

Tax Glimpses 2020

We bring you a concise analysis of important judgements and noteworthy regulatory developments in corporate tax, personal tax, financial services, M&A, transfer pricing, indirect taxes and regulatory developments during 2020.



Foreword



I am happy to present our annual compilation, Tax Glimpses 2020.

We are witnessing extraordinary

times, with the impact of the pandemic extending beyond the economic one – to the physical, psychological, emotional and social pieces as well. Maintaining the balance between saving lives and saving livelihoods has been a difficult decision globally.

Against this backdrop, and with the IMF predicting a global recession as a result of the pandemic, several countries, including India, have announced a series of tax and other measures to maintain business continuity, ease compliance-related requirements and reduce the quantum of economic degrowth. While these measures have helped absorb some of the impact, the jury continues to be out on the timing of economic recovery to pre-pandemic levels.

International developments

The world, and the future, is around digital and it is not surprising that international tax developments in this space are the most watched out for.

Delivering on its commitment made last year, the OECD's 'Inclusive Framework on BEPS', released on 12 October 2020, blueprints of reports relating to the tax challenges of digitalisation of the economy. These blueprints reflect convergent views on many of the key policy features, principles and parameters of both Pillar 1 and 2, and identify policy, and technical and administrative issues where divergent views remain to be settled. The OECD has sought input from stakeholders and intends holding consultation meetings in January 2021.

The approach of the new US administration to domestic and international tax policy will be an interesting space to watch. In the meanwhile, the European Union's Economy Commissioner has announced that the EU may decide to go ahead with its own plans for region-wide levy of tax on digital businesses in 2021 if the OECD is unable to reach a consensus on taxation of global technology companies by the end of 2020.

And at home

India did its share of measures to alleviate the impact of COVID-19, easing out compliance-related requirements and announcing other relevant steps to give a boost to its economy.

The scope of the unilateral measure of the Equalisation Levy was substantially expanded to cover the consideration received or receivable for e-commerce supply or services made or provided or facilitated by a non-resident e-commerce operator. The provision, as worded, could leave room for argument that it is wide enough to also cover certain cases where goods or services are not supplied electronically, but are only contracted for supply by using digital means.

In a bold move signalling a paradigm shift, the Prime Minister has announced a platform, 'Transparent Taxation – Honouring the Honest', which led to the subsequent rollout of 'faceless' interactions between taxpayers and tax authorities. Under the same platform, a Taxpayers' Charter was also announced and codified in law.

The CBIC has put in place pan-India faceless e-assessment under Customs

laws, which is seen as a paradigm shift in management of India's cross-border trade. Electronic Invoicing (e-invoicing) for businesses with annual revenues of more than INR 5000 million for B2B transactions was rolled out from 1 October 2020. It is proposed that this threshold will be gradually reduced to cover smaller businesses as well over the next few months. For B2C transactions, there is a proposal for the mandatory requirement of a QR code on invoices. With increased use of technology and real time data analytics, the Government expects to plug tax leakages and expand the tax base in India substantially.

The MLI came into force for India on 1 October 2019 and became effective for some of its tax treaties from 1 April 2020, including with jurisdictions such as Australia, France, Ireland, Netherlands, Japan, Singapore and the UK with whom it has key trade and investment relations.

To make the MAP process more efficient, the CBDT has introduced new rules on the procedure for filing applications for and to give effect to MAP resolutions. A detailed guidance note was released on the MAP procedure to help all relevant stakeholders.

In its annual budget, the Government had introduced an optional scheme for reduced tax rates, subject to taxpayers giving up certain exemptions and deductions, in order to provide relief to individuals in the middle-income bracket.

The tax on the dividends of Indian companies was moved back from the distributing company to shareholders. Of course, the taxpayer would have to demonstrate treaty eligibility to claim the attached benefits. Importantly, this would make the corporate structure of a business presence in India (combined with the reduction in headline tax rates) attractive compared to that of an LLP entity.

The Vivad Se Vishwas Scheme was introduced with a view to reduce pending direct tax litigation and allows a taxpayer to settle disputes by paying the whole or a part of the disputed tax, based on specified circumstances, with a waiver of interest and potential penalties and a reduced amount payable for penalties already imposed.

India has seen a record growth in its FDI numbers despite the economic impact of the pandemic.

On the regulatory front, investment in the defence sector was opened to an FDI of 74% through the automatic route. The PLI scheme was introduced to boost manufacturing in various sectors, and capital and investment subsidies have been provided in some sectors, based on production and sales thresholds. Concomitantly the Government is showing its preference for procurement from local manufacturers through a policy shift in the shape of 'Public Procurement Orders 2020', whereby local content is becoming a parameter for choice in procurement of goods and services from industry.

An impetus was given to the MSME sector through various schemes and packages. The definition of MSME was reconstituted and made more broad-based to benefit a larger section of Indian entrepreneurs through collateral free loans, interest waivers, easy financing options, etc.

The Ministry of Human Resource Development has finalised and released the 'National Education Policy, 2020', which paves the way for major transformational reforms in primary and higher education in India.

The Parliament has passed three labour codes, i.e., the Code on Social Security, 2020, the Industrial Relations Code, 2020, and the Occupational Safety, Health and Working Conditions Code, 2020, which will come in force from a date to be notified by the Government.

The MCA has introduced a new web-based process for incorporation of companies, which offers the facility to obtain, in parallel, various mandatory statutory registrations and also initiate the opening of bank accounts.

The amendments to the India Stamp Act, 1899, which apply to security-related transactions, were made effective from 1 July 2020.

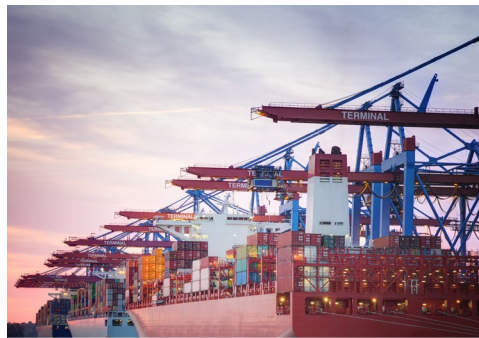
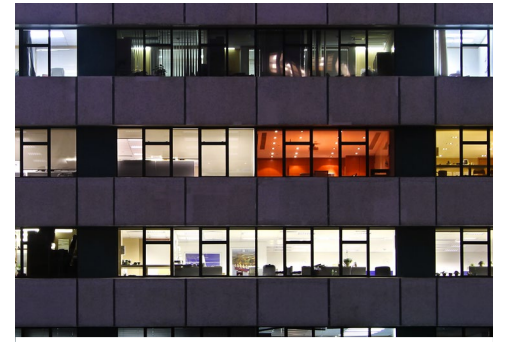
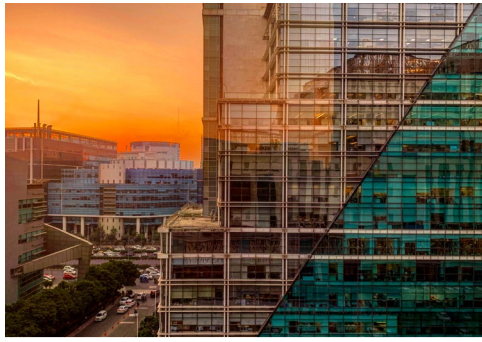
Tax Glimpses 2020 summarises some of the significant tax and regulatory developments, most of which have been shared with you earlier [see attached, a list of PwC Thought Leadership released during the year]. For ease of reference, we have also listed certain treaties and agreements that India has entered into with other countries (with a link to access these).

I hope you find this compilation useful and I look forward to your suggestions.

As always, my best wishes for the coming festive season, and beyond! And in these times, do remember to keep the mask up and the gatherings down. Stay safe.

Gautam Mehra
Leader, Tax and Regulatory Services

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Tax & Regulatory Insights

Judgements

Association of Person

JV formed by two companies for undertaking construction contracts is not liable to tax as an AOP if such income has been offered to tax by members at MMR

SLP Diary No. 17331/2020

The Supreme Court has dismissed the SLP filed by the tax department against the High Court order, wherein the High Court upheld that the taxpayer being a JV between the two companies, formed for the purpose of undertaking construction contracts, was not liable to tax as an AOP, as such income has been offered to tax by the members at the MMR and the requirements as specified in CBDT Circular No. 07/2016 were satisfied by the taxpayer.

The High Court upheld the order of the Tribunal where it ruled in favour of the taxpayer by observing that the AOP was formed to secure the work, and that

thereafter, the entire work was carried out by the JV members. The Tribunal also noted that the tax returns of the JV members had been subject to assessment under section 143(3) of the Act, and therefore, it could be inferred that there was no loss to the tax authorities, as the JV members were subject to tax at the MMR.

Capital gains

Compensation received in lieu of flat given to developer under development agreement taxed as 'capital gains' and not 'income from other sources'

ITA No. 4070/Mum/2016

The Mumbai bench of the Tribunal held that handing over of old flat by the taxpayer for redevelopment is a transfer, and hence, the amount received under the development agreement will constitute a capital receipt in the hands of taxpayer, taxable under the head 'capital gains' and not 'income from other sources'.

Subsequent sale by purchaser of property purchased under an agreement cum general power of attorney, not taxable in hands of original owner

ITA No. 2225/HYD/2018

The Hyderabad bench of the Tribunal observed that by virtue of the AGPA executed in 2006, the taxpayer has parted with his right in the property, as he had received the entire sale consideration agreed between the parties, and had handed over vacant possession of the property to the first acquirer.

The Tribunal observed that the first acquirer became the owner of the property under section 53A of the Transfer of Property Act, 1882. The transaction qualified as a transfer of property under section 2(47) of the Act, where the general power of attorney was given to the first acquirer only for the convenience of the purchaser for doing necessary acts and things on behalf of the parties involved in the AGPA.

The Tribunal also noted that although the subsequent sale deed described the taxpayer as the vendor, the taxpayer was not a signatory to the sale deed, nor did he receive any consideration. Accordingly, it was held that the subsequent sale of property by the first acquirer in 2012 cannot be considered as sale of property by the taxpayer, and thus, the capital gains from the sale proceeds of the property would not be taxable in the hands of the taxpayer.

Income from sale of land, held as investment by a real estate developer, chargeable to tax under the head 'capital gains'

Special Leave Petition (Civil) Diary No. 40693 of 2019

The Supreme Court dismissed the SLP filed by the Revenue authorities challenging the judgement of the Bombay High Court, wherein it was held that income arising on sale of land held as an investment by the taxpayer, being a real estate developer, was chargeable to tax under section 45 of the Act.



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The High Court observed that the law does not bar any person dealing in land from holding the same class of asset as investment. The Supreme Court dismissed the Revenue's SLP challenging the High Court's decision by a non-speaking order.

Exemption under section 47(v) of the Act available on transfer of land by a subsidiary company to its holding company, where entire share capital of subsidiary is held by the holding company and its nominees

Tax Case Appeal No. 485 of 2018

The Madras High Court has upheld that the provisions of section 47(v) of the Act should be given a purposive interpretation, such that the provisions do not become redundant.

The High Court, reaffirming the principle of beneficial ownership, while interpreting the provisions of section 47(v) of the Act, held that the entire share capital of the subsidiary company was held by the holding company, and the six individual shareholders held the shares as nominees

of the holding company, and they have no individual right. The nominees were holding the shares merely to comply with the requirement of the Companies Act.

Accordingly, the High Court observed that the subsidiary company met the conditions stipulated for availing exemption under section 47(v) of the Act.

Dividend Distribution Tax

Tribunal holds that DDT payable by a company is subject to maximum rate in the relevant tax treaty

ITA No. 7075/Del/2017

The Delhi bench of the Tribunal admitted an additional ground of the taxpayer on the issue of extending the benefit of the tax treaty qua the tax rate on payment of dividend to the shareholder, as against the applied DDT rate.

On merits of the issue, the Tribunal first analysed whether the incidence of tax on dividends is a liability on the company or on the shareholder. It concluded that

the economic burden of DDT falls on the shareholders rather than on the company, as the amount of distributed profits available for shareholders stands reduced to the extent of the DDT. The Tribunal also held that the concessional rate specified under Article 10 of the India-Germany tax treaty would apply in this case and remanded the matter back to the TO for factual examination of the applicability of other clauses of Article 10 of the tax treaty, dealing with the presence of PE in India for the beneficial owner of the dividend in light of the documents filed by the taxpayer in support of its claim for the first time before the Tribunal.

Given that the Tribunal has only decided the matter in principle and remanded the matter to the tax authorities for examination of fulfilment of conditions prescribed under the tax treaty, the test of 'beneficial ownership' continues to be a critical aspect while claiming benefits under the tax treaty. More so, in the new regime, where the DDT has been substituted by a classical system of withholding tax by the Finance Act 2020, and tax needs to be withheld on the

dividend paid to the shareholders based on the rate provided in the tax treaty if the shareholder is a beneficial owner of the dividends.

Deduction on actual payment

Supreme Court holds that unutilised balance of MODVAT credit at year-end not deductible under section 43B of the Act

Civil Appeal No. 11923 & 11924 of 2018

The Supreme Court has upheld the order of the Delhi High Court denying deduction claimed under section 43B of the Act for unutilised balance of MODVAT credit.

The Supreme Court observed that the manufacturer of raw materials and inputs (used by the taxpayer) is liable to pay the excise duty. Thus, the credit of input excise duty availed by the taxpayer under the MODVAT scheme and the remaining unutilised is not in the nature of 'sum payable' by way of tax, duty, etc., as envisaged in section 43B of the Act.



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Accordingly, the Supreme Court held that the MODVAT credit remaining unutilised at year end does not qualify for deduction under section 43B of the Act.

Supreme Court upholds constitutional validity of clause (f) of section 43B of the Act, relating to disallowance for sums payable in lieu of leave

Civil Appeal No. 3545/2009

The Supreme Court upheld the constitutional validity of section 43B(f) of the Act, overruling the judgement of the Calcutta High Court. The taxpayer had challenged the validity of section 43B(f) of the Act regarding leave encashment liability. Clause (f) to section 43 of the Act was inserted to curb the mischief of claiming the deduction of liability of leave encashment, i.e., advance deduction from tax liability, and not paying when the event occurs, which aligns with the purpose of introducing other clauses under section 43B of the Act. It fits within the broad objective of enacting the section to protect the larger public interest, primarily of revenue, and including the welfare of

employees. The Supreme Court was of the view that section 43B(f) of the Act neither reverses the nature of the leave encashment liability (i.e. present liability) nor has it taken away the deduction. It merely defers the benefit of deduction to be availed by the taxpayer, by linking it to the actual payment of the concerned employee.

This decision affirms the legitimacy and purpose of enacting clause (f) of section 43B of the Act and upholds its constitutional validity. This decision should put to rest the ongoing litigation on this issue.

Guarantee fees

Delhi bench of Tribunal holds that guarantee fees is not chargeable to tax as interest or FTS under the India-Netherlands tax treaty

ITA No. 6461 & 6462/Del/2015

The Delhi bench of the Tribunal held that payment of guarantee fees by an Indian company to its AE is not chargeable to tax in India either under Article 11 (Interest) or

Article 12 (Royalty and FTS) of the India-Netherlands tax treaty.

In this ruling, the Tribunal re-iterated the tax position that a guarantee fee cannot be taxable as interest income in the absence of any debt claim on the borrower by the surety. This ruling also fortifies the principle that merely guaranteeing a loan cannot be construed as extending a loan.

Initiation of reassessment

Delhi High Court upholds initiation of reassessment proceedings based on report of investigation authorities

W.P.(C) 11302/2019, CM APPL. 46536/2019, CM APPL. 46537/2019 & CM APPL. 46538/2019

The Delhi High Court held that information received from investigation authorities post closure of assessment proceedings constitutes a valid 'reason to believe' for the TO to initiate reassessment proceedings under section 147 of the Act. Based on the facts of the case, the Delhi High Court held that the report of investigation authorities

could be treated as tangible material for initiating reassessment proceedings, if it is new material, unavailable and analysed during the original assessment proceedings, and it would not be construed as a change in opinion.

Indirect transfer of shares

Transfer by a Belgian resident company, of shares in a Singapore company having an Indian subsidiary, taxable only in Belgium under Article 13(6) of the tax treaty between India and Belgium

ITA No. 7241/Mum/2018

The Mumbai bench of the Tribunal held that gains arising to a company resident in Belgium on the transfer of shares of a Singapore company having wholly owned subsidiary in India is not chargeable to tax in India, considering the provisions of Article 13(6) of the India-Belgium tax treaty.

This ruling emphasises that the 'see through' approach, unless specifically provided, cannot be read into the provisions of the tax treaty.



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Joint Venture

Transfer of development rights not taxable as capital gains, on non-fulfilment of conditions attached to the transfer

ITA No. 3251/Mum/2018

The Mumbai bench of the Tribunal has held that the payment received/ to be received by the taxpayer cannot be read in isolation to the obligations under the JV arrangement. The JV agreement is a composite agreement, and irrespective of whether the modifications are examined, all the terms of the JV agreement were to be read in conjunction with each other.

The Tribunal observed that when a taxpayer has an obligation to perform something and does not fulfil those obligations, nor does it seem to be in a position to do so, it cannot be said that a partial payment can be treated as income in the hands of the taxpayer.

This ruling pertains to the pre-ICDS period, and therefore, before relying on this particular ruling, one would need to evaluate the applicability of ICDS-IV, dealing with revenue recognition and corresponding implications, if any.

Tribunal holds that section 50C of the Act is not attracted to transfer of development rights by a taxpayer as capital contribution to an AOP

ITA No. 2279/Mum/2017

The Mumbai bench of the Tribunal held that section 50C of the Act, requiring substitution of the actual consideration with stamp duty value in certain cases, would not apply in the case of transfer of development rights by a taxpayer (party to a JV agreement) by way of its capital contribution to an AOP. The Tribunal also held that the provisions of section 45(3) of the Act cover such contribution, which provides for both charge and computation in case of contribution of a capital asset by a person to an AOP.

Permanent establishment

Supreme Court holds that a project office in India, carrying on preparatory and auxiliary activities, does not constitute a fixed place PE under the India-Korea tax treaty

Civil Appeal No. 12183 of 2016

The Supreme Court, in the case of a Korean company, held that where a project office is set up in India for the coordination and delivery of documents in a turnkey project and not in executing the project itself, it would not constitute a fixed place PE under Article 5(1) of the India-Korea tax treaty.

This decision reaffirms the tax position that activities of non-residents that are preparatory and auxiliary in nature should not constitute a PE in India. It also emphasises the principle that the onus is on the tax authorities to prove the existence of a PE.

Safe harbour limit

Proviso to section 43CA of the Act, inserted from 1 April 2019, permitting consideration to be within a range of 5% has retrospective effect

ITA No. 198/Mum/2019

The Mumbai bench of the Tribunal, considering the cardinal principle of interpretation, held that the proviso granting relief where there is only 5% variation, aimed at mitigating hardship or mischief to the taxpayer on the invocation of the deeming provisions of section 43CA of the Act.

The Tribunal further held that the proviso shall be effective retrospectively, and accordingly, there shall be no addition under section 43CA of the Act, where the variation is within the specified threshold.

In yet another case, the Mumbai bench of the Tribunal upheld the addition under section 43CA of the Act in the hands of



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taxpayer (a real estate-company) and observed that it would be incorrect to infer that prior to the amendment, a tolerance limit of 15% was already available and/or inbuilt in this statutory provision. The Tribunal opined that, had the tolerance limit been available prior to the amendment, there would have been no requirement to incorporate the 'proviso' to section 43CA (1) of the Act.

Circulars, Notifications and Others

Dispute Resolution Scheme

Vivad Se Vishwas – Direct Tax Dispute Resolution Scheme, 2020, enacted

Act No. 3 of 2020 dated 17 March 2020,
Circular No. 07/2020 dated 4 March
2020 and Notification No. 18/2020, F. No.
IT(A)/1/2020-TPL dated 18 March 2020

Per the announcement in the Budget speech by the Finance Minister on 1 February 2020, the Government tabled 'The Direct Tax Vivad se Vishwas Bill,

2020' (Bill) on 5 February 2020, before the Parliament, with the objective of inter alia reducing pending income-tax litigation and generating timely tax revenue. After certain amendments, the Lok Sabha passed the amended Bill on 4 March 2020. The Bill was enacted on 17 March 2020 after it was passed by the Rajya Sabha and assented by the President of India.

The VsV Act aims to provide a resolution mechanism for pending direct tax disputes across various appellate forums, viz., CIT(A), Tribunal, the High Court and the Supreme Court of India. The VsV Act also seems to include writ petitions under its ambit.

Some salient features of the VsV Act are as follows:

- All direct tax appeals (i.e. related to disputed tax, interest, penalty or fee) pending as on 31 January 2020 are eligible for resolution under the VsV Act, subject to certain exceptions prescribed, such as excluding search and seizure cases exceeding INR 50m,

matters where prosecutions have been initiated, etc. Thus, when a notice has been issued/ order passed on any matter but the same has not been appealed against, it would not be eligible for a resolution under the VsV Act.

- The resolution needs to be applied on an order-by-order basis, and not on issue basis. Hence, to pursue the VsV Act, the taxpayer will have to surrender its right of litigation on all the issues under dispute in respect of that appeal.
- Where the appeal relates to disputed tax, the VsV Act provides for complete waiver of interest, penalties as well as prosecution, where 100% (125% in search cases) of the disputed tax is paid by the specified date. If the appeal relates to disputed interest, penalty, fee – 25% of the disputed interest, penalty, fee needs to be paid where the same is deposited before the specified date. For appeals/ writ/ special leave petition filed by the Revenue, 50% (62.5% in search cases) of the above amount is

to be paid by the specified date. The disputed tax needs to be calculated as per the prescribed formula.

- As per the provision, the amount of disputed tax that must be paid to avail the VsV Act will also include the imputed tax on the reduction of loss resulting from the dispute.
- The taxpayer would have to file a declaration before the DA in the prescribed form. Once the declaration is filed, within a period of 15 days, the DA is required to issue a certificate determining the amount payable by the taxpayer. The taxpayer is required to pay the amount specified within 15 days from the date of receipt of the certificate to avail the benefits of lower tax outflows. The taxpayer is required to withdraw the appeal from the appellate forums and file proof of such withdrawal, along with details of the amount paid in the prescribed form to the DA. The DA will pass an order stating that the payment has been made.

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- The Finance Minister announced the extension of time limit for payment under the VsV Act until 31 December 2020 (from 30 June 2020), without paying the additional amount of 10%. Additionally, the compliances falling due under the VsV Act during the period 20 March 2020 to 30 December 2020 were extended to 31 December 2020.

The CBDT issued detailed guidance on the Bill in the form of responses to FAQs. The VsV Rules was notified on 18 March 2020. The VsV Rules inter alia prescribe the manner of computing the amount payable under different scenarios, and the forms to implement the provisions of the VsV Act.

Taxpayers must determine whether they should take the benefit of the VsV Act by considering various parameters, viz., merits of the issues involved, quantum involved, cost of litigation and repetition of issues across multiple years, etc. In cases where both the merit and penalty appeals are pending, the determination of amount payable in such cases needs to be evaluated. This dispute resolution is a welcome step towards addressing

long-pending income-tax litigation. With complete waiver of interest, penalty and prosecution, this would be an opportune moment for taxpayers to review their income-tax disputes for early closure. The Government has proactively clarified ambiguities through FAQs. The Revenue authorities are also reaching out to taxpayers to explain the nuances of the VsV Act, to make it a success.

COVID-19 relief measures

Taxation and Other Laws (Relaxation of Certain Provisions) Act, 2020 notified

Ordinance No. 2 of 2020 dated 31 March 2020, Act No. 38 of 2020 dated 29 September 2020 and F. No. 225/150/2020-ITA-II dated 30 September 2020

The Government of India notified the TOLA, on 29 September 2020, after receiving the President's assent. The TOLA seeks to enact legislative amendments in direct and indirect tax laws, which were introduced by Ordinance, as a COVID-19 pandemic relief measure.

The TOLA gives legislative effect to the relaxation in due dates for various tax compliances announced by the Government. The following is a snapshot of the extended due dates:

Sr. No.	Compliances	Due date given effect to
1.	TDS/ TCS Return for quarter ending March 2020 by the Government	15 July 2020
2.	TDS/ TCS Return for quarter ending March 2020 by other than the Government	31 July 2020
3.	Deductions for specified amount under chapter VIA of the Act under heading-B deduction (i.e. insurance premium, contributions to new pension fund, etc.) for FY 2019-20	31 July 2020
4.	Issuance of Form 16 for FY 2019-20	15 August 2020
5.	Filing of belated and revised ITR for FY 2018-19	30 November 2020
6.	Investment under sections 54 to 54GB for capital gains benefit under the Act	30 September 2020
7.	Furnishing of any report of audit for FY 2019-20	31 October 2020
8.	Filing of ITR for FY 2019-20	30 November 2020
9.	Completion or compliance of actions required under the VsV Amnesty Scheme including the date of furnishing of declaration, passing of order, etc.	31 December 2020

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10.	TDS/ TCS Returns for quarter ending June 2020 and September 2020	31 March 2021
11.	Linking of Permanent Account Number with Aadhar	
12.	Filing of Form 61A (Specified Financial Transactions)	
13.	Completion of assessment proceedings for FY 2017-18	
14.	Completion of assessment for FY 2016-17 (TP cases)	
15.	Issue of intimations under sections 143(1)/ 200A of the Act	
16.	Other notices and orders or compliances for which due date falls until 31 December 2020	
17.	Commencement of business operation in SEZs, where a letter of approval has been received on or before 31 March 2020	
18.	Any other due date falling during the period 20 March 2020 to 31 December 2020, for the completion of any proceeding or passing of any order or issuance of any notice, intimation, notification, sanction or approval by any authority, commission or Tribunal under the specified law, or the filing of any appeal, reply or application or furnishing of any report, etc., under the specified law	

Some other key relaxations announced are as follows:

- Any donation to the Prime Minister's Citizen Assistance and Relief in Emergency Situations Fund shall be eligible for 100% deduction under section 80G of the Act. In addition, the limit on deduction of 10% of gross total income would not be applicable to such donations.
- For delayed payments of advance tax, self-assessment tax, regular tax, TDS, TCS, equalisation levy, securities transaction tax, commodity transaction tax due between 20 March 2020 and 29 June 2020, and paid on or before 30 June 2020, the reduced interest rate at 9% per annum shall apply. The Government has granted immunity from penalty and prosecution for the delay relating to this period.



Other developments

This covers developments on which PwC has not released Tax & Regulatory Insights

Judgements

Capital gains

Tribunal denies deduction of interest while computing capital gains on sale of property

ITA No. 2848/Mum/2019

The taxpayer, while computing its income in previous years under the head 'income from house property', had claimed deduction under section 24(b) of the Act of the interest paid on loan raised from a financial institution for the construction of the property.

The Mumbai bench of the Tribunal holds that when interest expenditure was allowed as a deduction to the taxpayer when computing its income under the head 'income from house property', it would not be eligible to again claim deduction of such interest expenditure in the cost of

acquisition of the property, while computing income under 'capital gains' at the time of sale of the property.

However, in the contradictory rulings pronounced by the Delhi bench of the Tribunal (ITA No. 5155/DEL/2018) and Chennai bench of the Tribunal (ITA No. 943/MDS/2012), the deduction was allowed for housing loan interest while computing capital gains even though such deduction was already allowed against income from house property.

Amendment to section 50C of the Act being curative in nature will take retrospective effect

Tax Case Appeal No. 329 of 2020

The Madras High Court has held that the amendment made to section 50C of the Act by the Finance Act, 2016 (with effect from AY 2016-17), to adopt the stamp duty valuation prevailing on the date of agreement to sell, as against the date of registration, to determine the consideration for computing capital gains, is retrospective in nature. This is because the legislative intent behind such an amendment is

to eliminate undue hardship caused to taxpayers.

Characterisation of income

Income from operation of a shopping mall taxable as business income

ITA No. 1583 of 2017

The Bombay High Court, while taking cognisance that the object of the taxpayer-company was to acquire, develop, let-out the commercial complex and to derive income from running and maintaining the shopping mall, opines that the taxpayer intended to enter the business of renting out commercial space to interested parties. Therefore, the taxpayer's income from the operation of a shopping mall is taxable as business income and not as income from house property.

Deemed income

Section 56(2)(x) of the Act applicable only to immovable property that qualifies as capital asset

ITA No. 98/JP/2019

The Jaipur bench of the Tribunal held that the provisions of section 56(2)(vii)(b) of the Act cannot be invoked in case of agricultural land, which does not qualify as a 'capital asset', as defined under section 2(14) of the Act, where the purchase consideration is less than its stamp duty value.

The Tribunal reiterated that the intent of section 56(2)(vii) of the Act [now, section 56(2)(x)] is not to tax the receipt of any immovable property, which does not qualify as a 'capital asset'.

Depreciation

Payment for floor space index equated with payment for additions to buildings

ITA No. 1734 of 2017

The Bombay High Court observed that additional floor space index gives right to construct additional floors, which enhances the value/ cost of an existing building and is not a business/ commercial right falling

Other developments

within the scope of 'intangible asset' under section 32(1)(ii) of the Act. Thus, depreciation would be allowable at the rate applicable to buildings. Further, the High Court held that once the liability for entire amount has been recognised, depreciation must be allowed on the entire amount, irrespective of the fact that only part payment was made during the year.

Set up and commencement of business

Carrying out of substantial activities by the taxpayer considered as set up of its business

ITA No. 1408/Del/2011

The Delhi bench of the Tribunal noted that the taxpayer carried out substantial activities since the date of incorporation, which culminated in raising loans, investment in purchase of land (reflected as stock-in-trade) and advancing loans to group entities for purchasing different pieces of land, to develop townships, and that the taxpayer entered into development agreements during the year. The Tribunal

held that the taxpayer had not only set up its business but had also commenced its business during the previous year itself.

Circulars, Notifications, and Others

Real Estate Investment Trust

Listing and trading of units of InvITs and REITs on recognised stock exchange in IFSC

Circular No. SEBI/HO/DDHS/DDHS/ CIR/P/2020/174 dated 16 September 2020

The SEBI, vide circular dated 16 September 2020 permitted 'Units of InvITs and REITs by whatever name called in the Permissible Jurisdictions', as permissible security to be listed on stock exchanges in IFSC under clause 7 of the SEBI IFSC Guidelines, subject to the following conditions:

- InvITs and REITs that are incorporated/ settled and are listed on any of the following international exchanges in Permissible Jurisdictions:

- United States of America - NASDAQ, NYSE
- Japan - Tokyo Stock Exchange
- South Korea - Korea Exchange Inc.
- United Kingdom excluding British Overseas Territories- London Stock Exchange
- France - Euronext Paris
- Germany - Frankfurt Stock Exchange
- Canada - Toronto Stock Exchange
- Securities market regulator(s) in the Permissible Jurisdictions regulate such InvITs and REITs.

The circular also provides that the stock exchanges in IFSC shall evolve a detailed framework prescribing the initial and continuous listing requirements for such InvITs and REITs, whose units are listed/ proposed to be listed on stock exchanges in IFSC.

Units of InvITs and REITs from other prominent jurisdictions, such as Singapore, Malaysia (and India) are yet to be permitted to list on the recognised stock exchanges in IFSC.

Relaxation in guidelines for preferential issue and institutional placement by listed REITs/ InvITs

Circular Nos. SEBI/HO/DDHS/DDHS/ CIR/P/2020/183 and 184 dated 28 September 2020

The SEBI, vide circular dated 28 September 2020, has granted the following relaxations with respect to preferential issue and institutional placement by listed InvIT and REIT:

- Any subsequent institutional placement can be made two weeks after the date of prior institutional placement. Earlier, the cooling off period was six months.
- An additional option to the existing pricing methodology for preferential issuance to be made before 31 December 2020.
- In case of frequently traded units, as per the new formula, the price for allotment of shares will be the average of weekly high and low of the volume weighted average price during the preceding 12 weeks, or two weeks, whichever is higher.



Other developments

- Such units allotted on preferential basis using the above pricing formula shall be locked-in for three years.
- All allotments arising from the same unitholders' approval shall follow the same pricing model.

With respect to the lock-in requirement for units issued to sponsors by preferential issue, an explanation has been inserted to clarify that:

- Units held by a sponsor and locked-in for three years in the past in terms of SEBI (InvIT/ REIT) Regulation, 2014, shall be considered for the computation of lock-in requirement; and
- Units locked-in pursuant to the above-mentioned regulations shall not be put under fresh lock-in again, although they are considered for computing the lock-in requirement, in case these units are free of lock-in at the time of preferential issue.

Manner and mechanism to provide exit option to dissenting unitholders of REITs

Circular No. SEBI/HO/DDHS/DDHS/ CIR/P/2020/123 dated 17 July 2020

The SEBI vide circular dated 17 July 2020, prescribed guidelines on conditions, manner and mechanism of exit option to be provided to dissenting unit holders.

- An acquirer providing an exit option to dissenting unit holders should appoint merchant bankers registered with SEBI as lead managers for the exit option or offer who shall ensure compliance with SEBI regulations and particular circulars prescribing the exit mechanism.
- The lead manager should send the letter of offer to all dissenting unit holders and file it with the due diligence certificate with the exchanges.

- Upon completion of the exit option process, a due diligence certificate, in prescribed format, shall be filed by the SEBI's lead manager within two working days of payment of consideration by the acquirer.

'Affordable Rental Housing Complex' included in the Harmonised Master List of Infrastructure

F. No. 13/1/2017-INF dated 24 August 2020

The Central Government vide notification dated 28 August 2020, included 'Affordable Rental Housing Complex' in the Harmonised Master List of Infrastructure Sub-sectors by inserting a new item in the category of 'Social and Commercial Infrastructure'.

'Affordable Rental Housing Complex' has been defined as a project to be used for rental purpose only for urban migrant or poor (Economically Weaker Section or

Lower Income group categories) for a minimum period of 25 years with basic civic infrastructure facilities such as water, sanitation, sewage or septage, road, electricity along with necessary social or commercial infrastructure. The Local Authority or Entities fix the initial rent based on a survey of the area where the project is situated.



Financial Services

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Circulars, Notifications and Others

- Central Board of Direct Taxes
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- Reserve Bank of India
- Securities Exchange Board of India



Tax & Regulatory Insights

Judgements

Carry forward of losses

Claim for carry forward of losses of US sub-trusts allowed despite conversion of the trust to an LLC

Writ Petition No. 2796 of 2019, 2803 of 2019 and 3525 of 2019

The petitioners were originally constituted as sub-trusts of a business trust (trust) located in the USA and registered with the SEBI as FII. Subsequently, the Trust was reorganised/ converted from a Trust into an LLC in accordance with the laws in the USA, which provided that when a statutory Trust is converted into an LLC, the LLC would be deemed to be the same entity as the Trust.

The Bombay High Court held that carry forward of capital losses upon the conversion from one form of entity to another should be allowed, where such conversion under the local laws of domicile of the entity is ignored and the entity, after conversion, is regarded as the same as pre-conversion.

Tribunal allows a Mauritius FII to carry forward capital loss to subsequent years, without setting-off against capital gains that are exempt from tax

ITA No. 2201/Mum/2017

The taxpayer, a FII and a tax resident of Mauritius, had earned short-term and long-term capital gains during FY 2012-13. It claimed the gains as exempt under the India-Mauritius tax treaty. It had brought forward short-term and long-term capital losses from earlier years, which it carried forward without adjusting against gains during the year.

