NANUBHAI DESAI & CO.

March 2019

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Contents

INCOME TAX

DOMESTIC TAXATION

Circulars/ Notifications/ Press Release

Section 56 of sub-section (2) Clause (viib) of the Income Tax Act 1961

- In exercise of the powers conferred by clause (ii) of the proviso to clause (viib) of sub-section (2) of section 56 of the Income-tax Act, 1961 (43 of 1961) and in supersession of the notification of Government of India in the Ministry of Finance, Department of Revenue, Central Board of Direct Taxes published in the Gazettee of India, Extraordinary, Part-II, Section (3), Sub-section (ii) vide number S.O. 2088(E) dated 24th May, 2018, except as respect things done or omitted to be done before such supersession, the Central Government, hereby notifies that the provisions of clause (viib) of sub-section (2) of section 56 of the said Act shall not apply to consideration received by a company for issue of shares that exceeds the face value of such shares, if the said consideration has been received from a person, being a resident, by a company which fulfils the conditions specified in para 4 of the notification number G.S.R. 127(E), dated the 19th February, 2019 issued by the Ministry of Commerce and Industry in the Department for Promotion of Industry and Internal Trade and published in the Gazette of India, Extraordinary, Part-II, section 3, Sub-Section (i) on 19th February, 2019 and files the declaration referred to in para 5 of the said notification of the Department for Promotion of Industry and Internal Trade.
- This notification shall be deemed to have come into force retrospectively from the 19th February, 2019.

(Notification No.13/2019/F. No. 370142/5/2018-TPL, dated 05th March, 2019)

Section 10 of Clause 10 of sub-clause (iii) of the Income Tax Act 1961

- In exercise of the powers conferred by sub-clause (iii) of clause (10) of section 10 of the Income-tax Act, 1961 (43 of 1961), and in supersession of Ministry of Finance, Department of Revenue, notification number S.O. 141(E), dated the 11th June, 2010, except as respects things done or omitted to be done before such supersession, the Central Government, having regard to the maximum amount of any gratuity payable to employees, hereby specifies twenty lakh rupees as the limit for the purposes of the said sub-clause in relation to the employees who retire or become incapacitated prior to such retirement or die on or after the 29th day of March, 2018 or whose employment is terminated on or after the said date.

(Notification No. 16 /2019/F. No. 200/8/2018-ITA-I, dated 08th March, 2019)

SECTION 120 of sub-section (1) and (2) of the Income Tax Act 1961

- Directs that the Commissioner of Income-tax specified in column (1) of the Schedule annexed hereto, having his headquarter at the place specified in the corresponding entry in column (2) of the said Schedule, to exercise the concurrent powers in addition to any other authority under the Income-tax Act–
    1. for the purpose of centralized issuance of notice and for collection and processing of information or documents and making available the outcome of the collection and processing under sub sections (1) and (2) of section 133C of the Income-tax Act, 1961;
    2. to specify the format and manner of response expected from the assessee and to call for information under section 133 of the Income-tax Act, 1961 and corresponding provisions of Chapter XXI (Penalties imposable), Chapter-XXII (Offences and Prosecution) and other provisions incidental thereto of the said Act; and
    3. under section 285BA of the Income-tax Act, 1961 and corresponding provisions of Chapter XXI (Penalties imposable), Chapter-XXII (Offences and Prosecution) and other provisions incidental thereto of the said Act;

  in respect of such territorial area or such cases or class of cases or such persons or class of persons specified in the corresponding entry in column (3) of the said Schedule and in respect of all income or class of income thereof;

- Authorizes the Commissioner of Income-tax specified in column (1) of the said Schedule to issue orders in writing for exercise of powers and performance of functions by the Additional Commissioners or Joint Commissioners of Income-tax, who are subordinate to him, in respect of such territorial area or such persons or classes of persons or of such income or class of income or of such cases or class of cases specified in the corresponding entry in column (3) of the said Schedule;

- Authorizes the Additional Commissioners or Joint Commissioners of Income-tax referred to in clause (b), to issue orders in writing for the exercise of the powers and performance of the functions by the Assessing Officers, who are subordinate to them, in respect of such territorial area or such persons or class of persons or income or class of income, or cases or class of cases specified in the corresponding entry in column (3) of the said Schedule, in respect of which such Additional Commissioners or Joint Commissioners of Income-tax are authorized by the Commissioner of Income-tax under clause (b).

