Nanubhai Desai & Co.

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INCOME TAX

DOMESTIC TAXATION

Circulars/ Notifications/ Press Release

Further Enhancement of Monetary limits for filing of appeals by the Department before Income Tax Appellate Tribunal, High Courts and SLPs/appeals before Supreme Court - Amendment to Circular 3 of 2018 - Measures for reducing litigation.

1. Reference is invited to the Circular No.3 of2018 dated 11.07.2018 (the Circular) of Central Board of Direct Taxes (the Board) and its amendment dated 20th August. 2018 vide which monetary limits for fi ling of income tax appeals by the Department before Income Tax Appellate Tribunal. High Courts and SLPs/appeals before Supreme Court have been specified. Representation has also been received that anomaly in the said circular at Para 5 may be removed.
2. As a step towards further management of litigation. it has been decided by the Board that monetary limits for filing of appeals in income-tax cases be enhanced further through amendment in Para 3 of the Circular mentioned above and accordingly, the table for monetary limits specified in Para 3 of the Circular shall read as follows:

Sr. No.	Appeals/SLPs in Income-tax matters	Monetary Limit (Rs.)
1	Before Appellate Tribunal	50,00,000
2	Before High Court	1,00.00.000
3	Before Supreme Court	2.00.00,000

3. Further, with a view to provide parity in filing of appeals in scenarios where separate order is passed by higher appellate authorities for each assessment year vis-a-vis where composite order for more than one assessment years is passed, Para 5 of the circular is substituted by the following Para:

> "5. The Assessing Officer shall calculate the tax effect separately for every assessment year in respect of the disputed issues in the case of every assessee. If, in the case of an assessee, the disputed issues arise in

> more than one assessment year, appeal can be filed in respect of such assessment year or years in which the tax effect in respect of the disputed issues exceeds the monetary limit specified in Para 3. No appeal shall be filed in respect of an assessment year or years in which the tax effect is less than the monetary limit specified in Para 3. Further, even in the case of composite order of any High Court or appellate authority which involves more than one assessment year and common issues in more than one assessment year, no appeal shall be filed in respect of an assessment year or years in which the tax effect is less than the monetary limit specified in Para 3. In case where a composite order/ judgement involves more than one assessee, each assessee shall be dealt with separately."

4. The said modifications shall come into effect from the date of issue of this Circular.
5. The same may be brought to the notice of all concerned.
6. This issues under section 268A of the Income-tax Act, 1961.

(Circular No.17/2019, F. No. 279/Misc. 142/2007-ITJ (Pt.), dated 08th August, 2019)

Clarifications in respect of filling-up of the ITR forms for the Assessment Year 2019-20

1. The Income-tax Return (ITR) forms for the Assessment Year (A.Y.) 2019-20 were notified vide notification bearing G.S.R. 279(E) dated the 01st day of April, 2019. Subsequently, instructions for filing ITR forms were issued and the software utility for e-filing of all the ITR forms were also released. After notification of the ITR forms, various queries were raised by the stakeholders in respect of filling-up of the ITR forms. The queries were examined in the Board and a clarification was issued vide Circular No. 18 of 2019 dated 08.08.2019 to address the concerns raised.
2. Subsequently, further representations have been received on certain issues relating to filing of ITR Forms. Accordingly, following clarifications are issued in partial modification of Circular No. 18 of 2019.

3. In ITR Form-2 and ITR Form-3, in Part-A General, at column (h), the taxpayer is required to state whether he was Director in a company at any time during

the previous year. In case of an affirmative answer, the taxpayer is further required to disclose following information relating to each company in which he was a Director:-

a. Name of Company
b. PAN
c. Whether its shares are listed or unlisted
d. Director Identification Number (DIN)

