Tax & Regulatory Updates – Key developments of May 2023

DIRECT TAXATION: -

1. Govt. notifies India-Chile DTAA & Protocol:- *Notification No. 24/2023 [F. No.500/62/2017-FT&TR-V (Pt-III)] / SO 2059(E)*

The Central Board of Direct Taxes (CBDT) has notified the Double Taxation Avoidance Agreement (DTAA) between India and Chile. The agreement was signed on March 9, 2020, and entered into force on October 19, 2022. The agreement is intended to eliminate double taxation and prevent tax evasion and avoidance. It applies to persons who are residents of one or both of the contracting states and to taxes on income imposed on behalf of a contracting state, including taxes on gains from the alienation of movable or immovable property, and on the total amount of wages or salaries paid by enterprises, as well as on capital appreciation. The agreement applies to the income tax in India and the taxes imposed under the Income Tax Act in Chile, as well as any identical or substantially similar taxes imposed after the date of signature of the agreement. The competent

authorities of the contracting states are required to notify each other of any significant changes that have been made in their respective taxation laws.

While the DTAA appear widely worded under multiple clauses and gives a glimpse of future agreements to be signed / negotiated by India and interestingly has a treatment on 'fiscally transparent' entities under Article 1 in view of the increasing focus of IRS in this area.

https://incometaxindia.gov.in/communications/notification/notification-24-2023.pdf

2. Angel tax draft rules likely in 10 days which may clear the air on valuation:- *News report dated 2nd May 2023*

The government of India is set to release draft rules in the next 7-10 days to address the concerns of start-ups regarding the angel tax provisions introduced in the last Union Budget. The provisions will extend to transactions involving foreign investors, and angel tax will be applied to the premium to the fair market value of a company's shares during a funding round to raise capital. The excess premium received on sales of shares by an Indian unlisted company to a foreign investor will be taxed as "income from other sources." These provisions have caused concern for privately held companies, as they could impact investment by overseas investors. The Department for Promotion for Industry and Internal Trade has had consultations with industry associations, and the draft rules will address differences in valuation techniques used in the income tax act and the foreign exchange management act since the valuation criteria at the moment are different under FEMA and the Income-Tax Acts, start-ups had expressed their fear that it could result in litigation.

https://www.business-standard.com/india-news/angel-tax-draft-rules-likely-in-10-days-may-clear-the-air-on-valuation-123050200950_1.html

3. FT&TR Division clarifies on FATCA related reporting FAQs issued by US IRS:- *Notification F. No. 500/107/2015-FT&TR-III dated 04.05.2023*

FT & TR Division of the Finance Ministry issues clarification in pursuance to FAQ 6 (reporting) recently updated by US IRS with respect of US reportable accounts under the FATCA Intergovernmental Agreement between the US and other Model 1 jurisdictions that includes India. It clarifies that reporting for calendar year 2022 is considered to be a transition year, and to be eligible for relief, RFIs must either use the TIN codes specified in the earlier clarification issued in which clarifies that Indian Reporting Financial Institutions (RFIs) should ensure that US TIN is reported for all the US Reportable Accounts on Jan 31, 2022 or the updated TIN codes mentioned in the FAQ6. It states that for subsequent years, RFIs will have to follow the updated TIN codes referred to in FAQ6. Further, it requests RFIs to follow the guidance in respect of reporting of U.S. reportable accounts, also requests RFIs to suitably revise the reports submitted in Form 61B in respect of U.S. reportable accounts pertaining to Calendar Year 2022.

4. CBDT Supreme Court reserves order in Revenue's MA for Sec.148 proceedings in the decision of Abhisar Buildwell:- *News report*

SC concludes hearing and reserves order in Revenue's Miscellaneous Application (MA) filed pursuant to Abhisar Buildwell judgment. The MA was filed to seek clarity on initiation of reassessment proceedings under the prevailing provisions of Section 147 to 151 in the cases where proceedings under Sections 153A/153C do not survive due to Abhisar Buildwell judgment.

The matter was heard by the Division Bench of the Supreme Court comprising Justice M.R. Shah and Justice Sudhanshu Dhulia.

5. Taxmen cannot ignore 'brazen misuse' of laws:- *Finance Minister*

Finance Minister Nirmala Sitharaman has emphasized that tax authorities cannot ignore the blatant misuse of laws by taxpayers and acknowledged that while there may be genuine cases of tax disputes, there are also instances where individuals or businesses exploit loopholes and engage in tax evasion. The Finance Minister stressed the importance of ensuring that the tax system is fair and transparent for all taxpayers. Further, she called for a balance between providing a conducive environment for businesses to thrive and ensuring that everyone pays their fair share of taxes. Sitharaman stated that the government is committed to reducing litigation and improving the tax administration system.

Further highlights that the government has taken several measures to simplify tax laws and procedures, including the introduction of the faceless assessment scheme and the use of technology for efficient tax administration and encouraged tax officials to leverage these advancements to curb tax evasion effectively.The Finance Minister's remarks reflect the government's determination to tackle tax evasion and strengthen tax compliance. By addressing the misuse of laws and promoting fairness, the government aims to foster a more transparent and equitable tax system in India.

https://timesofindia.indiatimes.com/india/taxmen-cannot-ignore-brazen-misuse-of-laws-finance-minister-nirmala-sitharaman/articleshow/99855147.cms?from=mdr

6. CBDT directs 100% e-filing of Revenue's appeals before appellate Courts by May 31, pursuant to Supreme Court Order:- *Letter F. no. JDIT/SCC/L&R/LIMBS/2021-22/906 dated May 4, 2023*

CBDT [DGIT(L&R)] issues directions for all Pr.CCIT(CCA) pursuant to SC order in Bilfinder Neo Structo Construction Ltd wherein Union of India was directed to ensure 100% e-filing of Revenue's appeals before ITAT and High Court. The direction draws attention to *Interim Action Plan 2023-24* and subsequent corrigendum dt. May 1, 2023 wherein it was directed to ensure 100% filing of Revenue appeals/petitions before the High Courts and ITAT in e-filing mode by May 31, 2023.

Further, CBDT instruction also requires the concerned officers to ensure strict compliance with the directions of SC order. As per the corrigendum to Interim Action Plan, Jun 30, 2023 is the last date for updating pending HC cases with substantial questions of law in the Legal Information Management & Briefing System (LIMBS) portal and Apr 30, 2023 was the last date for implementation of e-office of work related to Special Leave Petitions.

7. CBDT announces Rule 11UA overhaul, protects notified startups and proposes new valuation methods: *Ministry of Finance- Press Release dated 19th May 2023*

The Central Board of Direct Taxes (CBDT) has proposed changes to Rule 11UA regarding the "angel tax" provision. The Finance Act of 2023 amended the Income-tax Act to include consideration received from non-residents for share issuance under section 56(2)(viib), making it taxable if it exceeds the Fair Market Value (FMV) of the shares. In response to stakeholder inputs, the CBDT plans to modify Rule 11UA for share valuation purposes.

Additionally, the CBDT intends to issue a separate notification for excluded entities. This notification will identify certain classes of non-resident investors to whom the provisions of section 56(2)(viib) will not apply. The proposed modifications and notification for excluded entities will be

subject to public comments before finalization. Furthermore, the CBDT plans to amend a notification to exempt consideration received by startups covered under the Department for Promotion of Industry and Internal Trade (DPIIT) from the provisions of section 56(2)(viib).

Currently, Rule 11UA outlines two approaches, namely Discounted Cash Flow (DCF) and Net Asset Value (NAV) methods, for valuing shares for resident investors. It is proposed to include 5 more valuation methods available for non-resident investors in addition to DCF and NAV methods of valuation.

Further, in case of receipt of consideration by a company with respect to the issue of shares from a non-resident entity notified by the Central Govt., the price of the equity shares may be taken as the FMV of the equity shares for resident and non-resident investors subject to the following:

a. To the extent, the consideration from such FMV does not exceed the aggregate consideration that is received from the notified entity and
b. The consideration has been received within a period of ninety days of the date of issue of shares which are the subject matter of valuation.

It is also proposed to notify certain classes of persons being non-resident investors to whom section 56(2)(viib) shall not be applicable. This includes:

a. Government and Government related investors including entities controlled by the Government or where direct or indirect ownership of the Government is 75% or more.
b. Banks or Entities involved in Insurance Business where such entity is subject to applicable regulations in the country where it is established or incorporated or is a resident.
c. Any of the following entities, which is a resident of certain countries or specified territories having robust regulatory framework:
   - Entities registered with Securities and Exchange Board of India as Category-I Foreign Portfolio Investors.
   - Endowment Funds associated with a university, hospitals or charities,
   - Pension Funds created or established under the law of the foreign country or specified territory,
   - Broad Based Pooled Investment Vehicle or Fund where the number of investors in such vehicle or fund is more than 50 and such fund is not a hedge fund or a fund which employs diverse or complex trading strategies.

8. CBDT issues notifications restricting rigours of Angel Tax:- *CBDT Notification No. 29/2023 & 30/2023 dated 24 May 2023*

The Finance Act 2023 has enhanced the scope of section 56(2)(viib) to make it applicable to share application money/premium received from any person, regardless of residential status. Further, Proviso to section 56(2)(viib) gives power to the Central Government to notify class or classes of persons to whom the provisions of said section shall not apply.

The CBDT issues two notifications on 24 May, 2023 pursuant to its Press Release dated 19 May, 2023 proposing changes with respect to Angel Tax. Notification No. 30/2023 (effective from Apr 1, 2023) deals with startups whereby, CBDT notified that Section 56(2)(viib) shall not apply to consideration received by a company for issue of shares exceeding the face value if the said consideration has been received from any person, by a company which fulfills the conditions specified in para 4 (Exempt Startups) of the DPIIT Notification dated 19 Feb, 2019 and files the declaration referred to in para 5 of the said notification.

Vide Notification No. 29/2023, CBDT notifies the class or classes of persons for inapplicability of Section 56(2)(viib) which are:

a. Government and Government related investors such as central banks, sovereign wealth funds, international or multilateral organizations or agencies including entities controlled by the Government or where direct or indirect ownership of the Government is 75% or more,
b. Banks or Entities involved in Insurance Business where such entity is subject to applicable regulations in the country where it is established or incorporated or is a resident,
c. Any of the following entities, which is a resident of Australia, Austria, Belgium, Canada, Czech Republic, Denmark, Finland, France, Germany, Iceland, Israel, Italy, Japan, Korea, New Zealand, Norway, Russia, Spain, Sweden, UK and USA, and is subject to regulations in the country where it is established or incorporated or is a resident:
    - SEBI registered Category-I Foreign Portfolio Investors,
    - endowment funds associated with a university, hospitals or charities,
    - pension funds created or established under the law of the foreign country or specified territory,
    - Broad Based Pooled Investment Vehicle or fund where the number of investors in such vehicle or fund is more than 50 and such fund is not a hedge fund or a fund which employs diverse or complex trading strategies.

9. CBDT releases Draft Rules on Angel Tax for public comments with a deadline of 5th June:- *CBDT Draft Notification dated 26 May 2023*

The Finance Act, 2023, amended section 56(2)(viib) to bring into account the consideration received from non-residents for the issue of shares. The section provides that if the consideration for the issue of shares exceeds the Fair Market Value (FMV) of the shares, it shall be chargeable to income tax under the head' Income from other sources'. Rule 11UA prescribes the manner to compute FMV of such shares.

After detailing the exempted entities from angel tax provisions, the Income Tax Department vide draft notification dated 26 May 2023 issued draft rules prescribing the method of computation of Fair Market Value (FMV) of unquoted equity shares through five different methods under section 56(2)(viib) of Income-tax Act, 1961 for non-resident investment in unlisted companies in India. Suggestions/comments have been invited from stakeholders and general public on the draft rules, which can be sent to ustpl2@nic.in latest by June 5, 2023. The draft rules would be effective from April 1, 2023. Under the draft rules, no changes are proposed for the prescribed net asset value and discounted cash flow (DCF) based valuation methodology, however, five newly proposed valuation methodologies (mentioned below) for arriving at fair market value (FMV) of unquoted shares to be issued to non-resident investors, needs to be determined by Category I Merchant Banker registered with SEBI, who were earlier authorised to issue valuation report under DCF method.

1) 5 new valuation methods for non-resident investors

- Comparable Company Multiple Method;
- Probability Weighted Expected Return Method;
- Option Pricing Method;
- Milestone Analysis Method;
- Replacement Cost Methods;

2) The price at which shares are issued to the notified entity can be treated as FMV for others

It has been proposed that if a company receives any consideration for the issue of shares from notified entity, the price of the equity shares corresponding to such consideration, may be taken as the FMV of the equity shares for other investors.

However, the following two conditions must be satisfied:

(a) The above benchmarking applies only to the extent of aggregate consideration that is received from the notified entity; and

(b) The company has received the consideration from the notified entity within 90 days of the date of the issue of shares which are the subject matter of valuation.

On similar lines, venture capital undertaking can use the price of equity shares issued to a venture capital fund, venture capital company or specified fund.

For example, if a venture capital undertaking receives a consideration of Rs 50000 from a venture capital company for the issue of 100 shares at the rate of Rs. 500 per share, then such an undertaking can issue 100 shares at this rate to any other investor within 90 days of the receipt of consideration from venture capital company.

3) Merchant Banker's report shouldn't be older than 90 days

Draft sub-rule (3) proposed that the valuation report by the Merchant Banker would be acceptable if it is of a date not more than 90 days prior to the date of issue of shares which are the subject matter of valuation.

4) 10% Safe harbor limit introduced

Sub-rule (4) has provided a safe harbor limit of 10%.

This means that if the price at which shares are issued is higher than the value determined per Rule 11UA, but the difference doesn't exceed 10%, the issue price will be held as the fair market value.

Under the existing norms, only investments by domestic investors or residents in closely held companies were taxed over and above the fair market value, which was referred to as angel tax. The CBDT has already notified investments from 21 countries as exempt entities from angel tax. Countries like Singapore, Netherlands and Mauritius, which constitute the major chunk of foreign direct investment in India, have not been included in the exemption list. Though the move is being viewed as a measure to plug loopholes for investments from tax havens, it is also expected to hit fundraising by startups in India.

10. CBDT notifies Rule 133 for computing 'Net Winnings' in Online Gaming:- *CBDT Notification No. 28/2023 dated 22 May 2023*

The Central Board of Direct Taxes (CBDT), vide Notification No. 28/2023 dated 22 May 2023, notifies Rule 133 of the Income tax Rules prescribing formulas for computation of Net Winnings in Online Gaming for the purposes of Sections 115BBJ (Tax on winning from online games) and 194BA (TDS on online gaming). A brief of the same is mentioned below:

1. Net winnings from online games during the previous year, for the purposes of section 115BBJ, shall be calculated using the following formula, namely:–

Net winnings = (A+D)-(B+C), where –

A = Aggregate amount withdrawn from the user account during the financial year;

B = Aggregate amount of non-taxable deposit made in the user account by the assessee during the financial year;

C = Opening balance of the user account at the beginning of the financial year; and

D= Closing balance of the user account at the end of the financial year.

2. Net winnings comprised in the first withdrawal during the financial year, for the purposes of section 194BA, shall be calculated using the following formula, namely:–

Net winnings = A-(B+C), where –

A = Amount withdrawn from the user account;

B = Aggregate amount of non-taxable deposit made in the user account by the owner of such account during the financial year, till the time of such withdrawal; and

C = Opening balance of the user account at the beginning of the financial year.

3. Net winnings in the formula given in sub-rule (2) shall be zero, if the sum of amounts B and C is equal to or greater than the amount A.

4. Net winnings comprised in each subsequent withdrawal during the financial year, for the purposes of section 194BA, shall be calculated using the following formula, namely:–

Net winnings = A-(B+C+E), where –

A = Aggregate amount withdrawn from the user account during the financial year till the time of subsequent withdrawal including the amount of such subsequent withdrawal;

B = Aggregate amount of non-taxable deposit made in the user account by the owner of such account during the financial year, till the time of such subsequent withdrawal;

C = Opening balance of the user account at the beginning of the financial year; and

E= Net winnings comprised in the earlier withdrawal or withdrawals computed under sub-rule (2), or under this sub-rule, during the financial year till the time of subsequent withdrawal if tax has been deducted in accordance with the provision of section 194BA on winnings comprised in such withdrawal or withdrawals.

