Tax Glimpses 2024

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Foreword

In 2024, the world witnessed a pivotal election year, as major economies across the globe—from the United States (US) to India to the European Union—held elections that reshaped their political landscapes and influenced global dynamics. In India, the Prime Minister Narendra Modi-led government was re-elected for the third term. In its budget, the government laid out a roadmap for Vikisit Bharat with a primary focus on infrastructure, skill development, manufacturing, energy security, urban development, innovation, and research and development, and next-generation reforms around labour, land, and foreign direct investments, amongst others.

In the US, the former President Donald J. Trump was elected as the 47th President of the United States. The President-elect Trump proposed substantial tariffs aimed at US trade relations and encouraging domestic manufacturing. Consequently, the anticipated trade landscape of 2025 will likely involve substantial change, with revised tariffs reshaping international trade and bolstering US-based manufacturing.

Amidst the global inflation and economic fluctuations, India's growth has been steady, with gross domestic product (GDP) growth at 7% in financial year (FY) 2022-23 and 8.2% in FY 2023-24. Meanwhile, the World Bank has projected 7% GDP growth for FY 2024-25. While India's growth story is attributable to varied government initiatives, the increase in tax collection is noteworthy. The GST in India has demonstrated remarkable progress and effectiveness in revenue collection since its implementation in 2017. In FY 2020-21, the total collection was INR11.37lakh crore, rising INR8.81lakh crore to INR20.18lakh crore in FY 2023-24. Additionally, the provisional net direct tax collection as on 10 November 2024 stood at INR1,210,630crore, including corporate tax at INR510,484crore, and non-corporate tax including securities transaction tax and other taxes at INR700,146crore. The personal income-tax in the recent years also witnessed a sharp rise in tax collection from INR5.75lakh crore in FY 2020-21 to INR12.01lakh crore (provisional data as on 21 April 2024) in FY 2023-24, reflecting the country's expanding economy and improved tax compliance coupled with government's efforts to broaden tax base.

On the tax front, the recent developments also show an encouraging trend. In the Union Budget 2024, the government announced a new tax code to be unveiled in six months, in line with the next-generation reforms in tax laws. Considering the resounding success of the Direct Tax Vivad se Vishwas scheme introduced in 2020, wherein as many as 146,701 disputes were settled and translated into a tax collection of approximately INR1lakh crore, the government, introduced the Direct Tax Vivad se Vishwas Scheme 2024 with an objective to reduce direct tax litigation.

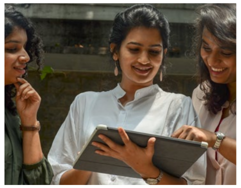
The first High Court decision on General Anti-Avoidance Rules was pronounced laying down several findings and observations that can shape the litigation on this issue. Several permanent establishment (PE) related issues were dealt with at different stages of litigation. However, a full bench of the Delhi High Court ruled that a PE has to be treated as an independent taxable entity. Moreover, a PE's activities should be independently evaluated and ascertained for the purposes of attributing profits, irrespective of profit or loss at a global level for the taxpayer. Bringing finality on the issue, the Supreme Court decided on one of the eagerly awaited issues of whether a shopping mall would qualify as a 'plant' by applying the 'functionality test'. Although the Supreme Court decided the said case in the taxpayer's favour, it remanded back to the High Court to make a fact-based decision. In another matter, on examination of the provisions, submissions, past rulings, etc. the Supreme Court held that Directorate of Revenue Intelligence officers of Customs are 'proper officers' who can issue Show Cause Notices under the Customs Act, 1962.

The Reserve Bank of India announced the launch of three significant initiatives: the PRAVAAH portal, Retail Direct Mobile Application and FinTech Repository. These initiatives are a part of a larger push towards digitisation and streamlining processes from an ease of doing business standpoint.

As a handbook that captures the year's events, this report brings to you a brief analysis of the significant judgements and noteworthy regulatory developments during 2024. This report also includes links to various PwC Thought Leadership initiatives, such as Tax & Regulatory Insights, Customs & Trade Newsletters, and Union Budget reports published during 2024.

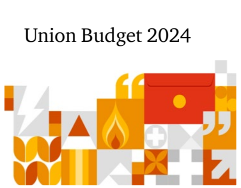
We hope you find this compilation useful and look forward to your suggestions.

As always, our best wishes for the coming festive season and beyond!



Tax & Regulatory Insights

Customs and Trade Newsletter



Union Budget 2024

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Revenue's action of invoking GAAR on a 'bonus stripping' transaction upheld – Telangana High Court

[2024] 163 taxmann.com 277 (Telangana)

In the given case, the taxpayer subscribed to certain shares of a private limited company. Subsequently (i.e. within a few days), the said company issued bonus shares in the ratio of 1:5. Pursuant to the issuance of such bonus shares, the value of each share was reduced to 1/6th of its original value. Thereafter (within a short span of time), the taxpayer sold the original shares to another company. Because of this sale, the taxpayer incurred a short-term capital loss as per the provisions of the Income-tax Act, 1961 (the Act). While filing the return of income, the taxpayer had set-off the short-term capital loss incurred on the above transaction against the long-term capital gains realised on another transaction of sale of shares.

The taxpayer filed a writ petition in the Telangana High Court against the show cause notice by the Principal Commissioner of Income-tax (PCIT) seeking response on why taxpayer's transaction should not be treated as an impermissible avoidance arrangement. The court dismissed the taxpayer's writ petition seeking a mandamus to declare the initiation of general anti-avoidance rules (GAAR) proceedings by the PCIT under section 144BA of the Act as lacking jurisdiction. The court upheld Revenue's action in applying GAAR provisions on the bonus-stripping transactions of shares before the specific amendment into section 94(8) of the Act.

The Telangana High Court observed that the specific anti-avoidance rules (SAAR) for bonus stripping, as provided in section 94(8) of the Act for the applicable assessment year (AY), do not cover cases of bonus stripping on securities. Therefore, the taxpayer's argument that SAAR should override GAAR provisions is not applicable in this case. Moreover, the court held that section 96(2) of the Act places the responsibility on the taxpayer to disprove the presumption of a tax-avoidance scheme. Moreover, the court held that there is clear and convincing evidence to suggest that the entire arrangement was designed with the sole intent of avoiding taxes.

While concluding its observations, the Telangana High Court relied on the landmark Supreme Court decision in the case of McDowell & Co. Limited *v.* CTO [1985] 3 SCC 230, and reiterated the settled principle of law that tax planning is legitimate if it is within the framework of law.

PE in India has to be treated as an independent taxable entity for purposes of attributing profits – Full Bench of the Delhi High Court

[2024] 166 taxmann.com 466 (Delhi)

The taxpayer filed a series of appeals against the Delhi bench of the Income-tax Appellate Tribunal's (Tribunal) order regarding the attribution of profits to its permanent establishment (PE) in India. In the appeal preferred with the division bench of the Delhi High Court, the primary contention was whether any taxable income could be attributed to the PE in India if the taxpayer, being an overseas entity, had incurred a loss in the relevant AY, and in such case, whether the relevant Double Taxation Avoidance Agreement (DTAA) entered into by the Government of India would be applicable.

The division bench of the Delhi High Court had held that the taxpayer has a PE in India at the premises of its Indian service recipient. The court dismissed the taxpayer's contention that the profits cannot be attributed if the taxpayer had incurred losses at a global level, which was held in the coordinate bench decision in the case of Commissioner of Income-tax (International Taxation)-2 *v.* M/s Nokia Solutions and Networks OY [ITA 503 of 2022]. Therefore, the court, expressing its reservation against the said coordinate bench decision, referred the instant case for consideration by a larger bench.

The full bench of the Delhi High Court then ruled that a PE has to be treated as an independent taxable entity. Moreover, a PE's activities should be independently evaluated and ascertained for the purposes of attributing profits, irrespective of the profit or loss at a global level for the taxpayer.

Additionally, the Delhi High Court rejected the taxpayer's reliance on the judgement of the coordinate bench of the Delhi High Court in the case of Nokia Solutions Network, holding that the judgement was being misinterpreted. Moreover, the court observed that the ruling of the Special Bench of the Delhi bench of the Tribunal in the case of Motorola Inc. *v.* Deputy Commissioner of Income-tax, Non-Resident Circle New Delhi (and vice-versa) [2005 SCC OnLine ITAT 1] has been misconstrued. Specifically, the references to the global sales and global net profit were made in the ruling of Motorola Inc. only in the backdrop of the parties failing to produce adequate material to independently establish the profit margin of the PE in India.

Moreover, the Delhi High Court noted that Article 7 of the relevant DTAA allows the taxation of profits attributable to a PE in India, even if the taxpayer incurs a loss in its global operations. Reinforcing the principle of source-based taxation, the court observed that the source state retains the right to tax the income or profits attributable to the PE within its jurisdiction, and Article 7 of the DTAA does not restrict this right based on the taxpayer's global income or loss.

In this detailed and significant decision, the full bench of the Delhi High Court has relied on various commentaries, including the Organisation for Economic Co-operation and Development (OECD) and United Nations (UN) Model Conventions, as well as key Supreme Court decisions, to clarify that multinational entities' global income is not the determinative criterion in ascertaining a PE's taxable income.

