

Nangia Andersen LLP



Tax & Regulatory Newsletter

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01

Direct Tax



*“Individually one drop
but together an ocean.
Every drop counts.”*

Revenue cannot go behind the Tax Residency Certificate (TRC) which is sufficient evidence for claiming eligibility for DTAA benefit; GAAR provisions inapplicable at threshold level

DCIT, (International Taxation) vs Reverse Age Health Services Pte. Ltd.
INCOME TAX APPEAL NO. 1867Del/2022

Issues	Outcome
Taxability of Short-term capital gain for AY 2018-19 under Article 13 of India-Singapore DTAA	In Favour of Assessee

Background

In a recent verdict, Income Tax Appellate Tribunal, Delhi Bench (‘Hon’ble ITAT’) examined the taxability of short-term capital gains arising on transfer of an Indian company i.e. Dr. Fresh Healthcare Private Limited (‘DFHPL’) by Reverse Age Health Services Pte. Ltd. (the ‘Assessee’ or ‘Company’), a resident corporation of Singapore. Hon’ble ITAT concluded that the benefit of India-Singapore treaty shall be available to the Assessee as GAAR provisions were inapplicable owing to threshold and the Assessee held a valid TRC.

Brief Facts and Contentions

- Assessee, a Singapore based company, claimed short term capital gain arising out of sale of share of DFHPL as not taxable for AY 2018-19 by virtue of Article 13 of India-Singapore DTAA, thus claimed the refund of TDS on the receipts from the transaction
- The Assessee furnished a valid Tax Residency Certificate from Singapore Tax Authority. Further, the two shareholders of the Assessee were also tax resident of Singapore.
- The Assessing Officer (‘AO’) and DRP denied the applicability of DTAA on the basis that the Assessee has no economic/commercial substance and is a shell company and accordingly held the amount to be taxable in India as per Income Tax Act, 1961 (the ‘Act’).

ITAT's Judgement

- Hon'ble ITAT followed the judgement of Hon'ble Supreme Court in case of Azadi Bachao Andolan (2004) [10 SCC 1] and held that provisions of DTAA shall supersede the provisions of the Act to the extent, application of former is more beneficial to the Assessee. Further, it was held that the TRC is sufficient evidence for the purpose of claiming eligibility for DTAA benefit, residency and beneficial ownership.
- ITAT opines that the Assessee cannot be termed as a shell or Conduit Company since the veracity of the expenditure incurred by the Assessee in Singapore was a subject matter of tax scrutiny in Singapore and the same was found to be genuine by the Singapore Tax Authorities as per tax assessment orders.
- ITAT observes that the Revenue completely ignored following submissions by Assessee submission while denying the benefit under India-Singapore DTAA
 - i. TRC issued by Singapore Tax Authority
 - ii. Tax assessments carried out in Singapore, and
 - iii. Financial statements for 3 years i.e., 2016, 2017 and 2018
- ITAT further holds that the treaty benefit cannot be denied to the Assessee even if the domestic GAAR provisions are applied as the transaction took place prior to the cut-off date of April 1, 2017 and the short term capital is less than the threshold of ₹3 Crores.

Nangia's Take

*Hon'ble ITAT has relied on a recent Delhi HC ruling in the case of **Blackstone Capital Partners** [n W.P. (C) 2562/2022] wherein it was held that the Revenue cannot go behind the tax residency certificate (TRC) which is sufficient evidence for claiming eligibility for DTAA benefit. This is another judgement which supports Singapore based companies with genuine operations and commercial substance.*



Set-off of losses to be allowed albeit substantial change in shareholding, provided 'beneficial ownership' remains unaltered

Sodexo India Services Private Limited vs. PCIT, Mumbai-5, Circle 13(2)(2)
I.T.A No. 930/Mum/2022

Issues	Outcome
Set off of losses when there is a substantial change in shareholding	In Favour of Assessee

Background

In a recent verdict, Income Tax Appellate Tribunal, Mumbai Bench ('Hon'ble ITAT') examined the validity of invoking revisionary jurisdiction under section 263 of the Income Tax Act, 1961 (the 'Act') where the assessment had initiated on the basis that Sodexo India Services Private Limited ('Assessee') brought forward the losses despite change in its shareholding beyond 51%. Hon'ble ITAT concluded the matter in favour of the Assessee stating that "ultimate beneficial ownership" needs to be checked for applicability of section 79 of the Act.

Brief Facts and Contentions

- Shares of Assessee were held by Sodexo Services Asia Pte. Ltd and Sodexo S.A., France in the ratio of 75% and 25% respectively. However, at the end of previous year, the former shareholder held no shares, whereas the latter one held the 99.99% of the Assessee. There was no change in the ultimate shareholding of the Assessee as the ultimate holding company was a French company. The Assessee duly disclosed such change in its audit report.
- Ld. Principal Commissioner of Income Tax ('PCIT'), noticed this substantial change in shareholding pattern and reached the conclusion that the Assessee cannot utilize its total brought forward business loss under section 79 of the Act and accordingly set aside the assessment order passed.
- No set-off of business loss incurred in the earlier years, which were carried forward have been claimed or allowed in the assessment order.

