NANUBHAI DESAI & CO.

December 2019

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INCOME TAX

DOMESTIC TAXATION

Circulars/ Notifications/ Press Release

Section 138 of the Income-Tax Act, 1961 - Disclosure of Information respecting assessees to Specified Officer, Authority or Body Performing functions under any other law - Notified Authority under section 138(1)(A)(Ii)

In pursuance of sub-clause (ii) of clause (a) of sub-section (1) of section 138 of the Income-tax Act, 1961, the Central Government hereby specifies Director General, Anti-Corruption Bureau, Government of Rajasthan, Jaipur for the purpose of said clause.

It is clarified that income-tax authority, as specified in Notification No. S.O. No. 731(E) dated 28.07.2000, shall—(i) furnish only relevant and precise information after forming an opinion that furnishing of such information is necessary so as to enable the above notified authority to perform its functions under the law being administered by it; and (ii) convey to the authority being specified vide this notification to maintain absolute confidentiality in respect of information being furnished.

(Notification No. 106/2019/F. No. 225/214/2019/ITA-II, dated 30th December, 2019)

Income-Tax (Sixteenth Amendment) Rules, 2019 - Insertion of Rule 119AA

In exercise of the powers conferred by section 269SU read with section 295 of the Income-tax Act, 1961 (43of 1961), the Central Board of Direct Taxes hereby makes the following rules further to amend Income-tax Rules, 1962, namely:—

Short title and commencement

1. (1) These rules may be called the Income-tax (16th Amendment) Rules, 2019.
   (2) They shall come into force from 1st day of January, 2020.
2. In the Income-tax Rules, 1962, after rule 119A, the following rule shall be inserted, namely:—

   "119AA. Modes of payment for the purpose of section 269SU.—Every person, carrying on business, if historical sales, turnover or gross receipts, as the case may be, in business exceeds fifty crore rupees during the immediately preceding previous year shall provide facility for accepting payment through following

electronic modes, in addition to the facility for other electronic modes of payment, if any, being provided by such person, namely:—

(i) Debit Card powered by RuPay;

(ii) Unified Payments Interface (UPI) (BHIM-UPI); and

(iii) Unified Payments Interface Quick Response Code (UPI QR Code) (BHIM-UPI QR Code).

(Notification No. Notification No. 105/2019, F.No. 370142/35/2019-TPL, dated 30th December, 2019)

Tax Exemption to Startups

Under Startup India Initiative recognized startups have been exempted under several sections of IT Act. Details are enclosed at Annexure-I.

The Fund of Funds for Startups (FFS) was approved by the Cabinet and established by Department for Promotion of Industry and Internal Trade (DPIIT) in June 2016 with a corpus of Rs. 10,000 crore to provide a much needed boost to the Indian startup ecosystem and enable access to domestic capital. The objectives of Fund of Funds include accelerating innovation driven entrepreneurship and business creation, mobilizing larger equity-like resources for startups. The Fund of Funds does not directly invest in start-ups but provides capital to SEBI-registered Alternate Investment Funds (AIFs), known as daughter funds, who in turn invest money in growing Indian startups through equity and equity-linked instruments. SIDBI has been given the mandate of managing this Fund through selection of suitable daughter funds and overseeing the disbursal of committed capital.

As on 21st November, 2019, SIDBI has committed Rs. 3123.20 Cr. to 47 SEBI registered Alternative Investment Funds (AIFs). These funds have raised a corpus fund of Rs. 25,728 Crore. Rs. 695.94 Crore have been drawn from the Fund of Funds for start-ups. Rs. 2,669.83 Crore have been invested into 279 startups. There is no provision for State/UT-wise distribution of funds under FFS. 2,85,890 jobs are reported by 23,657 DPIIT recognized start-ups, as on 4th December 2019. The breakup of the number of start-ups with number of employees State/UT-wise is attached at Annexure-II.

(Press release, dated 11th December, 2019)

Case laws

[2019] 111 taxmann.com 10 (Trib.) (Mum.) Ambuja Cements Ltd. vs. DCIT ITA No.: 3643/Mum/2018, Date of order: 5th September, 2019, A.Y.: 2007-08

Facts:

- The assessee, engaged in the manufacture and sale of cement, filed its return of income wherein a MAT credit of Rs. 20.12 crores was claimed. The AO, while completing the assessment, allowed MAT credit of only Rs 6.99 crores instead of Rs 20.12 crores as claimed in the return of income.
- Aggrieved, the assessee preferred an appeal to the CIT(A) on several grounds, one of which was that MAT credit was short-granted. The CIT(A) directed the AO to grant MAT credit in accordance with law. The AO passed an order giving effect to the order of CIT(A) wherein he allowed MAT credit of Rs. 20.12 crores to the assessee.
- The CIT was of the opinion that the MAT credit allowed by the AO is excessive as the MAT credit allowed includes Rs. 6.99 crores being MAT credit of ACEL, a company which was amalgamated into the assessee company. She, accordingly, exercised her powers u/s 263 of the Act and directed the AO not to grant MAT credit of Rs. 6.99 crores because according to her the amalgamated company is not entitled to MAT credit of the amalgamating company.
- Aggrieved, the assessee preferred an appeal to the Tribunal.

