NEWSLETTER

Tax & Regulatory

Jan, 2024

Nangia Andersen LLP

A member firm of ANDERSENGLOBAL

What's *Inside ?*

Direct Tax 03

- Consideration received for registration of domain name, not taxable as royalty
- ITAT holds that DIN is mandatory on DRP directions as well; CBDT circular to be strictly followed by the revenue
- Wholly owned subsidiary cannot be construed as PE merely on the basis of 100% ownership of Indian subsidiary's share capital
- Circular No 20 of 2023

Indirect Tax 15

- Judgements & Rulings
- GST Updates

Transfer Pricing 23

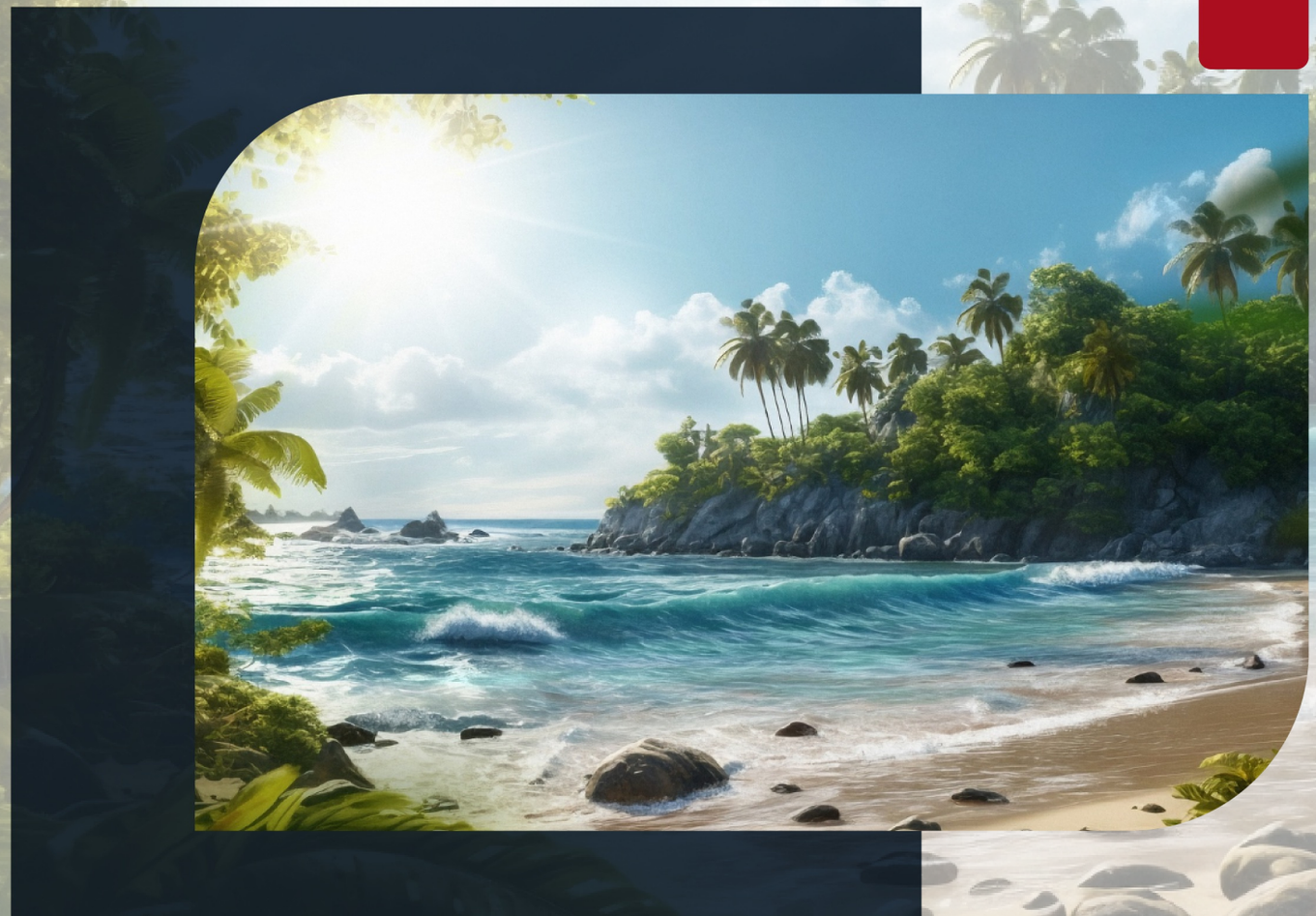
- ITAT: No reason to reject taxpayer's IGS benchmarking supported by PWC, KPMG reports

Regulatory 28

- Updates under Reserve Bank of India (RBI)
- Updates under securities and exchange board of India ('SEBI')
- Updates under Food Safety and Standards of India (FSSAI)
- Updates under Production Linked Incentive scheme ('PLI')
- Orders/judgements

Compliance Calendar 37

- Direct Tax
- Indirect Tax
- Regulatory



01
Direct Tax

Consideration received for registration of domain name, not taxable as royalty

Godaddy.com LLC vs Assistant Commissioner of Income Tax

ITA No. 891/2018

Issue(s) - Whether fee received for domain name registration is taxable as Royalty under the Income Tax Act, 1961 ('the Act')

Outcome - In Favour of Assessee.

Background

In a recent verdict, Hon'ble Delhi High Court ('Hon'ble HC') examined the scope of royalty under section 9(1)(vi) of the Act and held that consideration received for domain name registration cannot be construed as royalty, since the Assessee was not the domain name's owner and could not confer the right to use or transfer the right to use the domain name to another person.

Brief Facts and Contentions

- Assessee is engaged in the business of providing domain name registration services, web designing and web hosting services.
- The Assessee is tax resident of United States of America and does not have any permanent establishment ('PE') or fixed place of business in India. The Assessee is an accredited registrar for Internet Corporation for Assigned Names and Number (ICANN).

