Tax & Regulatory Updates – Key Developments of November 2023

DIRECT TAXATION

1. CBDT notifies changes in ITR-7 for AY 2023-24:- *CBDT Notification No. 94/2023 dated 31 October 2023*

The CBDT, vide its notification no. 94/2023 dated Oct 31, 2023, notifies changes in ITR-7 for AY 2023-24. The amendments come into effect from 01 Apr 2023, and apply to AY 2023-24. The changes are made in Part B-TI and Part B-TTI.

A. In Part B-TI:

i. Entry no. 16 is modified to 'Specified income chargeable u/s 115BBI, included in 13, to be taxed @ 30% (Sl. No 7 of Schedule 115BBI)' and

ii. A new entry no. 17 is inserted which is 'Aggregate income to be taxed at normal rates (13-14-15-16) (including income other than specified income under section 115BBI)'

B. <u>In Part B-TTI</u>

Entry 1(a) is modified to 'Tax at normal rates on [Sl. No. 17 of Part B1 of Part B-TI] or [Sl. No. (13-14) of Part B2 of Part B-TI] or [Sl. No. 13 of Part B3 of Part B-TI].

The amendment introduces alterations to Form ITR-7, affecting both Part B–TI and Part B–TTI. Under Part B–TI, clause 16 now addresses specified income chargeable u/s 115BBI, taxed at 30%, and clause 17 calculates the aggregate income to be taxed at normal rates as against the current version of the form where clause 16 states the reporting of only "Income chargeable u/s 115BBI , included in 13, to be taxed @ 30% (Sl. No. 13-14-15). Part B–TTI, clause 1a, calculates tax at normal rates and is consequential modification on account of modifications in Part B–TI. The amendment brings clarity and streamlines the tax calculation process for the specified AY.

Specified Income as defined in Explanation to section 115BBI means:

(a) income accumulated or set apart in excess of fifteen per cent of the income where such accumulation is not allowed under any specific provision of the Act or
(b) deemed income referred to in Explanation 4 to the third proviso to clause (23C) of section 10, or sub-section (1B) or sub-section (3) of section 11; or
(c) any income, which is not exempt under clause (23C) of section 10 on account of violation of the provisions of clause (b) of the third proviso of clause (23C) of section 10, or not to be excluded from the total income under the provisions of clause (d) of sub-section (1) of section 13; or
(d) any income which is deemed to be income under the twenty-first proviso to clause (23C) of section 10 or which is not excluded from the total income under clause (c) of sub-section (1) of section 13; or
(e) any income which is not excluded from the total income under clause (c) of sub-section (1) of section 11.

2. Income Tax Department initiates comprehensive profiling of HNIs involved in tax evasion:- *News Report*

The Income Tax Department is prepared to take stringent actions against high-net-worth individuals (HNIs) who engage in tax underpayment, notwithstanding the recent reduction in the highest tax rate. They are conducting a comprehensive profiling of individuals with annual incomes exceeding Rs. 1 crore, scrutinizing their investments, expenditures, and income sources. It has been found that the number of taxpayers reporting such high incomes falls short of the actual count, suggesting widespread tax underreporting among HNIs. The department plans to issue notices to those who have inaccurately reported their income.

In the latest budget, the government reduced surcharges for those earning Rs. 5 crores or more, but this did not deter tax evasion among HNIs. The department's efforts aim to boost government revenue and send a clear message to HNIs that the Income Tax Department employs advanced tools to detect tax evasion, so they should refrain from engaging in any tax avoidance or evasion schemes. To avoid scrutiny from the Income Tax Department, HNIs should:

- Ensure accurate and comprehensive reporting of income in their tax returns.

- Maintain proper documentation to support their claims, including receipts for expenses and invoices for investments.
- Stay updated on tax laws and regulations.
- Seek guidance from tax experts when unsure about tax-related matters.

3. ESOP deduction controversy reaches Supreme Court and Revenue previews two key grounds in the matter:- *Decision of Biocon*

SC briefly hears Revenue's appeals against Delhi HC ruling in case of ***NDTV*** and Karnataka HC ruling in ***Biocon*** where ESOP expenditure was held to be allowable under Section 37(1). Revenue counsel informs SC of the two key grounds he will take during the final hearing, as follows:

- ESOPs are a contingent liability, not crystallised, hence, deduction under Section 37(1) should not be allowed and
- ESOPs are an expense on 'capital' and hence deduction should not be granted.

SC lists the case for hearing on 30 November 2023. Revenue's Counsel also indicates that they may rely on recent SC ruling in ***Bharti Hexacom*** on Capital v. Revenue expenditure. The matter is before the Division Bench of the Supreme Court comprising Justice B.V. Nagarathna and Justice Prashant Kumar Mishra. Brief facts and decision of the aforementioned courts are summarised below for a ready reference:

a) Karnataka HC ruling in case of CIT v. Biocon Ltd (ITA no 653 of 2013):

Facts: The issue has been discussed at length by the Karnataka High Court in the case of CIT v. Biocon Ltd (ITA no 653 of 2013) (Karnataka HC), wherein the facts were that the assessee floated Employees Stock Option Plans (ESOP) and provided shares to its employees at a discount and claimed the deduction on the same as an expenditure under section 37 of the Income tax Act, 1961 in its income-tax return. There was a difference between grant price to employees and market price as on date of grant of ESOPs. The ESOPs were vested in employees over a period of four years. The deduction of discount on ESOP over vesting period was in accordance with accounting in books of account, which had been prepared in accordance with SEBI Guidelines. The Assessing officer (AO) during the course of audit proceedings rejected the taxpayers claim of difference between market price and allotment price as an expenditure under section 37 of the ITA, on the ground that the taxpayer had not incurred any expenditure and the expenditure was contingent in nature.

Decision: The Karnataka High Court held that on exercise of option by an employee, the actual amount of benefit that had to be determined was only a quantification of liability, which would take place at a future date. The Court further held that the discount on issue of ESOPs was not a contingent liability but was an ascertained liability. Accordingly, issuance of shares at a discount would be an expenditure incurred for purposes of section 37(1) as the primary object of aforesaid exercise was not to waste capital but to earn profits by securing consistent services of employees and therefore, same could not be construed as short receipt of capital. Therefore, the HC answered the substantial question of law in favour of the taxpayer viz. discount on issue of ESOP's as on the date of grant of options was allowable as a deduction under section 37(1) of the ITA] and dismissed the Revenue's appeal.

b) **Delhi HC ruling in case of PCIT v NDTV [398 ITR 57]:**

Facts: The assessee during the year under consideration charged expenses amounting to INR 11,83,43,111 under the head employee stock option expenses to its profit and loss account. The employees were covered under the ESOP 2004 scheme of the appellant. In its computation of taxable income, the appellant added back sum of INR 11,83,43,111 being the amount debited to profit and loss account and claimed deduction of INR 17,86,56,690/- which was recalculated as the expenses incurred on account of ESOP. The assessee computed the claim as per the Securities and Exchange Board of India (SEBI) guidelines which mandated that the difference between the market price and the price at which the option is exercised by the employee is to be debited to the profit and loss account as it is a benefit conferred on the employee which could not be taken back by the employer company. The learned assessing officer (AO) disallowed the above expenditure stating that these expenses are notional expenses.

Decision: The Delhi HC held that expenditure arising on account of ESOP is an ascertained liability and since once the option was given and exercised by the employee, the liability got ascertained and that it was not contingent liability depending on the various factors on which the assessee had no control. Order of the Tribunal deleting disallowance of the expenses debited as cost of employee's stock option plan in the profit and loss account was affirmed.

c) **Apex Court ruling in case of C.I.T. Delhi Vs. Bharti Hexacom Ltd. & Others Civil Appeal No(s). 11128 of 2016 :**

Facts: The assessee company was engaged in the business of telecommunication services and value-added related services. It initially procured a licence from the Government for telecommunication services under the 1994 agreement, which New Telecom Policy, 1999 subsequently governed. In terms of the licence agreement, the assessee had to pay an entry fee payable up to 31-7-1999, and, thereupon, the licence fee was payable as a percentage of gross revenue under the licence effective from 1-8-1999. The Delhi High Court apportioned the licence fee as partly revenue and partly capital by dividing the licence fee into two periods, i.e. before and after 31-7-1999. Accordingly, it was held that the licence fee paid or payable for the period up to 31-7-1999, i.e., the date set out in the Policy of 1999, should be treated as a capital expense, and the balance amount payable on or after the said date should be treated as a revenue expense.

Decision: On appeal, the Supreme Court held that, the view of the Delhi High Court was not right in apportioning the expenditure incurred towards establishing, operating and maintaining telecom services as partly revenue and partly capital by dividing the licence fee into two periods, that is, before and after 31-7-1999 and holding that the licence fee paid for the period upto 31-7-1999 should be treated as capital and the balance amount payable on or after the said date should be treated as revenue. The nature of payment being for the same purpose cannot have a different characterisation merely because of the change in the manner or measure of payment or, for that matter, the payment being made on an annual basis. Therefore, the nomenclature and the manner of payment are irrelevant. The payment posts 31-7-1999 was a continuation of the payment pre 31-7-1999, albeit in an altered format, which does not take away the essence of the payment. The consequence of non-payment would result in the ouster of the licensee from the trade. Thus, this is a payment which is intrinsic to the existence of the licence as well as trade itself. Accordingly, variable annual licence fees paid by the assessees to the DoT under the Policy of 1999 are capital in nature and may be amortised in accordance with section 35ABB.

4. The taxman wants to know if Indians are wearing an FPI mask:- *News Report*

In a series of detailed and inquisitive inquiries, tax authorities have issued notices to multiple offshore funds, requesting comprehensive information on their fundraising methods, the proportion of Indian investments within the fund pools, and details regarding the primary investors. Over the past few weeks, at least twelve Foreign Portfolio Investors (FPIs) have been subjected to such notices from the income-tax department, seeking clarification on fund management, geographical origins, and pertinent details about key investors, as disclosed by individuals familiar with the matter to ET. It is noteworthy that resident Indians are only permitted to invest in FPIs where the exposure to India is below 50%, and the total subscription by NRI cannot exceed 50% of the fund corpus. While periodic inquiries by the tax office aim to assess potential tax avoidance through exploitation of favourable tax treaties or ascertain a fund's Place of Effective Management (POEM), the recent set of questions has drawn attention for its notably intrusive nature.

Some of the information sought by the Income Tax department surpasses the stringent disclosure requirements mandated by the SEBI. As evidenced by the questions posed in notices dated October 16 and October 30, the tax authorities have delved into specifics such as the methodology for investor solicitation, the eligibility of Indian participation, and the verification of the legitimacy of funding sources, including details of the top 20 remittance sources.

This heightened scrutiny aligns with broader regulatory efforts to identify individuals of Indian origin associated with FPIs, as well as overseas private equity and venture capital funds, in the wake of allegations against the Adani Group by the US short-seller Hindenburg in January. Notably, these tax inquiries precede significant state elections and the scheduled evaluation of India, after more than a decade, by the Financial Action Task Force, a global body combating money laundering. As part of an enhanced disclosure framework introduced this year, Foreign Portfolio Investors (FPIs) are now mandated to disclose the identities of the ultimate natural persons holding 10% or more beneficial ownership (BO) in fund investments. However, tax authorities are currently seeking disclosure of the top 20 investors without applying any ownership threshold filter. This request is in addition to the examination of various aspects related to the decision-making process of FPIs, including the location of trading terminals, order placement procedures, and trade settlement processes. The recent notices sent to FPIs also encompass a range of additional information, such as details on the fund's management, team size responsible for fund management, qualifications and addresses of fund managers, confirmation and settlement procedures for trades, tax implications for fund participants, and copies of submissions made to the SEBI regarding fund participants.

Questions regarding the Place of Effective Management (POEM) arise when tax officials suspect that although a fund is established in a treaty jurisdiction, such as Mauritius, Singapore, or The Netherlands, to avail specific tax benefits, its key decision-makers may be located elsewhere, potentially even in India. The notices Issued under Section 142(1) of the Income Tax Act additionally mandate FPIs to provide their certificate of incorporation under the specific law of the foreign country, copies of bank statements for the relevant year (subject to a revaluation of the fund's tax implications by the Income Tax department), and detailed statements for short-term and long-term capital gains, ledger statements, and sample contract notes for each stockbroker.

5. CBDT prescribes monetary limit of INR 10 lakh or more to withhold refund under Sec. 245(2):- *CBDT Instruction No. 02/2023 dated 10 November 2023*

The CBDT has issued Instruction No. 02/2023 dated 10 November 2023 regarding the revision of timelines and monetary limits as well as revision of workflow in the matter of recording of reasons before withholding of refunds u/s 245(2) or the Income-tax Act, 1961 ('the Act') by the AO. The AO can withhold a refund under section 245(2) if there's an outstanding demand or pending assessment proceedings and AO believes the grant of refund is likely to affect the revenue adversely. CBDT has notified that the monetary limit for applying provisions of said section will be where the refund value is **INR 10 lakhs** or more.

CBDT has prescribed that in cases where section 245(2) of the Act is applicable, the Faceless Assessing Officer (FAO), on receipt of communication from CPC, shall intimate the Jurisdictional Assessing Officer (JAO) with regard to demand likely to be raised in the pending assessment(s). The JAO, based on such information shall record in writing, with proper application of mind and after analyses of the factual matrix of the case (which, includes the financial condition of the Assessee, past demands, pendency of appeals etc.) and seek approval of the jurisdictional Principal Commissioner of Income-tax. The reasons recorded shall not be cursory (i.e. shall be detailed). Such reasons should reflect the factual analysis of the case by the JAO. The JAO will communicate the final decision regarding withholding/release of refund to the CPC. To finish the above process, the time limit has been revised to **20 days** for the Faceless Assessment Unit and to **30 days** for JAO by the CBDT. A detailed workflow chart as delineated above will be issued by DGIT(Systems).

