Nangia Andersen LLP

Tax & Regulatory Newsletter

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A member firm of ANDERSEN GLOBAL

What’s Inside?

Direct Tax

Gift of “Brand” to private irrevocable trust non-taxable

Issue: Taxability of receipt of brand as gift
Outcome: Non - taxable - in favour of the assessee

Background

Recently, the Mumbai Tribunal dealt with the issue of taxability of gift of brand to a trust. The Tribunal held that the brands received by the assessee did neither carry any element of profit nor fell under any category of income specified under the Income Tax Act. Further, the brand was not in the nature of “work of art” and thus could not be taxed as property under Section 56 of the Act.

Brief Facts and Contentions

- The assessee-trust (M/s Balaji Trust) received the brand "Essar" from M/s Essar Investments Limited (EIL) which was not recognized in its financials. It subsequently entered into brand licensing agreements with Essar group companies. The license fees receivable was accounted for as per the cash system of accounting.

- During the year under consideration, assessee did not receive any license fees. However, the licensees had credited the fees in the account of the assessee in their respective books of accounts on which they had deducted and remitted TDS. Due to different methods of accounting adopted, there was difference of amount declared by the group companies as per the Form 26AS, as against the income that was declared by the assessee in the subsequent years.

- The Assessing Officer (AO) alleged that as per AS-9 issued by ICAI, the receipt by way of brand license fee shall be accounted as per accrual system of accounting. Further, the AO passed order u/s 143(3) that as the definition of "income" u/s 2(24) was very wide in nature, receipt of trademark and copyright was in the nature of income taxable under the head "income from other sources". Thereafter, the AO applied the DCF method for valuing the trademark and copyright and raised a demand.

ITAT's Judgement

- The Tribunal observed that the brand was in the nature of a profit earning apparatus with which the Trust was able to generate license fee from the Essar group. Thus, the brand was in the nature of a fixed or a capital asset. Further, the brands received by the assessee did neither carry any element of profit nor fell under any category of income specified under the Income Tax Act.

- The Tribunal further explicated that the mere fact that the brand was registered as an 'artistic work' under the Copyright Act, 1957, would not in itself mean that the brand is also a 'work of art'. Therefore, as the brand "Essar" was neither an artistic innovation nor possessed any artistic quality, it could not be held to be in the nature of "work of art". Thus, the Tribunal held that the brand could not be taxed as property under Section 56(2)(vii) of the Act (i.e. the erstwhile provision similar to Section 56(2)(x) of the IT Act), which provides for taxation of notional income on receipt of certain property (which inter alia includes 'work of art'), without any consideration or insufficient consideration.

- The Tribunal also noted that the brand was gifted to the Trust on the day it was created. Therefore, it could not be said that such income/ benefit was arising out of the Trust's business. Therefore, the brand could not be brought to tax as business income either. The Tribunal also explained that the DCF valuation method adopted by the AO was not as per the mandate of law.

- The "AS-9" was not applicable to the assessee being a Trust and even though the assessee had not received any licence fees, it had offered for tax the TDS amount as its income for the year to claim the TDS credit. In order to match the tax liability, the assessee had to declare the income to the extent of TDS amount that was deducted and deposited by the group companies.

. Nangia Andersen LLP's Take

The Tribunal's directive accords respite and clarity regarding the settlement of assets into a trust.

Notably, factors like the nature of transaction, treatment of assets in the books and the nature of asset are relevant for determining tax-ability under the Income Tax Act. Thus, every contribution proposed to be made to a trust or any proposal to settle any asset into a trust should be necessarily vetted from tax perspective. In the instant case, the brand was held to be profit earning apparatus in the nature of a fixed or a capital asset, not carrying any element of profit or income taxable under the Income Tax Act.

[Source- ITA no.5139/Mum./2017]

Engineering designs sent from UAE to ONGC against sum remitted directly to UAE, not covered u/s 44BB

Issue: Applicability of provisions of section 44BB of the ACt
Outcome: In favour of the Assessee

Background

The Dehradun Tribunal has pronounced that as all the engineering designs were prepared outside India and also the amounts were remitted directly outside India, assessee's receipts were not taxable on presumptive basis under section 44BB as the provisions of section 44BB do not override the charging provisions of section 4 and section 5 of the Income-Tax Act.