- The Assessee has offered the income from web hosting and web designing services to tax as Royalty. The Assessee further claimed domain name registration charges as business profits and treated the same as exempt in absence of PE as per India-USA Double Tax Avoidance Agreement.
- Domain name registration service is a process where registrants (customers) visit the Assessee's website and place a request for a particular domain name. Thereafter, Assessee checks with the registry whether the requested domain name is available for registration. The Assessee enters into agreement with the customer only when the registry confirms that the requested domain name is available for registration. The Assessee pays the applicable fees to ICANN and Registry for their services and retains the balance consideration with itself.
- The Assessing Officer ('AO') re-characterized web hosting and web designing services as Fees for Technical Services and the said re-characterisation was not challenged by the Assessee. Further, AO made an addition on account of domain name registration services fees construing it as royalty under Explanation 2 to section 9(1)(vi) of the Act.
- In response to the addition, the Assessee filed an objection before the Learned Dispute Resolution Panel ('Ld. DRP') stating that the Assessee is acting as an intermediary and does not have any right in the property or trademark in the domain name. Accordingly, the Assessee cannot transfer any right to use in the domain name to the registrants and the registrants only own the domain name. The Ld. DRP rejected the objection raised by the Assessee.
- Assessee filed an appeal before the Hon'ble ITAT. Hon'ble ITAT relying on the judgment of Hon'ble **Supreme Court in the case of Satyam Infoway vs Siffynet Solutions [(2004) 6 SCC 145]** sustained the addition made by the Ld. AO.
- The Assessee then approached Hon'ble HC against the order of Hon'ble ITAT.

Hon’ble HC’s Judgement

- Hon’ble HC, after observing the process of domain name registration and the accreditation agreement between the Assessee and the ICANN, held that the Assessee acts as a registrar and in that capacity provides domain name registration services to its customer. It does not create any ownership right to the Assessee and thus it cannot confer the right to use or transfer the right to use the domain name to another person/entity.
- Further, Hon’ble HC held that in the case of Satyam Infoway (supra), the Hon’ble Supreme Court was concerned only with rights of the domain name owner and not the registrar while determining whether passing off action can be initiated in relation to domain names. Thus, the Tribunal’s reliance on the above judgment is misconceived.

Nangia Andersen LLP’s take

In the above judgement, it has been held that in order for a consideration to qualify as Royalty, ownership of the underlying intangibles is necessary and mere registration of a domain name does not create any proprietorship rights in the name used as the domain name either in the Assessee or the customers or even any other third party.

ITAT holds that DIN is mandatory on DRP directions as well; CBDT circular to be strictly followed by the revenue

Sutherland Global Services Inc. & others vs The ACIT/DCIT & others

IT(TP)A Nos.27 to 31/CHNY/2023 & 49 others and SP Nos.34 to 39/CHNY/2023

Issue(s) – Whether final assessment orders & DRP directions valid without quoting of DIN.

Outcome - In Favour of Assessee

Background

In a recent verdict, Chennai Income tax Appellate Tribunal ('Hon'ble ITAT' or 'tribunal') held that communication of final assessment orders and Dispute Resolution Panel ('DRP') directions without quoting of document identification number ('DIN') is invalid. ITAT based the conclusion on non-satisfaction of the requirements of CBDT Circular No. 19/2019 and holds that any communication by the income tax authority ('ITA') without a valid computer-generated DIN is invalid and shall be deemed to have never been issued.

Brief Facts and Contentions

- Assessees, in a batch of appeals, raised additional ground before the Hon'ble ITAT challenging the validity of final assessment order/ DRP direction passed by the Assessing Officer (AO)/DRP, without a valid DIN generated and quoted in the body of the order in view of CBDT Circular No.19/2019 dated 14.08.2019.

- Assessees placed reliance on the judgement of Hon'ble SC in the case of **Pradeep Goyal vs. Union of India Writ Petition (Civil) No.32 of 2022** wherein Apex Court explained the necessity of implementing the system of electronic generation of a DIN for all communications sent by the ITA. Assessee further submitted that the CBDT has issued the circular as per the directions of the Hon'ble SC in the above case.
- Revenue contended that where DIN has been separately generated and communicated, it would be sufficient compliance of the impugned circular and directions issued by the DRP is an internal communication and thus, non-generation of DIN on said communication will not invalidate the final assessment order passed by the AO.

Hon'ble ITAT's Judgement

- Hon'ble ITAT, placing reliance on **Hon'ble SC** judgment in **Pradeep Goyal (Supra)**, remarked "if you understand the background and significance of issuing a circular mandating generating DIN in all communications from certain date one has to go by the letter and spirit of circular issued by the CBDT without any second thought", thereby holding the impugned Circular mandatory in nature.
- Hon'ble ITAT, placing reliance on **Delhi HC judgment** in **CIT vs. Brandix Mauritius Holdings Ltd. (456 ITR 34)**, observed that whenever communications are issued in the circumstances alluded to in paras 3(i) to 3(v) of CBDT circular without a DIN, they require to be backed by the approval of the competent authority.
- ITAT rejected revenue's argument of hand written DIN, opined that generation of DIN subsequently, and handwritten in the body of the order does not satisfy the conditions of the CBDT circular.
- Hon'ble ITAT, placing reliance on Hon'ble HC judgment in **CIT vs. Bhikajee Dadabhai & Co. [(1961) 42 ITR 123]** which was upheld by Hon'ble Apex Court, dismissed revenue's argument that once the DRP order is set aside the final order is not appealable before ITAT. ITAT observed that an illegal order would be in operation till it is vacated or set aside by the competent court in appeal.

- Hon'ble ITAT dismissed revenue's argument that DRP directions are not challengeable before tribunal opining that what is challenged before ITAT is final assessment order, which is passed in pursuant to the directions of the DRP. In addition, Hon'ble ITAT observed that if there is no valid DRP direction, the assessment order passed by the AO becomes time barred once the order of DRP has been held to be non-est.
- In conclusion, Hon'ble ITAT observed that no exceptional circumstances as described in para 3 of the Circular are mentioned in the directions issued by the DRP/AO, thereby rejecting revenue's reliance on Madras HC ruling in case of **Texmo Precision Castings UK Ltd vs. CIT (W.P.No.12310 of 2021 & WMP No.13097 of 2021)** and holding the final assessment orders and DRP directions void-ab-initio.

Nangia Andersen LLP's take

This judgement fortifies the intent of bringing automatic generation functionality of DIN by the CBDT. When a statute describes or requires a thing to be done in a particular manner, it should be done in that manner only, following the letter and spirit of the communication issued in this regard.

Wholly owned subsidiary cannot be construed as PE merely on the basis of 100% ownership of Indian subsidiary's share capital

M/S EXL Services.com Vs The Addl. D.I.T

ITA No. 4183/DEL/2013, 5627/DEL/2014, 5628/DEL/2014 & 3408/DEL/2014

Issue(s) - Whether wholly owned subsidiary would qualify as a PE of a foreign company

Outcome - In Favour of Appellant

Background

In a recent verdict, Delhi Tribunal ('Hon'ble ITAT') held that wholly owned subsidiary, cannot by virtue of 100% ownership, be considered as a Permanent Establishment ('PE') of a foreign company and other conditions for PE viz. fixed place PE, agency PE or Service PE are to be checked.

