimum Price (SMP).
 - (iii) Notice of Demand issued under section 156.
 - (iv) Challan of taxes paid, if any.

(v) Copy of Order(s)/Other legal instrument(s) regarding price fixation by the Government based on which excess price was paid for the purchase of sugarcane over and above Statutory Minimum Price (SMP).

(vi) Documentary evidence regarding registration of co-operative society under State/Central Act.

(vii) Any other document as considered necessary by the AO for the purposes of recomputation of total income.

d) AO shall recompute the total income of such co-operative society under the provisions of sub-section (19) of section 155 read with section 154

e) AO shall pass an order under section 155(19) read with section 154 within six months from the end of the month in which he receives the application.

It must be noted that the rectification under section 155(19) read with section 154, can be made till 31.03.2027.

23. I-T dept sends 100,000 notices over under-reported income:- News report dated 25th July 2023

In a recent announcement, India's Finance Minister Nirmala Sitharaman revealed that the Income Tax Department has taken significant action against tax evasion. The department has sent out 100,000 notices to individuals suspected of concealing income or providing inaccurate income details. These notices are based on comprehensive data gathered from diverse sources such as bank transactions and property records. Recipients of the notices are required to provide additional income information or face penalties for non-compliance. The notices are primarily directed at individuals with an annual income exceeding ₹50 lakh, and the process is expected to be completed by March 2024. The government has reduced the record-keeping period for taxpayers from 10 years to six years, facilitated by technology advancements in tax administration. The Finance Minister emphasized the government's commitment to a fair and transparent tax system using technology to ensure accurate tax payment and combat tax evasion effectively.

<https://economictimes.indiatimes.com/news/india/i-t-dept-sends-100000-notices-over-under-reported-income/articleshow/102088595.cms?from=mdr>

24. Rent, home loan claims to come under I-T lens:- News Report dated 27th July 2023

Many taxpayers show that they are living in a rented property that in fact belongs to close relatives and with increased use of artificial intelligence for analysis, the income tax department has started asking taxpayers about suspect deductions claimed for house rent and housing loan interest. AI makes it easier to find patterns and anomalies. In cases where such taxpayers show they are paying rent, the receiver does not mention this rental income in their returns. Similarly, some taxpayers claim bogus housing loan interest deductions and the I-T department is seeking details about such claims as well.

The income heads where high numbers of discrepancies are found are house rent allowance (HRA) and home loan repayments. The misuse of these heads is under scrutiny. Other heads where rebates are claimed will also be scrutinized. The claims and actual proof will be assessed through profiles of income taxpayers over the years. According to the rules, salaried employees get HRA as part of their salary. They need to have a rent agreement, rent payment receipts, and must reside in the rented property to claim the deduction. One can get these exemptions only under the old income tax regime.”

<https://timesofindia.indiatimes.com/city/ahmedabad/rent-home-loan-claims-to-come-under-i-t-lens/articleshow/102154651.cms>

25. Use of multiple PAN cards for weddings, IVF under scrutiny of I-T officials:- News Report

High-value consumption expenditure in sectors like hotels, luxury retail, banquets, and designer brands must be verified with taxpayer information and is expected to face greater scrutiny. Sellers must report the sale and purchase of goods or services transactions exceeding Rs 2 lakh in cash on form SFT-013, as per the CBDT's central action plan for fiscal 2023-24, and the transactions need greater scrutiny as the board has noticed rampant circumvention of this provision.

The Centre is aiming to widen the taxpayer base by tapping sectors that experienced unprecedented growth and profits after the COVID-19 pandemic on account of heavy spending (termed widely as revenge spending) as a one-time opportunity. Individual customers will need to be more cautious in their tax filings, and these sectors will need to be prepared for greater scrutiny. Scrutiny has already increased at hotels and banquets, and weddings and social events where PAN details are split between families on high-value transactions will be affected. The difference between reported incomes and expenditures incurred by taxpayers can be easily detected by examining various data sources concerning high-value expenditures, which is a pragmatic and smart move by the tax authorities.

https://www.business-standard.com/economy/news/use-of-multiple-pan-cards-for-weddings-ivf-under-scrutiny-of-i-t-officials-123072500295_1.html

26. FM, Sitharaman lists three principles to widen tax base:- News Report

Union Finance Minister Nirmala Sitharaman at 164th Income Tax Day celebrations emphasized three key principles - transparency, objectivity, and taxpayer-friendliness - for the Income-Tax Department to expand the tax base. She invoked Prime Minister Narendra Modi's vision of leveraging technology to boost revenues without increasing tax rates or resorting to aggressive measures. The department saw a 17.67% YoY growth in net direct tax collections in FY 23, aided by technology-driven compliance. The income-tax laws also have been amended to support micro, small, and medium enterprises (MSMEs), startups, and cooperatives. Under the revised law, big firms must pay their MSME vendors before claiming tax benefits. The minister highlighted the shift in the income-tax department's approach, which is now less adversarial and views taxpayers as wealth creators. This change has contributed to increased revenue collections without tax rate hikes. The government has also exempted income up to ₹7,27,000 from income tax under the new regime.

Further, efforts are being made to make taxation more people-friendly by keeping tax rates low, promoting transparency, and implementing user-friendly technology. Reforms have reduced the fear of reopening tax details from a decade ago. Cases can now be reopened for up to six years, but only for those with income over ₹50 crore, subject to explicit permission from senior tax officials. The finance minister also revealed that around one lakh such cases will be processed by March 2024, making the system more predictable. Sitharaman encouraged tax officials to maintain momentum with the aforementioned principles to achieve Prime Minister Modi's vision of making India a developed country by 2047 and urged the tax department to transition from being investigative to inclusive, encouraging more people to voluntarily enter the tax net.

INDIRECT TAXATION

1. Government mulls rating firms on GST compliance:- News Report

The government is mulling the introduction of tax compliance ratings for vendors under the GST regime, and a pilot project is on the anvil to try out biometric authentications of Aadhaar of high-risk applicants with OTP verification on e-mail and mobile number linked to PAN. While GST officials are cracking down on fake invoicing and other tax evasion techniques, they have also found more than 11,000 firms that were considered 'fake registrations', some of which were undertaken through identity theft.

The risk score for applicants would be determined on the basis of detailed parameters and sophisticated data analytics, which would be further made robust by using Artificial intelligence and Machine Learning. There was a move towards vendor ratings, which may include providing all relevant data points to the industry, which was largely compliant.

<https://www.thehindu.com/business/Economy/govt-mulls-rating-firms-on-gst-compliance/article67046594.ece>

2. Centre would Notify Rules for setting up GST Tribunal:- News Report

The forthcoming GST Council meeting will focus on formulating regulations for the establishment of an appeal tribunal within the Goods and Services Tax (GST) system. Once the meeting concludes, the Centre will issue the corresponding rules. Members of the Central Board of Indirect Taxes and Customs (CBIC) emphasized the need for the Council's consent before selecting members for the appeal tribunal. Further, GST authorities are also working to expand the taxpayer base and undertake more data triangulation with the corporate taxpayer's database in the income tax regime, Priya said at the Federation of Indian Chambers of Commerce & Industry's GST conclave. Currently, only 40 per cent of the corporate income taxpayer base is registered under GST, while as many as 1.39 crore businesses are registered under GST, almost double of the number at the time of the launch of the indirect tax regime six years ago.

The dissemination of rules is underway after obtaining Council approval, and the necessary infrastructure and workforce are being put in place. It was disclosed that some businesses have misused the registration process, prompting the CBIC to tighten registration procedures and employ information technology to detect fraudulent activities. The ongoing two-month-long effort by central and state tax inspectors to uncover phony registrations has led to the investigation of 45,000 bogus GST registrations, involving a tax evasion amount of Rs 13,900 crore. Additionally, authorities have halted fraudulent Input Tax Credit (ITC) claims totaling Rs. 1,430 crore.

<https://www.businessworld.in/article/Centre-All-Set-To-Notify-Rules-For-Setting-GST-Tribunal-/04-07-2023-482930/>

3. Geotagging may become a must for GST registrations:- News Report

The Central Board of Indirect Taxes and Customs (CBIC) is taking measures to address the issue of fraudulent GST registrations by implementing biometric authentication and geo-tagging for risky entities under GST. This initiative aims to curb the misuse of PAN and Aadhaar details for fraudulent GST registration. As part of the plan, authorized representatives or directors of new and existing registered companies will be required to undergo biometric authentication if tax officers suspect fraudulent intent for claiming Input Tax Credit (ITC). In suspicious cases, individuals will be asked to visit an Aadhaar center to verify their biometrics. Additionally, CBIC officers are considering the mandatory geo-tagging of all GST-registered entities to verify the provided addresses during registration. To evaluate the effectiveness and potential consequences, CBIC has

conducted trials of biometric authentication and geo-tagging in select states. Based on the trial's outcomes, the project will be implemented nationwide.

Further, CBIC has identified a significant number of bogus entities, approximately 12,500, across India during its ongoing drive against fake registrations. These entities were used to fraudulently claim ITC and defraud the exchequer. Fake entities were prevalent in states like Haryana, Rajasthan, Delhi, parts of Gujarat, Noida, Kolkata, Assam, Telangana, Tamil Nadu, and Maharashtra, particularly in sectors such as metal or plastic scrap, waste paper, manpower services, and advertising services. In an effort to control fake ITC claims, CBIC has already tightened the system, but there is still some room for taxpayers to edit their claimed ITC in GSTR-2A. It has been highlighted that editing facilities provided to IT applicants may contribute to the issue, and officers are exploring ways to further tighten the norms to reduce fraudulent applications.

4. Indian subsidiary is liable to GST under RCM for support services received from foreign parent company:- *Appellate Authority for Advance Ruling, Maharashtra IVL India Environmental R&D (P.) Ltd., In re - [2023] 152 taxmann.com 23 (AAAR-MAHARASHTRA)*

The appellant was a subsidiary of parent company in Sweden. The appellant and parent company entered into contract with Municipal Corporation for providing project management consultancy services.

The appellant held as liable to pay GST under reverse charge on consideration received from service recipient in India and transferred to Swedish company by the Authority for Advance Ruling (AAR). It filed appeal against the decision of AAR and contended that services were provided by Swedish entity based on its own technical and financial capabilities, bank guarantee was issued on behalf of Swedish entity and appellant was incorporated only to act as a conduit.

The Appellate Authority for Advance Ruling noted that the appellant in tender document had been termed as consultant and Swedish entity had been termed as parent company and it was mentioned that the payment would be made to consultant for work done by them. In the present case, the Swedish entity act as guarantor of entire arrangement but work was carried out by appellant.

Moreover, the appellant received support services from Swedish entity as without expertise and experience of Swedish entity, such services could not be provided by the appellant. Since, the place of supply was in India and impugned services would fulfil criteria of import of services; therefore, the transfer of monetary proceeds by appellant to Swedish entity was liable to IGST under reverse charge. Thus, the ruling by AAR was upheld.

5. HC directed department to refund amount recovered from recipient since wrong GSTR-1 was filed by supplier:- *Agrawal & Brothers v. Union of India - [2023] 152 taxmann.com 111 (Madhya Pradesh)*

The assessee participated in a bid and purchased scrap on e-auction. Later, the supplier had committed default in reporting entries with respect to purchase made in e-auction by not reporting auction sales invoice in GSTR-1. Therefore, the ITC was not reflected in assessee's GSTR-2A and it sent several representations to supplier and it was certified by supplier that auction sale was made to assessee, acknowledging full payment in respect of auction sale value including GST.

The department issued a demand notice and in order to avoid cancellation of GSTIN due to non-payment of GST charges, the assessee agreed to repay requisite GST under protest. Thereafter, it filed writ petition seeking refund of amount paid under protest.

The High Court noted that in the present case, it was admitted by supplier that inadvertently amount of GST was deposited and reflected in wrong GSTIN instead of assessee's GSTIN. The Court

further noted that it is a settled law that no one can't be made to suffer for fault of another. Therefore, it was held that assessee would be entitled to get refund from department and the Court directed department to return amount to assessee.

6. Form DRC-07 alone can't make an assessee liable to pay any tax, interest or penalty:- Shree Ram Agrotech v. State of Jharkhand - [2023] 152 taxmann.com 82 (Jharkhand)

The petitioner was engaged in the business of trading of ferrous waste and scrap, iron, steel, ingots and other metal articles. It received a recovery notice based on alleged summary order, which was based on DRC-07. However, the petitioner was not provided with show cause notice or detailed adjudication order in terms of Section 73 of GST Act.

It filed appeal but the Appellate authority dismissed the appeal. Thereafter, it filed writ petition and contended that detailed adjudication order, as required under section 73 (9) of GST Act, 2017, had not been passed by the department.

The High Court noted that the adjudication order was not available on records of the SGT department. Since no detailed adjudication order, as required under section 73(9) was passed, the petitioner was not liable to pay any tax, interest or penalty only on basis of said Form DRC-07. The Court also noted that Form DRC-07, alone cannot make an assessee liable to pay any tax, interest or penalty and this ground was not considered by the Appellate Authority. Therefore, the Court held that the summary order in Form GST DRC-07 and recovery notice were liable to be quashed.

7. Recommendations from 50th Meeting of GST Council:- Government Press Release, 11th July 2023

50th GST Council meeting was held on 11th July 2023 at Vigyan Bhawan, New Delhi. It marks the completion of 50 Council meetings since the inception of GST. Union FM Nirmala Sitharaman led the 50th GST Council meeting in the presence of ministers representing their states and Union Territories.

To mark the milestone of the 50th GST Council meeting, the Chairperson released a short video film titled 'GST Council- 50 steps towards a journey' in the presence of the Council members. The postal department also released the first set of a special cover and customized 'My Stamp', which were presented by the Chief Postmaster General, New Delhi, to the Chairperson and members of the Council.

Highlights of the 50th GST Council Meeting

The 50th GST Council meeting covered three important matters under the GST law. There were rate decisions taken on goods and services, as well as clarifications issued, and rate regularizations undertaken. Secondly, the recommendations of various GoMs were discussed. The third matter involved clarifying that the compensation cess dues have been paid to the states that have submitted AG-certified claims, and the states yet to submit their AG certificates will also be settled on submission of the same.

1. Recommendations with regard to GST on goods

- The GST Council took a decision to reduce the GST rates on the following goods:
 - a. Uncooked /unfried snack pellets reduced from 18% to 5%
 - b. Fish soluble paste reduced from 18% to 5%
 - c. Imitation zari threads/yarn reduced from 12% to 5%
 - d. LD slag to be at par with blast furnace slag and fly ash and reduced from 18% to 5%
- There is an IGST exemption on Dinutuximab (Quarziba) medicine when imported for personal use, as well as medicines and Food for Special Medical Purposes (FSMP) used in

the treatment of rare diseases, and FSMP when imported by Centres of Excellence for Rare Diseases or any person or institution on recommendation of any of the listed Centres of Excellence.

- It was clarified that the supply of raw cotton by agriculturists to cooperatives, including kala cotton, is taxable under reverse charge mechanism.
- It was further decided to regularize issues relating to past periods on an “as is basis” with regard to
 - a. Raw cotton,
 - b. Matters relating to trauma, spine and arthroplasty implants (for the period prior to 18.07.2022),
 - c. Matters relating to desiccated coconut (for the period 1.7.2017 to 27.7.2017),
 - d. GST on plates and cups made of areca leaves (prior to 01.10.2019), and
 - e. GST on biomass briquettes (for the period 01.7.2017 to 12.10.2017)
- It was decided to amend Entry 52B in the compensation cess notification to include all utility vehicles, by whatever name called, provided they meet the following parameters-
 - a. Length exceeding 4000 mm
 - b. Engine capacity exceeding 1500 cc, and
 - c. A ground clearance of 170 mm and above (in an unladen condition)
- It was decided that on pan masala, tobacco products etc, where it is not legally required to declare the retail sale price, the ad valorem rate applicable on 31st March 2023 may be notified for the levy of compensation cess.
- It was decided to include RBL Bank and ICBC bank in the list of specified banks for which an IGST exemption is available on the imports of gold, silver, or platinum.

2. Recommendations with regard to GST on services

- It was decided that a GST exemption would be provided on satellite launch services supplied by ISRO, Antrix Corporation Limited and New Space India Limited (NSIL), and may be extended to such services supplied by other private organisations too.
- As a trade-friendly measure, GTAs will not be required to file a declaration for paying GST under forward charge every year. If the option has been exercised for a particular financial year, it will be deemed to have been exercised for the next and future financial years unless a declaration is filed to revert that decision. The deadline to exercise this option will now be 31st March of the preceding financial year instead of 15th March.
- It was clarified that services supplied by a director of a company to the company in their personal or private capacity will not be taxable under RCM.
- It was clarified that the supply of food and beverages in cinema halls is taxable as a restaurant service if they are supplied by way of or as part of a service and supplied independently of the cinema exhibition service. If clubbed together and the same satisfies the test of composite supply, the entire supply will attract GST at the rate applicable to the service of exhibition of cinema, the principal supply.