Brief Facts and Contentions

- The assessee "Petronash FZE" is a company incorporated under the laws of UAE. During the years under consideration, it was engaged in a contract with ONGC for replacement of well fire shut down panels at offshore platform MH and NH on a turnkey basis.

- The Assessing Officer (AO) held that the • scope of the work included design, engineering and manufacturing of well- fire shutdown panels which was highly technical in nature and thus shall be taxed as "fees for technical services".

- Further, the AO held the income of the assessee to be taxable as "business income" on the grounds that the entire project was executed in India and the activities of design, engineering were based on the site survey and local conditions. The AO deduced that the entire project was a turnkey project, and thus no bifurcation was to be made of income accruing inside and outside India. The entire income accrued in India under section 5 the Act. Since the assessee had not maintained any books of accounts, the AO made an estimate of assessee's income at 25% of the gross receipts under section 44DA in view of existence of PE in India.

- The assessee filed several objections before the DRP and argued that since the first shipment arrived in May 2008, PE did not exist in AY 2008-09.

- The DRP, however held that the assessee undertook a turnkey project involving onsite surveys, designing & planning prior to procurement of material and installation and the first visit of the employees of the assessee was to be considered for determination of PE. The contract was signed in September 2007. Accordingly, the DRP held that the PE came into existence in the A.Y. 2008-09 and held 10% of the gross receipts to be taxable in India u/s 44BB.

ITAT's Judgement

- The Tribunal accepted assessee's contention that all the engineering designs were prepared entirely at assessee's specialties outside India and were sent directly to ONGC from UAE and also the amounts were remitted directly to UAE by ONGC.

- Taking note of the supply of materials, the designs conducted, the date of invoices, list of material, the presence of employees, the Tribunal held that the DRP was not right in apportioning 10% to gross receipts as taxable income as provisions of 44BB do not override the provisions of Section 4 and Section 5.

- As there was no PE before September 2007, the Tribunal directed the AO to apportion the profits, if any, attributable to the PE pertaining to the supply of well- fire shut down panels undertaken in India.

. Nangia Andersen LLP's Take

Section 5 of the Income-Tax Act stipulates that the total income of a non-resident shall include all income which is received or is deemed to be received in India or income which accrues or arises or is deemed to accrue or arise in India. Section 4 levies charge of income-tax in respect of the total income of every person.

Besides, section 44BB of the Income tax Act is a special provision for computing profits and gains of a non-resident assessee engaged in business of exploration, etc. of mineral oils on a presumptive basis at 10%. Pertinently, the provisions of 44BB cannot override the provisions of charging section 4 and section 5.

In the instant case, all the engineering designs were prepared entirely at assessee's specialties outside India and were sent directly from UAE. The assessee's income did not accrue or arise in India. Further, the amounts were also remitted directly to UAE. Thus, no income was received in India. The assessee was thus not subjected to tax under 44BB of the

[Source-ITA No. 5137/Del/2011 and ITA No. 6405/Del/2012]

Revenue preferring SLP against past judicial precedents no reason for rejecting lower-withholding certificate

Issue: Rate of tax on Dividend Income
Outcome: In favour of the Assessee

Background

In a recent pronouncement, the Delhi High Court allowed assessee's writ petition seeking direction for issuing certificate prescribing withholding rate of 5% on dividend covered by India-Switzerland tax treaty. It was held that as the position was settled by the Court, the Revenue could not refuse to follow binding jurisdictional decision merely on the basis that the Department proposed to file an SLP.

Brief Facts and Contentions

- In the instant case of the assessee "Cotecna Inspection SA", a rate of 10% was proposed to be levied on the dividends distributed by Cotecna Inspection India Private Limited ("CIIPL").

- A writ petition was filed whereby the Petitioner sought a fresh certificate under Section 197 of the Income Tax Act prescribing a tax withholding rate of 5% on dividend for the Financial Year 2021-22 in accordance with the India-Switzerland Tax Treaty read with the protocol and Most Favoured Nation ("MFN") clause.

