NANUBHAI DESAI & CO.

November 2019

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INCOME TAX

DOMESTIC TAXATION

Circulars/ Notifications/ Press Release

G.S.R. 836(E).— In exercise of the powers conferred by clause (XI) of the proviso to clause (x) of sub-section (2) section 56 read with section 295 of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby makes the following rules further to amend the Income-tax Rules,1962, namely:

1. Short title and commencement.
   i. These rules may be called the Income tax Amendment (13th Amendment), Rules, 2019.
   ii. They shall come into force from the 1st day of April, 2020.

2. In the Income-tax Rules, 1962, after rule 11UAB, the following rule shall be inserted from the 1st day of April, 2020 and shall be applicable for assessment year commencing on the 1st day of April, 2020 and subsequent assessment years, namely:

Prescribed class of persons for the purpose of clause (XI) of the proviso to clause (x) of sub-section (2) section 56.

11UAC.The provisions of clause (x) of sub-section (2) ofsection56 shall not apply to any immovable property, being land or building or both, received by a resident of an unauthorised colony in the National Capital Territory of Delhi, where the Central Government by notification in the Official Gazettee, regularised the transactions of such immovable property based on the latest Power of Attorney, Agreement to Sale, Will, possession letter and other documents including documents evidencing payment of consideration for conferring or recognising right of ownership or transfer or mortgage in regard to such immovable property in favour of such resident.

Explanation. For the purposes of this rule, _
(a) "resident" means a person having physical possession of property on the basis of a registered sale deed or latest set of Power of Attorney, Agreement to Sale, Will, possession letter and other documents including documents evidencing payment of consideration in respect of a property in unauthorised colonies and includes their legal heirs but does not include tenant, licensee or permissive user;

(b) "unauthorised colony" means a colony or development comprising of a contiguous area, where no permission has been obtained for approval of layout plan or building plans and has been identified for regularization of such colony in pursuance to the notification number S.O. 683(E), dated the 24th March, 2008, of the Delhi

Development Authority, published in the Gazette of India, Extraordinary, Part-II, Section 3, Sub-section (ii), dated the 24th March, 2008.'.

(Notification No. 96/2019/F. No.370142/29/2019-TPL, dated 11th November, 2019)

Scientific Research Expenditure - Approved Scientific Research Associations/Institutions - Corrigendum to notification No. S.O. 1202(E) [No. 40/2009 (F.No. 203/19/2009/ITA-II)], Dated 28-4-2009

In the notification of the Government of India, In the Ministry of Finance (Department of Revenue) no.40/2009 in F.No. 203/19/2009/ITA.II dated 28th of April, 2009, published in part-II, section 3, sub-section (ii)of the Gazette of India vide S.O. number 1202 dated 9th May, 2009.

(i) in paragraph 1:—

The name of the approved organization "Diabetes Research Centre Foundation, Chennai" shall be read as "Prof. M. Viswanathan Diabetes Research Centre, Chennai" with effect from 1-4-2010.

(Notification NO. 97/2019 (F. NO. 203/19/2009/ITA-II), dated 13th November, 2019)

Scientific Research Expenditure -Approved Scientific Research Association/Institution

It is hereby notified for general information that the organization M/s International Centre for Research in Agroforestry, South Asia Regional Programme, NASC Complex, Delhi (ICRAF) (PAN:-AATI4803K)has been approved by the Central Government for the purpose of clause (ii) of sub-section (1) of section 35 of the Income-tax Act, 1961 (said Act), read with Rules 5C and 5D of the Income-tax Rules, 1962 (said Rules),from Assessment year 2019-2020 onwards in the category of 'Scientific Research Association', subject to the following conditions, namely:-

(i) The sole objective of the approved Organization shall be to undertake scientific research;

(ii) The approved organization shall carry out scientific research by itself;(iii)

(iii) The approved organization shall maintain separate books of accounts in respect of the sums received by it for scientific research, reflect therein the amounts used for carrying out research, get such books audited by an accountant as defined in the explanation to sub-section (2) of section 288of the said Act and furnish the report of such audit duly signed and verified by such

accountant to the Commissioner of Income-tax or the Director of Income-tax having jurisdiction over the case, by the due date of furnishing the return of income under sub-section (1) of section 139 of the said Act;

(iv) The approved organization shall maintain a separate statement of donations received and amounts applied for scientific research and a copy of such statement duly certified by the auditor shall accompany the report of audit referred to above. (The approved organization shall receive grants/donations u/s.35(1)(ii) of the said Act after taking prior permission from the Indian Council of Agricultural Research (ICAR)/Department of Agricultural Research and Education (DARE),Ministry of Agriculture & Farmers' Welfare and the grants/donations so received shall be exclusively utilized for the purpose of conducting research in India only.

