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BY THE PROFESSIONALS FOR THE PROFESSIONALS

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CRITICAL ASPECTS OF TRANSFER PRICING COMPLIANCES

Introduction:

Since 2001, when Sections 92A to 92F were inserted for the first time in the Income-tax Act, 1961 (the Act), the Transfer Pricing (TP) field has rapidly evolved in India. With TP audits nearing two decades, it is clear that timely compliances and proper documentation form a critical part of this legislation. The primary responsibility of ensuring compliance with the TP provisions is that of the taxpayer, and therefore, it is imperative that proper documentation is maintained which would pass the test during the audits.

Despite the long duration of compliance and audit experience, it has been observed that certain common issues keep surfacing regularly. In this article, we have attempted to cover such basic issues, which would guide taxpayers to maintain the documentation that tax authorities examine while conducting scrutiny, thereby reducing unwarranted litigation.

Segmental Information:

It is observed that an Indian entity, which is part of an MNC group, has certain international transactions with its Associated Enterprises (AEs). These transactions either do not form part of its core business activity or form an insignificant portion of its core activity. This segregation of the profit and loss account (P&L A/c) into activity-wise/function-wise or AE and Non-AE (with independent third parties) transactions is referred to as segmental statements.

Segment information is relevant for assessing the operations, functions, assets, risks and returns of an MNC. The ultimate objective of delineating a segment for a TP analysis may be to determine an internal comparability (AE v/s Non-AE) or to identify the profitability from a specific segment (e.g., manufacturing and trading segment).

Certain aspects that need to be taken care of are:

- Identification of the respective segments (for e.g., if AE sales are only 15-20% of the total sales, ideally, the segments should be prepared for AE and Non-AE transactions to have a realistic TP analysis.)
- Identification of direct costs
- Allocation of indirect costs
    - Direct to the extent identifiable (for e.g., allocating marketing expenses

to the AE segment may not be required as generally no marketing efforts are undertaken for sales being made to AEs)
    - Allocated to different segments using appropriate allocation keys
- Identification of non-operating costs
- Getting the segmental statements certified by an independent external consultant, wherever feasible and critical.

The Mumbai Tribunal[1] rejected the tax officer's approach of entity-level benchmarking instead of considering the segment accounts prepared by the taxpayer using various allocation keys (weight, volume and revenue). The tax officer was of the view that the taxpayer's domestic business was suffering losses due to incorrect allocation of expenses. The Tribunal opined that the functions, assets and risks (FAR) of the taxpayer were different in the case of international vis-à-vis domestic business, and therefore it would not be appropriate to benchmark the entity-level margins.

With respect to TPO's rejection of taxpayer's audited segmental results on the ground that the same did not form a part of the published financial statements, the Kolkata Tribunal[2] opined that *"whether a particular segment is reportable or non-reportable under AS-17 prescribed by ICAI cannot be held to be a decisive criterion to uphold the reliability of the segment identified for the purposes of income-tax law."*

Accordingly, it is critical for the taxpayer to analyze the segmental results at the time of compliance and appropriately document the same.

Management Service Fees:

Management Service Fees typically involve an intragroup charge for centrally coordinated services rendered by the MNC's global management team to its group entities. Such central services achieve cost efficiency and ensure global operational synergy for the MNC. From a TP perspective, the following are

the major issues arising out of management service fees charged by the group entity in India:

- Whether the services are actually provided (i.e., the need-benefit test) and;
- Whether the remuneration/fee paid for such services is at arm's length price.

In this regard, the Hyderabad Tribunal[3] has held that the regional management services received by the taxpayer from its AE are intangible in nature, therefore, evidence in support of availing of such services and the benefit received therefrom can only be demonstrated by narrations, descriptions and documentary evidence. However, it has been observed that lower tax authorities generally disallow entire intra-group services on the grounds of: (i) lack of documentation and commercial rationale; (ii) Being duplicative in nature, or (iii) akin to a shareholder activity, thereby concluding that need-benefit test is neither satisfied nor documented.

The Hon'ble Delhi High Court[4] has held that the Transfer Pricing Officer's (TPOs) authority is to determine the Arm's Length Price (ALP) for the international transactions referred by the Assessing Officer (AO), rather than determining whether such services have been provided or benefits have accrued. However, the TPO can, after careful consideration of facts, determine the ALP to be "NIL" in case the TPO infers that an independent entity in a comparable transaction would not pay any amount. In this regard, the Mumbai Tribunal[5] had also observed that the lower authorities erred in adopting the 'other method' by applying need, benefit and evidence test for considering the ALP of

1 Aramex India Pvt. Ltd vs. DCIT [TS-351-ITAT-2018(Mum)-TP] ITA No.6749/Mum/2017
2 DIC India Limited [TS-820-ITAT-2019(Kol)-TP]
3 TNS India Pvt. Ltd. [ITA No. 944/Hyd/2007]
4 Cushman and Wakefield (India) Pvt. Ltd., [2014] 367 ITR 730 (Del.):
5 Sulzer Tech India Pvt Ltd, ITAT No 633-MUM-2021

intra-group charges to be "NIL" without searching for similar uncontrolled transactions between non-associated enterprises.

Other practical challenges that arise during the course of audit for lack of documentation are:

- TPO asks for AEs' financial statements and reconciliation of the cost pool with the financial statements
- Cost pool validation, cost allocation methodologies, budget v/s actual costs, the difference in financial years of the AE and the Indian entity, etc.
- Getting quotations for the service, especially since most of these services are aligned to group's objectives, promotes internal experience sharing and learning curve benefits, which unavailable outside the group.
- Furthermore, the management fee charges may be determined based on an hourly charge-out rate determined by the service provider. Determining the arm's length nature of such rates would invariably require insight into the management team's compensation structure, which comes with its own set of challenges.

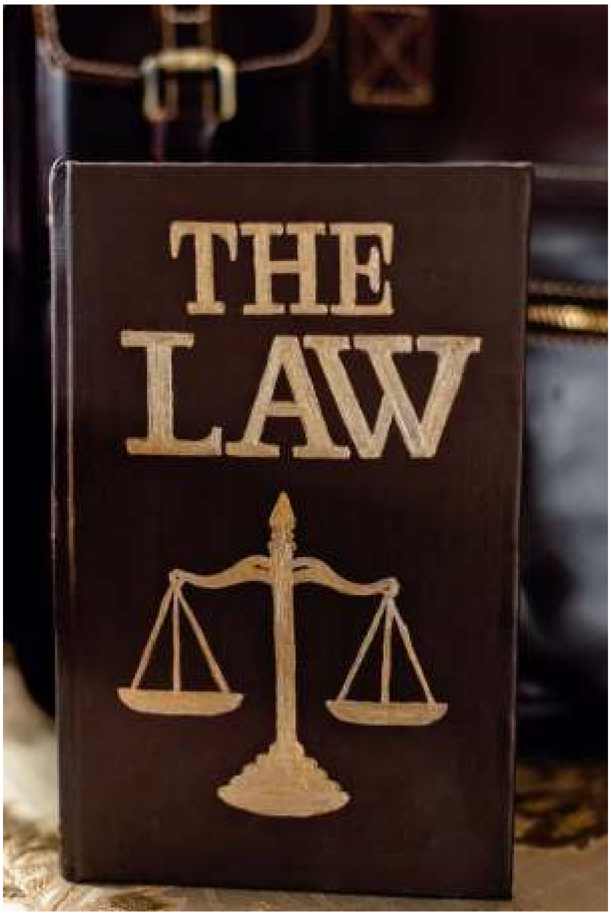
From a documentation perspective, it is critical that the Indian entity while accepting the charge also collates evidences and develops case studies (also documenting minutes of the meeting, call records, personnel visit records, analyzing impact on cost savings and profitability, efficiency, etc.) on a real time basis to demonstrate the receipt of services and benefits derived therefrom.

Outstanding Receivables:

Overdue receivables are a practical challenge in any business which operates on credit. This challenge gets further intensified when the receivables are overdue from an AE. In the Indian TP jurisprudence, there has been a plethora of rulings covering various facets of overdue receivables from the AEs.

Hyderabad Tribunal had held that with the introduction of explanation to Section 92B of the Act, interest on receivables constituted an international transaction and a separate adjustment is warranted on account of interest on delayed payments[6].

One of the aspects of receivables (whether overdue or not) is reporting the balances in Form No. 3CEB. While the taxpayers adopt various positions, one of the views is that these outstanding trade balances are innately linked with the primary international transaction (which may pertain to the provision of goods or services). Thus, as long as the primary international transactions meet the arm's length standards, the receivable and payable transactions can also be said to be at arm's length. The Ahmedabad Tribunal[7] has held that where operating income has been accepted as reasonable, there cannot be an occasion to make adjustments for notional interest on the delayed realization of debtors. Furthermore, it is also to be noted that any working capital adjustment would invariably take into account the impact of outstanding receivables on profitability. If working capital adjustment is granted, then no separate adjustment or interest



6 OSI Systems Pvt. Ltd (ITA No. 2228/Hyd/2017) placing reliance on Infor (India) Pvt. Ltd. ITA No. 1689/Hyd/2019
7 Micro Ink Limited. Vs. ACIT
8 American Express (India) Pvt Ltd [TS-429-ITAT-2021(DEL)-TP]

receivables is required[8].

With due cognizance to the above, it is critical to assess the credit period working, especially for trade receivables in the case of a taxpayer. There might be delays in the settlement of invoices which may warrant an interest charge on such overdue receivables. In this context, it is also critical to review what the inter-company agreement mention and that they are appropriately documented.

Furthermore, it would be prudent to draw up a comparison of the credit period extended by the taxpayer for independent customers (where data is available) vis-à-vis its AEs.

The Delhi High Court[9] has recently held that one-sided adjustment taking into account delayed invoices while at the same time ignoring invoices/payments received in advance cannot be allowed. Accordingly, it was held that the notional interest relating to alleged delayed payments in collecting receivables from the AEs was uncalled for as, in fact, there were no outstanding receivables as the amount received in advance far outweighed the amount received late.

As can be seen from the different judicial precedents, each case will have its own business and commercial reasons and the same needs to be appropriately documented and supported through economic adjustments, such as working capital adjustments or third-party receivable analysis.

Free of Cost Goods/Services:

In this context, it is often observed that some MNEs do not charge their captive service providers for various expenses incurred on their behalf because that will ultimately be invoiced with a mark-up leading to increased profit in the hands of the captive service provider, thereby leading to more tax outflow. Some examples of such transactions may include free-of-cost employee stock option plans, free-of-cost software/software-related services, free-of-cost management services, etc.

The tax authorities believe that ideally, the cost of these goods/services should be considered in the cost base of such captive/low-risk service providers and mark-up be levied on the same, unless there are commercial reasons (such as shareholder services) to not include such costs in the hands of the service provider. This is also aligned with the position adopted by the Central Board of Direct Taxes (CBDT) while signing the Advanced Pricing Agreements (APAs) with the taxpayer.

These reasons should be well documented to demonstrate arm's length behavior before the tax authorities.

The Hyderabad Tribunal[10] concurred with the view taken by tax authorities that free-of-cost software received by the taxpayer from its AE to carry out testing services would constitute an international transaction as per provisions of the Act. In another case, the Bangalore Tribunal has opined that "*When an assessee is receiving remuneration on cost plus basis from its AE then by reducing the cost…in fact, it reduces its income also and therefore, this aspect has to be examined and decided as to whether the allegation of the TPO is correct or not that the assessee has suppressed its cost by not including the cost to its AE on account of administrative and management support services and for user of various fixed assets received from its AE free of cost.*"

Conclusion

We have touched upon some prevalent and crucial aspects that need to be considered during compliance documentation. Other issues including, aggregated vs. segregated analysis, gorss or net margin analysis (especially for distributors), forex gain/loss to be considered as operating or non-operating, etc. need to be factored in too. Taking cues from 20 years of TP audits, the taxpayers need to firm up their documentation around these issues to avoid challenges during the tax officer's scrutiny. Every Indian entity needs to analyze the risk, calculate the probability of such risk being materialized and adopt a better compliance position that will avoid litigations.

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9 kinsey Knowledge Centre India (P.) Ltd.[2021] 131 taxmann.com 253 (Delhi)

10 Cavium Networks India Pvt Ltd (HYD) [ITA No. 1700/Hyd/2019]

INTEGRATED TAX ON IMPORTED GOODS: A DUTY OF CUSTOMS OR GOODS AND SERVICES TAX

INTRODUCTION

The Customs, Excise and Service Tax Appellate Tribunal ('Appellate Tribunal') in a recent decision in the case of ***Ortho Clinical Diagnostics India Private Limited v. CC***, ***2022-VIL-620-CESTAT-MUM-CU*** ('Ortho Clinical') has opined that customs authorities do not have the power to assess integrated tax liability on imported goods. The issue involved classification of imported goods under ***Notification 1/2017-Integrated Tax (Rate)*** dated June 28, 2017 for assessment of integrated tax liability.

The Appellate Tribunal whilst holding the issue in favour of taxpayer, observed that integrated tax under Section 3(7) of the Customs Tariff Act, 1975 ('Customs Tariff Act') is in the nature of goods and services tax ('GST') the rates for which have been prescribed under Integrated Goods and Services Tax Act, 2017 ('IGST Act'). It accordingly lies within the domain of GST authorities, and not customs authorities to assess the integrated tax liability on imported goods.

This decision has the potential to assail all assessments of integrated tax liability on imported goods which are routinely being undertaken by the customs authorities. In this article, we proceed to unfold the reasons behind this decision, examine the contours of relevant provision, deduce correctness of the interpretation and also present counter theory.