6. OECD invites public inputs on PE Commentary changes regarding 'Extractible Natural Resources':- *OECD Press Release dated 16 November 2023*

The OECD have invited public inputs on changes proposed to the Commentary on Article 5 of the OECD Model Tax Convention and its application to extractible natural resources. OECD releases public consultation document 'Provision on Activities in Connection with the Exploration and Exploitation of Extractible Natural Resources'. This is the part of their ongoing efforts to update the existing network of bilateral tax treaties and reduce opportunities for tax avoidance. Article 5 of the OECD Model Tax Convention on Income and on Capital (the OECD Model) deals with the definition of permanent establishment. Working Party 1 on Tax Conventions and Related Questions (which is the subgroup of the OECD Committee on Fiscal Affairs in charge of the OECD Model) has recently undertaken work on the Commentary on Article 5 to develop an alternative provision on activities in connection with the exploration and exploitation of extractible natural resources, together with related commentary. Interested parties are invited to comment on all aspects of the proposal below. In particular, the Committee has invited the inputs on following questions:

(1) The proposed alternative provision covers only activities connected with extractible natural resources (oil, gas and minerals), as explained at paragraph 187. Is there a case for extending the provision to cover the harnessing of renewable resources such as hydroelectric, wind, wave, tidal or solar power?
(2) Are there particular challenges of profit attribution to the short-duration permanent establishments that this provision would create? What are they and how should they be addressed?
(3) The paragraph on capital gains in the new provision (paragraph 4) largely replicates the rules in Article 13 of the OECD Model. But subparagraph (c) allows the aggregation of movable and

immovable property for the purposes of triggering a rule modelled on Article 13(4). Are there particular challenges in doing that?
(4) The provision contains an exclusion for the operation of ships or aircraft designed or modified, and used, for the primary purpose of: (i) transporting supplies or personnel, or (ii) towing or anchor handling. Is the "designed or modified" a useful extra condition, and would there be any practical difficulties in applying it? And
(5) Are the vessels mentioned as examples at paragraph 184 as within and outside the provision the right ones?

The interested parties can send their comments on the discussion draft before Jan 4, 2024 by email to taxtreaties@oecd.org in Word format and all the comments should be addressed to the Tax Treaties and International Co-operation Unit, OECD Centre for Tax Policy and Administration.

7. **HC discards 'travel back in time' theory propounded by revenue relying upon Ashish Agarwal case of Supreme Court:- *Ganesh Dass Khanna v. ITO - [2023] 156 taxmann.com 417 (Delhi)***

Issues involved: "Whether order passed under Section 148A(d) and the consequent notice issued under Section 148 of the amended 1961 Act [as obtained with the enactment of FA 2021], falls foul of the limitation prescribed in Section 149(1)(a)?"

Assessee contended that the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 [TOLA] does not delegate any power to revenue to postpone the applicability of the new regime enacted by the Legislature. The Delhi High Court held that the revenue's argument that actions taken before the extended time limit of 30-06-2021 are valid by virtue of the Notifications issued under Section 3(1) of TOLA is flawed for these reasons:

a. There was no power invested under TOLA, and that too via Notifications, to amend the statute, which had the imprimatur of the Legislature. Since, with effect from 01.04.2021, when FA 2021 came into force, the Notifications dated 31.03.2021 and 27.04.2021, which are sought to be portrayed by the revenue as extending the period of limitation, were contrary to the provisions of Section 149(1)(a).

b. The extension of the end date for completion of proceedings and compliances, a power which was conferred on the Central Government under Section 3(1) of TOLA, cannot be construed as one which could extend the period of limitation provided under Section 149(1)(a).

c. A careful perusal of the judgment of the Supreme Court rendered in Ashish Agrawal's case [2022] 138 taxmann.com 64 (SC) and the provisions of TOLA would show that neither the said judgment nor TOLA allowed for any such modality to be taken recourse to by the revenue, i.e., that extended reassessment notice would "travel back in time" to their original date when such notices were to be issued and thereupon the provisions of amended Section 149 would apply.

d. Furthermore, the judgment would show that it did not rule on the provisions contained in TOLA or the impact they could have on the reassessment proceedings. In any event, TOLA conferred no such power on the CBDT.

Thus, orders passed under Section 148A(d) and the consequent notices issued under Section 148 concerning AY 2016-17 and AY 2017-18 cannot be sustained.

8. Review Petitions filed in the Supreme Court on the MFN decision:- Review Petition in case of Assessing *Officer Circle (International Taxation) vs. Nestle SA & Others [2023] 155 taxmann.com 384 (SC) dated 19 October 2023 (News Report)*

The Supreme Court in a verdict on October 19 held that a notification u/s 90 of the Income tax Act, 1961 ("the Act"), is a mandatory condition to give effect to a DTAA or any other protocol that can alter the existing provisions of law. Further, it is also said by the Apex court that a claim under the MFN clause of a treaty with an OECD member country that relies on a third OECD member's tax treaty with India is valid only if the third country was a member of OECD at the time of entering into its DTAA with India. This is expected to have far-reaching implications for multinational companies from countries like France, Netherlands and Switzerland that are operating in India. Experts noted that filing of a review petition was on expected lines given the impact of the case as it has been recently reported that several assessees have preferred review petitions against the SC judgment in MFN Clause case. The review petitions seek re-consideration of the judgment on various aspects viz., treaty practice, treaty interpretation and precedents, among others. The 5 key grounds raised by the assessee in the review petitions are as follows:

- Reliance on Article 31(3)(b) of the Vienna Convention on the Law of Treaties (VCLT) : Petitioners have submitted that the SC interpretation of this Article in the judgment is incorrect since the Article envisages a treaty practice by both the States.
- Petitioners have further submitted that SC misdirected itself to conclude that the need for notifying a Treaty & a Protocol, extends to notifying an MFN benefit.
- On interpretation of the word 'is', Netherlands has signed treaties with other countries such as Australia which specifically says - 'is' a member of the OECD at the time of signing the treaty.
- SC overlooked its own judgment in Puttaswamy case wherein it was held that a domestic law requirement cannot override 'good faith' principle of treaty interpretation.
- SC ignored an argument that Indian companies declaring dividends from the Netherlands, benefited from the Dutch decree conferring MFN benefit.

9. Income Tax Department can now share taxpayer's information with UIDAI:- *CBDT* Notification *No. 99/2023 dated 20 November 2023*

CBDT specifies 'Deputy Director General (Tech Development Division), Unique Identification Authority of India (UIDAI), Government of India', under Section 138(1)(a)(ii) for the purpose of sharing taxpayers related information. Section 138(1)(a)(ii) of the Act allows providing of any information received or obtained by any income-tax authority in the performance of his functions under the Income-tax Act which in the opinion of CBDT or other income-tax authority is necessary for the purpose of enabling the officer, authority or body to perform his or its functions under the law governing such officer, authority or body.

10. DIT(Systems) issues corrigenda to SFT Notifications w.r.t. Depository & Mutual Fund Transactions:- *Corrigendum dated 15 November 2023 to Notification No.3 & 4 of 2021 dated 30 April 2021*

Directorate of Income-tax (Systems) issues Corrigendum dated 15 November 2023 to Notification No.3 of 2021 dated 30 April 2021 with regard to Statement of Financial Transactions (SFT) for Depository Transactions and to Notification No. 4 of 2021 dated 30 April, 2021 with regard to SFT for Mutual Fund Transactions by Registrar & Share Transfer Agent. The key point of the said Corrigendum is analysed below for a ready reference:

Corrigendum to Notification No.3 of 2021:

- As per the said Corrigendum, w.e.f. Apr 1, 2023, the SFT data will be submitted by Depository Institutions on a half yearly basis on or before 31st October and 30th April, respectively, instead of the existing quarterly basis.

- The Estimated Sale Consideration for the debit transaction should be determined on Weighted Average Price i.e., taking actual value of the transactions executed as against the 'best possible available price of the asset with depository (eg. and of day price).

- Further, the holding period of the **Unit of UTI** has been kept as 12 months where more than 35% of its total proceeds are invested in the equity shares of domestic companies and this information is required to be provided. Similarly, for **Units of Business Trust and Other Units**, the period of holding is kept at 36 months where more than 35% of its total proceeds are invested in the equity shares of domestic companies and this information is required to be provided. DIT(Systems) further clarifies that, where not more than 35% of its total proceeds are invested in the equity shares of domestic companies, (Specified Mutual Fund), it will always be classified as short-term capital asset **w.e.f. Apr 1, 2023**. DIT Further adds the Market Linked Debentures under the category of short-term capital assets **w.e.f. Apr 1, 2024**.

- The Corrigendum further states that for every debit transaction, the corresponding credit transaction should be identified using First in First Out (FIFO) method and the estimated cost of acquisition for the credit should be determined **on weighted average price of the asset i.e taking actual value of the transactions, if purchase was made after Feb 1, 2018 or End of the day price if purchase was made before Feb 1, 2018**, available with the depository. DIT clarified that the estimated cost of acquisition is to be taken as NIL for OFF Market purchase, corporate Action or for any transaction through other than Exchange and the IPO credit will be treated as Market credit and cost of the acquisition of the same will be arrived using the formula 'Number of shares allotted x Per unit price at which share is allotted'.

- The **Unit price** shall be the Weighted Average Sale price per unit (taking into account the actual value of the transactions), **Sale Consideration** shall be the Estimated Sale Consideration at Weighted Average price (taking into account the actual value of the transactions) & **COA** shall be the estimated Cost of acquisition without indexation.

Corrigendum to Notification No.4 of 2021:

- As per the said Corrigendum, w.e.f. Apr 1, 2023, the SFT data will be submitted by Registrar & Share Transfer Agent on a half yearly basis on or before 31st October and 30th April, respectively, instead of the existing quarterly basis.

- Further, the holding period of the **Unit of UTI** has been kept as 12 months where more than 35% of its total proceeds are invested in the equity shares of domestic companies and this information is required to be provided. Similarly, for **Other Units**, the period of holding is kept at 36 months where more than 35% of its total proceeds are invested in the equity shares of domestic companies and this information is required to be provided. DIT(Systems) further clarifies that, where not more than 35% of its total proceeds are invested in the equity shares of domestic companies, (Specified Mutual Fund), it will always be classified as short-term capital asset **w.e.f. Apr 1, 2023**.

11. Tax department sets strict targets to resolve appeals:- *News Report*

The income tax department has decided to prioritize litigation management to reduce the burden of litigation for both the government and taxpayers. However, the disposal of appeals is much less than the number of fresh appeals filed every year. As of 31 March 2023, the number of appeals pending has increased to 5.16 lakhs from 4.96 lakhs as of 31 March 2022, with over 2.8 lakh appeals pending for more than 03 years. To ensure faster disposal of appeals, the department has set strict targets for its officers, including disposing of a minimum of 450 appeals for FY24, all cases pending as of 01 April 2023, involving demands of ₹50 crore and above, and all appeals filed prior to April 2020 if the demand is more than ₹10 lakh. There are 285 appeal units under the income tax department across India who will have to submit a final report card to the board by January before the measures are finalized for the budget announcement.

Former senior officers of the tax department have expressed concern about the increasing number of appeals, as both taxpayers and the tax department continue to engage resources without any material outcome. Experts see this as a healthy measure, provided the appeals unit under the tax department adheres to the targets set by the top government. Addressing the root causes of the high number of appeals is crucial, as it allows the tax department to work on the root cause, reduce complexities in the law, and bring in simplicity so that the law leaves limited scope for disputes. Pending appeals before the Commissioner (Appeals) have been a sore point for taxpayers, as they go on for years without disposal. The government has cleared a lot of pendency due to the Vivad se Vishwas scheme, but there is still a need to address the large pendency at the Commissioner (Appeals) level with specific measures rather than just giving targets for disposal.

Additional reformative measures, such as prescribing disposal timelines for first-level appeals, introducing the 'Vivad se Vishwas' Scheme in a new avatar, efficacious functioning, and taxpayer representation in local committees, can demonstrate the government's stated objective of building greater trust with taxpayers. The tax department acknowledges a reduction in pending appeals, but emphasizes the importance of quality appeal orders for disposal. The department has proposed virtual hearings for early disposal but is hesitant to implement them. The impact of the reduction on litigation burden and budget measures to ease pain remains to be seen.

12. Issue of non-compete fee, whether capital or revenue expenditure reached Supreme Court, SC to hear in Jan'24:- *News Report*

A group of appeals addressing the permissibility of recognizing non-compete fees as revenue expenditure was presented before the Supreme Court (SC). The SC has slated the hearing for January 2024. One appeal involves Sharp Business contesting a Delhi High Court decision, which classified non-compete rights as strictly personal, resulting in the disapproval of non-compete fees paid to Larsen & Toubro (L&T) as neither revenue expenditure nor eligible for depreciation as an intangible asset. The batch encompasses the Revenue's appeal against the Madras High Court's verdict in Asianet Communications, where non-compete fees disbursed to a director were considered revenue expenditure, drawing a distinction from the Delhi HC's Sharp Business ruling. Furthermore, the Revenue challenges the Madras HC's decision in Pentasoft Technologies and Bombay HC's judgment in Piramal Glass, where non-compete fees were deemed qualified for depreciation as an intangible asset.

The case is under the purview of the Division Bench of the Supreme Court, presided over by Justice B.V. Nagarathna and Justice S.V.N. Bhatti while the assessees are being represented by Senior Advocate Porus Kaka and Advocate Kavita Jha.

