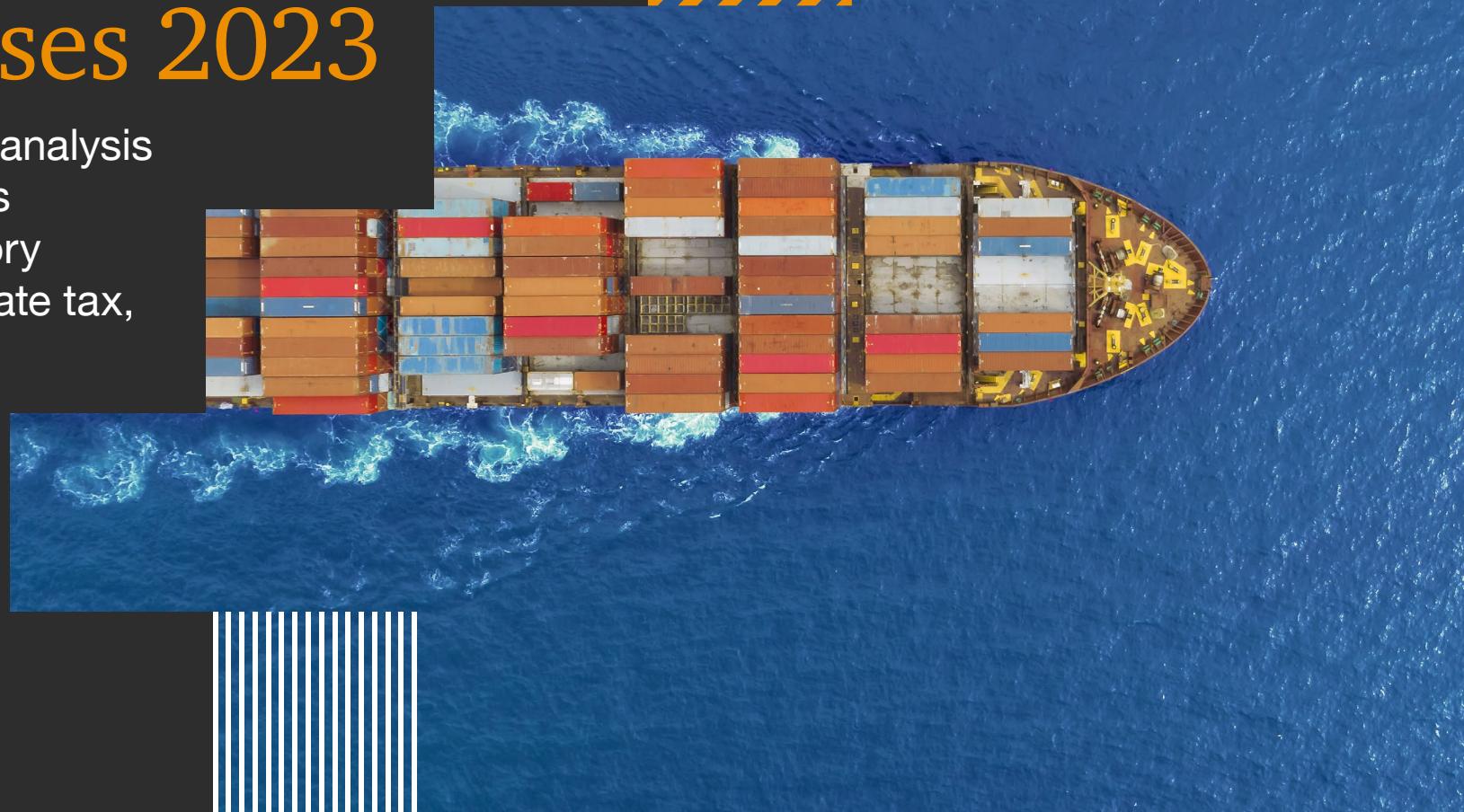




Tax Glimpses 2023

We bring you a concise analysis of important judgements and noteworthy regulatory developments in corporate tax, financial services, M&A, transfer pricing and indirect taxes during 2023.





Foreword

We are pleased to present our annual compilation, *Tax Glimpses 2023*!

Climate change is changing our lives, to the extent that it is affecting how much water we have to drink and grow crops and is causing millions of people to deal with poverty as storms, droughts, heat waves and floods grow more dangerous and intense. Climate change is indiscriminately devastating the lives of people, both rich and poor. In 2023, we witnessed record-breaking heat, with more intense rainfall and catastrophic flooding and damage. The changing rainfall pattern has resulted in massive forest fires that have burnt vast areas of land. Amidst the changing environmental needs, India remains committed to achieve the net-zero emission target by 2070. Moreover, India aims to achieve its short-term and long-term targets under the Panchamrit action plan. The Indian Government is committed to its National Determined Contribution by reducing emissions intensity by 33–35% in 2030 compared with the levels in 2005.

Besides the changing environment, we are also witnessing a remarkable transformation in the international tax landscape, which has ushered in a new

era of tax transparency and cooperation. Countries are striving to address tax avoidance, and governments are implementing measures to increase tax collection and encourage cross-broader exchange of information. This changing landscape of international tax has heralded an era of integrity and collaboration, paving the way for more equitable and sustainable economic growth.

On the economic front, the IMF has projected India's economic growth rate for both 2023 and 2024 to be 6.3%, which is 0.2% higher than what it had originally estimated. However, the IMF has cut its projected growth rate for China and the European zone, stating that the overall global growth has remained low and uneven despite what it called the 'remarkable strength' of the United States economy. The Reserve Bank of India has projected that the consumer price index-based inflation for the current financial year will be 5.4%, while the growth rate of the gross domestic product will be 6.5%. According to the IMF, the Indian economy expanded by 7.8% during April–June with private consumption growing at 6% as against 2.8% during January–March.

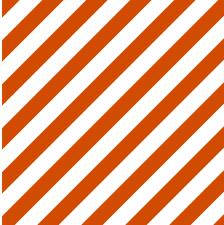
International developments

This year, the OECD/ G20 Inclusive Framework on BEPS (IF) released four important documents related to Pillars One and Two of the framework, as well as a Progress Report, to the G20 finance ministers and central bank governors. These documents include the (a) public consultation document on Amount A of Pillar One, (b) Subject-to-Tax-Rule (STTR), (c) Pillar Two GloBE Information Return and (d) Pillar Two Administrative Guidance.

The public consultation document on Amount A of Pillar One is the text of a consensus-based Multilateral Convention (MLC) accompanied by explanatory statement, an Understanding on the Application of Certainty for Amount A of Pillar One (UAC), and an update to the economic impact assessment of Pillar One. The OECD also published factsheets and a high-level overview of the content, operation, and layout of Amount A including a process map with steps for applying the rules. The release does not open the MLC to countries for signing at this point, because there are

still issues to be resolved. For the MLC to enter into force, it needs to be ratified by at least 30 jurisdictions including the headquarter jurisdictions of at least 60% of multinational enterprises currently expected to be within Amount A's scope (this cannot be met without the United States).

The STTR is a treaty-based rule that allows source countries to impose an additional tax liability on certain intragroup payments in case the recipient is subject to a nominal corporate tax rate of less than 9% (adjusted for tax base reductions such as tax exemptions and tax credits). The rule targets a wide range of payments between connected persons, including interest, royalties and service fees, with the notable exclusion of dividends. The STTR takes priority over the GloBE Rules and is creditable as a covered tax. Its implementation by countries was planned to start in October 2023 via a multilateral instrument (to allow for multiple bilateral tax treaties to be changed at the same time). IF members have committed to adopt the STTR when requested by other IF members that are developing countries.



The OECD released the second set of Administrative Guidance on the Pillar Two GloBE Model Rules which covers a range of issues where stakeholders sought additional clarity, including the Qualified Domestic Minimum Top-up Tax (QDMTT) and Transitional UTPR Safe Harbours, the treatment of transferable tax credits, application of the Substance Based Income Exclusion and others. Moreover, released as part of the OECD package was an updated version of the GloBE Information Return. The guidance brings greater clarity on matters including transferable credits, provision of two new safe harbours and application of QDMTT to entities other than constituent entities of a multinational enterprise group. However, questions remain regarding the benefits of some of the transitional reliefs, other unresolved transition issues, practical application of the currency conversion rules and, of course, whether countries will incorporate the latest guidance into their local implementation of GloBE Rules.

In addition, the Council of the European Union amended the European Union rules on administrative cooperation in the area of taxation (DAC8). The amendments

pertain primarily to reporting and automatic exchange of information on certain revenues from crypto-asset transactions and the provision of advance tax rulings for the wealthiest (high net worth) individuals. The directive aims to strengthen the existing legislative framework by broadening the scope for registration and reporting obligations as well as improving overall administrative cooperation between tax administrations.

At home

The government released the long-awaited Foreign Trade Policy (FTP) 2023 in March 2023 and made it effective from 1 April 2023. Unlike the previous policies that had a tenure of five years, the FTP 2023 will have no end date; subsequent revisions to the policy will be done on a need basis as per India's emerging trade scenario. The FTP 2023 has moved from incentives to a remission-based framework. It focuses on export promotion through collaboration, promoting ease of doing business through automation and solutions and focussing on emerging areas like e-commerce and export hubs with the overall objective of achieving the goal of \$1 trillion merchandise exports by 2030.

The Finance Act, 2023, amended provisions that deal with tax collection at source applicable on LRS payments and purchase of overseas tour program packages. Thereafter, the government made necessary amendments to include payments effected through international credit cards outside India under the ambit of LRS. In addition, the CBDT released guidelines addressing certain practical questions that may arise during the implementation of these changes.

Moreover, a provision for deduction of tax on net winnings was introduced in the Finance Act, 2023. The provision stipulates that any person who is responsible to pay any other person any income by way of winnings from any online game during the FY is obligated to deduct tax on the net winnings in the other person's user account. The tax must be deducted at the time of withdrawal and at the end of the FY. New rules were notified during the year to describe the specific mechanism to compute the 'net winnings' in various stages, along with certain explanations.

The CBDT released the Fourth and Fifth Annual Reports on the Indian APA Programme, which have identified 516 APAs, an encouraging number, thus cumulatively bringing tax certainty to

over 3,200 FYs. It is estimated that the 516 signed APAs have resulted in bringing finality in taxation to income of about INR190,000m which translates into payment of tax of about INR70,000m. The APA programme has matured over the past ten years, and various statistics prove that APAs are the solution to resolve TP issues instead of the long litigation route in India. For the first time, CBDT has also published statistics related to MAP. A remarkable development is the resolution of more than 180 MAP cases each in 2020 and 2021, and a decline in India's overall MAP inventory to 697 cases as on 31 March 2023.

On the litigation front, this year, the Supreme Court attempted to put to rest multiple tax controversies. The noteworthy ones are as follows: First, regarding interpretation of the notification under section 90 of the Income-tax Act, 1961 (the Act) where the Supreme Court held that it is a necessary and mandatory condition to give effect to a DTAA or any protocol that has the effect of altering the existing provisions of law. Moreover, a claim under the MFN clause of an agreement with an OECD member country—which relies on a third OECD member's DTAA with India—is valid only if the third country was an

OECD member at the time of entering into a DTAA with India. The Supreme Court, while adjudicating the aforesaid principles, had considered the MFN clause provided in the DTAA between India and France, the Netherlands and Switzerland (FNS countries), respectively. This is a significant decision with far-reaching consequences. This would also have implications on other DTAs that have MFN clauses where notifications have not been issued.

In another decision, the Supreme Court overturned a batch of High Court decisions to hold that determination of an ALP must follow the guidelines stipulated under Chapter X of the Act and the relevant rules thereunder; any deviation from these guidelines can be considered perverse and subject to scrutiny by the High Courts. Therefore, the High Courts can examine whether the guidelines under Chapter X of the Act are followed or not, and whether the findings recorded by the Income-tax Appellate Tribunal while determining the ALP are perverse or not.

The Madras High Court has limited the powers of the GST Council while determining the classification of a product, holding that the role of the GST Council is only recommendatory. While analysing the relevant tariff chapters

in detail, the Madras High Court held that 'flavoured milk' would be classified under tariff heading 0402, attracting a lower GST rate of 5% (and not under tariff heading 2202, as was decided in the GST Council meeting held on 22 December 2018, which would be taxable at 12%). This is an important judgement that would come to the taxpayer's aid when the Revenue authorities seek to demand tax, relying on the discussion in the GST Council meetings regarding classification of products. However, it is pertinent to note that the government can still exercise its power to bring such GST Council decisions into effect by amending the relevant provisions of the law.

On the regulatory front, the government has introduced a legislation that will regulate the processing of digital personal data, list the rights and duties of a citizen (i.e. the digital nagrik or data principal) and present obligations for organisations (i.e. data fiduciaries) to use such data lawfully. This legislation was introduced in the Lok Sabha on 3 August 2023 (Monsoon Session of the Indian Parliament) and is known as the Digital Personal Data Protection Bill, 2023 (DPDP Bill, 2023). The DPDP Bill, 2023, carries an understanding that emerged during consultation with stakeholders in the process of drafting

the previous version of the bill; moreover, it addresses various aspects of privacy concerns given the ongoing digitalisation and technology requirements of the industries.

The Ministry of Environment, Forest and Climate Change has notified the new draft Ecomark Certification Rules, 2023 (Rules), which supersede the previous Ecomark scheme notified in 1991. These Rules provide a comprehensive framework to develop and implement the Ecomark certification scheme for labelling products that have less adverse impacts on the environment. The aim is to encourage consumers to adopt such products, thereby supporting the principles of 'lifestyle for environment' and aiding manufacturers in transitioning to the production of Ecomark-certified products to promote sustainability and a circular economy. The Rules serve as a significant regulatory development aimed at promoting eco-friendly practices and sustainable consumption and production.

The BCI had initially opposed the entry of foreign lawyers and foreign law firms in India in any form. Consequently, the judiciary has deliberated upon this issue on various occasions. Allowing foreign lawyers to open a law practice in India in the fields of practise of foreign law, diverse international legal issues in

non-litigious matters and international arbitration cases would help the legal profession and domain grow in India to the benefit of lawyers in India. Therefore, the BCI has issued the BCI Rules for Registration of Foreign Lawyers and Foreign Law Firms in India, 2022 (BCI Rules) under the Advocates Act, 1961, and its enabling provisions. The BCI Rules aim to register and allow foreign lawyers and law firms in India, as well as enable foreign lawyers and foreign law firms to practise foreign law, diverse international law and international arbitration matters in India on the principle of reciprocity in a well-defined, regulated and controlled manner.

Tax Glimpses 2023 summarises some of the significant tax and regulatory developments, most of which have been shared with you earlier (see attached a list of *PwC Tax & Regulatory Insights* released during the year). For ease of reference, we have also listed certain *treaties and agreements India* has entered into with other countries (with a link to access these).

We hope you find this compilation useful and look forward to your suggestions.

As always, our best wishes for the coming festive season and beyond!
Stay safe.

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Tax & Regulatory Insights

Judgements

Enforceability of MFN clause

MFN clause provided in the protocol to DTAA does not result in its automatic enforceability until such time as appropriate notifications are issued

Civil Appeal No(s). 1420-1432 of 2023

The Supreme Court of India held that a notification under section 90 of the Act is a necessary and mandatory condition to give effect to a DTAA or any protocol that has the effect of altering the existing provisions of law. Accordingly, the benefit under the MFN clause is not automatic and cannot be enforced in the absence of an appropriate notification. Moreover, a claim under the MFN clause of a DTAA with a member country of the OECD, which relies on a subsequent DTAA between India and a third OECD member, may be invoked only if such third country was an OECD member at the time of entering into its DTAA with India. The above principles were adjudicated in the context of the MFN clause appearing in the DTAs between India and France, the Netherlands and Switzerland.

This decision fortifies the intent and position advocated in the CBDT Circular No. 3/ 2022 dated 3 February 2022. This significant decision has far-reaching impacts on the interpretation and invocation of the MFN clause in various DTAs where a separate notification has not been issued. A review petition is said to have been filed before the Supreme Court, given the humongous consequences of the application of this judgement.

TRC sufficient for DTAA benefit

Non-resident taxpayers are entitled to DTAA benefits as valid TRC holders

W.P. 713 of 2021 (Bombay)

The Bombay High Court decided involving transfer of shares of an Indian entity by a Mauritius special purpose vehicle. The court held that a valid TRC constituted sufficient evidence for accepting both the residence and beneficial ownership of the taxpayer for the purpose of the DTAA. The High Court noted that the Revenue denied DTAA access to the taxpayer by merely alleging the period of the taxpayer's incorporation and based on the fact that it did not have any tangible assets, employees, office

space, etc. The High Court observed that besides alleging, the Revenue could not bring on record any material to demonstrate that the taxpayer was incorporated as a device to avoid tax or that there was any fraud or illegal activity.

Accordingly, the High Court reiterated the principles laid down by the Supreme Court in Union of India v. Azadi Bachao Andolan [2003] 263 ITR 706 (SC) and Vodafone International Holding B.V. v. Union of India [2012] 341 ITR 1 (SC), wherein it was held that a TRC would be conclusive evidence if there was no fraud or illegal activity. Moreover, the High Court observed that any investment done before 1 April 2017 was grandfathered; hence, the limitation of benefits clause cannot be invoked. Based on the above findings, the High Court sent the matter back to the AAR for ruling on the transaction's taxability.

Royalty

Mere access to a server located abroad to obtain reports is not taxable as royalty

ITA No. 2573/Del/2022

The taxpayer availed candidate profiling services from a UK-based non-resident. In this regard, the taxpayer was given access to a software merely to download the reports, which are in the form of copyrighted articles. The Delhi bench of the Tribunal emphasised that the critical factor was whether the taxpayer gained ownership or proprietary rights to the non-resident's software and systems. Given that the taxpayer was not granted any such right for commercial exploitation of the software, which was owned and executed by the non-resident in its server located outside India, the Tribunal observed that the payment cannot be taxed as royalty.

PE attribution

No profits could be attributed to a PE in India when the contract for supply of goods (at an offshore level) was incurring loss at a global operational level

ITA Nos. 2259 & 2260/Del/2022

The taxpayer was engaged in providing services under technical collaboration agreements and executed projects in India through PEs in the form of branch and project offices. The tax authorities attributed profits earned from offshore supply of equipment to the PEs in India, given the involvement of project offices in relation to customs duty clearances for such supplies.

The Tribunal, following the Delhi High Court decision in the case of CIT (International Taxation) v. Nokia Solutions and Networks OY [2023] 147 taxmann.com 165 (Delhi), ruled in favour of the taxpayer. The Tribunal observed that no profit could be attributed to the PE in India when the contract for supply of goods (at an offshore level) was incurring losses at an operational level.

Dividend Distribution Tax

DDT being tax on distributed profits, is not eligible for a beneficial DTAA rate

ITA No. 6997/Mum/2019 dated 20 April 2023 and others

The Mumbai special bench of the Tribunal was of the view that DDT under section 115-O of the Act is an additional tax levied on the company on its distributed profits and not a tax on the dividend income in the hands of the shareholders. The Tribunal relied on the principles laid down by the Supreme Court in the case of Godrej and Boyce Mfg Co. Limited v. DCIT [2017] 394 ITR 449 (SC) and the High Court in the case of Small Industries Development Bank of India v. CBDT [2021] 133 taxmann.com 158 (Bombay) to conclude the above. Moreover, the Tribunal categorically concluded that the DTAA should be considered from the perspective of the recipient's taxability, and given that the DDT is tax paid by a domestic company distributing dividends, it cannot access the DTAA. The Tribunal further referred to the protocol in the India-Hungary DTAA and noted that the DTAA's benefit can be extended to DDT only in cases where the contracting states have specifically agreed.

Tax administration

Scope of order passed under section 148A(d) of the Act under the new reassessment scheme

Writ Tax No. 1076 of 2023

The Division Bench of the Allahabad High Court observed that the scope of an order passed under section 148A(d) of the Act is limited to the existence, or otherwise, of information suggesting that income chargeable to tax has escaped assessment; at that point, detailed adjudication on the correctness or merits of the information available is not required.

The court did not specifically deal with the objection on validity of initiating reassessment proceedings on the grounds of 'change of opinion'. Nevertheless, it emphasised that the purpose of section 148A of the Act is to establish whether income liable to tax has escaped assessment. Any grievances on the merits could be addressed during reassessment proceedings under section 147 of the Act, with the taxpayer having the opportunity to defend their case and appeal, if necessary.

Allowability of confiscation

Confiscation loss incurred while carrying on legal business is not allowable

Civil Appeal Nos. 7689-90 of 2022

The taxpayer is engaged in a legitimate jewellery business. In the course of this business, the taxpayer incurred a loss on account of confiscation of silver bars. In adjudicating the claim of deduction on such loss while computing business income, two judges of the Supreme Court passed separate orders with distinct observations; yet they held that such loss is not allowable.

The first judge rejected the High Court's reliance on the Supreme Court decision in the case of CIT v. Piara Singh [1980] 124 ITR 40 (SC), wherein confiscation loss arising in an unlawful business was allowed. It held that the above case is distinguishable from the present case, wherein the loss is incurred due to infraction of law in the course of carrying on a lawful business. Then, relying on Haji Aziz and Abdul Shakoor Bros. v. CIT [1961] 41 ITR 350 (SC), the Supreme Court disallowed such loss.

The second judge held that the word 'any expenditure' mentioned in section 37(1) of the Act takes in its sweep loss occasioned in the course of business that incidental to such business. Such expenditure or loss incurred for any purpose that is an offence will not be deemed to have been incurred for the purpose of a business or profession; hence, it is not deductible. The Supreme Court concluded that a penalty or confiscation is a proceeding in rem; therefore, a loss in pursuance thereof is not available for deduction regardless of the nature of the business carried out.

Compliance

Concessional tax rate of 22% to be allowed for AY 2020–21 where a technical error caused a delay in filing Form 10-IC

Tax Appeal No. 722 of 2023

For AY 2020–21, the taxpayer opted for the lower tax regime under section 115BAA of the Act. However, the taxpayer faced technical glitches preventing the e-filing of Form 10-IC. Later, the taxpayer physically submitted the form within the

extended deadline. However, the tax authority calculated tax under the normal regime due to failure in e-filing of the said form.

The Gujarat High Court upheld the order of the Tribunal, which concluded that the taxpayer should not be deprived of the beneficial tax rate provisions under section 115BAA of the Act merely on the ground of non-furnishing of Form 10-IC electronically over the Income-tax Business Application portal because of a technical issue that is not the taxpayer's fault. Moreover, the said form was filed physically within the extended timeline.

Refund

Revenue directed to refund the amount recovered in excess of 20% of tax liability

Writ Petition No. 11789/ 2023

The Delhi High Court held that while computing 20% of the outstanding tax demand to be deposited for obtaining a stay as per the CBDT's Office Memorandum dated 29 February 2016 (amended by Office Memorandum dated 25 August 2017), the credit of TDS or TCS is available; moreover, excess recovery

(if any) must be refunded to the taxpayer along with the interest as applicable thereon. The High Court also held that such 20% of the tax liability must be calculated against the tax liability as crystallised in the assessment order and not against the reduced amount as per the notice of demand under section 156 of the Act.

This decision is pursuant to a writ petition filed by a taxpayer in whose case refunds of subsequent AYs were adjusted against 20% of the outstanding demand, i.e. demand outstanding after the credit of TDS or TCS. The taxpayer filed a writ before the Delhi High Court, arguing that the Revenue recovered taxes in excess of what was allowed by the CBDT Office Memorandum, which limits recovery to 20% of the tax liability, while their appeal was still pending before the CIT(A).

Right to first offer

Right to first offer to acquire immovable property is not a capital asset and, accordingly, settlement amount received on account of breach of such right not liable to capital gain tax

ITA No. 4537/Del/2017

The Delhi bench of the Tribunal concluded that a taxpayer's right to have first offer to acquire an immovable property as a lessee does not qualify as a capital asset under the Act. Such right does not give rise to a transferable interest in the property and is not in the nature of pre-emptive right.

Accordingly, the sum received by the taxpayer on settlement of suit filed for specific performance of the enforceable covenant in the lease deed granting the said right cannot be taxed as capital gains.

Tax & Regulatory Insights

Circulars, Notifications and Others

TCS on LRS and overseas tour packages

Clarification – TCS on LRS and overseas tour packages

CBDT Circular No. 10 dated 30 June 2023

The Finance Act, 2023, introduced amendments to section 206C(1G) of the Act, which deals with TCS on payments under the LRS and the purchase of overseas tour packages. While there were back-and-forth amendments with respect to international credit card transactions, the following positions are said to prevail.

1. TCS will apply on remittance under LRS only if the remittance more than INR700,000.
2. TCS at a higher rate of 20% will be applicable from 1 October 2023 on the following.
 - Remittance under LRS (other than for education or medical treatment).

- Purchase of overseas tour packages in excess of INR700,000.

International credit card transactions while on a visit outside India will be outside the ambit of LRS; hence, TCS does not apply. However, if such transactions are carried out while in India, they will be subject to LRS limits and, hence, attract TCS at the abovementioned rates.

The CBDT released Circular No. 10 dated 30 June 2023, addressing certain practical clarifications relating to the following amended TCS provisions.

- Exemption of INR700,000 is a combined threshold and not applicable to each category of payment (e.g. education and travel). Moreover, the said threshold applies per financial year qua each remitter. Remittance through different authorised dealer bankers does not alter this position.
- The threshold of INR700,000 applies separately for LRS payments and the overseas tour program package. In case payment towards the purchase of an overseas tour package is covered under LRS, TCS provisions for the purchase of an overseas tour package would apply.
- The scope of remittance under the LRS for education and medical

treatment purposes was elaborated upon, given that different rates of TCS would apply on each.

- An overseas tour program package must include any two of the following: international travel ticket, hotel accommodation and any other expenditure of a similar nature.

In this context, the Mumbai bench of the Tribunal observed that for a copyright to exist, there must exist a 'work', and for a work to qualify as a 'cinematograph film', there must be a visual or sound recording. In case of a live broadcast of a sporting event, there is no recording and, consequently, no work. As a corollary position, consideration for broadcasting non-live content was held to be taxable as 'royalty' under Article 12 of the DTAA.

Other developments

Judgements

Royalty

Payment for non-live exhibitions and recorded content in live feeds is taxable as royalty

ITA Nos. 3135 & 3130/Mum/2006 and others

The taxpayer entered into a licence agreement granting broadcasting rights of certain cricket events in India for a licence fee. The proprietary rights included copyrights, trademarks and performing rights in the live feed for its exploitation. The live feed had been modified to include non-live content as well.

PE attribution

Offshore services provided by a German company, although connected with an Indian PE, are exempt from tax in terms of the protocol in the India-Germany DTAA

ITA No. 3257/Del/2014 and others

The taxpayer, a German company, was engaged in providing airport management and operation services to its customers in India, for which it had set up a project office in India. In relation to such services, the taxpayer rendered certain consultancy services directly from Germany, which were inextricably connected to the overall management services performed in India. Given the integral nature of these consultancy services, the Tribunal observed that the

consideration payable would be taxed only under the provisions of the DTAA as business income and not as FTS. Moreover, the Tribunal applied para 1(b) of the protocol in the India-Germany DTAA to determine which income from technical services rendered through Germany, although connected to the PE in India, will not be attributable to the Indian PE. Accordingly, the Tribunal set aside the matter to examine if the nature of services are covered under the exclusion category as per the protocol.

Depreciation on business rights

Depreciation allowable on business rights, although recorded as goodwill, and on IP rights pending registration in the taxpayer's name

ITA Nos. 905/2010 & 130/2013

The taxpayer classified their exclusive marketing and business rights as well as goodwill acquired under a business transfer agreement entirely as 'goodwill' and claimed depreciation on the same. The taxpayer also claimed depreciation on acquired IP rights in the form of a brand name, logo, patents and trademarks, registration for which in the name of the taxpayer was pending.