The Central Government shall withdraw the approval if the approved organization: -

a. fails to maintain separate books of accounts referred to in sub-paragraph (iii) of paragraph 1; or
b. fails to furnish its audit report referred to in sub-paragraph (iii) of paragraph 1; or
c. fails to furnish its statement of the donations received and sums applied for scientific research referred to in sub-paragraph (iv) of paragraph 1; or
d. ceases to carry on its research activities or its research activities are not found to be genuine; or
e. ceases to conform to and comply with the provisions of clause (ii) of sub-section (1) of section 35of the said Act read with rules 5C and 5D of the said Rules.

(Notification NO.99/2019 (F.NO. 203/04/2019/ITA-II), dated 27th November,2019)

Case laws

Principal CIT vs. Ankit Metal and Power Ltd.; [2019] 416 ITR 591 (Cal.) Date of order: 9th July, 2019 A.Y.: 2010-11

Facts:

- The assessee was a manufacturer who invested in a sponge iron plant and mega project that made him eligible for subsidy under the West Bengal Incentive Scheme, 2000 and the West Bengal Incentive to Power Intensive Industries Scheme, 2005. For the A.Y. 2010-11 the assessee disclosed Nil income under the normal computation and an amount as book profits u/s 115JB of the Income-tax Act, 1961. In the course of the assessment proceedings, he filed a revised computation of income under the normal provisions and section 115JB in order to claim deduction of the sums of interest subsidy and power subsidy amounts received by him under those schemes as capital receipts which he had treated as revenue receipts in the original return. The AO treated the subsidies as revenue receipts and brought them to tax.

Issue:

Income or capital – Subsidies – Book profit – Computation – Sections 2(24) and 115JB of ITA, 1961 – Receipts and power subsidies granted as incentives by State Government under schemes for setting up units in specified backward areas in State – Capital in nature – Not income – Cannot be included for purpose of computation of book profit u/s 115JB

Held:

Held by the Tribunal:

- The Tribunal held that the 'interest subsidy' and 'power subsidies' were capital receipts and would be excluded while computing the book profits u/s 115JB.

Decision of the High Court:

- According to the West Bengal Incentive Scheme, 2000 and the West Bengal Incentive to Power Intensive Industries Scheme, 2005 the subsidies were granted with the sole intention of setting up new industry and attracting private investment in the State of West Bengal in the specified areas which were industrially backward, and hence the subsidies were of the nature of non-taxable capital receipts. Thus, according to the "purpose test" laid out by the

Supreme Court and the High Courts, the subsidy should be treated as a capital receipt in spite of the fact that the computation of "power subsidy" was based on the power consumed by the assessee.

- Once the purpose of the subsidy was established, the mode of computation was not relevant. The mode of giving incentive was reimbursement of energy charges. The nature of subsidy depended on the purpose for which it was given. The entire reason behind receiving the subsidies was for setting up of a plant in the backward region. Therefore, the incentive subsidies of interest subsidy and power subsidy received by the assessee were "capital receipts" and not "income" liable to be taxed in the A.Y. 2010-11.
- The amendment to the definition of income u/s 2(24) wherein sub-clause (xviii) has been inserted including "subsidy" for the first time by Finance Act, 2015, w.e.f. 1st April, 2016, i.e., A.Y. 2016-17 has prospective effect and has no effect on the law on the subject applicable to the year in question.
- Where a receipt was not in the nature of income it could not be included in the book profits for the purpose of computation u/s 115JB. Therefore, the interest and the power subsidies received by the assessee under the government schemes would have to be excluded while computing the book profits u/s 115JB, when they were capital receipts and did not fall within the definition of income u/s 2(24).'