Issue:

Section 115JAA r.w.s. 263 – Amalgamated company is entitled to claim set-off of MAT credit of the amalgamating company

Held:

Held by the Tribunal:

- The Tribunal observed that there is no restriction with regard to allowance of MAT credit of an amalgamating company in the hands of the amalgamated company. According to the Tribunal, a plain reading of the aforesaid provision reveals that MAT credit is allowed to be carried forward for a specific period.
- In the case of Skol Breweries Ltd., the Tribunal, Mumbai Bench, while deciding an identical issue, has held that carried forward MAT credit of the amalgamating company can be claimed by the amalgamated company. A

similar view has been expressed by the Tribunal, Ahmedabad Bench, in Adani Gas Ltd.. If we consider the issue in the light of the ratio laid down in the aforesaid decisions, there cannot be two views that the assessee is entitled to claim carried-forward MAT credit of the amalgamating company Ambuja Cement Eastern Ltd. (ACEL).

- The Tribunal also observed that while completing the assessment in case of the amalgamating company ACEL in the A.Y. 2006-07, the AO has also concluded that carried-forward MAT credit of ACEL would be available in the hands of the present assessee.
- Keeping in view the assessment order passed in case of the amalgamating company as well as the decisions referred to above, the Tribunal held that the principle which emerges is that the carried-forward MAT credit of the amalgamating company can be claimed by the amalgamated company. Viewed in this perspective, the decision of the AO in allowing set-off of carried forward MAT credit of Rs. 6,99,46,873 in the hands of the assessee cannot be considered to be erroneous. Therefore, one of the conditions of section 263 of the Act is not satisfied. That being the case, the exercise of power u/s 263 of the Act to revise such an order is invalid.
- The Tribunal quashed the impugned order passed by the CIT.
- This ground of appeal filed by the assessee was allowed.

[2019] 201 TTJ (Mum.) 1009 Cable Corporation of India Ltd. vs. DCIT ITA Nos.: 7417/Mum/2010 & 7369/Mum/2012, Date of order: 30th April, 2019 A.Y.: 2000-01

Facts:

- The assessee company was engaged in the business of manufacturing and sales of cables. During the year the assessee borrowed interest-free loan of Rs. 12 crores from a company, MPPL, which was to be repaid over a period of 100 years. The said loan was utilised for the purchase of shares by the assessee and not for its line of activity / business. Thereafter, a tripartite agreement was entered into between the assessee, MPPL and CPPL under which the obligation of repaying the above-mentioned loan of Rs. 12 crores was assigned to CPPL at a discounted present value of Rs. 0.36 crores. The resultant difference of Rs. 11.64 crores was credited by the assessee to the profit and loss account as 'gain on assignment of loan obligation' under the head income from other sources. However, while computing the taxable income, the assessee reduced the said amount from the taxable income on the ground that the same constituted a capital receipt in the hands of the assessee and was not taxable.

- The AO observed that the lender, MPPL, had accepted the arrangement of assignment of loan to CPPL and CPPL had started paying the installments to MPPL as per the said tripartite agreement. Thus, the liability of the assessee was ceased / extinguished; as such, the provisions of section 41(1) were applicable to this case. He further observed that the assessee during the course of his business borrowed funds to the tune of Rs. 12 crores and assigned the same to CPPL for Rs. 0.36 crores, thus the resultant benefit of Rs. 11.6 crores by cessation of liability was a trading surplus and had to be taxed. The AO further observed that the assessee himself had credited Rs. 11.64 crores to the profit and loss account as gain on assignment of loan under the head income from other sources. On appeal, the Commissioner (Appeals) upheld the AO's order.