Revenue authorities rejected the entire claim of depreciation on goodwill (as it is not a specified intangible asset under section 32 of the Act) and IP rights (owing to non-registration). However, the High Court upheld the Tribunal's ruling, which concluded the following.

- The portion attributable to exclusive business rights is eligible for depreciation, and the balance portion pertaining to goodwill is not entitled to depreciation.
- The IP rights were owned and used by the taxpayer upon payment of consideration and hence are eligible for depreciation.

Tax administration

DRP proceedings and issuance of final assessment orders must be completed within the overall limitation period prescribed under section 153(1) of the Act

Writ Petition No. 2340 of 2021

The Bombay High Court held in a landmark decision that the time taken to complete proceedings under the DRP should be considered in the overall limitation period provided under

section 153 of the Act for completion of assessments. The High Court reiterated the principle laid down by the Madras High Court in the case of Roca: The overriding provisions under section 144C of the Act apply only to the limited extent of issuing a final assessment order; according to these provisions, despite section 153 of the Act providing a larger timeline for issuing a final assessment order, such order must be issued within the timelines prescribed under section 144C of the Act. Interestingly, this view was upheld under both the original assessment and the remand assessment fact pattern.

Hitherto, it is generally understood that the limitation period for completing the assessments prescribed under section 153 of the Act is applicable to draft assessment orders; once a draft assessment order is passed within the said timelines, proceedings before the DRP and issuance of the final assessment order can be as per section 144C of the Act. This decision overturns the position, but it would reach finality only upon a ruling by the Supreme Court of India.

Penalty under black money

Penalty under black money law for non-disclosure of foreign assets in Income-tax Return

BMA Nos. 1 to 3 (Mum) of 2023

The taxpayer inadvertently failed to disclose foreign assets under 'Schedule FA-Details of foreign assets and income from any source outside India' in the Income-tax Return. The taxpayer submitted that income from such foreign asset was duly offered to tax in the relevant tax year, and non-disclosure was due to an inadvertent error. Nevertheless, the Tribunal concluded that the penalty needed to be levied under the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015. Nothing under the relevant provisions of the black money law exempt the levy of penalty if the source of a foreign asset is explained by the taxpayer or income from such foreign asset is offered to tax.

Claim for deduction

Lessee allowed deduction of lease rent in case of finance lease arrangement

Petition(s) for Special Leave to Appeal (C) No(s). 25547/2014

The Supreme Court dismissed the special leave petition observing that, once the tax authorities conclude that the lessor is the owner of the property and entitled to depreciation, the lessee's claim for deduction of lease rent cannot be denied on the ground that the lessee is the owner and entitled to depreciation.

Method of income offered to tax

Real estate developer can offer income on project completion method

ITA No. 1006/Bang/2022

The Bangalore bench of the Tribunal concluded that real estate developers can follow the project completion method in line with the method consistently followed by the taxpayer. The Tribunal rejected the percentage completion method applied by the TO by distinguishing between a construction contractor and a developer.

Capital gains

Nature of capital assets and trigger of capital gains determined on the date of execution of sale deed

ITA No. 1239/Del/2018

The Delhi Bench of the Tribunal has concluded that in case of sale of immovable property (covered by section 2(47)(i) of the Act), the date of execution of sale deed (and not date of agreement to sale) will be considered for purpose of calculation of capital gains.

Other developments

Circulars, Notifications and Others

E-filing Form 10F without PAN

Non-residents can now e-file Form 10F without PAN

In July 2022, the CBDT mandated e-filing of Form 10F, which is required along with a TRC to avail the DTAA benefits. Subsequently, the last date was postponed until 30 September 2023 for non-residents who do not have a PAN

and are not required to have PAN owing to practical challenges in obtaining an online Form 10F in the absence of a PAN.

Recently, the CBDT enabled a functionality on the income-tax e-filing portal for non-residents who do not have a PAN and are not obligated to obtain PAN. Now, such non-residents can e-file Form 10F on the income-tax portal by creating an account without the requirement of first obtaining a PAN.

Form to claim certain preliminary expenses

CBDT notifies a form to claim certain preliminary expenses

CBDT Notification No. 54/2023 dated 1 August 2023

The CBDT inserted a new rule 6ABBB in the Rules, and the prescribed Form 3AF through a notification to claim certain preliminary expenses under section 35D(2) of the Act.

Under the said section, certain preliminary expenditure in the nature of a feasibility report, project report, etc. can be claimed, on the condition that such activity must be carried on by the

taxpayer or a concern approved by the CBDT. The Finance Act, 2023, eased out said condition and provided for such a claim upon furnishing a prescribed statement. Pursuant to this amendment, the CBDT issued a notification prescribing Form 3AF in relation to a claim of preliminary expenditure.

This form will be filed electronically one month before the due date of filing the Income-tax Return under section 139(1) of the Act. The form will be verified using the digital signature of the person authorised to verify the Income-tax Return or through an electronic verification code. This form is required only in the case of a claim of preliminary expenditure under section 35D(2)(a) of the Act; it contains activity-wise expenditure details in addition to basic details of the taxpayer. The said notification also provides an updated Form 3AE, which is the audit report required to be furnished under sections 35D(4) and 35E(6) of the Act.

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DTAA benefit

TRC is statutorily the only evidence required to be eligible for the benefit under DTAA

ITA No. 976/Del/2022

The Delhi bench of the Tribunal in a recent ruling concluded that a Mauritius based CIV and SEBI-registered FPI is eligible for relief under the India–Mauritius DTAA merely on the strength of a TRC issued by the Mauritian authorities. While concluding the Tribunal relied on the Delhi High Court decision in the case of Blackstone Capital Partners (Singapore) VI FDI Three Pte. Limited (2023/DHC/000634).

The Delhi bench of the Tribunal was of the view that the TRC is statutorily the 'only evidence required to be eligible for the benefit under the DTAA', and Revenue's attempt to question TRC and to go behind the TRC is 'wholly contrary to the Government of India's consistent policy and repeated assurances to Foreign Investors.

Additionally, the Tribunal rejected Revenue's finding that the taxpayer was a conduit because its investors were not tax residents of Mauritius and concluded

that the taxpayer was a tax resident of Mauritius and legally entitled to treaty relief on the strength of the TRC issued by the Mauritian authorities.

Bombay High Court rejects Revenue's plea on applicability of Article 24 of the India–Singapore DTAA for a Singapore FPI

Income tax Appeal No. 256 of 2018

The Bombay High Court, in the Singapore FPI case, ruled that the certificate issued by foreign tax authorities, i.e. the Inland Revenue Authority of Singapore (IRAS), is adequate to prove the taxability in Singapore regarding the income earned in India. The court concurred with the lower court's decision allowing the taxpayer to apply the beneficial provisions of the India–Singapore DTAA to income taxable in Singapore, irrespective of whether it is remitted to Singapore. Consequently, Article 24 of the DTAA would not apply. Accordingly, the Bombay High Court dismissed Revenue's appeal as devoid of a substantial question of law, citing CBDT Circular No. 789 dated 13 April 2000 and the judgement of the Madras High Court in the case of CIT v. Lakshmi Textile Exporters Limited [2000] 245 ITR 521 (Madras) and held that the certificate

issued by IRAS will constitute sufficient evidence to accept the legal position.

Circulars, Notifications and Others

Investments by FPIs

Change in Beneficial Ownership thresholds

Notifications dated 7 March 2023 and 4 September 2023 issued by the Ministry of Finance, Department of Revenue

FPIs are required to identify and report a list of their BOs on a look-through basis to the DDP, i.e. the Indian custodian. BOs are natural persons who ultimately own or control an FPI and are identified in accordance with Prevention of Money-laundering (Maintenance of Records) Rules, 2005 (PMLA Rules).

Pursuant to the recent update in the PMLA Rules, the thresholds for identification of BOs in the case of FPIs constituted as (i) companies, (ii) trusts and (iii) partnership firms have changed as follows.

FPI constituted as	New Percentage threshold for identification of BO* (Amendments indicated in a different colour)	Erstwhile threshold
Company	10% of shares, capital or profits of the company	25% of shares, capital or profits of the company
Trust	Beneficiaries with 10% or more interest in the trust	Beneficiaries with 15% or more interest in the trust
Partnership Firms	Ownership of entitlement to more than 10% of capital or profits of the partnership or who exercises control through other means. For the above purpose, 'Control' includes the right to control the management or policy decision.	Ownership of entitlement to more than 15% of the capital or profits of the partnership

Amendment to eligibility criteria for grant of FPI registration

Circular No. SEBI/LAD-NRO/GN/2023/143 dated 10 August 2023

Previously, while granting FPI registration to applicants, DDPs were, amongst others, required to ensure that the applicant or its underlying investors contributing 25% or more in its corpus or identified on the basis of control were not persons mentioned in the Sanctions List notified by the United Nations Security Council or resident in a FATF deficient country. This threshold has now been reduced to align with the thresholds mentioned under the PMLA Rules discussed earlier.

Amendment in timelines for reporting change in 'Material Information'

SEBI (FPI) Amendment Regulations, 2023 dated 14 March 2023

FPIs have a statutory obligation to inform the SEBI or DDP (Indian custodian) of any material change in the information or particulars submitted earlier to the SEBI or DDP. Pursuant to amendments to the SEBI (FPI) Regulations, 2019, any material change in the information furnished earlier would need to be

informed to the DDP and/ or the SEBI in writing within seven working days. Moreover, the DDP is required to inform SEBI in writing of any material change in information furnished earlier within two working days.

While the term 'material' has not been defined, it is understood to have broad connotations and interpretations. Amongst others, material change would include a direct or indirect change in structure or ownership or control; change in regulatory status; merger, demerger or restructuring; change in category, sub-category, structure, jurisdiction, name, beneficial ownership, etc. Accordingly, FPIs need to establish a mechanism to ensure compliance, i.e. intimate any material change in information or documentation to DDP and/ or SEBI within the stipulated timeline of seven working days.

Mandating additional disclosures by FPIs that fulfil certain objective criteria

Circular No. SEBI/HO/AFD/AFD –PoD –2/CIR/P/2023/148 dated 24 August 2023

In order to garner granular details with respect to ownership, economic interest

or control in certain objectively identified FPIs, the SEBI issued a circular dated 24 August 2023, which mandated the additional disclosure requirements for certain FPIs.

The requirement for additional disclosures apply to FPIs satisfying the below mentioned criteria.

- FPIs holding more than 50% of Indian equity AUM in single Indian corporate group;
- FPIs that individually or along with their investor group hold more than INR250bn (~US\$3bn) of Indian equity AUM.

FPIs satisfying the above criteria are required to provide granular details of all entities holding any ownership, economic interest or exercising control in the FPI, on a full look-through basis, up to the level of all natural persons, without any threshold.

Certain exemptions have been provided in the circular for specific categories of FPIs, which may not pose a significant systemic risk as under –

- Government and Government-related investors.
- Public Retail Funds being mutual funds or unit trusts which are open for subscription to retail investors

and that do not have specific investor type requirements such as accredited investors, specific insurance companies and pension funds.

- Exchange Traded Funds with less than 50% exposure to India and India-related equity securities and entities listed on specified exchanges of the permissible jurisdictions notified by SEBI.
- Pooled investment vehicles that are registered with or regulated in their home country provided their –
 - holding in an Indian corporate group is less than 25% of overall global AUM at scheme level; or
 - Indian equity AUM is below 50% of overall global AUM at scheme level.
- Newly registered FPIs for the first 90 calendar days from the date of settlement of first equity trade in India.
- FPIs in the process of winding down and having intimated to the DDP their intention to surrender their FPI registration.
- FPIs unable to liquidate their excess investments owing to statutory restrictions such as lock-ins, moratoriums, etc. till the time such restrictions exist.

A detailed mechanism for independently validating conformance of FPIs with the conditions and exemptions mentioned in the circular has been spelt out in a Standard Operating Procedure, which has been adopted by the DDPs in consultation with SEBI.

The timeline for FPIs to realign the investments are as follows.

- FPIs covered under the disclosure criteria (a) above will have 10 trading days from the date on which such FPIs exceed the threshold to realign their investments. Moreover, such FPIs will not be allowed to make fresh purchases of the equity shares of any company belonging to the said Indian group for 30 calendar days.
- FPIs covered under the disclosure criteria (b) above will have to realign within 90 calendar days from the date on which they exceed the threshold. Moreover, accounts of all FPIs, individually or belonging to such investor group, will be blocked for further equity purchases until the holding is brought below INR250bn (~US\$3bn) of Indian equity AUM.

FPIs whose investments continue to exceed the prescribed thresholds post expiry of timelines mentioned above will make the required disclosures within 30 trading days from the expiry of such

timelines. Moreover, non-disclosures will render the registration of the FPI invalid and the FPI will liquidate its securities and exit the Indian securities market by surrendering its FPI registration within 180 calendar days from the day the registration certificate becomes invalid.

FPIs satisfying the criteria mentioned in the circular are required to make the necessary disclosures to DDPs within 90 calendar days from 1 November 2023 being the effective date for the circular.

Streamlining onboarding process of FPIs

Circular No. SEBI/HO/AFD/P/CIR/2023/043 dated 27 March 2023

In order to ease the onboarding process for FPIs and reduce the time taken for granting registration and opening of demat account, trading and bank accounts, the SEBI permitted the following.

- Grant of FPI registration on the basis of scanned copies of application forms and supporting documents, which would be followed by verification of physical documents to enable the FPI to undertake transactions in the securities markets.
- Use of digital signatures by FPIs for the purpose of execution of CAFs and other registration related documents.

- Certification of copies of original documents by authorised bank officials using SWIFT mechanism.
- Submission of unique investor group ID by FPI applicants in lieu of complete details of group constituents, which was required to be submitted in the CAF where an applicant was a part of an investor group.

Mandating Legal Entity Identifier for all non-individual FPIs

Circular No. SEBI/HO/AFD/PoD-2/CIR/P/2023/0127 dated 27 July 2023

For existing FPIs	All existing FPIs, including those applying for renewal, who have not yet provided their LEIs to their DDPs or Custodian will be required to do so within 180 days from 27 July 2023 being the date of issuance of the circular. Failure to comply will result in the blocking of the FPI's accounts for further purchases until the LEI is provided to the DDPs.
For new FPIs seeking fresh registration	All new FPI registrations, subsequent to issuance of the circular, will be processed by the DDPs only upon receipt of LEI code of the FPIs.

Moreover, all FPIs are obligated to ensure that their LEI is active at all times. Accounts of FPIs whose LEI code has expired or lapsed will be blocked for further purchases in the securities market till the time the LEI code is renewed by such FPIs.

SEBI has issued a circular dated 27 July 2023 mandating all non-individual FPIs to provide their LEI – a unique globally referenced data system that identifies every legal entity in any jurisdiction, who is party to a financial transaction. It contains a unique 20-character code to identify legally distinct entities which engage in financial transactions.

Prior to issuance of this circular, FPIs were required to provide their LEI details in the CAF at the time of registration on a voluntary basis. Going forward, it will be a mandatory requirement for all non-individual FPIs to provide their LEI details in the CAF. Impact of the circular is as below.

FPI's to have direct market access for participating in ETCD

Circular No. SEBI/HO/MRD/MRD-PoD-1/P/CIR/2023/68 dated 10 May 2023

To enhance liquidity and depth in the commodity derivatives market and to promote efficient price discovery, FPI entry into the commodity derivatives market was enabled. Subsequently, based on representations received for enabling direct market access facility to FPIs in ETCD, stock exchanges have been permitted by SEBI to extend direct market access facility to FPIs for participation in ETCD.

Transactions in Corporate Bonds through RFQ platform by FPIs

Circular No. SEBI/HO/AFD/AFD-POD-2/P/CIR/2023/138 dated 7 August 2023

For increasing liquidity on the RFQ platform with respect to trading in corporate bonds by FPIs, SEBI has, with effect from 1 October 2023, mandated that FPIs will undertake at least 10% of their total secondary market trades in corporate bonds by value by placing or seeking quotes on the RFQ platform of stock exchanges on a quarterly basis.

Funds and fund management

Authorisation of schemes filed under the IFSCA (FME) Regulations, 2022

Circular No. IFSCA-AIF/47/2023-Capital Markets dated 15 September 2023

The IFSCA issued a circular dated 15 September 2023 providing clarity on certain operational aspects for FMEs registered under the IFSCA (FME) Regulations, 2022 (Regulations).

In said circular, the IFSCA clarified that all FMEs will seek authorisation from the IFSCA for each scheme filed under Chapters III, IV and V of the Regulations. The schemes covered in these chapters are as under:

- Chapter III: venture capital schemes, restricted (non-retail) schemes, retail schemes and special situation funds
- Chapter IV: exchange traded funds
- Chapter V: environmental, social and governance schemes

Clarifications in relation to Family Investment Funds

Circular No. F. No. 333/IFSCA/FIF/2022-23 dated 1 March 2023

To remove certain difficulties and doubts regarding FIFs, the IFSCA issued clarifications vide a circular dated 1 March 2023. Some key clarifications are as follows.

'Single family' will also include entities such as a sole proprietorship firm, partnership firm, company, LLP, trust or a body corporate, in which an individual or a group of individuals of a single family exercises control and directly or indirectly holds substantial economic interest. For this purpose, 'substantial economic interest' will mean at least 90% economic interest, as demonstrated by the FIF in an appropriate manner to the satisfaction of the IFSCA. This may include, *inter alia*, a –

- percentage of shareholding in case of a company with share capital, or the right to exercise control in case of a company without share capital;
- percentage share of profits in case of a partnership firm or LLP;
- percentage of beneficial interest specified in a trust deed in case of a

determinate trust, or pro-rata share in the trust property in case of an indeterminate trust; or

- any other manner as may be demonstrated to the satisfaction of the IFSCA.

An FIF may share economic interest with its employees, directors, FME or other persons providing services to the FIF, as per its internal policy to reward persons providing services to the FIF or to align the interest of such persons with those of the FIF. In this regard, wherever required, the FIF may accept contributions from the aforementioned persons for the limited purpose of granting them economic interest, which in no case will exceed an aggregate of 20% of the FIF's profits.

An FIF may set up additional investment vehicles subject to prior approval of the IFSCA and payment of fees as applicable to an FIF. Such additional vehicles, in the form of companies, LLPs, trusts or any other form as may be specified by the IFSCA, will also be considered part of the FIF for the purpose of meeting the requirements specified in the Regulations.

Clarifications in relation to FMEs and schemes set up in IFSCs by SWFs

Circular No F. No. 333/IFSCA/SWF/2022-23 dated 1 March 2023

The IFSCA issued certain clarifications vide a circular dated 1 March 2023 in relation to FMEs and schemes set up in an IFSC by SWFs under the Regulations. Some key clarifications are as follows.

- The ceiling of 10% investment from FMEs or its associates in case of venture capital schemes and restricted schemes will not apply.
- The restriction that certain schemes can only be close ended in case of venture capital schemes or Categories I and II AIFs will not apply.
- A restricted scheme set up as an open-ended scheme by an FME or an SWF may comply with the provisions applicable to close-ended schemes with respect to investments in physical assets as well as computation and disclosure of the net asset value. Moreover, the cap on investments in securities of unlisted companies will not apply to such open-ended schemes.

Dealing of client funds by portfolio managers

Notification No. IFSCA/2022-23/GN/REG034 dated 11 April 2023

The IFSCA has notified the IFSCA (Fund Management) (Amendment) Regulations, 2023, to amend the provision dealing with client funds as follows.

Funds of clients availing portfolio management services (other than those availing only advisory services) may be maintained in –

- a specific bank account of the FME in a banking unit;
- a specific bank account of the client in a banking unit or in a bank in India or a foreign jurisdiction; or
- any other manner as may be specified by the IFSCA.

It is also provided that when the funds are maintained in the specific bank account of a client, the FME operating as a portfolio manager will ensure the following: (a) It is duly authorised to operate said bank account either by itself or through a custodian; and (b) it will provide details of all such bank accounts, including transactions carried out thereunder, to the IFSCA whenever directed to do so.

Reporting norms for FMEs in the IFSC

Circular No. F. No. 970/IFSCA/FME Supervision/2023-24 dated 31 May 2023 and F. No. 970/IFSCA/FME Supervision/2023-24/2 dated 3 November 2023

The IFSCA has issued a circular specifying the reporting norms for FMEs in the IFSC. The FMEs are required to submit the following information in the prescribed format to the IFSCA on a half-yearly basis.

Quantitative information about the FME's fund management operations, which will be submitted in an editable MS Excel file. A 'compliance report', the signed copy of which will be submitted as a scanned PDF file.

The circular also provides that the first report corresponding to the period from 1 October 2022 to 31 March 2023 will be submitted latest by 21 June 2023. Subsequent reports for each half-yearly period will be submitted within 21 calendar days from the end of the half year. The aforesaid reports must be submitted to the IFSCA by way of an email at FME-reporting@ifsc.gov.in.

The above circular is modified vide the circular dated 3 November 2023, wherein the FMEs are now required to submit the specified information in the prescribed format on a 'quarterly' basis.

Capital market intermediaries

Regulatory framework for the distribution of capital market products and services

Circular No. F. No. 817/IFSCA/Distribution/2022-23 dated 21 December 2022

In recognition of the crucial role of distributors in the distribution of capital market products and services, the IFSCA issued a circular specifying the framework for the distribution of capital market products and services. The salient features of this framework are as follows.

Distributors may undertake the distribution of –

- capital market products, which include a wide bouquet of securities covered under the Securities Contracts (Regulation) Act, 1956; and
- capital market services, which include portfolio management and investment advisory services.

While distributors may offer their services to 'sophisticated investors' and distribute to them a wide bouquet of products and services, distribution to other investors may be undertaken with higher level of diligence and from a restricted set of products and services.

Distributors are permitted to enter into arrangements with other distributors (called associated distributors) from India, the IFSC or foreign jurisdictions to widen the scope of their operations, obtain access to a larger pool of issuers and service providers and cater to a broader clientele.

IFSCA registered and licensed entities—such as banking units, finance companies, broker-dealers, investment bankers, investment advisers and corporate agents—may avail of the simplified registration process and undertake distribution services from the IFSC.

An entity seeking registration as a registered distributor will maintain a net worth of US\$50,000 at all times. A registered distributor, if registered, licensed or authorised with the IFSCA in multiple categories, will maintain the highest of the applicable minimum net worth requirements, unless a higher amount is specified by the IFSCA.

To invest in jurisdictions that permit omnibus structures, certain distributors—such as banking units, finance companies, broker-dealers and those with a net worth more than US\$150,000—are permitted to invest through such structures. However, this is subject to adequate fulfilment of measures such as prior consent of clients; maintenance of records; compliance with norms related to KYC, AML and CFT.

A comprehensive code of conduct has been prescribed to ensure distributors maintain high standards of integrity, disclosure, diligence, promptitude and fairness in their dealings with clients. All registered distributors, associated distributors and other distributors that are empanelled by IFSC-based entities for distribution of their products or services must comply with the code of conduct.

IFSC brokers permitted to offer DMA facility to its clients

Circular No. IFSCA/CMD-DMIIT/EXCHTRD/2023-24/001 dated 21 June 2023

The IFSCA issued a circular permitting brokers-dealers in the IFSC (IFSC brokers) to offer the DMA and SA facility to its clients.

The DMA facility allows IFSC brokers to offer its clients direct access to the trading system of the stock exchange, through the IFSC brokers' trading systems, without any manual intervention by the IFSC brokers. IFSC brokers retain the ability to monitor internally and, if necessary, stop an order before it is executed.

SA is a type of DMA in which an IFSC broker permits its client to transmit orders directly to the exchange trading system without routing it through the IFSC broker's trading system. The SA facility facilitates low latency trading and helps preserve the confidentiality of sophisticated, proprietary trading strategies of the clients.

Additional list of securities listed on a recognised stock exchange in the IFSC notified under section 47(viab) of the Act

Notification No. 71/2023, F. No. 225/103/2023-ITA-II dated 12 September 2023

Section 47(viab) of the Act provides an exemption to non-residents on income from the transfer of certain securities listed on a recognised stock exchange in the IFSC. This is provided that the consideration is paid in foreign currency.

This exemption also applies to a specified fund set up in the IFSC as per section 10(4D) read with section 47(viab) of the Act.

To widen the basket of securities within the ambit of section 47(viab) of the Act, the CBDT notified the following additional securities listed on a recognised stock exchange in the IFSC.

- Unit of an investment trust registered under the FM Regulations (i.e. real estate investment trust and infrastructure investment trust)
- Unit of a scheme launched under the FM Regulations
- Unit of an exchange traded fund launched under the FM Regulations

Banking in IFSC

IBUs permitted to be set up as subsidiaries

Notification No. IFSCA/2023-24/GN/REG041 dated 6 July 2023

The IFSCA notified the IFSCA (Banking) (Amendment) Regulations, 2023 (Amendment Regulations), making certain amendments to the IFSCA (Banking) Regulations, 2020, such as the following.

- Banks are permitted to set up an IBU as a subsidiary (IFSC subsidiary).
- The parent bank will provide the IFSC subsidiary a minimum capital of US\$50m, or such other level of capital as may be specified by the IFSCA.
- The parent bank will obtain a no-objection letter from its home regulator regarding setting up the IFSC subsidiary.
- The IFSC subsidiary will maintain the liquidity coverage ratio and net stable funding ratio specified by the IFSCA.
- The IFSC subsidiary will maintain reserves as mandated under the Banking Regulation Act, 1949, and Reserve Bank of India Act, 1934.
- IBUs will conduct their business and maintain their books of accounts only in specified foreign currencies.
- The Amendment Regulations clarify that the activity of providing 'referral services' is permitted.

Income distributed on ODIs

Notification No. 50/2023/F.
No.370142/22/2023-TPL dated 17
July 2023

The Finance Act, 2023, extended the exemption under section 10(4E) of the Act to cover income distributed on ODIs by an offshore IBU in the hands of non-resident investors. Rule 21AK of the Rules, prescribes the conditions to be satisfied to claim the exemptions specified under section 10(4E) of the Act.

Through the notification, rule 21AK of the Rules was amended to also include income accrued to, arisen to or received by a non-resident as a result of distribution of income on ODIs.

Exemption from obtaining PAN for non-residents undertaking specified transactions with IBUs

Notification No. 88/2023 F. No.
370142/33/2023-TPL dated 10
October 2023

The CBDT has granted exemption from the requirement to obtain a PAN to non-residents undertaking specified transactions with an IBU. The specified transactions are as follows.

- Foreign companies opening an account or making a time deposit with an IBU, provided that they –
 - do not have any income chargeable to tax in India;

- do not possess a PAN; and
- file a declaration in Form 60.

- Non-residents making a deposit or withdrawal of an amount by a way other than cash, or opening a current account not being a cash credit with an IBU, provided that they do not have any income chargeable to tax in India.

AML-CFT and KYC guidelines

IFSCA (AML, CFT and KYC) Guidelines, 2022 – IFSC

Circular No. F. No. 939/IFSCA/FATF-C/
PMLA/2023-24 dated 23 May 2023

The IFSC has issued the following key amendments in the IFSCA (AML, CFT and KYC) Guidelines, 2022.

- The definitions for 'group' and 'non-profit organisation' have been amended.
- From the perspective of beneficial ownership, the threshold in the case of a company or partnership has been changed to more than 10% instead of 25% or 15%, respectively.
- Each banking company, financial institution or intermediary will register its non-profit organisation client on the DARPA Portal of the NITI Aayog,

and registration records will be maintained for a period of five years from end of business relationship or closure of account, whichever is later.

- In compliance with rule 9 of the Prevention of Money-Laundering (Maintenance of Records) Rules, 2005, if there is any update in the documents submitted, the client should give the updated documents for maintenance of records within 30-days of the update.
- The amended notification specifies the relevant persons who will report suspicious transactions when engaged in financial transactions on behalf of clients.