Telecom companies are not liable to deduct tax at source under section 194-H of the Act on discount given to distributors of pre-paid coupons or starter-kits – Supreme Court

[2024] 160 taxmann.com 12 (SC)

In the instant case, the Supreme Court dealt with multiple issues: (a) the establishment of a legal relationship between the taxpayer, and franchisees or distributors is that of a principal and an agent; (b) difference between the sale and discounted prices of pre-paid products represents commission or brokerage income in the hands of franchisees or distributors; and (c) liability to deduct tax at source on the income received by franchisees or distributors on the sale of pre-paid products to third parties lies with the taxpayer.

The Supreme Court held that the sale of pre-paid coupons or starter-kits by the taxpayer to the franchisees or distributors at a discounted price is not in the nature of commission or brokerage income. Therefore, the taxpayer is not under a legal obligation to comply with provisions of section 194-H of the Act. The court examined the entire operating model of pre-paid SIM card transaction along with the different clauses of agreement between the taxpayer, and franchisees or distributors to conclude that telecom companies are not obligated to comply with the provisions of the said section. Additionally, in the present case, the court's critical observation is that without information about the actual price at which the pre-paid products are sold by franchisees or distributors to end customers, it is impossible for the taxpayer to determine the amount at which tax should be deducted.

This judgment is not only relevant for the telecom industry but for all taxpayers for the purpose of identifying the instances when the relationship of two persons will qualify as a principal-principal or principal-agent relationship.

Order in favour of Revenue on reassessment notices issued under the old regime – Supreme Court

[2024] 167 taxmann.com 70 (SC)

This is a significant decision of the three-judge bench of the Supreme Court dealing with the interplay of three Parliamentary statutes: the Income-tax Act, 1961; Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 (TOLA); and Finance Act, 2021.

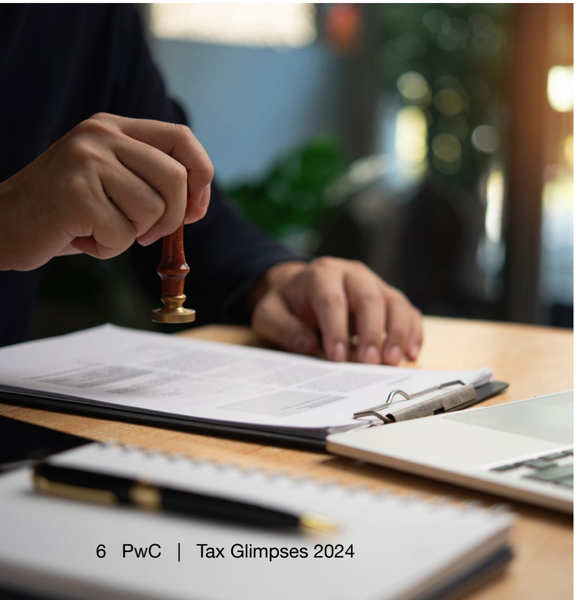
The decision primarily focused on the reassessment procedures and extended time limits due to the COVID-19 pandemic. The court examined whether TOLA and the notifications issued under it would apply to reassessment notices issued after 1 April 2021, and whether the reassessment notices issued under section 148 of the Act of the new regime between July and September 2022 were valid. Accordingly, the Supreme Court held that the tax officers (TOs) were required to issue the reassessment notices under section 148 of the Act of the new regime within the time limit surviving under the Act read with TOLA. All notices issued beyond the surviving period are time-barred and liable to be set aside.

The issue in the said case was whether the reassessment notices issued in July to September 2022 post following the procedure laid down by the Supreme Court in the Union of India *v.* Ashish Agarwal Civil Appeal No. 3005/2022 dated 4 May 2022 case for certain AYs are barred by the limitation period under the new reassessment regime. Various High Courts have held that TOLA does not extend the limitation period under new the reassessment regime. Hence, notices issued in July to September 2022 for specific AYs were time barred. Consequently, the issue of the validity of the notice again reached the Supreme Court in the present case, wherein the court examined two critical issues: TOLA's application to the new reassessment regime, and the validity of reassessment notices issued between July to September 2022 post the Supreme Court decision in the case of Ashish Agarwal.

The Supreme Court accepted Revenue's contention that TOLA is appliable to the Act if any action falls due during 20 March 2020 to 31 March 2021 (COVID-19 pandemic). The court held that the time limit for the issuance of the reassessment notice will be determined after factoring the period of implied stay from the date of pre-inquiry notice till the date of supply of material or information by Revenue, and a two-week response period granted thereafter to the taxpayer, pursuant to directions as per the Ashish Agarwal case. Thus, the reassessment notices issued during July to September 2022 were held to be valid.

Moreover, the Supreme Court clarified that the extension granted in the limitation period due to the applicability of TOLA will not change the class of the sanctioning authority for the issuance of the reassessment notice as applicable to the taxpayer under the applicable provisions.

This decision has put to rest the controversy on the applicability of TOLA to the new regime of reassessment. The taxpayers need to validate their facts and the applicability of this judgment based on the timelines as guided by the Supreme Court. The judgement will be applicable for AYs 2013-14, 2014-15, 2016-17 and 2017-18, while AY 2015-16 will stand excluded given that the TOLA was not applicable based on the time frame and income limits as applicable. For cases which are restored as valid, the taxpayers will have to test the waters on the merits of their case.



Supreme Court revises its ruling – DRI officers empowered to issue SCNs demanding customs duty

2024-VIL-48-SC-CU

Significantly revising its earlier 2021 decision, the Supreme Court has ruled that officers of the Directorate of Revenue Intelligence (DRI) are indeed 'proper officers' under the Customs Act, 1962 (Customs Act), and empowered to issue Show Cause Notices (SCNs) demanding customs duty. This decision overturns a previous judgment, which had stated that only the officer who conducted the original assessment could issue SCNs. Additionally, the court upheld the constitutional validity of the retrospective amendments introduced by section 28(11) of the Customs Act, which validates the SCNs issued by DRI officers since 2011. The decision clarifies the scope of powers of DRI officers and resolves various challenges concerning the jurisdiction and constitutionality of past rulings.

The Supreme Court's revised ruling provides clarity on the jurisdiction of DRI officers to issue SCNs, settling a long-standing legal uncertainty in customs law. The retrospective validation under section 28(11) of the Customs Act, is confirmed to be constitutionally valid, addressing concerns raised by the lower courts. The ruling will help resolve pending disputes across various forums, guiding future SCN issuance and adjudications. It also highlights key distinctions with GST law, where similar powers of Directorate General of GST Intelligence officers may face independent scrutiny. Taxpayers and customs practitioners must reassess their legal positions considering this ruling, especially concerning ongoing and future customs duty disputes.

US LLC is eligible for DTAA benefits – Delhi bench of the Tribunal

[2024] 166 taxmann.com 170 (Delhi-Trib.)

The taxpayer is a limited liability company (LLC) incorporated in the US. It has opted to be classified as a disregarded entity; that is, it is not regarded to be separate from its owner for US tax purposes. For AYs 2014-15 and 2015-16, the taxpayer had earned income in the nature of fees for technical services (FTS) or Fees for Included Services. The taxpayer offered this income to tax in India at the rate of 15% under Article 12 of the India-US DTAA. A tax residency certificate issued by the US tax authorities was furnished by the taxpayer along with the Form 10F to meet the requirements for availing the India-US DTAA benefits.

The Delhi bench of the Tribunal concluded that a US LLC, opting to be a disregarded entity in the US, is eligible to avail the benefits under the India-US DTAA. The Tribunal was of the view that such a US LLC qualifies as a 'person' and is 'liable to tax' in the US, as required under Article 4 of the India-US DTAA.

The Tribunal's ruling has laid down the principles on the concept of 'liable to tax' in the context of tax transparent entities. While judicial precedents exist on the eligibility of tax transparent partnerships being eligible to avail DTAA, this guidance on the applicability of similar principle to an LLC is the first of its kind. The clarity on the eligibility of a US LLC to avail the India-US DTAA benefits will provide guidance to the taxpayers (which are US LLCs) on the tax positions to be adopted on the taxability of such income, and payers paying US LLCs on whether to consider the India-US DTAA benefits while withholding the tax on payments to a US LLC. While this ruling outlines a precedent on this issue, as this is a Tribunal ruling, the Revenue authorities have an option to challenge it before the High Court. In this case, the final position would depend on the outcome at the higher appellate level.

Interest income earned by an Indian PE from its overseas HO or branch not taxable in India since Indian PE is not a separate legal entity – Delhi High Court

[2024] 162 taxmann.com 872 (Delhi)

The taxpayer is a multinational banking enterprise, with a PE in India comprising of branches. During AY 2003-04, the PE in India received interest income from its head office (HO) and other overseas branches. The taxpayer included this income in its total taxable income while filing its return of income but challenged it before the Commissioner of Income-tax (Appeals) on the ground that it was not taxable in India as it was a payment to self.

The Delhi High Court upheld the Tribunal's order, and argued that the interest income earned by the Indian branch or PE of the taxpayer foreign bank from the overseas HO or other overseas branches was not taxable in India as the PE, and HO or overseas branches were not separate legal entities but one person only. Additionally, it noted that one person could not earn profit from itself.

The court also noted that the explanation provided under section 9(1)(v) of the Act, according to which the interest paid from the Indian PE of a bank to its overseas HO should be subject to tax in India in the hands of the overseas HO, has no implication in the instant case since the explanation came into effect from AY 2016-17 and the case pertains to AY 2003-04.

This decision reaffirms the principle that one cannot make a profit out of oneself. Hence, the interest received by the PE from its own HO or overseas branches is not chargeable to tax unless the Act or DTAA has a specific provision to the contrary.

