Nangia Andersen LLP

Tax & Regulatory Newsletter

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What's Inside?

Direct Tax

Whether a PE exists or not is a fact specific issue and needs to be decided on year on year basis

Issue- Permanent Establishment
Outcome- In favour of the assessee

Background

In a recent decision, the Delhi Tribunal explained that whether a Permanent Establishment (PE) exists or not is a fact specific issue and is to be decided on year on year basis. Accordingly, the reassessment orders framed by the Revenue on the basis of earlier proceedings with different facts were set aside.

Brief Facts and Contentions

- The assessee (M/s Bentley Nevada Inc.) is a wholly owned subsidiary of General Electric Company and is incorporated in USA. It is engaged in the business of supplying goods and software to various customers in India.
- From the assessment orders passed for the past assessment years, the Assessing Officer (AO) deduced that the assessee had business connection as well as PE in India and the PE was engaged in activities which cannot be termed as auxiliary and preparatory.
- To substantiate the claim, the AO derived support from the submissions made by the assessee during the proceedings for the assessment years under consideration that there was no change in the business activities as compared to earlier years.
- In view of the foregoing observations, the AO concluded that the assessee's income had escaped assessment and hence initiated proceedings under section 147 of the Act.

.ITAT's Judgement

- The Tribunal explained that there needs to be close nexus between the material before the AO and the belief which he has formed. The belief of the AO is a condition precedent for assuming jurisdiction and without such belief, the AO would not have jurisdiction to initiate proceedings under section 147 of the Act.
- There must be direct nexus or live link coming to the notice of the AO and formation of his belief that there has been escapement of income from assessment in a particular year. Therefore, for every assessment year, there should be some tangible material evidence to form such a belief which is absent for the years under appeal.
- The Tribunal noted that in the assessment order, strong reliance was placed on various documents found during the course of survey carried out at the premises of General Electric International Operations India Liaison Office in 2007 whereas the assessment orders under challenge pertained to Assessment Years 2008-09 to 2011-12. Therefore, evidence being sought to be used for initiating fresh enquiry against the assessee did not even pertain to the Assessment Year under consideration.
- The Tribunal further explained that whether a PE exists or not is a fact specific issue and is to be decided on year on year basis. Since no new tangible material had been brought by the AO to justify the reopening for the assessment years under challenge, the Tribunal quashed the assessment orders altogether.

Nangia Andersen LLP's Take

The ruling reiterates the most important criteria for reopening of assessment by the Revenue, i.e. a rationale connection between the information in possession with the Revenue and belief that there has been escapement of income for the assessment year under consideration.

Pertinently, existence of PE is a fact specific issue and needs to be decided on year on year basis. The decision of the the taxing authorities in past assessment years on the basis of substance before them cannot be regarded as binding in the assessment of subsequent years.

Past Precedents

The Delhi High Court in the case of United Electrical Co. (P.) Ltd[1]. had held that in absence of material, no proceedings can be initiated under section 147 of the Act. The existence of tangible material, for the formation of opinion is a prerequisite for initiation of action under section 147 of the Act.

[Source- ITA No. 6300-6303/DEL/2017]

[1]United Electrical Co. (P.) Ltd. v. CIT [2002] 258 ITR 317

CBDT's stance on interpretation of MFN clauses in tax treaties diverges from judiciary

Background

The MFN clause forming part of Protocol to the tax treaties stipulates that if India subsequently agrees to a more beneficial tax treatment with respect to certain incomes with another treaty partner which *is a member of the Organisation for Economic Co-operation and Development (OECD),* the same shall be imported into the treaty having the MFN clause.

India's tax treaties with certain OECD countries including Slovenia, Lithuania, and Colombia provide for taxation of dividend income at a lower rate of 5% (subject to certain minimum shareholding conditions in some cases). Notably, these treaties were signed in 2005, 2012 and 2014 respectively but these countries became OECD members post signing of their tax treaties with India, in the year 2010, 2018 and 2020 respectively. This led to ambiguity regarding the date on which the OECD membership status of these countries was to be tested i.e. the date on which the tax treaty with India was signed or the date on which the MFN clause is being applied.

In a recent pronouncement[1], the Delhi High Court explained that "… *which is a member of the OECD …"* describes a state of affairs that should exist not necessarily at the time when the tax treaty was executed but when a request is made by the assessee for issuance of a lower rate withholding tax certificate under Section 197 of the Act. The Court held that the 10% tax rate on dividends under the India-Netherlands tax treaty would reduce to 5% in view of the MFN clause in the treaty.

