Nangia Andersen LLP

Newsletter

Tax & Regulatory

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What's

Inside?

01 Direct Tax

Facts and materials brought on record relating to year under consideration ought to be examined in order to establish existence of Permanent Establishment ('PE') in India

Deputy Commissioner of Income-tax, vs Nuovo Pignone International
ITA No. 999/Del/2022

Issue(s)	Outcome
Taxability of payment in respect of offshore supplies where Assessee does not have any PE/dependent agent in India for the year under consideration.	In Favour of Assessee

Background

In a recent verdict, Income Tax Appellate Tribunal, Delhi Bench ('Hon'ble ITAT') examined the existence of fixed place PE and dependent agent PE of Nuovo Pignone International ('Assessee'). The assesse has earned substantial amount from supply of spare parts/equipments to various customers in India. However, the assessee has not offered them to tax on the reasoning that those are offshore supplies, wherein, the title over the goods has passed outside India *inter-alia* claimed that it does not have any PE/dependent agent in India for the year under consideration.

With regard to the existence of PE, ITAT categorically holds that merely because in one year, the assessee had a PE in India and that by itself cannot lead to the conclusion that the assessee must be having a PE in subsequent assessment years, without looking into the relevant facts.

Brief Facts and Contentions

- Assessee is a non-resident corporate entity and a tax resident of Italy engaged in the business of supplying compressors/pumps/turbines and related services in the Oil & Gas industry. The assesse has earned from supply of spare parts/equipments to various customers in India which was not offered to tax as the title over the goods passed outside India.
- Examining the materials on record in course of a survey action conducted in case of General Electric International Operations Company (GEIOC), the Assessing Officer found that GE group was carrying out business in India through a PE for which the business heads are generally expatriates, who are appointed to head Indian operations with the support staff provided by GE India Industrial Pvt. Ltd. (GIIPL) and other third parties.
- AO further observes that GIIPL constitutes an agent of the assessee other than an agent of independent status, hence, can be considered as dependent agent PE. Thus, relying on the material on record that the Assessee has a fixed place/ PE in India in the form of office premises of AIFACS at 1, Rafi Marg, New Delhi, the AO called upon Assessee to explain why the amount received from the offshore supplies connected to PE should not be brought to tax in India.
- The assessee furnished its reply stating that it does not have any PE in India, as the office premises of AIFACS has been vacated and during the year, no expatriate employee has visited India. The AO however, did not find merits in the submissions of the assessee and relying upon the past assessment history of the assessee and the decision of the Tribunal and Hon'ble jurisdictional High Court in earlier assessment years, upheld the existence of PE.
- Aggrieved with the aforesaid order, the assessee raised objections before Dispute Resolution Panel ('DRP'). However, relying upon the orders of the Tribunal and Hon'ble High Court in earlier assessment years, learned DRP upheld the decision of the Assessing Officer.

ITAT Judgement

- ITAT acknowledges that Assessee had brought the following facts to the Revenue's notice:
  - New Delhi office was vacated,
  - No expatriates visited India during the year and
  - Liaison office was closed.

- ITAT remarks that it is a trite law that existence of PE has to be determined on year to year basis. Further, revenue remained oblivious to such facts and materials brought on record and proceeded to conclude existence of PE merely relying upon the past assessment and appellate orders. ITAT finds that the Assessee brought on record cogent evidences to demonstrate that there was substantial change in facts in impugned AY with regard to the existence of PE which was not controverted by the Revenue with any specific factual finding.

- Accordingly, ITAT holds that the Revenue cannot merely do a cut and paste job by following the decisions of the past AYs without independent application of mind to the facts brought on record by the assessee. Thus, allows Assessee's appeal with a clarification that the conclusion on non-existence of fixed place and dependent agent PE is purely based on the facts involved in the impugned assessment year.

Nangia Andersen LLP's Take

In the above judgement, ITAT has protected the interest of Assessee and simultaneously disapproved the action of revenue of simply relying on the assessment history and failing to undertake fresh enquiry on the facts and merits of the case. Further, ITAT has advocated/ seconded that existence of PE has to be determined on year to year basis. Further, the onus of proving the existence of PE is entirely on the revenue.

Supply of drawings and designs that are inextricably linked to offshore supply are not taxable as FTS

Deputy Director of Income Tax Vs SMS Concast AG

ITA NO. 1361/DEL/2012

Issue(s)	Outcome
Whether supply of drawings and design and supervisory services in connection with offshore supply of plants is taxable as FTS	Partly in Favour of Assessee

Background

In a recent verdict, Income Tax Appellate Tribunal ('Hon'ble ITAT'), held that when supply of drawings and designs are inextricably linked to offshore supply of plant, they cannot be taxed as FTS since offshore supply of plants itself is non-taxable. Further, the amount received for supervisory services clearly falls within the definition of FTS.