Brief Facts and Contentions

- EXL Inc ("appellant") is a company incorporated in USA and its primary business is to develop and deploy business process outsourcing solutions including transaction processing services and internet/ voice- based customer care service for its clients.
- EXL India entered into service agreement with appellant under which EXL India provides internet and voice based customer care services and backroom operation services to the customers of appellant and raises invoice to appellant at pre-determined hourly rate and in turn appellant raises invoices on the end customer.

- The assessing officer (‘AO’) alleged that the appellant had established a Permanent Establishment in India under Article 5 of Double Tax Avoidance Agreement (‘DTAA’) between India and United States of America and business connection under section 9(1)(ii) of the Act.
- AO based his contentions on the surmise that Appellant was neither competent nor had facility to execute the contract and was technically dependent on Indian company, further appellant had no role in performance of the contract and yet it retained substantial portion of revenue earned.

Hon’ble ITAT’s Judgement

- Hon’ble ITAT, following the judgement of the Supreme Court in case of Formula One World Championship Ltd stated that a fixed place is constituted if the following twin conditions are satisfied, i) Existence of a fixed place of business at the disposal of foreign enterprise and ii) a place through which business of the foreign enterprise is wholly carried on.
- Hon’ble ITAT observed that no part of business premises of EXL India was made available to the appellant. EXL India merely entered into a work contract and core activities are managed by the appellant from outside India only.
- Further EXL India had no authority to conclude any contract on behalf of appellant, all customers are based out of US, and none is present in India. Further appellant being a major shareholder of EXL India had right to nominate a director on the board of EXL India but it cannot be construed to mean that appellant has a place of management in India.
- ITAT referred to SC judgment in E-Funds [CIVIL APPEAL NO. 6082 OF 2015] and found the facts therein to be in pari materia with the Assessee's case. ITAT noted that the Revenue has not alleged that the employees of foreign enterprises furnished services in India and there was no case of secondment of employees by the Assessee to its Indian subsidiary, thus, held that there is no scope of Service PE.

- ITAT further noted that the Assessee is doing marketing work only and its contracts with clients are assigned or sub-contracted to its Indian subsidiary. ITAT further relied on SC judgment in Morgan Stanley [CIVIL APPEAL NOS. 2914 AND 2915 OF 2007] to observe that the Indian subsidiary has no authority to conclude contracts on behalf of Assessee and all customers are based out of US and none of them located in India, thus, there is no scope of dependent agent PE. Thus, concluded that there is no PE whether fixed place, service or agency PE of the Assessee in India.

Nangia Andersen LLP's take

A PE cannot be alleged merely by virtue of the fact that the foreign company has a right to appoint a director on the board of a wholly owned Indian entity. Other conditions viz. fixed place, dependent agent, service PE, etc. are to be checked by the Revenue.

Circular No 20 of 2023

Third round of guidelines issued by CBDT under section 194-O

Finance Act 2020 inserted a new section 194-O in the Income Tax Act 1961 ('the Act') which relates to deduction of tax at the rate 1% on the gross amount of sale of goods or provision of services by e-commerce operator on payment/credit of the amount to the account of e-commerce participants. The introduction of the provisions had created a lot of commotion amongst taxpayers, in response to which the Central Board of Direct Taxes (hereafter 'CBDT') had issued a Circular dated December 28, 2023. Considering the peculiarity of the provisions, further clarifications were sought by the stakeholders on ambiguous matters.

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

1. **TDS provision where multiple Electronic Commerce Operators ('ECOs') are involved in a transaction**

   A platform or network, such as the Open Network for Digital Commerce, might facilitate the involvement of multiple Electronic Commerce Operators in a single transaction. For instance, there could be a buyer-side ECO handling functions related to the buyer, and a seller-side ECO managing tasks associated with the seller. Following two situations arise in the given circumstance:

   - **Situation 1**: ECO (seller side) selling goods or provision of services is not the actual seller of the goods or services.

     In this situation, **ECO on the seller side** making payment to the final seller of goods or services shall be liable to deduct TDS under section 194-O of the Act.

- **Situation 2**: ECO (seller side) selling goods or provision of services is the actual seller of the goods or services.

  In this situation, **ECO on the buyer side** making final payment to the ECO on the seller side shall be liable to deduct TDS under section 194-O of the Act.

2. Convenience fees, delivery fees and commission charged by the ECO from seller shall be included in the gross amount on which tax has to be deducted if incidence of the said charges has been passed on the buyer. However, if seller pays such amount to the ECO on lump-sum basis which is not linked to specific transaction, there is no need to deduct tax under section 194-O of the Act on the said amount.
3. ECOs may offer discount to the buyers purchasing from its platform, applicability of TDS provision with respect to the same is as below:
   - If the discount offered by the ECO is on behalf of the seller i.e. seller receives consideration net of discount, the said discount shall be reduced while calculating gross consideration on which tax has to be deducted.
   - If the discount offered by the ECO is independent of the seller i.e. seller receives full consideration irrespective of the discount offered by the ECO, the said discount shall not be reduced while calculating gross consideration on which tax has to be deducted.
4. Tax has to be deducted on the gross consideration excluding the GST amount if GST amount has been indicated separately in the invoice. However, if TDS under section 194-O of the Act is to be deducted on payment basis and it is not possible to identify GST component in the amount, tax has to be deducted on the entire amount of payment.
5. In case of purchase return where TDS has already been deducted on account of earlier purchase of the said goods, the amount of TDS can be adjusted against the TDS liability of the next purchase against the same seller in the same financial year. Further, where purchase return has been replaced by goods itself, there is no need for any adjustment of TDS.

02
Indirect Tax

Rajasthan Authority for Advance Ruling (’AAR’) held that Residential dwelling leased out for commercial purpose will be taxable under forward charge

Brief Facts

- Deepak Jain (‘Applicant’) is the owner of a property (‘Demised Premises’) and has leased the same to Back Office IT Solutions Private Limited (‘Lessee’) which is engaged in providing comprehensive fund accounting, reporting, and analytics solutions to fund administrators in the hedge fund industry. The Lessee is registered for GST purposes in the state of Rajasthan;
- Lease deed issued by the Jaipur Development Authority ('JDA’) stipulates that the land use of the property to be residential;
- Further, lease agreement entered into by the Applicant and the lessee stipulates that the property be used solely for commercial use (i.e. for establishing branch/office) of the lessee and that construction of property is done for commercial purposes only;
- In view of the above facts, Applicant filed Advance Ruling Application before the AAR on following questions:
  a) Whether the Demised premises will be covered in definition of residential dwelling for the purpose of notification No.05/2022-CentralTax (Rate) dated July 13, 2022?

b) If out of following which are factors important to include in definition of residential dwelling?

