Nangia Andersen LLP

Tax & Regulatory Newsletter

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What's Inside?

01

Direct Tax

Revision proceedings may be initiated under section 263 of the Act even when the Assessment Order was passed post incorporating the DRP directions

M/s. Brocade Communications Systems Pvt. Ltd v. The PCIT(1), Bengaluru

ITA No. 656/Bang/2021 (Bangalore Tribunal)

Issue(s) – Initiation of revision proceedings under section 263 of the Act post directions issued by DRP

Outcome - In Favour of Revenue

Background

In a recent verdict, Bangalore Tribunal examined the validity of revision proceedings initiated under section 263 of the Income-tax Act, 1961 (the 'Act'), wherein, the final assessment order was passed after incorporating the directions issued by the Hon'ble DRP. M/s Brocade Communications Systems Pvt. Ltd. (the 'Assessee Company') received capital assets from its associated enterprises ('AE') free of cost. Assessment was done post incorporating the directions issued by DRP, however the said transaction was not considered. Hon'ble ITAT held that initiation of revision proceedings under section 263 is valid.

Brief Facts and Contentions

- The Assessee Company is engaged in the business of software development and support services. During the year under consideration, the Assessee Company had international transactions with its AE amounting to INR 192,54,32,057.
- An addition was made by adjustment to the arm's length price amounting to INR 14,88,72,733 via order passed under section 92CA of the Act. The Assessee Company raised the objections before the Hon'ble DRP. Following the directions issued by DRP, Final Assessment Order was passed enhancing the addition on account of adjustment to arm's length price amounting to INR 15,34,02,063.
- The Assessee Company had received capital goods free of cost amounting to INR 20,63,61,677 from its AE, which were disclosed in the financial statements. The Assessee Company did not claim depreciation on such capital goods.

- The Ld. Principal Commissioner of Income Tax (Ld. 'PCIT') then issued a notice under section 263 of the Act initiating the revision proceedings with respect to the above mentioned receipt of assets.
- The Assessee Company submitted that the Assessing Officer at the time of assessment did not call for information/verification with respect to such asset and corresponding deduction under section 10AA. Further, the Assessee Company submitted that Ld. PCIT could not have revised an order that was based on the directions issued by the Hon'ble DRP that consisted of three officers in the rank of Commissioner of Income Tax.
- However, Ld. PCIT passed an order directing the Assessing Officer to carry out a detailed inquiry with respect to the same. The Assessee Company then approached the Hon'ble ITAT against the order passed by Ld. PCIT.

ITAT's Judgement

- Explanation 1 clause (c) to section 263(1) of the Act provides that the powers of the Commissioner of Income Tax under section 263 of the Act, shall extend and shall always deemed to have been extended to such matters as had not been considered and decided in an appeal before the appellate authorities i.e. the power of CIT under section 263 will extend only to matters not decided and considered by the DRP.
- No specific query was raised with respect to taxability of the assets received by the Assessee Company during the draft assessment order stage or final assessment order stage by the Ld. Assessing Officer or Hon'ble DRP.
- In light of the above, the Hon'ble ITAT upheld the initiation of revision proceedings under section 263 by Ld. PCIT. Hon'ble ITAT further directed the Ld. Assessing Officer to grant depreciation in the event when the said assets received by the Assessee Company are capitalised.

Nangia Andersen LLP's Take

This judgement fortifies the intent of bringing Section 263 of the Act into play i.e. to protect the interest of the revenue. The orders which are prejudicial to the interests of the revenue includes order passed without making inquiries or verifications which should have been made at the stage of passing the assessment order. In the given case, revision of final assessment order after DRP directions was upheld as requisite inquiries or verifications were not made in respect of issues which were not discussed/ challenged under assessment proceedings or as objections before DRP.

Where the assessee had achieved process of establishing business, it will qualify as setting-up of business and the expenditure incurred shall be allowed as deduction under section 37(1) of the Act

RBL Hotels (P.) Ltd. v. Asst. Commissioner of Income Tax

[2022] IT Appeal Nos. 3428 & 3429 of 2018 (Chennai Tribunal)

Issue(s) – Allowability of pre-operative expenses

Outcome - In Favour of Assessee

Background

In a recent verdict, Chennai Tribunal examined the allowability of pre-operative expenses. RBL Hotels (P.) Ltd. (the Assessee Company') engaged in the business of hotels, motels and catering etc., has purchased a land and semi-constructed building in July 2011, which was completed in August 2013. During the AY 2012-13 and AY 2013-14, the Assessee Company has incurred certain expenses while setting up the business and claimed the same as deduction under section 37 of the Income-tax Act, 1961 (the 'Act'). The Hon'ble ITAT has allowed the deduction of expenditure incurred post set-up as business expenditure.

Brief Facts and Contentions

- To set up a hotel, the Assessee purchased semi-constructed building in July 2011 and entered into an agreement with India Hotels Company Limited (IHCL) in August 2011 for rendering of hotel services. The Assessee also entered into an agreement with Jones Lang LaSalle Property Consultants (India) Pvt. Ltd. in September 2011 to lay interior fit outs.
- The building was completed in August 2013, when it was handed over to the IHCL to run the hotel under their brand name 'The Taj Gateway'.
- In the return of income for AY 2013-14, Assessee admitted loss of ₹ 56.46 Lacs after claiming the deduction of expenses incurred on account of salary, interest and administration while setting up the business. The Assessee Company invested surplus funds in Fixed Deposits. During the year the Assessee Company did not commence its business operations, and hence did not earn revenue from operations.

- The Ld. Assessing Officer held that the said expenditure shall not be allowed as deduction prior to commencement of business and interest on FD along with discount received should be taxable under the head 'Income from other sources'.
- Hon'ble CIT(A) upheld the order of the Assessing Officer and further held that the business expenditure even when revenue in nature, was required to be capitalised along with the cost of building.
- The Assessee Company then approached Hon'ble ITAT against the order passed by the Hon'ble CIT(A).