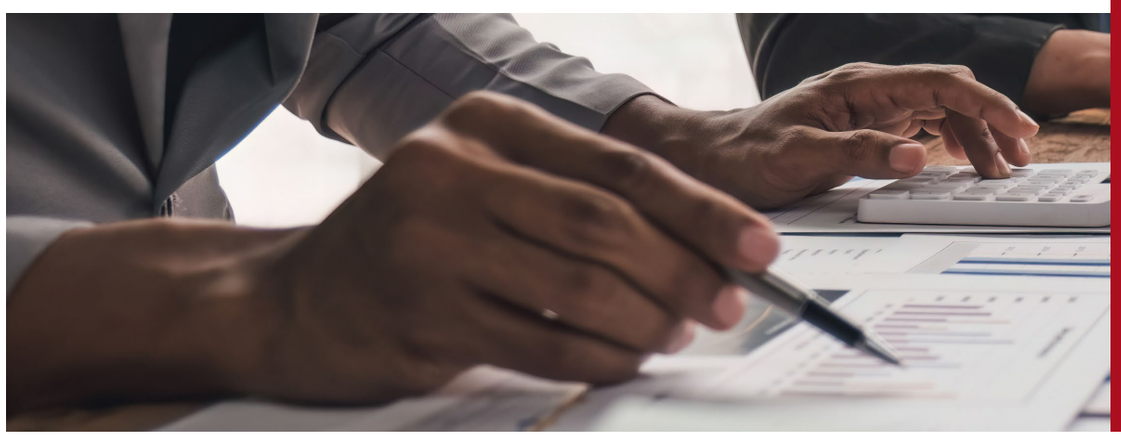
Brief Facts and Contentions

- The Assessee is a non - resident company engaged in the business of manufacturing and supply of plant, equipment, drawings as well as supervisory services.
- The Assessee entered into separate contract with JSW Steel Ltd for supply of plant and equipment, supply of drawings and designs in relation to such plant and equipment and supervision of erection and commissioning of the equipment.
- For the assessment year under consideration, the assessee filed a nil return. The assessing officer subsequently called upon assessee to explain why no income has been offered to tax.

- The assessee claimed that the supply of plant and equipment as well as drawings were made outside India and transfer of title has taken place outside India, accordingly the amount was not taxable. Further, a Permanent Establishment was setup in India for a period of less than 6 months and accordingly, receipts for supervisory services are not taxable.
- Revenue submitted that the contract for supply of plant and drawing have different scope of work and separate consideration. Thus, it cannot be said that the contracts are inextricably linked.
- Further drawings and designs are part of technical services and fall within the definition of FTS, and is taxable in India.
- Further, fees for supervisory services are also a part of FTS and should be taxed.

ITAT's Judgement

- Hon'ble ITAT stated that the material on record reveals that the drawings and designs are in relation to basic engineering and includes necessary calculations, functional descriptions, final equipment list, preliminary bills of material etc., which means draft drawings are necessary to design equipment and system. Thus from the records it is very clear that the drawings and designs are specifically related to the supply of plant and equipment.
- Further, the contract for supply of plant & equipment and supply of drawings were executed on same day and the purchaser is vested with the right to terminate the contracts due to delay in delivery for the reasons attributable to supplier. Thus, the contracts are inextricably linked.
- Further technical personnel were deputed to supervise the erection and commissioning of plant and equipment. Therefore, the amount for the same clearly falls within the definition of FTS.



Nangia Andersen LLP's Take

In the instant case, the dominant object of the contract was to supply plant and equipment in accordance with the drawings and design. Irrespective of the fact that the obligation to carry out design was under separate contract, the receipts shall have the nature of sale price for the supply of equipment. Also, various treaties, such as India-USA DTAA, do not separately tax the services which are ancillary and subsidiary, as well as inextricably and essentially linked, to the sale of property.

HC rejects Revenue’s invocation of 'Limitation of Benefit clause' (LoB clause) to limit the benefit to the extent of amount repatriated by the Assessee to Singapore

Commissioner of Income Tax (IT) vs M/s Citicorp Investment Bank
ITA. No. 256/2018

Issue(s)	Outcome
Income derived by the tax resident of Singapore in India would be considered under Singapore Tax Law as accruing in or derived from Singapore without reference to the amount remitted or received in Singapore	In Favour of Assessee

Background

In a recent verdict, Bombay High Court (‘Hon’ble HC’) upheld the order of Hon’ble ITAT, thereby discarding Revenue’s invocation of Article 24 LoB clause to limit the benefit to the extent of amount repatriated by the Assessee to Singapore and observed that “Singapore authorities have themselves certified that the capital gain income would be brought to tax in Singapore without reference to the amount remitted or received in Singapore”