3. Group of Ministers (GoM) recommendation on casinos, race courses and online gaming

- A Group of Ministers (GoM) was constituted last year to look into the issues relating to the taxation on casinos, horse racing and online gaming under GST. The GoM, in its second report, has recommended that in the absence of a consensus reached on whether online

gaming, horse racing and casinos should be taxed at 28% on the full-face value of bets placed or on the GGR, the GST Council may decide.

- The GST Council deliberated on the issue in the 50th GST Council meeting and recommended the following:
- That suitable amendments be made to the GST law to include online gaming and horse racing in Schedule III of the CGST Act as taxable actionable claims.
- That all three activities, namely casinos, horse racing and online gaming will be taxed at a uniform rate of 28%.
- That GST will apply on
 - a. The face value of the chips purchased in the case of casinos,
 - b. On the full value of the bets placed with the bookmaker/totalisator in the case of horse racing, and
 - c. On the full value of the bets placed in case of online gaming

4. Measures for streamlining GST compliances

- In accordance with the GoM recommendation, the Council has recommended to insert Rule 138F in CGST Rules, 2017, as well as in SGST Rules, 2017 of the States, to mandate the requirement for e-way bill generation for the intra-state movement of gold and precious stones under Chapter 71.
- In accordance with the GoM recommendation on capacity-based taxation and the special composition scheme approved in the 49th Council meeting, the Council made the following recommendations:
 - a. Issue of a notification under Section 148 of the CGST Act, 2017 prescribing the special procedure to be followed by the manufacturers of tobacco, pan masala and other similar items for registration and return filing.
 - b. Insertion of Section 122A in the CGST Act, 2017 providing for a special penalty for non-registration of machines by such manufacturers.
 - c. Provisions of Section 123 of Finance Act, 2021, amending Section 16 of the IGST Act, to be notified with effect from 1st October 2023 and a notification to be issued under Section 16(4) of the IGST Act, 2017 to provide for the restriction of the IGST refund route in respect of exports of tobacco, pan masala, mentha oil, and other similar items.
- Amendment to the CGST Rules, 2017 regarding GST registration:
 - a. Amendment to Rule 10A to provide that the bank account details in the name and PAN of the registered person, is furnished within 30 days of grant of registration or before filing of Form GSTR-1/ IFF, whichever is earlier.
 - b. Amendment in Rule 21A(2A) to provide for system-based suspension of GST registration in respect of taxpayers that do not furnish a valid bank account under Rule 10A within the time period prescribed above.
 - c. Insertion of a third proviso in Rule 21A(4) to provide for the automatic revocation of such system-based suspension on compliance with the provisions of Rule 10A.
 - d. Amendment to Rule 59(6) to provide that where a taxpayer has not furnished a valid bank account under Rule 10A, the said taxpayer cannot file their GSTR-1/IFF.
 - e. Amendment to Rule 9 and Rule 25 to do away with the requirement of physical verification of business premises in the presence of the applicant and also provide for physical verification in high risk cases even if the Aadhaar has been authenticated.

- A pilot to be conducted in Puducherry for risk-based biometric-based Aadhaar authentication of registration applicants.
- Insertion of Rule 142B to the CGST Rules, 2017 and insertion of a Form GST DRC-01D to provide for manner of recovery of the tax and interest in respect of the amount intimated under rule 88C (in cases where the output tax liability in the GSTR-1 exceeds the liability reported in the GSTR-3B for the said month by a specified threshold).
- System-based intimation to taxpayers in respect of the excess ITC claims in the GSTR-3B vis a vis the ITC available in the GSTR-2B above a certain threshold. In this regard, Rule 88D and Form DRC-01C is to be inserted in the CGST Rules, 2017, along with an amendment to Rule 59(6) of the CGST Rules, 2017.
- Form GSTR-3A is to be amended to provide for the issuance of notices to taxpayers for failing to furnish their annual return in Form GSTR-9/9A by the due date.
- Rule 64 of the CGST Rules, 2017 and Form GSTR-5A is to be amended to require OIDAR service providers to provide details of supplies made to registered taxpayers in India in their Form GSTR-5A return to help the tracking of due payments of tax on reverse charge basis by such taxpayers on supplies received from OIDAR service providers.
- Explanation 3 is to be inserted after Rule 43 of the CGST Rules, 2017 to prescribe that the value of supply of goods from Duty Free shops at arrival terminals in international airports is to be included in the value of exempt supplies for the purpose of reversal of input tax credit.
- The Council has recommended the insertion of Rule 163 in the CGST Rules, 2017 to provide for the manner and conditions of consent-based sharing of information of taxpayers available on the common GST portal with other systems.
- A sub-rule (3A) to be inserted in Rule 162 of the CGST Rules, 2017 to prescribe for compounding amounts for various offences under Section 132 of CGST Act, 2017.
- The Council has recommended insertion of a clause (ca) in sub-section (1) of Section 10 of the IGST Act, 2017 to clarify the place of supply in respect of supply of goods to unregistered persons.
- The Council has recommended to form a state-level coordination Committee comprising GST officers from both Centre and state GST administrations for knowledge sharing on GST matters as well as coordinated efforts towards administrative and preventive measures.
- The 2nd interim GoM report on IT System Reforms was also discussed by the Council. The report recommended various measures to curb GST fraud.

5. Measures for facilitation of trade:

- The GST Council recommended the Rules governing the appointment and conditions of the President and members of the proposed GST Appellate Tribunals (GSTATs), which may be notified by the Centre with effect from 1st August 2023.
- The Council recommended that the relaxations provided in FY 2021-22 in respect of various tables of the Form GSTR-9 and 9C to be continued for FY 2022-23.
- The exemption from filing the GSTR-9/9A for small taxpayers (with an aggregate annual turnover up to Rs.2 crore) continues for FY 2022-23 as well.

- The Council has recommended that a Circular be issued to clarify that the Input Services Distributor (ISD) mechanism is not mandatory for the distribution of input tax credit (ITC) of common input services procured from third parties to distinct persons as per the present provisions of the GST law.
- The Council has recommended that a Circular be issued to clarify various issues pertaining to the GST liability as well as to reverse ITC in cases involving warranty replacement of parts and repair services during warranty period without any consideration from customers.
- A Circular will be issued to clarify various refund related issues:
 - a. With effect from 1st January 2022, refund of accumulated ITC under Section 54(3) of the CGST Act, 2017 for a tax period is to be restricted to the ITC on inward supplies reflected in the GSTR-2B of the said tax period or any previous tax period.
 - b. The value of export goods is to be included while calculating the “adjusted total turnover” in the formula under Rule 89(4), which will be determined as per the said explanation.
 - c. A clarification regarding admissibility of refund in cases where the export of goods or the realisation of payment for the export of services, as the case may be, is made after the time limit provided under Rule 96A of the CGST Rules, 2017.
- A Circular is to be issued to provide clarity regarding the TCS liability under Section 52 of the CGST Act, 2017 in cases where multiple e-commerce operators (ECOs) are involved in a single transaction for the supply of goods or services or both.
- To ease the compliance burden on taxpayers, clause (f) of Rule 46 of CGST Rules, 2017 is to be amended to provide for the requirement of only the name of the state of the recipient, and not the name and full address of the recipient on tax invoices in cases of supply of taxable services by/through an ECO or OIDAR supplier to an unregistered recipient.
- Issuance of the following circulars:
 - a. Clarifying the matter of generating e-invoices under Rule 48(4) of CGST Rules for supplies made to government departments.
 - b. Clarifying issues regarding the manner of calculation of interest liable to be paid under Section 50(3) of the CGST Act, 2017 in respect of wrongly availed and utilized IGST credit.
 - c. Clarifying that just holding securities of a subsidiary company by a holding company cannot be treated as a supply of services and taxed under GST.
- Issuance of a circular to provide for a procedure for verification of ITC in cases involving difference in ITC claimed in the GSTR-3B vis a vis the ITC available in the GSTR-2A during the period from 1st April 2019 to 31 December 2021.
- A special procedure is to be provided under Section 148 of the CGST Act, 2017 to enable the manual filing of appeals against orders passed by the proper officers in respect of TRAN-1/TRAN-2 claims of taxpayers.
- Rule 108(1) and 109(1) of CGST Rules, 2017 are to be amended to provide for the manual filing of appeal under certain specified circumstances.
- Extension of the amnesty schemes with regard to non-filing of Forms GSTR-4, GSTR-9 and GSTR-10, revocation of cancellation of registration, and the deemed withdrawal of assessment orders issued under Section 62 of the CGST Act, 2017, until 31st August 2023.
- Extension of the due dates for filing of GSTR-1, GSTR-3B and GSTR-7 for April, May and June, 2023 for taxpayers in Manipur until 31st August 2023.

8. Govt. includes 'Goods and Services Tax Network' under PMLA to enable sharing of data with ED:- Notification No. G.S.R. 491(E), Dated 07.07.2023

Earlier, the Ministry of Finance vide Notification No. G.S.R. 381(E), Dated 27.06.2006, specified a list of agencies that were required to share information with the Enforcement Directorate (ED), the Financial Intelligence Unit (FIU) and other investigative agencies under the Prevention of Money-laundering Act, 2002 (PMLA).

Now, the Central Government has expanded the scope of PMLA by including the Goods and Services Tax Network (GSTN) in the list of agencies. GSTN is an information technology system responsible for managing the GST portal. These changes have been made w.r.t section 66 of PMLA, which mandates the disclosure of information by the person as specified by the director or any other specified authority.

Prior to this inclusion, there were already 25 agencies, including the Competition Commission of India, Reserve Bank of India, SEBI, Insurance Regulatory and Development Authority of India (IRDA), Serious Fraud Investigation Office (SFIO), and Director General of Foreign Trade (DGFT). The inclusion of GSTN has been made as the 26th entry in the list of agencies.

At present, the GST Act, under Section 158 gives the power to disclose the information it has with regard to any prosecution under the IPC and even under any other law in force for the time being. However, there was no corresponding power under the PMLA to disclose information to the GSTN unless notified under Section 66(1)(ii) of the PMLA. With the current notification, GSTN has now been included in the list.

The inclusion of GSTN in the list facilitates the effective sharing of sensitive data, aiding the Enforcement Directorate in investigating and recovering evaded revenue through money laundering. This decision is expected to have a significant impact on enhancing the effectiveness of prosecutions and investigations related to GST violations.

The notification will now facilitate the sharing of information or material in possession between the ED and GSTN if ED has reasons to believe that the provisions of the GST have been contravened.

9. Geocoding Functionality is now live for all States and Union Territories:- GSTN Advisory

The GSTN has issued an advisory to inform that the functionality for geocoding the principal place of business address is now live for all States and Union territories. This feature, which converts an address or description of a location into geographic coordinates, has been introduced to ensure the accuracy of address details in GSTN records and streamline the address location and verification process.

This functionality is now available for normal, composition, SEZ units, SEZ developers, ISD, and casual taxpayers who are active, cancelled, and suspended under the Services/Registration tab. Furthermore, all new addresses post-March 2022 are geocoded at the time of registration itself, ensuring the accuracy and standardization of address data from the outset.

10. ITC on inward supply of goods or services used for construction of warehouse is not available even if it is leased:- Authority for Advance Rulings, West Bengal Mindrill Systems And Solutions (P.) Ltd., In re - [2023] 152 taxmann.com 274 (AAR-WEST BENGAL)

The applicant was engaged primarily in the business of manufacturing of pneumatic rock drills, jack hammers, equipment, spare parts and accessories used in mining/construction industry. It decided to construct warehouse with sole intention to provide the same on rent. It filed an application for

advance ruling to determine whether credit would be allowed on input/input service used for construction of warehouse in case such construction expenses would not be capitalized in books.

The Authority for Advance Ruling observed that Section 17(5)(d) of CGST Act, 2017 denies ITC in respect of inward supplies received to construct immovable property for 'own use' by taxable person. In the present case, the warehouse would be constructed by applicant which would involve cement, marble, paver block etc. and it would not be moved after construction without damage. Therefore, the ITC of GST charged on inward supply of goods and services related to construction of warehouse which shall be capitalized in books of accounts would not be available. However, the ITC would be available if such expenses shall not be not capitalized in books.

11. Amnesty Schemes for non-filers of Annual Returns & revocation of GST cancellation extended till 31st August, 2023:- Notification No. 22/2023-Central Tax to Notification No. 26/2023-Central tax, dated July 17th, 2023

The CBIC has earlier issued amnesty scheme to provide waiver of certain amount in late fees for the registered persons who fail to furnish return in FORM GSTR-4, GSTR-9, and GSTR-10. Also, an amnesty scheme was issued for revocation for registration cancelled till 31.12.2022 for taxpayers who failed to file revocation with time prescribed. Another amnesty scheme for deemed withdrawal of best judgment assessment order was also provided if return could not be filed within 30 days of the assessment order but it shall be filed along with due interest and late fee. These amnesty schemes can be availed till 30th June, 2023. Now, all these amnesty schemes have been extended by 2 months till 31st August, 2023 for all the taxpayers.

12. Due date to file GSTR-1, GSTR-3B & GSTR-7 for April - June 2023 for State of Manipur extended till 31st July, 2023:- Notification No. 18/2023-Central Tax to Notification No. 21/2023-Central tax, dated July 17th, 2023

The CBIC has extended the due date of filing of GSTR-1, GSTR-3B & GSTR-7 for the period of April, May and June 2023 for taxpayers whose principal place of business is in the State of Manipur, till 31st July, 2023. In this regard, four notifications have been issued.

13. CBIC issues clarification on charging of interest in cases of wrong availment of IGST credit:- Circular No. 192/04/2023-GST dated July 17th, 2023

The CBIC has issued circular to clarify that in the cases where IGST credit has been wrongly availed, there will not be any interest liability if the credit under the heads of IGST, CGST and SGST taken together, has never fallen below the amount of such wrongly availed ITC.

14. Clarification to deal with difference in ITC for the period 01.04.2019 to 31.12.2021:- Circular No. 193/05/2023-GST dated July 17th, 2023

The CBIC has earlier issued Circular No. 183/15/2022-GST dated 27th December, 2022, vide which clarification was issued for dealing with the difference in Input Tax Credit (ITC) availed in FORM GSTR-3B as compared to that detailed in FORM GSTR-2A for FY 2017-18 and 2018-19, subject to certain terms and conditions. Now, the CBIC has issued another circular to provide detailed manner to deal with difference in ITC availed in FORM GSTR-3B as compared to ITC available in FORM GSTR-2A for the period 01.04.2019 to 31.12.2021.

15. CBIC issued clarification on TCS liability in case of multiple E-commerce Operators in one transaction:- Circular No. 194/06/2023-GST dated July 17th, 2023

In the case of the ONDC Network or similar other arrangements, there can be multiple ECOs in a single transaction i.e. one providing an interface to the buyer and the other providing an interface to the seller. Now, the CBIC has issued circular to clarify which ECO should deduct TCS and make other compliances under section 52 of CGST Act in such models having multiple ECOs in a single transaction since both the Buyer-side ECO and the Seller-side ECO qualify as ECOs as per Section 2(45) of the CGST Act.

16. No need to reverse ITC by manufacturer in respect of free replacement parts or repair services:- Circular No. 195/07/2023-GST dated July 17th, 2023

The CBIC has issued a circular to clarify that GST is not chargeable on free replacement of parts and/ or repair service during warranty period and it is not required to reverse the input tax credit in respect of the said replacement parts or on repair services provided. However, if any additional consideration is charged by the manufacturer from the customer, either for replacement of any part or for any service, then GST will be payable on such supply with respect to such additional consideration.

17. No GST on activity of holding of shares of subsidiary company by the holding company:- Circular No. 196/08/2023-GST dated July 17th, 2023

The CBIC has issued circular to clarify that the activity of holding of shares of subsidiary company by the holding company per se cannot be treated as a supply of services by a holding company to the said subsidiary company and cannot be taxed under GST.

18. No Advance Ruling to be issued when application is filed after work/activity/supply is completed:- Authority for Advance Rulings, Maharashtra Aryan Contractor (P.) Ltd., In re - [2023] 152 taxmann.com 370 (AAR - MAHARASHTRA)

The applicant was engaged in providing works contract services. It filed an application for advance ruling to determine taxability of liquidated damages which can be levied on applicant in case of delay beyond contractual completion date. The Authority of Advance Ruling noted that the due date for completion of the impugned contract was 31.12.2019 and in case of delay, liquidated damages to be levied on the applicant. However, the applicant had not brought anything on record to show that it had not completed the impugned works order on or before 31.12.2019.

The advance ruling can be only in relation to supply being undertaken or proposed to be undertaken but in the present case, the application was filed approximately one year after the impugned work/activity/supply was scheduled to be completed. Therefore, it was held that the question raised by applicant cannot be answered as supply was supposed to have been completed on contractual completion date.