- The Petitioner submitted that irrespective of the provisions of India-Switzerland DTAA prescribing a withholding rate of 10%, dividend income should be taxed at a lower rate of 5% pursuant to the MFN clause. It further submitted the issue had been settled by the judgment of the Court in Concentrix Services Netherlands B.V.[1] and Nestle SA[2] .

High Court's Judgement

- The Court explicated that the issue raised was no longer res integra, as the same was already dealt by the Court in the case of Concentrix Services Netherlands B.V. as well as in Nestle SA. The Court reiterated that protocol forms an integral part of the Convention and no separate notification is required to incorporate its provisions in the tax treaty.

- Further, the Supreme Court in UOI v. Kam lakshi Finance Corpn Ltd[3] held that order of higher appellate authorities should be followed 'unreservedly'. Accordingly, the Department shall be bound to follow jurisdictional decision.

- The Court directed the Department to issue a fresh certificate prescribing 5% rate of tax on dividend.

. Nangia Andersen LLP's Take

In a landmark ruling in the context of interpretation of MFN clause under the tax treaties, the Delhi High Court had established that the 10% tax rate on dividends under the Tax Treaty would reduce to 5% as per the most favoured nation (MFN) clause in the treaty. It was explained that the benefit of lower tax rate (or restricted scope) under India's tax treaty with a third country is to be allowed if such third country is a member of the OECD and the tax treaty with such third country provides for a tax rate lower or scope more restricted than the rate or scope under the Tax Treaty.Act.

In the instant case, the High Court directed the Revenue to issue a fresh certificate prescribing 5% rate of tax on dividend as the issue was already settled in the foregoing judgement.

[Source- W.P.(C) 14602/2021]

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[1]Concentrix Services Netherlands B.V. v. ITO (TDS), W.P.(C) 9051/2020 [2021] 127 taxmann.com 43 (Delhi)
[2]Nestle SA v. Assessing Officer, Circle (International Taxation), W.P.(C) 3243/2021
[3]AIR 1992 SC 711: (1992) 1 SCC 648

Transfer Pricing

ITAT remits acquisition of "bundle of sports rights" transaction back to AO/TOP for valuation and ALP determination

Facts of the case:

- Star India Pvt. Ltd. ("the taxpayer"), is a Resident Company engaged in media industry and is a broadcaster of various channels owned by the Star Group of companies.
- During the year under consideration (i.e. AY 2014-15), the taxpayer acquired bundle of sports rights by entering into an agreement termed as Master Rights Agreement (MRA) with its Associated Enterprise ("AE"), ESPN Star Sports Ltd. (ESS). For purchasing the rights, the taxpayer paid an amount of USD 1,211 million to ESS. To justify the value of rights, the taxpayer furnished the report of an independent valuer and benchmarked the transaction by adopting Comparable Uncontrolled Price ("CUP") Method. While applying CUP, the taxpayer compared the amount paid ESS to International sports body (ISB) for purchasing the same rights (i.e. USD 1,388 million) and contended that since the amount paid by the taxpayer was lesser than the amount paid by ESS to ISB, the transaction with the AE is at arm's length.
- The Assessing Officer ("AO") made a refeence to Transfer Pricing Officer ("TPO") for the issue under consideration. The TPO contended that the assessee has obtained rights from AE for a limited finite period and one major deficiency in the valuation report of the independent valuer is the incorpotion of terminal value extrapolated till perpetuity for the purpose of valuation of an asset with a finite period of life.
- Thus, TPO rejected the valuation report as well as submissions of the taxpayer and determined the ALP value at USD 411 million, thereby proposing an adjustment of INR 6693.60 million. Aggrieved, the taxpayer filed an objection before the Dispute Resolution Panel ("DRP")
- The DRP upheld the findings of the TPO in the instant case. Being aggrieved by the DRP directions, the taxpayer filed an appeal before Mumbai bench of Income Tax Appel late Tribunal ("ITAT").

