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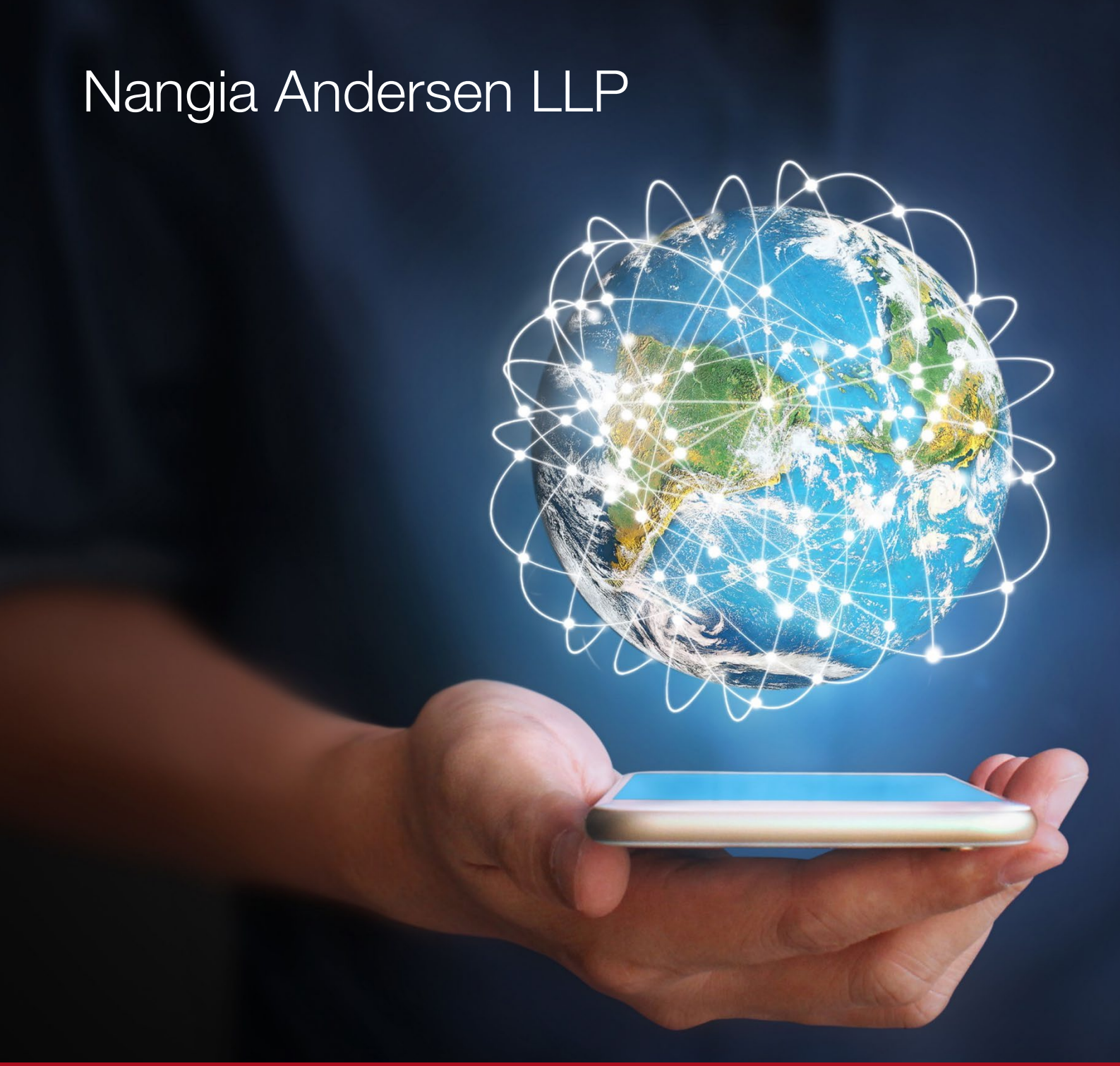

NEWSLETTER

September 2021

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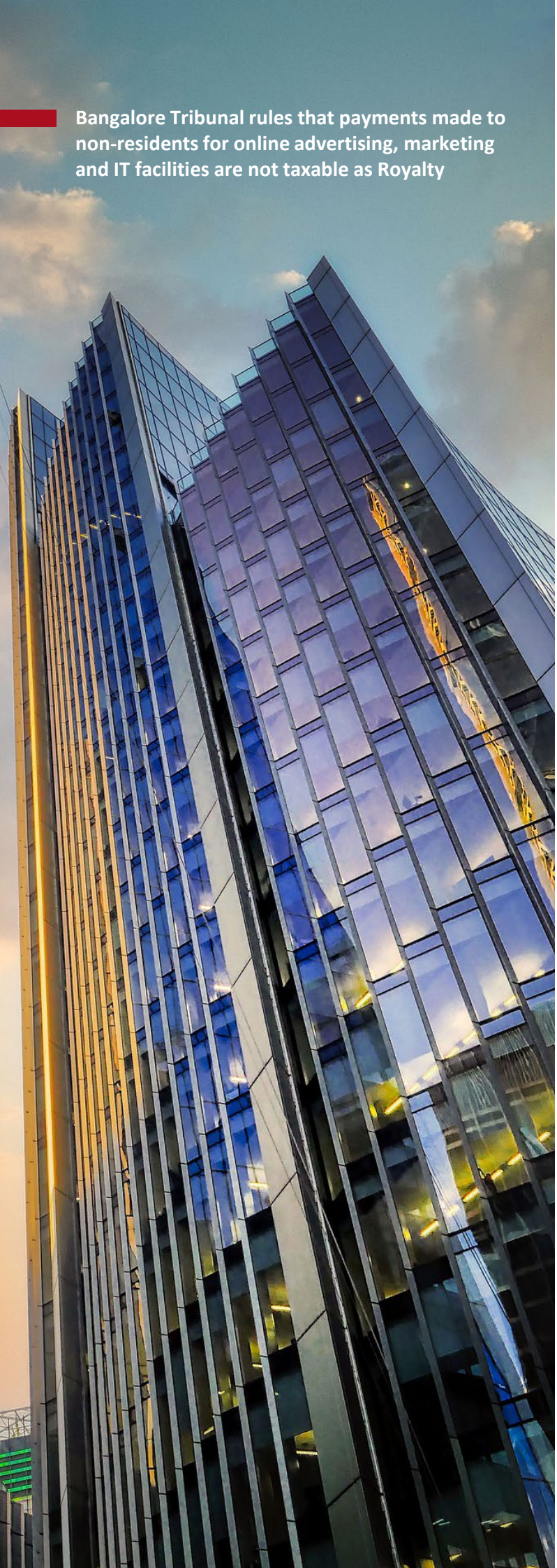
What's Inside?