19. E-invoice exemption declaration functionality is now available on portal:- Advisory GSTN Update dated July 24th, 2023

The GSTN has issued an advisory to inform that the e-Invoice exemption declaration functionality is now live on the e-Invoice portal. This functionality is specifically designed for taxpayers who are by default enabled for e-invoicing but are exempted from implementing it under the CGST (Central Goods and Services Tax) Rules. The e-Invoice exemption declaration functionality is voluntary and

purely for business facilitation purposes. It is important to note that any declaration made using this functionality will not change the e-Invoice enablement status of the taxpayer.

20. GTAs shall not be required to file declaration in Annexure V to opt forward charge on yearly basis:- Notification No. 06/2023- Central Tax (Rate) dated July 26th, 2023

The CBIC has issued notification to provide that once option to pay tax under forward charge is exercised by GTAs, it will be considered as opted for the next year and subsequent years as well. If a GTA wishes to switch to RCM, the same can be done by filing a declaration in Annexure VI. It is also provided that the last date of exercising the option by GTAs to pay GST under forward charge mechanism shall be 31st March of preceding Financial Year instead of 15th March. Further, 1st January of preceding Financial Year shall be the start date for exercise of option.

21. No GST shall be leviable on Satellite Launch Services:- Notification No. 07/2023- Central Tax (Rate) dated July 26th, 2023

The CBIC has issued notification to provide that satellite launch services provided by any entity or any person would be exempted under GST. Earlier, the exemption was available on the services of satellite launch provided by the Indian Space Research Organisation, Antrix Corporation Limited, or New Space India Limited. Now, this exemption would also be available to private sector organizations providing satellite launch services. This amendment aims to promote and support start-ups in the private sector.

22. HC directed dept. to refund amount excess GST paid by mistake to assessee:- Tagros Chemicals India (P.) Ltd. v. Union of India - [2023] 152 taxmann.com 570 (Gujarat)

The assessee received purchase order from registered exporter to supply goods at concessional rate of IGST at rate of 0.1% in terms of Notification No. 41/2017-Integrated Tax (Rate), dated 23-10-2017. However, due to an error, the assessee supplied goods to buyer on payment of full duty of IGST at rate of 18% instead of concessional rate of 0.1 per cent. Therefore, it filed refund claim in March, 2020 when mistake was found but the GST Authority rejected refund claim on basis of non-submission of documents by assessee which were required.

The assessee filed writ petition and contended that it had submitted invoice and a copy of letter written by recipient addressed to jurisdictional tax officer by intimating that they had raised purchase order and purchased goods. The High Court noted that the assessee had raised relevant tax invoice and the buyer-exporter had exported goods under shipping bill. Also, the condition no.(ii) of Notification No. 41/2017-Integrated tax (Rate) that registered recipient should export goods within a period of 90 days from date of issue of a tax invoice by registered supplier had been fulfilled. However, the authority had rejected refund claim merely on basis of a technical ground but substantial benefit cannot be denied on the ground of technicalities or procedural lapses.

The Court further noted that if assessee paid duties by mistake on the goods which were exempted from payment would not mean that the goods would become goods liable for the duty. Therefore, it was held that the authority should refund amount along with interest.

REGULATORY

1. ICAI mandates Forensic Accounting and Investigation Standards from July 1:- ICAI Press release

The Institute of Chartered Accountants of India (ICAI) has approved the Forensic Accounting & Investigation Standards and the Implementation Guide on Forensic Accounting and Investigation Standards (FAIS) in its 422nd Meeting held on 30th June 2023. These standards will be mandatory for all engagements beginning on or after 1st July 2023. The FAIS provides a comprehensive set of guidelines and best practices to ensure that forensic accounting and investigation services are conducted with the utmost ethics, professionalism, and integrity.

Further, ICAI is the first accounting body in the world to release such detailed standards, which outline both basic requirements and recommendatory guidance for members undertaking forensic assignments. Implementing the FAIS brings several benefits to businesses and organizations. It enhances the quality of services provided by professionals, leading to more accurate and reliable findings that support informed decision-making. By following these standards, organizations can also gain increased credibility and trust by employing forensic accountants and investigators who adhere to these guidelines. Moreover, implementing forensic accounting and investigation standards helps organizations comply with legal and regulatory requirements. This significant step aims to elevate the quality of forensic accounting and investigation services offered in India.

2. IFSCA introduces definition of ‘distributor’ in IFSCA (Capital Market Intermediaries) Regulations, 2021:- Notification No. IFSCA/2023-24/GN/REG040, Dated 03.07.2023

The IFSCA has notified amendment in IFSCA (Capital Market Intermediaries) Regulations, 2021. A new clause ‘ga’ & ‘oa’ introducing the definitions of ‘capital market intermediary’ & ‘distributor’ has been inserted in Regulation 2. The distributor means a person who for remuneration engages with clients on behalf of an issuer or a service provider to facilitate investment or subscription into “capital market products” or “capital market services”.

Further, an addition of word ‘distributor’ has been notified in Regulation 3(1) i.e., Obligation to seek registration. Now, distributors can commence operations in an IFSC after obtaining a certificate of registration from the Authority.

3. “Distributors” to obtain registration certificate prior to commencing operations in IFSC:- IFSCA Notification no. CG-GJ-E-04072023-247020 dated July 3, 2023

IFSCA notifies the IFSCA (Capital Market Intermediaries) (Amendment) Regulations, 2023, inter alia inserts a new clause (ga) in regulation 2(1) which defines “capital market intermediary” as an intermediary referred to in regulation 3 and is registered with the Authority under these Regulations. Further inserts a new clause (oa) in regulation 2(1) which stipulates that a “distributor” means a person who for remuneration engages with clients on behalf of an issuer or a service provider to facilitate investment or subscription to “capital market products” or “capital market services”. Moreover, insert a new category of intermediaries namely “Distributors” in regulation 3(1) which shall also obtain a certificate of registration from the Authority prior to commencement of operations in IFSC.

4. IASB seeks views on the post-implementation review of IFRS 15:- Press release

The International Accounting Standards Board (IASB) calls for stakeholder feedback to review the IFRS 15 Accounting Standard for revenue from contracts with customers. The Request for

Information Post-implementation Review of IFRS 15 Revenue from Contracts with Customers is open for comment until 27 October 2023.

IFRS 15 introduced a comprehensive and robust framework for the recognition, measurement and disclosure of revenue that applies to a wide range of transactions and industries. The Standard sets out a single coherent approach to recognising and measuring revenue that provides useful information to investors about the nature, amount, timing and uncertainty of revenue and cash flows arising from a company's contracts with customers. After reviewing stakeholder feedback and evidence from outreach and research activities, the IASB will determine whether and when to undertake standard-setting.

5. SEBI notifies norms for dispute resolution through mediation, arbitration:- SEBI Notification dated 03 July 2023

The Securities and Exchange Board of India (SEBI) vide notification dated 03 July 2023 notifies the SEBI (Alternative Dispute Resolution Mechanism) (Amendment) Regulations, 2023, to amend the various regulations inter alia including Merchant Bankers Regulations, Registrars to an Issue and Share Transfer Agents Regulations, Debenture Trustees Regulations, Mutual Funds Regulations, Custodian Regulations, Credit Rating Agencies Regulations, Collective Investment Schemes Regulations, Alternative Investment Funds Regulations, Investment Advisers Regulations.

Under the respective Regulations, Regulator introduces a dispute resolution provision that provides that "All claims, differences or disputes between a merchant banker / registrar to an issue and share transfer agent / as the case may be, and its client arising out of or in relation to the activities of the merchant banker / registrar to an issue and share transfer agent / as the case may be, in the securities market shall be submitted to a dispute resolution mechanism that includes mediation and / or conciliation and /or arbitration, in accordance with the procedure specified by the Board."

6. Member, trustee of issuer's governing body can be designated as nominee director:- SEBI vide Circular No. SEBI/HO/DDHS/POD1/P/CIR/2023/11, dated 04 July 2023

SEBI has issued a circular concerning the appointment of a nominee director by debenture trustees on the boards of issuers. The circular emphasizes the legal obligations for companies under the Companies Act and takes into account the challenges faced by issuers governed by different statutes. It provides comprehensive guidelines for ensuring compliance and outlines the role of debenture trustees in the appointment process. The SEBI circular highlights the mandatory requirement for companies under the Companies Act, 2013 to appoint a nominee director nominated by the debenture trustee(s). However, it also recognizes the difficulties faced by issuers governed by different statutes, such as those requiring prior approval from the President of India or lacking provisions for nominee directors in their governing documents. In such cases, the circular suggests an undertaking to appoint a non-executive/independent director/trustee/member of the governing body as a nominee director in consultation with the debenture trustee(s).

Further, the circular assigns debenture trustees the responsibility of ensuring compliance and monitoring issuer adherence to its provisions. In addition, the circular addresses the appointment of a nominee director on issuer boards by debenture trustees, taking into consideration the variations in statutes governing issuers. It provides a viable solution for issuers who are unable to comply with the specific provisions of the Companies Act. By submitting an undertaking to the debenture trustee, issuers falling into specific categories can designate an alternate director to ensure regulatory compliance. The primary objective of this circular is to safeguard investor interests, promote the securities market, and streamline the appointment process while accounting for the unique circumstances of different issuers.

7. SEBI amends CRA Regulations to introduce norms governing ESG Rating Providers:- SEBI Notification No SEBI/LAD- NRO/GN 2023/136 dated 3rd July, 2023

SEBI notifies amendments to the Credit Rating Agencies (CRAs) Regulations, inserts a new Chapter IV A laying down detailed provisions that shall be applicable to Environmental, Social and Governance (ESG) Rating Providers (ERPs), W.r.t. registration, specifies that, on and from the date of this Regulation coming into force, no person shall act as an ERP unless it has obtained a certificate from the Board, provided that a person acting as an ERP on the date of this Regulation coming into force, may continue to do so for 6 months from the date of this regulation coming into force or such other period as may be specified by the Board, or if it has made an application for grant of a certificate for registration within the specified period, till the disposal of such application; Outlining the eligibility criteria, the Amendment states that, for the purpose of the grant of certificate, the applicant shall, inter alia –

- (a) be incorporated as a company under Companies Act, 2013,
- (b) have specified ESG rating activity, as the main object in its MOA,
- (c) have submitted, to the Board, its business plan pertaining to providing ESG ratings, along with the specified information including a target breakeven date,
- (d) have submitted a declaration that it does not and shall not undertake any activity or offer any product or service, except what is allowed under the said Regulation.

Further, mandating the ERP to abide by the Code of Conduct as set out in the Seventh Schedule of the CRA Regulations, the Amendment also requires the ERP to, inter alia maintain a website and disclose the ESG ratings, type of ESG rating (whether risk-based or impact-based or otherwise), scores on environmental, social and governance parameters and other parameters forming a part of the ESG rating, on such a website for public access and provide a hyperlink to the methodology of assigning an ESG rating; Lastly, regarding the rating process and monitoring of ESG rating, the Amendment stipulates that an ERP shall – (i) have appropriate internal resources to assign an ESG rating, (ii) inform the general public of new ESG rating instruments or symbols introduced by it, (iii) ensure that the ESG rating suitably incorporates the environmental, social and governance aspects that are contextual to the Indian market, in such manner as may be specified by the Board from time to time: SEBI.

8. SEBI issues Master Circulars for InvIT, REIT:- SEBI Master Circulars No SEBI/HO/DDHS-PoD-2/P/CIR/2023/115 dated 6th July, 2023

SEBI issues Master Circular for Infrastructure Investment Trusts (InvIT) and Real Estate Investment Trusts (REIT), specifies that all applicants desirous of seeking registration as InvITs / REITs are now required to submit their applications online only, through SEBI Intermediary Portal.

Further, stating that the online filing system has been made operational, Market Regulator mandates that all SEBI registered InvITs / REITs are required to file / apply for any request, as may be required under the provision of InvIT / REIT Regulations and Circulars issued thereunder. With respect to allocation in public issue, SEBI stipulates that in an issue made through the book building process or otherwise, the allocation in the public issue shall be not more than 75% to Institutional Investors and not less than 25% to other investors. It highlights further that Institutional Investors is as defined under Reg. 2(1)(y) of SEBI (Issue of Capital and Disclosure Requirements) Regulations. SEBI stipulates that, before the opening of subscription, the Investment Manager / Manager on behalf of the InvIT / REIT shall deposit and keep deposited with the stock exchanges, an amount calculated at the rate of 0.5% of the amount of units offered for subscription to the public or Rs. 5 cr., whichever is lower. Lastly, specifying that InvIT / REIT shall submit its half yearly and annual financial information to the Stock Exchanges.

Regulator lays down that the financial information presented by the InvIT / REIT can be in the form of condensed financial statements, wherein, such financial information shall comply with the minimum requirements for condensed financial statements as described in Indian Accounting Standards 34 on “Interim Financial Reporting”, to the extent applicable SEBI.

9. Tweaks guidelines for preferential issue of unit, institutional placement of units by InvIT, REIT:- SEBI Circular No SEBI/HO/DDHS-PoD-2/P/CIR/2023/113 dated 5th July, 2023

SEBI modifies the guidelines for preferential issue of units and institutional placement of units by a listed Infrastructure Investment Trust (InvIT) / Real Estate Investment Trusts (REIT), stipulating that w.r.t. pricing of units, the institutional placement shall be made at a price not less than the average of the weekly high and low of the closing prices of the units of the same class quoted on the stock exchange during the 2 weeks preceding the relevant date.

Market Regulator also introduces a proviso which provides that the InvIT / REIT may offer a discount of not more than 5% on the price so calculated, subject to the approval of unitholders through a resolution; Lastly, Regulator adds an explanation, specifying that “relevant date” for the purpose of causes related to institutional placement shall be the date of the meeting in which the board of directors of the manager decides to open the issue SEBI.

10. SEBI mulls over consolidated cyber-security and cyber-resilience framework for Regulated Entities:- SEBI Consultation Paper dated 04th July 2023

The SEBI proposed a consolidated framework for cybersecurity, laying down a common structure for various regulated entities like stock exchanges, brokers, asset management companies and portfolio managers, among others.

In a consultation paper, titled Consolidated Cybersecurity and Cyber Resilience Framework (CSCRF), the markets regulator said that the new framework would supersede nearly 15 circulars issued separately for various segments since 2015. SEBI noted that the new consolidated framework has been based on five concurrent and continuous functions of cybersecurity, namely: identify, protect, detect, respond, and recover.

Under the proposed framework, Market Infrastructure Institutions (MIIs) like stock exchanges and depository participants will be required to conduct a cyber-audit twice a year while all other regulated entities will have to do it once each year. The watchdog also laid down timelines for other levels of assessment and review of cyber resilience. The draft guidelines specify baseline cybersecurity measures which will be applicable on all entities, supplementary measures applicable only on specified entities, and a set of additional guidelines for MIIs. The regulator noted that it had also developed a cyber capability index (CCI) to rate the preparedness and resilience of the cybersecurity framework of the MIIs.

The proposed norms also set a standard for compliance from these entities with regards to identification of vulnerabilities, cyber threats, cloud assets, etc. These standards will have to be followed by third party service providers and outsourcing staff also. “With these technological developments in the securities market, maintaining robust cybersecurity and cyber resilience to protect the organizations operating in the securities market from cyber-risks/incidents has become indispensable,” SEBI noted in the paper.

The regulator has invited comments on the proposal by July 25, 2023 through any of the following modes:

1. By email to: cscrf@sebi.gov.in

2. By post to: Ms. Shweta Banerjee (DGM-ITD), SEBI Bhavan II BKC, Plot no. C-7, 'G' Block, Bandra Kurla Complex, Bandra (E), Mumbai (Maharashtra)- 400051

https://www.SEBI.gov.in/reports-and-statistics/reports/jul-2023/consultation-paper-on-consolidated-cybersecurity-and-cyber-resilience-framework-csrf-for-SEBI-regulated-entities_73442.html

11. SEBI lays down core responsibilities of Trustees, board of directors of AMCs of Mutual Funds:- SEBI vide Circular No.-SEBI/HO/IMD/IMD-PoD-1/P/CIR/2023/117, dated 07 July 2023

The core responsibilities of a mutual fund trustee would include:

- Ensuring the fairness of the fees and expenses charged by the AMCs.
- Reviewing the performance of its scheme against peers.
- Putting in sufficient mechanisms to prevent mis-selling.
- Ensuring that there is no undue influence in the operations by sponsors, associates, or other stakeholders of the AMC.
- Addressing conflicts of interest between shareholders, stakeholders, associates of the AMC, and unitholders.
- Ensuring an adequate system to prevent market misconduct by employees and connected entities of the AMC.
- Trustees are also bound to prevent fraudulent activities, including front-running by employees
- They are bound to independently evaluate the extent of compliance by the AMC and not just rely on the statements made by the AMC.
- They should also make sure that the AMC has set up a suitable mechanism to produce system-based information for assessment and efficient due diligence.