Aircraft leasing in IFSC

No deduction of tax on dividend from an IFSC company to another IFSC company engaged in the business of aircraft leasing

Notification No. 52/2023/F.No.
275/17/2023-IT(B) dated 20 July 2023

The Central Government vide Finance Act, 2023, has exempted any income of a unit in the IFSC primarily engaged in the business of aircraft leasing by way of a dividend from another company that is a unit in the IFSC primarily engaged in the business of aircraft leasing.

Pursuant to that, the CBDT has notified the following: Such exempt income by way of a dividend received by a unit in the IFSC primarily engaged in the business of aircraft leasing from another company being a unit in the IFSC primarily engaged in the business of aircraft leasing will not be subject to deduct any tax under section 194 of the Act. The notification also provides for certain conditions for the payer and payee to avail such exemption.

Aviation Working Group issues positive watchlist notice for India

Notification No. F. No. Insol-30/9/2020-Insolvency-MCA dated 3 October 2023

On 3 October 2023, the Ministry of Corporate Affairs, Government of India, issued a notification, stating that the provisions of section 14(1) of the IBC, 2016, with respect to the application of moratorium, have been exempted for transactions, arrangements or agreements governed by the Cape Town Convention (CTC) relating to aircraft, aircraft engines, airframes and helicopters.

Because of this notification, the Aviation Working Group, the not-for-profit organisation comprising aircraft manufacturers, lessors and financial institutions, has issued a positive watchlist notice for India under the CTC compliance index with a projected increase in India's score.

Although India is a signatory to and has acceded to the CTC, there is no domestic legislation on the same.

Co-utilisation of space and staff by units dealing with aircraft leasing activities in the IFSC

Notification No. F. No. K-43013(12)/1/2022-SEZ dated 23 February 2023

The Central Government vide notification dated 23 February 2023 notified the Special Economic Zones (Amendment) Rules, 2023 (Amendment Rules) to amend the Special Economic Zones Rules, 2006.

The Amendment Rules have, inter alia, introduced rule 21B to permit an authorised aircraft leasing unit in the IFSC to utilise office space, workforce or both of another authorised aircraft leasing unit in the IFSC with prior approval from the IFSCA.

Inclusion of aviation training simulation devices as a financial product in the IFSC

Notification No. IFSCA/2022-23/ GN/037 dated 11 April 2023

The Central Government, on 14 December 2021, had notified that an operating lease, including any hybrid of an operating and financial lease of such product or equipment as may be specified by the IFSCA, is a financial product under the IFSCA Act, 2019.

Pursuant to the above, the IFSCA, vide notification dated 11 April 2023, has notified that an operating lease, including a hybrid of an operating and financial lease, in respect of 'aviation training simulation devices', is a financial product.

Ship leasing in IFSC

No deduction of tax at source on lease rentals paid to the ship lessor being an IFSC unit

Notification No. 57/2023/F. No. 275/19/2023-IT(B) dated 1 August 2023

The CBDT, vide notification dated 1 August 2023 (in line with aircraft leasing in the IFSC), has notified that no deduction

of tax at source under section 194-I of the Act is required on payments in the nature of lease rent or supplemental lease rent made by a lessee to a lessor (being an IFSC unit) for leasing a ship, subject to specified conditions.

However, note that the said relaxation under section 194-I of the Act is available only for the tax holiday period. The lessee will be liable to deduct the tax for other years.

Others

Remittances to the IFSC under the LRS

Circular No. A.P. (DIR Series) Circular No. 03 dated 26 April 2023

In February 2021, the RBI had permitted resident individuals to open a non-interest-bearing FCA in IFSCs to make specified permissible investments under the LRS. This permission was granted subject to conditions that any funds lying idle in the account for a period up to 15 days from the date of its receipt into the account will be immediately repatriated to the domestic Indian rupee account of the investor in India.

The present LRS, which governs the remittance of funds overseas by resident

individuals, permits resident individuals to open an FCA abroad with a bank. The LRS does not require the FCA to be only a non-interest-bearing account.

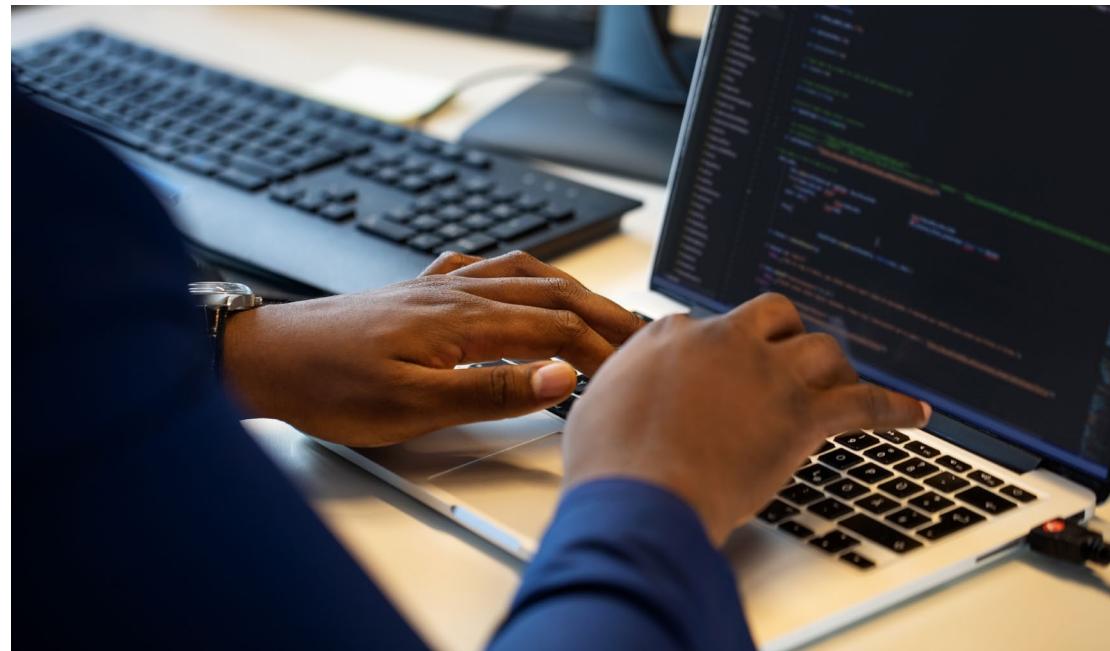
Moreover, resident individuals who have remitted funds under the LRS can retain or reinvest the income earned on the investments. The received, realised, unspent or unused foreign exchange, unless reinvested, is only required to be repatriated and surrendered to a bank in India within a period of 180 days from the date of such receipt, realisation, purchase, or acquisition or the date of return to India, as the case may be.

With an objective to align the LRS for IFSCs vis-à-vis other foreign jurisdictions, the RBI issued a circular dated 26 April 2023, amending the conditions in relation to opening an FCA in the IFSC. Resident individuals can now open an FCA in IFSCs to make specified permissible investments under the LRS.

Relaxation from furnishing Form 15CA on remittance made by IFSC units to non-residents that is not chargeable to tax

Notification No. 89/2023/F.
No.370142/36/2023-TPL dated 16
October 2023

The CBDT issued a notification providing relaxation to units set up in the IFSC from the obligation of furnishing information in Part D of Form 15CA while making remittance to a non-resident that is not chargeable to tax. The IFSC units will furnish information of such remittances in Form 15CD on a quarterly basis, within 15 days from the end of each quarter.



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Losses

As beneficial shareholding remains with ultimate holding company, section 79 of the Act cannot be invoked

ITA No. 930/Mum/2022

When beneficial ownership is with the ultimate holding company and continues to be so, section 79 of the Act cannot be invoked. As no set-off of loss was claimed, there is no question of disallowance.

Valuation method

DCF method for valuation of preference shares held to be hypothetical method of estimation lacking cogent basis

ITA No. 494/Bang/2023

During the FY relevant to the AY 2016–2017, the taxpayer allotted 1,045 preference shares, each convertible into 12 equity shares after FY 2019–2020, for INR11,000 per share (including a premium of INR10,000 per share). The issue price of INR11,000 was derived by

a chartered accountant using the DCF method. The TO made an addition of entire premium amount of INR10.45m.

It was observed that the DCF method followed by the taxpayer is a hypothetical method of estimation without any cogent basis. The Tribunal did not agree to calling for a fresh valuation from the Departmental Valuation Officer and accepted the addition made by the TO to be just and proper.

Issue of right shares

Non-applicability of provisions of section 56(2)(vii)(c) of the Act to issue of right shares – Gujarat High Court

R/Tax Appeal No. 80 of 2023 with R/Tax Appeal No. 96 of 2023

Section 56(2)(vii)(c) [now replaced by section 56(2)(x)(c)] of the Act cannot be invoked in respect of the allocation of right shares allotted to the taxpayer in proportion to his shareholding in the company, as it cannot be said that the taxpayer has received the shares. The shares that have been allotted to the taxpayer were not 'received from any person', which is the fundamental requirement for invoking section 56(2)(vii)(c) of the Act. In other words, the

property must pre-exist for application of section 56(2)(vii)(c) of the Act, which is clear from the intention of the legislature.

There is a vital difference between 'creation' and 'transfer of shares'. 'Allotment of shares' is the creation of shares by appropriation out of the unappropriated share capital to a particular person who has the right to choose for such allotment. The explanatory notes to the Finance Bill, 2010, provided that section 56(2)(vii)(c) of the Act ought to be applied only in the case of transfer of shares. It is trite law that allotment of new shares cannot be regarded as transfer of shares. Therefore, the provisions of section 56(2)(vii)(c) of the Act would not be applicable to the issue of new shares. The amendment is never meant to aim for the 'fresh issue' or 'fresh allotment' of shares by a company. For the provisions of section 56(2)(vii)(c) of the Act to apply, property must be in existence before receiving it.

Advanced Law Lexicon Dictionary defines the term 'receive' as 'To receive means to get by a transfer, as to receive a gift, to receive a letter or to receive money and involves an actual receipt'. Merely receiving such shares cannot be considered as a transfer under section 56(2)(vii)(c) of the Act. Accordingly, such a provision would not be applicable to the

issuance of shares by the company in the hands of the allottee.

In view of the foregoing reasons, it was opined that no question of law, much less any substantial question of law, would arise from the impugned common judgement and order passed by the Tribunal, and the departments appeals were accordingly dismissed.

Revision

Revisionary order rejected as TO had taken a plausible view after enquiry and verification

ITA No. 930/Mum/2022

The TO had enquired into the issues flagged by the Principal Commissioner of Income-tax (PCIT) and had taken a plausible view. Since 'no set-off' of brought forward loss has been claimed by the taxpayer, the order cannot be termed as erroneous. Explanation 2(a) to section 263 of the Act cannot be invoked while passing order under section 263 of the Act, if the same was not invoked at the time of issuing notice. Accordingly, the TO's order was neither erroneous nor prejudicial to the interest of the Revenue; hence, the order passed by the PCIT was to be quashed.

Gift

Receipt of shares as a gift is not taxable under either sections 56(1) or 28(iv) of the Act

ITA No. 2715 & 3064/Mum/2018

A source of income that is not covered specifically under any other head of income is brought to tax under income from other sources. However, the receipt of shares is a capital receipt and can be brought to tax under the head of capital gains only. Accordingly, the provisions of section 56(1) of the Act are not applicable. Since the shares gifted are those of a listed company, provisions of section 56(2)(viiia) of the Act do not apply.

Section 28(iv) of the Act specifies that the value of any benefit or perquisite arising from business will be chargeable to tax under the head 'Profits & Gains of business or profession'. To bring the gift of shares to tax under section 28(iv) of the Act, the benefit or perquisite should arise from the business. In the instant case, receipt of shares of the listed company as a gift does not arise out of any business dealings and is also a capital receipt. Accordingly, it is not taxable under section 28(iv) of the Act.

Therefore, the receipt of gift of shares of the listed company by the taxpayer is not chargeable to tax under either sections 56 (1) or 28(iv) of the Act.

Tax & Regulatory Insights

Circulars, Notifications & Others

Changes in angel tax provisions

Specified class of investors and start-up companies exempted

Notification No. 29/2023/F. No. 370142/9/2023-TPL (Part-I) dated 24 May 2023 and Notification No. 30/2023/F. No. 370142/9/2023-TPL (Part-I) dated 24 May 2023

The Central Government has notified that provisions of section 56(2)(viib) of the Act of the will not apply to receipt of consideration from:

- i. Government and government-related investors, including entities controlled by the government or where direct or indirect ownership of the government is 75% or more;
- ii. Banks or regulated entities involved in the insurance business;

iii. Regulated Entities established in or incorporated in or resident of 21 specified countries, which are (a) registered with the SEBI as Category-I Foreign Portfolio Investors; (b) endowment funds associated with a university, hospitals or charities; (c) pension funds created or established under the law of the foreign country or specified territory; (d) broad-based pooled investment vehicle with fewer than 50 investors and not being a hedge fund or a fund employing diverse or complex trading strategies.

List of 21 countries: Australia, Austria, Belgium, Canada, Czech Republic, Denmark, Finland, France, Germany, Iceland, Israel, Italy, Japan, Korea, New Zealand, Norway, Russia, Spain, Sweden, the United Kingdom and the United States.

Substitution of Rule 11UA(2) with effect from 25 September 2023 – valuation for section 56(2)(viib)

Notification No. 81/2023/F. No. 370142/9/2023-TPL (Part-I) dated 25 September 2023

Clause (A) relating to valuation of unquoted equity shares:

The existing rule 11UA(2) of the Rules provided that valuation of unquoted equity shares should be determined at the option of the taxpayer either under the DCF, as determined by a merchant banker or under the prescribed formula or method based on the NAV. The substituted Rule added two more options that, in case the taxpayer (a) being a venture capital undertaking, had issued equity shares to the venture capital fund, venture capital company or any specified fund and, has, within 90 days before or after such issue, issued shares to others to the extent of aggregate amount received from such funds, etc. the valuation should be the price at which shares were issued to such fund etc. or (b) had issued equity shares to any entity notified under section 56(2)(viib)(ii) of the Act and, has, within 90 days before or after such issue, issued shares to others to the extent of aggregate amount received from such notified entities, the valuation should be the price at which shares were issued to such notified entity.

In case consideration is received from a non-resident, in addition to the above, the fifth option of the valuation determined by a merchant banker under (a) comparable company multiple method, (b) probability weighted expected return method, (c) option pricing method, (d) milestone analysis method or (e) replacement cost methods has been added.

Clause (B) relating to valuation of compulsorily convertible preference shares:

- a. The clause (B) of the substituted Rule provides that valuation of compulsorily convertible preference shares will be value determined, at the option of the taxpayer
- b. Based on the DCF or the two newly inserted options or additional option in case of non-resident; or
- c. Based on the value of unquoted equity shares determined in accordance with the above applicable options.

Insertion of Rule 11UA(3)/(4):

Sub-rule (3) provides that, if the date of the valuation report of the merchant banker is not more than 90 days prior to the date of issue of shares, the taxpayer has the option to deem the date of the report to be the valuation date.

Sub-rule (4) provides a safe harbour of 10% variation in value (a) in case the consideration is received from residents and valuation is as per NAV or DCF methods and (b) in case the consideration is received from non-residents and the valuation is as per NAV, DCF or the fifth option prescribed for non-residents.

Other developments

Judgements

Amalgamation

Recovery of bad debts of amalgamating company – taxable in hands of amalgamated company

T.C.A. Nos. 272 & 275 of 2022

Certain companies amalgamated with the taxpayer. During the relevant year, the taxpayer recovered certain bad debts that were written off by the amalgamating companies. The taxpayer claimed that it is not a taxpayer for the purpose of section 41(1) of the Act; therefore, the amount recovered is not liable to tax. The High Court held that section 41(1) of the Act is a complete code that cannot be read devoid of section 41(4) of the Act. Moreover, assessment contemplated under sections 41(1) and 41(4) of the Act are same; therefore, just because amendment is made only in section 41(1) of the Act and not in section 41(4) of the Act, does not mean section 41(1) of the Act does not apply. Recovery of debt is one right, which, along with other rights, is transferred to the taxpayer. If the amalgamating company can claim deduction for a write-off, the same

right should also be recognised in the amalgamated company. Therefore, it held the recovery of bad debts to be taxable.

Scheme, being non-compliant with section 72A of the Act, rejected

Company application No. CA(CAA)-111(ND)/2021

As on 31 March 2021, the transferor company had substantial unabsorbed depreciation and carried forward business loss. It proposed to amalgamate with a profit-making transferee company with effect from 1 April 2022. The scheme was filed with the Delhi bench of the NCLT. The Regional Director and the Official Liquidator had no objection to approve the scheme.

The income-tax department filed an affidavit before the NCLT, observing that, in view of the use of losses of the transferor company, the profit of the transferee company will be reduced and result in loss to the Revenue. The department accordingly requested for rejection of the scheme.

The NCLT analysed the scheme and found that (a) there was no mention of compliance with the provisions of section 72A of the Act allowing transfer

of loss to the transferee company and (b) the scheme provides for carrying on business till an effective date and there is no undertaking to carrying on business till five years, as required by section 72A of the Act. Moreover, (c) there was no undertaking restricting the transfer of assets, as required by the said section. Therefore, the NCLT, not differing with the recommendation of the department, rejected the scheme.

Capital Gain

Applicability of first and second proviso to section 48 of the Act for computation of gains in the hands of the non-resident

ITA No. 1627/Mum/2022 (AY 2018–2019)

The taxpayer (a UAE-based company) computed long-term capital loss on sale of unlisted equity shares after applying the first proviso to section 48 of the Act, and carried forward such loss for set-off in future years. The TO disallowed the loss and computed long-term capital gains without applying first proviso to section 48 of the Act. The taxpayer contended that section 112 merely provides the rate of tax to be applied where computation under section 48 of

the Act results in capital gains. However, the Departmental Representative contended that the term 'income' covered in section 112 of the Act also includes losses; hence, the taxpayer needs to compute the gains as per section 112 of the Act, i.e. without taking the benefit of first and second proviso to section 48 of the Act.

The Tribunal was of the view that section 112(1)(c)(iii) of the Act is a special provision for the computation of long-term capital gains arising to a non-resident from transfer of unlisted shares, while section 48 of the Act is a general provision dealing with the mode of computation of capital gains. The Tribunal stated that it is a well-settled rule of interpretation that, if a special provision is made in respect of a certain matter, that matter is excluded from the general provision under the rule expressed by the maxim 'generalia specialibus non derogant'. The Tribunal further noted that section 112(1)(c)(iii) of the Act does not provide for 're-computation' of capital gains for levying a tax rate of 10%, and the taxpayer's interpretation would render the provisions of section 112(1)(c)(iii) of the Act otiose and redundant. Based on the above discussions, the Tribunal concluded that long-term capital gains earned by the taxpayer on sale of unlisted equity shares

will be computed without giving effect to first and second proviso to section 48 of the Act, and gains so computed will be chargeable to tax at the rate of 10% as per section 112(1)(c)(iii) of the Act.

Section 50C of the Act is not applicable, if stamp duty is not payable on the transaction

ITAT No. 282 of 2022 (G.A. No. 02 of 2022)

National Highway Authority of India acquired the land of the taxpayer at a price lower than the stamp duty valuation thereof. The acquisition was not on mutually agreed terms but was a compulsory acquisition by the authority. The High Court held that, in a case of compulsory acquisition of land by the authority, there is no room for suppressing the actual consideration, which can be possible in a transaction between the private parties. Therefore, the provisions of section 50C of the Act should not be applicable to such transaction of the compulsory acquisition.

One of the judges added that the provisions of section 50C of the Act are not applicable to all transfers referred to in section 2(47) of the Act but only to those transfers that can be effected only on payment of stamp duty. As in compulsory acquisition property vests through operation of law, stamp duty is not payable on such transfer. Therefore, section 50C of the Act should not be applicable.

Convertible debenture – Interest deductibility

Convertible debentures 'debt instrument' until conversion into equity – interest allowable as revenue expenditure

ITA No. 7856/DEL/2017

The holding company of the taxpayer had subscribed to the CCD of the taxpayer and taxpayer had paid interest on the same. The TO disallowed the interest expenditure, treating the same as dividend. The CIT(A), piercing the veil, had considered it to be a colourable device. The Tribunal considered that the CCDs are debt instruments till the time of conversion into equity and accordingly allowed interest paid on such CCDs to be deductible under section 36(1)(iii) of the Act.

Excessive issue price taxation

Subsidiary company receiving premium on shares issued to holding company – not liable to tax

IT Appeal No. 4895/DEL/2019 [AY 2014–2015]

The transaction of allotment of shares at a premium in the instant case is between holding company and its subsidiary company. When seen holistically, there is no benefit derived by the taxpayer by issue of shares at certain premium exceeding the fair market value of such shares. Instinctively, it is a transaction between the self. The true purport of section 56(2)(viib) of the Act is to prevent unlawful gains by the issuing company in the garb of capital receipts. In the instant case, not only that the fair market value is supported by independent valuer report, the allotment has been made to the existing shareholder holding 100% equity. Therefore, there is no change in the interest or control over the money by such issuance of shares. The object of deeming an unjustified premium charged on issue of share as taxable income under section 56(2)(viib) of the Act is wholly inapplicable for transactions between holding and its subsidiary company where no income can be said

to accrue to the ultimate beneficiary, i.e. holding company. Thus, the condition for applicability of section 263 of the Act for inquiry into the transactions between the interwoven holding and subsidiary company is of no consequence.

Section applicable in the year of allotment and not in the year of receipt of consideration

ITA No. 1958/Del/2019 [AY 2015–2016]

The taxpayer had received the share application in FY 2010–2011. However, allotment of shares was made during FY 2014–2015 at a substantial premium. The provisions of section 56(2)(viib) of the Act were inserted with effect from 1 April 2013. Therefore, the question was whether section 56(2)(viib) of the Act, relating to the taxation of excessive issue price, will be applicable to the consideration for the issue of shares received in FY 2010–2011?

The Tribunal was of the view that, till the date of allotment, the investor had the right to withdraw the application for shares. Therefore, the date of allotment, and not the date of receipt of consideration, is relevant for applicability

of section 56(2)(viib) of the Act. Therefore, the Tribunal concluded that the provisions inserted with effect from 1 April 2013 were applicable to allotment made during FY 2014–2015.

Taxation of inadequate consideration

Not applicable to buy-back of shares by a company

IT Appeal Nos. 67 & 76/Hyd/2018 [AYs 2013–2014 & 2014–2015]

The taxpayer bought back shares at face value of INR100 per share as against the fair value of INR146.817 per share. The TO made addition of the difference between fair value of share and face value. The Tribunal was of the view that provisions of section 56(2)(viia) of the Act apply if (a) the shares become property of the recipient company, the taxpayer, and (b) such shares should be the shares of other company. In case of buy-back of own shares, the shares are extinguished by reducing the capital. Therefore, the test of 'becoming property' and also 'shares of any other company' fails and the provisions under section 56(2)(viia) of the Act are inapplicable.



Tax & Regulatory Insights

Judgement

- Comparability analysis

Circulars, Notifications and Others

- Advance Pricing Agreement

Tax & Regulatory Insights

Judgement

Comparability analysis

Comparability issues in TP can give rise to a 'substantial question of law'

Civil Appeal No. 8463 of 2022 & Ors.

Several High Courts in the past have held that the selection of comparables and application of filters are fact-finding exercises and do not give rise to a 'substantial question of law'— a prerequisite for the High Court to admit an appeal unless any perversity is demonstrated in the order of the Tribunal. However, in a significant decision, the Supreme Court overturned a batch of High Court decisions and held that determination of the ALP must follow the guidelines stipulated under Chapter X of the Act and the relevant rules thereunder, and any deviation from these guidelines can be considered perverse and subject to scrutiny by the High Courts. Therefore, the High Courts can examine whether the guidelines under Chapter X of the Act are followed or not, and whether the findings recorded by the Tribunal while determining the ALP are perverse or not.

Circulars, Notifications and Others

Advance Pricing Agreement

CBDT released its fourth and fifth annual APA reports

Forth and Fifth annual APA reports

The CBDT released the fourth and fifth annual reports on the Indian APA Programme (APA report). The fourth APA report covers FYs 2019–20 to 2021–22, while the fifth APA report covers FY 2022–23. Despite the impact of the COVID-19 pandemic, the APA statistics continue to be encouraging, as the total APA tally has reached 516, cumulatively bringing tax certainty to over 3,200 FYs. It is estimated that the 516 signed APAs have resulted in bringing finality in taxation to income of about INR190bn, which translates to payment of tax of about INR70bn.



Notably, FY 2022–23 was a record-breaking year for the APA programme, as it saw the highest ever APA signings (95) in any FY, highest number of bilateral APAs (32) signed in any year, and largest number of single day signings (21) in the history of the programme. The fourth

APA report also highlighted the amicable resolution of intra-group services transactions, a widely litigated issue. The APA reports acknowledge that the APA programme is an important tool to decongest the tax Tribunals and higher judiciary for TP litigation.

Tax & Regulatory Insights

Judgements

- Taxability
- Input Tax Credit
- Place of supply
- Refund
- Others
- EPCG scheme
- Declared value
- Export & Import conditions
- SCN issued
- Refund of customs duty
- Tariff Entry

Circulars, Notifications and Others

- GST Council meetings
- Foreign Trade Policy
- Customs Tariff
- Import and export conditions
- Automatic Grant of Status Holder
- Transfer of inputs

Other developments

Judgements

- Taxability
- Input Tax Credit

Tax & Regulatory Insights

Judgements

Taxability

Consideration is critical to levy service tax on corporate guarantee provided to group companies – Supreme Court

Civil Appeal No. 1769 of 2023

The Supreme Court has rejected the civil appeal preferred by the Revenue and affirmed the decision of the CESTAT. Herein, CESTAT had held that issuance of corporate guarantee to group companies, without consideration, is not a taxable service under the Finance Act, 1994. The Supreme Court observed that this was a case where the taxpayer had not received any consideration while providing a corporate guarantee to its group companies. Moreover, no effort was made on behalf of the Revenue to assail the finding on the absence of consideration, or to demonstrate that the issuance of corporate guarantee to group companies without consideration would be a taxable service.

DFSs are outside the customs frontiers of India, and levy of service tax on service provided to DFSs is unconstitutional – Supreme Court

Civil Appeal Diary No. 24336/2022

In a case pertaining to service tax paid on charges levied by an airport operator, the Supreme Court has upheld the ruling of the Mumbai bench of the CESTAT, holding that DFSs cannot be saddled with any indirect tax burden as they are outside the customs frontiers of India. Moreover, the court held that any such levy would be unconstitutional considering Article 286 of the Constitution of India. The court further held that any tax levied cannot be retained, and the DFS will be entitled to refund of the service tax paid.

Supreme Court upholds sales tax liability on auto parts replaced free of cost by a dealer in fulfilment of the warranty obligation of the manufacturer qua customer, where a credit note is issued by the manufacturer as recompense

Civil Appeal No. 1822/2007

In a case pertaining to free replacement of defective parts by an automobile dealer pursuant to the warranty given by the manufacturer, a three-member bench of the Supreme Court held the following:

When a dealer replaces a defective part with a part maintained in its own stock or

by purchasing it from the open market, the credit note issued by the automobile manufacturer is a valuable consideration for the transfer of property in the spare part by the dealer to the customer.

The court held its previous decision in the case of Mohd. Ekram Khan & Sons v. CTT [2004] 6 SCC 183, to be correct, although it is to be read contextually.

Restaurants are not subject to service tax when offering takeaway food and sharing premises with an associated enterprise – Supreme Court

Civil Appeal No. 6147 of 2023

The Supreme Court, while considering a civil appeal preferred by the tax department, upheld the ruling of the CESTAT. The CESTAT had concluded that service tax cannot be levied on the activity of takeaway of food items. The CESTAT ruling relied on an earlier judgement to clarify that, in the case of takeaway food, the essence of the transaction is the sale of food or packaged items directly over the counter. This sale is akin to the sale of goods, and it does not involve additional services typically associated with dining, such as table service or facilities for washing and clearing tables.