IDENTIFYING RELEVANT PROVISIONS

Article 269A of the Constitution of India provides that supply of goods in the course of import into the territory of India shall qualify as an 'inter-state supply'. Section 5 of the IGST Act provides for levy of integrated goods and services tax (also referred as integrated tax) on all inter-state supplies of goods and services. The proviso to Section 5(1) states that integrated tax on import of goods shall be levied and collected in accordance with Section 3 of the Customs Tariff Act. Relevant extract of the provision

is reproduced as under:

> *"5 (1) Subject to the provisions of sub-section (2), there shall be levied a tax called the integrated goods and services tax on all inter-State supplies of goods or services or both, except on the supply of alcoholic liquor for human consumption, on the value determined under section 15 of the Central Goods and Services Tax Act and at such rates, not exceeding forty per cent., as may be notified by the Government on the recommendations of the Council and collected in such manner as may be prescribed and shall be paid by the taxable person:*
>
> ***Provided** that the integrated tax on goods imported into India shall be levied and collected in accordance with the provisions of section 3 of the Customs Tariff Act, 1975 on the value as determined under the said Act at the point when duties of customs are levied on the said goods under section 12 of the Customs Act, 1962."*

Section 3 of the Customs Tariff Act provides for imposition of integrated tax on import of goods into India. Relevant extract of the provision is reproduced as under:

> *"3(7) Any article which is imported into India shall, in addition, be liable to integrated tax at such rate, not exceeding forty percent as is leviable under section 5 of the Integrated Goods and Services Tax Act, 2017 on a like article on its supply in India, on the value of the imported article as determined under sub-section (8) or sub-section (8A), as the case may be."*

Section 3(12) of the Customs Tariff Act makes the provisions of Customs Act, 1962 ('Customs Act') applicable on taxes chargeable under Section 3.

> *"3(12) The provisions of the Customs Act, 1962 (52 of 1962) and the rules and regulations made thereunder, including those relating to drawbacks, refunds and exemption from duties shall, so far as may be, apply to the duty or tax or cess, as the case may be, chargeable under this section as they apply in relation to the duties leviable under that Act."*

RATIONALE ADOPTED BY THE APPELLATE TRIBUNAL

A transaction of import of goods involves applicability of Section 5(1) of the IGST Act and the proviso appended thereto. The proviso does not extinguish the levy of integrated tax on import of goods, but merely provides that the same shall be as per the Customs Tariff Act. Simply put, the levy of integrated tax on import of goods continues to exist under the IGST Act. The levy and collection of such however has to be in consonance or in agreement with the Customs Tariff Act.

Section 3 of the Customs Tariff Act has housed provisions for imposition of duties and taxes on import of goods with the principal objective to offset the taxes applicable in India and provide a level playing field to the domestic industry. Section 3(1) and Section 3(5) provide for imposition of countervailing duty and special additional duty to offset excise duty and sales tax respectively. The provision for countervailing duty borrows the rates applicable under Central Excise Act, 1944 ('Excise Act') and special additional duty is imposed at the rate of 4 per cent. which is the applicable rate under Central Sales Tax Act, 1956 ('CST Act'). These are similar to Section 3(7) which borrows the rate provided in ***Notification No. 1/2017-Integrated Tax(R)*** dated June 28, 2017, issued under the IGST Act, whilst imposing integrated tax on import of goods.

It is however interesting to note that Section 3(1) and Section 3(5) of the Customs Tariff Act used to provide for imposition of additional duty which is equivalent to excise duty or central sales tax. Whereas, Section 3(7) provides for imposition of integrated tax, and not additional duty / tax equivalent to integrated tax. The term 'integrated tax' has been defined under Section 2(12) of the IGST Act as integrated goods and services tax leviable under IGST Act. While levy of countervailing duty and special additional duty originated from Customs Tariff Act, the levy of integrated tax on import of goods originates under IGST Act.

Section 3(12) of the Customs Tariff Act provides for application of Customs Act only in respect of duties and taxes chargeable under Section 3. Since the levy of integrated tax on import of goods originates under IGST Act, Section 3(12) of the Customs Tariff Act borrowing the provisions of Customs Act is not applicable. Simply put, the provisions of Customs Act authorising the officers of customs to assess the duties and taxes on import of goods are not applicable with respect to integrated tax under Section 3(7) of the Customs Tariff Act. The officers of GST alone are authorised to assess the integrated tax on import of goods.

LEVY OF INTEGRATED TAX ON IMPORT OF GOODS

Scope of levy under IGST Act

The Parliament has enacted IGST Act in exercise of the powers conferred under Article 246A of the Constitution. Section 5(1) of the IGST Act provides for levy of integrated tax on inter-state supply of goods and services. The term 'supply' is defined under Section 7 of Central Goods and Services Tax Act, 2017 ('CGST Act'), which can be dissected into following categories:

- **Omnibus clause:** It covers all forms of supply undertaken for a consideration and in the course or furtherance of business [Section7(1)(a)];
- **Supply between juridical person and its members:** It covers supplies between a juridical person and its members or constituents [Section 7(1)(aa)];
- **Import of service clause:** It covers import of services for a consideration whether or not in the course or furtherance of business [Section 7(1)(b)]; and
- ***Sans* consideration clause:** It covers activities specified in Schedule I of the CGST Act when undertaken without consideration [Section 7(1)(c)].

The definition of 'supply' starts with the expression 'includes', which at first glance gives an impression that the definition is inclusive in nature. The Omnibus clause covers all forms of supply, but then annexes the conditions of consideration and in the course or furtherance of business. If the definition of 'supply' is treated as an inclusive definition, all forms of supply, even if undertaken without consideration and not in the course or furtherance of business, would be automatically covered thereunder. This would render the conditions annexed with Omnibus clause and need to specify the transactions in Schedule I under *Sans* consideration clause totally redundant. It is trite law that statute must be interpreted in the manner which gives effect to every term used therein and does not render any expression otiose[1]. Simply put, the definition of 'supply' has to be interpreted exhaustively. A transaction must fall within the clauses laid down in Section 7 of the CGST Act acting as pigeonholes for it to qualify as 'supply'.

A careful examination of definition further reveals that transaction of import of goods simpliciter, i.e. in the absence of sale or lease, ('import simpliciter') is not covered under any of the clauses, and hence does not constitute as 'supply'. Supplies, such as sale or lease, when undertaken in the course of import of goods qualify as inter-state supplies. Further, it is trite law that proviso cannot override the main provision. Thus, the proviso to Section 5(1) of IGST Act also refers to only such imports which involve supply. This is in line with the boundaries carved out by principal provision as well as Articles 265, 246A and 269A of the Constitution.

Scope of levy under Customs Tariff Act

Section 3(7) of the Customs Tariff Act provides for imposition of integrated tax on import of goods. The term 'import' refers to bringing goods into India from a place outside India. It covers transactions of import simpliciter as well as import transaction involving supply. If the levy of integrated tax on import of goods originates under the IGST Act, the transaction of import simpliciter will attract only basic customs duty. Such an interpretation would run contrary to the taxable event encapsulated in the expression 'import of goods' delineated under Section 3(7) of the Customs Tariff Act.

Thus, it is clear that levy carved out under Section 3(7) of the Customs Tariff Act is an independent levy on import of goods. Since, the taxable event is import of goods, the integrated tax is a levy of customs originating under Customs Tariff Act, more specifically Section 3 thereunder. The Parliament is indeed empowered to use same nomenclature (integrated tax) whilst providing for a distinct levy. In fact, it would be wrong to use the definition of 'integrated tax' under IGST Act for the purpose of interpreting the terms under Customs Tariff Act. The definition of 'integrated tax' as contained in Section 2 of the IGST Act, distinctly provides that the same is for the purpose of IGST Act. As a corollary, this definition cannot be used to suggest the levy of integrated tax on import of goods originates under IGST Act.

1 The principles are contained in oft quoted Latin maxim 'verbis legis non est recedendum' and 'ut res magis valeat quam pereat'.

Interplay between Section 3(7) of the Customs Tariff Act and proviso to Section 5 of the IGST Act

A transaction of supply in the course of import involves two elements: (i) Import; and, (ii) Supply. It thus attracts levy of integrated tax under Customs Tariff Act as well as IGST Act. The proviso was enacted to prevent levy of integrated tax twice on the transaction of import impregnated with 'supply', *viz.* first under Customs Tariff Act and second under IGST Act. The root of the tussle between the Customs Tariff Act and IGST Act lies in proviso to Section 5(1) of the IGST Act which states that integrated tax on import of goods will be levied and collected in accordance with the provisions of Section 3 of the Customs Tariff Act. The proviso does not extinguish the levy under IGST Act, but provides that the same shall be in accordance with the Customs Tariff Act.

It is important to note that the proviso to Section 5(1) refers to both 'levy' and 'collection' of IGST on import supplies. It is trite that levy comprises of charge of tax and assessment of tax. Simply put, even that charge of integrated tax under the IGST Act on a transaction of supply in the course of import has to be in consonance with or in agreement with, but never at variance with the Customs Tariff Act. This in effect merges the levy of integrated tax under IGST Act with levy of integrated tax arising under Section 3(7) of the Customs Tariff Act. This merger of levy results in dissolution of the identity of levy of integrated tax under IGST Act, like sugar or salt in water. Consequently, integrated tax on import of goods is a levy of customs under Section 3(7) of the Customs Tariff Act. As a corollary, Section 3(12) of the Customs Tariff Act borrowing the provisions of Customs Act will be squarely applicable on levy of integrated tax on import of goods.

Assessment in a taxing statute means the computation of taxable value, determination of tax payable by a taxpayer, and the procedure for collecting or recovering said tax[2]. Assessment therefore encompasses the whole procedure for ascertaining and imposing the liability upon a taxpayer. Therefore, customs authorities are empowered to re-classify imported goods, redetermine the integrated tax payable thereon and issue show cause notices proposing to demand said integrated tax.

CONCLUSION

In Ortho Clinical, the Appellate Tribunal has failed to understand that scope of Section 3(7) and Section 3(12) of the Customs Tariff Act. Although erroneous, the decision has precedential force. The customs department will certainly challenge this decision in order to protect the sanctity of its jurisdiction and assessments.

2 Bhopal Sugar Industries v. State of MP, AIR 1979 SC 537

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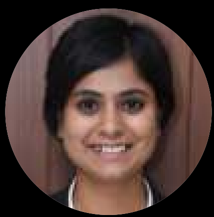

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UNRAVELLING INDIA'S DIGITAL TAX REGIME

Business in the digital age has grown exponentially, transcending geographical boundaries. Moreover, the swift onset of new technologies has paved the way for carrying on business in multiple locations without needing a physical presence. The new business models have resulted in new tax challenges in terms of nexus, allocation, classification, etc.

The Organisation for Economic Co-operation and Development (OECD) recognized the challenges faced in taxing digital businesses and accordingly, Action Plan 1 (Challenges of Digital Economy) of the BEPS (Base Erosion and Profit Shifting) Action Plan was initiated.

OECD members could not form a consensus on a solution to tackle the issue of taxing digital businesses and hence member countries were given the option to implement certain interim unilateral measures like introducing Digital Service Tax, Significant Economic Presence, etc. Taking a leaf out of OCED's Action Plan, several countries have implemented unilateral digital tax measures. India was a harbinger of such unilateral approaches and introduced Equalisation Levy 1.0 (EL 1.0) in 2016 to give effect to one of the recommendations of the BEPS Action Plan. EL 1.0. It mainly covered online advertisement and any related services, including the provision of digital advertising space, EL is payable at the rate of 6% by the non-resident. Such levy was collected in the form of withholding tax from the payment to a non-resident service provider.

The Indian government vide Finance Act, 2020 enhanced the scope of the EL by bringing digital transactions within the ambit of EL. Thus, EL 2.0 was expanded to cover non-resident e-commerce operators on e-commerce supply and services. EL 2.0 at the rate of 2% would apply to the amount of consideration received or receivable by a non-resident e-commerce operator from e-commerce supply or services made or provided, or facilitated by it:

- to a person resident in India irrespective of the internet protocol address used by him while ordering such goods or services; or
- to a non-resident in the specified circumstances; or
- to a person who buys such goods or services or both using internet protocol address located in India.

Equilisation Levy Impact to be analysed

The onus of compliance and payment of levy was shifted to non-resident e-commerce operators/foreign companies. A non-resident is exempt from EL 2.0 if its turnover is less than INR 20 million (i.e., approx. USD 2,50,000). While the law had come into effect in 2020, there were various interpretational concerns pursuant to widening the scope of EL provisions. In light of the same, vide Finance Act, 2021, the Indian government tried to address certain ambiguity around EL by providing clarifications/amendments:

- EL 2.0 shall not be applicable where consideration for e-commerce supply or services is taxable as Royalty or Fees for Technical Services (FTS) in India. Thus, taxation as Royalty/FTS under the income tax laws would have priority over EL.

- Scope of online sale of goods/ online provision of services has been defined to include cases where one or more of the following activities are carried out online:
  - Acceptance of offer for sale; or
  - Placing or acceptance of purchase order; or
  - Payment of consideration; or
  - Supply of goods or provision of services, partly or wholly.
- Consideration for the purpose of levy of EL clarified to include the value of goods or services, regardless of ownership or facilitation by the e-commerce operator.
- Furthermore, these amendments were made applicable retrospectively from 1 April 2020.

Also is pertinent to note that the amount, which is subject to the charge of EL, is exempt from Indian income tax.

However, at a broad level, ambiguity still exists around the applicability of levy, interpretation of various terms, and usage of the certain terms defined, which may result in long-drawn litigation. Some of the key issues which may arise could be as follows:

- **Whether emails/video calls constitutes a digital or electronic facility/platform**

  An e-commerce operator has been defined as a non-resident who owns, operates or manages a digital or electronic facility or platform for the online sale of goods or online provision of services or both. The term 'digital or electronic facility or platform' has not been defined.

  In normal parlance, digital/electronic facilities would include website addresses, conference call systems, and any device, system, procedure, method or other facilities providing an electronic venue for a general meeting. If this interpretation is adopted, even services like consultancy services, management services, and legal advice rendered by a non-resident through electronic means like emails, and video conferencing may get covered. However, the equalization levy was introduced to cover digital services or services rendered using digital platforms and hence standard services like management services, technical services, etc., which use digital mode for delivering services, should not be covered. Also, digital/electronic facilities should be considered in the context of digital services and should only cover platforms/facilities through which actual services are provided.