01

Direct Tax



Bangalore Tribunal rules that payments made to non-residents for online advertising, marketing and IT facilities are not taxable as Royalty

Issue: Royalty and FTS
Outcome: In favor of the Assessee

Background

The Bangalore Tribunal assessed the taxability of payments made to non-residents for online advertising, marketing and information technology services. The Tribunal held that as the non-residents allowed the assessee to merely use their facilities without transferring any license or right of any of the facilities, such payments do not fall within the meaning of 'royalty'. Hence, the assessee cannot be considered as an 'assessee in default' under Section 201(1) for non-deduction of tax at source under section 195.

Brief facts and contentions

- The assessee (M/s Urban Ladder Home Décor Solutions Pvt. Ltd.) sells home décor products largely through online marketing.
- The assessee obtained *advertisement services* of Facebook, Ireland*, bulk mail facility* offered by M/s Rocket Science group, USA and *Amazon Web Services (AWS)* of M/s Amazon Inc., USA. It made payments for these services without deducting tax at source.
- The Assessing Officer (AO) submitted that the payments made to Facebook were in the nature of "Royalty" as per Explanations to Section 9(1)(vi).
- Further, as the services of Rocket Science group and Amazon Inc., USA were in the nature of usage of technology, model or process and/or equipment, the payments made were taxable as "Royalty" liable for deduction of tax at source under section 195 of the Act.
- Further, the services provided by Amazon included provision of routers, data connectivity, cloud computing and networking and therefore, fell within the scope of royalty/ FTS
- The CIT(A) upheld the order of the AO. Aggrieved, the assessee filed an appeal before the Tribunal.

ITAT's Judgement

- Placing reliance on the Supreme Court's decision in the case of Engineering Analysis Centre of Excellence Private Limited[1] , the Tribunal considered the beneficial provisions of the relevant tax treaty for determining the taxability of payments made to the non-resident entities as "Royalty".

- On perusal of the provisions of the agreement entered by the assessee with Facebook and Rocket Science Group, the Tribunal observed that the non-resident entities allowed the assessee to use their facilities including software facilities for creating advertisement content only. The Tribunal explained that mere usage of facility provided by the non-residents does not render the payments as "royalty payments", since there is no parting of any "copyright" attached to the said facilities. Further, payment made to Amazon Web Services (AWS) is only for use of information technology infrastructure facilities on rental basis and does not entail transfer of copyright.

- The Tribunal therefore concluded that the payments made by the assessee to the three non-resident companies referred above cannot be considered as "Royalty". Accordingly, there shall be no requirement to deduct tax at source under section 195 of the Act and the assessee cannot be considered as an assessee in default under section 201(1) of the Act.

Nangia Andersen LLP's Take

Post the judgement of the Supreme Court[1] on software royalty, it has been established that consideration for sale/ use of computer software through distribution agreements is not royalty for use of copyright. Reiterating the principle, the Tribunal concluded that the use of patented tools/ software for creation of advertisement content, without grant of license does not entail transfer of 'copyright', accordingly, such services cannot be categorized as 'royalty' as defined in tax treaties.

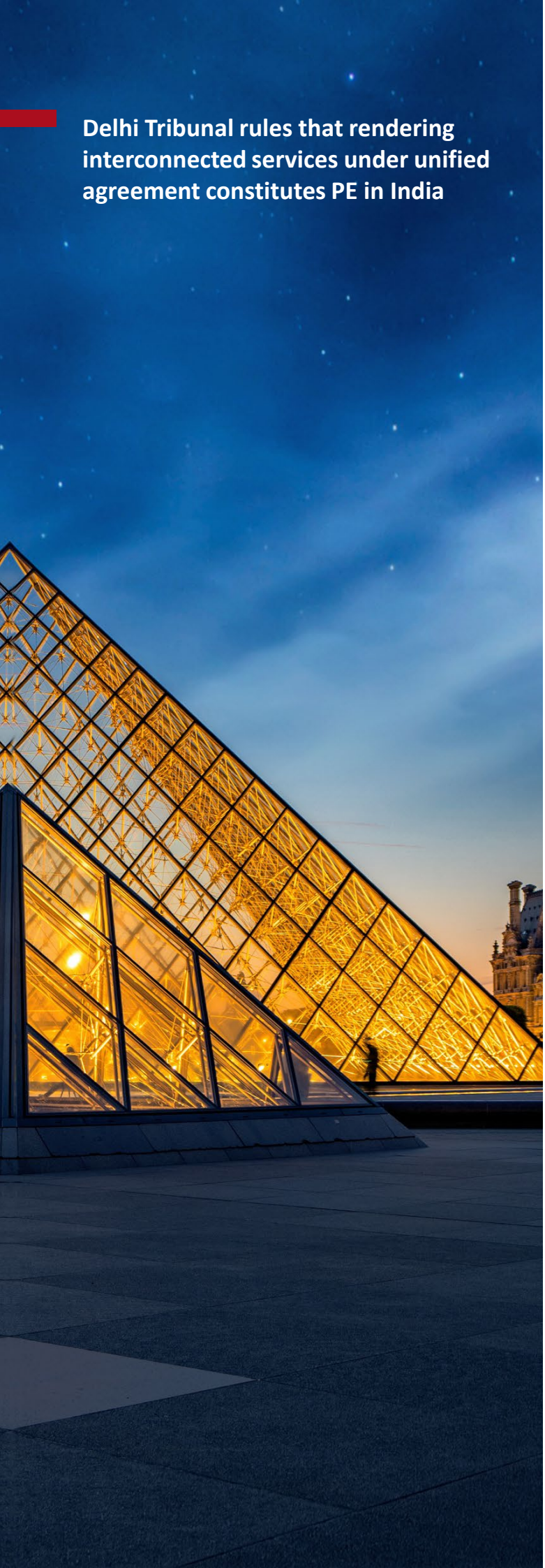
Past Precedents

In case of Skycell Communications Ltd[2], the Madras High Court held that web hosting charges are not in the nature of royalty and providing mere usage of a facility does not amount to provision of any technical service.

[Source- ITA No.615 to 620/Bang/2020]

[1]Engineering Analysis Centre of Excellence Private Limited vs. CIT (Civil Appeal Nos. 8733-8734 of 2018 dated March 02, 2021) (125 taxmann.com 42)

[2]Skycell Communications Ltd (251 ITR 53)



Delhi Tribunal rules that rendering interconnected services under unified agreement constitutes PE in India

Issue: Permanent Establishment (PE)

Outcome: In favor of the Revenue

Background

In a recent deliverance, the Delhi Tribunal rendered its decision that services rendered under the Service Order Form (SOFs), involving various activities including sourcing, marketing, ITeS, network, project, etc. are inter- connected. Further, as the aggregated period of stay of employees providing such services exceeds the threshold prescribed under Article 5(2)(I) of the tax treaty, the assessee constitutes a PE in India.