ITAT's Judgement

- ITAT held that where the beneficial ownership is with ultimate holding company, loss cannot be disallowed. However, in the instant case, no such loss was claimed by the Assessee.
- Further, with respect to revision proceedings, ITAT observes that the issue flagged by the Ld. PCIT was already enquired into and discussed as per details submitted by the Assessee and has taken a plausible view particularly in the face of the fact that "no set off" of brought forward loss has been claimed by the Assessee during the year under consideration. Accordingly, the assessment order cannot be termed as erroneous under section 263 of the Act.

Nangia's Take

ITAT has delved into the relevant provisions and inferred that ultimate beneficial ownership needs to be checked rather than immediate ownership only. This is a welcome judgement for the taxpayers making genuine structural changes in their businesses.





Reimbursement to non-resident entity in respect of salary paid to seconded employees is not taxable as Fees for Included Service

M/s. Google LLC vs. JCIT (OSD) (IT)/DCIT (IT) Circle 1(1), Bangalore
ITA No. 167/Bang/2021 & ITA No. 688/Bang/2022

Issues	Outcome
Taxability of salary reimbursement in respect of employees seconded in India	In Favour of Assessee

Background

In a recent verdict, Bangalore Tribunal ('Hon'ble ITAT') examined the taxability of reimbursement of payments made by Google LLC ('Assessee') to the employees of Google India Pvt Ltd. ('GIPL') on account of secondment services. The seconded employees were solely working under the control and supervision of GIPL and reconciliation of amount payable in respect of seconded employees and the salaries paid had a marginal difference only which pertains to foreign exchange rate fluctuation. Hon'ble ITAT concluded the matter in favour of the Assessee stating that the given transaction is not taxable as fees for included services ('FIS').

Brief Facts and Contentions

- Assessee, a company incorporated in USA, received reimbursement of payments made on behalf of GIPL for seconding its employees.
- Assessee had issued assignment letters to the seconded employees wherein it was stated that Assessee shall not have the right to recall in absence of GIPL's consent and no employment guarantee would be provided upon returning to the US after the secondment period.
- Further, Assessee deposits the salary of seconded employees to the bank account in USA and claims it as a reimbursement on cost-to-cost basis from GIPL. GIPL had deducted tax at source against salary and other allowances paid to the seconded employees and GIPL had obtained all the statutory registrations such as PF and Foreigners Regional Registrations.

- The Assessing officer ('AO') held that the secondment services are technical and managerial in nature as it provides or pass on a skill set to the concerned manpower of GIPL for execution of technical and managerial jobs and such an arrangement would fall under the ambit of FIS under India-USA DTAA.

ITAT's Judgement

- Hon'ble ITAT relied on the judgement of Jurisdictional High Court in the case of **Flipkart Internet Pvt. Ltd. v. DCIT (WP No.3619/2021)** and held that the amount paid by GIPL to the Assessee in the given case does not come within the 'FIS' under the Act or DTAA as the seconded employees were solely working under the control and supervision of GIPL and not on behalf of the Assessee during the period of secondment. Further, Assessee's role was merely to facilitate payment of salary on behalf of GIPL which was subsequently reimbursed on cost to cost basis without any element of profit.
- ITAT further held that the Revenue has wrongly made assumption that there is a service agreement between Assessee and GIPL for the provision of services through the seconded employees.

Nangia's Take

ITAT has precisely held that mere payment of salary to secondment employees on behalf of the other party which is subsequently reimbursed does not constitute FIS. The nature of payment made i.e. whether the payment is on account of actual services received or mere facilitation of payment made to the ultimate beneficiary of such payment is to be checked. This judgement protects the interests of bona-fide transactions which happen in this regard.



02

Indirect Tax



“Caring for water is caring for us all.”

West Bengal Authority for Advance Ruling ('AAR') held that sale of alcoholic liquor for human consumption is an 'exempt supply', hence requires Input Tax Credit ('ITC') reversal

Brief Facts

- Karnani FNB Specialities LLP ('Applicant') is engaged in the business of providing restaurant services from its lounge bar called "The GRID" and is also indulged in providing catering services as well as banquet renting services. At times, along with such supplies or on a standalone basis, the Applicant, is also engaged in selling/serving of alcoholic liquor for human consumption to its customers.
- Applicant has sought an advance ruling as to whether the Applicant was obliged to reverse ITC under section 17(2) of the Central Goods and Services Tax Act ('CGST Act') read with rule 42 of the Central Goods and Services Tax Rules, 2017 (CGST Rules) in view of the sale of alcoholic liquor for human consumption affected by it at its premises under the facts & circumstances of the present case.


Observations

- Applicant is of the firm view that sale of alcohol being outside the ambit of GST, it is not liable to reverse ITC on such a supply by way of treating it as non-taxable supply under Section 2(78) of the CGST Act (and therefore, exempt under Section 2(47)).
- Department submitted that ITC should be reversed since the Applicant affects the sale of alcoholic liquor for human consumption in addition to the supply of restaurant and outdoor catering services.