1. Land use of property by local authorities; or
2. Layout of the property, its structure, whether it is designed for usage as a residential unit or a commercial unit; or
3. The purpose for which the dwelling is put to use; or
4. How is the plan of the property sanctioned by the local authorities; or
5. The intention of the developer / owner of the property; or
6. The length of stay intended by the users; or
7. Electricity Bill; and
8. Municipal Tax

Observations

- AAR observed that renting of immovable property is considered as a supply service under the GST Legislation;
- Until July 17, 2022, renting residential dwellings for use as a residence was exempt from GST, while renting for commercial use was taxable at 18%. However, from July 18, 2022, the taxability of renting of residential property underwent certain changes and services by way of renting of residential dwelling used as residence is taxable under the reverse charge mechanism, if rented to a registered person. Taxability of renting of Commercial property remains taxable under the forward charge mechanism;
- AAR observed that the term “residential dwelling” is not defined under Central Goods and Services Tax Act, 2017. AAR further observed that primary consideration is to find out the use of property rented to determine the taxability;
- In the present case, lease agreement entered between Applicant and lessee stipulates that premises shall be used solely for commercial purpose (i.e. for establishing branch/office) and the electricity connection of the premises has also been issued for commercial purpose.

Decision

- AAR ruled that premises will not be covered in the definition of residential dwelling in terms of Notification No.05/2022-Central Tax (Rate) dated 13 July 2022 as it is being used for commercial use;
- In response to the Second question, AAR ruled that the important factors to be included in the definition of Residential Dwelling is the purpose for which the dwelling is put to use and the length of stay intended by the users.

[Deepak Jain - TS-664-AAR (RAJ)-2023-GST, Dated 20 December 2023]

Hon’ble Bombay High court held that GSTR-1 rectification post due date shall be allowed if due to bona fide human errors

Brief Facts

- M/s. Star Engineers(I) Private Limited (‘Petitioner’), is engaged in designing, developing, manufacturing and supplying wide range of electronic components for industrial purpose. Petitioner has a regular business relationship with Bajaj Auto Limited (‘BAL’);
- During Financial Year (‘FY’) 2021-2022 , the Petitioner delivered goods to third-party vendors on behalf of BAL, following a "Bill-to-Ship-to-Model" as per BAL's instructions. Although. the petitioner correctly issued e-invoices and credit notes to BAL with the appropriate GST identification number (GSTIN), there was an inadvertent error in Form GSTR-1 for the periods July 2021, November 2021, and January 2022. The GSTIN of third-party vendors who received the shipment was inadvertently reported instead of BAL's GSTIN in the said returns;
- Petitioner discovered this inadvertent error, post due date of correction in form GSTR-1 for the FY 2021-22. As a result, these invoices were appearing in GSTR-2B of third party instead of BAL, restricting BAL to claim Input Tax Credit (‘ITC’) for these invoices;
- Petitioner filed an application before the Deputy Commissioner of State Tax seeking approval to Modify/Amend the GSTR-1 for FY 2021-22. However, the said request by the Petitioner was rejected;
- Aggrieved by the order of the Deputy Commissioner of State Tax, Petitioner filed the present writ petition before the Bombay High Court;

Observations

- Hon'ble High court observed that Section 37, read with Section 38 and Section 39 of CGST Act, 2017 need to be purposively interpreted. Interpreting sub-section (3) of Section 37 should not restrict the petitioner from presenting accurate details in their GST returns in the category of cases when there is a bona fide and inadvertent error in furnishing any particulars in filing of returns, accompanied with the fact that there is no loss of revenue;
- High court observed that Petitioners reliance on the judgement of Hon'ble Madras High Court in the matter of Sun Dye Chem vs. Assistant Commissioner (ST) & Ors. wherein an error was committed by Sun Dye Chem in filing details relating to credit is apt in the current circumstance;
- It was also observed that in such cases the department is aware that there is no loss of revenue to the Government. The department needs to avoid unwarranted litigation on such issues, and make the system more assessee friendly.

Decision

- Hon'ble High court allowed the petitioner to amend/rectify the Form GSTR-1 for the impugned tax periods of FY 2021-22.

[Star Engineers (I) Pvt. Ltd. vs. UOI & Ors. -TS-654-HC(BOM)-2023-GST dated 14 December 2023]

Introduction of Amnesty scheme for GST appeal filing

- CBIC introduced an amnesty scheme for GST appeal filing providing relief to the following taxable persons:-
  - Those taxable persons who could not file an appeal against the order passed by the proper officer on or before the 31st day of March, 2023 under section 73 or 74 of the CGST Act, 2017 ('The said act') within the time period specified in sub-section(1) of Section 107 read with sub-section (4) of Section 107 of the said Act, and
  - Those taxable persons whose appeal against the said order was rejected solely on the grounds that the appeal was not filed within the time period specified in Section 107
- The said person shall file an appeal against the said order in FORM **GST APL-01** in accordance with subsection (1) of Section 107 of the said Act, on or before 31st day of January 2024
- An appeal under this notification can be filed only if the appellant has paid the full amount of tax, interest, fine, fee and penalty arising from the order and a sum equal to twelve and a half per cent of the remaining amount of tax in dispute arising from the said order , subject to a maximum of twenty-five crore rupees out of which twenty percent should have been paid by debiting from Electronic Cash Ledger,
- Further, an appeal under this notification shall not be admissible in respect of a demand not involving tax.

[Notification No. 53/2023-Central Tax dated 2 November 2023]

Extension of due date for filing GSTR-3B for Nov-2023 in certain districts of Tamil Nadu.

CBIC vide notification 55/2023- Central Tax has extended the due date for furnishing the return in **Form GSTR-3B** for the month of November-2023 till 27th day of December, 2023 for registered persons whose principal place of business is in the districts of Chennai, Tiruvallur, Chengalpattu and Kancheepuram in the state of Tamil Nadu and are required to furnish return under sub- section (1) of section 39 read with clause (i) of sub-rule (1) of rule 61 of the Central Goods and Services Tax Rules, 2017.

[Notification No. 55/2023-Central Tax dated 20 December 2023]

Extension of time limit for issuance of order under Section 73 for the Financial Year 2018-19 and 2019-20.

CBIC has extended the time limit specified under sub-section (10) of Section 73 for issuance of order under sub-section (9) of Section 73 of the CGST Act, 2017 ('the said act'), for recovery of tax recovery of tax not paid or short paid or of input tax credit wrongly availed or utilized, relating to the period as specified below, namely:-

- For the Financial Year 2018-19, up to the 30th day of April, 2024; and
- For the Financial Year 2019-20, up to the 31st day of August, 2024.

