NEWSLETTER

Tax & Regulatory

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Nangia Andersen LLP

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What's Inside?

01

Direct Tax

Conditions of Article 5(7) of India-Japan DTAA must be fulfilled to establish Dependent Agency PE

ITOCHU Corporation VS ACIT

ITA NO. 760/DEL/2021

Issue(s) – Whether Dependent Agent PE can be established without fulfilling the requirements of Article 5(7) of India-Japan DTAA

Outcome – In Favour of Assessee

Background

In a recent verdict, Income Tax Appellate Tribunal ('Hon'ble ITAT'), examined whether Dependent Agency PE can be established based on agreement entered between parties without fulfilling requirements of Article 5(7) of India-Japan DTAA, held that Article 5(7) conditions are essential for establishing Dependent Agency PE.

Brief Facts and Contentions

- Itochu Japan ('Assessee') a company incorporated in Japan and a tax resident of Japan, is involved in domestic and overseas trading of various products such as textile, machinery, metals, minerals, chemicals, information and communication technology, construction, finance as well as business investment.

- Assessee has an Indian subsidiary called Itochu India Private Limited ('Itochu India') which undertakes general trading, procurement and supply of chemicals, textiles, machinery and equipment. Further assessee had entered into Memorandum of Agency agreement with Itochu India for assistance in purchase and sales functions, and for such services Itochu India was compensated at arm's length price.
- The Assessee filed return of income for Assessment Year ('AY') 2017-18 on 30.11.2017 and declared income of ₹ 3,77,25,763. The return was selected for scrutiny and Assessing Officer ('AO') held that Assessee had a Dependent Agent PE in India in form of Itochu India and assessed the total income at ₹ 93,27,86,902 by attributing 50% of the income from the sales made to Indian customers to the PE and applied profit rate of 10% as per the provisions of section 44BB of the Income Tax Act, 1961 ('The Act').
- Aggrieved, Assessee filed objections before Dispute Resolution Panel ('DRP') and contended that pre-requisite conditions stipulated in Article 5(7) of India- Japan DTAA are not fulfilled. Further, AO had erred in holding that Itochu India secures orders in India on behalf of the Assessee and failed to appreciate that:
  i. The services in relation to the purchase of goods are different from sale of goods;
  ii. The purchase and sale functions performed by Itochu India are separately mentioned in the agency agreement;
  iii. No negotiation activity was undertaken by Itochu India for sale purposes;
  iv. Itochu India had no authority whatsoever to conclude contracts on behalf of the assessee;
  v. Itochu India has been paid service fee/commission for its services which is at arm's length price.
- DRP observed that Itochu India secured orders in India for the assessee and also negotiated and finalized the prices with the customers of assessee in India, though such authority was not vested in them through any agreement. Further, the issue of establishment of permanent establishment in India in the form of Assessee's 100% subsidiary (i.e., Itochu India) has been examined in Assessee's own case for AY 2013-14 and AY 2015-16 wherein it was held that the Assessee indeed had a PE.

- Accordingly, it was held that Itochu India was a dependent Agent PE of the assessee.
- The AO passed the final assessment order basis the directions of the DRP. Aggrieved by the same, Assessee filed appeal before the Hon'ble ITAT contending that AO and DRP had erred in holding that the assessee had a PE in India and had wrongly attributed 50% revenue of Assessee to such PE.
- Revenue submitted that Article 1 of memorandum of Agency agreement entered into by Assessee and Itochu India established a principal and agent relationship and no other evidence would be required to prove such relationship.

Hon'ble ITAT Judgement

- Hon'ble ITAT stated that merely referring to the parties as principal and agent is not sufficient to establish a principal and agent relationship. The conditions of Article 5(7) of India-Japan DTAA must be fulfilled to establish such relationship.
- It is further necessary to establish that the agent has authority to take decisions in relation to its day to day business operations and providing services to the customers on the basis of the agreement with the principal on its own and without any instructions or directions of the principal. It should be established that requisite skills, resources, employees and expertise are available with the agent to perform the services and the agent bears all sorts in relation to the services as an agent.
- Further, Hon'ble ITAT stated that there was no evidence that Itochu India habitually exercises the authority conclude contracts in India or maintains stock in India for delivery to customers or secures orders in India, thereby not fulfilling the pre-requisite of Article 5(7) of India-Japan DTAA.
- Further, it was also held that once it is established that the alleged PE has been compensated at arm's length price, no further profits can be attributed to such PE in accordance with the provisions of the DTAA.