Furthermore, the decrees issued by Netherlands and France and the recent publication of the Federal Department of Finance, Swiss Confederation cap the rate of tax on dividend income under their respective tax treaties with India at 5% in view of the MFN clause.

[1]Concentrix Services Netherlands BV WP (C) 9051/2020 and Optum Global Solutions International BV WP (C) 882/2021

CBDT's Clarification By Way Of Circular No. 3 of 2022

To address the ambiguities surrounding the interpretation of MFN clauses in tax treaties and promulgate its stance on the MFN clause, the Central Board of Direct Taxes (CBDT) has issued Circular No. 3

S.No.	Matter in question	Clarification
1	Applicability of unilateral decree/bulletin/publication issued by the other Countries	The decree/bulletin/publication issued by other countries without any bilateral consultation does not represent any shared understanding between India and the respective jurisdiction. The interpretation laid down under the respective decree/bulletin/publication represents views of the respective jurisdictions and does not have any effect of curtailing the tax liability that is payable to the Government of India under the respective tax treaty.
2	Date for testing OECD membership status	The Third State should be an OECD member at the time of the conclusion of tax treaty with India.
3	Date from which the benefit from the other treaty can be borrowed	The benefit shall be available from the date of entry into force of the tax treaty with the Third State and not when it becomes an OECD member.
4	Whether notification of the Indian government is required for application of MFN clause	A tax treaty or any amendment to a tax treaty shall be effective only upon its notification in the Official Gazette as required under Section 90 of the Act.
5	In case a treaty with a Third State provides a beneficial provision subject to fulfilment of certain conditions, whether it is mandatory for the taxpayer to fulfil such conditions even though the benefit is being claimed under a different tax treaty by invoking the MFN clause	When a beneficial provision under a Third State is imported, the taxpayer has to import such beneficial provision along with the attached conditions and no selective import of a provision shall be permissible.