The Mumbai bench of the Tribunal allowed the taxpayer to carry forward its brought forward losses without setting them off against gains earned during the year, as the gains were exempt under the tax treaty. The Tribunal observed that the taxpayer must examine whether the provisions of the Act are beneficial to him or that of the applicable tax treaty and a tax treaty cannot be thrust upon a taxpayer.

Disallowance of expenditure

High Court holds section 44 of the Act being a special provision for insurance companies, overrides the applicability of section 14A of the Act for such companies

ITA No. 172/2020

The Delhi High Court upheld the Delhi bench of the Tribunal's ruling, holding that the provisions of section 14A of the Act are not applicable in the case of insurance companies. The High Court held that section 44 of the Act, which is a special provision dealing with the insurance business, overrides various provisions of the Act, including those generally dealing with the computation of profits and gains from any business. Therefore, the overriding provisions of section 44 of the Act would also cover the provisions of section 14A of the Act. Consequently, the High Court held that the TO could not have made any disallowance under section 14A of the Act for an insurance company.

Circulars, Notifications and Others

Central Board of Direct Taxes

Relief to certain share transactions consummated below 'fair value'

Notification No. 40/2020 dated 29 June 2020 and Notification No. 42/2020 dated 30 June 2020

The Finance (No. 2) Act, 2019, empowered the CBDT under sections 56(2)(x) and 50CA of the Act to prescribe the class of persons for which the aforesaid provisions would not apply. The CBDT has issued the aforesaid notifications amending Rule 11UAC of the Rules, and introducing Rule 11UAD, providing that sections 56(2)(x) and 50CA of the Act shall not apply to receipt of unquoted shares by shareholders, received pursuant to resolution plan approved by NCLT under sections 241 and 242 of Companies Act, 2013, dealing with oppression and mismanagement with effect from AY 2020-21 onwards.

Tax & Regulatory Insights

International Financial Services Centre

Operating guidelines for Investment Advisers in IFSC

SEBI Circular No. SEBI/HO/IMD/DF1/CIR/P/2020/04 dated 9 January 2020

The SEBI issued a circular providing operating guidelines for Investment Advisers in IFSC, stating that all the provisions of the existing SEBI Investment Advisers Regulations, including the guidelines and circulars issued thereunder, shall apply to Investment Advisers set-up/operating in IFSC. The circular prescribes a few additional guidelines to be followed by Investment Advisers operating in IFSC, including minimum net worth criteria (minimum US\$1.5m), application fees (US\$750) and registration fees (US\$7,500), persons to whom Investment Advisers services can be provided and minimum qualification of persons providing Investment Advisers services.

Operating guidelines for PMs in IFSC

SEBI Circular No. SEBI/HO/IMD/DF1/CIR/P/2020/169 dated 9 September 2020

The SEBI issued a circular providing operating guidelines for PMs in IFSC, stating that all the provisions of the existing SEBI (Portfolio Managers) Regulations, including the guidelines and circulars issued thereunder, shall apply to PMs set-up/operating in IFSC, subject to the IFSC Operating Guidelines.

The circular provides for eligibility criteria (setting up a branch/ entity in IFSC, subject to conditions), net worth requirements (US\$0.75m), registration process, permissible clients to whom PM services can be rendered, certification requirements for employees, minimum investment amount from clients (US\$70,000), application fees (US\$1,500) and registration fees (US\$15,000), etc.

Tax regime for Category III AIF in IFSC

The Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 dated 29 September 2020

The notification provided a new taxation regime for Category III AIFs in IFSC. As per the notification, the income earned by a Category III AIF on the transfer of any securities (other than shares in a company resident in India) is exempt from tax. Income from securitisation trust, which is chargeable under the head 'profits and gains of business or profession' is also exempt from tax. In addition, income received by the investors from the AIF or on the transfer of units in the AIF is exempt from tax.

Income from securities (such as interest, dividend) is taxable at the rate of 10% (except interest income on certain rupee denominated bonds, Government securities or municipal debt securities referred to in section 194LD of the Act continue to be taxed at 5%).

Securities Exchange Board of India

SEBI notified SEBI (Investment Advisers) (Amendment) Regulations, 2020

Notification No. SEBI/LAD-NRO/GN/2020/22 dated 3 July 2020

The SEBI has provided amendments to SEBI (Investment Advisers) Regulations, 2013 with effect from 1 October 2020 to introduce transparency in the activities of Investment Advisers and strengthen the regulatory framework for Investment Advisers. The key amendments under the Revised Investment Adviser Regulations are as follows:

- Segregation of advisory and distribution activities
- Provision of implementation services to advisory clients through direct schemes/ products in the securities market
- Mandatory agreement to be entered between Investment Adviser and client, incorporating the terms and conditions, as may be specified by the SEBI
- Enhancement in the eligibility criteria for Investment Advisers
- Fees charged by the Investment Adviser for providing investment advice shall be in the manner as specified by the SEBI

Other developments

This covers developments on which PwC has not released Tax & Regulatory Insights.

Judgements

Tax treaty exemption

Tribunal upholds claim of a tax transparent entity under the India-Netherlands tax treaty

ITA No. 7119/Mum/2014

The Mumbai bench of the Tribunal held that in case of ABC entity, which is a tax transparent entity in the Netherlands, tax treaty protection cannot be declined in case the entire income of ABC belongs to tax residents of the Netherlands. The Tribunal held that in case of tax transparent entities, the contractual entity is required to be ignored and the status of beneficiaries or the constituents of tax transparent entities are relevant for determining tax treaty protection.

Venture Capital Fund

Tribunal grants exemption under section 10(23FB) of the Act to VCF on sale of subsequently 'listed' shares of VCU

ITA No. 486/Bang/2019

The Bangalore bench of the Tribunal has granted exemption under section 10(23FB) of the Act to taxpayer VCF against capital gains from sale of 'listed shares' of VCU, which came to be listed on the stock exchange in the year of sale.

The Tribunal observed that Regulation 12(b) of the VCF Regulations visualises the listing of shares in future, and hence, any subsequent listing of shares should not be a bar for availing exemption under section 10(23FB) of the Act. It rejected the Revenue's claim that the taxpayer had sold 'listed shares', and hence, no exemption under section 10(23FB) of the Act with respect to capital gains on such shares should be granted, clarifying that VCF

Regulations prescribes conditions to be followed at the time of making investments only. The Tribunal accepted the taxpayer's contention that VCF Regulations do not prohibit cases where the initial investments made in unlisted shares of VCU becomes listed shares due to corporate actions.

Tribunal allows credit for TDS to a 'pass through' VCF and upholds exemption under section 10(23FB) of the Act

ITA Nos. 1144/MUM/2018 and 1145/MUM/2018

The Mumbai bench of the Tribunal held that the taxpayer, a 'pass through' VCF, was entitled to TDS credit on deducted on income from investments, as such credit for TDS was appearing in Form No. 26AS of the taxpayer. The Tribunal also upheld the exemption of the taxpayer in respect of its income from investments in VCUs under section 10(23FE) of the Act.

Withholding of taxes

Withholding of taxes is required to be made at source without giving effect to the tax treaty

Civil Appeal No. 5749 of 2012

The Supreme Court, in case of payments to be made to non-residents sports associations, held that the obligation to withhold tax at source under section 194E of the Act is not affected by the tax treaty. If the exigibility of income to tax is disputed, the benefit of the tax treaty can be pleaded and refund can be claimed; however, withholding would be required under section 194E of the Act without considering the beneficial provisions of the tax treaty.

Other developments

Circulars, Notifications and Others

Central Board of Direct Taxes

Rules for manner of calculating remuneration to eligible fund manager under section 9A of the Act

Notification No. 29/2020 dated 27 May 2020

The CBDT vide the captioned notification has prescribed Income-tax (Tenth Amendment) Rules, 2020 providing minimum remuneration to be paid by the eligible investment fund to the eligible fund manager under clause (m) of section 9A of the Act as well as related compliances to be undertaken by the eligible fund manager. The amended rules are effective from 1 April 2019.

Harmonised Master List of infrastructure sub-sectors for the purpose of exemption under section 10(23FE) of the Act

Notification No. 44/2020 dated 6 July 2020

The Finance Act, 2020, provided exemption under section 10(23FE) of the Act to notified Sovereign Wealth Funds and Pension Funds with respect to any income in the nature of dividend, interest or long-term capital gains arising from an investment it made in India, whether in the form of debt or share capital or unit, in the specified infrastructure businesses.

The CBDT, vide the captioned notification, has expanded the scope of infrastructure provided under section 10(23FE) of the Act, which shall be applicable from FY 2020-21 and aligned it with the Harmonised Master List of Infrastructure sub-sectors.

Procedure for notification of Sovereign Wealth Fund under section 10(23FE) of the Act

Circular No. 15/2020 dated 22 July 2020

The CBDT has vide a captioned circular, released the application form (i.e. Form I) for getting notified as a Sovereign Wealth Fund for claiming tax exemption under the Act. It shall be required to file a quarterly statement (i.e. Form II) to be filed

electronically within one month from the end of the relevant quarter. Such forms need to be verified/ signed by a person competent to verify the ITR. The Sovereign Wealth Fund shall also be required to file a return of income along with an audit report.

Category I and II AIFs reporting procedure and forms amended

Notification No. 55/2020 dated 28 July 2020

Section 115UB (7) of the Act read with Rule 12CB of the Rules provides for the procedure, timelines and forms for undertaking the compliances by AIF. The CBDT has vide the captioned notification, notified amendments in Rule 12CB of the Rules and the forms. As per new procedure, Form 64D is to be filed electronically with the prescribed authorities by 15 June and Form 64C is then required to be generated and downloaded from the prescribed portal and to be issued to the investors by 30 June.

Forms are amended to capture the details of losses eligible for pass through to the unitholders and losses to be retained at

the AIF level, brought forward capital loss as on 31 March 2019, eligible for pass through to the unitholders and income/ loss from offshore investment by AIF from the investment of non-resident unitholders.

Rules notified stipulating conditions and compliance requirements for PF for section 10(23FE) of the Act

Notification No. 67/2020 dated 17 August 2020

The CBDT vide the captioned notification, has prescribed rules providing conditions to avail exemption under section 10(23FE) of the Act by a pension fund, application (i.e. Form 10BBA) to be made for notification under section 10(23FE) of the Act purposes, compliance requirements, such as quarterly statement (i.e. Form 10BBB) intimating details of investments made in India to be filed electronically within one month from the end of the relevant quarter, and obtaining a Chartered Accountant certificate. Such forms need to be verified/ signed by a person competent to verify the ITR. Such pension fund shall also be required to file an ITR under the Act.

Other developments

Relaxation to foreign insurers applying for tax non-deduction certificate

Notification No. 75/2020 dated 22 September 2020

The CBDT vide the captioned notification has amended Rule 29B of the Rules enabling Foreign Reinsurance Branches operating in India to apply under section 195(3) of the Act to receive income (excluding dividends and interest on certain securities) without any deduction of tax at source. This brings Foreign Reinsurance Branches at par with foreign bank branches operating in India.

Foreign Portfolio Investors

Concentration norms for FPIs

RBI A.P. (DIR Series) Circular No. 18 dated 23 January 2020

The circular relaxed concentration norms applicable to debt investments by FPIs by increasing short-term investment limit (investment with residual maturity of less than one year) in Central Government Securities (including Treasury Bills), State

Development Loans and Corporate Bonds from 20% to 30%. The circular also exempted concentration norms (i.e. maximum FPI debt-investment of up to 50% of the issue size and the short-term investment limit of 30%, as explained above) on investment in distressed space, i.e. investment in ARCs and in entity under the Corporate Insolvency Resolution Process.

Amendments on investing 'Voluntary Retention Route' scheme

RBI A.P. (DIR Series) Circular No. 19 dated 23 January 2020

The circular increased overall investment limit to INR 1,50,000 crores and permitted FPIs to transfer their investments made under the General Investment Limit to the VRR scheme. The circular also allowed FPIs to invest in Exchange Traded Funds that invest only in debt instruments.

Eligibility criteria for Category I FPI registration

SEBI Notification No. SEBI/LAD-NRO/GN/2020/09 dated 7 April 2020

The circular amended the SEBI (FPI) Regulations, 2019, to provide that in addition to entities from FATF member countries, entities from any country specified by the Central Government by an order or by an agreement or treaty with other sovereign Governments could be eligible to obtain Category I FPI registration, if they meet the specified requirements.

International Financial Services Centre

Amendment to IFSC Investment Advisers Guidelines

SEBI Circular No. SEBI/HO/IMD/DF1/CIR/P/2020/31 dated 28 February 2020

The SEBI reduced the net worth requirement for Investment Advisers in IFSC from existing US\$1.5m to US\$0.7m and allowed existing recognised entities in IFSC to apply for Investment Advisers registration without forming a separate company or LLP.

Regulatory Framework listing of DRs in IFSC

IFSCA Circular No. F. No. 87/IFSCA/DRs/2020-21 dated 28 October 2020

IFSC Authority issued a circular providing regulatory framework for listing of DRs in IFSC, to enable eligible listed companies to raise capital through the issuance and listing of DRs on the stock exchanges in IFSC. The regulatory framework also enables eligible companies having DRs listed on any exchange in a FATF compliant jurisdiction to list and trade such DRs in IFSC without any fresh public offering.

The framework provides eligibility criteria for issuance of DRs, conditions for Initial Public Offering and listing of DRs (with and without public offering) and for trading of DRs.

Dealing in offshore non-deliverable rupee derivative markets

RBI/2019-20/193 A.P. (DIR Series) Circular No. 23 dated 27 March 2020

RBI permitted authorised dealers having an IBU to participate in the offshore INR derivative market – the Non-Deliverable derivative contracts, with effect from 1 June 2020.

Other developments

Aircraft leasing as financial product and global in-house centres and financial service in IFSC

Notification No. S.O. 3652(E) and S.O. 3653(E) dated 16 October 2020

The Ministry of Finance notified aircraft lease (operating, financial and hybrid) as a financial product and Global In-house centers as a financial service under the International Financial Services Centres Authority Act, 2019.

IFSCA Notification No. IFSCA/2020-21/GN/REG 003 dated 12 November 2020 and Circular No. F. No. 29/IFSCA/GIC/2020-21 dated 18 November 2020

IFSC Authority notified IFSC Authority (Global In-house Centers) Regulations, 2020, to provide a framework to recognise and operationalise Global In-house Centers in IFSC. The notification provides the eligibility criteria to set-up as GIC in IFSC, permissible activities, currency and mode for conducting business and other miscellaneous provisions.

CBDT grants PAN exemption to non-resident investing in Category I and II AIF located in IFSC

CBDT Notification No. 58/2020/F.No. 370133/08/2020-TPL dated 10 August 2020

The CBDT notification exempts a non-resident (not being a company) or a foreign company (hereinafter, referred to as non-resident) who has made investments in Category I or II AIF located in IFSC from obtaining a PAN in India, subject to the fulfilment of certain conditions.

Reserve Bank of India

Final guidelines for 'on tap' licensing of SFBs in the private sector

Press Release No. 2019-2020/1356 dated 5 December 2019

The RBI has issued the final guidelines for 'on tap' licensing of SFBs. The final guidelines contain provisions pertaining to eligible promoters, corporate structure, fit and proper criteria for promoters, capital

requirements, promoter's contribution, foreign shareholding, voting rights and transfer/ acquisition of shares, Statutory Liquidity Ratio and Cash Reserve Ratio requirements, scope of activities, prudential norms, corporate governance and some other conditions.

Acquisition of financial assets by ARCs from sponsors and lenders

Circular No. DOR.NBFC(ARC) CC. No. 8/26.03.001/2019-20 dated 6 December 2019

The RBI prohibits ARCs from acquiring financial assets from the following entities on a bilateral basis:

- A bank or financial institution being sponsor of ARC;
- A bank or financial institution that is either a lender to the ARC or a subscriber to the fund, if any, raised by the ARC for its operations;
- An entity in the group to which the ARC belongs.

However, they may participate in auctions of the financial assets, provided such auctions are conducted in a transparent manner, on arm's length basis, and the prices are determined by market forces.

Increase in aggregate limit for lenders in the NBFCs – Peer-to-Peer Lending Platform (Reserve Bank) Directions, 2017

Notification No. DOR.NBFC(PD) CC.No.106/03.10.124/2019-20 dated 23 December 2019

The RBI has increased the aggregate limits for lenders across all peer-to-peer platforms from INR 1m to INR 5m, amending the Peer-to-Peer Lending Platform (Reserve Bank) Directions, 2017. Such increase in aggregate limit is subject to certain conditions. There is no mandatory requirement of maintaining escrow accounts, to be operated by bank promoted trustee for transfer of funds, with the bank that has promoted the trustee.

Other developments

Introduction of a new type of semi-closed prepaid payment instruments – prepaid payment instruments up to INR 10,000 with loading only from bank account

Circular No. DPSS.CO.PD.
No.1198/02.14.006/2019-20 dated 24
December 2019

To give impetus to small value digital payments and for enhanced user experience, the RBI introduced a new type of semi-closed prepaid payment instruments, i.e. prepaid payment instruments up to INR 10,000, with loading only from bank account with certain features. In addition, if desired by the prepaid payment instrument holder, minimum detail prepaid payment instruments existing as on 24 December 2019 can be converted to this new type of prepaid payment instrument.

Notified 'significant benchmarks' by RBI under Financial Benchmark Administrators (Reserve Bank) Directions, 2019

Notification No. FMRD.
FMSD.22/03.07.035/2019-20 dated 1
January 2020

In view of the captioned directions, the RBI has notified the following benchmarks administered by Financial Benchmarks India Private Limited as a 'significant benchmark'.

- Overnight Mumbai Interbank Outright Rate
- Mumbai Interbank Forward Outright Rate
- USD/ INR Reference Rate
- Treasury Bill Rates
- Valuation of Government Securities
- Valuation of State Development Loans

Lending against security of single product – Gold jewellery

Circular No. DOR.NBFC (PD).
CC.No.108/03.10.001/2019-20 dated 21
January 2020

As per the extant NBFC-Systemically Important Non-Deposit taking Company and Deposit taking Company and NBFC-Non-Systemically Important Non-Deposit taking Company (Reserve Bank) Directions, 2016, on default, gold jewellery was permitted to be auctioned in the same town or taluka in which the branch that has extended the loan is located. The RBI has now decided that NBFCs can pool gold jewellery from different branches in a district and auction it at any location within the district, subject to certain conditions.

External benchmark based lending – Medium enterprises

Circular No. DOR.DIR.
BC.No.39/13.03.00/2019-20 dated 26
February 2020

Earlier, vide a circular dated 29 September 2019, the RBI had mandated that all new floating rate personal or retail loans (housing, auto, etc.) and floating rate loans to micro and small enterprises, extended by banks from 1 October 2019, shall be linked to external benchmarks. To strengthen monetary policy transmission, the RBI, vide a circular dated 26 February 2020, has decided that all new floating rate loans to the medium enterprises extended by banks from 1 April 2020 shall also be linked to the external benchmarks.

Introduction of a 'Fully Accessible Route' for investment by non-residents in certain specified Government securities

A.P. (DIR Series) Circular No. 25
and Circular No. FMRD.FMSD.
No.25/14.01.006/2019-20 dated
30 March 2020

The RBI, in consultation with the Gol, introduced a separate route, viz. fully accessible route for investment by non-residents in securities issued by the Gol.

Other developments

The RBI shall notify the Government securities that shall be eligible for investment under the fully accessible route without being subject to any investment ceilings and such securities, once so designated, shall remain eligible for investment under the fully accessible route until maturity. The directions specifies eligible investors, specified securities, treatment of existing investments in such specified securities, process of investment and reporting and such other aspects.

Extension of priority sector lending - Lending by banks to NBFCs for on-lending

Circular No. FIDD.CO.Plan. BC.No.19/04.09.01/2019-20 dated 23 March 2020

The RBI vide a circular dated 23 March 2020, has decided to extend the priority sector classification for bank loans to NBFCs for on-lending, as decided in a circular dated 13 August 2019, for FY 2020-21. The existing loans disbursed under the on-lending model will continue to be classified under the priority sector until the date of repayment/ maturity.

Bank credit to registered NBFCs (other than micro finance institutions) and HFCs for on-lending will be allowed up to an overall limit of 5% of the individual bank's total priority sector lending. Banks shall compute the eligible portfolio under the on-lending mechanism by averaging across four quarters, to determine adherence to the prescribed cap.

Regulatory guidance on implementation of Ind AS for NBFCs and ARCs

Circular No. DOR (NBFC).CC.PD. No.109/22.10.106/2019-20 dated 13 March 2020

The RBI has framed regulatory guidance on specific prudential aspects of Ind AS implementation by NBFCs/ ARCs for the preparation of their financial statements from FY 2019-20 onwards. These guidelines focus on the need to ensure consistency in the application of the accounting standards in specific areas, including asset classification and provisioning, and provide clarifications on regulatory capital considering Ind AS implementation.

Prior Government approval required for FDI from countries with which India shares land borders

Notification No. S.O. 1278(E) dated 22 April 2020

In line with Press Note No. 3 of 2020, the Ministry of Finance has issued a notification mandating prior Government approval for FDI from countries with which India shares land borders. This means any fresh investment or acquisition undertaken by entities belonging to, or beneficially owned, by entities/ citizens of such countries would require prior Government approval even in sectors where otherwise FDI was permitted under the automatic route.

The Government approval route will also apply for any transfer of ownership of existing or future FDI that directly or indirectly results in beneficial ownership in the hands of any entity/ citizen of countries with which India shares land borders.

Liberalisation of foreign investment norms in insurance intermediaries

Notification No. S.O. 1374 (E) dated 27 April 2020

In line with Press Note No. 1 of 2020 and the Indian Insurance Companies (Foreign Investment) Amendment Rules, 2019, foreign investment up to 100% under the automatic route has been allowed in intermediaries or insurance intermediaries. This includes insurance brokers, reinsurance brokers, insurance consultants, corporate agents, third party administrator, surveyors and loss assessors, and such other entities, as the IRDAI may notify from time to time, subject to prescribed conditions.

Report of the internal working group to review extant ownership guidelines and corporate structure for Indian private sector banks

Press Release No. 2020-2021/667 dated 20 November 2020

The RBI has constituted an Internal Working Group to review the abovementioned subject, vide press release dated 12 June 2020, with certain terms of reference.

Other developments

The key recommendations of the Internal Working Group include following:

- Promoter's Cap - Cap on promoters' stake in private banks from the current 15% to 26% of the paid-up voting equity share capital of the bank in 15 years. For non-promoter shareholding, a uniform cap of 15% for all types of shareholders was suggested.
- Corporates as banks - Corporates in the banking space may be allowed only as 'promoters' after necessary amendments to the Banking Regulation Act, 1949, to prevent connected lending and exposures between the banks and other financial and non-financial institutions.
- Conversion of NBFCs into banks and payments banks into SFBs – Conversion subject to certain criteria/ track record.
- New banks – Increase in minimum capital requirements for licensing new banks.
- Continuation of Non-operative

Financial Holding Company – Non-operative Financial Holding Company to be the preferred structure for all new licences to be issued for universal banks.

- Licensing guidelines – The RBI may take steps to ensure harmonisation and uniformity in different licensing guidelines, to the extent possible.

Loans sourced by banks and NBFCs over digital lending platforms: Adherence to fair practices code and outsourcing guidelines

Circular No. DOR (NBFC) (PD) CC. No.112/03.10.001/2019-20 dated 24 June 2020

In addition to adhering to fair practices code and outsourcing guidelines, the RBI has asked banks and NBFCs (lending through digital platforms) to adhere to instructions. These instructions include disclosure of the names of digital lending platforms on the banks'/ NBFCs' websites, disclosure by digital lending platforms of the banks'/ NBFCs' names, on whose

behalf they are interacting with customers, sanction letter to be issued to the borrower on the letter head of the concerned bank/ NBFC, copy of the loan agreement, with all enclosures to be furnished to all borrowers at the time of sanction/ disbursement of loans, ensuring effective monitoring and creating awareness about grievance redressal mechanism

Exemption to AIFs companies from registration as NBFC

Circular No. DOR (NBFC).CC.PD. No.115/03.10.001/2020-21 dated 10 July 2020

Exemption was granted from the provisions of section 45-IA and 45-IC of the RBI Act, 1934, pertaining to requirement of registration with the RBI and net owned fund creation and maintenance of reserve fund, respectively. Exemption was also granted from the applicability of guidelines issued by the RBI for NBFCs to VCF companies not holding or accepting public deposits. The RBI vide a circular dated 10 July 2020, has substituted reference to 'VCF companies' with 'AIF companies'.

Fair Practice Code for ARCs

Circular No. DOR.NBFC(ARC) CC. No. 9/26.03.001/2020-21 dated 16 July 2020

The RBI vide a circular dated 16 July 2020, has advised ARCs to adopt 'Fair Practices Code' to ensure transparency and fairness in their operation and to follow transparent and non-discriminatory practices in acquisition of assets. To enhance transparency in the sale process of secured assets, it is necessary to ensure wide participation of prospective buyers. The terms and conditions of sale may be decided in consultation with security receipts holders and the spirit of section 29A of the Insolvency and Bankruptcy Code, 2016, may be followed in dealing with prospective buyers.

Other aspects include board-approved policy on fees, expenses and incentives, outsourcing activity undertaken by ARC, board-approved code of conduct for recovery agents in case of recovery of loans, constitution of grievance redressal machinery within ARC.

Other developments

New criteria for classifying the enterprises as MSME

Circular No. FIDD.MSME & NFS.BC.No.3/06.02.31/2020-21 dated 2 July 2020 and Gazette Notification No. S.O. 2119 (E) dated 26 June 2020

The RBI vide a circular dated 2 July 2020, has advised to classify/ reclassify enterprises, as per the new MSME definition provided by the Gol vide Gazette Notification dated 26 June 2020 with effect from 1 July 2020, as follows:

Composite criteria: Investment in plant and machinery or equipment			
Classification	Micro	Small	Medium
Manufacturing & services	Investment <INR 10m and	Investment< INR 100m and	Investment< INR 500m and
	Turnover< INR 50m	Turnover< INR 500m	Turnover< INR 2500m

The RBI has also provided that earlier guidelines pertaining to MSME issued are superseded by the aforesaid Gazette Notification by the Gol, except for delayed payment to micro and small enterprises. Such Gazette Notification provides for calculation of investment in plant and machinery or equipment and turnover, registration process, grievance redressal, etc.

Review of guidelines for CICs

Circular No. DoR (NBFC) (PD) CC. No.117/03.10.001/2020-21 dated 13 August 2020

The RBI has announced stricter guidelines for CICs, mandating more disclosures, better risk management and a simpler group structure. The new guidelines based on the recommendations of the working group provided modifications in computation of adjusted net worth, restriction in layers of CIC within group, exceptions to carrying other financial activity, change in nomenclature of Systemically Important CIC and exemption CIC,

clarifying registration requirements. It also provided that the parent CIC in the group, or the CIC with the largest asset size, will have to form a group risk management committee with five members, including two independent directors, which will report to the board of the CIC that constitutes it and must meet at least once in a quarter.

Restructuring of advances to MSMEs

Circular No. DOR.No.BP. BC.34/21.04.048/2019-20 dated 11 February 2020 and DOR.No.BP.BC/4/21.04.048/2020-21 dated 6 August 2020

To support MSME entities in the aftermath of Covid-19, and to align these guidelines with the Resolution Framework for Covid-19 related stress announced for other advances, the RBI has permitted extension of one-time restructuring of existing loans to MSMEs classified as 'standard' without a downgrade in the asset classification, subject to certain conditions. These are as follows: aggregate exposure of banks and NBFCs to borrower, implementation of restructuring of borrower account, borrower account should be a standard asset as on 1 March 2020, borrowing entity to be

GST-registered except in case of GST exemptions, asset classification benefit, additional provision requirement by banks for restructured account.

Revised priority sector lending Master Directions

Master Directions FIDD.CO.Plan. BC.5/04.09.01/2020-21 dated 4 September 2020

To harmonise various instructions issued to commercial banks, Regional Rural Banks, SFBs, Primary (Urban) Co-operative Banks (UCBs) and Local Area Banks and to encourage and support environment friendly lending policies to help achieve sustainable development goals, the RBI issued revised Master Directions encompass the consolidation of guidelines on priority sector lending for all commercial banks, Regional Rural Banks, SFBs, UCBs, Local Area Banks. The key features of the revised Master Directions are as follows:

- Increase in targets for lending by banks for 'small and marginal farmers' and 'weaker sections' in a phased manner up to 31 March 2024;

Other developments

- Additional categories notified for eligibility under priority sector, which, inter alia, include loans to start ups (up to INR 500m), loans for affordable housing projects;
- Change in mechanism for calculation of all-inclusive interest charged with respect to investment by banks in securitised assets or assignment/ outright purchases by banks that fall under priority sector lending.

Compliance functions in banks and role of chief compliance officer

Ref. No. DoS.CO.PPG./
SEC.02/11.01.005/2020-21 dated 11
September 2020

To bring uniformity in the approach followed by banks and to align the supervisory expectations on Chief Compliance Officer with best practices, the RBI has prescribed guidelines for the compliance function and the role of the Chief Compliance Officer. The key aspects of the guidelines include compliance policy, tenor, eligibility criteria, experience and responsibilities of Chief Compliance Officer, reporting requirements, no dual hatting provision.

Co-lending by banks and NBFCs to priority sector

Circular No. FIDD.CO.Plan.
BC.No.8/04.09.01/2020-21 dated 5
November 2020

Vide the captioned circular, the RBI has prescribed a revised scheme, termed 'Co-Lending Model', wherein the primary focus is to improve the flow of credit to the unserved and underserved sector of the economy and to make available funds to the ultimate beneficiary at an affordable cost.

Under this model, banks are permitted to co-lend with all registered NBFCs (including housing finance companies) based on prior agreements (earlier limited to NBFCs-non-deposit taking-systemically important). Co-lending banks will take their share of the individual loans on back-to-back basis on their books. However, NBFCs will retain a minimum 20% share of the individual loans on their books.

Other features include formulation of board-approved policies for co-lending and publishing on websites, prohibition

on co-lending arrangement within the same promoter group, contents on master agreement to be entered between bank and NBFC for co-lending, grievance redressal, non-applicability of Co-Lending Model to foreign banks with less than 20 branches.

Amendment to Master Direction on KYC

Circular No. DOR.AML.
BC.No.27/14.01.001/2019-20 dated 9
January 2020

To leverage the digital channels for the Customer Identification Process by Regulated Entities, the RBI has decided to permit Video-based Customer Identification Process as a consent-based alternate method of establishing the customer's identity, for customer onboarding. The key highlights of the amendment in KYC Directions, 2016, include the insertion of new definition such as digital KYC and equivalent e-document and Video-based Customer Identification Process and manner in which Video-based Customer Identification Process shall be carried out.

Securities Exchange Board of India

Usage of pool accounts in MF transactions

Discussion paper on 'Usage of pool
accounts in MF Transactions' dated 23
December 2019

The SEBI has released a discussion paper on 'Usage of pool accounts in MF Transactions' proposing to discontinue the pooling of funds/ units by intermediaries such as stock brokers, MF distributors, Investment Advisers and other platforms, to promote a secure investing environment in MFs and counter challenges of misuse of investments when such intermediaries execute MF transactions.

Measures to strengthen the conduct of Investment Advisers

Circular No. SEBI/HO/IMD/DF1/
CIR/P/2019/169 dated 27 December 2019

In addition to SEBI (Investment Advisers) Regulations, 2013, which provides a code

Other developments

of conduct to be followed by Investment Advisers, the SEBI has prescribed the following measures with effect from 1 January 2020 to strengthen the conduct of Investment Advisers further, and protect the interests of investors seeking their advice:

- Restriction on free trial
- Proper risk profiling and consent of client on risk profiling
- Receiving fees through banking channel only
- Display of complaints status on website

Guidelines for filing of placement memorandum for InvITs proposed to be listed

Circular No. SEBI/HO/DDHS/DDHS/CIR/P/2019/161 dated 24 December 2019

The SEBI has provided clarification on filing of a draft placement memorandum with the SEBI and stock exchange through a merchant banker registered with the SEBI, in case of InvITs issuing units on private placement basis and proposed to be listed with effect

from 15 January 2020. The draft placement memorandum shall contain disclosures as specified in the SEBI (Infrastructure Investment Trusts) Regulations, 2014 (InvIT Regulations) and the merchant banker also needs to submit a due diligence certificate in the prescribed format.

Introduction of 'Stewardship Code' for all MFs and AIFs in relation to their investment in listed equities

Circular No. CIR/CFD/CMD1/168/2019 dated 24 December 2019 and Circular No. SEBI/HO/CFD/CMD1/CIR/P/2020/55 dated 30 March 2020

To enhance monitoring and engagement with the investee companies, the SEBI, with effect from FY beginning 1 April 2020, has prescribed a 'Stewardship Code', which is required to be mandatorily followed by all MFs and all categories of AIFs, in relation to their investment in listed equities. Such 'Stewardship Code' includes key principles such as formulating comprehensive policy on discharge of stewardship responsibilities, managing conflicts, monitoring investee companies,

voting, and reporting of stewardship activities. However, vide circular dated 30 March 2020, the implementation of such Stewardship Code came into effect from 1 July 2020.

Disclosure standards for AIFs

Circular No. SEBI/HO/IMD/DF6/CIR/P/2020/24 dated 5 February 2020

As part of its initiatives to streamline disclosure standards in the growing AIF space, the SEBI has decided to introduce template(s) for private placement memorandum, subject to certain exemptions, and mandatory performance benchmarking for AIFs with provisions for additional customised performance reporting with effect from 1 March 2020.

It is mandatory for AIFs to perform an audit of their compliance of the terms of PPM. However, there are exemptions to certain categories of AIFs that do not have to follow the prescribed template format and need not undertake audit compliance.

Introduction of SEBI (Portfolio Managers) Regulations, 2020 and guidelines for PMs

Notification No. SEBI/LAD-NRO/GN/2020/03 dated 16 January 2020;

Circular No. SEBI/HO/IMD/DF1/CIR/P/2020/26 dated 13 February 2020; and

Circular No. SEBI/HO/IMD/DF1/CIR/P/2020/111 dated 29 June 2020

In addition to the SEBI (Portfolio Managers) Regulations, 2020 notified by the SEBI on 16 January 2020, the SEBI has also issued a circular prescribing certain guidelines for PMs, the implementation of which has been made applicable from 1 October 2020, vide circular dated 26 June 2020. The key aspects under the SEBI (Portfolio Managers) Regulations, 2020 and the guidelines are as follows:

- Increase in the net worth requirement of a PM from INR 20m to INR 50m

Other developments

- Increase in the minimum investment amount from clients from INR 2.5m to INR 5m
- Standardisation of fees and expenses
- Revised requirements relating to compliance officer and principal officer along with changes in the eligibility criteria
- Introduction of concept of 'investment approach'
- Revision in reporting requirements and relating to disclosure document
- Mandatory appointment of custodians, irrespective of value of total assets under management by PM, except where only advisory services are provided.