4. Representation has been received stating that non-residents are required to pay tax only in respect of income received in India or income accruing or arising in India. Non-residents are not required to disclose their assets outside India. Therefore, non-residents should not be required to disclose details of directorship in foreign companies. The disclosure requirement in ITR forms should be limited only to assets and incomes which have a nexus with India.
5. In this regard, it is stated that the disclosure requirement in ITR forms in respect of directorship in a company is meant only for the purpose of reporting. The details entered in this column are, in general, not relevant for computation of total income or tax liability of the assessee. As such, the requirement to disclose directorship in a foreign company by a non-resident taxpayer, does not tantamount to disclosure of any foreign source income or foreign asset held by such taxpayer.
6. However, to allay the apprehensions in the minds of non-resident taxpayers, it is hereby clarified that a non-resident shall not be required to disclose details of his directorship in a foreign company, which does not have any income received in India, or accruing or arising in India. In other words, a non-resident taxpayer who is Director only in a foreign company, which does not have any income received in India, or accruing or arising in India, should answer the relevant question in the negative, whereupon he would not be required to disclose details of such foreign company. It is further clarified that a non-resident taxpayer, who is Director in a domestic company and also in a foreign company, which does not have any income received in India, or accruing or arising in India, should answer the relevant question in the affirmative, and provide details of directorship in the domestic company only. It is also clarified that a resident taxpayer would continue to be required to disclose details of his directorship in any company, including foreign company, in the relevant column.
7. Further, in ITR Form-2, ITR Form-3, ITR Form-5, ITR Form-6 and ITR Form-7, in Part-B-TTI, before the verification part, a taxpayer, who is resident in India, is required to state whether he had any time during the previous year:-

a. held, as beneficial owner, beneficiary or otherwise, any asset (including financial interest in any entity) located outside India; or
b. had signing authority in any account located outside India; or
c. had income from any source outside India?

In case of an affirmative answer, the taxpayer is required to fill up the Schedule FA. In Schedule FA, the taxpayer is required to disclose the details of foreign assets etc. held at any time during the relevant accounting period.

8. Representation has been received citing example of cases where the foreign assets have been acquired after the end of "relevant accounting period" (in foreign jurisdiction) but before the end of "previous year" (in India). In such cases, the taxpayer would have to answer the question in Part-B-TTI in the affirmative, and consequently, would be required to fill up the details of foreign assets etc. in Schedule FA. Since the assets were acquired after the end of relevant accounting period, no amounts would be required to be reported in Schedule FA. However, if the taxpayer reports Nil amount in all tables of Schedule FA, the ITR form does not get validated.
9. In this regard, it is hereby clarified that a taxpayer shall be required to answer the relevant question in the affirmative, only if he has held the foreign assets etc. at any time during the "previous year" (in India) as also at any time during the "relevant accounting period" (in the foreign tax jurisdiction), and fill up Schedule FA accordingly.

(Circular No.21/2019, F.No. 370142/1/2019-TPL (Pt.-1), dated 27th August, 2019)

Section 56(2)(viib) of the Income Tax Act, 1961 - Income from other sources - CBDT simplifies the process of assessment in respect of Startups

The Finance Ministry has simplified the process of assessment in the case of Startup entities.
In cases where scrutiny assessments of Startup entities are pending, the CBDT has decided that:

(i) In case of Startup Companies recognized by DPIIT which have filed Form No. 2 and whose cases are under "limited scrutiny" on the single issue of applicability of section 56(2)(viib),the contention of the assessee will be summarily accepted.

(ii) (ii) In case of Startup Companies recognized by DPIIT which have filed Form No. 2 and whose cases have been selected under scrutiny to examine multiple issues including the issue of section 56(2)(viib),this issue will not

be pursued during the assessment proceedings and inquiry on other issues will be carried out by the Assessing Officer only after obtaining approval of the supervisory authority.

(iii) In case of Startup Companies recognized by the DPIIT, which have not filed Form No. 2, but have been selected for scrutiny, the inquiry in such cases also will be carried out by the Assessing Officer only after obtaining approval of the supervisory authorities.

In addition to the above, the Central Government has further decided to relax Para-6 of the DPIIT notificationNo.127 (E) dated 19.02.2019 and make it clear that this notification will also be applicable to Startup Companies where addition under section 56(2)(viib) has been made and the assessee has been recognized by DPIIT and subsequently filed Form No. 2.

(Press Release, dated 10th August, 2019)

Case laws

Rajendra Pal Verma vs. ACIT ITA No.: 6814/Mum/2016, Date of order: 12th March, 2019 A.Y.: 2013-14

Facts:

- The assessee had e-filed his return of income on 31st July, 2013. Thereafter, the assessee filed a revised return of income on 15th November, 2014. The AO observed that the assessee had during the year under consideration sold an old residential flat and the entire long-term capital gain (LTCG) on the sale of the old flat was claimed as exempt u/s 54. The assessee had purchased a new residential flat as per an agreement dated 29th December, 2014 with the builder / developer, as per which the construction of the property was expected to be completed by September, 2017. However, the AO observed that the assessee had failed to substantiate his claim of exemption u/s 54 amounting to Rs. 1.75 crores; hence he declined to allow the same.
- Aggrieved by the order, the assessee preferred an appeal to the CIT(A). The CIT(A) was of the view that the assessee was entitled for claim of exemption u/s 54 only to the extent he had invested the LTCG up to the due date of filing of his return of income for the year under consideration, i.e., assessment year 2013-14 as envisaged u/s 139(1), therefore, he had restricted his claim for exemption up to the amount of Rs. 83.72 lakhs.