Nangia Andersen LLP's Take-

The nature of business of trading being a continuous flow of business process cannot be a foundation to conclude a principle-agent relationship for the purpose of Article 5 of DTAA. Also, upon receipt of all relevant documents the burden is on the AO to establish the nature of agency. Accordingly, conditions mentioned in Article 5(7) of the India-Japan DTAA are necessary to be fulfilled in order to establish dependent agent PE in India.

Substantial justice takes precedence over procedural errors; allow claim of FTC under modified return under section 92CD(1)

Ericsson India Global Services Pvt. Ltd Vs Additional Commissioner of Income Tax

ITA No. 2367/Del/2019 and 2368/Del/20199

Issue(s) – Whether claim of foreign tax credit (FTC) be allowed in the modified return filed under section 92CD(1) of the Income Tax Act 1961

Outcome – In favor of Assessee

Background

In a recent ruling, the Delhi ITAT emphasized that procedural errors should not lead to denial of legitimate tax benefits and substantial justice should prevail over procedural technicalities. ITAT clarified that a modified return filed under section 92CD(1) pursuant to an APA is distinct from a revised return filed under section 139(5). Even though the Assessee filed a modified return instead of a revised return after the APA was finalized, the ITAT held that the Assessee was still eligible for the FTC claim if it met the necessary criteria.

Brief Facts and Contentions

- Ericsson India Global Services Pvt. Ltd. (Assessee) is engaged in the business of providing various telecommunication services, including network operations and software development services to various associated enterprises outside India.

- The Assessee had initially claimed FTC amounting to ₹ 14,41,380 in their original return. Subsequently, revised return was filed for the period under consideration to enhance the FTC claim to ₹ 8,25,75,166.
- During the assessment proceedings, the FTC claim was further increased to ₹ 8,98,74,874 based on additional foreign tax credit certificates received.
- The Transfer Pricing Officer (TPO) made an adjustment of ₹ 45,92,49,542, which was later confirmed by the Assessing Officer (AO), and the FTC was allowed as per the revised return of ₹ 8,25,75,166.
- Aggrieved by the order of the AO, an appeal was filed before the Commissioner of Income Tax (Appeals) [CIT(A)] to challenge the transfer pricing adjustment and to seek FTC as per the revised claim.
- Further, simultaneously an Advance Pricing Agreement (APA) was signed with the Government of India following which a modified return was filed claiming an FTC of ₹ 14,12,43,510.
- The CIT(A) upheld the AO's decision to allow FTC as per the revised return and held that the modified return filed under section 92CD(1) (in pursuit of APA) is different from a revised return under section 139(5).
- Accordingly, the CIT(A) held that the date for filing a revised return under section 139(5) cannot be extended to include the modified return under section 92CD(1).
- Aggrieved by the same, the Assessee filed an appeal before the ITAT challenging the order passed by the CIT(A).

Delhi ITAT Judgement

- ITAT held that there should be no restriction on granting the FTC if the assessee is otherwise eligible and has claimed it in the modified return.

- It emphasized the principle of substantial justice, arguing that procedural errors should not deprive a taxpayer of their rightful benefits. When a tax credit is due, the state cannot deny the benefit due to procedural errors.
- ITAT further directed to give benefit of FTC noting that the FTC benefit had been granted for subsequent years (AY 2017-18 and 2018-19) by the tax authorities.
- Accordingly, the ITAT allowed appeal in favor of Assessee and directed the tax authorities to grant full FTC claim as reflected in the modified return.

Nangia Andersen LLP's Take-

This ruling sets a favorable precedent for taxpayers seeking to claim the FTC in modified returns filed under section 92CD(1) in connection with APAs. It emphasizes that substantial justice is more important than procedural mistakes, thus ensuring that eligible taxpayers won't lose out on their rightful benefits due to procedural errors.

Receipts from Bandwidth services cannot be taxed as royalty and amendments in Section 9 cannot subsume DTAA provisions

The Commissioner of Income Tax Vs Telstra Singapore PTE. LTD.

ITA No. 334/2022, 335/2022, 597/2023 and others

Issue(s) – Whether income from bandwidth service can be taxed as royalty and amendment in Section 9 can alter DTAA provisions.

Outcome – In Favour of Assessee.

Background

In a recent verdict, Hon'ble Delhi High Court ('Hon'ble HC') examined whether receipts from Indian customer for the service of Telstra Singapore ('Assessee') when utilized outside the Indian Territory can be construed as equipment or process royalty under section 9(1)(vi) of the Income Tax Act, 1961 ('the Act') along with Article 12 of the India-Singapore Double Taxation Avoidance Agreement ('DTAA'), held that since the customer of the Assessee do not get any right over the infrastructure nor any right to use such technology or infrastructure it cannot be taxed as royalty.