(Notification No. 19 /2019/F. No. 187/2/2019-ITA-I, dated 13th March, 2019)

Case laws

Ganesh Sahakari Bank Ltd. vs. Government of India WRIT Petition No(s).14406 of 2018, March 29,2019

Facts:

- The assessee was a co-operative bank. It had filed return for the relevant assessment year 2008-09 on 18-12-2008. The last date for filing the return under section 139(1) was 31-10-2008. In such return, the assessee claimed a carry forward of losses.
- The Assessing Officer passed an order under section 143(3) rejecting the claim of carry forward of losses on the ground that the return was not filed within time.
- The Tribunal also opined that since the return of income was not filed by the assessee within time, the claim for carry forward of losses was not sustainable. The Tribunal expressed an opinion that the proper course for the assessee would have been to seek condonation of delay in filing the return from the CBDT.
- The assessee, thereafter, approached the CBDT by filing appropriate application under section 119(2) seeking condonation of delay in filing the return.
- The CBDT dismissed said application on the ground that the delay in filing the return was not satisfactorily explained and further that even the application for condonation of delay was filed beyond permissible limit.

Issue:

Section 72 of the Income-tax Act, 1961 - Losses - Carry forward and set off of business loss (Belated return) - Assessment year 2008-09 - For relevant year, assessee filed return claiming carry forward of losses - Assessing Officer rejected assessee's claim on ground that return was not filed within time prescribed under section 139(1) - Tribunal directed assessee to seek condonation of delay in filing return from CBDT - Assessee did not file application for condonation of delay before CBDT within permissible time limit - CBDT thus rejected assessee's application

Held:

- Having perused the documents on record, one may recall quite apart from delay in filing the return, the assessee also had to demonstrate why the application for condonation of delay could not be filed for as long as six years. As noted, the assessee first contested the claim before the revenue authorities. The Tribunal held that such loss was not allowable in absence of filing of the return within time and in absence of condonation thereof. Even if the assessee was bona fide pursuing the claim in the assessment proceedings, nothing prevented the assessee from filing appropriate proceedings before the CBDT for condonation of delay once the Tribunal expressed its opinion. The assessee has accepted such opinion and not preferred the appeal in the High Court. As per the impugned order, the first evidence of such a petition being filed before the CBDT was on 31-10-2015. Though the assessee contended that previously one such petition was filed on 6-10-2014, the CBDT found no evidence of such proceedings being filed. The assessee claims to have filed such an application before the Assessing Officer. Even there, the CBDT found that the evidence of any such petition being presented, inadequate. The assessee produced the receipt of private courier of having dispatched the same. The CBDT, however, in the impugned order records that even the Authority to whom the same has been forwarded is not mentioned. Under these circumstances, the assessee has not been prompt in pursuing the remedies on the ground of limitation and latches. No case of interference is made out.
- As is well know, even a declaration of loss would require assessment so that only the genuine loss is recognized and which would be available for carry forward to be set off against future income. Accepting the assessee's request, would amount to reopening the assessment for the long past period. Under these circumstances, the petition is disposed of.

Deputy Commissioner of Income Tax vs Visvas Promoters (P.)Ltd., March 27, 2019

Facts:

- The assessee was engaged in the business of construction and sale of flats. It undertook construction of residential projects. The assessee constructed and sold flats both more than 1500 sq. ft. and less than 1500 sq. ft. However, the assessee claimed deduction under section 80-IB(10) proportionately to the sale of flats less than 1500 sq. ft.

- The claim of the assessee was allowed by the assessing authority during original assessment.
- During scrutiny, the assessing authority issued re-assessment notice under section 148 stating that the assessee had claimed excess deduction under section 80-IB(10) to the extent of Rs. 68 lakhs in respect of its building project, which was required to be disallowed as the said building comprised of residential units over prescribed limit of 1500 sq. ft. for each residential unit and, hence, there was clear-cut failure on part of the assessee to disclose fully and truly all material facts.
- The assessee, filing writ petition, submitted that during original assessment proceedings the assessing authority had clearly excluded the sale value of flats exceeding the 1500 sq. ft. in working out the sale value of eligible flats and, hence, all primary facts were truly disclosed in the original return. The Single Judge quashed the impugned re-assessment notice and held that the impugned re-assessment notice was issued beyond the prescribed limitation of 4 years and 1st proviso of section 147 prohibited such re-assessment proceedings unless there was a failure on the part of the assessee to fully and truly disclose all material facts necessary for assessment.