Brief facts and Contentions

- The Assessee is a tax resident of Singapore registered as a Foreign Institutional Investor (FII) in debt segment with Securities and Exchange Board of India (SEBI). The Assessee has been investing in debt securities in India during the Assessment year ('AY') 2010-11.
- For the year under consideration, the Assessee declared a capital gain of INR 86,62,63,158 on the sale of debt instruments and claimed exemption under Article 13(4) of India-Singapore Double Taxation Avoidance Agreement (DTAA).
- During the assessment proceedings, the Assessee was asked to explain as to how the provisions of Article 24 of DTAA stood complied in order to claim capital gain as exemption in India. The Assessee in its submission contended that being a FII, Assessee was liable to tax in Singapore in respect of global income.
- Further, the Assessee submitted the certificate issued by Singapore Revenue Authority confirming the taxation of the Assessee in Singapore. Consequently, Assessing Officer ('AO') held that the Assessee did not show that repatriation of the capital gains was made to Singapore and in view of Article 24 of DTAA, the Assessee is not entitled to the exemption claimed.
- Aggrieved by the Draft Assessment order proposing denial of exemption in respect of capital gain, the Assessee filed objection before the Dispute Resolution Panel (DRP). The DRP upheld the findings of AO and basis the directions of DRP, the AO issued the Final Assessment Order denying exemption of capital gain.
- As a result, aggrieved by the Final Assessment order, the Assessee filed an appeal before the Hon'ble ITAT whereby the appeal of Assessee was allowed and it was held that the Assessee is entitled to the benefit of Article 13(4) of DTAA between India and Singapore.
- Consequently, aggrieved by the order of Hon'ble ITAT, the Revenue filed an appeal before the Hon'ble HC.

High Court's Judgement

- Hon'ble HC observed that the Singapore authorities have certified that the capital gain income would be brought to tax in Singapore without reference to the amount remitted or received in Singapore and the AO could not have come to a conclusion otherwise.
- Further holds that in terms of Article 13(4), the entire capital gains shall be taxed in Singapore. HC noted that as per Article 24, the exemption to be allowed under the DTAA in India shall only apply to so much of the income as is remitted to or received in Singapore where the laws in force in Singapore provides that the said income is subject to tax based on the amount remitted or received in Singapore. However, where the laws in force state that the income is taxable based on full amount regardless of remission or receipt in Singapore, then Article 24(1) would not apply.

- HC further considered that the certificate from Singapore Tax Authorities, certifying that the income derived by the Assessee from buying and selling of Indian Debt Securities and from Foreign Exchange transactions in India would be considered under Singapore Tax Law as accruing in or derived from Singapore and such income would be brought to tax in Singapore without reference to the amount remitted or received in Singapore.
- Hon'ble HC referred to circular No.789 dated 13th April 2000 and the ruling of Hon'ble Madras HC in case of **CIT Vs. Lakshmi Textile Exporters Ltd.,** though it applied to Indo-Mauritius DTAA, with reference to certificate of residence and held that the certificate issued by the Singapore authorities constitute sufficient evidence for accepting the position of the law in Singapore.
- In conclusion, the Hon'ble HC upheld the above ruling in the present case and observed that no substantial question of law arise in the present appeal, thereby upholding the ruling of Hon'ble ITAT.

Nangia Andersen LLP's Take

This judgement protects the interest of the Assessees and relies on the certificate of taxability issued by foreign countries' tax authorities as a conclusive evidence. Accordingly, when under the laws in force in Singapore, the income is subject to tax by reference to the full amount thereof, whether or not remitted to or received in Singapore, then in such case, Article 24(1) would not apply.

02 Indirect Tax

Advance Rulings & Judgements

Maharashtra Appellate Authority for Advance Ruling ('AAAR') held that support services received from foreign Parent Company is liable to Integrated Goods and Service Tax ('IGST') under Reverse Charge Mechanism ('RCM')

Brief Facts

- M/s. IVL India Environmental R&D Private Limited ('Appellant') is a wholly owned subsidiary of IVL Sweden and registered under Central Goods and Service Act 2017 ('CGST Act') in Maharashtra. IVL Sweden ('Parent Company') was awarded tender for Project Management Consultancy (PMC) by Municipal Corporation of Greater Mumbai ('MCGM');
- As per the terms of tender document and Letter of Acceptance a foreign company needed a wholly owned subsidiary in India and all the payments will be made by MCGM in INR to the wholly owned subsidiary only. Hence, the Parent Company incorporated the Appellant in India for the purpose of obtaining the contract from MCGM and was made responsible for raising the invoice and collection of payment;
- Parent Company and the Appellant jointly entered into the agreement with MCGM. Due to this, the Appellant after receiving the consideration, transfers to the Parent Company its relevant share;
- The Appellant contended that, it does not receive any services from its Parent Company and the Parent Company is solely responsible for execution of contract and it is the ultimate beneficiary of this contract;
- The Appellant further contended that PMC services supplied to the MCGM i.e., a local authority is wholly exempt under serial no. 3 of Notification No. 12/2017 – Central Tax (Rate) dated 28.06.2017 and exemption given to the main consultant should be extended to the secondary consultant as well;
- The Appellant had earlier sought an Advance Ruling, where the Maharashtra Authority for Advance Ruling ('AAR') had concluded that the transfer of monetary proceeds by the Applicant (Appellant in AAAR) to its Parent Company would be liable for payment of IGST under RCM under Entry no. 1 of Notification 10/2017 -IGST (Rate) dated June 28, 2017;
- Aggrieved by the above order, the Appellant had put up an appeal before the Maharashtra AAAR.