[Notification No. 56/2023-Central Tax dated 28 December 2023

03
Transfer pricing

ITAT: No reason to reject taxpayer's IGS benchmarking supported by PWC, KPMG reports

Outcome: In favour of the taxpayer

Category: Benchmarking of Arm's Length Price ("ALP") of Intra-Group Services ("IGS").

Facts of the Case

- CLSA India Pvt. Ltd. ("the taxpayer") is a part of CLSA group, an Asia brokerage house having its regional headquarters in Hong Kong. The taxpayer in India is primarily engaged in the business of institutional equity broking and is a member of Bombay Stock Exchange (BSE) and National Stock Exchange (NSE). Its customers mainly comprise of Foreign Institutional Investors (FII) and Domestic Institutional Investors (DII).
- During the year, the taxpayer has entered into agreements with its AEs to avail certain intra group services ("IGS") in the nature of broking management, credit risk management, finance, accounting as well as middle and back-office support services.
- In the TP study report, taxpayer had benchmarked the transaction of services availed, by taking entity level TNMM and has benchmarked the transaction separately by adopting AE as tested party using foreign data base.

- Further, during the course of TP proceedings, taxpayer has filed voluminous documents in connection with description of the various services received; head-wise breakup of the payments; cost allocation as per the allocation keys provided in agreement, survey report by separate and independent auditor, who have certified and verified allocated cost and keys. In addition to the same, the taxpayer had also provided PWC- Agreed Upon procedure report to establish factual veracity of the costs incurred, allocation mechanism and mark-ups charged by the AE and to demonstrate the shareholder costs and duplicative costs were not allocated. The taxpayer had also tried to justify the appropriateness of arm's length mark-up charged by the AEs by providing benchmarking analysis undertaking by KPMG.
- However, TPO rejected the entire benchmarking analysis done by the taxpayer and then proceeded to conclude ALP on some adhoc estimation of man hours devoted by AE by applying CUP method.
- Aggrieved, the taxpayer preferred an appeal before the ld. DRP. The ld. DRP also rejected the taxpayer's submission on the same basis as of TPO. Aggrieved by the order of the Hon'ble DRP, the taxpayer filed an appeal before the **Tribunal.**

ITAT Ruling

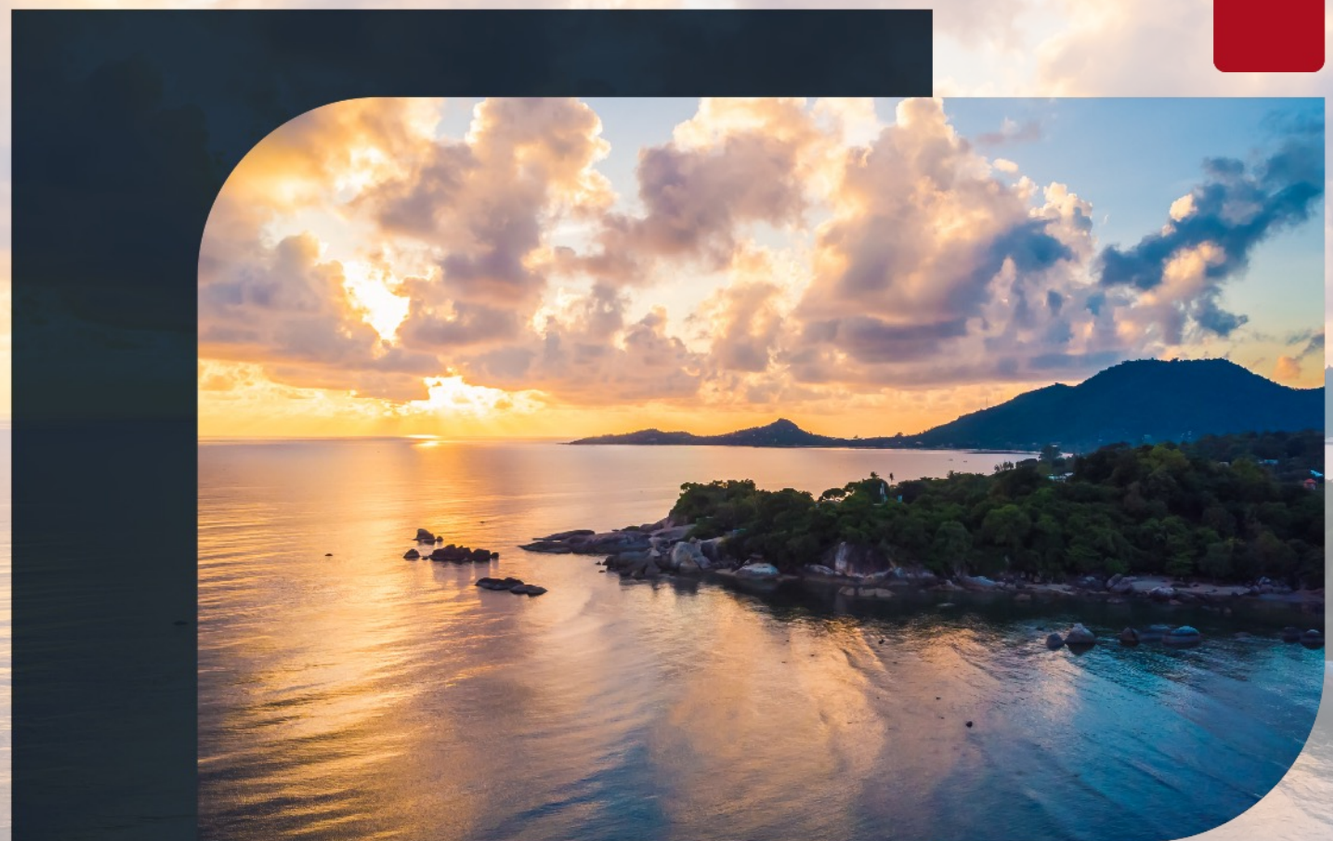
Following observation were drawn by the Hon'ble ITAT:

- The approach of the TPO to adopt that adhoc estimation of man hours is highly unjustifiable and was neither based on any method nor any proper basis or reasoning was sustained so as to justify some adhoc estimation.
- It was observed that TPO has made the transfer pricing adjustment purely on estimation basis without any supporting material. Though the TPO has mentioned that arm's length price has determined by applying CUP method but in fact the TPO has not come up with any comparables to justify the application of CUP method.
- ITAT do not find any shortcoming or defect in allocations of cost done by the taxpayer and therefore have no reason to reject the benchmarking analysis done by the taxpayer duly supported by independent report of PWC AUP and KPMG. Accordingly, based on aforesaid analysis and details of various intra-group services duly substantiated by the evidence and the benchmarking analysis, ITAT do not find any reason to justify the TP adjustments made by the TPO based on adhoc estimation and the same was deleted.