5. Net winnings in the formula given in sub-rule (4) shall be zero, if the sum of amounts B, C and E is equal to or greater than the amount A.

6. Net winnings comprised in the user account at the end of the financial year, for the purposes of section 194BA, shall be calculated using the following formula, namely:–

Net winnings = (A+D)-(B+C+E), where –

A = Aggregate amount withdrawn from the user account during the financial year;

B = Aggregate amount of non-taxable deposit made in the user account by the owner of such account during the financial year;

C = Opening balance of the user account at the beginning of the financial year;

D= Closing balance of the user account at the end of the financial year; and

E= Net winnings comprised in the earlier withdrawal or withdrawals computed under sub-rule (2), or sub-rule (4), during the financial year if tax has been deducted in accordance with the provision of section 194BA on winnings comprised in such withdrawal or withdrawals.

7. Net winnings in the formula given in sub-rule (6) shall be zero, if the sum of amounts B, C and E is equal to or greater than the sum of amount A and D.

Further, CBDT by way of explanation to this Rule clarified that:

a. User account shall include every account of user, by whatever name called, which is registered with the online gaming intermediary and where any taxable deposit, non-taxable deposit or the winnings made by the user is credited and withdrawal by the user is debited.
b. Whenever there is payment to the user in kind or in cash, or partly in kind and partly in cash, which is not from the user account, the provisions of this rule shall apply to calculate net winnings by deeming that the money equivalent to such payment has been deposited as taxable deposit in the user account and the equivalent amount has been withdrawn from the user account at the same time and shall accordingly be included in amount A.
c. Whenever there are multiple user accounts of the same user, each user account shall be considered for the purposes of calculating net winnings and the deposit, withdrawal or balance in the user account shall mean aggregate of deposit, withdrawal or balance in all user accounts.
d. Whenever there are multiple user accounts of the same user, transfer from one user account to another user account, maintained with the same online gaming intermediary, of the same user shall not be considered as withdrawal or deposit, as the case may be, for the purposes of deducting tax under section 194BA.
e. Whenever there is taxable deposit in the form of bonus, referral bonus, incentives, promotional money, discount by whatever name called; and such deposit can only be used for playing the online games and not for withdrawal or any other purposes, such deposit shall be ignored for the purposes of calculation of net winnings and shall not be included in amount B or amount C or amount D and
f. Whenever any bonus, referral bonus, incentives, promotional money, discount, by whatever name called, is not considered as part of amount B or amount C or amount D under clause (e) and subsequently they are recharacterised and allowed to be withdrawn, they shall be deemed as taxable deposit at the time of such recharacterisation and it shall be deemed that the equivalent amount has been deposited in the user account at that time.

By the same Notification, CBDT also amended Rule 31A (TDS Statement), w.e.f. Jul 1, 2023, to give effect to the newly inserted Section 194BA (TDS on online gaming) and amendment in Section 194N (TDS on cash payments) whereby threshold for TDS was raised to Rs.3 Cr if recipient is a

cooperative society; CBDT has also notified new Form 16 for AY 2024-25 and subsequent years apart from the amendments in Forms 24Q, 26Q, 27Q and 27EQ, w.e.f. Jul 1, 2023.

11. CBDT notifies Rs.25 lakhs for leave encashment exemption under Sec.10(10AA):- *CBDT Notification No. 31/2023 dated 24th May 2023*

When an employee surrender his unutilized leaves in lieu of monetary consideration, it is known as 'leave encashment'.

The leaves encashed by the Government employee at retirement are fully exempt from tax. However, leaves encashed by a non-Government employee at the time of retirement (voluntary or compulsory) shall be exempt to the extent of lower of the below.

The limit of Rs. 3,00,000 was fixed in the year 2002 vide Notification No. SO 588(E), dated 31-5-2002, when the highest basic pay in the government was Rs. 30,000 p.m. While presenting Union Budget 2023, the Finance Minister proposed increasing the Rs. 3 lakh limit in line with the increase in government salaries. The CBDT has notified enhanced tax exemption limit in respect of leave encashment for non-government (private sector) salaried employees from Rs 3 lakh to Rs 25 lakh, effective from 1 April 2023.

The exemption of Rs 25 lakh is redeemable for up to ten months' average salary at the time of retirement. Such employees can claim partial or complete exemption based on the least amount of the following four factors:

- Rs. 25 lakh (increased from Rs 3 lakh effective from April 1, 2023),
- Actual leave encashment amount
- Average salary of the last 10 months or
- Cash equivalent of the leave balance, subject to a maximum of 30 days per year of service.

Maximum Exemption Limit

The total amount exempt from income tax under section 10(10AA)(ii) of the Income-tax Act, 1961, shall not exceed Rs 25 lakh if a non-government/ private sector employee receives such payments from more than one employer in the same previous year. Furthermore, the amount exempt from income tax shall not exceed the limit of 25 lakh, less the tax exemption already allowed in the employee's total income under section 10(10AA)(ii) of any previous year or years.

Claiming Relief under Section 89 for Leave Encashment (Form 10E)

Leave encashment received during the employment is fully taxable and forms part of 'Income from Salary'. However, employees can claim tax relief under Section 89, by filing Form 10E online on the income tax e-filing portal. Here's a step-by-step guide to claiming tax relief for leave encashment:

- Log in to your account on the Income Tax e-filing portal;
- Access Form 10E, which is mandatory for claiming relief under Section 89(1);
- Fill out the form with the required details, including information about your leave encashment; and
- Submit the form online.

You will receive a message displaying the transaction ID and acknowledgement receipt number upon successful submission.

Lastly, the exemption limit of Rs 25 lakh is an aggregate exemption during the lifetime of an employee. One should keep in mind that leave policies and types of leaves differ from company to company and the tax treatment of leave encashment may vary accordingly.

12. CBDT extends Sec.10(23C), 12A & 80G registration deadline to Sep 30:- *CBDT Circular No.F. No.370 I 33/06/2023-TPL dated 24th May 2023*

The Central Board of Direct Taxes (CBDT) has issued a few clarifications with respect to various provisions related to charitable and religious trusts following amendments made by the Finance Act 2023.

The clarification covers various aspects relating to the applicability of section 115TD in case the trust fails to apply for registration, an extension of the due date of furnishing Form No. 10BD and Form No. 10BE, the applicability of provisional registration, the extension of the due date for furnishing statement of accumulation and clarification with respect to the furnishing audit report in Form 10B.

— **Extension of the due date to apply for registration/approval for the purpose of section 115TD**

The Finance Act 2023 amended section 115TD to tax the accreted income of the trusts who have not applied for registration/ approval within the prescribed time limit. This amendment has come into effect from 01.04.2023 and therefore applies to the assessment year 2023-24 and subsequent assessment years.

The last date for filing an application by the existing trusts seeking registration/ approval was extended to 25.11.2022 vide Circular No. 22 of 2022 dated 01.11.2022. Further, the due date for furnishing applications for registration/approval by the provisionally registered/approved trusts was extended till 30.09.2022. These trusts shall be subject to tax under section 115TD if the application is not made by 25.11.2022 or 30.09.2022, as the case may be.

Exercising the powers under section 119, the Board has extended the due date to file an application in Form No. 10A or Form No. 10AB till 30.09.2023, where the due date for making such application has expired prior to such date.

— **Due date to file Form No. 10BD and Form 10BE extended**

The Board has extended the due date for furnishing of statement of donation in Form No. 10BD and the certificate of donation in Form No. l0BE in respect of the donations received during the financial year 2022-23 to 30.06.2023.

— **Applicability of provisional registration**

It has been clarified that the provisional approval or provisional registration for section 10(23C), section 11 or section 80G, shall be effective from the assessment year relevant to the previous year in which the application is made and shall be valid for three assessment years subject to the provisions of the aforementioned sections.

— **Benefit of accumulation/ deemed accumulation not to be denied if the form furnished before furnishing the return of income**

Section 11 was amended by the Finance Act, 2023 to provide that statement of accumulation must be furnished at least two months before the due date of furnishing the return of income under section 139(1). A similar amendment was made in section 10(23C).

It is clarified that the statement of accumulation in Form No. 10 and Form No. 9A must be furnished at least two months before the due date of furnishing the return of income so that it may be taken into account while auditing the books of account. However, the accumulation/deemed application shall not be denied to a trust as long as the statement of accumulation/deemed application is furnished on or before the due date of furnishing the return as per section 139(1).

— **Furnishing details with respect to certain payments include Payment through account payee cheques**

The Auditor's Report furnished in Form No. 10B and Form No. 10BB requires the auditor to bifurcate certain payments or applications in electronic modes and non-electronic modes. Notes to the said Forms provide for all other electronic modes, including Credit Card, Debit Card, Net Banking, IMPS, UPI, RTGS (Real Time Gross Settlement), NEFT (National Electronic Funds Transfer), and BHIM (Bharat Interface for Money) Aadhar Pay but does not include account payee cheque drawn on a bank or an account payee bank draft or use of electronic clearing system through a bank account.

Therefore, it has been clarified that for the purposes of Form No. 10B and Form No. 10BB, electronic modes referred are in addition to the account payee cheque drawn on a bank or an account payee bank draft or use of electronic clearing system through a bank account.

13. CBDT issues compulsory case selection guidelines for 'Complete Scrutiny':- *Guideline no. F.No.22S/66/2023/IT A-II dated May 24, 2023 issued by CBDT*

CBDT issues guidelines for compulsory selection of returns for Complete Scrutiny during FY 2023-24. The guidelines cover cases pertaining to: (i) Survey, (ii) Search & Seizure or Requisition, (iii) Section 142(1) notices where no return is furnished, (iv) Section 148 (arising from search or survey or otherwise), (v) registration or approval under various sections such as 12A, 12AB, 35(1)(ii)/(iia)/(iii), 10(23C), etc. (v) addition in an earlier assessment year(s) on a recurring issue of law or fact and/or law and fact, (vi) specific information regarding tax-evasion.

CBDT mandates that the cases shall be selected for compulsory scrutiny by the International Taxation and Central Circle charges following prescribed parameters and procedure with prior administrative approval of the concerned Pr.CIT/Pr.DlT/CIT/ClT and the information pertaining to Compulsory Scrutiny may not be transferred to NaFAC unless the case itself is transferred and further clarifies that communication to NaFAC for access and/or further action after selection for Compulsory Scrutiny will not apply to the International taxation and Central charges.

As per the amendments brought by Finance Act 2021, the time limit for service of notice u/s 143(2) of the Act has been reduced to three months from end of the Financial Year in which the return is filed. Therefore, CBDT prescribed the following timeline that shall be followed:

(i) **Jun 9, 2023** as last date for selection and transfer of cases to NaFAC wherein assessments have to be completed in faceless manner (cases of - Section 148 not arising from search/survey, charitable institutions, recurring issues, tax-evasion) and

(ii) **Jun 30, 2023** as last date for service of Section 143(2) notice in cases selected for Compulsory Scrutiny.

INDIRECT TAXATION

1. Businesses Get 3 Months Extension On Implementation Of E-invoice Reporting Time Limit:- *GSTN Press release, 6 May 2023*

Last month the GST Network had imposed a timeline for businesses with turnover of Rs 100 crore and above for uploading e-invoices on the Invoice Registration Portal (IRP) within 7 days of the issue of such invoices beginning May 1. As per GST law, businesses cannot avail input tax credit (ITC) if invoices are not uploaded on the IRP.

In an advisory to taxpayers on May 6, GST Network said it has been decided by the competent authority to defer the imposition of time limit of 7 days on reporting old e-invoices on the e-invoice IRP portals for taxpayers with aggregate turnover greater than or equal to Rs 100 crore by three months.

2. Recipients of services are entitled to maintain an application for advance ruling:- *Anmol Industries Ltd. v. West Bengal Authority for Advance Ruling, Goods and Services Tax - [2023] 150 taxmann.com 3 (Calcutta)*

The assessee was registered under GST and it had filed an application for advance ruling before the Authority of Advance Ruling (AAR) to determine applicability of exemption notification. The AAR rejected the application and concluded that recipients of services were not entitled to maintain an application for advance ruling. The assessee filed writ petition and the learned Single Bench directed to file appeal before the Appellate Authority of Advance Ruling. It filed intra-court appeal and challenged the order.

The High Court noted that the definition of "applicant" under Section 95(c) of Central Goods and Services Tax (CGST) Act, 2017 is quite broad and includes any person registered or desirous of obtaining registration. In the instant case, the assessee was registered under Act and therefore it met the said criterion. Moreover, the Section 97 of CGST Act, 2017 sets out procedure for making an application for advance ruling, and question on which ruling is sought must fall within scope of section 97(2). In instant case, assessee had sought a ruling on applicability of an exemption notification under Act, which fell within scope of section 97(2) (b). Therefore, the Court held that the assessee was eligible to make an application for advance ruling and matter was remanded.

3. Perquisites provided by employer to employee under contractual agreement will not be subjected to GST:- *Authority for Advance Rulings, Gujarat AIA Engineering Ltd., In re - [2023] 150 taxmann.com 73 (AAR - GUJARAT)*

The applicant was providing canteen facility to its employees through canteens service provider. The employees would bear 50% cost while remaining 50% would be borne by the applicant on behalf of its employees. It filed an application for advance ruling to determine whether GST to be paid on amount recovered from employees and paid to canteens service provider.

The Authority for Advance Ruling (AAR) noted that the applicant provided demarcated space for canteen as mandated in section 46 of Factories Act, 1948. The AAR also noted that CBIC vide Circular No. 172/04/2022-GST has clarified that perquisites provided by employer to employee in terms of contractual agreement between employer and employee will not be subjected to GST when

the same are provided in terms of the contract between the employer and employee. Therefore, it was held that the subsidized deduction made by the applicant from the employees who would be availing food in the factory would not be considered as supply under the provisions of Section 7 of the GGST Act, 2017.

4. GSTN issues new advisory for timely filing of GST Returns:- *GSTN Update dated May 4th, 2023*

The GSTN has observed that some taxpayers faced difficulty in filing GSTR-3B of March, 2023 period on 20th April 2023. On analysing the reasons, it was noted that large number of tax payers attempted to file GSTR-3B returns in the afternoon of the last day. Therefore, the taxpayers are advised to file their Form GSTR- 3B well in advance to avoid last day rush. Taxpayers are also advised to inculcate a month-wise return filing discipline for all the B2B invoices for the month and avoid reporting invoices of the past period in one go, as such behaviour can adversely impact the queue (waiting time) on the GST system.

5. Proceedings can't be initiated by issuing summary of show cause notice without issuance of proper SCN:- *Vishkarma Industries v. State of Jharkhand - [2023] 150 taxmann.com 140 (Jharkhand)*

The proceedings were initiated by the GST department against the petitioner for wrongful availment of ITC and passing benefits of fake ITC to other entities. It filed writ petition to challenge the proceedings and contended that no proper show cause as contemplated under section 74(1) was issued and instead only summary of a show cause was issued.

The High Court noted that a summary of a show cause cannot be a substitute of a proper show cause notice and such substitution would entail violation of principles of natural justice. Moreover, in the instant case, the documents which formed basis of passing of impugned order were not supplied to the petitioner. The Court also noted that in absence of clear charges based upon which a person is required to answer, proper opportunity to defend itself stands denied. Therefore, it was held that the impugned show cause summary and adjudication orders were to be quashed and liberty was granted proper officer to initiate fresh proceeding by issuing a proper show cause notice.

6. CBIC issues guidelines for Special All-India Drive against fake registrations:- *Instruction No. 01/2023-GST dated May 4th, 2023*

The CBIC has issued a notification to provide that the E-invoice is required to be generated by the registered persons whose aggregate turnover in any preceding financial year from 2017-18 onwards exceed INR 5 crore rupees and this change shall be effective from August 1st, 2023. Currently, the threshold limit for generating E-invoice is 10 crores which is now reduced to 5 crores and such taxpayers would be required to generate E-invoice from August 1st, 2023 in respect of supply of goods or services or both to a registered person or for exports.

7. CBIC rolls out Automated Return Scrutiny Module for GST returns:- *Press Release dated May 11th, 2023*

The CBIC has rolled out an Automated Return Scrutiny Module for GST returns after the directions of Union Minister for Finance and Corporate Affairs Smt. Nirmala Sitharaman. In the module, discrepancies on account of risks associated with a return are displayed to the tax officers.