Brief Facts and Contentions

- The Assessee is a Singapore based company which is engaged in the business of providing international private leased circuits, multi protocols label switching and high speed data connectivity ('Bandwidth service'). Assessee holds and owns the infrastructure and equipment outside India which is utilized in connection with providing bandwidth service to customers.

- Assessee has entered into One Stop Shopping Service Agreement ('OSS Agreement') with Bharti Airtel Ltd and other related telecom operators obliging them to provide reciprocal bandwidth services based on customer location inside or outside India.
- During the Assessment Year ('AY') 2012-13, Assessee had filed return of income declaring Nil income and the matter was selected for assessment proceedings wherein the Assessing officer ('Ld. AO') contested that the amount received by the Assessee from Indian customers for the provision of bandwidth services outside India was liable to be construed as equipment/process royalty taxable under section 9(1)(vi) of the Act and passed by order based on the direction of Ld. Dispute Resolution Panel.
- Assessee's contention was that the bandwidth services were provided on a non-exclusive basis, meaning that customers did not gain any control over the infrastructure or equipment used to deliver these services. The underlying technology and infrastructure remained under Telstra's direct and exclusive control.
- Aggrieved by the order of Ld. AO, Assessee filed an appeal before the Hon'ble ITAT which had ruled the judgment in favour of the Assessee concluding that the above service cannot be construed as royalty as provisions of DTAA which had remained unamended are more beneficial notwithstanding the changes which had come to be introduced in section 9 of the Act.
- Revenue had appealed before Hon'ble HC and argued that the receipts from Indian customers for services provided outside Indian territories is liable to be viewed as those being in connection which the use or right to use of process or equipment in light of explanation 2 and 6 of section 9(1)(vi) of the Act.
- Revenue further contended that when the meaning of a term is not defined under a tax treaty, courts would have to necessarily follow the ambulatory approach as opposed to static approach.

Hon'ble High Court Judgement

- Hon'ble HC highlighted that the customers and those availing services provided by Telstra were not given a right over the technology possessed or infrastructure. The underlying technology and infrastructure remained under the direct and exclusive control of Telstra and thus held that even if explanation 2 and 6 of section 9 of the Act is applied, the services provided by the Assessee neither falls under the concept of process nor equipment royalty and thus not taxable as royalty under Article 12 of DTAA.
- Further, it was observed that an act of Parliament of amendment in the domestic law can neither supply nor alter the boundaries of the definition under Article 12 and Explanations could not be countenanced to be clarificatory, since they were introduced principally to overcome the basis of a verdict rendered by the Court, namely Asia Satellite and which had held that both —secret formula and —process were to be read in conjunction. Accordingly, there is no justification to either draw a different line or doubt the correctness of the decisions handed down in Asia Satellite and New Skies.
- Accordingly, Hon'ble HC rejected the attempt of revenue to draw a distinction between Satellite and telecom cases and contended that the issue in question is conclusively answered and settled by the court in the case of Asia Satellite **[(2003) 85 ITD 478 (Delhi)]** and New Skies Satellite **[2016 382 ITR 114 (Delhi)].**

Nangia Andersen LLP's Take-

Hon'ble HC has further strengthened the view taken by various courts that an act of the Parliament in domestic law cannot change the terms of a treaty and thus amendments in Section 9 cannot eclipse the DTAA provision. The Hon'ble HC highlighted the ambulatory approach in treaty interpretations which take into consideration the contemporary developments but it should not be set to alter the basic and fundamental concepts embodied in the treaty. Accordingly, it was affirmed that the bandwidth service provided to the customer does not give them right over the technology nor right to use such technology or infrastructure.


02
Indirect Tax

Advance Rulings & Judgements

Authority for Advance Ruling (AAR) of Karnataka held that where retention bonus, joining bonus, work from home allowance and expenses under Tuition Assistance Program (TAP) are in nature of perquisites provided by applicant-employer to its employees, therefore, recovery of joining bonus, retention bonus, work from home allowance and expenses under TAP are not taxable under GST.

Brief Facts

- The Applicant M/s. Fidelity Information Services Private Limited is engaged in the business of providing software development and maintenance services and Information Technology Enabled Services (ITES) including but not limited to back office, call center services, business support services to both domestic as well as overseas customers.
- The Applicant is recovering retention bonus, joining bonus, work from home allowance and expenses under TAP, only when employee wishes to voluntarily exit organization within stipulated time period as mentioned in terms and conditions laid out with respect to each bonus/allowance. The intention behind such bonus/allowance is to incentivize and motivate employee to remain in organization.