Issue:

Section 80-IB(10), read with sections 147 and 148, of the Income-tax Act, 1961 - Deductions - Profits and gains from industrial undertakings other than infrastructure development undertaking (Housing projects) - Assessment year 2003-04 - Assessee was engaged in business of construction and sale of flats - It undertook projects containing residential units/flats having area both less than and more than 1500 sq. ft. - In original return assessee claimed proportionate deduction to extent of eligible residential units below 1500 sq. ft. only

Held:

- There is no dispute that the 1st Proviso to section 147 provides for a limitation of 4 years from the end of the relevant assessment year and the assessment can be re-opened by the assessing authority having 'reason to believe' that the income of the assessee has escaped assessment on account of failure on the part of the assessee to disclose fully and truly all material facts necessary for assessment for that assessment year. Unless there is such a failure on the part of the assessee, the re-assessment notice issued under sections 147/148 issued

after the expiry of 4 years from the end of relevant assessment year is liable to be quashed as the assessing authority would lack the jurisdiction to issue any such reassessment notice.

- There is no failure on the part of the assessee, in the instant case. He disclosed fully and truly all the relevant facts before the assessing authority in the return filed by him or at the time of original assessment proceedings under section 143(3). The assessee not only disclosed all the Building Projects undertaken by him, but also consciously claimed only a proportionate deduction under section 80-IB(10), for Vajra F Building to the extent of eligible Residential Units below 1500 sq. ft. each. If the assessee had anything to hide or make a wrong claim, then proportionate deduction under section 80-IB(10) would not have been claimed by him. The assessing authority, while passing the original assessment under section 143(3), had all the powers to call for any further details, if he chose to do so. But, on the contrary, it appears that all the details, were called for by the assessing authority and were so furnished by the assessee and on a conscious application of mind only, the proportionate benefit under section 80-IB(10) was allowed by the assessing authority while passing the original assessment under section 143(3). The alleged reasons assigned by the assessing authority while undertaking the re-assessment proceedings beyond the limitation under section 147/148 and that too on the ground that the residential flats over 1500 sq.ft. were not disclosed by the assessee has no legs to stand upon. Section 80-IB(10) grants deduction to the assessee engaged in the business of developing and building housing projects approved before 31-3-2008 subject to certain conditions.
- Since a proportionate claim was made by the assessee, who disclosed all the details at the time of original assessment and an assessment order was passed by the assessing authority under section 143(3) applying his mind to the relevant facts, this impugned re-assessment proceedings initiated after the end of four years in the instant case were without any valid rhyme or reason and on a mere change of opinion by the assessing authority. On a mere change of opinion, the re-assessment proceedings are not permitted under the Act. The assessing authority cannot have a mere re-appreciation of the same facts or a review of existing material on a mere changes of opinion and take a different view of the matter and he is not permitted to undertake the re-assessment proceedings. The condition of 4 years provided in 1st proviso to section 147 is a protection in favour of the assessee against the whimsical and arbitrary re-assessment proceedings initiated by the assessing authorities beyond this limitation of 4 years, except where the escapement of income has resulted on account of failure on the part of assessee to disclose the material particulars.

That is why, the law has been settled by the Apex Court as well as various High Courts that 'reason to believe' on the basis of which, such a genuine and objective opinion or reason to believe is formed by the assessing authority is required to be conveyed to the assessee and to which the assessee is entitled to raise objections and without meeting those objections, the assessing authority is not permitted to undertake re-assessment proceedings and it is a question of jurisdiction, which goes to the root of the matter and the said exercise cannot be lightly ignored by the assessing authority.

- In the instant case, the assessee had made true and full disclosure and had consciously made only a proportionate claim under section 80-IB(10), which was rightly allowed by the assessing authority at the time of original assessment proceedings under section 143(3) and, therefore, after the expiry of 4 years in 2010, the impugned notice under section 147/148 for the assessment year 2003-04 issued on 31-3-2010 was not a valid initiation of the re-assessment proceedings. The Single Judge was justified in quashing the impugned re-assessment proceeding.

INTERNATIONAL TAXATION

Circulars/ Notifications/Press Release

Signing of Bilateral Agreement for Exchange of Country-by-Country (CbC) Reports between India and the USA

- Sub-section (4) of Section 286 of the Income-tax Act, 1961 requires that a constituent entity of an international group, resident in India, other than a parent entity or an alternate reporting entity of an international group, resident in India, shall furnish the Country-by-Country (CbC) Report in respect of the said international Group for a reporting accounting year within the period as may be prescribed, if the parent entity of the said International Group is resident of a country or territory.
  - where the parent entity is not obligated to file the CbC Report
  - with which India does not have an agreement providing for exchange of the CbC Report; or
  - where there has been a systemic failure of the country or territory and the said failure has been intimated by the prescribed authority to such constituent entity.
- Vide Notification in GSR 1217 (E) dated 18th December, 2018 with effect from 18th December, 2018, amendments to the Income-tax Rules. 1962 (the "Rules") have been carried out to provide that the period for furnishing of the CbC report (local filing) shall be twelve months from the end of the reporting accounting year.
- Further, vide Circular No.9/2018, dated 26th December, 2018, CBDT as a one-time measure, in exercise of powers conferred under section 119 of the Act, extended the period for furnishing of the CbC Report (local filing) in respect of reporting accounting years ending on or before 28th February, 2018 up to 31st March, 2019.
- The absence of an Agreement between India and USA till now entailed a possibility of local filing of CbC Reports in India. However, a Bilateral Competent Authority Arrangement, along with an underlying Inter-Governmental Agreement, for exchange of CbC Reports between India and the USA has now been finalized and will be signed on or before 31st March, 2019. This would enable both the countries to exchange CbC Reports filed by the ultimate parent entities of International Groups in the respective jurisdictions, pertaining to the financial years commencing on or after 1st January, 2016. As a result, Indian constituent entities of international groups headquartered in