ITAT's Ruling:

- During the course of proceeding, ITAT observes that despite furnishing of independent valuation report and expert opinions by the taxpayer, "no effort was made by the departmental authorities to find out the deficiencies/flaws, if any, in taxpayer valuation with a counter valuation being made by another expert;
- ITAT further observes that valuation of an asset is a highly technical job, which requires expertise in technical knowledge and skill on the subject. Thus, while taxpayer has furnished an independent valuation report, no such exercise to counter taxpayer's valuation has been undertaken by the Revenue.
- Further, ITAT disproves the approach adopted by the TPO in referring to certain materials available in valuation book and using them selectively to reject the valuation of the taxpayer;
- Accordingly, ITAT restores the matter back to AO for fresh adjudication and directs the AO to ascertain the correctness in taxpayer's valuation reports by getting valuation done through department's own valuer.

Nangia Andersen LLP's Take

In the instant case, ITAT highlighted that department cannot derive the ALP of the transactions on its own whims and fancies as matter like "Valuation of assets" is a highly technical job, which requires expertise in technical knowledge and skill on the subject. On the other hand, ITAT also elucidated that the valuation done by independent valuer to determine the ALP of the transaction, cannot be accepted blindly as such valuation should be based on appropriate facts/assumptions.
In view of the above, it is recommended that the taxpayers should maintain robust documentary evidence to justify their international transaction from arm's length perspective.

Source: Star India Pvt Ltd [TS-593-ITAT-2021(-Mum)-TP]

Regulatory

I. Updates Under Company Law

A. Clarification on Holding of Annual General meeting (AGM) through video conferencing (VC) or other Audio-Visual means(OAVM)

In continuation to its earlier circulars, Ministry of Corporate Affairs (MCA) has again issued General Circular No. 19/2021 dated 8 December 2021, allowing companies to organize AGMs in the year 2021 through VC or OAVM by 30 June 2022 in accordance with the applicable statutory provisions.

MCA has also issued General Circular No. 21/2021 dated 14 December 2021 to further allow companies to organize AGMs in the year 2022 with respect to meeting compliance for financial year ending on or before 31 March 2022, through VC or OAVM, by 30 June 2022.

MCA has clarified that the aforesaid circulars shall not be construed as conferring extension of time for holding AGMs by the companies under the Companies Act, 2013 ('the Act').

B. Clarification on Passing of Ordinaryand Special resolutions by the Companies under the act on Accountof Covid-19

MCA in its General Circular No. 20/2021 dated 8 December 2021 has allowed companies to conduct Extraordinary General Meetings (EGMs) through VC / OAVM or transact items through postal ballot up to 30 June 2022.

C. Relaxation on levy of Additional fees in filing forms for the Financial year ended 31 March 2021

In view of large number of requests received from stakeholders, MCA has granted relaxation on levy of additional fee up to 15 February 2022 for filing specific e-forms namely, AOC-4, AOC-4 (CFS), AOC-4 XBRL, AOC-4 Non-XBRL, and up to 28 February 2022 for filing e-forms MGT-7, MGT-7A, in respect of financial year ending 31 March 2021.

II. Financial Services Updates

A. Introductionof Prompt corrective action ('PCA') Framework for Non-Banking Financial Companies (NBFCs)

Reserve Bank of India ('RBI') on 14 December 2021 has introduced a PCA framework for large NBFCs, putting restrictions whenever vital financial metrics dip below the prescribed threshold. This framework shall come into effect on 1 October 2022.

The said framework shall be applicable to all Deposit Taking NBFCs, all Non-Deposit Taking NBFCs in Middle, Upper and Top Layers Including Investment and Credit Companies, Core Investment Companies ('CICs'), Infrastructure Debt Funds, Infrastructure Finance Companies, Micro Finance Institutions and Factors.

According to the framework, trigger point for applicability of the framework shall be as follows

S. No	Category	Key Areas for Triger	Indicators to be Tracked
1	For all Deposit Taking NBFCs and Non-Deposit Taking NBFCs	Capital and Asset Quality	Capital to Risk Weighted Assets Ratio, Tier I Capital Ratio and Net NPA Ratio
2	For CICs	Capital, Leverage and Asset Quality	Adjusted Net Worth/Aggregate Risk Weighted Assets, Leverage Ratio and Net NPA Ratio

NBFCs will be placed under PCA Framework based on the audited Annual Financial Results and/or the Supervisory Assessment made by the RBI.