Further responsibilities other than core ones, trustees are allowed to seek the assistance of professional firms, such as audit firms, legal firms, and merchant banks. This may include overseeing the management of AMCs, acting as a custodian of assets on behalf of unitholders, or periodically reviewing the activities of the AMCs. Responsibilities are also laid down for the unitholder protection committee as mandated by the Mutual Fund Regulations. The committee will be responsible for the protection of the unitholders.

It will ensure the adoption of sound and healthy market practises in terms of investments, sales, marketing, and others. It will also be responsible for ensuring compliance with various laws and regulations around mutual funds.

12. SEBI proposes mandating FPIs to route 10% of secondary market trades through RFQ platform:- SEBI Consultation paper dated July 5, 2023

The Securities and Exchange Board of India has proposed mandating Foreign Portfolio Investors (FPIs) to undertake at least 10 per cent of their total secondary market trades in corporate bonds by value on the RFQ (Request For Quote) platform of the stock exchanges. The proposal is aimed at increasing the liquidity on the RFQ platform and enhancing the transparency and disclosures pertaining to investments in corporate bonds, which in turn will encourage investment by FPIs in the corporate bond segment, Sebi said. RFQ, which was launched on BSE and NSE in February 2020, is an electronic platform that enables multilateral negotiations to take place on a centralised online trading platform with straight-through processing of clearing and settlement to complete the trade.

A wide variety of debt securities are available for trading on the RFQ platform. In its consultation paper, Sebi has proposed that FPIs may be mandated to undertake at least 10 percent of their total secondary market trades in corporate bonds by value by placing quotes on the RFQ platform of stock exchanges, on a quarterly basis, to start with. The regulator has provided a similar mandate for other intermediaries such as alternative investment funds (AIFs), portfolio management services (PMS) and stock brokers. Market Regulator has sought comments on the proposals till July 26. RFQ platform reduces information asymmetry and enhances transparency in the corporate debt segment by providing disclosures such as term sheets, price information and market quotes. This is expected to result in better price discovery, lower costs and ease of doing business. "The various advantages brought in by the RFQ platform are expected to propel Indian bond markets into a higher growth phase, thereby promoting investments in the segment by all participants, including FPIs," Sebi said.

However, the same can be achieved if the participation on the platform is deepened and widened due to adoption by a maximum number of participants resulting in a greater volume of trades, it added. While the overall corporate bond investment by FPIs is low, the percentage of such trades carried out on the RFQ platform is even lower. During FY2022-23, FPIs have carried out merely 4.5 per cent of their total trades in corporate bonds through the RFQ platform. Further, during the year, FPIs accounted for only 0.78 per cent of total trades in corporate bonds on the RFQ platform executed by various entities.

13. SEBI issues Master Circular for credit rating agencies:- SEBI Master Circular no. SEBI/HO/DDHS-POD2/P/CIR/2023/ 111 dated July 3, 2023

SEBI has released a master circular regarding Credit Rating Agencies (CRAs). The circular consolidates existing guidelines and regulations to provide a comprehensive reference for registered CRAs, debenture trustees, and issuers of non-convertible securities, securitized debt instruments, security receipts, municipal debt securities, or commercial paper. The Securities and Exchange Board of India (SEBI) on July 03, 2023, issued the Master Circular for Credit Rating Agencies

The following has been stated namely:-

- It states that in order to enable the industry and other users to have access to all the applicable circulars and directions in one place this Master Circular for CRAs has been prepared.
- This Master Circular is a collection of existing circulars as of July 03, 2023, with modifications. This master circular details the restrictions contained in various circulars chapter by chapter
- Annexure 1 contains a list of previous circulars for CRAs that have been superseded by this master Circular.
- It further states that Notwithstanding such rescission:-
 - a. anything done or any action taken or purported to have been done or taken under the rescinded circulars prior to such rescission shall be deemed to have been done or taken under the corresponding provisions of this Master Circular.
 - b. any application made to the Board under the rescinded circulars prior to such rescission and pending before it shall be deemed to have been made under the corresponding provisions of these regulations.

Further, stipulating that while publishing the ratings of structured finance products and their movements, a CRA apart from following all the applicable requirements in case of non-structured ratings shall also disclose the track record of the originator and details of nature of underlying assets while assigning the credit rating, SEBI highlights that CRAs shall also formulate a policy on "Minimum/ Indicative Information Requirement" in terms of various sectors or types of ratings, etc.

and disclose it on their website. Further, outlining that a CRA shall make all the disclosures stipulated below on their websites, SEBI states that in case of unsolicited credit ratings, i.e. the credit ratings not arising out of the agreement between a CRA and the issuer, credit rating symbol shall be accompanied by the word “UNSOLICITED” in the same font size.

14. SEBI introduces provisions for listing of non-convertible securities issued on private placement basis:- SEBI Notification no. SEBI/LAD-NRO/GN/2023/135 dated July 3, 2023

SEBI has issued a notification on July 3, 2023, regarding the Second Amendment to the Securities and Exchange Board of India (Issue and Listing of Non-Convertible Securities) Regulations 2021. This amendment introduces changes to the existing regulations to further enhance the framework for non-convertible securities. The Second Amendment to the SEBI regulations for Issue and Listing of Non-Convertible Securities brings significant changes to the regulatory framework. The amendment introduces new clauses, modifies existing definitions, and establishes additional requirements for issuers. Key changes include the insertion of a clause defining “key managerial personnel” and the inclusion of the term “senior management” in the regulations. The amendment also introduces Chapter VA, which focuses on the issuance and listing of non-convertible securities on a private placement basis. It mandates the filing of a general information document with the stock exchange(s) and introduces the concept of a key information document for subsequent offers. The amendment also introduces requirements for “Large Corporates” under Chapter VB. Additionally, Regulator requires key information document to contain the information regarding –

- (i) details of the offer of non-convertible securities in respect of which the key information document is being issued,
- (ii) material changes, if any, in the information provided in the general information document,
- (iii) any material developments not disclosed in the general information document,

Since the issue of the general information document relevant to the offer of non-convertible securities in respect of which the key information document is being issued. SEBI also inserts and defines “senior management” as the officers and personnel of the issuer who are members of its core management team, excluding the Board of Directors, and shall also comprise all the members of the management one level below the CEO or MD or Whole Time Director or Manager (including CEO and Manager, in case they are not part of the Board of Directors) and shall specifically include the functional heads, by whatever name called and the Company Secretary and the CFO. Market Regulator introduces another Chapter viz. requirements for large corporations, stipulating that a listed entity, fulfilling the criteria as may be specified by the Board, shall be considered as a “Large Corporate”, while specifying that such Large Corporates shall comply with the conditions or requirements, as may be specified by the Board from time to time. Lastly, under Schedule I of the Regulations, viz. disclosures for issue of securities, SEBI an interpretation clause which clarifies that in case of public issuance of non-convertible securities, all references to “non-convertible securities” in this Schedule shall refer to debt securities and non-convertible redeemable preference shares, whereas, in the case of public issuance of non-convertible securities, all references to “issue document” shall mean the offer document.

15. SEBI publishes Master Circular for Debenture Trustees:- SEBI Master Circular SEBI/HO/DDHS-PoD1/P/CIR/2023/109 dated 06th July 2023

SEBI has issued a Master Circular for Debenture Trustees on July 06, 2023 to replace all previous circulars issued to debenture trustees. The provisions of the Master Circular shall come into force with effect from April 01, 2023, unless specifically mentioned otherwise in the circular.

As per the master circular, Debenture Trustee, by itself or through professionals appointed and compensated/ remunerated by the Debenture Trustee viz., practicing chartered accountant, practicing company secretary, registered valuer, or legal counsel shall independently carry out due diligence. The terms and conditions with respect to exercising due diligence shall also be included in the debenture trustee agreement. The due diligence to be exercised by Debenture Trustee with respect to creation of security shall inter-alia include the following:

Debenture Trustee shall verify that the assets provided by Issuer for creation of security are free from any encumbrances or necessary permissions or consents has been obtained from existing charge holders by carrying out the following checks:

Verify from Registrar of Companies, Sub-registrar, CERSAI, IU or other sources where charge is registered/ disclosed as per terms.

In case of conditional consent/ permission received as per para 2.1(c)(ii) above: (A) Verify whether such conditional consent/ permission given to Issuer by existing charge holders is valid as per terms of transaction documents; and (B) Intimate existing charge holders through necessary and appropriate means (including via e-mail) about the proposal to create further charge on assets by Issuer seeking their comments/ objections, if any, to be communicated to the Debenture Trustee within next five working days.

16. SEBI Releases Master Circular for listing obligations, disclosure requirements for non-convertible securities:- SEBI Master Circular No. SEBI/HO/DDHS/PoD1/P/CIR/2023/1 dated 29th July 2022

The Securities and Exchange Board of India (SEBI) has issued a Master Circular outlining listing obligations and disclosure requirements for Non-Convertible Securities, Securitized Debt Instruments, and/or Commercial Paper. The circular introduces several key provisions. Firstly, if a listed entity decides to delay the release of financial results before the due date, it must disclose detailed reasons for the delay to the Stock Exchange within one working day of the decision. Additionally, when submitting annual audited financial results, the entity must disseminate the cumulative impact of all audit qualifications separately, and if the impact is unquantified by the auditor, management should provide an estimate.

SEBI also mandates that listed entities seeking approval for related party transactions (RPT) must provide comprehensive information to the audit committee such as (i) type, material terms and particulars of the proposed transaction, (ii) name of the related party and its relationship with the listed entity or its subsidiary, (iii) tenure of proposed transaction, (iv) value of proposed transaction, etc.;

SEBI also mandates that the audit committee review and approve proposed related party transactions, requiring disclosure of transaction details, related party information, tenure, and value. Furthermore, entities with listed Securitized Debt Instruments must submit statements and reports to the Stock Exchange within seven days of month-end or actual payment date. Finally, listed entities involved in a scheme of arrangement with unlisted entities must settle all dues and penalties with SEBI, Stock Exchanges, and Depositories before filing the draft scheme.

17. SEBI (Ombudsman) Regulations, 2003 stand repealed w.e.f 03.07.2023:- Notification No. SEBI/LAD-NRO/GN/2023/138, Dated: 03.07.2023

The SEBI (Ombudsman) Regulations, 2003 were introduced by the SEBI to provide for the establishment of the Ombudsman's office for addressing investor grievances in securities and related matters.

Now, the SEBI has notified the SEBI (Ombudsman) (Repeal) Regulations, 2023. Upon commencement of these regulations, the SEBI (Ombudsman) Regulations, 2003 shall stand

repealed. The repeal shall not impact previous actions or omissions taken under regulations. Further, penalties, punishments, investigations, legal proceedings, related to contraventions or offences committed under previous regulations will remain applicable.

18. SEBI amends Credit Rating Agency norms to include provisions relating to ‘ESG Rating Providers’:- Notification No. SEBI/LAD-NRO/GN/2023/136, dated 03.07.2023

The SEBI (Credit Rating Agencies) Regulations, 1999 were introduced by the SEBI to provide the procedure for credit rating agencies. The SEBI (Credit Rating Agencies) Regulations, 1999 provide for a disclosure-based regulatory regime, where the agencies are required to disclose their rating criteria, methodology, default recognition policy etc. Now, SEBI has notified the SEBI (Credit Rating Agencies) (Amendment) Regulations, 2023. Whereby a new chapter called “ESG Rating Providers” has been introduced. Accordingly, no person shall act as an ESG rating provider unless he has obtained a certificate from the Board.

In the current scenario, ESG (Environmental, Social, and Governance) plays a vital role for investors while their decision making as focus on sustainable practices and responsible governance can contribute to improved operational efficiency, cost reduction, innovation, and enhanced reputation, leading to potential competitive advantages and financial returns.

The amended regulation has provided the following provisions:

1. Applicability of the amended norms

The new chapter named “ESG Rating Providers” shall be applicable on the following class of ESG Rating providers:

- (a) where Location of ESG rating provider is in India having asset class in Indian securities market and location of ESG rating user is in India
- (b) where Location of ESG rating provider is in India having asset class in Global securities market and location of ESG rating user is in India
- (c) where Location of ESG rating provider is outside India having asset class in Indian securities market and location of ESG rating user is in India

2. Registration of ESG rating providers

Newly inserted provisions require mandatory registration ESG Rating providers.

“ESG rating provider” means a person which is engaged in, or proposes to engage in, the business of issuing ESG ratings.

As per the amended norms ESG service providers shall get themselves registered with the SEBI as ESG service provider.

However, an individual who is currently functioning as an ESG Rating Provider can continue to do so for 6 months from the date this regulation is implemented. Further, if the individual has already applied for a registration certificate within the specified period, they can continue their activities until a decision is made on their application.

3. Eligibility criteria to be registered as ESG rating provider

SEBI has prescribed various eligibility criteria for entities to obtain certificate of registration to act as an ESG rating provider like the applicant shall be incorporated as a company under the Companies Act, 2013, the applicant shall have specified ESG rating activity, as the main object in its Memorandum of Association; there are other net worth based criteria also.

4. Disclosure to be made by f ESG rating providers

The ESG rating provider is required to disclose the following while disclosing ESG ratings:

- (a) Clear definitions of the ESG rating, including the corresponding symbols.
- (b) An explicit statement clarifying that the ESG ratings should not be interpreted as recommendations to buy, hold, or sell any securities.

5. Appointment of Compliance Officer

The ESG rating provider shall appoint a compliance officer who shall be responsible for monitoring the compliance of all the applicable laws.

Further the compliance officer is required to promptly and autonomously notify the Board of Directors about any instances of non-compliance that they observe.

6. Maintenance of Books of Accounts records

Every ESG rating providers shall keep and store certain financial records, documents, and books for at least Five (5) years.

7. Steps taken by ESG rating providers on auditor's report

Every ESG rating provider shall, within 2 months from the date of the report of the auditor, take steps to rectify the deficiencies, if any, made out in such report, in so far as they relate to the activity of ESG rating

8. Confidentiality

ESG rating providers must keep the information they receive confidential and not disclose it to anyone else, except when required by law or with written consent from the information provider.

The confidential information received can only be used for the purpose of conducting ESG ratings, unless the provider of the information provides written consent for other purposes.

ESG rating providers are required to have written policies and procedures in place to safeguard any non-public information they receive in relation to their ESG rating products.

The provisions of SEBI (Credit Rating Agencies) (Amendment) Regulations, 2023 are effective from 03.07.2023.

SEBI clarifies on appointment of debenture trustee nominee for non-company issuers

Circular No. SEBI/HO/DDHS/POD1/P/CIR/2023/112, Dated 04.07.2023

The SEBI (Issue and Listing of Non-Convertible Securities) Regulations, 2021 obligates an issuer which is a company to ensure that its Articles of Association requires its Board to appoint as director, the nominee of debenture trustee (DTs).

Recently, the SEBI has received various representations from Debenture Trustees, a gist of the representations, are as follows:

1. Issuers that are incorporated under different statutes have expressed inability to execute such amendments as the composition of their boards is governed by certain statutes which do not provide for appointment of nominee directors by Trustees.
2. Appointment of any director on the boards of certain issuers which are governed by certain statutes requires prior approval of the President of India.
3. Certain issuers are unable to appoint Nominee Directors on their boards as their principal document / charter does not provide for the same.

Now, the SEBI has clarified on the appointment of nominee for issuers that are not companies.

Accordingly, owing to the issues above, the issuers that fall in any of the categories mentioned above shall submit an undertaking to their Debenture Trustees that a non-executive / independent director / trustee / member of its governing body shall be designated as nominee director for the purposes of NCS Regulations, in consultation with the DTs, or, in case of multiple DTs, in consultation with all the DTs.

19. MCA recommends merging multiple user-IDs in MCA21 V2 Portal with ones in V3 Portal:- MCA General Circular No.07/2023 dated 12th July, 2023

It has come to the notice of the Ministry that many members of the Institute of Chartered Accountants of India (ICAI), Institute of Cost Accountants of India and Institute of Company Secretaries of India have created multiple user IDs while transacting on the existing MCA21 V2 Portal, states that all such members may approach their respective institutes with their credentials and the institute shall make recommendations for merging multiple existing user IDs with the ID created in V3 Portal or for deactivation of the old user IDs in V2. Further many members are not able to create user Id in their new MCA21 V3 Portal due to an existing ID, about which they do not have any knowledge, or they do not remember that such an Id has been or was created in existing V2 portal.

20. IFRS enhances Climate-related Reporting Guidance to Align with ISSB's Sustainability Disclosure Standards:- IFRS published on July,2023

The International Financial Reporting Standards (IFRS) Foundation has published an updated version of its educational material to help companies determine how to consider climate-related matters when preparing their financial statements using IFRS Accounting Standards. These standards are developed by the International Accounting Standards Board (IASB) and do not refer explicitly to climate-related matters. However, the IASB's Standards require companies to consider climate-related matters in their financial statements if the effects of those matters are material.