The tax officers are provided with a workflow for interacting with the taxpayers through the GSTN Common Portal for communication of discrepancies noticed under FORM ASMT-10, receipt of taxpayer's reply in FORM ASMT-11 and subsequent action in form of either issuance of an order of acceptance of reply in FORM ASMT-12 or issuance of show cause notice or initiation of audit /investigation.

8. Time limit extended till 31st May, 2023 for exercising option to pay tax under Forward Charge for FY 23-24 by GTAs:- *Notification No. 05/2023- Central Tax (Rate) dated 9th May, 2023*

The CBIC has issued notification to provide that the option for the Financial Year 2023-2024 to pay tax under Forward Charge by Goods Transport Agency (GTA) shall be exercised on or before 31st May, 2023. Earlier, this option was required to be exercised before 15th March, 2023.

It is also provided that a GTA who commences new business or crosses threshold for registration during any Financial Year, may exercise the option to itself pay GST on the services supplied by it during that Financial Year by making a declaration in Annexure V before the expiry of forty-five days from the date of applying for GST registration or one month from the date of obtaining registration whichever is later.

9. High Court directs dept. to reconsider belated appeal against cancelled registration on payment of outstanding dues by petitioner:- *SSN Associates v. Union of India - [2023] 150 taxmann.com 159 (Gauhati)*

The petitioner was dealing with the business of printing and executing works contracts and supplies. Due to several personal problems due to COVID19 Pandemic situation and lockdown throughout the entire country, the GST returns from the month of July, 2021 to January, 2021 could not be submitted. The department issued notice for non-filing of GST returns but it was remained unattended and the GST registration was cancelled for non-filing of returns. It filed appeal but the appeal against cancellation order was dismissed on the ground of limitation. It filed writ petition before the High Court.

The High Court noted that the statutory dues are required to be paid by all entities who are registered under the GST regime. Such payments of statutory dues contribute towards the revenue collection by the Union. If the petitioner would not be included within the GST regime, then any statutory dues that may be required to be deposited by the petitioner will not be deposited and non-payment of tax will not be in interest of revenue.

The Court also noted that the petitioner had approached authority for appeal and same was dismissed on ground of limitation but the Writ Court is empowered to condone delay of any statutory or quasi-judicial authority. Therefore, the impugned orders were to be set aside and authority was directed to intimate outstanding dues to the petitioner and on payment of such dues, appellate authority would re-decide appeal.

10. No liability of interest would arise if credit was reversed by petitioner before its utilization:- *Grundfos Pumps India (P.) Ltd. v. Joint Commissioner of GST & Central Excise - [2023] 150 taxmann.com 176 (Madras)*

The petitioner had been an assessee under the erstwhile Central Excise regime and migrated into the regime of GST. The unutilized credit was taken forward as transitional credit on introduction of GST by the petitioner. However, the said credit was not reflected in Electronic Credit Ledger (ECL), and petitioner reflected same as available ITC in Form GSTR-3B return. The audit wing of GST department during audit demanded interest on ITC which was claimed in GSTR-3B.

The petitioner submitted that when ITC without explanation, came to be reflected in ECL, such credit was reversed without set off / utilization against output tax liability at any point of time. However, the department passed demand order levying interest. It filed writ petition against the levy of interest.

The High Court noted that the liability to interest arises only in case of actual utilisation of credit by assessee. By virtue of amendment in 2022 with retrospective effect from 2017, interest liability was attracted only when ITC wrongly availed and utilized with revenue impact. However, in present case, original error of non-maintenance of ECL was admittedly attributable to department. Moreover, the petitioner did not utilise credit and reversed the same. Thus, it was held that there was no liability to interest and the impugned order to extent to which it levied interest under section 50(3) was to be set aside.

11. Karnataka High Court decided in favour of gaming companies in the Gameskraft case on the distinction between game of skill and betting

In a 325 pages judgment that traces the jurisprudence on Games of Skill vs Games of Chance as also betting & gambling, Karnataka HC quashes the Show Cause Notice (SCN) issued by Revenue on online gaming (Rummy) co. Gameskraft. Comprehensively dealing with the key contentions raised on both sides as also the reliance by both Petitioners/Intervenors & Revenue on the same set of case laws, Justice S.R. Krishna Kumar rules that rummy is a game where predominantly skill is exercised to control the outcome of the game, further holds that game of Rummy is not one where forecasting or predicting the winner is the activity of the player.

HC therefore holds "...When the outcome of a game is dependent substantially or preponderantly on skill, staking on such game does not amount to betting or gambling." HC interprets each of the landmark case laws on this subject in great detail, terms Revenue's contention that SC in RMD Chamarbaugwala (RMDC-1) held any game whose result is based on a 'forecast' is gambling activity, as a contention liable to be rejected. HC further shoots down Revenue's reliance on Apex Court verdict in Satyanarayana where Rummy was infact being played for stakes, observes " ...If the said judgment is interpreted to mean that no fees can be imposed on players for playing a skill-based game, then effectively even an organiser of a chess competition who charges an entrance fee on the players to participate in the competition would be guilty of running a common gaming house." HC further observes, "If Satyanarayana's case is interpreted to mean that rummy played with stakes is an offence, it would render not only Section 14 but also the opening words of paragraph - 12 (in RMDC-2) as otiose."

HC then peruses Apex Court ratio in Lakshmanan case which considered all the above cases, observes that the ratio that emerges from the said case is that wager or betting on a game of skill does not amount to gambling. HC then goes on to peruse ratio laid down by division bench of Karnataka HC in All India Gaming Federation's case (which the Revenue argued ought to be treated per incuriam), keeping in mind the 'ratio decidendi' and 'inversion test' principles and holds in this context "...the judgment of the Hon'ble Division Bench of this Court is neither per incuriam nor sub-silentio as contended by the respondents. Only because a specific paragraph in a precedent has not been excerpted by a Court does not mean that a precedent has not been considered in its entirety." On extensive analysis of GST Act & its definitions/provisions, HC rules that the terms "betting" and "gambling" appearing in Entry 6 of Schedule III of the CGST Act does not and cannot include games of skill within its ambit. HC also elaborates that while element of chance cannot be completely overruled in game of Skill or game of Chance "but what is to be seen is the predominant element"

In conclusion, HC terms the Revenue's SCN and its contentions as nothing but an outcome of a 'vain' and 'futile' attempt to "...cherry pick stray sentences from the judgments of various Courts including the Apex Court, this Court and other High Courts and try to build up a non-existent case out of nothing which clearly amounts to splitting hairs and clutching at straws which cannot be countenanced and is impermissible in law." HC, thus, quashes Revenue's Rs.21,000 Cr SCN on Gameskraft issued in September, 2022 as illegal, arbitrary and without jurisdiction or authority of law.

12. Late fees can't be levied for period falling between filing of revocation application and restoration of GSTIN: *Ishwar Chand Proprietor of Bhagwati Trading Co. v. Union of India - [2023] 150 taxmann.com 294 (Delhi)*

The petitioner had not filed its GST returns for a period of more than six months. The department issued Show Cause Notice and the petitioner didn't respond to the notice but it filed GST returns. However, the department issued an order dated 29.07.2020 and GST registration of petitioner was cancelled by the department.

It filed application for revocation of cancellation of registration on 16.10.2020 but the same was rejected. Thereafter, it filed appeal against the order and the appellate authority had directed that the petitioner's GSTIN registration would be restored. The registration was restored on 22.04.2022 and it filed petition against the levy of penalty for the late filing of the returns.

The High Court observed that the revocation of cancellation application was ultimately allowed by Appellate Authority but registration was not restored immediately. The Court also noted that the petitioner could not be held responsible from date of filing application for revocation of its cancellation for not filing its returns during period when registration stood cancelled. Thus, the Court held that the period 16-10-2020 to 22-4-2022 when petitioner's registration was restored would be excluded for purpose of calculating any penalty for late filing of returns.

13. 5% GST to be paid on lump sum amount of bonus paid by recipient to employees of Canteen Service Provider: ***Authority for Advance Rulings, Telangana Foodsutra Art of Spices (P.) Ltd., In re - [2023] 150 taxmann.com 259 (AAR- TELANGANA)***

The petitioner was providing canteen services. The recipient paid a Lump Sum amount of bonus to the employees of petitioner apart from amount received under invoices for regular canteen services. It filed an application for advance ruling to determine taxability of amount paid to employees as bonus.

The Authority for Advance Ruling noted that all payments made in respect of a supply shall constitute as value of supply on which tax is to be levied according to rates applicable in respective notifications. In the instant case, the applicant was providing only canteen services to its recipient and didn't provide any other ancillary or incidental services.

Therefore, it was held that the same GST rate as applicable for main service being canteen service would also be applicable for bonus reimbursement and the total amount including bonus would form value of supply of canteen services and taxable at rate of 5%.

14. Govt. notified amendments in service exemption notification as per recommendations of 48th GST Council Meeting:- ***Authority for Advance Rulings, Karnataka Nagabhushana Narayana, In re - [2023] 150 taxmann.com 304 (AAR - KARNATAKA)***

The applicant was a non-resident Indian who owned an immovable property at Bangalore, India. He appointed his mother as General Power of Attorney (GPA) holder to manage property vide GPA registered on 22-5-2022 and property was given on lease rent. It filed an application for advance ruling to determine whether he would be required to register under GST.

The Authority for Advance Ruling noted that the applicant appointed his mother as GPA and mere possessing an immovable property does not require registration. The act of leasing of immovable property was taken up by his mother being GPA holder of said property and income from property, including rent would be received and retained by GPA holder.

Therefore, it was held that the GPA holder would be considered as supplier of service of leasing of building for commercial purposes and since GPA holder is a resident of Bengaluru, Karnataka, she would be liable to take registration under Section 22(1) of CGST Act.

15. CBIC issues Standard Operating Procedure for Scrutiny of Returns for FY 2019-20 onwards:- ***Instruction No. 02/2023-GST dated 26th May, 2023***

Earlier, the Standard Operating Procedure (SOP) was issued for online scrutiny of returns as an interim measure till the time a Scrutiny Module is made available on the ACES-GST application. Now, the DG Systems has developed functionality "Scrutiny of Returns", containing the online workflow for scrutiny of returns in the CBIC ACES-GST application.

Therefore, the CBIC has issued modified SOPs in respect of scrutiny of returns for financial years 2019-20 onwards. The GSTINs selected for scrutiny for the Financial Year 2019-20 have also been made available on the scrutiny dashboard of the proper officers on ACES-GST application. In this

regard, an Instruction No. 02/2023-GST has been issued which provides scrutiny schedule, process of scrutiny along with timelines and reporting requirements.

It is also clarified that since the scrutiny functionality has been provided on ACES-GST application only for the Financial Year 2019-20 onwards, the procedure specified in Instruction No. 02/2022 dated 22.03.2022 shall continue to be followed for the scrutiny of returns for the Financial Year 2017-18 and 2018-19.

16. Due date to file GSTR-1, GSTR-3B & GSTR-7 for April 2023 for State of Manipur extended till 31st May:- *Notification No. 11/2023- Central Tax, Notification No. 12/2023- Central Tax and Notification No. 13/2023- Central Tax dated May 24th, 2023*

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

17. SCN can't be issued by Deputy Commissioner when Form GST DRC-01A was already issued by Assistant Commissioner:- *SSB Petro Products v. Assistant Commissioner, State Tax - [2023] 150 taxmann.com 381 (Calcutta)*

The The appellant was served with an intimation of the tax ascertained as being payable under Sections 73(5) and 74(5) of the CGST Act, 2017. In the said intimation issued in Form GST DRC-01A, the grounds and quantification were mentioned and the appellant was advised to pay the tax ascertained along with the amount of applicable interest and penalty failing which show cause notice will be issued.

The appellant had filed reply to the show cause notice and the matter was not adjudicated further and kept pending. Thereafter, the Joint Commissioner issued Form GST DRC-01 which was uploaded on portal and it came to know of the same only after the sum of Rs. 1,84,930/- was paid from their electronic credit ledger and immediately thereafter, the appellant applied for a copy of the order and preferred the appeal but by then the period of limitation for filing the appeal had expired and appeal was rejected.

It filed writ petition challenging the rejection of appeal but the petition was dismissed and it was held that order was perfectly legal and valid as the appeal was hopelessly time barred and the authority had no power to condone the delay in filing the appeal. It filed intra-court appeal to challenge the order.

The High Court noted that the Deputy Commissioner could not have initiated proceedings by issuing summary of show cause notice in Form GST DRC-01 and passed order thereon when Assistant Commissioner had already initiated proceedings in respect of very same amount and allegations by issuing intimation in Form GST DRC-01. The Court also noted that reply was filed by appellant but the same was not considered and matter was kept pending as it was not taken to the logical end. Moreover, the proceedings therein were dropped subsequently during pendency of appeal. Therefore, it was held that the appeal could not be treated as time barred and order dismissing appeal as time barred was quashed with direction to pass fresh order on merits.

18. Petitioner can't be deprived of benefit of stay of balance amount of tax due to non-constitution of GST Tribunal:- ***PCPL and RK- JV v. State of Bihar - [2023] 150 taxmann.com 410 (Patna)***

The petitioner was willing to avail statutory remedy of appeal against the impugned order before the Appellate Tribunal under Section 112 of the Bihar Goods and Services Tax Act, 2017. However, due to non-constitution of the Tribunal, the petitioner was deprived of his statutory remedy. It filed writ petition before the High Court for stay on recovery of disputed amount due to absence of Tribunal. In this writ petition, the question before the High Court was whether the petitioner would be allowed to avail benefit of stay of recovery of balance amount of tax or not.

The High Court noted that the State authorities have acknowledged the fact of non-constitution of the Tribunal and issued notification to provide that period of limitation for the purpose of preferring an appeal before the Tribunal under Section 112 shall start only after the date on which the President, or the State President, as the case may be, of the Tribunal after its constitution enters office. Therefore, the petitioner should also be extended statutory benefit of stay under sub-section (9) of Section 112 subject to deposit of 20% of remaining amount of tax in dispute in addition to amount deposited earlier under sub-section (6) of section 107. However, the petitioner would be required to present/file his appeal under Section 112 once Tribunal is constituted and made functional.

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REGULATORY

1. Government expands PMLA purview to include management of client-money, assets by CA, CS:- *Ministry of Finance, Notification dated 03 May 2023*

The Government vide notification dated 03 May 2023 expands the scope of financial transactions under the anti-money laundering law (PMLA) to include (i) buying and selling of any immovable property, (ii) managing of client money, securities or other assets, (iii) management of bank, savings or securities accounts, (iv) organisation of contributions for the creation, operation or management of companies and (v) creation, operation or management of companies, limited liability partnerships or trusts, and buying and selling of business entities, executed by CAs, CSs, on behalf of their clients will now be covered under the anti-money laundering law (PMLA).

Under the new rule, the chartered accountants, company secretaries, and cost and works accountants carrying out such transactions (on behalf of their clients) will now be required to go through the Know Your Company (KYC) process before commencing work. This implies accountants are now reporting entities if they are managing their clients' money. Under the PMLA, every reporting entity is required to maintain a record of all transactions and furnish them to financial intelligence units (FIUs). The move aims at curbing fraudulent practices by which accountants allegedly help their clients to launder money. This would result in significant administrative burden in the compliances and related activities performed by such consultants for their clients including maintenance of DSC.

https://cfo.economictimes.indiatimes.com/news/transactions-by-ca-cs-for-clients-now-under-ambit-of-money-laundering-law/100004491

2. EPFO Higher Pension Opting Scheme Last date extended till June 26, 2023:- *Press Release issued on dated 02.05.2023*

Retirement fund body EPFO has extended the date for filing applications to opt for a higher pension till June 26, 2023. The process was initiated to implement a Supreme Court verdict on November 4 on higher PF pension. This is the second time that the Centre extended the date for submissions. Earlier, the date was March 3 and it was extended to May 3. The decision is based on the representations received from various Central Trade Unions and pensioners' organisations demanding extension of date.The EPFO said more than 12 lakh applications have been received till date. The EPFO stated that the online facility was to remain available only till May 3, 2023.

In the meantime, many representations have been received from various quarters seeking extension of time. The issue has been considered and it has been decided that in order to provide a larger window of opportunity and in order to enable all eligible persons to file their applications, the timeline for filing applications would now be till June 26, 2023," the EPFO said in a release. It added that the timeline is being extended to facilitate and provide ample opportunity to the pensioners and members so as to ease out any difficulty being faced by them.

