Nangia Andersen LLP

Newsletter

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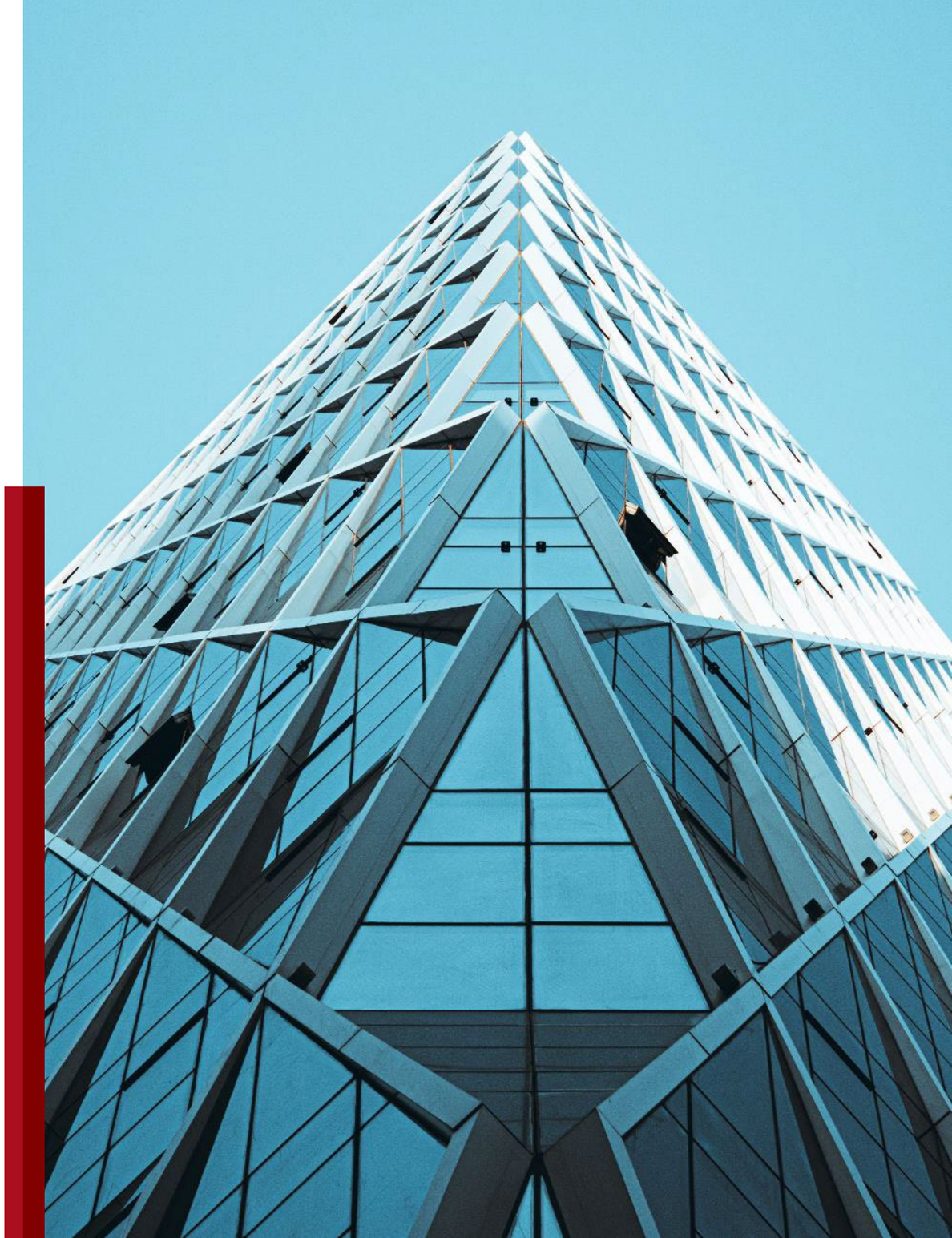

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What's

Inside?

01 Direct Tax

In absence of FTS clause in DTAA and Permanent Establishment (PE) in India, overseas payment to avail technical services shall not be chargeable to tax in India

Deputy Commissioner of Income-tax, vs Kalpataru Power Transmission Ltd.

IT APPEAL NO. 35 (AHD.) OF 2021

Issue(s)	Outcome
Payment in respect of designing services falls in the ambit of FTS ('Fees for Technical Services') or Royalty. Also in the absence of FTS clause in DTAA, whether such payment shall chargeable to tax in India.	In Favour of Assessee

Background

In a recent verdict, Income Tax Appellate Tribunal, Ahmedabad Bench ('Hon'ble ITAT') examined the taxability of payments made by Kalpataru Power Transmission Ltd ('Assessee') to Oilstone Technologies DMCC of UAE ('Oilstone UAE') for services towards towers design including designing of its foundation and structural drawing and held that this is a contract for provision of services and not for granting rights to the assessee to use an existing design and therefore, the payments made under service agreement cannot be regarded as royalty.

With regard to the taxability of FTS, ITAT categorically holds that there being no provision in India-UAE DTAA ('Double Taxation Avoidance Agreement') to tax fees for Technical Services, payment made by assessee to avail technical service to Oilstone UAE, would be taxed as per Article 7 but in absence of PE ('Permanent establishment') in India, said income was not chargeable to tax in India.