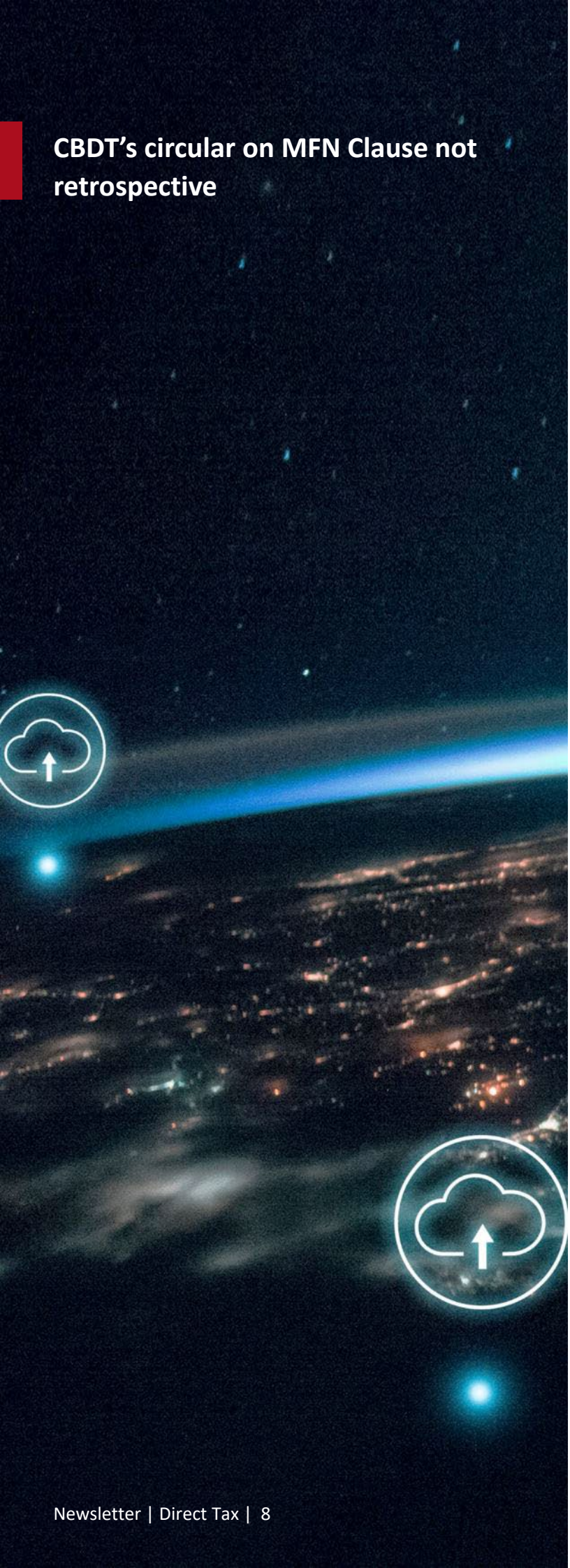
Nangia Andersen LLP's Take

The Circular clarifies CBDT's stance on interpretation of MFN clauses in tax treaties which diverges significantly from the decision of various judicial authorities.

However, it has also been stipulated that the clarifications shall not affect the implementation of any court order where taxpayer has received a favourable order on applicability of MFN clause.

Importantly, CBDT's circulars are not binding on the taxpayers or the appellate authorities. Accordingly, the non-residents assessees or persons making payments to non-residents who are required to withhold applicable tax at source may still plead their cases before the higher tax authorities to seek the benefit of MFN clause in view of specific facts and circumstances.

CBDT's circular on MFN Clause not retrospective



Issue- Applicability of Most Favoured Nation (MFN) Clause
Outcome- In favour of the assessee

Background

In an appeal pertaining to the year 2016-17, the Pune Tribunal has held that the benefit of lower rate of tax in view of MFN clause of Tax Treaty shall be granted notwithstanding the CBDT's Circular of 2022.

Brief Facts and Contentions

- The Assessee (GRI Renewable Industries S.L.) is a company incorporated in Spain.
- For Assessment Year (AY) 16-17, the assessee received certain sums from an Indian entity and declared the same as 'fees for technical services' and 'royalties' covered under Article 13 of the India-Spain Tax Treaty. In view of the MFN clause, the assessee claimed that these sums be taxed at 10% instead of 20% as under the India-Portugal Tax Treaty.
- The Assessing Officer (AO) however denied assessee's claim averring that in order to import an MFN clause from another tax treaty having lower rate of tax, it is necessary that such importing of clause is notified.
- Additionally, the assessee claimed certain sums as reimbursement on cost-to-cost basis. The AO called upon the assessee to furnish evidence in support of recoup of the expenses. However, in the absence of any response from the assessee, the AO treated this amount as a part and parcel of 'fees for technical services/royalties'.

.ITAT's Judgement

- The Tribunal noted that the Central Board of Direct Taxes (CBDT) vide its Circular No. 3 of 2022 has clarified its position with respect to interpretation of MFN clauses in tax treaties. The Circular stipulates that *a tax treaty or any amendment to a tax treaty is effective only upon its notification in the Official Gazette as required under Section 90 of the Act.*
- The Tribunal explained that the requirement for a separate notification for importing the beneficial treatment from another agreement as a corollary of section 90(1) of the Act, overlooks the plain language of the section seen in juxtaposition to the language of the Protocol. On notifying an agreement, all its integral parts, get automatically notified and there remains no need to again notify each prong of the agreement.
- The Tribunal further asseverated that it is not bound by the Circular transgressing the boundaries of section 90(1) of the Act. It is trite law that a circular issued by the CBDT is binding on the AO and not on the assessee or the Tribunal or other appellate authorities.
- The Tribunal expounded that the Circular attaches a new disability of a separate notification for importing the benefits of an Agreement with the second State into the treaty with first State. An additional detrimental stipulation cannot apply retrospectively to the transactions taking place in any period anterior to its issuance unless the legislative intent is clearly to give it a retrospective effect.
- In view of the foregoing reasoning, the Tribunal held that the requirement of a separate notification for importing the MFN clause, cannot be invoked for the year under consideration i.e. AY 16-17. Accordingly, the authorities were not justified in denying the benefit of the straight rate of tax at 10% as per the Tax Treaty read with India-Portuguese Tax Treaty.
- Since there was no material on record as to whether expenses claimed to be reimbursed were in furtherance of the rendering of 'fees for technical services' or other services, the Tribunal remitted the matter to the file of the AO.

Nangia Andersen LLP's Take

Some Tax Treaties contain an MFN clause which stipulates that if India, subsequently agrees to a more beneficial tax treatment with respect to certain income streams with another treaty partner, the same should be read into the treaty having the MFN clause. Pertinently, in a significant development, the CBDT vide its Circular No. 3 of 2022 has clarified its position with respect to interpretation of MFN clauses in tax treaties.