Issue Involved

- The Applicant recovers joining bonus and retention bonus on account of employee's inability to serve the organization (or a particular department, in case of retention bonus) for a pre-agreed period. Whether GST would be applicable on such recovery of bonus?

- Whether GST would be applicable on recovery of work from home one-time setup allowance paid to the employees in case where the employees exit before serving the pre-defined period from the payout date?
- Whether GST would be applicable on recovery of amount paid as financial assistance to employees under Tuition Assistance Program (TAP) policy in case where the employee exit before serving the pre-agreed period in the organization?

Decision

- AAR referred to SI No. 5 of Circular No. 172/04/2022-GST dated 6-7-2022 which states that any perquisites provided by employer to its employees in terms of contractual agreement entered into between employer and employee are in lieu of services provided by employee to employer in relation to his employment. It follows therefrom that perquisites provided by the employer to employee in terms of contractual agreement entered into between employer and employee, will not be subjected to GST when same are provided in terms of contract between employer and employee.
- AAR hence concluded that retention bonus, joining bonus, work from home allowance and expenses under TAP are also in nature of perquisites provided by employer to its employees – Therefore, recovery of joining bonus, retention bonus, work from home allowance and expenses under TAP are not taxable under GST.

[Advance Ruling No. KAR ADRG 31/2024, dated 2 July 2024]

Hon'ble High Court of Delhi sets aside the Demand Order issued against the SCN uploaded by GST Authorities under wrong category on GST portal.

Brief Facts

- In the given case, the petitioner was issued a SCN which was uploaded by the GST Authorities in category of "Additional Notices" instead of "Notices" which was not easily accessible to the petitioner.
- Accordingly, it was claimed that the SCN was not received by the petitioner and hence petitioner did not file any response or appeared for the hearing. Therefore, the GST Authorities passed the demand order on an ex-parte basis.

Observations

- Whether the petitioner was denied an opportunity to respond to the SCN due to improper categorization and inaccessibility of the notice, thereby warranting a reconsideration of SCN by GST Authorities?

Decision

- The High Court of Delhi disposed the petition on the grounds that the GST Authorities must adjudicate the impugned SCN while taking into account the petitioner's claim. The GST Authorities were directed to consider the petitioner's response and afford them an opportunity to be heard before making any determination of tax demand.
- The High Court of Delhi accordingly set aside the demand order by directing the GST Authorities to allow the petitioner to present her case in response to SCN.

[Kamla Vohra Vs Sales Tax Officer (W.P. (C) No. 9261 of 2024 and C.M. Appl. No. 37933 of 2024 (Stay) – Delhi HC) dated 10 July 2024]

GST Update

CBIC notifies changes in GST rates on Goods as per 53rd GST Council Meeting.

- CBIC has notified change in rate of goods from 18% to 12% for the following goods:

Description of Goods	HSN Code
Cartons, boxes and cases of, – (a) corrugated paper or paper board; or (b) non-corrugated paper or paper board	4819 10 and 4819 20
Milk cans made of Iron, Steel, or Aluminium	7310, 7323, 7612 and 7615
Solar Cookers	7321 and 8516

- The change in GST rate is effective from 15 July 2024.

[Notification No. 02/2024 - Central Tax (Rate) and Notification No. 02/2024 - Integrated Tax (Rate) dated 12 July 2024]

CBIC notifies the Supply of Farm Produce in Packages over 25 kgs/litres not considered as Supply.

- CBIC notifies that supply of agricultural farm produce in package(s) of commodities containing quantity of more than 25 kilogram or 25 litre shall not be considered as a supply made within the scope of expression 'pre-packaged and labelled' and therefore, no GST would be applicable on the same.
- This notification is effective from 15 July 2024.

[Notification No. 03/2024 - Central Tax (Rate) and Notification No. 03/2024 - Integrated Tax (Rate) dated 12 July 2024]

CBIC exempts GST on Railway and Accommodation Services.

- CBIC exempts GST on various services provided by Indian Railways, Special Purpose Vehicle (SPV) and Accommodation services as per below:

a. Services provided by Ministry of Railways (Indian Railways) to Individuals by way of

  - Sale of Platform Tickets
  - Facility of retiring/waiting rooms
  - Cloak room services
  - Battery Operated Car services

b. Intra Railway Department services

c. Services provided by SPV to Railways

   - Use of Infrastructure
   - Maintenance Services

d. Supply of Long-Term Accommodation services with a value of supply of up to Rs. 20,000/- per person per month for minimum continuous period of 90 days

- This notification is effective from 15 July 2024.