ITAT's Judgement

- In case of a newly set-up business, the previous year shall be the period beginning with the date of setting-up of the business. Accordingly, till the time the business is set-up, all the expenses, even if revenue in nature, would have to be capitalised. As a natural corollary, if the business is set-up, the expenditure would be allowable notwithstanding the fact that no business income was earned by the assessee during the year.
- When a business is established and is ready to commence business, it could be said that the business has been set-up. There may be an interval or time gap between the setting-up of the business and the commencement of the business but still all the expenses incurred during that interval would be permissible deductions.
- In case setting-up of business would require different activities, the assessee could be said to have set-up its business from the date when one of the categories of its business was started and it is not necessary that all the categories of its business activities must start either simultaneously or that the last stage must start before it can be said that the business was set up.
- In light of the above, ITAT allowed the Assessee Company's appeal saying that the business of the Assessee Company was already set up in AY 2012-13 and allowed the deduction of business expenditure incurred before commencement of business.

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Nangia Andersen LLP's Take

This issue has been debatable since long and the courts/ tribunal have given fact-driven judgements around this. In this particular case, Assessee had acquired necessary infrastructure in form of a land and semi-constructed building for setting up its business, obtained a loan and had started paying salaries and allowances to experts, mobilisation advances to the vendors, etc. Accordingly, business expenditure shall be allowed for deduction as the Assessee has completed the process of establishing its business.

Circular No 18 of 2022

Obstacles Eliminated or Augmented by CBDT on applicability of Section 194R

Finance Act 2022 inserted a new section 194R in the Income Tax Act 1961 with effect from 1st July 2022 which relates to deduction of tax on benefit or perquisite in respect of business and profession. The introduction of the provisions had created a lot of commotion amongst taxpayers, in response to which the Central Board of Direct Taxes (hereafter "CBDT") had issued a Circular dated June 16, 2022.Considering the peculiarity of the provisions, further clarifications were sought by the stakeholders on ambiguous matters.

In the new Circular, the CBDT has tried to cater to pertinent issues originated from the newly inserted section and clarified the following

1. No liability to deduct TDS by banks on one-time loan settlements /waivers.
2. Where the Service Provider acts as a pure agent for service recipient, no TDS would be required under section 194R of the Act. The definition of pure agent has been taken from GST Valuation Rules, 2017. Additionally, further points have also laid down in recent circular:
   - When supplier makes payment to the third party on authorization by such recipient and such payment has been separately indicated in the invoice issued by the pure agent to the recipient of service.
   - the supplies procured by the pure agent from the third party are in addition to the services he supplies on his own account.
3. No liability to deduct TDS in case of reimbursement of OPE's if TDS has been already deducted on Invoice value under other section viz. 194C or 194J.
4. In case of dealer's conference, if reasonable allocation of perks is not possible then the service provider may not claim the expenses.
3. Further, in case of a capital asset being given as benefit, then the value for depreciation purposes will be the value considered as an income in the hands of the recipient.
4. Section 194R will not be applicable if perks are provided by "UN (Privileges and Immunity Act)", international organization whose income is exempt, an embassy, High Commission, legation, commission, consulate and the trade representation of a foreign state.
5. TDS is not required to be deducted on issuance of bonus or right shares by a company in which the public are substantially interested.

Nangia Andersen LLP's Take

The tax department is leaving no stone unturned for implementing the provisions of tax deduction under the provisions of Section 194R of the Act; which in addition to a wide coverage, has a lot of practical difficulties. Though the questions of the impacted industries have been addressed, there are still apprehensions with respect to applicability of the provisions on various scenarios.

Revised Guidelines for Compounding of offences under the Income Tax Act, 1961 issued on 16.09.2022 [F.No. 285/08/2014-IT (Inv.V)/196]

The Central Board of Direct Taxes ("CBDT") has issued revised guidelines for compounding of offences with a view to simplify and facilitate compounding of offences in supersession of earlier guidelines dated 14.06.2019. The overall reading of the revised guidelines suggests that CBDT has extended the scope of eligibility for compounding of cases and has adopted a more liberal approach towards facilitating compounding of offences, being a settlement mechanism.

In the revised guidelines, the CBDT has tried to elucidate pertinent issues originated from the section 279(2) of the Income Tax Act ("Act") and illuminated the following:

1. The guidelines have simplified the process of compounding of offences:

   Fresh set of Guidelines on Compounding of Offences under the Income tax Act, 1961 ('the Act'), in supersession of the earlier Guidelines on the subject issued in 2019, to simplify and facilitate the process of Compounding of Offences. CBDT has revised these guidelines keeping in view the policy of Government on decriminalization of offences and ease of doing business to allow similar treatment for various offences covered under the prosecution provisions of the Income Tax Act, 1961 as well.

2. Offences are classified namely into 2 categories

   - Category A - where the offences are of technical nature and caused by an act of omission
   - Category B - where the offences are non-technical attributed to an act of commission

3. Time Limit

   Time limit for acceptance of compounding applications has been relaxed from the earlier limit of 24 months to 36 months now, from the date of filing of complaint.

4. Compounding charges/ interest:

   - 1.25 times the normal compounding charges in case the application of compounding is filed after the end of 12 months, but within 24 months,
   - 1.50 times in case of application filed beyond 24 months but before 36 months.
   - Additional compounding charges in the nature of penal interest @ 2% per month up to 3 months and 3% per month beyond 3 months have been reduced to 1% and 2% respectively.

5. Scope of eligibility for compounding of cases has been extended whereby:

   - Applicant who has been convicted with imprisonment for less than 2 years being previously non-compoundable, has now been made compoundable.
   - Offences u/s 276 of the Act dealing with removal, concealment, transfer or delivery of property to thwart tax recovery are now part of compoundable offence of category B.

6. Offences punishable under sections 275A & 275B of the Act shall not be compounded in any circumstances

7. Specific upper limits introduced for the compounding fee covering defaults across several provisions of the Act.

Nangia Andersen LLP's Take

By virtue of these guidelines CBDT has attempted to simplify and facilitate the process of Compounding of Offences. The guidelines have been revised keeping in view the policy of Government on decriminalization of offences and ease of doing business to allow similar treatment for various offences covered under the prosecution provisions of the Income Tax Act, 1961 as well.

02

Indirect Tax

Advance Rulings & Judgements

Karnataka AAR ruled ITC inadmissible on GST paid on the vouchers and subscription packages procured from third party

Brief Facts

- M/s. Myntra Designs Private Limited ('Applicant') is engaged in the business of selling fashion and lifestyle products through its e-commerce portal www.myntra.com. In order to incentivize the customers visiting the e-commerce portal, it proposes to run a loyalty program by way of issuing points to customer on the basis of purchases on the e-commerce portal;
- The applicant procures the vouchers and subscription packages from third party vendors upon payment of GST and provides the same to customers on redemption of the loyalty points earned by them;
- Applicant filed an Advance Ruling Application on whether it would be eligible to avail ITC on vouchers and subscription packages procured from third party vendors that are made available to the eligible customers participating in the loyalty program against the loyalty points earned/ accumulated by the said customers.