Nangia's Take

- The instant ruling is addition to plethora of rulings in the matter of intra -group services. The verdict in the instant case provides that intra group services should be duly substantiated by back up documents/evidence along with a thorough benchmarking analysis.
- In light of the above, ITAT in the instant ruling clearly observed that taxpayer established the actual receipt of intra group services from AE through back up documents like head-wise breakup of the payments; cost allocation as per the allocation keys provided in agreement, survey report by separate and independent auditor, who have certified and verified allocated cost and keys, PWC - Agreed Upon procedure Report and KPMG Benchmarking Report. Additionally, ITAT also opined that the taxpayer is justified in adopting TNMM as MAM for benchmarking the transaction pertaining to IGS.
- 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 services by applying most appropriate method out of the six methods as specified in Rule 10B of the Rules.

[Source: CLSA India Private Limited [TS-711-ITAT-2023(Mum)-TP]



04 Regulatory

Updates under Reserve Bank of India (RBI)

Restriction on investments in alternative investment funds by REs

The RBI, with an intent to curb evergreening through indirect exposure of regulated entities (RE) on debtor companies, restricted investments of RE in AIFs which have downstream investments in a debtor company of the RE vide notification dated 19th December 2023.

A time-line of 30 days from the notification has been prescribed to liquidate investments already made by such REs, whereas in case of any subsequent downstream investment, such investment of the RE shall be liquidated within 30 days of such subsequent downstream investment.

Notification of master direction - Reserve Bank of India (Internal Ombudsman for Regulated Entities) directions, 2023

The RBI vide notification dated 29th December, 2023, with a view to strengthen the Internal Grievance Redress system of the regulated entities notified the Master Direction - Reserve Bank of India (Internal Ombudsman For Regulated Entities) Directions, 2023. Pursuant to the same, the following independent internal ombudsman directives have been integrated into a single master direction:

- Internal Ombudsman Scheme 2018- Implementation by banks dated September 3, 2018
- Internal Ombudsman Scheme for Non-Bank System Participants, 2019 dated October 22, 2019

- Appointment of Internal Ombudsman by Non-Banking Financial Companies dated November 15, 2021
- Reserve Bank of India (Credit Information Companies - Internal Ombudsman) Direction, 2022 dated October 6, 2022

The framework reaffirms that the Internal Ombudsman mechanism should work as envisaged in the Master Directions and the Internal Ombudsman shall be positioned as an independent, apex level authority on consumer grievance redress within the regulated entities.

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

Extension of timeline for implementation of greivance redressal mechanism

SEBI through its circular dated 1st December, 2023 extended the timeline for implementing the provisions of circular dated 20th September, 2023 on redressal of investor grievances and the framework for monitoring and handling of complaints by designated bodies. Pursuant to the same, designated bodies specified in schedule II of the circular were required to apply for SCORES Authentication and/or API integration within a specified period.

The above-mentioned September circular was initially scheduled to come into effect on 4th December, 2023. Now, there has been a decision to extend the effective date of implementation of the provisions mentioned above to 1st April, 2024.

Despite the extension, entities are required to continue submitting the Action Taken Report on SCORES within 21 calendar days from the date of receiving the complaint, as directed in the circular dated 20th September, 2023.

Updates under Food Safety and Standards of India (FSSAI)

Extension of time period for compliance of provision of warning statement for pan masala

The FSSAI released certain directions vide notification dated 7th December 2023 in furtherance to Food Safety and Standards (Labelling and Display) Second Amendment Regulations, 2022 dated 11th October 2022 ('Amendment Regulations') and direction issued by FSSAI dated 22nd May 2023 and 01st August 2023 in this regard.

As per the Amendment Regulation, front label of the article 'PAN MASALA' is required to mandatorily contain the declaration: "CHEWING OF PAN MASALA IS INJURIOUS TO HEALTH" and such declaration/warning statement shall cover 50% of the front label of the said article.

As per earlier directions dated 22nd May 2023, extension of three months w.e.f., 1st May 2023 was provided for complying with the requirement of declaration covering 50% of the front label as mentioned. The enforcement of said amendment was further extended for a period of three months vide direction dated 01st August 2023.

However as per the latest direction dated 7th December 2023 released by FSSAI, an additional six-month extension from 1st November 2023 has been granted for enforcing the 50% coverage requirement. The same has been done in response to representations received from associations seeking more time to utilize/ exhaust their existing stock of packaging material inventory.

Updates under Production Linked Incentive scheme ('PLI')

Prospective scheme - PLI – MILLET 2.0

The "Production Linked Incentive Scheme for Food Processing Industry (PLISFPI)," was approved by the Union Cabinet on 31st March, 2021, with a budget of Rs. 10,900 crore, to foster global food manufacturing champions and promote Indian food brands internationally. The PLISFPI Scheme is being implemented over a six-year period from 2021-22 to 2026-27.

The scheme incentivizes four key food segments namely Ready to Cook/ Ready to Eat (RTC/ RTE) foods, including Millets-based products, Processed Fruits & Vegetables, Marine Products, Mozzarella Cheese (Category-I), supports SMEs for innovative/organic products (Category-II), and facilitates branding and marketing abroad.

A derivative from the savings under PLISFPI, the Production Linked Incentives Scheme for Millet Based Products (PLISMBP or PLI-Millets 1.0) has been introduced to promote the incorporation of millets in Ready to Cook/Ready to Eat products. The Expressions of Interest (EoI)/ Guidelines was issued on June 23, 2022.

Leveraging savings from the FY2021-22 disbursement claim under PLISFPI, the Ministry's proposal has gained approval for inviting EoI in the manufacturing of Millet-based products (Millets 2.0) with an allocated budget of Rs. 1000 Crore, as of 10th August, 2023.

EoI/ guidelines may be released by Ministry of Food Processing Industries in coming month and can expect the fresh application under PLI-Millet (2.0) from 01st April 2024.

Withdrawal Of FAQs - Production Linked Incentive Scheme for Food Processing Industry (PLISFPI)

In a letter dated 13th December, 2023, from the Ministry of Food Processing Industries, the government has officially withdrawn the FAQs (Clarification) that were issued on 18th January, 2023 effective from 06th October, 2023. The FAQs pertained to the shifting of B&M (Building and Marketing) expenditure, in part of in full, toward committed expenditure on capital (Plant & Machinery, Technical Civil Work and Associated Infrastructure).