However, the specific amendment in the Act with effect from 1 April 2016, which states that the interest paid by a branch of a bank in India to its HO outside India should be subject to taxes in India, may imply that the income earned by the Indian branch from its HO or overseas branches should also be subject to tax in India. Accordingly, the tax authorities and courts may not entertain the applicability of this case for the year commencing on or those after AY 2016-17.

No disallowance is warranted under section 40(a)(i) of the Act on payment to non-residents (having PE in India) towards purchase of goods considering non-discrimination clause in India-Japan and India-USA DTAAs – Delhi High Court

[2024] 159 taxmann.com 539 (Delhi)

In the given case, the TO disallowed the payment to the non-resident associated enterprises (AEs) based in Japan and the USA towards material purchase under section 40(a)(i) of the Act, concluding that the taxpayer was liable to deduct tax from such payments.

The Delhi High Court opined that the provisions of the disallowance of payment to non-residents are not at par *vis-à-vis* payment to residents. Hence, the taxpayer was justified in invoking the provisions of the non-discrimination clause in the India-Japan and India-USA DTAAs. Consequently, the disallowance under section 40(a)(i) of the Act is not warranted.

Court rejects higher TDS rate than prior years' as finding on profit attribution was left unquestioned – Delhi High Court

[2024] 161 taxmann.com 706 (Delhi)

The taxpayer is a non-resident supplying spare parts to various customers in India. It entered into independent contracts with customers for the supply of such parts from outside India. In the assessment orders passed for AYs 2001–02 to 2008–09, Revenue concluded that the taxpayer constitutes a PE in India.

The Delhi High Court observed that Revenue had not disputed the profit attribution rate of 26% and could not sustain a tax deducted at source (TDS) of 4% when the same was not seriously questioned. Moreover, while issuing the TDS certificate, Revenue itself mentioned that the Delhi High Court had upheld the attribution rate of 26%.

Accordingly, the court held that Revenue cannot direct a higher rate of TDS than the rate of profit attribution to the PE in India it accepted earlier unless Revenue challenges the same before the appropriate authority.

This is an interesting principle that the Delhi High Court has established. However, the facts in this case are unique and the decision's applicability in other matters will need to be carefully evaluated.

Payments made to non-resident taxpayer for bandwidth services do not constitute royalty, emphasising that DTAA provisions override domestic law amendments – Delhi High Court

[2024] 165 taxmann.com 85 (Delhi)

The taxpayer, a tax resident of Singapore, was engaged in the business of providing connectivity solutions and bandwidth services, including international private leased circuits (IPLC) and multi-protocol label switching for high-speed data connectivity. The taxpayer owns and operates the necessary infrastructure and equipment outside India for providing bandwidth services to its customers. The taxpayer entered into a One Stop Shopping Service Agreement with Indian telecommunication companies wherein it provided bandwidth services (IPLC services) to the telecom operators customers outside India. The taxpayer raised invoices for bandwidth services to Indian telecom operators which, in turn, charged their customers. The taxpayer did not have any PE in India and claimed that the income from the bandwidth services was not chargeable to tax in India under the provisions of the Act and India-Singapore DTAA.

The Delhi High Court concluded that the payments made to non-resident taxpayers for bandwidth services (IPLC services) provided to Indian customers do not constitute 'royalty' and are not taxable in India. The court also emphasised the DTAA's supremacy over domestic tax law amendments, thereby clarifying that the unilateral amendment made in the domestic tax laws cannot override the DTAA provisions and cannot modify the fundamental agreement between the parties to the DTAA.

This judgement reaffirms the understanding that domestic tax law amendments cannot upfront eclipse, subsume or override DTAA provisions. Even the theory of ambulatory reference for the interpretation of DTAAs does not empower the domestic legislation to undertake a wholesome amendment to basic and fundamental concepts which stand embodied in the DTAA. The term royalty is explicitly defined in the DTAA. Thus, no recourse is required to domestic tax laws for the term 'process' defined under section 9(1)(vi) of the Act. Moreover, the court clarified that for a payment to be considered as royalty under both the Act and DTAA, a transfer of rights over the use of equipment or processes must exist, and mere access to services does not constitute a transfer of such rights.

Mere holding of an office by an individual in a corporate entity is not sufficient to be treated as a 'principal officer'; connection must be established with corporate entity's management or administration – Delhi High Court

[2024] 159 taxmann.com 606 (Delhi)

The issue before the Delhi High Court was whether the mere holding of an office by an individual in a company is sufficient to treat them as a 'principal officer', and subsequently, hold them liable in case of a default in the deposit of TDS by the company.

The court set aside its order treating the petitioner, the company's managing director as the 'principal officer' for the purpose of initiation of the proceedings on the company regarding defaulting on depositing TDS. The court observed that merely holding an office in a corporate entity was not sufficient to treat a person as a principal officer unless it was established that the said person was connected with the corporate entity's management or administration. Accordingly, the court directed Revenue to examine the issue afresh after considering the petitioner's response and conducting inquiry whether the petitioner could be said to be a person connected with the company's management or administration.

This is an important judgement from the Delhi High Court affirming the principles that the notice of intent to treat a person as a principal officer must be supported with evidence of their involvement in the company's management and administration. Merely holding an office in a corporate entity is not sufficient to treat a person as a principal officer. The decision may aid senior officials of corporates facing the risk of the initiation of arbitrary prosecution *inter-alia* for TDS defaults, despite not being involved in the company's accounting, tax or finance related activities.

Fees for registration services provided by accredited registrars not taxable as royalty – Delhi High Court

[2023] 157 taxmann.com 256 (Delhi)

The issue before the Delhi High Court was whether the fees earned by the non-resident taxpayer to provide domain name registration services can be characterised as royalty under the provisions of the Act.

The court observed that a domain name's owner (registrant) can only confer or transfer the right to use the domain name to another person. Moreover, based on various clauses of the accreditation agreement, a registrar accredited with the ICANN is not the domain name's owner.

The court noted that no proprietorship right is created in the name used as a domain name on its mere registration. Therefore, it held that the fees received by such a registrar in that capacity—i.e. for providing domain registration services to its customers while not having any proprietorship rights on the domain name—is not taxable as royalty.

Moreover, the Delhi High Court rejected the reliance that the Delhi bench of the Tribunal placed on a Supreme Court judgement by considering the decision as misconceived. The Supreme Court had observed that the registrant (and not the registrar) owns the domain name and can protect its goodwill by initiating passing-off action against a subsequent registrant of the same domain name.

LO constitutes a PE in India as per the India–Germany DTAA if its activities go beyond merely acting as a communication channel between HO and clients in India – Delhi bench of the Tribunal

ITA Nos. 643 to 645/Del/2005 & 3660/Del/2009

The taxpayer, a German company engaged in the business of publishing scientific, technical, medical books and journals, set up a Liaison Office (LO) in India with the approval of the Reserve Bank of India (RBI) for the sole purpose of carrying out liaising activities: act as a communication channel between the HO and clients in India. The taxpayer did not file any return of income in India with the view that the LO is carrying out activities which are preparatory or auxiliary in nature. Hence, it does not constitute a PE as per Article 5(4) of the India-Germany DTAA.

The Delhi bench of the Tribunal concluded that activities of the LO of a German company in India constitutes a PE as per Article 5 of the India-Germany DTAA where the activities involved pertained to determining the book titles to be published, procuring orders, determining selling price and profits, etc., and thus, were not preparatory or auxiliary in nature.

This ruling underscores that facts and documentation are critical to determine a PE. While an LO can undertake only liaison or non-commercial activities, the statements of the LO officials recorded in this case suggested that the activities may be wider, and thus, can form the basis to determine PE by the tax authorities. Accordingly, the actual conduct of the business is critical to determine a PE.

Mere existence of a subsidiary would not lead to creation of a PE; in absence of the subsidiary's involvement, there is no basis to attribute profit on account of offshore sale to Indian customers; and mere reimbursement of testing charges is not covered within the ambit of FTS income – Delhi bench of the Tribunal

[2023] 157 taxmann.com 675 (Delhi-Trib.)

The taxpayer is a non-resident and has an Indian subsidiary (I Co). The taxpayer had earned the following revenue from India during the financial year (FY) 2012–13.

- Income from services rendered to I Co: offered to tax in the tax return.
- Reimbursement of expenses incurred for lab-testing charges outside India: claimed as exempt income in the tax return.
- Offshore sale of goods and other tangible assets to Indian customers: not offered to tax in the tax return.

The TO *inter alia* was of the view that the taxpayer procured business in India through I Co, and concluded that the taxpayer had allegedly deputed its expatriate personnel to supervise and provide repair services to I Co.

The Delhi bench of the Tribunal allowed the appeal in favour of the non-resident taxpayer, concluding that profits earned by the taxpayer by offshore sale of goods and other tangible assets should not be attributable to its Indian subsidiary. Deciding on the facts of the case, the Tribunal observed *inter alia* that the non-resident taxpayer had exported goods to Indian customers on a principal-to-principal basis, effected through both the delivery and receipt of payments for such sales outside India. The Tribunal was of the view that it is not sustainable to hold that the taxpayer has a PE merely based on the existence of an Indian subsidiary without any supporting evidence to prove the existence of such a PE. Hence, based on the facts of the present case, the Tribunal concluded that the non-resident taxpayer did not have a PE in India; accordingly, the profit attribution to the taxpayer on this account is liable to be deleted. The Tribunal further confirmed that, the mere reimbursement of expenses, being lab-testing charges, cannot be considered as FTS in the hands of the taxpayer receiving such a reimbursement from its Indian subsidiary.