Issue Involved

- Appellant vide instant Application before Appellate Authority for Advance Ruling sought a ruling on the following question:

  "Whether mere transfer of monetary proceeds by the Appellant to its Parent Company without underlying import of service will be liable for payment of IGST under RCM under entry no. 1 of Notification 10 2017- IGST (Rate) dated June 28, 2017."

Decision

- AAAR upheld the order passed by AAR;
- While referring to the contract, AAAR observed that the Appellant has been termed as "Consultant" in the contract and the contract provides that MCGM will pay the consideration to the Consultant only. It was further observed that Parent Company is acting as a guarantor in the entire agreement and entire PMC work is carried out by the Appellant only;
- Appellant is carrying out the PMC work with the help of its Parent Company, which has all the expertise, resources, and work experience in this regard. Hence, without Parent Company, the Appellant could not carry out the PMC work. Thus, it can be concluded that Appellant is receiving support services from its Parent Company to carry out PMC work as per the contract;
- The said support services fall within the ambit of import of services and the Appellant is liable for payment of IGST under RCM in terms of entry no. 1 of Notification 10 2017- IGST (Rate) dated June 28, 2017.

[M/s. IVL India Environmental R&D Private Limited- MAH/AAAR/DS-RM/03/2023-24, dated 05 June 2023]

Tripura High Court held that the petitioner is entitled to avail Input Tax Credit (‘ITC) on Goods and Services utilised for providing taxable work contract services

Brief Facts

- M/s SR Constructions (‘Petitioner’) entered into a works contract agreement with M/s Hotel Polo Pvt. Ltd. for construction of a hotel. During the construction process, the petitioner procured various materials from vendors and availed works contract services from subcontractors. Petitioner availed the ITC on such materials & works contract services. However, the Authorities raised the demand for ITC so availed on the ground that ITC availed on works contract service for supply of construction of an immoveable property is in violation of Section 17(5) of Central Goods and Services Tax Act (‘CGST Act’);
- Petitioner filed explanation against the demand raised, however adjudicating Authority passed the order against the Petitioner. Appellate Authority also confirmed the order passed by Adjudicating Authority;
- Aggrieved by the order of the Appellate Authority, petitioner filed the present writ petition before the Tripura high court.

Observations

Hon’ble High court observed that Petitioner has fulfilled all the conditions of the work contract by providing services for the construction of a hotel building, involving the transfer of goods. Further, petitioner has provided works contract services to the owner of the hotel and not used services for their own benefit. Accordingly, they are entitled to claim ITC on the goods and services used for providing taxable work contract services;

Decision

The impugned order passed by the appellate authority, affirming the order of the adjudicating authority is set aside and quashed.

[M/s SR Constructions [WP (C) 399 OF 2022, High Court of Tripura, Agartala Dated 04 April 2023]

03 Transfer Pricing

ITAT upholds adoption of 'Berry Ratio' as a relevant PLI for 'Merchanting Trades Segment'.

Outcome: In favour of both partially

Category: Determination of PLI; Berry ratio vs OP/OC

Facts of the case

- ADM Agro Industries Kota & Akola P. Ltd ("the taxpayer"), is engaged in trading activity and merchanting trades in agricultural commodities.
- During the year under consideration, the taxpayer has reported revenue from two separate segments i.e., merchanting trades segment and trading segment. The Transfer Pricing Officer ("TPO") accepted the Arm's Length Price ("ALP") of the trading segment. For the purpose of benchmarking merchanting trades, the taxpayer selected Transactional Net Margin Method ("TNMM") as the Most appropriate method ("MAM") which was accepted by the TPO however it rejected the taxpayer's Profit Level Indicator ("PLI") of Operating Profit/ Value added cost ("OP/VAC") by observing that PLI of comparables selected by the taxpayer is Operating Profit/ Operating Cost ("OP/OC") and the taxpayer had not provided any justified reason for the difference in PLI.
- Further, the TPO proceeded to determine ALP of the taxpayer qua the comparables and proposed an upward adjustment. Aggrieved by the same, the taxpayer raised objection before the Ld. Dispute Resolution Panel ("DRP"). However, the Ld. DRP upheld the action of the TPO.
- Aggrieved, the taxpayer filed an appeal before the Income Tax Appellate Tribunal ("ITAT"/ "the Tribunal"**)**

ITAT Ruling

Following observation were drawn by the Hon'ble ITAT:

- The Hon'ble ITAT observed that TPO accepted the taxpayer's comparables of business auxiliary service providers however, it rejected the PLI of OP/ VAC ("Berry ratio") by stating that the PLI of comparables was OP/OC and the taxpayer cannot have a different PLI since it will not be in conformity with Rule 10(B)(1)(e).
- The Hon'ble ITAT elucidating the mechanism for ALP computation under TNMM as per Rule 10(B)(1)(e) held that the net profit margin of the taxpayer can be computed having regard to any relevant base i.e., not only in relation to cost incurred or sales effected, or assets employed.
- In this regard, the Hon'ble ITAT relied on the jurisdictional High Court ("HC") ruling in case of ***Sumitomo Corporation India Pvt. Ltd.,*** wherein it was held that Berry Ratio is effectively applied only in case of stripped-down distributors who have no financial exposure and risk in respect of the goods distributed by them. Accordingly, it was held *that "where operating expense is considered a relevant base, there would be no difficulty in using berry ratio as PLI".*
- Further, the Tribunal explained that where the taxpayer uses intangible as part of its business or has substantial fixed assets the berry ratio may not be an appropriate PLI for determining ALP since the value
  added by such assets would not be captured in berry ratio. However, the taxpayer can apply OP/VAC as the PLI since the operating cost of the comparables was not inclusive of cost of goods as they are business auxiliary service providers.
- The Hon'ble ITAT observed that the taxpayer was functionally comparable to the business auxiliary service providers, hence, it undertook limited functions and risk in the merchanting segment and earned a fixed margin. Accordingly, the operating expense of the taxpayer adequately represents all functions performed and risk undertaken. Therefore, it was held that the return on value added cost will be a relevant base for computing the net profit margin which was in alignment with that of the comparables.
- Accordingly, ITAT directed AO to compute ALP by applying PLI of Operating profit to value added cost and excluding the cost of goods.

[Source: ADM Agro Industries Kota & Akola P. Ltd [TS-355-ITAT-2023(DEL)-TP]

Nangia Andersen LLP's Take

The judgment holds immense importance in context of transaction involving merchanting trade, wherein the intensity of operating expenses adequately represents all function performed and risk undertaken. The Hon'ble ITAT observations with regards to application of Berry ratio provides guiding principles for taxpayers to apply Berry Ratio as relevant PLI for benchmarking transactions involving merchanting trade.

04 Regulatory

Updates under companies act, 2013 ("ACT")

Companies (accounts) second amendment rules, 2023

The Ministry of Corporate Affairs ('MCA') has modified the Companies (Accounts) Rules, 2014 *vide* its notification dated 31st May, 2023.

The amendment introduced addition of new provision under sub-rule (1B) of Rule 12 which deals with the filing of financial statements and associated fees.

As per the amended provision, a separate Form CSR-2 must be filed on or before 31st March, 2024, for the Financial Year 2022-23. The filing should be done after submitting Form AOC-4 or Form AOC-4-NBFC (Ind AS) as specified in these rules, or Form AOC-4 XBRL as specified in the Companies (Filing of Documents and Forms in Extensible Business Reporting Language) Rules, 2015, depending on the applicable requirements.

Limited liability partnership (amendment) rules, 2023

The MCA vide notification dated 2nd June, 2023 amended Limited Liability Partnership Rules, 2009.

As part of these amendments, LLP Form No. 3 (which contains information about the Limited Liability Partnership Agreement and any modifications) has been replaced. The revised LLP Form No. 3 now requires the inclusion of details related to each partner's contribution, such as money, property, or other benefits, as well as the services they provide and their respective profit-sharing ratio.

Additionally, MCA now mandates the disclosure of certain information, including the Director Identification Number (DIN), Income Tax PAN, Designated Partner Identification Number, and Passport number for both the partner and the nominee.

Lastly, MCA now requires the disclosure of the number of amendments or changes made to the LLP agreement till date. It also mandates the provision of specific reasons for any changes in the LLP agreement which may include alterations in partners or modifications in the business activity, among other things.

Relaxation in paying additional fees in case of delay in filing dpt-3 for financial year ended on 31st march 2023

In order to facilitate the transition from Version - 2 to Version - 3 of the MCA-21 Portal, the MCA vide General Circular No. 06/2023 dated 21st June, 2023 permitted the companies to file DPT-3 (Return of Deposits) for the Financial Year ended on 31st March 2023 without incurring any additional fees up to 31st July, 2023.

The original due date for filing Form DPT-3 for the Financial Year ended on 31st March, 2023 was 30th June, 2023.

Updates under reserve bank of India (RBI)

Framework for compromise settlements and technical write-offs

The RBI has periodically provided instructions to Regulated Entities (REs) regarding compromise settlements for stressed accounts, which recognizes compromise settlements as a valid resolution plan. In order to offer additional avenues for addressing distressed assets, the RBI has introduced a comprehensive regulatory framework dated 8th June, 2023 that governs compromise settlements and technical write-offs for all REs. Co-operative banks have been included in the ambit of the framework for the first time.