[Notification No. 04/2024 - Central Tax (Rate) and Notification No. 04/2024 - Integrated Tax (Rate) dated 12 July 2024]

03

Transfer Pricing

HC rejects WDV as Arm's Length Price of purchase transaction

Outcome: In favour of the Assessee

Category: Determination of Arm's Length Price ("ALP")

Assessment Year: 2010-11

Facts of the case:

- M/s Sarens Heavy Lift India Pvt Ltd ("the taxpayer") is a wholly-owned subsidiary of Sarens NV, Belgium and is engaged in the business of hiring and leasing heavy cranes. Apart from transport and handling, Sarens group is also engaged in retail and the operation of cranes and the problem solving linked with the crane work, rendering services with heavy cranes and equipment's for erection jobs in big industrial and the civil projects in the field of petrochemicals, steel plants and major civil works.
- During the year under consideration, the taxpayer purchased 9 cranes from its AEs and benchmarked the same using TNMM (OP/OR). Further, the taxpayer supported the benchmarking of such cranes by the valuation report of an independent chartered engineer accompanied by valuation by custom authorities and as valued by following DCF method
- However, the Transfer Pricing Officer ("TPO") rejected the TNMM and applied CUP method by considering WDV of the cranes (as reflected in taxpayer's AEs books) as the ALP. Aggrieved by the same, the taxpayer filed objections before the DRP.

- The Ld. DRP rejected TPO's CUP basis that the WDV of cranes cannot be considered as ALP as it is not derived from the transactions between enterprises and other than associated enterprises. Further, the Ld. DRP opined that the independent valuation report and the details under DCF method, as submitted by the taxpayer, cannot be rejected without pointing out any defect in the same. Consequently, the Revenue filed an appeal before Income Tax Appellate Tribunal ("ITAT").
- The ITAT supported the DRP's reasoning that the TPO's method was not acceptable and that the taxpayer had justified the price paid for the cranes through multiple valid valuation methods.
- Resultantly, The ITAT upheld the DRP's decision, validating the taxpayer's approach to determining the ALP of the cranes through independent valuations and the DCF method. The ITAT's judgement affirmed that the TPO's method was flawed and supported the DRP's comprehensive evaluation and reasoning. Accordingly, the Revenue filed an appeal before Delhi HC.

HC Ruling

Following observations were drawn by the Hon'ble Delhi HC:

- Delhi HC refers the expression "uncontrolled transaction" as defined in Rule 10A(ab) quoted as "a transaction between enterprises other than associated enterprises". Accordingly, it opines that WDV does not satisfy the said definition and thus, cannot be resorted as ALP.
- Delhi HC upheld ITAT observation that the taxpayer sufficiently and reasonably justified the benchmarking through the valuation done by the independent chartered engineer, customs authorities and value as determined under the DCF method.

- Further, Delhi HC supported ITAT's reliance upon the ruling in Tecumseh Products India Private Limited wherein it was held that the price paid by way of a certificate constituted External CUP. Furthermore, it was observed that TPO did not rely on any other certificate and in the absence of any contrary information, price paid by the taxpayer can be accepted as such. Accordingly, Delhi HC dismissed the appeal of Revenue.

Nangia's Take-

- The instant ruling contributes to the plethora of rulings concerned with the determination of ALP. Lately, the Revenue authorities have been consistently slammed for their inept approaches of determining the ALP and the said ruling constitutes one such. From this specific instant, it can be indisputably inferred that the value of an asset, as reflected in the books of accounts, cannot be treated as ALP unless supported by relevant backup documents (e.g. valuation report)
- Accordingly, the treatment of Written Down Value (WDV) in the books of associated enterprises (AEs) as the Arm's Length Price (ALP) for purchase transactions must be critically assessed in light of reliable independent documentation and the definition of "uncontrolled transaction" as envisaged in Rule 10A(ab). The theoretical principle of considering WDV as a price that would be agreed upon between two uncontrolled enterprises does not inherently hold true without proper substantiation. Additionally, independent valuation reports and benchmarking with comparable uncontrolled transactions should be utilized to validate the WDV as an appropriate ALP. Ensuring compliance with jurisdictional regulations and conducting a functional and risk analysis can further support the reasonableness of using WDV in transfer pricing.