Aadhaar number has become mandatory for making investments in small saving schemes like PPF, Sukanya Samriddhi Yojana (SSY), Post Office Saving Scheme, Senior Citizens Saving Scheme (SCSS), etc. In this regard, The Ministry of Finance has issued a notification on 31st March 2023 wherein these changes have been notified as part of KYC (Know Your Customer) for small saving schemes. Prior to this central government's notification, investment in small saving schemes was possible without submission of one's Aadhaar number. But, from now onwards, one will have to submit at least Aadhaar enrolment number for making investment in government-backed small

saving schemes. The notification also made it clear that one will have to furnish PAN card on investment above a certain threshold.

3. Government launches Vivad se Vishwas Scheme as announced in Union Budget:- *Press Release issued on dated 02.05.2023*

The Department of Expenditure, Ministry of Finance, had issued an order on February 06, 2023 indicating the broad structure of the scheme. Final instruction in this regard, extending the relief to cover more cases and relaxing the limits of refunds was issued on April 11, 2023. The scheme commenced from April 17, 2023 and the last date for submission of claims is June 30, 2023.

The Ministry of Finance, through this scheme, decided to give following additional benefits to eligible MSMEs, affected during the COVID-19 period:

a) 95% of the performance security forfeited shall be refunded.
b) 95% of the Bid security shall be refunded.
c) 95% of the Liquidated Damages (LD) deducted shall be refunded.
d) 95% of the Risk Purchase amount realized shall be refunded.
e) In case any firm has been debarred only due to default in execution of such contracts, such debarment shall also be revoked, by issuing an appropriate order by the procuring entity. However, in case a firm has been ignored for placement of any contract due to debarment in the interim period (i.e. date of debarment and the date of revocation under this order), no claim shall be entertained.
f) No interest shall be paid on such refunded amount.

As per the Office Memorandum issued by the Department of Expenditure to Secretaries of all the Ministries/ Departments of Government of India and Chief Secretaries/ Administrators of Union Territories, relief will be provided in all contracts for procurement of Goods and Services, entered into by any Ministry/ Department/ attached or subordinate office/ autonomous body/ Central Public Sector Enterprise (CPSE)/ Central Public Sector Banks/ Financial Institution etc. with MSMEs, which meet the following criteria:

1. Registered as a Medium, Small or Micro Enterprise as per relevant scheme of Ministry of MSME on the date of claim by supplier/ contractor. MSME could be registered for any category of Goods and Services.
2. The original delivery period/ completion period stipulated in contract was between February 19, 2020 and March 31, 2022 (both dates are inclusive)

4. Government issued National Medical Health Policy, 2023:- *Notification No. F. No. 31026/91/2015-PI-II. dated 02.05.2023*

The Central government released the National Medical Devices Policy, 2023, in line with the press release issued on 26th April 2023, with an aim to grow the medical devices sector from the present $11 billion to $50 billion in the next five years, by facilitating the domestic production of the devices, enabling an ecosystem for manufacturing and innovation, and reducing the import of the equipment. Under this policy, the government will create a "Single Window Clearance System' for Licensing of Medical Devices for the ease of doing business.

Subsequently, Medical devices sector will be facilitated and guided through a set of strategies that will be cover six broad areas of policy interventions:

1. Regulatory Streamlining- To enhance the ease of conducting research and business, as well as to balance patient safety with product innovation measures.

2. Enabling Infrastructure- The construction and expansion of large medical device parks and clusters equipped with world-class common infrastructural facilities near economic zones with adequate logistics connectivity.

3. Facilitating R&D and Innovation-The policy envisages to promote Research & Development in India and complement the Department's proposed National Policy on R&D and Innovation in the Pharma- MedTech Sector in India. Further, It also aims at establishing Centres of Excellence in academic and research institutions, innovation hubs, 'plug and play' infrastructures and support to start-ups.

4. Attracting Investments-Along with recent schemes and interventions like Make in India, Ayushman Bharat program, Heal-in-India, Start-up mission, the policy encourages private investments, series of funding from Venture Capitalists, and also Public-Private Partnership (PPP).

5. Human Resources Development-The policy will leverage the Ministry of Skill Development and Entrepreneurship's available resources to skill, reskill, and upskill professionals in the medical device business. The policy will also support dedicated multidisciplinary courses for medical devices in existing institutions. Further, in order to develop partnerships with foreign academic/industry organizations to develop medical technologies in order to be at an equal pace with the world market.

6. Brand Positioning & Awareness Creation- The policy initiates studies and projects for learning from best global practices of manufacturing and skilling system so as to explore the feasibility of adapting such successful models in India. It will promote more forums to bring together various stakeholders for sharing knowledge and build strong networks across the sector.

The policy is expected to provide the required support and directions to strengthen the medical devices industry into a competitive, self-reliant, resilient and innovative industry that caters to the healthcare needs in the global market.

5. IFSCA: Notifies norms to regulate framework for insurance business carried out in IFSC:- *Notification No. F. No. IFSCA/2022-23/GN/REG035 dated 26th April 2023*

IFSCA notifies the IFSCA (Management Control, Administrative Control and Market Conduct of insurance business) Regulations, 2023, which aims to put in place the regulatory framework related to Management Control, Administrative Control and Market Conduct of insurance business carried out by an IFSC Insurance Offices (IIO) or International Insurance Intermediary Offices (IIIO).

These regulations states that every IIO shall inter alia formulate a policy, duly approved by its Board, for allocation of direct expenses and apportionment of indirect expenses of management under respective insurance segments, as also for payment of commissions to insurance agents, intermediary or insurance intermediary and for procedures to be followed for opening or closing of a place of business.

While closing a place of business, IIOs shall mitigate the risks involved on account of such closure, including but not limited to, providing alternate facilities to existing policyholders ensuring uninterrupted access to insurance services, as well as servicing of their claims, IFSCA further directs IIOs to follow prudent practices on management of risks arising out of outsourcing with a view to preventing negative systemic impact and to protect the interests of the policyholders.

Moreover, apprising that every IIO permitted to transact life insurance business and dealing with pension and annuities products, shall design such products in such a way that it addresses the actual need of the policyholder and should not be merely symbolic. In addition, an IIO dealing with pension and annuities products shall not pay or undertake to pay amounts less than the amount as may be specified by the Authority.

Further, informing that every IIO shall be guided by norms of fairness to the policyholder, international best practices and transparency to build trust in the insurance mechanism and to build insurance awareness and insurance literacy, IFSCA states that in order to remove any difficulty in the application or interpretations of the provisions of these regulations, it may issue clarifications through guidance notes or circulars.

https://ifsca.gov.in/Viewer/Index/413

6. RBI updates KYC instructions on wire transfer to align with FATF recommendation:- *Circular no. DOR.AML.REC.13/14.01.001/2023-24 dated May 4, 2023*

The Reserve Bank of India (RBI) has issued updated instructions regarding Know Your Customer (KYC) norms for wire transfers. The updated guidelines aim to enhance the security and transparency of wire transfers conducted by banks in India. Under the new instructions, banks are required to implement additional measures to verify the identity of customers engaging in wire transfers. They are directed to conduct due diligence and collect necessary information, such as the purpose of the transaction and the relationship between the customer and the beneficiary.

The RBI has also emphasized the importance of accurate and up-to-date customer information. Banks are instructed to regularly update customer records and promptly address any discrepancies or red flags identified during the wire transfer process. Furthermore, the updated guidelines emphasize the need for banks to maintain robust systems for record-keeping and audit trails. Banks should be able to retrieve wire transfer-related information promptly when requested by regulatory authorities or law enforcement agencies. These updated instructions by the RBI are aimed at combating money laundering, terrorist financing, and other illicit activities. By strengthening KYC norms for wire transfers, the RBI intends to enhance the overall integrity of the banking system and ensure compliance with regulatory requirements.

7. Public sector banks weigh consolidating foreign business at Gift City:- *News Report dated 3rd May 2023* of Procedure 2023

The government has asked state-run lenders to explore consolidating their overseas business currently done through foreign branches in the International Financial Services Centre (IFSC) housed in the Gujarat International Financial Tech (Gift) City. It has initiated initial discussions with lenders. State Bank of India, Punjab National Bank, Bank of Baroda, and Indian Bank have been directed to share their detailed inputs and strategies.

Set up in 2020, Gift City seeks to provide a conducive business ecosystem on a par with, or above, leading global financial hubs and attract onshore Indian business currently conducted overseas. In April, finance minister Nirmala Sitharaman, in a review meeting, asked PSBs operating out of Gift City to identify international opportunities, including prospects related to persons of Indian origin.

There was a suggestion that in order to further scale up operations at Gift City and compete at a global level, public sector banks (PSBs) can consolidate their businesses. We sought views from

banks, and it is being looked at. A senior executive with Bank of Baroda said its branch in Gift City had already become the fourth-largest overseas branch for the bank's international operations.

https://cfo.economictimes.indiatimes.com/news/public-sector-banks-weigh-consolidating-foreign-business-at-gift-city/99949307

8. Now email/mobile number linked with Aadhar can be verified at UIDAI portal/mAadhaar App:- *Ministry of Electronics & IT Notification dated 02 May 2023*

Keeping user benefits in mind, Unique Identification Authority of India (UIDAI) has allowed residents to verify their mobile numbers and email IDs seeded with their Aadhaar. It had come to the notice of the UIDAI that in some instances, residents were not aware/sure about that which of their mobile numbers is seeded to their Aadhaar. Hence residents were worried that Aadhaar OTP might be going to some other mobile number. Now, with this facility, the residents can check these quite easily. The facility can be availed under 'Verify email/mobile Number' feature on the official website (https://myaadhaar.uidai.gov.in/) or through mAadhaar App. It has been developed for the residents to verify that their own email/mobile number is seeded with respective Aadhaar.

This feature gives confirmation to resident that email/mobile number under his/her knowledge is only seeded to respective Aadhaar. It also notifies the resident in case a particular mobile number is not linked, and informs resident to take necessary steps to update the mobile number, if they wish so. In case mobile number is already verified residents will see a message like, 'the mobile number you have entered is already verified with our records', displayed on their screen. In case a resident does not remember the mobile number, she/he has given during enrolment she/he can check the last three digits of the mobile on Verify Aadhaar feature on Myaadhaar portal or mAadhaar App. If a resident wants to link email/mobile number with Aadhaar or want to update her/his email/mobile number, she/he may visit a nearest Aadhaar centre.

9. SEBI introduces Legal Entity Identifier system for issuers with listed NCDs, securitized-debt, security-receipts:- *SEBI Circular dated 03 May 2023*

The Securities and Exchange Board of India (SEBI) introduces Legal Entity Identifier system (LEI), a unique 20-character code to identify legally distinct entities that engage in financial transactions for issuers that have listed and / or propose to list non-convertible securities (NCDs), securitised debt instruments and security receipts, specifies that issuers having outstanding listed NCDs as on August 31, 2023, shall report / obtain the LEI code in the Centralized Database of corporate bonds, on or before September 1, 2023. Similarly, Market Regulator stipulates that issuers having outstanding listed securitized debt instruments and security receipts as on August 31, 2023, shall report / obtain and report the LEI code to the Depositories, on or before September 1, 2023. SEBI mandates that issuers proposing to issue and list NCDs, on or after September, 1, 2023, shall report their LEI code in the Centralized Database of corporate bonds at the time of allotment of the International Securities Identification Number (ISIN), moreover, lays down that issuers proposing to issue and list securitized debt instruments and security receipts, on or after September 1, 2023, shall report their LEI code to the Depositories at the time of allotment of the ISIN.

SEBI highlighted that LEI is a unique global identifier for legal entities participating in financial transactions and that the LEI is designed to create a global reference data system that uniquely identifies every legal entity, in any jurisdiction that is party to a financial transaction. SEBI underscores RBI's directions which mandate non-individual borrowers having aggregate exposure

of above Rs. 25 cr., to obtain LEI code. Lastly, stating that the requirement of LEI for issuers proposing to list / having outstanding municipal debt securities shall be specified later, SEBI directs Depositories to – (i) map the LEI code to existing ISINs by September 30, 2023, and (ii) for future issuances, map the LEI code provided by the issuers with the ISIN at the time of activation of the ISIN.

10. Government notifies monetary limits for adjudication of FEMA cases by ED officers: *MOF Notification No. [F. No. K-11022/5/2023-Ad.ED] dated 08th May 2023*

Government appoints the officers of the Directorate of Enforcement as the Adjudicating Authorities for holding an inquiry in the manner prescribed after giving a reasonable opportunity of being heard for the purpose of imposing any penalty u/s 13 of the FEMA, involving any amount or value as specified therein. Section 13 of the FEMA covers penalties for contravention of any provision, rule, regulation, notification, order or direction issued by RBI. It also covers the penalty provisions relating to assets held outside India in contravention of section 4 of the Act.

Accordingly, lists down 5 category of officers along with respective monetary limits for adjudication, inter alia specifying that the Adjudicating Authority shall be:

(i) The Special Director of Enforcement in cases involving amount exceeding Rs. 25 cr., and

(ii) The Additional Director as well as the Joint Director of Enforcement in cases involving amount upto Rs. 25 cr. but not less than Rs. 5 cr.

Further, stipulates that the Deputy Director of Enforcement shall inquire cases involving amount upto Rs. 5 cr. and not less than Rs. 2 cr., whereas cases involving amount not exceeding Rs. 2 cr. will be inquired by the Assistant Director of Enforcement.

11. Company cannot file application for name-removal without filing overdue financial statements, annual returns: *MCA Notification No. [F. No. 1/28/2013-CL-V(Part-III)] dated 10th May 2023*

The Ministry of Corporate Affairs (MCA) has notified a major change in Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016. Now, a company cannot be closed filing without financial statements under section 137 and overdue annual returns under section 92. For applying for the closure of the company in form STK-2, first the overdue financial statements under section 137 and overdue annual returns under section 92 have been filed, up to the end of the financial year in which the company ceased to carry its business operations.

Provided further that in case a company intends to file the application after the action under sub-section (1) of section 248 has been initiated by the Registrar, it shall file all pending financial statements under section 137 and all pending annual returns under section 92, before filing the application.

Provided also that once notice under sub-section (5) of section 248 has been issued by the Registrar for publication pursuant to the action initiated under sub-section (1) of section 248, a company shall not be allowed to file the application under Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016.

12. Informal Micro Enterprises with Udyam Assist Certificate to be treated as Micro enterprises for Priority Sector Lending:- *RBI Circular No. RBI/2023-24/27 FIDD.MSME & NFS.BC.No.09/06.02.31/2023-24, Dated: 09.05.2023*

The Govt. recently launched the 'Udyam Assist Platform' (UAP) to facilitate the formalisation of Informal Micro Enterprises (IMEs) through the online generation of the Udyam Assist Certificate. It has now been specified that IMEs with an Udyam Assist Certificate shall be treated as micro-enterprises under the MSME for the purpose of availing of Priority Sector Lending (PSL) benefits.

Informal Micro Enterprises are those enterprises that are unable to get registered on the Udyam Registration Portal (URP) due to lack of mandatory required documents such as Permanent Account Number (PAN) or Goods and Services Tax Identification Number (GSTIN). As a result, such enterprises are unable to avail the benefits of government schemes or programmes.

Further, the government has clarified to the RBI that the turnover of enterprises exempted from filing returns under the provisions of the Central Goods and Services Tax Act, 2017, shall be the sole criteria to define them as IMEs for the purpose of UAP. Hence, IMEs are those enterprises that are not covered in the Goods and Services Tax regime.

The Government has specified that the certificate issued on the UAP to IMEs should be treated at par with the Udyam Registration Certificate for the purpose of availing priority sector lending benefits.

Also, an interface has been created between the UAP and Udyam Registration Portal (URP) to enable the transition and migration of the IMEs from UAP to URP, once IMEs obtain the mandatorily required documents.

13. Govt. widens PMLA's scope, brings directors, nominee shareholders, and formation agents under its ambit:- *Notification, S.O. 2135(E), Dated May 9, 2023*

Money laundering is a sophisticated process that involves disguising the proceeds of illegal activities as legitimate funds. In 2002, India introduced the Prevention of Money Laundering Act (PMLA) to combat money laundering and terrorist financing. The PMLA aims to prevent and control money laundering activities and confiscate property involved in such activities.

Recently, the Central Government vide notification, S.O. 2135(E), Dated May 9, 2023, made amendments to Section 2 of the PMLA. These amendments include adding directors or secretaries of a company, partners of a firm, trustees of an express trust, and nominee shareholders of a company as reporting entities under the PMLA. These entities are now required to report certain activities undertaken in the course of their business to tackle money laundering.