Facilitating transaction in MF schemes through the stock exchange infrastructure

Circular No. SEBI/HO/MRD1/DSAP/CIR/P/2020/29 dated 26 February 2020

Similar to SEBI registered Investment Advisers, the SEBI has now decided to allow investors to access the infrastructure of recognised stock exchanges to purchase and redeem MF units directly from MF/asset management companies to increase the reach of this platform.

Clarifications with respect to circular dated 5 February 2020 on 'Disclosure Standards for AIFs'

Circular No. SEBI/HO/IMD/DF6/CIR/P/2020/99 dated 12 June 2020

The SEBI had issued a circular dated 5 February 2020, providing for certain disclosure standards to be followed by SEBI registered AIFs in India. The SEBI vide a circular dated 12 June 2020, issued a new circular clarifying the mechanism and timelines for compliance, specifically in relation to the annual audit requirement and performance benchmarking.

Collection of stamp duty on issue, transfer and sale of units of AIFs

Circular No. SEBI/HO/IMD/DF6/CIR/P/2020/113 dated 30 June 2020

Vide a circular dated 30 June 2020, the SEBI has provided that AIFs shall be subjected to stamp duty with effect from 1 July 2020, on issue, transfer and sale of its units. Pursuant to this, AIFs have to appoint a Registrar and Transfer Agent for the collection of stamp duty on such issue, transfer and sale of units of AIF. For transactions undertaken through a stock exchange, exchange/ authorised clearing corporation or depository empowered to collect stamp duty.

Reduction in cooling period between two qualified institutions placements

Notification No. SEBI/LAD-NRO/GN/2020/17 dated 16 June 2020

To promote Indian listed companies to raise capital under the Qualified Institutional Placement route, the SEBI has reduced the minimum cooling off period between two qualified institutions placements from six months to two weeks

Manner and mechanism to provide exit option to dissenting unitholders of InvITs

Circular No. SEBI/HO/DDHS/DDHS/CIR/P/2020/122 dated 17 July 2020

The SEBI vide a circular dated 17 July 2020, prescribed guidelines on conditions, manner and mechanism of exit option to be provided to dissenting unit holders.

- An acquirer providing an exit option to dissenting unit holders should appoint merchant bankers registered with the SEBI, as lead managers for the exit option or offer who shall ensure compliance with the SEBI (InvIT) Regulations and respective circulars prescribing the exit mechanism.
- The lead manager should send the letter of offer to all dissenting unit holders and file it with the due diligence certificate with the stock exchanges.
- Upon completion of the exit option process, a due diligence certificate, in prescribed format, shall be filed by the SEBI's lead manager within two working days of the payment of consideration by the acquirer.

Other developments

Amendments in Guidelines for issue and listing of structured products/ market-linked debentures

Circular No. SEBI/HO/DDHS/ CIR/P/2020/120 dated 13 July 2020

As per the erstwhile circular, the issuer of structured products and market-linked debentures was required to appoint a Credit Rating Agency registered with the SEBI for the valuation of market-linked debentures. After the amendment in SEBI (Credit Rating Agencies) Regulation, 1999, the Credit Rating Agency cannot carry out any activity other than rating of securities after 30 May 2020. Vide a circular dated 13 July 2020, the SEBI has decided that valuation of market-linked debentures shall be carried out by an agency appointed by the Association of Mutual Funds in India for carrying out valuation.

Administration and supervision of Investment Advisers

Circular No. SEBI/HO/IMD/DF1/ CIR/P/2020/148 dated 6 August 2020

With increasing numbers of registered Investment Advisers, the SEBI stated that a wholly owned subsidiary of a stock exchange can administer and supervise such advisers. Besides, the SEBI has put in place the criteria to grant recognition to a stock exchange's subsidiary and guidelines for setting up requisite systems by stock exchanges and the responsibilities of the stock exchange's subsidiary.

Execution of power of attorney by the client in favour of the stockbroker/ stockbroker and depository participant

Circular No. SEBI/HO/MIRSD/DOP/ CIR/P/2020/158 dated 27 August 2020

The SEBI has reiterated that power of attorney is optional and the stockbroker/ depository participant should only insist on it for opening the account. Stockbrokers have obtained power of attorney from investors as part of the KYC and account opening process and misused it by taking authorisation for activities not permitted by the SEBI. The SEBI has decided that all off-market transfer of securities shall

be permitted by the Depositories only by execution of Physical Delivery Instruction Slip (DIS) duly signed by the client himself or by electronic DIS (through One-Time Password). The provisions of this circular shall be effective from 1 November 2020.

Guidelines for Investment Advisers

Circular No. SEBI/HO/IMD/DF1/ CIR/P/2020/182 dated 23 September 2020

In addition to amendments in SEBI (Investment Advisers) Regulations, 2020, the SEBI has prescribed additional compliance vide captioned guidelines for certain provisions of amended regulations. These guidelines provide two modes for chargeability of fees from the client– asset under advice mode or fixed fee mode. The Investment Adviser shall ensure compliance with measures related to client level segregation, investment advisory agreement and fees to be charged by 1 April 2021, and with respect to maintenance of record, risk profiling and display of details on the website by 1 January 2021.

Asset allocation of multi-cap funds

Circular No. SEBI/HO/IMD/DF3/ CIR/P/2020/172 dated 11 September 2020

To diversify the underlying investments of multi-cap funds across the large, mid and small cap companies and be true to label, it has been decided to partially modify the scheme characteristics of multi-cap funds. The minimum investment by multi-cap funds in equity and equity-related instruments should be 75% of total assets (as against 65% of the total assets earlier) by investing a minimum of 25% each in equity and equity-related instruments of large cap/ mid cap and small cap companies. MFs must comply with the aforesaid requirement by 31 January 2021.

Processing of applications of AIFs/ schemes

Circular No. SEBI/HO/IMD/DF6/ CIR/P/2020/209 dated 22 October 2020

Where an Investment Committee is proposed to be constituted to approve

Other developments

the investment decisions of the AIF, the SEBI, vide a captioned circular, has provided clarification on processing of applications for registration of AIFs and the launch of new schemes. Applications where the Investment Committee includes external members who are 'resident Indian citizens' shall be duly processed. However, applications in which the Investment Committee includes external members who are not 'resident Indian citizens' shall be considered only after receipt of the clarification that the SEBI has sought from the Government and the RBI with respect to investments made by such AIFs being regarded as indirect foreign investment.

SEBI (AIF)(Amendment) Regulations, 2020

Notification No. SEBI/LAD-NRO/
GN/2020/37 dated 19 October 2020

The SEBI has amended the eligibility criteria of Investment Manager as provided in SEBI (AIF) Regulations, 2012. As per the amended regulations, the key investment team of the manager shall have at least one person with SEBI prescribed professional

qualification. It has also provided that the manager may constitute an Investment Committee to approve investment decisions of the AIF, subject to prescribed conditions.

Enhancement of overseas investment limits for MFs

Notification No. SEBI/HO/IMD/DF3/
CIR/P/2020/225 dated 5 November 2020

The SEBI, vide, a captioned circular has enhanced investment limits per MF as follows:

- Overseas investments subject to a maximum of US\$600m per MF (as against US\$300m provided earlier), within the overall industry limit of US\$7bn
- Investments in overseas Exchange Traded Fund subject to a maximum of US\$200m per mutual fund (as against US\$50m provided earlier), within the overall industry limit of US\$1bn

The circular provides the allocation methodology of the aforesaid limits to new as well as ongoing schemes. MFs shall report the utilisation of overseas investment limits on monthly basis, within 10-days from the end of each month in the prescribed format.

Amendments to guidelines for preferential issue and institutional placement of units by a listed InvIT

Circular No. SEBI/HO/DDHS/DDHS/
CIR/P/2020/232 dated 17 November 2020

As per circular dated 27 November 2019, the SEBI has provided that preferential issue shall not be made to any person who has sold or transferred any units of the issuer during the six months preceding the relevant date. The SEBI vide a captioned circular has inserted an explanation stating that in case any person belonging to a sponsor has breached the aforementioned condition, the sponsor shall be ineligible for allotment of units on preferential basis.





Personal tax

Tax & Regulatory Insights released by PwC

Circulars, Notifications and Others

- Income-tax
- Other COVID-19 relief measures

Other developments

Circulars, Notifications and Others

- Social Security/ Provident Fund
- Income-tax
- Immigration



Tax & Regulatory Insights

Circulars, Notifications and Others

Income-tax

Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020

No. 38 of 2020 dated 29 September 2020

The Indian Government introduced the TOLA on 29 September 2020, after receiving the President's assent. Although the main purpose of the TOLA was to effect the changes made through the Taxation and Other Laws (Relaxation of Certain Provisions) Ordinance, 2020 (Ordinance) dated 31 March 2020, certain other clarificatory changes have been made therein. The following is a summary of the key changes made through the Ordinance related to individual taxpayers in the past few months:

Particulars	Original Due Date	Extended Due Date
Original ITR (FY 2019-20)	31 July 2020	31 December 2020 (extended from 30 November 2020 vide notification dated 29 October 2020)
Belated/ Revised ITR (FY 2018-19)	31 March 2020	30 November 2020 (extended from 30 September 2020 vide order dated 30 September 2020)
Investments, deposits, purchases, etc., for the purpose of claiming deductions or exemptions of capital gains under section 54 to 54GB of the Act	31 March 2020	30 September 2020
Deductions under Chapter VIA of the Act (i.e. 80C, 80D, 80G, etc.)	31 March 2020	31 July 2020
Immunity of interest under section 234A of the Act [where the total tax payable after adjusting TDS/ TCS, advance, etc., exceeds INR 0.1m, no such immunity is provided] [SAT paid within 31 July 2020, by a resident senior citizen (not having income from business or profession) shall be considered as deemed advance tax for the purpose of calculating the INR 0.1m threshold limit], where the return is filed after 31 July but within the extended due date of 30 November 2020	31 July 2020	31 December 2020
Various other compliances under Specified Acts* such as PAN Aadhaar linking, completion of proceedings, passing of any order, issue of notice, filing appeal, reply/ applications, etc., which falls between 20 March 2020 to 31 December 2020		31 March 2021
Date for making payment without additional amount under the 'Vivad Se Vishwas Scheme'	31 March 2020	31 March 2021 (Further extended from 31 December 2020 vide Notification dated 27 October 2020)

*Specified Acts means (i) Wealth-tax Act, 1957; (ii) Income-tax Act, 1961; (iii) Prohibition of Benami Property Transactions Act, 1988; (iv) Chapter VII of the Finance (No. 2) Act, 2004; (v) Chapter VII of the Finance Act, 2013 (vi) Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015; (vii) Chapter VIII of the Finance Act, 2016; or (viii) Direct Tax Vivad se Vishwas Act, 2020.

Tax & Regulatory Insights

Reduction in interest rate on delayed tax payments

Interest rate reduced to 9% p.a. for delayed payment of advance tax, self-assessment tax, regular tax, TDS, TCS, etc., the due date of which falls between 20 March 2020 to 29 June 2020 and paid on or before 30 June 2020. No penalty shall be levied, and no prosecution shall be sanctioned on such delay.

In addition, the Government has made the following changes in TOLA in relation to residency provisions to provide further clarity:

- The 'deemed resident' clause shall not apply in cases where the individual qualifies to be a 'resident' in terms of the normal residency rule, based on the individual's physical presence in India during the relevant previous year and/ or past four FYs, as applicable.

- For the purpose of residency in India, the expression 'income from foreign sources' shall not include income deemed to accrue or arise in India. This explanation is relevant for determining the residency in India for a certain category of individuals who are citizens of India, or a person of Indian origin, having total income, other than the income from foreign sources, exceeding INR 1.5m during the previous year.

Lastly, changes have been made to extend the faceless assessment facility to certain other proceedings, such as income escaping assessment, etc., to enhance the taxpayer's experience and ensure better transparency in tax administration matters.

Other COVID-19 relief measures

Prime Minister CARES Fund

F. No. 178/7/2020-ITA-I dated 9 April 2020

A special Prime Minister's CARES Fund was set up for providing relief to persons affected from the outbreak of Covid-19 and shall be eligible for 100% deduction under section 80G of the Act. The limit on deduction of 10% of gross income shall not be applicable for a donation made to the Prime Minister's CARES Fund. When the donations are through the employer and no individual donation receipts are available, there is a lack of clarity on the mechanism for claiming deduction. Therefore, the Government issued a notification to clarify that deduction under section 80G of the Act can be claimed on the basis of the Form 16/ Certificate issued by the employer.



Other developments

This covers developments on which PwC has not released Tax & Regulatory Insights.

Circulars, Notifications and Others

Social Security/ Provident Fund

Non-refundable advance to Employee Provident Fund members

Notification No. GSR 225(E) dated 27 March 2020

In the Covid-19 outbreak, the GoI amended the Employees' Provident Funds Scheme, 1952, by inserting sub-para (3) under Para 68L to provide for non-refundable advance to EPF members. The advance would be lower of basic wages and dearness allowance for three months or up to 75% of the amount standing to the EPF member's credit in the fund.

Relief from levy of penal damages for delay in deposit of dues during lockdown

Circular No. C-I/Misc./2020-21/Vol. 1/1112 dated 15 May 2020

Considering the difficulty faced by the establishments in the timely deposit of contributions during the period of lockdown due to operational and economic reasons, EPF Organisation issued a circular that any delay in payment of any contributions or administrative charges due for any period during the lockdown in terms of the Disaster Management Act, 2005, will not attract any proceeding for the levy of penal damages.

Reduction in contribution rate

Notification No. S.O. 1513(E) dated 18 May 2020

To provide liquidity in the hands of employees and employers during the Covid-19 pandemic, the GoI has reduced the social security (PF) contribution rates from 12% to 10% with respect to contribution for the months of May, June, and July 2020. However, certain specified employers are outside the purview of this notification, including Government-owned/controlled enterprises. The Government clarified that the reduced rate is optional

and the employer, or employee or both may contribute at a higher rate.

Income-tax

Clarification in respect of option under section 115BAC of the Act

Circular No. C1 of 2020 vide F.No.370142/13/2020-TPL dated 13 April 2020

The Government, through the Finance Act, 2020, provided an option to individual/HUF to choose between the existing tax rates or new personal tax regime under section 115BAC of the Act when filing the ROI. However, there was a lack of clarity on whether the employer can consider the new tax regime at the time of withholding. To clarify, the CBDT issued a circular providing that the employee may intimate the employer of his intention to opt for the new tax regime and on such intimation, the employer shall undertake the withholding of taxes in accordance with the provisions of section 115BAC of the Act. If the employee makes no intimation, the employer would be required to compute total income and TDS as per the existing tax regime. It is also

clarified that the intimation to the employer would not amount to exercising the option in terms of section 115BAC (5) of the Act. The option at the time of filing his return may be different from the intimation made to the employer for that particular FY.

Clarification in respect of residency under section 6 of the Act

Circular No. 11/2020 vide F.No.370142/18/2020-TPL dated 8 May 2020

The CBDT issued a clarification in relation to the determination of residential status for FY 2019-20 with to avoid hardship for individuals who came to visited India before 22 March 2020 and could not leave or depart on an evacuation flight on or before 31 March 2020, due to the Covid-19 pandemic and related travel restrictions.

As per this clarification, such individuals can retain their non-resident/ not-ordinarily resident status in India for FY 2019-20 and their presence in India during certain periods (see table below) will be disregarded when applying the residency rules for specific scenarios, as follows:

Other developments

Sl. No.	Scenario	Period to be excluded for residency
1	Individuals who were unable to leave India on or before 31 March 2020	Stay in India from 22 March 2020 to 31 March 2020
2	Individuals who were quarantined due to Covid-19 on or after 1 March 2020	Stay in India from the beginning of quarantine until the date of departure (via evacuation flight) or 31 March 2020, whichever is earlier
3	Individuals who departed on an evacuation flight on or before 31 March 2020	Stay in India from 22 March 2020 until the date of departure

CBDT notifies new Form 26AS (Annual Information Statement)

Notification No. GSR. 329(E) dated 28 May 2020

The Finance Minister, in the Budget, 2020, proposed to replace the existing Form 26AS with a detailed statement that would capture a comprehensive set of information. Pursuant to the same, the CBDT vide a notification issued a new Form 26AS [Annual Information Statement (AIS)], which shall be effective from 1 June 2020, which apart from the TDS/ TCS details, shall contain certain other information, which primarily includes the following:

- Information related to specified financial transactions
- Information related to demand
- Information related to pending/ completed proceedings

Income-tax return forms for FY 2019-20 notified

Notification No. GSR. 338(E) dated 29 May 2020

The CBDT notified new ITR forms applicable for FY 2019-20. There is no change in the applicability criteria of the new ITR forms in comparison to the ITR

forms notified for FY 2018-19. However, the forms contain additional changes to reflect recent Covid-19 incentives and other details tax authorities need for automated processing. These Forms have various amendments that are relevant for individual taxpayers. The following are a few highlights:

- The Finance Act, 2019, introduced the mandatory requirement to file an ITR if a person meets certain criteria. One must furnish the following information in the ITR forms:
 - If a person deposited any amount or aggregate of amounts exceeding INR 10m in one or more current account during the relevant tax year (along with the amount);
 - If a person incurred expenditure of an amount or aggregate of amount exceeding INR 0.2m for travel to a foreign country for themselves or for any other person during the relevant tax year (along with the amount); and
 - If a person incurred an expenditure

of an amount or aggregate of amount exceeding INR 0.1m on the consumption of electricity during the relevant tax year (along with the amount).

- The forms reflect the interchangeability of the Aadhaar (Biometric Identification Number) with the PAN (Tax Identification Number) in various places within the Forms, including the TDS schedule, General Information, House Property, Capital Gain, Business Income, and Special Income schedule.
- A new Schedule DI has been added – details of investment made between 1 April 2020 to 31 July 2020, in the ITR forms relating to the deduction under Chapter VI-A, and investment/ expenditure made during 1 April 2020 to 30 September 2020, for the purpose of claiming deductions or exemptions of capital gains under section 54 to 54GB of the Act. In this schedule, taxpayers must report the amount of the deduction attributable to investment/ expenditure made and the amount of capital gain invested between these dates.

Other developments

The CBDT has also issued detailed instructions for ITR forms applicable to FY 2019-20. Besides providing guidance on the newly introduced schedules, such as filing return where more than INR 10m is deposited in a current account or expenditure on foreign travel and electricity exceeding INR 0.2m or 0.1m, respectively, etc., the following are the key changes in the instructions in comparison to the ones issued last year:

- Reporting of directorship in foreign companies – Non-resident individuals are required to also disclose details of their directorship in a foreign company that does not have any income accruing or arising in India.
- Confirmation on obtaining TRC to allow beneficial tax rates under the relevant tax treaty – In case income is taxable under the relevant tax treaty at a special rate and the TRC Flag is selected as 'No', then the income will be chargeable to tax as per the applicable rates specified for such income in the Act.

- Reasons for the validation errors – A List of validation errors has been included in the instructions for the ease of taxpayers to refer as needed.

One-time relaxation for verification of income-tax returns and processing of such returns

Circular No. 13/2020 vide F.No.225/59/2020/ITA-II dated 13 July 2020

The Indian Government released a circular regarding tax return verification, which provides a one-time relaxation for verifying past years' ITRs that were filed electronically within the timelines but remained incomplete due to non-submission of ITR-V (i.e. verification of acknowledgement). This relaxation is available for ITRs filed for the past five tax years starting from FY 2014-15 to FY 2018-19 basis which verification of eligible tax returns can be completed by sending a physical copy of ITR-V to the CPC, Bengaluru or by other prescribed modes (such as through Aadhaar (Biometric Identification), ATM, bank account etc.)

by 30 September 2020. In addition, the timelines for processing the aforementioned tax returns and issuance of intimation under section 143 (1) of the Act by the tax authorities has also been extended to 31 December 2020 to meet the requirement of the law, which provides for a period of one year from the end of the FY in which the tax return was filed to process the return and issue the intimation.

CBDT extends tax exemption for payment in lieu of LTC fare for private sector employees

Press Release dated 29 October 2020

The CBDT provided income-tax exemption for the payment of cash equivalent of LTC fare to the Central Government employees vide Office Memorandum No. F.No. 12(2)/2020-EII(A) dated 12 October 2020. Recently, this benefit has been extended to Non-Central Government employees, viz., covering all other employees in State Governments and the private sector, etc. The payment of cash allowance, with a maximum limit of INR 36,000 per person (round trip), as

deemed LTC fare shall be allowed income-tax exemption under section 10(5) of the Act, subject to fulfilment of all conditions as follows:

- The employee exercises an option for the deemed LTC fare in lieu of the applicable LTC in the current block (year 2018-21).
- The employee spends a sum equal to three times of the value of the deemed LTC fare on the purchase of goods/ services that carry a GST rate of at least 12% from GST registered vendors/ service providers through the digital mode.
- This spending shall be made during the period 12 October 2020 to 31 March 2021, and the employee needs to obtain the voucher indicating the GST number and the amount of GST paid.

The Government also clarified that employees who have opted to be taxed under the new personal tax regime, as per section 115 BAC of the Act (NPTR),

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cannot claim this exemption. There is no minimum threshold provided for spending to claim this benefit. However, where the actual spending is less than three times the deemed LTC fare, only a proportionate tax exemption will be allowed.

Immigration

Immigration changes in 2020

MHA Instruction No. O.M. No.25022/12/2017-Imm dated 14 March 2020; MHA Order No. OM No. 25022/24/2020-F.V/F.I (i) dated 5 May 2020; MHA Order No. OM No. 25022/24/2020-FV/F.I (ii) dated 5 May 2020; MHA Order No. 25022/24/2020-F.V/F.I dated 12 June 2020; MHA Office Memorandum No. OM No. 25022/ 24/ 2020-F.V/F.I dated 21 October 2020; and Circular No. 4/1/2020-IR dated 26 November 2020

The Indian Government extended the timeline for conversion of Person of Indian Card to OCI Card until 31 December 2021.

The Covid-19 pandemic resulted in India imposing various restrictions such as the suspension of international travel and visa issuance. Initially, the MHA issued guidelines on 13 March 2020, wherein they imposed restriction on international travel to India from Covid-19 impacted countries. Then, a complete lockdown was announced from 25 March 2020, for 21 days initially, which was extended further.

The MHA notified that all existing visas granted to foreign nationals, except to those belonging to Diplomatic, Official, UN/ International Organisations, Employment and Project categories were suspended until the GoI lifts the prohibition on the international travel of passengers from/ to India.

The foreign nationals stranded in India due to Covid-19 and whose visas were due to expire or have expired, had been allowed to stay in India until 30 days from the date of lifting of prohibition on commercial international air travel operations in India on 'Gratis' basis.

Gradually, the Indian Government relaxed the norms and allowed all categories of foreign nationals, including their dependents, to travel to India in case of urgent business needs. All existing visas, except electronic visas and tourist visas, have been restored with immediate effect.

The Indian Government arranged special flights to bring back the stranded Indian nationals in foreign countries under the 'Vande Bharat' mission, where it operated dedicated flights to many countries.

The commercial international airspace in India remains suspended until 30 November 2020. However, as part of the 'Unlock' programme, the Indian Government has signed bilateral agreements with various countries to operate flights between the countries under a programme called the 'Air Bubble'. Some of these countries are the US, UK, Germany, France, Ukraine, Tanzania, Bhutan, UAE, Canada, Japan, Rwanda, etc.; India continues to add more countries under the programme. Travellers will have to adhere to quarantine and other health-related guidelines, as prescribed by the MoHFW.





Mergers & Acquisitions

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Judgements

Amalgamation

Scheme of amalgamation, once approved by the High Court, is of binding nature

ITA Nos. 84/Kol/2019 and 2389/Kol/2018

The Kolkata bench of the Tribunal held that the High Court's order approving the scheme of amalgamation is binding in nature. The Tribunal also held that using the proposed provisions of the general anti-avoidance rule for drawing support, when they are not brought into effect, is also bad in law.

The taxpayer held leasehold rights in land (through its subsidiary) since 1966. Subsequently, in 2010, the leasehold rights were converted to freehold. The Tribunal held that the period of holding needs to be considered from the date the taxpayer had obtained the land on lease and not from the date of converting the leasehold land into freehold land.

'Capital reserve' recorded under the purchase method of accounting for amalgamation is not 'revaluation reserve' for purposes of section 115JB of the Act

ITA No. 764/Del/2020

The Delhi bench of the Tribunal, on facts of the case, rejected the Revenue's contention to hold scheme of amalgamation (Scheme) as a 'sham' transaction or colourable device. The Tribunal further held that capital reserve arising on recording of the Scheme under the purchase method of accounting is not revaluation reserve, and therefore, out of the purview of section 115JB of the Act.

Capital gains

Capital gains arising under section 46A of the Act, on buyback of shares, not exempt under section 47(iv) of the Act

ITA Nos. 1783 and 1784/Bang/2018

The Bangalore bench of the Tribunal held that exemption under section 47(iv) of the Act is not available in cases of buyback of shares that are taxable under section 46A of the Act. Even otherwise, exemption under section 47(iv) of the Act is not available where one company or its nominees do not hold the entire shareholding.

Write-off of income wrongly offered to tax in earlier year as capital gains, allowed as bad debt

ITA No. 5169/Del/2017

The Delhi bench of the Tribunal upheld the write-off of non-recoverable share sale proceeds as bad debt, although the corresponding income was wrongly offered, and taxed under the head capital gains in the earlier year. Relying on judicial precedents, the Tribunal reiterated that if a taxpayer has offered and the TO has assessed the income under a particular head of income in an earlier AY, although it was liable to be assessed under a different head of income, there is no embargo on the taxpayer to consider the income from the

same source under the correct head in a subsequent year.

The judgment reiterates the principle that the taxpayer offering any income under a particular head of income in one year cannot act as an estoppel against the taxpayer in a subsequent year to claim that income taxable under a different head of income.

Supreme Court holds that a separate agreement for non-compete fee, on facts, not sham; not taxable as part of capital gains on share

Civil Appeal No. 12044 of 2016

The Supreme Court held that the Deed of Covenant for non-compete fees is not a colourable device and that the payment of non-compete fee was a non-taxable capital receipt. The amendment to section 28 (va) of the Act, with effect from 1 April 2003, making the non-compete fee taxable as business income was amendatory and not clarificatory, and hence, it cannot apply retrospectively. The Court emphasised that the Revenue has no business to

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second-guess the commercial or business expediency of what parties at arms-length decide for each other.

Company law

NCLAT dismisses appeals of minority shareholders against NCLT's order approving reduction of share capital under section 66 of the Companies Act, 2013

Company Appeal (AT) No. 365 and 366 of 2019

The appeal was mainly on the issues that the NCLT had amended the resolution without giving sufficient notice to all the shareholders and legally convening a general meeting.

The NCLAT dismissed the appeals filed by the minority shareholders against the order passed by the NCLT, approving the reduction in the share capital of minority shareholders under section 66 of the CA Act. This was on the principle that the NCLT has wide and substantive powers to amend/ modify the resolutions passed by shareholders under section 66 of the CA Act, as it may deem fit to resolve the matters before it.

Dividend Distribution Tax

Tribunal holds DDT payable by a company is subject to maximum rate in the relevant tax treaty

ITA No. 7075/Del/2017

The Delhi bench of the Tribunal held that the economic burden of DDT falls on the shareholders rather than on the company, as the amount of distributed profits available for the shareholders stand reduced to the extent of the DDT. It also held that the concessional rate specified under the tax treaty would apply, and remanded the issue back to the TO to factually examine the applicability of other clauses of the tax treaty.

Depreciation on goodwill

Tribunal upholds allowance of depreciation on goodwill acquired and non-compete fee paid on purchase of business

ITA Nos. 1664 to 1666/Chny/2019

The Chennai bench of the Tribunal upheld a claim for depreciation on goodwill and the non-compete fee paid on the acquisition of two businesses through a slump sale agreement. The Tribunal upheld that the difference between the consideration paid and the net value of assets represents goodwill and is eligible for depreciation. The Tribunal, relying on the decision of the Madras High Court in the case of Pentasoft Technologies Limited v. DCIT [2014] 264 CTR 187 (Madras), upheld the allowance of depreciation on the non-compete fees paid on the acquisition of these businesses.

Income

On facts, revenue shared was held to be diversion of income by overriding title

ITA Nos. 1731, 1732 and 6114 Del/2014

A consortium of four companies bid in an auction and it was awarded the project. The taxpayer entered into a revenue sharing agreement) with one of the consortium members (H Co), wherein it agreed to execute the project, while H Co would provide the entire finance required for the

execution of the project. In lieu thereof, H Co would take 25% of the revenue from the sale proceeds of the project.

The Delhi bench of the Tribunal held that disbursement of income by the taxpayer under the revenue sharing agreement is a diversion of income by overriding title, as the taxpayer has been obligated by the virtue of the agreement to divert the income at source for the contributions made by the holding company.

Shares

Preference share capital should be included in total liabilities for valuing unquoted equity shares under Rule 11UA of the Rules

ITA No. 2172/Del/2018

The Delhi bench of the Tribunal held that while arriving at the FMV of unquoted equity shares under Rule 11UA of the Rules, the preference share capital should be included in the total liability of the company. The Tribunal clarified that preference shares were non-convertible, non-cumulative

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and redeemable; thus, the company was liable to pay this amount to its preference shareholders.

On facts and absence use of unaccounted money in the garb of share premium, addition under section 56(2)(viib) of the Act was deleted

ITA No. 2222/Del/2019

The Delhi bench of the Tribunal held that addition made on account of alleged excess share premium is unjustified when those very shares are sold in the next FY at much higher amount to a non-resident buyer after proper due diligence. Elucidating the legislative intent behind section 56(2)(viib) of the Act, the Tribunal held that the aforesaid provision applies where unaccounted money is received in the garb of share premium, which is not the matter in the instant case.

Merely showing the shares acquired pursuant to a demerger scheme as stock-in-trade, does not constitute business of dealing in shares

ITA Nos. 2191 & 2006/Del/2017

The Delhi bench of the Tribunal held that merely classifying the shares of a company, into which the taxpayer's main business was demerged, as stock-in-trade, does not amount to the taxpayer engaging in the business of purchase and sale of securities. Accordingly, the Tribunal disallows the expense claimed by the taxpayer.

Receipt of shares in an amalgamated company in lieu of shares in an amalgamating company, results in transfer

ITA Nos. 822, 853, 935 & 961/2005 (Delhi)

The Delhi High Court has held that when a taxpayer obtains shares in an amalgamated company in lieu of shares in an amalgamating company, it results in a 'transfer'. The High Court observed that if the shares are held as stock-in-trade, income shall be chargeable to income-tax under the head 'profits and gain of business or profession'.

Slump sale

Slump sale of business is succession for section 170 and for allowing depreciation in the hands of purchaser

ITA Nos. 306/Mum/2019 and 6919/Mum/2018 and C.O. No. 07/Mum/2020

The Mumbai bench of the Tribunal held that section 170 of the Act is applicable to the acquisition of business pursuant to slump sale, and therefore, the fifth proviso to section 32 of the Act was also applicable. The Tribunal reaffirmed that the difference between consideration for slump sale and the value of assets acquired from the transferor and added to the block of assets will be 'goodwill' and will be eligible for depreciation.

Transfer of undertaking for non-monetary consideration is not 'slump sale'

Tax Case Appeal No. 673 of 2018

The Madras High Court held that the transfer of an undertaking for non-monetary

consideration shall not be termed a 'slump sale', and accordingly, it shall not be taxable under section 50B of the Act.

Succession

The sixth proviso to section 32(1) of the Act applies only in the year of succession

ITA No. 154 of 2014

The Karnataka High Court held that the fifth proviso (now sixth) to section 32(1) of Act is applicable only in the year of succession and not in the years subsequent to the year of succession. In case of succession referred to in section 47(xiii) of the Act, the taxpayer would be eligible to claim depreciation on the actual cost incurred to acquire the capital asset.

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Circulars, Notifications and Others

SEBI

Changes in Delisting Regulations announced by SEBI in its Board Meeting of 29 September 2020:

SEBI Press Release No. 52/2020 dated 29 September 2020

The SEBI had issued a consultation paper on 16 March 2020, and then in its board meeting of 29 September 2020, it proposed the following amendment:

Currently, a listed subsidiary desirous of delisting would be required to follow the reverse book building process and other norms, per the SEBI (Delisting of Equity Shares) Regulations, 2009. It is provided that exemption be given for delisting the shares of a listed subsidiary through a scheme where:

- The listed parent entity would issue its own shares to all shareholders of the

listed subsidiary in lieu of their holding in the listed subsidiary through a scheme of arrangement.

- The listed subsidiary will be delisted without pursuing the process under the SEBI (Delisting of Equity Shares) Regulations, 2009 and shall become an unlisted wholly owned subsidiary of the listed parent.

To ensure that undue advantage is not taken, and this route is not detrimental to investors, the following safeguards have been envisaged:

- The exemption shall be confined to only to a scheme of arrangement between a listed subsidiary and its listed parent.
- The process for the scheme of arrangement shall be identical to a process followed in case of a merger.
- Both companies shall seek no objection from stock exchanges and the SEBI in terms of Regulation 37 of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, before filing the scheme of

arrangement with the NCLT.

- The independent valuation of shares of the listed subsidiary and the listed parent for the share swap will ensure that all shareholders of the listed subsidiary (except the parent company) receive shares of the listed parent in lieu of the shares they hold in the listed subsidiary.
- The votes cast by public shareholders in favour of the proposal should amount to at least two times the number of votes cast by public shareholders against it.
- A minimum of three years of listing of the shares of the listed subsidiary is required.

Note: Despite the Board decision, the final amendment in regulation is not yet issued

SEBI issues consultation paper for review of the existing SEBI (Delisting of Equity Shares) Regulations, 2009, for public comments

Consultation paper on review of SEBI (Delisting of Equity Shares) Regulations, 2009 dated 20 November 2020

On 20 November 2020, the SEBI issued a consultation paper reviewing the SEBI (Delisting of Equity Shares) Regulations, 2009 to seek public comments. The proposed amendments are based on the key objectives of enhancing disclosures, refining the existing process, rationalising existing timelines, streamlining the SEBI (Delisting of Equity Shares) Regulations, 2009 for robustness, increasing efficiency, transparency and making them more investor friendly, plugging gaps, and to update the reference to the CA Act, and other securities laws.

The following is a summary of the key proposals to revise the SEBI (Delisting of Equity Shares) Regulations, 2009:

Enhancing disclosures

- The promoter or acquirer shall make an Initial Public Announcement of their intention to voluntarily delist the company, along with reasons to delist and other disclosures, through the manager to the delisting offer, to all the stock exchanges on which the company is listed, on the same day,



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when their intention is intimated to the company.

- The meeting of the Board of Directors should be convened within 21 working days from the date of receipt of the delisting proposal, to consider and approve the delisting proposal. The Board of Directors shall also disclose to the stock exchanges the Merchant Banker's due diligence report and the audit report, while communicating their approval of delisting proposal.
- The Committee of Independent Directors (Committee), in line with the provisions of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011, may be required to provide their reasoned recommendations on the proposal for delisting, along with the voting pattern of the Committee. The Committee may obtain an expert's opinion and the cost thereof can be borne by the company.

Streamlining the delisting process

- The shareholder's approval through a special resolution may be obtained through a postal ballot or through

e-voting, as per the provisions of the CA Act.