CIT vs. Apollo Tyres Ltd. (No. 5); [2019] 416 ITR 571 (Ker.) Date of order: 14th March, 2019 A.Y.: 1995-96

Facts:

- The assessee manufactured and sold automobile tyres and tubes. It had two manufacturing units. The profit from the eligible business was Rs. 7,16,68,439 and the total income was Rs. 6,46,55,496. For the A.Y. 1995-96, the AO restricted the deduction u/s 80-IA of the Income-tax Act, 1961 to 30% of total income, instead of 30% of the profits of the Baroda unit as claimed by the assessee.
- The Commissioner (Appeals) and the Tribunal allowed the assessee's claim. The Tribunal held that according to section 80-IA, for the purpose of allowing deduction the profits of the eligible unit alone should be considered as if it was the only business of the assessee.

Issue:

Industrial undertaking – Special deduction u/s 80-IA of ITA, 1961 – Computation – Assessee having two manufacturing units – Deduction to be at 30% of profits of eligible business and not of total income

Held:

Decision of the High Court:

- The understanding of the Department with regard to the scope of section 80AB to enable them to reckon the deduction at 30%, confining it to the lower extent of the total income from all sources, instead of reckoning it as 30% of the business profits from the eligible business, was wrong and misconceived.
- The assessee was eligible to have the deduction as allowed by the Commissioner (Appeals) and upheld by the Tribunal.'

INTERNATIONAL TAXATION

Circulars/ Notifications/Press Release

Meeting between Secretaries Switzerland and India to further assistance in tax matters

Fighting the menace of Black Money stashed in offshore accounts is a key priority area for the Government. Following the agreement between the Indian Prime Minister and the Swiss President for enhanced cooperation in the fight against tax evasion the two sides have worked closely for expeditious information exchange in tax matters. To further this cooperation, Revenue Secretary, Dr. Ajay Bhushan Pandey and Switzerland's State Secretary for International Finance, Ms. Daniela Stoffel met today at New Delhi. The Secretaries expressed satisfaction over the progress made over the past few years in the area of administrative assistance in tax matters, particularly the efforts made by Switzerland in providing assistance in HSBC cases.

Welcoming the first transmission of financial account information on automatic basis between the two countries in September 2019, the Secretaries reiterated their countries' commitment to global tax transparency for tackling offshore tax evasion. This automatic exchange of financial account information will usher in anew era of financial transparency as Indian tax administration will now know the details of all bank accounts held by Indians in Switzerland. The Secretaries encouraged the competent authorities of both the countries to further collaborate and share experiences with the aim of continuously enhancing the quality of the exchanged data.

The Revenue Secretary and Swiss State Secretary also exchanged views on addressing the challenges arising out of digitalization of the economy and agreed that coordinated international actions, as in the case of tax base erosion and profit shifting project, are central to achieving a consensus-based long-term solution that leads to desired tax certainty and sustainable development.

The Secretaries reaffirmed the need for continuous dialogue at the level of competent authorities of the two countries to further enhance the cooperation under the India Switzerland tax treaties and agreed to carry forward the dialogue in the spirit of mutual friendship and cooperation.

A Joint Statement was signed by the two Secretaries at the conclusion of the meeting.

(Press Release, dated 13th November, 2019)

Double Taxation Agreement – Cabinet approves Agreement and Protocol between India and Chile for Avoidance of Double Taxation

The Union Cabinet chaired by Prime Minister Shri Narendra Modi today approved the signing of the Double Taxation Avoidance Agreement (DTAA) and Protocol between the Republic of India and the Republic of Chile for the elimination of double taxation and the prevention of fiscal evasion and avoidance with respect to taxes on income.

Major impact:

The DTAA will facilitate elimination of double taxation. Clear allocation of taxing rights between Contracting States through the Agreement will provide tax certainty to investors & businesses of both countries while augmenting the flow of investment through fixing of tax rates in source State on interest, royalties and fees for technical services. The Agreement and Protocol implements minimum standards and other recommendations of G-20 OECD Base Erosion Profit Shifting (BEPS) Project. Inclusion of Preamble Text, a Principal Purpose Test, a general anti-abuse provision in the Agreement along with a Simplified Limitation of Benefits Clause as per BEPS Project will result in curbing of tax planning strategies which exploit gaps and mismatches in tax rules.

Implementation Strategy and Targets:

After Cabinet approval, necessary formalities for bringing the Agreement and Protocol into force will be completed. Implementation would be watched and reported by the Ministry.