Source: Sarens Heavy Lift India Pvt Ltd [TS-228-HC-2024(DEL)-TP]; Sarens Heavy Lift (I) P Ltd [TS-294-ITAT-2018(DEL)-TP]

04

Regulatory

Updates Under Ministry Of Corporate Affairs (MCA)

Amendment in Companies (Appointment and Qualification of Directors) Rules, 2014

The MCA, vide its notification dated 16th July, 2024 (effective from 1st August 2024) released Companies (Appointment and Qualification of Directors) (Amendment) Rules, 2024. These rules will allow Directors to file multiple KYCs update during the year.

Prior to the amendment of Companies (Appointment and Qualification of Directors) Rules, 2024, a director could update his mobile and phone number details only once a year through Annual KYC. This led to director missing important communication from MCA regarding their new organisations where they get appointed as directors between the year. Now, a director shall require updation of mobile number/email ID with the MCA on a real-time basis and stay connected as well-informed during transitions of organisations.

Updates Under Reserve Bank Of India (RBI)

Revamping the Fraud Risk Management Framework of Regulated Entities

The RBI, vide press release dated 15th July 2024, has released three Master Directions on Fraud Risk Management for the Regulated Entities (REs) namely:

- Commercial Banks (including Regional Rural Banks) and All India Financial Institutions;

- Cooperative Banks (Urban Cooperative Banks / State Cooperative Banks / Central Cooperative Banks); and
- Non-Banking Finance Companies (including Housing Finance Companies) in the Upper Layer, Middle Layer and in the Base Layer (with asset size of ₹500 crore and above) ('Applicable NBFCs')

This revised Master Directions also take into account the judgement of Supreme Court in the matter of State Bank of India & Ors. Vs. Rajesh Agarwal & Ors. and expressly requires that REs shall ensure compliance with the principles of natural justice in a time-bound manner before classifying Persons/Entities as fraud.

While revamping the existing fraud risk management framework for REs, the same focusses on strengthening internal control systems. The Master Directions mandate forming of Special Committee of the Board for Monitoring and Follow-up of cases of Frauds or Committee of the Executives by the concerned RE. The onus of establishing a robust system lies with the Board of Directors of the company and senior management.

RBI releases Master Direction on Treatment of Wilful Defaulters and Large Defaulters

The RBI vide notification dated 30th July, 2024 released the aforesaid Master Directions, applicable to REs.

The Master Directions follow the Fraud Risk Managaement notification and is a step in furtherance to adoption of a fair and transparent process in accordance with the principles of natural justice. A fair process should be adopted to classify a borrower as a wilful defaulter. These Master Directions also seek to establish a system for sharing credit information about wilful defaulters, alerting lenders to prevent further institutional financing from being extended to them.

Updates Under Securities And Exchange Board Of India (SEBI)

SEBI notifies SEBI (Alternative Investment Funds) (Third Amendment) Regulations, 2024 ('Amendment Regulations')

The SEBI notified the aforesaid Amendment Regulations vide notification dated 20th July 2024.

Pursuant to the aforesaid Amendment Regulations, a new concept of 'migrated venture capital fund' has been introduced by insertion of a new chapter (i.e. Chapter III-D) under the Securities and Exchange Board of India (Alternative Investment Funds) Regulations, 2012.

The provisions of Chapter III-D shall apply only to migrated venture capital funds and schemes launched by such migrated venture capital funds.

- A 'migrated venture capital fund' has been defined as "a fund that was previously registered as a venture capital fund under the Securities and Exchange Board of India (Venture Capital Funds) Regulations, 1996 and subsequently registered under these regulations as a sub-category of Venture Capital Fund under Category I - Alternative Investment Fund in accordance with the provisions of this Chapter".
- **Regulation 19Z** prohibits migrated venture capital funds from issuing a document or an advertisement inviting offers from the public for the subscription or purchase of any of its units.
- **Regulation 19AD** specifies conditions subject to which the investments may be made by the 'migrated venture capital fund'.

SEBI has Issued a Consultation Paper on Proposed Amendments to the Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015

SEBI vide its notification dated 29th July, 2024, has released a consultation paper to propose amendments to the Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015 ('PIT Regulations'). This consultation paper is open for public comments till 18th August, 2024.