USA, who have already filed CbC Reports in the USA, would not be required to do local filing of the CbC Reports of their international groups in India.

(Press Release, dated 15th March, 2019)

Signing of Inter-Governmental Agreement for exchange of country by country reports between India and the United States of America

- India and the United States of America have today, the 27th March, 2019, signed an Inter-Governmental Agreement for Exchange of Country-by-Country (CbC) Reports. The Agreement was signed by Shri P.C.Mody, Chairman, Central Board of Direct Taxes and Mr. Kenneth I. Juster, Ambassador of the United States of America to India on behalf of the two countries. This Agreement for Exchange of CbC Reports, alongwith the Bilateral Competent Authority Arrangement between the two Competent Authorities, will enable both the countries to automatically exchange CbC Reports filed by the ultimate parent entities of Multinational Enterprises ("MNEs") in the respective jurisdictions, pertaining to the years commencing on or after 1st January, 2016. It would also obviate the need for Indian subsidiary companies of US MNEs to do local filing of the CbC Reports, thereby reducing the compliance burden.
- India has already signed the Multilateral Competent Authority Agreement (MCAA) for Exchange of CbC Reports, which has enabled exchange of CbC Reports with 62 jurisdictions.
- Filing of CbC Reports by the ultimate parent entity of an MNE group to the prescribed Authority in the jurisdiction in which it is a resident and exchange of such CbC Reports by the Competent Authority of the said jurisdiction with the Competent Authorities of other jurisdictions in which the group has one or more of its constituent entities, are the minimum standards required under the Action 13 Report of OECD/G20 BEPS Project in which India is an active participant.
- A CbC Report has aggregated country-by-country information relating to the global allocation of income, the taxes paid, and certain other indicators of an MNE group. It also contains a list of all the constituent entities of an MNE group operating in a particular jurisdiction and the nature of the main business activity of each such constituent entity. MNE groups having global consolidated revenue of 750 Million Euros or more (or a local currency equivalent) in a year are required to file CbC Reports in their parent entity's jurisdiction. The INR equivalent of 750 Million Euros has been prescribed as

INR 5500 Crore in Indian rules. This information will enable an enhanced level of assessment of tax risk by both tax administrations.

(Press Release, dated 27th March, 2019)

Case Laws

Intec Billing Ireland – Deputy Director of Income-tax (International Taxation), Range- 3(1), Mumbai, dated on 19th March 2019

Facts

- The assessee-Irish company entered into a Software Licence Agreement in terms of which it supplied billing software to Indian Company Reliance Industries.
- The Assessing Officer, at the stage of draft assessment order as well as after the directions of the Dispute Resolution Panel, took the stand that the supply of the software involved granting of copyright in the software and, therefore, the receipts from 'RIL' were in the nature of 'Royalty'.
- The assessee stated that what was supplied to 'RIL' was an off-the shelf or a shrink-wrapped software which enabled the telecom companies to do their customer billing in an efficient and profitable manner. The assessee, further, stated that the software licensed to 'RIL' was a standardised product which was made available to other clients also, and was not developed specifically for 'RIL'.
- On the assessee's appeal before the Tribunal.

Issue:

Section 9 of the Income-tax Act, 1961, read with Article 12 of the DTAA between India and Ireland - Income - Deemed to accrue or arise in India (Royalties/fees for technical services - Computer software) - Assessment year 2013-14 - Assessee was a tax resident of Ireland - Under a Software Licensing Agreement, it supplied an off-shelf/shrink - Wrapped software to Indian telecom company 'RIL' for purpose of billing their customer in an efficient and profitable manner

Held

- Pertinently, in the dispute for Assessment year 2010-11, the Tribunal did not approve the stand of the Assessing Officer and, instead, upheld the stand of the assessee to the effect that the impugned receipts were in the nature of business profits, not liable to be taxed in India. The Co-ordinate bench of the Tribunal in the assessee's own case for the assessment year 2010-11 as well as in the case of JDIT v. Intec Billing America [IT Appeal No. 3196 (Mum.) of 2007 dated 5-2-2010] for the assessment year 2002-03 upheld the stand of the assessee that

the receipts from company Reliance Industries for supply of the software were not in the nature of 'Royalty'.