Ruling

- AAR ruled that the applicant would be required to reverse ITC in terms of sub-section (2) of section 17 of the GST Act read with Rule 42 of the GST Rules for sale of alcoholic liquor for human consumption.
- AAR explains reversal of tax charged on outward exempted supplies of alcoholic liquor for human consumption would no way lead to discharging of GST liability on outward supply.

[M/s Karnani Fnb Specialities LLP- WBAAR 24 of 2022, Dated 9 February 2023]



Karnataka High Court held that supply of vouchers is neither goods nor services and therefore cannot be taxed

Brief Facts

- Premier Sales Promotion Private Limited ('Petitioner') is engaged in procuring Prepaid Payment Instruments (PPIs) of Gift Vouchers, Cash Back Vouchers and E-Vouchers from the issuers and supplying them to its clients for specified face value. The clients in turn issues them to their employees in form of incentive/ to other beneficiaries as part of a promotional scheme;
- The Petitioner filed an application before the Karnataka Authority for Advance Ruling ('AAR') for a ruling about Taxability of such instruments. Karnataka AAR ruled that supply of vouchers are taxable as goods. Aggrieved by the order of Karnataka AAR, petitioner challenged the said order before Karnataka Appellate Authority for Advance ruling ('AAAR'). Karnataka AAAR affirmed the order passed by Karnataka AAR;
- Aggrieved by the order, Petitioner filed the writ petition before Karnataka High Court against the order of Karnataka Appellate Authority

Observations

- The Petitioner relied on RBI's master direction on issuance and operation of PPIs. Petitioner submitted that vouchers involved in this case are PPIs which do not disclose the goods & services at the time of issuance;
- Petitioner also relied on the following:
 - Sodexo SVC India Private Ltd. Vs. State of Maharashtra;
 - M/s. Kalyan Jewellers India (Appeal filed u/s 100(1) of the Tamil Nadu Goods and Services Tax Act, 2017/Central Goods and Services Tax Act, 2017)
- The vouchers involved in the instant case are semi-closed PPIs wherein the goods and services to be redeemed cannot be identified during issuance. The said vouchers are distributed to the employees of clients who may redeem them against purchases. Cash cannot be withdrawn against these semi closed PPIs which have been issued with the prior approval of RBI;
- On the basis of the above, Hon'ble High Court observed that, in substance the transaction between the petitioner and his clients is procurement of printed forms and their delivery. The printed forms are like currency. The value printed on the form can be transacted only at the time of redemption of the voucher and not at the time of delivery of vouchers. Therefore, the issuance of vouchers is similar to pre-deposit and not supply of goods or services.

Decision

- Vouchers are neither goods nor services and therefore cannot be taxed.

[Premier Sales Promotion Private Limited [TS-23-HC (KAR)-2023-GST, Dated 06 February 2023]

03

Transfer Pricing

“Water is life and conservation is the future. Let’s save lives through water conservation.”

ITAT: Justifies 5% mark-up on availing IT Support Services as acceptable under international guidelines

Outcome	Category
In favour of taxpayer	Determination of ALP of Procurement of IT Support Services

Facts of the Case

- The case was under assessment for AY 2017-18 and AY 2018-19, wherein BMW India Financial Services Private Limited (“the taxpayer”) availed IT Support Services from the Associated Enterprise (“AE”/ “BMW Group”), whereas margin/mark-up of 5% has been recharged by the AE from the taxpayer.
- During the course of assessment proceedings, the taxpayer submitted that 5% mark-up policy finds support in multiple international guidance as the nature of services received are a mix of high-end and low-end services.
- On the other hand, the Transfer Pricing Officer (“TPO”), Ld. TPO observed that no mark-up was warranted on third party cost, since no value addition done by BMW Group and alleged that third party costs (as allocated by AE to the taxpayer) already included a mark-up, therefore markup of 5% charged by AE from taxpayer is double mark-up which is not justifiable. Accordingly, The Ld. TPO accordingly selected ‘Other Method’ as Most Appropriate Method (“MAM”) instead of Transactional Net Margin Method (“TNMM”) by using service provider as tested party and based thereon, proposed an upward TP adjustment.
- Aggrieved by the order of the TPO, the taxpayer filed an appeal before the Ld. Dispute Resolution Panel (“DRP”). Ld. DRP held that the Ld. TPO has correctly noted in this regard that the taxpayer merely performs coordination services, adding no value to the functions that the third party performs. Thus, no-mark-up from the taxpayer is required.
- Aggrieved by the order of Ld. DRP, the taxpayer filed an appeal before Income Tax Appellate Tribunal (“ITAT”)

ITAT's Ruling

Following observations were drawn by ITAT:

- ITAT held that BMW Group recovered from the taxpayer, the costs incurred by it in relation to IT support services, which inter alia, also included the purchase cost of certain IT products/ licenses from third parties. In this regard, it is pertinent to note that the cost of external licences purchased by the BMW group is allocated without a mark-up;
- ITAT relied on the screenshot of SAP in paper book, in which detailed break-up of service type Wide Area Network ("WAN") received from the *third-party vendor i.e., Singtel*, and corresponding amounts cross charged by BMW Group to the taxpayer in India, has been provided.
- Further, ITAT observed that third party agreements with third party vendor entered into by BMW Group documents, the fixed price which shall be charged to BMW Group for provision of WAN services at the location of the taxpayer in India. The amount charged by third party vendor is then passed on to the taxpayer in India by BMW Group along with additional costs which BMW Group must have incurred in connection with such services with a mark-up of 5%.
- ITAT also observed that a mark-up of 5% policy for the IT services rendered is an acceptable markup by international guidelines and as per EU Joint Transfer Pricing forum.
- In view of the above, **ITAT held that it cannot be expected that the parent organization supply support services without charging anything for such services rendered. Hence, the mark-up of 5% is sufficient to recoup the expenditure involved by the AE in exploration, inspection, testing and finalization of suitable software** and directs that no other expenses other than 5% mark-up be allowed on the support services rendered by the AE.

Source: BMW India Financial Services Pvt Ltd [TS-68-ITAT-2023(DEL)-TP]



Nangia's Take

The instant ruling is addition to plethora of rulings to the matter of intra-group services. The verdict in the instant case provide that no independent third party would agree to provide any intra-group services without keeping an arm's length profit element over and above the cost of services.

Further, ITAT in the instant ruling clearly observed that taxpayer established the actual received of intra group IT support services from AE through back up documents like screenshot of SAP. Additionally, ITAT also observed that a mark-up of 5% policy for the IT support services procured is an acceptable markup by international guidelines and as per EU Joint Transfer Pricing forum.

In view of the above, the instant ruling is a clear signal to the taxpayers that the taxpayers are required to substantiate the actual receipt of services by way of producing relevant documents in the form of communication/Reports/memos etc. and further establish the arm's length pricing for such procurement of services.

04

Regulatory



“Water taught lessons that the rest of the world could not. Save Water.”

Updates under companies act, 2013 (“ACT”)

Extension of time for filing of 45 company e-forms

According to General Circular No. 04/2023 dated February 21, 2023, issued by the Ministry of Corporate Affairs (MCA), there is a new deadline of March 31, 2023, for filing 45 forms that were originally due between February 7, 2023, and February 28, 2023, without incurring any additional fees.

Additionally, Form PAS-03, which closed for filing in Version-2 on January 20, 2023, and was launched in Version-3 on January 23, 2023, can also be filed without additional fees until March 31, 2023, if the due date for filing falls between January 20, 2023, and February 28, 2023.

Furthermore, the circular states that companies can now reserve names under sub-section (5) of section 4 of the Act for an additional 20 days. Additionally, the resubmission period under rule 9 of Companies (Incorporation) Rules, 2014, which was originally between January 23, 2023, and February 28, 2023, is extended by 15 days. These changes have been made to provide relief to companies that may have been struggling to meet previous deadlines.

Draft digital competition act

To create the Digital Competition Act, the Indian government has established a committee comprising 16 members, including union secretaries, law experts, and industry stakeholders. The committee, headed by Manoj Govil, secretary in the Ministry of Corporate Affairs, will review the current Competition Act, 2002 and associated regulations to determine their effectiveness in tackling anti-competitive behavior in the digital economy. The Competition Commission of India will assist the committee in this endeavor.

The objective of the act is to introduce regulations for digital markets, which will include defining Systemically Important Digital Intermediaries (SIDIs) that require more stringent rules. The committee will feature representatives from several government agencies and will investigate global best practices in regulating digital markets. Major tech companies such as Google, Apple, Facebook, and Amazon have come under scrutiny for possible market abuses, and last year, the CCI imposed fines and ordered changes to Google's business model in two separate cases.

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

SEBI notifies governance norms for REITS, INVITS similar to listed cos

SEBI has recently issued governance guidelines for Real Estate Investment Trusts (REITs) and Infrastructure Investment Trusts (INVITS), which are comparable to those for publicly traded companies. SEBI has rationalized various provisions, such as those concerning the auditor's term, leverage calculation, and distribution of unclaimed or unpaid dividends. The regulator has also revised some provisions that do not apply directly or are already specified for REITs and INVITS under their relevant regulations. The board of directors for REITs or INVITS must include at least six directors, with one being a woman independent director. The quorum for board meetings must be at least one-third of the total number of directors or three directors, whichever is greater, with at least one independent director. Additionally, these investment instruments must have a vigil mechanism, including a whistle-blower policy for reporting genuine concerns by directors and employees. While REITs and INVITS are relatively new in India, they are popular in international markets. REITs consist of portfolios of commercial real estate assets, while INVITS consist of portfolios of infrastructure assets such as highways and power transmission assets.