Brief facts and contentions

- The assessee, "Telenor ASA" is a tax resident of Norway. It entered into an agreement with Unitech Wireless (Tamil Nadu) India P. Ltd. to provide various services under SOFs like marketing, sourcing, etc.
- It offered its income from consideration received for services rendered under SOFs to tax as per Article 13- Fee for Technical Services (FTS) of the tax treaty at the rate of 10% on gross basis.
- The Assessing Officer (AO) however held that the assessee had a PE in India as the time spent by the employees of the assessee in India exceeded the threshold stipulated under Article 5(2)(I) of the tax treaty.
- The assessee contended that the SOFs constituted separate and independent projects, governed by uniform terms and conditions and cannot be considered as one consolidated project. However, the AO disregarded assessee's contentions by stating that the SOFs were an integral part of agreement and accordingly computed the income of the PE after allowing deduction of expenses at 40 per cent.
- The Dispute Resolution Panel (DRP) upheld the order of the AO. Aggrieved, the assessee preferred an appeal before the Tribunal.

ITAT's Judgement

- The Tribunal perused the OECD's Commentary on "enterprise" and "connected projects" and noted that the services of the assessee involved preparation, execution and negotiation of the Global System for Mobile Communication (GSM), devising the strategy development, preparation of IT solutions architect, recruiting the manpower, etc. and none of these services served any purpose individually.

- The services rendered by the assessee are inter-connected, inter laced, sequential technical services as none of the aforementioned services could stand in isolation with the other services and no single service could give rise to performance and achieving of the purpose of the recipient. The outcome of one SOF was essentially the input for the other SOF. Thus, on account of the unified agreement and consolidated billing pattern, the Tribunal held that a PE of the assessee existed in India as the duration test under the tax treaty was satisfied.

- The Tribunal further noted that the AO made ad-hoc disallowance of 60% of the revenues received by the assessee allowing only the 40% of the receipts as expenditure. The assessee demanded that only the mark-up of 3.5% of the cost equivalent to 3.38% of the revenues could be considered as the income attributable to the revenues of the PE in India. Accordingly, the Tribunal remanded the issue of determination of the profits back to the file of the AO.

Nangia Andersen LLP's Take

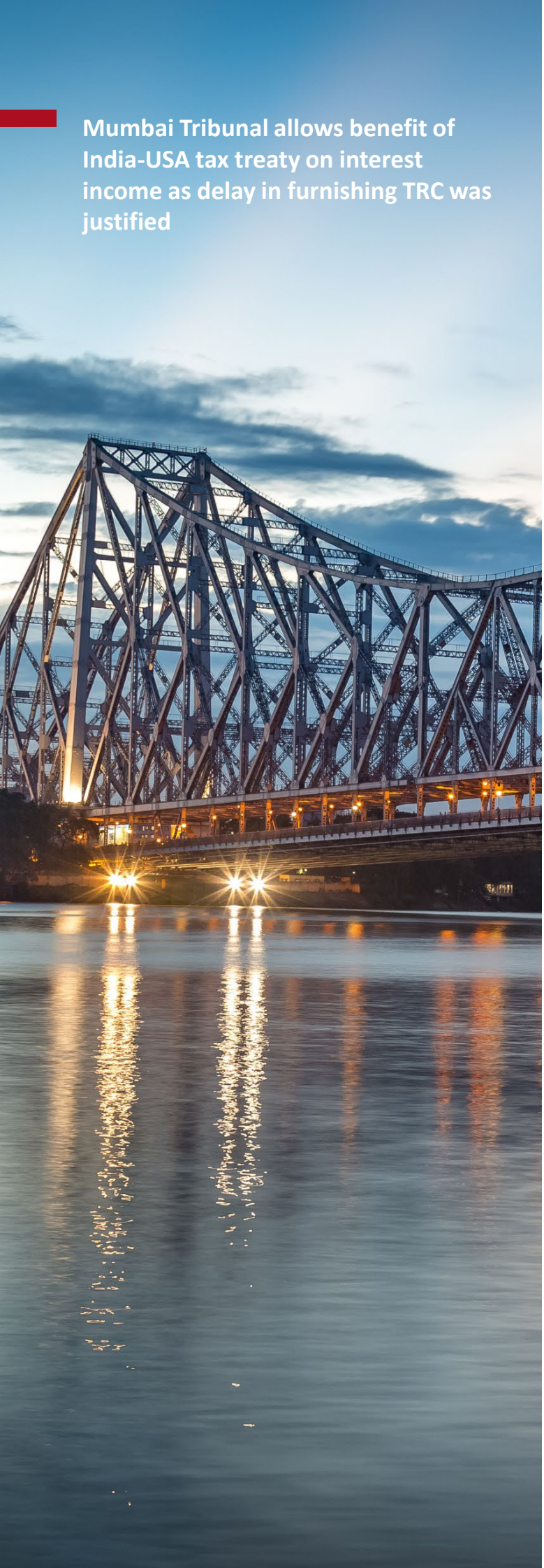
Ascertaining whether activities are connected depends on the factual matrix of each case. The OECD Commentary 2017 provides various factors that may be relevant for this purpose. There have been decisions in the past where the Judiciary has treated different projects carrying out different functions as separate projects. However, in the instant case, the Tribunal has considered services under SOFs to be inter-connected as there is a clear commercial coherence and no single activity gives rise to performance and achieving of the purpose of the recipient.

Past Precedents

In the case of Valentine Maritime (Mauritius) Ltd[1], the Mumbai Tribunal held aggregation of different periods of time should be applied only in those circumstances where the services rendered are so inextricably interconnected or interdependent that these are essentially required to be viewed as a coherent whole.

Source-Telenor ASA [TS-762-ITAT-2021(DEL)]

[1]ADIT v. Valentine Maritime (Mauritius) Ltd [2010-TIOL-195-ITAT-MUM]



Mumbai Tribunal allows benefit of India-USA tax treaty on interest income as delay in furnishing TRC was justified

Issue: Permanent Establishment (PE)

Outcome: In favor of the Revenue

Background

The Mumbai Tribunal assessed the eligibility of India-USA tax treaty benefit on the interest income of an assessee who delayed in furnishing Tax Residency Certificate (TRC) and Form 10F. The Tribunal allowed the benefit of special tax rate as the reasons for delay were justifiable.