Key features of the framework

- REs shall put in place Board-approved policies for undertaking compromise settlements with borrowers and for carrying out technical write-offs.
- Policies to include specific conditions such as framework by the RE to assess staff accountability, methodology for arriving at realisable value of security, delegation of powers for approval/sanction etc.
- A reporting mechanism must be in place to the next higher authority regarding compromise settlements and technical write-offs that have been approved by a specific authority, for reporting at least on a quarterly basis.
- Cooling period (for borrowers subject to compromise settlements) in respect of exposures other than farm credit exposures shall be subject to a floor of 12 months. However, REs are free to stipulate higher cooling periods.
- REs can undertake compromise settlements or technical write-offs regarding accounts categorised as wilful defaulters or fraud without prejudice to criminal proceedings against such debtors.

Guidelines on default loss guarantee

In order to regulate the digital lending carried on by banks and NBFCs, the RBI vide notification dated 2nd September, 2022 introduced the Guidelines on Digital Lending (DL Guidelines). While the DL Guidelines is a comprehensive regulatory framework, the prescriptions surrounding first loss default guarantees were ambiguous, and the financial services market had various interpretations regarding the intent of the regulator.

In order to address these ambiguities, the RBI vide notification dated 8th June, 2023 notified the Guidelines on Default Loss Guarantee in Digital Lending ('FLDG Guidelines'). The highlights of the FLDG Guidelines are as follows:

- Eligibility of DLG Provider – Only a lending service provider or an RE having an outsourcing arrangement with the Regulated Entities (RE) and incorporated in the form of a company can provide guarantees to such REs.
- Documentation requirements - The DLG provided by the LSP/RE should be backed by an explicit, legally enforceable arrangement.
- Form of DLG - DLG may be provided in the form of cash deposited, fixed deposit or bank guarantee;
- Cap on DLG cover – Total amount of DLG cover on any outstanding portfolio which is specified upfront shall not exceed five percent of amount of that loan portfolio.
- Maximum Overdue Period - RE shall invoke DLG within a maximum overdue period of 120 days.
- Tenor of DLG – The period for which DLG is in force shall be at least equivalent to the longest tenor of the loan in the underlying loan portfolio.
- Board Approved Policy - The REs accepting such guarantees are required to provide for a board approved policy governing such DLG arrangements.
- Due diligence of DLG provider - Prior to entering such arrangements, the REs are required to undertake due diligence of the guarantee provider.

Notifications by ministry of finance

The Ministry of Finance on 16th May, 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').

Now, the Ministry *vide* notification dated 30th June, 2023 reversed the aforesaid deletion thereby restoring the protection extended to International Credit Cards from inclusion under the Liberalised Remittance Scheme.

Thus, transactions made through international credit cards shall not be covered under the ambit of Rule 5 of the FEM Rules, and accordingly, Schedule III as well.

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

Sebi (LODR) (second amendment) regulations, 2023

The SEBI vide notification dated 14th June, 2023 notified the SEBI (Listing Obligation and Disclosure Requirements) (Second Amendment) Regulations, 2023. The key highlights of the amendment are as follows:

- Periodic approval for directors appointed (Insertion of Regulation 17(1D)): With effect from 1st April, 2024, the continuation of a director serving on the board of directors of a listed entity shall be subject to the approval by the shareholders in a general meeting at least once in every five years from the date of their appointment or reappointment, subject to exceptions as specified.
- Timeline for filling in vacancy of compliance officer (Regulation 6): A listed entity shall fill in the vacancy in the office of a compliance officer within a period of three months from the date of such vacancy.
- Timeline for filling in vacancy of Key Managerial Personnel (Regulation 26): A listed entity shall fill in the vacancy in the office of a Chief Executive Officer, Managing Director, Whole Time Director or Manager or Chief Financial Officer within a period of three months from the date of such vacancy.
- Introduction of quantitative thresholds for determining materiality of events in Regulation 30;
- Reduction of disclosure timelines for certain material disclosures (Regulation 30): The timeline for disclosure of material events (other than events listed under Part A of Schedule III) to stock exchange has been reduced to 12 hours from the occurrence of the event or information, in case such material information emanates from within the listed entity.
- Confirmation on market rumours (Regulation 30): Market rumours to be verified and confirmed, denied or clarified, as the case may be, by top 100 listed entities by market capitalization effective from 1st October, 2023 and by top 250 listed companies with effect from April 1, 2024.
- Disclosure requirements for certain types of agreements binding listed entities (Insertion of Regulation 30A): All specified agreements wherein the shareholders, promoters, promoter group entities, related parties, directors, key managerial personnel and employees of a company or its holding, subsidiary or associate company are a party, but the listed entity is not, shall be disclosed to the listed entity within a period of two working days from the date of entering the agreement.
- Special Rights to shareholders (Regulation 31B): Special rights granted to any shareholder should be approved by the shareholders by way of special resolution, at least once in five years starting from the date of granting such right, subject to exceptions as specified.
- Business Responsibility and Sustainability Report Core (Regulation 34): The requirement for obtaining assurance in Business Responsibility and Sustainability Report Core for companies as specified, has been prescribed.
- Sale, Lease or disposal of undertaking outside scheme of arrangement (Regulation 37): The framework for the same has been notified, requiring compliance requirements such as approval of the shareholders prior to sale and disclosure of objects and rationale for such sale.
- Amendments to Schedule III, Part A;