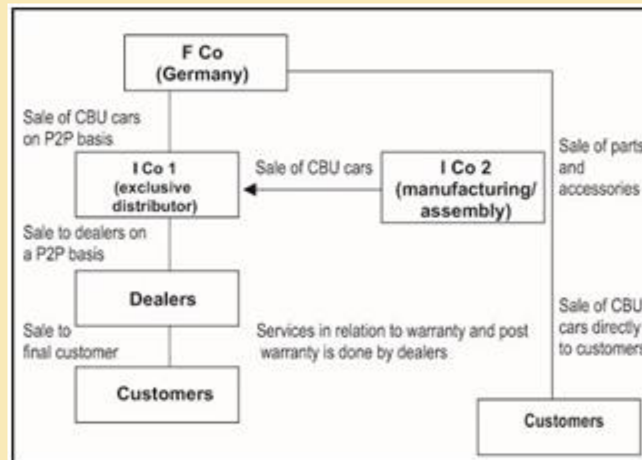
(Press Release, dated 27th November, 2019)

Case Laws

TS-548-ITAT-2019 (Mum.) Audi AG vs. ADIT ITA No.: 1781/Mum/2014, Date of order: 3rd September, 2019 A.Y.: 2010-11

Facts

- The assessee was a car manufacturer based in Germany (F Co). It was a tax resident of Germany. F Co was inter alia engaged in the business of selling its cars globally under its own brand name (F Co Brand).
- It had appointed an Indian company (I Co 1), which was its associated enterprise (AE) as its exclusive distributor for sale of F Co Brand cars in India. During the relevant year, the assessee had sold completely built-up cars (CBU cars) and accessories to I Co 1. The assessee also had another AE (I Co 2) in India. The assessee sold parts and accessories to I Co 2 from which I Co 2 manufactured F Co Brand cars in India. I Co 2 sold these cars to I Co 1 who, in turn, distributed them to the dealers / distributors.



- The assessee offered only fees for technical services for tax under the India-Germany DTAA. However, on the basis of the following observations, the AO held that the assessee had a business connection and a PE in India in terms of Article 5(1) and 5(5) of the India-Germany DTAA.
  (i) I Co 1 was an exclusive distributor and its only business activity and source of income was from the sale of F Co Brand cars;
  (ii) Activities of the assessee and I Co 1 complemented each other and I Co 1 was functioning as an extended arm of, and replaced, the assessee in India;
  (iii) The assessee and I Co 1 jointly established sales targets;

(iv) Most of the senior officials working with I Co 1 had come from F Co group; and

(v) The activities of storage, marketing, soliciting with clients and potential customers, after-sales services and support services, supply of spare parts and accessories, taking part in Auto Expo were undertaken in India by I Co 1 on behalf of the assessee.

- The DRP upheld the order of the AO. Aggrieved, the assessee appealed before the Tribunal.

Issue:

Section 5 of the Act – Article 9 of India-Germany DTAA – Foreign car manufacturing company sold completely built-up cars to Indian company on principal-to-principal basis – Indian company sold such cars to dealers on principal-to-principal basis, each transaction constituted a separate and independent activity, and since Indian company was not acting on behalf of the foreign company, the foreign company could not be said to have PE in India, either u/s 9 of the Act or under article 5 of India-Germany DTAA

Held

- The manufacture of cars was completed by the assessee outside India. Hence, it constituted a separate and independent activity;
- The sale of cars was also completed outside India. Hence, income arising from sales could not be taxed in India;
- The assessee had contended that the cars were sold to I Co 1 on principal-to-principal basis outside India and I Co 1 had sold these on principal-to-principal basis to dealers. I Co 1 was not acting on behalf of the assessee and the assessee was not selling cars through I Co 1. Income from sale of such cars in India was taxed separately in the hands of I Co 1 in India. The AO did not bring any material to counter this. Thus, I Co 1 did not constitute a PE of the assessee in India and income from sale of cars is not taxable in India. The Tribunal relied on the decision in the case of ACIT vs. Daimler Chrysler AG1.

DCIT vs. K.E. Faizal ITA No.: 423/Coch/2018 A.Y.: 2012-13 Date of order: 8th July, 2019

Facts:

- The assessee was a non-resident under the Act. He was located in UAE and qualified for benefit under the India-UAE DTAA. During the relevant year he sold units of equity-oriented mutual funds and derived short-term capital gain (STCG). The assessee claimed that the STCG derived by him was not chargeable to tax in India in terms of Article 13(5) of the India-UAE DTAA.
- The AO noted that the underlying instrument of an equity-oriented mutual fund was nothing but a 'share'. Accordingly, the AO held that in terms of Article 13(4) of the India-UAE DTAA, STCG was chargeable to tax in India.
- The CIT(A) held that the units were not 'shares'. Hence, in terms of Article 13(5) of the India-UAE DTAA, STCG from units was not chargeable to tax in India.