The educational material sets out examples of situations in which companies applying the IASB's Standards might need to consider the effects of climate-related matters in their financial statements. The educational material was first published in 2020 and has been updated in light of developments including the International Sustainability Standards Board's (ISSB) inaugural IFRS Sustainability Disclosure Standards, issued on 26 June 2023. Consideration of the ISSB's Standards, together with the educational materials, may help companies better identify matters, including climate change, that affect the financial statements and help companies apply IFRS Accounting Standards. The IASB is also working on a project on Climate-related Risks in the Financial Statements to explore whether and how financial statements can better communicate information about climate-related risks.

21. MCA to withdraw 7,338 pending prosecutions in second round of a special drive to cut litigations:- News Report

The Ministry of Corporate Affairs (MCA) approves the withdrawal of another 7,338 prosecutions pending before various courts under Special Arrears Clearance Drive-II to cut litigation, promote ease of doing business, and decriminalise compoundable offences under the Companies Act, 2013. Withdrawal will lead to a 21.86% reduction in pending prosecutions being pursued by the Central Government. The Government's "Action Plan for Special Arrears Clearance Drives" for reducing the number of pending litigations had previously resulted in the withdrawal of 14,247 prosecutions during the Special Drive-I in 2017.

The MCA had constituted a committee to undertake a thorough review of all the pending litigation and the long-pending prosecutions for compoundable offences have been identified for withdrawal. The prosecutions related to serious non-compoundable offences such as cheating, fraud, acceptance

of deposits, pending charges, etc. have not been considered for withdrawal. This decisive step will also unclog the courts and foster the growth of the corporate sector in India, while maintaining a healthy corporate governance framework. Besides, it is also part of the principle that the Central Government should not be a compulsive litigant that these drives are being undertaken.

<https://cfo.economictimes.indiatimes.com/news/governance-risk-compliance/mca-to-withdraw-7338-pending-prosecutions-in-second-round-of-a-special-drive-to-cut-litigations/101772096>

22. IFSCA allows IFSC Banking Companies to set up banking units in IFSC in addition to IFSC banking Units:- Notification No. IFSCA/2023-24/GN/REG041., Dated: 06.07.2023

The IFSCA has notified an amendment to the IFSCA (Banking) Regulations, 2020. The amendment allows for the setting up of a Banking unit in an International Financial Services Centre (IFSC) as either an IFSC Banking Unit (IBU) or an IFSC Banking Company (IBC). Earlier, the option to set up an IFSC in a banking company was not available. The amendment shall be effective from 06.07.2023.

The key highlights of the amendment are as follows -

1. IFSCA introduces/replaces/substitutes various definitions:

The IFSCA has inserted, replaced, and substituted various definitions under Regulation 2 of the IFSCA (Banking) Regulations, 2020. The definition of 'Banking Unit' under Regulation 2(1)(c) has been substituted.

The term "Banking Unit" or BU means a financial institution defined under Section 3(1)(c) of the Act that is licensed or permitted by the Authority to undertake permissible activities under these regulations.

Further, the definitions of "IFSC Banking Company" and "IFSC Banking Unit" have been introduced under Regulations 2(1)(eb) & 2(1)(ec) respectively.

As per the amendment, the term "IFSC Banking Company" or IBC means a Banking Unit licensed or permitted by the Authority to operate in an IFSC as a subsidiary company of the Parent Bank.

While, the term "IFSC Banking Unit" or IBU means a Banking Unit licensed or permitted by the Authority to operate in an IFSC as a branch of the Parent Bank. Also, the clause defining the term "Representative Office" under Regulation 2(1)(la) has been replaced with the term "Referral services".

2. IFSCA grants permission to IFSC banking companies to establish banking units within IFSC

The IFSCA has introduced a new Regulation 3(1A). Now, a Banking unit may be set up in an IFSC as an IFSC Banking Unit or IBU and IFSC Banking Company or IBC. The condition is that a parent bank that has already set up an IBU in an IFSC may be permitted to convert it to an IBC, with the prior approval of the Authority.

An application for setting up a Banking Unit shall be made by the Parent Bank in the form and manner as specified by the Authority. Further, the parent Bank can withdraw the application at any time before the Authority grants the license or permission.

3. IFSCA prescribes criteria for grant of licence or permission to set up an IFSC Banking Company

The existing requirements for granting a licence or permission by the Authority to set up a Banking Unit will now also apply to IFSC Banking Units under Regulation 3(3).

For IFSC Banking Company (IBC), the IFSCA has introduced new Regulation 3(3A), which defines the requirements for obtaining a license or permission by the Authority. Thus, the applicant must satisfy the following requirements for a grant of license or permission by the Authority –

- (a) The Parent bank must provide the necessary capital for the IBC, subject to a minimum of USD 50 million or such other level of capital that may be specified by the Authority. Such capital must be calculated and must be maintained as specified by the Authority.
- (b) The Parent bank must obtain a No Objection Letter from its Home Regulator regarding the setting up of the Banking Unit in the IFSC as a subsidiary company of the parent bank.
- (c) Any other condition specified by the Authority.

Further, a Foreign Bank that does not have a presence in India and wishes to set up a Banking Unit in an IFSC, must comply with such additional requirements as specified by the IFSCA.

4. IFSCA amends ‘Reserve Requirements’ for Banking Units

The IFSCA has substituted the already existing ‘Reserve Requirements’ under Regulation 8. Now, the IFSC Banking Company must maintain such reserves and, in such manner, as mandated under the Banking Regulation Act, 1949 and the Reserve Bank of India, 1934.

5. IFSCA specifies foreign currencies under ‘Banking Regulations’

The IFSCA has introduced a new Schedule I to the IFSCA (Banking) Regulations, 2020 which specifies the foreign currencies to be used and dealt with under the Banking regulations. The specified currencies include the US Dollar (USD), Euro (EUR), Japanese Yen (JPY), Russian Rouble (RUB), Hong Kong Dollar (HKD) etc. As a result of the introduction of these ‘specified currencies’, various other amendments were also notified.

23. IFSCA notifies fee structure for entities desirous of availing permitted financial:- *Circular No F. No. 865/IFSCA/Banking/Fee Revision/2022-23 dated 17th May 2023*

IFSCA lays down a consolidated fee structure for an entity desirous of getting license, registration, recognition or authorization or availing of any permitted financial service in the IFSC under relevant regulations, circulars, guidelines or framework and for the entities which have been granted license, registration, recognition or authorization by the Authority.

States that fees payable to the Authority shall fall into following categories –

- (i) Application fees and License/ Registration/ Recognition/ Authorization fees (payable during the process of application),
- (ii) Recurring fees (payable after grant of license, registration, recognition, or authorization),
- (iii) Activity based fees (payable based on the nature and volume of activity carried out by the Financial Institutions (FIs),
- (iv) Processing fees (payable for handling specific requests such as modification of terms of license, waiver of regulations etc.).

Highlighting that in case, the Applicant fails to pay the requisite license, registration, recognition or authorization fee within the specified time, or any extension of such time as may be granted by the Authority, it shall be presumed that the Applicant does not wish to continue the process and the Authority shall terminate the application process under intimation to the applicant, IFSCA specifies that grant of provisional/ in-principle approval shall not make an Applicant automatically eligible for grant of final license, registration, recognition or authorization.

Further, at the end of every FY “Turnover Fee” for the said FY shall be calculated based on the actual “Turnover” of such FY, the Authority mentions that for an FY other than the year of commencement of operations, the “flat” recurring fee shall be paid within 30 days of the end of the preceding FY.

If the Regulated Entity (RE) fails to pay the outstanding dues/fees to the Authority within the specified time, such dues/ fee may be paid after the specified time, along with a late payment fee as specified in the Schedule II, IFSCA apprises that the Authority may, in exceptional circumstances, Suo motu or on a request by the Applicant or RE, waive the full or part of any fee.

24. SEBI comes up with framework for assurance and ESG disclosures for value chain:- SEBI Circular No. SEBI/HO/CFD/CFD-SEC-2/P/CIR/2023/122, dated 12.07.2023

The Securities and Exchange Board of India (SEBI) has come out with a regulatory framework for listed entities on Environment, Social and Governance (ESG) disclosures on supply chain and assurance. In a bid to address the need for ESG disclosure assurance, SEBI has introduced BRSR Core, a subset of the BRSR (Business Responsibility and Sustainability Report), comprising nine Key Performance Indicators (KPIs) for several E, S and G factors that need to be assured. Under the framework, large listed companies will have to make disclosures and obtain assurance as per 'BRSR Core' for their value chain. Keeping in view the relevance to the Indian market context, few new KPIs have been identified for assurance such as job creation in small towns, openness of business and gross wages paid to women. Further, for better global comparability, intensity ratios based on revenue adjusted for purchasing power parity have been included.

In addition, SEBI has introduced disclosures and assurance for the value chain of listed entities, as per the BRSR Core. In the supply chain, SEBI said that ESG disclosures according to the BRSR Core for the top 250 companies on a comply-or-explain basis will start from 2024-25, with assurance beginning the following year, according to a circular. Disclosures for the value chain will be made by the listed company as per BRSR Core as part of its annual report. In this regard, the value chain would encompass the top upstream and downstream partners of a listed entity, cumulatively comprising 75 per cent of its purchases or sales by value, respectively. As per SEBI, listed entities will have to report the KPIs in the BRSR Core for their value chain to the extent it is attributable to their business with that value chain partner. Such reporting may be segregated for upstream and downstream partners or can be reported on an aggregate basis.

The regulator also said the board of the listed entity will have to ensure that the assurance provider of the BRSR Core has the necessary expertise for undertaking reasonable assurance. Further, the listed entity would have to ensure that there is no conflict of interest with the assurance provider appointed to assure the BRSR Core. For instance, it needs to be ensured that the assurance provider or any of its associates do not sell its products or provide any non-audit related service, including consulting services, to the listed entity or its group entities.

25. Issues Master Circular for compliance with LODR Regulations provisions by listed entities:- SEBI Master Circular No. SEBI/HO/CFD/PoD2/CIR/P/2023/120 dated 11th July, 2023

SEBI issues Master Circular for compliance with the provisions of the SEBI (Listing Obligations Disclosure Requirements) Regulations (LODR Regulations) by listed entities, disclosure and reporting in following manners:

1. Periodic Disclosure under LODR Regulations:

- i. Holding of specified securities and shareholding pattern:

The details of the shareholding of the promoters and promoter group, public shareholders and non-public non-promoter shareholders must be accompanied with Permanent Account Number

(PAN)(first holder in case of joint holding). Further, the shareholding of the promoter and promoter group, public shareholders and non-public non-promoter shareholders is to be consolidated on the basis of the PAN and folio number to avoid multiple disclosures of shareholding of the same person.

ii. In the disclosure of Public Shareholding:

- a. Names of the shareholders holding 1% or more than 1% of shares of listed entity is to be disclosed
- b. Names of the shareholders who are persons acting in concert, if available, shall be disclosed separately

2. Report on compliance with the Corporate Governance provisions specified in the LODR Regulations:

i. The applicability of the corporate governance provisions of the LODR Regulations i.e., regulations 17 to 27 and certain provisions of regulation 46 and Schedule V, is specified in regulation 15(2) of the LODR Regulations.

ii. In terms of regulation 27(2) of LODR Regulations, the listed entity is required to submit a quarterly compliance report on corporate governance in the format specified by the Board from time to time, to the recognised Stock Exchange(s).

iii. Listed entities shall submit the compliance report on corporate governance as per the formats specified above. In case of non-applicability of the corporate governance provisions, the listed entity shall submit a declaration to that effect, duly signed by the compliance officer or the chief executive officer accompanied by a certificate from a PCA or a PCS, to the Stock Exchange(s), at the beginning of every financial year.

3. Financial Disclosure under LODR Regulations:

i. Disclosure of financial results, statement on impact of audit qualifications and the procedure and formats for limited review / audit reports submitted by listed entities:

ii. In order to enable investors to make well-informed investment decisions, timely, adequate and accurate disclosure of financial results on a periodical basis is critical. Towards this end, regulation 33 of the LODR Regulations has specified various requirements with respect to submission of financial results viz., quarterly / annual financial results (audited / unaudited), limited review of unaudited financial results, disclosure of impact of audit qualifications etc. This Section deals with the procedure and / or formats for the aforesaid requirements. The requirements specified in this Section shall apply to the listed banking and insurance companies with exceptions/ modifications as provided in the relevant paragraphs.

4. Disclosure about Statement of Deviation or Variation for proceeds of public issue, rights issue, preferential issue, Qualified Institutions Placement etc:

As per regulations 32(1), 32(2) and 32(3) of the LODR Regulations, a listed entity is, inter alia, required to submit to the stock exchange, a statement of deviation or variation, pursuant to review by the audit committee, on a quarterly basis for public issue, rights issue, preferential issue etc. indicating:

- a. deviations, if any, in the use of proceeds of public issue, rights issue, preferential issue etc.
- b. category wise variation between projected utilisation of funds and the actual utilisation of funds.

5. Annual Disclosure:

Regulation 24A(1) of the LODR Regulations requires every listed entity and its material unlisted subsidiaries incorporated in India to undertake a secretarial auditor on a yearly basis. The secretarial audit report given by a company secretary in practice, in such form as specified, shall be annexed with the annual report of the listed entity.

6. Business Responsibility and Sustainability Reporting by listed entities:

From the financial year 2022-23, in terms of the provision to regulation 34 (2) (f) of the LODR Regulations, top 1000 listed entities based on market capitalization have to submit a Business Responsibility and Sustainability Report (BRSR) in the format as specified by the Board. Further, other listed entities can voluntarily submit such reports.

7. E-voting facility provided by listed entities:

Under Regulation 44(1) of LODR Regulations, listed entities are required to provide a remote e-voting facility to its shareholders, in respect of all shareholders' resolutions. However, it has been observed that the participation by the public non-institutional shareholders/ retail shareholders is at a negligible level.

8. Standard Operating Procedures for dispute resolution available under the stock exchange arbitration mechanism for disputes between a listed entity and its shareholder(s)/investor (s):

Regulation 40 of the LODR Regulations, bye-laws, listing agreement & regulations of the stock exchanges provide for dispute resolution under the stock exchange arbitration mechanism for disputes between a listed company and its shareholder(s)/ investor(s).

<https://www.sebi.gov.in/sebiweb/home/HomeAction.do?doListing=yes&sid=1&ssid=6&smid=0>

26. SEBI issue Master Circular for ESG Rating Providers, mandates annual internal audit:- SEBI Master Circular No. SEBI/HO/DDHS/POD2/P/CIR/2023/121 dated 12th July, 2023

SEBI issues Master Circular for ESG Rating Providers (ERP) mandatory Internal Audit under Regulation 22 of the CRA Regulation shall include an internal audit to be undertaken in the following manner:

- i. It shall be conducted on a yearly basis.
- ii. It shall be conducted by Chartered Accountants, Company Secretaries or Cost and Management Accountants who are in practice and who do not have any conflict of interest with the ERP.
- iii. It shall cover all aspects of ERP operations and procedures, including investor grievance redressal mechanism, compliance with the requirements stipulated in the SEBI Act, Rules and Regulations made thereunder, and guidelines issued by SEBI from time to time.
- iv. The report shall state the methodology adopted, deficiencies observed, and consideration of response of the management on the deficiencies.
- v. The report shall include a summary of operations and of the audit, covering the size of operations, number of transactions audited and the number of instances where violations / deviations were observed while making observations on the compliance of any regulatory requirement.
- vi. The report shall comment on the adequacy of systems adopted by the ERP for compliance with the requirements of regulations and guidelines issued by SEBI and investor grievance redressal.

Requirements related to Internal Audit ERPs:

1. The audit firm shall have a minimum experience of three years in the financial sector.
2. An auditor shall be appointed for a maximum term of five years, with a cooling-off period of two years.

3. The audit team must be composed of, at least, a Chartered Accountant (ACA/ FCA) and a Certified Information Systems Auditor/ Diploma in Information Systems Auditor (CISA/ DISA).

27. SEBI issues Master Circular for issue, listing of NCDs, Commercial Paper:- SEBI Master Circular No. SEBI/HO/DDHS/PoD1/P/CIR/2023/119, dated 07.07.2023

SEBI releases a Master Circular for issuing listed debt securities (NCDs) and listing of non-convertible securities (NCS), securitised debt instruments, security receipts, municipal debt securities and commercial paper (CP), inter alia made some amendments in case the issuer is a NBFC or Housing Finance Company (HFC) or Public Financial Institutions (PFI) and the objects of the public issue entail loan to any entity which is a 'Group Company'. The regulator has specified that the face value of a listed debt security or non-convertible redeemable preference share issued on private placement basis traded on a stock exchange or Over the Counter (OTC) basis shall be Rs. 1 lakh, SEBI states that an issuer, if desirous, may choose to access EBP platform for private placement of municipal debt securities or CPs or Certificate of Deposits (CDs).