Vouchers in the form of 'PPIs' are 'money' and thus not chargeable under the GST law – Karnataka High Court

Writ Petition No. 5569 of 2022 (T-RES)

The Karnataka High Court dealt with the taxability of PPIs or vouchers (gift vouchers, cashback vouchers and e-vouchers) and held that they are similar to pre-deposits. These PPIs do not qualify as goods or services and are mere instruments covered under the definition of 'money'. Therefore, supply of a voucher is not taxable under the GST law. It was also observed that these PPIs can be issued only with prior approval of the RBI and cannot be used for cash withdrawal. The value printed on the vouchers can be transacted only at the time of the voucher's redemption and not on its delivery.

Service tax demand on Indian salary component paid to secondees upheld by relying on a Supreme Court decision – Chennai bench of the CESTAT

Service Tax Appeal No. 41736 of 2019

The Chennai bench of the CESTAT upheld the service tax demand on

the Indian salary component paid to expatriate employees seconded from a foreign affiliate on the basis that it constitutes consideration for labour services received from the foreign affiliate by the Indian entity. The CESTAT also relied upon the landmark Supreme Court decision in the case of Northern Operating System Private Limited (NOS decision) and observed that the facts are similar to those of the NOS decision. While the demand has been upheld for the normal period along with interest, the CESTAT set aside the demand for the extended period on the basis that the case does not involve suppression of facts and that it was a revenue-neutral situation.

Input Tax Credit

Producing cogent material and substantiating actual physical movement of goods are sine qua non for taxpayer to justify the genuineness of the ITC claim under the Karnataka Value Added Tax Act, 2003 – Supreme Court

Civil Appeal No. 230 of 2023

The Supreme Court has set aside a decision by the Karnataka High Court to hold that denial of ITC is justified in the

absence of any cogent material to prove the genuineness of transactions disputed by the Revenue authorities. The Supreme Court observed that to claim ITC, the transactions genuineness and goods actual physical movement are sine qua non; the burden of proving the same lies on the purchasing dealer who is claiming such ITC, and it cannot be shifted on the Revenue.

ITC allowed on manufacturing or invisible loss that is an inherent part of the manufacturing process – Madras High Court

W.A. Nos. 1094 of 2015

The Madras High Court, while considering a batch of petitions and writ appeals, allowed ITC on manufacturing or invisible loss that is inevitable in the process of manufacturing products in the context of the Tamil Nadu Value Added Tax Act, 2006 (TNVAT Act). ITC on manufacturing or invisible loss that is inevitable in the process of manufacturing would be covered within the scope of the expression 'used in manufacturing or process of goods' in the context of the TNVAT Act.

Place of supply

Bombay High Court passes the final judgement upholding sections 13(8)(b) and 8(2) of the IGST Act as constitutionally valid – Bombay High Court

Writ Petition No. 2031 of 2018 and Writ Petition (L.) No. 639 of 2020

The Bombay High Court held the provisions of sections 13(8)(b) and 8(2) of the IGST Act, relating to the place of supply and taxability of intermediary services provided by a supplier in India to a recipient located outside India (intermediary provisions), to be legal, valid and constitutional. This judgement concluded the proceedings that emerged from the split verdict by the Division Bench of the Bombay High Court on the constitutionality of the intermediary provisions. The Chief Justice referred the matter for the opinion of the third judge, who rendered his opinion that – (1) the provisions in relation to intermediary services are legal, valid and constitutional; (2) however, they are confined in their operation to the provisions of the IGST Act only; and (3) the same cannot be made applicable

for levy of tax on services under the CGST Act and the Maharashtra Goods and Services Tax Act, 2017. The matter was placed before the division bench for the final verdict, which held the intermediary provisions to be legal, valid and constitutional.

Refund

Karnataka High Court strikes down amended rule 89(4)(C) of the CGST Rules as being unconstitutional and ultra vires GST law

Writ Petition No. 13185 of 2020 (T-RES)

The Karnataka High Court held that rule 89(4)(C) of the CGST Rules is arbitrary and unreasonable, as it restricts export turnover (i.e. exports without payment of tax) to 1.5 times the value of like goods supplied in the domestic market. The High Court quashed the applicability of rule 89(4)(C) of the CGST Rules as being ultra vires the provisions of section 16 of the IGST Act and section 54 of the CGST Act, as well as being violative of Articles 14 and 19 of the Constitution of India.

Others

CBEC circular issued on valuation of goods sold to both independent and related parties does not violate central excise laws and is binding on the tax department – Supreme Court

Civil Appeal No. 6891 of 2018

The Supreme Court held that the circular issued by CBEC, which clarified the methodology to be adopted to determine the value of goods when sales are made to both independent and related buyers, conforms with section 4(1) of the Central Excise Act, 1944, and rule 11 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 (CEVR). The court also held that the tax department is bound by circulars that the CBEC has issued when there is no conflict between the circular and provisions of the CEVR. While the Supreme Court upheld the demand of differential excise duty, it set aside the levy of penalty and interest on the basis that the tax department itself remained unclear on the valuation method to be adopted.

‘Mens rea’ is not an essential ingredient to levy penalty and interest, based on specific language of the provisions – Supreme Court

Civil Appeal No. 3481 of 2022

The Supreme Court of India, while considering an appeal from the State of Gujarat, confirmed the levy of interest and penalty. Based on the specific provisions of the Gujarat Sales Tax Act, 1969, the court observed that interest and penalty provisions are automatically attracted when it is found that a taxpayer has failed to pay the tax. There is no requirement of ‘mens rea’ on the part of the taxpayer, and there is no discretion to levy or not levy penalty. Considering the tenor of the provisions for the levy of penalty and interest as well as the language used therein, on strict interpretation, the court held that the levy of penalty and interest is statutory and mandatory.

GST Council cannot determine a classification – Classifies ‘Flavoured milk’ under tariff heading 0420 attracting lower GST rate of 5% – Madras High Court

Writ Petition Nos. 16608 & 16613 of 2020

The Madras High Court, while limiting the powers of the GST Council in determining the classification of a product, held that the role of the GST Council is only

recommendatory. While analysing the relevant tariff chapters in detail, the High Court held that ‘flavored milk’ would be classified under tariff heading 0402, attracting a lower GST rate of 5% (and not under tariff heading 2202 as was decided in the GST Council meeting held on 22 December 2018, which would be taxable at 12%). While referring to Article 279A(4) of the Constitution of India, the High Court held that the GST Council can only make recommendations and that the decision of the GST Council is not binding on the government.

Addition of royalty will not form part of transaction value if the same is not a condition to the sale

Customs Appeal No. 21832 of 2016

In the instant case, A Co. and B Co. has been importing various materials from G Co., Germany, and other subsidiary companies of the same group. Customs concluded that the supplier and the importer are related, and the import price, as declared by the importer, was accepted under Rule 3(3)(a) of the Customs Valuation Rules, 2007. However, the Commissioner (Appeals) in his order held that the importer had accepted the addition of 5% royalty on carbon brushes under rule 10(1)(c) of the

Customs Valuation Rules, 2007, and had not provided any proof to show that the items imported were also from unrelated suppliers. Since the imports were only from the related suppliers, it is assumed that it is a condition for sale for buying only from the related suppliers.

The importer challenged the said order, and in their submission, stated that, since the transaction value has already been accepted after detailed examination in the order in original, the question of addition of 5% royalty to the transaction value is not sustainable. Also, the royalty for technical expertise for the manufacture of pantographs is a post-import activity; therefore, it cannot be the part of the transaction value for the imported goods. In support of the argument, reliance was placed on the past decisions on similar issue including on the decision of the Supreme Court in the cases of Commissioner of Customs v. Ferodo India Private Limited: 2008 (224) ELT (23) (SC) and Commissioner of Customs Port Chennai v. Toyota Kirloskar Motor Private Limited: 2007 (213) ELT (4) (SC).

Based on the submission made by the importer and the department along with the relevant provisions of Customs Act, the CESTAT held that it is clearly established and not under dispute that

the pricing was at arm's length and the relationship had not influenced the price, which has been accepted by the department. Hence, there is no question of adding the royalty to the transaction value, which stands accepted.

Questions raised in advance ruling will be liable for rejection if the said questions are subject of re-assessment and pending before the Customs Officer

CAAR/Del/ATL Battery/06/2023

The advance ruling was sought for the effective rate of IGST leviable on the import of the raw materials used for manufacturing of lithium-ion cells in India. The applicant is a global leader in manufacturing of lithium-ion battery cells in India and caters to the business requirement of world-renowned branded smartphones and other information and communications technology products.

While considering the application, the authority observed that the jurisdictional customs authorities have commented that the applicant is under investigation on short payment of IGST on imports of specified items by the Directorate of Revenue Intelligence (DRI). However, the same has not been disclosed by the

applicant in the application. Given that in terms of the proviso to section 28l of the Customs Act, the instant application is liable to be rejected. However, the applicant countered the same by stating that the letter received from the DRI sought clarification on the claim of exemption from IGST and summons have been issued as well to the applicant; the same though is not a matter pending before the customs officer in terms of past judgments in the matter. Moreover, the DRI has shared a letter with the authority wherein the applicant has communicated payment of differential duty and sought communication in this regard from customs authorities for re-assessment and payment of differential customs duty with interest.

Based on the examination of the relevant provision of the regulation on the aspect of matter pending before the authorities and eligibility of seeking a ruling and judgments on the same laying down the principles, the authority held that, since the applicant is in the process of paying differential duty with interest and getting the Bills of Entry re-assessed, which needs to be decided by the proper officer, the question raised is pending before the customs officer. Hence, the application was rejected.

EPCG scheme

Benefit of EPCG scheme to an SEZ unit is only available on exit

Customs Appeal No. 12023 of 2018

In the instant case, the appellant has imported certain capital goods through SEZ for ultimate clearance against an EPCG authorisation to its sister unit in domestic tariff area. The clearance was allowed provisionally under EPCG in terms of the SEZ law. However, the department contended that, since the appellant has not exited from the SEZ, the same is a one-time facility available in case of exit, as provided in the SEZ Rules. Hence, the clearance is in contravention of the provisions and the duty liability needs to be re-worked on final assessment.

Accordingly, the goods were finally assessed with direction to pay applicable customs duty along with interest. Aggrieved by the order, the appellant preferred an appeal with the Commissioner (Appeals). However, Order in Appeal upheld the original order. Pursuant to that, the appellant preferred an appeal with the CESTAT on following grounds.

- SEZ unit is legally permitted to sell the impugned goods to the domestic buyer under EPCG.
- The unit is not liable to pay the customs duty and interest as the same lies with the domestic unit clearing the goods against EPCG, which cannot be demanded as same is legally permitted clearance; thus, export obligation stands discharged.

Based on the examination of submissions made in the appeal and counter submissions made by the department and analysis of relevant regulations, the CESTAT held that the one-time exit facilitation under EPCG cannot be read as permitting availment of the EPCG scheme in terms of Rule 34 of the SEZ Rules, 2006, against a license. Moreover, it was held that, given the implications from World Trade Organization commitment perspective, switchover from one scheme to another of capital goods needs to be construed strictly through specific mandate of the legislature and not liberally.

Declared value

Enhancement of declared value not sustainable if no speaking order passed

Customs Miscellaneous Application No. 77306 of 2018 (Stay) and Customs Appeal No. 78763 of 2018

In the instant case, the importer has filed a BoE for clearance of Flower Lights, LED Lights, etc. from China. On assessment, the declared value was enhanced due to business reasons the importer cleared the goods on payment of customs duty under protest on the enhanced value. Customs authorities neither gave reason for enhancement nor passed a speaking order in terms of section 17(5) of the Customs Act.

Aggrieved by the enhancement, the importer filed an appeal; in Order in Appeal, the Commissioner (Appeals) set aside the enhancement on the grounds that no basis was provided nor any detailed order in terms of section 17(5) was passed by the assessing authority. The department preferred an appeal against the Appellate order with the Kolkata bench of the CESTAT on the grounds that there is no requirement

to pass an order under section 17(5) of the Customs Act as the importer has accepted the enhanced value.

Relying on the provisions of section 17(5) of the Customs Act and that the goods were cleared on payment of customs duty under protest, the CESTAT held that there was a requirement to pass such an order and the same since is not passed, the enhancement of declared value is not sustainable.

Export & Import conditions

The term 'importer' as defined under section 2(26) of the Customs Act is not limited to only owner of imported goods

Customs Miscellaneous (ROM) Application No. 10214 of 2023 in Customs Appeal No. 10569 of 2013

In the instant case, the importer carried out import of machinery required for setting up of a solar power generation project and claimed exemption from customs duty. As stipulated in the exemption notification, the importer submitted a certificate issued by Ministry of New and Renewable Energy, Government of India.

However, the benefit claimed by the importer was denied by Revenue authorities on the grounds of not being the owner of the goods. Moreover, the goods were being imported on behalf of another company that had purchased them basis a high sea sales agreement.

The Ahmedabad bench of the CESTAT was of the view that 'importer' includes any person causing the import, owner of the goods or any other person holding himself out to be the owner. Hence, the benefit of exemption available to an importer was allowed.

Denial of exemption on import of alternate input under DFIA scheme not permissible as exemption notification dealing with export benefits are to be construed liberally

Customs Appeal No. 10601 of 2023-DB

The appellant in the instant case sought to import lithium-ion cells (inputs) against the description 'automotive battery', as provided in the transferable DFIA issued against export of agricultural tractors in terms of notified SIONs. The benefit was denied on assessment by the authorities on the grounds that the input sought to be imported is not mentioned in the DFIA

against the description of automotive battery and its usage in export product as required in terms of the provisions of the FTP applicable.

Aggrieved, the appellant preferred an appeal with the Commissioner (Appeals) who rejected the same, which resulted in filing the appeal before the CESTAT. In their submission, the appellant held that the inputs used is an automotive battery in the agricultural tractor, and thus covered in the description in the DFIA and shared technical opinions, brochure or technical literature, etc. in support of their contention. The appellant further submitted that it is a settled law that a transferee of DFIA is not required to establish that the imported goods are actually used in the export product so long it is established that they are capable of being used in the export product mentioned in the SION and cited various case laws in this regard. They also cited judgments and policy circular issued by the DGFT on the accountal of input in the export product where flexibility is allowed to import alternative inputs and accountal is limited to sensitive items as notified or mentioned in the FTP.

Conversely, Revenue reiterated the findings of the Commissioner (Appeals) and submitted that exemption notification is required to be strictly construed, and in case of any ambiguity, in the language the benefit to be given to Revenue.

Based on the examination of the facts, provisions of the law and various rulings on similar matters including one cited by the appellant, the CESTAT held that it is not the actual use but the possibility of the use that needs to be seen while extending the benefit. For verifying the possibility of use, department can always seek technical opinions to arrive at the conclusion. Moreover, the DFIA unlike other schemes, does not require a strict co-relation as held by the rulings and relevant notification, and while the legislative purpose and intent of policy makers is not required to be looked into for interpreting the notification, but it can be broadly analysed if the policy makers wish to encourage innovation, advent of new technologies and use of new materials, which may require broad basing of imports within the industry and the SIONs, and accordingly allowed the appeal.

Supreme Court sets aside Gujarat High Court judgment that struck down 'pre-import condition' under AAS

Civil Appeal No(S). 290 of 2023

The Supreme Court set aside the Gujarat High Court judgment with respect to fulfilment of pre-import condition for imports under AAS. The requirement of 'pre-import condition' as incorporated in the FTP has been upheld on the following grounds.

Upon introduction of GST, a trade notice was issued forewarning the importers that AAS and their utilisation would not continue in the same manner. Importers would continue to enjoy exemption from payment of BCD, additional customs duty, etc. but would need to pay IGST and take ITC as applicable under GST Rules.

Inconvenience caused to exporters by paying IGST and claiming refund thereafter could not be a ground to hold the 'pre-import' condition as arbitrary.

The argument that there is no justification for different treatment of BCD and IGST under AAS was also rejected as BCD is a customs levy at the point of import, IGST is levied at multiple points (including at the stage of import) and ITC gets into the stream till the point of end user. Hence, there is a justification for a separate treatment of the two levies.

However, given that trade was extended interim relief on the matter, Revenue was directed to permit claim of refund or credit as the facts of the case maybe on merits for which guidelines are to be issued and application to be made within six weeks of the order with the concerned Commissioner of Customs.

Transfer from SEZ to DTA cannot be termed as 're-import'

Ruling No. CAAR/Del/Baker Hughes/09/2023

The matter involved a question on whether the applicant or importer is eligible to claim exemption from payment of customs duty, IGST and compensation cess on re-import of equipment from an SEZ or a FTWZ into a DTA, given the equipment is the same that brought from the DTA earlier and admitted into the SEZ or FTWZ.

The New Delhi bench of the CAAR clarified that, as per the provisions of SEZ Act, 2005, an activity of bringing goods from a Unit or Developer in an SEZ to a DTA is not covered under the definition of the term 'import'. Therefore, such transfer from an SEZ to a DTA cannot be termed as 're-import' for application of procedures and conditions as applicable

in the case of normal re-import of goods from outside India. Consequently, availing exemption of customs duty on re-import from an SEZ or FTWZ to a DTA is not maintainable.

SCN issued

SCN issued prior to amendment of section 28 of the Customs Act stands lapsed if not adjudicated within a period of 12 months from the date of issuance

W.P. (C) 6338/2021 & CM APPL. 19962/ 2021

In the instant case, the importer has filed a writ petition with the Delhi High Court praying for quashing of an SCN issued to them on 14 February 2018 on the issue of maximum retail price relabeling and recovery of differential duty due to the relabeling along with interest and penalty.

The SCN was not adjudicated till the filing of the petition before the court in April 2021. The two points raised in the petition were –

Whether the adjudication of the SCN issued prior to amendment of section 28 of the Customs Act by Finance Act, 2018, is subject to limitation vis-à-vis the timeline notified for adjudication of the SCN in terms of amended section?

Whether, in terms of erstwhile section 28(9) of the Customs Act the SCN has lapsed having not been adjudicated within the period of 12 months?

Based on the submissions and counter submissions and the relevant provisions of the section prior to and post amendment including judicial precedents, the court held as below.

Basis the intention of legislation, it is evident that for SCNs issued prior to the Finance Act, 2018, coming into effect, the unamended provision of section 28(9) of the Customs Act will apply. Hence, the benefit of limitation prescribed in the amended provision will not be applicable.

The flexibility on timeline given in the unamended section 28(9) of the Customs Act by expression 'where it is not possible to do so' does not mean indeterminate deferment by the department. The indifference of the concerned officer to complete adjudication, as evident from the timeline of the proceeding shared, cannot be condoned to the detriment of the taxpayer. Moreover, in absence of any ground that it was not possible for the officer to determine the amount of duty within the prescribed period, the SCN has lapsed and cannot be adjudicated.

Refund of customs duty

Amendment of BoE for refund of customs duty without challenge or review of assessment is allowed

Customs Appeal No. 11235 of 2014-DB

The instant case pertains to the claim of refund of additional duty of customs paid by the importer at the time of clearance as they by oversight paid the said duty while it was exempted on the product imported by them. The department assessed the BoE without granting the exemption which according to the importer was a clerical error. Hence, the importer sought amendment in the 26 BoE in terms of section 154 read with section 149 of the Customs Act with claim of refund of duty paid erroneously. The claim was rejected by the adjudicating authority *inter alia* on the grounds that no provisional assessment was requested, the duty was not paid under protest and the legal process as laid down in the law of challenging the assessment was not followed.

The aggrieved importer preferred an appeal before the Commissioner (Appeals), who allowed the appeal based on the ground averred by the importer

and directed the BoE to be amended in terms of section 149 of the Customs Act and re-assess the same under section 17 of the Customs Act.

On review, the department filed an appeal wherein the earlier ground of rejection as cited in the Order in Original was reiterated with further reference to legal provisions relating to assessment, refund, etc. which was countered in the submission by the importer.

Based on the examination of the submission of the importer and the department, the CESTAT held that principal grievance of the department is that unless order of assessment is reviewed under section 18 of the Customs Act or modified in appeal, the benefit cannot be extended after the self-assessment is done and applicable duty paid. However, the CESTAT observed that section 149 of the Customs Act permits amendment to the documents including a BoE after clearance based on documentary evidence in existence at the time of clearance and cited past judicial precedents. Moreover, the term 'or otherwise' used in section 17(4) of the Customs Act is comprehensive that it includes judicial orders directing the same. Thus, the CESTAT upheld the order of the Commissioner (Appeals) as the correct interpretation based on the principle of *Ex Visceribus Actus*.

Tariff Entry

LCD panels or display boards are classifiable under Tariff Heading 9013 and not as parts or components of television sets of Tariff Heading 8529 of the Customs Tariff

Civil Appeal No(s). 5622 of 2009

The instant case pertains to the classification of LCD panels or display boards to be used in television sets. While the taxpayer sought classification under Tariff Entry 9013.80.10 as 'LCDs', Revenue sought to classify it under Tariff Heading 8529, as 'parts of goods covered under heading Tariff Heading 8528 (Television Sets)' of the Customs Tariff.

The Supreme Court held that LCD panels are classifiable under Tariff Heading 9013 and not as parts of televisions sets basis the following.

- Rule 1 of the General Rules of Interpretation (GRI) provides that classification is to be determined according to the 'terms of the Tariff Headings' and Tariff Entry 9013.80.10 explicitly covers 'Liquid Crystal Display's'.

- Rule 3(a) of the GRI provides that a more specific heading will prevail over a general one, i.e. Tariff Heading 9013 is more specific heading for LCD panels than is Tariff Heading 8529.
- Note 1(m) to section XVI of the Customs Tariff clearly excludes articles of Chapter 90 from Chapter 85.
- The 'sole and principal use test' as mentioned in Note 2 of section XVI cannot be attracted to classify LCD panels or display boards as parts of Television sets, as Note 2 has to be read sub-ordinate to Note 1 of section XVI. Since Note 1 excludes goods of Chapter 90 from Chapter 85, LCD panels or display boards get excluded from Chapter 85.

Therefore, LCD panels or display boards merit classification under Tariff Entry 9013.80.10 as 'Liquid Crystal Devices' of the Customs Tariff.

Considering the principal function as ADPM, 'interactive flat display panel' is correctly classifiable under Tariff Entry 8471.41.90 of the Customs Tariff

Ruling No. CAAR/Del/ Supertron/10/2023

The instant case pertains to the classification of Optoma creative touch 'Interactive Flat Panel', an all-in-one computer system that functions like a large-sized tablet computer. The goods have an integrated system with central processing unit, mother board, memory (RAM + storage), touch screen as virtual keyboard as an input device and video display unit as an output device.

The competing entries are Tariff Entry 8471.41.90 as 'ADPM' and Tariff Entry 8528.59.00 as 'other monitors'. To merit classification under Tariff Heading 8471, the goods must be capable of performing the following functions in terms of the relevant chapter notes (Note 6(A) to Chapter 84 of the Customs Tariff.

- Storing the processing programme.
- Freely programmed following the requirements of the user.
- Performing arithmetical computations.

- Executing, without human intervention, a processing programme that requires them to modify their execution by logical decision during the processing run.

The New Delhi bench of the CAAR held that the product satisfies the features of ADPM as it has an inbuilt input unit, output unit and processing unit that can perform multiple functions.

Since the subject goods is not merely used as a monitor for a machine and has all the capabilities to meet all the four essential conditions listed in Notes to Chapter 84, it is appropriate to classify it under Tariff Entry 8471.41.90 as ADPM.

Burden of proof for re-classifying goods under a Tariff Entry different from the importer's claim lies upon Revenue

Customs Appeal No. 86627 of 2021

In the instant case, the importer's claim for classification of its goods under Tariff Entry 7307.22.00 of the Customs Tariff was denied without any justification.

The Mumbai bench of the CESTAT held that it is essential for the department to provide proper evidence and discharge

the burden of proof if they intend to classify the goods differently from the importer's claim. Since in the present case the said burden has not been discharged by Revenue, the entire process of re-determination of the classification is deemed to be not in accordance with law.

Computer systems with enhancement for gaming classifiable in Tariff Entry 8471.30.90 as an ADPM

Customs Appeal No. 42563 of 2018

In the instant case, the importer has imported computer system desktop specially designed for gaming purposes and claimed classification under Tariff Entry 8471.30.90 as ADPM. However, on examination, the customs authorities re-classified the goods in Tariff Entry 9504.50.00 as video games consoles and machines. On appeal, the Appellate Authority concluded that, while the product satisfies the condition of the Notes for Heading 8471 (ADPM), given the functionality and as heading 9504 includes ADPM as well, in terms of Rule 3 of the GRI, the specific heading prevails and upheld the reclassification done by the customs authorities.

On further appeal, based on technical submission, practice followed at the different ports, difference between gaming desktop computer and video game console and chapter notes and explanatory notes to Harmonized System of Nomenclature, the CESTAT held that the goods are neither 'video game consoles' nor 'video game machines' but entirely different product, which, though have gaming capabilities with wide array of functionalities for possible use by the trade, are to be classifiable as ADPM under heading 8471.

'Interface Cards' working as intermediate component of telecom equipment merits classification as populated, loaded or stuffed printed circuit board covered under Tariff Entry 8517.70.10

Customs Appeal No. 86186 of 2022

The instant case pertains to the classification of the imported goods namely 36-Port-100GE Interface Card (FG, QSFP28). The said goods were self-assessed by the importer as Populated Printed Circuit Board Assembly covered in Tariff Entry 8517.70.10. However, the department rejected the self-assessment and reclassified them as machines for the

reception, conversion and transmission or regeneration of voice, image or other data, including switching and routing apparatus (Tariff Item 8517.62.90) and sought to recover differential customs duty with interest and penalty in lieu of confiscation. Aggrieved by the action, the importer preferred an appeal with the Commissioner, Customs (Appeal), who upheld the view taken by the department. Consequently, the importer filed an appeal with the Mumbai bench of the CESTAT.

In the appeal, the importer submitted that the said goods are 'interface cards' similar to Populated Circuit Board Assembly and forms a part of Packet Optical Transport Switch (POTS) used in cloud engine switches providing the function of data packet processing and traffic management on 36 100GE optical ports. It was further submitted that these goods are distinguishable from the 'network interface cards', as unlike them, the former do not initiate or terminate data communication in a local area network connection. In support of their contention, they also relied on expert opinion from IIT, Delhi.

The importer further submitted that these goods are not machine or apparatus but parts of POTS correctly classifiable in the

Tariff Entry 8517.70.10 and relied on past judgments on similar matter in the cases of NI Systems (India) Private Limited (2010 11 SCC 638) and Inter Continental (India) (2003 (154) ELT (Gujarat)). The department reiterated the findings of the earlier proceedings and submitted that classification as done in them is correct and proper, including the action proposed.

Based on the submission made by the importer and the department, relevant provisions of the Customs Tariff including guidance given for the contending entry in the relevant Section Notes and Chapter Notes including HSN issued by World Customs Organization, the CESTAT held that the said cannot be categorised as 'machine or apparatus' but can only be part of the apparatus, i.e. cloud engine switches. The CESTAT further held that the Order in Original and Order in Appeal did not give any specific finding or conclusion for classification of goods in the Tariff Entry 8517.62.90 in light of the submission made by the importer and technical opinion cited. Moreover, reliance on the entry in the Notification No. 57/2017-Cus dated 30 June 2017 in the Order in Appeal for classification is not legally tenable, as notifications cannot be used for determining classification of goods in terms of past legal precedents. The CESTAT, based

on the ruling in the case of Reliance Jio Infocomm Limited (2023 (3) CENTAX 96 (Tri- Bom) on a similar matter, upheld by the Supreme Court, upheld the contention of the importer and allowed appeal with relief.