Brief Facts and Contentions

- Assessee is an Indian Company engaged in the business of Engineering, Procurement and Construction (EPC) Contracts relating to infrastructure. In one of the EPC Project executed by the assessee's Branch Office in Uganda, the assessee has made payment for designing services Oilstone UAE and no tax has been deducted at source on such payment by the assessee on the ground that such payment was not chargeable to tax in India.
- The assessee was issued show cause notice as to why the assessee should not be treated as "assessee in default" u/s. 201(I) and u/s. 201(IA) of Income Tax Act, 1961 ('the Act') for non-deduction of tax on payments made to Oilstone UAE. The assessee contended before the TDS Officer that payment under consideration was fees for technical services (FTS) and not royalty, and therefore section 195 of the Act as not applicable if the sum was not chargeable to tax in India.
- The assessee's submission was not found satisfactory by the TDS Officer. Accordingly, the TDS Officer held that the assessee had made payment to Oil stone UAE was in the nature of royalty and since the assessee had failed to deduct tax on such payment, it was in default and liable to provisions u/s. 201(1) & 201(1A) of the Act.
- Aggrieved with the aforesaid order, the assessee filed appeal before CIT(Appeals) challenging the additions made/treatment given by the TDS Officer.

CIT(A) Order

- The Ld. CIT(Appeals) observed that there was no existing design of tower structure which was supplied to the assessee, but in the instant facts it is a case of actual rendering of services where Oilstone UAE was required to create a new design in the course of rendering the service under the Service Agreement based on the specifications provided by the assessee. As per the agreement, once designs were prepared by Oil Stone UAE, the ultimate customer had the exclusive ownership of said design and all rights including in any of such design belonged to the ultimate customers.
- The CIT(Appeals) held that from the facts it is evident that the assessee entered into a service agreement to generate designs and not for granting rights to the assessee to use an existing design and therefore, the payments made under service agreement cannot be regarded as royalty.
- With regards to taxability of payments as fee for technical services, Ld. CIT(Appeals) held that since in this case the services were provided by Oil Stone, UAE to the assessee outside of India and also since the services were utilised for the purpose of the business of the assessee outside of India, the case of the assessee was covered by the exclusion clause provided in section 9(1)(vii)(b) of the Act and the payment was not chargeable to tax in India under domestic law as FTS.

ITAT’s Judgement

- ITAT observe that since fresh designs involve active rendering of services as per the specifications of the assessee in the service agreement, the aforesaid agreement does not qualify as royalty agreement and Ld. CIT(Appeals) has correctly inferred that in the instant set of facts, the payments are towards rendering of Technical Services.
- ITAT is of the considered view that in absence of FTS clause in the India UAE Tax Treaty, payment for the aforesaid services cannot be taxed in India, unless it is established that Oilstone UAE has a PE in India. In the instant facts, there is no allegation that Oilstone UAE has Permanent Establishment (PE).
- Accordingly, since the payment do not qualify as FTS under the India UAE Tax Treaty in absence of FTS clause in the said treaty, ITAT holds that there was no requirement for the assessee to withhold taxes on such payments made to Oilstone UAE.

Nangia Andersen LLP’s Take

In the above judgement, ITAT has rightly held that the critical factor of royalty is granting of rights. Further, the taxability of overseas payment in respect of technical services arises only when FTS clause is present in the respective DTAA. It can be inferred that in the absence of FTS clause & PE in India, FTS cannot held taxable.

Revenue to consider manually filed ITR post-merger on the directions of High Court; HC upholds the ruling of Apex Court in case of Dalmia Power Limited

TSI Business Parks (Hyderabad) Pvt Ltd. vs The Deputy Commissioner of Income-Tax

W.P. No. 6892/2023

Issue(s)	Outcome
Revised return filed after the statutory due date owing to the amalgamation of the business	In Favour of Assessee

Background

In a recent verdict, Telangana High Court ('Hon'ble HC') directed the Revenue to accept the manually filed revised ITR form under section 139 of the Income Tax Act, 1961 ('the Act'). HC observed that SC ruling in **Dalmia Power** is squarely applicable to the present case as the revised return could not be filed due to circumstances beyond the control of the Assessee.

Brief Facts and Contentions

- The Assessee is engaged in the business of developing, constructing and managing residential and commercial properties. The Assessee (transferee company) along with M/s. Millenial Business Park Private Limited (transferor company) entered into a transaction of amalgamation.
- A joint petition was filed by both transferee and transferor company before the National Company Law Tribunal, Hyderabad ('NCLT'). Ultimately, NCLT approved the scheme of amalgamation and the transferor company got merged with the transferee company with effect from 01.04.2020.

- Thereafter, with respect to revised return of income for the AY 2021-22 following amalgamation, the Assessee communicated to Revenue on 16.12.2022 that after amalgamation, the entire accounts had to be revised and in the process, the due date for filing revised income tax return for the said AY being 31.03.2022 had long expired.
- Consequently, the Assessee had filed the revised return of income manually on 23.12.2022 relying upon the decision of the Supreme Court (Hon'ble SC) in case of **Dalmia Power Limited v. Assistant Commissioner of Income Tax, Circle-I Trichy.**
- As a result, the Revenue stated that the manual return of income filed by the petitioner on 23.12.2022 for the concerned AY was beyond the statutory due date of filing the revised return of income and in absence of any order of condonation of delay by the competent authority, revised return of the Assessee was rejected.
- Aggrieved by the order of the Revenue, the Assessee preferred a writ petition before the Hon'ble HC.