One of the important clarifications is that "a tax treaty or any amendment to a tax treaty is effective only upon its notification in the Official Gazette as required under Section 90 of the Act."

Notwithstanding the Circular of 2022, the Pune Tribunal has allowed the assessee's claim of benefit of lower rate of tax for the year 16-17 stating that the Circular specifies a fresh requirement that cannot apply retrospectively to the transactions taking place in any period anterior to its issuance.

[Source-ITA No.202/PUN/2021]

Non- Resident Assessee's Income From "Interest on Income-Tax Refund" Eligible For Tax Treaty Benefits

Issue- Taxability of Interest on Income Tax Refund
Outcome- In favour of the assessee

Background

In a recent directive, the Delhi Tribunal has stipulated that the interest on income tax refund shall be taxed in terms of Article 11 of the Indo-US Tax Treaty. The Tribunal has explained that as the interest on income tax refund is not effectively connected with the Permanent Establishment (PE) either on the basis of asset-test or activity-test, the same cannot be taxed as Business Profits.

Brief Facts and Contentions

- The Assessee (Transocean Offshore International Ventures Ltd) is a tax resident of United States of America. It received interest income on income tax refund in the year under consideration and claimed the same to be chargeable to tax as per the beneficial provisions of Article 11 of the Indo-US Tax Treaty.

- The Assessing Officer (AO) however held that the assessee was carrying on business through its PE in India and since interest income was not covered by the provisions of presumptive taxation under section 44BB of the Act, the interest income was taxable as business income at the rate of 40 per cent.

- The AO further submitted that the interest had not arisen out of the business transactions, but it was received in the course of the business of the PE and therefore, there was a direct nexus of the indebtedness with the assets of the business.

ITAT's Judgement

- The Tribunal noted that in a case where the provisions of a Tax Treaty apply to an assessee, the provisions of the Act shall apply only to the extent they are more beneficial to that assessee as per the provisions of Section 90(2).

- The Tribunal explained that if assessee's income by way of interest received from the income-tax department is computed under the head "other sources", it will be taxed at the rate applicable to a foreign company i.e. 40%. However, the same shall be taxed at 15% under the Indo-US Tax Treaty. Therefore, the tax payable under the Act would be more than the tax payable under the treaty. *Accordingly, the provisions of Section 90(2) will come to the aid of the assessee to come to an automatic conclusion, without exercise of any option, that it should get the benefit under the Tax Treaty.*

- Further, the Tribunal noted that the interest on income tax refund is not effectively connected with the PE either on the basis of asset-test or activity-test. Hence, it can only be taxed in terms of Article 11 of the Indo-US Tax Treaty.

Nangia Andersen LLP's Take

The decision of the Delhi Tribunal establishes that the interest on income tax refund is not business income since it cannot be said to be effectively connected with the PE.

Further, in accordance with the provisions of Section 90 of the Act, the provisions of the Act shall apply only to the extent more beneficial to the assessee. The provisions of the Act cannot be thrust upon the assessee when a benefit under the Tax Treaty is available. The ruling reinforces the faith of the taxpayers in the Indian judiciary, as a legitimate benefit was duly accorded to the assessee.

[Source- ITA No. 5896/Del/2017]

Transfer Pricing

ITAT rejects applicability of Berry Ratio to full-fledged manufacturers

Outcome- In favor of taxpayer
Category- ALP Computation, Profit Level Indicator

Facts of the case

- Vaibhav Global Limited ("The taxpayer" / "the Company") is engaged in business of manufacturing and export of gold studded jewellery and coloured stones.
- During the year under consideration i.e. Assessment Year ("AY") 2016-17, the taxpayer has entered into International transactions with its Associate Enterprise ("AE") amounting to INR 360,60,46,377 and used Cost Plus Method (CPM) and selected gross profit margin/cost of production (GPM/COP) as the appropriate Profit Level Indicator (PLI) for benchmarking its international transactions.
- During the course of assessment proceedings, the TPO observed that since the taxpayer is purchasing from AEs as well as selling to AEs, both cost and revenue sides are tainted and hence GP/COP cannot be applied as PLI and upheld the application of Berry ratio with Operating Profit/Value Added Expenses (OP/VAE) as the PLI under Transactional Net Margin Method (TNMM) thereby proposing an adjustment of INR 29,25,17,385/.
- Aggrieved by the same, the taxpayer filed objections with Dispute Resolution Panel ("DRP"). The DRP issued directions, upholding the TPO's order i.e., considering Berry Ratio with OP/VAE as PLI.
- Aggrieved by the directions of DRP, the taxpayer filed an appeal before Jaipur Income Tax Appellate Tribunal ("ITAT").