Touch ID terminal chips used for capturing data from employee's card to be classified as electrical machines and apparatus having individual functions (Tariff Heading 8543) and not parts of computers (Tariff Entry 8473.30.20)

Customs Appeal No. 558 of 2010

In the instant case, importer imported '553 series for 4500 Full A/N Prox. Exp Memory' as a part of computer and classified the same accordingly under Tariff Entry 8473.30.20. However, upon examination, it was revealed that these goods were actually 'kronos 4500 Touch ID terminal chips', with an integrated badge reader designed for data capture from employee card or PIN input. They could only collect data, which was transmitted to a central server for various purposes such as marking the attendance, preparation of payroll, etc. The authorities, based on explanation in Note 5 (E) to the Chapter Note 84 of the Customs Tariff, re-classified these goods under Tariff Entry 8543.70.99,

considering them as badge readers working in conjunction with a server.

The Commissioner (Appeals) disagreed with the original authority's classification under Tariff Heading 8543 and classified the imported goods under Tariff Entry 8471.41.90 by stating that description of the product and heading of the Tariff Heading 8543 does not resonate with each other and the said goods has a Central Processing Unit (CPU) runtime memory, storage memory, operating system and application software.

Aggrieved by the said order, Revenue filed the appeal with the Bangalore bench of the CESTAT on the grounds that the said goods are not a data processing machine or any part or accessory of the same even though the product has a CPU keyboard and display. Since item imported only collects the data as and when the card is swiped and PIN is entered but does not process the data, it cannot be construed as an automatic data processing machine, and hence, is rightly classifiable under Tariff Heading 8543. The Revenue also cited error in the judgment as the heading considered by the appellate authority was not pleaded before the original authority.

Tax & Regulatory Insights

Circulars, Notifications and Others

GST Council meetings

48th Council meeting – GST
Council recommends changes and clarifications on taxability, tax credits and trade facilitation, including decriminalisation of offences and streamlining of compliances

Notification Nos. 26/2022 & 27/2022 – Central Tax dated 26 December 2022; Notification No. 12/2022, Notification No. 13/2022, Notification No. 14/2022 and Notification No. 15/2022 – Central Tax (rate) & Integrated tax (rate) and Union Territory tax (rate), dated 30 December 2022; Circular No. 184/16/2022-GST dated 27 December 2022; and Circular Nos. 189/01/2023-GST and 190/02/2023-GST dated 13 January 2023

The 48th meeting of the GST Council was held virtually on 17 December 2022, wherein various aspects, such as clarifications on certain GST rates, measures for trade facilitation and streamlining of compliances, were discussed.

In furtherance of the announcements made at the 48th GST Council Meeting, the CBIC issued various notifications making some amendments to the CGST Rules and the statutory forms therein. The notification and circulars have introduced a refund mechanism for flat buyers who cancelled contracts for various reasons and were refused return of GST by builders. Moreover, they provided guidance to field formations on re-determination of demand pursuant to appellate orders, wherein charges such as fraud or suppression have been dropped in favour of the taxpayer. They also clarified the tax recovery process to be followed by the authorities against corporate debtors whose IBC process has been concluded, revised tax rates on certain items, and covered menthol under the RCM. Other key circulars are on the issues of entitlement of ITC where place of supply is determined as per the proviso to section 12(8) of the IGST Act, and the manner of dealing with the difference in ITC availed in Form GSTR-3B vis-à-vis Form GSTR-2A for FYs 2017-18 and 2018-19.

49th Council meeting

Notification No. 1/2023 dated 28 February 2023, Notification No. 2/2023 dated 28 February 2023,

Notification No. 3/2023 dated 28 February 2023, Notification No. 4/2023 dated 28 February 2023 – Central Tax (rate) & Integrated tax (rate) and Union Territory tax (rate); Notification No. 1/2023 dated 28 February 2023

The 49th meeting of the GST Council was held on 18 February 2023. Herein, the GST Council made recommendations relating to GST compensation, GST Appellate Tribunal, capacity-based taxation, the Special Composition Scheme, changes in the GST rates, and GST Amnesty, as well as proposed deletion of section 13(9) of the IGST Act.

50th GST Council Meeting

Notification No. 18/2023 dated 17 July 2023, Notification No. 19/2023 dated 17 July 2023, Notification No. 20/2023 dated 17 July 2023, Notification No. 21/2023 dated 17 July 2023, Notification No. 22/2023 dated 17 July 2023, Notification No. 23/2023 dated 17 July 2023, Notification No. 24/2023 dated 17 July 2023, Notification No. 25/2023 dated 17 July 2023, Notification No. 26/2023 dated 17 July 2023 – Central Tax

Notification Nos. 11/2023 – Integrated Tax (Rate), 12/2023 – Integrated Tax (Rate) and 13/2023 – Integrated Tax (Rate) dated 26 September 2023

Notification No. 6/2023 dated 26 July 2023, Notification No. 6/2023, Notification No. 6/2023 dated 26 July 2023 – Central tax rate & Integrated tax rate and Union territory tax rate

Circular No. 200/12/2023-GST dated 1 August 2023

The 50th meeting of the GST Council was held on 11 July 2023. The most notable recommendation was the proposal to levy a GST rate of 28% on the full-face value of transactions in casinos, racecourses and online gaming. Recommendations were also made in respect of rules governing the appointments and conditions of presidents and members of the GST Appellate Tribunal and the applicability of certain provisions of the Finance Act, 2023, with effect from 1 August 2023. Moreover, while some tax rates were rationalised across multiple sectors, the GST Council also provided two important clarifications: (1) the ISD is currently optional and will be made mandatory prospectively through a legislative amendment, and (2) neither are warranty replacements taxable nor is the reversal of ITC required. Some

other important clarifications issued pursuant to the aforesaid GST Council meeting include the applicability of tax collected at source, where more than one e-commerce operator is involved in an online transaction, calculation of interest on wrongful claim of ITC, formula for calculation of refund, etc.

Moreover, pursuant to the discussion in the 50th GST Council meeting, the Central Government issued notifications related to rate amendment, exemption and RCM (original notifications) by terminating the levy of tax under the RCM payable by importers on inbound transportation services of import of goods on a CIF basis, with effect from 1 October 2023. These notifications have been issued in alignment with the Supreme Court decision in the case of Mohit Minerals, where the court upheld the Gujarat High Court decision that IGST on inbound transportation services of import of goods on a CIF basis cannot be allowed, because it violates the principle of composite supply.

51st GST Council meeting – GST on online gaming and casinos to be levied on face value at entry level; rate remains unchanged at 28%, and proposed changes are expected to be implemented from 1 October 2023

The CGST Amendment Act, 2023 dated 18 August 2023

Notification No. 45/2023 dated 6 September 2023, Notification No. 47/2023 dated 25 September 2023, Notification No. 48/2023 dated 29 September 2023, Notification No. 49/2023 dated 29 September 2023, Notification No. 50/2023 dated 29 September 2023, Notification No. 51/2023 dated 29 September 2023 – Central tax

Notification No. 11/2023 dated 29 September 2023 – Central tax (rate) & Integrated tax rate and Union territory tax rate

The 51st meeting of the GST Council was conducted on 2 August 2023 and was chaired by the Union Finance and Corporate Affairs Minister Nirmala Sitharaman through video conferencing. This meeting was held as a follow-on discussion to clarify the government's stance on the taxation of online gaming, horseracing and casinos, based on recommendations made in the 50th GST Council meeting held on 11 July 2023. The meeting proposed to levy GST on online gaming and casinos on face value at the entry level, keeping the rate unchanged at 28% (as decided in the 50th GST Council meeting). It is important to note that, in the 50th GST

Council meeting, it was proposed to levy GST at the rate of 28% on the full-face value of transactions (i.e. money pooled) in casinos, racecourses and online gaming, irrespective of whether the activity is a game of skill or chance.

52nd GST Council meeting – GST Council recommends ISD to be made mandatory; extension of time limit to file appeal; and several clarifications including, inter alia, valuation of personal and corporate guarantees and place of supply of certain services

Circular Nos. 202/14/2023-GST, 203/15/2023-GST and 204/16/2023-GST all dated 27 October 2023

The 52nd meeting of the GST Council was held on 7 October 2023. The GST Council made several important announcements in respect of trade facilitation and compliance streamlining measures. In line with the recommendations, notifications have been issued to introduce the Amnesty Scheme allowing extended time to file an appeal until 31 January 2024 for orders on or before 31 March 2023 with an enhanced pre-deposit. Moreover, clarifications have been issued regarding valuation of corporate guarantee, and insertion of the proposed sub-rule 28(2) into the CGST Rules in

this regard. Legislative amendments to make the ISD mechanism mandatory was proposed. Circulars containing clarifications in respect of place of supply for transportation of goods services; advertising services and co-location service; taxability of corporate and personal guarantee; and receipt of remittances in Indian rupees for qualification as export of services were also issued pursuant to the 52nd GST Council meeting.

Foreign Trade Policy

Government notifies FTP 2023 with effect from 1 April 2023

Notification No. 1/2023 dated 31 March 2023

FTP 2023 was released by the government on 31 March 2023 and is effective from 1 April 2023 onwards. Moreover, the FTP 2023 has no end date and the subsequent revisions has been and will be done on a need basis as per India's emerging trade scenario. FTP 2023 strives for wider engagement and coverage through promotion of export hubs and e-commerce exports. The ease of doing business measures is expected to help trade reduce compliance cost and time. Moreover, the amnesty scheme for

export obligation regularisation under EPCG and AAS has come as a relief to the exporters with possible reduction in litigation. Thus, the FTP 2023 is expected to be dynamic and responsive to changing trade realities through partnership of trade to achieve US\$1 trillion export target by 2030.

DGFT issues Handbook of Procedure 2023 and CBIC issues notifications for operationalisation of FTP 2023

Public Notice No. 1/2023 dated 1 April 2023, Tariff Notification No. 21/2023-Cus to 28/2023-Cus dated 1 April 2023 and Non-Tariff Notification No. 24 & 25-Cus dated 1 April 2023

The government released the FTP 2023 on 31 March 2023, and it is effective from 1 April 2023 onwards. The detailed guidelines and procedure for the operationalisation of the provisions of the FTP 2023 are notified in the Handbook of Procedure 2023 (HoP 2023) by the DGFT. Parallelly, the relevant exemption notifications and non-tariff notifications under the Customs Act, was notified as well by the CBIC for the operationalisation of FTP 2023. These came into effect from 1 April 2023. HoP 2023 outlines the detailed contours for the operationalisation of FTP 2023.

The issuance of guidelines and contours in HoP 2023 coupled with the CBIC notifications completed the operationalisation of FTP 2023. The trade needs to evaluate the opportunities in terms of export hubs and e-commerce hubs and engage in discussions with relevant stakeholders for developing detailed guidelines and framework.

Government notifies one-time Amnesty Scheme as a part of FTP 2023, including clarification on treatment of pre-import condition in specified cases

Public Notice No. 2/2023 dated 1 April 2023; Policy Circular No. 1/2023-24 dated 17 April 2023 & Trade Notice No. 27/2023 dated 25 September 2023

The DGFT has notified a one-time Amnesty Scheme for regularization of default on EO against authorisations issued under AAS and EPCG under specific FTPs.

The coverage of this scheme is limited to the following:

- Authorisations issued under FTP 2009–2014 till 31 March 2015.
- For FTPs 2004–2009 or before,

authorisations whose EO period was valid beyond 12 August 2013.

The scheme will be in operation till 31 March 2024 and to avail the benefit, the exporter needs to register by 31 December 2023.

Moreover, a step-by step guide or procedure for user assistance for filing such applications through online mode has also been defined by the DGFT with simplified requirements.

Also, the DGFT has provided an online help manual, FAQ section and help desk service including toll free numbers for user assistance on its website: <http://dgft.gov.in/>.

Suitable amendments have been made in the notifications in respect of interest levy in case of default in export obligation.

Moreover, the DGFT has clarified the treatment to be given in relation to pre-import condition for regularization purposes for certain export-import scenarios in respect of authorisations issued under the AAS between 13 October 2017 to 9 January 2019 (when the pre-import condition was removed) in the following manner by the Regional Licensing authorities while dealing with such matter in terms of the CBIC guidelines.

Sl. No.	Scenarios considered	Applicability of pre-import condition
1	Authorisations where exports were made in the 13 October 2017 to 9 January 2019 period, and the imports were made on or after 10 January 2019	No violation of pre-import condition
2	Authorisations were issued on or prior to 9 January 2019, and imports were made on or after 10 January 2019	Pre-import condition not applicable
3	If, against authorisation, imports were partly made up to and including 9 January 2019 and remaining imports were made on or after 10 January 2019	Import made on or after 10 January 2019 will not be subject to pre-import condition
4	In case of imports made against an authorisation on payment of IGST and compensation cess	Pre-import condition inapplicable irrespective of date of import

Customs Tariff

Government notifies changes in First Schedule of the Customs Tariff

CBIC website and Fourth Schedule of Finance Act, 2023

In the Finance Act, 2023, changes were notified to the First Schedule of the Customs Tariff. These changes have come into effect from 1 May 2023.

As per the memorandum explaining the

changes, these are inter alia notified for the following reasons:

- To introduce new tariff lines or modify existing tariff lines covering chapters 3, 4, 9, 10, 12, 13, 19, 27, 29, 31, 38, 39, 48, 52, 54, 57, 61, 62, 63, 69, 71, 84, 85 and 87 of the Customs Tariff.
- To align the General Explanatory Note to the General Rules for Interpretation with the complementary amendments to the Harmonised System of Nomenclature 2022.

- To modify the tariff rates on certain tariff entry as part of rationalisation of the customs duty rate structure.

CBIC introduces certain amendments in Customs Tariff

Notification No. 72/2023-Cus (NT) dated 30 September 2023

CBIC announced certain amendments in the First Schedule to the Customs Tariff Act effective 1 October 2023. The amendments primarily focused on following two aspects:

- Spirits for industrial use – new entry with Customs Tariff Heading 2207 10 12 has been inserted for 'spirits for industrial use' with a customs duty of 150%. A note has been added to define 'spirits for industrial use'.
- Actionable claims related to online money gaming –
 - Heading for Chapter 98 has been amended to include actionable claims;
 - A new note has been inserted defining the terms 'Online money gaming' and 'Specified actionable claims';
 - Tariff Item 9807 has been inserted covering various actionable claims involved in or by way of betting, casinos, gambling, horse racing, lottery and online money gaming with a Nil customs duty rate.

Import and export conditions

Mandatory additional qualifiers in import and export declarations for products specified chemicals, pigments, paints and plastic, etc. belonging to Chapters 12, 28, 29, 30, 32, 38 and 84 of the Customs Tariff

Circular No. 15/2023-Customs dated 7 June 2023 read with Circular No. 18/2023-Customs dated 30 June 2023 & Circular No. 23/2023-Customs dated 30 September 2023

With an intent to aid reducing queries and improve the efficiency of assessment, the CBIC has mandated to declare following additional parameters in relation to import of certain products made on or after 15 October 2023.

Declarations	Additional Qualifiers
Import	The declaration of International Union of Pure and Applied Chemistry name and/ or Chemical Abstracts Service number of the constituent chemicals, for imports under the Chapters 28, 29, 32, Heading 3808 and 39 of the Customs Tariff

In case of non-availability of information for even one ingredient on grounds of confidentiality, the importer can furnish a self-undertaking in the prescribed format in the BoE.

However, for exports, the mandatory qualifiers declaration as tabulated below has come into effect from 1 October 2023.

Declarations	Additional Qualifiers
Export	<p>Declaration of name of:</p> <ul style="list-style-type: none"> • medicinal plant, for exports of parts of plants under Chapter 12 • formulation, for exports of formulations of different streams of medicine under chapter 30 • surface material that comes into contact with the chemical, for exports of various products under chapter 84

Guidelines notified pursuant to Supreme Court decision in relation to pre-import condition in AAS

Circular No. 16/2023-Customs dated 7 June 2023 read with Trade Notice No. 7/2023-24 dated 8 June 2023

Pursuant to the Supreme Court decision in relation to pre-import condition in AAS, the CBIC proposed the following procedure for payment of the taxes and claiming credit or refund as the case may be.

Importers, including respondents in the matter, who have not fulfilled the 'pre-import' condition and are required to pay the IGST and compensation cess need to approach the customs authorities at the port of import with relevant details for payment of tax and cess along with interest.

The assessing group at the port of import to cancel the out of charge of the relevant BoE and indicate the reason for the same in remarks. The BoE to be reassigned again for collection of tax and cess with interest.

Payment of tax and cess with interest to be made electronically in the Customs Electronic Data Interchange system.

On completion of payment, the port of import to make a notional out of charge for the BoE to enable transmission to the GST Network portal with details for claiming of credit as per eligibility in terms of GST law.

In the event such credit is utilised for payment of IGST on outward zero-rated supplies, the refund will be available subject to GST law provisions and eligibility.

Import of laptops, computers, data processing machine, etc. of Heading 8471 subject to license from 1 November 2023

Notification No. 23/2023 dated 3 August 2023 as amended by Notification No. 26/2023 dated 4 August 2023

Import of laptops, computers, data processing machine, specified automatic data processing machines and systems covered in headings of HSN 8471 of ITC(HS) of FTP 2023 will be subject to license. However, the requirement of license will not apply to –

- Imports under Baggage Rules, as applicable;

- Import of:
 - Laptop, tablet, all-in-one personal computer, or ultra small form factor Computer, including those purchased from e-commerce portals, through post or courier. However, these will be subject to payment of applicable customs duty.
 - Up to 20 such items per consignment for the purpose of R&D, testing, benchmarking and evaluation, repair and re-export, product development purposes. The same will be subject to condition that these goods to be used for the stated purposes only and will not be sold. Moreover, after the intended usage, the goods would either be destroyed beyond use or re-exported.
- Re-import of goods repaired abroad in terms of repair and return.
- Laptops, tablets, all-in-one personal computers, and ultra small form factor computers and servers, which are an essential part of a capital good also exempted from the licensing requirements.

Earlier the requirement of license was made effective from 3 August 2023. However, it was subsequently deferred to 1 November 2023.

Extension of sunset date of exemption to specified project import categories

Notification No. 54/2023-Cus dated 14 September 2023

In the Finance Act, 2022, amendment was made to the Project Import Scheme with a sunset clause prescribed for the exemption to end on 30 September 2023 and all contracts after the sunset date was to attract BCD of 7.5%. However, through above referred notification, following amendments are made to specific project import related exemptions in terms of exemption end date.



Sl. No.	Description of goods	Remarks
597	Goods required for: <ul style="list-style-type: none"> • iron ore beneficiation plants or projects • barge mounted power plants 	Sunset on 30 September 2023, i.e. 7.5% BCD to apply
	Goods required for: <ul style="list-style-type: none"> • coal mining projects • power generation projects including gas turbine power projects (excluding captive power plants set up by projects engaged in activities other than power generation) • power transmission, sub-transmission or distribution projects 	Sunset extended to 30 September 2025
598	Goods required for setting up of any Mega Power Project specified in List 31, so certified by an officer not below the rank of a Joint Secretary to the Government of India in the Ministry of Power before the 19th day of July 2012, that is to say, <ol style="list-style-type: none"> a. a thermal power plant of a capacity of 700MW or more, located in the States of Jammu and Kashmir, Sikkim, Arunachal Pradesh, Assam, Meghalaya, Manipur, Mizoram, Nagaland and Tripura; or b. a thermal power plant of a capacity of 1000MW or more, located in States other than those specified in (a); or c. a hydel power plant of a capacity of 350MW or more, located in the States of Jammu and Kashmir, Sikkim, Arunachal Pradesh, Assam, Meghalaya, Manipur, Mizoram, Nagaland and Tripura; or d. a hydel power plant of a capacity of 500MW or more, located in States other than those specified in clause I 	Sunset extended to 30 September 2025
601	All goods	Sunset extended to 30 September 2025
602	Goods required for setting up of any Nuclear Power Project specified in List 32, having a capacity of 440 MW or more, as certified by an officer not below the rank of a Joint Secretary to the Government of India in the Department of Atomic Energy	Sunset extended to 30 September 2025
603	Water Supply Projects Explanation. – Water supply projects notified under the heading 9801 against item numbers 26 and 26A of Notification No. 42/96-Customs dated 23 July 1996 [G.S.R. 294 (E)].	Sunset extended to 30 September 2025

Changes in import policy for computers, laptops and tablets

Notification No. 38/2023 dated 19 October 2023

Effective 3 August 2023, the DGFT has amended the import policy relating to Chapter 84 of the Schedule I (Import Policy) of Indian Trade Classification HSN 2022 by introduction of a new condition for imports of goods like laptops, computers, tablets, etc. covered under

specified subheadings of HSN 8471 and making them restricted for imports; meaning that their imports will henceforth require a license. The proposed changes were to come into effect from 1 November 2023 as the government, based on representation from trade,

allowed relief to enable transition to the new policy.

Subsequently, consultations were held with trade and trade associations including relevant Ministries on the proposed policy changes. Based on

these stakeholder consultations, the DGFT notified additional changes in the policy condition for import of these goods in terms of exemption including to SEZ and Export Oriented Units; it also clarified the earlier exemption including notifying implementation of the Import Management System for information technology hardware.

Automatic Grant of Status Holder

Automatic Grant of Status Holder certificate notified

Public Notice No. 32/2023 dated 9 October 2023 & Trade Notice No. 28/2023-24 dated 9 October 2023

Exporters who have achieved a minimum threshold of export performance as specified over a prescribed period are accorded certificate of 'Status Holder' under FTP 2023, and eligible for certain specified benefits. As part of trade facilitation measure, DGFT notified operationalisation of a system generated electronic status holder certificate based on merchandise export data available in Directorate General of Commercial Intelligence and Statistics (DGCI&S) without the need to file an application. However, the exporter can still file an application in the prescribed format in certain cases, e.g. service exports,

deemed exports, etc. including for upgradation, where export data are not completely captured by DGCI&S.

In this regard separate guidelines are also notified as well including relating to applications already filed or in process.

It was further clarified that the Status Holder Certificates issued under the FTP 2015–2020 will remain valid until 30 September 2023. Importer Exporter Code holders who are seeking a Status Holder Certificate under the FTP 2023, but are not covered by the automatic issuance mechanism, must submit their applications online to the relevant DGFT Regional Authorities.

Transfer of inputs

Credit of transfer of inputs between multiple Units under Advance Authorisation Scheme

Public Notice No. 34/2023 dated 13 October 2023

DGFT has permitted ITC on transfer of duty-free inputs imported or locally procured, on which GST is paid, against an advance authorisation and used for manufacture in different units (within or outside the state) of the authorisation holder, subject to conditions and rules under the GST law.

Earlier ITC was not permitted on such inter-unit transfer of inputs.

Other developments

Judgements

Taxability

Engineering design imported in the form of paper is taxable as 'design services' – Supreme Court

Civil Appeal Nos. 11400-11401/2018

The Supreme Court dealt with the issue of applicability of service tax on the import of paper containing designs and drawings. The taxpayer claimed that since these designs and drawings were considered 'goods' for the purpose of customs, no service tax was leviable on the same; this was upheld by the Tribunal. However, the Supreme Court, while upholding the levy of service tax on 'design services', held that merely the fact that the design and drawing prepared and supplied by a sister company were shown as 'goods' under the Customs Act and in the BoE cannot constitute grounds to take such services out of the definition of 'design services' under the Finance Act, 1994.

Input Tax Credit

Time limit to avail ITC is one of the restricting provisions of section 16 of the CGST Act and is not overridden by any other restricting provisions of this section

Writ Petition No. 24235 of 2022

The Andhra Pradesh High Court dealt with the issue where the petitioner had claimed ITC based on the return filed belatedly for March 2020 with a late fee, which was sought to be disallowed by the Revenue authorities. The High Court held that sections 16(2) and 16(4) of the CGST Act, are separate restricting provisions. This restricts the credit eligibility even when the basic condition as provided in sub-section (1) of section 16 of the CGST Act is passed. Therefore, while upholding the constitutional validity of section 16(4) of the CGST Act, it was observed that section 16(2) of the CGST Act overrides only section 16(1) and not section 16(4) of the CGST Act. The High Court also held that ITC is a mere concession or benefit; therefore, imposing conditions of such time limitation will not amount to violation of the Constitution or any statute.

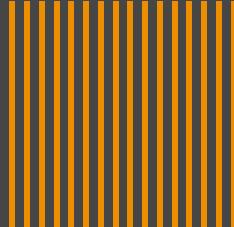
Regulatory Insights

Judgements

- Successful resolution
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Circulars, Notifications and Others

- Buy-back of securities
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- Medical Device Policy
- Merger & amalgamation
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Regulatory Insights

Judgements

Successful resolution

Successful resolution applicants cannot be held liable for non-compliance of MCA filings by erstwhile directors of CD before insolvency commencement date – Chandigarh bench of the NCLT

In CP (IB) No. 161/Chd/Hry/2018

The Chandigarh bench of the National Company Law Tribunal in its recent order holds that a new management of the CD cannot be held liable and responsible for malfeasance committed by the CD's former promoters and directors.

This order has gone to a great extent to alleviate the challenges faced by successful resolution applicants regarding past non-compliance of MCA filings by the erstwhile management. References can be drawn to such orders to seek relief from penalty or interest on such defaults. Note that the new management can make the requisite regulatory filings based on the best available information in case the requisite information is not available due to non-traceability of the erstwhile management.

Liquidation proceedings

Title of 'clean slate' in liquidation proceedings upheld – Gujarat High Court

R/Special Civil Application No. 19804 of 2022

The Gujarat High Court has recently upheld that the purchaser of the CD under liquidation is entitled to a 'clean slate' and will not be held responsible to pay any debt that was not claimed during the process.

The High Court has relied on Supreme Court decisions in the cases of Ghanashyam Mishra and Sons Private Limited and Paschimanchal Vidhyut Vitran Nigam Limited. Accordingly, the High Court has pronounced that the acquirer of assets under liquidation proceedings under the IBC, 2016, is entitled to a 'clean slate' and will not be responsible to pay any past dues or any amount due to any government authority. This is because the said dues will be dealt with as per the waterfall mechanism ascribed under section 53 of the IBC, 2016. The High Court has also observed the following –

- Debt not forming part of the resolution plan will be extinguished.
- Upon relinquishing its interest under section 52 of the IBC, 2016 the State authorities cannot continue the insistence of maintaining the charge in Revenue's records, and their claim will have to stand in priority.
- A charge cannot be enforced against any property in the hands of a person to whom such property has already been transferred for consideration and without notice of such charge.

Regulations, 2018 (Regulations). Through these Amended Regulations, SEBI has brought about numerous changes to the Regulations:

- Streamlining the process of buy-back from the open market through a book-building process;
- Refining the process of buy-back through tender offers; and
- Reviewing the timelines for buy-back.

The Amended Regulations came into effect from 9 March 2023.

These amendments are aimed at making the buy-back process more robust and transparent by curbing existing drawbacks in the Regulations. The SEBI has provided the pathway for discontinuing the buy-back of securities from open market through the stock exchange in a phased manner, as this method may not have been equitable to all types of shareholders and their interests, especially retail shareholders. The SEBI has also provided a revised mechanism for buy-back from open market through the book-building process to bring about more certainty in terms of pricing, specifically considering the bi-furcation between frequently and infrequently traded securities and the methodology of acceptance of bids.