Updates under reserve bank of India (RBI)

Prime ministers of India and Singapore launch real-time payment systems linkage between the two countries

Prime Minister Narendra Modi, his Singaporean counterpart Lee Hsien Loong, and RBI governor Shaktikanta Das launched a cross-border linkage between India and Singapore using their respective fast payment systems, UPI and PayNow. According to PM Modi, this marks a new milestone in relations between the two countries. The UPI-PayNow linkage will allow users in both countries to make safe, instant, and cost-effective cross-border funds transfers using their mobile apps.

Initially, State Bank of India, Indian Overseas Bank, Indian Bank, and ICICI Bank will facilitate inward and outward remittances, while Axis Bank and DBS India will facilitate inward remittances. Singapore users can access the service through DBS-Singapore and Liquid Group, with more banks being added in the future. The UPI-PayNow linkage is the result of extensive collaboration between the Reserve Bank of India, Monetary Authority of Singapore, and payment system operators from both countries, along with participating banks and non-bank financial institutions. This linkage aligns with the G20's financial inclusion priorities and represents a significant development in infrastructure for cross-border payments between India and Singapore, making transactions faster, cheaper, and more transparent.

Updates under competition commission of India ('CCI')

CCI approves acquisition of 100% of issued and outstanding share capital and sole control of VGP holdings LLC by gateway velocity holding CORP

The Competition Commission of India (CCI) has given its approval for the acquisition of VGP Holdings LLC (Target) by Gateway Velocity Holding Corp., a wholly owned subsidiary of Saudi Arabian Oil Company (Saudi Aramco).

The Target is a limited liability company incorporated under the laws of Delaware, and it primarily sells lubricants, coolants and AdBlue (diesel exhaust fluid) in India. The acquisition is being carried out through a proposed combination, which involves the transfer of one of Valvoline Inc.'s business segments, the Global Products Business, to the Target after a pre-closing reorganization. The Global Products Business sells Valvoline and other branded and private label engine and automotive preventive maintenance products in several countries. Saudi Aramco is primarily engaged in prospecting, exploring, drilling, and extracting hydrocarbon substances and processing, manufacturing, refining and marketing these substances, including in India, where it is primarily engaged in the marketing and selling of hydrocarbons and derivatives such as polyethylene, polypropylene, resins, lubricants and base oils.

Updates under production linked incentive scheme ('PLI')

Pharma sector gets first tranche of payment under PLI scheme

The Indian government's Department of Pharmaceuticals has given the first tranche of incentives, amounting to Rs 166 crore, to four selected companies under the Product Linked Incentive (PLI) scheme for the pharmaceutical sector. The scheme, which aims to enhance India's

manufacturing capabilities and product diversification, has a total financial outlay of Rs 15,000 crore over six years and has so far selected 55 applicants, including 20 Micro, Small & Medium Enterprises (MSMEs).

The incentives for incremental sales to selected participants under different categories of products are at varying rates over the years, ranging from 10 percent to 3 percent. The scheme has generated an investment of Rs 16,199 crore by these 55 applicants in the first year of implementation and has generated employment for 23,000 persons so far against the expected employment of one lakh over a six-year scheme period.