Brief facts and contentions

- The assessee is a non-resident individual. He earned interest income from fixed deposits and bank interest during the Assessment Year 2014-15 and offered the same to tax at 10% and 15% as per the tax treaty.
- The Assessing Officer (AO), however, refused to accept assessee's claim of beneficial provisions of the tax treaty as the assessee had failed to substantiate that the interest income had been offered to tax in the return of income filed in U.S.A. The AO, accordingly, directed the assessee to pay tax on interest income as per the normal rates set under the Income Tax Act (the Act).
- The matter was challenged before the CIT(A), wherein the assessee furnished Tax Residency Certificate (TRC) and Form 10F by way of additional evidence. The CIT(A) also rejected assessee's claim as the assessee had not obtained TRC before filing return of income and had not filed TRC/ Form 10F during the course of assessment proceedings. It was stipulated that such documents ought to have been available with the assessee at the time of filing of return of income.
- CIT(A) held that the assessee had failed to comply with the mandate of Section 90(4)/(5) of the Act and therefore, beneficial provisions were rightly denied to him. Aggrieved, the assessee filed an appeal before the Tribunal.

ITAT's Judgement

- The Tribunal noted that the AO had refused to grant the benefit of special rate of tax under the India-USA tax treaty as the assessee failed to substantiate that he offered his interest income for tax in his return of income filed in the USA. The Tribunal held that this basis of rejection of the assessee's claim was misconceived and misplaced as the assessee was not seeking credit of taxes paid on his income abroad, but was only seeking taxing of his interest income as per the beneficial rates under the India-USA tax treaty.

- Further, the Tribunal accepted that the assessee could not furnish the TRC and Form 10F during the course of assessment proceedings due to paucity of time. It was of the view that there were justifiable reasons for the delay.

- Tribunal concluded that since the assessee had filed TRC with the AO (although after the conclusion of assessment) coupled with reasons for delay in obtaining the same, along with Form 10F, declining treaty benefit to the assessee was not justified.

- Accordingly, the Tribunal quashed the order of the CIT(A) and directed the AO to determine the tax liability on interest income as per the special rate of tax under the India-USA tax treaty.

Nangia Andersen LLP's Take

Section 90(4) of the Act prescribes that a non-resident assessee shall not be entitled to claim any relief under a tax treaty unless he obtains a TRC from the Government of the Contracting State. However, there could be genuine hardship or reasons beyond the control of an assessee resulting in delay in obtaining TRC from the foreign tax authorities. The Tribunal, in the instant case has accorded a genuine treaty benefit to the taxpayer, who had acceptable reasons for not obtaining TRC. Judgements like these strengthen the faith of the taxpayers in the judiciary.

Past Precedents

In case of Skaps Industries India Pvt. Ltd[1]., the Ahmedabad Tribunal held that an eligible assessee cannot be declined treaty protection under section 90(2) of the Act if the assessee could not furnish TRC in the prescribed form. Nevertheless, the assessee has to satisfy his eligibility for treaty protection in accordance with Article 4(1) of the tax treaty.

[Source-ITA Nos.1380/Mum/2020]

1ITA Nos. 478 & 479/Ahd/2018

02

Transfer Pricing

ITAT: Upheld naked LIBOR rates for benchmarking of interest free loan and commission rate of 0.5% for benchmarking corporate guarantee

Category: Interest free loan and Corporate Guarantee

Outcome: Partially in favour of both

Facts of the case

- Rosy Blue (India) Pvt. Ltd. ("the taxpayer"), is engaged in the business of cutting and polishing rough diamonds. During the assessment year ("AY") 2013-14, the taxpayer had given interest free loan to its Associated Enterprise ("AE") which is a wholly owned subsidiary of the taxpayer and also given corporate guarantee to Barclays Bank PLC on behalf of its said AE.

- The taxpayer had not charged any interest on the loan and any commission/fees for issue of such guarantee for the benefit of the AE considering that the loan transaction and corporate guarantee transactions are shareholder activities and cannot be considered as an international transaction within the scope of Section 92B of the Act.

- During the assessment proceedings, the Ld. TPO made following adjustments:

  - ❖ The TPO ignored the contention of the taxpayer and benchmarked the transaction of interest using LIBOR of 1.52% plus spread of 2%. For the purpose of arriving at spread rate of 2%, the ld. TPO used a SWAP Manager application of the "Bloomberg database" which converts the average spread into a fixed rate of interest. Based thereon, Ld. TPO made an upward adjustment to arm's length price towards notional interest income of ***INR 16.33 lakh*** on the loan given to AE.

  - ❖ Further, in connection to the transaction of corporate guarantee, the ld. TPO determined fee/commission at 2.25% and arrived at the transfer pricing adjustment of ***INR 93.35lakhs***

- Based on the above, the taxpayer filed an appeal before the Commissioner of Income Tax (Appeals) "CIT(A)". The Ld. CIT(A) upheld the addition made by Ld. TPO on account of notional interest income at LIBOR plus spread rate of 3.52%.

- Further, with respect to corporate guarantee, the CIT(A) directed the ld. TPO to determine the commission on corporate guarantee at 0.5% on the loans availed.

- Aggrieved by the same, the taxpayer filed an appeal before Mumbai Income Tax Appellant Tribunal ("ITAT"/ "the Tribunal").

ITAT's Ruling:

ITAT made the following observations:

- ITAT observed that **Tribunal in taxpayer's own case in subsequent year for AY 2014-15 held that only LIBOR rate should be considered for the purpose of making TP adjustment on account of interest free loan given to wholly owned subsidiary.**

- ITAT relied on the **Hon'ble Rajasthan High Court Ruling in case of *"CIT vs. Vaibhav Gems Ltd."*** wherein it was held that only LIBOR rate should be taken for the purpose of adding notional interest on account of interest free loan given to AE. Further, ITAT also noted that the Special Leave Petition preferred by the Revenue before the Hon'ble Apex Court against the judgement has been dismissed by the Hon'ble Apex Court.

- In view of the aforementioned, **the ITAT directed the Ld. TPO to consider only LIBOR rate @1.52% as arm's length price for benchmarking the interest free loan given by the taxpayer.**

- Further, with respect to the Corporate Guarantee, ITAT relies on coordinate bench ruling in taxpayer's own case for AY 2014-15 wherein coordinate bench had upheld CIT(A)'s order of charging corporate guarantee commission at 0.5%. Based thereon, ITAT upheld the corporate guarantee commission at 0.5% for the year under consideration.

Nangia Andersen LLP's Take

The instant ITAT ruling has supported the ruling of Hon'ble Rajasthan High Court in case of CIT vs. Vaibhav Gems Ltd., wherein it was held that only LIBOR rate without any spread rate should be considered for determining the notional interest income on account of interest free loan from arm's length perspective.

In light of the instant ruling, a thought to ponder can be given to the matter of outstanding receivables which are also characterized as interest free loan by the Indian Tax Authorities. In this regard, without prejudice to the fact that whether outstanding receivables falls under the ambit of international transactions as per Indian TP Regulations, based on the ratio of instant ruling it can be construed that naked LIBOR rate can be considered for the purpose of benchmarking transactions of outstanding receivables from transfer pricing perspective.

Also, the verdict in the instant case emphasizes on the principle of res-judicata (i.e. rule of consistency) where based on the similar facts, the decision is derived from the earlier or subsequent assessment years.