- It was observed that Intec Ireland exclusively owns all the Intellectual Property Rights (IPR) in the software. Intec Ireland has merely granted a copyrighted article to Reliance and not the 'copyright' in the article. Hence, Reliance does not use or have any right to use the copyright in the software products and Intec Ireland merely grants a right to use software for Reliance's own use in India.
- It was further held that the very same agreement and the software supplied by the assessee to Reliance has been subject matter in dispute in the assessment year 2002-03 and the Co-ordinate Bench of the Tribunal in ITA No. 3196/Mum/2007 held that sale of the software by the assessee to the end customer does not involve any transfer of copyright either in part or inwhole and therefore consideration paid by the distributer cannot be said to be a payment for right of use of copyright or transfer of use of copyright.
- It was also held that the receipts from the supply of the software are not taxable in the hands of Intec-Ireland as Royalty under the new Ireland tax treaty. Intec-Ireland does not have Permanent Establishment (PE) in India and, accordingly, amounts received by Intec-Ireland towards the supply of the software are not liable to tax in India. Hence, payment received by the assessee was not in the nature of royalty and cannot, therefore, be brought to tax.
- The Tribunal has specifically noted that the provisions of India-Ireland DTAA, which governs the position of the instant year also, were similar to the provisions of the India-US DTAA considered by the earlier bench for the assessment year 2002-03.
- Therefore, the aforesaid precedents fully cover the controversy, and since the precedents continue to hold the field, as it has not been altered by any higher authority, the Ground of appeal nos. 2 and 3 raised by the assessee deserve to be allowed.

Sandvik Tooling Sverige AB v/s Deputy Commissioner of Income-tax (International Taxation), Circle 2, Pune, dated on 29th March 2019

Facts:

- The assessee, a non-resident foreign company had provided software services and IT support services. The assessee received from company Sandvik Asia 'IT support service fee' of Rs. 1.05 crores.
- The Assessing Officer during scrutiny proceedings found that in the case of assessment of Sandvik Asia, the payment made under IT support services,

which was received by the assessee, was held in the nature of fees for technical services. The Assessing Officer held that the impugned receipt was taxable in India as per article 12 of DTAA between India and Sweden as well as under section 9(1)(vii) as 'royalty'. He, thus, brought the income from fees for technical services to tax.

- On appeal, the DRP directed the Assessing Officer to assess the license fees received by the assessee as 'royalty'; the fees for connected IT support services and fees for application development services as fees for technical services. The DRP further directed the Assessing Officer to tax other IT support services either as 'royalty' or 'fees for technical services'.
- The Assessing Officer upon the directions of the DRP, held the license fees to be IT support services which fell within ambit of 'fees of included services' as available in article 12(4) of DTAA. Further, the fees for providing GSS maintenance were held to belong to category of connected IT support services. The same was held to fall within ambit of 'fees for included services' and taxable as 'fees for technical services' in India.

Issue:

Section 9 of the Income-tax Act, 1961, read with article 12 of DTAA between India and Sweden - Income - Deemed to accrue or arise in India (Royalties/fees for technical services - Computer software) - Assessment years 2010-11, 2011-12 and 2013-14 - Assessee was non-resident and was providing software services and also IT support services to Swedish Company (SA).

Held:

- The assessee is non-resident and was providing software services to Sandvik Asia and also was providing IT support services to the said concern. The question which arises in the instant appeal is whether the consideration received by the assessee from the payer i.e. Sandvik Asia amounts to 'royalty' or 'fees for included services' or 'fees for technical services' under the realm of section 9(1)(vi) or under the provisions of DTAA between India and Sweden. The Assessing Officer has relied on the order in the case of Sandvik Asia, which is the payer, wherein it was held that the said payment by the said concern to the assessee was in the nature of 'royalty'. The DRP in the said case allowed the claim of said concern i.e. payer, against which the revenue filed an appeal before the Tribunal. The Tribunal in consolidated order relating to assessment year 2011-12 and assessment year 2011-12 held that the payment