Issue:

Section 41(1) r.w.s. 28(iv) – Where assessee assigned its loan obligation to a third party by making a payment in terms of present value of future liability, surplus resulting from assignment of loan was not cessation or extinguishment of liability as loan was to be repaid by third party –The same could not be brought to tax in the hands of the assessee

Held:

Held by the Tribunal:

- The Tribunal held that the assessee was in the line of manufacturing and trading of cables and not the purchase and sale of shares and securities. It was apparent from the facts that the loan was utilised for the purpose of purchase of shares which was not a trading activity of the assessee. The liability of the loan of Rs. 12 crores to be discharged over a period of 100 years was assigned to the third party, viz., CPPL, by making a payment of Rs. 0.36 crores in terms of the present value of the future liability and the surplus resulting from the assignment of the loan liability was credited to the profit and loss account under the head income from other sources; but while computing the total income, the said income was reduced from the income on the ground that the surplus of Rs. 11.64 crores represented capital receipt and, therefore, was not taxable. It was true that both companies, MPPL and CPPL, were amalgamated with the assessee later on with all consequences. So the issue was whether the surplus Rs. 11.64 crores resulting from the assignment of loan to CPPL under the said tripartite agreement between the assessee, MPPL and CPPL was a

revenue receipt liable to tax or a capital receipt as has been claimed by the assessee.

- The purchase of shares by the assessee was a non-trading transaction and was of capital nature. The surplus resulting from the assignment of loan as referred to above was not resulting from trading operation and therefore was not to be treated as revenue receipt. The provisions of section 41(1) were not applicable to the said surplus as its basic conditions were not fulfilled. In other words, the assessee had not claimed it as deduction in the profit and loss account in the earlier or in the current year. In order to bring an allowance or deduction within the ambit of section 41(1), it was necessary that a deduction / allowance was granted to the assessee.
- In the instant case, the loan was utilised for purchasing shares which was a capital asset in the business of the assessee and the surplus resulting from assignment of loan was a capital receipt not liable to be taxed either u/s 28(iv) or u/s 41(1). Accordingly, the surplus arising from assignment of loan was not covered by the provisions of section 41(1) and consequently could not be brought to tax either u/s 28(iv) or u/s 41(1). Further, the surplus had resulted from the assignment of liability as the assessee had entered into a tripartite agreement under which the loan was to be repaid by the third party in consideration of payment of net present value (NPV) of future liability. Thus, the surplus resulting from assignment of loan at present value of future liability was not cessation or extinguishment of liability as the loan was to be repaid by the third party and, therefore, could not be brought to tax in the hands of the assessee. Therefore, the order of the Commissioner (Appeals) was set aside and the AO was directed to delete the addition of Rs. 11.64 crores.

INTERNATIONAL TAXATION

Circulars/ Notifications/Press Release

Public Consultation on proposal for amendment of Income-Tax Rules, 1962, to insert new rule 29BA and Form 15E, to give effect to amendment in Section195 of the Income-Tax Act, 1961 vide Finance (No. 2) Act, 2019

Section 195 of the Act relates to levy of tax deduction at source (TDS) on any sum chargeable to tax and which is paid to a non-resident, not being a company, or to a foreign company. Prior to the amendment, sub-section (2) of the said section provided that where the person responsible for paying such sum chargeable under the Act to a non-resident considers that the whole of such sum would not be income chargeable in the case of the recipient, he may make an application to the Assessing Officer to determine, by general or special order, the appropriate of such sum so chargeable and upon such determination, tax shall be deducted only on that proportion of the sum which is so chargeable.

However, no format was prescribed for making the application under sub-section (2) of section 195.Therefore, the deductor has to write an application on plain paper and physically submit it to the Assessing Officer. The AO then issues a certificate determining by general or special order, the appropriate proportion of such sum so chargeable to tax at source under section (1) of section 195 of the Act, and there are also no standard operating procedures in respect of processing and disposal of the application under the said sub-section. This increases uncertainty and causes inconvenience to deductors.

Further, sub-section (7) of section 195 also provided that the Government may specify- a class of persons or cases, where the deductor who is responsible for paying to a non-resident, not being a company, or to a foreign company, any sum, whether or not chargeable under the provisions of this Act, shall make an application to the Assessing Officer to determine, by general or special order, the appropriate proportion of sum chargeable, and upon such determination, tax shall be deducted under sub-section (1) on that proportion of the sum which is so chargeable. However, no format was prescribed for making such application and neither is any standard operating procedures specified in respect of processing and disposal of the application. There was a demand from various stakeholders to streamline the process of passing of such orders under section 195(2) of the Act.

In order to streamline the process for making an application by the deductor and to reduce the human interface, section 195 of the Act was amended through Finance (No.2), Act 2019. The new amended section195 now empowers the Board to prescribe the form and manner of filing of application under sub-section (2)to determine the appropriate proportion of such sum so chargeable and upon determination tax to be deducted as per sub-section (1) of section 195 on that proportion only. Further sub-

section (7) of section 195 was amended to provide that the Government may specify a class of persons or cases, where the deductor who is responsible for paying to a non-resident, not being a company, or to a foreign company, any sum, whether or not chargeable under the provisions of this Act, shall make an application to the Assessing Officer in such form and manner and Assessing officer to determine in such manner as may be prescribed the appropriate proportion of sum chargeable, and upon such determination, tax shall be deducted under sub-section (1).