- The promoter or acquirer may be allowed to specify an indicative price, higher than the floor price calculated in terms of Regulation 8 of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011.
- The promoter or acquirer shall deposit an amount equivalent to 25% of the total consideration, calculated on the basis of the floor price or indicative price, in an escrow account within seven days from the shareholders' approval. The remaining amount may be deposited as per the existing provisions. The manager to the offer should be empowered to operate the escrow account in terms of the SEBI (Delisting of Equity Shares) Regulations, 2009.
- In case of failure of the delisting offer, 99% of the amount lying in the escrow account shall be released within one working day of the public announcement of the failure of the voluntary delisting offer, and the

remaining 1% shall be released after returning the shares/ revoking the lien, as per the timelines.

- The result of the Reverse Book Building, in terms of its success or failure, shall be announced within two hours of the closure of the tendering period.
- Unconfirmed bids or order shall not be displayed in the stock exchange Reverse Book Building window.

Rationalise timelines

- A timeline of 15 working days from the passing of special resolution by shareholders may be stipulated for the company to file an application for in-principle approval by the stock exchanges.
- A timeline of five working days from the date of making payment to the shareholders may be stipulated for the company to make the final application to the stock exchanges.
- The time-period for granting in-principle approval by the stock exchanges to be 15 working days.

- Shares in dematerialised form shall be tendered by marking a lien in favour of the special depositories account, opened for voluntary delisting. If a threshold of minimum percentage under the book building process is not met or a promoter decides not to accept the discovered price, the shares tendered by creating a lien shall be released on the same day. In case of physical shares, it needs to be submitted to the Register and Transfer Agents of the company before the last day of the tendering period, and the Register and Transfer Agents should complete the verification on the same day.
- It is proposed that upon acceptance of the price discovered through the book building process, if the discovered price is same as the floor price, the payment with respect to dematerialised shares shall be made through the secondary market settlement mechanism. If the discovered price is more than the floor price, payment with respect to dematerialised shares shall be made within five working days.



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- It is proposed that the public announcement for giving a counter-offer or accepting or rejecting the discovered price, shall be made within two working days of the closure of the tendering period.

Making the process robust

- The promoter or acquirer shall appoint a Merchant Banker registered with the SEBI, who is not an associate of the acquirer or promoter, as the manager for the delisting offer. The due diligence should be performed by a peer reviewed practicing Company Secretary who is unrelated to the Merchant Banker, or acquirer, or promoter or their associates. The roles and responsibilities of the manager to the offer are also outlined. The Merchant Banker is required to ensure that the acquirer will be able to implement the offer and that the acquirer has made a verifiable arrangement of funds to meet the payment obligations under the offer.

- To provide an exit to the remaining shareholders, the acquirer or promoter, the Merchant Banker shall take the following additional steps which should be monitored by the stock exchange:

- File the quarterly progress report to the stock exchanges, which shall be disseminated;
- Send follow up communications to the remaining shareholders quarterly;
- Publish an advertisement inviting the remaining shareholders to avail the exit opportunity, quarterly, during the one-year exit window.

- The definition of public shareholding to align with the definition of public shareholding under the Securities Contracts (Regulations) Rules, 1957, which was amended to include depository receipt holder having the right to vote and exclude employees' stock option schemes.
- For companies with inactive shareholders, viz., vanishing

companies, struck-off companies, or companies whose shares have been transferred to the IEPF account, the minimum acquisition threshold under Reverse Book Building shall be calculated after reducing such shareholding.

Plugging gaps

- The book value to be considered on the basis of both consolidated and standalone, whichever is higher, as per the latest quarterly financial results filed by the company on the stock exchanges, as on the date of public announcement for counter-offer.
- If the price discovered through the Reverse Book Building is equal to the floor price, the promoter shall be bound to accept the delisting price and the promoter shall not have the option of rejecting the delisting.
- In case of failure of the delisting offer, the cost of the offer should be borne by the promoter/ acquirer.

- The cooling off period for relisting, after delisting, prescribed under the SEBI (Delisting of Equity Shares) Regulations, 2009, is proposed to be reduced to three years.

- Voluntary delisting may not be permitted pursuant to buy-back and preferential allotment, unless a period of six months has elapsed from the completion of the last buy-back or preferential allotment.

- Pursuant to the delisting of shares in the home jurisdiction, the company shall delist all its depository receipts issued overseas, in consultation with the Gol.

- It is proposed that a cooling off period of six months between two delisting offers be included in the SEBI (Delisting of Equity Shares) Regulations, 2009.

Update references to the Companies Act, 2013

- Regulation 3(2) of the SEBI (Delisting of Equity Shares) Regulations,

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2009 is proposed to be deleted. It provides for the non-applicability of the SEBI (Delisting of Equity Shares) Regulations, 2009 to any delisting made pursuant to a scheme sanctioned by the Board for Industrial and Financial Reconstruction under the Sick Industrial Companies (Special Provisions) Act, 1985 or by the NCLT under section 424D of the CA Act.

Public comments on the proposed amendments in the consultation paper are requested to be sent latest by 21 December 2020.

SEBI relaxation for companies having financial stress

No. SEBI/LAD-NRO/GN/2020/18 dated 22 June 2020

The SEBI (Issue of Capital and Disclosures Requirement) Regulations, 2018 has been amended as follows:

- Eligible listed stressed companies (stressed company) to be provided exemption from the strict enforcement of pricing guidelines. In such cases, the

pricing for preferential issues should not be less than the average of the weekly high and low of the related equity shares quoted on a recognised stock exchange during the two weeks preceding the relevant date.

Eligibility conditions

A stressed company should be eligible for the proposed exemptions if it satisfies any two out of the following three conditions:

- The stressed company has disclosed specified defaults.
- Existence of inter-creditor agreement in terms of the Reserve Bank of India (Prudential Framework for Resolution of Stressed Assets) Directions, 2019 dated 7 June 2019.
- Downgrading of credit rating of the listed instruments of the company to 'D'.

Stressed companies should ensure the following to avail the abovementioned exemptions:

The preferential issue is made to non-promoter persons who should not be suffering the specified disqualifications.

- The majority of shareholders have approved the resolution for the proposed preferential issue, excluding the promoters and proposed allottees.
- The proceeds of such preferential issue shall not be used for any repayment of loans taken from promoters. The proposed use of the proceeds shall be disclosed in the explanatory statement sent for the purpose of shareholder resolution.
- A monitoring agency to be appointed to monitor the use of the proceeds of such a preferential issue.
- The shares issued to proposed allottees shall be locked in for a period of three years from the latest of the dates of the trading approval granted by all the stock exchanges.

Amendment in SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011

No. SEBI/LAD-NRO/GN/2020/14 dated 16 June 2020

A proviso has been inserted to provide under regulation 3(2) to allow promoters to acquire, pursuant to the preferential issue of equity shares by the target company, voting rights in the target company up to 10%, instead of 5%.

Stamp duty on securities transactions effective from 1 July 2020

7 FAQs issued on 30 June 2020

The following is a summary of the provisions of the Indian Stamp Act, 1899 amended by the Finance Act, 2019, which are applicable to securities transactions with effect from 1 July 2020:

Instruments of securities liable to stamp duty

- The definition of debentures has been inserted such that 'debenture' includes – (i) Debenture stock, bonds or any other instrument of a company evidencing a debt, whether constituting a charge on the assets of the company or not; (ii) Bonds, in the nature of

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debentures issued by any incorporated company or body corporate; (iii) Certificate of deposit, commercial usance bill, commercial paper and such other debt instrument of original or initial maturity up to one year, as the RBI may specify from time-to-time; (iv) Securitised debt instruments; and (v) Any other debt instruments specified by the SEBI from time-to-time.

- 'Debenture' has been excluded from the definition of 'bonds'. This exclusion ensures that stamp duty on 'debentures' is chargeable only under any Article 27 (Union list) of the Constitution of India and not under the classification of 'bonds'.
- The definition of securities has been widened to include (i) Securities, as defined in clause (h) of section 2 of the Securities Contracts (Regulation) Act, 1956 (SCRA Act); (ii) A 'derivative', as defined in clause (a) of section 45U of the RBI Act, 1934; (iii) A certificate of deposit, commercial usance bill, commercial paper, repo on corporate bonds and such other debt instruments of original or initial maturity up to one

year, as the RBI may specify from time-to-time; and (iv) Any other instrument declared by the Central Government, by notification in the Official Gazette, to be securities for the purposes of the Indian Stamp Act, 1899.

- The definition of the term 'instrument' has been widened by including in its ambit, a document, electronic or otherwise, created for a transaction in a stock exchange or depository by which any right or liability is, or purports to be, created, transferred, limited, extended, extinguished or recorded.

Valuation mechanism

Stamp duty is to be levied on the market value of a stock or security. The definition of market value provides as follows: in relation to an instrument through which

- Any security is traded in a stock exchange, means the price at which it is so traded;
- Any security that is transferred through a depository but not traded in stock; exchange, means the price or the consideration mentioned in such

instrument;

- Any security dealt otherwise than in the stock exchange or depository, means the price or consideration mentioned in such instrument.

In the absence of a specific provision for market value in case of transfers without consideration, it seems that such transactions would not be subject to stamp duty in the absence of any other instrument of transfer. The Gol has issued FAQs for the implementation of amendments in the Indian Stamp Act, 1899 and the Rules made thereunder. The FAQs clarify that no stamp duty is payable in relation to transactions without consideration, i.e. gift, bonus shares, transmission of securities, etc.

In the following cases, the market value for the computation of stamp duty is as follows:

- In case of Options in any securities, it is the premium paid by the buyer;
- In case of Repo on corporate bonds, it is the interest paid by the borrower; and
- In case of Swap: only the first leg of cash flow, i.e. in a swap agreement, the

notional/ gross value of the contract for the buyer.

Levy of stamp duty

- The newly inserted sections 9A and 9B of the Indian Stamp Act, 1899 consolidate the stamp duty provisions relating to the issue, sale or transfer of securities.
- The instrument on which stamp duty is chargeable under section 9A of the Indian Stamp Act, 1899 shall be the principal instrument for the levy of stamp duty, and no stamp duty shall be charged on any other instruments relating to the said transaction.
- The new section 8A provides levy of stamp duty in relation to the transfer of dematerialised securities and units of mutual funds between beneficial owners. The transfer of securities from a person to a depository (dematerialisation) or from a depository to a person (re-materialisation) continues to be exempt.
- The following table provides a quick glance of the changes to the stamp duty rates:

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Article	Transaction	Rate with effect from 1 July 2020	Erstwhile rate
27	Issue of debenture	0.005%	0.05% per year up to a maximum of 0.25% or INR 2.5m, whichever is lower
	Transfer and re-issue of debenture	0.0001%	Charged as per State Schedules
56A	Issue of securities other than debentures	0.005%	Charged as per State Schedules Exempt for issue of units of mutual funds
	Transfer of security other than debenture on delivery basis	0.015%	0.25% for unlisted shares; Exempt for units of mutual funds and shares held in dematerialised format
	Transfer of security other than debenture on non-delivery basis	0.003%	Charged as per State Schedules
	Derivatives – Futures (equity and commodity)	0.002%	Charged as per State Schedules
	Derivatives – Options (equity and commodity)	0.003%	Charged as per State Schedules
	OTC currency and interest rate derivatives	0.0001%	Charged as per State Schedules
	Other derivatives	0.002%	Charged as per State Schedules
	Government securities	0%	Charged as per State Schedules
	Repo on corporate bond	0.00001%	Charged as per State Schedules

Stamp duty on certain transactions has reduced significantly. For example, stamp duty on the transfer of unlisted shares reduced from 0.25% to 0.015%. In addition, stamp duty on allotment of shares is now 0.005%, which was 0.1% in certain States.

Stamp duty payment

In the absence of an agreement to the contrary, the following table describes the person responsible for the payment of stamp duty in case of different transactions:

Nature of transaction	Duty payable by
Sale of security through stock exchange	Buyer
Sale of security otherwise than through a stock exchange	Seller
Transfer of security through a depository	Transferor
Transfer of security otherwise than through a stock exchange or depository	Transferor
Issue of security whether through a stock exchange or depository or otherwise	Issuer
In any other case	Person making, drawing or executing such instrument

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Stamp duty collection mechanism

The provisions prescribe the centralised collection and payment mechanism of stamp duty by stock exchanges, clearing corporations and depositories (collecting agents).

The following table provides the collecting agents for certain transactions:

Nature of transaction	Collecting agent
Sale of security through stock exchange	Stock exchange or clearing corporation appointed by it
Transfer of security through a depository	Depository
Issue of securities resulting in creation/ change in records of depository	
Transactions otherwise than through a stock exchange or depository	Registrars to an issue and/ or share transfer agents/ or issuer/ or seller

For the sale of any securities through the stock exchange, including the sale of any listed units of any registered pooled arrangements or scheme or tripartite repo

- Stamp duty shall be collected on the settlement day;
- For transactions reported to a stock exchange, stamp duty shall be collected on the entire sale consideration when the transfer is reported, even if the consideration is paid in part or in instalments to be paid in future. However, if the reporting is by the depository, and such depository has collected stamp duty and informed about it, the stock exchange should not collect stamp duty on such transactions;
- The sale consideration reported to a stock exchange shall be considered as the actual sale value;
- In case of interoperability of clearing corporations, the trades of a client across the stock exchanges shall be considered for determining whether they would result in a delivery or not.

For the transfer of securities for consideration made by a depository otherwise than through a stock exchange

- Stamp duty has to be collected before the execution of all off-market transfers involving the transfer of securities in the depository system. This includes over-the-counter trades occurring in dematerialised or electronic form;
- In case of the transfer of securities pursuant to the invocation of a pledge, duty shall be collected from the pledgee on the market value of securities.

On the issue of securities leading to creation or change in records of the depository

- Stamp duty shall be collected from the issuer before executing any transaction in the depository system;
- Stamp duty shall not be collected on the creation or destruction of securities on account of corporate actions such as stock split, consolidation, mergers and acquisitions, or such similar actions, if it does not involve change in beneficial ownership. Provided there is fresh issue to an investor as part of a corporate

action, such issuance shall be subject to stamp duty.

- The collecting agent shall round off the stamp duty to the nearest rupee and transfer it to the account of the concerned State Government, with the RBI, or any specified scheduled commercial bank.
- Within three weeks of its collection, stamp duty collected is to be transferred to the State Government where the buyer resides. If the buyer is located outside India, the stamp duty is to be transferred to the State where the trading member/ broker of the buyer is located. If there is no such trading member, it needs to be deposited to the State Government having the registered office of the participant.
- Collecting agents may deduct 0.2% of the stamp duty collected as facilitation charges before transferring it to the concerned State Government.
- The collecting agent will submit a monthly stamp duty return along with the list of defaulters in the prescribed manner, within seven days of the succeeding month. An annual return is also required to be filed on or before 30 June of the following FY.

Other developments

This covers developments on which PwC has not released Tax & Regulatory Insights.

Judgements

SEBI Informal Guidance Note

Contra trade

Guidance Note No. SEBI/HO/ISD/OW/P/2020/10749/1 dated 4 June 2020

The provisions of contra trade under the SEBI (Prohibition of Insider Trading) Regulations, 2015, apply to promoters individually and not to the entire promoter group.

The transaction of inter se promoter transfer of shares through a block deal window, while in possession of UPSI, will be covered in Regulation 4(1) (ii) of the SEBI (Prohibition of Insider Trading) Regulations, 2015, requiring pre-clearance. In addition, the circumstances under (i) to (vi) of Regulation 4 (I) of the SEBI (Prohibition of Insider Trading) Regulations, 2015 are for demonstrating innocence and not an exemption from the applicability

of Regulation 4 of the SEBI (Prohibition of Insider Trading) Regulations, 2015.

Declassification of promoter

Guidance Note No. SEBI/HO/CFD/CMD1/OW/2020 dated 10 June 2020

Daughters would fall under the definition of the promoter group under the SEBI (Issue of Capital and Disclosures Requirement) Regulations, 2018, despite being married and living separate lives or not involved in the management of the company. Accordingly, for the reclassification of promoters under Regulation 31A of the SEBI (LODR) Regulations, the condition under Regulation 31A(3)(b)(i), i.e. the promoter seeking reclassification and the persons related to such promoter shall not together hold more than 10% of the total voting rights in the listed entity, needs to be satisfied.

Subsisting obligation

Guidance Note No. SEBI/HO/CFD/DCR 1/OW/P/2020/4442/1 dated 3 February 2020

A company is allowed to grant ESOPs/RSUs after the completion of the vesting

period and before the expiry of the one-year period from the date of completion of buyback, considering it as the discharge of subsisting obligations under Regulation 24(i)(f) of the Buyback Regulations and section 68 of the CA Act.

Contra trade under insider trading

Guidance Note No. SEBI/HO/ISD/ISD/OW/P/2019/29136/1 dated 4 November 2019

The transfer of shares among promoters within six months from the date of receipt of shares on the conversion of warrants into shares or the date of acquisition through a block deal window would violate the contra trade provisions of the SEBI (Prohibition of Insider Trading) Regulations, 2015.

Equity shares acquired pursuant to the exemption under Regulation 10 and 11 of SEBI (Substantial Acquisition and Takeover) Regulations, 2011, does not reduce or consume the 5% creeping acquisition limit prescribed under Regulation 3(2) of the SEBI (Substantial Acquisition and Takeover) Regulations, 2011.





Transfer Pricing

Tax & Regulatory Insights released by PwC

Judgements

- Berry ratio
- Associated enterprise

Circulars, Notifications and Others

- ICAI guidance
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Judgements

Berry ratio

Tribunal accepts operating profit/ value added expense as the profit level indicator for a freight forwarder

ITA No. 1030/Mum/2015

The Mumbai bench of the Tribunal has accepted OP/ VAE [OP/ VAE = Berry Ratio – 1] as the profit level indicator, by treating the amounts paid by a freight forwarder to third-party service providers (airliners/ ship liners/ transporters) as pass-through, for benchmarking the international transactions pertaining to its freight forwarding segment.

The Tribunal disregarded the arguments of the Revenue authorities that the element of freight could be considered as pass-through only if no profit element or mark-up is earned on it. It upheld the taxpayer's contention that to characterise a particular item as pass-through, an analysis of the functions, assets and risks of the taxpayer qua such activity is necessary.

Associated enterprise

Tribunal rules on relationship between sub-sections (1) and (2) of section 92A of the Act relating to definition of AE

ITA No. 2165/Mum/15

Placing reliance on the decisions of a higher judicial forum, the Mumbai bench of the Tribunal has held that sub-section (1) is to be read in conjunction with sub-section (2) of section 92A of the Act.

The Revenue had urged the Tribunal to follow precedence in the taxpayer's own case for the previous year, in which a standalone reading of section 92A(1) of the Act was upheld. However, the Tribunal rejected this and held that a decision taken by a higher judicial forum will impact the decisions delivered by the Tribunal even if such a higher judicial forum is a non-jurisdictional one.

Circulars, Notifications and Others

ICAI guidance

Guidance note on section 92E of the Act revised by the ICAI

<https://resource.cdn.icai.org/57510citax46618.pdf>

The ICAI has endeavoured to provide effective guidance to its members in discharging their reporting responsibilities effectively. The recent revision of its guidance note (seventh edition) has some notable amendments that take cognisance of the evolving TP law and related developments.

The revised guidance note elaborates on the roles and responsibilities of the Accountant/ Company in the preparation and issuance of the accountant's report in Form No. 3CEB, illustrating the applicability of TP methods, seeking guidance/ taking

cognisance of global TP guidelines (e.g. OECD, United Nation – TP Manual). Thus, it provides a comprehensive guidance to ensure effective discharge of the issuance function by Accountants.

Mutual Agreement Procedure

Amendments to Rule 44G of the Rules on Mutual Agreement Procedure

Notification No. G.S.R. 282(E) dated 6 May 2020

The CBDT vide a notification, introduced amendments to Rule 44G and omitted Rule 44H of the Rules, which dealt with the procedure for filing an application for and giving effect to a MAP.

These amendments appear to have been made in response to some of the recommendations made in the MAP Peer Review Report on India (Stage 1) undertaken pursuant to the OECD's BEPS Action Plan 14. As part of the MAP Peer Review Report, it was recommended



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that India should introduce a defined mechanism with timelines for achieving speedy dispute resolution under MAP. Therefore, the amended Rule 44G of the Rules now encapsulates the to-and-fro communication protocol between the taxpayer, the CA, and the Indian tax authorities, along with defined and binding timelines to be followed in a MAP proceeding. While some of the procedural aspects were already being practically followed, there are others that are new.

The amended Rule 44G of the Rules shall apply with effect from 6 May 2020 to all MAP cases that are pending on the aforesaid date.

The notable amendments to Rule 44G of the Rules are as follows:

- An average of a 24-month time period to arrive at a MAP resolution has been defined. This is in line with the OECD's BEPS Action Plan 14 and the recommendation of the subsequent 'Peer Review' of India.

- The Indian CA has been provided the discretion to either accept or reject a reference under MAP, received from a CA of another country or a specified territory.
- Where a MAP is invoked on account of action taken by any income-tax authority in India, the resolution arrived at shall not result in decreasing the income or increasing the loss of the taxpayer in India vis-à-vis the position adopted in its ROI.
- The taxpayer now has the opportunity for a direct interaction with the Indian CA, enabling it to understand the various facets of the case from either the taxpayer or its representative.
- If the CAs of India and another country arrive at a MAP resolution, it shall be communicated in writing to the taxpayer. The taxpayer needs to communicate its acceptance/ rejection of the outcome within 30 days. The TO must give effect to the resolution within one month from the end of the month in which the communication was received from the Indian CA.
- A provision has been introduced for the withdrawal of pending appeals filed by Indian tax authorities. As per the amendment, this should be done after the MAP resolution has been accepted by the taxpayer and given effect to by the TO, and the tax payable has been paid by the taxpayer as per the resolution.
- Revised Form No. 34F (form for making an application to the CA of India to invoke a MAP) — No significant changes have been proposed to the form, except that a prescription of documents now needs to be filed to support the taxpayer's claim: (i) reasoning as to why the taxpayer believes that the order/ action of the tax authority of the treaty partner is not in accordance with the agreement; and (ii) details with documentary evidence of any remedy sought in the other country.

CBDT publishes detailed guidance on MAP

F. No. 500/09/2016-APA-I/MAP
Guidance/2020

Subsequent to the notification dealing with the procedure for filing an application and giving effect to a MAP, the CBDT published a detailed MAP guidance (Guidance). The Guidance has been issued for the benefit of taxpayers, tax practitioners, tax authorities, and CAs of India and tax treaty partners.

The key new aspects of the Guidance are provided below:

- In most tax treaties of India, the time limit for making a MAP application is within three years from the first notification of the action giving rise to double taxation. Where the tax treaties have a time limit that is not three years, it is expected to be changed to three years as per the minimum standard outlined in the BEPS Action Plan 14 final report and the MAP Peer Review report's recommendation.



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- The Guidance categorically clarifies that the commitment is not to resolve MAP cases within the 24-month timeframe but that it 'endeavours' to do so. Further, the period of 24-months is to be computed from the 'start date' of a MAP case. Since most MAP cases before the Indian CAs arise from a MAP application made by a non-resident taxpayer before the CAs of other countries or specified territories, the 'start date' is determined by the other CAs. If the Indian CAs receive intimation of MAP cases from the other CAs much beyond the 'start date', it would result in delaying the 'endeavour' to resolve such MAP cases within 24-months.
- As per the Guidance, in certain circumstances, access to MAP would be provided, but the Indian CAs cannot negotiate any outcome other than what is agreed/ concluded. These circumstances are as follows: (i) where there is a concluded unilateral APA, the Indian CAs should request the foreign jurisdiction CA to provide for correlative relief. However, in situations where the unilateral APA negotiation is in-process, the CAs of India or the other countries or specified territories may accept MAP applications from their taxpayers and notify each other. The Indian CAs can allow access to MAP but should not process it until the unilateral APA is concluded; (ii) If an Indian or foreign taxpayer applies for safe harbour provisions (as applicable) on its international transactions, and the ROI is accepted by the Indian tax authorities, then the Indian CAs should request the other countries' CAs to provide for correlative relief. For a concluded APA/ adoption of safe harbour provisions, the CAs of the other countries or specified territories may accept MAP applications from their taxpayers, if any decision of the tax authorities of such other countries disturbs the income declared in the returns filed in pursuance of the unilateral APAs/ safe harbour provisions, and also notify the Indian CAs; and (iii) if an order is issued by the Tribunal for the same disputes that are also being examined under MAP. In such cases, the Indian CAs shall not deviate from the Tribunal's order for the relevant year where the dispute is decided on merits. The Indian CAs would request the other countries' CAs to provide correlative relief. However, this does not apply to Tribunal orders setting aside matters for fresh adjudication.
- Indian CAs can deny access to MAP under the following situations: (a) delay in filing of MAP application by taxpayer, i.e., beyond the expiry of the stipulated time period; (b) if the Indian CAs conclude that the objection raised by the taxpayer on the action taken by tax authorities is not justified; (c) incomplete MAP applications/ documents/ information; (d) where issues sought to be covered under the MAP application have already been either settled, or have been admitted, or are under examination by the Income-tax Settlement Commission or AARs; or (e) issues that are purely governed by India's domestic law and arise due to implementation of India's domestic legal provisions.
- In addition to the bilateral MAP process, in some cases, the Indian CAs can participate in multilateral MAP discussions with more than one tax treaty partner. The conditions for this are as follows: (i) all participating countries or specified territories have tax treaties with each other; (ii) the transaction or issue in dispute has a bearing on all the tax treaty partners, directly or indirectly, and non-resolution of the dispute would result in taxation that is not in accordance with the relevant tax treaties; and (iii) CAs of all the participating countries or specified territories agree to negotiate a multilateral MAP. Multilateral MAP cases shall involve similar processes (such as exchange of position papers, negotiations, and finalisation of mutual agreements) on a multilateral basis that is followed in a bilateral MAP case and shall be executed as a series of parallel bilateral MAP cases.
- Indian CAs are required to adhere to section 92(3) of the Act for adjustments made by Indian tax authorities.

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- Therefore, in a MAP negotiation, the Indian CA cannot accept an outcome that results in a downward adjustment of the income declared by the Indian taxpayer in its return of income (returned income) for the relevant year. However, for MAP cases involving adjustments made by the tax authorities of other countries, the Indian CA may go below the Indian taxpayer's returned income.
- The taxpayers will be able to opt for MAP even in situations where the Indian tax authorities have applied domestic anti-abuse provisions.
 - Where obligation to deduct tax at source on payment made by an Indian entity to a non-resident entity is enforced by an order passed under section 201 of the Act and the same is disputed by the non-resident entity, MAP access will be provided to such non-resident entity. However, for such cases, the MAP discussion will be taken up only after the assessment order is passed.
 - For recurring issues, the Indian CAs may resolve cases based on the same principles that were adopted in a prior MAP resolution. However, they cannot prevent tax authorities from making adjustments that are not in accordance with the prior MAP resolutions for the same taxpayer with regard to the same issues.
 - Interest and penalties are to be administered under the domestic laws. Therefore, Indian CAs do not have any mandate to consider these issues. For the amount of interest and penalties linked to the quantum of income, such interest and penalties shall be varied in the same proportion as the variation in the quantum of income due to a MAP resolution in accordance with the domestic law.
 - Indian CAs are obligated to make secondary adjustments as part of the MAP resolution for cases pertaining to FY 2016-17 or thereafter.
 - For issues for which a bilateral or multilateral APA application has already been filed and accepted, MAP applications for the same years should not be made.
 - India has entered into a MoU with a limited number of tax treaty partners that allows suspension of the collection of taxes pending MAP resolution, for which taxpayers must comply with the MoU terms. In the absence of an MoU, the domestic Indian law shall govern the stay of demand.



Indirect tax

Tax & Regulatory Insights released by PwC

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1. GST



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Judgements

GST

Anti-profiteering

NAA holds a multiplex owner guilty of profiteering in view of the reduction in GST rate

Case No. 37/2020 dated 7 July 2020

With respect to services by admission to exhibition of cinematograph films, where the price of an admission ticket was above INR 100 (the services), the GST rate was reduced from 28% to 18% with effect from 1 January 2019. The taxpayer had increased the base price while maintaining the same selling price for the services rendered. In this regard, the NAA held the multiplex owner guilty of profiteering under section 171 of the CGST Act, while upholding the allegations of the Directorate General of Anti-profiteering that post reduction in the rate of GST from 28% to

18%, the taxpayer had increased the base price, while maintaining the same selling price, or by not reducing the selling price of the service commensurately, despite a reduction in the GST rate to pass on the benefit to the customer.

Director's remuneration

Rajasthan AAR rules that consideration paid to directors of a company will attract GST under RCM in the hands of the company

Advance Ruling No. RAJ/AAR/2019-20/33 dated 20 February 2020

The board of directors of the applicant company were also engaged as employees of the company, for which they were compensated by regular salaries and other allowances, as per company policy and their employment contract. The AAR in the State of Rajasthan held that consideration paid to directors (in the form of salary and commission) by the applicant company would attract GST under the RCM.

GST compliance

Delhi High Court reads down circular to the extent it restricts rectification of Form GSTR-3B with respect to period in which error occurred

WP(C) No. 6345/2018, CM APPL No. 45505/2019 & Circular No. 26/26/2017-GST dated 29 December 2017

The petitioner had challenged Rule 61(5) of the CGST Rules (i.e. Form GSTR-3B) and a circular, as ultra vires the provisions of the CGST Act, to the extent they do not provide for modification of information to be filled in the return of the tax period to which such information relates. This circular prevented the petitioner from correcting the monthly GST returns in Form GSTR-3B for the period July to September 2017, to claim additional credits, rectify errors, and consequently, seeking the refund of excess taxes paid. The High Court held that the rectification of return for the very month to which it relates is imperative, and

accordingly, read down the circular to the extent it restricts the rectification of Form GSTR-3B with respect to the period in which the error occurred.

Intermediary services

Gujarat High Court upholds constitutional validity of 'place of supply' provisions under GST law for intermediary services based on 'location of supplier'

Special Civil Application No. 13238/2018

The petitioner had filed a writ petition challenging the constitutional validity of section 13(8)(b) of the IGST Act, as ultra vires the provisions of the Constitution of India. Section 13(8)(b) of the IGST Act provides the place of supply for intermediary services rendered to overseas customers as the 'location of the supplier' even if the consideration is earned in foreign exchange. The High Court held that the said provision is not ultra vires or unconstitutional and observed the basic logic or inception of section 13(8) (b) of the IGST Act, considering the place of supply



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as the location of supplier, is to levy CGST and SGST, and therefore, such services would be outside the purview of IGST.

Inverted duty structure

Gujarat High Court allowed refund of ITC availed on input services under inverted duty structure category; Explanation (a) of Rule 89(5) of the CGST Rules ultra vires to section 54(3) of the CGST Act

Special Civil Application No. 2792 of 2019

Considering the existing issues in the provisions of section 54(3) of the CGST Act read with Rule 89(5) of CGST Rules, disallowing the refund of input service, the petitioner filed a special civil application before the Gujarat High Court. The Gujarat High Court allowed the claim of refund by the petitioners, considering the unutilised ITC of input services as a part of net ITC for the calculation of refund as per Rule 89(5) of the CGST Rules. Explanation (a) of Rule 89(5) of the CGST Rules was held to be contrary to the provisions of section 54(3) of the CGST Act.

Joint Development Agreements

Karnataka AAAR issues two orders on services provided by a developer under a revenue-share JDA and temporary housing rentals earned by a religious trust

Order No. KAR/AAAR-19/2020-21 dated 4 May 2020 & Order No. KAR/AAAR-16/2019-20 dated 2 March 2020

The appellant sought a ruling on whether the development and sale of land attracts tax under GST, and if so, the related valuation mechanism and taxability of temporary rental of rooms on a shared basis by a charitable body. The Karnataka AAAR held that while the parties entered into a JDA to reap the benefits of sale of land to customers jointly, there is a service provided by the appellant to the landowner in developing the land.

In another ruling, with regard to the temporary rental of rooms on a shared basis by a charitable body, the AAAR held that the value of supply will be the charges for both bedrooms in a 2-BHK unit/ all beds in the dormitory, and not the charges

for each room in the 2-BHK unit/ each bed in the dormitory. Resultantly, it was held that such accommodations cannot qualify for the exemption under Entry 13(b) of Notification No. 12/2017 dated 28 June 2017 and would in turn be subject to GST.

Ocean freight

Gujarat High Court quashes levy of service tax and GST on ocean freight under reverse charge on importers

Special Civil Application No. 726 of 2019; Special Civil Application No. 20785 of 2018

The Gujarat High Court dealt with various writs filed against two separate judgements in relation to the legality of levy of GST on ocean freight under the Finance Act, 1994, the CGST Act, and the IGST Act. The High Court held that the IGST Act does not sanction extra-territorial jurisdiction and the mere fact that the transportation of goods terminates in India, does not mean that supply has occurred in India. It was also held that IGST cannot be imposed on the same freight amount by treating it as a supply of service, as freight also suffers

IGST as a part of the assessable value of imported goods, which is necessary to avoid double taxation. The levy was held to be unconstitutional, as there is no statutory sanction for the levy and collection of such tax in this manner due to the lack of empowering provisions.

Refund

Gujarat High Court upholds validity of amendments to Rule 96(10) of the CGST Rules, thereby, denying rebate benefit to advance authorisation licence holders

R/ Special Civil Application No. 15833 of 2018

The petitioner had obtained advance authorisation licences and imported goods without the payment of import duty in accordance with Notification No. 79/2017-Customs dated 13 October 2017. By virtue of the amendment to Rule 96(10) of the CGST Rules, vide Notification No. 54/2018-Central Tax dated 9 October 2018 (Amendment Notification), the petitioner was unable to claim rebate benefit on exports, as it had availed benefits under

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the advance authorisation licence. In a writ filed before the Gujarat High Court, the High Court upheld the amendments made to Rule 96(10) of the CGST Rules, vide the Amendment Notification, to the extent that it denies rebate (refund) to a person who has imported goods under an advance authorisation licence. It held that the Amendment Notification is to be made applicable retrospectively, with effect from 23 October 2017.

Transitional credit

High Court holds that time limit for filing Form GST TRAN-1 for transitioning the credit is directory and cannot take away the vested right of credit accrued as on 1 July 2017; permits taxpayers to claim transition credit until 30 June 2020

WP(C) No. 11040/2018 and C.M. No. 42982/2018, WP(C) No. 196/2019 and CM APPL No. 965/2019, WP(C) No. 8496/2019, WP(C) No. 13203/2019

On the issue of time limit for filing Form GST TRAN-1, this judgement has analysed the background of the amendments,

considered the object of smooth transitioning of credits, and recognised the divergent views adopted for interpreting the term 'technical difficulty'. The High Court has reiterated that the right to avail transition credit cannot be fettered by a limitation in a Rule. It has also applied the residuary provisions of the Limitation Act, 1963, to allow the transition of credits, making it specifically applicable to other taxpayers who are similarly situated, thereby, seeking to reduce litigation.