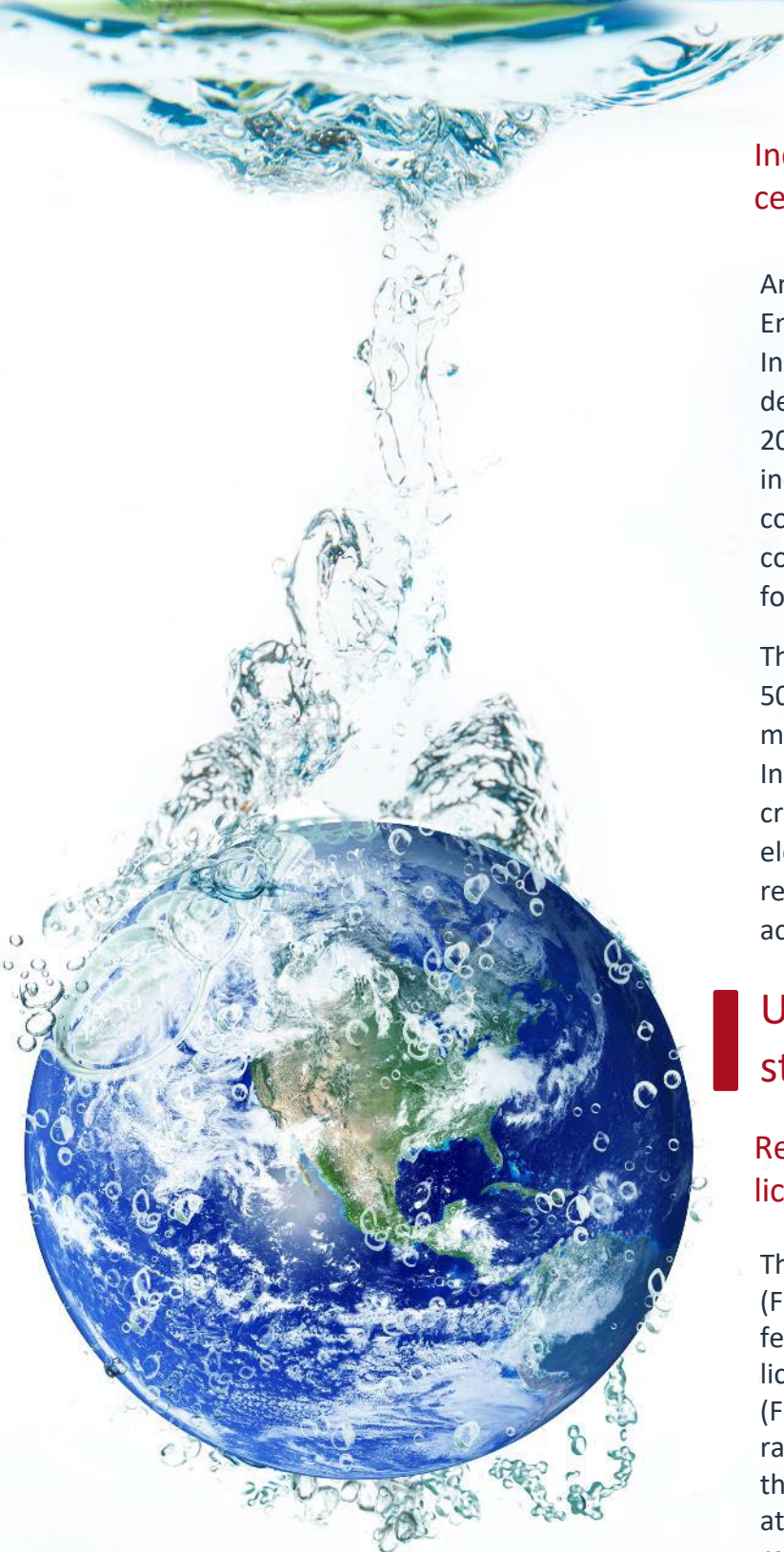
The department has received an incentive claim of about Rs 544 crore from 15 applicants, and incentives of about Rs 221 crore from four applicants have been found eligible, of which 75 percent has been released, and the remaining incentives are under examination. As of January 31, 2023, sales of about Rs. 36,000 crore have been reported by the select 55 applicants.

Dot starts doling out production-linked incentives, GX telecom gets first cheque

The Department of Telecom in India has begun providing production-linked incentives (PLI) to manufacturers who have completed their targets for 2021-22 under the PLI scheme aimed at promoting local manufacturing. One of the recipients of the incentives is GX Telecom, a telecom gear maker, who plans to use the funds for developing products made in India.

Two other companies, VVDN Technologies and Commscope India, have submitted their claims for incentives, which are currently being processed. The scheme aims to generate additional sales of Rs 2.45 lakh crores and create over 44,000 new jobs during the five-year period starting from April 1, 2022.





India needs Rs 33,750 Cr to set up li-ion cell, battery MFG plants: CEEW

An independent study by the Council on Energy, Environment and Water (CEEW) has found that India needs up to 903 GWh of energy storage to decarbonize its mobility and power sectors by 2030. The study recommends that India should increase R&D investments, focus on battery cell component manufacturing and reducing material costs, and support recycling to reduce the need for new materials.

The government has set a PLI target of setting up 50 GWh of lithium-ion cell and battery manufacturing plants, and CEEW estimates that India needs investments worth up to Rs 33,750 crore (USD 4.5 billion) to achieve this target. The electric vehicle market in India is expected to reach annual sales of 1-crore units by 2030, according to the Economic Survey 2022-23.

Updates under food safety and standards of India (FSSAI)

Reduction of initial application fee for FSSAI license

The Food Safety and Standards Authority of India (FSSAI) has amended the process of payment of fee to be paid at the time of applying for FSSAI license. Previously, the Food Business Operator (FBO) was required to pay a consolidate fee ranging from INR 2,000/- to INR 7,500/-, but now they are only required to pay INR 1000/- plus GST at the time of filing the application, with the remaining amount to be paid after the application is scrutinized by the licensing authority.

A time limit of 30 days has been set for payment of the remaining fee, and non-submission within the time limit will result in the rejection of the application. This amendment is expected to make it easier for new businesses to obtain an FSSAI license.

Other regulatory updates

Department of telecommunication (DOT)

New Telecom Bill: National security, consumer safety to be priority

The Indian government plans to introduce a telecom bill in Parliament that will regulate over-the-top communication apps such as WhatsApp and Signal for national security and consumer safety, but these apps will not be subject to telecom operator regulations or fees. The Department of Telecom has resolved issues related to the powers of the Telecom Regulatory Authority of India and broadcasting ministry domain overlap. The revised draft is expected to clarify which apps will be regulated and exclude streaming platforms and food delivery apps. It is unclear if there will be another round of public consultations.