Further, risk threshold for Invocation of PCA shall be as follows:

A. For all Deposit Taking NBFCs and Non-Deposit Taking NBFCs:

Indicator	Risk Threshold- 1	Risk Threshold- 2	Risk Threshold- 3
Capital to Risk Weighted Assets Ratio	Upto 300 bps below the regulatory minimum CRAR [currently, CRAR <15% but ≥12%]	More than 300 bps but upto 600 bps below regulatory minimum CRAR [currently, CRAR <12% but ≥9%]	More than 600 bps below regulatory minimum CRAR [currently, CRAR <9%]
Tier I Capital Ratio	Upto 200 bps below the regulatory minimum Tier I Capital Ratio [currently, Tier I Capital Ratio <10% but ≥8%]	More than 200 bps but upto 400 bps below the regulatory minimum Tier I Capital Ratio [currently, Tier I Capital Ratio <8%	More than 400 bps below the regulatory minimum Tier I Capital Ratio [currently, Tier I Capital Ratio <6%]
NNPA Ratio	>6% but ≤ 9%	>9% but ≤12%	>12%

B. For CICs:

Indicator	Risk Threshold- 1	Risk Threshold- 2	Risk Threshold- 3
Adjusted Net Worth / Aggregate Risk Weighted Assets	Upto 600 bps below the regulatory minimum ANW/RWA [currently, ANW/RWA <30% but ≥ 24%]	More than 600 bps but upto 1200bps below regulatory minimum ANW/RWA [currently, ANW/RWA <24% but ≥ 18%]	More than 1200 bps below regulatory minimum ANW/RWA [currently, ANW/RWA <18%]
Leverage Ratio	≥2.5 times but <3 times	≥ 3 times but <3.5 times	≥3.5 times
NNPA Ratio	>6% but ≤ 9%	>9% but ≤12%	>12%

Corrective action proposed under the framework are as follows:

Specifications	Mandatory actions	Discretionary
Risk Threshold 1	• Restriction on dividend distribution/remittance of profits; • Promoters/shareholders to infuse equity and reduction in leverage; Restriction on issue of guarantees or taking on other contingent liabilities on behalf of group companies (only for CICs)	• Special Supervisory Actions • Strategy related • Governance related • Capital related • Credit risk related • Market risk related • HR related • Profitability related • Operations/Business related *Detailed list of Action has been provided in the notification
Risk Threshold 2	In addition to mandatory actions of Threshold 1, restriction on branch expansion	
Risk Threshold 3	In addition to mandatory actions of Threshold 1 & 2, • Appropriate restrictions on capital expenditure, other than for echnological upgradation within Board approved limits Restrictions/reduction in variable operating costs	

B. For CICs:

B. Discontinuance of Libor as a Benchmark Rate

In view of the imminent discontinuance of LIBOR as a benchmark rate, RBI vide. Circular No. 19, dated 8 December 2021 has made changes to the all-in-cost benchmark and ceiling for Foreign Currency External Commercial Borrowings/Trade Credits (FCY ECBs/ TCs).
Accordingly, benchmark rate in case of FCY ECB/TC shall refer to any widely accepted interbank rate or alternative reference rate (ARR) of 6-month tenor, applicable to the currency of borrowing. Further, all-in-cost ceiling for new FCY ECBs and TCs has been increased by 50 bps to 500 bps and 300 bps, respectively, over the benchmark rates.

Consequently, to enable smooth transition of existing ECBs/ TCs linked to LIBOR whose benchmarks are changed to ARRs, the all-in cost ceiling for such ECBs/ TCs has been revised upwards by 100 basis points to 550 bps and 350 bps, respectively, over the ARR.

It has also been clarified that there is no change in the all-in-cost benchmark and ceiling for **INR ECBs/ TCs.**

C. RBI to provide greater operational flexibility to banks for Infusion of capital and Retention/Repatriation/Transfer of Profits Overseas

RBI vide. its notification dated 08 December 2021 has announced that no prior approval from RBI will be required for banks to infuse capital/retention of profits in, and transfer or repatriation of profits from these overseas centres in overseas branches and subsidiaries. The said notification shall apply to all Scheduled Commercial Banks other than foreign banks, Small Finance Banks, Payment Banks and Regional Rural Banks.

The said flexibility has been provided subject to the condition that the bank shall meet the regulatory capital requirements (including capital buffers) and shall also ensure compliance with all applicable home and host country laws and regulations.