This ruling highlights the importance of keeping relevant factual documentation on the issue pertaining to PE and reimbursements, as well as understanding how the same is critical for the actual outcome.

Payment to acquire the right to broadcast live sports events does not constitute 'copyright' or use of any 'process'; hence, it does not qualify as royalty under section 9(1)(vi) of the Act – Delhi bench of the Tribunal

[2024] 158 taxmann.com 129 (Delhi-Trib.)

The taxpayer is an Indian private company engaged in the business of broadcasting or sub-licensing the right to broadcast sport events, such as golf, cricket, and soccer, on live and non-live basis. During the year, the taxpayer had entered into agreements with certain non-residents for the acquisition of two kinds of broadcasting rights to:

- broadcast live sports events (Live rights); and
- use the audio-visual recording of sports events for telecasting, making highlights of the events, etc. (Non-live rights).

The consideration for Live and Non-live rights was agreed and invoiced separately. The taxpayer deducted tax under section 195 of the Act on the payment for the Non-live rights but not on the Live rights.

The Delhi bench of the Tribunal concluded that the right to broadcast live sports events does not constitute a 'copyright', and hence, does not qualify as royalty under section 9(1)(vi) of the Act. Moreover, the Tribunal was of the view that the payment to a non-resident who is a holder of such a right, and where such payment is neither made to any satellite owner nor for the use of any satellite does not constitute a 'process'. Hence, it does not qualify as royalty under section 9(1)(vi) of the Act.

Through this ruling, the Tribunal has reaffirmed the view that a payment to acquire the right to broadcast live events does not constitute a 'copyright' or use of any 'process', and hence, does not qualify as royalty under section 9(1)(vi) of the Act.

Receipts from offshore supply of goods or equipment cannot be clubbed with onshore supplies and taxed in India merely on account of cross-fall breach clause – Delhi bench of the Tribunal

[2024] 160 taxmann.com 467 (Delhi-Trib.)

The taxpayer, a non-resident corporate entity with an Indian subsidiary, had entered into a contract with Indian customers. As per the contract terms, the taxpayer manufactured the goods and equipment in China, and supplied them to its customers in India on a cost, insurance and freight (CIF) sale basis. The revenue earned on account of such offshore supply of goods and equipment to Indian customers was not offered to tax in India.

In the instant case, the Delhi bench of the Tribunal was of the view that the receipts from the offshore supply of goods and equipment are not taxable in India. The Tribunal observed that the supply of goods took place, the title over the goods was transferred and payment was received outside India.

The Tribunal also noted that the mere existence of an Indian subsidiary would not lead to the creation of a PE. This is because no material on record substantiates that the Indian subsidiary was involved in any manner in the work of design, manufacture, testing or supply of goods from China on a CIF basis.

Moreover, the Tribunal observed that a cross-fall breach clause in the onshore and offshore contracts cannot lead to these two different and distinct contracts as being composite in nature.

This ruling highlights the importance of maintaining the records of relevant factual documentation on the issue of taxability of income earned on the account of offshore supply of goods. Moreover, while adjudicating the issue, the Tribunal has examined each contract term to evaluate the roles of the taxpayer and Indian subsidiary. This shows that each contract clause also plays a key role.

Mall could be said to be a 'plant', may be covered within exclusion under section 17(5)(d) of the CGST Act, ITC may be allowed and functionality test to be applied – Supreme Court

2024-VIL-45-SC

The Supreme Court ruled that a shopping mall could be considered a 'plant' if its construction is essential for supplying services such as renting or leasing, thus allowing input tax credit (ITC) under section 17(5)(d) of the Central Goods and Services Tax Act, 2017 (CGST Act). This decision hinges on the functionality test, assessing whether the building is integral to business operations. The court upheld the constitutional validity of sections 17(5)(c) and 17(5)(d) of the CGST Act but remanded the case to the High Court to determine if the mall qualifies as a plant based on specific facts. This judgment clarifies ITC eligibility for construction-related credits, potentially impacting similar future cases.

This is a welcome judgment by the Supreme Court which was eagerly awaited by the industry, after several pertinent open litigations and accumulated credits over the years. While the Supreme Court has held in favour of the taxpayer, it notably, the case has been remanded back to the High Court to make a fact-based decision on whether the shopping mall would qualify as a 'plant' by applying the 'functionality test'. The Supreme Court held that, *inter alia*, 'the functionality test would be said to be satisfied if it is found on facts that a building has been so planned and constructed so as to serve a taxpayer's special technical requirements'. Accordingly, this decision must not be read as a blanket uplifting of the restriction on construction-related credits. A robust fact-finding exercise is required, supported by adequate documentation to conclude whether ITC would be available based on this Supreme Court decision.

Angle tax provisions does not apply on (a) conversion of loan into equity if no consideration is received in year of conversion; (b) option to select a share valuation method vests only with taxpayer – Himachal Pradesh High Court

[2024] 163 taxmann.com 408 (Himachal Pradesh)

In the case of the taxpayer, the issue before the Himachal Pradesh High Court was regarding (a) the applicability of angel tax provisions on the conversion of pre-existing unsecured loans into equity shares at a premium, and (b) the valuation method adopted by the taxpayer to determine the fair market value of shares.

The Himachal High Court held that no substantial question of law arises and upheld the orders of the appellate authorities to conclude that the angle tax provisions are applicable only if consideration is received for the issue of shares. Since no consideration was received, the angle tax provisions are not applicable. Moreover, the TO has no jurisdiction to substitute the net asset value (NAV) method for the valuation of shares once the taxpayer has selected the discounted cash flow (DCF) method of valuation as permitted under the angel tax provisions.

The court confirmed the Tribunal's ruling, to the effect that section 56(2)(viib) of the Act applies only if consideration for the allotment of shares is received during the previous year. Moreover, the court also confirmed that the TO had no jurisdiction to substitute the NAV method for the DCF method adopted by the taxpayer.

Note: The Finance Act No. (2), 2024 has provided that section 56(2)(viib) of the Act shall not be applicable on or after 1 April 2025.

CENVAT credit can be availed in respect of telecom towers and PFBs – Supreme Court

2024-VIL-49-SC-CE

The Supreme Court has resolved a long-standing tax dispute by allowing telecom service providers to claim Central Value Added Tax (CENVAT) credit under the CENVAT Credit Rules, 2004 (CENVAT Credit Rules), for mobile towers and prefabricated buildings (PFBs). Previously, the Bombay High Court had denied this credit, considering these structures as immovable property, while the Delhi High Court had allowed it, viewing them as movable property. The Supreme Court ruled that mobile towers and PFBs are movable property since they can be dismantled and relocated without damage, thus qualifying as 'goods'. The court also held that these structures qualify as 'capital goods' and 'inputs' under the CENVAT Credit Rules, enhancing the functionality of essential telecom components. This decision brings significant relief to telecom operators and infrastructure companies, although its implications under the GST regime need careful examination due to specific exclusions.

The Supreme Court has delivered a landmark ruling allowing CENVAT credit of the excise duty paid on telecommunication towers and peripheral structures such as PFBs used for providing telecommunication services. This decision brings great relief to telecom operators and telecommunication infrastructure companies who have been in a long-standing battle with the revenue authorities to avail the said CENVAT credit. Notably, while the decision relates to the pre-GST regime, it may have ramifications under the GST regime as well from the perspective of ITC eligibility and for determining output tax liability on contracts for setting up telecommunication towers and similar other structures. However, the implications must be carefully examined for GST purposes given the specific exclusion of telecommunication towers from the definition of 'plant and machinery' for the purposes of, *inter-alia*, section 17(5) of the CGST Act.

Civil appeal dismissed against a CESTAT ruling holding that services rendered on a principal-to-principal basis will not be covered under the definition of intermediary – Supreme Court

2023-VIL-1219-CESTAT-CHE-ST

The Supreme Court dismissed a civil appeal against a Customs Excise and Service Tax Appellate Tribunal (CESTAT) ruling, affirming that services rendered on a principal-to-principal basis do not qualify as intermediary services for service tax purposes. The taxpayer, involved in procuring orders for garment exports and providing various support services, was initially taxed as an intermediary. However, the CESTAT ruled that these services extended beyond mere intermediary activities, as they included vendor selection, quality assurance and logistical support. The Supreme Court upheld this decision, clarifying that such comprehensive services fall outside the intermediary definition, thus mitigating similar future litigations.

The Supreme Court's affirmation of the CESTAT order is a welcome move, especially since the issues related to the categorisation of an intermediary are widespread owing to lack of statutory precision. This confirmation, specifically from the Supreme Court, will play a huge role in mitigating litigation for similar issues. The definition of 'intermediary' as provided under the service-tax regime is also similar to that provided in the GST regime, and the jurisprudence from this decision can aid taxpayers impacted under the GST regime.

Lower tax rate for royalties and FTS under the India-Spain DTAA notified – Ministry of Finance

Notification No. 33/2024 dated 19 March 2024

The Ministry of Finance recently issued a notification invoking the most-favoured nation (MFN) clause under the DTAA between the Government of the Republic of India and the Kingdom of Spain. As per the notification, the Central Government modified the India-Spain DTAA by importing a lower tax rate of 10% for royalties and FTS from the India-Germany DTAA.

The automatic applicability of the MFN clause has been a subject matter of dispute.