Observations

- AAR observed that subscription packages procured by the applicant from third party vendors and supplied to customers against loyalty points meets the definition of 'voucher' as it places an obligation on the potential supplier to accept it as consideration for supply of goods or services to the holder of the instrument or the customer
- AAR further relied on the ruling of Hon'ble Supreme Court in the case of Tata Consultancy Services Vs State of Andhra Pradesh (2004) and held that vouchers in the instant case are covered under the definition of 'goods';

- AAR further noted that said loyalty points, in the applicant's own admission, do not have any monetary value, are non-transferable and cannot be converted to cash & accordingly the redemption of loyalty points, admittedly involves no flow of consideration from the customer. Thus, redemption of loyalty points by the customer for receiving vouchers from the applicant implies that the vouchers are issued free of cost to the customer and amounts to disposal of vouchers (goods) by way of gift and are squarely covered under clause (h) of Section 17(5) (covering blocked credits) of the Act.

Decisions

- AAR ruled that the applicant is not eligible to avail the input tax credit on the vouchers and subscription packages procured by the applicant (from third party vendors) and made available to the eligible customers participating in the loyalty program against the loyalty points earned / accumulated by the said customers.

[M/s. Myntra Designs Private Limited [TS-470-AAR (KR), dated 14 September 2022]

High Court of Orissa held that Interest would be chargeable only on tax amount paid by debiting electronic cash ledger and not on the amount paid by debiting electronic credit ledger in respect of returns filed after due date.

Brief Facts

- Utkal Automobiles (P.) Ltd ('Company') had filed its statutory returns in Form GSTR -3B for the periods from April 2019 to December 2019 and while filing said returns there was delay. While filing the returns, Company calculated and paid interest on net tax liability i.e. after adjusting the input credit ledger available in electronic credit ledger;
- The Assessing Authority had issued a Demand Information Notice ('Notice') calculating interest on gross GST liability for belated payment of tax for the periods 2017-18, 2018-19 and 2019-20 (up to December 2019);
- Aggrieved by said Notice, Company filed the Writ Petition before High Court to quash the demand Notice and declare that interest u/s 50(1) is to be levied on payment of tax by electronic cash ledger and not electronic credit ledger and holding that proviso to section 50(1) is clarificatory and retrospective in nature.

Decision

- High Court observed the amendment in Central Goods and Services Tax Act 2017 (CGST Act), by virtue of Finance Act, 2021, as:

  In Section 50 of the CGST Act, in subsection (1), for the proviso, the following proviso shall be substituted and shall be deemed to have been substituted with effect from the 1st day of July, 2017, namely, :-

  'Provided that the interest on tax payable in respect of supplies made during the tax period and declared in the return for the said period furnished after the due date in accordance with the provisions of Section 39, except where such return is furnished after commencement of any proceedings under Section 73 or Section 74 in respect of the said period, shall be payable on that portion of the tax which is paid by debiting the electronic cash ledger.'"

- Accordingly, High Court set aside the Demand Notice and remanded back the matter to the Superintendent for reconsideration of the matter taking into consideration the amendment carried out by virtue of the Finance Act, 2021.

[Utkal Automobiles (P.) Ltd V Union of India ([2022] 142 taxmann.com 116 (Orissa), dated 11 July 2022]

03 Transfer Pricing

ITAT: Assessee's predominant revenue from trading in UPS and accessories; TNMM with Berry Ratio not applicable

Outcome: In the favour of taxpayer

Category: ALP Computation, Berry Ratio

Facts of the Case

- M/s. Socomec Innovative Power Solutions Pvt. Ltd. ("The taxpayer" / "the Company") is engaged in the business of trading of uninterrupted power supply (UPS) systems and accessories in India. The company also provides maintenance and other after sale services in respect of UPS systems through network of branches situated across the country.
- During the years under Consideration i.e. Assessment Year ("AY") 2010-11 and AY 2011-12, the taxpayer has entered into various international transactions with its Associate Enterprises ("AEs") including purchase of finished goods, sale of UPS, etc. and applied Comparable Uncontrolled Price ("CUP") for benchmarking its international transactions.
- During the course of assessment proceedings, the TPO rejected CUP as well as the alternate method i.e. RPM proposed by the taxpayer and adopted Transactional Net Margin Method ("TNMM") as MAM with Berry Ratio as Profit Level Indicator ("PLI") thereby proposing an adjustment of INR 5.8 Cr.
- Aggrieved by the same, the taxpayer filed its objections with the Dispute Resolution Panel ("DRP"), wherein the DRP upheld the order of the TPO.
- Aggrieved by the order of DRP, the taxpayer filed an appeal before Income Tax Appellate Tribunal ("ITAT") wherein the Hon'ble ITAT passed an order upholding the TPO/DRP's order i.e. considering Berry Ratio as PLI.
- Aggrieved by the same, the taxpayer further filed an appeal before Hon'ble High Court ("HC") wherein the matter was remanded back to the ITAT.

ITAT's Ruling

- ITAT views that the requirement of accurate data with respect to nature and type of transactions for application of CUP was fulfilled by the taxpayer.
- ITAT found that the taxpayer had tried to establish its case with help of third party importers of similar goods form various countries after obtaining information from customs authorities under RTI and claimed that transactions with its AEs were at arm's length price.
- ITAT observed that the TPO has summarily rejected CUP adopted by the taxpayer as well as the alternate method RPM proposed to be applied by the taxpayer without assigning any cogent reasons as to why transactions of the taxpayer cannot be compared with CUP method.
- ITAT further observed that major revenue from taxpayer's operations was from trading in UPS and accessories which were successfully proved by details filed by the taxpayer.
- ITAT stated that TNMM can only be considered as MAM, where other methods cannot be adopted for benchmarking transactions of the taxpayer with its AEs, however, where other methods can be applied, then there is no need to go for TNMM as MAM.
- As regards to Berry Ratio, ITAT placed reliance on the ruling of Hon'ble Delhi HC in Sumitomo Corporation (I)(P) Ltd and in view of the same, held that that Berry Ratio can only be applied where operating expenses is main contributor for determining profitability of the taxpayer i.e. berry Ratio can only be applied where the value of goods is not directly linked to quantum of profits and are primarily dependent on the expenses incurred by the taxpayer.
- Further, berry ration can effectively only be applied in certain cases such as stripped-down distributors where they have no financial exposure and risk in respect of goods distributed by them.