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INDIRECT TAXATION

1. CBIC notifies the amnesty scheme for filing of appeals under GST:- Notification No. 53/2023– Central Tax dated 02 November *2023*

The CBIC has issued a notification to notify the amnesty scheme for filing of appeal against order passed on or before 31 March 2023. Now, the assessee can file an appeal against such order on or before 31st January 2024. However, a sum equal to 12.5% of amount of tax subject to a maximum of 25 crore rupees must be paid, out of which at least 20% should have been paid by debiting from the Electronic Cash Ledger. Moreover, no such appeal shall be admissible in respect of a demand not involving tax.

2. GSTN issues advisory for applicants of Gujarat and Puducherry for Biometric-Based Aadhaar Authentication:- *GSTN Update dated 04 November 2023*

The GSTN has issued an advisory to inform that functionality of Biometric-based Aadhaar Authentication for GST registration was launched in Puducherry on 30th August 2023 and will be rolled out in Gujarat on 7th November 2023. The said functionality now also provides for the document verification and appointment booking process. After the submission of the application in Form GST REG-01, the applicant will receive either of the following links in the e-mail:

- A Link for OTP-based Aadhaar Authentication or
- A link for booking an appointment with a message to visit a GST Suvidha Kendra (GSK) along with the details of the GSK and jurisdiction, for Biometric-based Aadhaar Authentication and document verification.

3. Government introduces 2-Factor Authentication for e-Way Bill and e-Invoice System

To enhance the security of e-Way Bill/e-Invoice System, NIC has introduced 2-Factor Authentication for logging in to e-Way Bill/e-Invoice system. In addition to username and password, OTP will also be authenticated for login. It is also if there are 3 different ways of receiving the OTP and user may enter any of the OTP and login to system. Once users have registered for 2 Factor authentication, then the same is applicable for both e-Way bill and e-Invoice system.

4. NIC issues advisory on verification of transporter id in e-way bill system:- *NIC Update dated 10 November 2023*

The NIC has received representation from various transporters and taxpayers that ERP system can't distinguish between registered and enrolled transporter IDs. There is another API ‘Get TRANSIN details’ to verify the transporter id under the categories of ‘enrolled and common enrolled transporters. Hence, the NIC has issued an advisory to inform the ERP systems may be modified to first call the ‘Get GSTIN Details’ to verify the transporter Id and in case the status is invalid then call ‘Get TRANSIN details’ API before finally concluding the status of the transporter Id.

5. Government mulls some relief on levy of GST on vouchers and gift cards:- *News Report*

The Indian government is considering providing relief on the goods and services tax (GST) for vouchers and gift cards to address the issue of double taxation in certain cases. Currently, some vouchers incur GST at the time of purchase, leading to additional taxation when used for goods or services that also include tax. A clarification on this matter is anticipated soon, with a focus on

suggesting that vouchers should not be taxed at the point of sale. The clarification may also address the taxation of tradeable vouchers sold to distributors.

The GST Council will make the final decision, following examination by its law committee. The issue primarily revolves around multi-purpose vouchers, which can be redeemed for any goods or services, and industry stakeholders argue that they should only be taxed at the time of redemption. Single-purpose vouchers, tied to specific goods, face tax at the time of issuance. The industry has expressed concerns about the potential end of this promotional tool due to the levy of tax at each stage of distribution. The confusion originated from a 2021 ruling in Karnataka, classifying vouchers as goods and taxable. The industry seeks clarity from the GST Council, emphasizing the need for comprehensive guidance to avoid unintended dual taxation involving payment through vouchers.

6. Biometric-based Aadhaar authentication & risk-based physical verification introduced in Andhra Pradesh:- *Notification No. 54/2023-Central Tax dated 17 November 2023*

The State Andhra Pradesh has been notified for Biometric-based Aadhaar authentication and risk-based physical verification in terms of Rule 8(4B) of the CGST Rules. Notably, earlier the given functionality was made available on pilot test basis in the State of Gujarat and Union Territory of Puducherry. The existing procedure of processing the registration application would continue to follow for the applications pending in the States/UT other than Andhra Pradesh, Gujarat and Puducherry.

7. Circular issued by TRU is set aside as power to issue instructions or directions to central tax officers is vested exclusively in CBIC:- *Association of Technical Textiles Manufacturers and Processors v. Union of India - [2023] 156 taxmann.com 421 (Delhi)*

The petitioners include association of technical textiles manufacturers and a member of the said association. The writ petition was filed to seek relief against Circular No. 80/54/2018-GST dated 31-12-2018, issued by the Tax Research Unit (TRU) regarding the classification of polypropylene woven and non-woven bags under the Customs Tariff Act.

The TRU clarified that polypropylene bags fall under Tariff Heading 3923. The petitioners argue that polypropylene non-woven fabric is a textile and bags should not be classified as plastics but should be classified under Chapter 56 (Textiles and Textile Articles), specifically Tariff Heading 5603. The petitioners question the TRU's authority to issue such clarifications, contending that only the CBIC has the power under Section 168 of the CGST Act to issue directives.

The High Court held that the TRU lacks the authority to issue the challenged clarification. The High Court further examined the classification issue and emphasized the exclusion of textiles from Chapter 39. However, the court refrains from giving a definitive opinion on the classification issue due to inadequate material and industry-wide ramifications. It stresses the importance of avoiding classification rulings based on tenuous and inadequate material. The court quashes the impugned circular and leaves the issue of classification open for consideration by the competent authority in appropriate proceedings.

8. GSTIN issued advisory on filing appeals under the amnesty scheme against Orders u/s 73 and 74:- *GSTIN Update dated 10 November 2023*

The CBIC has issued an amnesty scheme vide Notification No. 53/2023-Central Tax, dated 02-11-2023 for taxable persons who were either unable to file an appeal before the Appellate Authority or

whose appeal was rejected solely on the grounds of expiry of limitation. It has been provided that the scheme would be applicable to the orders passed up to 31-03-2023 under Section 73 or Section 74 of the CGST Act.

GSTIN has issued an advisory on the same providing that the appeal under the amnesty scheme can be filed in Form GST APL-01 on the common portal upto 31-01-2024. It is further stated that the said appeal is required to be filed upon making payment of the required amount of pre-deposit. The manner of payment of such pre-deposit, from cash ledger and from credit ledger, is required to be correctly chosen by the taxpayer. It also provides that the Appellate Authority would first verify the correctness of pre-deposit amount and thereafter entertain the appeal.

The taxpayers who already filed the appeal and want to avail the benefit of amnesty are first required to make differential payment against demand by navigating to Login >> Services >> Ledgers >> Payment towards Demand

9. **Rectified refund application under Rule 90(3) is not time-barred:-** ***Global Health Ltd. v. Union of India - [2023] 156 taxmann.com 375 (Punjab & Haryana)***

The petitioner is engaged in providing healthcare service. While filing Form GSTR-3B, the petitioner had mistakenly paid the excess amount of SGST under reverse charge mechanism, though the liability for same was comparatively less. Thereafter, the petitioner filed a refund application in terms of the provisions of the GST law.

The department issued a deficiency memo in Form GST RFD-03. Notably, as per Rule 90(3) of the CGST Rules, once the proper officer communicates the deficiencies noticed to the applicant in Form GST RFD-03, the applicant is required to file a fresh refund application post rectification of the deficiencies. The petitioner also filed the second refund application after rectifying/clarifying the deficiencies raised in the deficiency memo. The Department rejected the second refund application by holding it as time barred. Thereby, the petitioner filed a writ petition before the High Court.

The High Court placed its reliance on the Delhi High Court order in the case of BSNL v. Union of India [W.P. (C) No. 3550/2023], where it was held that Rule 90(3) of the CGST Rules cannot be applied in a manner that it renders refund application filed by taxpayer. The High Court held that the second application filed by the petitioner, after removing the deficiency, could not have been rejected on the ground that it was time barred.

10. **New tax refund scheme for exports faces US, EU action:-** ***News Report***

Two Indian products are facing anti-subsidy action in the form of countervailing duty (CVD) in the US and EU clue to their use of Remission of Duties or Taxes on Export Products or RODTEP, the new government scheme meant to refund levies. The government has argued that the scheme, which replaced the Merchandise Export Incentive Scheme (MEIS), is in line with rules prescribed by WTO, which allows goods to be exported free of taxes, the US and the EU have taken a different stand. Besides, it took a strong stand in both cases.

The US dismissed the arguments and imposed CVD on file folders fron1 India. A few months before that, the EU had also held that certain graphite electrode systems from India were subsidised through RODTEP and imposed CVD. The levy itself may not be large, but it opens the doors to more cases. Trade experts are arguing that India needs to be ready for a fight.

"It cannot remain to be a losing battle for India while defending RODTEP in CVD investigations as a WTO compliant scheme. All efforts will have to be made to show the calculations of rates on the fuel or other taxes such as electricity duty and mandi tax that are embedded in the manufactured product being exported. We will have to take up this issue bilaterally with the US and EU. We may also have to explore our options to take up this issue as a formal WTO dispute," said Mukesh Bhatnagar, who was earlier a professor at the Centre for WTO Studies.

11. **HC allowed assessee to carry forward ITC of TDS under TNVAT Act to GST regime where benefit of transitional credit was denied:- *Harshandh Construction (P.) Ltd. v. Assistant Commissioner (ST), Varadarajapuam - [2023] 156 taxmann.com 376 (Madras)***

The writ petition pertains to the denial of TDS which was claimed as Transitional Credit u/s 140 of the TNGST Act, 2017 during the transition period. The petitioner was entitled to set-off the TDS towards its tax liability under the provisions of the Tamil Nadu Value Added Tax (TNVAT) Act, 2006. The GST authorities denied the same to be considered as Transitional credit on the ground that the dealer can carry forward the input tax credit, and not the excess tax paid by them. Thus, tax authorities passed assessment order for wrongly availed ITC along with interest and penalty.

Based on the existing High Court rulings in the case of M/s. DMR Constructions and M/s. Sekar Constructions, the Madras High Court set aside the impugned Assessment Order and held that the petitioner was entitled to carry forward ITC of TDS under TNVAT Act to GST regime. The case was remitted back to revenue to pass fresh order de novo on merits.

12. **Faceless scrutiny assessment under GST may take some time :- *News Report***

The implementation of faceless scrutiny assessment for tax returns filed under GST may face delays, as it is linked to specific jurisdictional officers or units. This unique challenge necessitates a careful transition and policy-level adjustments to enhance the effectiveness of the faceless assessment process in the GST framework. GST Network Vice President (Services) Jagmal Singh acknowledged the need for thoughtful planning and policy modifications to facilitate the seamless introduction of faceless scrutiny assessment in GST. Since its inception on July 1, 2017, the GST has consolidated 17 local levies, including excise duty, service tax, VAT, and cesses.

13. **Inspection fee and Affiliation fee charged by Universities from Colleges is not exempt under GST:- *Care College of Nursing and others vs. Kaloji Narayana Rao University of Health Sciences - [2023] 156 taxmann.com 450 (Telangana)[17 October 2023]***

The University, for the purpose of granting affiliation to the colleges, first conducts inspection of the Colleges. For the same, it charges inspection fees and also, affiliation fees. The petitioner contends that the inspection and affiliation would be covered under the exemption granted under GST to the educational institutions.

In this regard, the High Court noted that the exemption entry in respect of educational services is restricted to the extent the services are provided to the students, staff, and faculty. It does not deal with the services rendered by the university to the educational institutions. 'Affiliation' and 'inspection' is a service rendered by the university to the educational institutions for which the university had charged the respective educational institutions. Hence, the High Court held that where the exemption entry is required to be strictly construed and as the impugned services are not specifically contained in the exemption notification, these would remain taxable under the GST Act.

14. Dept. should have approached Official Liquidator to recover sales tax dues of company under liquidation:- *Smt. K. Malathi v. State Tax Officer (Inspection-Group IV) - [2023] 156 taxmann.com 555 (Madras)*

The petitioner was a director of company which had been ordered to be liquidated by the National Company Law Tribunal (NCLT). The department conducted inspection at the premises of company and issued SCN under Section 74 containing various allegations and demand for recovery of ITC. The petitioner did not file any reply and the department passed ex parte orders, demanding huge taxes, interest and penalties. She filed a writ petition and contended that she had no locus standi to represent company after order of liquidation was passed by NCLT.

The High Court noted that the company was under liquidation and the right course available for the department was to file an appropriate claim before Official Liquidator. However, the new cause of action would arise to recover tax dues from ex-directors of company in liquidation if there were no funds available with company in liquidation. Therefore, the Court held that the action taken by department in passing impugned order of demand in name of company, which was in liquidation and served to petitioner was not sustainable and liable to be set aside.

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REGULATORY

1. ICAI Issues Exposure Draft on Accounting Standards for LLPs, Invites Comments by November 27:- *ICAI Press Release dated 27 October 2023*

The ICAI has released an Exposure Draft on Accounting Standards for Limited Liability Partnerships (LLPs) and invited comments on the same by 27 November 2023, the comments are invited specifically on the following aspects -

- Applicable Accounting Standards
- Basis of accounting: Applicability of AS to LLPs following cash basis of accounting
- Classification of LLPs and Exemptions: Criteria for classification of LLPs for applicability of Accounting Standards and exemptions/relaxations available to LLPs
- Transitional provisions required if any.

Below are certain key Highlights of the Exposure Draft for the ready reference:

- The Exposure draft prescribes that AS 1 to 5, 7, 9 to 19 and 21 to 29, as notified under Companies (Accounting Standards) Rules, 2021 shall be applicable to the LLPs and that AS 20 - Earning Per Share shall be exempted to the LLPs.

- Terminology used in the Accounting Standards notified under the Companies (Accounting Standards) Rules, 2021, shall be understood and applied in context of LLPs, e.g., terms 'shareholder' shall be read as 'partners', 'shareholders funds' shall be read as 'partners funds', 'dividend' shall be read as 'distribution to partners' etc.