In February 2022, the Central Board of Direct Taxes (CBDT) clarified that, among other things, the following conditions must be satisfied cumulatively to apply the MFN clause in a DTAA:

- The second DTAA is signed after signing the DTAA between India and the first country, subject to the MFN clause's language.
- Such a third country is a member of the OECD at the time of signing the DTAA with India.
- The second DTAA provides a beneficial tax rate or scope regarding the relevant items of income.
- India issues a separate notification to import the second DTAA's benefits into the first DTAA.

Subsequently, the Supreme Court held that a notification under section 90 of the Act, is a necessary and mandatory condition to give effect to a DTAA or any Protocol that has the effect of altering the existing provisions of law. A review petition against the Supreme Court judgement is pending.

The present notification is in line with the Supreme Court's findings and benefit of a lower tax rate under the India-Germany DTAA; i.e. a tax rate of 10% is now extended to the taxpayers on the royalties and FTS taxable under the India-Spain DTAA.

Under some other DTAAs signed by India with an OECD member country that entered into force after 1 January 1990, India has limited the taxation at source on royalties and FTS to not only a lower rate but also a restricted scope compared with that provided in the India-Germany DTAA (e.g. the DTAA signed between India and Portugal). However, in the instant case, only the rate has been imported from the India-Germany DTAA.

It will be interesting to see if, because of the above Supreme Court decision, the Central Government notifies a similar lower rate or restricted scope for other OECD member countries with a DTAA with India.

Clarification on the simultaneous availment of concessional customs duty benefit under IGCR and duty deferment under MOOWR – CBIC

Circular No. 26/2024-Customs dated 21 November 2024

The Central Board of Indirect Taxes and Customs (CBIC) has issued a clarification on the simultaneous availment of concessional customs duty benefits under the Customs (Import of Goods at Concessional Rate of Duty or for specified End Use) Rules, 2022 (IGCR 2022) and duty deferment under the Manufacture and Other Operations in Warehouse Regulations, 2019 (MOOWR). The clarification addresses concerns raised by trade regarding the eligibility for simultaneously availing both benefits, particularly for the manufacturing of intermediate goods, such as components used in mobile phone manufacturing. The CBIC confirmed that both benefits can be simultaneously availed, subject to compliance with the respective regulations, including timelines and procedures outlined in IGCR 2022 and MOOWR. Additionally, it clarified that the concessional duty benefit under IGCR 2022 applies even when goods are imported by a MOOWR unit for further value addition before being supplied to a mobile phone manufacturer.

The CBIC's clarification resolves the ambiguity surrounding the simultaneous availment of concessional duty and duty deferment under different regulations. This guidance is expected to streamline operations for MOOWR units, allowing them to benefit from both schemes without conflict. Businesses should review this clarification carefully to ensure compliance with the prescribed conditions and consult with authorities if further facilitation is needed.

RBI launches three significant initiatives moving towards digitisation

Press Release: 2024-2025/393

The RBI, through a press release dated 28 May 2024, announced the launch of three significant initiatives, i.e. PRAVAAH portal, Retail Direct Mobile Application and FinTech Repository. These initiatives are a part of a larger push towards digitisation and streamlining processes from an ease of doing business standpoint.

The initiatives were earlier announced in the bi-monthly Statement on Development and Regulatory Policies released by RBI in April and December 2023, and April 2024.

The initiatives are extremely beneficial for industry players in saving their time and effort.

Direct Tax Dispute Resolution Scheme 2.0 – Direct Tax Vivad se Vishwas Rules, 2024 & Guidance Note on VsV 2.0 – FAQs

Notification No. G.S.R. 584(E) dated 20 September 2024; Circular No. 12 of 2024 dated 15 October 2024

Given the resounding success of the Direct Tax Vivad se Vishwas scheme introduced in 2020 (VsV 1.0), wherein as many as 146,701 disputes were settled, translating into a tax collection of approximately INR1lakh crores, the government, in the Union Budget 2024, introduced the Direct Tax Vivad se Vishwas Scheme 2024 (VsV 2.0 or scheme) with an objective to reduce direct tax litigation.

VsV 2.0 is effective from 1 October 2024 and Direct Tax Vivad se Vishwas Rules, 2024, were notified on 20 September 2024. Although the overall structure of VsV 1.0 and VsV 2.0 remains consistent, the schemes have specific differences. A key distinction is the treatment of old appellants versus new ones, with a heavier payment obligation placed on the former. The designated date of 22 July 2024 is being considered as the cut-off date by which the dispute was sought to be settled must be pending.

The scheme can be availed by a taxpayer in cases where:

- An appeal, writ petition (writ) or Special Leave Petition is pending as on 22 July 2024.
- Objections have been filed before the Dispute Resolution Panel (DRP), but no directions have been issued on or before 22 July 2024.
- DRP directions have been issued but the final assessment order has not been passed on or before 22 July 2024.
- An application for revision under section 264 of the Act before the Commissioner of Income-tax is pending as on 22 July 2024.

The Income-tax Department received various queries from stakeholders regarding the newly enacted scheme. To provide guidance on these queries, CBDT has released a Guidance Note with the first set of frequently asked questions (FAQs). These FAQs provide much-needed clarity on the various provisions of the scheme and restrict its scope to an extent compared to VsV 1.0.

Owing to the success of VsV 1.0 and rising pendency of appeals, the dispute resolution scheme has been reintroduced to provide a mechanism for settling disputed issues, ultimately reducing litigation without significantly burdening the exchequer. With a complete waiver of interest, penalties and prosecution, this presents an ideal opportunity for taxpayers to assess their income-tax disputes for prompt resolution. However, unlike VsV 1.0, all search and seizure cases, regardless of the disputed tax amount, are excluded from the benefits of VsV 2.0.

Moreover, while the initial set of FAQs offer clarity on several aspects, some questions remain unanswered, such as the implications on secondary adjustments and processing of pending rectifications. The Guidance from the Revenue Department is needed in these areas. CBDT may likely release another set of FAQs to address open issues and encourage more taxpayers to utilise this scheme.

CBDT amends Safe Harbour Rules

Notification No. 104/2023 dated 19 December 2023

The CBDT has amended the Safe Harbour Rules for international transactions—rules 10TA and 10TD of the Income-tax Rules, 1962. These amendments are regarding the definition of operating expense and operating revenue, and scope of intra-group loan transactions that will be covered within the ambit of the Safe Harbour Rules. These amendments came into force from 1 April 2024.

The rationalisation of the Safe Harbour Rules is a welcome development for the taxpayer in India. Over the years, several representations have been made to the government to structurally reform the Safe Harbour regime by expanding its scope and rationalising the margins prescribed for various transactions. Encouragingly, the government considered the recommendation of expanding the scope of the Safe Harbour Rules to cover inter-company loans given to any non-resident AE rather than restricting it only to loans given to non-resident wholly owned subsidiaries. While these amendments are a step in the right direction, the Safe Harbour Rules can be made more attractive by rationalising the profit margins and removing the turnover thresholds for eligibility of the Safe Harbour. Notably, during the full budget speech of 23 July 2024, the Finance

Minister had spoken about expanding the scope of the Safe Harbour Rules and making them more attractive for the taxpayer. Additional details regarding this are expected in due course.

Foreign direct investment norms for space sector liberalised

DPIIT File No. P-15019/2/2023-FDI Policy dated 4 March 2024

The Department for Promotion of Industry and Internal Trade (DPIIT) has recently released press note no. 1 (2024 Series), which amends para 5.2.12 of the consolidated Foreign Direct Investment (FDI) Policy Circular of 2020, thereby liberalising the foreign investment norms for the Indian space sector.

This reform has liberalised the FDI policy provisions for the Indian space sector by prescribing easy an entry route and providing clarity for various activities under the space sector. This development will increase foreign investment, and help generate employment, enable modern technology absorption, and make the sector self-reliant. It is expected to integrate Indian companies into global value chains.

Operational framework for reclassification of Foreign Portfolio Investment as FDI – RBI

Notification No. RBI/2024-25/90 dated 11 November 2024

In consultation with the Government of India and Securities and Exchange Board of India (SEBI), the RBI has via its circular dated 11 November 2024, with immediate effect, issued the operational framework for the reclassification of Foreign Portfolio Investment made by Foreign Portfolio Investors (FPIs) as FDI under the Foreign Exchange Management (Non-debt Instruments) Rules, 2019 (NDI Rules), as amended, in case of any breach of the investment limit by the concerned FPIs.

The operational framework has been issued to streamline the process of reclassification from portfolio investment to FDI, and ensuring better compliance with the NDI Rules by FPIs and Indian listed companies.

Advisory for introduction of IMS on GST portal

https://tutorial.gst.gov.in/downloads/news/revised_advisory_on_ims.pdf

A new Invoice Management System (IMS) has been introduced on the GST portal, effective from 1 October 2024. This system allows taxpayers to manage invoice corrections or amendments efficiently. Key features include the ability for recipients to accept, reject or keep invoices pending, and for suppliers to view recipient actions. The IMS aims to enhance transparency and streamline ITC reconciliation. Taxpayers must update their compliance processes to adapt to this new functionality, which is expected to reduce errors and improve the overall GST return filing experience.

The introduction of the IMS is expected to facilitate transparency between recipients and suppliers and streamline the reconciliation of ITC, which has been a challenging process since the introduction of GST. The practical benefits of the system to taxpayers will become clearer as it is implemented. Considering that it will be made mandatory in early 2025, companies will have to revisit their compliance processes and gear up their systems to quickly adhere to this new requirement. Although implemented, using the IMS is currently optional.