ITAT Ruling

ITAT made the following observations:

- ITAT referred to OECD TP guidelines, United Nation Practice Manual on TP and relied on the rulings of **Sumitomo Corporation India, Delhi ITAT ruling in Mitsubishi Corporation India and Ahmedabad ITAT ruling in Bagadiya Brothers** and noted that to determine the applicability of Berry Ratio as appropriate PLI, the profile of the taxpayer and its functions performed, the assets employed and risk undertaken (FAR analysis) needed to be undertaken;
- ITAT then referred to the FAR analysis as reflected in the taxpayer's TP report and observed that the taxpayer could be classified as manufacturer performing all entrepreneurial functions.
- ITAT noted that the Berry ratio is effectively applied only in case of stripped down distributors which have no financial exposure and risk in respect of goods so distributed by them
- ITAT observed that the international transactions under dispute relate to import of gems stones, rough diamonds and other raw material from its AEs as well as export of gems stones and studded jewelry to its AEs
- ITAT further observed that TPO's approach was bereft of functions performed, the assets employed and risk undertaken by taxpayer while carrying out its manufacturing and export activities, therefore, this approach was not in consonance with OECD and UN guidelines and the decision by Delhi HC and coordinate benches.

In view of the aforesaid observations, ITAT held that the Berry ratio is not applicable in the present case where taxpayer is a full-fledged manufacturer performing all entrepreneurial functions and thereby directs TP adjustment to be deleted considering taxpayer's margins to be at Arm's length price.

Nangia Andersen LLP's Take

The instant ruling reinforces the fundamental TP principle that the arm's length return should be commensurate with the functions performed, assets employed and risk assumed by the taxpayer.

The instant ruling specifically highlights the use of Berry ratio in case of stripped down distributors i.e. distributors that have no financial exposure and risk in respect of goods distributed by them and not full-fledged manufacturers.

The application of Berry Ratio has been time and again questioned by the tax authorities. The instant ruling provides a detailed insight and certain guiding principles for effective application of Berry Ratio, thereby providing some clarity to taxpayers looking to use Berry ratio in their relevant cases.

Source: Vaibhav Global Limited [TS-70-ITAT-2022(JPR)-TP]

Regulatory

Updates under Companies Act, 2013

- **Report on Corporate Social responsibility in form CSR-2**

  Ministry of Corporate Affairs ('MCA') has issued Companies (Accounts) Amendment Rules, 2022, vide notification dated 11.02.2022. As per the notification, every company covered under the provisions of sub-section 1 of Section 135 shall furnish a report on Corporate Social Responsibility in Form CSR-2 to Registrar of Companies for the preceding financial year 2020-21 by 31.03.2022 and onwards as an addendum to Form AOC-4 or AOC-4 XBRL or AOC-4 NBFC (Ind AS), as the case may be.

  Earlier on 22.01.2021, MCA had amended CSR rules and mandated companies (including foreign companies) to prepare and enclose CSR report in prescribed format in Annexure II. While the same reporting continues, the new notification has mandated companies (excluding foreign companies) to file Form CSR-2 and to provide additional details such as amount of net worth, turnover, CSR trigger point, computation of net profit and details of unspent amount between FY 2014-15 to FY 2019-20.

- **Relaxation on levy of additional fees in filing of Annual Report and Annual return for the Financial year ended 31.03.2021**

  In continuation to Ministry's General Circular No. 22/2021 dated 29.12.2021 and in view of various requests received from stakeholders, MCA has vide General Circular No. 01/2022 dated 14.02.2022, granted relaxation on levy of additional fee up to 15.03.2022 for filing specific e-forms namely, AOC-4, AOC-4 (CFS), AOC-4 XBRL, AOC-4 Non-XBRL, and up to 31.03.2022 for filing e-forms MGT-7, MGT-7A, in respect of financial year ending 31.03.2021.