The Central Government, by using the authority granted u/s 2(1)(sa)(vi) has notified that certain activities, when carried out on behalf of or for another person in the course of business, will be regarded as activities for the purpose of this sub-clause. These activities are as follows -

(a) Acting as a formation agent of companies and LLPs;

(b) Acting as (or arranging for another person to act as) a director or secretary of a company, a partner of a firm or a similar position in relation to other companies and LLPs;

(c) Providing a registered office, business address or accommodation, correspondence or administrative address for a company or a LLP or a trust;

(d) Acting as (or arranging for another person to act as) a trustee of an express trust or performing the equivalent function for another type of trust; and

(e) Acting as (or arranging for another person to act as) a nominee shareholder for another person.

14. RBI directs authorised dealers to levy fees on forex prepaid cards/store value cards/travel cards in Rupees only:- *Circular No. RBI/2023-24/29 A.P. (DIR Series) Circular No. 04, dated: 09.05.2023*

Earlier, the RBI issued a circular regarding the use of International Debit Cards/Store Value Cards/Charge Cards/Smart Cards or any other instrument that can be used to create a financial liability, as 'currency'. However, the RBI discovered that a few Authorised Persons are levying certain fees/charges, which are payable in India on such instruments, in foreign currency. As a result, the RBI has now advised that fees/charges payable in India must be denominated and settled in Rupees only.

15. Govt enables certain Labour Law Provisions:- *Notification No.* S.O. 2060(E) dated 03.05.2023

SEBI, The Government of India, implemented the various provisions in relation to The Employees' Pension Scheme, 1995 under The Code on Social Security, 2020. Accordingly, the corresponding provisions of the EPF Act shall stand repealed and subsumed. As, the Social Security Code provides for repeal of the EPF Act once the provisions of Social Security Code are brought into effect. The following provisions of the Social Security Code, 2020 came into force:

a. Section 15 of the Social Security Code empowers the Central Government to frame a pensions scheme that would envisage inter alia superannuation / retirement pension, widow or widower pension, and nominee pension. Section 15 (3) relates to "Schemes" and talks about any or all of its provisions to take effect either prospectively or retrospectively on and from such date as may be specified on that behalf in the scheme.
b. Section 16(1)(a) refers to the Provident Fund Scheme, in which the employer contributes to the fund 10% of the salary for the time being payable to each of the employees, whether hired directly by him or by or via a contractor. The employee's contribution will be equivalent to the employer's contribution in respect of him. If the employee so wants, he may contribute more than 10% of his wages, subject to the proviso that the employer is not required to pay any contribution in excess of his contribution payable under this section, i.e. 10% of his wages. The Central Government can modify this section through notification and change the percentage of contribution from 10% to 12% and also can specify rates of employees' contributions and the period for which such rates will apply for any class of employee.
c. Section 16(1)(b) relates to the Pension Scheme as it provides that-

   "(b) the Pension Scheme, establish a Pension Fund in the manner specified in that scheme by that Government into which there shall be paid, from time to time, in respect of every employee who is a member of the Pension Scheme:

   (i) such sums from the employer's contribution under clause (a) not exceeding 8.33% of the wages or such per cent of wages as may be notified by the Central Government;

   (ii) such sums payable as contribution to the Pension Fund, as may be specified in the Pension Scheme, by the employers of the exempted establishments would be required to

make contributions towards pensionary benefits of employees as in the manner specified under Section 143 to which the pension scheme applies;

(iii) such sums as the Central Government after due appropriation by Parliament by law on this behalf, specify".

d. Section 16 (2) provides that the Provident/ Pension/ Insurance Fund will be administered by the Central Board.
e. Part of Section 143 (Power to exempt establishment) which applies in giving effect to the provisions of Section 16(1)(b)(ii) in relation to the Employees' Pension Scheme, 1995. This Section, in turn, has been brought into from the Effective Date, and it makes enabling provisions for the government to specify the conditions subject to which an establishment may be exempted inter alia from the pension-related provisions of the Social Security Code.
f. Section 164(1) repeals the corresponding provisions of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952.
g. Part of Section 164(2)(b) of the Social Security Code inter alia provides that notwithstanding the repeal of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (EPF Act). The 1995 Scheme shall remain in force, to the extent not inconsistent with the Social Security Code, for a period of one year from the date of commencement of the code. It has been brought into force from the Effective Date such that the 1995 Scheme will continue to operate mutatis mutandis under the Social Security Code

16. SEBI allows Direct Market Access to SEBI registered FPIs for participating in ETCDs:- *Circular No.* SEBI/HO/MRD/MRD-PoD-1/P/CIR/2023/68 dated 10.05.2023

SEBI has allowed stock exchanges to extend the direct market access (DMA) facility to foreign portfolio investors (FPIs) for participation in Exchange Traded Commodity Derivatives. DMA facilitates the clients of a broker to directly access the exchange trading system through the broker's infrastructure to place orders without manual intervention by the broker. Further, DMA offers certain advantages to brokers such as direct control over orders, faster execution of orders, reduced risk of errors associated with manual order entry, maintaining confidentiality, lower impact costs for large orders and implementing better hedging and arbitrage strategies.

This permission is subject to certain conditions that require stock exchanges/brokers to follow the procedure for application for DMA, operational specifications, client authorisation and broker-client agreement, risk management etc. Accordingly, SEBI advises stock exchanges to take steps to make necessary amendments to the relevant bye-laws, rules and regulations for the implementation of this circular and to bring the provisions of this circular to the notice of the members of the stock exchange and also disseminate the same on their website. The circular shall be effective immediately.

17. SEBI advises SEBI registered Debenture Trustees to register, re-register in FINNET 2.0 system:- *Circular No.* SEBI/HO/DDHS/DDHS-POD1/CIR/P/2023/67 dated: 09.05.2023

The Financial Intelligence Unit – India (FIU-India), issued a letter dated April 19, 2023 addressing designated directors and principal officers of Debenture Trustees (DTs). The letter outlined specific guidelines including red flag indicators for detecting suspicious transactions by the Debenture Trustees under Rule 7(3) of the Prevention of Money Laundering (Maintenance of Records) Rules,

2005. Now, the SEBI has directed that all Reporting Entities falling under the DT segment registered in the FINNET 1.0 system of the Financial Intelligence Unit are required to re-register themselves in the FINNET 2.0 system/module.

The FINNET 2.0 module aims to provide quality financial intelligence for safeguarding the financial system from the abuses of money laundering, terrorism financing, and other economic offences. Further, those reporting entities who have not yet registered themselves with FIU-India are required to be registered in the FINNET 2.0 system/ module of FIU-India immediately in light of the FATF mutual evaluation.

18. SEBI Finance Ministry amends norms for use of International Credit Cards under LRS:- *MOF's Notification No. G.S.R. 369(E) dated May 16, 2023*

The Indian government has recently made significant changes concerning the usage of international credit cards (ICCs) for individuals travelling abroad. Previously, travelers enjoyed an exemption that allowed unrestricted spending on ICCs to cover their expenses overseas. However, the recent amendment has brought ICC transactions under the Liberalised Remittance Scheme (LRS) purview introducing new limitations and requirements, which enable the higher levy of TCS u/s 206C. The new regulations now bring ICC transactions within the ambit of Rule 5 of the Current Account Rules, 2000, signalling a significant shift in the landscape of international credit card usage.

Earlier, Rule 7 of the Foreign Exchange Management (Current Account Transactions) Rules, 2000 provides that:

"Nothing contained in rule 5 shall apply to the use of an International Credit Card for making payment by a person towards meeting expenses while such person is on a visit outside India."

Whereas Rule 5 read with Schedule III of the Foreign Exchange Management (Current Account Transactions) Rules, 2000 prescribes that Individuals can avail of foreign exchange facility for the specified purposes within the limit of USD 2,50,000 only. Any additional remittance in excess of the said limit for the following purposes shall require prior approval of the Reserve Bank of India.

Therefore, the usage of an international credit card to make payments towards meeting expenses during a trip abroad was not covered under the LRS (i.e. the USD 2,50,000 Limit). The spending through international credit cards was excluded from LRS by way of Rule 7 of the Foreign Exchange Management (Current Account Transaction) Rules, 2000. However, the Ministry of Finance vide notification G.S.R. 369(E) dated 16/05/2023 has omitted Rule 7 of the Foreign Exchange Management (Current Account Transaction) Rules, 2000 and with this the Govt. has taken away the exemption that was earlier available on usage of international credit cards (ICC) while travelling abroad.

This recent amendment bringing credit card spending in forex under the LRS and imposing a higher TCS levy will have significant implications. It introduces stricter regulations and requires RBI approval for transactions exceeding USD 250,000, and aims to enhance financial monitoring and moreover, this move comes in response to a significant surge in spending on overseas travel under LRS with a 104% increase between April-February in FY23 and aims to regulate and track high-value transactions. Further, the other operational guidelines about credit card spending are expected to be issued later.

19. FPIs can be part of multiple investor groups, provided investment limits adhered to:- *Judgement no. SEBI/HO/AFD/P/OW/2023/3703/1 dated January 30. 2023*

The Securities and Exchange Board of India (SEBI) has clarified that foreign portfolio investors (FPIs) can be part of multiple investor groups, provided that the investment limits are adhered to. SEBI has clarified that clubbing of investment limit for FPIs will be on the basis of common ownership of more than 50% or based on common control. SEBI has also clarified that in case, two or more FPIs including foreign Governments/ their related entities have direct or indirect common ownership of more than 50% or control, all such FPIs will be treated as forming part of an investor group and the investment limits of all such entities will be clubbed at the investment limit as applicable to a single FPI.

The only exemption prescribed to this clubbing rule is in cases whereof:

a. FPIs are appropriately regulated public retail funds; or
b. FPIs which are public retail funds majority owned by appropriately regulated public retail funds on a look through basis; or
c. FPIs which are public retail funds and investment managers of such FPIs are appropriately regulated.

The above exemption would be available only if the stated FPIs have common control and do not have more than 50% common ownership. Hence, if FPIs have a common entity/person which takes investment decisions for such FPIs, then such FPIs would be considered to be a part of the same investor group.FPIs in breach of the said investment limit can either (a) divest its holding within 5 (five) trading days from the date of settlement of the trades to bring its shareholding below 10% of the paid up capital of the company; or (b) the FPI investments will be treated as a Foreign Direct Investment ("FDI") from the date of such breach.

20. RBI withdraws Rs. 2,000 denomination notes from circulation, gives time to deposit/ exchange notes till 30 Sep 2023 and it will continue to remain a legal tender:- *RBI Guidelines RBI/2023-24/32 and Press Release dated 19 May 2023*

RBI withdraws the Rs. 2,000 denomination banknotes from circulation in pursuance of the Clean Note Policy of the RBI and considering that this denomination is not commonly used for transactions and will continue to be legal tender, as well as that the stock of banknotes in other denominations continues to be adequate to meet the currency requirement of the public. Apprising that the Rs. 2,000 denomination banknote was introduced in November 2016 u/s 24(1) of the RBI Act, primarily to meet the currency requirement of the economy in an expeditious manner after the withdrawal of legal tender status of all Rs. 500 and Rs. 1000 banknotes in circulation at that time, and also emphasises that the objective of introducing Rs. 2,000 banknotes was met once banknotes in other denominations became available in adequate quantities; therefore, printing of Rs. 2,000 banknotes was stopped in 2018-19.

It further highlights that about 89% of the Rs. 2,000-denomination banknotes were issued prior to March 2017 and are at the end of their estimated life-span of 4-5 years. The total value of these banknotes in circulation has declined from 6.73 lakh crore at its peak as of 31 March 2018 (37.3% of notes in circulation) to 3.62 lakh crore, constituting only 10.8% of notes in circulation on 31 March 2023. It has also been observed that this denomination is not commonly used for transactions.

Further, the stock of banknotes in other denominations continues to be adequate to meet the currency requirement of the public.

RBI issued guidelines laying down the plan of action to implement the above decision and specifies that in order to ensure operational convenience and to avoid disruption of regular activities of bank branches, exchange of Rs. 2,000 banknotes into banknotes of other denominations can be made up to a limit of Rs. 20,000 at a time at any bank starting from 23 May 2023. To complete the exercise in a time-bound manner and provide adequate time to the members of the public, all banks shall provide deposit and/or exchange facilities for Rs. 2,000 banknotes until 30 September 2023.

Lastly, advising banks to stop issuing Rs. 2,000 denomination banknotes with immediate effect while also encouraging the members of the public to utilise the time up to 30 September 2023, to deposit and/ or exchange the Rs. 2,000 banknotes. Accordingly, the following plan of action has been formulated which, the banks shall follow meticulously:

— **Handling of existing stock and receipts**

a. All banks shall discontinue the issue of ₹2,000 denomination banknotes with immediate effect. ATMs/Cash Recyclers may also be reconfigured accordingly.
b. Banks holding Currency Chests (CCs) shall ensure that no withdrawal of ₹2,000 denomination is allowed from the CCs. All balances held in the CCs shall be classified as unfit and kept ready for dispatch to respective RBI offices.
c. All banknotes in this denomination received by the banks shall be sorted immediately through Note Sorting Machines (NSMs) for accuracy and genuineness and deposited in the currency chests under the Linkage Scheme or kept ready for dispatch to the nearest Issue Office of RBI.
d. The instructions contained in Master Direction dated 03 April 2023 on detection, reporting and monitoring of counterfeit notes shall be meticulously followed.

— **Facility for Deposit and Exchange**

a. The facility for deposit and/ or exchange of ₹2,000 banknotes shall be available for members of the public up to 30 September 2023.
b. Deposit of ₹2,000 banknotes into accounts maintained with all banks can be made in the usual manner, that is, without restrictions and subject to compliance with extant Know Your Customer (KYC) norms and other applicable Statutory requirements. The banks shall also be required to comply with Cash Transaction Reporting (CTR) and Suspicious Transaction Reporting (STR) requirements, where applicable.
c. The facility for exchange of ₹2,000 banknotes shall be provided to all members of the public by all banks through their branches.
d. With a view to minimise inconvenience to the public, to ensure operational convenience and avoid disruption of the regular activities of bank branches, all banks may exchange ₹2,000 banknotes upto a limit of ₹20,000/- at a time.
e. Business Correspondents (BCs) may also be allowed to exchange ₹2,000 banknotes upto a limit of ₹4000/- per day for an account holder. For this purpose, banks may, at their discretion, enhance the cash holding limits of BCs.
f. To give time to the banks for preparatory arrangements, members of the public have been requested to approach the banks/branches from May 23, 2023 for availing

exchange facility. Deposit of ₹2,000 banknotes may continue as per the normal banking practice.

g. For providing deposit / exchange facility to people residing in remote/ unbanked areas, banks may consider using mobile vans, if necessary.
h. While crediting the value of ₹2,000 notes to Jan Dhan Yojana Accounts / Basic Savings Bank Deposit (BSBD) Accounts, the usual limits will apply mutatis mutandis.
i. The banks shall to the extent feasible make special arrangements to reduce inconvenience to the senior citizens, persons with disabilities and women seeking to exchange/deposit ₹2,000 notes.

— **Replenishment of Stock of Other Denominations for Exchange**

a. Branches / CCs should estimate their cash requirement and obtain banknotes of other denominations from the linked / nearby currency chest / RBI well in time.
b. CC holding branches shall extend required support to the linked / non-linked branches in accepting ₹2,000 notes and distribution of banknotes in other denominations. In case of any difficulty in obtaining cash, the banks may contact the concerned Issue Office of RBI.

— **Dissemination of Information**

a. The banknotes in ₹2,000 denomination will continue to be legal tender.
   - A document on FAQs and press release in the matter informing the public of the exercise and soliciting their cooperation is being issued separately and which may also be displayed in the banking hall, ATM kiosks, etc.
b. Banks may also consider advising their customers suitably in the matter.