High Court's Judgement

- Hon'ble HC observed that the scheme of amalgamation was approved and sanctioned by the NCLT after the due date of filing the revised return for the AY 2016-17.
- Hon'ble HC referred to the ruling of Hon'ble SC in case of **Dalmia Power Limited** (supra) wherein the Apex Court held that "as per the provision of section 170 of the Act, it is incumbent upon the Income Tax Department to assess the total income of the successor company in respect of the previous assessment year after the date of succession."
- In conclusion, the Hon'ble HC upheld the above ruling in the present case and observed that because of circumstances beyond the control of the Assessee, the revised return could not be filed before the statutory due date.
- As a result, Hon'ble HC set aside the order of the Revenue and keeping in mind the provisions of section 170 of the Act, directed the Revenue to consider the revised return filed by the Assessee.

Nangia Andersen LLP's Take

This judgement by Telangana High Court is a shield provided to the taxpayer keeping in mind the practical difficulty faced by the taxpayer owing to expiry of due date to revise ITR online. The taxpayer has been allowed to file a manual ITR to protect the interest of both Revenue & Assessee.

Central Board of Direct Taxes (“CBDT”) has issued guidelines for removal of doubts regarding TDS on Income from Online Gaming

Circular No. 5 of 2023

Background

Finance Act 2023 has inserted a new section 194BA in Income Tax Act, 1961 (“the Act”) requiring a person who is responsible for paying any other person any income by the way of winnings from online gaming to deduct tax on net winnings at the rates in force, at the time of withdrawal of amount as well as at the end of financial year. The method of computing net winnings was required to be prescribed. In this respect, CBDT has now prescribed the method under Rule 133 of the Income-tax Rules (‘Rules’) which is discussed as under:

Net Winnings

- Net winnings = A-(B+C), where
  - A is the amount withdrawn from the user account,
  - B is the non-taxable deposit made during the year
  - C is the opening balance of the user account
- User account will include every account of the user registered with an online gaming intermediary.

Bonus

- Bonus, referral bonus, incentives etc. given by online game intermediary to the user are taxable deposit and will increase the balance in user account and is not deducted while calculating net winnings. But if the bonus, referral bonus, incentives etc. are for the purpose of playing and cannot be withdrawn, then they will not be considered while calculating net winnings.

Withdrawal

- Further transfer from user account to another account shall be considered as withdrawal. However, transfer from one account to another account of the user, shall not be considered as withdrawal or deposit, as the case maybe.

Insignificant Withdrawal

- Tax may not be deducted on withdrawal on satisfaction of all of the following conditions, namely:-
  - Net winnings comprised in the amount withdrawn does not exceed ₹ 100 in a month;
  - Tax not deducted on account of this concession is deducted at a time when the net winnings comprised in withdrawal exceeds ₹ 100 in the same month or subsequent month or if there is no such withdrawal, at the end of the financial year; and
  - The deductor undertakes responsibility of paying the difference if the balance in the user account at the time of tax deduction under section 194BA of the Act is not sufficient to discharge the tax deduction liability.

Winning in Kind

- In case the net winnings are in kind, the person responsible for paying shall before releasing the winning amount ensure that the tax has been paid.
- Further the valuation of winnings in kind will be based on fair market value except in following cases: -
  - The online game intermediary has purchased the winnings before providing it to the user. In that case the purchase price shall be the value for winnings.
  - The online game intermediary manufactures such items given as winnings. In that case, the price that it charges from its customers for such items shall be considered as the value for such winnings

02 Indirect Tax

Advance Rulings & Judgements

Appellate Authority for Advance Ruling (AAAR) upheld the order issued by Uttar Pradesh Authority for Advance Ruling (AAR) and held that works contract services in relation to water supply projects provided to Uttar Pradesh Jal Nigam (UPJN) would attract GST rate of 18% instead of 12% as UPJN does not qualify as 'Local Authority' as per Section 2(69) of Central Goods and Services Tax Act, 2017 (CGST Act).

Brief Facts

- M/s. Indian Hume Pipe Company Limited ('Applicant') is registered in the state of Uttar Pradesh and it undertakes contracts for construction of head works sumps, pump rooms, laying jointing of pipeline and commissioning and maintenance of the entire work for water supply projects/sewerage projects/facilities.
- The Customers of the Applicant include Government bodies/entities/authorities mainly, M/s Uttar Pradesh Jal Nigam for the aforementioned work. M/s Uttar Pradesh Jal Nigam hold PAN AALU0256C under Income Tax Act, 1961 and GSTIN- 09AAALU0256C320 under the Goods and Service Tax Act, 2017.
- Applicant contended that works contract services provided in relation to water supply to M/s Uttar Pradesh Jal Nigam continues to attract concessional rate of GST at the rate of 12% since the same is classified as Local Authority even after issuance of Notification 15/2021 – Central Tax (Rate) dated 18th November 2021 which substituted the words "Union territory, a local authority, a Governmental Authority or a Government Entity" with "Union territory or a local authority" in Notification No. 11/2017 – Central Tax (Rate).

Issue Involved

- Whether the supply of works contract services in relation to water supply by the Applicant to M/s Uttar Pradesh Jal Nigam is eligible for charging GST at the concessional rate of 12% post issuance of Notification 15/2021 – Central Tax (Rate) dated 18th November 2021 read with Notification No. 22/2021 – Central Tax (Rate) dated 31st December 2021.

Decision

- AAAR held that M/s Uttar Pradesh Jal Nigam is a body corporate formed by the State legislature under UPWSS Act enacted by UP State Legislature and cannot be classified as local authority as it is not entrusted with power to raise funds for the furtherance of their activities and the fulfillment of their projects by levying taxes, rates, charges, or fees. It is essential that control or management of fund must vest in hands of the entity to be classified as Local Authority as per Section 2(69) of CGST Act. Hence, works contract services in relation to water supply provided by the Applicant to M/s Uttar Pradesh Jal Nigam attracts 18% GST liability.