Source: Rosy Blue (India) Pvt. Ltd. [TS-327-ITAT-2021(Mum)-TP]

ITAT treats Provision written back as operating, Provides method for RPT filter computation; grants working capital adjustment; Restricts TP-adjustment to AE transaction

Category: Provision written back treated as operating, RPT filter computation; Working capital adjustment; Restricts TP-adjustment to AE transaction, Royalty Benchmarking.

Outcome: Partially in favour of both revenue and taxpayer

Facts of the case

- Toyota Kirloskar Motors Pvt. Ltd. ("the taxpayer") is engaged in the business of manufacturing and selling of multi utility vehicles.
- During AY 2013-14, the Assessing Officer ("AO") made a reference to Transfer Pricing Officer ("TPO") for the transfer pricing issues under consideration (as discussed below).
- Aggrieved by the AO/TPO order, the taxpayer filed an appeal before the Commissioner of Income Tax Appeals ("CIT (A)").
- Cross appeals were filed before the Income Tax Appellant Tribunal ("ITAT/Tribunal") against CIT(A)'s order by both Revenue and the Taxpayer that included both Corporate Tax as well as TP issues.
- Aggrieved by the order of CIT(A), Revenue filed an appeal before the ITAT in respect of the following issues:

Issue 1: Related Party Transaction Filter- Aggregation Approach:

- The taxpayer applied 25% RPT filter whereby companies having related party transactions (income transactions plus expenses transactions) in excess of 25% of sales were rejected as comparables. Accordingly, the taxpayer rejected Tata Motors Limited and these companies had RTP in excess of 25%. During the course of assessment proceedings, TPO included these companies as comparables.
- Aggrieved by the same, the taxpayer filed an appeal before the CIT(A). CIT(A) directed the AO / TPO to exclude the aforementioned companies.

Issue 2: Provision Written back- Operating in Nature:

- The taxpayer treated Provision written back as operating in nature while computing the margin, however, during the course of assessment proceedings, TPO treated the same as non-operating in nature.
- Aggrieved by the same, the taxpayer filed an appeal before the CIT(A) wherein it was held that provisions written back should be treated as operating in nature.

Issue 3: Working Capital Adjustment:

- During the course of assessment proceedings, TPO rejected the taxpayer's claim of granting Working capital adjustment.
- CIT(A) accepted the contention of the taxpayer and directed the AO/TPO to provide for working capital adjustment.

Issue 4: TP Adjustment should be restricted to AEs Transactions:

- The taxpayer contended before the TPO to restrict TP Adjustment only to AE transaction by stating that out of total transactions entered into, only 52.07% of the transactions are with its AEs, while the balance transactions are undertaken with third parties. However, the TPO rejected the taxpayer's contention, pursuant to which the taxpayer file an appeal before CIT(A), wherein a order was passed in favour of the taxpayer.

Issue 5: Royalty Benchmarking:

- The taxpayer had adopted TNMM at entity level wherein royalty payment is considered as closely linked transaction and part of operating cost. The TPO rejected this position of the taxpayer and benchmarked royalty as per ALP computation of AY 2012-13.
- consistent approach and should adopt net sales as denominator for the purpose of comparing royalty in case of comparables and the taxpayer.

ITAT's Ruling:

ITAT relied on the contentions of the taxpayer and the Revenue and made the following observations:

Issue 1: ITAT restored this issue back to AO and directed AO to compute RPT ratio on an aggregate basis taking the ratio of RPT income plus RPT expenses by sales across the board for all the comparable companies.

Issue 2: ITAT upheld CIT(A)'s position of treating provisions written back as operating in nature by holding that if creation of provision was treated as operating in nature, then the reversal of the same should also be treated as operating in nature.

Issue 3: ITAT upheld the order of CIT(A) in respect of granting of Working Capital Adjustment by stating that it is an acceptable adjustment .

Issue 4: ITAT observed that it was held in the taxpayer's own case for AY 2003-04 wherein it was held that TP adjustment should be restricted to transactions entered into with its AEs, and accordingly, upheld the order of the CIT(A) in favour of the taxpayer.

Issue 5: ITAT partially upheld CIT(A)'s order and opined that once the net profit margin is tested on the touchstone of arm's length price, it pre-supposes that the various components of the income and expenditure considered in the process of arriving at the net profit are also at arm's length. Further, it was held in taxpayer's own case for AY 2007-08, that the royalty payment is at arm's length price. ITAT held that the CIT(A) was correct in partly allowing the taxpayer's ground by holding that TPO should follow a consistent approach and adopt net sales as denominator for the purpose of comparable royalty in the case of comparables and the taxpayer.

Nangia Andersen LLP's Take

ITAT in the instant ruling clarified the treatment of certain items such as method for computation of RPT filter and write back of provisions for computation of cost base and margin, which often is an area of conflict between the revenue and the taxpayer while computing margins of the taxpayer and comparable companies, thereby providing some clarity on this issue.

Further, the Indian Transfer Pricing Regulations recognize the need for making appropriate adjustment to eliminate the material effect of differences between the international transactions and the comparables transactions to establish the comparability. In this ruling, the ITAT has reiterated the acceptability of working capital adjustment the purpose of better comparability.

ITAT further opined that the objective of determining the arm's length price in relation to an international transaction with AEs is to supplant the provisions of Section 92(1) of the Act, which prescribes that income arising from an international transaction shall be computed having regard to the ALP. Therefore, it is a natural corollary that the adjustment arising as a result of transfer pricing analysis is to be confined to international transactions undertaken with the AEs alone and not in relation to non-AE transactions.

In view of the above, the instant ruling provides more clarity to the taxpayer in respect of common transfer pricing issues.

Source: Toyota Kirloskar Motors Private Limited [TS-349-ITAT-2021(Bang)-TP]

03 Regulatory

Company Law Updates

A. Exemption from various provisions of Companies Act 2013 to Foreign Companies raising funds in International Financial Service Centres (IFSC)

The Ministry of Corporate Affairs ('MCA') *vide.* its notification dated 5 August 2021 has issued the Companies (Specification of definitions details) Third Amendment Rules, 2021 and Companies (Registration of Foreign Companies) Amendment Rules, 2021 providing explanation for the term **'Electronic Mode'** under Rule 2(1)(h) of Companies (Specification of definitions details) Rules, 2014 and under Rule 2(1)(c) of Companies (Registration of Foreign Companies) Rules, 2014.

According to the explanation, electronic based offering of securities, subscription thereof or listing of securities in the IFSC set up under section 18 of the Special Economic Zones Act, 2005 **shall not be construed as 'Electronic Mode'.**

Further, MCA *vide.* notification S.O. 3156 dated 5 August 2021, has exempted **foreign companies and company incorporated or to be incorporated outside India** from the provisions relating to offering for subscription of securities, requirements related to the prospectus, and all matters incidental thereto **in the IFSCs** set up under section 18 of the Special Economic Zones Act, 2005.