Orders/judgements

Registrar of companies (ROC)

Order for Penalty for Violation of Section 207 of the Companies Act, 2013

ROC, Gujarat, Dadra & Nagar Haveli has passed an order dated 31st January, 2023 under Section 454 of the Companies Act, 2013 (Act) read with Companies (Adjudication of Penalties) Amendment Rules, 2019 for violation of Section 207 of the Act in the matter of M/S Haitian Huayuan Machinery (India) Private Limited.

As per Section 207(3) the Registrar or inspector making an inspection or inquiry shall have all the powers as are vested in a civil court under the Code of Civil Procedure, 1908, while trying a suit in respect of the following matters, namely: -

- the discovery and production of books of account and other documents, at such place and time as may be specified by such Registrar or inspector making the inspection or inquiry;
- summoning and enforcing the attendance of persons and examining them on oath; and
- inspection of any books, registers and other documents of the company at any place.

Further, if any director or officer of the company disobeys the direction issued by the Registrar or the inspector under this section, **the director or the officer** shall be punishable with imprisonment which may extend to one year and with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees.

Also, Section 450 states that if a company or any officer of a company or any other person contravenes any of the provisions of this Act or the rules made thereunder and for which no penalty or punishment is provided elsewhere in this Act, the company and every officer of the company who is in default or such other person shall be liable to a penalty of INR 10,000, and in case of continuing

contravention, with a further penalty of INR 1,000 for each day after the first during which the contravention continues, subject to a maximum of INR 2,00,000 in case of a company and INR 50,000 in case of an officer who is in default or any other person.

- An inquiry u/s 206 was ordered by Registrar wherein inquiry officers has issued summon to the Directors/Officers including **Statutory Auditor** of the Company (**Price Waterhouse Chartered Accountants LLP**) for examine them on oath.
- Auditors was failed to present before the inquiry officer and hence are liable to penalize for violation of Section 207 of the Act.
- Auditors replied on 23.11.2022 to the adjudication notice dated 18.10.2022 that notice for summon dated 08.03.2022 was received by them in the evening on 14.03.2022 and hence they were not able to appear before the inquiry officer at the requested time on 14.03.2022.
- Thereafter, notice u/s 454 was issued to the Mr. Gautam Wadhwa, Partner of PWC and matter fixed for hearing on 30.01.2023. Ms. Khushnam, present partner of PWC and Mr. Gautam, Ex-Partner of PWC in the hearing pleaded for not charging any penalty.
- The presenting officer submitted that auditor disobeys the summons and their willingness to appears in O/o ROC is not sustainable.
- Hence auditors firm is liable to penalize u/s 450 as there is no penal provisions provided for violation of section 207(3) of the Act with respect to non-compliance on the part of Auditors Firm.
- Penalty imposed: 10,000 + 1,000 per day = Maximum 50,000 (u/s 450) = **50,000**

Order for Penalty for Violation of Section 118 of the Companies Act, 2013

ROC, NCT of Delhi & Haryana has passed an order dated 13th February, 2023 under Section 454 of the Companies Act, 2013 (Act) read with Companies (Adjudication of Penalties) Amendment Rules, 2019 for violation of Section 118 of the Act in the matter of M/S Riot Games Private Limited.

As per Section 118(10), every company shall observe Secretarial Standards with respect to general and Board meetings specified by the Institute of Company Secretaries of India (ICSI) constituted u/s 3 of Company Secretaries Act, 1980 and approved as such by the Central Government. Moreover, if any default is made in complying with the provisions of this section in respect of any meeting, the company shall be liable to a penalty of INR 25,000 and every officer of the company who is in default shall be liable to a penalty of INR 5,000.

Further, SS-1 requires that every company shall hold at least 4 meetings of its Board in each of Calendar year with a maximum interval of 120 days between any 2 consecutive meeting.

- Company conducted its 1st Board meeting for the calendar year 2022 on 10th March, 2022 and next Board meeting was to be held on 7th July, 2022 but it was held on 31st August, 2022. Hence the company has made the default in complying with SS-1 read with Section 118(10) of the Act in conducting its BM with delay of 54 days.
- Company suo-motu filed an application dated 06.12.2022 for adjudication of penalty u/s 454 of the Act.
- Show Causes Notices (SCN) dated 17.01.2023 were issued to the company and officer in default.
- Company submitted its reply on 27.01.2023 stating that the non-compliance was unintentional and not committed wilfully. The applicants and the company have not directly or indirectly benefited from the unintentional default that was committed.
- The Adjudicating Officer after considering the reply imposed the penalty on the company and its officers in default under Section 118(11) for violation of SS-1.
- Penalty imposed for the period 08.07.2022 (due date of convening next BM) till 31.08.2022 (date of convening BM) i.e. **54 days**:
 - Company: 25,000/-
 - Officers in default: 5,000/- on each officer in default.



05

Compliance Calendar



“Water is the soul of the Earth.”