Updates under fiscal incentive schemes

Strategic Intervention for Green Hydrogen Transition ('SIGHT') Programme - Component I and II: Incentive Scheme for Electrolyser Manufacturing for National Green Hydrogen Mission

The Ministry of New and Renewable Energy ('MNRE') *vide* notification dated 28 June 2023, issued the Scheme Guidelines for under SIGHT Component I and II. The total fund allocation under the said schemes has been bifurcated between the two components as under:

- Component I: Rs. 4,440 crore
- Component I: Rs. 13,050 crore

The Scheme shall be implemented by Solar Energy Corporation of India ('SECI').

Objectives of the Scheme:

- To maximise production of Green Hydrogen and its derivatives in India
- Enhance cost-competitiveness of Green Hydrogen and its derivatives vis-à-vis fossil fuel based alternatives
- Encourage large scale utilisation of Green Hydrogen and its derivatives

Eligible Products for incentives

- Under Category I: Electrolyser
- Under Category II: Green Hydrogen

Incentives

- Under Category I: From Rs. 4,440/ kW in year 1 tapering down to Rs. 1,480/ kW in year 5
- Under Category II: (Incentive quoted for that year in Rs./ kg) x (Allocated capacity or actual production, whichever is lower in Kg

Our Take

To enhance production of Green Hydrogen to fuel, among other things, Hydrogen Fuel Cell ('HFC') cars already being incentivised under a separate PLI Scheme, the Components of SIGHT Scheme targeting incentives for manufacturing of both Electrolysers and the final product - Green Hydrogen - is an important step towards extracting the potential of the most abundant potential fuel in the Universe.

Updates under food safety and standards of India (FSSAI)

Legal metrology (packaged commodities) (amendment) rules, 2022 to come into effect from 1st July, 2023

The Ministry of Consumer Affairs, Food and Public Distribution had, *vide* notification dated 28th March, 2022, released Legal Metrology (Packaged Commodities) (Amendment) Rules, 2022.

As per the amendment, the unit sale price ('USP') in rupees, rounded off to the nearest two decimal place, is required be declared on every pre-packaged commodity in the following manner, namely: -

- per gram where net quantity is less than one kilogram and per kilogram where net quantity is more than one kilogram;
- per centimetre where net length is less than one metre and per metre where net length is more than one metre;
- per millilitre where net volume is less than one litre and per litre where net volume is more than one litre;
- per number or unit if any item is sold by number or unit:

The said amendment was to come into effect from 1st June, 2023, however as per notification dated 5th June, 2023, the said amendment will now come into effect from 1st July, 2023.

Orders/Judgements

Registrar of companies (ROC)

Order for penalty for the violation of section 149(1) of the Companies Act, 2013

ROC, Gwalior, has passed an order dated 1st June, 2023 for violation of Section 149(1) of the Act in the matter of **M/s. M.P. Telelinks Limited.**

As per Section 149 of the Companies Act, 2013 every Company shall have a Board of Directors consisting of individual and shall have:

- Minimum 3 Directors in case of a Public Company, 2 in case of Private Company and 1 in case of One Person Company.a
- A maximum of 15 Directors.

Rule 3 of Companies (Appointment and qualification of Directors) Rules, 2014 states that the following Companies shall appoint at least 1 woman director-

- Listed Company;
- Every other public Company with paid up share capital of INR 100 crore or more; or
- Turnover of INR 300 crore or more;

Further section 172 of the Act stipulates that if a Company is in default of any of the provisions of this chapter and where no specific penalty is given, Company and every officer in default will be liable to INR 50,000 and in case of continuing default, penalty on Company - INR 500 per day subject to maximum of INR 3,00,000 and on officer in default – INR 500 per day subject to maximum of INR 1,00,000.

- Company, being a listed Company was required to appoint one woman director, however failed to do so.
- Accordingly, the ROC issued a show cause notice to which neither the Company nor its officer replied.
- In the absence of the representation by the Company, adjudicating officer imposed the penalty on the Company as well as on the officer in default under section 172.
- The penalty was imposed for the default of **840 days**, which was as follows:
  - Company - 3,00,000/-
  - Directors - 1,00,000 on each Director

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

ROC, Delhi & Haryana has passed order dated 19th June, 2023 for the violation of Section 118 of the Companies Act, 2013 in the matter of **M/s Teleone Consumers Product Private Limited.**

As per section 118(10) of the Act, every Company shall observe secretarial standards with respect to General Meeting and Board Meeting specified by ICSI under section 3 of Company Secretaries Act, 1980.