- **Goods/Services ordered or booked online but delivered offline**

  Online sale of goods and online provision of services has been defined to include any transaction where one of the legs of the transaction (like acceptance of offer, placing of order, acceptance of order, payment, supply/provision of service) is online.

  In my view, the entire definition of an online transaction has been expanded by the clarification provided and there is a risk that even a normal brick-and-mortar business transaction may also get captured. A few such transactions that could get captured are as follows:

  - Businesses with an online order placing mechanism, but all other work of finalizing, negotiating and delivery happens offline.
  - Many corporates have online inventory systems that provide options to their customers to look at the inventory availability at various locations and accordingly place an order.
  - Project/Services agreement digitally signed but requires the physical provision of services.

1 Sale of advertisement, which targets a customer resident in India or a customer, who accesses the advertisement through IP address located in India ***or*** *Sale of data collected from a person resident in India or a person who uses an IP address located in India.*

- Payments made through credit cards online for physical goods or payments through online banking would be considered as payments made online.

- **<u>Applicability to cost-recharge/cost-sharing agreements</u>**
  Large MNCs often have cost-sharing arrangements, wherein various procurement functions and common services are undertaken by an overseas entity and the costs for the same are shared across the group based on certain pre-defined allocation keys. It is possible that certain goods/services are procured online at a group level which could be for the benefit of the Indian subsidiary as well. In such cases, it would be interesting to see the applicability of EL as no specific clarification is available.

- **<u>Treaty benefits and foreign tax credit</u>**
  Generally, source countries could impose withholding taxes on various classes of income, while the country of residence would provide Foreign Tax Credit (FTC) for such withholding taxes. It is pertinent to note that EL has been introduced as a separate levy in the Finance Act and does not form part of the Income-tax Act, 1961 (ITA). Furthermore, tax treaties entered between India and foreign countries have been specifically defined and provided that they shall apply to taxes imposed under Indian laws if they are substantial or similar to income tax. Accordingly, whether the foreign company shall be eligible to claim the FTC of EL paid will depend on the local tax laws in the home jurisdiction. However, it is likely that the tax credit may not be available for the EL paid in India because EL is introduced as a levy and not in the form of a direct tax or indirect tax. This may result in double taxation of income.

- **<u>Is EL refundable</u>**
  The taxation of Royalty/FTS has been a subject matter of protracted litigation in India. It is possible that the taxpayer considers a transaction as covered in EL provisions and during revenue audit, the same is characterized as Royalty/FTS by the tax authorities. Currently, the EL provisions are silent on the treatment of EL already paid by the taxpayer. It is pertinent to evaluate whether in such cases, EL paid shall be allowed as credit against the tax liability arising on account of taxability as Royalty/FTS or refunded to the taxpayer.
  Furthermore, no specific provision in the Finance Act provides for either refund of EL or adjustment against the income-tax liability by way of credit in a case where EL has already been paid and the existence of a Permanent Establishment (PE) has been established at a later stage.

<u>Concluding Remarks</u>

Another interesting development in the offing is the implementation of the Pillar 1 solution by OECD to reallocate taxing rights for digital businesses and certain specified services. Pillar 1 solution is proposed to be applied only to multinational companies whose consolidated turnover exceeds EUR 20 billion. As per OECD, once Pillar 1 solution under the BEPS project is implemented, all interim measures undertaken to tax digital businesses by the countries would have to be withdrawn. Given the fact that Pillar 1 solution may impact only a few hundred companies globally, it remains to be seen whether India would be willing to give up EL, which has resulted in good tax collection for the tax authorities.

Overall, we are heading for interesting times in digital taxation with the introduction of Pillar 1 solution and challenges which may come to taxpayers once litigation on EL and significant economic presence regulations commence. It would be very critical for non-residents/foreign companies to factor in these levies as part of their global tax planning and revisit their business model/transaction flow, as it is likely to increase the cost of doing business in India.

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DEVELOPMENT ENTERPRISE AND SERVICES HUBS (DESH) - A PROPOSED VEHICLE TO REJUVENATE SPECIAL ECONOMIC ZONES (SEZS)

Background:

The Government of India formulated the Special Economic Zone (SEZ) policy in April 2000 and implemented it through the Foreign Trade Policy. SEZ received major impetus when specific legislation was enacted to administer SEZs through the SEZ Act, 2005 and SEZ Rules, 2006. The objective behind creating SEZs was to attract foreign direct investments, develop infrastructure, facilitate access to global markets for domestic companies, and encourage exports. After the initial momentum, the SEZ framework lost steam leaving a yawning gap between the initial promise and actual delivery due to various challenges such as:

- Unutilised SEZ land of more than 25,000 hectares
- Treating removal of goods from SEZ to DTA as imports, making such transactions dutiable
- Imposition of Minimum Alternate Tax (MAT), Dividend Distribution Tax (DDT)
- Requirement for receipt of payment in convertible foreign exchanges
- Complex compliance procedures for SEZ units
- Positive Net Foreign Exchange criteria
- Inferior Infrastructure facilities and restrictions on sharing of infrastructure
- Administrative difficulties with the existence of multiple models of economic zones
- Absence of single window clearance for lack of sync between State level policies/laws with the Central SEZ Act
- Rigid and complex work-from-home policy
- Absence of investment promotion activities and financial benefits to attract anchor investors, etc.

Further, India's SEZ framework came under challenge by the United States of America (USA) before the Dispute Settlement Body of the World Trade Organisation (WTO), which eventually ruled that India's SEZ policy violated its rules as it gave direct tax benefits to net-foreign exchange positive entities (earned more forex than they spent) for five years. Accordingly, the Ministry of Commerce and Industry constituted SEZ Policy review committee under the Chairmanship of Baba Kalyani, Chairman M/s. Bharat Forge to study the SEZ Policy of India on June 4, 2018, with the following objectives:

- Evaluate the SEZ policy and make it WTO compatible
- Suggest measures for maximizing utilization of vacant land in SEZs
- Suggest changes in the SEZ policy based on international experience
- Merge the SEZ policy with other government schemes

A detailed report was submitted by the committee, underscoring the following key recommendations to revamp the SEZ framework in India:

- Shift focus from export growth to employment and economic growth
- Formulation of separate rules and

procedures for manufacturing and service SEZs
- Enabling ease of doing business by establishing one integrated online portal for new investments, operational requirements, and exits related matters
- Broad-banding definition of services/allowing multiple services to come together
- Extension of the sunset clause and retaining tax or duty benefits
- Procedural relaxations for developers and tenants to improve operational and exit issues.
- Facility of sub-contracting for customers outside SEZs without any restriction or cap at any level
- Flexibility of long-term lease for developers and tenants
- Promotion of MSME participation in the manufacture and service sector
- Dispute resolution through arbitration and commercial courts.

The above events had forced Indian Policymakers to reanalyse the SEZ policy, and this was affirmed by the Hon'ble Finance Minister Mrs Nirmala Sitharaman during the Union Budget, 2022 speech, wherein she underscored the need to replace the existing SEZ Act with new legislation to cater to the needs of time and to devise a WTO-compliant framework.

Work Frome Home (WFH) Policy:

Whilst the SEZ framework faced challenges; the global business environment underwent a dramatic change due to the pandemic-induced lockdowns. Covid-19 made the government realise that absence of a comprehensive WFH policy is the biggest hurdle faced by SEZs. That forced government to impose a comprehensive WFH protocol to productively engage employees and meet operational challenges. Most companies continued the WFH or switched to a hybrid model even after the lockdowns were lifted.

However, SEZs faced operational difficulties in obtaining permission for WFH during the pandemic and thereafter due to certain restrictions on the use of capital goods, including laptops for specified purposes, movement of goods from/to SEZs, issuance and validity of identity cards, etc., leading to business losses and a compulsion to start 'on-site' work and even prompting units to reimagine their continuation under the SEZ scheme.

The government acknowledged the challenges faced by SEZs, and to address the concerns, the Ministry of Commerce issued a notification on July 14, 2022, inserting a new Rule 43A in the SEZ Rules, 2006, setting out a policy for permitting WFH for employees of SEZ units. The new rule lays down the categories of employees — that is, employees of IT and IT-enabled services, temporarily incapacitated employees, travelling employees and offsite working employees — who shall be permitted to WFH or any place outside the SEZ, subject to a limit of 50 percent of the total employee strength. The validity of this permission will be for a year from the date of such consent, subject to an extension that cannot exceed one year at a time. Further, the Ministry issued instruction No.110, dated August 12, 2022, providing SOPs for implementing provisions contained in Rule 43A. The new Rule comes with several procedural and administrative compliances on SEZs, taking away the required flexibility.

After insertion of new Rule 43A, permitting only 50of % of employees working in SEZs to work from home for a maximum period of one year, Hon'ble Commerce and Industry Minister Mr Piyush Goyal, on September 13, 2022, highlighted that the government is looking into the industry's demand to allow 100 percent WFH permission for employees of units in SEZs. It was highlighted that the said move is expected to create employment opportunities in small cities and increase the export of services.

Proposed Change under DESH:

To redress the operational and compliance challenges and to redraw the SEZ scheme to make it more attractive, the government is formulating to introduce of the 'Development of Enterprises and Services Hubs (DESH) Bill, 2022'. Under the proposed scheme, existing SEZs are expected to be transitioned into new hubs known as DESH, which shall be established by the Centre or a State or jointly by them, or any person for the manufacturing of goods or rendering services or for both. The new DESH scheme is expected to afford more operational and compliance flexibility following recommendations of the Baba Kalyani report to the units currently operating under a stricter SEZ law

and for new units who wish to unroll under DESH.

The new DESH scheme is also expected to factor in current industry demands permitting 100 percent WFH permission for employees of units in SEZs. At this stage, certainly, there is unclarity on several aspects such as pure play trading activities, list of permissible and ineligible activities, treatment of sub-contracting and job work, WFH policy, entitlement to RoDTEP and other FTP benefits, implications on exit from notified areas, etc., under the new DESH scheme. However, the new DESH scheme to be implemented is expected to be a WTO-compliant scheme, which is expected to provide specified fiscal incentives, promote economic activity, generate employment, attract investments and remove bottlenecks around the SEZ scheme. Given that, SEZs are counting on the Government to implement DESH at the earliest, so the units can operate more flexibly, which would help bring-back cheers in the face of the exporters and earn a larger pie of the international business and foster the country's growth.

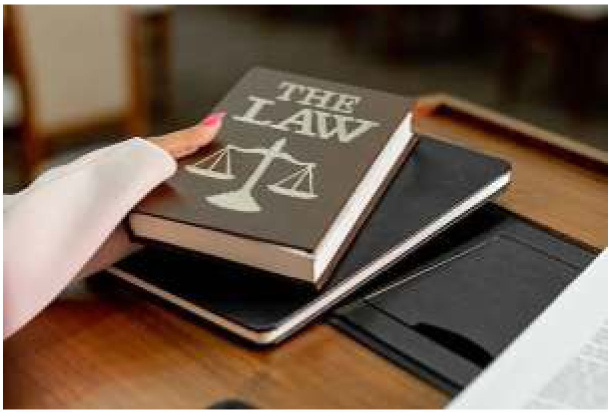
<u>Some of the fundamental changes expected to be introduced in the new DESH law</u>:

- Manufacturing Hub and Service Hub as against Sector Specific SEZ concept
- Infrastructure status to units under DESH for easy access to financing
- Partial denotification frees up the area not in demand without affecting the continuity of the remaining built-up processing area
- Built-up area in a service hub may not be required to be contiguous
- Doing away with net foreign exchange requirements makes the scheme WTO compliant. Thereby allowing units to cater to the domestic demand and not only focus on international markets
- Negative list of Authorised Operations
- Flexible Work from Home (WFH) policy
- Authorised operations of Manufacturing Hub may include the provision of Services
- Permission to subcontract goods and services for DTA units without any condition
- Exemption from GST on Domestic Procurement, Income Tax Benefits and other incentives
- Payment of duty on the imported inputs used in manufacturing goods instead of final value, in case of DTA clearances
- DTA Equalisation Levy for DTA Clearance
- Establishment and maintenance of an integrated online portal acting as a single window clearance mechanism to grant time-bound approvals for establishing and operating Development Hubs
- Allowing foreign collaborations and foreign direct investments for setting up units
- Single application forms for obtaining any license, permission, registration or furnishing returns or information by a Developer or a Unit
- Self-certification for developers and occupiers for a defined set of business activities
- Commercial dispute resolution between two or more entrepreneurs or developers or between an entrepreneur and a Developer through mediation/arbitration
- Single point of contact across multiple ministries in the Central Government aiming at a significant improvement in ease of doing business

<u>Issues to be addressed</u>:

There is a lot of information available on DESH in the public domain, and after analysing the same, some issues still seem pending to be addressed:

- Whether a company intending to do 100% domestic clearances be allowed to set up a unit under the DESH scheme?
- Whether a company intending to do 100% trading activity be allowed to set up a unit under the DESH scheme? What will be duty implications in the case of the traded



goods?

- Whether existing SEZ units be entitled to fiscal benefits under Income Tax Law for remaining while transitioning to DESH scheme?
- Which service sectors will be permitted to set up a unit under the DESH scheme?
- Whether any negative list provided for authorised operation(s) to be carried out?
- Whether exports from DESH units entitled to RoDTEP, Drawbacks and other FTP benefits?
- Whether DTA units supplying goods to DESH units be entitled to RoDTEP, Drawback and other FTP benefits?
- What will be the duty implications for inter-unit transfer between DESH units to MOOWR/EOU/STPI units or vice versa?
- Whether existing SEZ units be entitled to opt for other schemes like MOOWR, EPCG, etc., instead of the DESH scheme during the transition period?
- Whether there will be any transition window and relaxations provided with respect to existing stock, capital goods, duty payments, licenses under FTP
- Whether the preferential duty benefit rate based on Free Trade agreements (FTAs) be available for the supply of goods from DESH units to DTA units even in cases of nil or lower value addition?
- Whether existing EOU, MOOWR units, etc., eligible to opt for the DESH scheme?
- Whether payments for supplies made to and from DESH units be made in Indian Rupees?
- Whether DESH units be entitled to Production Linked Incentive (PLI) scheme or other state incentive schemes?
- Whether other allied laws like BIS, FSSAI, etc., be applicable at the time of imports into DESH units or the procurement of goods by DTA units from DESH?
- Whether SEIS benefits be available in case of a supply of services by DTA units to DESH units?
- Whether the DESH scheme will affect the future of the MOOWR scheme and other schemes like Advance Authorisation and EPCG in India?
- Whether infrastructure facilities be allowed to be shared between DESH and DTA units?