As a result of these amendments, foreign companies desirous of raising funds shall not be required to comply with various provisions under the Companies Act such as maintaining accounts in India, dating and registration of prospectus with ROC and other related compliances.

B. Relaxation In Qualification for appointment of Independent Directors

In further relaxation to the qualification for appointment of Independent directors, MCA, *vide* a notification G.S.R 538(E) dated 19 August 2021 (hereinafter referred to as the "Notification G.S.R. 538(E)", has now further exempted certain additional classes of individuals from the requirement of passing the online proficiency self-assessment test in order to be qualify as the Independent director.

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According to the notification G.S.R 538(E), following classes of individuals shall not be required to pass an online proficiency self-assessment test:

- An advocate, chartered accountant in practice, cost accountant in practice, company secretary in **practice for 10 years**.
- Individuals who satisfy the following conditions:
    a. Who have **served** for a total period of not less than **three years** as on the date of inclusion of his name in the data bank
    b. In the pay scale of Director or equivalent or above in any Ministry or Department, of the Central Government or any State Government, and
    c. Having experience in handling matters relating to commerce, corporate affairs, finance, industry or public enterprises or the affairs related to Government companies or statutory corporations set up under an Act of Parliament or any State Act and carrying on commercial activities;

FDI Policy Updates

A. FDI in Insurance sector

Ministry of Finance *vide* notification dated 19 August 2021 has amended the Foreign Exchange Management (Non-debt Instruments) Rules, 2019 in line with Press Note No. 2 (2021 series) issued by the DPIIT amending provisions relating to Foreign Direct Investment ('FDI') in the Insurance Sector.

According to the said notification, the limit for FDI in Indian Insurance Company has now been increased to 74% (earlier 49%) under the automatic route.

However, it would be mandatory for the Indian Insurance Company having foreign investment up to 74% to have majority of its directors, Key Management Persons and at least one amongst the Chairperson of its Board/ Managing Director/ Chief Executive Officer as a Resident Indian Citizens.

Financial sector Updates

A. Framework for Outsourcing of Payment and Settlement-related activities by Payment System Operators

RBI on 3 August 2021 has notified a new framework for outsourcing of payment and settlement-related activities by Payment System Operators ('PSOs').

The framework will be applicable to **non-bank PSOs and shall put in place minimum standards for managing risks in outsourcing of payment and/or settlement-related activities.** These standards shall not applicable to activities other than those related to payment and/or settlement services, e.g. internal administration, housekeeping or similar functions will not be covered under the ambit.

Key provisions of the framework includes:

- Definition of Service Providers to include vendors, payment gateways, agents, consultants and / or their representatives who are engaged in the activity of payment and / or settlement systems. It also includes sub-contractors (i.e., secondary service providers) to whom the primary service providers may further outsource whole or part of some activity related to payment and settlement system activities outsourced by the PSO.
- The service provider to whom the work has being outsourced to, shall not be owned or controlled by any director or officer of the PSO or their relatives unless such service provider is a group company of the PSO.
- PSOs have been restricted to outsource core management functions, including risk management and internal audit, compliance and decision-making functions such as determining compliance with KYC norms.
- PSOs will have to exercise due diligence, put in place sound and responsive risk management practices for effective oversight, and manage the risks arising from such outsourcing of activities.

It was a much awaited framework for the PSOs to guide them in setting up a minimum standard and enable effective management of attendant risks in outsourcing of such activities.

B. Master Directions on Prepaid Payment Instruments ('MD-PPIs')

The Department of Payment and Settlement Systems, RBI has revised the Master Directions on Prepaid Payment Instruments (PPIs) on 27th August 2021. The applicability of these master directions now stands widened to include all PPI Issuers and System Participants. Earlier,

The said master directions have been issued to provide a framework for authorisation, regulation and supervision of entities issuing and operating PPIs in the country.

Some of the important provisions under the master directions are as follows:

- Prior approval or authorisation of the RBI is required to set up and operate payment systems for PPIs.
- PPIs have now been classified into two categories *viz.* Small PPIs and full KYC PPIs where Small PPIs have been defined as *"Issued by banks and non-banks after obtaining minimum details of the PPI holder"* and Full-KYC PPIs have been

- defined as "*instruments issued by banks and non-banks after completing Know Your Customer (KYC) of the PPI holder*"

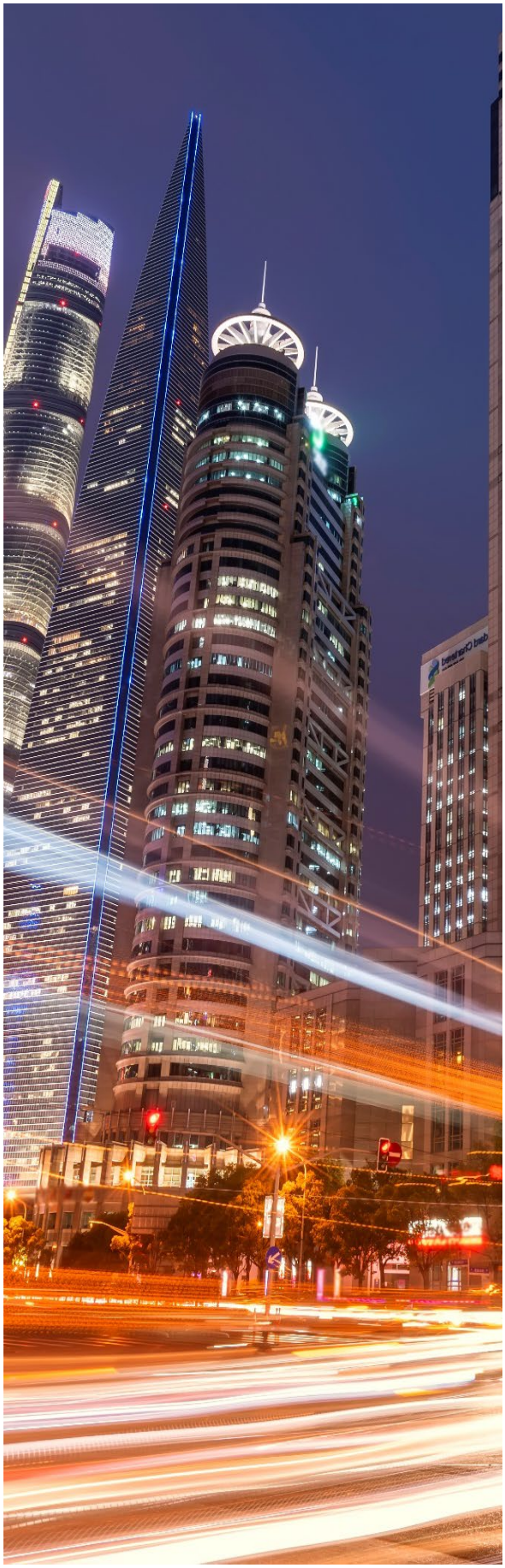
- Minimum positive net-worth of INR. 5 crore has been set for all non-bank entities seeking authorisation from RBI at the time of submission of application. Thereafter, by the end of the third financial year from the date of receiving final authorisation, they shall achieve a minimum positive net-worth of INR. 15 crore which shall be maintained at all times

- PPI issuer shall have a board-approved policy for PPI interoperability.