Issue:

Article 13(4) and (5) of India-UAE DTAA – As Article 13(4) covered only gains from 'share', gains from 'unit' of mutual fund were subject to Article 13(5) under India-UAE DTAA

Held I:

- Article 13(4) of the India-UAE DTAA provides that income arising to a resident of the UAE from the transfer of shares in an Indian company other than those specifically covered within the ambit of other paragraphs of Article 13, may be taxed in India. Article 13(5) provides that income arising to such a resident from transfer of property, other than shares in an Indian company, is liable to tax only in the UAE.
- Article 13(4) covers within its purview capital gains arising from transfer of 'shares' and not any other property. Therefore, units of a mutual fund could be covered under Article 13(4) only if they could be considered as shares.
- Since the DTAA does not define 'share' in terms of Article 3(2), the definition under the Companies Act, 2013 should be referred. Further, as per SEBI regulations, a mutual fund can be established only as a 'trust'. Therefore, the units issued by an Indian mutual fund could not be considered a 'share'.
- Under the Securities Contract (Regulation) Act, 1956 a 'security' is defined to include inter alia shares, scrips, stocks, bonds, debentures, debenture stock or

other body corporate and units or any other such instrument issued to the investors under any mutual fund scheme.

- From the definition of 'securities', it is clear that 'share' and 'unit of a mutual fund' are two separate types of securities. Hence, gains arising from transfer of units of a mutual fund would not be covered within the ambit of Article 13(4). Consequently, it would be covered under Article 13(5).
- Therefore, the assessee was not liable to tax in India in respect of STCG arising from the sale of units.

REGULATION GOVERNING INVESTMENTS

FOREIGN EXCHANGE MANAGEMENT ACT (FEMA)

FAQs on Overseas Direct Investment updated by RBI

FAQ No. 64: Can Indian Party set up a Step down Subsidiary / Joint Venture in India through its foreign entity (WOS/ JV), directly or indirectly through step down subsidiary of the foreign entity?

Earlier RBI had clarified that the provisions dealing with transfer and issue of any foreign security to residents do not permit an Indian Party to set up a Step down Subsidiary / Joint Venture in India through its foreign WOS/JV nor do the provisions permit Indian Party to acquire a WOS or invest in a JV that already has direct/indirect investment in India.

RBI has further clarified that, now Indian Parties can approach RBI for obtaining prior approval through their AD Banks for cases which involve FDI through ODI structure. Such cases will be considered by RBI on a case to case basis and depending on merits of the case.

Authors' Comments: RBI has been compounding cases involving FDI through ODI structures treating such arrangement as non-fulfillment of 'bonafide business activity' test required to be complied in terms of Regulation 6(2)(ii) of FEMA Notification 120. The above referred FAQ further testifies the view of RBI, that FDI through ODI structure would require prior approval of RBI.

COMPANY LAW

Company Meeting Of Board and its Power (Rules) (2014)

Ministry of Corporate Affairs (MCA) vide its Notification dated 18th November, 2019 had amended Companies (Meeting OF Board and its Power) Rules, 2014 ("Rules 2014"), the same will be effective from its notification date.

Companies (Meeting of Board and its Powers) Rules, 2014 and amended criteria for Related Party Transactions (RPT) by amending Rule 15 (3) (a) (i) to (iv) of these Rule.

Following are the amendments in threshold limits for entering into any transaction by any Company with its Related Party, as prescribed under section188(1) (a) to (e) of the Companies Act 2013, only with the approval of members by way of an Ordinary Resolution .