The DESH was planned to be taken up during the Ninth Session of the Seventeenth Lok Sabha, 2022 ("Monsoon Session"). However, the same was not introduced during the Monsoon Session. The Bill is now understood to have been finalised internally by the policymakers and is expected to be tabled during the winter session of the Parliament or, alternatively, the ordinance route may be explored to operationalise this reform. To this effect, the ministry of commerce has also formed a working group for framing the rules under the proposed Bill, which will form the backbone of the implementation framework. As the DESH Bill is expected to soon see the light, it is now imperative for SEZs and other business units to evaluate their current operations and supply chain to opt for a suitable business model post implementation of DESH.

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ELUCIDATING THE EVOLUTION OF E-COMMERCE BUSINESS IN INDIA

The upsurge in Electronic-commerce Business has led to considerable changes in Indian taxation in recent times. These constant updation in Indian laws impacted corporates to reform their business strategies so as to comply with these amendments. The Indian Government has formulated Project ONDC (Open Network for Digital Commerce) to encourage a streamlined structure for the e-commerce industry in India. We have covered the challenges and taxation updates vis-à-vis E-commerce business in India.

Challenges regarding taxation

The growing trend of e-commerce business in India has developed new tax challenges. The persistent taxation dilemmas relating to e-commerce are -

1. Difficulty in characterizing the nature of payment and establishing the nexus or link between taxable transaction, activity, and a taxing jurisdiction due to geographical boundaries.

2. Difficulty in locating the transaction, activity and identifying the taxpayer for income tax purposes especially when the e-commerce company is remotely working from a server located in a country outside the jurisdiction of India.

3. Numerous issues related to Income Tax or GST arise that need to be handled appropriately. Lately a lot of issues coming up with Seconded employees which demand prudent resolution.

Recent Taxation Amendments

The changes in the business model have forced to reconsider the basic concepts underlying existing international tax according to G20-OECD Recommendations under Action Plan 1 of BEPS Project resulting in introduction of new sections under Income Tax Act'1961 -

1. Withholding tax under section 194O wef Oct 1, 2020.
2. Equalization levy as per section 165 under Finance Act to avoid DTAA benefit wef April 4, 2020
3. Deduction of tax on benefit or perquisite in respect of business or profession u/s 194R wef 1st July, 2022

1. Applicability of Withholding Tax u/s 1940 on payments by e-commerce operator to e-commerce participant

Amendments have been made to the withholding taxation norms to widen the scope of the section to e-commerce players. **E-Commerce operators w.e.f Oct 1 2020**, are responsible for deducting TDS @1% on the gross amount of such sales or services or both at the time of credit of the amount of sale of goods, services, or both to the account of an e-commerce participant or at the time of making payment to an e-Commerce participant by any other mode, whichever is earlier.

No TDS is to be deducted where e-commerce Participant is Individual or HUF whose gross amount of such sale or services or both during the previous year does not exceed five lakh rupees and e-

commerce participant furnished Permanent Account Number or Aadhaar number to the e-commerce Operator.

Any transaction in respect of which tax has been deducted by the e-commerce operator u/s 194O(1), or which is not liable to deduction u/s 194O(2), shall not be liable to tax deduction at source under any other provision of TDS Chapter.

For the purposes of this section,

- *"e-commerce operator"* shall be deemed to be the person responsible for paying to e-commerce participant. It can be either **Resident or Non-Resident**.
- *"e-commerce participant"* means **a person resident in India** selling goods or providing services or both, including digital products, through digital or electronic facility or platform for electronic commerce;
- *"services"* includes "fees for technical services" and fees for "professional services", as defined in section 194J.

CBDT clarifications issued 17 of 2020 dtd 29th September 2020 and 20 of 2021 dtd Nov 15th 2021

1. TDS is to be deducted at **1% on the gross amount of sales or services or both by any person who is E-commerce Operator**. In absence of Pan/Aadhaar, TDS is to be deducted **@5** %. "Gross amount of such Sales" which means e-commerce operator will require to deduct TDS Gross sales including Commission and affiliation portion which e-commerce operator himself withholds.
2. No TDS is required to be deducted when e-commerce Participant is Non-Resident. If E-commerce operator is Non-resident, Equalisation Levy will also be applicable.
3. E-commerce Participant can apply for Lower deduction/No Deduction certificate u/s 197 consequent to amendment in Section 197.
4. GST indicated separately in the invoice shall be excluded for the purpose of TDS vide Circular No. 23/2017 dated July 19, 2017.
5. Non applicability on Payment Gateway - The payment gateway will not be required to deduct tax under section 194-0 of the Act on a transaction, if the tax has been deducted by the e-commerce operator under section 194-0 of the Act, on the same transaction.

2. Applicability of Equalisation Levy u/s 165A inserted vide Finance Act'2020 (wef April 1, 2020)

This law is introduced with the purpose to include "Foreign Electronic Commerce Operators" in the domain of Indian Taxation which claims no presence of Permanent Establishment (PE) or economic significance in India. Compliance relating to procedural process is to be completed by Foreign ECO.

There is a liability to charge an equalisation levy at the rate of **two percent of the amount** of consideration received or receivable by a Foreign e-commerce operator not having any PE in India from e-commerce supply or services made or provided or facilitated by it—

- to a person resident in India; or
- to a non-resident in the **specified circumstances** (for sale of advertisement targeting resident in India or a person using Indian IP and sale of data collected from a person resident in India or a person using Indian IP)
- to a non-resident using Indian IP or to a person who buys such goods or services or both using internet protocol address located in India.

E-commerce Supply or services includes-

- Online sales of goods owned by the e-commerce operator or
- Online services provided by the e-commerce operator or
- Online sales of goods or services or both, **facilitated** by the e-commerce operator

Exceptions to the applicability of Equalization Levy u/s 165A –

- where the e-commerce operator making or providing or facilitating e-commerce supply or services has a permanent establishment in India and such e-commerce supply or services is effectively connected with such permanent establishment;

- Cases where Equalization levy is applicable as per Section 165 for specified services of online/digital advertisement
- This shall not apply in case where the sales, turnover or gross receipts, as the case may be, of the e-commerce operator from the e-commerce supply or services made or provided or facilitated is less than two crore rupees during the previous year.

3. Applicability of deduction of tax on benefit or perquisite in respect of business or profession as per Section 194 R

The Finance Act 2022 inserted a new section 194R **wef 1st July 2022** with an aim to collect tax from the very source of payment of such benefits or perquisites whether convertible into cash or not and also to plug a loophole of such in-kind benefit or perquisite which mostly missed to be disclosed in Income Tax Return of the recipient.

According to section 194R any person responsible for providing to a **resident**, any benefit or perquisite, whether convertible into money or not, arising from business or the exercise of a profession, by such **resident**, shall, before providing such benefit or perquisite, as the case may be, to such resident, ensure that tax has been deducted in respect of such benefit or perquisite at the rate of ten per cent of the value or aggregate of value of such benefit or perquisite.

CBDT has issued guidelines for removal of difficulties under section 194R(2) on 16th June'2022 and Sept 13th, 2022

Salient features of section 194R –

1. The provisions of section 194R are applicable to any **Resident** who is providing any benefit/perquisites to another **Resident**.
2. It brings in its scope the situation where the benefit or perquisite is in cash or in kind or partly in cash or partly in kind. In case the entire benefit is for kind or cash is in shortfall, then the amount of TDS needs to be paid maybe by a Debit note or recipient pays the TDS before receiving the benefit or perquisite.
3. TDS should be deducted at **10%** on the value or aggregate of value of such benefit or perquisite.
4. The benefit or perquisite which has been provided on or before 30, June 2022, would not be subjected to tax deduction but the threshold limit of Rs. 20,000 shall be counted from April 1st, 2022.
5. TDS should be deducted before providing such benefit or perquisite.
6. No deduction of tax in case of benefit/perk per person is **not more than Rs. 20,000** in a financial year.
7. No TDS liability of an **Individual or HUF deductor**, whose gross receipts / gross turnover from business does not exceed **Rs. 1 crore**, or from profession does not exceed **Rs.50 lacs** during the financial year immediately preceding the financial year in which such benefit or perquisite is provided by him.

Further clarifications by CBDT dtd 16th June 2022 and 13th September 2022 -

1. The deductor is not required to check whether the amount of benefit or perquisite that he is providing would be taxable in the hands of the recipient under section 28(iv) or any other section of the Act or even if benefit/perquisites are in the nature of capital assets.
2. No tax is required to be deducted under section 194R of the Act on sales discount, cash discount and rebates allowed to customers. It is clarified that such relaxation would not apply to a situation of free samples or incentives in the form of cash or kind other than discount and rebate.
3. The valuation would be based on FMV of the benefit or perquisite except in following cases:-

    (i) The benefit/perquisite provider has purchased the benefit/perquisite before providing it to the recipient. In that case the purchase price shall be the value for such benefit/perquisite.

    (ii) The benefit/perquisite provider

manufactures such items given as benefit/perquisite, then the price that it charges to its customers for such items shall be the value for such benefit/perquisite.

It is further clarified that GST will not be included for the purposes of valuation of benefit/perquisite for TDS under section 194R of the Act.

4. *Treatment of reimbursement of out of pocket expense incurred by service provider in the course of rendering service is benefit/perquisite* – If the invoice is not in the name of the payer of benefit and the payment is made by him directly or reimbursed, it is the benefit/perquisite provided by the deductor to the benefit recipient for which deduction is required to be made under section 194R of the Act.

5. Expenditure pertaining to dealer/business conference would not be considered as benefit/perquisite for the purposes of section 194R if such conference is held with the prime objective to educate dealers/customers.

6. The requirement of law is that if a person is providing benefit in kind to a recipient and tax is required to be deducted under section 194R of the Act, the person is required to ensure that tax required to be deducted has been paid by the recipient. Such recipient would pay tax in the form of advance tax.

7. Section 194R is not applicable on benefit/perquisite provided by, an organization in scope of The United Nations (Privileges and Immunity Act) 1947, an international organization whose income is exempt under specific Act of Parliament (such as the Asian Development Bank Act 1966), an embassy, a High Commission, legation, commission, consulate and the trade representation of a foreign state.

8. It is not required to be deducted on the issuance of bonus or right shares by a company in which the public is substantially interested

Conclusion

[1]In 2022, the Indian e-commerce market is predicted to increase by 21.5%, reaching US$ 74.8 billion. India's e-commerce market is expected to reach US$ 350 billion by 2030. 100% FDI is allowed in B2B e-commerce and 100% FDI under the automatic route is permitted in the marketplace model of E-commerce. Further, the recent amendments announced in the Income-tax Act,1961 and GST are a positive shift for managing the business of E-Commerce. Therefore, the primary responsibility is to be well equipped to tackle the business challenges and comply with the various Acts to safeguard the interest of the company.

[1]Source: https://www.ibef.org/industry/ecommerce-presentation

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TRANSITIONAL CREDITS

WHO WILL HAVE THE LAST LAUGH?

Seems like there a streak of landmark Supreme Court rulings is going on in the field of Indirect Taxation!!! In yet another big move, the Supreme Court, in the case of ***UOI v. Filco Trade Centre Private Limited, 2022-VIL-38-SC*** ('Filco') has given extraordinary relief to taxpayers across nation by directing Revenue to re-open GST Portal for 2 months for availing Transitional Credits. The Authors through this Article have analyzed this welcome decision in backdrop of what all could have been done, what other consequences may follow and what taxpayers need to be wary of.

The issue before the Court in instant matter related to nature of timeline (directory or mandatory) prescribed under Rule 117 of the CGST Rules, 2017 for transitioning of Credit. To put it into context, as per Section 140(1) of the CGST Act read with Rule 117, taxpayers were required to file their TRAN-1 & TRAN-2 forms before December 27, 2017 and any credit not carried forward from erstwhile regime to GST regime by this date was deemed to be lapsed. Henceforth, transitioning of Credits of erstwhile taxes was subject to timely filing of forms under GST.

At its core, this issue related to timeless question of whether a taxpayer's Credit of taxes paid on its input supplies is his vested right which must be protected at all costs or is merely a benefit on which Government can put conditions?

Pertinently, several High Courts across country, in a series of judgments[1] had acknowledged problems faced by taxpayers in transitioning Credit due to various technical glitches on the Portal and given relief by way of either reopening of Portal or allowing taxpayers to avail the Credit in their GSTR-3B. Some had even gone to the extent of allowing relief by way of cash refunds.[2] The Delhi High Court in the case of ***SKH Sheet Metal Components v. UOI, 2020-VIL-255-DEL*** had categorically noted that Rule 117 prescribing timelines is only procedural in nature and cannot take away substantive right of claiming Credit. On the contrary, the Bombay High Court in the case of ***Nelco Limited v. UOI, 2020-VIL-143-BOM*** had upheld the sanctity of timelines and noted that transition of Credit under Section 140 was a mere concession that came at the cost of fulfillment of conditions.

1 Adfert Technologies Private Limited v. UOI, 2019-VIL-537-P&H, SLP not admitted by SC; Brand Equity Treaties Limited v. UOI, 2020-VIL-196-DEL, stayed by SC
2 Vetrivel Explosives Private Limited v. UOI, 2022-VIL-292-MAD

Fortunately, or unfortunately, the Supreme Court found its way out of this question without commenting on the correctness of prescription of timelines by use of its extraordinary powers to do justice. One way of looking at SC's direction to allow re-opening of Portal for a limited period of time is reinforcement of sanctity of timelines and following of procedure in the first place. On the other side, SC has allowed all taxpayers to avail this benefit, thus effectively making no differentiation between taxpayers who had attempted to follow the timelines and the process and those who hadn't.