This circular aims to achieve effective regulation of the corporate bond market and to enable the issuers and other market stakeholders to get access to all the applicable circulars in one place, this Master Circular has been prepared. This circular came into force with effect from August 16, 2021.

The following has been updated namely: -

- It has consolidated previous circulars (Annex-1) into a single operational circular, with adjustments. The circulars have been specified chapter by chapter in this Master circular. It further states that this Master Circular supersedes the circulars indicated in Annex -1 of this Master Circular.

- It stated that notwithstanding the supersession as mentioned in Clause 3 of this circular:

- (i) Anything done or any action taken or purported to have been done or taken under the rescinded circulars, prior to such rescission, shall be deemed to have been done or taken under the corresponding provisions of this Master Circular.

- (ii) any application made to the Board under the rescinded circulars, prior to such rescission, and pending before it shall be deemed to have been made under the corresponding provisions of these regulations;

- It stated that all the Recognized Stock Exchanges, Depositories, other SEBI registered intermediaries, Issuers, and other stakeholders are directed to perform the following function namely:

- (i) Disseminate the provisions of this circular on their website

- (ii) comply with the conditions laid down in this circular.

- (iii) put in place the necessary systems and infrastructure for the implementation of this circular.

- (iv) make consequential changes, if any, to their respective bye-laws, rules and regulations, and bidding portals.

- (v) Communicate and create awareness amongst stakeholders.

- (vi) Monitor the compliance of this circular by issuer companies, as applicable.

28. SEBI releases regulatory framework for sponsors of Mutual Fund:- SEBI Circular No. SEBI/HO/IMD/IMD-PoD-2/P/CIR/2023/118, dated 07.07.2023

The SEBI has put in place a regulatory framework for private equity funds sponsoring a mutual fund house as well as for a self-sponsored Asset Management Company (AMC). As per the said framework, the applicant private equity funds (PE) or its manager is required to have a minimum of 5 years' experience in the capacity of a fund/investment manager and experience of investing in the financial sector. Further, it should have managed, committed and drawn-down capital of at least Rs 5000 crore as on the date of its application made to the SEBI.

The experience, track record and eligibility regarding the fit and proper criteria of any applicant PE to become a sponsor of a Mutual Fund shall be ascertained through its conduct in the respective home jurisdiction. In order to enhance the penetration of the Mutual Fund industry, and to facilitate new types of players to act as sponsors of Mutual Funds, an alternative set of eligibility criteria is introduced. This is to facilitate the fresh flow of capital into the industry, foster innovation, encourage competition, and provide ease of consolidation and easing exit for existing sponsors.

An AMC can become a self-sponsored AMC subject to certain conditions –

(a) The AMC should have been carrying on business in financial services for a period of not less than 5 years.

(b) The AMC should have a positive net worth in all immediately preceding five years.

(c) Net profit of the AMC after providing for depreciation, interest and tax in each of the immediately preceding five years and the average net annual profit after providing for depreciation, interest and tax should be at least Rs. 10 crores.

Further, any sponsor proposing to disassociate can reduce shareholding below 10% within 5 years in the case of listed AMCs, while the same will be 3 years in the case of unlisted AMCs. Also, after the dissociation of any sponsor from an AMC, all the shareholders of such AMC will be classified as financial investors and the upper limit of shareholding for such financial investors shall be below 10%. The provisions of this circular shall come into force from 01.08.2023, while those related to the deployment of liquid net worth by AMC shall be applicable from 01.01.2024.

29. India, OECD to combat financial crimes, FM Nirmala Sitharaman:- News Report

The Finance Minister Nirmala Sitharaman(FM) recently pitched for strengthening the global architecture to combat financial crimes, money laundering, and sharing of information about different asset classes including crypto currencies. She announced initiating a pilot project in the South Asia region for tax and financial crime investigation under India's G20 Presidency. The FM simultaneously stressed on attracting private investment to develop urban infrastructure. Sitharaman was addressing two events – 'Combating Tax Evasion, Corruption, and Money Laundering' and 'Investor Dialogue' on the sidelines of the G20 Finance Minister and Central Bank Governor (FMCBG) meeting under India's presidency.

Addressing the tax symposium, the FM said that under the G20 Presidency, India has taken the lead in building capacity in tax and financial crime investigation in the South Asian region in collaboration with the OECD. "As a first step, it gives me immense pleasure to announce the launch of a pilot programme on tax and financial crime investigation in collaboration with the OECD for the South Asian region starting from July 18 at the Regional Campus of National Academy of Direct Taxes in New Delhi," she said. This institutionalized initiative, she said, will help in addressing the specific needs of countries in the South Asia region.

In addition to increased cooperation between law enforcement agencies and enhanced capacity building, Sitharaman said, "it is also imperative that we remain alive to the emerging risks to financial transparency. In this context, the progress of work towards the development of the Crypto-Asset Reporting Framework and the update to the Common Reporting Standard is a welcome

step." Besides these, she said, "we should also examine closely whether there are any other classes of assets, in respect of which information needs to be shared in a systematic way amongst jurisdictions." With the advancement in technologies and openness in international trade and commerce, criminals have started utilising sophisticated measures to transfer illegal proceeds across borders through multi-layered transactions involving various forms of assets including Financial Assets, Crypto Assets and Real Estate, she said.

According to FM, during tax investigations, tax administrations acquire access to large amounts of incriminating information obtained through tax treaties which may have relevance for investigations in other financial crimes. However, the disclosure of such information to other domestic law enforcement agencies is subject to seeking consent from foreign jurisdictions for the use of such information for non-tax purposes. She said that the recent report of the Global Forum will assist interested jurisdictions to streamline the processes involved in obtaining consent for the use of information obtained through tax treaties for non-tax purposes. "The suggestions in the report would help to make the process of obtaining consent from foreign jurisdictions more efficient and speedy," she said.

<https://timesofindia.indiatimes.com/city/ahmedabad/india-oecd-to-combat-financial-crimes-fm/articleshow/101810452.cms>

30. AT PMLA affirms ED's attachment-order against individual for non-disclosure of foreign assets in ITR:- *Girish Bali, The Joint Director, Directorate of Enforcement vs. Offset India Solutions Pvt. Ltd. & Ors. [LSI-653-AT PMLA-2023(NDEL)]*

The Adjudicating Authority's order refusing to confirm ED's provisional attachment order (PAO) against an individual (Respondent) for allegedly failing to disclose foreign assets and entities in Dubai in the Income Tax Return (ITR) is set aside by the AT PMLA on the grounds that the Adjudicating Authority failed to appreciate the facts on record and even to make a proper interpretation of the law for passing the impugned order mentioned hereunder:

- (i) ED received information from the IT Department along with the documentation demonstrating the Respondent and his associates' possession of different overseas assets and sources of income,
- (ii) material seized during search and statements recorded from time to time were sent to ED along with a copy of the notice issued to Respondent u/s 10(1) of the Black Money Act and the Imposition of Tax Act,
- (iii) ED discovered a case of Scheduled Offence u/s 51 of the Black Money Act, ECIR was recorded, and
- (iv) PAO was issued against the Respondent and his associates for Rs. 21.09 cr.

The Adjudicating Authority recorded its conclusion, preserving that a "offence of cross border implication" has not been carried out, although pointing out that a transfer of money outside of India cannot be a component of tax evasion because it is considered to be an unpaid tax liability. The Appellate Tribunal believes that the Adjudicating Authority's conclusion ignores the PMLA and Black Money Act provisions and that the PAO cannot be confirmed as a result.

Explaining that the first proviso to Section 5(1) of the PMLA requires that an attachment order be made when a report has been forwarded to the Magistrate u/s 173 Cr.P.C. for a Scheduled Offence or a complaint has been filed by an officer competent to investigate the offence for taking cognizance by a Court of Magistrate, the second proviso, on the other hand, does not require any of the formalities specified in the first proviso, AT PMLA asserts that the PAO in the instant case was issued under the second proviso, despite the fact that the Respondent placed a high value on the compliances provided under the first proviso, and the Adjudicating Authority also recorded its findings to deny confirmation of PAO in the absence of the prosecution complaint in the manner specified in the first proviso.

Further, noting that the Adjudicating Authority referred to certain notices issued by the Income Tax Authority to demonstrate that no case was registered for an offence under Section 51 of the Black Money Act prior to recording of ECIR and issuance of PAO, AT PMLA emphasises that it is unaware that registration of the case for Scheduled Offence is not a prerequisite for issuance of PAO when the second proviso to Section 5(1) is invoked, and thus, the Adjudicating Authority has recorded erroneous finding about the non-registration of the case.

Furthermore, Respondent's argument that all foreign assets and even the incorporation of entities in Dubai were long before the Black Money Act went into effect is criticised by AT PMLA as being ignorant about the provisions of Sections 3 and 4 of the Black Money Act, which required that all foreign assets and income be disclosed in the assessment year commencing on or after April 1, 2016, in order to charge tax at a rate of 30%. This leads to the conclusion that the Black Money Act was made applicable even for the undisclosed foreign income and assets prior to the coming into effect, and confirms PAO.

31. IFSCA Mandates Intermediaries to ring-fence IFSC-related capital market activities with cross-border operations:- IFSCA (Capital Market Intermediaries) (Amendment) Regulations, 2023

IFSCA amends the IFSCA (Capital Market Intermediaries) Regulations inter alia omitting provisions pertaining to the definition of “portfolio manager”, registration of portfolio manager to seek registration as an intermediary, obligations and responsibilities of portfolio manager etc. Cross-border business, the Regulations stipulate that the provisions shall apply to a registered capital market intermediary incorporated in an IFSC.

The Regulations provide that “capital market intermediary” means an intermediary referred to in Registration according to Regulation 3 of the IFSCA (Capital Market Intermediaries) Regulations:

1. The following categories of intermediaries shall obtain a certificate of registration from the Authority prior to commencement of operations in an IFSC:

Broker dealers:

The broker dealers shall be eligible for registration as segregated nominee account providers with the recognised stock exchanges pursuant to compliance with the requirements specified by such recognised stock exchanges and Authority from time to time.

Clearing members:

The clearing members shall be eligible for registration as segregated nominee account providers with the recognised clearing corporations pursuant to compliance with the requirements specified by such recognised clearing corporations and Authority from time to time.

Investment adviser:

The following persons shall not be required to seek registration as an investment adviser in IFSC:

any person who gives general comments in good faith in regard to trends in the financial or securities market or the economic situation where such comments do not specify any particular securities or investment product;

(ii) any insurance agent or insurance brokers recognised or registered or authorised by the Authority, who offers investment advice solely in insurance products;

(iii) any pension adviser recognised or registered or authorised by the Authority, who offers investment advice solely in pension products;

(iv) any distributor of mutual funds providing any investment advice to its clients incidental to its primary activity;

(v) any advocate, solicitor or law firm, who offers investment advice to its clients, incidental to their legal practice;

2. Application for registration:

An entity desirous of obtaining a certificate of registration as a capital market intermediary in IFSC shall submit an application form in the format provided in Part I of Schedule I to the Authority along with the application fees as specified by the Authority:

Provided that the applicant seeking registration to act as a broker dealer or clearing member or depository participant shall make the application along with such additional information through the recognised stock exchange or recognised clearing corporation or recognised depository respectively.

I. The recognised stock exchange, the recognised clearing corporation, the recognised depository, as the case may be, shall examine the eligibility of the applicant in terms of these regulations, relevant Acts, regulations and the rules, bye-laws of the concerned stock exchange, clearing corporation, depository and forward the application with the application fees to the Authority along with its recommendation as early as possible but not later than thirty days of receipt of the complete application with the specified application fees.

ii. Subject to approval by the concerned recognised depository, a registered depository participant may be permitted to act as a participant of another recognised depository without obtaining a separate certificate of registration.

3. Net worth requirements:

An entity seeking registration as a capital market intermediary shall comply with the net worth requirements as specified in Schedule II of these regulations or such other amount as may be specified by the Authority, and the same shall be maintained at all times:

Provided that an entity operating as a capital market intermediary in multiple categories shall maintain the highest of the applicable minimum net worth requirements unless a higher amount is specified by the Authority.

4. Code of Conduct:

Every capital market intermediary shall abide by the Code of Conduct as specified in Schedule III.

5. Maintenance of books of account, records and other documents:

Every capital market intermediary shall maintain and preserve the following books of accounts, records and documents, in electronic retrieval form for a minimum of ten years, namely: -

- a. A copy of the balance sheet at the end of each accounting period;
- b. A copy of profit and loss account for each accounting period;
- c. A copy of the auditor's report on the accounts for each accounting period
- d. A statement of net worth for each quarter;

6. Cyber Security and Cyber Resilience:

A registered capital market intermediary shall have robust cyber security and cyber resilience framework in accordance with the requirements as may be specified by the Authority from time to time.

7. Risk Management and Internal Controls:

i. A registered capital market intermediary shall have a sound risk management system for comprehensively managing risks.

ii. A registered capital market intermediary shall have adequate internal procedures and controls, given the types of business in which it engages (including any activities which have been outsourced)

with the aim of protecting the interests of clients and their assets and ensuring proper management of risk.

8. Cross-Border Business:

1. The provisions of this chapter shall apply to a registered capital market intermediary incorporated in an IFSC, and shall not apply to entities incorporated outside IFSC and operating in an IFSC in the form of a branch.

2. A registered capital market intermediary may undertake cross-border business in capital markets in India or a Foreign Jurisdiction, subject to the following conditions:

a. The intermediary shall ensure that its cross-border business activities in capital markets are in compliance with the applicable regulatory requirements of the other jurisdiction.

b. The intermediary shall ring fence its IFSC related capital market activities with its cross-border operations.

c. The intermediary shall ensure that it has appropriate risk management and internal controls to ensure that the interests of its clients are adequately protected.

d. The intermediary shall ensure that true, correct and adequate disclosures (including risks) are made to its clients regarding its cross-border business.

e. The intermediary shall maintain records (including details of client, KYC, details of transactions etc.) of its cross-border activities in electronic retrieval form for a period of at least ten years and the same shall be made available to the Authority as and when required.

f. The intermediary shall have policies and procedures pertaining to handling of complaints in respect of its cross-border operations.

g. The intermediary shall immediately inform the Authority in case any action is taken against the intermediary for its cross-border activities by any financial sector regulator.

32. SEBI permits the launch of multiple ESG schemes with different strategies by Mutual Funds:- Circular No. SEBI/HO/IMD/IMD-I –PoD1/P/CIR/2023/125, Dated: 20.07.2023

Earlier, the SEBI allowed Mutual Funds to launch only one scheme with ESG investing under the thematic category for Equity schemes. Now, in view of the industry representations for allowing multiple schemes with different ESG strategies and considering the increasing need for green financing, SEBI has decided to permit the launch of multiple ESG schemes with different strategies by Mutual Funds.

Further, in order to suggest further measures to improve transparency, with a particular focus on the mitigation of risks of mis-selling and greenwashing, an ESG Advisory Committee was set up by SEBI which provided recommendations for expanding the disclosure norms for ESG funds. Accordingly, the SEBI has decided to implement certain measures to facilitate green financing with a thrust on enhanced disclosures and mitigation of greenwashing risk.

Some of the key features include:

1. SEBI introduces a separate sub-category for ESG investments under Thematic Schemes

Earlier, SEBI vide. circular no. [Circular No. SEBI/HO/IMD/IMD-PoD-1/P/CIR/2023/74; Dated: 19.05.2023]dated 19.05.2023 allowed Mutual Funds to launch only one ESG Scheme under the thematic category of Equity schemes, Now, SEBI, has decided to introduce a separate sub-category

for ESG investments under the thematic category of Equity schemes. The scheme under the ESG category shall be launched with one of the strategies including Exclusion, Integration, Impact investing, etc.

Further, a minimum of 80% of the total assets under management (AUM) of ESG schemes shall be invested in equity & equity-related instruments of that particular strategy of the scheme. Also, Mutual Funds shall endeavour to deploy a higher proportion of the assets towards the scheme's strategy under the ESG theme and make suitable disclosures. The provisions for ESG schemes shall be applicable with an immediate effect.

2. ESG scheme shall invest a minimum 65% of AUM in companies which are reporting on comprehensive BRSR

Presently, the ESG schemes of Mutual Funds are mandated to invest only in such companies that have comprehensive Business Responsibility and Sustainability Reporting (BRSR) disclosures.

Now, SEBI has decided that an ESG scheme shall invest at least 65% of its AUM in companies that are reporting on comprehensive BRSR and are also providing assurance on BRSR Core disclosures. This requirement shall be applicable w.e.f October 1, 2024.