Further, Section 118(11) states that in case any default is made in compliance with respect to the above provision, the Company shall be liable to a penalty of INR 25,000/- and each officer in default shall be liable to pay INR 5000/-.

- In an inquiry report under section 208, the officer pointed out that the Company is non-compliant of the above-mentioned provisions i.e. the date of signing of the minute book was not mentioned and the serial number of the minute book was also missing.

- ROC issued a show cause notice, to which neither the reply was received nor the representation was made by the Company and its officer.
- Adjudicating officer after considering the Fact and circumstances imposed the penalty on the Company as well as on its officer in default under section 118(11).
- The penalty imposed is:
  - Company - 75000/-
  - Director (being officer in default) – INR 15000/- on each director

05 Compliance Calendar

Direct Tax

Due dates	Particulars
7th July 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 June 2023.
	Due date for payment of Equalisation Levy on e-commerce supply of services, referred to in Section 165A of Finance Act, 2016 for the quarter ending June 30, 2023.
	Due date for deposit of Tax deducted/collected for the month of June 2023.
15th July 2023	Due date for issue of TDS Certificate for tax deducted under section 194-IA in the month of May 2023.
	Due date for issue of TDS Certificate for tax deducted under section 194-IB in the month of May, 2023
	Due date for issue of TDS Certificate for tax deducted under section 194M in the month of May, 2023
	Due date for issue of TDS Certificate for tax deducted under section 194S in the month of May, 2023 (in case of specified person)
	Quarterly statement of TCS deposited for the quarter ending 30 June 2023.
30th July 2023	Quarterly TCS certificate in respect of tax collected by any person for the quarter ending June 30, 2023.
	Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194-IA for the month of June, 2023
	Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194-IB for the month of June, 2023
	Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194M for the month of June, 2023
	Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194S for the month of June 2023 (in case of specified person)
31st July 2023	Quarterly statement of TDS deposited for the quarter ending June 30, 2023.
	Return of income for the AY 2023-24 for all assessee other than • corporate assessee or • non-corporate assessee (whose books of account are required to be audited) or • partner of a firm whose accounts are required to be audited or the spouse of such partner if the provisions of section 5A applies or • an assessee who is required to furnish a report under section 92E.

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 June 2023 - 11th July 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 June 2023 - 20th July 2023
3	Invoice furnishing facility ('IFF') (QRMP Scheme)	Optional facility to furnish the details of outward supplies under QRMP Scheme	Monthly	1st day to 13th day of succeeding month	For Tax Period June 2023 - 1 to 13th July 2023
4	Form GST PMT-06 (Monthly payment of tax) (QRMP Scheme)	Payment of tax in each of the first two months of the quarter under QRMP Scheme	Monthly	25th of the succeeding month	For Tax Period June 2023- 25th July 2023
5	Form GSTR-1 (Details of outward supplies) (QRMP Scheme)	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	For the quarter April 2023 to June 2023- 13th July 2023

6	Form GSTR-3B (QRMP Scheme)	• Registered person with aggregate turnover up to INR 5 crore (opted for QRMP Scheme) having place of business in Group 1[i] 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[ii] states and union territories	Quarterly Quarterly	22nd day of the subsequent month following the end of quarter 24th day of the subsequent month following the end of quarter	For the quarter April 2023 to June 2023-22nd July 2023 For the quarter April 2023 to June 2023-24th July 2023
7	Form GSTR-6 (Return for Input Service distributor)	Return for input service distributor	Monthly	13th of the succeeding month	For Tax Period June 2023-13th July 2023
8	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 June 2023- 10th July 2023

Regulatory

Particulars	Applicant	Form No.	Due Dates
ECB Return	ECB Borrower	ECB-2	7th July
Annual return of Foreign Assets & Liabilities for FY.22-23	All Companies having Foreign Investment received or Foreign Investment made abroad	FLA return	15th July
Reporting of deposits and exempted deposits	All companies	DPT-3	31st July, 2023 (Extension)
Submit Statements of Investors Complaints to STX under R 13(3) of SEBI (LODR) Reg. 2015	Listed Companies	-	within 21 days from the end of Quarter
Submit a Corporate Governance Report under R27(2)(a) of SEBI(LODR) Reg. 2015	Listed Companies	-	within 21 days from the end of Quarter
Submit a Statement showing Shareholding Pattern to STX under R31(1) of SEBI(LODR) Reg. 2015	Listed Companies	-	within 21 days from the end of Quarter
Submission of Statement of deviation(s) or variation(s) under R32(1) of SEBI (LODR) Reg. 2015	Listed Companies	-	Within 45 days from the end of Quarter
Submit Quarterly financial results (Unaudited + Limited Review Report/Audited) and Statement of Assets and Liabilities under R33(3)(a) of SEBI (LODR) Reg. 2015	Listed Companies	-	Within 45 days from the end of Quarter
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	-	within 30 days from the end of Quarter

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