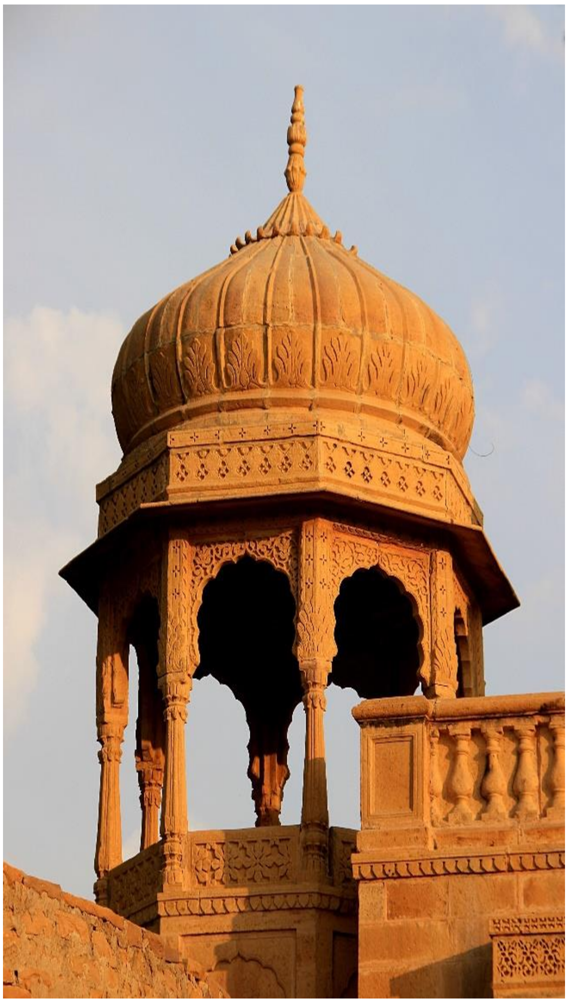
MPC & CO LLP
CHARTERED ACCOUNTANTS

Corporate Update

April | 2022 (Regular)

CONTENTS



FOREWORD

Dear Reader,

The negotiations for entering in to a Free Trade Agreement between India & EU are likely to start soon, as is indicated from the discussions which India's Prime Minister, Mr. Narendra Modi had recently with the visiting Ms. Ursula von der Leyen, the President of the European Commission a few days back and with the German Chancellor, Mr. Olaf Scholz, this week. As stated in our last Update, Government of India is taking good steps to enter into such Agreements.

India's tax treaty with Germany may also be amended soon as agreed between the two Governments during the visit of Prime Minister of India to Germany this week.

In this Update, we cover various changes in regulations covering GST, Companies Act, FDI Policy besides analysis of a few Judgements under direct tax.

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Partner

INTERNATIONAL TAXATION

Filing of Form 67 not mandatory for claiming foreign tax credit

42 Hertz Software India Pvt. Ltd. vs. ACIT [TS-214-ITAT-2022(Bang)] dated March 07, 2022

Recently, the Tax Tribunal, Bangalore bench held that the requirement to furnish Form 67 before the due date of filing tax return is only directory in nature since Rule 128(9) of the Income Tax Rules, 1962 does not provide for disallowance of FTC in case of delay in filing such form.

The taxpayer is a private limited company engaged in the software business. In respect of return of income filed by the taxpayer for Assessment Year ('AY') 2017-18, the taxpayer claimed Foreign Tax Credit (FTC) under section 90/91 of the Income Tax Act, 1961 ('the Act') in respect of tax withheld in Japan as per Indo-Japan tax treaty. The tax officer denied FTC to the taxpayer on the premise that the taxpayer did not file Form 67 before filing the return of income which is mandatory for claiming FTC as per Rule 128(9). The taxpayer had filed Form 67 in the course of assessment proceedings which was not accepted by the tax officer. No relief was granted by the Commissioner (Appeals).