21. Union Cabinet approves Rs 17,000 crore for IT Hardware PLI Scheme 2.0 to boost electronic manufacturing: *News report dated 17th May,2023*

The Indian Cabinet, led by Prime Minister Narendra Modi, has given its approval to the Production Linked Incentive (PLI) Scheme 2.0 for IT Hardware, allocating a budget of Rs 17,000 crore. This strategic move aims to bolster the electronics manufacturing sector in India, which has exhibited a consistent growth rate of 17% over the past eight years, with a remarkable milestone of USD 105 billion (approx. Rs 9 lakh crore) in production this year. The PLI Scheme 2.0 encompasses laptops, tablets, all-in-one PCs, servers, and ultra-small form factor devices. It is projected to generate incremental production worth Rs 3.35 lakh crore, an incremental investment of Rs 2,430 crore, and create around 75,000 direct employment opportunities during its six-year tenure. The PLI Scheme, initiated in April 2020 with a focus on mobile phone production, has propelled India to become the world's second-largest mobile phone manufacturer, with exports surpassing USD 11 billion (approx. Rs 90 thousand crore) in March. This progress has positioned India as a significant player in the global electronics manufacturing ecosystem.

https://cfo.economictimes.indiatimes.com/news/policy/union-cabinet-approves-rs-17000-crore-for-it-hardware-pli-scheme-2-0-to-boost-electronics-manufacturing/100304397

22. RBI banks/FIs to cease pricing new transactions using LIBOR, MIFOR from July 1:- Circular no. RBI/2023-24/30CO.FMRD.DIRD.01/14.02.001/2023-24 dated: 12.05.2023

RBI has directed banks and financial institutions (FIs) to ensure a complete transition away from the London Interbank Offered Rate (LIBOR) from 01 July, 2023. A complete transition is a significant event in global financial markets, aimed at mitigating operational risks and ensuring an orderly transition.

Banks/FIs are advised to ensure that no new transaction undertaken by them or their customers relies on or is priced using the US$ LIBOR or the Mumbai Interbank Forward Outright Rate (MIFOR). Banks in India have already been encouraged to undertake transactions using a widely accepted alternative reference rate (ARR) since 31 December, 2021. The RBI directs Banks/FIs to take all necessary steps to ensure insertion of fallbacks at the earliest in all remaining legacy financial contracts that reference US$ LIBOR (including transactions that reference MIFOR). Further, the banks/FIs are expected to have developed the systems and processes to manage the complete transition away from LIBOR. The Reserve Bank will also continue to monitor the efforts of banks/FIs to ensure a smooth transition from LIBOR. Also, Financial Benchmarks India Pvt. Ltd. will cease to publish MIFOR after 30 June, 2023. The Financial Conduct Authority of the UK announced the withdrawal of LIBOR settings in 2021 following wide-scale allegations of malpractice.

23. MCA amends rules pertaining to approval of merger scheme for certain companies: *MCA Notification No. G.S.R. 367(E) dated 15th May 2023.*

The objective of promoting 'ease of doing business in India' had made the Ministries introduce some really momentous concepts and corresponding changes in the law. One of such move taken by the Ministry of Corporate Affairs ('MCA'), was the introduction of section 233 of the Companies Act, 2013 ('Act') dealing with the "Merger and amalgamation of certain types of companies" vide notification dated 7th December, 2016, thereby offering an alternative mode to certain classes of companies for entering into scheme of merger or amalgamation.

The idea was to process the scheme of arrangements involving wholly owned subsidiaries or small companies in a cost-effective and comparatively swift way. However, upon the practical implementation of the provision, it was seen that the time taken by the authorities for disposal of such applications and issuing confirmation orders to the schemes was longer than expected and therefore, the provision was losing its relevance.

It is in the backdrop of such delays, MCA, vide notification dated 15th May, 2023 (yet to be published in e-gazette) has introduced certain amendments in the Companies (Compromise, Arrangements, and Amalgamations) Rules, 2016 ('CAA Rules') ensuring faster disposal of applications u/s 233 of the Act. The amendments shall be effective w.e.f. 15th June, 2023.

Substituting certain provisions of Rule 25 (merger or amalgamation of certain companies), to inter alia provide that “where no objection or suggestion is received within 30 days of receipt of copy of scheme u/s 233(2) of the Companies Act, from the Registrar of Companies (ROC) and Official Liquidator by the Central Government. and the Central Government is of the opinion that the scheme is in the public interest or in the interest of creditors, it may, within 15 days after the expiry of said 30 days, issue a confirmation order of such scheme of merger or amalgamation in Form No. CAA.12.”

Further, a new clause in Rule 25 has been inserted, which gives the power to the Central Government to set aside the objections received from the OL and RoC if the Central Government is of the opinion that the scheme is beneficial to the investors and creditors. Rule 25(6)(a) stipulates that "where objections or suggestions are received within 30 days of receipt of copy of scheme u/s 233(2) from the ROC or Official Liquidator or both by the Central Government and such objections or suggestions of ROC or Official Liquidator, are not sustainable and the Central Government is of the opinion that the scheme is in the public interest or in the interest of creditors, it may within 30 days after the expiry of the afore-mentioned 30 days, issue a confirmation order of such scheme of merger or amalgamation in Form No. CAA.12".

In respect of Rule 25(6)(b), the Amendment specifies that "if Central Government is of the opinion (whether on the basis of such objections or otherwise) that the scheme is not in the public interest or in the interest of creditors, it may within 60 days of the receipt of the scheme file an application before the Tribunal in Form No. CAA.13 stating the objections and requesting that the Tribunal may consider the scheme u/s 232; However, provides that, if the Central Government does not issue a confirmation order under the above mentioned clause (a) or does not file any application under clause (b) within 60 days of the receipt of the scheme u/s 233(2), it shall be deemed that it has no objection to the scheme and a confirmation order shall be issued accordingly".

24. SEBI issues Consultation Paper to amend AIF Regulations for strengthening governance mechanisms: *SEBI Consultation Paper dated 18th May 2023*

MCASEBI publishes a Consultation Paper on the proposed amendment to SEBI (Alternative Investment Funds) Regulations to strengthen governance mechanism of AIFs, inter alia proposing to –

a. specify guidelines for borrowing by Category I and II AIFs,
b. mandate AIFs to hold their securities/investments in demat form only,
c. extend the mandate for appointment of custodian to all AIFs,
d. specify maximum extension of tenure by Large Value Fund for Accredited Investors (LVFs),
e. mandate renewal of registration of AIFs,

SEBI solicits comments by May 31, 2023. Apprising that under the extant AIR Regulations, the regulatory intent behind permitting borrowing for Category I and II AIFs is for utilizing the funds borrowed for meeting operational requirements of the AIF, and not for the purpose of making investment, Regulator recommends that Category I and II AIFs shall not borrow funds directly or indirectly in leverage for the purpose of making investments, however, proposed that the Category I and II AIFs may borrow for the purpose of meeting shortfall in drawdown while making investment in an investee company, subject to conditions.

Regarding dematerialization of assets / investment of AIFs, SEBI states that, to fully realize the objective of ease of monitoring and administration by stakeholder and enhancing transparency, it is necessary that AIF's side assets (viz. investments of AIFs) is also dematerialized, as has been mandated for AIF's liabilities (viz. units of AIF), accordingly, suggests to mandate that AIFs shall hold the instruments / securities of their investments only in dematerialized form, whereas, this requirement shall be not applicable in case of investment in such types of instruments / securities for which dematerialization is not available.

In extension of the extant requirement of mandatory appointment of a custodian for safekeeping of securities for AIFs with corpus of more than Rs. 500 cr., SEBI proposes that the requirement may be extended to AIFs with corpus of less than Rs. 500 cr. as well, wherein existing AIFs with corpus with

less than Rs. 500 cr. shall be given a time 6 months to appoint custodian, also suggests that, in addition to the extant requirements under Custodian and AIF Regulations, custodians shall also be responsible for monitoring AIFs' investments w.r.t. investment conditions and other related requirements under AIF Regulations.

Lastly, highlighting the recently introduced concept of LVF, which is a scheme of an AIF in which each investor is an Accredited Investor and invests at least Rs. 70 cr., SEBI states that certain flexibilities has been extended LVFs w.r.t. extension of tenure, however, points out that the flexibility of having no upper limit on extension of LVT's term may result in a closed ended fund, accordingly, Regulator recommends that LVF's may be permitted to extend their tenure upto to 4 years, subject to approval of two-thirds of the unit holders by value of their investment in the LVF.

https://www.sebi.gov.in/reports-and-statistics/reports/may-2023/consultation-paper-on-proposed-amendment-to-sebi-alternative-investment-funds-regulations-2012-to-strengthen-governance-mechanisms-of-alternative-investment-funds-aifs-_71387.html

25. SEBI mulls streamlining regulatory framework for registration of Foreign Venture Capital Investors: *SEBI Consultation Paper dated 18th May 2023*

SEBI issues a Consultation Paper on streamlining regulatory framework for registration of Foreign Venture Capital Investors (FVCIs) under the Foreign Venture Capital Investor Regulations, invites public comments/ suggestions by May 31, 2023.

Considering that the Designated Depository Participants (DDPs) have already been carrying out the process of granting registration and post registration approvals of FPIs and a mechanism has been put in place for the same. SEBI proposes that the process of granting registration to FVCIs and processing other post registration references may be delegated to DDPs, in line with the provisions prescribed for FPIs.

Reviewing the eligibility criteria for registration as FVCIs, SEBI inter alia suggests that, Non-resident Indians (NRIs) or Overseas Citizens of India (OCIs) or Resident Indian Individuals (RIs) may be constituents of the applicant provided that the –

a. contribution of a single NRI or OCI or RI shall be below 25% of the total contribution in the corpus of the applicant,
b. aggregate contribution of NRIs, OCIs and RIs shall be below 50% of the total contribution in the corpus of the applicant and
c. NRIs, OCIs and RIs shall not be in control of the applicant.

Further, highlighting that currently, FVCIs are not mandated to hold their investments in demat form, SEBI proposes to mandate that FVCIs shall hold the instruments/securities of their investments only in dematerialized form and clarifies that this requirement shall not be applicable in case of investment in such type of instruments/securities for which dematerialization is not available.

Furthermore, regarding continuation of registration of FVCIs, Regulator recommends that FVCIs who wish to continue with their registration for the subsequent block of 5 years, should pay renewal fees of USD 2500 to their DDPs and inform change in information, if any, and, in case an FVCI fails to pay the renewal fee in the manner as specified above, then a late fee equivalent to 2% of registration fee shall be charged for each day of delay in payment of renewal fee, subject to maximum of 2 times of the registration fee, post which, the certificate of registration of FVCI shall be liable to be suspended/ cancelled.

https://www.sebi.gov.in/reports-and-statistics/reports/may-2023/consultation-paper-on-streamlining-regulatory-framework-for-registration-of-foreign-venture-capital-investors-fvcis-_71391.html

26. SEBI publishes Consultation Paper proposing review of total expense ratio charged to MF investors:- *SEBI's Consultation Paper dated May 18, 2023*

SEBI releases Consultation Paper proposing review of Total Expense Ratio (TER) charged by Asset Management Companies (AMCs) to unitholders of schemes of Mutual Funds to facilitate greater transparency and accrual of benefits of economies and seeks comments by June 1, 2023. In view of the underlying principle that TER should be inclusive of all costs charged to an investor, SEBI proposes that brokerage and transaction expenses may be included within the TER limit and the transaction wise limits prescribed for additional expenses towards brokerage may not be applicable, and further highlights that this may bring in much needed transparency in the costs charged to unitholders, and greater accountability in respect of the significant brokerage costs, with oversight from the AMC Board/Trustees.

Also, underscoring that in FY 2021-22, while the total amount of additional expenses charged to the schemes was Rs. 735 cr., the exit load recovered from existing investors and credited to the schemes was Rs. 611 cr. SEBI recommends discontinuation of the provision, enabling charging of additional expense of 5 bps for schemes having provision of exit load. Further, with a view to facilitate AMCs to launch Fund of Fund schemes on low cost international funds, SEBI suggests that, for schemes investing only in international funds, the TER over and above the weighted average of the TER of the underlying schemes shall not exceed higher of 2 times the weighted average of the TER levied by the underlying schemes and the actual cost of running a scheme, including distribution commission of not more than 50 bps but excluding AMC Management Fees, subject to the overall regulatory limit. Lastly, w.r.t. increase in TER of locked-in and quasi locked-in schemes, Regulator proposes that unitholders may be given an option to exit at the prevailing NAV without any exit load when there is an increase in TER, as also suggests that there should be uniformity in charging of each and every expense to the investor of regular plan and direct plan and the only difference between the TER of regular plan and direct plan should be the expenses towards the distribution commission.

27. SEBI publishes Consultation Paper on proposals to strengthen governance norms for REITs, InvITs

SEBI issues a Consultation Paper on special rights to unitholders and role of sponsor in REITs and InvITs, seeks public comments/ suggestions by May 29, 2023 to assess the desirability and suitability of special/ differential rights.

Unitholders right to nominate directors on the Board of Manager/ Investment Manager of REIT/InvIT or alternatively, to nominate members on Unitholders Council constituted by the Manager/ Investment Manager, with a view to address the demand of industry players to provide unitholders right to nominate directors on the board of Manager/Investment Manager of REIT/InvIT.

As also to ensure principle of rights being proportional to one's holding, SEBI proposes to specify either or both of the following option to REIT/InvIT unitholders, namely,

a. nomination rights to unitholders holding certain percentage of units and above, on the board of the manager/investment manager and/or,
b. constitution of Unitholders Council with nominees of unitholders of REIT/InvIT holding certain percentage of units and above Highlighting that Mutual Funds and all categories of Alternative Investment Fund (AIFs) have been mandated to follow the principles of 'Stewardship Code', Regulator suggests certain principles of Stewardship Code that shall be made applicable to the entities having representation on the Board of Directors of Manager/Investment Manager of REIT/InvIT and/or on the Unitholders Council; Further, considering the feedback from market participants on the Consultation Paper on "Holding of sponsor in REIT/ InvITs", SEBI recommends the alternative options *viz.* maximum cap on locked-in units in terms of amount and provision of self-sponsored REIT/InvIT, which would provide additional flexibility in terms of minimum holding requirement by Sponsor in REIT and InvITs; Lastly, proposing certain qualifying conditions for becoming a self-sponsored REIT/InvIT.

SEBI explains that introduction of a framework for self-sponsored REIT/InvIT will, besides creating space for mature and independent, professionally managed Managers/Investment Managers to emerge, provide a further exit option for the Sponsor in addition to the exit option through change of sponsor presently envisaged in the REIT and InvIT Regulations.

28. SEBI proposes draft Regulations to probe "unexplained suspicious trading activities" in securities: *SEBI's Consultation Paper dated May 18, 2023*

SEBI issues a Consultation Paper on draft SEBI (Prohibition of Unexplained Suspicious Trading Activities in the Securities Market) Regulations inter alia proposing to define "Unexplained Suspicious Trading Activity" to mean and include suspicious trading activity by a person or a group of connected persons in a security or a group of securities and executed in circumstances for which no reasonable rebuttal or explanation is provided, seeks public comments on the draft Regulations by June 2, 2023.

Highlighting contravention of the provisions of securities laws, particularly resulting in manipulation, fraudulent and unfair trade practices, insider trading, front running, pump and dump etc. severely undermine the integrity of the market, SEBI emphasizes that, with the advent of technology, novel methods are being adopted by the market participants to carry out fraudulent / violative activities in the securities market while concealing the identities, connections and relationships between the entities engaged in such activities.

SEBI being the securities market regulator and being entrusted with the task of demonstrating what constitutes a fair playing field for all its market participants and taking actions against deviations, wherever required, proposes a new regulatory framework to deal with Unexplained Suspicious Trading Pattern (USTP), wherein a person or group of connected persons exhibiting an USTP viz. repetitive abnormal gainful dealings in a security or a set of securities, around the presence of Material Non-Public Information, would be deemed to be violating the securities laws, unless they are able to effectively rebut the said presumption; Regulator suggests that under the proposed regulatory framework, Unusual Trading Pattern (UTP) shall include such repetitive pattern of trading activity by a person or a group of connected persons which –

a. involves a substantial change in risk taken in one or more securities over short periods of time,

b. consequently delivered abnormal profits or averted abnormal losses, further stating that, while the UTP would deal with unusual trading pattern exhibited by a person or a group of connected persons, there have been instances where the trading pattern of a single person or group, which in isolation appear to be normal, when analysed holistically, exhibit the UTP, proposes that such trading activity shall also be deemed to be UTP; Lastly, elaborating on Suspicious Trading Activity (STA), wherein, a person or a group of connected persons, if found exhibiting UTP, in a security or a group of securities, where such UTP coincides with Material Non-Public Information in relation to that security or group of securities.