Issue:

Section 54 r.w.s. 139 – Assessee would be entitled to claim exemption u/s 54 to extent of having invested capital gain on sale of old residential flat towards purchase of new residential property up to date of filing of his revised return of income u/s 139(5)

Held:

Held by the Tribunal:

- The Tribunal held that on a perusal of section 54(2), it emerges that the assessee in order to claim exemption u/s 54 remains under an obligation to appropriate the amount of the capital gain towards purchase of the new asset as per the stipulated conditions of section 54.Where the capital gain was not appropriated by the assessee towards purchase or construction of the residential

property up to the date of filing of the return of income u/s 139, then in such a case the entitlement of the assessee to claim the exemption by making an investment towards purchase or construction of the new asset would be available, though subject to the condition that the assessee had deposited the amount of such capital gain in the CGAS account with the specified bank by the due date contemplated u/s 139(1). Further, in case any part of the capital gain had already been utilised by the assessee for the purchase or construction of the new asset, the amount of such utilisation along with the amount so deposited would be deemed to be the cost of the new asset.

- On the basis of the aforesaid deliberations, it was viewed that the outer limit for the purchase or construction of the new asset as per sub-section (2) of section 54 was the date of furnishing of the return of income by the assessee u/s 139. It was viewed that the date of furnishing of the return of income u/s 139 would safely encompass within its sweep the time limit provided for filing of the return of income by the assessee u/s 139(4) as well as the revised return filed by him u/s 139(5). It was found that the instant case clearly fell within the sweep of the aforementioned first limb, i.e., sub-section (1) of section 54. As the assessee in the instant case had utilised an amount of Rs. 2.49 crores (i.e., much in excess of the amount of LTCG on sale of the residential property) up till the date of filing of his revised return of income u/s 139(5) on 15th November, 2014, therefore, his claim of exemption u/s 54 in respect of the investment made towards the purchase of the new residential property up to the date of filing of the revised return of income u/s 139(5) was found to be in order.
- Therefore, the assessee in the instant case was entitled to claim exemption u/s 54 to the extent he had invested towards the purchase of the new residential property under consideration up to the date of filing of his revised return of income u/s 139(5), i.e., on 15th November, 2014.

Maharashtra State Warehousing Corporation vs. DCIT ITA Nos.: 2366 to 2399/Pune/2017, Date of order: 3rd June, 2019, A.Y.s: 2003-04 to 2006-07

Facts:

- The assessee, a State Government Undertaking, was engaged in providing warehouse facilities in the State of Maharashtra. For A.Y. 2002-03, while assessing the total income of the assessee, the AO made certain additions to the returned income. The assessee contested the additions in an appeal before the CIT(A) as well as before the Tribunal. The Tribunal restored the matter back to the AO with certain directions.

- The AO passed an order u/s 143(3) r.w.s. 254 and allowed the final net business loss to be carried forward.
- Subsequently, the CIT invoked section 263 of the Act and held the order passed by the AO u/s 143(3) r.w.s. 254 to be erroneous and prejudicial to the interest of the Revenue.
- The assessee challenged the action of the CIT before the Tribunal. The Tribunal quashed the order passed by the CIT u/s 263. As a result, the order passed by the AO based on the directions of the Tribunal stood restored.
- Thereafter, the assessee, in order to claim the set-off of brought-forward business loss of A.Y. 2002-03, filed an application for rectification of assessment orders for A.Y. 2003-04 to A.Y. 2006-07. The AO rejected this application.
- Aggrieved, the assessee preferred an appeal to the CIT(A) who dismissed the appeals of the assessee on the ground that since the set-off was not claimed in the return of income, the same could not be allowed to the assessee at a belated stage.
- The assessee preferred an appeal to the Tribunal.