However, the banks shall be required to report all such instances of infusion of capital and/ or retention/transfer/ repatriation of profits to the central office of Chief General Manager-in-Charge, Department of Regulation with a copy to Chief General Manager-in-Charge, Department of Supervision

D. Legal Entity Identifier ('LEI') must for Cross-Border Transactions by Resident Entities

RBI vide. Circular No. 20 dated 10 December 2021 has mandated resident entities to obtain LEI with effect from October 1, 2022. LEI is a 20-digit number used to uniquely identify parties to financial transactions worldwide to improve the quality and accuracy of financial data systems.

AD Banks shall be required to obtain LEI number from the resident entities undertaking capital or current account transactions of INR 50 crore and above (per transaction) under Foreign Exchange Management Act, 1999.

E. Clarification on Aquisition/Transferof immovable property in India by overseas Citizen of India (OCIs)

RBI on 29 December 2021 has clarified that in furtherance of a judgement of the hon'ble Supreme Court of India, NRIs/OCIs are governed by provisions of FEMA, 1999 and do not require prior approval of RBI for acquisition and transfer of immovable property in India, other than agricultural land/ farm house/ plantation property.

III. Updates under Production Linked Incentive ('PLI") Scheme

A. PLI Scheme for Automobile and Auto Component Industry

Ministry of Heavy Industries ('MHI') notified the PLI Scheme for Automobile and Auto Component Industry on 24 September, 2021 where the last date for making an application under the Scheme stands as 9th January 2022.The application platform for applying under the said PLI Scheme was also activated on 1 December, 2021. .

PLI Scheme for the auto sector envisages to overcome the cost disabilities of the industry for manufacture of Advanced Automotive Technology products in India. The incentive structure will encourage industry to make fresh investments for indigenous global supply chain of Advanced Automotive Technology products.

B. PLI Scheme for Semi-Conductor Manufacturing

The PLI scheme for semi-conductor manufacturing which was earlier approved by the Union Cabinet with a budget outlay of INR 76,000 crores to be provided as incentives towards domestic semiconductor fabrication and display manufacturing got notified on 21 December 2021.

Highlights of the Scheme are as follows:

- Products covered: Semiconductor and Display manufacturing
- Activities covered: Design, fabrication, packaging, marking, testing covered. Complete eco-system covered
- Tenure: 6 years
- Objective: Increase electronics manufacturing from USD 75 billion to USD 300 billion in next 6 years
- Value chain prior to assembly: Chips, discrete components, substrate & packaging and supply chain
- The eco-system: Silicon semiconductor fabrication, Display fabrication, Compound semiconductors, Packaging
- 85,000 high quality, highly qualified engineers to be developed under Chips to Start-Ups ('C2S') program
- Target of 20 fab units
- Design Linked Incentive ('DLI') Scheme also announced: 50% of design expenditure to be incurred by Government of India. Additionally, 6% incentive for the designer for sale of finished products
- MSMEs given separate carve out. 15-20 MSMEs to be encouraged for novel chip such as GaN-FAB
- 35,000 high quality employment to be generated

C. PLI Scheme for Man-Made Fibres and Technical Textiles

Ministry of Textiles has released final operational guidelines for Textile PLI Scheme on 28 December 2021.

Key changes to the guidelines are set out below:

- Last date for making applications: 31 January 2022
- Product list stands updated
- Period for achieving minimum investment stands increased from 2 years to 3 years
- Selection criteria stands updated

While making applications, companies will now have to inform the Ministry regarding their annual investment plans, expected sales/ turnover, expected employment generation as well as exports projected during the tenor of the scheme

The scheme was earlier approved by the Union Cabinet in September'21 and is focused on expanding man-made fibres/ fabrics and technical textiles value chain to help India regain its dominant status in the global textiles trade. This comes at a time when India's share in global exports have gradually declined over the last few years.

IV. Updates under Foreign Contribution Regulation Act ('FCRA")

Extension of validity of registration certificates issued under FCRA

The Ministry of Home Affairs issued a public notice vide circular no. II/21022/23(22)/2020-FCRA-III, dated 31 December 2021 in continuation to its earlier public notices dated 12 January 2021, 18 May, 2021 and 30 September 2021.