Regulator proposes that such UTP will be deemed to be STA, and recommends that once STA is established, the proceedings would be initiated against the person / group of connected persons involved in such STA calling upon them to explain the STA, thereby, being liable for action under the draft Regulations.

29. SEBI proposes to regulate platforms offering fractional ownership of real estate assets:- SEBI Consultation Paper dated 12.05.2023

SEBI issues a Consultation Paper laying down proposals on the regulatory framework for Micro, Small and Medium REITs (MSM REITs) inter alia proposing to bring Fractional Ownership Platforms (FOPs) under the regulatory ambit / regulatory perimeter by introducing a chapter under REIT Regulations and labelling these as MSM REITs, invites public comments on the proposals by 27 May, 2023.The market regulator also highlights the need to regulate the operations of FOPs and keep in mind the core objective of investor protection, particularly for non-institutional investors. It suggests that any person or entity, including FOPs, which facilitate or have facilitated fractional investment in real estate should register with it and apply for registration in the specified format.

The SEBI proposed the MSM REIT should be set up as a trust under the provisions of the Indian Trusts Act with an ability to establish separate and distinct schemes for ownership of real estate assets through wholly-owned special purpose vehicles (SPVs) constituted as a company under the Companies Act. SEBI also underscores the benefits to the market participants of the standard know-your-customer (KYC) requirements that would be applicable while registering clients.

As per the market regulator, the net worth and deposit requirements prescribed for sponsors and managers will ensure these platforms have sound and stable financial health. SEBI says, over the past two-three years, there has been a mushrooming of web-based platforms offering fractional ownership of real estate assets. These platforms provide investors an option to invest in buildings and office spaces including warehouses, shopping centres, and conference centres. The minimum investment on these FOPs ranges from Rs. 10 lakh to Rs. 25 lakh. The underlying real estate assets offered on FOPs are similar to the real estate or property defined under the REIT regulations.

As of 31 March, 2023, five REITs are registered with SEBI, of which three REITs have issued units which are listed on the stock exchange platform and have total unit capital of Rs. 54,411 crore. Although there is immense potential in real estate investment in office spaces, one of the reasons for lesser number of REITs may be attributed to the requirement of minimum asset size of Rs. 500 crore and minimum offer size of Rs. 250 crore as envisaged in the REIT regulations.

30. SEBI payment for investment in MFs to be accepted from minors via any mode:- Circular no. SEBI/HO/IMD/POD-II/CIR/P/2023/0069; Dated: 12.05.2023

Earlier, SEBI prescribed a uniform process to be followed by Asset Management Companies (AMCs) regarding investments in mutual funds made in the name of a minor through a guardian. As per the new norms, payment for investments in mutual funds by any mode shall be accepted from the minor's bank account, the parent or legal guardian of the minor, or from a joint account of the minor with the parent or legal guardian.

For existing mutual fund folios, the AMCs shall insist upon a Change of Pay-out Bank mandate before redemption is processed. Further, irrespective of the source of payment for the subscription, all redemption proceeds shall be credited only to the verified bank account of the minor, i.e., the account the minor may hold with the parent/ legal guardian after completing all KYC formalities. The SEBI clarified that all other provisions mentioned in the aforesaid circular shall remain unchanged, Regulator advises all AMC to make necessary changes to facilitate the above changes in mutual fund transactions w.e.f. 15 June, 2023.

31. SEBI floats Consultation Paper on mechanism for delisting of non-convertible debt securities:- *SEBI Consultation paper dated 12.05.2023*

SEBI has proposed a mechanism for the voluntary delisting of non-convertible debt securities. The objective of the consultation paper is to seek comments/ views/ suggestions from the public by May 26, 2023. Under the mechanism, an entity should not be permitted to delist a few non-convertible debt securities while other non-convertible debt securities continue to remain listed.

Accordingly, the proposed mechanism would apply to the voluntary delisting of all listed non-convertible debt securities from all or any of the recognised stock exchanges. The proposed mechanism would not be applicable to the delisting of non-convertible debt securities of a listed entity that have been delisted by the stock exchanges as a consequence of any penalty or delisted under a resolution plan approved under the IBC.

Notwithstanding this, a listed entity that has more than 200 non-QIB holders in any ISIN (International Securities Identification Number) relating to listed non-convertible debt securities, should not be able to voluntarily delist any of its listed non-convertible debt securities. The regulator came out with the proposal in the absence of any specific provision for the delisting of non-convertible debt securities in the extant provisions.

As per the proposed mechanism, the listed entity will have to make an application to the stock exchange for seeking in-principle approval of the proposed delisting of non-convertible debt securities within 15 working days from the date of passing of the special resolution. SEBI suggests that the delisting proposal shall be considered to have failed under the circumstances of non-receipt of in-principle approval from Stock Exchange, no-objection certificate from the debenture trustee and of approval from all the holders of non-convertible debt securities.

Lastly, recommending that where a listed entity's non-convertible debt securities are listed on more than one recognised stock exchanges, the listed entity may choose to delist non-convertible debt securities from all but one such recognised Stock Exchange having nationwide trading terminals, SEBI puts forth that, in such cases, the listed entity shall *inter alia* obtain the prior approval of its board of directors, disclose the fact of delisting from the relevant Stock Exchange on its website.

32. ICAI updates Sustainability Reporting Maturity Model in line with SEBI BRSR Circular:- *ICAI's SUSTAINABILITY REPORTING MATURITY MODEL (SRMM)* VERSION 2.0*

The Sustainability Reporting Standards Board (SRSB) of the ICAI updates Sustainability Reporting Maturity Model (SRMM) Version 1.0 to SRMM Version 2.0 to incorporate changes in the format of the Business Responsibility and Sustainability Report (BRSR) as notified by SEBI. It specifies that similar to SRMM Version 1.0, this version comprises total 300 scores, by completing the scoring of all three sections and nine principles of the SEBI BRSR and apprises that SRMM Version 2.0 offers the possibility for each corporate complying with BRSR to individually assess its position vis a vis various sustainability reporting maturity levels and achieve its vision of sustainable business.

Further, it adds that Level 1, Level 2, Level 3 and Level 4 of Sustainability Maturity of corporates have been defined based on total range of scores obtained by a corporate in a financial year as per the proposed BRSR scoring mechanism and that the leadership indicators have been given prominence by allocating score of 75 for encouraging companies to target achievement of same. Further states that each maturity level portrays the present level of sustainability reporting and where a new cycle of reporting starts towards a higher level of sustainability reporting. Lastly, it elucidates that corporates can self- evaluate their current level of maturity on the SRMM, identify areas where more focus is required, and then develop a road map for upgrading to a higher level of maturity, including formulation of strategies/ processes for internal controls and data collection to progress towards achievement of sustainable goals and thereby moving to higher level of sustainable reporting.

33. IASB amends tax accounting requirements to help companies respond to international tax reform:- *IASB Press release*

The International Accounting Standards Board (IASB) has issued amendments to IAS 12 *Income Taxes* which give companies temporary relief from accounting for deferred taxes arising from the Organisation for Economic Co-operation and Development's (OECD) international tax reform. The OECD published the Pillar Two model rules in December 2021 to ensure that large multinational companies would be subject to a minimum 15% tax rate. More than 135 countries and jurisdictions representing more than 90% of global GDP have agreed to the Pillar Two model rules.

The IASB has taken urgent action to respond to stakeholders' concerns about the uncertainty over the accounting for deferred taxes arising from the implementation of the rules. The amendments will introduce:

- a temporary exception—to the accounting for deferred taxes arising from jurisdictions implementing the global tax rules. This will help to ensure consistency in the financial statements while easing into the implementation of the rules; and
- targeted disclosure requirements—to help investors better understand a company's exposure to income taxes arising from the reform, particularly before legislation implementing the rules is in effect.

Companies can benefit from the temporary exception immediately but are required to provide the disclosures to investors for annual reporting periods beginning on or after 1 January 2023.

https://www.ifrs.org/news-and-events/news/2023/05/iasb-amends-tax-accounting-requirements/

34. MSME Ministry Notifies voluntary Aadhaar authentication for MSMEs to ease priority sector lending process:- *MSME notification dated 22nd May 2023*

Ministry of MSMEs notifies that the Aadhaar authentication of enterprises shall be performed on a voluntary basis, using Yes / No authentication facility, during the process of registration of owners of informal micro enterprises on its digital platform, to facilitate access for availing of priority sector lending. Rule 3 of the Aadhaar Authentication for Good Governance (Social Welfare, Innovation, Knowledge) Rules, 2020 empower the Central Government (in the Ministry of Electronics and Information Technology) to allow Aadhaar authentication by requesting entities in the interest of good governance, preventing leakage of public funds, promoting ease of living of residents and enabling better access to services for them, for the purposes specified therein. Ultimately, the Ministry submitted a proposal as required by Rule 4 of the Aadhaar Authentication Rules to the Central Government, after which Central Government has authorized the Ministry of MSME to perform Aadhaar authentication for the purposes mentioned therein.

35. IFSCA notifies fee structure for entities intending to undertake 'permissible activities' in IFSC:- *IFSCA Circular No. 865/IFSCA/Banking/Fee Revision/2022-23 dated 17 May 2023*

The International Financial Services Centres Authority (IFSCA) lays down the fee structure for entities undertaking or intending to undertake permissible activities in IFSC, which states that where a fee is payable as part of any application or request to the Authority, the application or request shall not be regarded as submitted until such fee has been paid in full. The fees payable to the Authority fall into the following categories:

- application fees and license/registration/recognition/authorization fees (payable during the process of application),
- recurring fees (payable after grant of licence, registration, recognition, or authorization),
- activity-based fees (payable based on the nature and volume of activity carried out by the financial institutions (FIs),
- processing fees (payable for handling specific requests such as modification of terms of licence, waiver of regulations, etc.

The Authority specifies w.r.t. the first category that application fees once paid shall not be refunded under any circumstances, including the case where the application is withdrawn, whereas, for the second category of fees, recurring fees payable by an FI shall be a pro-rata share of the recurring fees from the date of commencement of operations to the end of FY and shall be paid within 15 days of commencement of operations.

FIs desirous of undertaking specific activities shall pay specific activity-based fees in respect of the third category and the Authority elucidates that the application from the regulated entities (REs) requesting relaxation or waiver of provisions of the applicable regulation, guideline, circular, or framework shall be accompanied by the processing fees under the fourth category. In exceptional circumstances, an additional or supplementary fee may be levied on an applicant or a RE if such a fee is justified by the resources allocated or to be allocated by the authority towards considering an application or request or regulating the activities undertaken by the said applicant or RE.

36. RBI mandates banks to maintain daily data on Rs. 2000 banknotes' deposits/exchange in a prescribed format:- *RBI vide circular no RBI/2023-24/33 DCM(Plg) No.S 239/ 10.27.00/2023-24, dated 22 May 2023*

The Reserve Bank of India (RBI) has issued a directive requiring banks to maintain daily records of deposits and exchanges involving Rs. 2000 banknotes, following a prescribed format. These records must be submitted to the RBI on a monthly basis. The format includes details such as the date, bank name, amount of Rs. 2000 notes deposited, and amount of Rs. 2000 notes exchanged. The RBI has implemented this measure to closely monitor the circulation and utilization of Rs. 2000 banknotes, aiming to identify any emerging patterns in their deposit and exchange. This data will prove valuable to the RBI in formulating policies related to the use of Rs. 2000 banknotes.

Furthermore, the RBI has also advised banks to provide appropriate infrastructure at their branches, such as shaded waiting space, drinking water facilities, etc., considering the summer season. This will help to ensure that customers are able to deposit and exchange their Rs. 2000 banknotes in a smooth and hassle-free manner. The introduction of these measures is driven by several objectives:

- to oversee the flow and usage of Rs. 2000 banknotes
- identify trends in their deposit and exchange
- utilize the gathered information for policy-making decisions concerning the usage of these banknotes
- enable a smooth deposit and exchange process by encouraging banks to improve their infrastructure accordingly

37. SEBI comes up with measures to implement pro-rata rights for AIF investors: *News Report*

The Securities and Exchange Board of India (SEBI) has introduced measures to enforce pro-rata and pari passu rights for Alternative Investment Fund (AIF) investors. These measures aim to ensure equal rights for all investors in an AIF, irrespective of their investment size.The key measures include:

- Prohibiting AIFs from adopting a differential distribution model, ensuring that all investors receive payouts proportionate to their investments, regardless of their entry time.
- Establishing clarity on the pro-rata rights of investors in an AIF scheme, providing transparency and preventing unfair treatment of investors.
- Requiring AIFs to disclose pro-rata rights in their offering documents, empowering investors with essential information for making informed investment decisions.
- These measures represent a positive stride in safeguarding the interests of AIF investors, promoting fairness and granting them a voice in the management of their investments.

In addition, SEBI has proposed disallowing AIFs from granting differential rights to investors, ensuring equal rights for all investors regardless of their investment size. This proposal aims to reinforce fairness and investor participation in decision-making. While these measures are currently in the consultation stage, with SEBI actively seeking public feedback, they demonstrate SEBI's commitment to protecting the interests of AIF investors.

38. SEBI publishes Consultation Paper seeking to review QIB status of AIFs, VCFs, FVCIs: *SEBI Consultation Paper dated 19th May 2023.*

SEBI publishes a Consultation Paper seeking to review Qualified Institutional Buyer (QIB) status of Alternative Investment Funds (AIFs) registered under AIF Regulations, Venture Capital Funds (VCFs) registered under erstwhile VCF Regulations and Foreign Venture Capital Investors (FVCIs) registered under FVCI Regulations, solicits comments on the proposals by June 1, 2023.

Highlighting that certain AIFs, which have very few investors and belonging to the same family / investor group, have invested in IPOs under QIBs quota, thereby circumventing norms pertaining to QIBs under ICDR Regulations, Regulator emphasizes that entities which may not be otherwise eligible to qualify as QIBs on their own, may avail flexibility provided to QIBs by setting up an AIF for the said purpose, states that "Given the above regulatory arbitrage, it was felt necessary to address the same."

In terms of AIF Regulations, corpus of scheme of an AIF means the total amount of funds committed by investors to the scheme by way of a written contract or any such document (usually the Contribution Agreement entered into between AIF and its investors) on a particular date, further, SEBI elaborates that, as and when the investment opportunities are identified as per the defined investment objective of the scheme, funds are drawn down by AIFs for investment out of the capital commitments provided by the investors.

However, highlighting that no outer timelines have been specified in AIF Regulations for AIFs to drawdown the funds out of commitments for investments, SEBI proposes that AIFs and VCFs, other than those having 50% or more contribution from a single investor or investors belonging to the same group, shall be considered as QIBs, wherein, "same group" shall include relatives and related parties as defined in Companies Act, 2013

Finally, underscoring that individuals are not eligible to register as FVCIs, SEBI addresses the concerns related to designation of FVCIs as QIBs, stating that it is necessary that only those FVCIs who are other than corporate bodies and family offices are designated as QIBs to align the conditions for FVCIs with that given for FPIs and thus, recommends that FVCIs, other than those FVCIs who are corporate bodies and family offices, shall be considered as QIBs.

39. SEBI proposes to reduce IPO listing timeline to 3 days, for faster capital-market access:- *SEBI Consultation Paper dated 20th May 2023*

SEBI issues Consultation Paper laying down proposals pertaining to the reduction of time period from the date of Issue closure to the date of listing of shares through Public Issues from the existing 6 days to 3 days and in this regards SEBI has sought the comments/views from the public on the 12 proposals by June 3, 2023. "Issuers will have faster access to the capital raised thereby enhancing the ease of doing business and the investors will have opportunity for having early credit and liquidity of their investment", SEBI said in its consultation paper.

In November 2018, the markets regulator established Unified Payment Interface (UPI) as a new payment channel with Application Supported by Blocked Amount (ASBA) for retail investors and mandated listing within six days after the closing of IPO (T+6). SEBI proposed in its consultation paper that the time period from the date of closure of the issue to the date of listing of shares through initial public offerings be reduced from six days to three days (T+3). The proposal to reduce the listing timeline to 3 from 6 days is a positive sign for investors. It reduces the lag time for better listing thereby reducing speculation in the GMP (grey market premium) prices. Also, it helps investors who weren't allotted shares to have access to buying the stock earlier than expected.

Meanwhile, the SEBI has also proposed a uniform total expense ratio (TER) across all mutual funds (MFs). SEBI stated that the consultation record would serve as a basis for final recommendations after receiving feedback from stakeholders.