Issue:

Section 72 r.w.s. 254, Section 154 – Business loss determined and carried forward by the AO pursuant to an order passed in accordance with directions of the Tribunal u/s 143(3) r.w.s. 254 can be set off in subsequent years though such claim is not made in the return of income. The AO is duty-bound to give relief to the assessee which has resulted pursuant to the order passed by the appellate authority and which has a cascading effect on the subsequent assessment years

Held:

Held by the Tribunal:

- The Tribunal observed that by the time the order u/s 143(3) r.w.s. 254 was passed whereby loss was determined and allowed to be carried forward, the assessee had already filed return of income for the subsequent assessment years and hence the assessee had no occasion to claim set-off of brought-forward business loss and it was a case of supervening impossibility. The Tribunal held that the AO is duty-bound to give relief to the assessee which has resulted pursuant to the order passed by the appellate authority and which has a cascading effect on the subsequent assessment years.

- Further, the Tribunal relied on the decision of the Bombay High Court in the case of CIT vs. Pruthvi Brokers & Shareholders (P) Ltd. [2012] 349 ITR 336 wherein it was held that the assessee is entitled to raise additional ground not merely in terms of legal submissions but also additional claims which were not made in the return filed by it. It was thus held that the assessee was entitled to claim set-off of brought-forward business loss in A.Y.s 2003-04 to 2006-07.

INTERNATIONAL TAXATION

Circulars/ Notifications/Press Release

S.O. 2887(E).—Whereas the Multilateral Convention to Implement Tax Treaty related Measures to Prevent Base Erosion and Profit Shifting (hereinafter referred to as the "the said Convention") was signed by India at Paris, France on the 7th day of June, 2017;

And whereas, the said Convention entered into force on the 01st day of July, 2018, being the first day of month following expiration of three calendar months beginning on the date of deposit of the fifth instrument of ratification, in accordance with para 1 of Article 34 of the said Convention;

And whereas, India had ratified the said Convention and had deposited the instrument of ratification along-with the list of Covered Tax Agreements, reservations and notifications (hereinafter referred to as "India's Position under the said Convention") to the Depositary as in Article 39 of the said Convention, on the 25th day of June, 2019;

And whereas, the date of entry into force of the said Convention for India is the 01st day of October, 2019, being the first day of the month following the expiration of a period of three calendar months beginning on the 25th day of June, 2019 being the date of deposit by India of the instrument of ratification, in accordance with para 2 of Article 34 of the said Convention;

And whereas, the provisions of the said Convention shall have effect in India with respect to a Covered Tax Agreement in accordance with provisions of Article 35 of the said Convention;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 90 of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby notifies that the provisions of the said Convention shall be given effect to in the Union of India, in accordance with India's Position under the said Convention, as set out in the Annexure.

(Notification No. 57/2019/F. No. 500/71/2015-FTD-I dated 09th August, 2019)

S.O. 3079(E).—Whereas, the Protocol, amending the Convention between the Government of the Republic of India and the Kingdom of Spain for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital which was signed at New Delhi on the 8th February, 1993, has been signed at New Delhi on 26th October 2012,as set out in the ANNEXURE appended to this notification (hereinafter referred to as the said amending Protocol);
And whereas, the date of entry into force of the said amending Protocol is the 29th December, 2014 being the two months after the receipt of later of the notifications of the completion of the internal procedures required by each Contracting State for giving effect to the said amending Protocol in accordance with Article 9 of the said amending Protocol;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 90 of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby notifies that all the provisions of the said amending Protocol, as annexed hereto, shall be given effect in the Union of India.

(Notification No. 58/2019/F. No. 503/02/1986-FTD-I, dated 27th August, 2019)

Case Laws

DCIT vs. Hyva Holdings B.V., ITA Appeal No.: 3816 (Mum.) of 2017, Date of order: 30th April, 2019, A.Y.: 2012-13

Facts

- Taxpayer, a company incorporated in the Netherlands, had entered into a service agreement with its Indian subsidiary (ICo) for rendition of a bouquet of services (provision of IT, R&D, strategic purchasing services, etc.) which involved providing certain expertise to support ICo to grow, expand and achieve business independence. Taxpayer contended that the services rendered to ICo are 'managerial' in nature and in the absence of coverage of 'managerial services' in the Fee for Included Services (FIS) Article of the India-Netherlands DTAA, it would not trigger source taxation under the DTAA.
- On a perusal of the service agreement, the AO noted that the nature of services provided by the Taxpayer were not confined to managerial service alone but were all-inclusive, comprising managerial, technical and consultancy services. As the services rendered by Taxpayer made available technical knowledge, experience, knowhow and skill, it qualified as FTS under Article 12 of the DTAA.
- Aggrieved, the Taxpayer filed an appeal before the CIT(A) who reversed the AO's order and concluded that services rendered by Taxpayer were in the nature of managerial services and hence did not fall within the ambit of FTS under the DTAA. Further, even if such services qualify as technical services, in the absence of satisfaction of make-available condition, it did not qualify as FTS under the DTAA.
- But the aggrieved AO appealed before the Tribunal.