ESG schemes that are not in compliance with the aforesaid investment criteria as on October 01, 2024, must ensure compliance with the requirement by September 30, 2025.

Further, during the said period of 1 year, ESG schemes must not undertake any fresh investments in companies without assurance on BRSR Core.

3. Disclosure norms for ESG Schemes

The key disclosure norms applicable to ESG Schemes include:

(a) Mutual Funds must clearly disclose the name of the ESG strategy in the name of the concerned ESG fund/scheme.

(b) Mutual Funds must disclose Security wise BRSR Core scores & Name of the ERPs providing ESG scores for the ESG schemes in their monthly portfolio statements.

(c) The AMCs are required to make disclosures of votes cast on their website on a quarterly basis, along with the specific rationale supporting their voting decision.

(d) The AMCs shall categorically disclose whether the resolution has or has not been supported due to any environmental, social or governance reasons.

(e) A 'Fund Manager Commentary' along with the additional disclosures with respect to engagements undertaken by Mutual Funds for ESG schemes, as required to be disclosed should be provided in the Annual Report of ESG schemes.

4. AMCs to obtain an independent reasonable assurance regarding their ESG scheme's portfolio

Now, the AMCs must obtain independent reasonable assurance on an annual basis regarding their ESG scheme's portfolio being in compliance with the strategy and objective of the scheme. The Board of AMCs must ensure that the assurance provider for an ESG scheme has the necessary expertise, for undertaking reasonable assurance.

Further, the AMCs must also ensure that there is no conflict of interest with the assurance provider appointed for providing assurance on their ESG schemes.

Such assurance shall be on a "comply or explain basis" for all ESG schemes for FY 2022-23 by December 31, 2023. Thereafter, disclosure of assurance shall mandatorily be made in the scheme's annual report.

5. Certification by the Board of AMCs

The board of directors of AMCs, based on a comprehensive internal ESG audit, must certify the compliance of ESG schemes with the regulatory requirements in the annual report of the scheme.

The internal ESG audit must include verifying the Scheme Information Documents, Stewardship Reporting and Responsible Investment Policy of the ESG Funds and any other relevant document, to ensure that the statements made in these documents are factual.

This certification shall be applicable with an immediate effect. The board of directors of AMCs shall provide the certificate for FY 2022-23 by December 31, 2023. Thereafter, the certification shall be disclosed in the Annual Reports of the schemes.

6. Conclusion:

In conclusion, the SEBI has taken significant steps to promote sustainable and responsible investing through Environmental, Social, and Governance (ESG) funds. To ensure transparency and guard against mis-selling and greenwashing risks, SEBI has established an ESG Advisory Committee, which has recommended enhanced disclosure norms for ESG funds.

These measures are designed to foster green financing, promote sustainable investment practices, and protect investors from potential misrepresentation. By implementing these enhanced disclosure norms and oversight mechanisms, SEBI aims to foster responsible investing and contribute to a greener and more sustainable financial ecosystem in India.

33. ICSI floats online form to capture data of PCS who are designated as 'Reported Entities' under PMLA:- ICSI News, Dated: 19.07.2023

Recently, the Ministry of Finance included professionals including the company secretary in practice performing certain transactions on behalf of their clients in the definition of 'Reporting Entity' under PMLA.

The FIU-India has implemented Anti-Money Laundering & counter-terrorist financing Guidelines. ICSI has been advised to take on the role of Supervisory Regulatory Body for its members. The Guidelines apply to the relevant persons carrying out financial transactions, such as individuals who obtained a certificate of practice under section 6 of the Chartered Accountants Act, 1949, under section 6 of the Company Secretaries Act, 1980 and under section 6 of the Cost and Works Accountants Act, 1959.

Also, the ICSI has been advised to take on the role of Supervisory Regulatory Body (SRB) for its practising members i.e., Company Secretary in Practice. For the purpose of interaction and information sharing between practicing members and FIU-India, a nodal officer is also identified as per the requirement of guidelines who can be reached at pmla@icsi.edu.

In compliance with the same, all PCS falling under the definition of Reporting Entity must register within 7 days by filling in details in the online form.

34. Govt. announces an interest rate of 8.15% on Employees' Provident Fund for the FY 22-23:- Notification No. INV-11/2/2021-INV, Dated 24.07.2023

The Ministry of Labour and Employment has conveyed the approval to credit interest at the rate of 8.15% per annum for the year 2022-23 to the account of each member of Employee Provident Fund (EPF) Scheme as per the provisions of Para 60 of EPF Scheme, 1952. After the government's consent to the interest rate, the EPFO would now start crediting the rate of interest for the previous fiscal to the EPF subscribers.

35. ICAI invites Public Comments on IASB' Post-implementation Review of Revenue Standard (IFRS 15):- ICAI Press release

The International Accounting Standards Board (IASB) has conducted a post-implementation review (PIR) of IFRS 15 'Revenue from Contracts with Customers.' The objective is to assess the clarity, suitability, benefits, and costs associated with the implementation of this standard. The IASB seeks feedback from stakeholders on various aspects of IFRS 15, including its core principle and the five-step revenue recognition model. Specific areas of interest include performance obligations, transaction price determination, revenue recognition timing, principal versus agent identification, licensing, and disclosure requirements. Additionally, stakeholders are encouraged to provide their views on how IFRS 15 interacts with other standards, especially IFRS 3, IFRS 9, IFRS 10, and IFRS 16.

Further, the review will consider the level of convergence between IFRS 15 and US GAAP. The IASB aims to identify any fundamental questions, benefits, and costs associated with the standard's application. With the view to contribute to standard setting at international level, the above-mentioned Request for Information issued by the IASB has been hosted on the website of the Institute of Chartered Accountants of India (www.icaai.org) for public comments with the last date as August 31, 2023.

36. ICAI releases Exposure Draft on Tax Audit Guidance Note; Public comments deadline Aug 6:- ICAI Press release

The Direct Tax Committee has released the Exposure Draft of the Guidance Note for Tax Audit under Section 44AB, which is a mandatory audit for certain taxpayers under the Income Tax Act. The Exposure Draft reflects the amendments made by the Finance Act 2023, which introduced new provisions and modified existing ones related to tax audit. The Direct Tax Committee seeks public comments on the Exposure Draft, especially on the paragraphs that provide guidance on the new or revised aspects of tax audit. Comments are most helpful if they indicate the specific paragraph or group of paragraphs to which they relate, contain a clear rationale, and, where applicable, provide suggestions for alternative wording. The comments should include the rationale for the feedback and the alternative wording that would improve the clarity and accuracy of the Guidance Note. Comments can be sent to dte@icaai.in so as to be received no later than 6th August 2023.

37. Govt allows firms to list on GIFT IFSC to attract foreign flows:- News Report dated 29th July 2023

Finance Minister Nirmala Sitharaman said, Indian firms are allowed to list on exchanges registered in a new financial hub in Gujarat, to give companies access to easier and cheaper foreign capital.

Under the flagship project of the Prime Minister, listed and unlisted companies can list their shares in the International Financial Services Centre (IFSC) housed in the Gujarat International Financial Tech (GIFT) City. GIFT-IFSC is a tax neutral financial center, which aims to compete with hubs like Singapore as it provides fiscal incentives and an easier regulatory environment to operate on. Recently the SGX Nifty, which was previously traded on the Singapore Exchange's (SGX) platform, moved to NSE's International Exchange (NSE IX) in GIFT City. The IFSC houses two stock exchanges, one commodity bourse, and a bullion exchange.

Indian companies can currently only list on foreign exchanges through instruments such as depository receipts. The government had announced plans in 2020 to allow firms to have their primary listings on foreign exchanges.

Finance Minister said, "I'm pleased to announce that the government has taken a decision to enable direct listing of listed and unlisted companies on the IFSC exchanges and the companies can use the IFSC route to access similar benefits of foreign capital."

https://cfo.economictimes.indiatimes.com/news/govt-allows-firms-to-list-on-gift-ifsc-to-attract-foreign-flows/102223124?action=profile_completion&utm_source=Mailer&utm_medium=newsletter&utm_campaign=etcfo_news_2023-07-29&dt=2023-07-29&em=Z2FyZy5yYWh1bEBhc2lyZS5pbG==

38.MCI national IPR Policy an institutional mechanism for implementation, review of IP laws:- Press Release dated July 21, 2023

Shri. Som Parkash, the Union Minister of State for Commerce and Industry, submitted a written reply in the Rajya Sabha. He stated that the National IPR Policy 2016 covers all forms of intellectual property rights or IPRs in a single vision document, establishing an institutional mechanism for implementation, monitoring and review of IP laws. He enumerated the types of intellectual property rights as follows: (i) Patents, (ii) Trademarks, (iii) Designs, (iv) Copyrights, (v) Geographical Indications, (vi) Semiconductor Integrated Circuit Layout Design, (vii) Trade Secret, and (viii) Plant Varieties. He emphasized the measures taken under the policy, such as compliance and timeline reduction in IP filing and disposal, fee rebate for Startups, MSMES, Educational Institutions and expedited examination for certain categories of applicants. He informed about the National IPR Policy's objectives, highlighting that IPR chairs have been established across the country under the Scheme for Pedagogy & Research in IPRs for Holistic Education and Academia to foster the study, research, and development of IPR in higher educational institutions.

39.Govt. extends the initial validity period of industrial licenses to be issued from 3 years to 15 years:- Press Note No.1 (2023 Series), Dated: 21.07.2023

The Government has extended the initial validity period of industrial licenses to be issued from 3 years to 15 years for all kinds of licenses under the IDRA, aligning with the validity of licenses issued for defence items. Further, the Govt. has issued revised guidelines for an extension of the validity of both new and existing industrial licenses. These guidelines apply to cases where the existing license holder has not commenced production within 15 years of the issue of the license.

The revised guidelines are as follows –

(a)The application for an extension of the license must be submitted to the concerned Administrative Ministry/Explosive Section (DPIIT), prior to the expiry of 15 years period or otherwise specified for commencement of commercial production.

(b)At the time of applying for the grant of extension of validity of the license the condition and status of the firm must be the same as mentioned in the Industrial License issued to the firm. Thus, any amendment, viz, changes in the name of the company, change in the Board of Director, increases/changes in license capacity, alteration or change in the premises, part shifting etc. must have been endorsed in the License.

(c)Applicant's request must be forwarded to the concerned Central/State Government, as the case may be, and after obtaining comments of the Central/State Government, the case should be considered for extension of validity.

(d)Applicant must meet the following conditions at the time of applying of extension/reconsideration –

- Land must have been acquired, either under ownership or on lease for a minimum period of 30 years (as per registration/lease documents)
- The construction on the project must have been completed
- Plant and machinery for the project must have been installed/commissioned.

(e) Cases involving transfer, suspension or cancellation of license in the intervening period shall not be considered for extension.

(f) Extension of validity of existing license would be allowed on receipt of application from license holder within 15 years period from issuance of Press Note 5 (2014 series) i.e. 2nd July 2014.

(g) Extension of validity of new licenses, to be issued as per this Press Note, would be allowed for a further period of 3 years (up to a maximum of 18 years of validity).

(h) Any Industrial License, wherein commercial production has not started even within the extended period (15+3 i.e. a maximum period of 18 years from the date of issue of license), shall be treated as automatically lapsed.

(i) The applicants fulfilling the above guidelines may be granted an extension of Industrial License with the approval of the concerned Additional Secretary/Joint Secretary of the Administrative Ministry/Explosive Section (DPIIT) without referring the application to Licensing Committee.

40. SEBI mandates all non-individual FPIs to provide Legal Entity Identifier (LEI) details to designated DPs:- Circular No. SEBI/ HO/ AFD/ AFD- PoD-2/ CIR/ P/ 2023/ 0127, Dated: 27.07.2023

SEBI has mandated the requirement of providing Legal Entity Identifier (LEI) details for all non-individual FPIs. Currently, FPIs are required to provide their LEI details in the Common Application Form (CAF), used for registration, KYC and account opening of FPIs on a voluntary basis. Further, all existing FPIs that haven't provided their LEIs to their DDPs must do so within 180 days from the date of issuance of this circular. This circular shall be effective immediately.

41. SEBI amends Mutual Fund Trustee's 'Half-Yearly Report' format:- Circular No. SEBI/HO/IMD/IMD-I -PoD1/P/CIR/2023/126, Dated: 26.07.2023

As per Master Circular on Mutual Funds, the Trustees shall have arrangements with independent firms for special purpose audit and/or to seek legal advice. Accordingly, SEBI has now modified the Half Yearly Trustee Report format, as provided in Master Circular. The modified format includes for 'Compliance with the requirement of standing arrangements with independent firms for special purpose audit and/or to seek legal advice'. These provisions shall be applicable with an immediate effect.

42. SEBI extends restriction on trading by Designated Persons by freezing PAN, to all listed cos.:- SEBI Circular no. SEBI/HO/ISD-PoD-2/P/CIR/2023/124 dated July 19, 2023

SEBI announces that it will implement the framework for restricting trading by Designated Persons (DPs) by freezing PAN at security level to all listed companies in a phased manner. This is to ensure compliance with the insider trading regulations. It will commence this process with the top 1,000 companies in terms of BSE Market Capitalization as of June 30, 2023 (excluding companies part of benchmark indices), from October 1, 2023, and proceed with the next 1,000 companies from January 1, 2024. Further, Regulator stipulates that Designated Depository shall provide the details received from the listed company (i.e. Commencement Date and End Date of the trading window closure period, Name and PAN of DPs, ISIN, etc.) to the Stock Exchanges and other Depository at least 1 day trading day prior to the commencement of trading window closure commencement date (T-1 day).

It will use the PAN details of the DPs to freeze their trading accounts at the security level. It will also communicate this information with the stock exchanges and depositories in a standardized format

and timeline. It will permit the settlement, squaring off or closing out of the transactions, if any, undertaken by the DPs prior to freezing their PAN at the security level.

43. SEBI notifies 01.01.2024 as the effective date for certain regulations of SEBI (MFs) (Amend.) Regulations, 2023:- Notification No. SEBI/LAD-NRO/GN/2023/141., Dated 26.07.2023

Earlier, the SEBI vide. Notification dated 26.06.2023 notified the SEBI (Mutual Funds) (Amend.) Regulations, 2023. SEBI had directed that the provisions of the Amendment Regulations would come into force on such dates as the Board may prescribe.

Now, vide present notification, SEBI has notified the date of applicability for certain regulations as 01.01.2024. Such Regulations include Regulation 25A i.e., Meeting of the board of the trustee company and the board of the AMC, etc

44.No separate registration needed for limited-purpose CC participants for trading corporate bonds in tri-party repo segment:- Notification No. SEBI/LAD-NRO/GN/2023/140, Dated 24.07.2023

The SEBI has notified (Stock Brokers) (Second Amendment) Regulations, 2023. The amendment has been notified in Regulation 10 A i.e., Application for registration. A new proviso to the regulation has been inserted. Now, no separate registration shall be required for any person registered with the limited purpose clearing corporation as a participant for participating in the tri-party repo segment for undertaking proprietary trades in corporate bonds.

45. SEBI mandates Depository Participants (DP) to contribute to the ‘Settlement Guarantee Fund’:- Notification No. SEBI/LAD-NRO/GN/2023/139, Dated, 24.07.2023

The SEBI has notified Securities Contracts (Regulation) (Stock Exchanges and Clearing Corporations) (Second Amendment) Regulations, 2023. The amended norms require DPs to contribute to the Settlement Guarantee Fund. Earlier, the recognized limited-purpose clearing corporations, clearing members and issuers of debt securities were obliged to make a contribution to the Settlement Guarantee Fund. Respective changes have also been notified in regulations 37 i.e., Fund to guarantee settlement of trades.

46. SEBI requires AMCs of Mutual Fund schemes to invest in units of ‘Corporate Debt Market Development Fund’:- Circular No. SEBI/HO/IMD/PoD2/P/CIR/2023/129, Dated: 27.07.2023

SEBI has decided that the units of the Corporate Debt Market Development Fund (CDMDF) shall be subscribed by AMCs of Mutual Funds and “specified debt-oriented MF Schemes”. Accordingly, Debt-oriented MF schemes and AMC’s contributions, along with any appreciation, will be locked-in until the fund winds up. SEBI has further provided that the First contribution will be due within 10 working days of CDMDF's request. Half-yearly contributions will begin in Dec 2023, within 10 days after each half-year's end.

47. SEBI prescribes detailed framework for newly notified AIF “Corporate Debt Market Development Fund”:- Circular No. SEBI/HO/IMD/PoD2/P/CIR/2023/128, Dated: 27.07.2023

Earlier, the SEBI on June 15, 2023, notified a new category of the Alternative Investment Fund (AIF) named Corporate Debt Market Development Fund (CDMDF). Now the SEBI has prescribed a detailed framework for the same. The CDMDF shall comply with the Guarantee Scheme for Corporate Debt (GSCD) as notified by MoF. The CDMDF shall deal only in low duration G-sec, Treasury bills, Tri-party Repo on G-sec, and Guaranteed corporate bond repo with maturity not exceeding 7 days.