Be that as it may, all taxpayers now have an opportunity to file or revise their TRAN-1 & TRAN-2 forms from September 2022 to October 2022 after which Revenue is required to pass Orders on veracity of claims on merits within 90 days. These Orders will be passed after providing opportunity of personal hearing. The judgment further states that the Credit will reflect in Electronic Credit Ledger of taxpayers only after this verification. In Authors' humble view, this is where SC has ignited new issues.

Bare perusal of provisions on transitioning of Credits under the CGST Act and respective rules elucidates that there was no requirement of pre-verification of claims under the law. In other words, while department could very well have questioned the veracity of transitioned Credit post availment, this power would have to be exercised within four corners of demand and recovery provisions of the CGST Act. Interestingly, demand and recovery provisions under GST law i.e. Section 73 and 74 of the CGST Act are restricted to demand and recover Input Tax Credit ('ITC') and definition of ITC does not include Transitional Credit in its scope. To put it simply, the CGST Act as it stands today does not contain substantive provisions for demand and recovery of Transitioned Credit. Hence, eligibility of Credit of tax paid under erstwhile laws could only have been questioned under the respective laws and not under GST. As opposed to this, in its magnanimity, the SC has introduced an additional condition on eligibility of Credit availed under erstwhile laws. Taxpayers now need to go over additional painful process of explaining veracity of their claims to officers before they are able to transition them and the ball goes again in Revenue's court. Possibility of the entire Credit being questioned during revision of a small portion is also very likely. In this background, it would be apposite to ponder about the scope of relief which the Court was authorised to give in the light of explicit bar on judiciary to legislate.

Therewithal, taxpayers who had been granted relief by High Courts by allowing Credit in GSTR-3B may now face scrutiny on failure to take corrective measures. Several issues like refund claim of erstwhile taxes paid after implementation of GST will continue undeterred.

Having said that, the judgment is sure to bring relief to scores of taxpayers suffering at the hands of a non-functional Portal. Re-opening of Portal is also an opportunity for litigants to keep their claim of Credit of cesses alive. Hopes now rest on GST Council which is expected to lay down scope of verification of claims through guidelines but well, how dreamy can one really be? And if at last hopes rest on an executive body, who really will have the last laugh?

The article was first published on VATinfoline Multimedia [VILGST].

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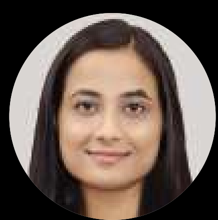

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CANTEEN FACILITY AT WORKPLACE

FOOD FOR THOUGHT REMAINS

During visit to any factory set up in India, few common features can be seen across, including presence of canteen facility, medical rooms etc. The reason for the same is mandate of these facilities under the provisions of the Factories Act, 1948. Along with statutory requirement, provision of food (complimentary or at concessional rates) has been associated with good work culture and believed to increase workplace production.

Taxation of provision of food (perquisites) under GST has been a tangled issue due to multiple reasons, ITC being restricted on food / outdoor catering service and employees being related party to name a few. Need for clarification on this front has been felt for long now.

On eve of 5th GST Anniversary, when GST Council announced that clarification will be announced on this issue, taxpayers rejoiced that at least complete clarity on the issue will be available. They expected that clarification will help them decide future dispute free course of action and even use it in upcoming departmental audits. To much disappointment, even though some issues have been clarified by CBIC, complete clarity was still missing in ***Circular No. 172/04/2022-GST*** dated ***July 6, 2022*** ('Circular 172').

The article intends to provide a 360 degree view point on this issue.

GST on canteen recovery

It is a common industry practice that companies engage canteen contractors for providing food to its employees and recovers a subsidized amount from them for providing such food. The balance cost is borne by companies.

Employer and employees are related persons under GST and any supply between them in the course of business, even without consideration, qualifies as supply. Notably, service provided by employee to employer in course of his employment is outside the

purview of GST.[1]

Here the first question which taxpayers face is whether various perquisites provided by employer to employee are exigible to GST or not. In general sense, 'perquisite' is any casual emolument or benefit attached to an office or position in addition to salary or wages, viz. canteen facility, transportation, accommodation, medical insurance, parking facility, office tours / trips etc.

There was a school of thought (including advance ruling[2]) which believed that on account of being related persons, GST is payable even on free meals provided to employees. The authors as well as rulings or Appellate Authority for Advance Ruling[3] ('AAAR') were of contrary view that such perquisites are condition to employment contract and not in lieu of any non-monetary consideration.

Clearing the air, Circular 172 has clarified the issue and removed any doubts that any perquisites provided in terms of contractual agreement will not be subject to GST.

Points not clarified

One point worth pondering here is that whether the term 'contractual agreement' will include verbal contracts as well. In authors' view, while verbal contracts are enforceable by law and should be included, it will be an enormous task for taxpayers to evidence the same before department and hence, they should attempt to capture all perquisites / other facilities in HR policy or any other document.

Importantly, Circular 172 has not settled the dust on issue pertaining to **partial recovery for perquisites**. For instance, in case of canteen facility, employer recovers a subsidized amount of Rs. 25 from employee (while paying Rs. 100 to canteen contractor). For partial recovery, different views prevail for GST liability:

- No GST is payable since even Rs. 25 is charged as part of contractual arrangement. Circular 172 has not distinguished between perquisites provided free for partial consideration. Hence, as long as same is part of contractual arrangement, GST will not be leviable.

- GST should be payable since same qualifies as supply of service. However, since employer and employee are related persons, GST should be payable on Open Market Value *viz.* Rs. 100.

In authors' view, third view should be taken i.e. differential amount (Rs. 75) should qualify as a perquisite and should not be taxed if it was agreed under employment contract. However, GST should be payable on Rs. 25 which is charged for provision of canteen facility to employees.

The Circular 172 has maintained its silence on this aspect, which has been in discussion for long and immediate guidance on the issue is required.

ITC eligibility on canteen services

The next question which has arisen in mind of taxpayers (post February 1, 2019) is eligibility of ITC on canteen expenses, which is often a significant expense.

Section 17(5) of the CGST Act enlists goods and services on which ITC is barred. Section 17(5)(b)(i) restricts ITC on outdoor catering service, except where:

1 Para 1 of Schedule III of the Central Goods and Services Tax Act, 2017
2 Mfar Hotels & Resorts Private Limited, 2020-VIL-296-AAR
3 Beumer India Private Limited, 2022- VIL-3-AAAR

- Such inward supply is used for making outward taxable supply of the same category [Proviso to Section 17(5(b)(i)]; or
- *Such services are obligatory for an employer to provide to its employee under any law [proviso after Section 17(5)(b)(iii)]*

There has been enough controversy on second exception provided in the law in form of proviso given at end of Section 17(5)(b)(iii). There were contrary advance rulings[4] on whether ITC should be available on canteen services provided to employees as part of mandatory obligation set out under Factories Act, 1948 or not, disputing whether proviso should be read with sub-clause (iii) or entire Section 17(5)(b).

Circular 172 on this issue rightly relies on agenda to 28th GST Council Meeting that clearly gives a mention that the proviso is being inserted to allow ITC on goods / services provided under an obligation by employer.
This clarification was much needed as the interpretation by department and adverse advance rulings would have led to unnecessary litigation on this issue.

Points not clarified

Few interesting points relating to eligibility of ITC emerge in case of partial recovery from employees, when the issue is seen in completeness. As discussed above, there are different views possible on outward GST liability in case of recovery from employees. However, each view will also have corresponding implications on ITC eligibility on canteen services, which will be independent from points clarified above.

This confusion furthers in light that outward canteen services attract GST rate of 5%, with a condition that deems such service **akin to exempt supply** under GST. Hence, even though taxpayers decide to pay GST at outward stage, there will still be proportionate reversal of ITC on such supplies.

Way forward

Circular 172 is definitely a welcome step and clarifies all issues for taxpayers who provide canteen facility but do not recover any amount from employees. However, for taxpayers who undertake partial recovery, issues remain from GST liability as well on ITC eligibility standpoint.

Thus, taxpayers should consider filing a representation on pending issues as well, hoping that the same get clarified in near future. Meanwhile, taxpayers should take an informed call analyzing all points and undertaking a cost benefit analysis.

The article was first published on Taxsutra.

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4 Bharat Oman Refineries Limited, 2021-VIL-73-AAAR, Musashi Auto Parts India Pvt Ltd, 2022-VIL-35-AAAR, Tata Motors Limited, 2021-VIL-316-AAR,

GST ON RESIDENTIAL DWELLINGS: ENIGMATIC APPROACH

The recent 47th GST Council meeting has left everyone interpreting and analysing the sundry amendments made; so much so that it's been more than a month and there are active discussions happening around us even today. The open-ended points, the ambiguous clarification and the equivocal notifications have left the taxpayers in the lurch.

Amongst these amendments, one amendment which has raised eyebrows is the withdrawal of exemption of renting of residential units to registered person. The said supply now finds its place under the supplies covered under the Reverse Charge Mechanism (RCM) notification. While some may ponder as to why this amendment is so popular and being discussed at various forums, it becomes imperative to analyse the amendment and the implications of such amendment.

Prior to 18 July 2022

Prior to the amendment coming into force, Entry no. 12 of Notification no. 12/2017-CT (R) dated 28 June 2017 exempted ***'Services by way of renting of residential dwelling for use as residence'*.** This meant that renting of residential dwelling used for residence was exempt from the levy of GST. Here, the key points to note are that the exemption was available if the following two conditions were satisfied:

- The unit rented out should be a residential unit
- It must be used for the purpose of residence

Post 18 July 2022

Vide Notification no. 4/2022 – CT (R) dated 13 July 2022, the CBIC restricted the exemption entry. The amended entry excluded the exemption to cases when such residential units were rented to a registered person. In such cases, the CBIC has prescribed such supply to be covered under the RCM. The amended exemption entry is reiterated below:

'Services by way of renting of residential dwelling for use as residence [except where the residential dwelling is rented to a registered person].'

Therefore, post the amendment the following points are important to note:

- From a blanket exemption of renting of all residential units, the exemption now reads as 'renting of residential dwelling for use as residence (except for where the residential dwelling is rented to a registered person).'
- The exception provided in the above entry has now been inserted in Notification no. 13/2017 – CT (R) dated 28 June 2017. Therefore, renting of residential dwelling to a registered person is now covered under RCM; thereby implying that the registered recipient shall be liable to pay tax in such cases.

Tabulated below is the sum and summary of the amendmen**Implications of the amendment**

Type of unit	Purpose	Lessee	Taxable/ Exempt
Residential	Residential	Unregistered	Exempt
Residential	Residential	Registered	Taxable (RCM)
Residential	Commercial	Registered	Taxable (RCM)
Residential	Commercial	Unregistered	Taxable (Forward charge)
Commercial	Commercial	Registered	Taxable (Forward charge)
Commercial	Commercial	Unregistered	Taxable (Forward charge)

Interestingly, the term 'residential dwelling' is not defined under the GST law. However, if one was to draw inference, one could refer to the definition of 'residential dwelling' given under the Education guide published under the Service tax law. The said term has been defined as '*residential accommodation other than hotel, motel, inn, guest house, campsite, lodge, houseboat or like places meant for temporary stay'.*

Therefore, basis the above definition and basis common parlance, residential dwelling is a unit meant for residence purpose and not commercial purpose.

However, Entry no. 5AA inserted in Notification no. 13/2017 – CT (R) includes renting of residential dwelling to a registered person does not mention any specific usage of the dwelling. Therefore, an interpretation is being made that even if a residential dwelling, used for commercial purpose, is being rented to a registered person, it shall attract GST under RCM. Notably, earlier, the landlord (if registered under GST) would have been charging GST under forward charge.

Issues and possible interpretations

The said amendment comes with its own set of issues and possible interpretations. We have listed some issues below:

1. <u>Ambiguity on what constitutes as a residential dwelling and its purpose</u>

   While the term itself is self-explanatory, what remains a mystery is that Entry no. 5AA of Notification no. 13/2017 – CT(R) nowhere mentions that such residential dwelling should only be used for residential purpose or for commercial purpose. This leads us to an interpretation that for whatever purpose the registered recipient is using the dwelling, RCM liability shall arise.

   Moreover, the fact that residential dwelling is not defined under the GST law is another ambiguity which adds to the confusion.

   Interestingly in the case of ***Borbheta Estate Private Limited,*** the West Bengal AAR held that exemption under Notification 12/2017 shall be available if the dwelling is used as residence; irrespective of whether they are let out to individuals or business entities. On the contrary, the Karnataka AAAR upheld the decision of Karnataka AAR in the case of ***Sri. Taghar Vasudeva Ambrish*** to state that letting of premises to a lessee for further sub-lease for residential purpose shall not be eligible for an exemption as it is a commercial activity. Furthermore, the Maharashtra Authority for Advance Ruling in the case of ***M/s Ghodawat Eduserve LLP*** interpreted the meaning of 'residential dwelling' in context of a hostel as a place where there is kitchen and no restriction to cook food, no restriction for visitors, no embargo on visits and stay of family etc. Thus, multiple rulings have tried to decipher the meaning of term residential swelling but we have contradictory interpretations which do not guide us towards the right path.

2. <u>Place of supply in respect of immovable property</u>

   Section 12(3)(a) of the IGST Act, 2017 specifies the place of supply in respect of the immovable property as the location of such immovable property. Further, as per Section 7 and 8 of the IGST Act, 2017, where the location of supplier and place of supply are in the same state, it shall be an intrastate supply and CGST+SGST would be levied. Let us now take an example where supplier and residential swelling is in the same state. However, the registered recipient is located in a different state. In such cases, the recipient shall be required to pay CGST+SGST of the supplier's state under RCM. However, in absence of registration in the given state, it will be a challenge to pay tax in that state.