Issue:

Article 12(5) of India-Netherlands DTAA – Rendering of a bouquet of services where the predominant nature is managerial in nature will qualify for exemption from FTS, even if some of the services have the trappings of technical and consultancy services

Held

- A perusal of the service agreement indicated that while the services to be rendered under the agreement were termed as management services, some of the services such as information technology, R&D, etc. rendered by Taxpayer

were in the nature of technical or consultancy services. Nevertheless, the core activity of Taxpayer under the agreement was rendering managerial services.

- Further, as the AO did not demonstrate that the amount can be attributed towards technical or consultancy services, the payment received by Taxpayer does not qualify as FTS under the DTAA.
- Without prejudice, even if the services are held to be in the nature of technical or consultancy services, as Taxpayer has not made available any technical knowledge, experience, knowhow, skill, etc., to ICo for its independent use, the amount received by Taxpayer did not qualify as FTS under the DTAA.

Outotec (Finland) Oy, Kolkata vs. DCIT (International Taxation), ITA No.: 2601/Kol/2018, Date of order: 31st May, 2019, A.Y.: 2015-16

Facts:

- Taxpayer, a Finnish company, earned income from rendering of testing and other services to Indian customers. Taxpayer contended that the services were carried on from its office / laboratories located outside India and none of its employees visited India for providing these services to Indian customers. Thus, as the services were performed outside India, income from these services was not taxable in India as per Article 12(5) of the India-Finland DTAA.
- But the AO contended that the services can be said to be performed only when they were used by the beneficiary. Since the intended use of the services tested in the laboratories in Finland was ultimately in India, service can be said to be performed in India and income from such services were taxable in India under Article 12(5) of the DTAA.
- Taxpayer appealed before the DRP who upheld the AO's order. Still Aggrieved, Taxpayer appealed before the Tribunal.

Issue:

- Section 91 of the Act – Credit for state taxes paid in USA can be availed u/s. 91 of the Act
- Section 91 of the Act – A 'resident but not ordinarily resident' being a category carved out of 'resident' – Such assessee is a resident – Entitled to claim tax credit u/s. 91

Held:

- Article 12(5) of the DTAA provides that the FTS shall be deemed to arise in a contracting state where the payer is located. However, as an exception to this in cases where the services for which the FTS is paid is performed within a contracting state, then it shall be deemed to arise in the state in which the services are performed.
- For applying the exception to Article 12(5) it is necessary that the payment should be made for services and such services should be performed in the other state (i.e., Finland). In the present case, payment was made not for the testing but for obtaining the results of the testing which was used in India. Thus, even where testing was done outside India, the exception of Article 12(5) does not apply.
- As services were availed in India, the fee for testing services was taxable in India.

REGULATION GOVERNING INVESTMENTS

FOREIGN EXCHANGE MANAGEMENT ACT (FEMA)

Foreign Exchange Management (Deposit) (Amendment) Regulations, 2019 – Acceptance of Deposits by issue of Commercial Papers

Attention of Authorised Dealers (ADs) is invited to the Foreign Exchange Management (Deposit) Regulations, 2016 notified vide Notification No. FEMA 5(R)/2016-RB dated April 1, 2016, as amended from time to time and the relevant directions issued thereunder. We advise that Sub-regulation (3) of Regulation 6 of the above Regulations, in terms of which a Company may accept deposits through issue of Commercial Paper (CP), has been reviewed vis-à-vis other Statutes/Regulations – notably Section 45 U(b) of RBI Act, 1934 describing CP as one of the Money Market Instruments and Section 2(c) of Companies (Acceptance of Deposits), Rules 2014 which excludes any amount received against issue of, inter alia, CPs from definition of deposits.