- sale, purchase or supply of any goods or materials directly or through appointment of agent, exceeding 10% or more of the Turnover of the Company; ("or RS.100 Crore, whichever is lower" is deleted vide this amendment)
- selling or otherwise disposing of, or buying, property of any kind directly or through appointment of agent amounting to 10% or more of net worth of the Company.("or Rs.100 Crore, whichever is lower" is deleted vide this amendment)
- leasing of property of any kind amounting to 10% or more of the turnover of the Company ("or 10% or more of Net worth or Rs.100crore, whichever is lower" is deleted vide this amendment)
- availing or rendering of any services directly or through appointment of agent, amounting to 10% or more of the turnover of the Company ("or Rs.50 Crore, whichever is lower" is deleted vide this amendment)

Company Law Committee Report 18th November 2019

Review, Reward & Reschedule

Company Law Committee (CLC) which was set up by the Ministry of Corporate Affairs (MCA) on 18th September 2019 presented its Report on 18th November 2019 to Union Minister of Finance and Corporate Affairs Smt. Nirmala Sitaraman. CLC was constituted of 11 members including Shri Injeti Srinivas, Secretary, MCA who is Chairman of CLC.

CLC was to give report on further decriminalize provisions of the Companies Act, 2013 (CA 2013) to boost EASE OF LIVING by Corporate India.

A. Review of 46 Penalties and recommendation

In Chapter 1 of its Report, CLC has recommended amendments to 46 more provisions, detailed below under CA 2013 to reduce or remove criminality and de-clog the criminal justice system by retention of status quo in case of non – compoundable offences. CLC has adopted a principle based approach to further remove criminality, in case of defaults which can be determined objectively, and which otherwise, lack the element of fraud or do not involve larger public interest.

1. 23 Offences to be re-categorised which could be dealt with in the In House adjudication.
2. 7 compoundable offences to be omitted all together.
3. 11 compoundable offences to be limited with only fines and imprisonment provisions to be removed from it.
4. 5 offenses to be dealt under alternative framework.

B. Reward to law abiding Corporates

In Chapter 2, of its Report, CLC has recommended, providing following for the Ease of Living for law abiding corporates

1. Power to exclude certain class of companies from the definition of 'listed company', mainly for listing of debt securities, in consultation with SEBI.
2. Clarifying the trial court's jurisdiction on the basis of place of commission of offence under Section 452, for wrongful withholding of property of a company by its officers/employees.
3. Including the provisions of Part IXA (Producer Companies) of the Companies Act, 1956 in the Companies Act, 2013.
4. Proposing benches of National Company Law Appellate Tribunal (NCLAT)
5. Provisions for allowing payment of adequate remuneration to non-executive directors in case of inadequacy of profits, by aligning the same with the provisions for remuneration to executive directors in such cases
6. Relaxing provisions related to imposition of higher additional fees under third proviso to Section 403(1);
7. Extending applicability of Section 446B (lower penalties for small companies and one person companies) to all provisions which attract monetary penalties and extending the benefit to producer companies and start-ups also.

8. Excluding certain companies/bodies corporate from applicability of Section 89 (declaration of beneficial interest in shares) and Chapter XXII (companies incorporated outside India);
9. Reducing timelines for Right Issues under Section 62 so as to speed up the issue
10. Extending exemptions from filing of certain resolutions to certain classes of non-banking financial companies under Section 117 in consultation with RBI;
11. Providing power to enhance the thresholds which trigger applicability of (CSR)Corporate Social Responsibility provisions;
12. Non-levy of penalties for delay in filing the annual returns and financial statements in certain cases.

C. Rescheduling of certain issues which need wider consultation

The CLC has also highlighted following areas that require wider consultation and need to be taken up in due course at a later stage.

1. Providing for appeal against the orders of the Regional Directors before the NCLT after due examination;
2. Exempting certain private placement requirements for Qualified Institutional Placements (QIPs) after due consultation with SEBI;
3. Reviewing provisions on disqualification of directors after due consultation and examination; and
4. Reviewing provisions in respect of debarment of audit firms after due consultation and examination.

Conclusion: There may be the intention of Government to bring a Bill on the recommendation by CLC in the winter session of Parliament itself. This decriminalization gives signal to the world about Narendra Modi government agenda to get India among the top 50 countries in World Bank's ease of doing business ranking.

ACCOUNTS & AUDIT

Disclosure of defaults in payment of interest/repayment of principal amount on loans from banks/ financial institutions and unlisted debt securities by listed entities

SEBI through its circular dated 21 November 2019 requires all listed entities which have listed equity and convertible securities, Non-Convertible Debentures (NCDs) and Non-Convertible Redeemable Preference Shares (NCRPS) to provide a disclosure to the stock exchange in case of default2 in payment of interest/ installment obligations on loans (including revolving facilities like cash credit) from banks/financial institutions and unlisted debt securities in the following manner:

- In case of default on loans (including revolving facilities like cash credit) beyond 30 days: Disclose the fact to the stock exchange immediately but not later than 24 hours from the 30th day of such default.
- In case of default on unlisted debt securities i.e. NCDs and NCRPS: Disclose the fact to the stock exchange immediately but not later than 24 hours from the occurrence of the default.