On further appeal, the Tribunal held that the requirement to file Form 67 before the filing of tax return cannot be treated as mandatory. The same is directory in nature as Rule 128(9) does not provide for disallowance of FTC in case of delay in filing Form No.67. In this regard, the Tribunal placed reliance on the decision of coordinate bench in case of Ms.Brinda Kumar Krishna vs.ITO [ITA no.454/Bang/2021]. The Tribunal further held that the provisions of tax treaty overrides the provisions of the Act and the Rules as held by various High Courts, as also approved by Hon'ble Supreme Court in the case of Engineering Analysis Centre of Excellence (P.) Ltd. (2021) 432 ITR 471.

Accordingly, the Tribunal concluded that the claim of FTC cannot be denied to the taxpayer and the matter was remanded back to the tax officer for verification of documents filed by the taxpayer in support of its claim of FTC.

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DOMESTIC TAXATION

Direct Taxes

Supreme Court revives validity of reassessment notices issued after April 01, 2021 under old regime

UOI & Ors v Ashish Agarwal (CA No. 3005/2022)

In a landmark decision, the Supreme Court has revived the validity of approximately 90,000 reassessment notices issued by the tax department during the period April 01, 2021 to June 30, 2021. Such notices were earlier held to be invalid by various High Courts across India.

These notices were issued under Section 148 of the erstwhile income escaping assessment scheme (Section 147 to Section 151), in terms of which, the tax department was empowered to scrutinize tax records of past years as old as six years (in some cases, even 16 years). Such powers were available if the assessing officer had 'reason to believe' that income had escaped assessment.

Legislative History

The legal controversy has its origins in the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 ('**TOLA**'). This special legislation was earlier enacted to extend various statutory deadlines, on account of the outbreak of the COVID-19 pandemic. Due to the prolongation of the pandemic and difficulties arising in meeting even the extended timelines, the Government further extended such timelines by issuing notifications under the TOLA from time to time.

In the interim, the Finance Act, 2021 was passed by the Indian Parliament, wherein, most notably, the entire income escaping assessment scheme was revamped and rationalised. The new income escaping assessment regime substituted the erstwhile provisions with effect from April 01, 2021. In other words, no notice under the old scheme could have ordinarily been issued after March 31, 2021.

Apart from insertion of procedural checks and balances (inquiry before notice, approval of higher authority, show cause notice under Section 148A etc), the major change in the new regime was the time limits for issuing notices for past years. In terms of the new regime, ordinarily, a notice could not be issued after three years from the end of the relevant assessment year. However, in cases where the income which has escaped tax is represented in a form of an asset and exceeds INR 50 lakhs, the limitation period is ten years.

Thus, compared to the erstwhile provisions, notices issued under the new scheme for assessment years which are more than 3 years old are required to undergo a stricter test.

On March 31, 2021, on account of the hardships faced by revenue authorities due to the pandemic, the Central Government issued a notification under the TOLA to extend the deadline for issuance of notice under Section 148 under the old provisions to April 30, 2021. Thereafter, this date was further extended to June 30, 2021 by way of another notification dated April 27, 2021.

Dispute before the High Courts

The validity of these notifications and notices issued under the erstwhile provisions were challenged before various High Courts by way of writ petitions. Most High Courts, namely, the High Court of Allahabad, Delhi, Bombay, Rajasthan, Madras and Calcutta quashed the said notices. However, the Chattisgarh High Court adopted a contrary view and upheld the validity of the notices.

The decision of the majority of High Courts was based on the legal position that the erstwhile provisions of Section 148 of the Act stood obliterated from the statute with effect from April 01, 2021, without any provision in the Finance Act, 2021 or the Income tax Act to save such provision. The Courts held that the TOLA had overreached its powers to revive a dead provision in the primary legislation, i.e. the Income-tax Act, 1961. In other words, it was beyond the competence of the TOLA to extend the limitation period of the erstwhile Section 148 beyond March 31, 2021, as the erstwhile Section 148 was no longer in existence after March 31, 2021.

The decisions of the Allahabad High Court in the case of *Ashok Kumar Agarwal v UOI (WP 524/2021)* and the Delhi High Court in the case of *Man Mohan Kohli v ACIT [2021] 133 taxmann.com 166* are notable in this regard.