Orders/judgements

Registrar of companies (ROC)

Order of penalty for the violation of section 178 of the companies act, 2013

ROC, Chennai has passed an order for the violation of Section 178 of Companies Act, 2013 in the matter of M/s Mukka Proteins Limited (having registered office in Karnataka), (herein after referred as 'the Company').

Section 178 states that the board of directors of a listed company and such other class or classes of company as may be specified, shall constitute the Nomination and Remuneration Committee consisting 3 or more non-executive directors out of which ½ shall be independent directors.

It further states that if any default is made in complying Section 177 or 178 of Companies Act, 2013, then company shall be liable to the penalty of Rs. 5 Lakhs and every officer in default shall be liable to the penalty of Rs. 1 Lakh.

In the given case, the Company, filed a suo-moto application stating that the Company was converted into public company with effect from 2nd December, 2019. As the result the provisions of Section 149(1) were applicable to the Company on the basis of turnover and outstanding loans, debentures and deposits and it was required to appoint independent director form 2nd December, 2019. However, the Company complied with this provision on 15th January, 2022, for which the Company was penalised accordingly.

The Company also defaulted in constituting a Nomination and Remuneration Committee, which was later complied with effect from 17th January, 2022.

Date of hearing was fixed, where the representative of the Company accepted the default.

ROC, Karnataka imposed the below mentioned penalty for violating Section 178 of Companies Act, 2013:

S. No	Name of the Defaulters	Total Penalty levied
1.	Company	Rs. 500000
2.	Kalandan Mohammed Haris, Director	Rs. 100000
3.	Kalandan Mohammed Arif, Director	Rs. 100000
4.	Umaiyya Banu, Director	Rs. 100000
5.	Kalandan Mohammed Althaf, Director	Rs. 100000
6.	Jessica Juliana, CS	Rs. 100000
7.	Mehaboobsab Chalyal, CS	Rs. 100000

Order of penalty for the violation of section 170 of the companies act, 2013

ROC, Chennai has passed an order for the violation of Section 170 of Companies Act, 2013 in the matter of M/s Sailor Exports Limited (registered office in Madhya Pradesh) (herein after referred as 'the Company').

Section 170 states that every Company shall keep a register at its registered office containing such particulars of its directors and KMP including the details of securities held by each one of them in the company or its holding, subsidiary or associate companies.

It also states that the company shall file with Registered office, a return containing such particulars as prescribed of its directors and KMP within 30 days from the date of appointment of every director and KMP.

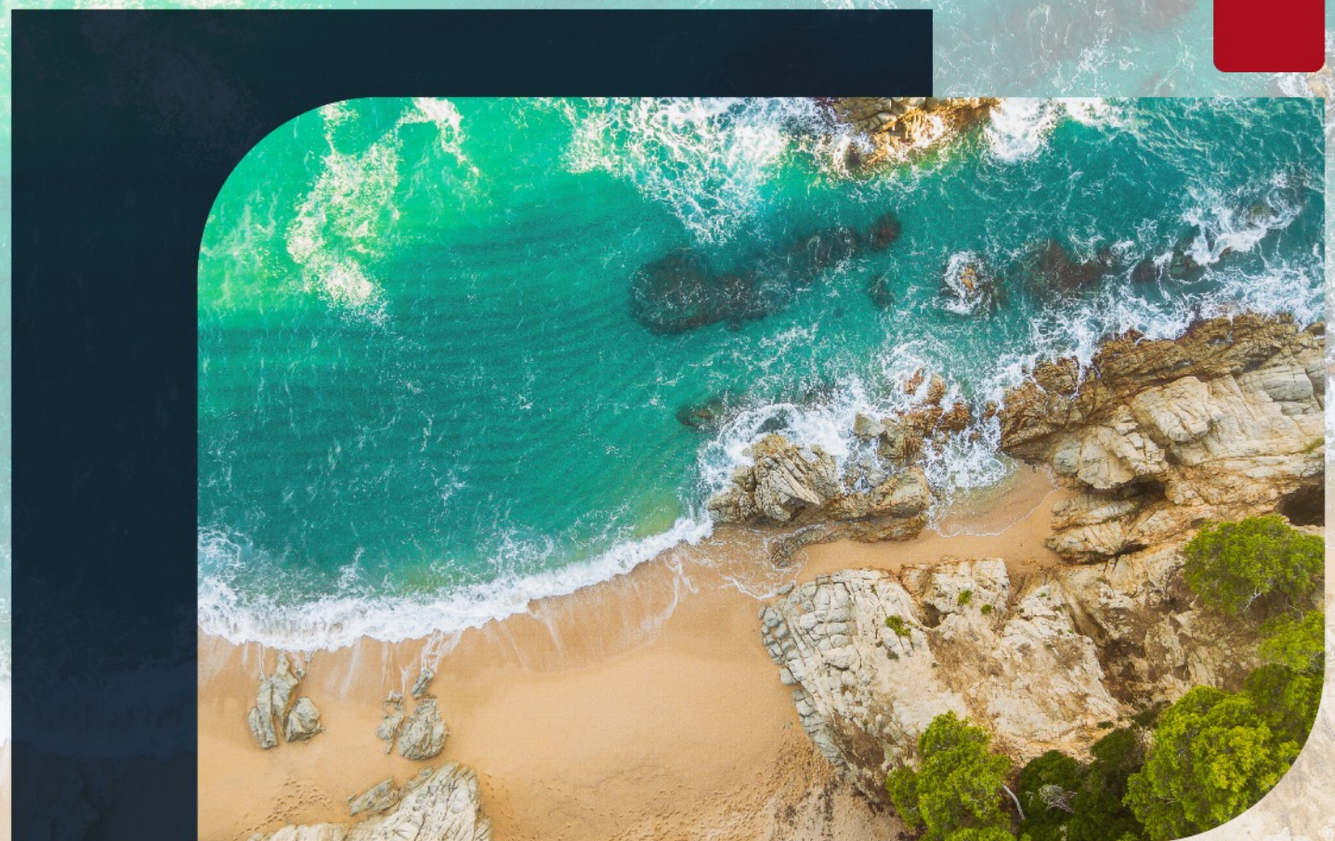
Further Section 172 states that where no specific penalty is given and company or officer in default contravenes any provisions of this chapter, shall be liable to the penalty of Rs. 50000/- and in case the default continues, shall be liable to the penalty of Rs. 500/- for each day till such default continues, maximum cap being Rs. 300000/- for the company and Rs.100000/- in case of officer in default.