[Uttar Pradesh AAAR Appeal Order No. 05/AAAR/10/03/2023 dated 10 March 2023]

Lump Sum amount of bonus received by applicant-service provider from service recipient for paying to service provider's employees is to be taxed at same GST rate as applicable for main service being canteen service.

Brief Facts

- M/s. Foodsutra Art of Spices Private Limited ('Applicant') is registered in the state of Telangana and it is involved in business of hotels, camping sites and other provision of short-stay accommodation and restaurant facilities operated in connection with the provision of lodging.
- The Applicant is providing canteen services to ITC limited ('Service Recipient') and it is submitted that along with consideration on provision of regular canteen services, they are receiving a Lump Sum amount of bonus from service recipient for paying to their employees.
- The Applicant contended that they are taking the bonus consideration from service recipient which is meant to be paid to their employees, by acting as an intermediary and therefore it will be taxable at the rate of 18% as the same is separate consideration received on account of their services provided as intermediary and it cannot be classified as restaurant services which are taxable at 5% GST under HSN 9963.

Issue Involved

- Whether the reimbursement of bonus will be treated as consideration received for provision of canteen services (main services) to the employees of the service recipient and attract 5% GST rate.

Decision

- AAR held that such reimbursement of bonus will be taxable at 5% GST if no commission is retained by the applicant in the capacity of an intermediary, as the same will be treated as consideration received for supply of main services i.e., canteen services under HSN 9963.
- Further, if the applicant is retaining some amount in terms of commission as an intermediary, then the same will be taxable at 18% GST and balance amount is taxable at 5% GST as per above contention

[Telangana Advance Ruling No. 07/2023 in A.R.Com/19 of 2022, dated 12 April 2023]

03 Transfer Pricing

ITAT adopted Interest saving approach for guarantee commission; floating rate over fixed rate for interest on loans

Outcome: In favour of taxpayer

Category: Corporate guarantee fee; Interest on loan; rule of consistency

Facts of the case

- JSW Steel limited ("the taxpayer") is one of the largest integrated steel companies in India having very strong networks globally and is the flagship company of the JSW Group.
- During the year under consideration, the taxpayer had given guarantees to third party lenders and several banks on behalf of its overseas associated enterprises ("AE"). Also, it has been observed that the loan agreement entered into by the taxpayer with its AE has been extended and the same was reported by the taxpayer as an international transaction.
- The taxpayer adopted 'Interest Saved Approach' for determining the arm's length nature of the guarantee fee payable by the overseas entities under the 'Other Method' ("AOM") for benchmarking the international transaction of guarantee fee payable by the AE to the taxpayer. This approach measures guarantee fee by analysing the benefit conferred by the guarantee, i.e., the reduction in lending rates due to the guarantee. Thus, the arm's length guarantee fee shall be difference between the rate normally charged by third party lenders and banks and the reduced rate charged due to the guarantee provided by the taxpayer.
- Further, the taxpayer, considering the estimated creditworthiness of the AE, undertook a search on the Reuters Dealscan Database for uncontrolled comparable unguaranteed loan arrangements in the same market as the taxpayer, having the same terms and conditions and creditworthiness.
- The taxpayer in relation to international transaction of extension of loan facility provided to its AE, conducted a search on Reuter's Dealscan Database, taking into consideration, search criteria such as credit rating of the borrower; location/region of the borrower; currency denomination; selection of time period; tenure/maturity; and other qualitative filters.
- During the course of proceedings, the Assessing Officer ("AO") referred the case to the Transfer Pricing Officer ("TPO") as per Section 92CA of the Act.

- The TPO, observed that taxpayer had not made any suo moto adjustment based on the ALP guarantee commission, and thus, did not consider the 'Interest Saved Approach' adopted by the taxpayer. Accordingly, TPO benchmarked the corporate guarantee by considering the rates for financial guarantee charged by the banks considering Comparable uncontrolled price ("CUP") method as the most appropriate method ("MAM") charging guarantee fee to be 2% and made upward adjustment.
- Aggrieved by the same, the taxpayer filed an objection before Dispute Resolution Panel ("DRP"), wherein DRP upheld the guarantee commission rate of 2% applied by the TPO without taking into consideration the benchmarking of corporate guarantee transactions using the Interest Saved Approach by the taxpayer.
- Further, in relation in relation to the transaction in the nature of loan provided, the TPO benchmarked the transaction using the Bloomberg database rates over PLR-based rates. Accordingly, the TPO made an upward adjustment on account of short receipt of interest on loans and arrived at a fixed rate of interest as against the floating interest rate as agreed between the taxpayer and AE.
- Aggrieved by the same, the taxpayer filed an objection before DRP, wherein it was held that the taxpayer has not submitted any details regarding the creditworthiness of the AE to find out internal/external CUP for similar borrowings by unrelated parties.
- Aggrieved by the order of DRP, the taxpayer filed an appeal before Income Tax Appellate Tribunal ("ITAT")

ITAT's Ruling

- ITAT relied on the ruling of High Court ("HC") in Everest Kanto Cylinders Ltd wherein it was held that no comparison can be made between guarantees issued by commercial banks and a corporate guarantee issued by the holding company, for the computation of arm's length price of guarantee commission.
- ITAT further observed that there was no examination by the lower authorities of the Interest Saving Approach applied by the taxpayer. Accordingly, issue regarding benchmarking of the international transaction pertaining to corporate guarantee had been remanded back to the TPO for afresh benchmarking of the said international transaction.
- ITAT, further, in relation to the transaction of provision of loan, relied upon the tribunal ruling in case of JSW Energy Ltd vs DCIT wherein it was held that floating rates of interest are appropriate for benchmarking of interest on loan transactions.
- ITAT, thus, held that TP adjustment on account of short receipt of interest was disallowed as it was due to varied usage of comparable interest rates.