- **Proposed Amendment to the Definition of 'Connected Persons':** SEBI proposes amending the definition of "connected persons" in the PIT Regulations to expand its scope and include individuals who, while not directly involved with a company, have access to Unpublished Price Sensitive Information ('UPSI') due to their close relationships with existing connected persons. The said paper also proposes to add multiple categories under the definition of deemed connected person under the specified regulation.
- **Rationalizing the Definition of "Relative":** The said paper is released to rationalize the scope of the expression 'connected person' under regulation 2(1)(d) of the PIT Regulations in connection with the definition of "related party" under section 2(76) of the Companies Act, 2013 along with regulation 2(1)(hc) of the Income Tax Act, 1961, while not increasing compliance requirements.
- **No Change to Be Proposed In Definition of 'Immediate Relative':** SEBI has also stated in the consultation paper that in order to ensure that there is no increase in compliance requirements, the definition of 'immediate relative' under regulation 2(1)(f) is proposed to be retained in the PIT Regulations and requirement for disclosures of trades of 'immediate relative' by promoters/directors/designated persons under PIT Regulations will continue, to ensure continuance of ease of doing business.

Updates Under Food Safety And Standards Of India (FSSAI)

Proposed Amendment to Rule 3 of Legal Metrology (Packaged Commodity) Rules, 2011

The Department of Consumer Affairs, Ministry of Consumer Affairs, Food and Public Distribution, have received representations requesting to amend Rule 3 of the Legal Metrology (Packaged Commodities) Rules, 2011 ('Rules').

The existing Rule 3 excludes packages of commodities containing quantity of more than 25 kg or 25 l from complying with the provisions of Chapter II of the Rules pertaining to packages intended for retail sale.

The proposed amendment seeks to extend the scope of Chapter II to encompass all the packaged commodities sold in bags in retail form, except the packaged commodities meant for industrial or institutional consumers. Accordingly, even the commodities weighing over 25 kg or 25 l would be required to mandatorily contain the necessary declarations such as Maximum Retail Price, details of manufacturer, net quantity, date of manufacturer, expiry date, etc.

The proposed amendment aims to ensure all the packaged commodities are aligned with the intention of the Ministry to ensure comprehensive declarations on all pre-packaged commodities intended for retail sale.

This revised provision will help establish uniform standards and requirements for packaged commodities, promoting consistency and fairness across different brands and products and enabling consumers to make informed choices based on complete information.

Launch of Provision of Instant (Tatkal) Issuance of License/ Registration in Certain Categories of Food Businesses

The FSSAI has introduced a new option with respect to applying and obtaining licenses/ registration. This new scheme aims to streamline the licensing process, offering instant grant of licenses/registrations to specific low risk food businesses via FSSAI's Food Safety Compliance System subject to digital verification through GST, CIN, PAN, Aadhar, etc. The eligible businesses include wholesalers, distributors, retailers, transporters (excluding those dealing with dairy, meat, and fish products), storage without atmospheric controlled, importers, food vending agencies, direct sellers and merchant-exporters.

To apply for an instant license/registration, applicants are required to pay the entire fee upfront. The fee structure remains consistent with existing provisions i.e., Registration: INR 100, State License: INR 2000 and Central License INR 7,500 (plus 18% GST).

The validity of instant license/ registration will be one year and thereafter, it may be renewed as per existing procedure for renewal of license/ registration.

Orders/Judgements

Order Under Section 161(1) Of The Companies Act, 2013

Pursuant to Section 161(1) of the Companies Act, 2013 (the 'Act'), Articles of Association of a company may confer on its Board, the power to appoint any person, other than a person who fails to get appointed in the General Meeting, as an Additional Director, at any time, who shall hold office up to the date of next AGM or last date when AGM should have been held, whichever is earlier.

Further, section 172 of the Act provides that if a company defaults in complying with any of the provision of the Act for which no specific penalty or punishment is provided, the company and every officer of the company who is in default shall be liable for a penalty of:

- INR 50,000/; in case of continuing failure;
- Further penalty of INR 500 for every day, subject to maximum INR 3,00,000 in case of company and;
- INR 1,00,000 in case of officer who is in default.

Facts of the Case

M/s. JKJM Infrastructure Private Limited (hereinafter referred as "Company") is a company registered in Kanpur, Uttar Pradesh with a paid up share capital of INR 1,00,000. During the course of Inspection, it appeared that Mr. Ravishankar Prabhakar was appointed as an Additional Director of the Company with effect from 4th April, 2017 and was supposed to hold the office of directorship up to the date of next AGM. However, he is still working in the capacity of additional director till date which is in contravention of Section 161(1) of the Act. Accordingly, SCN was issued to the Company but it failed to submit any satisfactory response.