As a result of the amendments carried out in sub-section (2) and sub-section (7) of section 195 of the Act, vide Finance (No.2) Act, 2019, consequential amendments have to be carried out in Income-tax Rules, 1962{the Rules) and Forms to give effect to the amendments.

In view of the above discussion, a new Form 15E is proposed to be introduced in the Rules to operationalize the provisions of the section 195(2) of the Act.

It has been decided to seek the stakeholder's comments in relation to proposed Form 15E to be introduced in the Rules. In this regard, comments and suggestions are invited from the general public on the proposed form.

(Office Memorandum, F. NO. 340142/24/2019-TPL, dated 31st December, 2019)

CBDT Issues Draft Notification Seeking Inputs for Framing of Rules with respect to Fund Manager Regime under Section 9 of the Income-Tax Act, 1961

Section 9A of the Income-tax Act, 1961 (the Act) provides for a special taxation regime in respect of certain offshore funds in the context of their fund managers being located in India. It is provided that in case of an eligible investment fund, the fund management activity carried out through an eligible fund manager acting on behalf of such fund shall not constitute business connection in India of the said fund. Further, it is provided that an eligible investment fund shall not be said to be resident in India merely because the eligible fund manager undertaking fund management activities on its behalf is located in India subject to the conditions mentioned in sub-section (3) of section 9A, one of which [clause (m) of said sub-section] provides that the remuneration paid by the fund to an eligible fund manager in respect of fund management activity under taken by him on its behalf is not less than the arm's length price of the said activity.

Accordingly, Income-tax Rules, 1962 (the Rules) were amended by way of insertion of rules 10V to 10VB and Forms 3CEJ and 3CEK vide notification No. 14/2016 with S.O. 1101 (E), dated 15.3.2016. Rule 10V was further amended vide notification No. 106/2016 with S.O. 3498(E), dated 21.11.2016.
Sub-rules (5) to (10) of rule 10V of the Rules contains the provisions relating to determination of the arm's length price in respect of any remuneration paid by the

eligible investment fund to an eligible fund manager as referred to in clause (m) of sub-section (5) of section 9A.

Finance (No 2) Act, 2019 with effect from 1st April, 2019, inter alia, amended clause (m) of sub-section (5) of section 9A so as to provide that the remuneration paid by the fund to an eligible fund manager in respect of fund management activity undertaken by him on its behalf is not less than the amount calculated in such manner as may be prescribed.

Accordingly, the manner for calculation of the amount, compared to which the remuneration paid to the eligible fund manager should not be less, is required to be prescribed.

The draft notification proposing the above amendments has been uploaded on www.incometaxindia.gov.in for inputs from stakeholders and general public. The inputs on the draft rules may be sent electronically at the email address, ustpl1@nic.in, latest by 19th December, 2019.

(Press release, dated 05th December, 2019)

Case Laws

TS-659-ITAT-2019 (Chny.) M/s. Herve Pomerleau International CCCL Joint Venture vs. ACIT ITA Nos.: 1008/Chny/2017, 17, 18 & 19/Chny/2019 A.Ys.: 2010-11, 2011-12, 2012-13 & 2013-14 Date of order: 21st October, 2019

Facts

- The assessee was a consortium between an Indian and a foreign company. It was taxable as an Association of Persons (AOP) under the Act. The consortium was set up to execute a contract in India. While the consortium agreement and the profit-sharing agreement were silent about the profit-sharing ratio of members, they mentioned that profit before tax on the project would be finally determined after completion of the project and that the foreign company would be paid a guaranteed profit share equivalent to 2% of the contract price. The consortium agreement further mentioned that the obligation to pay the guaranteed amount was not on the AOP but on the Indian company.
- The assessee contended that it was a 'determinate' AOP, hence it offered income for tax at the maximum marginal rate (MMR) applicable to an Indian company.
- But the AO held that the assessee was an 'indeterminate' AOP. Hence, its income was to be taxed at the MMR applicable to a foreign company. Therefore, he initiated re-assessment proceedings under the Act.
- The CIT(A) dismissed the appeal of the assessee who filed an appeal before the Tribunal.