Provisions of Competition (Amendment) Act, 2023 and rules pertaining to combinations under the Competition Act, 2002 notified – MCA

Notification Nos. S.O. 3846(E), G.S.R. 548(E), G.S.R. 549(E) and G.S.R. 547(E) dated 9 September 2024

The Ministry of Corporate Affairs (MCA) has released four key notifications, effective from 10 September 2024, pertaining to combinations under the Competition Act, 2002 (Competition Act). These notifications implement specific provisions introduced in the Competition (Amendment) Act, 2023 (Amendment Act), while also expanding the scope of when notices for combinations must be filed and outlining instances where exemptions from filing may apply.

The merger control regime revamp aims to streamline business transactions and notification requirements, thereby reducing the compliance burden for transactions that are unlikely to have an appreciable adverse effect on competition.

Licensing, procedural approvals and compliances for bonded warehouses digitised – CBIC

Circular No. 19/2024-Cus dated 30 September 2024

The CBIC introduced a new digital module on the Indian Customs Electronic Gateway (ICEGATE) portal to streamline the approval, compliance and procedural processes for bonded warehouses. This initiative is part of CBIC's ongoing digitisation efforts for enhancing trade facilitation. The module enables online applications for warehousing licenses, transfer of goods between warehouses and the filing of monthly returns. It also includes features for tracking and maintaining goods records, including ownership and transfer details. The digital shift is expected to replace traditional manual processes and will be implemented in phases, with further integration of webforms for returns filing, and additional processes for transshipment bonds and ownership transfer in the future.

This digitisation effort will significantly ease compliance for bonded warehouse operations, offering greater efficiency and reducing manual interventions. However, trade must align its processes with the new digital requirements to avoid disruptions. The initiative's success will depend on real-time feedback from trade and prompt action from authorities to address any operational challenges. Additional updates are expected as CBIC continues to expand the scope of the module, including integrating the module for MOOWRs.

Clarification on the transfer of goods between bonded manufacturing units under MOOWR, 2019

Instruction No. 16/2024-Customs dated 25 June 2024

The CBIC has issued a clarification regarding the permissibility of transferring goods between bonded manufacturing units under the Manufacture and Other Operations in Warehouse Regulations (MOOWR), 2019. The clarification addresses the challenges faced by trade due to ambiguity in the interpretation and implementation of section 65 of the Customs Act. The CBIC has clarified that such transfers are allowed, provided that the correct documentation, disclosures, and intimation to the bond officer are followed as per the procedures outlined in MOOWR. The duty deferment will continue and customs duty on warehoused goods is payable when the resultant goods are removed for home consumption. The instruction is aimed at resolving issues related to the process and documentation involved in inter-unit transfers of goods.

This clarification provides much-needed guidance on the movement of goods between bonded manufacturing units and clarifies the documentation requirements. This should help streamline operations for businesses under MOOWR. Trade entities need to align their systems with the outlined procedures to ensure compliance and avoid future complications.

Clarification regarding third-party invoicing under FTAs – CBIC

Instruction No. 23/2024-Customs dated 21 October 2024

The CBIC has issued clarifications on the issues surrounding third-party invoicing under Free Trade Agreements (FTAs), particularly under the India-Associated for South-East Asian Nations (ASEAN) FTA, which had caused customs duty benefit disputes since April 2024. The clarification affirms that third-party invoicing is a common practice allowed under certain FTAs and the Certificate of Origin (CoO) serves as proof of origin, irrespective of the invoicing party. Customs officers are empowered to seek additional information for doubts regarding origin criteria. However, any denial of preferential duty benefits must follow due process, including issuing a speaking order in cases of non-compliance. This move aims to resolve the ongoing disputes and facilitate smoother trade operations.

This clarification is expected to reduce the issues around third-party invoicing under FTAs, and provide clearer guidance to both customs authorities and trade. It will help resolve pending disputes, and ensure that the principles of natural justice and FTA requirements are adhered to in future cases.

Guidelines for Committee of Creditors to address procedural delays in resolution process of corporate debtor – IBBI

https://ibbi.gov.in//uploads/legalframwork/db3d7327523500331bd793bed7835ff2.pdf

The Insolvency and Bankruptcy Board of India (IBBI) has issued the Guidelines for the Committee of Creditors (CoC) on 6 August 2024 (effective immediate). The aim is to address procedural delays in the resolution process of a corporate debtor (CD) due to the absence of uniform procedures to be followed by the CoC for effective and time bound resolutions.

In its continuous efforts towards strengthening the ever-evolving Code, the IBBI has proposed guidelines for the CoC members, which is the main driving force behind a CD's resolution or liquidation. Over the past few years, slowdowns were noticed in the corporate insolvency and resolution process (CIRP) owing to procedural delays, and lack of prompt, effective and timely coordination by and between the CoC members. This led to the need for the CoC's increased accountability and transparency in the CIRP to overcome value erosion, and keep a check on the cost and expenses incurred by the insolvency professional (IP) in running the CD and CIRP. The present guidelines are broad and try to highlight important factors which require attention, efforts and uniformity by the CoC. However, we look forward to more elaborate, enhanced and concentrated guidelines which should compel a tight watch on the CIRP, increased accountability of the IP towards the CoC members, and fostering a well-balanced and coordinated functioning of the CoC.

Direct listing of equity shares of Indian companies on IFSC stock exchanges

Notification No. F. No. 4/1/ECB/2019 dated 24 January 2024; Notification No. F. No. 5/1/2021-CL-I dated 24 January 2024; Notification No. FEMA. 395(2) /2024-RB dated 23 April 2024; Notification No. FEMA. 10R(3)/2024-RB dated 23 April 2024

The Department of Economic Affairs, Ministry of Finance, and the Ministry of Corporate Affairs have notified the following rules to provide an enabling regulatory framework for issuance and direct listing of equity shares of public Indian companies on the international exchanges located in GIFT-International Financial Services Centre (IFSC):

1. FEMA (Non-debt Instruments) Amendment Rules, 2024, which prescribe the framework for the issuance and listing on international exchanges, and investments from a foreign exchange perspective.
2. Companies (Listing of equity shares in permissible jurisdictions) Rules, 2024, which prescribe the eligibility criteria for companies and requirement of filing the prospectus.
3. FEMA (Foreign Currency Accounts by a person resident in India) Regulations, 2015, and FEMA (Mode of Payment and Reporting of Non-Debt Instruments) Regulations, 2019, which prescribe the holding of funds raised in foreign currency accounts, mode of payment and remittance of sale proceeds.

Currently, the framework allows unlisted public companies to list their shares on IFSC exchanges. The The SEBI is in the process of issuing the operational guidelines for listed public companies to issue and list their equity shares on IFSC exchanges.

The rules will provide a big impetus to the IFSC as an investment and capital raising financial centre, and broaden the investor base. It will also provide alternative avenues and better valuation to Indian companies for raising funds from global investors, especially for start-ups and companies in the sunrise and technology sectors.

SEBI permits increased participation of NRIs, OCIs and RIs in FPIs based out of IFSC

Notification No. SEBI/LAD-NRO/GN/2024/185 dated 26 June 2024; Circular No. SEBI/HO/AFD/AFD-POD-2/P/CIR/2024/89 27 June 2024

Earlier, an non-resident Indian (NRI), overseas citizen of India (OCI) or resident Indians (RI) was permitted to invest in a SEBI-registered FPI up to 25% of its corpus individually and up to 50% of its corpus at an aggregate level.

The SEBI has recently amended the SEBI (FPI) Regulations, 2019, to provide flexibility for increased contribution by NRIs, OCIs and RI individuals up to 100% in the corpus of FPIs based out of IFSC and regulated by the IFSC Authority, subject to the following conditions:

- Contribution of a single NRI, OCI or RI individual will be below 25% of the corpus of the FPI;
- Contribution of RI individuals made through the Liberalised Remittance Scheme route will be in global funds whose Indian exposure is less than 50%;
- NRIs, OCI and RI individuals will not be in control of the applicant;
- NRIs, OCI and RI individuals will provide prescribed identity documents to its Designated Depository Participant. In case where the investment manager of the FPI is an asset management company of a SEBI registered mutual fund which is sponsored by the RBI regulated bank, or its IFSC based subsidiary or branch, the requirement of providing identity documents is not applicable subject to the satisfaction of prescribed conditions.
- The FPI will ensure the disclosure of granular details of all entities holding any ownership, economic interest or exercising control in the FPI on a look through basis if:
  - The FPI holds more than 33% of their Indian equity assets under management (AUM) in a single Indian corporate group; or
  - The FPI, individually or along with their investor group, holds more than INR25,000 crore of equity AUM in the Indian market.

This amendment permits the launch of 100% NRI and OCI funds in IFSC, which will provide a major boost to the fund management regime in IFSC. This will result in larger participation from NRIs and OCIs, and boost liquidity and market depth in the Indian capital markets.

SEBI notifies SEBI (Listing Obligations and Disclosure Requirements) (Amendment) Regulations, 2024

Notification No. SEBI/LAD-NRO/GN/2024/177 dated 17 May 2024

The SEBI notified the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) (Amendment) Regulations, 2024 (Amendment Regulations), on 17 May 2024.

Through this amendment, SEBI has, among other things, primarily changed how the market capitalisation is to be determined, and revamped the existing regulations on rumour verification by listed companies by specifically linking the disclosure of events or information to material price movement as may be specified by the stock exchanges (SE).