In view of the aforesaid observations, ITAT held that TNMM with Berry ratio as PLI cannot be applied as MAM in the instant case. Accordingly, ITAT directed the TPO to re-examine the case for both assessment years.

Nangia Andersen LLP's Take

While use of Berry ratio is allowed as per OECD and UN TP manual, however in the Indian context, the use of berry ratio has been a subject matter of litigation mainly in case of low risk/ stripped distributors (like 'Sogo Shosha companies , commission agents etc.

The instant ruling primarily emphasised on the fact that the berry ratio shall only be applied in cases where value of goods is not directly linked to quantum of profits and profits are mainly dependent on expenses incurred by the taxpayer. Further, Berry ratio can be applied in case of stripped down distributors i.e., distributors that have no financial exposure and risk in respect of goods distributed by them.

Thus, the instant ruling highlights various aspects that need to be factored in while applying berry ratio thereby providing some significant insights to taxpayers looking to use Berry ratio in their relevant cases.

Source: Socomec Innovative Power Solutions Private Limited [TS-601-ITAT-2022(CHNY)-TP]

04

Regulatory

Updates under companies act, 2013

Companies (specification of definition details) amendment rules, 2022

The Ministry of Corporate Affairs ('MCA') on 15 September 2022 notified an amendment to the Companies (Specification of Definitions Details) Rules, 2014. As per the amendment, definition of "Small Companies" under the Companies Act, 2013 has been revised by increasing thresholds of paid-up capital from Rs 2 crore to Rs 4 crore and turnover from Rs 20 crore to Rs 40 crore.

Extension of time for filing E-form DIR-3 KYC and web-form DIR KYC

The MCA *vide* circular dated 28 September 2022 has extended the due date for filing e-form DIR-3 KYC and web form DIR-3 KYC Web for the FY 2021-22 without any additional filing fee for the period starting 30 September 2022 to 15 October 2022.

Updates under securities and exchange board of India ('SEBI')

SEBI issues guidelines for stock brokers providing algorithmic trading services

SEBI, *vide* circular no. SEBI/HO/MIRSD/DOP/P/CIR/2022/117 dated 2 September 2022, has released guidelines for stock-brokers provide services relating to algorithmic trading for investors, to prevent instances of mis-selling.

The guidelines have been introduced after SEBI observed that certain stock-brokers provide algorithmic trading facilities to investors through unregulated platforms.

SEBI has given certain responsibilities to stock-brokers that provide algorithmic trading facilities to investors through such platforms. Such stock-brokers have been restricted from making any reference to the past or expected future return of the algorithm as well as associating with any platform that provides any reference to the past or expected future return of the algorithm.

Updates under FCRA

Extension of validity of FCRA registration certificates

Ministry of Home Affairs has issued a public notice dated 23 September 2022 in continuation of its earlier public notices dated 12 January 2021, 18 May 2021, 30 September 2021, 31 December 2021, 24 March 2022 and 22 June 2022.

FCRA registration certificates whose validity was extended till 30 September 2022 and whose renewal application was pending shall now stand extended till 31 March 2023 or till date of disposal of the renewal application, whichever is earlier.

Further, FCRA registration certificates whose 5 years validity period would be getting expired during the period between 1 October 2022 and 31 March 2023 and who have applied/ apply for renewal before expiry of 5 years validity period, the same shall remain valid up to 31 March 2023 or till date of disposal of 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 renewal application and the association shall not be eligible either to receive the foreign contribution or utilise the foreign contribution received.

Updates under food safety standards authority of India ('FSSAI')

Draft food safety and standards (labelling & display) amendment regulations, 2022

The FSSAI has issued draft regulations called Food Safety and Standards (Labelling & Display) Amendment Regulations, 2022 which deal with '***Front of the Pack Nutritional Labelling*** **(FOPNL**)' *vide* notification dated 13 September 2022.

Final set of regulations shall come into force on the date of their publication in the Official Gazette or as per the date specified in the notification as the case may be. Compliance with regulations shall be voluntary until a period of 48 months from the date of final notification of these regulations and mandatory thereafter.

Observations and comments of the stakeholders are invited on the aforesaid regulations for consideration till 12 November 2022. Key features of the scheme have been set out below:

- **Introduction of new definitions**

i. Front-of-pack nutrition labelling

The draft regulations define FOPNL as supplementary nutrition information that presents simplified nutrition information on the front-of-pack of pre-packaged foods. It can include symbols/graphics, text or a combination thereof that provide information on the overall nutritional value of the food and/or on nutrients included in the FOPNL".

ii. High fat, sugar, salt ('HFSS') food

HFSS food has been defined as processed food product having high levels of saturated fat or total sugar or sodium. The declared values of these ingredients are such that the product has total sugar more than 10 percent of total energy, or from saturated fat more than 10 percent of total energy, and sodium more than 1 mg/1 kcal."

- **New labelling requirement**

The draft regulations mandates declaration of percentage of Fruits, Vegetable, Nuts, Legumes & Millets, if present in the food product. Further, dietary fibre has been added as a nutrient in the list for the nutritional labelling.

- **Indian Nutrition Rating ('INR')**

The draft regulations propose to introduce a new chapter -6 pertaining to Indian Nutrition Ratings. Key highlights of this new concept are:

i. All processed and packaged food products covered under the extant FSS Regulations are classified into three categories namely Category-I (Solid foods), Category-II (Liquid foods) and Category-III (Exempted from FOPNL).

ii. The INR system is intended to rate the overall nutritional profile for packaged food by assigning it a rating from **½ star (least healthy) to 5 stars (healthiest)**. More stars shall indicate that the food product is better positioned to provide for daily human need of nutrients.

iii. The format of logo for INR is also provided in the draft regulations. The logo shall be displayed close in proximity to the name or brand name of the product on front of pack.

iv. INR shall be calculated on the basis of contribution of energy (kcal), saturated fat (g), total sugar (g) and sodium (mg) and the positive nutrients per 100 g of solid food or 100 ml of liquid food on a "as sold" basis, using the formula mentioned in Schedule –III of the draft regulations.