Issue:

Section 167B(1) of the Act – Where foreign company is a member of an AOP and share of profits of the members is indeterminate or unknown, income of AOP is subject to maximum marginal rate applicable to foreign company

Held

- Admittedly, the consortium was assessed as an AOP;
- Section 167B(1) of the Act would apply if the shares of the members of the AOP are indeterminate or unknown;
- Perusal of the consortium and profit-sharing agreements showed that the agreement was silent about the profit-sharing ratio of its members. However, the foreign company was guaranteed 2% of the contract price as its profit. The

obligation to pay the guaranteed amount was not on the AOP but on the Indian company;

- The term 'share of net profit' implies a 'share in the net profits' which is an interest in the profits as profits, which implies a participation in profits and losses;
- In the facts of the case, the foreign company was entitled to 2% of the project cost regardless of whether the AOP made profits or losses. Thus, the minimum guarantee was a charge against the profits of the AOP but not a share in the profits of the AOP. Therefore, the share of the members in the profit of the AOP could not be said to be determinate or known;
- Accordingly, the AOP was subject to section 167B(1) of the Act. Consequently, its income was subject to tax at the MMR applicable to foreign companies.

TS-640-ITAT-2019 (Chny.) DCIT vs. M/s Integra Software Services Pvt. Ltd. ITA No.: 2189/Chny/2017 A.Y.: 2011-12 Date of order: 11th October, 2019

Facts:

- The assessee was engaged in the business of undertaking editorial services, multilingual typesetting and data conversion. The assessee outsourced language translation to various vendors in the USA, the UK, Germany and Spain and made certain payments to them without withholding tax, on the ground that such services were not in nature of FTS.
- However, the AO concluded that such payments were subject to withholding and, consequently, disallowed payments made u/s 40(a)(i) of the Act.
- On appeal, the CIT(A) concluded that payments made to tax residents of the USA and the UK did not make available technology to the assessee and hence they were not FIS under the India-USA DTAA and the India-UK DTAA. Thus, tax was not required to be withheld from such payments. He, however, held that payments made to the tax residents of Germany and Spain were in the nature of FTS and in the absence of 'make available' condition in the relevant DTAAs, it was subject to withholding of tax.
- Aggrieved, the assessee filed an appeal before the Tribunal.

Issue:

Section 195 – As services of copyediting, indexing and proofreading do not qualify as FTS, tax could not be withheld u/s 195 of the Act

Held:

- Copyediting, indexing and proofreading services only require knowledge of language and not expertise in the subject matter of the text. Hence such services could not be considered as technical services. Reliance in this regard was placed on the decision of the Chennai Tribunal in Cosmic Global Ltd. vs. ACIT (2014) 34 ITR (Trib.) 114.
- Since the services rendered were not technical services, payments made to NRs were not taxable in India and were also not subject to withholding of tax under the Act.

REGULATION GOVERNING INVESTMENTS

FOREIGN EXCHANGE MANAGEMENT ACT (FEMA)

RBI releases Financial Stability Report –December 2019

The Reserve Bank of India released the Report on Financial Stability (FSR). The FSR reflects the collective assessment of the Sub-Committee of the Financial Stability and Development Council (FSDC) on risks to financial stability and also the resilience of the financial system. The Report also highlights issues relating to development and regulation of the financial sector. The Overall assessment of systemic risks according to the report says that India's financial system remains stable notwithstanding weakening domestic growth; the resilience of the banking sector has improved following recapitalisation of Public Sector Banks (PSBs) by the Government. Risks arising out of global/domestic economic uncertainties and geopolitical developments, however, persist.

Global and domestic macro-financial risks

- The global economy confronted a number of uncertainties, delayed in the Brexit deal, trade tensions, whiff of an impending recession, oil-market disruptions and geopolitical risks, leading to significant deceleration in growth. These uncertainties weighed on consumer confidence and business sentiment, dampened investment intentions and unless properly addressed are likely to remain a key drag on global growth.
- As regards the domestic economy, aggregate demand slackened in Q2:2019-20. Further extending the growth deceleration. While the outlook for capital inflows remains positive, India's exports could face headwinds in the event of sustained global slowdown but current account deficit is likely to be under control reflecting muted energy price outlook.
- Reviving the twin engines of consumption and investment while being vigilant about spillovers from global financial markets remains a critical challenge going forward.

Financial Institutions: Performance and risks

- Scheduled commercial banks' (SCBs) credit growth remained subdued at 8.7 per cent year-on-year (y-o-y) in September 2019, though Private Sector Banks (PVBs) registered double digit credit growth of 16.5 per cent.
- SCBs' capital adequacy ratio improved significantly after the recapitalization of public sector banks (PSBs) by the Government.