- Interoperability shall be mandatory on the acceptance side as well. QR codes in all modes shall be interoperable by March 31, 2022.

- PPI issuer shall put in place a formal, publicly disclosed customer grievance redressal framework, including designating a nodal officer to handle customer complaints or grievances, the escalation matrix and turn-around-times for complaint resolution.

- In the case of PPIs issued by banks and non-banks, customers shall have recourse to the Banking Ombudsman Scheme and Ombudsman Scheme for Digital Transactions respectively for grievance redressal.



[4] SEBI/HO/CFD/DIL1/ CIR/P/2021/0585

Securities and Exchange Board of India ('SEBI') Updates

SEBI, in its meeting held on 6 August 2021, approved amendments to the existing securities laws as listed below:

- **New SEBI (Share Based Employee Benefits and Sweat Equity) Regulations, 2021**

  It has been decided to merge SEBI (Issue of Sweat Equity) Regulations, 2002 ("Sweat Equity Regulations") and SEBI (Share Based Employee Benefits) Regulations, 2014 ("SBEB Regulations") into a single regulation which shall be **SEBI (Share Based Employee Benefits and Sweat Equity) Regulations, 2021 ('SBEBS Regulations').** Further, the board also agreed to certain amendments in the existing regulations.

  The SBEBS Regulations have widened the category of employees open to receive stock options by including group/ associate Company employees. The SBEBS Regulations also provide employees, working for such a company or any of its group companies including a subsidiary or an associate, share-based benefits. Some of the other key benefits include:

  - Requirement of a minimum vesting period and lock-in period (minimum 1 year) for all share benefit schemes has been removed
  - Time period for appropriating the unappropriated inventory of shares held by the trust extended from the one year to two years
  - Companies permitted to transfer excess shares held by a trust upon winding up, to other share-based employee benefit schemes, subject to approval of the shareholders for such transfer

- **Review of regulatory framework for promoter, promoter group and group Companies**

  Further to its consultation paper dated 11 May 2021, examining review of regulatory framework of promoter, promoter group and group companies as per Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018 ('ICDR Regulations'), SEBI has prescribed a reduction in lock-in period for minimum promoters' contribution to 18 months and on pre-IPO shares to 6 months.

  The Board also considered shifting the concept of 'promoter' to the concept of 'person in control'.

  The driving factor behind doing so is the changing landscape of ownership in listed Companies and many cases involving no identifiable promoter.

- **Amendment to SEBI (Alternative Investment Funds) ('AIF') Regulations, 2012**

  SEBI has approved the following amendments to the AIF Regulations:

  a. The minimum amount of grant of INR 25 lakh stipulated for Category I AIFs –Social Venture Funds shall not apply to grants received from accredited investors.
  b. AIFs can also issue partly paid up units to investors to represent the portion of committed capital invested.
  c. The regulator has also stipulated that AIFs will have to file private placement memorandum with SEBI through registered merchant bankers.

  The changes are meant to ease compliance for AIFs, provide investment flexibility and streamline regulatory processes.

- **Amendment to SEBI (Substantial Acquisition of Shares and Takeovers) Regulations,2011 ('Takeover Regulations')**

  In view of the implementation of the System Driven Disclosures ('SDDs'), certain disclosure obligations for the acquirers/ promoters, etc, would be done away with from 1 April, 2022, pertaining to:

  a. Acquisition or disposal of shares aggregating to 5 per cent or more
  b. Any change of 2 per cent,
  c. Annual shareholding disclosures
  d. Creation/ invocation/ release of encumbrance registered in depository systems under takeover regulations

  Under SDD framework, relevant disclosures are disseminated by the stock exchanges based on aggregation of data from the depositories without human intervention.

Production Linked Incentive ('PLI') Scheme Updates

A. FAQs on PLI Scheme for White Goods- AC and LED lights released

In a set of FAQs on PLI scheme for white goods - ACs and LED lights released on 16 August 2021, the Department for Promotion of Industry and Internal Trade ('DPIIT') said that a company availing benefits of PLI scheme, if for any reason, fails to make full committed investment and exits midway will have to refund the incentives taken along with interest and its bank guarantee will also be invoked.

Further, the applicant will have to refund the incentive availed by it under the scheme till such date along with interest calculated at the prevailing three year SBI MCLR compounded annually.

The FAQs also clarify that in case an applicant does not meet criteria of threshold investment and net incremental sales for any given year, it would not be eligible for disbursement of incentive for that particular financial year.

As far as relaxations are concerned, it has allowed inclusion of more LED components such as resistors, fusers, LED transformers, among others, in the target segments and eligible products. Similarly, pre-qualification criteria can be met on the basis of audited financials for 2020-21.

The PLI scheme for white goods, which got the Cabinet's approval in April, aims to create a complete component ecosystem in India and make India an integral part of the global supply chains.

B. FAQs on PLI Scheme for Pharmaceuticals

In a set of FAQs on PLI scheme for Pharmaceuticals released by the Department of Pharmaceuticals ('DoP') on 19 August 2021, the Ministry has given further clarifications on Global Manufacturing Revenue ('GMR').

- GMR shall be the consolidated global revenue of the applicant and Group Company, if any, from the sale of pharmaceutical goods and/ or in vitro diagnostic medical devices manufactured by the Group (in own plant/ contract manufacturing and loan licensing).
- Further, revenue on consolidated basis shall be considered after removing intra-group sales, if any, so as to prevent double counting.
- The trading revenue (that is to say revenue from products not manufactured by applicant and Group company in own plant/ contract manufacturing / loan licensing) shall not be considered while calculating the GMR.
- In case the sales of products manufactured under contract manufacturing/ Loan Licensing that are booked as revenue in the books of accounts and Statutory Auditor's certificate is submitted by the applicant as per the Scheme, the same would be considered for calculating GMR.
- However, revenue from sale of eligible products produced under contract manufacturing shall not be considered for calculating threshold/ incremental sales. Revenue from sale of eligible products produced under Loan Licensing shall be included while calculating threshold/ incremental sales.

The DoP, *vide* corrigendum dated 13 August 2021 extended the last date of submitting the applications from 15 August 2021 to 31 August 2021.