Updates under PLI

PLI - Semiconductors

The Cabinet, chaired by Prime Minister, Shri Narendra Modi, has approved the following modifications in the Programme for development of semiconductors and display manufacturing ecosystem in India:

i. Fiscal support of 50% of Project Cost on pari-passu basis for all technology nodes under Scheme for Setting up of Semiconductor Fabs in India.

ii. Fiscal support of 50% of Project Cost on pari-passu basis under Scheme for Setting up of Display Fabs.

iii. Fiscal support of 50% of Capital Expenditure on pari-passu basis under Scheme for Setting up of Compound Semiconductors / Silicon Photonics / Sensors Fab and Semiconductor ATMP /OSAT facilities in India. Additionally, target technologies under the Scheme will include Discrete Semiconductor Fabs.

Under modified programme, a uniform fiscal support of 50% of Project Cost shall be provided across all technology nodes for setting up of Semiconductor Fabs. Given the niche technology and nature of compound semiconductors and advanced packaging, the modified programme shall also provide fiscal support of 50% of Capital Expenditure in pari-passu mode for setting up of compound semiconductors / silicon photonics / sensors / Discrete semiconductors fabs and ATMP/OSAT.

The programme has attracted many global semiconductor players for setting up fabs in India. The modified programme will expedite investments in semiconductor and display manufacturing in India. On the basis of discussion with potential investors, it is expected that work on setting up of the first semiconductor facility will commence soon.

An Advisory Committee comprising global experts from industry and academia was constituted to advise India Semiconductor Mission - the nodal agency for the Programme for development of semiconductors and display manufacturing ecosystem in India. Advisory Committee has unanimously recommended uniform support for all technology nodes of silicon semiconductor fabs / Silicon Photonics / Sensors / Discrete Semiconductor Fabs and ATMP/OSAT, which has been accepted by the Government. The technology nodes of 45nm and above have high demand which is inter-alia driven by Automotive, Power and Telecom applications. Moreover, this segment constitutes around 50% of the total semiconductor market.

PLI - Solar PV manufacturing

The Cabinet, chaired by Prime Minister, Shri Narendra Modi, has approved the Ministry of New & Renewable Energy's proposal for implementation of the Production Linked Incentive Scheme (Tranche II) on 'National programme on High Efficiency Solar PV Modules', with an outlay of Rs. 19,500 crore for achieving manufacturing capacity of Giga Watt (GW) scale in High Efficiency Solar PV Modules.

The national programme on High Efficiency Solar PV Modules aims to build an ecosystem for manufacturing of high efficiency solar PV modules in India, and thus reduce import dependence in the area of Renewable Energy. It will strengthen the Atmanirbhar Bharat initiative and generate employment.

Solar PV manufacturers will be selected through a transparent selection process. PLI will be disbursed for 5 years post commissioning of solar PV manufacturing plants on sales of high efficiency solar PV modules from the domestic market will be incentivised.

The benefits expected from the scheme are as follows:

- It is estimated that about 65,000 MW per annum manufacturing capacity of fully and partially integrated, solar PV modules would be installed
- The scheme will bring direct investment of around Rs. 94,000 crore
- Creation of manufacturing capacity for Balance of Materials like EVA, Solar glass, Backsheet, etc.
- Direct employment of about 1,95,000 and indirect employment of around 7,80,000 persons
- Import substitution of approximately Rs.1.37 lakh crore
- Impetus to Research and Development to achieve higher efficiencies in Solar PV Modules

Updates under department of telecommunication

The Ministry of Communications initiated a public consultative process to develop a modern and future-ready legal framework. In July 2022, a Consultation Paper **''Need for a new legal framework governing Telecommunications in India''.** Based on the consultations, suggestions received, the Ministry of Communications has now prepared a draft Indian Telecommunication Bill, 2022 ('the draft Bill'). The draft Bill, once enacted shall repeal and replace Indian Telegraph Act enacted in 1885, the Indian Wireless Telegraphy Act enacted in 1933 and the Telegraph Wires (Unlawful) Possession Act in 1950 and "restructure the legal and regulatory framework" for the telecommunications sector.

The Minister for Communications, Ashwini Vaishnaw, has said that he expects the Bill would convert into law in the next 6-10 months.

The Current version of the bill has generated a significant discussions around various changes that it proposes to make to the current telecom regulatory framework such as:

- Expansion of definition of "telecommunication services" to include Over-the-top (OTT) communication services. As a consequence, the wide network of OTT telecommunication services may also be subject to the licensing conditions as are applicable to the Telecom Service Providers ('TSPs').
- In the event of a public emergency or in the interest of public safety, Clause 24(2) of the draft Bill central or state governments have been empowered to suspend communication via any telecommunication network, as long as it is necessary or expedient to do so, by issuing an order ***in the interest of the sovereignty, integrity or security of India, friendly relations with foreign states, public order, or preventing incitement to an offence.***
- The draft bill also proposes to considerably dilute TRAI's position in a number of ways reducing its powers from a regulatory body to a recommendatory body. First, the government would no longer be required to seek recommendations from the TRAI before issuing licences. Second, it also removes the power of the TRAI to requisition from the government, information or documents that are necessary to make such recommendations. Moreover, the Department of Telecommunication (DoT) will no longer be required to refer back to TRAI the recommendations for reconsideration.

Updates under reserve bank of India

RBI digital lending guidelines

The Reserve Bank of India ('RBI') has issued guidelines to all commercial banks NBFCs, Primary (Urban) Co-operative Banks, State Co-operative Banks, District Central Co-operative Banks. The digital lending platforms shall purport to comply the following in true letter and spirit:

Guidelines related to borrow data

1. The guidelines provide that Digital lending platforms cannot access the contact lists, file and media of the users. Infact, only a one-time access is allowed for the purpose of KYC that too, with the consent of borrower. The Borrower must also be informed about the type of data, as well as the time duration of storage of data and other usage restrictions. The information about these items shall be available on their websites and apps all the time.
2. A key fact statement including the following details shall be provided to the borrower at the time of disbursal of loan:

    - Loan Amount
    - Total Interest Charge during the tenor
    - All- inclusive cost of digital loan
    - Penal Interest/Charges Levied shall be disclosed upfront on an annualized basis.
    - Annual Percentage Rate, Recovery Mechanism and Details of Grievance Redressal Officer etc.