- SCBs' gross non-performing assets (GNPA) ratio remained unchanged at 9.3 per cent between March and September 2019.
- Provision Coverage Ratio (PCR) of all SCBs rose to 61.5 per cent in September 2019 from 60.5 per cent in March 2019 implying increased resilience of the banking sector.
- Macro-stress tests for credit risk show that under the baseline scenario, SCBs' GNPA ratio may increase from 9.3 per cent in September 2019 to 9.9 per cent by September 2020 primarily due to change in macroeconomic scenario, marginal increase in slippages and the denominator effect of declining credit growth.
- As per network analysis, total bilateral exposures between entities in the financial system registered a marginal decline in quarter ended September 2019. Among all the intermediaries, Private Sector Banks (PVBs) saw the highest y-o-y growth in their payables to the financial system, while insurance companies recorded the highest y-o-y growth in their receivables from the financial system. Commercial Paper (CP) funding amongst the financial intermediaries continued to decline in the last four quarters.
- The size of the inter-bank market continued to shrink with inter-bank assets amounting to less than 4 per cent of the total banking sector assets as at end-September 2019. This reduction, along with better capitalisation of PSBs led to a reduction in contagion losses to the banking system compared to March 2019 under various scenarios relating to idiosyncratic failure of a bank/non-banking finance company (NBFC) /housing finance company (HFC) and macroeconomic distress.

Financial sector: Regulation and developments

- Reserve Bank has initiated policy measures: to introduce a liquidity management regime for NBFCs; to improve the banks' governance culture; for resolution of stressed assets and for the development of payment infrastructure
- The Reserve Bank has accepted some of the key recommendations of the Task Force on Offshore Rupee Markets viz., allowing domestic banks to freely offer foreign exchange prices to non-residents and allowing rupee derivatives (with settlement in foreign currency) to be traded in International Financial Services Centres (IFSCs).
- The Securities and Exchange Board of India (SEBI) has taken a number of steps to improve the financial markets including a revised risk management framework of liquid funds, revised norms for investment and valuation of money market and debt securities by mutual funds (MFs), revised norms for credit rating agencies (CRAs), facilitating new commodity derivative products and

setting up institutional trading platforms (ITPs) on stock exchanges to promote start-ups.

- The Insolvency and Bankruptcy Board of India (IBBI) continues to make steady progress in the resolution of stressed assets.
- The Insurance Regulatory and Development Authority of India (IRDAI) has taken initiatives for growth of Insur Tech and strengthening insurers' corporate governance processes.
- The Pension Fund Regulatory and Development Authority (PFRDA) continues to bring more citizens under the pension net.

RBI introduces a new type of semi-closed Prepaid Payment Instrument (PPI)

In reference to the Statement on Developmental and Regulatory Policies issued as part of Monetary Policy Statement and the Master Direction on Issuance and Operation of Prepaid Payment Instruments (PPI-MD), Reserve Bank of India (RBI) has introduced a new type of semi-closed Prepaid Public Instrument (PPI) to give impetus to small value digital payments and enhanced user experience.

The features of Prepaid Public Instrument (PPI) are as follows:

- Such PPIs shall be issued by bank and non-bank PPI Issuers after obtaining minimum details of the PPI holder.
- The minimum details shall necessarily include a mobile number verified with One Time
- Pin (OTP) and a self-declaration of name and unique identity / identification number of any 'mandatory document' or 'officially valid document' (OVD) listed in the 'Master
- Direction- Know Your Customer (KYC) Direction, 2016' issued by Department of Regulation, Reserve Bank of India, as amended from time to time.
- These PPIs shall be reloadable in nature and issued in card or electronic form. Loading/ Reloading shall be only from a bank account
- The amount loaded in such PPIs during any month shall not exceed Rs. 10,000 and the total amount loaded during the financial year shall not exceed Rs. 1,20,000.
- The amount outstanding at any point of time in such PPIs shall not exceed Rs. 10,000.
- These PPIs shall be used only for purchase of goods and services and not for funds transfer.

- PPI issuers shall provide an option to close the PPI at any time and also allow to transfer the funds 'back to source' (payment source from where the PPI was loaded) at the time of closure.
- The features of such PPIs shall be clearly communicated to the PPI holder by SMS / email/ post or by any other means at the time of issuance of the PPI / before the first loading of funds.
- The minimum detail PPIs existing as on the date of this circular can be converted to the above type of PPI, if desired by the PPI holder.

RBI revises norms for ARCs on acquisition of financial assets

This is in refer to Circular DNBS (PD) CC.No.37/SCRC/26.03.001/2013-2014 dated March 19, 2014 of notification on Buyback of assets from Securitisation Companies/Reconstruction Companies (SC/RCs) by the Defaulters and acquisition of assets by SC/RCs from sponsor banks.