- LLP which is a subsidiary, joint venture or associate of another entity which is applying Ind AS notified under Companies (Indian Accounting Standards) Rules, 2015, is permitted to prepare its financial statements in accordance with Ind AS since such an LLP is already preparing financial statements under Ind AS for the purpose of consolidation.

- If an LLP is following the cash basis of accounting, it shall apply AS along with exemptions, to the extent applicable in the context of cash basis of accounting.

- For applicability of AS to LLPs - Level I will be large size LLPs, Level II – Medium size LLPs, Level III – Small size LLPs & Level IV – Micro size LLPs. Level II, III and IV LLPs are referred to as Micro, Small and Medium size LLPs (MSMLLPs).

- Level I LLPs are required to comply in full of AS 1 to 5, 7, 9 to 19 and 21 to 29. Exemptions/ relaxations are provided to MSMLLPs.

- Specified disclosures in the financial statements are required to be made by MSMLLPs which avail the exemptions or relaxations given to it.

- Where an LLP had qualified for any exemption or relaxation previously but no longer qualifies for the relevant exemption or relaxation in the current accounting period, the relevant standards or requirements become applicable from the current period and the figures for the corresponding period of the previous accounting period need not be revised. These facts need to be disclosed appropriately in the financial statements.

- Where there is a change of classification from a higher level to a lower level, no exemption/ relaxation can be availed, until the LLP ceases to be covered in higher level for 2 consecutive years.

- MSMLLPs may opt not to avail any exemptions/ relaxations, in which case relevant requirements of the AS needs to be complied with, and disclosure of the Standard(s) in respect of which it has availed the exemption or relaxation is to be made.

- Availing partial exemption or relaxation and disclosure shall not be permitted.

2. LLPs to maintain Register of Partners, Partners to disclose beneficial interest:- *MCA Notification No. G.S.R. 803(E) dated 27 October 2023*

MCA amends the Limited Liability Rules 2008 (LLP Rules) by inserting new Rules 22A and 22B. The amended rules make several significant changes to the extant LLP Rules, primarily related to the register of partners and beneficial interests in the contributions of the Limited Liability Partnership ("LLP"). The significant updates made to the LLP Rules have been summarized below:

(a) Register of Partners (Rule 22A):

Rule 22A of the LLP Rules now requires that every LLP must maintain a register of its partners in Form 4A (annexed to the amended LLP Rules) - which ought to be kept at the registered office of the LLP. While the LLP Rules now require that any new LLP maintains such a register from the date of its incorporation, existing LLPs are required to comply with this requirement within 30 (thirty) days from the commencement of the amended LLP Rules. The register shall be maintained in **Form 4A**.

The register of partners is required to contain the following particulars in respect of each partner:

- name, address, and email address;
- PAN or CIN,
- Unique Identification Number (if any);
- name of father/ mother/ spouse;
- occupation, status, nationality, and the name and address of their nominee;
- the date of becoming partner;
- date of cessation;
- amount and nature of contribution with monetary value thereof;
- any other interest (if any).

Any change in the contribution amount, the name and details of the partners of the LLP, or cessation of partnership interest, is required to be reflected within 7 (seven) days in the register.

(b) Declaration of Beneficial Interest (Rule 22B):

For the Registered Partners not holding the beneficial Interest - Every registered partner of the LLP which does not have any beneficial interest (fully or partly) in contribution, is required to file a declaration in **Form 4B** (annexed to the amended LLP Rules) with the LLP, within 30 (thirty) days from the date on which such partner's name was entered in the aforesaid register of partners, specifying the name and particulars of the person who actually holds any beneficial

interest in such contributions. Further, any changes in the beneficial interest is required to be reported in Form 4B within 30 (thirty) days from the date of such change.

For the Partners holding the beneficial Interest - In parallel, every person which has a beneficial interest in the contribution of the LLP but is not registered in the register of partners of the LLP is required to file a declaration in **Form 4C** (annexed to the amended LLP Rules) with the LLP, within 30 (thirty) days from the date on which they acquired such beneficial interest in the contribution of the LLP, specifying the nature of his interest and his particulars. Further, any change in the beneficial interest is required to be reported in Form 4C within 30 (thirty) days from the date of such change.

For the LLP Receiving the aforementioned declaration - After receiving the aforementioned declarations (as applicable), the LLP is required to record the same in the register of partners and file a return in **Form 4D** within a period of 30 (thirty) days with the Registrar of Companies ("ROC") along with the applicable fees.

(c) Designated Partner for Providing Information:

Rule 22B (4) of the amended LLP Rules specify that each LLP is required to specify a designated partner responsible for furnishing information and cooperating with the ROC (or any other officer authorised by the Central Government) in providing information in relation to beneficial interests in the contribution of the LLP. It also states that the aforementioned information is required to be filed with the ROC in Form 4 (annexed to the amended LLP Rules). The LLP Rules also stipulate that until such a designated partner is specified, every designated partner is responsible for furnishing such information.

The MCA has been quick to bring LLPs within a regulatory framework that is commensurate with its increased use as a vehicle for carrying out businesses in India. LLPs are much more favoured than regular partnerships and are almost as common as private limited companies. This requires the adept formulation of rules and regulations to ensure that the flexibilities provided by the LLP structure are not exploited to the detriment of key stakeholders like financial institutions, creditors, partners, and employees.

3. Provision allowing Indian Cos. to list on foreign stock-exchanges effective from October 30:- *MCA Notification No. S.O. 4744(E) dated 30 October 2023*

MCA appoints 30 October 2023 as the date on which the provisions of Section 5 of the Companies (Amendment) Act, 2020 shall come into force. This amendment is aimed at providing public companies with the flexibility to list their securities on foreign stock exchanges and includes provisions for exemptions by the Central Government. Section 5 amends section 23 of the Companies Act, 2013. The key amendments introduced by Section 5 are as follows:

Amendment of Section 23 of the Companies Act, 2013

In Section 23 of the principal Act, after sub-section (2) and before the Explanation, the following sub-sections shall be inserted:

(3) – Listing on Foreign Stock Exchanges

Certain classes of public companies are now allowed to issue specific classes of securities for the purpose of listing on permitted stock exchanges in permissible foreign jurisdictions or other jurisdictions, as may be prescribed.

(4) – Exemptions by Central Government

The Central Government may, by notification, exempt any class or classes of public companies referred to in sub-section (3) from any of the provisions of this Chapter, Chapter IV, section 89, section 90, or section 127. A copy of each such notification shall be laid before both Houses of Parliament as soon as possible after its issuance.

5. Amendment of section 23 of Companies Act, 2013.

In section 23 of the principal Act, after sub-section (2) and before the Explanation, the following sub-sections shall be inserted, namely:

"(3) Such class of public companies may issue such class of securities for the purposes of listing on permitted stock exchanges in permissible foreign jurisdictions or such other jurisdictions, as may be prescribed.

(4) The Central Government may, by notification, exempt any class or classes of public companies referred to in sub-section (3) from any of the provisions of this Chapter, Chapter IV, section 89, section 90 or section 127 and a copy of every such notification shall, as soon as may be after it is issued, be laid before both Houses of Parliament."

4. **RBI to regulate entities facilitating cross-border payment transactions for import/export:- *RBI Circular no. RBI/2023-24/80 CO.DPSS.POLC.No.S-786/02-14-008/2023-24 dated 31 October 2023***

RBI has issued regulations aimed at governing entities that facilitate payment and settlement for online cross-border export/import transactions and regulations include Payment Aggregators (PAs), which are entities that support the processing of domestic transactions in online mode. Now, the RBI aims to bring all entities involved in facilitating cross-border payment transactions for the import and export of goods and services under direct regulation. The guidelines provided are as follows:

i. **Payment Aggregators (PAs):** Payment Aggregators, often referred to as PAs, are entities that enable cross-border payment transactions for the import and export of permissible goods and services in an online mode. These entities act as intermediaries, streamlining the payment process for businesses engaged in international trade. By doing so, PAs help facilitate the smooth flow of funds across borders and contribute to the efficiency of international trade.

ii. **Escrow Accounts**: Within the context of PAs, the term 'escrow account' is crucial. This refers to an account where PAs pool and aggregate the amounts collected on behalf of the merchants they work with. Essentially, the escrow account serves as a secure holding space for funds until the completion of a transaction. This helps ensure the financial integrity of the payment process, providing both merchants and customers with a layer of security.

iii. **Requirements of Authorization:** AD Category-I banks, which are authorized dealers in foreign exchange, do not require separate approval from the RBI to undertake PA-CB activities. They are already regulated by the RBI and are authorized to handle foreign exchange transactions. Non-bank entities that provide PA-CB services are required to apply to the RBI for

authorization. These entities must apply in one of the following categories: Export-only PA-CB (PA-CB-E), Import-only PA-CB (PA-CB-I), or Export and Import PA-CB (PA-CB-E&I).

Existing non-bank PAs offering these services should adhere to various guidelines, including those related to governance, merchant onboarding, customer grievance redressal, technology recommendations, security, fraud prevention, and risk management. Non-compliance with these guidelines may lead to authorization applications being refused. Non-bank PAs must register with the Financial Intelligence Unit-India (FIU-IND) as a prerequisite for seeking authorization from the RBI.

iv. **Net Worth Criterion:** Non-bank PAs must meet specific net worth criteria. Existing non-bank PAs, as of the date of the circular, must have a minimum net worth of ₹15 crore when submitting their authorization applications to the RBI and a minimum net worth of ₹25 crore by March 31, 2026. New non-bank PAs should have a net worth of ₹15 crore when applying for authorization and reach a minimum net worth of ₹25 crore by the end of the third financial year after receiving authorization. Non-bank PAs are required to provide a certificate from their statutory auditor, along with audited financial statements, to evidence their net worth. Non-compliance with the net worth requirements or failure to apply for authorization within the stipulated time frame may result in the winding up of PA-CB activities by July 31, 2024.

v. **Import and Export PA-CBs:** PA-CBs may focus on import, export, or both activities. Import-only PA-CBs **must** maintain an Import Collection Account (ICA) with an AD Category-I scheduled commercial bank. Payments for imports are received in an escrow account and transferred to the ICA for onward transfer to foreign merchants. Export-only PA-CBs must maintain an Export Collection Account (ECA) denominated in Indian Rupees (INR) and/or foreign currency. All export proceeds are credited to the relevant currency ECA, and the funds are settled in the account of the respective merchant.

vi. **Customer Due Diligence:** PA-CBs are responsible for conducting Customer Due Diligence, as **defined** in the Master Direction – Know Your Customer (KYC) Direction, 2016. This includes verifying and onboarding merchants and ensuring that they do not facilitate payment transactions for the import or export of restricted or prohibited goods and services.

5. IBBI proposes changes to strengthen liquidation process, seeks public comments by November 10:- *IBBI's Discussion Paper on 'Strengthening the Liquidation Process', dated 20 October 2023*

The Insolvency and Bankruptcy Board of India (IBBI) has published a Discussion Paper on 'Strengthening the Liquidation Process' under the Insolvency and Bankruptcy Code, 2016 (IBC). The IBBI has also invited comments from the public/stakeholders regarding proposed changes to the Liquidation framework. The comments can be submitted online till 10.11.2023. The proposed changes to IBBI (Liquidation Process) Regulations, 2016, are as under:

i. **Review of Auction Framework:** The auction notice shall provide that the prospective bidders shall undertake that they are eligible under section 29A of the IBC to participate in the auction process. It shall also provide that in case the bidder at any stage during the auction is found to be ineligible, his EMD shall stand forfeited by the liquidator. To ensure confidentiality of the names of prospective bidders participating in the auction process, manner in which earnest money to be deposited by prospective bidders shall be notified through Circular by the Board.