3. Explicit consent of the borrower shall be taken before sharing personal information with the third party

Guidelines relating to the responsibilities of the Lenders

The banks and NBFC must publish a list of their Digital Lending Apps ("DLA") and Lending Service Providers ("LSP") on their websites and applications.

The information shall be sent to the borrowers regarding the successful execution of the loan on the letterhead of the bank containing the key facts statement, summary of loan product, sanction letter, terms and conditions, accounts statements, privacy policies of DLA/ LSP with respect to the borrowers etc. The Banks/ NBFC must analyze the profile of borrowers covering age, occupation, income before extending any loan over their own DLA/LSP with an objective to assess the viability of the borrower to pay back the loan.

The Banks and NBFC shall ensure that any lending done through their DLA/ LSP is reported to Credit Information Companies.

The regulated entities shall ensure that the loan servicing, repayment etc. shall be executed by the borrower directly into the lenders' bank account without any pass-through accounts/ pool account of any third party. However, the guidelines do provide for exceptions in the form of disbursals covered exclusively under a statutory mandate. Flow of money between regulated entities for co-lending transactions and disbursals for specific end use is permitted provided loan disbursement is made directly into the bank account of the end beneficiary. It shall also be ensured that no disbursal is made to a third party account, including DLA/ LSP except as provided in guidelines.

Orders / Judgements

Competition commission of India

CCI approves acquisition of stake in Apraava Energy Private Limited by CDPQ Infrastructures Asia II Pte. Ltd.

The Competition Commission of India (CCI) approves acquisition of stake in Apraava Energy Private Limited (Target) by CDPQ Infrastructures Asia II Pte. Ltd. (Acquirer) under Section 31(1) of the Competition Act, 2002. The proposed combination pertains to the acquisition of an additional 10% shareholding in the Target from CPL GPEC (Mauritius) Holding Limited. The Acquirer currently (prior to the proposed transaction) held 40% shareholding in the Target.

The Acquirer had been incorporated in Singapore and a direct and wholly owned subsidiary of Caisse de depot et placement du Quebec, a long-term institutional investor with net assets of approximately CAD 420 billion invested globally that manages funds primarily for public and para-public pension and insurance plans. The target is engaged in the Indian power sector with an investment spread across renewable energy (including wind and solar), transmission, supercritical coal and gas fired generation.

CCI approves amalgamation of Jio Cinema OTT platform with Viacom 18 Media Private Limited

The Competition Commission of India (CCI) has approved the amalgamation of the Jio Cinema OTT platform with Viacom 18 Media Private Limited (Viacom18), following an investment by BTS Investment 1 Pte. Ltd. (BTS1) and Reliance Projects & Property Management Services Limited (RPPMSL).

BTS1 is a company incorporated under the laws of Singapore. It is currently in the process of raising capital from various investors including sovereign funds, multinationals and global institutional investors.

RPPMSL, a wholly owned subsidiary of Reliance Industries Limited, is engaged in the provision of IT support services, business and infrastructure support services, manpower support services and erection and commissioning of telecom facilities. RPPMSL is also presently engaged in the business of owning and operating the Jio Cinema OTT platform.

Reserve bank of India

RBI imposes monetary penalty on G.S. Mahanagar Co-operative Bank Limited, Mumbai

The Reserve Bank of India (RBI) has, by an order dated 8 September 2022, imposed a monetary penalty of Rs. 25 Lakh on G.S. Mahanagar Co-operative Bank Limited, Mumbai, Maharashtra (the 'bank') for non-compliance with the directions issued by RBI on **'Maintenance of Deposit Accounts'**.

This penalty has been imposed in exercise of powers vested in RBI conferred under section 47A(1)(c) read with sections 46(4)(i) and 56 of Banking Regulation Act, 1949 (BR Act).

The statutory inspection of the bank conducted by RBI with reference to its financial position as on March 31, 2020, and examination of the Risk Assessment Report and all related correspondence pertaining to the same, revealed, inter alia, that the bank had levied penal charges for non-maintenance of minimum balance in savings bank accounts without notice to the customers and without providing one-month time for restoration of the minimum balance in the accounts. In furtherance to the same, a notice was issued to the bank advising it to show cause as to why penalty should not be imposed for contravention of the RBI directions, as stated therein.

After considering the banks' reply to the notice, additional submissions made by it and the verbal submissions made during personal hearings, RBI came to the conclusion that the charge of non-compliance with the aforesaid RBI directions was substantiated and warranted imposition of monetary penalty.

RBI imposes monetary penalty on Thane Bharat Sahakari Bank Ltd., Thane, Maharashtra

The Reserve Bank of India (RBI) in exercise of the powers vested under section 47A(1)(c) read with Section 46(4)(i) and 56 of the Banking Regulation Act, 1949 has, by an order dated 29 August 2022, imposed a monetary penalty of Rs. 15 Lakh on Thane Bharat Sahakari Bank Limited, Thane, Maharashtra (the bank) for non-compliance with the directions issued by RBI on **'Customer Protection - Limited Liability of Customers of Co-operative Banks in Unauthorized Electronic Banking Transactions'**.