Source: JSW Steel Ltd [TS-269-ITAT-2023(Mum)-TP]

Nangia Andersen LLP's Take

Benchmarking of Corporate guarantee has been a highly litigated issue in the history of transfer pricing rulings. The Indian Transfer Pricing statute provides for no express guidance for benchmarking the international transaction of guarantee fee. Thus, taking into consideration the basic intent of entering into such international transaction, and the commonly used industry practice, the Interest Saved Approach is widely accepted as the most appropriate methodology for benchmarking such international transaction.

The present ruling highlights the acceptance of such method by the higher tax authorities, wherein the ITAT has acknowledged the use of Interest Saved approach for benchmarking the subject international transaction and remanded the matter back to the TPO for statistical purposes. This shall prove to be beneficial to the taxpayers entering into similar transactions, acting as a landmark judicial precedent for reference during the benchmarking exercise.

04 Regulatory

Updates under companies act, 2013 ("ACT")

Companies (compromises, arrangements and amalgamations) amendment rules, 2023

The Ministry of Corporate Affairs (MCA) *vide* notification dated May 15, 2023, issued the Companies (Compromises, Arrangements and Amalgamations) Amendment Rules, 2023 ('Amendment Rules'), with effect from June 15, 2023. Pursuant to the Amendment Rules, Rule 25(5) and Rule 25(6) were substituted with new prescriptions.

The highlights of the Amendment Rules are as follows:

- The erstwhile provisions under section 233 read with rule 25(5) specified that in case of no objection or suggestion or unsustainable objection/ suggestion to the scheme from the Registrar of Companies or Official Liquidator within 30 days, the Central Government (CG) was to issue a confirmation order of scheme of merger or amalgamation in Form No. CAA.12.

Pursuant to the Amendment Rules, clear timelines have been prescribed for the aforesaid procedure in the following manner:

Provision	Particulars	Timelines
Rule 25(5) of the Rules	Non-receipt of objection from the RoC/ Official Liquidator within a period of thirty days from receipt of copy of scheme.	The CG is required to issue a confirmation order of such scheme of merger or amalgamation in Form No. CAA.12 within fifteen days after the expiry of said thirty days.
Rule 25(6) of the Rules	Objections received within 30 days from the Registrar of Companies or Official Liquidator or both, but CG is of the opinion that such objections are unsustainable, and the scheme is in public interest.	CG to issue confirmation order in Form No. CAA.12 within thirty days of after expiry of thirty days.

Rule 25(6) of the Rules	Objections received within 30 days from the Registrar of Companies or Official Liquidator or both, and CG is of the opinion that the scheme is not in the public interest or in the interest of creditors.	CG may file an application before the Tribunal, within sixty days of the receipt of the scheme, in Form No. CAA.13 stating the objections or opinion and requesting that Tribunal may consider the scheme under section 232 of the Act.

Further, a blanket time limit of 60 days is specified for the CG's approval to the scheme i.e in case the CG does not issue a confirmation order within a period of sixty days of the receipt of the scheme or file the same with the tribunal, the scheme shall be deemed to be approved and an order shall be issued accordingly.

Updates under reserve bank of India (RBI)

Foreign exchange management (current account transactions) (amendment) rules, 2023

The Ministry of Finance on May 16, 2023 notified the Foreign Exchange Management (Current Account Transactions) (Amendment) Rules, 2023 ('Amendment Rules'), to include international credit card payments under the Liberalised Remittance Scheme, by omission of Rule 7 from the Foreign Exchange Management (Current Account Transactions) Rules, 2000 (FEM Rules').

Prior to the Amendment Rules and pursuant to Rule 7 read with Rule 5 of FEM Rules, prior approval of RBI was not required in case of transactions carried out above limits specified under Schedule III of the FEM Rules, in case such transactions were undertaken by way of International Credit Card, while outside India.

Rule 7 has been now been omitted, indicating that approval of the RBI would be required even in case of use of International Credit Card while outside India for carrying out transactions in the manner specified under Schedule III.

Updates under micro, small and medium enterprises ('MSME')

Formalisation of informal micro enterprises on udyam assist platform

The Ministry of Micro, Small and Medium Enterprises vide notification dated March 20, 2023 had granted 'at par' status to the certificate issued on the Udyam Assist Platform to Informal Micro Enterprises (IMEs), with the Udyam Registration Certificate for the purpose of availing Priority Sector Lending benefits.

In this regard, the Government of India clarified to the RBI that IMEs are enterprises exempt from the GST regime i.e entities exempted from filing returns under the provisions of the Central Goods and Services Tax Act, 2017 shall be classified as IMEs.

In order to affect the aforesaid, the government has created a transitionary interface, to enable migration of IMEs from Udyam Assist Platform to Udyam Registration Portal.

Updates under competition commission of India ('CCI')

CCI approves proposed merger of Credit Suisse Group AG with UBS Group AG

The Competition Commission of India (CCI) has given its approval for the planned merger between Credit Suisse Group AG and UBS Group AG.

UBS Group AG (UBS) is a Swiss multinational investment bank and financial services company that operates globally. UBS offers various services such as wealth management, asset management, investment banking, and retail and corporate banking. In India, UBS primarily focuses on brokerage services.

Credit Suisse Group AG (Credit Suisse) is also a Swiss multinational investment bank and financial services company with a global presence. Credit Suisse's operations include wealth management, asset management, investment banking, and retail and corporate banking. In India, Credit Suisse's business activities mainly revolve around wealth management and investment banking services.