It has also been considered that Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) Regulations, 2017 – FEMA 20(R), already allow investments in CPs issued by the Indian Companies. Therefore, with a view to bring in consistency in statutory provisions/regulations relating to Commercial Papers (CPs), RBI advise that sub-regulation (3) of Regulation 6 of FEMA 5(R)/2016-RB has been deleted vide GOI Notification No. FEMA 5(R)(2)/2019-RB dated July 16, 2019.

Bank credit to registered NBFCs for on-lending will be eligible for classification as Priority Sector

In order to boost credit to the needy segment of borrowers, it has been decided by RBI that bank credit to registered NBFCs (other than Micro Finance Institutions- MFIs) for on lending will be eligible for classification as priority sector under respective categories subject to the following conditions:

- **Agriculture**: On-lending by NBFCs for ‘Term lending’ component under Agriculture will be allowed up to INR 10 lakh per borrower.
- **Micro & Small enterprises**: On-lending by NBFC will be allowed up to INR 20 lakh per borrower.
- **Housing**: Enhancement of the existing limits for on-lending by Housing Finance Companies (HFCs) vide Para 10.5 of RBI’s Master Direction on Priority Sector lending, from INR 10 lakh per borrower to INR 20 lakh per borrower.

Under the above on-lending model, banks can classify only the fresh loans sanctioned by NBFCs out of bank borrowings, on or after the date of issue of this circular. However, loans given by HFCs under the existing on-lending guidelines will continue to be classified under priority sector by banks.

Bank credit to NBFCs for On-Lending will be allowed upto a limit of five percent of individual bank's total priority sector lending on an ongoing basis. Further, the above instructions will be valid for the current financial year upto March 31, 2020 and will be reviewed thereafter. However, loans disbursed under the on-lending model will continue to be classified under Priority Sector till the date of repayment/maturity.

RBI reduces repo rate in Third Bi-monthly Monetary Policy Statement, 2019-20

On the basis of an assessment of the current and evolving macroeconomic situation, the Monetary Policy Committee (MPC) at its meeting today decided to reduce the policy repo rate under the liquidity adjustment facility (LAF) by 35 basis points (bps) from 5.75 per cent to 5.40 per cent with immediate effect. Consequently, the reverse repo rate under the LAF stands revised to 5.15 per cent, and the marginal standing facility (MSF) rate and the Bank Rate to 5.65 per cent. The MPC also decided to maintain the accommodative stance of monetary policy. These decisions are in consonance with the objective of achieving the medium-term target for consumer price index (CPI) inflation of 4 per cent within a band of +/- 2 per cent, while supporting growth.

RBI Central Board accepts Bimal Jalan Committee recommendations and approves surplus transfer to the Government

The Central Board of the Reserve Bank of India (RBI) decided to transfer a sum of INR 1,76,051 crore to the Government of India (Government) comprising of INR 1,23,414 crore of surplus for the year 2018-19 and INR 52,637 crore of excess provisions identified as per the revised Economic Capital Framework (ECF) adopted at the meeting of the Central Board held in August 2019.

Direct Benefit Transfer (DBT) Scheme

In reference to Circular RPCD.CO.LBS.BC.No.75/02.01.001/2012-13 dated May 10, 2013 and RPCD.CO.LBS.BC.No.11/02.01.001/2013-14 dated July 9, 2013 regarding the use of Aadhaar to facilitate delivery of social welfare benefits by direct credit to the bank accounts of beneficiaries. In this connection, banks are advised by RBI to ensure that opening of bank accounts and seeding of Aadhaar numbers with existing or new accounts of eligible beneficiaries opened for the purpose of Direct Benefit Transfer (DBT) under social welfare schemes, is in conformity with the provisions listed under Section 16 of the Master Direction - Know Your Customer (KYC)

Direction, 2016 (updated as on May 29, 2019) and extant provisions of the Prevention of Money Laundering (PML) Rules.

Transfer of Regulation of Housing Finance Companies (HFCs) to Reserve Bank of India

The Finance (No.2) Act, 2019 (23 of 2019) has amended the National Housing Bank Act, 1987 conferring certain powers for regulation of Housing Finance Companies (HFCs) with Reserve Bank of India. The Central Government has since issued notification appointing August 09, 2019 as the date on which the relevant part of that Act, namely, Part VII of Chapter VI shall come into effect. HFCs will henceforth be treated as one of the categories of Non-Banking Financial Companies (NBFCs) for regulatory purposes. Reserve Bank will carry out a review of the extant regulatory framework applicable to the HFCs and come out with revised regulations in due course. In the meantime, HFCs shall continue to comply with the directions and instructions issued by the National Housing Bank (NHB) till the Reserve Bank issues a revised framework. NHB will continue to carry out supervision of HFCs and HFCs will continue to submit various returns to NHB as hitherto. The grievance redressal mechanism with regard to HFCs will also continue to be with the NHB.