Additionally, to strengthen the framework around rumour verification and uniformity in its implementation throughout the industry, SEBI notified circular 2 dated 21 May 2024. It directs all listed companies for whom verification of market rumours is applicable to follow the industry standards formulated by Industry Standards Forum (ISF) comprising representatives from three industry associations—Associated Chambers of Commerce and Industry, Confederation of Indian Industry and Federation of Indian Chambers of Commerce and Industry — under the aegis of the SEs. The industry associations and SEs will publish the standards' note on their websites.

In addition, through a subsequent circular on the same day, SEBI also issued the framework for considering the unaffected price for transactions impacted by material price movements.

The Amendment Regulations prescribing the calculation of market capitalisation on the average data of six months instead of data on a single day (i.e. 31 March), as was done previously, will invariably affect the ranking of the top 100 to 2000 companies by market capitalisation. Accordingly, listed companies may need to brace themselves for additional obligations if they are covered within these rankings as on 31 December. Meanwhile, the sunset clause on the applicability of these additional obligations (if listed companies are not covered within the ranking) for three consecutive years is a progressive step that will foster the ease in doing business and reduce the costs for such companies.

SEBI has also introduced a uniform approach for all companies on the amendments for market rumour verification. This will bring greater transparency and governance.

Powers of the Development Commissioner, SEZ, regarding unit approval for IFSC units vested to the IFSC Authority

Notification No. F. No. 3/4/2022-EM dated 28 February 2024

Entities proposing to set up in the IFSC were earlier required to obtain an approval from the Development Commissioner, Special Economic Zone (SEZ).

The Department of Economic Affairs has now issued a notification to amend the SEZ Act, 2005, and SEZ Rules, 2006, to vest certain powers and functions of the Development Commissioner to an officer nominated by the IFSC Authority (IFSCA) as 'Administrator (IFSCA)' for entities proposing to be registered or authorised by the IFSCA.

Any person intending to set up a unit in IFSC will need to submit its application to the Administrator (IFSCA) instead of the Development Commissioner. The application will be considered in the Unit Approval Committee (UAC) meeting, which will be headed by the Administrator (IFSCA). After obtaining approval from the UAC, the Administrator (IFSCA) will grant letter of approval to the IFSC unit.

The units in IFSC were earlier required to obtain approval from the SEZ Authority and IFSCA. The vesting of powers of unit approval from the Development Commissioner, SEZ, to the IFSCA will ensure faster approval process and enable the ease of doing business in IFSC.

DGFT notifies and mandates filing of annual return – RoDTEP

Public Notice 27/2024-25 dated 23 October 2024

The Directorate General of Foreign Trade (DGFT) has introduced a mandatory Annual Remission of Duties and Taxes on Export Products (RoDTEP) Return (ARR) requirement for exporters, effective from FY 2023–24. The RoDTEP scheme, which provides post-export benefits by refunding duties and taxes not covered under other schemes, aims to collect data for reviewing and adjusting the scheme. Exporters claiming RoDTEP benefits over INR10 million must file an ARR detailing export claims at the eight-digit level by 31 March 2025, with a grace period until 30 June 2025, subject to a composition fee. Non-compliance may result in denial of benefits, including the ability to generate export scrolls. The filed ARR will undergo risk-based audits and exporters must retain supporting documentation for five years. This new filing requirement emphasises accurate and timely compliance to avoid penalties or loss of future benefits.

The introduction of the ARR requirement ensures better oversight of the RoDTEP scheme and may prompt corrective actions or audits on exporters claims. Exporters should assess their systems and processes to meet the filing requirements and ensure proper documentation to avoid disruptions in future claims. Non-compliance could lead to penalties and loss of RoDTEP benefits, making it crucial for exporters to stay informed and compliant.

Clarificatory changes issued to PPO order – DPIIT

Order No. P-45021/2/17-PP (BE-II)-Part(4) Vol.II dated 19 July 2024

The Department for Promotion of Industry and Internal Trade (DPIIT), Ministry of Commerce and Industry, issued a revised Public Procurement (Preference to Make in India), Order 2017 (PPO order), on 19 July 2024 containing clarificatory changes to the existing provisions. These changes are effective from the date of issuance of the PPO order.

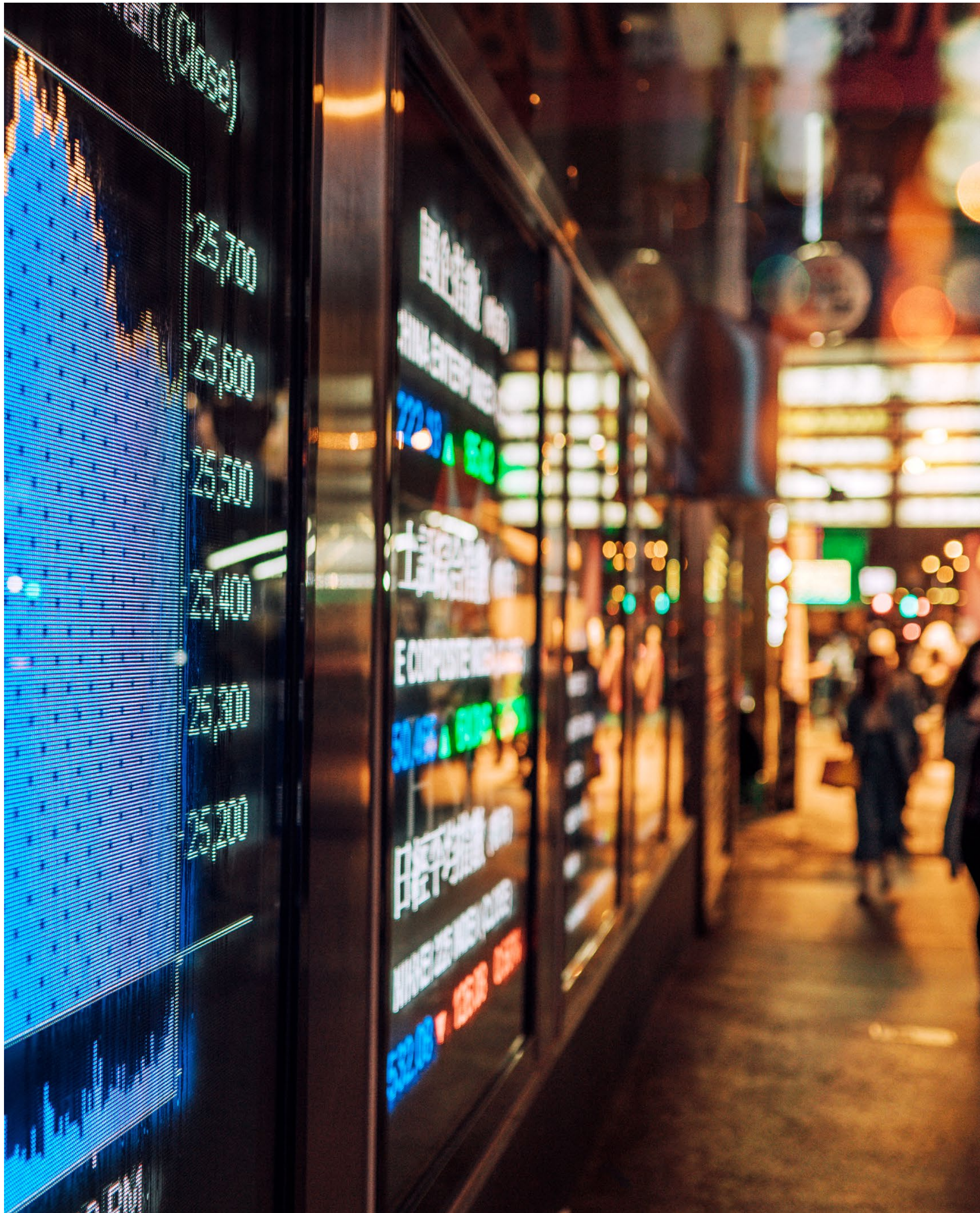
The changes enumerated in the revised PPO order were a matter of interpretation earlier and suppliers in the past had been reaching out to the relevant authorities in this regard. These changes will help suppliers gain clarity on common aspects of procurement contracts with government authorities.

Foreign investment rules amended to includes transfer of shares by swap of securities, investment in OCI on non-repatriable basis and renunciation of rights

Notification No. S.O. 3492(E) dated 16 August 2024

The Department of Economic Affairs, Ministry of Finance, has issued the Foreign Exchange Management (Nondebt Instruments) (Fourth Amendment) Rules, 2024 (Amended Rules), dated 16 August 2024. Moreover, the RBI recently updated its Master Direction on Foreign Investment in India (Master Direction) (updated up to 8 August 2024). The Amended Rules and Master Direction cover certain aspects, including the transfer of shares via swap of securities, investment by OCI on non-repatriable basis, and renunciation of rights.

The changes introduced in the Master Direction and Amended Rules are welcome steps for further facilitating foreign investments, and simplifying the rules to promote the ease of doing business. The amendments related to cross-border swap of shares will especially benefit those Indian start-ups aiming to expand globally.