Moreover, Section 24 of the CGST Act, 2017 requires compulsory registration of person required to pay tax under RCM. Accordingly, the interpretation creates a grey area whereby it becomes vital to determine whether a person should obtain registration to discharge GST on rental services or because the person is unregistered, such RCM notification shall not be applicable to it.

Furthermore, if the recipient starts taking registration in all states where it wishes to rent property, its compliances shall increase multi-fold.

3. <u>Taxability of apartments/ accommodations taken by corporates for their employees and directors</u>

Often it is seen that corporates hire apartments and houses for their employees in various places. Such accommodation is used for residential purpose by the employees. The question that arises here is that whether such expense would be considered for personal use or for furtherance of business and subsequently whether it will be eligible as credit in light of Section 17(5). The department could raise a question alleging that since such accommodation has been used for personal stay of employee, ITC in this regard may not be available.

Further, another aspect that needs deliberation here is the provision of accommodation from employer to employee and the taxability of the same. While Schedule III to the CGST Act, 2017 [Activities not to be treated as supply] includes supplies from employees to employers. However, the same does not include vice versa. In this regard, the CBIC has recently issued Circular no. 172/04/2022 dated 6 July 2022 which clarifies that perquisites provided by employer to employee would not attract GST as long as the same is contractually covered.

4. <u>Change in rate of tax and time of supply provisions</u>

Section 14 of the CGST Act, 2017 specifies the time of supply in case of change in rate of tax. However, it does not prescribe the mechanism to determine the time of supply in case of continuous contracts like that of renting a residential dwelling. In some cases, the taxpayers have paid tax under RCM on proportionate basis (i.e., for 12 days of July 2022), whereas in some cases, tax has been paid at 100% rent considering that invoice was raise at end of July 2022. Hence, taxpayers are adopting different approaches for the same transaction thereby creating divergence.

Conclusion

With so many open issues and interpretations, the amendment seems to be more of a pitfall than a boon. The CBIC may have wanted to extend their tax net to residential rental incomes derived from registered taxpayers, but in the endeavour to increase the depth of their chest of their treasury they have advertently or inadvertently created a loophole in the law. Unless, timely clarification is not received, we may be looking at a fresh subject of litigations, disputes and of course a sea of contrary AARs!t

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ACCOUNTING FOR STOCK APPRECIATION RIGHTS (SARS)

1. <u>Background</u>

Employee motivation and retention are the key priorities for any management amongst the other key aspects of the business. As a part of the employee retention plans and to reward the employees for their efforts in improving the overall performance, the employers use various methods of compensating the employees. Apart from traditional method of plans like performance bonus, tenure house, retirement/ leave benefits etc., other forms of employee benefit plans like Employee Stock Option Plans (ESOPs), Employee Stock Purchase Plans (ESPPs), and Stock Appreciation Rights (SARs) are also widely used by the management. ESOP, ESPP and SAR are share-based payment plans which are also quite popular in startup companies where they cannot afford to pay high salaries to their employees. In past few years, apart from employees, even non-employees are also offered share-based payments.

Revised Guidance Note (GN) on 'Share-based Payments' issued by Institute of Chartered Accountants of India ('ICAI') in September 2020 prescribes accounting for companies that follow the Companies (Accounting Standards) Rules, 2006 (Non-Ind AS). The Revised GN deals with share-based payment transactions for employees as well as non-employees and has aligned the accounting with the Indian Accounting Standards (Ind AS). This GN applies to share-based payment plans the grant date in respect of which falls on or after April 1, 2021. For companies to which Ind AS is applicable, accounting for share-based payments is prescribed in Ind AS 102 – 'Accounting for Share-Based Payments'. Further, the listed companies are required to follow additional norms provided by SEBI with respect to the share-based payment plans.

Primarily, shared based payments are either equity settled or cash settled. Following are the other variations which can be included in share-based payments:

1. Share-based payment plans with cash alternatives
2. Share-based payment transactions in which the terms of the arrangement provide the counterparty with a choice of settlement
3. Share-based payment transactions in which the terms of the arrangement provide the enterprise with a choice of settlement
4. Share-based payment transactions among group enterprises

In this article, we have summarised key accounting treatment in respect of cash-settled SARs as per the guidance provided in the Revised GN.

2. <u>What are Stock Appreciation Rights (SARs)?</u>

A cash-settled share-based payment transaction is defined as a share-based payment transaction in which the enterprise acquires goods or services by incurring a liability to transfer cash or other assets to the supplier of those goods or services for amounts that are based on the price (or value) of equity instruments (including shares or share options) of the enterprise or another group enterprise.

SAR is defined as the rights that entitle the employees to receive cash or shares for an amount equivalent to any excess of the market value of a stated number of enterprise's shares over a stated price. The form of payment may be specified when the rights are granted or may be determined when they are exercised. In some plans, the employee may also choose the form of payment as per the rights given in the plan.

When the employees are given SARs, the employees becomes entitled to a future cash payment or shares, based on the increase in the price of the shares from a specified level over a specified period.

3. <u>How do SARs operate?</u>

Generally, the lifecycle of SAR would consist of:

- Issue of rights to the employees. Such rights granted are subject to vesting conditions determined by the company.
- Some SAR vest immediately and in some cases it vests on completion of prescribed conditions or occurrence of certain event.
- In SAR, an employee is not required to pay any price to earn the benefit of earned SAR on the fulfilment of vesting conditions.
- Upon satisfaction of the vesting conditions set out in the SARs, the company shall deliver the value equivalent to the difference between the fair market value of the shares underlying the SARs at the time of their settlement, and the exercise price.
- This value can be settled either wholly in shares ("Equity Settled SARs") or wholly in cash ("Cash Settled SARs") or a combination of the two.
- Once the SARs are settled by the issuing company, they are considered retired.

4. <u>Accounting of cash settled SARs using fair value method</u>:

The company shall recognise the services received, and a liability to pay for those services, as the employees render service.

If the SARs do not vest until the employees have completed a specified period of service, the enterprise shall recognise the services received, and a liability to pay for them, as the employees render service during that period.

The liability for cash settled SAR is measured at the fair value of the liability. The liability shall be measured, initially and at the end of each reporting period taking into an account the terms and conditions on which the share appreciation rights were granted, and the extent to which the employees have rendered service to date.

The company shall remeasure the fair value of the liability at the end of each reporting period. At the date of settlement, any changes in fair value is recognised in profit or loss for the period. The fair value is measured using option pricing model.

5. <u>Recognition and measurement: Cash Settled SARs using fair value method</u>

In the 1st year:

- For cash-settled SARs, the expenses and liability is recognized at fair value at reporting period for SARs expected to vest over the vesting period.

In subsequent years,

- Liability is recognized as per the revised estimate of SARs expected to vest and re-measure at fair value as at year-end.
- Revised cost is amortized over the remaining requisite period less amounts previously recognized.

In the year of settlement:

If the rights are exercised	*In the year of settlement of SAR,* *Expense is recognized as cash paid on exercise of SARs by employees at intrinsic value* *(Add:) Provision as at year for outstanding SARs at fair value as at year-end* *(Less:) Provision already made in earlier years*
If the rights are lapsed/unexercised	*Previously recognized liability for SARs that did not vest is reversed.*

Journal entries to be passed for cash settled SARs
1. To recognize the compensation cost determined for each reporting period:
Employee compensation expense A/c ….. Dr To Provision for payment of SARs A/c (Being compensation expense recognized in respect of SARs.)
2. To record the settlement on the exercise of SARs
Provision for payment of SARs A/c ….. Dr To Bank A/c (Being cash paid on exercise of SARs)

Note:

1. *In case, Intrinsic value method is adopted, the intrinsic value may be used, mutatis mutandis, in place of the fair value.*
2. *Balance in the 'Provision for Payment of SARs Account', outstanding at year-end, is disclosed in the balance sheet, as a provision under the heading 'Current Liabilities and Provisions'.*
3. *In the journal entries given above, expenses is increased/reversed depending upon changes in fair value or changes in the rights expected to vest.*

1. Conclusion

From the management's perspective, where they don't want to dilute equity shareholding, cash settled SARs can be very important tool which can be used for employee compensation. From the angle of performance improvement and motivating to do better, management can use cash settled SARs effectively by prescribing goals which have to be achieved for its entitlement. Also, cash settled SARs can reduce immediate cash outflow and manage cashflow effectively. In addition to accounting, there are also implications in respect of withholding of tax under the Income Tax Act which has to be considered while framing the scheme of SAR.

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The 5 KEY ASPECTS OF CORPORATE GOVERNANCE – MCA'S VISION

Corporate Governance in India is largely governed by the Ministry of Corporate Affairs (MCA), which provides corporations with the regulatory and administrative framework to contribute towards national development effectively. The MCA is a facilitator and administrator of the Companies Act 2013, Insolvency and Bankruptcy Code 2016, Competition Act 2002, and other allied statutes.

In this article, we focus on Corporate Governance using the lens of the Companies Act 2013 (the Act), which came into effect on 30 August 2013 as the successor to the Companies Act 1956. It was introduced with the vision of revamping Indian Corporate Governance and adapting to the ever-changing, rapidly-evolving business scenarios globally. Since its inception, the Act has undergone several evolutions and reforms.

The Act was also amended from time to time owing to the issues of Corporate Governance that had been unaddressed previously, which created loopholes and possible threats of interpretation. The accountability for various stakeholders, including the authorities and regulators, became a key feature of the Act.

In the current five-year plan (2019-2024), the MCA has laid down its vision to be a facilitator of world-class governance of Corporates through the administration of these Acts and Statutes.

The MCA made a considerable impact in recent years through a series of efforts via new rules, notifications, and amendments. Some important changes have been detailed below to provide current updates on Corporate Governance in India and provide a way forward for Corporates.

The vision of Corporate Governance from the lens of the Companies Act:

In the current five-year plan (2019-2024), the following key themes have been identified as areas of focus for the Government of India during this period:

A. Greater ease of doing business
B. New legislations
C. Single source of truth for key financial data
D. AI and analytics-based MCA21 v3 (MCA web portal)
E. Overhaul of Corporate Governance framework

The Act focused on the digital era to ensure the law's smooth and faster implementation. The compliances were digitized with the MCA's online portal and reporting shifted to paperless. This digitized system was time efficient, resulted in faster turnaround time by the authorities, maintenance of the records online, and simplified the verification of facts about the companies.

Some of the notable reforms introduced by the MCA in each of the themes are given below.

A. Greater Ease of Doing Business:

The Ministry has made several efforts to ease the doing business quotient in India and continues to do so year after year.

- **Condonation of Delay Scheme:** Over the course of time, many companies had defaulted

in the filing of annual returns, balance sheets, etc., and were served with strike-off notices. Pending the filing of annual reporting, the companies could not conduct business in the normal course of business.

The MCA introduced the Condonation of Delay Scheme in 2018, wherein companies could complete the filings with late fees. This reform identified genuine companies, and the strike-off was initiated for defaulting companies. Due to this, companies were allowed to start their compliance functions with a clean slate.

Incorporations and Registrations introduced in Spice+: The Spice+ form presented in the year 2020 allowed stakeholders to receive the necessary statutory registrations as per the state of incorporation. This reduced follow-ups from stakeholders with the regulatory authorities and ensured that a newly incorporated company had all the required statutory registrations so that business activities could begin immediately.

As per MCA, the process has improved tremendously and currently the department can approve name applications and issue certificates of incorporation within two days.

B. New Legislations

With the view to keeping abreast with the constantly changing business scenario and requirements, several reforms were introduced by the Ministry. Some of the major reforms are discussed below:

- **Companies Fresh Start Scheme (2020):**
In order to give an opportunity to the defaulting companies and to enable them to file overdue documents in the MCA-21 registry, the Central Government, in the exercise of the powers conferred under Section 460 read with Section 403 of the Companies Act, 2013, introduced the "**Companies Fresh Start Scheme, 2020 (CFSS-2020).**" This scheme permitted the filing of missed/delayed compliances at nominal fees with the Registrar of Companies (ROC). The scheme saved the additional filings cost from stakeholders and cleared the compliance blockage.

- **Decriminalization of several offences:** After four years of the implementation of the Act, the MCA's decision to decriminalize certain offences under the Act has provided major relief to the industry and improved ease of doing business in India.

- **Introduction of National Financial Reporting Authority Rules (NFRA), 2022:**
The industry has welcomed the rationalization of penalties under the NFRA Rules 2022. NFRA amended the penalty in case of infringement of NFRA Rules. Earlier, it depended on Section 450 (Punishment where no specific penalty or punishment is provided) of the Companies Act 2013 was applicable and referred. Now, the reference to the Companies Act is dropped and the rule itself prescribes the penalty quantum. This amendment reduces the one-time penalty volume, but maximum limits are removed for the continuing default, exposing the defaulter to a higher monetary risk.

C. Single source of truth for key financial data

The MCA is restructuring how data is captured at the input stage and how it is stored, processed, and analyzed further using artificial intelligence and machine learning algorithms. They are committed to leveraging new-age technologies to bring value-added services to corporates.

With this background, the MCA introduced DIR-3 KYC active form amendments recently.

- **DIR- 3 KYC, ACTIVE Form:**

Additional reporting standards were introduced to track down shell entities and untraceable companies.

D. AI and analytics-based MCA21 v3 (MCA web portal)

The MCA is focused on leveraging artificial intelligence and machine learning tools to deploy next-generation version 3 of the MCA

21 system and have introduced MCAv3 for LLP earlier this year and is already in the process of migration for some of the process for Pvt. Ltd. as well.

- **Digitization of the portal:**

  With the Companies Act 2013, entire reporting on the portal was digitized. Currently, the MCA is revamping its website and plans to introduce a new version focused on online forms and data collation. The first phase of this new website is live and available for selective processes and forms.

  A separate digitized portal was introduced for Limited Liability Partnerships (LLPs) in 2022. Post the completion of that update, all LLP forms are now web-based.