made by Sandvik Asia to its associated enterprise Sandvik Tooling Sverige AB for purchase of copyrighted article was not 'royalty'. The Tribunal in turn, relying on the decisions of Pune Bench of Tribunal in Allianz SE v. Asstt. DIT (IT) [2012] 21 taxmann.com 62/51 SOT 399 (Pune - Trib.) and in John Deere India (P.) Ltd. v. Dy. DIT (International Taxation) [2019] 102 taxmann.com 267 (Pune - Trib.) held that the purchase of software being copyrighted article would not be covered by the term 'royalty' under section 9(1)(vi). Where the assessee did not acquire any copyright in the software, is not covered under Explanation 2 to section 9(1)(vi). Further; amended definition of 'royalty' under the domestic law cannot be extended to the definition of 'royalty' under DTAA, where the term 'royalty' originally defined has not been amended. As per definition of 'royalty' under DTAA, it is payment received in consideration for use or right to use any copyright of literary, artistic or scientific work, etc.; thus, purchase of copyrighted article does not fall in realm of 'royalty'.

- Once the Tribunal has held the same as not royalty either under the Income-tax Act or under DTAA provisions in the hands of payer i.e. Sandvik Asia, consequently the said receipt by the assessee cannot be termed as 'royalty' under both the provisions of the Act i.e. section 9(1)(vi)/9(1)(vii) or under article 12 of the DTAA between India and Sweden. Accordingly, the consideration received by the assessee on providing software services is not taxable.

REGULATION GOVERNING INVESTMENTS

FOREIGN EXCHANGE MANAGEMENT ACT (FEMA)

TRADE CREDIT POLICY - REVISED FRAMEWORK

- Trade Credits can be raised under the automatic route up to the amount specified in the Annex to this circular and in compliance with the other applicable norms. The designated AD Category I bank while considering the Trade Credit proposal is expected to ensure compliance with applicable Trade Credit guidelines by their constituents. Any contravention of the applicable provisions will invite penal action or adjudication under the Foreign Exchange Management Act, 1999.
- The amended Trade Credit policy will come into force with immediate effect. Authorized Dealer banks may bring the contents of this circular to the notice of their constituents and customers. The Master Direction No. 5 dated January 01, 2016 on the subject is being revised to reflect the above changes.
- The direction contained in this circular has been issued under sections 10(4) and 11(1) of the Foreign Exchange Management Act, 1999 (42 of 1999) and is without prejudice to permissions / approvals, if any, required under any other law.

(RBI/2018-19/140 - A.P. (DIR SERIES) CIRCULAR NO.23, dated on 13th March 2019)

Establishment of Branch Office (Bo)/Liaison Office (Lo)/Project Office (Po) or Any Other Place of Business in India by Foreign Entities

- The extant Regulations regarding requirement of prior approval of the Reserve Bank of India, for opening of a Branch Office (BO)/Liaison Office (LO)/Project Office (PO) or any other place of business in India, where the principal business of the applicant falls in the Defence, Telecom, Private Security and Information and Broadcasting sector, have since been reviewed in consultation with the Government of India and the amendments have been notified by Government vide Notification No. FEMA 22(R)(2)/2019-RB dated January 21, 2019.
- Accordingly, it is advised that for opening of a BO/LO/PO or any other place of business in India, where the principal business of the applicant falls in the Defence, Telecom, Private Security and Information and Broadcasting sector, no prior approval of the Reserve Bank of India shall be required, if

Government approval or license/permission by the concerned Ministry/Regulator has already been granted. Further, in the case of proposal for opening a PO relating to defence sector, no separate reference or approval of Government of India shall be required if the said non-resident applicant has been awarded a contract by/entered into an agreement with the Ministry of Defence or Service Headquarters or Defence Public Sector Undertakings. It is clarified that the term "permission" used in the Notification does not include general permission, if any, available under Foreign Direct Investment in the automatic route, in respect of the above four sectors.

- All other provisions of the BO/LO/PO policy shall remain unchanged. AD Category - I banks may bring the contents of this circular to the notice of their constituents and customers.
- The Master Direction No. 10 dated January 1, 2016 is being updated simultaneously to reflect the changes.
- The directions contained in this circular have been issued under sections 10(4) and 11(2) of the Foreign Exchange Management Act, 1999 (42 of 1999) and are without prejudice to permissions/approvals, if any, required under any other law.

(A.P. (DIR Series) Circular No. 27 dated 28th March, 2019)

COMPANY LAW

Companies (Incorporation) Second Amendment Rule 2019 & Companies (Incorporation) Third Amendment Rule 2019

MCA, pursuant to its order dated 6th March 2019 has amended the Companies (Incorporation) Rules, 2014 stating the following:

- Prescribed limit of paying fees for filing application for incorporation of a company through Form No INC-32 (Simplified Proforma for Incorporating Company Electronically (SPICe)), has been increased for companies having a nominal share capital of less than or equal to INR fifteen lakhs instead of INR ten lakhs, other conditions remaining same as prescribed earlier in the rule

Clarification on filing of e-form RD-1 for conversion of public company into private company and change in a Financial Year

MCA pursuant to its order dated 11th March 2019 has issued instructions that while filing e-form RD-1 (form for applications made to Regional Director), Regional Directors are advised to process e-form RD-1 for the above applications, if 'Others' is selected, in case of applications received u/s 2(41) (change in financial year) and u/s 14 (conversion of public limited company into private company) of the Companies Act, 2013 till the revised form is deployed by this ministry.