Circulars, Notifications & Others

Buy-back of securities

Buy-back of securities regulations amended to streamline process of buy-back from open market, refine process of buy-back through tender offers and review timelines for buy-back

Notification No. SEBI/LAD-NRO/GN/2023/120 dated 7 February 2023

SEBI notified the SEBI (Buy-Back of Securities) (Amendment) Regulations, 2023 (Amended Regulations), amending the SEBI (Buy-Back of Securities)

Foreign law firms in India

Bar Council of India issues Rules for registration and regulation of foreign lawyers and foreign law firms in India, 2022 – Key highlights

Notification No. BCI: D: 1260/ 2023 dated 10 March 2023

The BCI had initially opposed the entry of foreign lawyers and foreign law firms in India in any form; consequently, the judiciary has deliberated upon this issue on various occasions. Allowing foreign lawyers to open a law practice in India in the fields of practise of foreign law, diverse international legal issues in non-litigious matters and international arbitration cases would help the legal profession and domain grow in India to the benefit of lawyers in India. Therefore, the BCI has issued the BCI Rules for Registration of Foreign Lawyers and Foreign Law Firms in India, 2022 (BCI Rules), which were published on 14 March 2023 under the Advocates Act, 1961, and its enabling provisions. The BCI has issued a press release, dated 19 March 2023, clarifying the 'true facts about BCI's rules regarding Entry, Rules and Regulations of Foreign Lawyers and Law firms in India'. The aim of the BCI Rules is to register and allow foreign

lawyers and law firms in India, as well as enable foreign lawyers and foreign law firms to practice foreign law, diverse international law and international arbitration matters in India on the principle of reciprocity in a well-defined, regulated and controlled manner.

The BCI Rules are said to mutually benefit lawyers from both India and abroad. These Rules may also help address concerns expressed about the flow of FDI in the country and make India a hub of international commercial arbitration.

Competition Act

The Competition (Amendment) Bill, 2023, enacted

The Bill was passed by the Lok Sabha on 29 March 2023 and by Rajya Sabha on 3 April 2023

The Competition (Amendment) Bill, 2023 (Bill), which seeks to amend the existing Competition Act, 2002, was passed by both the Lok Sabha and the Rajya Sabha. The Bill received the President's assent and was enacted on 11 April 2023 as the Competition (Amendment) Act, 2023 (Amended Act). This Amended Act will come into force on such date as the Central Government may, by notification

in the Official Gazette, appoint. The Amended Act intends to make the current statute efficient by, *inter alia*,

- reducing the timeline for the Competition Commission of India to approve, disprove or amend a transaction (from 210 days to 150 days);
- increasing the scope of entities that can be considered to form a part of anti-competitive agreements to include enterprises or persons that are not engaged in similar businesses;
- laying down a framework for settlement and commitment of certain violations under the Competition Act, 2002;
- providing faster resolution of investigations.

Medical Device Policy

National Medical Devices Policy, 2023

<https://pib.gov.in/PressReleaselframePage.aspx?PRID=1919984>

With an objective to establish a comprehensive framework supported by guiding strategies for ensuring sustained growth and development of the medical devices sector, the Department of

Pharmaceuticals, Ministry of Chemicals and Fertilizers released the National Medical Devices Policy, 2023 (Policy), in line with the press release issued earlier. The government believes that the sector needs to be supported to realise its full potential through an enabling ecosystem for manufacturing along with innovation. This would create a robust and streamlined regulatory framework, provide support for training and capacity building programs and promote higher education to foster talent and skilled resources in line with industry requirements.

The Policy has been released by the government post multiple deliberations with the objective of giving an impetus to the medical devices industry. As next steps, implementation guidelines will be developed and formulated by the government to implement the policy and to equip the medical devices industry for a competitive, self-reliant, resilient and innovative industry, catering to both the Indian as well as the global market.

Merger & amalgamation

Rules related to merger or amalgamation of certain companies amended – MCA

Notification No. G.S.R. 367(E) dated 15 May 2023

The MCA has notified amended sub-rules (5) and (6) of rule 25 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 (Companies Rules). Pursuant to the amendment of these sub-rules, the MCA has now provided the time limit within which the Central Government may issue its order confirming the scheme of merger or amalgamation of certain companies (Scheme) under section 233 of the Companies Act, 2013 (Fast Track Merger). The MCA has further prescribed the time limit by which the Central Government is required to respond to the Scheme submitted with it, i.e. whether to pass an order approving the Scheme or to file the application with the National Company Law Tribunal to consider the Scheme. If the Central Government does not respond within the prescribed time limit, then the Scheme will automatically be deemed to be approved. This notification has been effective from 15 June 2023.

By introducing this amendment, the MCA has taken a measure to smoothen the process of merger or amalgamation for certain entities like small companies, start-ups, etc. and to get timely approval for the Fast Track Merger. The Central Government is now bound to respond on time if it has any concerns with respect to the Scheme filed or else the Scheme will be approved automatically pursuant to the amended rules.

Scheme of arrangements

Master Circulars on scheme of arrangements and issue of capital and disclosure requirements – SEBI

SEBI Circular No. SEBI/HO/CFD/POD-2/CIR/2023/93 dated 20 June 2023; SEBI Circular No. SEBI/HO/CFD/DIL1/CIR/P/2021/0000000665 dated 23 November 2021; and SEBI Circular No. SEBI/HO/CFD/PoD-2/P/CIR/2023/00094 dated 21 June 2023

SEBI has issued Master Circulars on (i) providing framework and provision relating to scheme of arrangement by listed entities and relaxation under sub-rule (7) of rule 19 of the Securities Contracts (Regulation) Rules, 1957; and (ii) issue of capital and disclosure requirements. The Master Circular on scheme of arrangement is an improvised

version of the previous Master Circular dated 23 November 2021 (erstwhile Master Circular) incorporating various circulars issued periodically by SEBI with respect to the scheme of arrangement, while providing for some additional disclosures thereto. It is pertinent to note that, with the issuance of this Master Circular, all the previous circulars issued by SEBI and listed in Schedule I of this Master Circular in relation to the subject will stand rescinded.

The Master Circulars aims to consolidate various circulars and directions issued by SEBI in one place, thereby facilitating ease of reference for the entities and other participants.

Data Protection Bill

Government introduces the Digital Personal Data Protection Bill, 2023

Bill No. 113 of 2013

The government has introduced a legislation that will regulate the processing of digital personal data, list the rights and duties of the citizen (i.e. the digital nagrik or data principal) and present obligations for organisations (i.e. data fiduciaries) to use such data lawfully. This legislation was introduced in the

Lok Sabha on 3 August 2023 (Monsoon Session of the Indian Parliament) and is known as the Digital Personal Data Protection Bill, 2023 (DPDP Bill, 2023).

The government had earlier released a version of this bill in 2022, which was open for public consultation in December 2022. The DPDP Bill, 2023, carries the understanding that emerged during consultation with stakeholders in the process of drafting the previous version of the bill; moreover, it addresses various aspects of privacy concerns given the ongoing digitalisation and technology requirements by the industries.

The overall aim of the DPDP Bill, 2023, is to establish a comprehensive legal framework governing digital personal data protection in India. In this regard, the Central Government will set up a Data Protection Board of India (Board) through a notification, and this Board will function independently.

Pharma MedTech sector

Operational Guidelines of the Scheme for Promotion of Research and Innovation in the Pharma MedTech Sector

https://pharmaceuticals.gov.in/sites/default/files/Approved%20Operational%20Guidelines%20%20%28PRIP%29_0.pdf

The Ministry of Chemicals and Fertilizers, Department of Pharmaceuticals has released the Operational Guidelines of the Scheme for Promotion of Research and Innovation in Pharma MedTech (PRIP) sector (Guidelines). The objective is to encourage the industry to invest in R&D in the identified 'priority areas' and foster a culture of quality research, while nurturing a pool of scientists in the country by promoting industry-academia linkage. The Guidelines align with the scheme that was earlier notified in this respect.

These much-awaited Guidelines concerning the PRIP scheme released by the government clarifies various aspects for the industry stakeholders to apply under the scheme.

Foreign Education Institutions

UGC issues draft regulations to set up campuses by Foreign Universities and Foreign Educational Institutions in India

https://www.ugc.ac.in/pdfnews/9214094_Draft-Setting-up-and-Operation-of-

Campuses-of-Foreign-Higher-Educational-Institutions-in-India-Regulations-2023.pdf

In line with the recommendations of the National Education Policy, 2020, the UGC released the Draft University Grants Commission (Setting up and Operation of Campuses of Foreign Higher Educational Institutions in India) Regulations, 2023 (draft regulations) for public comments, suggestions and feedback from all stakeholders. The suggestions could be sent to ugcforeigncollaboration@gmail.com by 18 January 2023. The draft regulations provide a framework to allow the entry of higher-ranked foreign universities and educational institutions of repute to set up campuses in India to offer undergraduate, postgraduate, doctoral, post-doctoral and other programmes and research and award degrees, diplomas and certificates in all disciplines. Through these regulations it proposes to provide a first of its kind window for high ranked and reputed foreign higher education players to set-up their presence in India. Whilst the welcome move from UGC to allow foreign higher educational institutions in India to operate in India with autonomy is pathbreaking, certain aspects such as type of entity that would be allowed for setting up of a campus by such institutions in India, which

education rankings to be considered for meeting eligibility criteria, initial corpus requirement for set-up, etc. need further clarity and may form part of the final version of the regulations.

UGC releases Regulations to set up campuses by Foreign Higher Educational Institutions in India

Notification No. F. No. 1-1/2023(IIC-FHEI) dated 7 November 2023

Subsequently, in line with the recommendations of the National Education Policy, 2020, the UGC released the University Grants Commission (Setting up and Operation of Campuses of Foreign Higher Educational Institutions in India) Regulations, 2023 (Regulations) on 8 November 2023. The Regulations provide a framework to allow the entry of higher-ranked foreign universities and educational institutions of repute to set up campuses in India, with the aim to offer undergraduate, postgraduate, doctoral, post-doctoral and other programmes and research as well as award degrees, diplomas and certificates in all disciplines.

These Regulations provide a novel opportunity for highly ranked and reputed foreign higher education players to set up their presence in India.

Significant Beneficial Owner

Rules on Significant Beneficial Owner for Limited Liability Partnerships released – MCA

Notification No. F. No. 17/30/2018-CL-V dated 9 November 2023

The MCA recently published the LLP (SBO) Rules, 2023 (SBO Rules). The SBO Rules are issued pursuant to section 90 of the Companies Act, 2013, which was made applicable to all LLPs by way of an MCA notification dated 11 February 2022. All SBOs identified under the SBO Rules are required to file a declaration with the LLP in the respective form within 90 days from the notification of the said rules. LLPs are also required to take steps and give notice(s) to persons with the objective of identifying such SBO(s). The SBO Rules will come into force from the date of publication in the official gazette.

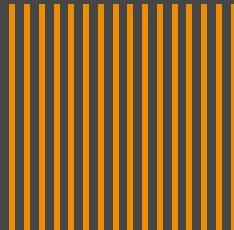
The MCA, through the SBO Rules, intends to strengthen the framework around reporting of SBOs for LLPs and bring it in line with the obligations that are already applicable to companies. The onus of compliance with the SBO Rules is largely with the LLPs. Considering the timeframe provided, they would need to take immediate steps to evaluate the applicability of the SBO Rules and cause declarations from the SBO or identify them through the process provided in the SBO Rules.

Tax & Regulatory Insights

Customs and Trade Newsletters

Treaties & Agreements

- Tax Information Exchange Agreements
- Limited Tax Treaties
- Double Taxation Avoidance Agreements
- Countries with whom India has ratified the Multilateral Convention to implement Tax Treaty related measures to prevent BEPS
- Signatories of the Multilateral Competent Authority Agreement on the Exchange of Country-by-Country Reports



Glossary

Tax & Regulatory Insights

Sl. No.	Date	Topic/Subject	Podcast	Ruling/ Notification/ Circular
1	3 December 2022	Supreme Court holds that claim for rebate of duty of excise on excisable goods exported out of India is subject to the period of limitation prescribed under the Act		Civil Appeal No. 8717/ 2022
2	8 December 2022	Successor steps in predecessor's shoes – amalgamated company being successor is eligible to claim brought forward long-term capital loss and MAT credit of predecessor amalgamating company – Pune bench of the Tribunal		ITA No.1857/PUN/2017
3	9 December 2022	Ministry of Commerce notifies rules to further relax WFH guidelines for SEZ units		Special Economic Zone (Fifth Amendment) Rules, 2022 dated 8 December 2022 as issued vide File No KK43013(12)/1/ 2021-
4	14 December 2022	Tribunal holds that brought forward business loss and unabsorbed depreciation would be set-off against foreign dividend income		ITA No. 217/Mum/2020
5	14 December 2022	CBEC circular issued on valuation of goods sold to both independent and related parties do not violate central excise laws and is binding on the tax department – Supreme Court		Civil Appeal No. 6891 of 2018
6	19 December 2022	GST Council recommends changes and clarifications on taxability, tax credits and trade facilitation including decriminalisation of offences and streamlining of compliances		Press Release on the 48th GST Council Meeting dated 17 December 2022
7	22 December 2022	Extended time limit of 16-years for reassessment to tax foreign asset not applicable to assessments that are concluded and time-barred prior to effective date of amendment providing time limit – Mumbai bench of the Tribunal		ITA No. 968/Mum/2020 (AY 2004-05) & ITA No. 974/Mum/2020
8	23 December 2022	Indian Government notifies Rules of Origin for trade in goods under the India-Australia ECTA		Notification No. 112/2022-Customs (NT) dated 22 December 2022
9	2 January 2023	CBIC issues circulars, notifications pursuant to recommendations made at the 48th GST Council Meeting		Notification Nos. 26/2022 & 27/2022-Central Tax dated 26 December 2022
10	3 January 2023	Government notifies preferential customs duty rates to operationalise trade in goods under India-Australia ECTA		Notification No. 62/2022-Customs dated 26 December 2022
11	6 January 2023	UGC issues draft regulations to set up campuses by Foreign Universities and Foreign Educational Institutions in India		University Grants Commission (Setting up and Operation of Campuses of Foreign Higher Educational Institutions in India) Regulations, 2023
12	11 January 2023	Karnataka High Court quashes reassessment proceedings being barred by the period of limitation		Writ Petition No. 15910 of 2022
13	12 January 2023	Government notifies Customs (Assistance in Value Declaration of Identified Imported Goods) Rules, 2023		Notification No. 03/2023-Customs (N.T.) read with Circular No. 01/2023-Customs dated 11 January 2023
14	16 January 2023	CBIC issues circulars pursuant to 48th GST Council Meeting recommendations on rate clarifications for goods and applicability of GST on services		Circular Nos. 189/01/2023-GST and 190/02/2023-GST dated 13 January 2023
15	20 January 2023	Time charter hire charges taxable as profits of shipping business and not 'royalty'		ITA No. 1857/Mum/2022

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16	20 January 2023	Delhi High Court upholds taxability of fees for branding and management services under Article 12 of India-US DTAA in the hands of US company, being 'beneficial owner' of the income in absence of back-to-back arrangement with holding company		ITA 530/2022
17	23 January 2023	SEBI notifies amended LODR Regulations to bring about relaxation in relation to compliance with corporate governance regulations for REITs and InvITs		Notification No. SEBI/LAD-NRO/GN/2023/117 dated 17 January 2023
18	24 January 2023	Taxability of uplinking and playout services denied as royalty and FTS respectively – Delhi bench of the Tribunal		ITA No. 702/DEL/2021 [AY 2017-18]
19	24 January 2023	Acceptance of a valuation methodology adopted as per TPoS method in terms of section 14 of the Customs Act – Customs Authority for Advance Rulings		Ruling No. CAAR/Mum/ARC/47/2022 in Application No. CAAR/CUS/APPL/69/2022 dated 27 December 2022
20	25 January 2023	RBI revises framework for investment and voting in banks		https://rbi.org.in/Scripts/BS_ViewMasDirections.aspx?id=12439
21	7 February 2023	SEBI notifies amended regulations for issue and listing of non-convertible securities		Notification No. SEBI/LAD-NRO/GN/2023/119 dated 2 February 2023
22	13 February 2023	Vouchers in the form of 'PPIs' are 'money' and thus not chargeable under GST law – Karnataka High Court		2023-VIL-67-KAR
23	17 February 2023	Supreme Court holds that mere availability of an alternative remedy cannot render a writ petition as 'not maintainable'; directs adherence to judicial discipline by Revisional Authority		2023-VIL-10-SC
24	19 February 2023	Clear pending GST compensation to states, considers GoM reports on GST Appellate Tribunal, declines capacity-based taxation, and announces trade facilitation including GST Amnesty Scheme – GST Council's recommendations at its 49th meeting		Press Release on the 49th GST Council Meeting dated 18 February 2023
25	21 February 2023	Buy-back of securities regulations amended to streamline process of buy-back from open market, refine process of buy-back through tender offers and review timelines for buy-back		Notification No. SEBI/LAD-NRO/GN/2023/120 dated 7 February 2023
26	27 February 2023	IT and SAP support services provided on a recurring basis not taxable as FTS under India-Israel DTAA – Delhi bench of the Tribunal		ITA Nos. 1427/Del/2015 & 975/Del/2016
27	2 March 2023	Revision under section 263 is not tenable where issue was examined during assessment proceedings – Provisions of section 79 cannot be invoked, where ultimate beneficial shareholder remains the same – Mumbai bench of the Tribunal		ITA No. 930/Mum/2022
28	10 March 2023	Tribunal holds that private cloud, colocation, mainframe and data recovery services shall not be taxable as FIS in absence of satisfaction of 'make available' condition		ITA No. 258/PUN/2021 [AY 2017-18]
29	11 March 2023	Salary reimbursements of seconded employees do not come within the scope FTS or FIS under the Act or DTAA – Bangalore bench of the Tribunal		IT(IT)A Nos. 167/Bang/2021 & 688/Bang/2022
30	13 March 2023	Reassessment proceedings for AYs 2013-14 and 2014-15 barred by limitation as per the amended provisions of section 149 of the Act – Gujarat High Court		Special Civil Application No. 17321 of 2022

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31	13 March 2023	Amount received for allowing access to the online database of journals and books not taxable as royalty under the India-USA DTAA – Delhi bench of the Tribunal		ITA No.7347/Del/2019
32	13 March 2023	Receipt of shares in a List Co as a gift without consideration from holding/ group company is not taxable under either section 56(1) or section 28(iv) of the Act – Mumbai bench of the Tribunal		ITA Nos. 2715/Mum/2018 and 3084/Mum/2018
33	13 March 2023	Amnesty Scheme, 2023 for pre-GST disputes and reduced VAT rate on ATF in select districts – Maharashtra State Budget for FY 2023-24		https://beams.mahakosh.gov.in/Beams5/BudgetMVC/MISRPT/HomePage2021.html#
34	15 March 2023	Producing cogent material, substantiating actual physical movement of goods, sine qua non for the taxpayer to justify the genuineness of the ITC claim under the KVAT Act – Supreme Court		Civil Appeal No. 230 of 2023
35	20 March 2023	Bar Council of India issues Rules for registration and regulation of foreign lawyers and foreign law firms in India, 2022 – Key highlights		Notification No. BCI: D: 1260/ 2023 dated 10 March 2023
36	28 March 2023	Key amendments to the Finance Bill, 2023 – enactment awaited		Finance Bill, 2023 as passed by Lok Sakha on 24 March 2023
37	28 March 2023	ITC allowed on manufacturing or invisible loss which is inherent part of the manufacturing process – Madras High Court		2023 (3) TMI 940
38	1 April 2023	Government notifies Foreign Trade Policy 2023 with effect from 1 April 2023		For the copy of the Foreign Trade Policy 2023, its highlights and event presentation please refer to this link of the DGFT website.
39	3 April 2023	Foreign Trade Policy 2023 – DGFT issues Handbook of Procedure 2023 and CBIC issues notifications for operationalisation of FTP 2023		For a copy of the HoP 2023, refer to this link on the DGFT website.
40	3 April 2023	One-time Amnesty Scheme for regularisation of default of EO under Advance Authorisation and Export Promotion Capital Goods Scheme – Foreign Trade Policy 2023		Public Notice No 2/2023 dated 1 April 2023
41	4 April 2023	Bombay High Court overrules AAR findings and holds that taxpayer is entitled to DTAA benefits as a valid TRC holder; remands matter back to AAR		W.P. No.713 of 2021 (Bombay)
42	4 April 2023	Karnataka High Court strikes down amended rule 89(4)(C) of the CGST Rules as being unconstitutional and ultra vires GST law		Writ Petition No. 13185 of 2020 (T-Res)
43	6 April 2023	LoB test in depth examined to hold that payment towards advertising and sponsorship rights does not qualify as 'royalty' under India-Malaysia DTAA – Mumbai bench of the Tribunal		ITA Nos. 5717/ Mum/ 2016 and 6129/ Mum/ 2016
44	6 April 2023	Distribution of AdWords program by Indian entity does not create a DAPE of the foreign entity in India; payment of distribution fee to foreign AE not subject to TDS – Bangalore bench of the Tribunal		ITA Nos. 374 & 362/Bang/2013
45	8 April 2023	Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Amendment Rules, 2023 notified – Key highlights		Notification No. G.S.R. No. 275(E) dated 6 April 2023
46	10 April 2023	Revisionary proceedings alleging PE of a non-resident on offshore supply of goods quashed, citing no error in the assessment order – Delhi bench of the Tribunal		ITA No. 34/DDN/2019

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47	10 April 2023	Consideration is critical to levy service tax on corporate guarantee provided to group companies – Supreme Court		Civil Appeal Diary No. 5258/2023
48	12 April 2023	Classification of LCD panels and display boards – dispute on imports between 2006–09 settled – Supreme Court		Civil Appeal Nos. 5622 of 2009 8026 of 2022 dated 29 March 2023
49	12 April 2023	The Competition (Amendment) Bill, 2023 enacted – Key highlights		The Bill was passed by the Lok Sabha on 29 March 2023 and by Rajya Sabha on 3 April 2023
50	14 April 2023	No penalty leviable under section 271C of the Income-tax Act, 1961 for delay in deposit of TDS – Supreme Court		Civil Appeal No. 7934 of 2011 and 1258-1260 of 2019
51	17 April 2023	Delhi High Court upholds Tribunal's ruling that TO's assessment order passed without DIN is invalid and deemed to have never been issued as per CBDT Circular No. 19/2019 dated 14 August 2019		ITA No. 163/ 2023
52	18 April 2023	Government notifies procedure for online application of one-time settlement (Amnesty Scheme) of default in EO by AA and EPCG authorisation holders		Policy Circular No. 01/2023-24 dated 17 April 2023
53	19-Apr-2023/ 20-Apr-2023	Comparability issues in TP can give rise to 'substantial question of law' – Supreme Court		Civil Appeal No. 8463 of 2022 & Ors
54	20 April 2023	Non-compete fees received prior to 1 July 2012 not leviable to service tax – Supreme Court		2023-VIL-41-SC-ST
55	20 April 2023	DFSs are outside the customs frontiers of India; levy of service tax on service provided to DFS is unconstitutional – Supreme Court		Civil Appeal Diary No. 24336/2022
56	20 April 2023	Sections 13(8)(b) and 8(2) of the IGST Act governing intermediary services are confined only to IGST Act and not to CGST Act or MGST Act – Bombay High Court		Writ Petition No. 2031 of 2018
57	21 April 2023	'Mens rea' is not an essential ingredient to levy penalty and interest; based on specific language of the provisions – Supreme Court		Civil Appeal No. 3481 of 2022
58	24 April 2023	DDT being a tax on distributed profits not eligible for beneficial DTAA rate – Special bench, Mumbai of the Tribunal		ITA No. 6997/MUM/2019 dated 20 April 2023 along with other clubbed appeals and interveners
59	28 April 2023	Stay of demand allowed subject to payment of mandatory pre-deposit since constitution of GST Tribunal is pending – Patna High Court		C.W.J.C No. 1920 of 2023 and Civil Writ Jurisdictions Case No. 15546 of 2022
60	29 April 2023	Refund of amounts recovered during search proceedings, along with interest mandated – Punjab and Haryana High Court		CWP-23788-2021 (Punjab & Haryana)
61	1 May 2023	Government notifies changes in First Schedule of the Customs Tariff Act, 1975		CBIC website and Fourth Schedule of Finance Act, 2023
62	3 May 2023	Gujarat High Court decision set aside on pre-import condition in AAS – Supreme Court		2023-TIOL-45-SC-CUS
63	4 May 2023	Deemed valuation of land as one-third of contract value is applicable only when actual consideration received towards construction services and land is not available – Madras High Court		WP. No. 6431 of 2020
64	5 May 2023	Supreme Court affirms High Court's decision that attribution of profit is essentially a question of fact		Civil Appeal Nos. 6511-6518/2010

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65	5 May 2023	National Medical Devices Policy, 2023 notified – Key highlights		F. No. 31026/91/2015-PI-II dated 2 May 2023
66	11 May 2023	SEBI mandates obtaining LEI for entities having non-convertible securities, securities debt instruments and security receipts		Circular No. SEBI/HO/DDHS/DDHS_Div1/P/CIR/2023/64 dated 3 May 2023
67	12 May 2023	Guidelines for the Scheme for Assistance to Medical Device Clusters for Common Facilities – Key highlights		No. G-30018/01/2023-Scheme dated 9 May 2023
68	17 May 2023	Sales of sports broadcasting business by a Mauritius tax resident cannot be taxed in India since taxpayer does not have a PE in India – Mumbai bench of the Tribunal		ITA No. 821/Mum/2021 (AY2017–18)
69	18 May 2023	Split verdict on withdrawal of tax exemption based on the principle of legitimate expectation – Supreme Court's Division Bench		Civil Appeal No. 2297 of 2011
70	18 May 2023	Right to first offer for purchase of immovable property not a capital asset; Sum received for settlement of property litigation not taxable as capital gains – Delhi bench of the Tribunal		ITA No. 4537/Del/2017
71	19 May 2023	Product classification debate on cares v. cures continues to rage – Supreme Court		2023 (5) TMI 191 - SUPREME COURT; 2023 (4) TMI 408 - SUPREME COURT; 2023 (5) TMI 290 - SUPREME COURT
72	22 May 2023	Proposed review of definition of Unpublished Price Sensitive Information under SEBI (Prohibition of Insider Trading) Regulations, 2015 – SEBI consultation paper		Consultation Paper on proposed review of the definition of Unpublished Price Sensitive Information (UPSI) under SEBI (Prohibition of Insider Trading) Regulations, 2015 to bring greater clarity and uniformity of compliance in the ecosystem dated 18 May 2023
73	23 May 2023	Reaffirms Mohd. Ekram Khan's case and upholds sales tax liability on auto parts replaced free of cost by dealer in fulfilment of warranty obligation of manufacturer qua customer, where credit note is issued by manufacturer as recompense – Supreme Court, Larger Bench		Civil Appeal No. 1822/2007
74	25 May 2023	MCA notifies certain provisions of the Competition (Amendment) Act, 2023 – Key highlights		Notification No. S.O. 2228(E) dated 18 May 2023
75	26 May 2023	Rules related to merger or amalgamation of certain companies amended – MCA		Notification No. G.S.R. 367(E) dated 15 May 2023
76	30 May 2023	Changes in angel tax provisions – specified class of investors and start-up companies exempt; draft valuation rules open for public comments		Press Release dated 19 May 2023; Notification No. 29/2023/F. No. 370142/9/2023-TPL (Part-I) dated 24 May 2023; Notification No. 30/2023/F. No. 370142/9/2023-TPL (Part-I) dated 24 May 2023; Notification No. F. No. 5(4)/2018-SI dated 19 May 2023
77	31 May 2023	Guidelines and notification to withhold tax on 'net winnings' from online games – CBDT		CBDT Circular No. 5 of 23 dated 22 May 2023; Notification No. 28/2023 dated 22 May 2023
78	5 June 2023	Amendments proposed to IFSCA (Banking) Regulations, 2020 – Consultation paper		Consultation Paper released on 29 May 2023
79	5 June 2023	Companies (Accounts) Rules, 2014 amended to clarify that companies will file a separate form for amount spent on CSR from FY 2022–23 onwards		Notification No. G.S. R. 408 (E) dated 31 May 2023