Updates under Limited Liability Act, 2008

- **Commencement of LLP (Amendment) Act, 2021**

  In exercise of the powers conferred by sub-section (2) of section 1 of the Limited Liability Partnership (Amendment) Act, 2021, Ministry of Corporate Affairs (MCA), vide notification dated 11.02.2022 has appointed 01.04.2022 as the date on which provisions of sections 1 to 29 of the said Act shall come into force.

  The changes prescribed under the aforesaid provisions inter-alia relate to Small LLP, Start-up LLP, de-criminalisation of offences, reduction of penalties, appointment of respective Registrar of Companies as adjudicating officers etc.

- **Limited Liability Partnership (Amendment) rules, 2022**

  Ministry of Corporate Affairs (MCA) has vide notification dated 11.02.2022 issued Limited Liability Partnership (Amendment) Rules 2022 which shall come into force with effect from 01.04.2022. These amendments *inter-alia* relate to allotment of a new name to existing LLP u/s 17 (3) in case its name matches with an existing LLP, adjudication of penalties, appeal against order of adjudicating officer.

- **Applicability of provisions of the Companies Act 2013 to limited Liability Partnerships**

  Under Section 67(1) of the LLP Act 2008, Central Government has powers to direct applicability of specific sections of Companies Act 2013 to LLP with suitable modifications.

  In exercise of such powers conferred by Section 67(1) of the LLP Act 2008, the Central Government has now directed that provisions of Sections 90 [Significant Beneficial Owners], 164 [Disqualifications for appointment of director], 165 [Number of directorships], 167 [Vacation of office of director], 206(5) [Power to call for information, inspect books and conduct inquiries], 207(3) [Conduct of inspection and inquiry], 252 [Appeal to Tribunal] and section 439 [Offences to be non-cognizable] of the Companies Act 2013 be applicable upon Limited Liability Partnerships with suitable modifications s may be needed.

Financial Sectoral Updates

a. Master circulation on Asset Reconstruction companies (ARCs)

Reserve Bank of India ('RBI') *vide.* notification number RBI/2021-22/154, dated 10.02.2022 has issued a Master Circular aggregating all current instructions/guidelines applicable to Asset Reconstruction Companies ('ARC').

Provisions of the said master circular shall apply to all ARCs registered with the RBI under Section 3 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.

This master circular contains the following provisions applicable to ARCs:

- Capital Adequacy Requirement;
- Asset Classification;
- Asset Reconstruction & Securitisation;
- Permissible Business;
- Net Owned Funds requirement for ARCs;
- Fit and Proper Criteria for Sponsors/ Investors;
- Fair Practices Code;
- Reporting requirements;
- Registration and matter incidental thereto etc.

b. Master circulation on Housing Finance (HFCs)

RBI vide its circular dated 18.02.2022 has issued Master Circular for HFCs to consolidate framework of rules/ regulations and clarification on Housing Finance.

The said master circular shall be applicable on all Scheduled Commercial Banks, excluding Regional Rural Banks.

The said framework includes the following provisions:

- Various regulatory provisions applicable to HFCs;
- Quantum of Finance that can be provided by the HFCs and computations;
- Provisions regarding Innovative housing loan products;
- Interest rates that can be charged by the HFCs;
- Disclosure Requirements;
- Exposure for various categories etc.

c. Amendment to Payment and settlement systems regulations

RBI *vide*. its notification dated 10.02.2022 has published Payment and Settlement Systems (Amendment) Regulations, 2022 to further amend the Payment and Settlement Systems Regulations, 2008.

In order to widen the scope of applicability of these regulations, the word System Provider has been replaced with System Participants.

Further, Regulation 6 has been amended to provide powers to the RBI to prescribe returns, documents and their format that are required to be submitted by the System Provider.

Also, it has been prescribed that returns and documents shall be submitted by the system provider from its registered office to office of the jurisdictional RBI (Department of Payment and Settlement Systems, Central Office) situated in Mumbai."

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

a. Outcome of SEBI meeting

SEBI took the following decisions in its Board Meeting held on 15.02.2022:

1. Separation of role of Chairperson and MD/CEO

SEBI in its Board Meeting held in May, 2018 mandated top 500 listed Companies to have two separate & unrelated persons as Chairperson and MD/CEO w.e.f. from 01.04.2020 which was further extended to 01.04.2022 in January, 2020.

However, SEBI received various representation from corporates expressing difficulties in complying with the mandate due prevailing pandemic situation and unsatisfactory level of compliance achieved so far, SEBI made this provision "Voluntary" from "mandatory" for the listed Companies.