C. Extension of last date of filing applications: PLI for high efficiency solar PV

The implementing agency for PLI Scheme for High Efficiency Solar PV Modules- Indian Renewable Energy Development Agency ('IREDA'), *vide* corrigendum dated 27 August 2021 extended the last date of submission of applications under the Scheme to **15 September 2021**.

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Limited Liability Partnership (Amendment) Act, 2021

In accordance with the Government of India's ease of doing business initiative, the Limited Liability Partnership (Amendment) Bill, 2021 was approved by Rajya Sabha on 4 August, 2021 and by Lok Sabha on 9 August 2021.

Further, on 13 August 2021, the bill received the assent of the President, leading to notification of Limited Liability Partnership (Amendment) Act, 2021.

Key amendments that the Limited Liability Partnership (Amendment) Act, 2021 introduced are:

- **Introduction of Small Limited Liability Partnership:** A Partnership where contribution does not exceed INR 25 Lakhs or such higher amount, not exceeding INR 5 crore, as may prescribed, and Turnover does not exceed INR 40 lakhs or such higher amount, not exceeding INR 50 crores, as may be prescribed.

- **Resident in India- Section 7(1) Explanation:** Under LLP Act, the period of stay for an Indian resident has been reduced to 120 days from initial 182 days.

- **Section 34A- Accounting and Auditing Standard:** The Central Government may prescribe standards of accounting and standards of auditing as in consultation with National Financial Reporting Authority (NFRA).

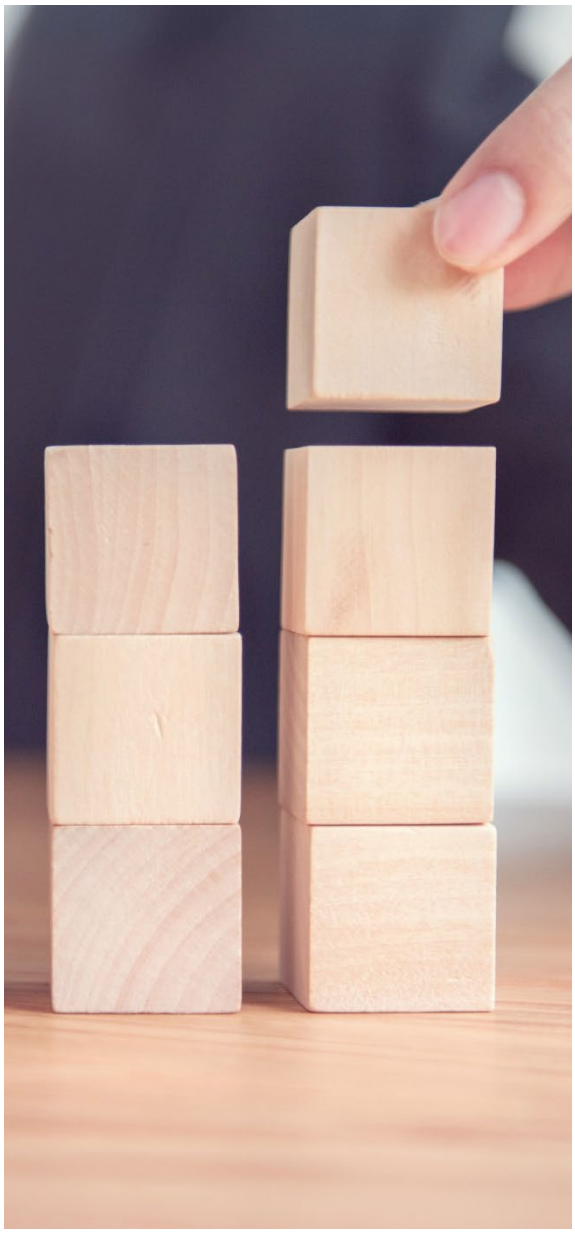
- **Section 67A and 67B- Special Courts:** The Central Government may establish special courts for areas where speedy trials of offences are required. Powers of these courts are listed in Section 67B.

- **Section 68A –Registration Offices:** The Central Government may establish such number of registration offices for registration of new Limited Liability Partnerships by way of notification.

- **Section 17-Change in name of LLP:** Where the name registered by LLP is identical or resembles with any other Limited Liability Partnership or company or registered trade mark, then on application made by LLP, CG may direct to change its name within a period of 3 months from the date of issue of such direction. Further, such LLP who has changed its name shall give notice of its change to ROC

- **Section 39- Compounding of offences:** The Act decriminalizes compoundable offences by either omitting those provisions or by substituting the word fine with penalty

The aforesaid amendments seek to encourage the start-up ecosystem by decriminalising various offences, formation of special courts for speedy trial of offences, expanding the scope of Small LLPs.



04 Compliance Calendar

Direct Tax

Due Date	Particulars
7th September 2021	Payment of TDS/TCS - For the period 1st August 2021 to 31st August 2021
	Payment of Equalisation Levy on online advertisement and other specified services, referred to in Section 165 of Finance Act, 2016 - For the period 1st August 2021 to 31st August 2021
14th September 2021	Due date for issue of TDS Certificate for tax deducted under section 194-IA in the month of July, 2021
	Due date for issue of TDS Certificate for tax deducted under section 194-IB in the month of July, 2021
	Due date for issue of TDS Certificate for tax deducted under section 194M in the month of July, 2021
15th September 2021	Due date for furnishing of Form 24G by an office of the Government where TDS/TCS for the month of August, 2021 has been paid without the production of a challan
	Due date for payment of second instalment of advance tax for the assessment year 2022-23
30th September 2021	Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194-IA in the month of August, 2021
	Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194-IB in the month of August, 2021
	Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194M in the month of August, 2021

Extension of due date in statutory and regulatory compliance matters (Vide Circular No. 12/2021, dated June 25, 2021)	
30th September 2021	Extended due date for filing of income tax return for the assessment year 2021-22 for all assessee **other than** (a) corporate-assessee; (b) non-corporate assessee (whose books of account are required to be audited); (c) partner of a firm whose accounts are required to be audited or the spouse of such partner if the provisions of Section5A applies; (d) an assessee who is required to furnish a report under section 92E
	Extended due date for linking of Aadhaar number with PAN
	Extended due date for investment, deposit, payment, acquisition, purchase, construction and such other action for the purpose of claiming exemption under section 54 to 54GB of the Income-tax Act, 1961 for which the last date of compliance is between 1st April 2021 to 29th September 2021.

Regulatory

Segment	Particulars	Due Dates
Monthly ECB Return	ECB-2 (Monthly Return of ECBs for the month of August)	07 September, 2021
Director's KYC	DIR-3 KYC	30 September, 2021
Filing of financial statement with RoC by Liaison/ Branch/ Project Office	Form FC-3	30 September, 2021
Foreign Assets and Liabilities Revised Return	FLA Return	30 September, 2021

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