E. Overhaul of Corporate Governance framework

Good Corporate Governance requires a constant emphasis on ethics, transparency, and accountability in the operations of the objective. In this context, the MCA is working closely with the Central Government to crack down on the non-ethical behavior in Indian companies and introduced a new regulation earlier this year.

- **Home-Ministry Clearance for Directors of specific nationalities:**

  Given India's international relations with neighboring countries, the MCA has mandated that any Directors from the specified list of neighboring countries will require a clearance from the Home Ministry. The clearance, if applicable, must be declared in the Director consent form (DIR-2). New formats of the same have been applicable from 1 June 2022.

Closing Remarks and The Way Forward:

In addition to the points mentioned above, various other amendments have been taken up from time to time to aid the set-up and governance processes. The MCA is continually focusing on taking futuristic actions and updating requirements, procedures, and the portal accordingly.

The digitization of the portal, forms, and procedures has come a long way since its inception in the early 2000s. The system has been made robust to track any non-compliances or delayed compliances. The penalties, although monetary, have been increased to inculcate the habit of timely compliance among stakeholders. The evolution will go on as per the newer developments and enable in keeping the promise of making India a global investment hub and a governance leader.

There are areas where MCA has worked a lot to improve the ease of doing business in India. Still, there are a few areas where some intervention is required to streamline the process – complete online/automation of Shop Acts and state-specific registration. This will help any companies to get all registration at one place at the time of incorporation.

Automated process for incorporation and allied registrations to digitize and improve the workflow and ease of doing business in India. Introduction of wallet systems in MCA to make statutory payments (Concept exists in the Middle East countries and has been working well to make various statutory payments).

The MCA should continue consolidating the other allied registrations at the time of initial business set-up. While the MCA has facilitated the smooth implementation of incorporation, they should also consider the costs involved in setting up.

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IMPLICATIONS OF COMPANY NAME STRIKING-OFF PROCEEDINGS FOR A CREDITOR

This article examines the extent to which creditor's rights are secured in the event of company name striking-off proceedings under the Companies Act.

<u>ROC can order removal of name in two situations</u>
Under section 248 of the Companies Act, 2013 (hereinafter 'the Act'), ROC may order removal of a company's name in the following two circumstances:

(i) when a company has failed to commence its business within one year of its incorporation, or

(ii) when a company is not carrying on any business or operation for a period of two immediately preceding financial years and has not made any application within such period for obtaining the status of a dormant company under section 455 of the Act

On compliance with notice requirements under section 248(4), the Registrar may strike off the name, and publish notice thereof in the Official Gazette, and **upon such publication, the company shall stand dissolved.**

<u>Creditors inter-alia have the following rights</u>

- Right to notice of proceedings
- Right to object to name removal
- Right to demand creation of a provision for realization of debt due, and to obtain an undertaking from the company management
- Right to
- Right to appeal against ROC's orders
- Right to proceed under IBC irrespective of name removal proceedings

The above are elaborated below.

<u>Prior notice of the proceedings must be given, and notice to be published</u>
Prior to striking of the name u/s 248(5), the Registrar is required to issue a public notice

inviting objections from the general public. **Companies (Removal of Names) Rules 2016** (in short 'the Rules') prescribes a form of public notice vide Form No.STK-5A. Rule 7 inter-alia requires that the notice:

(i) must be placed on MCA's official website on a separate link on the website;

(ii)published in the Official Gazette;

(iii)published in English language in a leading English newspaper and at least once in vernacular language in leading vernacular language newspaper, both having wide circulation in the State in which the registered office of the company is situated

<u>Creditor's right to object</u>

preceded by a satisfaction to be recorded by the ROC u/s 248(6) of the Act that *sufficient provision has been made for the realisation of all amount due to the company and for the payment or discharge of its liabilities and obligations by the company within a reasonable time and obtain necessary undertakings from the managing director, director or other persons in charge of the management of the company, if necessary*

<u>Additionally, assets must be made available for payment</u>

Further, under s248(6), the assets of the company shall be made available for the payment/discharge of all its liabilities and obligations even after the date of the order

Form No.STK-5A inter-alia provide as follows:

> *"*
>
> *1.*
>
> *2.Any person objecting to the proposed removal/striking off of name of the companies from the register of companies may send his objection to the office address mentioned hereabove within thirty days from the date of publication of this notice….."*

<u>Right to provision to be made; Right to undertaking to be given by management; Registrar to record satisfaction</u>

An order to strike-off the name must be removing the name of the company from the register of companies.

<u>Name removal order is appealable to Tribunal before expiry of 20years by creditor</u>

Under section 252.

***Any person aggrieved** by Registrar's order (notifying a company as dissolved), may file an appeal to NCLT within three years from order date. If Tribunal is of the opinion that the removal is not justified (in view of the absence of any of the grounds for removal) it may order restoration of name*

If a creditor, feels aggrieved by the company having its name struck off, NCLT on an

application inter-alia by creditor before the expiry of **twenty years** from the publication in the Official Gazette of the notice of removal u/s 248(5), if satisfied that the company was, (i)at the time of its name being struck off, carrying on business or in operation or (ii)otherwise it is just that the name of the company be restored, order the name of the company to be restored to the register of companies,

Further, NCLT can give other directions and make such provisions as deemed just for placing the company and all other persons in the same position as nearly as may be as if the name had not been struck off

Certificate of incorporation deemed cancelled except for realising amount due to company

Certificate of Incorporation is deemed cancelled from date of dissolution under section 248 except for realising amount due to the company and for the payment or discharge of the liabilities or obligations of the company.

In the event of dissolution, the properties of the company vest with the government.

On the company standing dissolved upon publication of striking off name in the official gazette the properties of the company stand vested with the government, and therefore they remain in safe custody to enable creditors' enforcement against the said properties.

CIRP under section 7 and 9, IBC maintainable

CIRP under sections 7 and 9 of the IBC are maintainable in respect of a company whose name has been struck off, and in such event the creditors can work out their rights under the IBC. Further, NCLT has been empowerd to restore name of the company and all other persons in their respective position for purpose of initiation of CIRP.

In conclusion:

Adequate safeguards for creditors of a defunct company remain, provided the company has assets to meet its liabilities. However, assets are inadequate creditors face the prospect of rated distribution of assets. Thus the law as it stands today in reality does not safeguard creditors' interest, and funky hair-cuts have become the norm!

Sai Srujan Tayi
Advocate

Pooja Jain
Advocate

Webinar on Customs Law and Regulations

In this Webinar on Customs Law and Regulations scheduled on 5th July 2022, here, Introduction on Customs, Budget impact on Customs, Introduction of CAROTAR Rules in India was given by N V Raman, Founder Partner at NOVELLO Advisors LLP.

India - UAE Comprehensive Economic Partnership Agreement (CEPA)

In this Webinar on India - UAE Comprehensive Economic Partnership Agreement (CEPA) scheduled on 6th July 2022, here, Overview of the CEPA and its benefits for Indian businesses dealing with the UAE and vice versa, Review of e global supply chain to augment trade benefits, Conduct Data Analytics & Evaluate the Rules of Origin requirements, value addition was jointly taken by KRISHNA BARAD, Partner/ Customs & International Trade Indirect Tax at BDO India & Abhishek Singhania, Director- Customs & International Trade at BDO India.

Virtual Training on Mergers & Acquisitions and Business Valuation

In this Virtual Training on Mergers and Acquisitions scheduled on 15th July 2022 , where Introduction and Negotiation techniques from the M&A World was discussed by Harshal Choudhary, Principal Consultant/Associate Director, Transaction Advisory at Nexdigm. Shafaq Uraizee Sapre, Partner at JSA I advocates & solicitors jointly shared their insights on M&A Deal Documentation, Legal Issues & Tax Implications & Shraddha Shah, Associate Director, M&A Tax and Regulatory Services, Private Client at Nexdigm.

Session on Corporate Restructuring was taken by Subodh Dandawate, Associate Director - Regulatory Services at Nexdigm. In the last session Jayasimha Pasumarti, Director - Investment Banking at JPR Capital provided insights on Unlocking Key Factors that Influence Valuation.

Fraud Prevention, Detection and Investigation Training Program

Fraud Prevention, Detection and Investigation Training Program was scheduled on 20th July 2022, where How to Identify Corporate Frauds & Overview of fraud schemes was discussed by Aditya Murli, Director at Alvarez & Marsal & Akshay Kale, Senior Manager at Alvarez & Marsal. Session on Conducting a Fraud Risk Assessment and Recognizing the Red Flags of Internal Fraud was taken by Rahul Gosain, Managing Director at Alvarez & Marsal.

Session on Fund Trail Product Demo was given by Gaurav Batheja, Chief Executive Officer at iAcuity Fintech Pvt Ltd. Atul Luthra, Director at PwC shared his insights on India Investigation Techniques- Forensic Accounting Investigation - What it Is; whereas Establishing an Anti- Fraud Culture was taken by Rahul Lalit, Partner at PwC India.

GST and Customs- Contemporary Issues

GST and Customs- Contemporary Issues scheduled on 21st July 2022 in New Delhi at Hotel Eros brought to you by Achromic Point, commenced with the welcome address given by Aashish Verma, Director of Achromic point. Himanshu Goel, Associate Partner at TR Chadha & Co LLP shared his insights on Refunds under GST & Intricacies of ITC.

Emerging Issues in GST instigating Litigation was taken by Manish Mishra, Partner | Head of Practice - Indirect Tax JSA. Saket Patawari, Executive Director, Indirect Tax at Nexdigm spoke upon Appeal, Revision, Offence, Penalty, Inspection, Search, Seizure, and Arrest in GST.

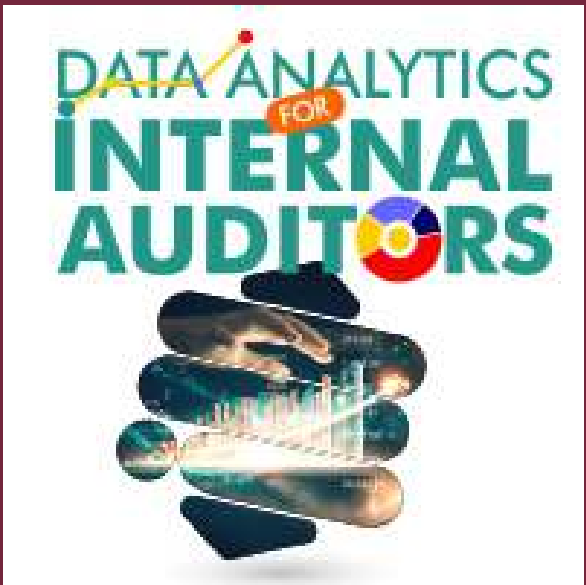
The Session on Lucrative Customs Schemes and Litigation under Foreign Trade Policy was discussed by Yogesh Gaba, Managing Partner - Indirect Tax at GABA & CO. Lalitendra Gulani, Partner at Anantham Legal shared his insights on Writ petitions including Anti-Profiteering and credits. GST on Ocean Freight – analysis of Mohit Mineral decision was taken by Jatin Arora, Partner / Lawyer - Indirect Tax at Phoenix Legal.

Commercial Litigation & Disputes: Current Trends, Developments, and Strategies 2022 and beyond

Commercial Litigation & Disputes: Current Trends, Developments, and Strategies 2022 and beyond scheduled on 29th July 2022 in Delhi at Hotel Eros brought to you by Achromic Point along with Alvarez and Marsal as Knowledge Partner, Ankura as Gold Partner, EY & SAMVAD Partners as Silver Partner, Economic Laws Practice as Associate Partner & Cyril Amarchand Mangaldas as Supporting Partner. The event commenced with the welcome address given by Aashish Verma, Director of Achromic point.

The Panel Discussion on Top commercial Litigation threats organizations, Arbitration activity, M&A Disputes was taken by Bishwajit Dubey, Partner at Cyril Amarchand Mangaldas as a moderator along with his panelists Arjun Krishnan, Partner at SAMVAD Partners, Gaganpreet Puri, Managing Director, Risk & Regulatory Leader at Alvarez & Marsal, Abhay Chattopadhyay, Associate Partner at Dispute Resolution Economic Laws Practice & Aslam Ahmed, Partner at Singhania & Co.
The Panel Discussion on Complying with regulations of Digital Payments and e-money services was taken by Alipak Banerjee, Leader, International Dispute Resolution at Nishith Desai Associates as a moderator along with his panelists Amit Jaju, Senior Managing Director India at Ankura, Ghanshaym Singla, Group Head of Internal Audit and Forensic at PayTm, Harsh vardhan Masta, Head of Digital Payments at PolicyBazaar.com. Session on Current trends and challenges in construction dispute resolution in India was discussed by Arcoprovo Mitra, Director, Construction Disputes Advisory at Alvarez & Marsal India.

The Panel Discussion on Tax Litigation management- Direct and Indirect Taxwas taken by Sachit Jolly, Partner at DMD Advocates as a moderator along with his panelists Arpinder Singh, EY Global Markets and India Leader, Forensic & Integrity Services at EY, Haroon Qureshi, Vice President – Taxes at Genpact, Vidur Puri, Senior Partner at SCV & Co. LLP & Pushpendra Dixit, General Manager & Global Tax Head at PVR Group.



How to drive value from Data Analytics in Internal Audit

How to drive value from Data Analytics in Internal Audit conducted on 4th August 2022, In this Vetrivelan A B, Director at Deloitte Risk Advisory discussed about Analytics in the context of IA & Use of Data through the Audit Lifecycle; Cyber considerations in Internal Audit and Risk Analysis? was jointly taken by Kush Wadhwa, Senior Director – Disputes and Investigations at Alvarez and Marsal, Akhilesh Garude, Analytics Manager at Alvarez and Marsal & Alok Rajput, Senior Manager – Disputes and Investigations at Alvarez and Marsal.

Session on Use of forensic techniques when you suspect fraud in the audit- Evidence considerations from an auditor was explained by Vishal Narula, Managing Director at Alvarez and Marsal.