40. SEBI publishes Master Circular for Registrars to an Issue and Share Transfer Agents:- Circular No. SEBI/HO/MIRSD/POD-1/P/CIR/2023/70, dated 17.05.2023

The Securities and Exchange Board of India (SEBI) has issued the Master Circular for Registrars to an Issue and Share Transfer Agents (RTA) *inter alia* specifying that Registrars to an Issue (RTI) / Share Transfer Agents (STA). The circular provides that the Registration granted to Share Transfer Agents will be for the principal as well as for all the branch offices in India of the RTI, declared in its application for registration. RTI/STA shall handle its activities only from the offices declared to SEBI and approved by it.

Further, The Board may consider granting of certificate to an applicant, notwithstanding that another entity in the same group has been previously granted registration by the Board if the following conditions are fulfilled:

- The entities are incorporated as separate legal entities.
- The entities have independent boards of Directors. For this purpose, an Independent Board of Directors means that common directors should not be in the majority in both the Boards.
- There is an absolute arm's length relationship with reference to their operations.
- The key personnel and infrastructure are independently available for each entity.
- Each entity has independent regulatory controls and supervisory mechanisms.

The RTIs shall not handover applications and other documents/ records pertaining to an Issue or to any other persons for any purpose whatsoever until completion of dispatch of allotment letters / share / debenture certificates / refund orders. The SEBI advised RTAs to refer to its Master Circular with respect to the guidelines on anti-money laundering standards and combating the financing of terrorism/obligations of securities market intermediaries under the PMLA. The RTAs, based on information of bidding and blocking received from the stock exchange, shall undertake reconciliation of the bid data and block confirmation corresponding to the bids by all investor category and prepare the basis of allotment, SEBI mentions that upon approval of the basis of allotment, the RTA shall share the 'debit' file with sponsor bank, for credit of funds in the public issue account and unblocking of excess funds in the investor's account.

Further, RTAs shall submit an application for registration/surrender/cancellation, submission of periodical reports, requests for change of name/address/other details, etc. only in online mode on the SEBI Intermediary portal. The RTAs will be separately required to submit relevant documents viz. declarations/undertakings required as a part of application forms prescribed in relevant regulations, in physical form, only for records without impacting the online processing of applications for registration. The RTAs are jointly and severally responsible for compliance with all the applicable regulations including system audit and cyber security audit, SEBI stipulates that RTAs desirous of outsourcing their activities shall not, however, outsource their core business activities and compliance functions.

41. SEBI proposes integration of SCORES with ODR mechanism, for bolstering investor grievance handling:- SEBI Consultation Paper dated 19.05.2023

SEBI has released a consultation paper discussing the proposal to strengthen the investor grievance handling mechanism by integrating the SEBI Complaint Redressal System (SCORES) with the recently approved online dispute resolution (ODR) mechanism. The objective is to make the entire redressal process of grievances in the securities market more comprehensive by providing an end-to-end solution, and making the process more efficient and faster by reducing timelines and introducing auto-routing and auto-escalation.

Elaborating on the rationale for its proposals, the market regulator highlights that this process will provide full opportunity for the investor to seek review after receipt of a reply from the entity, and this would make the entity more accountable, as also, linkage of SCORES portal with ODR platform will enable the creation of further options for the complainant if he is dissatisfied with the resolution provided on SCORES. The proposal also provides for two levels of review that the investor can opt for, along with an option for referral to the Online Dispute Resolution mechanism recently approved by SEBI.

As per the consultation paper, SCORES may be redesigned as a platform for investors to directly seek timely redressal of their grievances from entities. For investors dissatisfied with the redressal, an opportunity for two levels of review would be given even before the option to opt for the ODR mechanism. Explaining the process flow in detail, where the complaints lodged on SCORES will be automatically forwarded to the concerned entity for resolution and submission of action taken reports (ATR), the market regulator says the complaint will also be shared with market infrastructure institutions (MIIs), first level regulators (FLR) and trade bodies as appropriate.

The SEBI envisages that if the complainant is unsatisfied with the ATR submitted at the first review stage and indicates the same within 15 days or the FLR body has not submitted the ATR within 10 days, the complainant will be taken up for review automatically. Further, complaints pertaining to market price manipulation, insider trading, accounting manipulation by listed companies that are currently being auto-closed will be excluded from the SCORES platform as these cannot be treated as complaints and a separate portal for market intelligence will be created for this purpose. In case, the investors lodge complaints about the nature of market intelligence on SCORES, such types of complaint would be closed and routed to the Market Intelligence portal.

42. SEBI releases Master Circular for Stock Brokers:- Notification No. SEBI/HO/MIRSD/MIRSD-PoD-1/P/CIR/2023/71, dated 17.05.2023

SEBI publishes a Master Circular for Stock Brokers compiling all relevant circulars/directions in relation to Stock Brokers in supersession of the Master Circular dated June 1, 2018 and the subsequent circulars on the subject, inter alia advises Stock Exchanges to verify the antecedents of the applicant before granting admission as a member of Stock Exchange.

The following verification of antecedents of the applicant is required for Registration of Brokers:

- Conversion of individual membership into corporate membership.
- Additional information to be submitted at the time of registration of Stock Broker with SEBI.
- Additional requirements for processing applications of Stock Brokers for Registration/ Prior approval for the sale of Membership/ Change of name/ Trade name.
- Single registration for Stock Brokers & Clearing Members.

- Registration of Members of Commodity Derivatives Exchanges.
- Uniform Membership structure across segments.

In order to facilitate integration between stock brokers, SEBI reiterates that client accounts may be transferred from one stock broker to the other stock broker, by taking the express consent of the client through a verifiable mode of communication and thereby continuing with the existing set of documentation in respect of broker client relationship. Further, underscoring that Power of Attorney (PoA) executed in favour of a stock broker and Depository Participant by the client should identify/provide the particulars of the beneficial owner accounts and the bank accounts of the clients that the stock broker is entitled to operate, the Regulator adds that the PoA shall not facilitate the stock broker to do off-market trades between parties other than the related parties as mentioned in the PoA or execute trades in clients' name without the clients' consent, etc. The SEBI directs brokers to disclose the codes of accounts which are classified as 'error accounts' to the Stock Exchanges, and also specifies that each broker should have a well-documented error policy approved by the management of the broker.

43. SEBI issues Master Circular for Mutual Funds Circular No. SEBI/HO/IMD/IMD-PoD-1/P/CIR/2023/74, dated 19.05.2023

The Securities and Exchange Board of India (SEBI) has released a Master Circular for Mutual Funds, incorporating the provisions of various circulars issued until March 31, 2023. This initiative aims to provide stakeholders with easy access to all applicable regulatory requirements in one comprehensive document. The Offer Documents for schemes, Regulator mandates that the Offer Document shall have 2 parts, viz. Scheme Information Document (SID) and Statement of Additional Information (SAI), wherein SID shall incorporate all information pertaining to a particular scheme and SAI shall incorporate all statutory information on Mutual Fund. The regulator specifies that Mutual Funds / Asset Management Companies (AMCs) shall disclose portfolio (along with International Securities Identification Number) as on the last date of the month / half-year for all their schemes on their respective website and on the website of Association of Mutual Funds in India within 10 days from the close of each month / half year respectively in a user-friendly and downloadable spreadsheet format.

The SEBI further warns that an Independent Trustee shall not be associated in any manner with the Sponsors, similarly, specifies that the independent directors on the Board of the AMC shall not be associate of, or associated in any manner with, the sponsor or any of its subsidiaries or the trustees, and defines "associate" as

- relatives of Sponsors or directors of the Sponsor Company or relatives of Associate Directors of the AMCs and Trustee.
- nominees of the companies who are stakeholders in the Sponsor Company or AMCs, even if they are not deemed sponsors by virtue of holding less than 40% net worth of AMC.

Subsequently, the entities subject to compliance must submit necessary reports as specified in the document. The SEBI stated that units of mutual fund schemes may be permitted to be transacted through registered stock brokers of recognized stock exchanges and such stock brokers will be eligible to be considered as official points of acceptance. The issuance of the Master Circular falls under SEBI's authority to safeguard investor interests and regulate the securities market. The complete Master Circular can be accessed on the SEBI website.

CROSS BORDER

1. PCAOB enhances Transparency of Inspection Reports With New Section on Auditor Independence:- *PCAOB Press Release dated 02 May 2023*

The Public Company Accounting Oversight Board (PCAOB) announced that it has enhanced its inspection reports with a new section on auditor independence and a range of other improvements that increase transparency by making publicly available more information that is relevant, reliable, and useful for investors and other stakeholders. The changes will appear in reports for PCAOB inspections completed in 2022, beginning with eight reports released. The enhanced inspection reports will include:

1. A new section of the report focused on independence violations: Reports will feature a new independence section (Part I.C) that will discuss instances of non-compliance with PCAOB rules related to maintaining independence, as well as potential non-compliance with U.S. Securities and Exchange Commission independence rules.
2. More information related to fraud procedures and the identification and assessment of the risks of material misstatements: Reports will expand Part I.B to include deficiencies related to AS 2401, Consideration of Fraud in a Financial Statement Audit, and AS 2110, Identifying and Assessing Risks of Material Misstatement.
3. More commentary: Reports will provide additional commentary in Part I.A for certain situations, such as whether the audit was the firm's first audit of the issuer or whether the firm had identified significant risks, including fraud, for areas in which PCAOB inspection staff identified deficiencies.
4. New graphs: For annually inspected firms, reports will include charts to clearly show firm and engagement partner tenure.

https://pcaobus.org/news-events/news-releases/news-release-detail/pcaob-enhances-transparency-of-inspection-reports-with-new-section-on-auditor-independence-and-more

2. Italy wary of raising taxes on web firms, fearing U.S. reaction:- *News Report*

Italy is reportedly cautious about increasing taxes on digital companies operating within its borders due to concerns over potential retaliatory measures from the United States. The Italian government is considering imposing a digital tax on large tech companies to ensure they contribute their fair share of taxes. However, there is apprehension that such a move could trigger a response from the US, potentially leading to trade tensions. Italy is part of a global effort to implement a fair taxation system for digital companies that generate significant revenues but pay relatively low taxes. The aim is to ensure a level playing field between traditional businesses and digital giants. However, the fear of provoking the US has resulted in a cautious approach.

Several European countries have already introduced digital services taxes, which have drawn criticism from the US. In response, the US has threatened retaliatory measures, including imposing tariffs on certain European goods. Italy is keen to avoid similar repercussions and is reportedly seeking a coordinated international solution through the OECD (Organisation for Economic Co-operation and Development) negotiations. The Italian government is currently evaluating different options, including a digital tax or a revenue-sharing agreement with the companies involved. The objective is to strike a balance that allows for fair taxation while minimizing the risk of trade

disputes. The issue of digital taxation has become a complex and sensitive matter, requiring careful navigation to ensure both revenue generation and international relations are effectively managed.

https://www.reuters.com/markets/europe/italy-wary-raising-taxes-web-firms-fearing-us-reaction-2023-05-02/

3. UAE releases Explanatory Guide on Corporate Tax Law:- *Press release dated, 12-05-2023*

The UAE Ministry of Finance has issued an Explanatory Guide for Federal Decree-Law No. 47 of 2022 on the Taxation of Corporations and Businesses (the "Corporate Tax Law"). The Guide is designed to provide a detailed explanation of each article, the intended purpose of the provisions of the Corporate Tax Law and the executive decisions issued for its implementation. The Guide explains the policies related to the Corporate Tax regime in the State, based on which the provisions of the Corporate Tax Law were formulated. The Guide will also assist in understanding the legal provisions and improve the Corporate Tax Law's readability by companies, businesses and individuals undertaking a business or business activity.

4. Australia to implement Global & Domestic Minimum Tax from Jan'24, UTPR by Jan'25:- *Australia Budget dated 10th May 2023*

Australia's Budget 2023-24 introduces two new tax measures: a 15% global minimum tax for large multinational enterprises and a 15% domestic minimum tax. The global minimum tax and domestic minimum tax will apply to income years starting on or after Jan 1, 2024 and undertaxed profits rule (UPTR) starting on or after Jan 1,2025.

The global minimum tax aims to prevent a "race to the bottom" on corporate tax rates and protect Australia's corporate tax base. The rules would allow Australia to apply a top-up tax on a resident multinational parent or subsidiary company where the group's income is taxed below 15% overseas. The domestic minimum tax would give Australia first claim on top-up tax for any low-taxed domestic income. These measures will apply to large multinationals with annual global revenue of EUR750 million (approximately $1.2 billion) or more. The implementation of these measures is estimated to increase receipts by $370 million and increase payments by $111 million over the 5 years from 2022-23, according to the Budget Paper.

5. EU lawmakers propose transactions tax among new sources of cash to repay joint debt:- *News Report*

The European Union lawmakers have called for new sources of revenue, including a financial transactions tax and a digital levy, to help repay joint borrowing during the COVID pandemic and cover various new spending needs. A European Parliament report, adopted on Wednesday, also suggested a fair border tax be paid by firms that do not pay workers enough for them to escape poverty, as defined by the World Bank, and a slice of national corporate taxes. The report is meant to influence a proposal from the European Commission, the only EU body that can suggest new laws, on new EU revenue sources that is due between June and September. The new revenue sources are intended to ensure that the next generation of Europeans do not have to pay the price for the repayment of the principal and the interest of the funds borrowed under Next Generation EU.

The Next Generation EU plan was an unprecedented joint borrowing scheme agreed by the EU in 2020 to raise more than 800 billion euros to finance the post-pandemic economic EU recovery and green and digital transformation. The EU will begin repaying that debt from 2028 and must establish new revenue streams for that purpose. The EU is already working on obtaining funds from the Emissions Trading System, a global tax on the biggest multinational companies, and a border tax on imported goods based on the level of CO2 emitted in their production. However, the proposed revenue from these sources is only a fraction of the required 15-20 billion euros annually for 30 years, making additional resources essential to meet the EU's financial commitments.

https://www.reuters.com/world/europe/eu-lawmakers-propose-transactions-tax-among-new-sources-cash-repay-joint-debt-2023-05-10/

6. Maryland Supreme Court reverses ruling on digital ad tax:- *News Report dated 10th May 2023*

UAE's Maryland's highest court overturned a ruling by a lower court that declared Maryland's tax on digital advertising as unconstitutional. The court did not make a ruling on the constitutionality of the law but sent the case back to a lower court with directions to dismiss, stating that the plaintiffs had not followed the correct administrative process. The digital ad tax is a law that taxes revenue made by companies on digital advertisements shown in Maryland and is imposed on businesses with at least $100 million in global revenue and $1 million in gross receipts from digital advertising services in Maryland. The digital ad tax is estimated to raise about $250 million a year to help pay for K-12 education.

7. An engagement group of G20 call for global definition for start-ups:- *News report dated 28th May, 2023*

The engagement group under India's G20 Presidency has urged the creation of a global definition framework for start-ups across G20 nations to promote consistency in understanding and evaluating start-up ecosystems by encouraging relevant stakeholders to adopt it by aligning existing definitions with the framework and ensuring future alignment as the government and private sectors evolve.

Additionally, the group has called for a favorable policy environment for start-ups, including tax incentives. These incentives would support the growth and development of start-ups by providing financial benefits and encouraging investment in the sector. Moreover, the group has recommended enabling measures to facilitate the cross-border flow of capital among G20 nations. By implementing such measures, barriers to international investment and market access would be reduced, fostering collaboration and growth in the start-up ecosystems of G20 countries.

https://www.business-standard.com/india-news/g20-an-engagement-group-call-for-global-definition-for-start-ups-123052201151_1.html

8. Vietnam deposits BEPS MLI ratifying instrument:- *OCED News Report*

Viet Nam has deposited its instrument of ratification for the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (BEPS Convention), which now covers around 1850 bilateral tax treaties, underscoring its strong commitment to prevent the abuse of tax treaties and base erosion and profit shifting (BEPS) by multinational

enterprises which will enter into force on 01st September 2023, for Viet Nam. Around 1,200 treaties concluded among the 81 jurisdictions that have ratified, accepted, or approved the BEPS Convention will have already been modified by the BEPS Convention on 01st June 2023, and around 650 additional treaties will be modified once the BEPS Convention has been ratified by all signatories.

https://www.oecd.org/tax/beps/viet-nam-deposits-its-instrument-for-the-ratification-of-the-multilateral-beps-convention.html

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