The circular provides the formats in which the said disclosures are to be provided. Additionally, if on the last date of each quarter, any loan (including revolving facilities like cash credit) from banks/ financial institutions is outstanding for more than 30 days or there is any outstanding debt security under default, then the listed entity is required to provide specified details of such default (in the prescribed format) within seven days from the end of each quarter.

The provisions of the circular are applicable from 1 January 2020.

(Source: SEBI circular no. SEBI/HO/CFD/CMD1/CIR/P/2019/140 dated 21 November 2019)

Disclosure of divergence in the asset classification and provisioning by banks

Background

SEBI through its circular (no. CIR/CFD/CMD1/79/2019) dated 17 July 2019 required all banks with listed specified securities to disclose divergences in the asset classification and provisioning to the stock exchange(s), if either or both of the following conditions are satisfied:

a. The additional provisioning for Non-Performing Assets (NPAs) assessed by the Reserve Bank of India (RBI) exceeds 10 per cent of the reported profit before provisions and contingencies for the reference period and
b. The additional gross NPAs identified by RBI exceed 15 per cent of the published incremental gross NPAs for the reference period.

The disclosures are required to be made in the 'notes to accounts' to the annual financial results filed with the stock exchange(s).

New development

On 31 October 2019, SEBI through its circular required banks with listed specified securities to provide above disclosures to the stock exchange(s) within a reasonable time (not exceeding 24 hours) from the receipt of the 'final risk assessment report' of the RBI. Therefore, banks should not wait to publish them as part of their annual financial statements. The circular also prescribes the format in which disclosures are to be made. The provisions of the circular are effective from 31 October 2019.

(Source: SEBI circular no. CIR/CFD/CMD1/120/2019, dated 31 October 2019)

GOODS AND SERVICE TAX

CBIC vide Notification No. 43/2019 - CT dated 30th September, 2019
excludes the manufacturer of Aerated Water from opting under composition scheme. The said notification shall come into force from 1st October, 2019.

CBIC vide Notification No. 49/2019 - CT dated 9th October, 2019
makes following amendment in CGST Rule, 2017 w.e.f from 9th October, 2019

Suspension of registration

- In Rule 21A(3), an explanation has been inserted to clarify that the expression "shall not make any taxable supply" shall mean that the registered person shall not issue a tax invoice & shall not charge tax on supplies made by him during the period of suspension of registration.
- In Rule 21A, a new sub rule 5 has been inserted to provide that where any order having the effect of revocation of suspension of registration has been passed, the provisions of section 31(3)(a) and section 40 of CGST Act in respect of the supplies made during the period of suspension and the procedure specified therein shall apply.

Condition for claiming ITC – Rule 36

- In Rule 36, a new sub rule 4 has been inserted to provide that ITC availed by registered person in respect of Invoice & debit note not appearing in GSTR 2A shall not exceed shall not exceed 20% of ITC on account of Invoice & debit note uploaded by supplier under section 37(1) & appearing in GSTR 2A

Form and manner of submission of monthly return- Rule 61

- CGST Rule 61(5) substituted retrospectively w.e.f. 1st July, 2017 whereby Form GSTR 3B is notified as Return to be furnished electronically. It is further provided that assesse is not required to furnish return in Form GSTR 3 once he files return in Form GSTR 3B.This amendment is inserted to reverse the decision of Hon'ble Gujarat High court decision in case of AAP & Co. wherein court has held that GSTR 3B is not a return under section 39(1).
- Rule 117 has been amended to extend the availment of transitional credit in Form GSTR TRAN-1 from 31st March 2019 to 31st December, 2019 and Form GSTR TRAN-2 till 31st January, 2020 for those taxpayers/registered persons who could not submit the said declaration by the due date on account of technical difficulties.

- A new Form DRC 01A has been notified for intimating tax, Interest & Penalty by Tax Authority before service of SCN u/s 73(1) & Section 74(1). Reponses to DRC 01A shall be filed by taxpayer in Form DRC 01A (Part B). The voluntary payment of taxes shall continue to be paid using DRC – 03.

DISCLAIMER AND STATUTORYNOTICE

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