The Liquidator shall within 3 days of declaration of H1 bidder conduct due diligence and verification of the eligibility of the bidder, who stood as the H1 (highest) bidder in the auction process. The liquidator shall place before the Stakeholders Consultation Committee (SCC) for its consideration under regulation 31A the result of the auction, the details of the highest bidder, due diligence conducted by him on its eligibility and the result of such due diligence. In case the highest bid above reserve price is not acceptable for any reason to the liquidator, the consultation with SCC shall be mandatory.

ii. **Reduction in reserve price:** Clause (4A) may be deleted from Schedule I which shall ensure that the reserve price in an auction is reduced by maximum 10% at a time.

iii. **Monitoring Private Sale:** Clause (c) of Regulation 33 to be omitted. Further, Regulation 33(2) may be amended to provide that the liquidator may sell the assets of the CD by means of private sale only after the prior consultation with SCC and the successful buyer shall also be confirmed after such consultation.

iv. **Listing of all assets on listing platform:** The regulations may provide that the liquidator should list all assets of the CD as per the Asset Memorandum, on a listing platform in the manner to be notified by the Board, which would significantly improve the visibility of assets, reduce information asymmetry and simplify the process for potential bidders. Each asset listed should contain all material information about the assets such as status of attachment or lien, geographic coordinates, envisaged mode of sale and likely date of auction. By listing assets much earlier than the auction date, the process would ensure greater engagement for the prospective bidders and availability of more time with bidders for due diligence, leading to more competitive bidding.

v. **Circulation of progress reports to stakeholders:** Regulation 15 may be amended to provide that the progress reports shall also be shared with the SCC.

vi. **Simplification of calculation of liquidator's fee:** Liquidator's fee specified in the first column will be applicable for the realisation made up to the end of six months from the end of quarter in which liquidation has commenced. However, no period will be allowed to be excluded on account of inability to sell assets because of any litigation. Renegotiation of fees with Stakeholders' Consultation Committee will be permitted in cases where fees are unviable because of the majority of assets being under litigation.

vii. **Meetings of SCC at regular intervals:** The Liquidator shall be mandated to hold meetings of the SCC in such a way that interval between two consecutive meetings does not exceed 30 days.

viii. **Preliminary Report:** Regulation 13 may be amended to provide that the Liquidator shall seek suggestions / observations of the SCC on the draft preliminary report and finalize it, after considering such suggestions / observations, and thereafter, submit it to the AA, Board and members of SCC.

ix. **Liquidation Cost:** Regulation 31A may be amended to mandate the liquidator to place the reason for liquidation cost exceeding the estimates of liquidation cost before SCC and discuss ways to rationalise the same by presenting cost and benefits analysis of various expenses: i) if it exceeds the estimated cost mentioned in the preliminary report or. ii) if it exceeds 10 percent of the liquidation value of the CD.

x. **Valuation related:** In all such cases where the liquidator decides to undertake a fresh valuation of assets of the CD under regulation 35(2) after consultation with the SCC under regulation 31A: i)

The liquidator shall facilitate a meeting wherein registered valuers shall explain the methodology being adopted to arrive at valuation, to the consultation committee before finalisation of valuation reports. ii) The Liquidator shall share the valuation report with the SCC members.

xi. **Litigation related:** In all cases where the liquidator proposes to continue or initiate any legal proceeding before any authority, he shall seek the advice of the consultation committee, upon its reconstitution as per Regulation 31A, after presenting the economic rationale for the proposal. The consolidated status of all the legal proceedings shall be placed before the consultation committee in its every meeting.

xii. **Running business of the CD as Going Concern:** In the event the running of business of the CD is economically unviable, the liquidator shall consult the SCC, to decide whether to keep the CD as a going concern or otherwise. In case, the SCC decides not to run the business of the CD as a going concern, the liquidator shall act as per the advice of SCC. b. Where the liquidator is unable to sell the CD as a going concern though business of the CD is running as going concern, he shall inform the reason for such failure to SCC and seek its advice to review the marketing strategy already adopted for previous auctions, to attract potential bidders in future auctions.

xiii. **Assignment of Not Readily Realisable Assets (NRRA):** A liquidator may assign assets underlying proceedings for preferential, undervalued, extortionate credit and fraudulent transactions referred to in sections 43 to 51 and section 66 of the Code even before the adjudication of such proceedings by the AA.

xiv. **Early Dissolution:** Before applying to the Adjudicating Authority for early dissolution under this regulation, the liquidator shall mandatorily consult the Stakeholder Consultation Committee (SCC) to seek their views and recommendations. The liquidator shall provide a detailed report of the consultation and the views of the SCC in the application to the Adjudicating Authority.

xv. **Withdrawal from Corporate Liquidation Account:** Where a request for withdrawal is received from the claimant, the Board shall direct the liquidator in all such cases where a dissolution order or process closure order has not been passed, for verification of the claim. This includes checking the legitimacy of the claim, the amount involved, and any other relevant details. Post verification, the liquidator shall submit their findings and opinion to the IBBI to enable it to permit withdrawal even before dissolution.

6. IBBI proposes implementation of resolution plans in 2 parts to streamline CIRPs:- IBBI's *Discussion paper on amendments dated 01 November 2023*

The Insolvency and Bankruptcy Board of India (IBBI) has issued a Discussion Paper suggesting changes to the Corporate Insolvency Resolution Process (CIRP) Regulations. This proposal addresses seven key issues, which include:

- Approval of the Committee of Creditors (CoC) for insolvency resolution process costs
- The frequency of monthly CoC meetings
- Discussion regarding valuation methodology and report with CoC
- Disclosure of valuation reports
- Continuation of process activities pending disposal of extension application by the Adjudicating Authority (AA)
- Clarity regarding the minimum entitlement of dissenting financial creditors.
- Mandatory contents of the resolution plan.

To streamline the resolution process and avoid delays, IBBI recommends structuring the resolution plan into two parts:

- Part A, which focuses on inflow, including total value of the resolution plan, payment of insolvency resolution process costs, payment schedule, feasibility, & viability of the resolution plan.
- Part B, which deals with the distribution of assets to various stakeholders.

Additionally, IBBI suggests that the Insolvency Professional (IP) should seek approval for all components of the insolvency resolution process costs, including the expenses incurred for the ongoing operations of the Corporate Debtor, following Regulation 34 of the CIRP Regulations. This is aimed at improving the process and enhancing CoC's oversight of the CIRP. Recognizing scheduling issues in CoC meetings in ongoing CIRP cases, IBBI proposes mandating monthly CoC meetings to ensure a timely resolution process. The CIRP is ideally designed to be completed within 180 days.

Furthermore, to align the incentives of stakeholders with the remaining value of the Corporate Debtor and the objectives of the Insolvency and Bankruptcy Code (IBC), IBBI recommends amending Regulation 38 to provide clarity regarding the entitlement of dissenting financial creditors. This aims to address potential conflicts of interest and enhance the resolution process's effectiveness. IBBI is seeking feedback from stakeholders on these proposed changes, with comments due by November 22.

7. SEBI revises manner of achieving minimum public unitholding requirement for Infrastructure Investment Trusts (InvITs):- SEBI Circular No. SEBI/HO/DDHS-PoD-2/P/CIR/2023/174 dated 31 October 023

In the case of issuing units through preferential allotment, only units offered to the general public will be taken into account when assessing compliance with the minimum unitholding requirement. Furthermore, it stipulates that Sponsors, Investment Managers, and their associates are permitted to sell up to 2% of the total paid-up unit capital of the InvIT. However, this permission is subject to the following conditions which are as follows:

- The Investment Manager must publicly announce the Sponsor's intention to sell.
- Provide the purpose of the sale.
- Disclose details about the Sponsor's proposed divestment of their unitholding, and
- Reveal the total number of units and the percentage of unitholding in the InvIT.

Additionally, the regulatory framework introduces a provision that allows Sponsors and their associates to sell up to a maximum of 5% of the paid-up unit capital of the InvIT. However, this permission is contingent on the requirement that the public unitholding in the InvIT must reach 25% after the completion of such a sale. Furthermore, the Investment Manager is obliged to provide an undertaking to the recognized stock exchange, obtained from the Sponsor, indicating that they will not purchase any units in the open market on the same dates when they are selling their units.

8. LLPs to make declaration, maintain register of significant beneficial owners:- *MCA Notification dated 09 November 2023*

The MCA has notified Limited Liability Partnership (Significant Beneficial Owners) Rules, 2023. These rules to be applicable from the date of their publication in the Official Gazette and shall be applicable to the Limited Liability Partnerships. The key highlights of the newly introduced rules:

i. LLPs Mandated with Identification of Significant Beneficial Owners:

As per the newly introduced rules, every reporting limited liability partnership shall take necessary steps to find out if there is any individual who is a significant beneficial owner, in relation to that reporting limited liability partnership, and if so, identify him and cause such individual to make a declaration in Form No. LLP BEN-1.

ii. **MCA prescribes deadlines for the 'LLP BEN-I.'**

Following the commencement of these rules, the significant beneficial owners in a reporting LLP must submit Form No. LLP BEN-1 to the LLP within 90 days. Further, Individuals becoming significant beneficial owners or experiencing changes in their significant beneficial ownership must submit Form No. LLP BEN-1 to the reporting LLP within 30 days of acquiring or modifying their status. Further, with the present notification, the limited liability partnership shall give notice in Form No. LLP BEN-4 seeking information.

iii. **Compliance Requirement: LLPs Must File Form LLP BEN2 for Declarations Received**

Upon receiving the declaration, the LLPs responsible for reporting must submit a return using Form No. LLP BEN-2 to the Registrar. This return should be filed within 30 days from the date of receiving the declaration.

iv. **Register of Significant Beneficial Owners in LLP (Form No. LLP BEN-3) and Inspection Guidelines**

The LLPs are required to keep a register of significant beneficial owners using Form No. LLP BEN-3. This register will be available for inspection during regular business hours, at times agreed upon through the limited liability partnership agreement, or as determined by the partners of the LLP. Further, access to the register may be granted upon payment of a fee specified by the limited liability partnership, not to exceed fifty rupees for each inspection.

v. **Empowering the Tribunal: Taking Action Against Non-Compliance and Unsatisfactory Information**

Application to the Tribunal by the reporting limited liability partnership can be made in the following situations:

- When any person fails to provide the required information within the specified time as per Form No. LLP BEN-4 notice.
- When the information provided is unsatisfactory, as per subsection (7) of Section 90 of the Companies Act, 2013.

The purpose of this application is to request the Tribunal to impose appropriate restrictions on the relevant contribution, which may include:

- Restrictions on the transfer of interest attached to the contribution in question;
- Suspension of the right to receive profits or any other distribution in relation to the contribution in question;
- Suspension of voting rights in relation to the contribution in question;
- Any other restrictions on some or all of the rights connected to the contribution in question.

MCA specifies that these rules shall not apply to the extent the reporting LLP's contribution is controlled/held by the Central/State Government and investment vehicles registered with and regulated by SEBI, RBI and IRDAI.

Conclusionary note:

In conclusion, the MCA recent notification regarding the LLP (Significant Beneficial Owners) Rules, 2023, has brought about significant changes in the regulatory landscape for LLPs. These rules mandate the identification of significant beneficial owners, the timely submission of declarations, and the maintenance of registers. They also empower the Tribunal to take action against non-compliance and unsatisfactory information.

With these rules now in effect, reporting LLPs must proactively identify and engage with significant beneficial owners, ensuring compliance with the new regulations. The specified timelines for submissions and the mechanisms for inspections and enforcement further enhance transparency and accountability within the LLP framework.

9. Centre may junk DESH Bill, amend SEZ Act:- *News Report dated 06 November 2023*

The government could junk the proposed Development of Enterprise and Service Hubs (DESH) bill as it evaluates the need for new legislation to overhaul the country's SEZ. Officials said discussions are on to amend the extant SEZ Act instead of putting in place new legislation, and a decision on the issue is likely before the winter session of Parliament. The commerce and industry ministry are keen to allow units in these zones to sell in areas outside SEZs, called domestic tariff area (DTA) without the payment of customs duties.

Modalities being discussed:

"We are still evaluating and everything is on the table. Whether it will be the DESH bill or amending the SEZ Act or some new format, the modalities are being discussed," said an official.

The ministries of finance and commerce & industry have been in discussions on the DESH bill for more than a year. Partial de-notification of zones, sales to DTA, concessional corporate tax for them and removal of net foreign exchange earning requirement have been some of the sticky issues between the two ministries. The commerce department is working on a cabinet note on the proposed amendments to the SEZ Act.

Addressing concerns:

The amendment would address the concerns and long-standing demand for SEZs to be allowed to sell in the domestic market and that all duties foregone on raw materials should be paid back and must also be accommodated.

"There is a thinking that the DESH bill should be scrapped and the SEZ Act should be amended," said a person familiar with the deliberations.

The finance minister had, during the Budget speech on February 1, 2022, announced that the SEZ Act will be replaced with a new legislation that will enable the states to become partners in DESH. The existing SEZ Act was implemented in 2006 with an aim to create export hubs and boost manufacturing in the country. However, these enclaves started losing their sheen after imposition of minimum alternate tax and introduction of sunset clause for the withdrawal of tax incentives.

10. IFSCA Circular updates Reporting Norms for Fund Management Entities:- *Circular no. F. No. 970/IFSCA/FME Supervision/2023-24/2 dated 03 November 2023*

The International Financial Services Centres Authority (IFSCA) released a circular that revises the reporting guidelines for Fund Management Entities (FMEs) operating in International Financial Services Centres (IFSCs). This circular amends the one previously issued on May 31, 2023, introducing new reporting obligations for FMEs. The main changes are that FMEs are now required to report on a quarterly basis, replacing the previous half-yearly requirement. All mentions of "half-year" or "half-yearly" in the earlier circular have been substituted with "quarter" or "quarterly". This necessitates a change in the reporting schedules of FMEs. FMEs within IFSCs are expected to comply promptly with these revised reporting norms to ensure regulatory compliance and transparency in the financial ecosystem.

This recent circular represents a significant shift in the reporting norms for FMEs in IFSCs. The transition from half-yearly to quarterly reporting requires FMEs to quickly adapt their reporting procedures to meet the updated requirements, thereby maintaining compliance and transparency in the financial services industry within IFSCs. For any further questions or clarifications, FMEs are advised to contact the designated person mentioned in the circular.

11. RBI releases Master Direction on IT Governance, Risk, Controls and Assurance practices for banks and NBFCs:- *Master Direction No. RBI/2023-24/107 Dated 07 November 2023*

RBI notifies Master Direction on Information Technology Governance, Risk, Controls and Assurance Practices, w.e.f. April 1, 2024, applicable to 'regulated entities' (REs) such as Banking Companies, NBFCs, Credit Information Companies, EXIM Bank, NABARD and SIDBI, however, excludes Local Area Banks and NBFC-Core Investment Companies. With a view to enhance key focus areas of IT Governance such as risk, resource, performance and Business Continuity / Disaster Recovery management, RBI highlights that REs shall specify the governance structure and processes necessary to meet their business/strategic objectives and include adequate oversight mechanisms to ensure accountability and mitigation of IT and cyber/information security risks. Further, outlining that such IT and Cyber Security strategies shall be approved and reviewed annually by the Board of Directors.