On a review, it has been decided by RBI that Asset Reconstruction Companies (ARCs) shall not acquire financial assets from the following on a bilateral basis, whatever may be the consideration:

i. a bank/ financial institution which is the sponsor of the ARC;
ii. a bank/ financial institution which is either a lender to the ARC or a subscriber to the fund, if any, raised by the ARC for its operations;
iii. an entity in the group to which the ARC belongs.

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

COMPANY LAW

Extension of the last date of filing Form NFRA-2

An auditor of a company and a body corporate covered under the National Financial Reporting Authority (NFRA) Rules, 2018 is required to furnish an annual return2 (in Form NFRA-2) with the NFRA. The Ministry of Corporate Affairs (MCA) through its circular dated 27 November 2019 clarified that the time limit for filing Form NFRA-2 would be 90 days from the date of deployment of the form on the website of NFRA. On 9 December 2019, Form NFRA-2 has been deployed on the NFRA website. Accordingly, auditors are required to submit the annual return in Form NFRA-2 by 8 March 2020.

(Source: MCA general circular no. 14/2019 dated 27 November 2019)

The Ministry of Corporate Affairs has notified the Insolvency and Bankruptcy (Insolvency and Liquidation Proceedings of Financial Service Providers and Application to Adjudicating Authority) Rules, 2019 wherein various provisions related to CIRP of financial service providers, filing of application fee, liquidation process, insolvency professional etc...

SEBI has decided to categorize the modification in contact specification parameters in commodity derivatives contract such as Category A for non-material modification, category B for material modification which can be made at exchange level and Category C for modifications which can be made only approval from SEBI

Continuous disclosures and compliances by listed entities under SEBI (Issue and Listing of Municipal Debt Securities) Regulations, 2015 - Circular No. SEBI/HO/DDHS/Cir/P/134/2019, Dated 13-11-2019

Introduction of Cross-Margining facility in respect of offsetting positions in co-related equity indices - Circular No. SEBI/HO/ MRD/DOP1/CIR/P/2019/128, Dated 8-11-2019

ACCOUNTS & AUDIT

The Taxation Laws (Amendment) Act, 2019

Background

On 20 September 2019, the Ministry of Law and Justice issued the Taxation Laws (Amendment) Ordinance, 2019 (tax ordinance) and made certain amendments to the provisions of the Income-tax Act, 1961 (IT Act) and the Finance (No.2) Act, 2019 with effect from Financial Year (FY) 2019-20.

The key amendments relate to the following:

- Tax concession for domestic companies
- Tax concession for new domestic manufacturing companies
- Reduction in Minimum Alternate Tax (MAT) rate and
- Buy-back provisions.

New development

Recently, the Taxation Laws (Amendment) Bill, 2019 (Tax Bill) which seeks to replace the tax ordinance has been passed by the Parliament. The Tax Bill received the presidential assent on 11 December 2019. Consequently, the Taxation Laws (Amendment) Act, 2019 (the Tax Act) has been made effective from 20 September 2019.

In addition to the changes made by the tax ordinance, the Tax Act has introduced certain other amendments to the IT Act and the Finance (No.2) Act, 2019. The key amendments are as follows:

- **Business of manufacture - Specific exclusions:**
  The Tax Act clarified that the business of manufacture or production of any article or thing referred in Section 115BAB of the IT Act should not include business of:

  a. Development of computer software in any form or in any media
  b. Mining
  c. Conversion of marble blocks or similar items into slabs
  d. Bottling of gas into cylinder
  e. Printing of books or production of cinematograph film or
  f. Any other business as may be notified by Central Government (CG) in this behalf.

- **Set-off of unabsorbed depreciation/loss not allowed from total income:**
  In order to avail the option to pay tax at concessional rates under Section 115BAA/Section 115BAB of the IT Act, the total income of the company should, inter alia, be computed without set-off of any loss or allowance for unabsorbed depreciation deemed so under Section 72A of the IT Act1, if such loss or depreciation is attributable to any of the prescribed ineligible deductions.
- **Failure to comply with the conditions specified for concessional tax rates:**
  As per the Tax Act, in case a person fails to satisfy the conditions specified under Section 115BAA/Section 115BAB of the IT Act in any previous year, then the option (to pay tax at the reduced rate of 22 per cent/15 per cent) would become invalid in respect of assessment year relevant to that previous year and subsequent assessment years.