FCRA registration certificates which are getting expired during the period between 29 September 2020 and 31 March 2022 and which await renewal, shall remain valid up to 31 March 2022 or till the date of disposal of the renewal application, whichever is earlier.

In case of refusal of the application for renewal of certificate of registration, validity of the certificate shall be deemed to have expired on the date of refusal of the application of renewal. Accordingly, such association shall not be eligible either to receive or utilise foreign contribution.

V. Updates under Securities and exchange Board of India ('SEBI')

Publishing of investor charter and disclosure of complaints by custodians and depository (DDPs) on their websites

SEBI vide Circular No. **SEBI/HO/FPIC/P/CIR/2021/691** after due consultations with stakeholders has developed an Investor Charter for Custodians and DDPs to increase awareness amongst investors about the activities conducted by the given institutions applicable from January 01,2022.

All registered custodians and DDPs shall display Investor Charter on their respective websites for streamlining its availability to investors. This circular also orders the registered custodians and DDPs to report the monthly status of the Investor Complaints and redressal on their respective websites according to the format provided by the SEBI in the circular itself.

B. Securities and exchange board of India (substantial acquisition of shares and takeovers) (third amendment) regulations, 2021

SEBI vide its Circular No. SEBI/LADN-RO/GN/2021/60 dated 6th December 2021 has issued Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) (Third Amendment) Regulations, 2021 which shall come into applicability from its publication in Official Gazette.

Some of the significant highlights of the Amendments are as follows:

- According to the amendment, notwithstanding anything contained in these regulations and the Delisting Regulations, in the event the acquirer makes a public announcement of an open offer for acquiring shares or voting rights or control of a target company in terms of sub-regulation (1) of regulation 3, regulation 4 or regulation 5, the acquirer may seek the delisting of the target company by making a delisting offer in accordance with this regulation.
- The manner in which delisting offer obligations shall be fulfilled has also been amended and in case the response to the delisting offer leads to threshold pursuant to Regulation 21 of the Delisting Regulations being met, then in such case, all shareholders who tender their shares shall be paid the indicative price as defined in Delisting regulations, and if the threshold is not being met, then all shareholders who tender their shares shall be paid the open offer price.
- In case, prior approval of shareholders, in terms of Regulation 11 has not been received or In-Principle Approval of Relevant stock exchange is not received then in such a case, the acquirer shall within two working days of failure make an announcement in all such newspapers in which detailed public statement was made.

Compliance Calendar

Direct Tax

Due Date	Particulars
7th January 2022	Due date for payment of TDS and TCS for the for the month of December 2021
	Due date for payment of Equalisation Levy on online advertisement and other specified services, referred to in Section 165 of Finance Act, 2016 for the month of December, 2021
	Payment of Equalisation Levy in case of e-commerce supply of services referred to in section 165A of Finance Act for the quarter ending on December 31, 2021
15th January 2022	Due date for submission of tax audit report for Assessment Year 2021-22 for taxpayers liable for audit under Section 44AB of the Income-tax Act, 1961
	Due date for filing of quarterly return of TCS for the quarter ending December 31, 2021
	Due date for issuance of TDS Certificate for tax deducted under section 194-IA in the month of November, 2021
	Due date for issuance of TDS Certificate for tax deducted under section 194-IB in the month of November, 2021
	Due date for issuance of TDS Certificate for tax deducted under section 194M in the month of November, 2021
30th January 2022	Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194-IA in the month of December, 2021
	Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194-IB in the month of December, 2021
	Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194M in the month of December, 2021
31st January 2022	Due date for furnishing of report under section 92E of the Income-tax Act, 1961 (Transfer Pricing Certificate)
	Due date for filing of quarterly return of TDS for the quarter ending December 31, 2021
	Due date of issue of quarterly TCS certificate in respect of quarter ending December 31, 2021

Regulatory

Segment	Particulars	Due Dates
Monthly ECB Return under FEMA	ECB-2 (Monthly Return of ECBs for the month of October)	07 January 2022
Annual Return under the Companies Act, 2013	Form MGT-7/ MGT-7A (in case date of AGM is 30 November 2021)	28 January 2022
Annual return under POSH Act	State-specific return	31 January 2022

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