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80	8 June 2023	Bombay High Court passes the final judgement upholding sections 13(8)(b) and 8(2) of the IGST Act as constitutionally valid		Writ Petition No. 2031 of 2018
81	9 June 2023	Pre-import condition in AAS – CBIC notifies guidelines pursuant to Supreme Court decision		Circular No. 16/2023-Cus dated 7 June 2023
82	9 June 2023	RBI issues Guidelines on Default Loss Guarantee in Digital Lending		RBI/2023-24/41 DOR.CRE.REC.21/21.07.001/2023-24 dated 8 June 2023
83	13 June 2023	200% penalty leviable only in case of specific misreporting instances prescribed under section 270A(9) of the Act – Mumbai bench of the Tribunal		ITA No. 13/Mum/2023
84	15 June 2023	Regulatory framework for Execution Only Platforms to facilitate transactions in direct plans of schemes of mutual funds – SEBI		SEBI Circular No. SEBI/HO/IMD-PoD-1/P/CIR/2023/86 dated 13 June 2023
85	20 June 2023	CIT(A) has no jurisdiction to enhance income on account of fresh issues not examined by TO – Kolkata bench of the Tribunal		ITA No. 2485/Kol/2019
86	21 June 2023	SEBI amends SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 – Highlights		Notification No. SEBI/LAD-NRO/GN/2023/131 dated 14 June 2023
87	22 June 2023	Supply of drawings and design by a Swiss entity cannot be taxed in India as FTS since it is inextricably linked to offshore sale and supply of plant and equipment which itself is not liable to tax in India – Delhi bench of the Tribunal		ITA No. 1361/Del/2012
88	23 June 2023	Service tax demand on Indian salary component paid to secondees by relying on Supreme Court decision upheld – Chennai bench of the CESTAT		Service Tax Appeal No. 41736/2019
89	26 June 2023	Reimbursement of salary paid to employees seconded to India not taxable as FTS under India-US DTAA – Delhi bench of the Tribunal		ITA No. 2332/DEL/2022
90	30 June 2023	Examining the nature of business is prerequisite to determine set up of business, and consequential disallowance of expenditure – Delhi bench of the Tribunal		ITA No. 3368/Del/2018
91	3 July 2023	Master Circulars on scheme of arrangements and issue of capital and disclosure requirements – SEBI		SEBI Circular No. SEBI/HO/CFD/POD-2/CIR/2023/93 dated 20 June 2023; SEBI circular no. SEBI/HO/CFD/PoD-2/P/CIR/2023/00094 dated 21 June 2023
92	6 July 2023	Ministry of Power notifies Carbon Credit Trading Scheme, 2023 – Key highlights		Notification No. S.O. 2825(E) dated 28 June 2023
93	10 July 2023	Guidelines with respect to recent changes in TCS provisions on LRS and overseas tour packages – CBDT circular		Circular No. 10 of 2023 dated 30 June 2023
94	11 July 2023	High Court dismisses Revenue's appeal affirming Tribunal's ruling on DTAA entitlement based on valid TRC and non-existence of business connection based on facts of case – Bombay High Court		ITA No. 212 of 2018

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95	13 July 2023	GST to be levied on online gaming, important clarifications on ISD mechanism and warranty replacements, other compliances, anti-evasion and dispute resolution-related announcements – 50th GST Council meeting		Press Release on the 50th GST Council Meeting dated 11 July 2023
96	18 July 2023	Support services rendered on continuous basis not satisfying make-available test, hence not taxable in India – Delhi bench of the Tribunal		ITA No. 820/Del/2022
97	24 July 2023	Independent projects need to be evaluated separately to determine PE threshold, despite performance of services by same sub-contractor, unless the applicable provisions specify aggregate approach – Delhi bench of the Tribunal		ITA Nos. 1831, 1832/Del/2022 & 451/Del/2023
98	26 July 2023	Revenue's appeal dismissed, affirming Tribunal's ruling that commission income received by taxpayer as per the commissionaire agreement from its Indian affiliate is not FTS, and subscription fees received by taxpayer are not 'royalty' – Delhi High Court		ITA No. 306 of 2023
99	3 August 2023	Inter-connectivity and bandwidth charges are not taxable as royalty under beneficial provisions of the DTAA, thus obligation to deduct tax is not required – Karnataka High Court		ITA No.160/2015, C/W ITA Nos. 161/2015, 162/2015, 163/2015, 164/2015, 64/2020, 65/2020, 66/2020
100	3 August 2023	Revenue's SLP dismissed against Bombay High Court's decision which set aside interest and penalty on surcharge, CVD and SAD payments in absence of substantive provisions – Supreme Court		Special Leave Petition (Civil) Diary No(s). 18824/2023
101	3 August 2023	GST on online gaming and casinos to be levied on face value at entry level; rate remains unchanged at 28%, and proposed changes are expected to be implemented from 1 October 2023 – 51st GST Council meeting		Press release on the 51st Council meeting dated 2 August 2023
102	3 August 2023	Government notifies changes in import policy for computers, laptops, tablets, etc. covered under the HSN Code 8471 – ITC (HS) 2022 of the Foreign Trade Policy 2023		Notification No. 23/2023 dated 3 August 2023
103	4 August 2023	No profits could be attributed to PE in India, when contract for supply of goods (at offshore level) was incurring loss at global operational level – Delhi bench of the Tribunal		ITA Nos. 2259 & 2260/Del/2022
104	4 August 2023	Revenue to initiate first course of action against supplier and not recipient in case of mismatch in Forms GSTR 2A-3B – Calcutta High Court		MAT 1218 of 2023 (Calcutta)
105	4 August 2023	Government introduces the Digital Personal Data Protection Bill, 2023 – Key highlights		Bill No. 113 of 2023
106	5 August 2023	Receipts from cloud-computing services not taxable as royalty, FTS or FIS as per the India-USA DTAA – Delhi bench of the Tribunal		ITA No. 522 & 523/ Del/ 2023
107	10 August 2023	Payment for purchase of online advertisement space cannot be characterised as royalty or FTS; CSR expenditure eligible for deduction under section 80G of the Act – Bangalore bench of the Tribunal		IT(TP)A No.68 & 205/ Bang/ 2015, IT(TP)A No.559 & 881/ Bang/ 2016, IT(TP)A 387 & 2890/ Bang/2017, IT(TP) A 3430/ Bang/ 2018, IT(TP)A No.2301/ Bang/ 2019
108	21 August 2023	Reassessment proceedings quashed where taxpayer's failure to disclose material facts is not recorded; limits CIT(A)'s power to enhance income – Delhi bench of the Tribunal		SA Nos. 564 to 569/DEL/2018 & ITA Nos. 4410 to 4417/ DEL/2018

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109	22 August 2023	Interconnectivity charges received by a non-resident telecom operator from an Indian telecom service provider not taxable as 'royalty' as per the Act and the India-Spain DTAA – Bangalore bench of the Tribunal		[IT(IT)A No. 2657/Bang/2019, 180/Bang/2021 & 817/Bang/2022]
110	24 August 2023	Compensation paid for premature contract termination is deductible revenue expenditure; non-compete fee paid is a capital expenditure qualifying as an intangible asset eligible for claim of depreciation – Bombay High Court		ITA No. 675 of 2018
111	25 August 2023	MCA issues circular to condone delay in filing of forms by LLPs		General Circular No. 08/2023 dated 23 August 2023
112	28 August 2023	Receipts from ILP and consortium membership are not taxable as FIS, as neither the technical services are provided nor made available; Receipts from sponsorship assignments are taxed as FIS as technology is made available through specific research – Mumbai bench of the Tribunal		ITA No.607/Mum/2022
113	29 August 2023	CCPS would be covered within the ambit of 'shares'; CCPS acquired prior to 1 April 2017 and converted to equity shares post 1 April 2017 to be covered by Article 13(4) and not Articles 13(3A) or 13(3B) of India-Mauritius DTAA – Delhi bench of the Tribunal		ITA No. 2289/Del/2022
114	1 September 2023	Employees traveling to India does not create a fixed place PE if they do not undertake core business activities in India, and the activities are limited to stewardship or preparatory or auxiliary in nature – Delhi bench of the Tribunal		ITA No. 2147/Del/2022 and ITA No. 2148/Del/2022
115	2 September 2023	Fourth and Fifth APA Annual Reports published – CBDT		Advance Pricing Agreement (APA) Report
116	8 September 2023	Successful resolution applicants cannot be held liable for non-compliance of MCA filings by erstwhile directors of CD before insolvency commencement date – Chandigarh bench of the NCLT		IA No. 924/23 In CP (IB) No. 161/Chd/Hry/2018
117	21 September 2023	Revisionary order quashed holding compensation for waiving off 'right to sue' as chargeable to tax, citing no error in the assessment – Mumbai bench of the Tribunal		ITA No. 1654/Mum/2023
118	22 September 2023	Income earned from rendering human resource screening services to Indian clients is neither 'royalty' nor 'FTS' under the India-UK DTAA – Delhi bench of the Tribunal		ITA No. 373/Del/2023 and ITA No. 1884/Del/2022
119	26 September 2023	Indian AE providing marketing support services with no authority to conclude contracts does not constitute agency PE of foreign entity – Bangalore bench of the Tribunal		ITA 763 to 768/Bang/2022
120	26 September 2023	Pre-import condition in AAS – DGFT clarifies applicability to specified cases		Trade Notice No. 27/2023 dated 25 September 2023
121	27 September 2023	Timeline extended to convene the AGM and EGM through VC or OAVM until 30 September 2024 – MCA		General Circular No. 09/2023 on 25 September 2023
122	28 September 2023	SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 amended to introduce provisions for listing non-convertible debt securities – SEBI		Notification No. SEBI/LAD-NRO/GN/2023/151 dated 19 September 2023
123	29 September 2023	Addition under section 56(viib) of the Act rejecting DCF method adopted by taxpayer for valuation of preference shares, stating it to be hypothetical method of estimation lacking cogent basis – Bangalore bench of the Tribunal		ITA No. 494/Bang/2023

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124	29 September 2023	Amendments to angel tax valuation rules notified		Notification No. 81/2023 dated 25 September 2023
125	29 September 2023	Display of information regarding borrower and secured assets possessed under the SARFAESI Act, 2002 mandated – RBI		RBI/2023-24/63 DoR.FIN.REC.41/20.16.003/2023-24 dated 25 September 2023
126	30 September 2023	Government amends notifications to give effect to Supreme Court's decision in the case of Mohit Minerals w.r.t. CIF inbound transportation services		Notification Nos. 11/2023 – Integrated Tax (Rate), 12/2023 – Integrated Tax (Rate) and 13/2023 – Integrated Tax (Rate) dated 26 September 2023
127	3 October 2023	Stock exchanges introduce the format for disclosing cybersecurity incidents in corporate governance report		NSE Circular No. NSE/CML/2023/69 dated 29 September 2023 & BSE Circular No. 20230929-26 dated 29 September 2023
128	8 October 2023	GST Council recommends ISD to be made mandatory, extension of time limit to file appeal and several clarifications including inter alia valuation of personal and corporate guarantees and place of supply of certain services – 52nd GST Council meeting		Press Release on the 52nd GST Council meeting dated 7 October 2023
129	9 October 2023	Restaurants are not subject to service tax when offering take-away food and sharing premises with an associated enterprise – Supreme Court		Civil Appeal No. 6147 of 2023
130	10 October 2023	DTAA access cannot be denied in complete disregard to TRC and other corroborative evidence reaffirmed – Delhi bench of the Tribunal		ITA No.1686/Del/2022
131	10 October 2023	Relaxation provided to listed entities from certain provisions of SEBI LODR – SEBI		SEBI Circular No. SEBI/HO/DDHS/P/CIR/2023/0164 dated 6 October 2023; and SEBI Circular No. SEBI/HO/CFD/CFD-PoD2/P/CIR/2023/167 dated 7 October 2023
132	13 October 2023	Discussion paper on streamlining voluntary liquidation process – IBBI		Discussion Paper on Streamlining the Voluntary Liquidation Process dated 5 October 2023
133	16 October 2023	Revenue directed to refund amount recovered in excess of 20% of tax liability; TDS and TCS credits to be adjusted – Delhi High Court		W.P.(C) 11789/2023
134	17 October 2023	Mere access to server located abroad to obtain reports is not taxable as royalty – Delhi bench of the Tribunal		ITA No. 2573/Del/2022
135	17 October 2023	Draft Ecomark Certification Rules, 2023 open to feedback and suggestions – MoEF & CC		Notification No. S.O. 4441 (E) dated 11 October 2023
136	19 October 2023	Additional changes in import policy for computers, laptops, tablets covered under HSN 8471 of the ITC(HS) 2022 of Foreign Trade Policy 2023 notified and roll out of Import Management Systems for IT Hardware – DGFT		Notification No. 38/2023 and Policy Circular No. 06/2023-24 dated 19 October 2023

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137	21 October 2023	Non-applicability of provisions of section 56(2)(vii)(c) [now replaced by section 56(2)(x)(c)] of the Act affirmed to issue of right shares to a shareholder in proportion to his and his relatives' existing shareholding – Gujarat High Court		R/Tax Appeal No. 80 of 2023 with R/Tax Appeal No. 96 of 2023
138	24 October 2023	Proceedings stayed against recovery of ITC availed of GST paid pursuant to Supreme Court decision – Karnataka High Court		2023-VIL-734-KAR
139	27 October 2023	Order passed under section 148A(d) of the Act under the new reassessment scheme does not require detailed adjudication and ultimate determination, and its scope is limited to existence of information suggesting escapement of income		Writ Tax No. 1076 of 2023
140	27 October 2023	Supreme Court of India holds that entering into a tax treaty or protocol does not result in its automatic enforceability till such time as appropriate notifications are issued		Civil Appeal Nos. 1420; 1423; 1421-1422; 1424; 1425; 1426; 1427; 1428; 1429; 1430; 1431; 1432 of 2023
141	27 October 2023	MCA notifies Companies (Incorporation) Third Amendment Rules, 2023		Notification No. G.S.R. 790(E) dated 20 October 2023
142	27 October 2023	RBI issues Master Direction (Non-Banking Company – Scale Based Regulation) Directions, 2023		RBI/DoR/2023-24/105 DoR.FIN.REC. No.45/03.10.119/2023-24
143	30 October 2023	Application of amended section 151 of the Act even in case of notices issued under section 148 of the Act extended by TOLA upheld – Bombay High Court		Writ Petition No. 4888 of 2022
144	30 October 2023	CBIC issues circulars pursuant to recommendations made during GST Council's 52nd meeting		Circular Nos. 202/14/2023-GST, 203/15/2023-GST and 204/16/2023-GST all dated 27 October 2023
145	30 October 2023	Discussion paper on strengthening the liquidation process – IBBI		Discussion Paper on Strengthening the Liquidation Process dated 20 October 2023
146	30 October 2023	MCA notifies the Companies (Prospectus and Allotment of Securities) Second Amendment Rules, 2023		Notification No. G.S.R. 802(E) dated 27 October 2023
147	30 October 2023	MCA notifies the Companies (Management and Administration) Second Amendment Rules, 2023		Notification No. G.S.R. 801(E) dated 27 October 2023
148	31 October 2023	Amended LLP Rules notified to maintain register of partners and declaration of names of persons holding interest in the LLP – MCA		Limited Liability Partnership (Third Amendment) Rules, 2023 dated 27 October 2023
149	31 October 2023	Framework for LCs' fundraising revised – SEBI		SEBI Circular No. SEBI/HO/DDHS/DDHS-RACPOD1/P/CIR/2023/172 dated 19 October 2023
150	1 November 2023	Title of 'clean slate' in liquidation proceedings upheld – Gujarat High Court		R/Special Civil Application No. 19804 of 2022
151	2 November 2023	Concessional tax rate of 22% to be allowed for AY 2020–21 where a technical error caused a delay in filing Form 10-IC – Gujarat High Court		R/Tax Appeal No. 722 of 2023
152	3 November 2023	RBI invites comments on the draft Master Direction on Outsourcing of Financial Services by Regulated Entities		Press Release: 2023-2024/1180 dated 26 October 2023

Sl. No.	Date	Topic/Subject	Podcast	Ruling/ Notification/ Circular
153	6 November 2023	Notification introducing Amnesty Scheme to file appeals against demand orders for which appeal could not be filed within stipulated period following recommendations made at 52nd GST Council meeting – CBIC		Notification No. 53/2023–Central Tax dated 2 November 2023
154	6 November 2023	Operational Guidelines of the Scheme for Promotion of Research and Innovation in the Pharma MedTech Sector		Operational Guidelines of the Scheme for Promotion of Research and Innovation in Pharma MedTech (PRIP) Sector
155	8 November 2023	Discussion paper on proposed amendments to CIRP Regulations – open for public comments		Discussion paper on amendments to Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Process) Regulations, 2016 dated 1 November 2023
156	9 November 2023	UGC releases Regulations to set up campuses by Foreign Higher Educational Institutions in India		F. No. 1-1/2023(IC-FHEI) dated 7 November 2023
157	14 November 2023	Rules on Significant Beneficial Owner for Limited Liability Partnerships released – MCA		F. No. 17/30/2018-CL-V dated 9 November 2023
158	15 November 2023	Discussion paper on real estate-related proposals – CIRP and liquidation		Discussion paper on real-estate related proposals- CIRP and liquidation dated 6 November 2023
159	15 November 2023	TRAI issues press release to implement DCA facility – Key highlights		PIB Press release: RKJ/DK/SMP (release ID: 1975372) dated 7 November 2023
160	16 November 2023	GST Council cannot determine a classification – Classifies 'Flavoured milk' under tariff heading 0420 attracting lower GST rate of 5% – Madras High Court		2023-VIL-789-MAD
161	20 November 2023	One-time entry fee as well as variable annual license fee paid by telecom operators are in the nature of capital expenditure – Supreme Court		Civil Appeal No(s). 11128 of 2016 & Ors.
162	23 November 2023	Only blatant inaccuracies are amenable for rectification under section 254(2) of the Act – Supreme Court		R/ Special CA No. 11998 of 2023 & Ors.
163	29 November 2023	CIRP application filed by corporate debtor to avoid income-tax liability is not maintainable – Kolkata bench of the NCLT		(2023) ibclaw.in 894 NCLT
164	29 November 2023	Reassessment proceedings quashed for notices issued for AYs 2016-17 & 2017-18 for cases covered by the Ashish Agarwal Supreme Court decision – rejects 'travel back in time' theory postulated by CBDT Instruction issued to implement directions as per Ashish Agarwal decision – Delhi High Court		WP(C) 11527/2022

The above list consists of Tax & Regulatory Insights released between 1 December 2022 until 30 November 2023.

Customs and Trade Newsletters

Sl. No.	Month	Topic
1	December 2022	PwC India Customs and Trade Newsletter
2	January 2023	PwC India Customs and Trade Newsletter
3	February 2023	PwC India Customs and Trade Newsletter
4	March 2023	PwC India Customs and Trade Newsletter
5	April 2023	PwC India Customs and Trade Newsletter
6	May 2023	PwC India Customs and Trade Newsletter
7	June 2023	PwC India Customs and Trade Newsletter
8	July 2023	PwC India Customs and Trade Newsletter
9	August 2023	PwC India Customs and Trade Newsletter
10	September 2023	PwC India Customs and Trade Newsletter
11	October 2023	PwC India Customs and Trade Newsletter
12	November 2023	PwC India Customs and Trade Newsletter

The above list consists of newsletters released between 1 December 2022 until 30 November 2023.

Treaties & Agreements

Tax Information Exchange Agreements				
Sr. No.	Country	Notification No. and Date	Date when signed]	Date of coming into force
1	Argentine	Notification No. 22/2013 [F. No. 504/3/2010-FTD-II]/S.O. 824(E), dated 22 March 2013	21 November 2011	28 January 2013
2	Bahamas	Notification No. 25/2011 [F. No. 503/6/2009-FTD-I]/S.O. 1049(E), dated 13 May 2011	11 February 2011	1 March 2011
3	Bahrain	Notification No. 44/2013 [F. No. 503/03/1994-FT&TR-II]/S.O. 1766(E), dated 19 June 2013	31 May 2012	11 April 2013
4	Belize	Notification No. 3/2014 [F. No. 503/4/2012-FTD-I]/S.O. 48(E), dated 7 January 2014	18 September 2013	25 November 2013
5	Bermuda	Notification No. 5/2011 [F. No. 503/2/2009-FTD-I], dated 24 January 2011	7 October 2010	3 November 2010
6	British Virgin Islands	Notification No. 54/2011 [F. No. 503/10/2009-FTD-I] S.O. 2301(E), dated 3 October 2011	9 February 2011	22 August 2011
7	Brunei Darussalam	Notification No. 14/2020 [F. No. 503/02/2012-FTD-II]/S.O. 1009(E)	28 February 2019	30 January 2020
8	Cayman Islands	Notification No. 61/2011 [F. No. 503/03/2009-FTD-II]/S.O. 2902(E), dated 27 December 2011	21 March 2011	8 November 2011
9	Gibraltar	Notification No. 28/2013 [F. No. 503/11/2009-FTD-I]/S.O. 924(E), dated 1 April 2013	1 February 2013	11 March 2013
10	Guernsey	Notification No. 30/2012 [F. No. 503/1/2009-FTD-I]/S.O. 1782(E), dated 9 August 2012	20 December 2011	11 June 2012
11	Isle of Man	Notification No. 26/2011 [F. No. 503/01/2008 - FTD-I]/S.O. 1048(E), dated 13 May 2011	4 February 2011	17 March 2011
12	Jersey	Notification No. 26/2012 [F. No. 503/6/2008-FTD-I]/S.O. 1541(E), dated 10 July 2012	3 November 2011	8 May 2012
13	Liberia	Notification No. 32/20012-FT&TR-II [F. No. 503/02/2010-FT&TR-II]/S.O. 1877(E), dated 17 August 2012	3 October 2011	30 March 2012
14	Macao Sar	Notification No. 43/2012 [F. No. 503/04/2009-FT&TR-II]/S.O. 2427(E), dated 10 October 2012	3 January 2012	16 April 2012
15	Maldives	Notification No. S.O. 2865(E) [No. 76/2016 (F. No. 500/79/2008-FTD-II)], dated 2 September 2016	11 April 2016	2 August 2016
16	Marshall Islands	Notification No. S.O. 1789(E) [No. 40/2019 (F. No. 503/1/2018-FT&TR-IV)], dated 21 May 2019	18 March 2016	6 December 2018
17	Principality of Liechtenstein	Notification No. 30/2014 [F. No. 503/4/2009-FTD-I], dated 6 June 2014	28 March 2013	20 January 2014
18	Principality of Monaco	Notification No. 43/2013 [F. No. 503/05/2009-FTD-I]/S.O. 924(E), dated 12 June 2013	31 July 2012	27 March 2013
19	Saint Kitts and Nevis	Notification No. S.O. 2488(E) [No. 62/2016 (F.NO.503/09/2009-FTD-I)], dated 21 July 2016	11 November 2014	2 February 2016
20	Saint Vincent and the Grenadines	Notification No. S.O. 4756(E) [NO. 96/2023/F.NO. 503/12/2012-FTD.I], dated 1 November 2023	19 May 2022	14 February 2023
21	San Marino	Notification No. 63/2015 [F. No. 500/02/2003-FTD-I], dated 12 August 2015	19 December 2013	29 August 2014
22	Seychelles	Notification No. S.O. 2894(E) [No. 80/2016 (F. No. 503/07/1993-FT&TR-IV)], dated 8 September 2016	26 August 2015	28 June 2016

Limited Tax Treaties		
Sr. No.	Country	Notification
1	Afghanistan	Notification No. GSR 514(E), dated 30 September 1975
2	Ethiopia	Notification No. GSR 8(E), dated 4 January 1978 as corrected by Notification No. GSR 159(E), dated 2 March 1978
3	Iran	Notification No. GSR 284(E), dated 28 May 1973
4	Lebanon	Notification Nos. GSR 1552 and 1553, dated 28 June 1969
5	Maldives	Notification No. S.O. 2853(E) [No. 77/2016 (F. No. 503/4/2013-SO/FT&TR-II(1)], dated 2 September 2016
6	Pakistan	Notification No. GSR 792(E), dated 29 August 1989
7	People's Democratic Republic of Yemen	Notification No. GSR 857(E), dated 12 August 1988
8	Yemen Arab Republic	Notification No. GSR 2(E), dated 1 January 1987

Double Taxation Avoidance Agreements

Sr. No.	Country	Notification No. and Date	Date when signed	Date of coming into force
1	Albania	Notification No. 2/2014 [F. No. 501/1/2003-FTD-I]/SO 47(E), dated 7 January 2014	8 July 2013	4 December 2013
2	Armenia	Notification No. GSR 800(E) [No. 292/2004 (F. No. 503/5/96-FTD)], dated 8 December 2004 as amended by Notification No. S.O. 3266(E) [No. 30/2018 (F. No. 503/05/1996-FTD-I)], dated 5 July 2018	31 October 2003	9 September 2004
3	Australia	Notification No. GSR 60(E), dated 22 January 1992 as amended by Notification No. 74/2013 [F. No. 503/1/2009-FTD-II]/S.O. 2820(E), dated 20 September 2013	25 July 1991	30 December 1991
4	Austria	Notification No. GSR 682(E) [No. 271/2001 (F. No. 505/1/82-FTD)], dated 20 September 2001 as amended by Notification No. S.O. 1370 [No. 22/F. No. 505/01/1982-FTD-I (Pt.)], dated 24 April 2020	8 November 1999	5 September 2001
5	Bangladesh	Notification No. GSR 758(E), dated 8 September 1992 as amended by Notification No. 50/2013 [F. No. 500/27/2007-FTD-II], dated 4 July 2013	27 August 1991	27 May 1992
6	Belarus	Notification No. GSR 392(E) [No. 10646 (F. No. 501/7/92-FTD)], dated 17 July 1998 as amended by Notification No. 2/2016 [F. No. 501/07/1999-FTD-I], dated 13 January 2016	27 September 1997	17 July 1998
7	Belgium	Notification No. GSR 632(E), dated 31 October 1997, as amended by Notification No. S.O. 54(E), dated 19 January 2001. Earlier agreement was entered into vide GSR 323(E), dated 6 June 1975 which was later amended by GSR 321(E), dated 2 March 1988	26 April 1993	1 October 1997
8	Bhutan	Notification No. 42/2014 [F. No. 503/4/2004-FTD-II], dated 5 September 2014	4 March 2013	17 July 2014
9	Botswana	Notification No. S.O. 1494(E), dated 18 June 2008	8 December 2006	30 January 2008
10	Brazil	Notification No. GSR 381(E), dated 31 March 1992 as amended by Notification No. S.O. 93(E) [F. No. 500/101/2006-FT&TR-V], dated 4 January 2018	26 April 1988	11 March 1992
11	Bulgaria	Notification No. GSR 205(E), dated 9 May 1996	26 May 1994	23 June 1995
12	Canada	Notification No. S.O. 28(E), dated 15 January 1998. Earlier agreement was entered into vide GSR 1108(E), dated 25 September 1986, as amended by GSR 635(E) dated 24 June 1992	11 January 1996	6 May 1997
13	Chile	Notification No. S.O. 2059(E) [No. 24/2023/F. NO. 500/62/2017-FT&TR-V (PT-III)], dated 3 May 2023	9 March 2020	19 October 2022
14	China	Notification No. GSR 331(E), dated 5 April 1995, as amended by Notification No. S.O. 2562(E) [No. 54/2019/F. No. 503/02/2008-FTD-II], dated 17 July 2019	26 November 2018	21 November 1994
15	Croatia	Notification No. 24/2015 [F. No. 501/09/1995-FTD-I], dated 17 March 2015	12 February 2014	6 February 2015
16	Colombia	Notification No. 44/2014 [F. No. 501/3/99-FTD-II], dated 23 September 2014	13 May 2011	7 July 2014
17	Cyprus	Notification No. S.O. 64(E) [No. 3/2017 (F. No. 504/05/2003-FTD-I)], dated 10 January 2017	18 November 2016	14 December 2016
18	Czech Republic	Notification No. GSR 811(E) [No. 11160 (F. No. 503/6/93-FTD)], dated 8 December 1999	1 October 1998	27 September 1999
19	Denmark	Notification No. GSR 853(E), dated 25 September 1989 as amended by Notification No. 45/2015 [F. No. 503/02/1998-FTD-I]/SO 1371(E), dated 22 May 2015	8 March 1989	13 June 1989