(Source: The Taxation Laws (Amendment) Act, 2019 issued by the Ministry of Law and Justice dated 12 December 2019)

Guidelines for preferential issue of units and institutional placement of units by listed InvITs and REITs

The Securities Exchange Board of India (SEBI) through its circular dated 27 November 2019 issued guidelines for preferential issue of units and institutional placement of units by listed Infrastructure Investment Trusts (InvITs) and Real Estate Investment Trusts (REITs). The guidelines, inter alia, include conditions and manner of issuance of units and disclosures to be made by the issuer. Key conditions for preferential issue/institutional placement of units to be complied by a listed InvIT/REIT are as follows:

- The preferential issue/institutional placement of units should be approved by the existing unit holders of InvIT/REIT by passing a resolution.
- The units of the same class which are proposed to be allotted have been listed on a stock exchange for a period of at least six months in case of preferential issue/12 months in case of institutional placement prior to the date of issue of notice to its unit holders for convening the meeting to pass a resolution.
- An in-principal approval has been obtained from the stock exchange(s) for listing of units proposed to be issued.
- None of the promoters, partners or directors of the sponsor, manager or trustee of the InvIT/REIT is a fugitive economic offender declared under the Fugitive Economic Offenders Act, 2018.
- Subsequent institutional placement should not be made by the REIT/InvIT until the expiry of six months from the date of prior institutional placement.

(Source: SEBI circular no. SEBI/HO/DDHS/DDHS/CIR/P/2019/142 and circular no. SEBI/HO/ DDHS/DDHS/CIR/P/2019/143 dated 27 November 2019)

GOODS AND SERVICE TAX

CBIC vide Notification No. 50/2019 - CT dated 24th October, 2019 has extended the due-date for filing Form GST CMP 08 (Return by composition Tax dealer) for quarter July-September, 2019 by four days from 18th October, 2019 till 22nd October, 2019.

CBIC vide Notification No. 51/2019 - CT dated 31st October, 2019 notify jurisdiction of Jammu Commissionerate over union Territory of Jammu & Kashmir and Union territory of Ladakh.

CBIC vide Notification No. 52/2019 - CT dated 14th November, 2019 has extended the due date for filing GSTR 1 for registered person (whose aggregate turnover in preceding financial year or during current financial year is less than or equal to 1.5 crore) whose principal place of business is in state of Jammu & Kashmir for quarter July –September, 2019 till 30th November, 2019.

CBIC vide Notification No. 53/2019 - CT dated 14th November, 2019 has extended the due date for filing GSTR 1 for registered person whose aggregate turnover in preceding financial year or during current financial year is more than 1.5 crore and whose principal place of business is in state of Jammu & Kashmir for each months of July to September, 2019 till 15th November, 2019.

CBIC vide Notification No. 54/2019 - CT dated 14th November, 2019 has extended the due date for filing GSTR 3B for registered person whose principal place of business is in state of Jammu & Kashmir for each months of July to September, 2019 till 20th November, 2019.

CBIC vide Notification No. 55/2019 - CT dated 14th November, 2019 has extended the due date for filing GSTR 7 (Return by person required to pay TDS) for registered person whose principal place of business is in state of Jammu & Kashmir for each months of July to September, 2019 till 15th November, 2019.

CBIC vide Notification No. 26/2019 – CT (Rate) dated 22nd November, 2019 has inserted following Explanation in Notification 11/2017-CT (Rate) dated 28th June, 2017"Explanation- For the purposes of this entry, the term "bus body building" shall include building of body on chassis of any vehicle falling under chapter 87 in the First Schedule to the Customs Tariff Act, 1975"

CBIC vide Circular 123/42/2019-CT dated 11th November, 2019 has clarified following with respect to Rule 36(4)

- This being a new provision, the restriction of claim/ eligibility of ITC is not imposed through the common portal and it is the responsibility of the taxpayer that ITC is availed in terms of the said Statute & rule and therefore, the

availment of restricted credit in terms of Rule 36(4) of CGST Rules shall be done on self-assessment basis by the tax payers.

- The restriction on availment of ITC is only for Invoice/Debit Note required to be uploaded under section 37(1). ITC for IGST on import, on RCM, ISD Credit etc. which are outside the ambit of section 37(1), provided eligibility conditions for availment of ITC are met in respect of the same.
- The restriction of 36(4) will be applicable only on the invoices / debit notes on which credit is availed after 09.10.2019. Whether the said restriction is to be calculated supplier wise or on consolidated basis?
- The restriction imposed is not supplier wise. The credit available under Rule 36(4) is linked to total eligible credit from all suppliers who are required to upload invoice u/s 37(1).
- Accordingly, those invoices on which ITC is not available under any of the provision (say under sub-section (5) of section 17) would not be considered for calculating 20 per cent. of the eligible credit available.

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