The proposed merger involves UBS acquiring Credit Suisse through an absorption merger, where UBS would be the surviving legal entity (Proposed Combination).

Updates under production linked incentive scheme ('PLI')

It hardware

India devises bumper scheme for laptop, tablet makers with four-fold jump in incentives

The Indian government has announced a new production-linked incentive (PLI) scheme for IT hardware, aiming to boost the manufacturing of laptops and tablets. Manufacturers could receive up to four times the current incentives if they use domestically produced processors and components exceeding 8%. The scheme is worth INR 17,000 crore and has a six-year tenure, with the goal of stimulating domestic manufacturing and achieving incremental production worth INR 3.35 lakh crore.

Under the previous scheme, manufacturers received incentives of 2% of net sales for domestic production. The newly approved scheme raises the basic incentive level to over 5%, with an additional 3% for companies that procure domestically produced components. Major laptop producers like Apple, Acer, HP, and Dell are considering the scheme, and the maximum incentives of 8-9% will be clarified once detailed provisions are released.

The Indian government aims to triple the country's electronics manufacturing industry to over $300 billion and eventually reach a trillion dollars, rivaling China's sector. The PLI 2.0 scheme takes into account industry feedback and lessons from the previous scheme, with manufacturers able to apply starting July 1 without considering previous sales numbers. Contract manufacturers can also benefit from the incentives, and the scheme is expected to create around 75,000 direct jobs and many more indirect jobs, totaling around 200,000 employment opportunities.

Updates under food safety and standards of India (FSSAI)

Draft cosmetics amendment rules

The Department of Health and Family Welfare, Ministry of Health and Family Welfare after consultation with the Drugs Technical Advisory Board has issued draft amendment rules vide notification dated 15th May, 2023. Observations and comments of the stakeholders are invited on the aforesaid rules for consideration on or before the expiry of 45 days from the date on which copy of the said draft rules is made available to the public.

Some of the key highlights of the amendment rules are:

- Rule 31A pertaining to cancellation and suspension of license is to be inserted. The said rule grants authority to the state licensing authority to cancel or suspend the license in case it is of the opinion that the licensee has failed to comply with any of the conditions of the license or any provision of the Drugs and Cosmetics Act, 1940 ('Act') or rules made thereunder. However, the state authority can do so only after giving the licensee an opportunity to show cause why such an order should not be passed. Further, a licensee whose license has been cancelled or suspended, as the case may be, have the right to appeal within three months from the date of such order to the State Government.
- The definition of "Laboratory" as per Rule 2(m) of the Cosmetics Rules, 2020 is to be omitted.
- Explanation to definition of "Use Before" or "Date of expiry" as per Rule 2(w) is to be inserted. The explanation states that when the term "Use Before" would be used, it would mean use before first day of the month stated on the label and where "Date of expiry" would be used, it would mean the last day of the month stated on the label.
- The licensee would be required to retain record of the details of each batch of cosmetic manufactured by him and of the raw materials used therein as per particulars specified in Eighth Schedule, for a period of three years or six months after expiry of batch, whichever is later.
- The Central Drugs Laboratory established under the Drugs and Cosmetics Act, 1940 shall function as Central Cosmetics Laboratory for the purpose of:-
  - To analyse or test such samples of cosmetics as may be sent to it as per the Act; or
  - Functioning as an appellate laboratory; or
  - To carry out any other function as may be specifically assigned to it.

Other Regulatory Updates

Ministry of electronics and information technology (MEITY)

Orders/judgements

Registrar of companies (ROC)

Order for Penalty for Violation Of Section 10(A) Of Companies Act, 2013

The Registrar of Companies (ROC), West Bengal, issued an order on May 12, 2023, regarding the violation of Section 203(4) of the Companies Act by M/s Ambica Shipping & Industries Limited.

According to Section 203(1) of the Act, certain classes of companies are required to have key managerial personnel, including a managing director, Chief Executive Officer (CEO) or manager, a company secretary, and a Chief Financial Officer (CFO). Rule 8 of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014, states that every listed company and other public companies with a paid-up share capital of INR 10 crore or more must have whole-time key managerial personnel.

Section 203(5) of the Act stipulates that companies failing to comply with these provisions will face penalties. The company will be liable for a penalty of INR 5,00,000, while each director and key managerial personnel in default will be liable for a penalty of INR 50,000. In the case of a continuing default, an additional penalty of INR 1,000 per day may be imposed, up to a maximum of INR 5,00,000.

M/s Ambica Shipping & Industries Limited, incorporated on April 23, 1973, is a listed company that has not appointed a Company Secretary since its incorporation. Adjudication notices were issued to the company and officers in default on July 28, 2022.

The company sought exemption from compliance, citing reasons such as lack of profitability, negative net worth, difficulty in appointing a whole-time Company Secretary, efforts to delist from the exchange, and financial crunch. However, the Adjudicating Officer, after considering the facts and circumstances, imposed penalties on the company and its directors for the violation of Section 203 of the Act.

The penalties were imposed for two periods: November 2, 2018, to December 13, 2020, and March 1, 2022, to July 28, 2022, totaling 649 days. The company was fined INR 5,00,000, while each director faced a penalty of INR 1,000 per day, amounting to a maximum of INR 5,00,000 for each director.

Order for Penalty for Violation of Section 189(1) of the Companies Act, 2013

The Registrar of Companies (ROC), NCT of Delhi & Haryana, issued an order on May 25, 2023, under Section 454 of the Companies Act, 2013, and the Companies (Adjudication of Penalties) Rules, 2014. The order pertains to a violation of Section 189(1) of the Act by M/s Teleone Consumers Product Private Limited.