2. Amendment to SEBI (Alternative Investment Funds) Regulations, 2012

Through this amendment, SEBI has provided flexibility to the Category III AIFs to calculate their investment concentration norm based either on NAV or investable funds, subject to conditions specified by Board while investing in listed equity of investee companies.

3. Alignment of regulatory framework for "security cover", disclosure of credit ratings and due diligence certificate

SEBI in order to align the framework and smooth discharge of principal and interest thereon has replaced the word "asset cover" from "security cover" in SEBI (Debenture Trustee Regulations, 1993 and SEBI (Listing Obligations and Disclosure Requirements), 2015.

Further, disclosure of credit ratings and requirement of due-diligence certificate for unsecured debt securities has been prescribed under SEBI (Issue and Listing of Non-Convertible Securities) Regulations, 2021.

b. Guidelines on Accounting with respect to Indian Accounting Standards

SEBI vide notification no. dated January 25, 2022 amended SEBI (Mutual Funds) Regulations, 1996 (MF Regulations), which mandated that the AMCs shall prepare the Financial Statements and Accounts of the Mutual Fund Schemes in accordance with IND AS with effect from April 01, 2023. Accordingly, Mutual Fund Schemes shall prepare the opening balance sheet as on date of transition and the comparatives as per the requirements of IND AS.

Further, as per the requirement stated in clause 6 of schedule 11 of MF Regulations, the Mutual Fund schemes may not be mandatorily required to state 3 years scheme wise per unit statics as per IND AS for the first two years from first time adoption of IND AS but are required to label the GAAP Information prominently as not being prepared in accordance with IND AS and disclose the nature of adjustments that will be required to be made under IND AS.

c. Audit Committee of asset Management Companies

SEBI vide notification no. SEBI/HO/IMD/IMD-I DOF2/P/CIR/2022/17 (Effective from August 01, 2022) mandated Asset Management Companies of mutual funds to constitute an Audit Committee and described the role, responsibility, membership, meetings, reporting and control of the same.

Updates Under MSME Act

a. Assistance to MSME Sector

The Ministry of Micro, Small & Medium enterprises launched a web portal called 'SAMADHAAN' on 30 October 2017 for monitoring of the outstanding dues to the Micro and Small Industries from the buyers of goods and services. In addition to this, a special sub-portal within SAMADHAAN portal was also launched on 14.06.2020 for monitoring the dues and monthly payments by Ministries/Departments of Government of India and Central Public Sector Enterprises (CPCEs) to the MSMEs. As per the information available in the SAMADHAN portal as on 03.02.2022, the total outstanding payments to the Micro and Small Sector since 01.04.2020 is Rs. 11,741.21 crore

The Government of India has announced a series of measures under Aatma Nirbhar Bharat to support the MSME sector. These measures include (i) Rs. 20,000 crore Subordinate Debt for stressed MSMEs; (ii) Rs. 50,000 crore equity infusion through MSME Fund of Funds (SRI Fund); (iii) 3 lakh crore Emergency Credit Line Guarantee Scheme (ECLGS) for Businesses, including MSMEs (which has subsequently been increased to Rs. 5 lakh crore); (iv) New Definition of MSME (v) No Global tenders for Government procurements up to Rs. 200 crore

The Ministry has also implemented Credit Guarantee Scheme for Micro and Small Enterprises under which new and existing Micro and Small Enterprises engaged in manufacturing or service activity can avail collateral free loans up to an amount of Rs. 200 lakh from Banks and Member Lending Institutions.

b. Launch of Self – Reliant India Fund

The Government of India has launched Self Reliant India (SRI) Fund, a fund of funds that aims to extend growth funding to MSMEs. This intends to increase the financial capacity of viable MSMEs for growth so that they can expand their business. The fund aims to achieve the following objectives:

- To provide funding support to Daughter Funds for onward provision as growth capital through equity, quasi-equity and debt (as permitted under relevant SEBI guidelines)
- To support faster growth of MSMEs and thereby ignite the economy and create employment opportunities
- To support MSMEs to graduate beyond the MSME bracket and become National/International Champions
- To support MSMEs which help making India self-reliant by producing relevant technologies, goods and services.