COMPANY LAW

MCA clarifies 'APPOINTED DATE'

'Appointed date' is crucial for arriving at values appearing in books of accounts for the purpose of transfer to transferee company for transfer of assets / business and also for arriving at the value of the shares for transferor and transferee companies i.e. exchange ratio in a scheme of amalgamation/arrangement.

Recently, there was some uncertainty observed from the behaviour of National Company Law Tribunal (NCLT) and Regional Directors where they were taking a rigid view that 'appointed date' must be a specific calendar date and rejected the concept of 'appointed date' linked with scheme becoming effective upon satisfaction of certain agreed conditions in scheme and receipt of requisite approvals including NCLT approval. In fact, Mumbai NCLT stirred a hornet's nest by interpreting that 'appointed date' should be the valuation date i.e. date when the merger consideration is determined.

In this context, the clarification from MCA vide its circular dated 21 August 2019 is a welcome step in unpacking and resolving these ambiguities pertaining to 'appointed date'.

Clarifications issued are as follows:

i. Parties to the merger/amalgamation may choose an 'appointed date' specific to a calendar date or tied to occurrence or fulfillment of any condition or event as agreed between the parties upon which the scheme shall become effective.
ii. The 'appointed date' under the scheme shall be deemed to be 'acquisition date' for the purpose of Ind AS 103 (Business Combination).
iii. The 'appointed date', if it is a specific calendar date, may precede the date of filing of scheme with NCLT. However, justification is required to be given in the case where the 'appointed date' is significantly ante-dated.
iv. Where the 'appointed date' is an event-based date and it is subsequent to the date of filing of scheme with the NCLT, then Registrar is required to be intimated of the same within 30 days of such scheme coming into force.

MCA amends provisions related to differential Voting Rights.

MCA has amended the provisions relating to issue of shares with differential voting rights provisions under the Companies Act with the objective of enabling promoters of Indian companies to retain control of their companies in their pursuit for growth and creation of long-term value for shareholders, even as they raise equity capital from global investors.

The key change to the Companies (Share Capital & Debentures) Rules, 2014 brings in an enhancement in the previously existing cap of 26% of the total post issue paid up equity share capital to a revised cap of 74% of total voting power in respect of shares with differential voting rights of a company.

Another key change brought about is the removal of the earlier requirement of distributable profits for 3 years for a company to be eligible to issue shares with differential voting rights. This would encourage more companies to issue shares with differential voting rights.

MCA amends provisions relating to DEBENTURE REDEMPTION RESERVE (DRR)

MCA has amended the provisions relating to the conditions for creating DRR under the Companies Act. The requirement of creation of DRR of 25% of the value of outstanding debentures has been removed in respect of listed companies, non-banking financial companies registered with the RBI and housing finance companies registered with National Housing Banks for both public issue and private placement.

For unlisted companies, the adequacy of DRR has been reduced from 25% to 10% of the value of the outstanding debentures.

ACCOUNTS & AUDIT

Additional disclosure of reasons for encumbrance by promoter of listed companies

Background

Regulation 31(1) of the Securities and Exchange Board of India (SEBI) (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 requires disclosure of details of shares in a target company encumbered by the promoter/persons acting in concert. The format of the disclosure has been prescribed by SEBI through circular (no. CIR/CFD/POLICYCELL/3/2015) dated 5 August 2015.

New development

SEBI through its circular (no. SEBI/HO/CFD/DCR1/ CIR/P/2019/90) dated 7 August 2019 prescribed additional disclosure requirements in relation to encumbered shares. This is expected to provide greater transparency regarding reasons for encumbrance, particularly when significant shareholding by a promoter along with persons acting in concert with him/her is encumbered.

As per the circular, promoter of every listed company is specifically required to disclose detailed reasons for encumbrance if the combined encumbrance by the promoter along with persons acting in concert with him/ her equals or exceeds 50 per cent of their shareholding in the company or 20 per cent of the total share capital of the company.