High Court reiterated that time limit to file Form GST TRAN-1 is directory and not mandatory, despite retrospective amendment to prescribe timeline

WP(C) No. 13151/2019

Writ petitions were filed before the Delhi High Court seeking availment of ITC of the accumulated CENVAT credit, as on 30 June 2017 (transitional credit), by filing Form GST TRAN-1 beyond the time period provided under the CGST Rules. The High Court read down Rule 117 of the CGST Rules as being directory in nature and held it to be unconstitutional, arbitrary and violative of Article 14 of the Constitution of

India, to the extent it imposes a time limit to carry forward the CENVAT credit. The High Court also held that in cases where petitioners have filed or attempted to file Form GST TRAN-1 on or before 30 June 2020, they are entitled to avail the ITC accruing to them. The Revenue Authorities were directed to open the online portal to enable the filing of Form GST TRAN-1 electronically or accept it manually.

High Court allows availing transition credit in Form GSTR-3B, if the portal to file Form GST TRAN-1 is not opened by 30 June 2020

CWP No. 8213 of 2020 (O&M) & CWP No. 8215 of 2020 (O&M)

Two writ petitions were filed before the Punjab and Haryana High Court seeking directions for opening the GST portal for filing Form GST TRAN-1, or to allow the transition of ITC balance as on 30 June 2017 (transitional credit). The High Court allowed the writ petitions and directed the opening of the GST portal for filing Form GST TRAN-1. The High Court held that the time limit prescribed for availing transitional credit cannot be discriminatory

and unreasonable. While the time limit for filing Form GST TRAN-1 was repeatedly extended whenever a technical glitch occurred as per the respondents, the same was denied in cases where the evidence of an attempt to upload Form GST TRAN-1 could not be produced.

Madras High Court holds Rule 117 of the CGST Rules to be intra vires section 140 of the CGST Act to conclude that time limit specified under Rule 117 of the CGST Rules is mandatory and not directory

Writ Petition No. 8890 of 2020 and WMP No. 10803 of 2020

The petitioner could not upload Form GST TRAN-1 on the common portal due to technical challenges, and therefore, submitted a hard copy with the Revenue Authorities, who did not respond with respect to entitlement to transitional ITC. The petitioner filed a Writ Petition before the Madras High Court, challenging the validity of Rule 117 of the CGST Rules on the ground that it is ultra vires section 140 of the CGST Act. The Madras High Court held that Rule 117 is intra vires section 140 of



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CGST Act and the time limit specified under Rule 117 of the CGST Rules is mandatory and not directory. It was also held that ITC is a concession and not a vested right.

Pre-GST-VAT

Supreme Court upholds sales tax on time charter arrangement where the contractor had no right to give the vessel for use to anyone else, as it constitutes ‘transfer of right to use goods’

Civil Appeal No. 3383 of 2004

The issue involved in this decision was whether a time charter agreement entered with a port trust authority would attract sales tax under the provisions of the Karnataka Sales Tax Act, 1957. It was observed that passing of the property within the state was material for determining whether the sale was ‘inside’ or ‘outside’ the state, and accordingly, it was held that the state of Karnataka enjoyed sufficient jurisdiction to tax this transaction. With regard to taxability, the Supreme Court held that to constitute a transaction of

transfer of right to use goods, it is essential that goods must be available for delivery. It was also observed that the vessel was made available, subsequently delivered and during the contract period, the contractor had no right to give the vessel for use to anyone else.

Jharkhand High Court holds action to recover ITC cannot be taken against a bona fide purchaser due to seller’s default in paying VAT dues

WP(T) No. 5978 of 2018

A writ petition was filed against the rejection of ITC in the hands of bona fide dealers that challenged the vires of section 18(8) (vii) of the Jharkhand Value Added Tax Act, 2005, which allowed conjoint recovery of ITC availed from purchaser and seller if tax on the transaction was unpaid by the seller. The High Court held that it was improper that punitive action was taken against the petitioner, only because the Jharkhand Value Added Tax Act, 2005 provided for such action against both the dealers, when the authorities were satisfied from the petitioner’s documents that the selling dealer had defaulted in filing

its return or depositing the tax collected from the petitioner in the Government treasury. The order issued by the Assistant Commissioner was quashed and was directed to refund the amount recovered from the petitioner, without entertaining the question on the vires of the provisions under the Jharkhand Value Added Tax Act, 2005.

Pre-GST-Excise/ Service tax

Exemption from excise duty under incentive scheme does not automatically cover other types of duty or cess imposed by different legislations

Civil Appeal Nos. 9237 with 9238 of 2019

The Gol, vide notification dated 9 September 2003, granted exemption from excise duty on goods manufactured by units set up in the state of Sikkim for 10 years from the date of commencement of production. It was contended that the exemption from excise duty would also extend to other excise duties such as the National Calamity Contingent Duty, Education Cess and Secondary and Higher

Education Cess under its ambit. The Supreme Court held that the exemption notification applicable to a ‘duty of excise’ does not bear an extended meaning to include special excise duty and auxiliary excise duty.

Supreme Court holds that principle of promissory estoppel does not apply in cases where the amendment in law is clarificatory in nature and does not take away any vested right

Civil Appeal Nos. 2256-2263 of 2020 dated 22 April 2020

After the introduction of an incentive scheme for setting up new industries in the earthquake-affected districts by the Gol to provide incentive by way of refund of excise duty paid in cash, subsequent notifications/ policies were issued that provided the benefit of refund only to the extent of prescribed value addition. The Gujarat High Court set aside the impugned notifications, as they were retrospective and not retroactive in nature, and hence, hit by the doctrine of promissory estoppel. The Supreme Court analysed various judicial precedents on the subject considering



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the object and purpose of the impugned notifications and allowed the Revenue's appeals, upholding the validity of impugned notifications on the ground that they were merely clarificatory in nature.

Gujarat High Court holds that an Indian subsidiary providing services to its parent outside India cannot be treated as the establishment of a 'distinct person' to deny benefit of exports

R/ Special Civil Application No. 12626 of 2018

In a writ petition filed before the Gujarat High Court, it has been held that a subsidiary company in India providing services to its parent entity outside India would not be treated as the establishment of a 'distinct person' and the benefit of export of service cannot be denied to them. The High Court also observed that the petitioner, which is a company incorporated in India under the provisions of the CA Act, and its holding company incorporated in Germany, are both distinct legal persons; therefore, they cannot be treated to be establishments of the same company, as they are distinct artificial juridical persons.

CESTAT holds that the Indian bank of the exporter in India is not liable to pay service tax under reverse charge on bank charges levied by foreign banks

Service Tax Appeal No. 51138 of 2017

The appellant bank was engaged in providing services, including provision of services to importers and exporters in relation to the settlement of payments for which it has to co-ordinate with the corresponding foreign bank of the foreign party or a foreign intermediary bank (foreign banks). Service tax under reverse charge was demanded by the Revenue Authorities on the charges levied by foreign banks for such services, stating that the foreign banks have provided services of transfer/exchange of documents and transfer of money relating to exports to the appellant under the category of 'Banking and Other Financial Services'. The Principal Delhi Bench of the CESTAT, while analysing the concepts of 'consideration' and 'recipient of service', held that bank charges levied by foreign banks were not chargeable to service tax under reverse charge in the hands of the Indian bank.

Larger Bench of CESTAT holds that foreclosure charges collected by banks and NBFCs on premature termination of loans is not leviable to service tax

Service Tax Appeal No. 511 of 2011-LB with Service Tax Cross Application No. 40320 of 2018

The taxpayer was registered with the Service Tax Department under the category of 'banking and other financial services' and was providing housing loans to borrowers. The issue in the present case was applicability of service tax on foreclosure charges collected by banks and NBFCs on the premature termination of loans. The Larger Chennai Bench of the CESTAT held that foreclosure of loan is a 'breach of contract' and the foreclosure charges are damages received for breach of contract, and hence, service tax shall not be attracted.

Mumbai bench of CESTAT lifts corporate veil to reject assessable value between two Indian subsidiaries of an overseas parent; holds that companies are artificially created to maintain lower selling price for payment of excise duty

Excise Appeal Nos. 86245 & 86251 of 2016

The parent company of the taxpayer had split the function of manufacturing and marketing of cars between its two different subsidiary entities in India. For the purpose of Central Excise, the sale price between the taxpayer and the marketing subsidiary was determined following the 'Retail Minus method', i.e. price after subtracting the marketing company's margin from the retail sale price.

The CESTAT held that a distinction in functionality between the taxpayer and the marketing company was artificial, only with the intention to reduce the sale price, which has a bearing on the amount of Central Excise Duty. While lifting the corporate veil, the CESTAT held that the entire operations



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of manufacture and sale of vehicles was on account of the parent company. Applying Rule 11 of the Valuation Rules, 2017, it was held that the value of the transactions between related persons has to be determined under Rule 9 of the Valuation Rules, 2017, i.e. on the basis of sale price of the marketing subsidiary to the dealers.

CESTAT directs applications for refund of accumulated and unutilised credit of KKC to be kept in abeyance until the Supreme Court's decision on the issue

Excise Appeal No. 12588 of 2018 (CESTAT- Ahmedabad)

In this appeal, the issue before the CESTAT was whether a taxpayer is entitled to refund of accumulated and unutilised credit of KKC appearing in the CENVAT credit register, as it cannot be utilised on account of implementation of GST. The CESTAT directed the officers to keep the refund application pending and did not pass orders on merits, as the Supreme Court seized the issue in the case of Bombay Dyeing & Manufacturing Co. Limited v. CCE [C.A. No. 2549/2020 registered on 9 June 2020]; SLP(C) No. 7390/2020 registered

on 9 June 2020 and remanded the refund application to the original authority for de novo examination, once the Supreme Court settles the issue.

Circulars, Notifications and Others

Customs

Pan-India rollout of faceless e-assessment in customs

Notification Nos. 50/2020-Customs (NT) and 51/2020-Customs (NT) read with Circular No. 28/2020-Customs and Instruction No. 9/2020-Customs dated 5 June 2020; Notification No. 63/2020-Customs (NT) read with Circular No. 34/2020-Customs dated 30 July 2020

The faceless e-assessment is an initiative under the project 'Turant Customs'. The pilot programme of faceless e-assessment was undertaken since mid-2019. Basis the evaluation of the pilot programme, in February 2020, the CBIC released a concept paper on faceless e-assessment for comments/ responses from trade/

stakeholders. The CBIC considered the comments/ inputs in revisiting the modalities and processes of faceless e-assessment for pan-India roll out by December 2020.

Basis the evaluation of the first phase rollout, the CBIC notified the second phase rollout of faceless e-assessment that commenced from 3 August 2020 and is expected to cover specified custom zones and imports under specific chapters of the Customs Tariff Act, 1975.

The CBIC has also outlined guidelines, including amendments in regulations for the phased roll out of faceless e-assessment, by issuance of multiple notifications/ circulars/ instructions.

Government mandates companies and importers to review imports under 'Others' category

Trade Notice No. 46/2019-20 dated 17 January 2020

With the indication that imports under the 'Others' category create an unsystematic classification of goods globally, besides

resulting in incorrect duty payment, the Direct General of Foreign Trade has issued a Trade Notice reiterating that correct tariff entry at the eight-digit level should be used. In case of continued non-compliance because of the misclassification of the goods in the 'Others' category, the Government may place all such goods under the restricted category and impose licensing requirements. Therefore, the Direct General of Foreign Trade has advised the importers to seek clarification regarding classification/ specific tariff entry on a need-basis. It also provides the details on who shall it apply to and the procedures necessary.

Government notifies rules administering origin compliance in relation to FTAs

Notification No. 81/2020-Customs (NT) dated 21 August 2020 and Circular No. 38/2020-Customs dated 21 August 2020

To curb the rampant misuse of FTAs, the Gol introduced section 28DA in the Customs Act, 1962, through section 110 of the Finance Act, 2020, effective from 27 March 2020. Under this enactment, key provisions for monitoring the correct



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use of FTAs in implementing a legal onus were made on importers of goods for the declarations in the Certificate of Origin, compliance with value-addition requirements by the overseas manufacturer in terms of Rules of Origin notified for the FTAs, etc. The enactment also requires the importer to possess value-addition/costing-related data for goods imported using an FTA from 27 March 2020. On 21 August 2020, the GoI also notified the procedural and compliance requirements for importers, processes and timelines for verification by the Customs Authorities, etc., in the form of the Customs (Administration of Rules of Origin Under Trade Agreements) Rules, 2020. This came into effect from 21 September 2020.

CBIC issues FAQs on manufacturing and other operations in customs bonded warehouse

F. No. F.No.484/03/2015-LC (Pt) dated 27 October 2020

To promote the 'Make in India' initiative, and as part of the Ease of Doing Business measure, the CBIC had notified the Manufacture and Other Operations in

Warehouse Regulations (MOOWR or Scheme) in 2019. This Scheme enabled businesses to import raw materials and capital goods without payment of duty for manufacturing and other operations in a bonded manufacturing facility for exports, while allowing import duty deferral for the domestic market.

The CBIC explained the modalities of the Scheme through Circular No. 34/2019-Customs dated 1 October 2019. The CBIC also issued two set of FAQs in July 2020 and October 2020 to throw light on issues pertaining to undertaking manufacturing and other operations in a bonded warehouse, such as eligibility, duty/ tax implications on various transactions, time limit for duty deferment, physical control and validity of approvals, Authorised Economic Operator status holders, procedures and compliances, etc.

Foreign trade policy

Government notifies capping of benefit and phasing out Merchandise Exports from India Scheme

Notification No. 30/2015-20 dated 1 September 2020

In September 2019, the GoI had announced certain measures to boost exports. One key measure related to the replacement of Merchandise Exports from India Scheme with the Remission of Duties or Taxes on Export Product, in a phased manner by the end of 2020. Pursuant to that, the Directorate General of Foreign Trade through this notification notified capping of benefit of Merchandise Exports from India Scheme on exports made from 1 September 2020 until 31 December 2020 and its complete phase out in 2021.

Foreign trade policy extended with relaxation in timelines due to Covid-19 pandemic

Public Notice No. 67/2015-20 and Notification No. 57/2015-20 dated 31 March 2020

The Foreign Trade Policy is notified for five years with annual supplements generally notified by the Directorate General of Foreign Trade. The present Foreign Trade Policy notified

in 2015 was valid until 31 March 2020. It was expected to be replaced by a new Foreign Trade Policy effective 1 April 2020. However, the Directorate General of Foreign Trade extended the present Foreign Trade Policy by another year, i.e. up to 31 March 2021. Additionally, it also notified relaxations in timelines and procedures for specified export incentive schemes.

GST

E-Invoicing

Notification No. 70/2020-CT dated 30 September 2020 amends Notification No. 13/2020-CT dated 21 March 2020

Where the aggregate turnover of a registered person crosses INR 5bn for any FY from FY 2017-18, the registered person shall be liable to generate an invoice reference number for taxable supplies (including exports) made to registered persons from 1 October 2020.

Notification No. 71/2020-CT dated 30 September 2020 amends Notification No. 14/2020-CT dated 21 March 2020



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If the aggregate turnover of a registered person crosses INR 5bn for any FY from FY 2017-18, and such registered person issues invoices to an unregistered person, the invoice shall have a dynamic quick response code. This shall come into effect from 1 December 2020 (extended from previous effective date of 1 October 2020).

Notification No. 60/2020 dated 30 July 2020

Prescribes a new format/ schema for e-invoice in Form GST INV-1 read with Rule 48 of the CGST Rules.

Notification No. 72/2020-CT dated 30 September 2020

Amendment made to CGST Rules to prescribe that an invoice issued under Rule 48(4) of the CGST Rules, i.e. an e-invoice, should contain a quick response code with embedded invoice reference number.

Notification No. 61/2020-CT dated 30 July 2020 & Notification No. 70/2020-CT dated 30 September 2020

Notifies that every registered person whose aggregate turnover in any preceding FY from FY 2017-18, exceeds INR 5bn including exports shall prepare an e-invoice (in terms of sub-rule (4) of rule 48 of the CGST Rules) for supplies to a registered person, except SEZ units, insurer or a banking company or a financial institution, including a NBFC, goods transport agency, supplier of passenger transportation services, supplier of services by admission to exhibition of cinematograph films in multiplex screens.

Notification Nos. 82 to 88/2020-CT dated 10 November 2020

E-invoicing requirement for taxpayers having aggregate turnover exceeding INR 1bn to be applicable from 1 January 2021.

Introduction of Form GSTR-2B and other changes in online return filing system

Notification No. 82/2020-CT dated 10 November 2020

A facility has been introduced to electronically make available the details of IGCST paid on import of goods or goods brought into Domestic Tariff Areas from SEZ units or from developers on a bill of entry in Part D of Form GSTR-2A on the GST portal.

An auto-drafted statement containing the details of ITC shall be electronically made available to the registered persons in the newly introduced Form GSTR-2B every month on the GST portal. The format for Form GSTR-2B, along with detailed table-wise instructions have also been notified.

CBIC mandates personal hearings via video conferencing for proceedings before Adjudicating and Appellate Authorities; option to request for e-hearing extended for appeals before the benches of the CESTAT

Public Notice No. 2 of 2020 dated 10 August 2020; Public Notice No. 3 of 2020 dated 14 August 2020 and Public Notice No. 4 of 2020 dated 16 August 2020

Owing to the Covid-19 pandemic, the Indian judiciary adapted to a virtual mode of functioning by conducting e-hearings/ digital hearings. The Supreme Court, various High Courts, Tribunals and the AAR had already been conducting virtual/ digital hearings for urgent matters via video conferencing for previous few months, to prevent disruptions/ further delay in settling urgent and pending issues. The CBIC and CESTAT also issued instructions and guidelines applicable to such video conferencing proceedings in compliance with the directions of the Supreme Court.

GST Council discusses borrowing options to compensate States for GST shortfall; time period for the levy of GST Compensation Cess expected to extend beyond FY 2021-22

Press Release on Forty-first GST Council Meeting dated 29 August 2020

The forty first GST Council meeting discussed the borrowing options available to meet the requirement of compensating the States for shortfall in revenues for the FY 2020-21, on account of implementation

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of GST and the impact of the Covid-19 outbreak on the economy. Borrowing for shortfall arising out of GST implementation only and borrowing for shortfall arising out of GST implementation and Covid-19 impact were the main two borrowing options analysed, based on which the States were required to communicate their preference on the borrowing options.

Special Economic Zone

SEZ Provisions – Additional amendment in SEZ Rules – notified

Notification No. GSR 940(E) dated 17 December 2019

As part of promoting growth in SEZs in India, the Ministry of Commerce has introduced additional amendments in the form of Special Economic Zones (Third Amendment) Rules, 2019. The amendments mainly cover aspects relating to the establishment of SEZ such as multi-sector SEZ, minimum area requirement, minimum land requirement, minimum processing area, etc.

Others

Union Cabinet approves India incentive schemes on domestic manufacturing for electronics and health sector

PIB Press Released dated 21 March 2020

In alignment with the 'Make in India' strategy of the Central Government, and to increase gross domestic product and employment substantially, as part of Vision 2025, the Prime Minister of India on 21 March 2020 announced a package of incentives for the electronics and health sector. It covered various initiatives in each sector, which will also help reduce India's dependence on imports, such as production-linked incentive scheme for large-scale electronics manufacturing, scheme for promotion of manufacturing of electronic components and semiconductors, modified electronics manufacturing clusters (EMC 2.0) scheme, promotion of domestic manufacturing of critical key starting materials/ drug intermediates and active pharmaceutical ingredients, etc.





Other developments

This covers developments on which PwC has not released Tax & Regulatory Insights.

Judgements

GST

Anti-profiteering

National Anti-profiteering Authority finds taxpayer guilty of profiteering for not adopting correct methodology to pass on benefit of rate reduction

Case No. 70/2019 dated 10 December 2019

The respondent was the subsidiary of a global food and confectionary group and the GST rate on several products supplied by the respondent were reduced from 28% to 18% (with effect from 15 November 2017) and from 18% to 12% (with effect from 25 January 2018). The respondent passed on the benefit of rate reduction at the aggregate level of Stock Keeping Unit (SKU) or at the product level, whereas it was required to pass on such benefit

on every SKU, so that the benefit could reach every buyer of that SKU. Hence, the methodology adopted by the respondent to pass on the benefit of rate reduction was held to be incorrect, and as a manufacturer, the respondent was required to re-fix the maximum retail prices on all impacted SKUs.

GST refunds

High Court directs Revenue authorities to process refund manually of additional IGST paid, in the absence of a mechanism on the online portal

W.P.(MD) No. 6209 of 2019

The taxpayer was an exporter of goods and claimed refund of IGST paid, and the taxpayer revised several shipping bills due to foreign exchange fluctuations. On the differential IGST that the taxpayer discharged separately, the Revenue authorities were not in a position to refund the IGST paid because of the absence of provisions for processing the refund manually. In the writ filed by the taxpayer,

the High Court observed that in the absence of any facility in the electronically managed system to refund such amount, the Department should have visualised the situation prior to its introduction to eliminate those anomalies and provide a solution. Accordingly, it directed the Department to refund the differential IGST paid.

Input Tax Credit

ITC on procurement of detachable sliding and stackable glass partitions not restricted under section 17(5)(d) of the CGST Act

Order No. KAR/AAAR-17/2019-20 dated 6 March 2020

The issue was whether the activity of fixing detachable sliding and stackable glass partitions qualifies as 'construction of an immovable property', and therefore, the ITC on such activity is restricted under section 17(5)(d) of the CGST Act. The AAAR held that there was no permanency in affixing such partitions, as they could be dismantled and re-fixed, and fixing partitions to the ground using

nuts and bolts only gives a false sense of permanency. Therefore, such fixtures were held to be movable property and ITC on the GST charged on the procurement of detachable sliding and stackable glass partitions was held eligible and it did not attract the provisions of section 17(5)(d) of the CGST Act.

Luxury tax under GST

Kerala High Court upholds levy of luxury tax under the GST regime on the basis that the enactment has not been repealed under the GST law

WP(C) No. 3603 of 2020(A)

A demand to pay luxury tax as per the provisions of the Kerala Building Tax Act, 1979, was raised on the taxpayer, which was challenged. The Kerala High Court, while dismissing the writ, held that there was no repeal of the Kerala Building Tax (23 of 1999), which levied luxury tax on buildings with effect from 1 April 1999, vide sections 173 and 174 of the CGST Act. Accordingly, the levy of luxury tax was held to be still effective and the levy was upheld.



Other developments

Pre-GST-Excise/ Service tax

High Court holds that service tax authorities are empowered to conduct audit and seek information pertaining to service tax under GST regime

WP(C) No. 2580/2020 dated 6 March 2020

This decision dealt with whether the service tax authorities can conduct audit pertaining to the service tax regime in the post-GST regime. The High Court observed that Rule 5A of the Service Tax Rules, 1994, empowers officers authorised by the commissioner for carrying out any scrutiny, verification, and checks as may be necessary to safeguard the interest of the Revenue. As GST law provides that the repeal of the Finance Act 1994, does not affect any investigation, inquiry, verification (including scrutiny and audit), assessment proceedings, adjudication, etc., under erstwhile laws, it was held that the service tax authorities were empowered to conduct audit and seek information under the GST regime.

Delhi Tribunal holds that no service tax is payable on subsidy received for a separate transaction that cannot be said to be in relation to promotion or marketing services

Service Tax Appeal No. 54510 of 2014

The taxpayer was a distributor appointed by a telecom company for marketing their telecom service products, for which the taxpayer received a commission and discharged service tax on it. The taxpayer was also engaged in selling mobile handsets, where it purchased the handsets from a third-party vendor and sold them at a price below cost. The telecom company made good the taxpayer's loss in the form of a 'subsidy'. It was held that no service tax was payable on the amount of subsidy paid to the taxpayer, as the payment made to compensate the taxpayer's loss cannot be said to have any relation to the service of promotion or marketing.

Pre-GST-VAT

Madras High Court holds that supply of valves, stents during healthcare services constitutes 'works contract'

WP No. 2982 of 2012

Post the forty sixth amendment to the Constitution of India, the definition of 'works contract' has been widened, and it encompasses every possible and conceivable contract involving the transfer of property, while providing services. The High Court held that the dominant nature test has no application and the traditional decisions that have held that the substance of the contract must be seen, have lost their significance where transactions are in the nature of works contracts contemplated in clause 29(A) of Article 366 of the Constitution of India. Accordingly, it was held that the fixing of valves, stents, metal plates, artificial hips etc., can be construed as fitting out a moveable property and within the purview of 'works contract' under section 2(43) of the Tamil Nadu Value Added Tax Act, 2006.

Circulars, Notifications and Others

GST

Increase in restriction for unmatched credit and e-way bill

Notification No. 75/2019 dated 26 December 2019

- The percentage of ITC that can be availed by a registered person on invoices or debit notes, the details of which have not been uploaded by the suppliers (under section 37(1) of the CGST Act) reduced to 10% of the eligible credit (from 20%).
- Restriction imposed on registered persons who do not file the statement of outward supplies for any two months/ quarters (as applicable), whether as a supplier or as a recipient from furnishing information in Part A of Form GST EWB-01 for the said months.

Other developments

Reverse charge – amendment to entry on renting of motor vehicles designed to carry passengers

Notification No. 28/2019-IGST Rate and Notification No. 29/2019-CT (Rate) dated 31 December 2019

The substitution of reverse charge entry relating to service by renting motor vehicles provided to body corporate, to restrict the reverse charge to only vehicles designed to carry passengers, and other changes made to rationalise the entry.

Amendment made to CGST Rules – Refunds

Notification No. 16/2020 dated 23 March 2020

- CGST Rules amended to provide for refund to electronic credit ledger when the tax amount is wrongly paid or paid in excess.
- Ceiling on value of export of goods introduced by amendment to definition of 'Turnover of zero-rated supply of

goods' up to 1.5 times the value of similar goods supplied domestically.

- Provision introduced for adjustment of refund amount against any liability due under any law for time being in force.
- Persons paying tax on inputs used in export of goods or services and availing exemption of only Basic Customs Duty under notifications mentioned under Rule 96(10)(b) of CGST Rules (Advance authorisation, Export Promotion Capital Goods, etc.) can claim refund of IGST on such exports.
- Provisions introduced for recovery of refund of unutilised ITC on export, when export proceeds have not been realised within the time limit prescribed under Foreign Exchange Management Act, 1999.

Amendments relating to Maintenance Repair or Overhaul services

Notification No. 2/2020-IGST dated 26 March 2020

Insertion of place of supply provisions for maintenance, repair or overhaul services of aircrafts, aircraft engines and other aircraft components or parts supplied to a person for use in the course or furtherance of business as the location of the recipient of service. The provisions shall come into effect from 1 April 2020.

Notification No. 2/2020-CT (Rate) dated 26 March 2020

The GST rate for maintenance, repair or overhaul services for aircrafts, aircraft engines and other aircraft components or parts has been notified at 5% (CGST – 2.5%, SGST – 2.5%, IGST – 5%) by the insertion of a new entry carved out from the earlier entry covering 'maintenance, repair and installation (except construction) services' taxed at 18%.

Insertion of proviso for cumulative application of Rule 36(4) of the CGST Rules

Notification No. 30/2020 dated 3 April 2020

Taxpayers have received relief from Rule 36(4) of the CGST Rules, by the introduction of a proviso that states that the condition specified under Rule 36(4) of the CGST Rules would apply cumulatively for the period February to August 2020. The cumulative adjustment of ITC for the said months would be done in the return in Form GSTR-3B for the month of September 2020.

Transfer of amount from one account head to another in electronic cash ledger under Rule 87(13) of the CGST Rules

Notification No. 37/2020-CT dated 28 April 2020

The notification states that Rule 87(13) of the CGST Rules, which provides for the transfer of any amount of tax, interest, penalty, fee or any other amount available in the electronic cash ledger under the CGST Act to the electronic cash ledger for integrated tax, central tax, State tax or Union territory tax or cess in Form GST PMT-09, shall come in force on 21 April 2020.

Other developments

Interest applicable on net liability, i.e. only on liability paid in cash from 1 September 2020

Notification No. 63/2020-CT dated 25 August 2020

The notification appoints 1 September 2020 as the date from which the proviso to section 50(1) of the CGST Act, which provides for levy of interest on net liability, i.e. on liability that is paid in cash, would be applicable.

Clarification of appeal regarding non-constitution of Appellate Tribunal

Circular No. 132/2/2020-GST dated 18 March 2020

- Order No. 9/2019-CT dated 3 December 2019, provided that the appeal to the GST Tribunal can be made within three months (six months in case of appeals by the Government) from the date of communication of order or date on which the President

or the State President, as the case may be, of the GST Appellate Tribunal enters office, whichever is later.

- Accordingly, it was clarified that the time limit to make an application to the GST Appellate Tribunal would be counted from the date on which the President or the State President enters office. The appellate authorities were advised to dispose all pending appeals expeditiously, without waiting for the constitution of the GST Appellate Tribunal.

Clarification on levy of GST on director's remuneration

Circular No. 140/10/2020 dated 10 June 2020

- Remuneration paid to directors, such as independent directors, who are not in employment with a company, shall be liable to GST under reverse charge basis, in the hands of a company, and

shall be beyond the scope of Schedule III of the CGST Act. This pertains to that part of a director's remuneration that is declared separately, other than 'salaries', in a company's books of accounts and subjected to TDS under section 194J of the Act as 'fees for professional or technical services'. It shall be treated as consideration for providing services that are beyond the scope of Schedule III of the CGST Act.

- The part of a director's remuneration declared as 'salaries' in the books of a company and subjected to TDS under section 192 of the Act, are not taxable, as it constitutes 'services by an employee to the employer in the course of or in relation to his employment' in terms of Schedule III of the CGST Act, 2017.

Non-applicability of restriction on refund in case of invoices not appearing in GSTR-2A

Circular No. 139/09/2020 dated 10 June 2020

- After issuance of Circular No. 135/05/2020-GST dated 31 March 2020, refund related to invoices on which credit has been claimed by the taxpayer, but are missing in Form GSTR-2A, i.e. the supplier has not reported these invoices in its returns, has been restricted.
- In this regard, it was clarified that this restriction would not apply in case of imports, Input Service Distributor invoices and inward supplies liable to reverse charge.



Regulatory

Regulatory Insights

Circulars, Notifications and Others

- Education Sector
- Foreign Contribution Regulation Act
- Schemes in Electronics Manufacturing Sector
- Labour Codes
- Data Protection Law
- Consumer Protection Law
- Public Procurement Order
- Intellectual Property
- Insolvency and Bankruptcy Code
- MSMEs
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- Telecom Sector
- Indian Exchange Control Regulations/ FDI Policy
- Medical Devices
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Circulars, Notifications and Others

- Intellectual Property
- Insolvency and Bankruptcy Code
- Quality Control Order
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- Medical Devices





Regulatory Insights

Circulars, Notifications and Others

Education Sector

National Education Policy, 2020

National Education Policy 2020

The MHRD released the NEP 2020 after it received cabinet approval on 29 July 2020. The MHRD, now Ministry of Education, had released a Draft National Education Policy in 2019 for public consultation. Based on an unprecedented process of consultation involving over 200,000 suggestions, NEP 2020 has been finalised and released by the Government, paving way for major transformational reforms in schools and the higher education system in the country.

NEP 2020 aspires for the universalisation of education—upto 100% GER from pre-school to the secondary level—and to double the GER for higher education from 26.8% to 50% by 2030. It covers the entire education sector from pre-school to higher education and is guided by the principles

of flexibility in learning, multi-disciplinary and liberal education, equity and inclusion, resource efficiency, autonomy through a ‘light but tight’ regulatory system, research focus and continuous policy making.

Foreign Contribution Regulation Act

Amendment to the Foreign Contribution Regulation Act

No. 33 of 2020

The Foreign Contribution (Regulation) Amendment Act, 2020 (Amendment) received the assent of the President of India and was published in the official gazette on 28 September 2020. The following are the key highlights of the Amendment:

1. Prohibition on acceptance of foreign contribution by certain categories of persons: The FCRA 2010 prohibits certain categories of persons such as candidates for election, judges and government servants from accepting foreign contributions. The Amendment

further adds ‘public servant’ as defined under the Indian Penal Code, 1860 to this list of prohibited categories of persons.

- 2. Prohibition on transfer of foreign contribution to other person:** The FCRA 2010 prohibits the transfer of foreign contribution to any other person, unless such other person is also registered, or had obtained prior permission under the FCRA 2010. The Amendment completely prohibits the transfer of foreign contribution to any other person.
- 3. Reduction in the use of foreign contribution for administrative purposes:** The FCRA 2010 provides that without prior approval of the Central Government, a person who receives foreign contribution shall not defray more than 50% of the contribution received in a FY towards administrative expenses. The Amendment reduces it to 20%.
- 4. Restriction on utilisation of foreign contribution:** The Amendment

provides that, where the Central Government, on the basis of any information or report and after holding a summary inquiry, has reason to believe that a person who has been granted prior permission has contravened any provisions of the FCRA 2010, the Central Government may, pending any further inquiry, direct that such person shall not utilise the unutilised foreign contribution or receive the remaining portion of foreign contribution without its prior approval.

- 5. Aadhaar number for registration:** The Amendment provides that the Central Government may require that any person who seeks prior approval or makes an application for renewal of certificate shall provide the Aadhaar number of all its office bearers, directors or other key functionaries as the identification document. In case of a foreigner, they shall provide a copy of the passport or OCI card.



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- 6. Suspension of registration:** The FCRA 2010 provides that the Government may suspend the registration of a person for a period not exceeding 180 days. The Amendment adds that the registration may be suspended for a period of 180 days or such further period, not exceeding 180 days, as may be specified.
- 7. Surrender of certificate:** Section 14A of the FCRA 2010 has been inserted by the Amendment, wherein the Central Government may permit the surrender of the certificate granted on receiving a request from a person. This is provided so that the Central Government is satisfied after making an inquiry that such person has not contravened any of the provisions of the FCRA 2010, and the management of foreign contribution and assets (if any) created out of such contribution has been vested in the authority.
- 8. Renewal of certificate:** A new proviso has been inserted to section

16(1) of the FCRA 2010, which provides that before renewing the certificate, the Central Government may make such inquiry, as it deems fit, to satisfy itself that such person has fulfilled all conditions specified in sub-section (4) of section 12 of the FCRA 2010, meaning that the person is not fictitious or *benami*, etc.

- 9. Foreign contribution through scheduled bank:** The FCRA 2010 provides that a registered person must accept foreign contribution only in a single branch of a scheduled bank specified by such person. Such person may open more accounts in other banks to utilise the contribution. The Amendment further adds that the foreign contribution must be received only in an account designated as the 'FCRA Account' by the bank, which shall be opened for the purpose of remittances of foreign contribution in the State Bank of India. Such person may also open another FCRA Account in any scheduled bank for keeping or utilising the received foreign contribution. Every person

who makes an application for grant of certificate of registration shall be required to mention the details of the FCRA Account in the application.

Schemes in Electronics Manufacturing Sector

Operative Guidelines released for Schemes in Electronics Manufacturing Sector

Guidelines for the PLI Scheme, SPECS and EMC 2.0 dated 1 June 2020

The MeitY released guidelines for the PLI Scheme, SPECS and EMC 2.0 on 1 June 2020.

- The PLI shall extend an incentive of 4% to 6% on incremental sales (over base year) of goods manufactured in India and covered under the target segments to eligible companies for a period of five years subsequent to the base year. Applications were open till 31 July 2020. MeitY has approved 16 companies including Samsung, Foxconn and Pegatron under PLI.