Circulars issued pursuant to recommendations made during the 53rd GST Council meeting – CBIC

Circular Nos. 207/1/2024-GST; 208/2/2024-GST; 209/3/2024-GST; 210/4/2024-GST; 211/5/2024-GST; 212/6/2024-GST; 213/07/2024-GST; 214/8/2024-GST; 215/9/2024-GST; 216/10/2024-GST; 217/11/2024-GST; 218/12/2024-GST; 219/13/2024-GST; 220/14/2024-GST; 221/15/2024-GST; 222/16/2024-GST dated 26 June 2024

The CBIC, following the recommendations of the 53rd GST Council meeting, issued circulars aiming to simplify GST compliance and reduce litigation. Key topics include the taxability of employee stock options, reverse charge mechanism supplies, post-sales discounts, place of supply rules and ITC on life insurance premiums. The circulars also address the tax treatment of salvage values in motor insurance, warranty replacements and services between related parties. Overall, these clarifications are intended to ease business operations and resolve ongoing disputes.

The majority of the clarifications aim at providing great relief to the taxpayers and are expected to reduce litigations such as clarification on the time limit under section 16(4) of the CGST Act, valuation of supply of import of services by a related person, taxability of the transaction of providing loan by an overseas affiliate to its Indian affiliate, taxability of employee stock ownership plans and salvage or wreckage value earmarked by insurance companies.

Meanwhile, the other circulars promote trade facilitation measures or provide procedural clarifications which will help ensure ease of doing business. Overall, the circulars are a welcome step and have been much awaited by the industry since these aim to address the ongoing confusion which was resulting in unnecessary litigation. While these circulars provide clarity under GST, it is essential to adopt a comprehensive approach by considering not only GST implications but also by evaluating transactions from an income-tax and transfer pricing standpoint, especially in the case of secondments and related party transactions. This holistic analysis ensures compliance and mitigates potential tax risks.

The majority of the circulars clarify the positions under the existing laws, but the circulars do not specify whether the clarification would be applicable retrospectively. However, since the circulars are clarificatory in nature, these should be applied retrospectively, unless clarified otherwise.

Amendment to CGST Rules *inter alia* in respect of valuation of corporate guarantee, ISD, appeals to GSTAT, introduction of Form GSTR-1A, clarifications through circulars – CBIC

Notification Nos. 12, 13, 14 & 15/2024-Central Tax; 01/2024-Integrated Tax and 01/2024-Union Territory Tax dated 10 July 2024; Circular No. 224/18/2024-GST dated 11 July 2024; Circular No. 225/19/2024-GST dated 11 July 2024; Circular No. 227/21/2024 dated 11 July 2024

Amendments were made to the Central Goods and Services Tax Rules, 2017 (CGST Rules) following the 53rd GST Council meeting. Key changes include the valuation of corporate guarantees at 1% per annum, adjustments to input service distribution (ISD) mechanisms and the introduction of Form GSTR-1A for amending outward supply details. It also addressed the refund of additional integrated goods and services tax (IGST) paid due to price revisions post-export and reduced the tax collected at source (TCS) rate for e-commerce supplies. Additionally, the amendments facilitate electronic filing for GST Appellate Tribunal (GSTAT) appeals and clarify the process for handling inadvertent payments through Form GST DRC-03A. These changes aim to streamline compliance and reduce litigation.

The recent series of notifications and circulars highlight the government's deliberate efforts to bring clarity to the GST taxation framework and enhance ease of doing business. The rapid introduction of legal changes and clarifications is commendable and is poised to significantly reduce litigation between the revenue authorities and taxpayers. Initiatives such as the reduction in pre-deposits for appeals and the lowering of TCS rates are anticipated to have a notably positive financial impact on businesses.

Recommended effective date for section 128A waiver, clarifications on ITC on demo vehicles, composite supply and place of supply provisions, implementing e-invoicing for B2C transactions in a phased manner and prospective omission of rules 89(4A) or 4(B) and rule 96(10) of the CGST Rules – 54th GST Council meeting

Press Release ID: 2053233 dated 9 September 2024

The 54th GST Council meeting held on 9 September 2024 includes the effective date for section 128A waiver starting 1 November 2024 and provides clarifications on ITC eligibility for demo vehicles used by dealers. Other highlights include the phased implementation of e-invoicing for B2C transactions; the prospective omission of rules 89(4A), 89(4B), and 96(10) of the CGST Rules; and clarifications on composite supply and place of supply provisions. These changes aim to streamline compliance, reduce litigation and provide clarity on various tax issues.

Continuing the past trend, the overall focus of the recommendations in the 54th GST Council meeting remains to be on reducing past litigation and affording ease of doing business. The most important aspect is section 128A of the CGST Act, which will become effective from 1 November 2024. It is expected that notifications under section 11A of the CGST Act will be issued in cases of regularisation of past matters on an 'as-is-where-is' basis. Many important clarifications are expected by way of circulars such as composite supply for Preferred Location Charges, GTA services and electricity supplies, which will settle the ongoing litigations. Omission of rules 89(4A/ 4B) and 96(10) of the CGST Rules is a welcome move encouraging exports. Additionally, no recommendations have been made regarding the requests of the electric vehicle industry. Clarification on a 28% GST rate on online gaming and its deeming valuation provisions were also expected in the current meeting. The Finance Minister acknowledged the increase in revenue in online gaming and casinos; however, there has been no change in the rates. Representation may be required for taking up these issues expeditiously. A Group of Ministers to be formed to address matters related to GST on life and health insurance, future of compensation cess, the negative balance of IGST and the retrieval of funds from states. These issues are likely to be taken up in the next meeting expected in December 2024. Lastly, while B2C e-invoicing and IMS are proposed to be optional only at this stage, it is important to understand the business impact of both from the perspective of potential benefits (if any) as well their potential impact, in case these processes are made mandatory later.

Amendments to CGST Rules to, *inter-alia*, omit rules 89(4A), 89(4B) and 96(10), introduce procedure for section 128A waiver (rule 164) and specifies time limit for issuing self-invoice; rate changes proposed at the 54th GST Council meeting notified past rates regularised for multiple goods and services; and CBIC clarifications *inter alia* on scope of regularisation of past on 'as-is' basis

Notification Nos. 20, 21, 22 & 23/2024-Central GST(CGST) dated 8 October 2024; Notification Nos. 24 & 25/2024-Central GST(CGST) dated 9 October 2024; Notification No. 02/2024-Union Territory GST (UTGST) dated 7 October 2024

The recent series of notifications highlight the government's deliberate efforts to bring clarity to the GST taxation framework and enhance ease of doing business. The amendments in the CGST Rules, other notifications and circulars issued essentially aim to implement the recommendations made by the GST Council in its 54th meeting. The omission of rules 89(4A), 89(4B) and 96(10) of the CGST Rules; waiver of the late fees for non-filers of TDS returns; the procedures prescribed for opting for waiver of interest and penalty under section 128A of the CGST Act; and the procedure for filing the rectification application for the order confirming the demand of ITC eligible for benefit under sections 16(5) and 16(6) of the CGST Act are welcome developments, among other amendments.

The recent series of notifications highlights the government's deliberate efforts to bring clarity to the GST taxation framework and enhance ease of doing business. The amendments in the CGST Rules, other notifications and circulars issued essentially aim to implement the recommendations made by the GST Council in its 54th meeting. The omission of rules 89(4A), 89(4B) and 96(10) of the CGST Rules; waiver of late fees for non-filers of TDS returns; the procedures prescribed for opting for waiver of interest and penalty under section 128A of the CGST Act; and the procedure for filing the rectification application for the order confirming the demand of ITC eligible for benefit under sections 16(5) and 16(6) of the CGST Act are welcome developments, among the other amendments.

Circulars issued pursuant to recommendations made during the 54th GST Council meeting – CBIC

Circular Nos. 230/24/2024-GST, 231/25/2024-GST, 232/26/2024-GST and 233/27/2024-GST dated 10 September 2024

Four circulars were issued by the CBIC following the 54th GST Council meeting. Key points include the following –

1. **Advertising services:** Clarifies that advertising services provided to foreign clients are considered exports if conditions are met, and Indian advertising companies are not intermediaries.
2. **Demo vehicles:** ITC is available for demo vehicles used by dealers for test drives and demonstrations, as they are considered for further supply.
3. **Data hosting services:** Data hosting services provided by Indian providers to overseas cloud computing services are considered exports, with the POS being outside India.
4. **IGST refunds:** Regularises IGST refunds for exporters who initially imported inputs without paying IGST but later paid with interest.

The clarifications primarily aim to provide significant relief to the taxpayers and are expected to reduce litigations. Overall, the circulars are a welcome step and are highly anticipated by the industry since these address the earlier lack of clarity, which was resulting in unnecessary litigations. The majority of the circulars clarify the positions under the existing laws, but do not specify whether the clarifications would apply retrospectively. However, since the circulars are clarificatory in nature, these should be applied retrospectively, unless clarified otherwise.

Guidelines for Prime Minister's Internship Scheme – Pilot Project (FY 2024–25) released by MCA

Notification No. F. NO- CSR/ 13/35/2024 dated 3 October 2024

The MCA has officially released an office memorandum regarding the Prime Minister's Internship Scheme (PMIS, or scheme) – Pilot Project effective from 3 October 2024. PMIS is a transformative initiative by the Government of India aimed at providing internship opportunities to over 10 million youth in the next five years. The scheme offers young individuals the chance to intern with the top 500 companies (partner companies) in India, offering them real-world exposure and hands-on experience across sectors. The interns will receive financial support and insurance coverage, making it an attractive opportunity for skill development and employability.

This upcoming pilot project is expected to function as an essential testing ground for the comprehensive implementation of this forward-thinking scheme, thereby paving the way for a more promising future for the youth of India.

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