The disclosure of reasons for encumbrance should be made within two working days from the creation of such encumbrance to every stock exchange (where the shares of the company are listed) and to the listed company in the format provided in Annexure - II of the circular. The disclosure is required to be made on every occasion when the extent of encumbrance increases further from the prevailing levels. The disclosure requirement is applicable from 1 October 2019.

In case the existing combined encumbrance by the promoter along with persons acting in concert with him/ her is either 50 per cent or more of their shareholding in the company or 20 per cent or more of the total share capital of the company as on 30 September 2019, then the promoter is required to make the disclosure on detailed reasons for encumbrance by 4 October 2019 (in the format specified in Annexure – II of the circular).

(SEBI circular no. SEBI/HO/CFD/DCR1/CIR/P/2019/90 dated 7 August 2019)

SEBI issues revised format for compliance report on corporate governance by listed companies Background

Regulation 27(2) of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (Listing Regulations) requires every equity listed company to submit a quarterly compliance report on corporate governance (report) to the recognised stock exchange(s) within 15 days from the close of the quarter in the format specified by SEBI.

Accordingly, SEBI through its circular (no. CIR/CFD/ CMD/5/2015) dated 24 September 2015 specified the formats for the report to be submitted:

a. On a quarterly basis
b. At the end of Financial Year (FY) (for the whole of FY)
c. At the end of six months after the end of FY. This may be submitted along with second quarter report.

Further, Regulation 17(3) of the Listing Regulations also requires the Board of Directors (BoD) of the listed company to periodically review the above reports as well as steps taken by the listed company to rectify instances of non-compliances.

New development

On 16 July 2019, SEBI through its circular (no. SEBI/ O/CFD/CMD1/CIR/P/2019/78) issued revised formats for compliance report on corporate governance. The modifications to the formats have been made on the basis of the recent changes made to the Listing Regulations pursuant to Kotak Committee and other amendments.

The key compliances to be additionally reported in the report are as follows:

- **Chairperson is related to the MD or CEO**: Every equity listed company is required to disclose whether chairperson is related to Managing Director (MD) or Chief Executive Officer (CEO) on a quarterly basis.
- **Quorum for board and committee meetings**: As part of compliances to be reported at the end of FY, every equity listed company is required to affirm whether requisite quorum has been maintained during the board and the committee meetings.
- **Chairperson of SRC to be present in AGM**: A listed company is additionally required to affirm whether the chairperson of the Stakeholders Relationship Committee (SRC) was present at the Annual General Meeting (AGM) to answer queries of the security holders in the compliance report to be submitted at the end of six months after the end of FY. The revised formats have been made effective from the quarter ending 30 September 2019.

(Source: SEBI circular no. SEBI/HO/CFD/CMD1/ CIR/P/2019/78 dated 16 July 2019)

GOODS AND SERVICE TAX

The applicability of Rule 138E has been further postponed by 3 months i.e. up to 21st November 2019.

- As per Rule 138E, if any of the registered person fails to file returns for 2 consecutive tax periods, their GSTIN shall not be allowed to be mentioned anywhere in Part A of the E-way bill.
- Now the council has decided to postpone the same by 3 more months. Hence, the effective date for the same shall be 21st November, 2019

The requirement of filing ITC-04 (for Job work) has been exempted for the period Jul'17 to Mar'19.

- ITC-04 is a statement the Principal (Person sending the goods for Job-work), which contains the details of the goods sent for the Job work, received back / supplied from there. Etc.
- The same has to be filed on quarterly basis, by 25 of the following quarter. However, the same has been extended multiple times.
- Finally, the council has decided to remove the requirement for the past period, i.e. Jul'17-Mar'19.
- However, the principal has to file the following details in the first return to be filed i.e. the return for the period Apr'19-Jun'19, the principal has to file the details of the goods dispatched to a job worker in the period July, 2017 to March, 2019 but are neither received back, nor sent to the customer.
- The due date for filing of ITC-04 for the quarter Apr'19-Jun'19 is 31-Aug-19.

The Sec 103 of the finance (No. 2) act, 2019, which enables the single window disbursement mechanism for refunds has been notified w.e.f. 01 Sep-19.

- The central govt. has drawn power to disburse the state taxes by inserting newsub-sec. 8A to Sec 54.
- Hence, the Central officers can disburse the entire tax amount (CGST+SGST+IGST) at a time.
- However, it's not very clear, whether the State officers can also refund the Central tax & IGST or only the Central tax officers shall be doing it.

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