- SPECS aims to address the challenges faced by manufacturers of components and semiconductors by offering capital subsidy of 25%.
- EMC 2.0 is the continuation of the EMC scheme in a modified form. The objective of EMC 2.0 is to reinforce the infrastructure base for the electronics industry in the country and extend the electronics value chain.

Labour Codes

The Parliament passed three labour codes i.e. the Code on Social Security, 2020; Industrial Relations Code, 2020; and Occupational Safety, Health and Working Conditions Code, 2020 on 23 September 2020 (Labour Codes). The same shall come into effect as and when the Central Government may appoint by notification in the official gazette.

It is to be noted that the draft Rules for the said Labour Codes have already been placed for public consultation by the Government. Once finalised, the

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Government will notify the said Rules by way of separate notifications, bringing the Labour Codes into effect.

Key highlights of the Labour Codes are as follows:

Code on Social Security, 2020

PIB Press Release dated 23 September 2020

The Code on Social Security, 2020 amalgamates the following labour laws:

1. The Employees' Compensation Act, 1923;
2. The Employees' State Insurance Act, 1948;
3. The Employees' Provident Funds and Miscellaneous Provisions Act, 1952;
4. The Maternity Benefit Act, 1961;
5. The Payment of Gratuity Act, 1972;
6. The Unorganised Workers' Social Security Act, 2008;
7. The Cine Workers Welfare Fund Act, 1981;

8. The Building and Other Construction Workers Cess Act, 1996; and
9. The Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959.

Data Protection Law

The Personal Data Protection Bill, 2019

In 2018, MeitY, GoI, constituted a committee of experts under the chairmanship of the retired Supreme Court judge Justice B N Srikrishna. Such committee was entrusted to identify the lapses in the present data protection regulations and prepare data protection laws, which were more robust and comprehensive, by virtue of which the draft of the Personal Data Protection Bill, 2018 came into existence.

The aforementioned bill underwent various ministerial and private member consultations. By virtue of which, the new Personal Data Protection Bill, 2019 was cleared by the Cabinet on 4 December 2019. It is likely to be tabled before the Parliament during the budget session in February 2021.

Consumer Protection Law

Consumer Protection (E-commerce) Rules, 2020

Notification No. G.S.R. 462(E) dated 23 July 2020

The Department of Consumer Affairs has notified CP Rules under the Consumer Protection Act, 2020 on 23 July 2020. These CP Rules aim to prevent unfair trade practices in e-commerce, demarcate the liabilities of e-commerce platforms and sellers, and protect the rights and interests of consumers.

These CP Rules apply to the following:

- All goods and services bought or sold over digital or electronic networks, including digital products;
- All models of e-commerce, including marketplace and inventory models of e-commerce;
- All e-commerce retail, including multi-channel single brand retailers

and single brand retailers in single or multiple formats;

- All forms of unfair trade practices across all models of e-commerce; and
- Entities not established in India but offering goods and services to consumers in India.

Public Procurement Order

Revision in Public procurement (Preference to Make in India), Order 2017

Order No. P-45021/2/2017-PP (BE-II) dated 4 June 2020

The DPIIT has issued the revised Public procurement order on 4 June 2020. The revised order prescribes enhancing the value for public procurement to INR 200 crore (USD 26.50m), prescribes further category for local suppliers and some changes in purchase preference requirements.

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Some of the new provisions introduced in the revised order are detailed out as below:

1. New definitions introduced for sub-categories of local supplier

Local suppliers have been sub-categorised as follows:

- Class-I local supplier – Supplier of goods/ service whose goods or service offered for procurement have local content equal to or greater than 50%
- Class-II supplier - Supplier of goods/ service whose goods or service offered for procurement have local content more than 20% but less than 50%
- Non-Local supplier - Supplier of goods/ service whose goods or service offered for procurement have local content less than or equal to 20%

2. Who can apply for public procurement?

Nature of supply	Who can apply	Preference
Goods/ services/ works having sufficient local capacity and local competition	Only Class I local suppliers	Class I local suppliers
Categories not covered above and value of procurement upto 200 crores	Only Class I and Class II local suppliers eligible (Global tender enquiry not permitted, except with prior Nodal Ministry approval)	Class I local supplier

3. Purchase Preference Process

While the process for public procurement process remains the same, the term 'local supplier' is replaced with Class I local supplier for purchase preference, and the revised procedure is mentioned hereunder:

- The lowest bid is termed as L-1. If L-1 is a Class-I supplier, full quantity contract will be awarded to L1.

Amendment in GFR imposing restrictions including prior registration requirement for bidders from countries sharing land border to participate in public procurements

Office Memorandum No. F. No. 6/18/2019-PPD dated 23 July 2020

The DoE has inserted Rule 144 (xi) under the GFR, empowering the DoE to impose restrictions, including registration and/ or screening requirements on procurement from bidders from a country or countries, or a class of countries, on the grounds of defence of India or national security. As per the powers exercised under Rule 144 (xi) of the GFR, the DoE has ordered that any bidder from a country that shares a land border with India must register with the Competent Authority for bidding under a Public Procurement Order.

This restriction does not apply to orders placed or contracts concluded or letter/ notice of award/ acceptance issued before the date of issue of Order. For tenders that are yet to be opened, or with incomplete evaluation of technical bid or the first exclusionary qualificatory stage, no contracts shall be placed on bidders from such countries. If the bid has crossed the first exclusionary stage, the contract shall be considered de novo.

Intellectual Property

Patent (Amendment) Rules, 2020

Notification No. G.S.R. 652(E) dated 19 October 2020

The GoI has published the Patent Rules in the Gazette of India on 20 October 2020. The amendments aim at simplifying the manner of furnishing information pertaining to the commercial working of patents in India.

Key changes include the following:

1. Form 27 containing details of the commercial working of patents may



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now be filed within six months after the end of the FY, instead of within three months after the end of the calendar year, as required earlier.

2. Instead of providing exact details of quantum and value accrued to the patentee through manufacturing and import into India, patentees are now permitted to mention approximate value and revenue accrued.
3. A single form may be filed in respect of multiple patents, provided that all are related patents, wherein the approximate revenue/ value accrued from a particular patented invention cannot be derived separately from the approximate revenue/ value accrued from related patents, and all such patents are granted to the same patentee.
4. The part concerning the declaration by the patentee to disclose whether public requirement has been met/ not met/partially met has been deleted.
5. Form 27 also clarifies the following:
 - (i) Every patentee and licensee has

to file Form 27 separately; and (ii) in case a patent is granted to two or more persons, they may file a single Form 27 jointly.

The amendments came into force from the date of publication, namely, 20 October 2020.

Insolvency and Bankruptcy Code

IBC (Amendment) Ordinance, 2020 dated 5 June 2020 and IBC (Second Amendment) Act, 2020 dated 23 September 2020 made effective from 5 June 2020

The Insolvency and Bankruptcy Code (Amendment) Ordinance, 2020 No. 9 of 2020 dated 5 June 2020; The Insolvency and Bankruptcy Code (Second Amendment) Act, 2020 No. 17 of 2020 dated 23 September 2020

Key changes made in the amendment are as follows:

- The amendment inserted a new section 10A, which provides the following:

- No application for initiation of CIRP of a CD shall be filed, for any default arising on or after 25 March 2020. This suspension is applicable for a period of six months or such further period, not exceeding one year from such date, as may be notified in this behalf.
- No application shall ever be filed for initiation of CIRP of a CD for the said default occurring during the said period.
- These provisions shall not apply to any default committed before 25 March 2020.
- A new sub-section (3) under section 66 has been introduced to provide that the resolution professional shall not file an application under section 66(2) (w.r.t. wrongful trading) in respect of such defaults against which the initiation of CIRP is suspended under section 10A.

IBBI (Liquidation Process) (Amendment) Regulations, 2020

Notification No. IBBI/2019-20/GN/REG053 dated 6 January 2020

Key changes made in the amendment are as follows:

- The amendment prescribes that “a person who is not eligible under IBC to submit a resolution plan for insolvency of the CD, shall not be a party in any manner to a compromise or arrangement of the CD as stated under section 230 of the Companies Act, 2013.”
- Further, an asset cannot be sold or transferred by a secured creditor, to any person, who is not eligible under the IBC to submit a resolution plan for insolvency resolution of the CD.
- The amendment also prescribes that a secured creditor, who proceeds to realise its security interest, shall contribute its share of the insolvency resolution process cost, liquidation process cost and workmen’s dues,

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within 90 days of the liquidation commencement date and shall also pay to the liquidator the excess of realised value of the asset, which is subject to security interest, over the amount of its claims admitted, within 180 days of the liquidation commencement date. If the secured creditor fails to comply with the aforesaid requirements, the asset shall become a part of the liquidation estate.

MSMEs

Central Government notified criteria for classification and procedure for filing of memorandum by MSMEs

Notification No. S.O. 2119(E) dated 26 June 2020

The Government has notified the criteria for the classification of MSMEs vide notification dated 1 June 2020. These revised criteria are effective from 1 July 2020.

Revised MSME Classification			
Classification	Micro	Small	Medium
Manufacturing and Services	Investment < INR 10m and Turnover < INR 50m	Investment < INR 100m and Turnover < INR 500m	Investment < INR 500m and Turnover < INR 2500m

- A composite criterion of investment and turnover shall apply for classifying an enterprise as micro, small or medium.
- The existing enterprises registered prior to 30 June 2020, shall continue to be valid only for a period up to 31 March 2021 and will have to update the registration with Udyog.
- Exports of goods or services or both is excluded while calculating the turnover.
- Value of investment in plant and machinery and equipment will be considered from previous years' ITRs.
- Any upward or downward change will result in re-classification of the enterprise.

Corporate Law

Companies (Incorporation) Amendment Rules, 2020

Notification No. F. No. 1/13/2013 CL-V, Vol. IV dated 6 February 2020

As a part of initiatives aiming to increase ease of doing business and to reduce the time taken for companies to commence operations (upon incorporation), the MCA has introduced, with effect from 15 February 2020, a new web-based SPICe+ incorporation Form.

The new SPICe+ Form is accompanied by an updated Form AGILE-PRO, which offers the functionality to obtain various

mandatory statutory registrations such as GST Number, PF, Employee State Insurance Corporation, Profession Tax (for Maharashtra) and also to initiate the opening of a bank account.

Companies Fresh Start Scheme, 2020

General Circular No. 12/2020

In order to make good any filing related defaults, irrespective of the duration of default, and make a fresh start as a compliant entity, the MCA has introduced the CFSS. CFSS was intended remain in force from 1 April 2020 until 30 September 2020 and has now been extended to 31 December 2020.

It applies to a company that has defaulted in filing any document, statement, return, etc., on the MCA portal. When filing any belated document, only the normal fee would be required to be paid, and no additional fee would be levied on such filing. Immunity shall be provided from launch of any prosecution or proceeding for imposing penalty on delay in filing the document.



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If the company or any of its officers in default has filed an appeal against any prosecution launched or proceedings for imposing penalty, then such appeal should first be withdrawn. Once the delayed forms are filed and are taken on record and after the closure of CFSS, the company shall apply for an immunity certificate under CFSS.

CFSS does not apply to companies against which action for final notice for striking off has already been initiated, companies where any application for striking off has been filed, companies that have amalgamated, companies where applications have already been filed for obtaining dormancy status, vanishing companies or companies where the action of increase in authorised capital or filing of charge related documents is involved.

Limited Liability Partnership Settlement Scheme, 2020

Circular No. 13/2020

The LLPSS was initially intended to remain in force from 1 April 2020 until 30 September 2020 and has now been

extended to 31 December 2020. This applies to an LLP that has defaulted in filing any document, statement, return, etc. on the MCA portal. Defaulting LLPs are permitted to file belated documents, which were due for filing until 31 August 2020.

Defaulting LLPs that have filed their belated documents until 31 December 2020 and made good the default shall not be subjected to prosecution by the Registrar of Companies. LLPSS shall not apply to LLPs that have applied for striking off their names.

Companies (Amendment) Act, 2020

No. 29 of 2020

Key highlights of the Companies (Amendment) Act, 2020 (Certain provisions are yet to be notified):

- Decriminalisation of various offences: Penalty and imprisonment for certain offences have been removed, and reduced penalty amounts have been notified with respect to few offences such as violation of provisions w.r.t Annual return.

- Amendment to Definition of Listed Company: In consultation with the SEBI, classes of companies that are listed or intend to list shall not be considered as listed companies, as may be prescribed.
- Companies are allowed to set off such excess amount against the requirement to spend as CSR for such number of succeeding FYs, as may be prescribed.
- Waiver to constitute CSR committee if the amount to be spent by a company as CSR is less than or equal to INR 5m.
- NBFCs and HFCs registered under the National Housing Bank Act, 1987 are exempted from filing MGT-14 return in respect of a resolution passed to grant loans, or providing guarantee or security in respect of loans under clause (f) of sub-section (3) of section 179 in the ordinary course of their business.
- Public companies are allowed to issue such class of securities for the purposes of listing on permitted stock

exchanges in permissible foreign jurisdictions.

- The Central Government can require any unlisted company to prepare, audit and file periodical financial results with the Registrar.
- In case of no profits or inadequacy of profits, a non-executive director, including an independent director, shall be eligible to receive remuneration as prescribed by the Act, in addition to, any managing or whole-time director or manager.
- A new chapter on Producer Companies has been added in the CA Act. Earlier, Producer Companies were governed under CA Act.

The Central Government is empowered to exempt any class of persons from complying with the requirements of declaration of beneficial interest if considered necessary in public interest.



Regulatory Insights

Telecom Sector

OSP Guidelines, 2020 – 5 November 2020

Guidelines for Other Service Providers (OSPs) dated 5 November 2020

The Ministry of Communications, Department of Telecommunications has issued the revised OSP Guidelines (Revised Guidelines). These Revised Guidelines aim to significantly improve the ease of doing business for the Information Technology industry including BPO/ IT-enabled Services sectors, by reducing the compliance burden.

The Revised Guidelines have removed registration and approval requirements and excluded entities providing non-voice-based services from the ambit of the OSP guidelines.

Indian Exchange Control Regulations/ FDI Policy

RBI issued guidelines to regulate payment aggregators and payment gateways

Notification No. RBI/DPSS/2019-20/174
DPSS.CO.PD. No. 1810/02.14.008/2019-20
dated 17 March 2020

The RBI released guidelines to regulate PAs and PGs. The guidelines mandate PAs to obtain authorisation from the RBI, obligate settlement of payment to merchant in a defined transaction time, segregate e-commerce marketplaces from the PA entities and prescribe minimum net worth requirements of INR 250m. Existing PAs were required to apply for authorisation by 30 June 2021. The guidelines prescribe detailed technology and operational guidelines for PAs such as merchant onboarding, data sovereignty, customer data access, audit obligations, etc. Baseline technology-related security recommendations have also been recommended for optional adoption by PGs.

Prior Government approval required for FDI from countries with which India shares land border

Press Note No. 3 (2020 Series) DPIIT File No.: No. 5(5)/2020-FDI Policy dated 17 April 2020

DPIIT issued Press Note No. 3 (2020 Series) on 17 April 2020 mandating prior Government approval for FDI from countries with which India shares land border. This means any fresh investment or acquisition undertaken by entities belonging to, or beneficially owned, by entities/ citizens of such countries would require prior Government approval.

Currently, FDI is under automatic route for all sectors except certain sectors that are prohibited or restricted. Investment by entities and/ or citizens from Bangladesh and Pakistan are not eligible for automatic route and requires prior Government approval irrespective of the sector. Further, entities and/ or citizens of Pakistan can invest, only under the Government route, in sectors/ activities other than defence, space, atomic energy and sectors/ activities prohibited for foreign investment.

With the amendment issued under Press Note No. 3 of 2020, any investment from countries with which India shares land border will require prior Government approval, even in sectors where FDI was otherwise permitted under the automatic route.

The Government approval route will also apply for any transfer of ownership of existing or future FDI that directly or indirectly results in beneficial ownership in the hands of any entity/ citizen of countries with which India shares land border.

Clarification regarding FDI in uploading/ streaming of news and current affairs through digital media

DPIIT File No. 5(4)/2019-FDI Policy dated 16 October 2020

DPIIT, vide its Press Note No. 4 of 2019 issued on 18 September 2019, had allowed FDI in uploading/ streaming of news and current affairs through digital media and had restricted the FDI to 26% in such companies. Based on representations made by companies, on 16 October 2020, DPIIT issued a clarification on Press Note No. 4 of 2019. The clarification states that in addition to entities undertaking streaming/ uploading of news and current affairs, news agencies that gather, write and distribute/ transmit news as well as news aggregators will also be covered by the provisions of



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Press Note No. 4 of 2019. Such entities will need to align with the 26% FDI cap and seek approval from the Government within one year from issue of the clarification.

Further, similar to the conditions outlined in the traditional news and current affairs segment, such entities should ensure that Indian citizens comprise the majority of the Board of Directors and the position of the Chief Executive Officer.

FDI Circular released by DPIIT amending the Consolidated FDI Circular, 2017

DPIIT File No. 5(2)/2020-FDI Policy dated 15 October 2020

DPIIT has released the updated Consolidated FDI Policy circular amending the Consolidated FDI Policy Circular of 2017. This circular largely captures the amendments issued vide different press notes, such as relaxations in the insurance sector, single brand retail trading, ecommerce, digital media, etc.; clarifications issued by the DPIIT on contract manufacturing and real estate broking; and references of Foreign

Exchange Management (Non-debt Rules), 2019, in place of Foreign Exchange Management (Transfer or Issue of Security by Persons Resident Outside India) Regulations, 2000.

DPIIT issues revised SOPs to process FDI proposals

No. 1/8/2016-FDI Policy dated 9 November 2020

DPIIT has released revised SOPs for processing FDI proposals that require Government approval. Some of the key changes include the creation of an inter-ministerial committee to review delayed proposals, changes in processing timelines, clarity on documents, etc.

Liberalisation of foreign investment limit in defence sector

Press Note No. 4 (2020 Series) DPIIT File No. 5(8)/2020-FDI Policy dated 17 September 2020

DPIIT issued Press Note No. 4 (2020 Series) dated 17 September 2020, liberalising

foreign investment norms for the defence industry, subject to industrial license under the Industries (Development & Regulation) Act, 1951 and manufacturing of small arms and ammunition under the Arms Act, 1959.

Key highlights

- The limit of foreign investment in the defence industry, subject to industrial license under the Industries (Development & Regulation) Act, 1951 and manufacturing of small arms and ammunition under the Arms Act, 1959, increased from 49% to 74%, subject to the following conditions:
 - For companies seeking fresh industrial licenses, FDI up to 74% under the automatic route shall be permitted.
 - For companies not seeking industrial license or those that already have Government approval for foreign investment, the following shall apply:
 - Infusion of fresh foreign investment up to 49% or change in equity/ shareholding pattern/

foreign investor would require submission of a declaration with the MoD within 30 days of such change.

- Proposals for raising FDI beyond 49% from such companies will require prior Government approval.
- Foreign investment in the defence sector beyond 74% allowed, subject to Government approval, wherever such investment is likely to result in access to modern technology or for other reasons.
- Foreign investment in the sector shall also be subject to security clearance by the Ministry of Home Affairs and as per the guidelines of the MoD.
- The Government has also reserved the right to review any foreign investment in the defence sector on grounds of national security.
- Other conditions remain the same.



Regulatory Insights

Medical Devices

Guidelines issued for incentive schemes in the pharmaceuticals (drugs) sector

File No. 31026/16/2020-Policy dated 27 July 2020

In line with its notification dated 21 July 2020, the DoP released guidelines for the PLI Scheme for promoting the domestic manufacturing of critical KSMs/ DIs/ APIs in India (PLI Scheme) on 27 July 2020. The PLI Scheme shall extend financial incentives based on committed investment and domestic sales made by the selected applicant for the eligible products for the prescribed period.

Key aspects of the guidelines have been set out below:

- Proprietary Firm/ Partnership Firm/ LLP/ Company registered in India meeting the prescribed net worth, and other threshold requirements are eligible to make an application.
- Target segments defined to include a

list of 41 critical KSMs, DIs and APIs (as stated in Annexure I).

- The scheme would be applicable only on greenfield projects and would be subject to threshold of committed investment and quantum of production critical KSMs/DIs and APIs, as set out in **Annexure I**.
- Eligible investment includes expenditure incurred on new Plant, Machinery, Equipment and Associated Utilities; capital expenditure incurred on new R&D facilities; and product development. Expenditure incurred on construction of building in case of new plant and machinery subject to a maximum of 20% of the value of investment in new plant and machinery. Expenditure incurred on land shall not be considered.
- Tenure – FY 2020-21 to 2029-30 subsequent to the base year (i.e. FY 2019-20).
- Rate of incentive^{**}:
 - Fermentation-based products:

- FY 2023-2024 to FY 2026-2027: 20%
- FY 2027-28: 15%
- FY 2028-29: 5%
- Chemically synthesised products:
 - FY 2022-2023 to 2027-2028: 10%

^{**}The incentives will be disbursed as per the maximum incentive per target segment as mentioned in the guidelines. Therefore, the percentages of disbursement of incentives will depend on product type and the FY as provided under the guidelines.

- Incentive Outlay – INR 69.40bn
- The PLI Scheme would be implemented through PMA, IFCI Limited, which shall be responsible for the verification/ examination of applicants, data compilation, etc. Approval shall be granted by the Empowered Committee, upon final examination and review of the applications suggested by the PMA.
- Guidelines also stipulate minimum DVA requirements and specify DVA to be achieved for a claim period in order to remain eligible for incentive for that

claim period subject to relaxations. DVA shall be computed as A/ B, where,

A = Net sales turnover minus value of non-originating material and services used in manufacturing of eligible product;

B = Net sales turnover.

- Selection criterion - All eligible applicants to be ranked according to marks obtained based on the committed annual production capacity and quoted sale price for eligible products, and the number of selected applicants is to be limited by the maximum amount of incentive available for each eligible product. The empowered committee can also select an application received from Central Public Sector Enterprise under the administration control of DoP in national interest.

Scheme for Promotion of Bulk Drugs Parks

File No. 31026/54/2020-Policy dated 27 July 2020



Regulatory Insights

In line with the DoP notification dated 21 July 2020, DoP released guidelines for the PBDP on 27 July 2020. PBDP has been introduced for easy access to standard testing and infrastructure facilities through creation of common infrastructure facilities. It shall provide a one-time grant-in-aid of a maximum amount of INR 30bn for the creation of common infrastructure facilities in the selected three Bulk Drug Parks proposed by the State Governments.

Key aspects of the guidelines are set out below:

- PBDP proposes to provide grants-in-aid to three Bulk Drug Parks with a maximum limit of INR 10bn per Bulk Drug Park or 70% of the project cost of Common Infrastructure Facilities, whichever is less.
- In case of hilly states and the North East Region, the grant-in-aid would be INR 10bn per Bulk Drug Park or 90% of the project cost of Common Infrastructure Facilities, whichever is less.
- Grant-in-Aid from the GoI is not permitted to be utilised towards the land and building components of the project.
- Assistance under PBDP will be admissible for the creation of Common Infrastructure Facilities by State Governments in Bulk Drug Parks.
- Indicated Common Infrastructure Facilities -
 - Central Effluent Treatment Plants
 - Solid waste management
 - Storm water drains network
 - Common Solvent Storage System, Solvent recovery and distillation plant
 - Common Warehouse
 - Emergency Response Centre
 - Centre of Excellence etc.
 - Tenure – FY 2020-21 to FY 2024-25
- Incentive outlay – INR 30bn for providing financial assistance for the construction of Common Infrastructure

Facilities in three Bulk Drug Parks with a maximum limit, as prescribed.

- PBDP would be implemented through a one-time grant-in-aid to be released in various phases for the creation of Common Infrastructure Facilities in Bulk Drug Park to a State Implementing Agency.
- PBDP Scheme Steering Committee in DoP shall approve the project components and funding thereof, depending upon the merits of the proposal.

Guidelines issued for incentive schemes in the Medical Devices sector

File No. 31026/19/2020-MD dated 27 July 2020

In line with its notification dated 21 July 2020, DoP released guidelines for the PLI Scheme for promoting the domestic manufacturing of medical devices on 27 July 2020. The PLI Scheme shall extend an incentive of 5% on incremental sales (over

base year of 2019-2020) for the prescribed list of medical devices manufactured in India to eligible companies for a period of five years starting from FY 2022-23. The key aspects of the guidelines cover issues on applicability, incentive, target segments, eligibility threshold criteria, expenditure incurred, duration of scheme, selection, implementation and DVA requirements.

Scheme for Promotion of Medical Devices Parks

File No. 31026/54/2020-Policy dated 27 July 2020

In line with its notification dated 21 July 2020, DoP released guidelines for Scheme for PMDP on 27 July 2020. PMDP has been introduced for easy access to standard testing and infrastructure facilities through the creation of common infrastructure facilities. It shall provide a one-time grant-in-aid of maximum INR 4bn for the creation of common infrastructure facilities in four selected Medical Device Parks proposed by the State Governments.



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Key aspects of the guidelines are set out below:

- Incentive outlay of INR 4bn to provide financial assistance for the construction of common infrastructure facilities in four medical device parks.
- PMDP will provide grant-in-aid to four medical device parks with a maximum limit of INR 1bn per park or 70% of the project cost of common infrastructure facilities, whichever is less.
- In case of hilly states and the Northeast region, the grant-in-aid would be INR 1bn per park or 90% of the project cost of common infrastructure facilities, whichever is less.
- Assistance under PMDP will be admissible for the creation of common infrastructure facilities by the State Government in a medical device park.
- Indicated common infrastructure facilities
 - Component testing centre
 - Electromagnetic interference laboratory
 - Biomaterial/ biocompatibility testing centre

- Medical grade low vacuum moulding, cabinet moulding, injection moulding centres
- Two-dimensional designing and printing for medical grade products
- Sterilisation and toxicity testing centre
- Radiation testing centre, etc.
- Tenure – FY 2020-21 to FY 2024-25.
- PMDP would be implemented through a one-time grant-in-aid to be released in various phases for creation of common infrastructure facilities in a medical device park to a State Implementing Agency to be set up by the respective State Government.
- The Scheme Steering Committee in the DoP shall approve the project components and funding thereof, depending upon the merits of the proposal.

Insurance Sector

Liberalisation of foreign investment norms for insurance intermediaries

Notification No. S.O. 1374(E) dated 27 April 2020

In line with Department of Financial Services' Notification No. G.S.R. 619(E) dated 2 September 2019 (Indian Insurance Companies (Foreign Investment) Amendment Rules, 2019), DPIIT also permitted 100% foreign equity investment in insurance intermediaries, subject to conditions, vide issue of Press Note No. 1 (2020 Series) dated 21 February 2020. This was followed by a corresponding change by the Ministry of Finance in the Foreign Exchange Management Act, 1999 vide issue of Foreign Exchange Management (Non-debt Instruments) (Second Amendment) Rules, 2020 dated 27 April 2020.

Miscellaneous

Empowered Group of Secretaries constituted

Notification No. P
36017/144/2020-Investment Promotion

Pursuant to the announcements by the Finance Minister earlier this year, the Central Government has announced the constitution of EGoS under the chairmanship of the Cabinet Secretary. EGoS will have both strategic and supervisory role in ensuring investment facilitation and promoting manufacturing. Their role would include the following:

- Identification of potential investors, potential clusters/ locations, sectors;
- Recommend incentive packages/ policies for sectors having export potential, import substitution;
- Adoption of best practices adopted by countries and States;
- Handholding investors in implementation process; and
- Create competitive environment for States for investment implementation.



Other developments

This covers developments on which PwC has not released Tax & Regulatory Insights.

Circulars, Notifications and Others

Intellectual Property

Geographical Indications of Goods (Registration and Protection) (Amendment) Rules, 2020

The amended rules were published and have been in force since 26 August 2020. Key changes brought by the amendments are as follows:

- Reduction in Fee:
 - Official fee for application for registration of an authorised user has been revised to INR 10 from INR 500.
 - Official fee for renewal of registration of an authorised user has been revised to INR 10 from INR 1000.
 - Official fee of INR 100 for issuance of certificate of registration to an authorised user of a registered GI has been omitted.

- Ease of procedure:
 - A person claiming to be a producer of a registered GI is permitted to make an application for registration as an authorised user on his/ her own, instead of a joint application required to be made by such producer and the previous owner of the registered GI.
 - The authorised user shall be entitled to get registered after completion of the advertisement period or dismissal of the opposition, as the case may be. The requirement of a proposed authorised user to apply and request for issuance of registration certificate the Registrar after such period is over or after the opposition is dismissed, has been removed.

Patent Prosecution Highways

In December 2019, India executed its first bilateral Patent Prosecution Highways pilot program between the Indian Patent Office and the Japan Patent Office. A

Patent Prosecution Highways comprises procedural mechanisms to facilitate accelerated patent prosecution between participating patent offices. Under the program, subject to applicable terms and conditions, applicants from Japan before the Indian Patent Office (and applicants from India before the Japan Patent Office) were entitled to fast track examination and processing of patent applications.

Insolvency and Bankruptcy Code

IBC (Amendment) Ordinance, 2019 dated 28 December 2019 and IBC (Amendment) Act, 2020 dated 13 March 2020 made effective from 28 December 2019

The Insolvency and Bankruptcy Code (Amendment) Ordinance, 2019 No.16 of 2019 dated 28 December 2019; The Insolvency and Bankruptcy Code (Amendment) Act, 2020 No.1 of 2020 dated 13 March 2020

Key changes made in the amendment are as follows:

- The amendment prescribed a threshold for filing the insolvency

petition in case of class of creditors as follows:

- In case of real estate companies, where a home buyer/ allottee makes the insolvency petition for a real estate project, the application has to be filed jointly by not less than 100 allottees of the same real estate project or 10% of the total allottees under that project, whichever is lower.
- Similarly, in other cases, with bondholders, etc., intending to file the insolvency petition, such petition has to be filed jointly by not less than 100 such creditors in the same class of 10% of the total number of such creditors in the same class, whichever is less.
- A non-obstante clause was introduced in the amendment, prescribing that a licence, permit, registration, quota, concession, clearances or a similar grant or right given by the central, state or local authority, sectoral regulator or any other authority, shall not be suspended, terminated on the grounds of insolvency, subject to the condition



Other developments

that there is no default in dues arising for the use or continuation of the said licence, permits, etc., during the moratorium period.

- Another non-obstante clause was introduced in the amendment, whereby blanket immunity is provided to the insolvent company and all its properties for all the past offences, if pursuant to the approval of the resolution plan, the insolvent company has been acquired by new promoters/management.
- The amendment further proposed that the insolvent company and its assets are free from any proceedings, attachment, seizure, confiscation, etc.; however, the promoters of such companies shall continue to be liable to be prosecuted under applicable laws, and the property of any such person shall also be subject to applicable proceedings.

Extension of section 10A of IBC

Notification No. S.O. 3265(E) dated 24 September 2020

The MCA notified a further period of three months from 25 September 2020 for the purposes of section 10A of IBC.

IBBI (Liquidation Process) (Second Amendment) Regulations, 2020

Notification No. IBBI/2020-21/GN/REG060 dated 20 April 2020 effective from 17 April 2020

A new regulation, Regulation 47A was inserted to exclude the period of lockdown imposed by the Central Government in the wake of Covid-19 outbreak for the purposes of computation of the timeline for any task that could not be completed due to such lockdown, in relation to any liquidation process.

IBBI (Insolvency Resolution Process for Corporate Persons) (Third Amendment) Regulations, 2020

Notification No. IBBI/2020-21/GN/REG059 dated 20 April 2020 effective from 29 March 2020

A new regulation, Regulation 40C was inserted to exclude the period of lockdown imposed by the Central Government in the wake of the Covid-19 outbreak for the purposes of computation of the timeline for any task that could not be completed due to such lockdown, in relation to a corporate insolvency resolution process.

IBBI (Insolvency Resolution Process for Corporate Persons) (Fourth Amendment) Regulations, 2020

Notification No. IBBI/2020-21/GN/REG064 dated 7 August 2020

The amendment prescribes that the Committee of Creditors shall evaluate the resolution plans as per the evaluation matrix and record its deliberations on the feasibility and viability of each plan. Further, voting on all resolution plans shall occur simultaneously.

The amendment further provides that in case only one plan is put to vote, and if the same receives the requisite majority, then it shall be considered as approved. In cases where two or more plans are put to vote,

the plan that receives with the highest votes (over and above the requisite majority), shall be considered as approved. Further, a tie-breaking formula shall be announced before voting, which shall be relied upon in case two or more plans receive equal and more than the requisite majority. In a situation, where none of the plans receive requisite majority, fresh voting on the plan that received the highest votes shall occur, subject to timelines under the IBC.

Quality Control Order

Gol issues the Toys (Quality Control) Order, 2020

Notification No. SO 853(E) dated 25 February 2020

DPIIT, Gol has issued the QCO. It deals with the regulation of toys and the materials for use in play by children under the age of 14 years. QCO contains several important provisions for toy safety which include:

BIS is the certifying and enforcement authority under the QCO



Other developments

As per the QCO, the Bureau of Indian Standards would be the certifying and enforcing authority for all toys imported and manufactured in India. As per the applicable provisions of the Bureau of Indian Standard Act, 2016 (section 16), it prohibits manufacturing, importing, distributing, selling, hiring, leasing, storing or exhibiting for sale toys that do not conform to the QCO from implementation date onwards. DPIIT has extended the date of implementation of QCO to 1 January 2021 from 1 September 2020. This decision has allowed manufacturers four months of extra time to make necessary arrangements for compliance of standards in view of difficulties arising out of Covid-19 pandemic.

Requirement for toys to conform to the latest version of a list of Indian Standards

Toys have been brought under compulsory Bureau of Indian Standards certification with effect from 1 January 2021 (as per the amendment order). The latest version of the Indian Standards including its amendments, as notified by the Bureau

from time to time, will apply from the implementation date. The order mandates toys to bear the Standard Mark under a licence from the Bureau as per Scheme-I of Schedule-II of Bureau of Indian Standards (Conformity Assessment) Regulations, 2018. Scheme-I had been chosen for the purpose of ensuring stricter monitoring of quality of goods as the objective of the conformity assessment measure (licensing) is to primarily ensure safety of toys for use of children and BIS keeps the same under focus with minimum possible costs involved. In pursuance of the QCO, Bureau of Indian Standard has initiated the process to grant licence to manufacturers of toys for use of Bureau of Indian Standard's Standard Mark.

Corporate Law

Special Measures under Companies Act, 2013 and Limited Liability Partnership Act, 2008 in view of Covid-19 outbreak

General Circular No. 11/2020

The outbreak of Covid-19 has caused

economic disruptions caused by to the word. In order to support the Companies and LLPs, MCA has taken the following measures to reduce their compliance burden and other risks:

- No additional fees shall be charged for late filing during a moratorium period.
- The mandatory requirement of holding meetings of the Board of the companies within the intervals provided in section 173 of the CA Act (120 days) stands extended by a period of 60 days till next two quarters (upto 30 September 2020).
- The Companies (Auditor's Report) Order, 2020 shall be made applicable from FY 2020-2021 instead of being applicable from FY 2019-2020 notified earlier.
- The minimum residency requirement in India for a period of at least 182 days by at least one director of every company under section 149 of the CA Act shall not be treated as a non-compliance for the FY 2019-20 & 2020-21 in case of default.