Double Taxation Avoidance Agreements

Sr. No.	Country	Notification No. and Date	Date when signed	Date of coming into force
20	Egypt (United Arab Republic)	Notification No. GSR 2363, dated 30 September 1969	20 February 1969	30 September 1969
21	Estonia	Notification No. 27/2012 [F. No. 503/02/1997- FTD-1]/ S.O. No. 1677(E), dated 25 July 2012	19 September 2011	20 June 2012
22	Ethiopia	Notification No. 14/2013 [FT & TR-II/F. No. 503/01/1996-FT&TR-II]/ S.O. 418(E), dated 21 February 2013	25 May 2011	15 October 2012
23	Fiji	Notification No. 35/2014 [F. No. 503/11/2005-FTD-II], dated 12 August 2014	30 January 2014	15 May 2014
24	Finland	Notification No. 36/2010 [F. No. 501/13/1980-FTD-II], dated 20 May 2010	15 January 2010	19 April 2010
25	France	Notification No. GSR 681 (E), dated 7 September 1994, as amended by Notification No. S.O. 650(E), dated 10 July 2000 and S.O. No. 2106(E), dated 12 August 2009	29 September 1992	1 August 1994
26	Georgia	Notification No. 4/2012[F. No. 503/05/2006-FTD.I]/ S.O. 34(E), dated 6 January 2012	24 August 2011	8 December 2011
27	Germany	Notification No. S.O. 836(E) [No. 10235 (F. No. 500/47/90-FTD)], dated 29 November 1996	19 June 1995	26 October 1996
28	Greece	Notification No. GSR 394, dated 17 March 1967	11 February 1965	17 March 1967
29	Hong Kong	Notification No. S.O. 6247(E) [No. 89/2018/F. No. 500/124/97-FTD-II], dated 21 December 2018	19 March 2018	30 November 2018
30	Hungary	Notification No. GSR 197(E), dated 31 March 2005	3 November 2003	4 March 2005
31	Iceland	Notification No. S.O. 241(E), dated 5 February 2008	23 November 2007	21 December 2007
32	Indonesia	Notification No. S.O. 1144(E) [No. 17/2016 (F. No. 503/4/2005-FTD-II)], dated 16 March 2016, as amended by Notification No. GSR 77(E), dated 4 February 1988	27 July 2012	5 February 2016
33	Iran	Notification No. S.O. 1442(E) [No. 29/2021/F. No. 501/03/92/FTD-II], dated 1 April 2021	17 February 2018	29 September 2020
34	Ireland	Notification No. GSR 105(E) [45/2002 (F. No. 503/6/99-FTD)], dated 20 February 2002	6 November 2000	26 December 2001
35	Israel	Notification No. GSR 256(E) [No. 10134 (F. No. 503/4/92-FTD)], dated 26 June 1996, as amended by Notification No. S.O. 441(E) [No. 10/2017 (F. No. 500/14/2004-FT-II)], dated 14 February 2017	29 January 1996	15 May 1996
36	Italy	Notification No. GSR 189(E), dated 25 April 1996	19 February 1993	23 November 1995
37	Japan	Notification No. GSR 101(E), dated 1 March 1990, as amended by Notification Nos. S.O. 753(E), dated 16 August 2000; S.O. 1136(E), dated 19 July 2006; S.O. 2528(E), dated 8 October 2008; S.O. 3346(E) No. 102/2016 (F.No. 506/69/81-FTD-I), dated 28 October 2016	29 December 1989	29 December 1989
38	Jordan	Notification No. GSR 810(E) [No. 11161(F.No.501/4/89-FTD)], dated 8 December 1999	20 April 1999	16 October 1999
39	Kazakhstan	Notification No. GSR 633(E) [No. 10449 (F. No. 501/6/94-FTD)], dated 31 October 1997, as amended by Notification No. S.O. 1589(E) [No. 20/2018 (F. No. 501/06/94-FTD-II)], dated 12 April 2018	9 December 1996	2 October 1997

Double Taxation Avoidance Agreements

Sr. No.	Country	Notification No. and Date	Date when signed	Date of coming into force
40	Kenya	Notification No. S.O. 731(E) [No. 11/2018 (F. No. 503/01/2005/FTD-II)], dated 19 February 2018	11 July 2016	30 August 2017
41	Korea, (Republic of)	Notification No. S.O. 3265(E) [No. 96/2016 (F. No. 500/121/1996-FTD-II)], dated 24 October 2016	18 May 2015	12 September 2016
42	Kuwait	Notification No. S.O. 2000(E), dated 27 November 2007, as amended by Notification No. S.O. 1823(E) [No. 21/2018 (F. No. 501/03/88-FTD-II)], dated 4 May 2018	15 June 2006	17 October 2007
43	Kyrgyz Republic	Notification No. 34 [F.No. 503/7/95-FTD]/ GSR 75(E), dated 7 February 2001	13 April 1999	10 January 2001
44	Latvia	Notification No. 12/2014 [F. No. 503/02/1997-FTD-II], dated 5 March 2014	18 September 2013	28 December 2013
45	Libya	Notification No. GSR 22(E), dated 1 July 1982	2 March 1981	1 July 1982
46	Lithuania	Notification No. 28/2012 [F. No. 503/02/1997-FTD-1]/ S.O. 1693(E), dated 25 July 2012	26 July 2011	10 July 2012
47	Luxembourg	Notification No. 78/2009 [S.O. 2591(E)], dated 12 October 2009	2 June 2008	9 July 2009
48	Macedonia	Notification No. 94/2015 [F. No. 503/08/2004-FTD-II]/ S.O. 3499(E), dated 21 December 2015	17 December 2013	12 September 2014
49	Malaysia	Notification No. 07/2013 [F. No. 506/123/84-FTD-II]/ S.O. 284(E), dated 29 January 2013	9 May 2012	26 December 2012
50	Malta	Notification No. 34/2014 [F. No. 504/06/2003-FTD-II], dated 5 August 2014	8 April 2013	7 February 2014
51	Mauritius	Notification No. GSR 920(E), dated 6 December 1983 as amended by Notification No. S.O. 2680(E) (No. 68/2016 (F.No. 500/3/2012-FTD-II), dated 10 August 2016	24 August 1982	6 December 1983
52	Mexico (United Mexican States)	Notification No. 86/2010 [F. No. 503/4/91-FTD-I], dated 26 November 2010	10 September 2007	1 February 2010
53	Mongolia	Notification No. S.O. 635(E), dated 16 September 1996	22 February 1994	29 March 1996
54	Montenegro	Notification No. S.O. 96(E), dated 7 January 2009	8 February 2006	23 September 2008
55	Morocco	Notification No. GSR 245(E), dated 15 March 2000 as amended by Notification No. S.O. 3789(E) [No. 84/2019/F. No.503/09/2009-FTD-II], dated 22 October 2019	30 October 1998	20 February 2000
56	Mozambique	Notification No. 30/2011-FT&TR-II [F. No. 501/152/2000-FT&TR-II]/ S.O. 1249(E), dated 31 May 2011	30 September 2010	28 February 2011
57	Myanmar	Notification No. S.O. 1518(E), dated 18 June 2009	2 April 2008	30 January 2009
58	Namibia	Notification No. GSR 196(E), dated 8 March 1999	15 February 1997	22 January 1999
59	Nepal	Notification No. 20/2012 [F. No. 503/03/2005-FTD-II], dated 12 June 2012	27 November 2011	16 March 2012
60	Netherlands	Notification No. GSR 382(E), dated 27 March 1989 as amended by Notification No. S.O. 693(E), dated 30 August 1999	30 July 1988	21 January 1989

Double Taxation Avoidance Agreements

Sr. No.	Country	Notification No. and Date	Date when signed	Date of coming into force
61	New Zealand	Notification No. GSR 314(E), dated 27 March 1987, as amended by Notification No. GSR 477(E), dated 21 April 1988 and GSR 37(E), dated 12 January 2000	17 October 1986	3 December 1986
62	Norway	Notification No. 24/2012 [F. No. 505/3A/81-FTD-I], dated 19 June 2012	2 February 2011	20 December 2011
63	OECD Member Countries	Notification No. 35/2012 [F. No. 500/154/2009-FTD-I], dated 29 August 2012	26 January 2012	1 June 2012
64	Oman	Notification No. S.O. 563(E), dated 23 September 1997	2 April 1997	3 June 1997
65	Philippines	Notification No. GSR 173(E), dated 2 April 1996, as amended by Notification No. S.O. 125(E), dated 2 February 2005	12 February 1990	21 March 1994
66	Poland	Notification No. GSR 72(E), dated 12 February 1990, as amended by Notification No. 47/2014, dated 24 September 2014	21 June 1989	26 October 1989
67	Portuguese Republic	Notification No. GSR 542(E), dated 16 June 2000, as corrected by Notification No. S.O. 673(E), dated 25 August 2000; No. GSR 597(E), dated 20 September 2005 and as amended by Notification No. S.O. 4724(E) [No. 43/2018 (F. No. 503/05/1991-FTD-I)], dated 11 September 2018	11 September 1998	30 April 2000
68	Qatar	Notification No. GSR 96(E), dated 8 February 2000	7 April 1999	15 January 2000
69	Romania	Notification No. 13/2014 [F.No.501/10/1995-FTD-I], dated 5 March 2014	8 March 2013	16 December 2013
70	Russian Federation	Notification No. GSR 507(E) [10677 (F. No. 501/6/92-FTD)], dated 21 August 1998	25 March 1997	11 April 1998
71	Saudi Arabia	Notification No. GSR 645 (E) [No. 287/2006-FTD (F. No. 501/7/91-FTD)], dated 17 October 2006	25 January 2006	1 November 2006
72	Serbia and Montenegro	Notification No. S.O. 97(E), dated 7 January 2009	8 February 2006	23 September 2008
73	Singapore	Notification No. GSR 610(E), dated 8 August 1994 as amended by Notification No. S.O. 1022(E), dated 18 July 2005; No. S.O. 2031(E), dated 1 September 2011 and No. S.O. 935(E), dated 23 March 2017	24 January 1994	27 May 1994
74	Slovenia	Notification No. GSR 344(E), dated 31 May 2005	13 January 2003	17 February 2005
75	Slovak Republic	Notification No. GSR 526(E) [No. 7311 (F.No. 11/22/66-FTD)], dated 25 May 1987 read with, Notification No. S.O. 813(E) [No. 25/2015 (F. No. 501/12/1995-FTD-I)], dated 23 March 2015	27 January 1986	13 March 1987
76	South Africa	Notification No. GSR 198(E), dated 21 April 1998, as amended by Notification No. S.O. 316(E) [No. 10/2015-FT&TR-II] (F. No. 500/144/2005-FTD-II), dated 2 February 2015	4 December 1996	28 November 1997
77	Spain	Notification No. GSR 356(E), dated 21 April 1995, as amended by Notification S.O. 3079(E) [No. 58/2019/F. No. 503/02/1986-FTD-I], dated 27 August 2019	8 February 1993	12 January 1995
78	Sri Lanka	Notification No. 23/2014 [F. No. 503/8/2005-FTD-II]/ S.O. 956(E), dated 28 March 2014	22 January 2013	22 October 2013
79	Sudan	Notification No. GSR 723(E), dated 1 November 2004	22 October 2003	15 April 2004

Double Taxation Avoidance Agreements					
Sr. No.	Country	Notification No. and Date	Date when signed	Date of coming into force	
80	Sweden	Notification No. GSR 705(E), dated 17 December 1997, as amended by Notification No. 63/2013 [F. No. 505/02/1981-FTD-I]/ [S.O. 2459(E)], dated 14 August 2013	24 June 1997	25 December 1997	
81	Switzerland	Notification No. GSR 357(E), dated 21 April 1995, as amended by Notification No. GSR 74(E), dated 7 February 2001 and Notification No. S.O. 2903(E), dated 27 December 2011	2 November 1994	29 December 1994	
82	Syria	Notification No. S.O. 884(E), dated 30 March 2009	18 June 2008	10 November 2008	
83	Tajikistan	Notification No. S.O. 1758(E), dated 16 July 2009, as amended by Notification No. S.O. 1328(E) [No. 15/2018 (F. No. 503/10/95-FTD-II)], dated 23 March 2018	20 November 2008	10 April 2009	
84	Tanzania	Notification No. 8/2012-FT&TR-II [F. No. 503/02/2005-FTD-II]/ S.O. No. 303(E), dated 16 February 2012	27 May 2011	12 December 2011	
85	Thailand	Notification No. S.O. 3244(E), [No. 88/2015 (F. No. 503/5/2005-FTD-II)], dated 1 December 2015, as amended by Notification No. GSR 915(E), dated 27 June 1986	29 June 2015	13 October 2015	
86	Trinidad & Tobago	Notification No. GSR 720(E) [No. 11111 (F. No. 503/11/95-FTD)], dated 26 October 1999	8 February 1999	13 October 1999	
87	Turkey	Notification No. S.O. 74(E), dated 3 February 1997	31 January 1995	1 February 1997	
88	Turkmenistan	Notification No. GSR 567(E), dated 25 September 1997	25 February 1997	7 July 1997	
89	Uganda	Notification No. GSR 666(E), dated 12 October 2004	30 April 2004	27 August 2004	
90	Ukraine	Notification No. GSR 24(E), dated 11 January 2002	7 April 1999	31 October 2001	
91	United Arab Emirates	Notification No. GSR 710(E) [No. 9409 (F. No. 501/3/89-FTD)], dated 18 November 1993, as amended by Notification No. S.O. 2001(E), dated 28 November 2007 and Notification No. 29/2013 [F. No. 503/5/2004-FTD-II], dated 12 April 2013	29 April 1992	22 September 1993	
92	United Kingdom	Notification No. GSR 91(E), dated 11 February 1994, as amended by Notification No. 10/2014 [F. No. 505/1986 FTD-I], dated 10 February 2014	25 January 1993	26 October 1993	
93	United States of America	Notification No. GSR 992(E), dated 20 December 1990	12 September 1989	18 December 1990	
94	Uruguay	Notification No. 53/2013 [F. No. 500/138/2002-FTD-II]/ S.O. 2081(E), dated 5 July 2013	8 September 2011	21 June 2013	
95	Uzbekistan	Notification No. S.O. 790(E) [No. 10222/96 (F. No. 501/8/92-FTD)], dated 13 November 1996, as amended by Notification No. S.O. 2689(E), dated 7 November 2012	29 July 1993	25 January 1994	
96	Vietnam	Notification No. GSR 369(E) [No. 9758/95 (F. No. 503/7/91-FTD)], dated 28 April 1995 [As amended by Notification No. 9860 (F. No. 503/7/91-FTD.), dated 12 September 1995 and No. S.O. 2826(E) {No. 82/2017 (500/5/2009-FTD-II)}, dated 30 August 2017]	7 September 1994	2 February 1995	
97	Zambia	Notification No. GSR 39(E), dated 18 January 1984	5 June 1981	18 January 1984	

Countries with whom India has ratified the Multilateral Convention to implement Tax Treaty related measures to prevent BEPS

Sr. No.	India's treaty with*	Date of ratification by other country	Date of entry into force by other country
1.	Albania	22 September 2020	1 January 2021
2.	Armenia	25 September 2023	1 January 2024
3.	Australia	26 September 2018	1 January 2019
4.	Austria	22 September 2017	1 July 2018
5.	Bangladesh		
6.	Belarus (Part of USSR)		
7.	Belgium	26 June 2019	1 October 2019
8.	Bhutan		
9.	Botswana		
10.	Brazil		
11.	Bulgaria	16 September 2022	1 January 2023
12.	Canada	29 August 2019	1 December 2019
13.	China	25 May 2022	1 September 2022
14.	Colombia		
15.	Croatia	18 February 2021	1 June 2021
16.	Cyprus	23 January 2020	1 May 2020
17.	Czech Republic	13 May 2020	1 September 2020
18.	Denmark	30 September 2019	1 January 2020
19.	Egypt	30 September 2020	1 January 2021
20.	Estonia	15 January 2021	1 May 2021
21.	Ethiopia		
22.	Fiji		
23.	Finland	25 February 2019	1 June 2019
24.	France	26 September 2018	1 January 2019

Sr. No.	India's treaty with*	Date of ratification by other country	Date of entry into force by other country
25.	Georgia	29 March 2019	1 July 2019
26.	Germany	18 December 2020	1 April 2021
27.	Greece	30 March 2021	1 July 2021
28.	Hungary	25 March 2021	1 July 2021
29.	Iceland	26 September 2019	1 January 2020
30.	Indonesia	28 April 2020	1 August 2020
31.	Ireland	29 January 2019	1 May 2019
32.	Israel	13 September 2018	1 January 2019
33.	Italy		
34.	Japan	26 September 2018	1 January 2019
35.	Jordan	29 September 2020	1 January 2021
36.	Kazakhstan	24 June 2020	1 October 2020
37.	Kenya		
38.	Korea	13 May 2020	1 September 2020
39.	Kuwait		
40.	Kyrgyz Republic		
41.	Latvia	29 October 2019	1 February 2020
42.	Libya		
43.	Lithuania	11 September 2018	1 January 2019
44.	Luxembourg	9 April 2019	1 August 2019
45.	Macedonia		
46.	Malaysia	18 February 2021	1 June 2021
47.	Malta	18 December 2018	1 April 2019
48.	Mauritius	18 October 2019	1 February 2020

Countries with whom India has ratified the Multilateral Convention to implement Tax Treaty related measures to prevent BEPS

Sr. No.	India's treaty with*	Date of ratification by other country	Date of entry into force by other country
49.	Mexico	15 March 2023	1 July 2023
50.	Mongolia		
51.	Montenegro		
52.	Morocco		
53.	Mozambique		
54.	Myanmar		
55.	Namibia		
56.	Nepal		
57.	Netherlands	29 March 2019	1 July 2019
58.	New Zealand	27 June 2018	1 October 2018
59.	Norway	17 July 2019	1 November 2019
60.	Oman	7 July 2020	1 November 2020
61.	Philippines		
62.	Poland	23 January 2018	1 July 2018
63.	Portuguese Republic	28 February 2020	1 June 2020
64.	Qatar	23 December 2019	1 April 2020
65.	Romania	28 February 2022	1 June 2022
66.	Russia	18 June 2019	1 October 2019
67.	Saudi Arabia	23 January 2020	1 May 2020
68.	Serbia	5 June 2018	1 October 2018
69.	Singapore	21 December 2018	1 April 2019
70.	Slovak Republic	20 September 2018	1 January 2019
71.	Slovenia	22 March 2018	1 July 2018
72.	South Africa	30 September 2022	1 January 2023

Sr. No.	India's treaty with*	Date of ratification by other country	Date of entry into force by other country
73.	Spain	28 September 2021	1 January 2022
74.	Sri Lanka		
75.	Sudan		
76.	Sweden	22 June 2018	1 October 2018
77.	Swiss Confederation	29 August 2019	1 December 2019
78.	Syria		
79.	Tajikistan		
80.	Tanzania		
81.	Thailand	31 March 2022	1 July 2022
82.	Trinidad and Tobago		
83.	Turkey		
84.	Turkmenistan		
85.	Uganda		
86.	Ukraine	8 August 2019	1 December 2019
87.	United Arab Emirates	29 May 2019	1 September 2019
88.	United Kingdom	29 June 2018	1 October 2018
89.	Uruguay	6 February 2020	1 June 2020
90.	USA		
91.	Uzbekistan		
92.	Vietnam	23 May 2023	1 September 2023
93.	Zambia		

*India is a signatory to the Multilateral Convention to implement tax treaty related measures to prevent BEPS (MLI). India deposited the instrument of ratification on 25 June 2019, and from 1 October 2019 the provisions of the MLI enter into force for India.

Source: OECD

Signatories of the Multilateral Competent Authority Agreement on the Exchange of Country-by-Country Reports

Sr. No.	Country	Date of signing
1.	Andorra	18 October 2018
2.	Anguilla	11 April 2019
3.	Argentina	30 June 2016
4.	Aruba	12 March 2020
5.	Australia	27 January 2016
6.	Austria	27 January 2016
7.	Azerbaijan	12 March 2021
8.	The Bahamas	10 December 2018
9.	Bahrain	22 December 2019
10.	Barbados	23 December 2021
11.	Belgium	27 January 2016
12.	Belize	20 June 2017
13.	Bermuda	15 April 2016
14.	Brazil	21 October 2016
15.	British Virgin Islands	8 July 2019
16.	Bulgaria	17 November 2017
17.	Canada	11 May 2016
18.	Cayman Islands	21 June 2017
19.	Chile	27 January 2016
20.	China (People's Republic of)	12 May 2016
21.	Colombia	21 June 2017
22.	Costa Rica	27 January 2016
23.	Croatia	6 July 2017
24.	Curacao	30 June 2016
25.	Cyprus	1 November 2016
26.	Czech Republic	27 January 2016
27.	Denmark	27 January 2016
28.	Dominican Republic	6 July 2023
29.	Estonia	27 January 2016
30.	Faroe Islands	17 May 2023
31.	Finland	27 January 2016
32.	France	27 January 2016
33.	Gabon	26 January 2017
34.	Georgia	30 June 2016

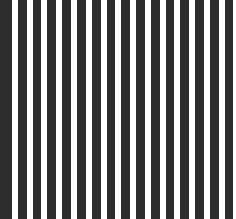
Sr. No.	Country	Date of signing
35.	Germany	27 January 2016
36.	Gibraltar	7 May 2020
37.	Greece	27 January 2016
38.	Guernsey	21 October 2016
39.	Haiti	22 June 2017
40.	Hong Kong, China	26 July 2018
41.	Hungary	1 December 2016
42.	Iceland	12 May 2016
43.	India	12 May 2016
44.	Indonesia	26 January 2017
45.	Ireland	27 January 2016
46.	Isle of Man	21 October 2016
47.	Israel	12 May 2016
48.	Italy	27 January 2016
49.	Japan	27 January 2016
50.	Jersey	21 October 2016
51.	Kazakhstan	12 June 2018
52.	Kenya	9 September 2022
53.	Korea	30 June 2016
54.	Latvia	21 October 2016
55.	Liberia	1 June 2022
56.	Liechtenstein	27 January 2016
57.	Lithuania	25 October 2016
58.	Luxembourg	27 January 2016
59.	Macau, China	21 August 2020
60.	Malaysia	27 January 2016
61.	Maldives	12 August 2021
62.	Malta	26 January 2017
63.	Mauritius	26 January 2017
64.	Mexico	27 January 2016
65.	Monaco	2 November 2017
66.	Montserrat	31 March 2023
67.	Morocco	25 June 2019
68.	Netherlands	27 January 2016

Sr. No.	Country	Date of signing
69.	New Zealand	12 May 2016
70.	Nigeria	27 January 2016
71.	Norway	27 January 2016
72.	Oman	16 July 2020
73.	Pakistan	21 June 2017
74.	Panama	24 January 2019
75.	Papua New Guinea	14 March 2023
76.	Peru	9 November 2018
77.	Poland	27 January 2016
78.	Portugal	27 January 2016
79.	Qatar	19 December 2017
80.	Romania	19 December 2017
81.	Russian Federation	26 January 2017
82.	San Marino	10 October 2018
83.	Saudi Arabia	6 August 2019
84.	Senegal	4 February 2016
85.	Seychelles	9 July 2019
86.	Singapore	21 June 2017
87.	Slovak Republic	27 January 2016
88.	Slovenia	27 January 2016
89.	South Africa	27 January 2016
90.	Spain	27 January 2016
91.	Sweden	27 January 2016
92.	Switzerland	27 January 2016
93.	Thailand	9 December 2022
94.	Tunisia	26 November 2019
95.	Turkey	30 December 2019
96.	Turks and Caicos Islands	21 June 2017
97.	United Arab Emirates	24 June 2018
98.	United Kingdom	27 January 2016
99.	Ukraine	3 November 2022
100.	Uruguay	30 June 2016

Source: OECD

Glossary

Authority for Advanced Ruling – AAR	Commissioner of Income-tax (Appeal) – CIT(A)	Global Anti-Base Erosion – GloBE	Most Favoured Nation – MFN
Advance Authorisation Scheme – AAS	Collective Investment Vehicle – CIV	Goods and Services Tax – GST	Net Asset Value – NAV
Automatic Data Processing Machines – ADPM	Customs Act, 1962 – Customs Act	Insolvency and Bankruptcy Code – IBC	National Company Law Tribunal – NCLT
Alternative Investment Funds – AIFs	Customs Tariff Act, 1975 – Customs Tariff	IFSC banking unit – IBU	Organisation for Economic Co-operation and Development – OECD
Arm's-length price – ALP	Discounted Cash Flow – DCF	Income-tax Act, 1961 – the Act	Offshore derivative instruments – ODIs
Anti-money Laundering – AML	Designated Depository Participant – DDP	Income-tax Rules, 1962 – Rules	Permanent Account Number – PAN
Advance Pricing Agreement – APA	Dividend Distribution Tax – DDT	Income-tax Appellate Tribunal – Tribunal	Principal Commissioner of Income-tax – PCIT
Asset Under Management – AUM	Duty Free Import Authorisation – DFIA	Integrated Goods and Services Tax – IGST	Permanent Establishment – PE
Assessment Year – AY	Duty-free shops – DFSs	Integrated Goods and Services Tax Act, 2017 – IGST Act	Pre-payment instruments – PPIs
Basic Customs Duty – BCD	Director General of Foreign Trade – DGFT	International Financial Service Centre – IFSC	Reserve Bank of India – RBI
Bar Council of India – BCI	Direct Market Access – DMA	International Financial Services Centres Authority – IFSCA	Reverse Charge Mechanism – RCM
Base Erosion and Profit Shifting – BEPS	Dispute Resolution Panel – DRP	International Monetary Fund – IMF	Request for Quote – RFQ
Beneficial Owner – BO	Domestic Tariff Area – DTA	Intellectual Property – IP	Sponsored Access – SA
Bill of Entry – BoE	Double Taxation Avoidance Agreement – DTAA	Indian rupee – INR	Significant Beneficial Owner – SBO
Customs Authority for Advance Ruling – CAAR	Export Obligation – EO	Input Service Distributor – ISD	Show Cause Notices – SCNs
Common Application Forms – CAFs	Export Promotion Capital Goods – EPCG	Input Tax Credit – ITC	Securities and Exchange Board of India – SEBI
Central Board of Direct Taxes – CBDT	Exchange Traded Commodity Derivatives – ETCD	Information Technology – IT	Special Economic Zone – SEZ
Central Board of Excise and Customs – CBEC	Foreign Currency Account – FCA	Information Technology Enabled Services – ITeS	Standard of Input Output Norms – SIONs
Central Board of Indirect Taxes and Customs – CBIC	Foreign Direct Investment – FDI	Know Your Customer – KYC	Sovereign Wealth Fund – SWF
Compulsory Convertible Debenture – CCD	Family Investment Fund – FIF	Liquid crystal devices – LCD	Social Welfare Surcharge – SWS
Corporate Debtor – CD	Fund Management Entity – FME	Legal Entity Identifier – LEI	Tax collected at source – TCS
Customs Excise and Service Tax Appellate Tribunal – CESTAT	Foreign Portfolio Investor – FPI	Limited Liability Partnership – LLP	Tax deducted at source – TDS
Combating the Financing of Terrorism – CFT	Foreign Trade Policy – FTP	Liberalised Remittance Scheme – LRS	Tax Officer – TO
Central Goods and Services Tax Act, 2017 – CGST Act	Fees for Technical Services – FTS	Mutual Agreement Procedure – MAP	Transfer Pricing – TP
Cost Insurance Freight – CIF	Free Trade Warehousing Zone – FTWZ	Ministry of Corporate Affairs – MCA	Tax Residency Certificate – TRC
	Financial Year – FY		University Grants Commission – UGC



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