It is also clarified that such applications filed in e-form RD-1 should not be rejected merely on the ground that "Others" is selected and "e-form is not available"

Clarification on Filing of e-form RD- l Conversion of public company into private company and change in a Financial Year

- This Ministry vide notification no. G.S.R 1219(E) dated 18/12/18 has notified Companies (Incorporation Fourth Amendment) Rules, 2018, whereby applications u/s 2(41) (change in a financial year) and u/s 14 of the Companies Act, 2013 (conversion of public limited company into private company), along with e-form RD-1 shall be processed by Regional Directors.
- Stakeholders have expressed certain difficulties in filing e-form RD-1 on account of aforesaid two purposes pending deployment of revised version of e-form RD-1. It is therefore clarified and Regional Directors are advised to process e-form RD-1 for the above referred applications, if 'others' is selected on account of aforesaid two counts, till the revised form is deployed by this ministry.

- Further, it is also clarified that such applications filed in e-form no. RD-1 should not be rejected merely on the ground that "others" is selected and "e-form is not available", till the said form is deployed by this Ministry.

(Circular No. 03 /2019-F.No. 01/13/2013-CL-V-Pt-II MCA, dated 11th March, 2019)

ACCOUNTS & AUDIT

The Companies (Indian Accounting Standards) Amendment Rules, 2019

MCA vide notification dated March 30, 2019 has issued The Companies (Indian Accounting Standards) Amendment Rules, 2019 to amend the Companies (Indian Accounting Standards) Rules, 2015 which shall come into force from April 1,2019. This amendment notification relates to pronouncement of Indian Accounting Standard (IndAS) 116 –Leases to replace Ind AS 17 which will further impact other IndAS wherever applicable.

The Companies (Indian Accounting Standards) Second Amendment Rules, 2019

MCA vide notification dated March 30, 2019 has issued The Companies (Indian Accounting Standards) Second Amendment Rules, 2019 to amend the Companies (Indian Accounting Standards) Rules, 2015. The notification shall come into force from April 1, 2019; however, the notification is yet to be published in the official gazette. This amendment notification has amended following Indian Accounting Standards (Ind AS)

Ind AS	**Nature of amendment**
Ind AS 12: 'Income Taxes'	Amendments relating to income tax consequences of dividend and uncertainty over income tax treatments
Ind AS 19: 'Employee Benefits'	Clarifies accounting for defined benefit plans on plan amendment, curtailment and settlement.
Ind AS 23: 'Borrowing Costs'	Clarifies the borrowing costs to be considered for capitalization.
Ind AS 28: 'Investments in Associates and Joint Ventures'	Clarifies accounting for the share of losses of an associate or joint venture after the equity interest reduced to nil.
Ind AS 103: 'Business Combinations' and Ind 111 'Joint Arrangements'	Additional guidance on acquisition accounting where entity obtained control of a joint operation and where a participant in a joint operation not having joint control
Ind AS 109: 'Financial Instruments'	Enable entities to measure certain financial assets with Prepayment features that may yield negative compensation on prepayment.

GOODS AND SERVICE TAX

Nature of Supply of Priority Sector Lending Certificates (PSLC)

- Representations have been received requesting to clarify whether IGST or CGST/ SGST is payable for trading of PSLC by the banks on e-Kuber portal of RBI.
- In this regard, it is stated that Circular No. 62/36/2018-GST dated 12.09.2018 was issued clarifying that GST on PSLCs for the period 1.7.2017 to 27.05.2018 will be paid by the seller bank on forward charge basis and GST rate of 12% will be applicable on the supply. Further, Notification No. 11/2018-Central Tax (Rate) dated 28.05.2018 was issued levying GST on PSLC trading on reverse charge basis from 28.05.2018 onwards to be paid by the buyer bank.
- It is further clarified that nature of supply of PSLC between banks may be treated as a supply of goods in the course of inter-State trade or commerce. Accordingly, IGST shall be payable on the supply of PSLC traded over e-Kuber portal of RBI for both periods i.e 01.07.2017 to 27.05.2018 and from 28.05.2018 onwards. However, where the bank liable to pay GST has already paid CGST/SGST or CGST/UTGST as the case may be, such banks for payment already made, shall not be required to pay IGST towards such supply.