RBI underscores that REs shall establish a Board-level IT Strategy Committee (ITSC) with minimum 3 directors as members and an independent director with substantial IT expertise as Chairperson to review the adequacy and effectiveness of its Business Continuity Planning and Disaster Recovery Management. RBI also states that REs shall have a documented data migration policy specifying a systematic process for data migration, ensuring data integrity, completeness and consistency, while adding that REs shall put in place appropriate vendor risk assessment process and controls to mitigate concentration risk and manage supply chain risks effectively. Additionally, RBI inter alia apprises that REs' cyber incident response and recovery management policy shall address the classification and assessment of incidents, include clear communication strategy and plan to manage such incidents, contain exposures and achieve timely recovery.

https://www.pdicai.org/Docs/RBI-2023-24-107_8112023145821124.PDF

12. IBBI floats Discussion Paper on issues in real-estate project insolvencies, seeks comments by November 28:- *Discussion paper real-estate related proposals- CIRP & Liquidation, dated 06 November 2023*

The Insolvency and Bankruptcy Board of India ("IBBI") has published a Discussion Paper on Real-Estate related proposals to be introduced in Corporate Insolvency Resolution Process (CIRP) & Liquidation process under the Insolvency and Bankruptcy Code, 2016 ("IBC"). Accordingly, amendments have been proposed to IBBI (Insolvency Resolution Process for Corporate Process) Regulations, 2016 and IBBI (Liquidation Process) Regulations, 2016.

Proposed Changes

i. **Mandatory registration and extension of projects under RERA:** To expressly state that Insolvency Resolution Professional (IRP) or Resolution Professional (RP) must comply with the provision of the RERA Act and regulations framed thereunder. It is proposed to mandate the IRP/RP to register all real estate projects under RERA or to extend the registration of the real estate project under RERA, wherein the registration is expired or about to expire.

ii. **Operating a separate bank account for each real estate project:** In line with the RERA provision for maintaining separate accounts for each project and to ensure transparency in the process, it is proposed that IRP/ RP should operate a separate bank account for each project undergoing CIRP.

iii. **Execution of registration/sublease deeds with approval of CoC during CIRP:** To facilitate the smooth handover of occupied units or where possession has been transferred to home buyers, it is proposed to allow RP to handover the ownership of a plot, apartment, or building to the allottees through transfer during the resolution process, with the approval of CoC. Further, to avoid delays due to unnecessary holds-ups, it is also proposed that with the approval of the CoC, RP may also be permitted to hand over the possession of units to the allottees on 'as is where is' basis or on payment of balance amount, if any, after taking in to account the funds due and funds required for completing the unit.

iv. **CoC to examine and invite separate plans for each project:** In view of the foregoing discussion that each project needs different treatment in terms of resolution, it is proposed to clarify that CoC on examination, may direct the RP to invite separate plan for each project. It would also encourage the association of allottees of a real state project to bring their own resolution plan and resolve issues in a specific project.

v. **Exclusion of property in possession of homebuyers from the liquidation estate:** Section 36 of IBC defines 'Liquidation estate' which states that for the purposes of liquidation, the liquidator shall form an estate of the assets which will be called the liquidation estate in relation to the corporate debtor. Clause (4) of Section 36 of IBC states a list of assets which shall not be included in the liquidation estate and shall not be used for recovery in the liquidation. Section 36(4)(e) further provides power to the Board to specify any other assets which shall not form a part of the liquidation estate of the Corporate Debtor. Board may specify, u/s 36(4)(e) that assets in possession of the allottee be excluded from the liquidation estate.

13. **Central Government amends PMLA norms, designates FIU-India Director as Regulator for expanded reporting entities:-** ***Notification No. S.O. 4876(E) & 4877(E), Dated 09 November 2023***

Earlier, the Central Government expanded the scope of the Prevention of Money Laundering Act, 2002, through a notification dated 07.03.2023 & 09.05.2023. The amendments enhanced the coverage by including crypto currencies and various entities & individuals such as company directors, individuals serving as formation agents, partners of firms, trustees, & nominee shareholders as reporting entities under PMLA. Now, for the purpose of above-mentioned notification, the govt has designated Director, Financial Intelligence Unit, India as Regulator.

14. **SEBI introduces a procedural framework for dealing with unclaimed amounts lying with InvITs, REITs & specified entities:-** ***Circular No: SEBI/HO/DDHS/DDHS-RAC-1/P/CIR/2023/178, dated 08 November 2023***

SEBI, with an objective to uniform the process of claiming unclaimed funds by investors has specified a procedural framework for dealing with unclaimed amounts lying with InvITs, REITs and entities having listed non-convertible securities. The norms w.r.t the manner of claiming such unclaimed amounts by investors has also been prescribed. The circular shall be effective from 01st March 2024.

This procedural framework would be applicable to entities having listed non-convertible securities with interest/ dividend/ redemption amount which has not been claimed within thirty days from the due date of interest/ dividend/ redemption payment. Further, it is also applicable to the REITs and INVITs having amounts unclaimed or unpaid out of the distributions declared by it. As per the procedural framework, it is the obligation of the listed entity to transfer the unclaimed amounts to an Escrow Account to be opened by it in any scheduled bank, within seven days from the date of expiry of the said period of thirty days.

Further, for REITs and INVITs, where a distribution has been made by the Manager, but the payment to any unitholders has remained unpaid or unclaimed, up to fifteen days from the date of declaration, the Manager shall, within seven working days from the date of expiry of such period of fifteen days, transfer such unclaimed amounts to an Escrow Account to be opened by it on behalf of the REIT & INVIT in any scheduled bank.

Also, the entities are required to designate as 'Nodal Officer', a person who may either be a Director, Chief Financial Officer, Company Secretary or Compliance Officer of the listed entity or investment manager. Such an officer shall be the point of contact for investors entitled to claim their unclaimed amounts, SEBI, Stock Exchange(s) and Depositories.

15. **SEBI issues framework for unclaimed amounts with REITs/InvITs and entities having listed non-convertible securities:-** ***SEBI's Circular No: SEBI/HO/DDHS/DDHS-RAC-1/P/CIR/2023/176, dated: 08 November 2023***

Regulation 61A (2) of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 mandates the transfer of the unclaimed interest/ dividend/ redemption amount to an Escrow Account. In this regard, a framework has been created by SEBI for defining the manner of transfer of unclaimed amounts by a listed entity to an Escrow Account and claim thereof by an investor. Further, a framework defining the procedure to be followed by the listed entities (which are not companies) for transfer of such unclaimed amounts from the Escrow Account to the IPEF and claim thereof by an investor. It is also applicable to the REITs and INVITs having amounts unclaimed or unpaid out of the distributions declared by it. As per the procedural framework, it is the obligation of the listed

entity to transfer the unclaimed amounts to an Escrow Account to be opened by it in any scheduled bank, within seven days from the date of expiry of the said period of thirty days.

For REITs and INVITs, where a distribution has been made by the Manager, but the payment to any unitholders has remained unpaid or unclaimed, up to fifteen days from the date of declaration, the Manager shall, within seven working days from the date of expiry of such period of fifteen days, transfer such unclaimed amounts to an Escrow Account to be opened by it on behalf of the REIT & INVIT in any scheduled bank. The regulator outlines that listed entity & manager of the REIT/InvIT shall formulate a policy to be followed by investor/unitholder for claiming their unclaimed amounts, which shall include the format of claim, procedure and documentation for making/supporting claim, manner of submission, conditions for rejection and option of re-filing of a claim.

The entities are also required to designate as 'Nodal Officer', a person who may either be a Director, Chief Financial Officer, Company Secretary or Compliance Officer of the listed entity or investment manager. Such officer shall be the point of contact for investors entitled to claim their unclaimed amounts, SEBI, Stock Exchange(s) and Depositories. This shall come into force from March 01, 2024.

16. Punjab & Haryana High Court Declares 75% Domicile Quota For Haryana Locals In Private Sector As Unconstitutional:- *Punjab & Haryana High Court*

The Punjab and Haryana High Court, in a significant setback for the Haryana government delivered a verdict, declaring a state law enforcing a 75 per cent reservation for locals in private sector jobs as "unconstitutional." The court, in its order, emphasized that private employers cannot be compelled to hire individuals from a specific state, asserting that discrimination based on one's state of origin amounts to negative treatment against other citizens of the country. A division bench comprising Justice GS Sandhawalia and Justice Harpreet Kaur Jeewan ruled that the Haryana State Employment of Local Candidates Act, 2020, exceeded the state's legal authority (ultra vires) and contravened Part III of the Constitution.

Further, the court's order highlighted the impracticality of directing private employers on whom to hire, considering the diverse skills and expertise that individuals from different regions bring. It underscored that such a directive would contradict the principle of laissez-faire, emphasizing that minimal government intervention is preferable. The Local Candidates Act, enacted by the state Assembly in 2021, mandated private sector employers in Haryana to allocate 75 per cent of new job openings to candidates domiciled in the state. This reservation requirement applied to privately managed companies, societies, trusts, limited liability partnership firms, partnership firms, and other commercial entities employing 10 or more persons, specifically for job roles with a monthly salary below Rs 30,000.

Furthermore, challenges to the law were presented by entities such as the Haryana Industries Association and Faridabad Industries Association, resulting in a stay on the law in February 2022. The petitions argued that the Act infringed upon the fundamental rights of private employers, as provided under Article 19, and criticized the imposed restrictions as arbitrary, capricious, excessive, and unwarranted. Additionally, they contended that the Act contradicted constitutional values such as justice, equality, liberty, and fraternity.

17. DGFT announces Pilot Launch of Upgraded eBRC System for Exporters:- *DGFT Trade Notice 33/2023-24 dated 10th November 2023*

The DGFT has announced the pilot launch of an upgraded Electronic Bank Realization Certificate (e-BRC) system vide Trade Notice No. 33 enabling self-certification by exporters. This initiative is expected to play a crucial role in facilitating smoother export processes. The large number of

documents that exporters provide to the bank can be saved through this mechanism and BRCs will be issued in an efficient manner and smoother manner. This innovative system marks a significant step towards enhancing efficiency, transparency, and ease of doing business in India's export sector.

Key Features of the new system:-

i. **Self-Certification of the Certificates:** In a bid to enhance efficiency and transparency in trade processes, the new eBRC system allows exporters to self-certify their certificates. This system is integrated with electronic Inward Remittance Messages (IRMs) transmitted directly by banks to the DGFT, thereby simplifying the exporters' workflow.

ii. **Ease of process and Reduced Costs:** The enhanced system is set to significantly reduce transaction times and costs for exporters. It aims to ease the reconciliation process of IRMs with shipping bills and SOFTEX invoices, making the process of doing business more accessible and straightforward.

iii. **Pilot Launch Schedule:** The soft launch of the eBRC system is scheduled to commence on 15th November 2023. This initial phase will see a concurrent operation of both the upgraded and legacy systems until all participating banks have transitioned to the new system.

iv. **Efficient and prompt data exchange using API:** The new system mandates banks to integrate using an Application Programming Interface (API) for efficient and prompt data exchange. The deadline for this integration is set for 31st January 2024.

v. **Awareness Campaigns:** To familiarize users with the new system, the DGFT will publish a user guide and FAQs on its website. Additionally, the Directorate plans to conduct Exporter Outreach Programs to raise awareness about the new eBRC facility.

vi. **Helpdesk:** Stakeholders can share feedback regarding the alignment of purpose codes to eBRC fields and the rulesets for generating eBRCs. For any issues, suggestions, or feedback related to eBRC, exporters can contact the DGFT Helpdesk through a toll-free number or by submitting a helpdesk ticket on the DGFT website.

18. RBI permits AD Cat-I banks maintaining Special Rupee Vostro A/c to open special current a/c exclusively for export settlement:- *RBI/2023-2024/86 FED Circular No.08 dated 17 November 2023*

Earlier, the RBI vide circular no. 10 dated July 11, 2022, put in place an additional arrangement for invoicing, payment, and settlement of exports/imports in INR through Special Rupee Vostro Accounts of the correspondent bank/s of the partner trading country maintained with AD Category-I banks in India.

Further, the RBI has also issued a consolidated circular on Consolidated Circular on Opening of Current Accounts and CC/OD Accounts by Banks vide a consolidated circular dated 19/04/2022. In furtherance of the same and in order to provide greater operational flexibility to the exporters, AD Category-I banks maintaining Special Rupee Vostro Account as per the provisions of the Reserve Bank circular dated July 11, 2022, referred to above are permitted to open an additional special current account for its exporter constituent exclusively for settlement of their export transactions.

19. Companies fear new data law may upset cross-selling cart:- *News Report*

India's Digital Personal Data Protection (DPDP) Bill has raised concerns among enterprises like banks, healthcare, and telecom companies that use user data to sell various products and services. The law requires data fiduciaries to process user data without explicit consent and requires them to state the purpose of data collection and delete information when consent is withdrawn. This has led to companies offering multiple services using stored data to cross-sell their other products, leading them to seek legal advice. India's largest hospital chain, Narayana Health, has criticized the current regulations that prevent hospitals from deleting patient records. The new privacy law requires a "carve-out for health data" to ensure information is used to treat patients. Bankers, however, expressed concern about the new law's impact on their business, as it restricts cross-selling opportunities under the DPDP Act, 2023. They are currently submitting feedback to the government through the Indian Banks' Association.

20. Ministry of External Affairs amends the list of individuals and entities, suspected of having terrorist links:- *Directive no. RBI/2023-2024/84 DOR. AML.REC. 56/14.06.001 /2023-24 dated 15 November 2023*

As per Section 51A of the Unlawful Activities (Prevention) Act, 1967, the Central Government has the power to freeze, seize or attach funds and other financial assets or economic resources held by, on behalf of or at the direction of the individuals or entities listed in the Schedule to the Order, or any other person engaged in or suspected to be engaged in terrorism.