Direct Tax	
Due dates	Particulars
2 nd March 2023	Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194-IA in the month of January 2023.
	Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194-IB in the month of January 2023.
	Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194M in the month of January 2023.
7 th March 2023	Due date for deposit of Tax deducted/collected for the month of February 2023.
	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 2023.
15 th March 2023	Due date for payment of fourth instalment of advance tax for the assessment year 2023-24
	Due date for payment of whole amount of advance tax in respect of assessment year 2023-24 for assessee covered under presumptive scheme of section 44AD/ 44ADA
17 th March 2023	Due date for issue of TDS Certificate for tax deducted under section 194-IA in the month of January, 2023
	Due date for issue of TDS Certificate for tax deducted under section 194-IB in the month of January, 2023
	Due date for issue of TDS Certificate for tax deducted under section 194M in the month of January, 2023
30 th March 2023	Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194-IA in the month of February 2023
	Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194-IB in the month of February 2023
	Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194M in the month of February 2023
31 st March 2023	Due date for furnishing Form 67 to claim foreign tax credit for AY 2022-23
	Country-By-Country Report in Form No. 3CEAD for FY 2021-22 by a parent entity or the alternate reporting entity, resident in India, in respect of the international group of which it is a constituent of such group
	Country-By-Country Report in Form No. 3CEAD for a reporting accounting year by a constituent entity (being resident in India) in respect of the international group of which it is a constituent if the parent entity is not obliged to file report under section 286(2) or the parent entity is resident of a country with which India does not have an agreement for exchange of the report etc.

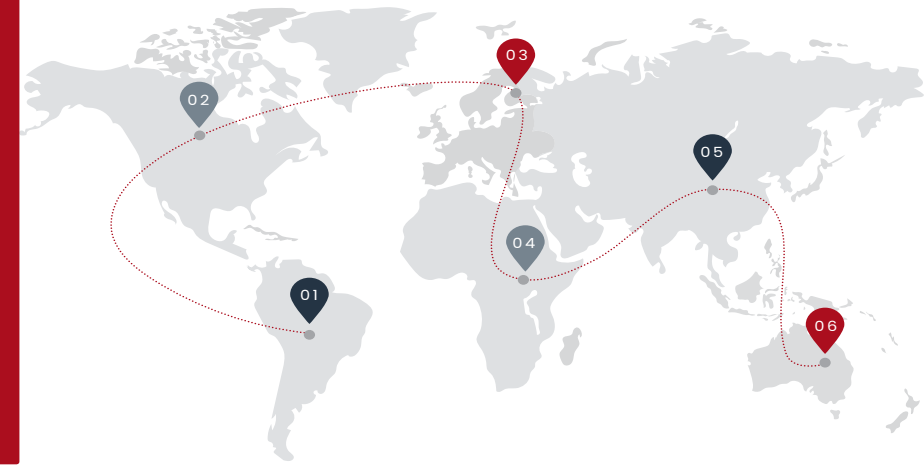
Indirect Tax

S. No.	Compliance Category	Compliance Description	Frequency	Due Date	Due Date falling in March 2023
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	11 th day of succeeding month	For Tax Period February 2023-11 th March 2023
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	20 th day of succeeding month	For Tax Period February 2023-20 th March 2023
3	QRMP Scheme				
	Invoice furnishing facility ('IFF')	<ul style="list-style-type: none"> Optional facility to furnish the details of outward supplies under QRMP Scheme 	Monthly	1st day to 13th day of succeeding month	<ul style="list-style-type: none"> For Tax Period February 2023 - 1 to 13 March 2023
	Form GST PMT-06 (Monthly payment of tax)	<ul style="list-style-type: none"> Payment of tax in each of the first two months of the quarter under QRMP Scheme 	Monthly	25th of the succeeding month	<ul style="list-style-type: none"> For Tax Period February 2023 - 25 March 2023
	Form GSTR-1 (Details of outward supplies)	<ul style="list-style-type: none"> Registered person having aggregate turnover up to INR 5 crores who have opted for QRMP Scheme 	Quarterly	13th day of the subsequent month following the end of quarter	<ul style="list-style-type: none"> For the quarter January 2023 to March 2023 - 13th April 2023

Form GSTR-3B	<ul style="list-style-type: none"> 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 	Quarterly	22 nd day of the subsequent month following the end of quarter	<ul style="list-style-type: none"> For the quarter January 2023 to March 2023- 22nd April 2023 	
Form GSTR-3B	<ul style="list-style-type: none"> Registered person with aggregate turnover up to INR 5 crore (opted for QRMP Scheme) having place of business in Group 2 states and union territories 	Quarterly	24 th day of the subsequent month following the end of quarter	<ul style="list-style-type: none"> For the quarter January 2023 to March 2023- 24th April 2023 	
4	Form GSTR-6 (Return for Input Service distributor)	<ul style="list-style-type: none"> Return for input service distributor 	Monthly	13 th of the succeeding month	For Tax Period February 2023-13 March 2023



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Regulatory

Segment	Particulars	Due dates
ECB Borrowers	ECB Return (ECB-2)	7 th March, 2023

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