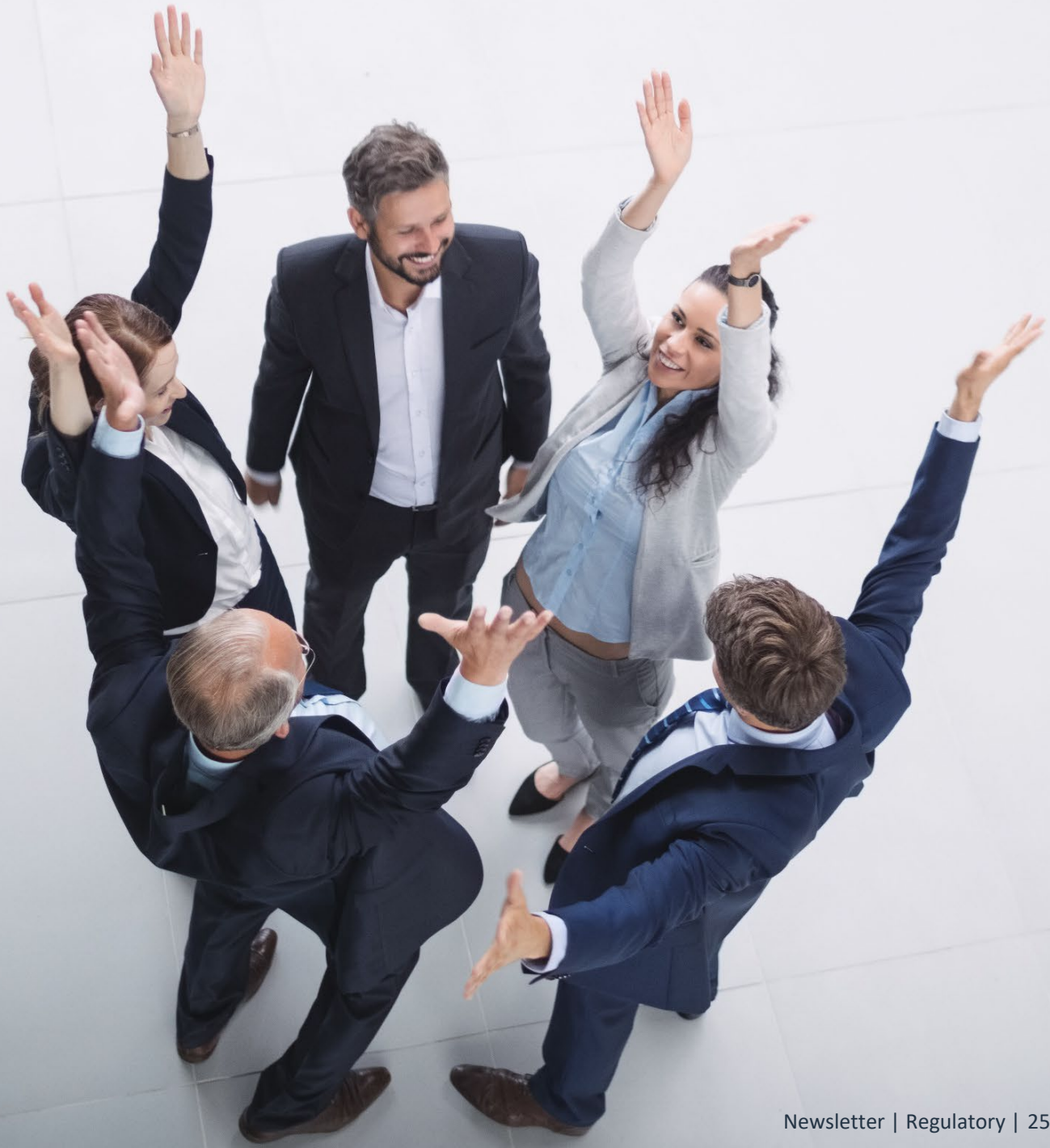
The statutory inspection of the bank conducted by RBI with reference to its financial position as on March 31, 2020, and examination of the Risk Assessment Report and all related correspondence pertaining to the same, revealed, inter alia, that the bank did not provide a direct link for customers to lodge complaints, with specific option to report unauthorized electronic transactions, on the home page of its website. In furtherance to the same, a notice was issued to the bank advising it to show cause as to why penalty should not be imposed for contravention of the RBI directions, as stated therein.

After considering the banks's response to the notice, additional submissions made by it and verbal submissions made during the personal hearings, RBI came to the conclusion that the charge of non-compliance with the aforesaid RBI directions was substantiated and warranted imposition of monetary penalty.

Registrar of companies

The Registrar of Companies (ROC), Gujarat, Dadra & Nagar Haveli, has recently passed an order dated 8 September 2022, in the matter of M/s Premier Solution Private Limited.

A penalty of Rs. 1,50,000 each has been imposed on the company and its KMPs, on account of omission of specifying DIN on the financial statements filed by the Company for consecutive three years, as required under Section 158 of the Companies Act, 2013 ("Act"). ROC further ruled out that the object of filing such information on financial statement under the MCA-21 Portal/public domain is in the public interest, to enable the investors and public to access the information pertaining to director(s) of the Company. Non filing of adequate/correct documents under the MCA portal will result in denial of information to public regarding DIN of the director(s) of the Company.



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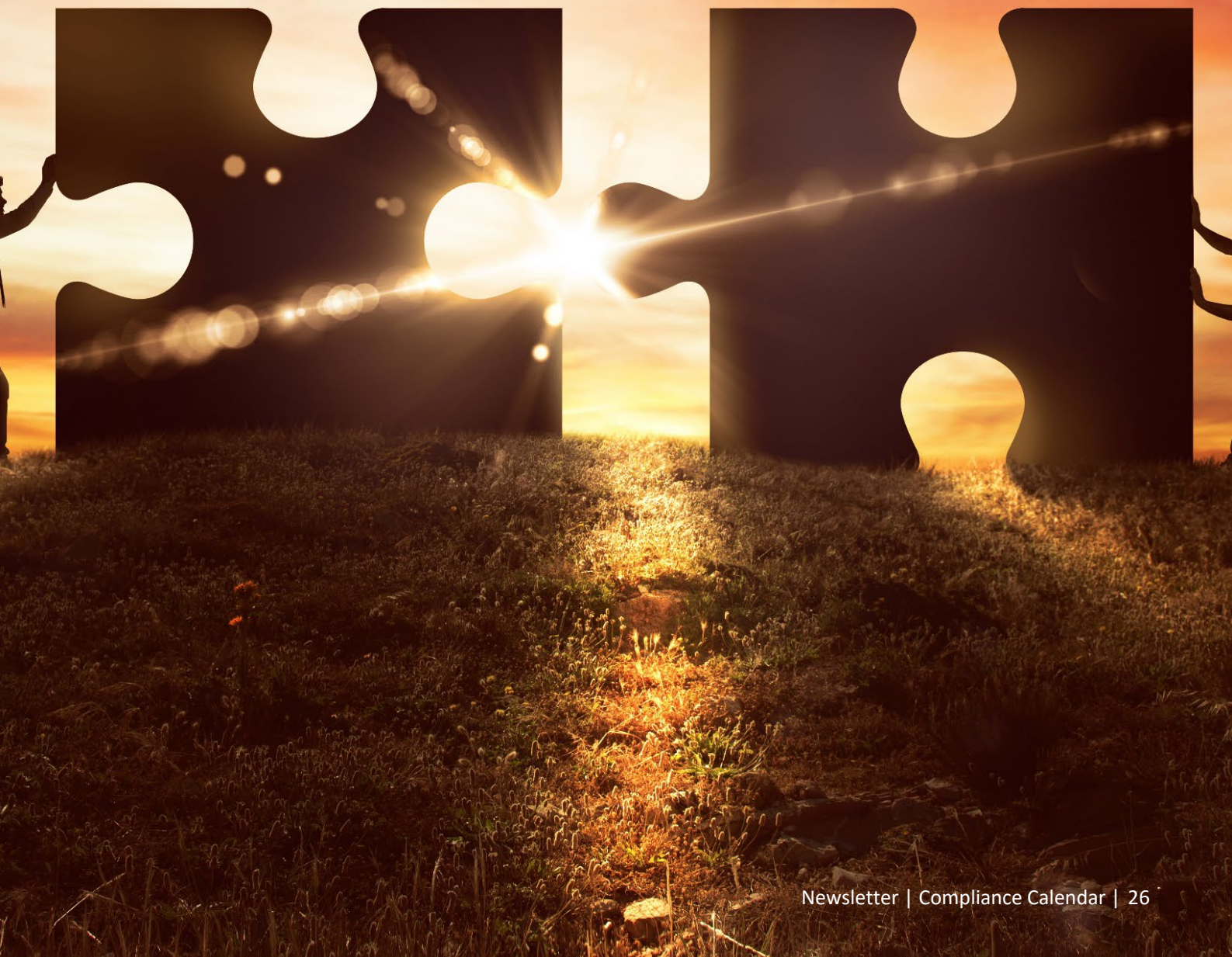
Compliance Calendar