The Ministry of External Affairs (MEA) periodically updates the list of individuals and entities subject to the assets freeze, travel ban, and arms embargo. The most recent update is on November 15, 2023, where the Security Council Committee approved amendments to 05 entries. Regulated Entities (REs) are advised to ensure they do not have any account in the name of individuals/entities appearing in these lists. They are also advised to take appropriate action in terms of sections 51 of the Master Direction on Know Your Customer and strictly follow the procedure as laid down in the UAPA Order dated February 02, 2021(amended on August 29, 2023) annexed to the MD on KYC. Any request for delisting received by any RE is to be forwarded electronically to the Joint Secretary (CTCR), Ministry of Home Affairs (MHA) for consideration.

21. RBI enhances the risk weights in respect of consumer credit exposure of commercial banks:- *Circular No. RBI/2023-24/85 DOR.STR.REC.57/21.06.001/2023-24, Dated 16 November 2023*

The Governor in its statement flagged the high growth in certain components of consumer credit and advising banks and NBFCs to strengthen their internal surveillance mechanisms, address the build-up of risks, if any, and institute suitable safeguards, in their own interest. The high growth seen in consumer credit and increasing dependency of NBFCs on bank borrowings. It has been decided to effect the following measures as under:

(a) **Increase the risk weights in respect of consumer credit exposure of commercial banks/NBFCs:** As per extant instructions applicable to commercial banks, consumer credit attracts a risk weight of 100%. On a review, it has been decided to increase the risk weights in respect of consumer credit exposure of commercial banks (outstanding as well as new), including personal loans. However, the housing loans, education loans, vehicle loans and loans secured by gold and gold jewelry are to be excluded. The risk is increased by 25 percentage points to 125%. Similarly, Consumer credit exposure of NBFCs has also been raised to 125% in place of 100%.

(b) **Increase the risk weights in respect of Credit card receivables:** As per extant instructions, credit card receivables of scheduled commercial banks (SCBs) attract a risk weight of 125%3 while that of NBFCs attract a risk weight of 100%. On a review, it has been decided to increase the risk weights on such exposures by 25 % points to 150% and 125% for SCBs and NBFCs respectively. Further, it has also been decided to increase the risk weights on exposures of scheduled commercial banks SCBs to NBFCs by 25% points, over and above the risk weight associated with the given external rating.

22. Warrants issued by the listed companies cannot be transferred unless trading approval from exchange has been granted:- *SEBI Informal Guidance No. CFD/PoD/OW/2023 /45315/1 dated 10 November 2023*

Paramount Communications Limited (hereinafter referred as 'the Company') a publicly listed company in its Extra Ordinary General Meeting (EGM) held on 11 Jan 2023 has approved the issue of convertible equity warrants to persons other than the promoters. The said equity warrants were under the lock-in period of 1 year as prescribed under reg 167(2) of SEBI (Issue of Capital and Disclosure Requirement) Regulations, 2018. The warrants allotted can be transferred post lock-in period.

Further, the Warrants so issued were neither listed on any stock exchange nor would be listed on completion of one year from the date of allotment. However, the security holder has the right to convert those warrants into equity shares of the company at any time within 18 months from the date of allotment of such warrants.

The Company sought the guidance of the SEBI "Whether the holder of the Equity Warrants, being non-promoter entity transfer their warrants after lock-in but before conversion into equity shares?" The SEBI replied that Reg 167(2) of the ICDR Regulations provides that in case of warrants which are not listed on stock exchanges, such securities shall be locked in for a period of one year from the date of allotment. Whereas Regulation 168 (2) of the ICDR Regulations deals with restrictions on the transferability of the shares.

Reg 168(2) provides that the specified securities allotted on a preferential basis shall not be transferable by the allottees till trading approval is granted for such securities by all the recognized stock exchanges where the securities are listed. Thus, in the instant case warrants issued by the Company cannot be transferred until the trading approval from all the recognized stock exchanges is received where the equity shares of the company are listed.

23. IFSCA releases FAQs on Registration of a Fund Management Entity (FME) and Authorisation of a Scheme or Fund under IFSCA (Fund Management) Regulations, 2022, *dated 16 November 2023*

IFSCA has clarified the following through Frequently Asked Questions (FAQs) on Registration of a Fund Management Entity (FME) and Authorization of a Scheme or Fund under IFSCA (Fund Management) Regulations, 2022:

i. **Registration Documents for FME Application:** One of the initial steps in the registration process involves submitting essential documents. The required documents vary based on the type of entity. For a company, documents such as the Certificate of Incorporation, Memorandum of Association, and Articles of Association are mandatory. Similarly, LLPs and Trusts have their specific document requirements, including the LLP agreement for LLPs and the Indenture of Trust for Trusts.

ii. **Existing Registrations and Financial Sectoral Regulators:** Entities seeking registration must provide details about their existing registrations with IFSCA or other financial sectoral regulators in India or foreign jurisdictions.

iii. **Details of Key Executives:** The FME application requires information about Key Executives, including the Principal Officer and Compliance Officer for the IFSC Office.

iv. **Financial Statements and Net Worth Requirements:** The financial documents required for the FME application include the previous three years consolidated/standalone audited financial statements. For newly incorporated entities, ITRs and acknowledgments can be submitted. The Net Worth Certificate, a crucial component, must not be older than six months and should meet the requirements specified by IFSCA.

v. **Shareholding and Capital Structure Details:** Detailed information about share ownership and the structure of capital, including Ultimate Beneficial Owners (UBOs) and Controlling Shareholders, must be provided. UBOs' details, along with self-attested Know Your Customer (KYC) documents, are essential for submission.

vi. **Business Profile and Business Plan:** The detailed business profile should provide insights into the applicant's history, industry presence, and market position. Additionally, a comprehensive business plan outlining proposed activities within the IFSC is necessary for a clear roadmap.

vii. **Accounting Standards for FMEs and Schemes:** FMEs and schemes may adopt various accounting standards, including Indian GAAP, IND AS, IFRS, or US GAAP, as permitted under applicable law.

viii. **Payment Details and Reference Rate:** Entities are required to make payments as per the fee structure outlined by IFSCA. For those making fee remittances in INR, the applicable RBI reference rate for the specific day of fee remittance is to be employed.

Lastly, navigating the registration process for FMEs in IFSC requires careful attention to detail and compliance with the specified requirements. This comprehensive FAQ guide serves as a valuable resource for entities seeking clarity on the intricate aspects of the registration process, facilitating a smoother journey into the world of fund management in the International Financial Services Centre.

24. SEBI set aside the norms w.r.t. freezing of folios without PAN, KYC details and nomination:- *Circular: SEBI/HO/MIRSD/POD-1/P/CIR/2023/181 dated 17 November 2023*

Capital markets regulator SEBI issued a circular whereby it is decided to do away with the provision of requiring the freezing of folios without PAN, KYC details and nomination for all holders of physical securities. Earlier, the SEBI issued a Master Circular[SEBI/HO/MIRSD/POD-1/P/CIR/2023/70] for Registrars to an Issue and Share Transfer Agents dated May 17, 2023. Under the extant norms common and Simplified Norms for processing investor's service requests by RTAs and norms for furnishing PAN, KYC details and Nomination were also specified.

As per the said circular, all holders of physical securities in listed companies needed to furnish PAN, Nomination, Contact details, Bank A/c details and Specimen signature for their corresponding folio numbers. In case the holder of physical securities fails to furnish the aforesaid details by October 01, 2023. The folio of those security holders shall be frozen by RTA. Further, the Frozen folios shall be referred by the RTA / listed company to the administering authority under the Benami Transactions

(Prohibitions) Act, 1988 and/or Prevention of Money Laundering Act, 2002, if they continue to remain frozen as on December 31, 2025.

The SEBI decided to do away with the provision of requiring the freezing of folios and refereeing the same to the company to the administering authority under the Benami Transactions (Prohibitions) Act, 1988 and/or Prevention of Money Laundering Act, 2002. The action is taken on the basis of representations received from the Registrars' Association of India, feedback from investors, and to mitigate unintended challenges on account of freezing of folios and referring frozen folios to the administering authority under the Benami Transactions (Prohibitions) Act, 1988 and/or Prevention of Money Laundering Act, 2002. This move, aimed at simplifying the rule and will come into force with immediate effect.

25. IFSCA issues Consultation Paper on regulatory framework for accredited investors:- *IFSCA Consultation Paper dated 23 November 2023*

IFSCA suggests that Government and Government related investors of India and foreign jurisdictions, such as central banks, sovereign wealth funds or agencies including entities controlled or at least 75% directly or indirectly owned by such Government and Government related investors shall be deemed to be Accredited investors. The Authority further proposes that Regulated Entities which intend to accept an investor as an Accredited Investor, shall inter alia ensure that they lay down adequate procedures and internal policy for verifying and periodically reviewing the eligibility of such investor. The authority recommends that while the Regulated Entities onboarding an investor as an Accredited Investor shall be responsible for complying with all the requirements in this regard, they may delegate the task of verification of eligibility at the time of onboarding such investor or at the time of periodic review to certain entities.

Moreover, Regulated Entities intending to accept investments from an Accredited Investor shall inform such investor that the usual investor protection measures may not be made available or may be made available at a lower extent to an Accredited Investor, and further, the Accredited Investor shall also confirm in writing that it understands the risks, costs and benefits of investing in that specific capital market product or service and wishes to be treated as an Accredited Investor for the purpose of the same.

Comments may be sent by email to Mr. Aditya Sarda, Deputy General Manager at aditya.sarda@ifsca.gov.in with a copy to Mr. Pavan Shah, General Manager at pavan.shah@ifsca.gov.in by 07 December 2023.

26. IFSCA seeks public suggestions on review of IFSCA (Banking) Regulations, 2020:- IFSCA *notice on seeking public Comments on IFSCA (Banking) Regulations dated 21 November 2023*

IFSCA has issued a notice to seek comments/views/suggestions from the public on any amendments or additions to the International Financial Services Authority (Banking) Regulations, 2020 (as amended). As per IFSCA (Procedure for making regulations) Regulations, 2021, all regulations issued by IFSCA are required to be reviewed 3 years from the date of its notification. As part of this process, IFSCA seeks comments from the public on any suggested modifications/changes to the regulations. IFSCA has requested general public and stakeholders to forward their comments/suggestions through e-mail to Mr. Supriyo Bhattacharjee at supriyo.b@ifsca.gov.in and Mr. T P Samuel Wesly at wesly.samuel@ifsca.gov.in on or before 12 December 2023 in the attached format.

27. IFSCA floats Consultation Paper on Remote Broker-Dealer in IFSC:- ***IFSCA* Consultation *Paper dated 22 November 2023***

The IFSCA, highlighting that various proposals have been received from the Stock Exchanges including one pertaining to permitting Broker-Dealers to operate remotely from foreign jurisdictions i.e. to permit Broker-Dealers to transact on the Stock Exchanges without having a physical presence in IFSC, releases a Consultation Paper on Remote Broker-Dealer (RBD) in IFSC proposed to be permitted under the IFSCA (Capital Market Intermediaries) Regulations, 2021.

The Authority states that it has been decided to consider this proposal of the Stock Exchange, which would require amendment to Reg. 5(1) of the IFSCA (Capital Market Intermediaries) Regulations, 2021. Suggesting creation of a sub-category of Broker-Dealers called RBD. IFSCA underscores that RBD would be required to obtain a certificate of registration from IFSCA and lays down the requirements for an entity desirous of registering and operating as a RBD in IFSC. The entity should be a resident of a country whose securities market regulator is a signatory to the International Organization of Securities Commission's Multilateral Memorandum of Understanding (IOSCO-MMoU) or a signatory to the bilateral MOU with IFSCA. Further stipulates that RBD shall not be permitted to register/operate as a Clearing Member and will be required to enter into an agreement with a IFSCA registered Clearing Member for clearing and settling its transactions executed on the Stock Exchanges in IFSC.

The comments may be sent by 13 December 2023 via email to Mr. Praveen Kamat, (General Manager) at praveen.kamat@ifsca.gov.in with a copy to Mr. Shubham Goyal (Assistant General Manager) at goyal.shubham@ifsca.gov.in, with the subject line "Comments on consultation paper on Remote Broker-Dealers in IFSC."

28. RBI permits AD Category-I banks to open additional current account for exports proceeds:- RBI's ***circular no. RBI/2023-2024/86 FED Circular No.08 dated 17 November 2023***

In furtherance of providing increased operational flexibility to exporters, the RBI permits Scheduled Commercial Banks holding an Authorized Dealer (AD) Category – I license, and maintaining a Special Rupee Vostro Account, to open an additional special current account exclusively for their exporter constituents for the settlement of export transactions. This allowance is in accordance with the RBI Circular No. RBI/2023-2024/86 dated November 17, 2023. The circular, building upon the framework established by A.P. (DIR Series) Circular No.10 dated July 11, 2022, outlines an additional arrangement for invoicing, payment, and settlement of exports/imports in INR through Special Rupee Vostro Accounts of correspondent banks of the partner trading country maintained with AD Category-I banks in India. This initiative aims to enhance the efficiency of international trade settlement in Indian Rupees and is part of the ongoing efforts to streamline export processes.

29. Risks of recession may reappear in 2024: India's Finance Ministry:- ***News Report***

The Finance Ministry has warned that the country may face recession risks in 2024 due to uncertainties related to higher food and energy prices and geopolitical tensions. The report also said that India's trade deficit reached a record high in October 2023 due to higher-value imports and lower exports. Gold and silver imports almost doubled in October 2023 compared to October 2022, signalling the robust demand during the festival season. The report also noted that India's economic growth is projected to decelerate to 6% in 2023 from 6.6% in 2022, as higher financing costs and over-leveraging in the corporate sector may dent the buoyant economic activity.