Webinar on BEPS and MLI

Webinar on BEPS and MLI was scheduled on 10th August 2022, where, Basic introduction on what lead to Introduction of BEPS, What is BEPS? Was given by Shashishekhar Chaugule, FCA, Insolvency Professional, Registered Valuer. Prevention of Treaty abuse & Interplay between GAAR and PPT & Artificial avoidance of PE status through Commissionaire and Agency arrangements was taken by Parth Savla, Principal at Dhruva Advisors LLP.

Chetna (Naik) Thapar, Director| Corporate and International Tax at B S R & Co LLP shared her insights on Artificial avoidance of PE status & India's domestic measures to address BEPS.

Hands on Digital Training on Drafting Commercial Contracts

In this Hands on Digital Training on Drafting Commercial Contracts scheduled on 24th, 25th & 26th August 2022 , here, Hands on Digital Training on Drafting Commercial Contracts & Elements in Drafting Commercial Contracts was discussed by Pratik Patnaik, Principal Associate at SAMV D PARTNERS , whereas, Elements in Drafting Commercial Contracts was taken by Arti Narsana, Principal Associate at Vaish Associates Advocates.

Isha Sinha, General Manager | Group Head – Legal at Medicover Hospitals spoke upon Term and Termination; Entire Agreement Clauses; Governing Law, Jurisdiction and Dispute Resolution Clauses. Kavita Jitani Senior Associate at SAMV D PARTNERS shared her insights on Legal Issues Arising from Contractual Clauses. Negotiation Skills and Techniques to Ensure Effective Negotiations was taken by Prashant Jain, Co- Founder & Managing Partner at Samisti Legal; whereas Ajay Kumar, Senior Associate at SAMV D PARTNERS took the session on Understanding the Arbitration Process as an Alternative Dispute Resolution Mechanism.

GST and Customs- Contemporary Issues

GST and Customs- Contemporary Issues scheduled on 25th August 2022 in Mumbai at Hotel Orchid brought to you by Achromic Point, commenced with the welcome address given by Aashish Verma, Director of Achromic point.

Aasmee Mangla, Associate Partner at NITYA Tax shared her insights on Refunds under GST & Intricacies of ITC. The Session on Lucrative Customs Schemes and Litigation under Foreign Trade Policy, was discussed by Yogesh Gaba, Managing Partner - Indirect Tax at GABA & CO.

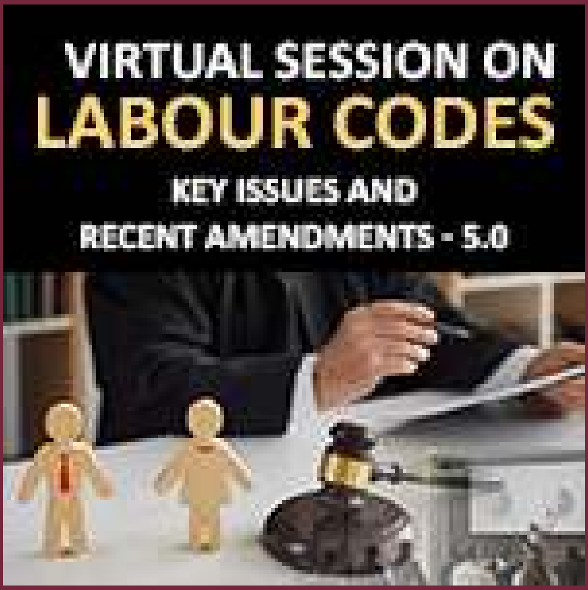
Emerging Issues in GST instigating Litigation was taken by Jatin Arora, Partner / Lawyer - Indirect Tax at Phoenix Legal. Saket Patawari, Executive Director, Indirect Tax at Nexdigm spoke upon Appeal, Revision, Offence, Penalty, Inspection, Search, Seizure, and Arrest in GST. Writ petitions including Anti-Profiteering and credits was taken by Manish Mishra, Partner | Head of Practice - Indirect Tax & Shareen Gupta, Partner, Indirect Tax at JSA.

Commercial Litigation & Disputes: Current Trends, Developments, and Strategies 2022 and beyond

Commercial Litigation & Disputes: Current Trends, Developments, and Strategies 2022 and beyond scheduled on 26th August 2022 in Mumbai at Hotel Orchid brought to you by Achromic Point along with Alvarez and Marsal as Knowledge Partner, Ankura as Gold Partner, EY & SAMVAD Partners as Silver Partner, Economic Laws Practice as Associate Partner & Cyril Amarchand Mangaldas as Supporting Partner, commenced with the welcome address given by Aashish Verma, Director of Achromic point.

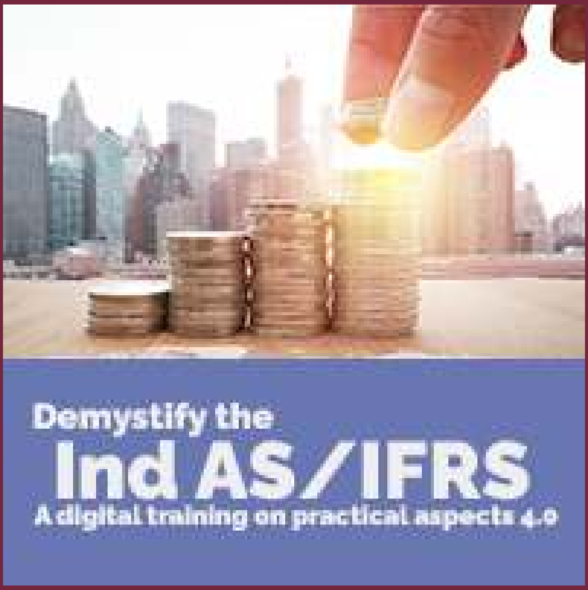
The Panel Discussion on Top commercial Litigation threats organizations, Arbitration activity, M&A Disputes was taken by Zameer Nathani, Senior Vice President and General Counsel at UFO Moviez India Limited as a moderator along with his panelists Yogen Vaidya, Partner, Forensic & Integrity Services at EY, Savani Gupte, Partner at SAMVAD Partners & Nitin Jain, Partner at Agama Law Associates. The Panel Discussion on Complying with regulations of Digital Payments and e-money services was taken by Ankoosh Mehta, Partner at Cyril Amarchand Mangaldas as a moderator along with his panelists Amit Jaju, Senior Managing Director India at Ankura, Anirban Banerjee, Global Head - Business Advocacy & Excellence TCS BFSI Operations at Tata Consultancy Services, Kush Wadhwa, Senior Director – Disputes and Investigations at Alvarez and Marsal, Dinesh Pednekar, Partner at Economic Laws Practice & Pradeep Jain, Managing Partner at Singhania & Co.

Session on Current trends and challenges in construction dispute resolution in India was discussed by Arcoprovo Mitra, Director, Construction Disputes Advisory at Alvarez & Marsal India. The Panel Discussion on Tax Litigation management- Direct and Indirect Tax was taken by Tejveer Singh, Partner at DMD Advocates as a moderator along with his panelists Neha Halgali, Senior Manager – Real Estate and Corporate at WeWork India Management Private Limited, Swathi Kamath, Head Legal at Dupont & Sahil Kanuga, Co-Head, International Dispute Resolution & Investigations Practice at Nishith Desai Associates.



Virtual Session on Labour Codes - Key Issues and recent Amendments- 5.0

In this Virtual Session on Virtual Session on Labour Codes – Key Issues and recent Amendments- 5.0 conducted on 2nd & 3rd September 2022. Here, Sessions on Wages, Social Security, Industrial Relations & Health & Working Conditions was discussed by Savitha kesav Jagadeesan, Senior Resident Partner at Kochhar and Co. & Gaurav Chatterjee, Partner at Kochhar and Co.



Demystify the Ind AS /IFRS – A digital training on practical aspects 4.0

Demystify the Ind AS /IFRS - A digital training on practical aspects 4.0 conducted on 6th, 7th & 8th September 2022, where the Income and Expenses IND AS 115, 20, 19, 102 & 12 were discussed by Vipin Kumar at Walker Chandiok & Co LLP, Assets and Liabilities was taken by Priyanjali Agarwal at Walker Chandiok & Co LLP. Anirudh Rustagi at Walker Chandiok & Co LLP spoke upon Group Accounts; Presentation and Disclosures was taken by Arpit Jain at Walker Chandiok & Co LLP. Hansraj Jangir at Grant Thornton Bharat LLP shared his insights on Financial Instruments and foreign exchange which received a lot of attention from the audience.

Workshop on Data Privacy, Digital Forensics and Cyber Investigations

In this Workshop on Data Privacy, Digital Forensics and Cyber Investigations conducted on 9th September 2022, where Data Privacy & Key Data Privacy Principles was discussed by Anirban Sengupta Partner, Cyber Security and Data Privacy PWC; Amol Pitale, Managing Director at Ankura spoke upon Digital Forensics Session on Redefining Cyber Crime was taken by Amulya Podile Pepalla,
Associate Director at PwC.

GST and Customs- Contemporary Issues

GST and Customs- Contemporary Issues scheduled on 16th September 2022 in Bengaluru at Hotel Radisson Blu brought to you by Achromic Point, commenced with the welcome address given by Aashish Verma, Director of Achromic point, whereas; Akbar Basha, Partner at Hiregange & Associates LLP shared his insights on Refunds under GST & Intricacies of ITC. Sanjay Chhabria, Director, Indirect Tax at Nexdigm spoke upon Appeal, Revision, Offence, Penalty, Inspection, Search, Seizure, and Arrest in GST.

The Session on Lucrative Customs Schemes and Litigation under Foreign Trade Policy was discussed by CA Sowmya, Advisor-Indirect tax and Foreign Trade Policy. Emerging Issues in GST instigating Litigation and Writ petitions including Anti-Profiteering and credits was taken by Darshan Bora, Partner at Economic Laws Practice, Nischal Agarwal, Principal Associate at Economic Laws Practice and Aanchal Mundada, Principal Associate at Economic Laws Practice.

Certificate Course on International Tax

In this Certificate Course on International Tax scheduled on 14th, 15th & 16th September 2022, where the Introduction to International Tax & Penalties and Dispute Resolution was discussed by Rahul Charkha, Partner, Direct Tax at Economic Laws Practice , International Tax Treaties were taken by Rahul Chheda, Senior Manager, International Tax at Nexdigm & Debojit Mahanta, Associate Director I Corporate and International Tax at B S R & Co. LLP.

Session on BEPS and MLI was jointly given by Harshit Khurana, Principal Associate at Laxmikumaran & Shridharan & Aanchal Jain, Direct Tax Associate at Laxmikumaran & Shridharan; Guiding Concepts of Transfer Pricing was taken by Nishant Shah, Senior Manager, Global Transfer Pricing at Nexdigm.

ACHROMIC POINT

Upcoming Events – 2022 - 2023

One Day Tax Colloquium – Hybrid Event

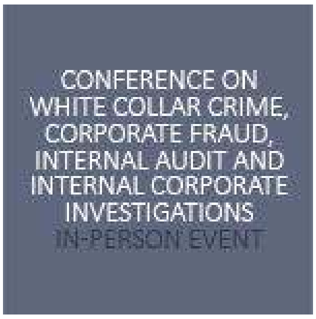
11th October 2022 – Delhi, Hotel Eros

Virtual Training Course on Transfer Pricing and Related Compliances

12th & 13th October 2022

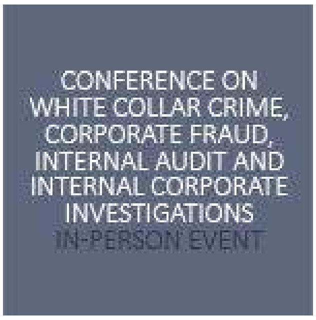
Masterclass on Companies Act- Key Issues and Recent Amendments

19th October 2022



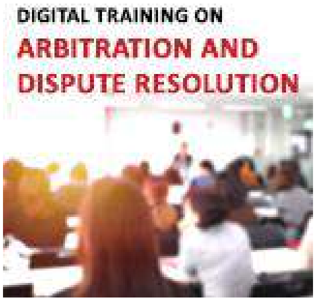
Conference on White Collar Crime, Corporate Fraud, Internal Audit and Internal Corporate Investigations - In-Person Event - Delhi

16th November 2022 – Hotel Eros New Delhi



Conference on White Collar Crime, Corporate Fraud, Internal Audit and Internal Corporate Investigations - In-Person Event - Mumbai

29th November 2022 – Hotel Orchid Mumbai

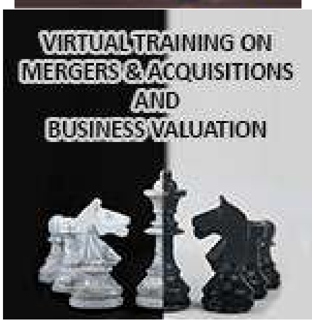


Certificate Course on Practical Knowledge of Arbitration and Dispute Resolution

2nd & 3rd December 2022

Cross Border Remittances - A FEMA Perspective

9th December 2022



Virtual Training on Mergers & Acquisitions and Business Valuation

15th December 2022

Digital Training on Contracts Drafting, Negotiation, Contractual Fraud and Dispute Resolution

18th January 2023 | 19th January 2023 | 20th January 2023

Masterclass on Companies Act- Key Issues and Recent Amendments

24th January 2023

Certificate Course on Detecting and Preventing Internal and External Fraud

31st January 2023

Data Analytics for Internal Auditors

24th February 2023

Virtual Session on Labour Codes - Key Issues and recent Amendments- 6.0

16th February 2023 | 17th February 2023

4th Annual Conference on Fintech Disputes, Regulatory and Compliance

17th February 2023 - Bengaluru

6th Annual GST Summit and Awards- Conference & Awards

3rd March 2023 – New Delhi

6th Annual Direct Tax Summit and Awards 2022

23rd March 2023 - Mumbai

5th Annual Anti-Fraud Conclave & Awards 2022

24th March 2023 - Mumbai

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