(Circular No. 93/12 /2019-GST, dated 08th March, 2019)

Clarification in respect of transfer of input tax credit in case of death of sole proprietor

- Doubts have been raised whether sub-section (3) of section 18 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as „CGST Act") provides for transfer of input tax credit which remains unutilized to the transferee in case of death of the sole proprietor. As per sub-rule (1) of rule 41 of the Central Goods and Services Rules, 2017 (hereinafter referred to as „CGST Rules"), the registered person (transferor of business) can file FORM GST ITC-02 electronically on the common portal along with a request for transfer of unutilized input tax credit lying in his electronic credit ledger to the transferee. Further, clarification has also been sought regarding procedure of filing of FORM GST ITC-02 in case of death of the sole proprietor. In order to clarify these issues and to ensure uniformity in the implementation of the provisions of the law, the Board, in exercise of its powers conferred by section 168 (1) of the CGST Act, hereby clarifies the issues raised as below.

- Clause (a) of sub-section (1) of section 29 of the CGST Act provides that reason of transfer of business includes "death of the proprietor". Similarly, for uniformity and for the purpose of sub-section (3) of section 18, sub-section (3) of section 22, sub-section (1) of section 85 of the CGST Act and sub-rule (1) of rule 41 of the CGST Rules, it is clarified that transfer or change in the ownership of business will include transfer or change in the ownership of business due to death of the sole proprietor.
- In case of death of sole proprietor if the business is continued by any person being transferee or successor, the input tax credit which remains un-utilized in the electronic credit ledger is allowed to be transferred to the transferee as per provisions and in the manner stated below –
  a) Registration liability of the transferee / successor: As per provisions of sub-section (3) of section 22 of the CGST Act, the transferee or the successor, as the case may be, shall be liable to be registered with effect from the date of such transfer or succession, where a business is transferred to another person for any reasons including death of the proprietor. While filing application in FORM GST REG-01 electronically in the common portal the applicant is required to mention the reason to obtain registration as "death of the proprietor".
  b) Cancellation of registration on account of death of the proprietor: Clause (a) of sub-section (1) of section 29 of the CGST Act, allows the legal heirs in case of death of sole proprietor of a business, to file application for cancellation of registration in FORM GST REG-16 electronically on common portal on account of transfer of business for any reason including death of the proprietor. In FORM GST REG-16, reason for cancellation is required to be mentioned as "death of sole proprietor". The GSTIN of transferee to whom the business has been transferred is also required to be mentioned to link the GSTIN of the transferor with the GSTIN of transferee.
  c) Transfer of input tax credit and liability: In case of death of sole proprietor, if the business is continued by any person being transferee or successor of business, it shall be construed as transfer of business. Sub-section (3) of section 18 of the CGST Act, allows the registered person to transfer the unutilized input tax credit lying in his electronic credit ledger to the transferee in the manner prescribed in rule 41 of the CGST Rules, where there is specific provision for transfer of liabilities. As per sub-section (1) of section 85 of the CGST Act, the transferor and the transferee / successor shall jointly and severally be liable to pay any tax, interest or any penalty due from the transferor in cases of transfer of business "in whole or in part,

by sale, gift, lease, leave and license, hire or in any other manner whatsoever". Furthermore, sub-section (1) of section 93 of the CGST Act provides that where a person, liable to pay tax, interest or penalty under the CGST Act, dies, then the person who continues business after his death, shall be liable to pay tax, interest or penalty due from such person under this Act. It is therefore clarified that the transferee / successor shall be liable to pay any tax, interest or any penalty due from the transferor in cases of transfer of business due to death of sole proprietor.

d) Manner of transfer of credit: As per sub-rule (1) of rule 41 of the CGST Rules, a registered person shall file FORM GST ITC-02 electronically on the common portal with a request for transfer of unutilized input tax credit lying in his electronic credit ledger to the transferee, in the event of sale, merger, de-merger, amalgamation, lease or transfer or change in the ownership of business for any reason. In case of transfer of business on account of death of sole proprietor, the transferee / successor shall file FORM GST ITC-02 in respect of the registration which is required to be cancelled on account of death of the sole proprietor. FORM GST ITC-02 is required to be filed by the transferee/successor before filing the application for cancellation of such registration. Upon acceptance by the transferee / successor, the un-utilized input tax credit specified in FORM GST ITC-02 shall be credited to his electronic credit ledger.

- It is requested that suitable trade notices may be issued to publicize the contents of this circular.

(Circular No. 96/15 /2019-GST, dated 28th March, 2019)

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