Section 189(1) requires every company to maintain one or more registers containing the details of contracts or arrangements covered under subsection (2) of Section 184 or Section 188. The registers should be prepared as prescribed and presented to the next board meeting for signing by all the directors present. Failure to comply with these provisions, as per Section 189(6), attracts a penalty of INR 25,000 for each director.

Based on an inquiry report under Section 208 of the Act, it was found that M/s Teleone Consumers Product Private Limited had not provided a copy of the register of contracts or arrangements in which directors were interested, as required by Section 189. It was also discovered that the company had not disclosed these transactions in the board meeting minutes. Consequently, it appeared that the company had not maintained the registers as per Section 189 for the financial years ending on March 31, 2016, 2017, and 2018.

Show cause notices were issued to the company and its directors on June 14, 2022, but no response was received. Considering the facts and circumstances of the case, the Adjudicating Officer imposed penalties on the directors who were in default under Section 189(6) for violating Section 189(1) of the Act.

The penalties were imposed for three financial years (2015-16, 2016-17, and 2017-18), with each director facing a penalty of INR 25,000 per year, resulting in a total penalty of INR 75,000 for each director.

05 Compliance Calendar

Direct Tax

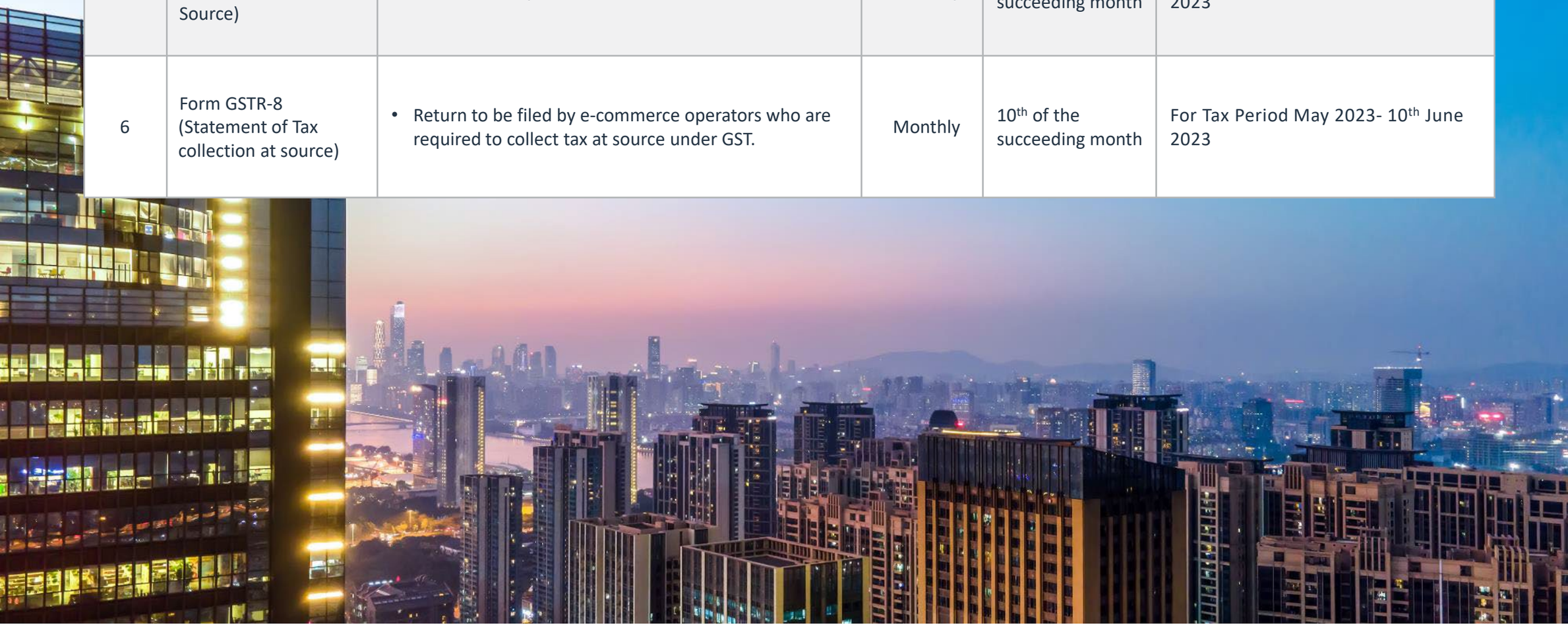
Due dates	Particulars
7th June 2023	Due date for payment of Equalisation Levy on online advertisement and other specified services, referred to in Section 165 of Finance Act, 2016 for the month of May 2023.
	Due date for deposit of Tax deducted/collected for the month of May 2023
14th June 2023	Due date for issue of TDS Certificate for tax deducted under section 194-IA in the month of April, 2023
	Due date for issue of TDS Certificate for tax deducted under section 194-IB in the month of April, 2023
	Due date for issue of TDS Certificate for tax deducted under section 194M in the month of April, 2023
	Due date for issue of TDS Certificate for tax deducted under section 194S in the month of April, 2023 (in case of specified person)
15th June 2023	Quarterly TDS certificates for the quarter ending March, 2023 (in case of payment other than salary)
	First instalment of advance tax for the Assessment Year 2024-25
	Form 16 to be issued to the employees with respect to salary paid and tax deducted during Financial Year 2022-23
30th June 2023	Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194-IA in the month of May, 2023
	Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194-IB in the month of May, 2023
	Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194M in the month of May, 2023
	Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194S in the month of May, 2023 (in case of specified person)
	Furnishing the statement with respect to Equalisation Levy for the Financial Year 2022-23
	Deadline for linking PAN with Aadhaar to avoid PAN becoming inoperative