Direct Tax

Due dates	Particulars
7th October 2022	Due date for deposit of Tax deducted/collected for the month of September 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 September 2022.
	Due date for payment of Equalisation Levy on specified services, referred to in Section 165A of Finance Act, 2016 for the quarter ending September 30, 2022.
15th October 2022	Due date for issue of TDS Certificate for tax deducted under section 194-IA in the month of August 2022.
	Due date for issue of TDS Certificate for tax deducted under section 194-IB in the month of August 2022.
	Due date for issue of TDS Certificate for tax deducted under section 194M in the month of August 2022.
	Quarterly statement of TCS deposited for the quarter ending September 30, 2022
30th October 2022	Quarterly TCS certificate (Form 27D) for the quarter ending September 30, 2022
	Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194-IA in the month of September 2022.
	Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194-IB in the month of September 2022.
	Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194M in the month of September 2022.
31st October 2022	Quarterly statement of TDS deposited for the quarter ending September 30, 2022
	Audit report under section 44AB for the assessment year 2022-23 in the case of an assessee who is also required to submit a report pertaining to international or specified domestic transactions under section 92E
	Due date for filing of return of income for the assessment year 2022-23 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
	Due date for furnishing Accountant's Report in Form 3CEB (Transfer Pricing) in respect of international transaction and specified domestic transaction.
	Due date for claiming foreign tax credit, upload statement of foreign income offered for tax for the previous year 2021-22 and of foreign tax deducted or paid on such income in Form no. 67 (if due date of submission of return of income is October 31, 2022).

Indirect Tax

S. No.	Compliance Category	Compliance Description	Frequency	Due Date	Due Date falling in June 2022
1	Form GSTR-1 (Details of outward supplies)	Registered person having aggregate turnover more than INR 5 crores and registered person having aggregate turnover up to INR 5 crores who have not opted for Quarterly Returns Monthly Payment ('QRMP') Scheme	Monthly	11th day of succeeding month	September – 11 October 2022
2	Form GSTR-3B (Monthly return)	Registered person having aggregate turnover more than INR 5 crores and registered person having aggregate turnover up to INR 5 crores who have not opted for Quarterly Returns Monthly Payment ('QRMP') Scheme	Monthly	20th day of succeeding month	September – 20 October 2022
3	**QRMP Scheme** Invoice furnishing facility ('IFF') Form GST PMT-06 (Monthly payment of tax) Form GSTR-1 (Details of outward supplies) Form GSTR-3B Form GSTR-3B	• Optional facility to furnish the details of outward supplies under QRMP Scheme • Payment of tax in each of the first two months of the quarter under QRMP Scheme • Registered person having aggregate turnover up to INR 5 crores who have opted for QRMP Scheme • Registered person with aggregate turnover up to INR 5 crore (opted for QRMP Scheme) having place of business in Group 1 states and union territories • Registered person with aggregate turnover up to INR 5 crore (opted for QRMP Scheme) having place of business in Group 2 states[2] and union territories	Monthly Monthly Quarterly Quarterly Quarterly	1st day to 13th day of succeeding month 25th of the succeeding month 13th day of the subsequent month following the end of quarter 22nd day of the subsequent month following the end of quarter 24th day of the subsequent month following the end of quarter	• September - 1 to 13 October 2022 • September - 25 October 2022 • July to September 2022 – 13 October 2022 • July to September 2022 – 22 October 2022 • July to September 2022 – 24 October 2022
4	Form GSTR-6 (Return for input service distributor)	• Return for input service distributor	Monthly	13th of the succeeding month	September – 13 October 2022
5 6	Form GSTR-9 (Annual Return) Form GSTR-9C (Reconciliation Statement)	• Annual Return if aggregate turnover is more than INR 2 crore • GST reconciliation statement if aggregate turnover is INR 5 crore or more	Yearly	On or before the 31st December following the end of FY	Annual Return And reconciliation statement for FY 2021-22: 31 December 2022

Regulatory

Particulars	Applicant	Form No.	Due Dates
ECB Return	ECB Borrower	ECB-2	7th October
DIR-3 KYC	Every Director holding valid DIN	DIR-3 KYC E-Form or DIR-3 KYC web	15th October
Financial Statements	Every Company whose AGM was held on 30.09.2022	AOC-4	29th October
LLP	Every LLP	Form-8	30th October
MSME	Every Company	MSME-1	31st October
Submit Statements of Investors Complaints to STX	Listed Companies	NA	21st October, 2022
Submit Audit Report to STX for Reconciliation of Share Capital Audit by PCA or PCS for shares held in Physical or D-mat mode	Listed Companies	NA	21st October, 2022
Submit a Statement showing Shareholding Pattern to STX	Listed Companies	NA	21st October, 2022
Submit a Corporate Governance Report	Listed Companies	NA	15th October, 2022
Disclosures of Related Party Transaction	Listed Companies	NA	30 days from the date of publication of its standalone and consolidated financial results

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