CROSS BORDER

1. Singapore to change tax rules that attracted the super rich:- News Report dated 05th July 2023

The Monetary Authority of Singapore (MAS) is implementing changes to tax incentives for single family offices in order to boost local hiring, increase investment in Singapore's equity markets, and encourage support for climate-related projects and philanthropy. The move comes as Singapore has experienced a surge in the number of single family offices based in the country, reaching 1,100 in 2022 from 400 in 2020.

Under the new measures, single family offices seeking tax exemptions must meet minimum assets under management and business spending requirements. The changes include:

- Encouraging participation in blended finance structures, including those supporting the region's transition to net zero. For grants that these entities provide to support such structures with no expectations of income or return of principal, authorities will recognize as S\$2 for every dollar spent, among incentives
- All investments in non-listed Singapore operating companies including private credit will be recognized
- Recognition of twice the amount invested in Singapore-listed equities, and eligible exchange traded funds, as well as unlisted funds that invest primarily in locally listed equities

These adjustments aim to address concerns that despite the increase in family offices, much of the wealth managed by them is not being invested within Singapore, limiting the expected creation of local jobs. By incentivizing investment in local ventures and climate-related projects, Singapore hopes to leverage its success in attracting wealth to play a larger role in society and the economy.

Additionally, MAS will enhance surveillance and defense against money laundering risks in the sector by requiring single family offices to notify the regulator when commencing operations and maintain a business relationship with a MAS-regulated financial institution. The proposals will undergo a public consultation process in the near future.

<https://economictimes.indiatimes.com/news/international/world-news/singapore-to-change-tax-rules-that-attracted-the-super-rich/articleshow/101513413.cms>

2. 138 countries agree on Outcome Statement for Two Pillars, defer DST:- OECD Press release, 11th July 2023

During the 15th Meeting of the OECD/G20 Inclusive Framework on Base Erosion and Profit Shifting (BEPS), 138 members representing more than 90% of global GDP reached an Outcome Statement acknowledging the substantial progress achieved in addressing the tax challenges arising from the digitalization of the economy. This outcome allows countries and jurisdictions to move

forward with a significant and historic reform of the international tax system. The Two-Pillar Solution, developed by the Inclusive Framework, aims to ensure a more equitable distribution of profits and taxing rights among countries and jurisdictions concerning the world's largest Multinational Enterprises (MNEs).

The Outcome Statement summarizes the key deliverables formulated by the Inclusive Framework to address the remaining elements of the Two-Pillar Solution:

1. **A Multilateral Convention (MLC) text**, developed by the Inclusive Framework, enables jurisdictions to reallocate and exercise a domestic taxing right over a portion of MNE residual profits (Amount A of Pillar One). The Inclusive Framework will release the MLC text for signature once it has been finalized, resolving specific concerns raised by a small number of jurisdictions.
2. A proposed **framework for the simplified and streamlined application of the arm's length principle** to in-country baseline marketing and distribution activities (Amount B of Pillar One). Stakeholder input is being sought on certain aspects before finalization.
3. **The Subject-to-Tax Rule (STTR)** and its implementation framework, allowing developing countries to update bilateral tax treaties and "tax back" income on certain intra-group transactions subject to low or nominal taxation in the other jurisdiction.
4. The OECD will prepare a **comprehensive action plan** to facilitate the swift and coordinated implementation of the Two-Pillar Solution, working in conjunction with regional and international organizations.

Further, the Outcome Statement also includes an agreement among the 138 countries and jurisdictions to refrain from imposing newly enacted digital services taxes or similar measures on any company until 31 December 2024, or until the MLC enters into force, if earlier. This commitment is made to avoid disrupting or delaying the ratification of the MLC, acknowledging the progress made thus far.

3. EU Business Leaders push to extend freeze on Digital Taxes:- News Report

Several EU technology companies wrote to finance ministers across Europe on Monday to extend an international agreement to stop digital services taxes (DSTs) beyond Dec. 31. C-suite executives at Spotify Technology, Zalando, and 13 other companies said in their letter that extending the agreement would prevent the implementation of new DSTs and allow governments time to complete their negotiations, domestic discussions, ratification and implementation processes on Pillar One, a set of rules to reallocate national taxing rights over large companies. DSTs are national taxes on the revenues of large digital companies, which the EU companies want to avoid. DSTs hit companies at the early stages of growth particularly ones that are not yet profitable and those with low margins hardest.

The EU companies prefer an alternative solution called Pillar One, which is a set of rules to reallocate national taxing rights over large companies based on where they operate instead of where they are headquartered. Pillar One is part of a global tax deal endorsed by the G-20 nations, which also includes a minimum global corporate tax rate of 15%. Pillar One presents an opportunity for a fairer and more stable international tax framework which taxes economic profits, avoids double taxation, increases tax certainty through effective dispute prevention and resolution mechanisms and puts an end to DSTs and other similar measures.

<https://news.bloombergtax.com/daily-tax-report-international/eu-business-leaders-push-to-extend-freeze-on-digital-taxes>

4. OECD wants data sharing on foreign real estate deals:- News Report

The OECD has proposed exploring the scope of the Common Reporting Standard (CRS) to include real estate under automatic exchange of information (AEOI) among countries on a voluntary basis and submitted the updated report that examines the current state of tax transparency concerning foreign-owned real estate and how recent advancements in other tax transparency frameworks, such as the OECD/G20 CRS, and broader policy developments could inform improvements to tax transparency in the area of real estate on a voluntary basis.

The AEOI framework provides for the sharing of financial account details among signatory countries to check tax evasion. India has been pressing for enhanced tax transparency in overseas real estate holdings by assessing and using tax-treaty-enabled information for non-tax purposes to curb tax evasion and illicit financial flows. In the short term, interested countries could make significant progress at a limited cost by exchanging readily available information through existing international legal and operational gateways. In the long term, a model could be based on a more novel direct access-based model, building on the ongoing trend in the anti-money laundering and financial regulatory space.

The sharing of information from tax to non-tax authorities, including information exchanged under international tax agreements, could be achieved through the implementation of cooperation agreements. The numbers of jurisdictions participating in AEOI and the amount of information exchanged continue to increase; in 2022, information on over 123 million financial accounts worldwide, covering total assets of over 12 trillion euros, was exchanged automatically.

<https://www.financialexpress.com/economy/oecd-wants-data-sharing-on-foreign-real-estate-deals/3178631/>

5. OECD releases Secretary-General's Tax Report with deliverables including STTR:- OECD

OECD issued the OECD Secretary-General Tax Report to G20 Finance Ministers and Central Bank Governors, which can be accessed in the PDF format [PDF 1.3 MB]. This report follows the recent agreement reached by 138 countries and jurisdictions on an Outcome Statement. The Outcome Statement outlines the package of deliverables formulated by the Inclusive Framework to address the tax challenges arising from the digitalization of the economy. These deliverables, as elucidated in the current OECD release, encompass the following:

1. A framework that simplifies and streamlines the application of transfer pricing rules to specific marketing and distribution activities under Amount B of Pillar One. The OECD has initiated a public consultation on this matter, set to continue until 1st September 2023. The aim is to finalize the Amount B report by the year-end and incorporate crucial content into the OECD Transfer Pricing Guidelines by January 2024.
2. A Subject to Tax Rule (STTR), which will facilitate developing countries in updating bilateral tax treaties to "tax back" certain intra-group income, especially when such income is subject to low or no nominal taxation in the other jurisdiction.
3. The text of a multilateral convention (MLC) that empowers jurisdictions to reallocate and exercise domestic taxing rights over a portion of a multinational enterprise's residual profits. The Inclusive Framework will publish the MLC text once it is ready for signature, pending resolution of a few specific concerns raised by a few jurisdictions.

Moreover, there is additional guidance provided on global anti-base erosion (GloBE) items, which includes the following:

1. The GloBE Information Return comprises simplified reporting requirements and forms part of a centralized filing and exchange framework.
2. Further Administrative Guidance, featuring two new safe harbors. The first is applicable to jurisdictions implementing a qualified domestic minimum top-up tax (QDMTT), while the second applies to a transitional undertaxed profits rule (UTPR) safe harbor. Under the UTPR, the top-up tax in the jurisdiction of a company's ultimate parent entity will be zero if that jurisdiction maintains a corporate tax rate of at least 20% for fiscal years commencing on or before 31st December 2025. This document also includes detailed administrative guidance on currency conversion rules, substance-based income exclusion, and additional insights on the treatment of tax credits.

6. OECD Tax Talks provides insight into 'Outcome Statement', future course of action:- *OECD Tax talks webinar dated 19th July 2023*

The OECD Centre for Tax Policy and Administration recently conducted Tax Talks on the Outcome Statement and other developments related to the Two Pillar Solution. Ms. Manal Corwin, the Director of the OECD Centre for Tax Policy and Administration, highlighted that the Outcome Statement is the result of technical negotiations between representatives from developed and developing countries, showcasing an extraordinary level of collaboration.

The discussions at the G20 Finance Minister and Central Bank Governors meeting also welcomed the progress made on the Two Pillar Solution. Mr. Achim Pross, the Deputy Director of the OECD Centre for Tax Policy and Administration, explained the standstill agreement on Digital Services Taxes (DSTs). According to this agreement, when at least 30 jurisdictions representing at least 60% of the Ultimate Parent Entities (UPEs) of multinational enterprises (MNEs) covered by Pillar One ratify the Minimum Level of Taxation (MLC) on Amount A before the end of 2023, members of the OECD/G20 BEPS Inclusive Framework will refrain from imposing newly enacted DSTs until December 31, 2024, or the entry into force of the MLC.

Mr. Achim Pross further informed that the MLC is almost ready for release, with only a few small issues pending resolution. Once these issues are resolved, the MLC will be released.

<https://www.oecd.org/tax/tax-talks-webcasts.htm#20230227>

7. OECD invites public comments on Pillar One-Amount B's technical aspects:- *OECD press release*

OECD releases a public consultation document on July 17, 2023 to invite comments on the main design elements of Amount B under Pillar One relating to simplification of transfer pricing rules. With its simplified methods on the application of the arm's length principle to in-country baseline marketing and distribution activities, Amount B, particularly, focuses on the needs of countries suffering from long-term impediments to growth. The draft released this week comprising 41 pages outlines the design elements of Amount B and aims to obtain inputs from stakeholders on the technical aspects of Amount B; The discussion draft lays out specific features under 6 different heads – (i) transactions in scope, (ii) application of most appropriate method principle to in-scope transactions, (iii) determining the arm's length return under the simplified and streamlined approach, (iv) documentation, (v) transitional issues and (vi) tax certainty.

Specific question raised in the discussion draft pertain to transactions in scope (whether a separate qualitative scoping criterion is required to identify distributors that make non-baseline contributions which cannot be reliably priced under the pricing methodology described in Section 4). Further, several reasons are provided as to why TNMM is considered MAM for the purposes of

applying the pricing methodology in Section 4 to in-scope transactions in Chapter II, Part B of OECD Guidelines. Further, the discussion draft highlights the pricing matrix, mechanism to address geographic differences and address low and high functionality, periodic updates, etc. while dealing with the issue of determining the arm's length return under the simplified and streamlined approach. As regards documentation, it ensures that tax administrations have access to the necessary information to conduct risk assessment processes and/or to audit the taxpayer's transfer pricing practices. The transitional issues highlight on approach of MNE groups to reorganise their distribution business models and AEs' attempts to artificially reorganise their arrangements to derive tax advantages from the application of the simplified and streamlined approach; Lastly, the segment on tax certainty revolve around approach to prevent uncertainty when different parties take divergent views resulting in corresponding adjustment. The document is open for public comments upto September 1, 2023 by e-mail to TransferPricing@oecd.org in Word format.

8. UK Unveils Minimum Tax Backstop Rule and 22 Other Draft Tax Laws:- News Report

The United Kingdom has revealed a new Minimum Tax Backstop Rule along with 22 other draft tax laws. The Minimum Tax Backstop Rule is designed to ensure that multinational corporations operating in the UK pay a minimum level of tax. This measure aims to prevent tax avoidance and ensure that companies contribute their fair share of taxes to the UK government. Alongside this significant rule, the UK government has introduced 22 other draft tax laws covering various aspects of taxation. These draft laws may encompass changes to existing tax regulations, updates to tax rates, and the introduction of new measures to improve tax compliance and revenue collection. The unveiling of these draft tax laws reflects the UK government's ongoing efforts to maintain a robust and equitable tax system while adapting to changing economic conditions and international tax standards. It is expected that these proposals will undergo further scrutiny and consultation before they are finalized and implemented.

9. US Treasury comes under fire over OECD tax talks:- News Report

US lawmakers criticized the OECD's proposed minimum corporate tax rate and new taxing rights, citing concerns about its impact on US tax revenues and perceived European control over the process. At a recent hearing, the House Ways & Means Committee scrutinized the OECD's international tax reforms and expressed disagreement with the US Treasury's negotiation approach, particularly regarding the undertaxed payments rule (UTPR). Republican members raised questions about Congress' involvement in the UTPR decision, asserting lack of consultation. The UTPR is a crucial part of the global anti-base erosion rules aiming to establish a global minimum corporate tax system. However, the US has not yet enacted pillar two, leading to further criticism.

In addition, lawmakers emphasized their goal of maintaining US competitiveness globally and feared that the current OECD efforts might result in unilateral taxes for US companies in Europe and other nations. They expressed concern that US politics could hinder a multilateral agreement on tax reform. The OECD aims to finalize the agreement on taxing rights and profit allocation rules by year-end and to achieve consensus, open dialogue and cooperation are essential for moving forward.

<https://www.internationaltaxreview.com/article/2bytih523mqgb8axyw3ko/us-treasury-comes-under-fire-over-oecd-tax-talks>

10. OECD develops tax instruments to tackle tax avoidance in West Africa:- News Report

In a concerted effort to tackle base erosion and profit shifting (BEPS) in West Africa, the OECD, along with the Global Forum on Transparency and Exchange of Information for Tax Purposes, has devised three essential tax instruments. These instruments aim to empower the tax administrations

of member states in the Economic Community of West African States (ECOWAS) to exercise greater control over multinational enterprises operating within their jurisdictions.

The first instrument, the Directive on the harmonization of transfer pricing rules, seeks to equip ECOWAS member states' tax authorities with the necessary tools to effectively regulate transfer pricing activities of multinational corporations.

Next, the Directive on beneficial ownership takes center stage, enabling the identification of beneficial owners behind legal entities and structures. This directive strives to ensure that comprehensive, accurate, and up-to-date information on these beneficial owners is readily available. Completing this robust framework, the Supplementary Act on mutual administrative assistance in tax matters establishes various avenues of cooperation among the tax administrations of ECOWAS member states. The act serves to fortify the exchange of vital tax-related information between the participating countries.

It is worth noting that these community instruments were meticulously developed in partnership with the ECOWAS and the West African Economic and Monetary Union (UEMOA) commissions. The collaborative effort ensures that the instruments adhere to the latest international tax standards. Consequently, they received unanimous approval from the ECOWAS Council of Ministers and the Conference of Heads of State and Government of ECOWAS during their respective meetings.

11. Australia proposes to simplify Individual Tax Residency Criteria:- News report dated 24th July 2023

The Government is consulting on a new, modernised individual tax residency framework based on recommendations made by the Board of Taxation in its 2019 report *Individual Tax Residency Rules – a model for modernisation*. This measure was announced by the former Government in the 2021-22 Budget.

Under the Board's proposed model, the primary test will be a simple 'bright line' test — a person who is physically present in Australia for 183 days or more in any income year will be an Australian tax resident. Individuals who do not meet the primary test will be subject to secondary tests that depend on a combination of physical presence and measurable, objective criteria. The objective of the consultation process is to inform the development of robust principles that will underpin an enduring framework and achieve the policy intent. The outcomes of consultation will help to inform the Government's decision on whether to proceed with this measure.

The details of the framework outlined in the paper have not received government approval and are not yet law. Consequently, the paper is merely a guide as to how the framework might operate. While submissions may be lodged electronically or by post, electronic lodgement is preferred. For accessibility reasons, please submit responses sent via email in a Word or RTF format. An additional PDF version may also be submitted.

All information (including name and address details) contained in submissions will be made available to the public on the Treasury website unless you indicate that you would like all or part of your submission to remain in confidence. Automatically generated confidentiality statements in emails do not suffice for this purpose. Respondents who would like part of their submission to remain in confidence should provide this information marked as such in a separate attachment. Legal requirements, such as those imposed by the Freedom of Information Act 1982, may affect the confidentiality of your submission.

Responses can be submitted to this consultation until 22 September 2023. Interested parties are invited to comment on this consultation in the following manner:

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