Indirect Tax

S. No.	Compliance Category	Compliance Description	Frequency	Due Date	Due Date falling In September 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	For Tax Period May 2023 - 11 June 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	20th day of next month	For Tax Period May 2023 - 20 June 2023
3	QRMP Scheme Invoice furnishing facility ('IFF') Form GST PMT-06 (Monthly payment of tax)	• 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	Monthly Monthly	1st day to 13th day of succeeding month 25th of the succeeding month	• For Tax Period May 2023 – 1 to 13 June 2023 • For Tax Period May 2023 – 25 June 2023
4	Form GSTR-6 (Return for Input Service distributor)	• Return for input service distributor	Monthly	13th of the succeeding month	For Tax Period May 2023- 13th June 2023

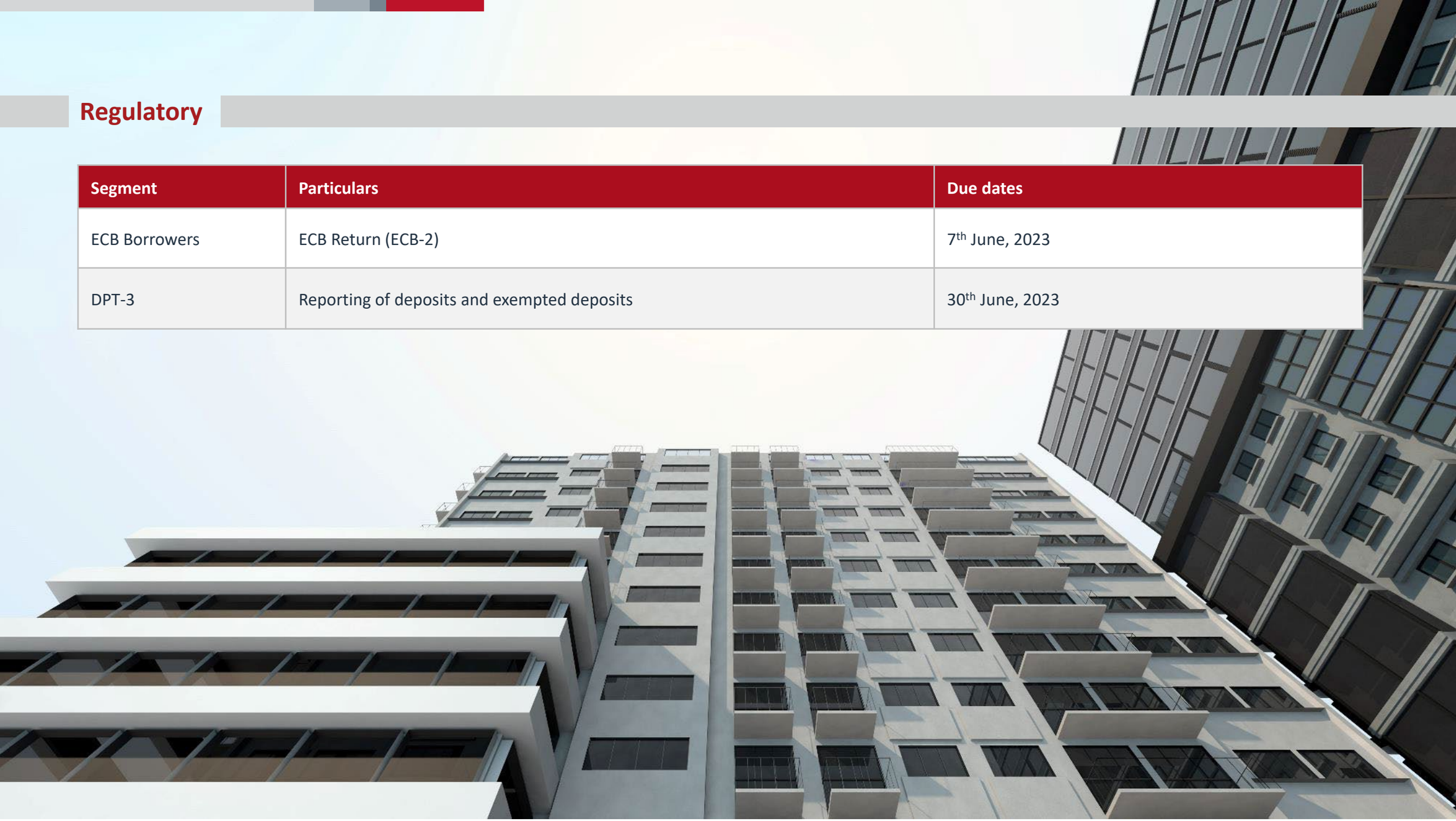
Indirect Tax

5	Form GSTR-7 (Return for Tax Deducted at Source)	• Return filed by individuals who deduct tax at source.	Monthly	10th of the succeeding month	For Tax Period May 2023- 10th June 2023
6	Form GSTR-8 (Statement of Tax collection at source)	• Return to be filed by e-commerce operators who are required to collect tax at source under GST.	Monthly	10th of the succeeding month	For Tax Period May 2023- 10th June 2023



Regulatory

Segment	Particulars	Due dates
ECB Borrowers	ECB Return (ECB-2)	7th June, 2023
DPT-3	Reporting of deposits and exempted deposits	30th June, 2023



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