- Extension of time of 180 days to newly incorporated companies from filing of declaration of commencement of business.
- If the Independent Director does not hold minimum one meeting during FY 2019-20, the same shall not be viewed as non-compliance.

Medical Devices

Revised definition of the term 'Medical Devices' and introduction of concept of voluntary registration

The MoHFW has further widened the scope of the term 'Medical Devices' to include all type of medical devices within ambit of the Medical Device (Amendment) Rules, 2020, whether such medical device is intended to be used in human beings or animals w.e.f. 1 April 2020, vide its notification dated 11 February 2020. Further, the Ministry of Chemicals and Fertilizers, vide its notification dated 31 March 2020, inserted provisions in relation to the governing of such Medical Devices under the Drugs (Price Control) Order, 2013.

Other developments

Revised definitions have been set out below:

All devices including an instrument, apparatus, appliance, implant, material or other article, whether used alone or in combination, including a software or an accessory, intended by its manufacturer to be used specially for human beings or animals which does not achieve the primary intended action in or on human body or animals by any pharmacological or immunological or metabolic means, but which may assist in its intended function by such means for one or more of the specific purposes of —

1. diagnosis, prevention, monitoring, treatment or alleviation of any disease or disorder;
2. diagnosis, monitoring, treatment, alleviation or assistance for, any injury or disability;
3. investigation, replacement or modification or support of the anatomy or of a physiological process;
4. supporting or sustaining life;

5. disinfection of medical devices; and
6. control of conception.

Separately, voluntary registration window of a period of 18 months for manufacture/ import/ distribution of such medical devices (other than the prescribed list of 37 medical devices) has been introduced by the Government as an initial step. Relaxation in relation to compliance with Medical Devices Rules, 2017 for an initial period of 30/ 42 months has also been provided by the Government for the respective prescribed categories of medical devices.

The above Medical Device Rules, 2017, and amendments shall provide the direction for growth and much needed transformation to the sector.

Classification of non-notified medical devices

In continuation and with reference to the Medical Devices (Amendment) Rules, 2020 released earlier this year, the Central Drugs Standard Control Organisation, on 3 September 2020, released a draft classification of medical devices along with description/ intended use and

risk classification under each category. This classification is intended to streamline the registration process of medical devices and align with international practices. The various categories as per the draft and number of devices under each category are set out below:

Sr. No.	Categories of Medical Device	Total no. of devices
1.	Anaesthesiology	115
2.	Pain Management	69
3.	Cardiovascular	37
4.	Dental	89
5.	Ear, Nose, Throat (ENT)	78
6.	Gastroenterological	163
7.	Urological	90
8.	General Hospital	72
9.	Operation Theatre (OT)	27
10.	Respiratory	71
11.	Neurological	131
12.	Personnel use	24
13.	Obstetrical and Gynaecological (OG)	116
14.	Ophthalmic	144
15.	Rehabilitation	48
16.	Physical support	38
17.	Interventional and Radiology	71
18.	Rheumatology	11
19.	Dermatology and Plastic Surgery	56
20.	Paediatric and Neonatology Medical	137
21.	Oncology	78
22.	Radiotherapy	102
23.	Nephrology and Renal care	39
24.	Software	60



Annexures

Annexures

1. Tax & Regulatory Insights
2. Thought Leaderships
3. Treaties & Agreements
 - Tax Information Exchange Agreements
 - Social Security Agreements
 - Limited Tax Treaties
 - Double Taxation Avoidance Agreements
 - List of tax treaties where synthesised text (treaty read with the MLI) is available as on 30 November 2020
 - Signatories of the Multilateral Competent Authority Agreement on the Exchange Country-by-Country Reports
4. Abbreviations



Tax & Regulatory Insights

Sl. No.	Date	Topic/Subject	Ruling/ Notification/ Circular
1	06-Dec-19	SEBI issues consultation paper on introduction of performance benchmarking and standardisation of private placement memorandum for AIFs	Consultation Paper on Introduction of Performance Benchmarking and Standardization of Private Placement Memorandum for Alternative Investment Funds
2	07-Dec-19	Supreme Court upholds sales tax on Time Charter arrangement	Civil Appeal No. 3383 of 2004
3	10-Dec-19	Tribunal upholds allowance of depreciation on goodwill acquired and non-compete fee paid on purchases of business	ITA Nos. 1664 to 1666/Chny/2019
4	12-Dec-19	Visa on Arrival in India facility extended to UAE nationals	https://indianvisaonline.gov.in/visa/visa-on-arrival.html
5	12-Dec-19	Validity of OCI Card under miscellaneous services guidelines	Press Release - Advisory on Validity of Overseas Citizen of India Card dated 19 November 2019
6	13-Dec-19	Bill proposed to amend the Insolvency and Bankruptcy Code	Bill No. 376 of 2019
7	13-Dec-19	Indian Stamp Act, 1899 – Amendments	Notification No. GSR 901(E) dated 10 December 2019
8	16-Dec-19	E-Invoice for taxpayers with turnover above 1bn in B2B segment and QR code for taxpayers with turnover above 5bn in B2C segment (respectively) made mandatory from 1 April 2020	Notification Nos. 68 to 72/2019-Central Tax, dated 13 December 2019
9	19-Dec-19	GST Council extends date for filing annual returns and reconciliation statement, introduces measures to address consequences for non-filing of returns and fraudulent ITC	Press Release ID nos. 1596894, 1596895 and 1596896
10	23-Dec-19	Additional amendment in SEZ Rules – notified	Notification No. GSR 940(E) dated 17 December 2019
11	28-Dec-19	E-Invoicing System – GSTN releases API Specs and FAQs	https://www.gstn.org/e-invoice/
12	03-Jan-20	CBDT prescribes modes of electronic payment for section 269SU of the Income-tax Act, 1961	Circular No. 32/2019 and Notification No. 105 / 2019
13	07-Jan-20	ITR 1 and ITR 4 Forms for FY 2019-20 notified	Notification No. GSR 9(E) dated 3 January 2020
14	08-Jan-20	The Insolvency and Bankruptcy Board of India (Liquidation Process) Regulation, 2016 - Amended	IBBI/2019-20/GN/REG053
15	08-Jan-20	Exemption from excise duty under incentive scheme does not automatically cover other types of duty or cess imposed by different legislations	Civil Appeal Nos. 9237 with 9238 of 2019
16	09-Jan-20	Tribunal holds that preference share capital should be included in total liabilities for valuing unquoted equity shares under Rule 11UA	ITA No. 2172/Del/2018
17	10-Jan-20	Eligibility conditions to file Forms ITR-1 and ITR-4 relaxed	Press release dated 9 January 2020

Sl. No.	Date	Topic/Subject	Ruling/ Notification/ Circular
18	13-Jan-20	SEBI issues operating guidelines for Investment Advisers in IFSC	SEBI/HO/IMD/DF1/CIR/P/2020/04
19	14-Jan-20	Amendment of net foreign exchange conditions for units located in an IFSC	Notification No. G.S.R. 12(E) dated 31 December 2019
20	14-Jan-20	RBI relaxes operating framework for IBUs in IFSC	RBI Circular No. DBR.IBD.BC.26/23.13.004/2019-20 dated 23 December 2019
21	14-Jan-20	Tribunal accepts operating profit/ value added expense as the profit level indicator for a freight forwarder	ITA No. 1030/Mum/2015
22	15-Jan-20	Tribunal holds that capital gains arising under section 46A of the Act, on buyback of shares, not exempt under section 47(iv) of the Act	ITA Nos. 1783 and 1784/Bang/2018
23	20-Jan-20	Government mandates companies and importers to review imports under "Others" category	Trade Notice No. 46/2019-20 dated 17 January 2020
24	21-Jan-20	Tribunal deletes addition under section 56(2)(viib), basis specific fact pattern and observing there was nothing to suggest use of unaccounted money in the garb of share premium	ITA No. 2222/Del/2019
25	22-Jan-20	Guidance Note on section 92E of the Income-tax Act, 1961 revised by the ICAI	
26	25-Jan-20	Gujarat High Court quashes the levy of Service Tax and GST on ocean freight under reverse charge on importers	Special Civil Application No. 726 of 2019
27	27-Jan-20	Delhi bench of Tribunal holds, on facts, that revenue shared was diversion of income by overriding title	ITA Nos. 1731, 1732 and 6114 Del/2014
28	28-Jan-20	Jharkhand High Court holds action to recover ITC cannot be taken against a bona fide purchaser due to seller's default in paying VAT dues	W.P. (T) No. 5978 of 2018
29	31-Jan-20	Tribunal upholds adoption of "opening price" on next working day as cost of shares received on redemption of GDRs on a stock exchange holiday	ITA No. 8140/Mum/2010
30	31-Jan-20	Compensation received in lieu of flat given to developer under development agreement taxed as "capital gains" and not "income from other sources"	ITA No. 4070/Mum/2016
31	06-Feb-20	Vivad Se Vishwas - Direct Tax Dispute Resolution Scheme 2020 tabled in the Parliament	Bill No. 29 of 2020
32	13-Feb-20	Companies Act, 2013 update - MCA looks to streamline the operational aspects with new amendments and rules	Notification No. F. No. 1/13/2013 CL-V, Vol. IV dated 6 February 2020
33	13-Feb-20	Supreme Court holds that unutilised balance of MODVAT credit at year end not deductible under section 43B of the Act	Civil Appeal No.11923 & 11924 of 2018
34	20-Feb-20	Monitoring of FTAs usage to become more stringent with proposed amendments in the Finance Bill, 2020	The Finance Bill, 2020 [Bill No. 26 of 2020]

Sl. No.	Date	Topic/Subject	Ruling/ Notification/ Circular
35	24-Feb-20	Implementation of faceless e-assessment proposed in customs – Comments sought from stakeholders	Concept Paper on Faceless e-Assessment
36	25-Feb-20	Delhi High Court upholds initiation of reassessment proceedings based on investigation authorities report	W.P.(C) 11302/2019, CM APPL. 46536/2019, CM APPL. 46537/2019 & CM APPL. 46538/2019
37	05-Mar-20	Supreme Court affirms newly formed Trusts are eligible for registration under section 12AA of the Income-tax	Civil Appeal No. 4702/2014
38	06-Mar-20	Mumbai bench of the Tribunal rules on relationship between sub-sections (1) and (2) of section 92A relating to definition of Associated Enterprise	ITA No. 2165/Mum/15
39	09-Mar-20	Vivad se Vishwas: Direct Tax Dispute Resolution Scheme, 2020	Bill No. 29-C of 2020 as passed by Lok Sabha on 4 March 2020 and Circular No. 07/2020 dated 4 March 2020
40	11-Mar-20	Supreme Court holds that a satisfaction note prepared by the TO of the other person is sufficient for initiating proceedings under section 153C of the Act, where the TO of the searched person and other person is the same	Civil Appeal Nos. 2006-2007 of 2020, 2008-2009 of 2020, 2010-2011 of 2020 and 2012-2013 of 2020
41	11-Mar-20	Central Government notifies additional list of securities traded on a recognised stock exchange located in IFSC which when transferred by specified investors shall not be regarded as a transfer	Notification No. 16/2020, F. No. 370142/22/2019-TPL dated 5 March 2020
42	12-Mar-20	Tribunal holds that tax was required to be withheld on fees paid to non-resident attorney for rendering services in connection with IP registration in foreign jurisdiction as it was in the nature of FTS under section 9(1)(vii) of the Act	ITA No. 2006/Kol/2017
43	14-Mar-20	Delhi High Court holds section 44 of the Act being a special provision for insurance companies, overrides the applicability of section 14A of the Act for such companies	ITA No. 172/2020
44	16-Mar-20	Transfer by a Belgian resident company, of shares in a Singapore company having an Indian subsidiary, taxable only in Belgium under Article 13(6) of the tax treaty between India and Belgium	ITA No. 7241/Mum/2018
45	16-Mar-20	GST Council extends date for implementation of e-invoice, simplified monthly return and annual returns, extends foreign trade benefits, and introduces various other trade facilitation measures	Press Release on the thirty ninth GST Council Meeting dated 14 March 2020
46	19-Mar-20	Central Government specifies EFIs transacting in recognised stock exchanges located in an IFSC shall be deemed as FIIs	Notification No. 17/2020 dated 13 March 2020
47	19-Mar-20	RBI issues guidelines to regulate payment aggregators and payment gateways	Notification No. RBI/DPSS/2019-20/174 DPSS.CO.PD. No.1810/02.14.008/2019-20 dated 17 March 2020
48	20-Mar-20	Vivad se Vishwas: Rules and Forms prescribed	Notification No.18/2020, F. No. IT(A)/1/2020-TPL dated 18 March 2020
49	23-Mar-20	Proviso to section 43CA of the Act, inserted from 1 April 2019, permitting consideration to be within a range of five percent has retrospective effect	ITA No. 198/Mum/2019

Sl. No.	Date	Topic/Subject	Ruling/ Notification/ Circular
50	23-Mar-20	Tribunal holds that for computing foreign tax credit, net foreign income taxable in India should be considered	ITA No. 1135/AHD/2017 dated 6 March 2020
51	24-Mar-20	COVID-19 update: Relief measures relating to statutory and regulatory compliance matters announced by Finance Minister	Press Release dated 24 March 2020
52	25-Mar-20	Union Cabinet approves India incentive schemes on domestic manufacturing for electronics and health sector	Press Release dated 21 March 2020
53	25-Mar-20	Finance Bill, 2020 as passed by the Lok Sabha – amendments related to Financial Services sector	Bill No. 26-C of 2020 as passed by Lok Sabha on 23 March 2020
54	27-Mar-20	Tribunal holds that participation by a non-resident celebrity in a product launch event outside India, targeted for the Indian market, triggered business connection for him	ITA No. 2195/Mum/2017
55	27-Mar-20	Amendments to the Finance Bill, 2020, as passed by the Lok Sabha	Bill No. 26-C of 2020 as passed by Lok Sabha on 23 March 2020 and The Finance Act, 2020 No. 12 of 2020 dated 27 March 2020
56	31-Mar-20	Delhi bench of Tribunal holds that acquisition of shares in a scheme of arrangement and merely showing it as stock-in-trade, does not constitute business of dealing in shares	ITA No. 2191 & 2006/Del/2017
57	31-Mar-20	Companies Fresh Start Scheme, 2020 and LLP Settlement Scheme, 2020	General Circular No. 12/2020
58	01-Apr-20	Foreign Trade Policy extended with relaxation in timelines due to COVID-19 pandemic	Public Notice No.67/2015-20 and Notification No. 57/2015-20 dated 31 March 2020 issued by the Directorate General of Foreign Trade
59	02-Apr-20	Taxation and Other Laws (Relaxation of Certain Provisions) Ordinance, 2020	The Taxation and other laws (Relaxation of Certain Provisions) Ordinance, 2020 No. 2 of 2020, comes into force with immediate effect from 31 March 2020
60	03-Apr-20	Government releases notification for incentive schemes for electronic products/ components - PLI and SPECS	PLI – Notification no - CG-DL-E-01042020-218990 dated April 1, 2020 and SPECS – Notification No CG-DL-E-01042020-218992 dated April 1, 2020
61	06-Apr-20	CBIC issues notifications and circular to implement relief measures for COVID-19	Notification No. 31/2020 – Central Tax dated 3 April 2020; Notification No. 32/2020 – Central Tax dated 3 April 2020; Notification No. 33/2020 – Central Tax dated 3 April 2020; Notification No. 36/2020 – Central Tax dated 3 April 2020.
62	07-Apr-20	SEBI consultation paper on proposed amendments to SEBI (Delisting of Equity Shares) Regulations, 2009 – public comments requested	Consultation Paper on Amendment to SEBI (Delisting of Equity Shares) Regulations, 2009 for Schemes of Arrangement dated 16 March 2020
63	10-Apr-20	Rajasthan AAR rules that consideration paid to directors of a company will attract GST under RCM in the hands of the company	Advance Ruling No. RAJ/AAR/2019-20/33 dated 20 February 2020

Sl. No.	Date	Topic/Subject	Ruling/ Notification/ Circular
64	15-Apr-20	COVID-19 impact on India immigration	Advisory: Travel and visa restrictions related to COVID-19 dated 31 March 2020
65	18-Apr-20	Change in FDI Policy – Prior Government approval required for FDI from countries with which India shares land border	Press Note No. 3 (2020 Series), DPIIT File No.: No. 5(5)/2020-FDI Policy, dated 17 April 2020
66	23-Apr-20	SEBI consultation paper proposing relaxation in pricing of preferential issues and exemption from open offer for acquisition in companies having financial stress	Consultation Paper-Preferential Issue in companies having stressed assets dated 22 April 2020
67	27-Apr-20	Supreme Court holds that principle of promissory estoppel does not apply in cases where the subsequent notification is clarificatory and does not take away any vested right	Civil Appeal Nos. 2256-2263 of 2020 dated 22 April 2020
68	29-Apr-20	Liberalisation of foreign investment norms in insurance intermediaries and other changes in Non-debt Rules	Notification No - S.O. 1374(E) dated 27 April 2020
69	30-Apr-20	The Supreme Court upholds constitutional validity of clause (f) of section 43B of the Income-tax Act, 1961, relating to disallowance for sums payable in lieu of leave	Civil Appeal No. 3545/2009
70	02-May-20	Supreme Court holds that value of post-importation services provided by supplier of equipment cannot be included in assessable value of imported equipment when it's not a condition of supply	Civil Appeal No. 6398 of 2009
71	11-May-20	Delhi High Court reads down circular dated December 2017 to the extent that it restricts rectification of Form GSTR-3B with respect to period in which error occurred	W.P.(C) 6345/2018, CM APPL. 45505/2019
72	11-May-20	High Court holds that time limit for filing FORM GST TRAN-1 for transitioning the credit is directory and cannot take away vested right of credit accrued as on 1 July 2017; permits taxpayers to claim transition credit until 30 June 2020	W.P.(C) 11040/2018 and C.M. No. 42982/2018, W.P.(C) 196/2019 and CM APPL. 965/2019, W.P.(C) 8496/2019, W.P.(C) 13203/2019
73	12-May-20	Subsequent sale by purchaser, of property purchased under an agreement cum general power of attorney, not taxable in hands of original owner	ITA No. 2225/HYD/2018
74	12-May-20	Amendments to Rule 44G on Mutual Agreement Procedure	Notification No. G.S.R. 282(E) dated 6 May 2020
75	14-May-20	COVID-19 update: Relief measures announced by Finance Minister to support Indian economy	Press Releases 1 & 2 dated 13 May 2020
76	17-May-20	COVID-19 update: Economic and regulatory measures announced by Finance Minister to help boost the Indian economy	Press Releases No. 1 & 2 dated 17 May 2020
77	22-May-20	Karnataka Appellate Authority for Advance Rulings issues two orders on services provided by a developer under a revenue-share JDA and temporary housing rentals earned by a religious trust	Order No. KAR/AAAR-19/2020-21 dated 4 May 2020
78	03-Jun-20	Measures to boost domestic manufacturing of medical devices	Notification on Production Linked Incentive Scheme for Promoting Domestic Manufacturing of Medical Devices dated 28 May 2020

Sl. No.	Date	Topic/Subject	Ruling/ Notification/ Circular
79	05-Jun-20	Operative guidelines released for schemes in electronics manufacturing sector	Appraisal and Disbursement Guidelines for effective functioning of the Scheme for Promotion of Manufacturing of Electronic Components and Semiconductors (SPECS) dated 1 June 2020
80	05-Jun-20	Impact of COVID-19 on travel and visa restrictions for foreign nationals	MHA Order No. 25022/24/2020-F.V./F.I.
81	06-Jun-20	Amendments to the Insolvency and Bankruptcy Code	The Insolvency and Bankruptcy Code (Amendment) Ordinance, 2020 No. 9 of 2020 dated 5 June 2020
82	08-Jun-20	Phased roll out of faceless e-assessment in customs	
83	08-Jun-20	Mumbai bench of Tribunal holds that transfer of development rights not taxable as capital gains, as conditions attached to the transfer not fulfilled	ITA No. 3251/Mum/2018
84	09-Jun-20	Delhi bench of the Tribunal allows deduction as bad debt, of income wrongly offered to tax in earlier year as capital gains but not recovered	ITA No. 5169/Del/2017
85	09-Jun-20	NCLAT dismisses appeals of minority shareholders against NCLT's order approving reduction of share capital under section 66 of the Companies Act, 2013	Company Appeal (AT) No. 365 and 366 of 2019
86	09-Jun-20	Public Procurement (Preference to Make in India) Order, 2017 - amended	Order No. P-45021/2/2017-PP (BE-II) dated 4 June 2020
87	11-Jun-20	Delhi bench of Tribunal holds that transfer of shares of an Indian company, owning an IT Park, was not chargeable to tax in India under the pre-amended India-Cyprus tax treaty	ITA No. 1152/Del/2016
88	13-Jun-20	GST Council further waives/ reduces late fees and interest on delay in filing of Form GSTR-3B	Press Release dated 12 June 2020
89	15-Jun-20	Empowered Group of Secretaries constituted	Notification No. P 36017/144/2020 - Investment Promotion
90	17-Jun-20	High Court reiterated that time limit to file FORM GST TRAN-1 is directory and not mandatory, despite retrospective amendment to prescribe timeline; held bona fide mistakes not irreparable	W.P.(C) 13151/2019
91	19-Jun-20	Delhi bench of Tribunal holds that guarantee fees is not chargeable to tax as interest or FTS under the India-Netherlands tax treaty	ITA No. 6461 & 6462/Del/2015
92	23-Jun-20	Bombay High Court allows claim for carry forward of losses of US sub-trusts in their hands in spite of conversion of the Trust to an LLC	Writ Petition No. 2796 of 2019, 2803 of 2019 and 3525 of 2019
93	25-Jun-20	RBI releases proposed changes in regulations applicable to housing finance companies for public comments	RBI releases proposed changes in regulations applicable to Housing Finance Companies (HFCs) for public comment dated 17 June 2020
94	25-Jun-20	The Central Government further extends timelines specified under the Taxation and Other Laws (Relaxation of Certain Provisions) Ordinance, 2020	Notification No. 35/2020 dated 24 June 2020
95	26-Jun-20	High Court allows availing transition credit in Form GSTR-3B, if the portal to file Form GST TRAN-1 is not opened by 30 June 2020	CWP No. 8213 of 2020 (O&M) & CWP No. 8215 of 2020 (O&M)

Sl. No.	Date	Topic/Subject	Ruling/ Notification/ Circular
96	29-Jun-20	Central Government notifies criteria for classification and procedure for filing of memorandum by MSMEs	Notification No. S.O. 2119(E) dated 26 June 2020
97	29-Jun-20	Central Government further extends due dates for compliance, procedures and applications as a relief measure in view of COVID-19 pandemic	Notification Nos. 55/2020- Central Tax dated 27 June 2020, 56/2020- Central Tax dated 27 June 2020 and GSR 418E dated 27 June 2020.
98	01-Jul-20	CBDT grants relief to certain share transactions consummated below “fair value”	Notification Nos. 40/2020/F. No.370149/143/2019-TPL and 42/2020/F. No.370149/143/2019-TPL
99	02-Jul-20	Supreme Court dismisses Revenue’s SLP against income from sale of land, held as an investment by a developer, being upheld as capital gains	Special Leave Petition (Civil) Diary No. 40693 of 2019
100	04-Jul-20	Stamp duty on securities transactions effective from 1 July 2020	7 FAQs issued on 30 June 2020
101	06-Jul-20	SEBI (Investment Advisers) (Amendment) Regulations, 2020 notified	Notification No. SEBI/LAD-NRO/GN/2020/22 dated 3 July 2020
102	08-Jul-20	Gujarat Authority for Advance Rulings issues GST orders on sale of developed plots and concessional GST rate for affordable housing	Advance Ruling no. GUJ/GAAR/R/2020/11 dated 19 May 2020 & Advance Ruling no. GUJ/GAAR/R/2020/14 dated 19 May 2020
103	13-Jul-20	Visa and travel restrictions for foreign nationals and OCI cardholders	No 4/1/2020 dated 3 July 2020
104	15-Jul-20	National Anti-Profitteering Authority holds a multiplex owner guilty of profiteering in view of the reduction in GST rate	TS-501-NAA-2020-NT
105	15-Jul-20	CBIC issues FAQs on manufacturing and other operations in customs bonded warehouse	Frequently asked questions on Manufacture and Other Operations in Customs Warehouse
106	16-Jul-20	Larger Bench of Tribunal holds that foreclosure charges collected by banks and NBFCs on premature termination of loans is not leviable to service tax; analyses what constitutes “consideration” for service and damages for breach of contract	Service Tax Appeal No. 511 of 2011-LB with Service Tax Cross Application No. 40320 of 2018
107	22-Jul-20	Madras High Court holds Rule 117 of the CGST Rules to be intra vires section 140 of the CGST Act to conclude that time limit specified under Rule 117 of the CGST Rules is mandatory and not directory	Writ Petition No. 8890 of 2020 and WMP No. 10803 of 2020
108	24-Jul-20	Scheme of amalgamation, once approved by High Court, is of binding nature	ITA No.84/Kol/2019 and ITA No. 2389/Kol/2018
109	27-Jul-20	Consumer Protection (E-commerce) Rules, 2020 notified	Notification No. GSR 462(E) dated 23 July 2020
110	28-Jul-20	Amendment in General Finance Rules, 2017 imposing restrictions including prior registration requirement for bidders from countries sharing land border to participate in public procurements	Office Memorandum No. F. No. 6/18/2019-PPD dated 23 July 2020
111	28-Jul-20	MeitY Committee Report on NonPersonal Data Governance Framework – open to public comments until 13 August 2020	Report by the Committee of Experts on Non-Personal Data Governance Framework
112	29-Jul-20	Supreme Court holds that a project office in India, carrying on preparatory and auxiliary activities, does not constitute a fixed place permanent establishment under the India-Korea tax treaty	Civil appeal No. 12183 of 2016

Sl. No.	Date	Topic/Subject	Ruling/ Notification/ Circular
113	30-Jul-20	Tribunal holds slump sale of business to be succession for depreciation in the hands of purchaser; allows depreciation on goodwill recorded as a result of the purchase	ITA Nos. 306/Mum/2019 and 6919/Mum/2018 and C.O. No. 07/Mum/2020
114	31-Jul-20	Guidelines issued for incentive schemes in the medical devices sector	File No. 31026/19/2020-MD dated 27 July 2020 and File No. 21026/54/2020-Policy dated 27 July 2020
115	31-Jul-20	National Education Policy, 2020 Highlights - School Education	National Education Policy 2020
116	31-Jul-20	National Education Policy, 2020 Highlights - Higher Education	National Education Policy 2020
117	31-Jul-20	Second phase rollout of faceless e-assessment in customs	Notification No. 63/ 2020-Customs (NT) read with Circular No. 34/2020-Cus dated 30 July 2020
118	31-Jul-20	Guidelines issued for incentive schemes in the pharmaceuticals (drugs) sector	Guidelines for the Production Linked Incentive Scheme for promotion of domestic manufacturing of critical Key Starting Materials/ Drug Intermediaries/ Active Pharmaceutical Ingredients in India
119	03-Aug-20	Supreme Court holds that a separate agreement for non compete fee, on facts, not sham; not taxable as part of capital gains on shares	Civil Appeal No. 12044 of 2016
120	03-Aug-20	Gujarat High Court allowed refund of ITC availed on input services under inverted duty structure category; Explanation (a) of Rule 89(5) of the CGST Rules ultra vires to section 54(3) of the CGST Act	Special Civil Application Number 2792 of 2019
121	04-Aug-20	Gujarat High Court holds that an Indian subsidiary providing services to its parent outside India cannot be treated as establishment of a "distinct person" to deny benefit of exports	R/Special Civil Application No. 12626 of 2018
122	04-Aug-20	Supreme Court admits Revenue's SLP on certain tax issues specific to insurance companies	Special Leave Petition (Civil) Diary No. 5280 of 2020
123	05-Aug-20	Gujarat High Court upholds constitutional validity of "place of supply" provisions under GST law for intermediary services based on "location of supplier"	W.P.(C) 13238/2018
124	07-Aug-20	Tribunal holds "capital reserve" recorded under the purchase method of accounting for amalgamation is not "revaluation reserve" for purposes of section 115JB of the Act	ITA No. 764/Del/2020
125	10-Aug-20	Delhi Tribunal holds that Indian bank of the exporter in India is not liable to pay service tax under reverse charge on bank charges levied by Foreign banks	Service Tax Appeal No. 51138 of 2017
126	14-Aug-20	CBDT publishes detailed guidance on MAP	F. No. 500/09/2016-APA-I/MAP Guidance/2020
127	17-Aug-20	Central Government amends E-assessment Scheme, 2019 to conduct faceless assessments	Press Information Bureau, Ministry of Finance, 4 August 2020
128	17-Aug-20	Madras High Court upholds exemption under section 47(v) of the Act, where entire share capital of subsidiary held by the holding company and its nominees	Tax Case Appeal No. 485 of 2018
129	19-Aug-20	Receipt of shares in an amalgamated company in lieu of shares in an amalgamating company, results in transfer	ITA Nos. 822, 853, 935 & 961/2005 (Delhi)

Sl. No.	Date	Topic/Subject	Ruling/ Notification/ Circular
130	24-Aug-20	Karnataka AAAR holds supply of goods and services under warranty contract as composite supply, with principal supply being services; infers the term “recipient of supply” as the person obligated to make payment to supplier under the contract	Order No. KAR/AAAR-14-B/2019-20, dated 9 February 2020
131	24-Aug-20	Karnataka AAAR holds that gamut of services provided in course of relocation management, as a package, is taxable as “mixed supply”	Order No. KAR/AAAR 14-C/2019-20
132	24-Aug-20	SEBI consultation paper – Recalibration of threshold for MPS norms	SEBI Consultation Paper – Recalibration of threshold for Minimum Public Shareholding norms, enhanced disclosures in Corporate Insolvency Resolution Process (CIRP) cases dated 19 August 2020
133	25-Aug-20	Tribunal holds that transfer of development rights by a taxpayer as capital contribution to an AOP, does not attract section 50C of the Act	ITA No. 2279/Mum/2017
134	25-Aug-20	Amendments widening the scope of CSR activities under the Companies Act, 2013	Notification Nos. GSR 526(E) and GSR 525(E) dated 24 August 2020
135	25-Aug-20	Government notifies rules administering origin compliance in relation to FTAs	Notification No. 81/2020–Customs (N.T.) dated 21 August 2020 and Circular No. 38/2020-Customs dated 21 August 2020
136	27-Aug-20	Karnataka Industrial Policy 2020-25	New Industrial Policy 2020-25 dated 13 August 2020
137	28-Aug-20	CBIC mandates personal hearings via video conferencing for proceedings before Adjudicating and Appellate Authorities; option to request for e-hearing extended for appeals before the benches of the CESTAT	Public Notice No. 2 of 2020 dated 10 August 2020; Public Notice No. 3 of 2020 dated 14 August 2020 and Public Notice No. 4 of 2020 dated 16 August 2020.
138	31-Aug-20	GST Council discusses borrowing options to compensate States for GST shortfall; time period for levy of GST Compensation Cess expected to extend beyond financial year 2021-22	Press Release on the forty-first GST Council Meeting dated 29 August 2020
139	02-Sep-20	Government notifies capping of benefit and phasing out of Merchandise Exports from India Scheme	Notification No. 30/2015-20 dated 1 September 2020
140	07-Sep-20	PAN India rollout of faceless e-assessment in customs	Circular No. 40/2020-Cus and Notification No. 85/2020-Customs (NT) dated 4 September 2020
141	08-Sep-20	Companies (Acceptance of Deposits) Rules, 2014 amended to provide relaxation of acceptance of deposits by start-ups	Notification No. G.S.R. 548(E) dated 7 September 2020
142	10-Sep-20	SEBI issues operating guidelines for portfolio managers in IFSC	Circular No. SEBI/HO/IMD/DF1/CIR/P/2020/169 on 9 September 2020
143	14-Sep-20	Tribunal holds section 50D applies where land transferred under a JDA; rejects adoption of future cost of construction of built up area to be received as full value of consideration	ITA No. 923/Bang/2018

Sl. No.	Date	Topic/Subject	Ruling/ Notification/ Circular
144	17-Sep-20	The Gujarat Industrial Policy 2020	
145	18-Sep-20	Liberalisation of foreign investment limit in defence sector	DPIIT File No.: 5(8)/2020-FDI Policy
146	24-Sep-20	Parliament passes the Foreign Contribution (Regulation) Amendment Bill, 2020	
147	28-Sep-20	Parliament passes the Code on Social Security, 2020	PIB Press Release dated 23 September 2020
148	28-Sep-20	Parliament passes the Industrial Relations Code, 2020	
149	28-Sep-20	Parliament passes the Occupational Safety, Health and Working Conditions Code, 2020	
150	29-Sep-20	Madras High Court holds transfer of undertaking for non-monetary consideration is not 'slump sale'; not chargeable to tax under section 50B of the Act	Tax Case Appeal No. 673 of 2018
151	30-Sep-20	Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 notified	No. 38 of 2020 dated 29 September 2020
152	30-Sep-20	CBDT issues guidelines on applicability of TDS on e-commerce operators and TCS on sale of goods	Circular No. 17/2020 dated 29 September 2020
153	01-Oct-20	Tribunal holds Mauritius FII entitled to carry forward past capital losses, without setting off exempt capital gains in current year	ITA No. 2201/Mum/2017
154	05-Oct-20	Government relaxes deadlines for e-invoicing, filing of GST Annual Return and audit report; prescribes 100% security for imports under Foreign Trade Agreement where inquiry or verification is initiated	Notification No. 69/2020-(CT) dated 30 September 2020
155	06-Oct-20	GST Council extends compensation cess indefinitely beyond June 2022; existing return filing system to continue till 31 March 2021; and proposes enabling of auto-population of Form GSTR-3B from Form GSTR-1	Press Release on the forty-second GST Council Meeting dated 5 October 2020
156	08-Oct-20	Parliamentary Standing Committee recommends continuation of 'virtual courts' post-pandemic	https://www.livelaw.in/pdf_upload/pdf_upload-381310.pdf
157	09-Oct-20	Government issues FAQs on rules administering origin compliance in free trade agreements	https://www.cbic.gov.in/resources/htdocs-cbec/customs/CarotarBrochure_8thOct2020.pdf
158	14-Oct-20	Tribunal holds dividend distribution tax payable by a company is subject to maximum rate in the relevant tax treaty	ITA No. 7075/DEL/2017
159	16-Oct-20	Mumbai bench of CESTAT lifts corporate veil to reject assessable value between two Indian subsidiaries of an overseas parent; holds that companies are artificially created to maintain lower selling price for payment of excise duty	2020-TIOL-1471-CESTAT-MUM
160	19-Oct-20	Madras High Court decides against carry forward of unutilised cess into GST	W.P. No. 4773 of 2018
161	20-Oct-20	Clarification regarding FDI in uploading/ streaming of news and current affairs through digital media	DPIIT File No.: 5(4)/2019-FDI Policy dated 16 October 2020
162	22-Oct-20	The Patents (Amendment) Rules, 2020	Notification No. G.S.R. 652(E) dated 19 October 2020