Order

ROC Kanpur after considering the facts, circumstances and applicable law appropriate to the case held that Company and its officers in default has violated Section 161(1) of the Act and are liable under Section 172 of the Act. Accordingly, the following penalty was imposed:

Name of the Officer default	Penalty (In INR)
JKJM Infrastructure Private Limited	3,00,000
Mr.Dipak Mohta	1,00,000
Sashi Kanta Jha	1,00,000
Ravishankar Prabhakar	1,00,000

ROC order under Section 155 of the Companies Act, 2013

Pursuant to section 155 of the Companies Act, 2013 (the 'Act'), no individual, who has already been allotted a Director Identification Number under section 154, shall apply for, obtain or possess another DIN.

Section 159 of the Act provides that if any individual or director of a company makes any default in complying with any of the provisions of section 152, section 155 and section 156, such individual or director of the company shall be liable to a penalty which:

- May extend to INR 50,000/- and
- Where the default is a continuing one, with a further penalty which may extend to INR 500/- for each day after the first during which such default continues.

Smt. Shashi Singla (hereinafter referred as Director) is a director having DIN (00599311). Upon processing of Form DIR 5 for surrender of Second DIN, it was observed, the applicant has applied and obtained two DINs on MCA Portal i.e (00599311) and (10008811).The Regional director directed the director to compound the offense for considering the Form DIR-5. Thereafter application was filed by the Director under Section 454 for compounding of the offense for inadvertently obtaining the Second DIN.

ROC Chandigarh, after considering the facts and circumstances of the case, held that the Smt. Sashi Singla has violated Section 115 of the Act and is liable under Section 159 of the Act and accordingly imposed a penalty of INR 4,14,500/-.

05

Compliance Calendar

Direct Tax

Due dates	Particulars
7th August 2024	Due date for deposit of Tax deducted/collected for the month of July, 2024.
	Due Date for payment of Equalisation Levy on online advertisement and other specialised services, referred to in Section 165 of Finance Act 2016 for the month of July, 2024.
14th August 2024	Due date for issue of TDS Certificate for tax deducted under section 194-IA in the month of June, 2024.
	Due date for issue of TDS Certificate for tax deducted under section 194-IB in the month of June, 2024.
	Due date for issue of TDS Certificate for tax deducted under section 194M in the month of June, 2024.
	Due date for issue of TDS Certificate for tax deducted under section 194S (by specified person) in the month of June, 2024.

Direct Tax

15th August 2024	Quarterly TDS certificates (in respect of tax deducted for payments other than salary) for the quarter ending June 30, 2024.
30th August 2024	Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194-IA in the month of July, 2024.
	Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194-IB in the month of July, 2024.
	Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194M in the month of July, 2024.
	Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194S (by specified person) in the month of July, 2024.

Indirect Tax

S. No.	Compliance Category	Compliance Description	Frequency	Due Date	Due Date falling in August 2024
1	Form GSTR-1 (Details of outward supplies)	Registered person having aggregate turnover more than INR 5 crores and registered person having aggregate turn-over 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 July 2024- 11th August 2024
2	Form GSTR-3B (Monthly return)	Registered person having aggregate turnover more than INR 5 crores and registered person having aggregate turnover up to INR 5 crores who have not opted for Quarterly Returns Monthly Payment ('QRMP') Scheme	Monthly	20th day of succeeding month	For Tax Period July 2024- 20th August 2024
3	QRMP Scheme Invoice furnish-ing facility ('IFF')	Optional facility to furnish the details of outward supplies under QRMP Scheme	Monthly	1st day to 13th day of succeeding month	For Tax Period July 2024 – 1st to 13th August 2024

Indirect Tax

	Form GST PMT-06 (Monthly payment of tax)	Payment of tax in each of the first two months of the quarter under QRMP Scheme	Monthly	25th of succeeding month	For Tax Period July 2024 – 25th August 2024
4	Form GSTR-6 (Return for Input Service distributor)	Return for input service distributor	Monthly	13th of succeeding month	For Tax Period July 2024- 13th August 2024
5	Form GSTR-7 (Return for Tax Deducted at Source)	Return filed by individuals who deduct tax at source.	Monthly	10th of the succeeding month	For Tax Period July 2024- 10th August 2024
6	Form GSTR-8 (Statement of Tax collection at source)	Return to be filed by e-commerce operators who are required to collect tax at source under GST.	Monthly	10th of the succeeding month	For Tax Period July 2024- 10th August 2024

Regulatory

Segment	Particulars	Due Dates
ECB Borrowers	ECB Return (ECB-2)	7th August, 2024
Quarterly Report under Regulation 32 & 33 of SEBI (Listing Obligations and Disclosure Requirements) Regulations 2015	Financial Results & Statement of deviation	14th August, 2024

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