In the given situation, an inquiry notice was issued against the Company, where it was found that the Company appointed Mrs. Sunita as women director with effect from 22nd August, 2022. However, the Company filed DIR-12 for intimating the said appointment on 19th April, 2023 (total delay of 208 days).

On being asked to justify the delay, the Company pleaded that ROC has already passed adjudication order against the Company and its directors for violating Section 149 (1) of Companies Act, 2013 for not appointing the women director on time.

ROC, Madhya Pradesh, on the ground that both the sections (i.e. section 149 for appointment of director and section 170 for intimating maintaining register of directors and intimating the same to the ROC) are different and it does not justify the plea of the Company, imposed the following penalties under Section 170:

S.No	Name of the Defaulters	Duration of Default	Initial Penalty	Penalty for continuing default	Total Penalty levied
1	Company	208 day	Rs. 50000	Rs. 104000	Rs. 154000
2	Mr. Mahesh, Director	208 day	Rs. 50000	Rs. 104000	Rs. 100000
3	Mr. Kishanchand, Director	208 day	Rs. 50000	Rs. 104000	Rs. 100000
4	Mr. Manoj, Director	208 day	Rs. 50000	Rs. 104000	Rs. 100000



05 Compliance Calendar

Due dates	Particulars
7th January 2024	Due date for deposit of Tax deducted/collected for the month of December, 2023.
	Due date for deposit of TDS for the period October 2023 to December 2023 when Assessing Officer has permitted quarterly deposit of TDS under section 192, 194A, 194D or 194H.
	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 December 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 December 31st, 2023.
14th January 2024	Due date for issue of TDS Certificate for tax deducted under section 194-IA in the month of November, 2023.

	Due date for issue of TDS Certificate for tax deducted under section 194-IB in the month of November, 2023
	Due date for issue of TDS Certificate for tax deducted under section 194M in the month of November, 2023
	Due date for issue of TDS Certificate for tax deducted under section 194S in the month of November, 2023 (in case of specified person)
15th January 2024	Quarterly statement of TCS for the quarter ending December 31st, 2023
30th January 2024	Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194-IA for the month of December, 2023
	Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194-IB for the month of December, 2023
	Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194M for the month of December, 2023

	Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194S for the month of December, 2023 (in case of specified person)
	Quarterly TCS certificate (in respect of tax collected by any person) for the quarter ending December 31st, 2023
31st January 2024	Quarterly statement of TDS for the quarter ending December, 2023

S. No.	Compliance Category	Compliance Description	Frequency	Due Date	Due Date falling in January 2024
1	Monthly Return 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 December 2023- 11th January 2024
2	Monthly Return Form GSTR-3B	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 QRMP Scheme	Monthly	20th day of succeeding month	For Tax Period December 2023- 20th January 2024
3	QRMP Scheme Form GSTR-1 (Details of out-ward supplies)	Registered person having aggregate turnover up to INR 5 crores who have opted for QRMP Scheme	Quarterly	13th day of the subse-quent month following the end of quarter	For the quarter October 2023 to December 2023- 13th January 2024

4	QRMP Scheme Form GSTR-3B	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	Quarterly	22nd day of the subsequent month following the end of quarter	For the quarter October 2023 to December 2023- 22nd January 2024
		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	24th day of the subsequent month following the end of quarter	For the quarter October 2023 to December 2023- 24th January 2024
5	Form GSTR-6 (Return for Input Service distributor)	Return for input service distributor	Monthly	13th of the succeeding month	For Tax Period December 2023- 13th January 2024

6	Form GSTR-7 (Return for Tax Deducted at Source)	Return filed by individuals who deduct tax at source under GST.	Monthly	10th of the succeeding month	For Tax Period December 2023- 10th January 2024
7	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 December 2023- 10th January 2024

[i]**Group 1 states** - Chhattisgarh, Madhya Pradesh, Gujarat, Maharashtra, Karnataka, Goa, Kerala, Tamil Nadu, Telangana, Andhra Pradesh or the Union Territories of Daman & Diu and Dadra & Nagar Haveli, Puducherry, Andaman and Nicobar Islands, Lakshadweep

[ii]**Group 2 states** - Himachal Pradesh, Punjab, Uttarakhand, Haryana, Rajasthan, Uttar Pradesh, Bihar, Sikkim, Arunachal Pradesh, Nagaland, Manipur, Mizoram, Tripura, Meghalaya, Assam, West Bengal, Jharkhand, Odisha or the Union Territories of Jammu and Kashmir, Ladakh, Chandigarh, Delhi

Segment	Particulars	Due dates
ECB Borrowers	ECB Borrowers	7th January, 2024
SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015	Statement of Grievance Redressal Mechanism	21st January 2024
SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015	Corporate Governance Report	21st January 2024
SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015	Shareholding Pattern	21st January 2024
SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015	Reconciliation of share capital audit report	30th January 2024
The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013	Annual POSH Return	31st January 2024*

***** *The timeline for POSH compliances vary from state to state, however usually, a time-line of 31st January is considered for filing the report for the preceding calendar year. The concerned are requested to check with the authorities in their vicinity.*

NOIDA

(Delhi NCR - Corporate Office) A-109, Sector - 136, Noida - 201304, India
T: +91 120 2598000

GURUGRAM

001-005, Emaar Digital Greens Tower-A 10th Floor, Golf Course Extension Road, Sector 61, Gurgaon-122102
T: +91 0124 430 1551

CHENNAI

Prestige Palladium Bayan,
Level 5, 129-140, Greams Road, Thousand Lights, Chennai - 600006 T: +91 44 46549201

PUNE

3rd Floor, Park Plaza, CTS 1085, Ganeshkhind Road, Next to Pune Central Mall, Shivajinagar, Pune - 411005, India

DELHI

(Registered Office) B-27, Soami Nagar, New Delhi - 110017, India T: +91 120 2598000

MUMBAI

4th Floor, Iconic Tower, URMI Estate, Ganpat Rao Kadam Marg, Lower Parel, Mumbai - 400013, India
T : +91 22 4474 3400

BENGALURU

Prestige Obelisk, Level 4, No 3 Kasturba Road, Bengaluru - 560 001, Karnataka, India
T: +91 80 2248 4555

DEHRADUN

1st Floor, "IDA" 46 E.C. Road, Dehradun - 248001, Uttarakhand, India T: +91 135 271 6300

www.nangia-andersen.com | query@nangia-andersen.com

Follow us at :

Nangia Andersen LLP

A member firm of ANDERSENGLOBAL