Sl. No.	Date	Topic/Subject	Ruling/ Notification/ Circular
163	27-Oct-20	High Court holds that the fifth (now sixth) proviso to section 32(1) of the Act applies only in the year of succession; allows depreciation on assets acquired in case of succession of a firm by a company on cost incurred for acquisition	ITA No. 154 of 2014
164	28-Oct-20	Government issues additional clarifications on manufacturing and other operations in bonded warehouse	Circular No. 48/2020-Cus dated 27 October 2020
165	28-Oct-20	Relaxations in visa and travel restrictions for foreign nationals travelling to India	Office Memorandum No. 25022/24/2020-F.V/F.I dated 21 October 2020
166	29-Oct-20	CBIC issues additional FAQs on manufacturing and other operations in bonded warehouses	F. No. F.No.484/03/2015-LC (Pt) dated 27 October 2020
167	30-Oct-20	The Equalisation Levy (Amendment) Rules, 2020	Notification No. 87/2020-S.O. 3865(E) dated 28 October 2020
168	30-Oct-20	FDI Circular released by the Department for promotion of Industry and Internal Trade amending the Consolidated FDI Circular, 2017	DPIIT File Number 5(2)/2020-FDI Policy dated 15 October 2020
169	02-Nov-2020	PLI Schemes for manufacturing of bulk drugs and medical devices	File No. 31026/16/2020-Policy dated 29 October 2020 and File No. 31026/19/2020-MD dated 29 October 2020
170	03-Nov-2020	Gujarat High Court upholds validity of amendments to Rule 96(10) of the CGST Rules, thereby denying rebate benefit to Advance Authorisation License holders	R/Special Civil Application No. 15833 of 2018
171	03-Nov-2020	CESTAT directs applications for refund of accumulated and unutilised credit of KKC to be kept in abeyance until the Supreme Court's decision on the issue	Excise Appeal No. 12588 of 2018 (CESTAT-Ahmedabad)
172	09-Nov-2020	Liberalisation of OSP Guidelines	Guidelines for Other Service Providers (OSPs) dated 5 November 2020

Thought Leaderships

Sl. No.	Particulars
1	Advantage India
2	Automotive industry transformation – a transfer pricing perspective
3	Technology, Media and Telecom (TMT) – Online business and disruptive technologies – key India tax and regulatory aspects
4	Reimagining GST@3

Treaties & Agreements

Tax Information Exchange Agreements as on 30 November 2020

Sr. No.	Country	Notification No. and Date	Date when signed	Date of coming into force
1	Argentina	Notification No. 22/2013 [F. No. 504/3/2010-FTD-II]/SO 824(E)	21 November 2011	28 January 2013
2	Bahamas	Notification No. 25/2011 [F. No. 503/6/2009-FTD-I]/SO 1049(E)	11 February 2011	1 March 2011
3	Bahrain	Notification No. 44/2013 [F. No. 503/03/1994-FT&TR-II]/SO 1766(E)	31 May 2012	11 April 2013
4	Belize	Notification No. 3/2014 [F. No. 503/4/2012-FTD-I]/SO 48(E)	18 September 2013	25 November 2013
5	Bermuda	Notification No. 5/2011 [F. No. 503/2/2009-FTD-I]	7 October 2010	3 November 2010
6	British Virgin Islands	Notification No. 54/2011 [F. No. 503/10/2009-FTD-I] S.O. 2301(E)	9 February 2011	22 August 2011
7	Cayman Islands	Notification No. 61/2011 [F. No. 503/03/2009-FTD-I]/S.O. 2902(E)	21 March 2011	8 November 2011
8	Gibraltar	Notification No. 28/2013 [F. No. 503/11/2009-FTD-I]/SO 924(E)	1 February 2013	11 March 2013
9	Guernsey	Notification No. 30/2012 [F. No. 503/1/2009-FTD-I]/SO 1782(E)	20 December 2011	11 June 2012
10	Isle of Man	Notification No. 26/2011 [F. No. 503/01/2008 - FTD-I]/SO 1048(E)	4 February 2011	17 March 2011
11	Jersey	Notification No. 26/2012 [F. No. 503/6/2008-FTD-I]/SO 1541(E)	3 November 2011	8 May 2012
12	Liberia	Notification No. 32/20012-FT&TR-II [F. No. 503/02/2010-FT&TR-II]/SO 1877(E)	3 October 2011	30 March 2012
13	Macao	Notification No. 43/2012 [F. No. 503/04/2009-FT&TR-II]/SO 2427(E)	3 January 2012	16 April 2012
14	Maldives	Notification No. SO 2865(E) [No. 76/2016 (F. No. 500/79/2008-FTD-II)]	11 April 2016	2 August 2016
15	Principality of Liechtenstein	Notification No. 30/2014 [F. No. 503/4/2009-FTD-I]	28 March 2013	20 January 2014
16	Principality of Monaco	Notification No. 43/2013 [F. No. 503/05/2009-FTD-I]/SO 924(E)	31 July 2012	27 March 2013
17	Saint Kitts and Nevis	Notification No. SO 2488(E) [No. 62/2016 (F.NO.503/09/2009-FTD-I)]	11 November 2014	2 February 2016
18	San Marino	Notification No.63/2015 [F. No. 500/02/2003-FTD-I]	19 December 2013	29 August 2014
19	Seychelles	Notification No. SO 2894(E) [No. 80/2016 (F.NO.503/07/1993-FT&TR-IV)]	26 August 2015	28 June 2016

Source: Income Tax Department - Government of India

Social Security Agreements as on 30 November 2020

Sr. No.	Country	Date when signed	Date of coming into force
1	Australia	18 November 2014	1 January 2016
2	Austria	4 February 2013	1 July 2015
3	Belgium	3 November 2006	1 September 2009
4	Canada	6 November 2012	1 August 2015
5	Czech Republic	9 June 2010	1 September 2014
6	Finland	12 June 2012	1 August 2014
7	French Republic	30 September 2008	1 July 2011
8	Germany	8 October 2008	1 October 2009
9	Hungary	3 February 2010	1 April 2013
10	Japan	16 November 2012	1 October 2016
11	Kingdom of Denmark	17 February 2010	1 May 2011
12	Kingdom of Netherlands	22 October 2009	1 December 2011
13	Luxembourg	30 September 2009	1 June 2011
14	Norway	29 October 2010	1 January 2015
15	Portugal	4 March 2013	8 May 2017
16	Republic of Korea	19 October 2010	1 November 2011
17	Sweden	26 November 2012	1 August 2014
18	Swiss Federal	3 September 2009	29 January 2011
	Signed but not notified: Quebec - 26 November 2013 Germany - 12 October 2011		

Source: Ministry of External Affairs

Limited Tax Treaties as on 30 November 2020

Sr. No.	Country	Notification
1	Afghanistan	Notification No. GSR 514(E)
2	Ethiopia	Notification No. GSR 8(E) and GSR 159(E)
3	Iran	Notification No. GSR 284(E)
4	Lebanon	Notification Nos. GSR 1552 and 1553
5	Maldives	Notification No. SO 2853(E) [No. 77/2016 (F. No. 503/4/2013-SO/FT&TR-II(1))]
6	Pakistan	Notification No. GSR 792(E)
7	People's Democratic Republic of Yemen	Notification No. GSR 857(E), dated 12 August 1988
8	Yemen Arab Republic	Notification No. GSR 2(E), dated 1 January 1987

Source: Income Tax Department - Government of India

Double Taxation Avoidance Agreements as on 30 November 2020

Sr. No.	Country	Notification No. and Date	Date when signed	Date of coming into force
1	Albania	Notification No. 2/2014 [F. No. 501/1/2003-FTD-I]/SO 47(E), dated 7 January 2014	8 July 2013	4 December 2013
2	Armenia	Notification No. GSR 800E, dated 8 December 2004 as amended by Notification No. SO 3266(E) [No. 30/2018 (F. No. 503/05/1996-FTD-I)], dated 5 July 2018	31 October 2003	9 September 2004
3	Australia	Notification No. GSR 60(E), dated 22 January 1992 as amended by Notification No. 74/2013 [F. No.503/1/2009-FTD-II]/SO 2820(E), dated 20-9-2013	25 July 1991	30 December 1991
4	Austria	Notification No. GSR 682(E), dated 20 September 2001	8 November 1999	5 September 2001
5	Bangladesh	Notification No. GSR 758(E), dated 8 September 1992	27 August 1992	27 May 1992
6	Belarus	Notification No. GSR 392(E), dated 17 July 1998	27 September 1997	17 July 1998
7	Belgium	Notification No. GSR 632(E), dated 31 October 1997, as amended by Notification No. SO 54(E), dated 19 January 2001. Earlier agreement was entered into vide GSR 323(E), dated 6 June 1975 which was later amended by GSR 321(E), dated 2 March 1988.	26 April 1993	1 October 1997
8	Bhutan	Notification No. 42/2014 [F. No. 503/4/2004-FTD-II], dated 5 September 2014	4 March 2013	17 July 2014
9	Botswana	Notification No. S.O. 1494(E), dated 18 June 2008	8 December 2006	30 January 2008

Sr. No.	Country	Notification No. and Date	Date when signed	Date of coming into force
10	Brazil	Notification No. GSR 381(E), dated 31 March 1992 as amended by Notification No. SO 93(E) [F. No. 500/101/2006-FT&TR-V], dated 4 January 2018	26 April 1988	11 March 1992
11	Bulgaria	Notification No. GSR 205(E), dated 9 May 1996	26 May 1994	23 June 1995
12	Canada	Notification No. SO 28(E), dated 15 January 1998. Earlier agreement was entered into vide GSR 1108(E), dated 25 September 1986, as amended by GSR 635(E) dated 24 June 1992. Circular No. 638, dated 28 October 1992 dealt with this agreement.	11 January 1996	6 May 1997
13	China	Notification No. S.O. 2562(E) [No.54/2019/F. No. 503/02/2008-FTD-II], dated 17 July 2019	26 November 2018	21 November 1994
14	Croatia	Notification No. 24/2015 [F. NO. 501/09/1995-FTD-I], dated 17 March 2015	12 February 2014	6 February 2015
15	Colombia	Notification No.44/2014 [F. No. 501/3/99-FTD-II], dated 23 September 2014	13 May 2011	7 July 2014
16	Cyprus	Notification No. SO 64(E) [No.3/2017 (F. NO. 504/05/2003-FTD-I)], dated 10 January 2017	18 November 2016	14 December 2016
17	Czech Republic	Notification No. GSR 811(E), dated 8 December 1999	1 October 1998	27 September 1999
18	Denmark	Notification No. GSR 853(E), dated 25 September 1989	8 March 1989	13 June 1989
19	Egypt (United Arab Republic)	Notification No. GSR 2363, dated 30 September 1969	20 February 1969	1 January 1961
20	Estonia	Notification No. 27/2012 [F. No. 503/02/1997- FTD-1]/SO No. 1677(E), dated 25 July 2012	19 September 2011	20 June 2012
21	Ethiopia	Notification No. 14/2013 [FT & TR-II/F. No. 503/01/1996-FT&TR-II], dated 21 February 2013	25 May 2011	15 October 2012
22	Fiji	Notification No. 35/2014 [F. No. 503/11/2005-FTD-II], dated 12 August 2014	30 January 2014	15 May 2014
23	Finland	Notification No. 36/2010 [F. No. 501/13/1980-FTD-I], dated 20 May 2010	15 January 2010	19 April 2010
24	France	Notification No. 9602 [F. No. 501/16/80-FTD], dated 6 September 1994, as amended by Notification No. SO 650(E), dated 10 July 2000	29 September 1992	1 August 1994
25	Georgia	Notification No. 4/2012[F. No. 503/05/2006-FTD.I], dated 6 January 2012	24 August 2011	8 December 2011
26	Germany	Notification No. SO 836(E) [No. 10235 (F. No. 500/47/90-FTD)], dated 29 November 1996	19 June 1995	26 October 1996
27	Greece	Notification No. GSR 394, dated 17 March 1967	11 February 1965	1 April 1964
28	Hong Kong	Notification No. SO. 6247(E) [No. 89/2018/F. No. 500/124/97-FTD-II], dated 21 December 2018	19 March 2018	30 November 2018
29	Hungary	Notification No. GSR 197(E), dated 31 March 2005	3 November 2003	4 March 2005
30	Iceland	Notification No. S.O. 241(E), dated 5 February 2008	23 November 2007	21 December 2007
31	Indonesia	Notification No. S.O. 1144(E) [No. 17/2016 (F. No. 503/4/2005-FTD-II)], dated 16 March 2016	27 July 2012	5 February 2016
32	Ireland	Notification No. 45/2002 [F. No. 503/6/99-FTD], dated 20 February 2002	6 November 2000	26 December 2001

Sr. No.	Country	Notification No. and Date	Date when signed	Date of coming into force
33	Israel	Notification No. GSR 256(E), dated 26 June 1996 as amended by Notification No. SO 441(E) [No. 10/2017(F. No. 500/14/2004-FT-II)], dated 14 February 2017, W.E.F. 14 February 2017	29 January 1996	15 May 1996
34	Italy	Notification No. GSR 189(E), dated 25 April 1996.	19 February 1993	23 November 1995
35	Japan	Notification No. GSR 101(E), dated 1 March 1990, as amended by Notification Nos. SO 753(E), dated 16 August 2000 (w.r.e.f. 1 October 1999), SO 1136(E), dated 19 July 2006, w.r.e.f. 28 June 2006 and SO 2528(E), dated 8 October 2008, w.e.f. 1 October 2008	7 March 1989	29 December 1989
36	Jordan	Notification No. GSR 810(E), dated 8 December 1999	20 April 1999	16 October 1999
37	Kazakhstan	Notification No. GSR 633(E), dated 31 October 1997 [as amended by Notification No. SO 1589(E) [No. 20/2018 (F. No. 501/06/94-FTD-II)], dated 12 April 2018, W.R.E.F. 12 March 2018]	6 January 2017	2 October 1997
38	Kenya	Notification No. SO 731(E) [No. 11/2018 (F. No. 503/01/2005/FTD-II)], dated 19 February 2018	11 July 2016	30 August 2017
39	Korea, (Republic of)	Notification No. SO 3265(E) [No. 96/2016 (F. No. 500/121/1996-FTD-II)], dated 24 October 2016	18 May 2015	12 September 2016
40	Kuwait	Notification No. SO 2000(E), dated 27 November 2000 as amended by Notification No. SO 1823(E) [No. 21/2018 (F. No. 501/03/88-FTD-II)], dated 4 May 2018	15 June 2006	17 October 2007
41	Kyrgyz Republic	Notification No. GSR 75(E), dated 7 February 2001	13 April 1999	10 January 2001
42	Latvia	Notification No. 12/2014 [F. No. 503/02/1997-FTD-I], dated 5 March 2014	18 September 2013	28 December 2013
43	Libya	Notification No. GSR 22(E), dated 1 July 1982	2 March 1981	1 April 1983
44	Lithuania	Notification No. 28/2012 [F. No. 503/02/1997-FTD-1], dated 25 July 2012	26 July 2011	10 July 2012
45	Luxembourg	Notification No. 78/2009 [F. No. 503/1/96-FTD-I], dated 12 October 2009	2 June 2008	9 July 2009
46	Macedonia	Notification No. 94/2015 [F. No. 503/08/2004-FTD-I]/ SO 3499(E), dated 21 December 2015	17 December 2013	12 September 2014
47	Malaysia	Notification No. 07/2013 [F. No. 506/123/84-FTD-II], dated 29 January 2013	9 May 2012	26 December 2012
48	Malta	Notification No. 34/2014 [F. No. 504/06/2003-FTD-I], dated 5 August 2014	8 April 2013	1 April 2015
49	Marshall Islands	Notification No. SO 1789(E) [No. 40/2019 (F. No. 503/1/2018-FT&TR-IV)], dated 21 May 2019	18 March 2016	6 December 2018
50	Mauritius	Notification GSR No. 920(E), dated 6 December 1983	24 August 1982	6 December 1983
51	Mexico (United Mexican States)	Notification No. 86/2010 [F. No. 503/4/91-FTD-I], dated 26 November 2010	10 September 2007	1 April 2011
52	Mongolia	Notification No. SO 635(E), dated 16 September 1996	22 February 1994	29 March 1996
53	Montenegro	Notification No. 4/2009 [F. No. 503/1/1997-FTD-I]/S.O. 96(E), dated 7 January 2009	8 February 2006	23 September 2008
54	Morocco	Notification No. GSR 245(E), dated 15 March 2000	30 October 1998	20 February 2000
55	Mozambique	Notification No. 30/2011-FT&TR-II [F. No. 501/152/2000-FT&TR-II], dated 31 May 2011	30 September 2010	28 February 2011

Sr. No.	Country	Notification No. and Date	Date when signed	Date of coming into force
56	Myanmar	Notification No. SO 1518(E), dated 18 June 2009	2 April 2008	1 April 2010
57	Namibia	Notification No. GSR 196(E), dated 8 March 1999	15 February 1997	22 January 1999
58	Nepal	Notification No. 20/2012 [F. No. 503/03/2005-FTD-II], dated 12 June 2012	27 November 2011	1 April 2013
59	Netherlands	Notification No. GSR 382(E), dated 27 March 1989	30 July 1988	21 January 1989
60	New Zealand	Notification No. GSR 314(E), dated 27 March 1987, as amended by GSR 477(E), dated 21 April 1988 and GSR 37(E), dated 12 January 2000	17 October 1986	3 December 1986
61	Norway	Notification No. 24/2012 [F. No. 505/3A/81-FTD-I], dated 19 June 2012	2 February 2011	20 December 2011
62	OECD Member Countries	Notification No. 35/2012 [F. No. 500/154/2009-FTD-I], dated 29 August 2012	26 January 2012	1 June 2012
63	Oman	Notification No. SO 563(E), dated 23 September 1997	2 April 1997	3 June 1997
64	Philippines	Notification No. GSR 173(E), dated 2 April 1996 and as amended by Notification No. SO 125(E), dated 2 February 2005	12 February 1996	21 March 1994
65	Poland	Notification No. GSR 72(E), dated 12 February 1990 as amended by Notification No. 47/2014, dated 24 September 2014]	21 June 1989	26 October 1989
66	Portuguese Republic	Notification No. GSR 542(E), dated 16 June 2000, as corrected by Notification No. SO 673(E), dated 25 August 2000 and GSR 597(E), dated 20 September 2005 and as amended by Notification No. SO 4724(E) [No. 43/2018 (F. No. 503/05/1991-FTD-I)], dated 11 September 2018	11 September 1998	30 April 2000
67	Qatar	Notification No. GSR 96(E), dated 8 February 2000	7 April 1999	15 January 2000
68	Romania	Notification No. 13/2014 [F.NO.501/10/1995-FTD-I], dated 5 March 2014	8 March 2013	16 December 2013
69	Russian Federation	Notification No. 10677 [F. No. 501/6/92-FTD], dated 21 August 1998	25 March 1997	11 April 1998
70	Saudi Arabia	Notification No. 287/2006-FTD [F. No. 501/7/91-FTD], dated 17 October 2006	25 January 2006	1 November 2006
71	Serbia and Montenegro	Notification No. S.O. 97(E), dated 7 January 2009	8 February 2006	23 September 2008
72	Singapore	Notification No. GSR 610(E), dated 8 August 1994 as amended by Notification SO 1022(E), dated 18 July 2005 No. SO 2031(E), dated 1 September 2011 and no. SO 935(E), dated 23 March 2017	20 April 1981	27 May 1994
73	Slovenia	Notification No. GSR 344(E), dated 31 May 2005	13 January 2003	17 February 2005
74	Slovak Republic	Notification No. SO 813(E) [No.25/2015 (F. No. 501/12/1995-FTD-i)], dated 23 March 2015	27 January 1986	25 May 1987
75	South Africa	Notification No. GSR 198(E), dated 21 April 1998 as amended by Notification No. S.O. 316 (E) [No.10/2015-FT&TR-II] (F. No. 500/144/2005-FTD-II), dated 2 February 2015	4 December 1996	28 November 1997

Sr. No.	Country	Notification No. and Date	Date when signed	Date of coming into force
76	Spain	Notification No. GSR 356(E), dated 21 April 1995	8 February 1993	12 January 1995
77	Sri Lanka	Notification No. 23/2014 [F. No. 503/8/2005-FTD-II]/SO 956(E), dated 28 March 2014	22 January 2013	22 October 2013
78	Sudan	Notification No. GSR 723(E), dated 1 November 2004	22 October 2003	15 April 2004
79	Sweden	Notification No. GSR 705(E), dated 17 December 1997 as amended by Notification No. 63/2013 [F. No. 505/02/1981-FTD-I]/[SO 2459(E)], dated 14 August 2013	24 June 1997	25 December 1997
80	Switzerland	Notification No. GSR 357(E), dated 21 April 1995, as amended by Notification No. GSR 74(E), dated 7 February 2001, 62/2011, dated 27 December 2011 w.e.f. 1 April 2012	2 November 1994	29 December 1994
81	Syria	Notification No. 33/2009-FTD-II [F. No. 503/7/2005-FTD-II], dated 30 March 2009	18 June 2008	10 November 2008
82	Tajikistan	Notification No. SO 1758(E), dated 16 July 2009 as amended by Notification No. SO 1328(E) [No. 15/2018 (F. No. 503/10/95-FTD-II)], dated 23 March 2018	20 November 2008	10 April 2009
83	Tanzania	Notification No. 8/2012 [FT & TR-II/F. No. 503/02/2005-FTD-II], dated 16 February 2012	27 May 2011	12 December 2011
84	Thailand	Notification No. 88/2015 [F. No. 503/5/2005-FTD-II], dated 1 December 2015	29 June 2015	1 April 2016
85	Trinidad & Tobago	Notification No. GSR 720(E) [No. 11111 (F. No. 503/11/95-FTD)], dated 26 October 1999	8 February 1999	13 October 1999
86	Turkey	Notification No. SO 74(E), dated 3 February 1997	31 January 1995	1 February 1997
87	Turkmenistan	Notification No. GSR 567(E), dated 25 September 1997	25 February 1997	7 July 1997
88	Uganda	Notification No. GSR 666(E), dated 12 October 2004	30 April 2004	27 August 2004
89	Ukraine	Notification GSR 24(E), dated 11 January 2002	7 April 1999	31 October 2001
90	United Arab Emirates	Notification No. GSR 710(E) [No. 9409 (F. No. 501/3/89-FTD)], dated 18 November 1993, as amended by Notification No. SO 2001(E), dated 28 November 2007 and Notification No. 29/2013 [F. No. 503/5/2004-FTD-II], dated 12 April 2013]	29 April 1992	22 September 1993
91	United Kingdom	Notification No. GSR 91(E), dated 11 February 1994	25 January 1993	26 October 1993
92	United States of America	Notification No. GSR 990(E), dated 20 December 1990	12 September 1989	18 December 1990
93	Uruguay	Notification No. 53/2013 [F. No. 500/138/2002-FTD-II]/SO 2081(E), dated 5 July 2013	8 September 2011	21 June 2013
94	Uzbekistan	Notification No. SO 790(E) [No. 10222/96 (F. No. 501/8/92-FTD)], dated 13 November 1996, as amended by Notification No. SO 2689(E), dated 7 November 2012	29 July 1993	25 January 1994
95	Vietnam	Notification No. GSR 369(E) [No. 9758/95 (F. No. 503/7/91-FTD.), dated 28 April 1995 [As amended by Notification No. 9860 [F. No. 503/7/91-FTD.], dated 12 September 1995 and No. SO 2826(E) [No. 82/2017 (500/5/2009-FTD-II)], dated 30 August 2017]	7 September 1994	2 February 1995
96	Zambia	Notification No. GSR 39(E), dated 18 January 1984	5 June 1981	18 January 1984

Source: Income Tax Department - Government of India

List of tax treaties where synthesised text (treaty read with the MLI) is available as on 30 November 2020			
Sr. No.	India's treaty with*	Link to the synthesised text	Date of ratification by other country
1	Australia	Click here to access the link to the synthesised text.	26 September 2018
2	Austria	Click here to access the link to the synthesised text.	22 September 2017
3	Belgium	Click here to access the link to the synthesised text.	26 June 2019
4	Canada	Click here to access the link to the synthesised text.	29 August 2019
5	Czech Republic	Click here to access the link to the synthesised text.	13 May 2020
6	Finland	Click here to access the link to the synthesised text.	25 February 2019
7	Georgia	Click here to access the link to the synthesised text.	29 March 2019
8	Ireland	Click here to access the link to the synthesised text.	29 January 2019
9	Japan	Click here to access the link to the synthesised text.	26 September 2018
10	Latvia	Click here to access the link to the synthesised text.	29 October 2019
11	Lithuania	Click here to access the link to the synthesised text.	11 September 2018
12	Luxembourg	Click here to access the link to the synthesised text.	09 April 2019
13	Malta	Click here to access the link to the synthesised text.	18 December 2018
14	Poland	Click here to access the link to the synthesised text.	23 January 2018
15	Russia	Click here to access the link to the synthesised text.	18 June 2019
16	Serbia	Click here to access the link to the synthesised text.	05 June 2018
17	Singapore	Click here to access the link to the synthesised text.	21 December 2018
18	Slovak Republic	Click here to access the link to the synthesised text.=	20 September 2018
19	Slovenia	Click here to access the link to the synthesised text.	22 March 2018
20	United Arab Emirates	Click here to access the link to the synthesised text.	29 May 2019
21	United Kingdom	Click here to access the link to the synthesised text.	29 June 2018
22	Ukraine	Click here to access the link to the synthesised text.	08 August 2019

Source: Income Tax Department – Government of India

*India is a signatory to the Multilateral Convention to implement tax treaty related measures to prevent BEPS (MLI). India deposited the instrument of ratification on 25 June 2019.

Signatories of the Multilateral Competent Authority Agreement on the Exchange of Country-by-Country Reports as on 30 November 2020

Sr. No.	Country	Date of signing
1.	Andorra	18 October 2018
2.	Anguilla	11 April 2019
3.	Argentina	30 June 2016
4.	Aruba	12 March 2020
5.	Australia	27 January 2016
6.	Austria	27 January 2016
7.	The Bahamas	10 December 2018
8.	Bahrein	22 December 2019
9.	Belgium	27 January 2016
10.	Belize	20 June 2017
11.	Bermuda	15 April 2016
12.	Brazil	21 October 2016
13.	British Virgin Islands	8 July 2019
14.	Bulgaria	17 November 2017
15.	Canada	11 May 2016
16.	Cayman Islands	21 June 2017
17.	Chile	27 January 2016
18.	China (People's Republic of)	12 May 2016
19.	Colombia	21 June 2017
20.	Costa Rica	27 January 2016
21.	Croatia	6 July 2017
22.	Curacao	30 June 2016
23.	Cyprus	1 November 2016
24.	Czech Republic	27 January 2016
25.	Denmark	27 January 2016

Sr. No.	Country	Date of signing
26.	Estonia	27 January 2016
27.	Finland	27 January 2016
28.	France	27 January 2016
29.	Gabon	26 January 2017
30.	Georgia	30 June 2016
31.	Germany	27 January 2016
32.	Gibraltar	7 May 2020
33.	Greece	27 January 2016
34.	Guernsey	21 October 2016
35.	Haiti	22 June 2017
36.	Hong Kong, China	26 July 2018
37.	Hungary	1 December 2016
38.	Iceland	12 May 2016
39.	India	12 May 2016
40.	Indonesia	26 January 2017
41.	Ireland	27 January 2016
42.	Isle of Man	21 October 2016
43.	Israel	12 May 2016
44.	Italy	27 January 2016
45.	Japan	27 January 2016
46.	Jersey	21 October 2016
47.	Kazakhstan	12 June 2018
48.	Korea	30 June 2016
49.	Latvia	21 October 2016
50.	Liechtenstein	27 January 2016
51.	Lithuania	25 October 2016
52.	Luxembourg	27 January 2016

Sr. No.	Country	Date of signing
53.	Macau, China	21 August 2020
54.	Malaysia	27 January 2016
55.	Malta	26 January 2017
56.	Mauritius	26 January 2017
57.	Mexico	27 January 2016
58.	Monaco	2 November 2017
59.	Morocco	25 June 2019
60.	Netherlands	27 January 2016
61.	New Zealand	12 May 2016
62.	Nigeria	27 January 2016
63.	Norway	27 January 2016
64.	Oman	16 July 2020
65.	Pakistan	21 June 2017
66.	Panama	24 January 2019
67.	Peru	9 November 2018
68.	Poland	27 January 2016
69.	Portugal	27 January 2016
70.	Qatar	19 December 2017
71.	Romania	19 December 2017
72.	Russian Federation	26 January 2017
73.	San Marino	10 October 2018
74.	Saudi Arabia	6 August 2019
75.	Senegal	4 February 2016
76.	Seychelles	9 July 2019
77.	Singapore	21 June 2017
78.	Slovak Republic	27 January 2016
79.	Slovenia	27 January 2016

Sr. No.	Country	Date of signing
80.	South Africa	27 January 2016
81.	Spain	27 January 2016
82.	Sweden	27 January 2016
83.	Switzerland	27 January 2016
84.	Tunisia	26 November 2019
85.	Turks and Caicos Islands	21 June 2017
86.	United Arab Emirates	24 June 2018
87.	United Kingdom	27 January 2016
88.	Uruguay	30 June 2016

Source: OECD

Abbreviations

Authority for Advance Ruling (AAR)	Companies Fresh Start Scheme, 2020 (CFSS)	Direct Tax Vivad se Vishwas Act, 2020 (VsV Act)	Financial Year (FY)
Appellate Authority for Advance Ruling (AAAR)	Central Goods and Services Tax Act, 2017 (CGST Act)	Direct Tax Vivad se Vishwas Rules, 2020 (VsV Rules)	Gross Enrolment Ratio (GER)
Associated Enterprise (AE)	Central Goods and Services Tax Rules, 2017 (CGST Rules)	Double Taxation Avoidance Agreement (Tax Treaty)	General Finance Rules, 2017 (GFR)
Alternative Investment Funds (AIFs)	Core Investment Companies (CIC)	Domestic Value Addition (DVA)	Government of India (GoI)
Agreement cum General Power of Attorney (AGPA)	Commissioner of Income-tax (Appeals) [CIT(A)]	Empowered Group of Secretaries (EGoS)	Goods and Services Tax (GST)
Advance Pricing Agreement (APA)	Corporate Insolvency Resolution Process (CIRP)	Electronics Manufacturing Cluster (EMC 2.0)	Housing Finance Companies (HFCs)
Active Pharmaceutical Ingredients (APIs)	Consumer Protection (E-commerce), Rules 2020 (CP Rules)	Employee Provident Fund (EPF)	Hindu Undivided Family (HUF)
Association of Persons (AOP)	Corporate Social Responsibility (CSR)	Employee Stock Option Plan (ESOP)	Indian Accounting Standards (Ind AS)
Asset Reconstruction Companies (ARCs)	Designated Authority (DA)	Financial Action Task Force (FATF)	IFSC Banking Unit (IBU)
Assessment Year (AY)	Drug Intermediates (DIs)	Frequently Asked Question (FAQ)	Income-tax Act, 1961 (Act)
Base Erosion and Profit Shifting (BEPS)	Dividend Distribution Tax (DDT)	Foreign Contribution (Regulation) Act, 2010 (FCRA 2010)	Income-tax Rules, 1962 (Rules)
Business Process Outsourcing (BPO)	Department of Expenditure (DoE)	Foreign Direct Investment (FDI)	Income-tax Appellate Tribunal (Tribunal)
Companies Act, 2013 (CA Act)	Department of Pharmaceuticals (DoP)	Foreign Institutional Investors (FII)	Insolvency & Bankruptcy Code (IBC)
Central Board of Direct Taxes (CBDT)	Department for Promotion of Industry and Internal Trade (DPIIT)	Fair market value (FMV)	Indian Competent Authority (CA)
Central Board of Indirect Taxes and Customs (CBIC)	Depository Receipts (DR)	Foreign Portfolio Investors (FPIs)	Institute of Chartered Accountants of India (ICAI)
Corporate Debtor (CD)		Free Trade Agreements (FTAs)	Income Computation and Disclosure Standard (ICDS)
Central Value Added Tax (CENVAT)		Fees for Technical Services (FTS)	International Financial Services Centre (IFSC)
Customs Excise and Service Tax Appellate Tribunal (CESTAT)			Integrated Goods and Services Tax (IGST)

Integrated Goods and Services Tax Act, 2017 (IGST Act)
 Infrastructure Investment Trust (InvIT)
 Insurance Regulatory and Development Authority of India (IRDAI)
 Input tax credit (ITC)
 Income-tax Return (ITR)
 Joint Development Agreement (JDA)
 Joint venture (JV)
 Krishi Kalyan Cess (KKC)
 Key Starting Materials (KSMs)
 Know Your Customer (KYC)
 Limited Liability Company (LLC)
 Limited Liability Partnership (LLP)
 Limited Liability Partnership Settlement Scheme, 2020 (LLPSS)
 Leave Travel Concession (LTC)
 Mutual Fund (MF)
 Memorandum of Understanding (MoU)
 Mutual Agreement Procedure (MAP)
 Ministry of Corporate Affairs (MCA)
 Ministry of Defence (MoD)
 Ministry of Electronics and Information Technology (MeitY)

Ministry of Home Affairs (MHA)
 Ministry of Health and Family Welfare (MoHFW)
 Ministry for Human Resource Development (MHRD)
 Micro, Small and Medium Enterprise (MSME)
 National Anti-profiteering Authority (NAA)
 Non-banking Financial Companies (NBFCs)
 National Company Law Tribunal (NCLT)
 National Company Law Appellate Tribunal (NCLAT)
 National Education Policy, 2020 (NEP 2020)
 Overseas Citizens of India (OCIs)
 Organisation for Economic Cooperation and Development (OECD)
 Operating Profit (OP)
 Other Service Provider (OSP)
 Payment Aggregators (PAs)
 Permanent Account Number (PAN)
 Permanent Establishment (PE)
 Production Linked Incentives (PLI)
 Portfolio Manager (PM)

Project Management Agency (PMA)
 Promotion of Medical Devices Parks (PMDP)
 Provident Fund (PF)
 Patents (Amendment) Rules, 2020 (Patent Rules)
 Reverse Charge Mechanism (RCM)
 Real Estate Investment Trust (REIT)
 Reserve Bank of India (RBI)
 Research & Development (R&D)
 Return of Income (ROI)
 Small Finance Banks (SBFs)
 Special Economic Zone (SEZ)
 State Goods and Services Tax (SGST)
 Special Leave Petition (SLP)
 Standard Operating Procedure (SOP)
 Scheme for Promotion of Manufacturing of Electronic Components and Semiconductors (SPECS)
 Scheme for Promotion of Bulk Drug Parks (PBDP)
 Tax collected at source (TCS)
 Tax deducted at source (TDS)/
 Withholding tax
 Tax Officer (TO)

Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 (TOLA)
 Taxation and Other Laws (Relaxation of Certain Provisions) Ordinance, 2020 (Ordinance)
 Transfer Pricing (TP)
 Toys (Quality Control) Order, 2020 (QCO)
 Tax Residency Certificate (TRC)
 Value Added Expenses (VAE)
 Value Added Tax (VAT)
 Venture Capital Funds (VCFs)
 Venture Capital Undertakings (VCUs)
 Voluntary Retention Route (VRR)

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