MSMEs as per the definition given in the MSMED Act shall be eligible provided, after assessment, they are found viable, have a positive growth trajectory, and have a defined business plan for growth. Previous 3 years CAGR will be considered. Further, Non Profit institutions, NBFCs, financial inclusion sector, micro credit sector and other financial intermediaries shall not be eligible for consideration

Orders / Judgements

a. Delay in issue of share certificates

The Registrar of Companies (ROC), NCT of Delhi & Haryana has recently passed an order dated 19.01.2022 under Section 454(3) of the Companies Act 2013, in the matter of Rasberry Pi Educational Services Private Limited.

A penalty of Rs. 2 lakh has been imposed on the company and its officers in default, on the occasion of non-compliance with Section 56(4) of the Companies Act, 2013 which requires every company to deliver the share certificates of all securities allotted to the subscribers of the memorandum of association within a period of two months from the date of incorporation of the company.

However, in the aforesaid case, the company had issued share certificate with a delay of about 30 days. Therefore, penalty was imposed under Section 56(6) which is Rs. 50,000 each on the company and every officer in default.

b. Anti – Competitive Agreements

The Competition Commission of India has recently passed an order dated 07.02.2022 under the provisions of Section 27 of the Competition Act, 2002 in the matter of Dumper Truck Union to be in violation of Section 3 of the Act.

CJ Darcl Logistics Ltd. ('CJD Logistics'), the Informant, filed an information with CCI alleging that the Dumper Truck Union, operating in Sanu Mines area, Jaisalmer, did not allow CJD Logistics to carry out transportation work through its own vehicles and also made it mandatory to take vehicles along with drivers from the members of the union only, and that too, on a higher rate. Furthermore, the union and its members caused hindrances by not only obstructing the Informant's vehicles to execute the work but also threatening drivers and personnel of the Informant with bodily harm in case they tried to execute the work.

Basis the evidence, the CCI found the Union guilty of contravention of the provisions of Section 3 (Anti-competitive agreements) since the Union determined the prices of transportation services in a concerted manner and also limited and controlled the provision of such services. Accordingly, the Commission directed the Union to cease and desist from indulging in practices that were found to be in contravention of the provisions of Section 3 of the Act.

Compliance Calendar

Direct Tax

Due dates	Particulars
2nd March 2022	Due date for furnishing of challan-cum-statement for tax deducted under section 194-IA in the month of January, 2022
	Due date for furnishing of challan-cum-statement for tax deducted under section 194-IB in the month of January, 2022
	Due date for furnishing of challan-cum-statement for tax deducted under section 194M in the month of January, 2022
7th March 2022	Due date for payment of TDS and TCS for the month of February, 2022.
	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 February, 2022.
15th March 2022	Due date for fourth instalment of advance tax for the Assessment Year 2022-23
	Due date for payment of whole amount of advance tax in respect of Assessment Year 2022-23 for assessee covered under presumptive scheme of section 44AD/ 44ADA.
	Extended due date for filing of Income Tax Return for Assessment Year 2021-22 if the Assessee (not having any international or specified domestic transaction) is (a) corporate-assessee or (b) non-corporate assessee (whose books of account are required to be audited) or (c) partner of a firm whose accounts are required to be audited or the spouse of such partner if the provisions of section 5A apply
	Extended due date for filing of Income Tax Return for Assessment Year 2021-22 if the Assessee is required to submit a report under section 92E pertaining to international or specified domestic transaction(s)
17th March 2022	Due date for issue of TDS Certificate for tax deducted under section 194-IA in the month of January, 2022
	Due date for issue of TDS Certificate for tax deducted under section 194-IB in the month of January, 2022
	Due date for issue of TDS Certificate for tax deducted under section 194M in the month of January, 2022

Direct Tax

30th March 2022	Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194-IA in the month of February, 2022
	Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194-IB in the month of February, 2022
	Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194M in the month of February, 2022
	Extended due date for linking of Aadhaar number with PAN
31st March 2022	Due date for filing of belated/revised return of income for the assessment year 2021-22 for all assessee (provided assessment has not been completed before March 31, 2021)

Regulatory

Segment	Particulars	Due Dates
Monthly ECB Return under FEMA	ECB-2 (Monthly Return of ECBs for the month of October)	07.03.2022
Filing Annual Return under the Companies Act, 2013 without additional fee for financial year ended 31.03.2021	Form AOC-4 / AOC-4 CFS / Form AOC-4 XBRL	15.03.2022
Filing Annual Return under the Companies Act, 2013 without additional fee for financial year ended 31.03.2021	Form MGT-7 / MGT-7A	31.03.2022

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