The report said that India's growth ambitions are supported by massive infrastructure investment, especially in the energy sector. The report also highlighted the positive effects of strong private consumption, corporate profits, and export performance. However, it cautioned that a decline in international crude oil prices and continued moderation in core inflation are needed to control the inflationary pressures going forward. The report also said that rural demand has sustained momentum in Q2 of FY24 as incomes from foodgrain production have been stable and inflationary pressures moderate. The report also mentioned that India's FPI inflows have been positive in FY24, reflecting the strong macroeconomic fundamentals of the Indian economy.

30. SEBI clarifies on post-amendment lock-in period for equity shares under ICDR Regulations:- ***SEBI's Informal Guidance No. SEBI/HO/CFD/PoD-1/OW /P/2023/46034 1 dated 17 November 2023***

SEBI issues an Informal Guidance to Jain Irrigation Systems Ltd. (Target Company) with respect to Regulation 167(2) of the ICDR Regulations and the lock-in period for shares post amendment to the Regulation. The applicant submitted the following queries:

The ICDR Regulations as amended by the amendment made effective from 14 January 2022 shall be applicable to the equity shares as per the provisions of Regulation 167 of the ICDR Regulations. The said equity shares were so issued and allotted subject to a lock-in period of six months from the date of trading approval received from the stock exchanges.

SEBI explained with respect to query no. 1 that the proposed amendments to Regulation 167(2) would be made applicable for issuers making preferential issues under ICDR Regulations where the board meeting of the issuer company considering the preferential issue is held after the notification of amendments in the Gazette.

SEBI explained with respect to query no. 2 that the said amendment would not be applicable to equity shares as allotted in case of the said company as the board had approved the preferential issue in the meeting held on 07 September 2021. The equity shares issued to the allottees would be subject to a lock-in period of one year from the date of trading approval received from the stock exchanges.

31. SEBI Board approves proposals for reducing SSEs' minimum issue-size, introducing new framework for Small & Medium REITs:- ***SEBI Board Meeting PR No. 27 /2023 dated 25*** **November** ***2023***

The SEBI Board approved a proposal to boost fund-raising by NPOs on the Social Stock Exchange (SSEs). The proposal includes a reduction in the minimum issue size for public issuance of Zero Coupon Zero Principal Instruments (ZCZP) by NPOs on SSE from Rs. 1 crore to Rs. 50 crores, and a reduction in the minimum application size for public issuance of ZCZP from Rs. 2 lakhs to Rs. 10,000. The board also changes the nomenclature of "Social Auditor" to "Social Impact Assessor" to provide comfort to NPOs and promote a positive approach towards the social sector.

The board approves a regulatory framework for index providers to foster transparency and accountability in financial benchmarks in the securities market. The regulations will provide a framework for the registration of index providers that license 'Significant Indices', notified by SEBI based on objective criteria. SEBI plans to amend the RIETs Regulations or create a new regulatory framework for the facilitation of small and medium REITs with an asset value of at least Rs. 50 crore. The regulatory framework will provide structure, migration of existing structures, obligations of investment managers, investment conditions, minimum subscription, distribution norms, and asset valuation. Proposals for facilitating compliance and strengthening investor interests in AIFs have also

been approved. Any fresh investment made by an AIF beyond September 2024 must be held in dematerialized form.

CROSS BORDER

1. Government notifies Information Exchange & Tax Collection Assistance Agreement with Saint Vincent & Grenadines:- *Ministry of Finance, Notification No. 96/2023 dated 01* November *2023*

The Finance Ministry notifies Agreement between India and Saint Vincent and the Grenadines for the Exchange of Information and Assistance in Collection with Respect to Taxes. The Agreement entered into force on 14 Feb 2023 being the date of the later of the notifications of the completion of the procedures required by the respective laws of the contracting states for entry into force of the agreement. Thus, the Central Government by exercising the powers under Section 90(1) notifies that all the provisions of said Agreement shall be given effect to in India. The Agreement between the Government of India and the Government of Saint Vincent and the Grenadines for the Exchange of Information and Assistance in Collection with respect to taxes is a significant step towards enhancing cooperation between the two countries in tax-related matters. It enables the exchange of crucial information for tax enforcement and collection, ultimately contributing to more effective tax administration. This agreement will strengthen the relationship between India and Saint Vincent in the realm of tax compliance and administration. The agreement comprises 13 articles which are also mentioned below for a ready reference:

- Article 1: Object and Scope of the Agreement
- Article 2 :Jurisdiction
- Article 3: Taxes Covered
- Article 4: Definitions
- Article 5: Exchange of Information Upon Request
- Article 6: Tax Examinations Abroad
- Article 7: Possibility of Declining a Request for information
- Article 8: Assistance in the Collection of Tax Claims
- Article 9: Confidentiality
- Article 10: Implementation Legislation
- Article 11: Mutual Agreement Procedure
- Article 12: Entry into Force
- Article 13: Termination

2. Bulgaria has been added to the list of High-Risk Jurisdictions under Increased Monitoring:- *Press Release No. 2023-2024/1223 dated 01 November 2023*

FATF had earlier identified some jurisdictions as having strategic deficiencies. These jurisdictions were Albania, Barbados, Burkina Faso, Cameroon, Cayman Islands, Gibraltar, Jordan, Panama etc. Now, Bulgaria has been added to the list of jurisdictions under Increased Monitoring while Albania, the Cayman Islands, Jordan, and Panama have been removed from this list based on a review by the Financial Action Task Force (FATF).

3. Kuwait set to launch new corporate tax initiative across all entities and more:- *News Report*

Kuwait is gearing up for a tax system overhaul as it strives to join the OECD/G20 Inclusive Framework on base erosion and profit shifting, making it the sole Gulf Cooperation Council state yet to become a member. The proposed "Business Profits Tax (BPT) Law" is a key component of Kuwait's comprehensive plan to revamp its existing tax framework. The reform will unfold in two stages, aiming for full implementation as early as 2025. Currently, only foreign companies engaged in business or trade in Kuwait face taxation on their profits and capital gains income. BPT law will levy a 15% tax on the profits of various operating structures, encompassing corporate entities, partnerships, and legally distinct businesses established, incorporated, or operating in Kuwait.

Notably, individuals and small enterprises will enjoy exemptions. Starting from 01 January 2025, Kuwaiti multinational companies, including government entities operating internationally and generating annual revenues surpassing €750 million ($806 million), will fall under the purview of the proposed BPT. The plan outlines the BPT as an amendment to existing tax laws, aligning with the globally implemented Pillar Two framework. The existing Kuwait corporate income tax law imposes a tax on the income of anybody corporate, wherever incorporated, earning income from Kuwait sources. In practice, no income tax is currently imposed on companies incorporated in the GCC and entirely owned by citizens of the GCC. Corporate income tax is currently only imposed on income earned by non-GCC (foreign) companies.

4. Germany approves global minimum corporate tax:- *News Report*

The German parliament has approved the adoption of a global minimum corporate tax, aligning itself with an international accord that establishes a 15% minimum tax rate for large companies. As per this agreement, multinational corporations will be required to pay a 15% tax on their global profits, regardless of the location where these profits are generated. In 2021, approximately 140 countries reached a consensus on a deal proposed by the Organisation for Economic Cooperation and Development (OECD), scheduled to be implemented from the upcoming year. The objective of this agreement is to address the practice of major corporations avoiding taxes by transferring profits to jurisdictions with lower tax rates.

5. UAE releases guide on accounting standards and interaction with corporate tax:- *UAE Corporate tax guide on Accounting Standard dated 6 November 2023*

The UAE Federal Tax Authority (FTA) issued the Corporate Tax Guide on Accounting Standards and Interaction with Corporate Tax on 06 November 2023. The guide serves the purpose of providing comprehensive guidance on the interface between Accounting Standards and Corporate Tax. It furnishes readers with a detailed overview, encompassing the preparation of Financial Statements, the Cash Basis of Accounting, the realization basis of accounting, other adjustments specified under Article 20(2)(i) of the Corporate Tax Law, and adjustments falling under transitional rules. The guide is specifically intended for individuals entrusted with the preparation of Financial Statements for Taxable Persons within the context of Corporate Tax. It is recommended to be perused in conjunction with the prevailing Corporate Tax Law, relevant implementing decisions, and supplementary guidance disseminated by the Federal Tax Authority.

6. UN inches towards 'inclusive & effective international tax co-operation' with 'open-ended' ad hoc intergovernmental committee:- *United Nations General Assembly*

The United Nations General Assembly (UNGA), in its 78th session, has endorsed a resolution titled 'Promotion of inclusive and effective international tax cooperation at the United Nations.' The voting results revealed that 125 member states, including India, Singapore, Malaysia, Qatar, and South Africa, voted in favour, while 48, including the United States, the United Kingdom, Canada, Japan, Netherlands, Switzerland, and Ireland, voted against. Additionally, 9 members, including the UAE and Turkey, abstained from voting.

The resolution acknowledges the report of the UN Secretary-General on promoting inclusive and effective international tax cooperation and underscores the necessity of developing a United Nations framework convention on international tax cooperation. The objective is to fortify international tax cooperation, ensuring its complete inclusivity and enhanced effectiveness. Consequently, the UNGA calls for the establishment of a Member State-led, open-ended ad hoc intergovernmental committee. This committee is tasked with drafting terms of reference for a United Nations framework convention on international tax cooperation, with the goal of completing its work by August 2024. The ad hoc intergovernmental committee, in formulating the draft terms of reference, is mandated to

- consider the needs, priorities, and capacities of all countries, especially developing nations.
- adopt a holistic, sustainable development perspective, taking into account interactions with other crucial economic, social, and environmental policy areas.
- the committee is instructed to consider the evolving international tax landscape and the need for flexibility and resilience in the system. It should also factor in the work of relevant forums, potential synergies, and the existing tools and expertise available at the international, regional, and local levels.
- the committee is directed to explore early protocols on specific priority issues, such as measures against tax-related illicit financial flows and the taxation of income from cross-border services in a digitalized and globalized economy.

Further, the UNGA requests the committee to submit a report, containing the draft terms of reference, to the General Assembly at its seventy-ninth session, with further consideration of the report planned for the 79th session. In response to these developments, the Secretary-General of the Organization for Economic Co-operation and Development (OECD) expressed pride in the organization's track record of achieving consensus-based solutions to address tax evasion and avoidance, stabilize the international tax system, and support developing countries. The Secretary-General affirmed the OECD's commitment to completing this crucial work and ensuring the broad and effective implementation of the agreement. Emphasizing a spirit of cooperation among nations, the statement conveyed the OECD's dedication to collaborating with global partners, including the UN, to enhance inclusivity and maintain a fairer international tax system.

7. Germany, France and Italy reach agreement on future AI regulation:- *News Report*

Germany, France, and Italy have reached an agreement on the regulation of AI within the European Union (EU). The three countries advocate for binding voluntary commitments from both large and small AI providers in the EU. Discussions at the EU level involve negotiations between the European Commission, the European Parliament, and the EU Council. In June, the European Parliament introduced an "AI Act" to manage safety risks and prevent discriminatory effects while fostering innovation. Initially, the Parliament suggested binding the code of conduct only for major U.S.-based AI providers, but the three EU governments argue against this, emphasizing the need for uniform rules applicable to all providers. While no immediate sanctions are proposed, the paper suggests the

possibility of implementing sanctions for violations after a certain period. The establishment of a European authority to monitor compliance with standards is also considered. Germany's Economy Ministry asserts that regulations should focus on the application of AI rather than the technology itself.

8. World Tax News:- *News Report*

UK releases guidance on TP records requirement for Permanent Establishment: The UK's HMRC has issued comprehensive guidance on transfer pricing record obligations for permanent establishments within the country, considering modifications introduced by the Finance (No. 2) Act 2023. Notably, the transfer pricing records legislation exempts permanent establishments within an MNE group meeting the CbCR threshold. The Finance (No. 2) Act 2023's Schedule 5 defines relevant transfer pricing records as those related to profit or loss calculations in accordance with the Taxation (International and Other Provisions) Act 2010. The 2022 Transfer Pricing Guidelines establish documentation standards, allowing groups to streamline documentation for related party transactions in their Local File. Additionally, supplementary documentation beyond the OECD standard is required to record the existence of a permanent establishment and the characterization and terms of dealings between the PE and the enterprise.

Source: https://www.gov.uk/hmrc-internal-manuals/international-manual/intm450021

Hong Kong's Aircraft Leasing Tax Regime: On November 17, 2023, Hong Kong introduced the Inland Revenue (Amendment) (Aircraft Leasing Tax Concessions) Bill 2023 to enhance the aircraft leasing preferential tax regime. The bill proposes various legislative amendments, such as tax deductions for qualifying aircraft lessors, an expanded scope covering wet lease and funding lease, removal of the one-year lease term restriction, a broader definition of "aircraft leasing activity," deduction of interest payable for aircraft acquisition from a non-Hong Kong financier, and threshold requirements for compliance with OECD standards. Upon the bill's passage, these legislative amendments will have retrospective effect from the year of assessment starting April 1, 2023, facilitating early implementation. The Bill is scheduled for introduction to the Legislative Council on November 29.

Source: https://www.ird.gov.hk/eng/ppr/archives/23111701.htm

Denmark's Termination of Tax Treaty with Russia: The Official Gazette has announced the termination of the 1996 tax treaty between Denmark and Russia. Effective 01 Jan 2024, the termination impacts income and wealth taxes, withholding taxes for income received on or after 01 Jan 2024, and other taxes on income and property taxes for taxes levied on or after the same date.

Source: https://www.retsinformation.dk/eli/ltc/2023/3

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Contact Us: -

Rahul Garg

Managing Partner

info@asireconsulting.com

connect@asireconsulting.com

+91 9891091307

517, 5th Floor,
MGF Metropolis,
MG Road, Sector 28,
Gurugram 122002
Haryana

Tax | Regulatory | M&A

www.asire.in