Decision of the Supreme Court

The revenue authorities challenged the order of the Allahabad High Court in *Ashok Kumar Agarwal (supra)* before the Supreme Court. To avoid multiplicity of litigation, the Apex Court took cognizance of judgments of all other High Courts and decided the matter collectively by its order dated May 4, 2022.

The Apex Court, at the outset, agreed with the ratio of the decisions of the High Courts that the reassessment notices issued after April 01, 2021 under the old scheme were bad in law. However, the Apex Court also observed that the tax department had made a bonafide mistake by issuing notices after April 01, 2021 under the old Section 148. The Court held that if the notices are quashed altogether, the tax department shall be left without remedy.

Noting that ultimately, the public exchequer will suffer if the notices are absolutely quashed, the Apex Court proceeded to strike a balance between the rights of the tax authorities and the taxpayer. Such balance was sought to be achieved by invoking its powers under Article 142 of the Constitution of India. To this end, the Apex Court held as under:

- The notices issued under the old law after April 01, 2021 shall be treated to be a show cause notice under Section 148A of the Income-tax Act, 1961 (i.e. new scheme);

- Within 30 days from the date of the order of the Supreme Court, the assessing officer shall provide the assessee, the relevant material and information relied upon by him. The assessee, within a period of two weeks therefrom, shall reply to such show cause notice.

- A one-time dispensation shall be given to the requirement of enquiry, in respect of such proceedings;

- The assessing officers shall thereafter pass orders in terms of Section 148A(d) in respect of each of the concerned assessees. Thereafter, after following the procedure as required under Section 148A, the assessing officer may issue notice under new Section 148;

- All rights, defences etc available under the law (including new Section 149) to the assessees as well as revenue authorities shall continue to be available.

The judgment of the Supreme Court shall have pan India applicability and the orders of the High Courts shall be modified / substituted to such extent, irrespective of whether they have been challenged before the Supreme Court or not. This would avoid filing of further appeals before the Supreme Court in approximately 9,000 cases against the similar judgments and orders passed by the various High Courts.

Way Forward

The Supreme Court, in a rare application of Article 142 to tax matters, has breathed life into 90,000 reassessment proceedings, most of which were quashed by the various High Courts. However, the order is still wanting on various unaddressed aspects. For instance, in terms of the new Section 149 of the Act, proceedings initiated for AY 2013-14 to AY 2017-18 could not have been issued under the new provisions, unless the assessing officer had 'information' in his possession suggesting that income represented in a form of asset (exceeding INR 50 lakhs) escaped assessment. In case the Assessing Officer had reopened such years merely on the basis of 'reason to believe' of income having escaped assessment (without other conditions under the new provisions being satisfied), whether the assessee may adopt a defence that such notices do not satisfy the tests of the new Section 149 and therefore, are invalid.

As such, the end of litigation on this matter does not appear to be in sight.

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Section 40(a)(iib) - Surcharge on Sales Tax and Turnover Tax is an allowable expenditure while Gallonage Fees, License Fees and Shop Rental is a disallowable expenditure

Kerala State Beverages Manufacturing & Marketing Corporation Ltd. v. ACIT (TS-01-SC-2022) (SC)

Recently, the Apex Court held that expenditure incurred by the Appellant, a state government undertaking, towards surcharge on sales tax and turnover tax were allowable expenditure under Section 40(a)(iib) of the Income Tax Act.

The aforesaid decision of the Apex Court relates to Section 40(a)(iib) in terms of which, any amount paid by way of royalty, license fee, service fee, privilege fee, service charge or any other fee or charge exclusively levied upon or appropriated from a state government undertaking by a state government shall be an inadmissible expense.

Brief facts of the case are that the Appellant is a Kerala state government undertaking engaged in wholesale and retail trade of liquor. The Appellant possessed FL-9 wholesale and FL-1 retail licenses which authorized it to deal in trade of liquor. For Assessment Year (AY) 2014-15 and 2015-16, the Appellant claimed certain expenditure of the nature of gallonage fee, license fee, shop rental, surcharge on sales tax and turnover tax as a deduction in its books of accounts. The Income Tax Authorities, First Appellate Authority as well as Tax Tribunal decided the matter against the Appellant by disallowing aforesaid expenditure claimed by the Appellant under Section 40(a)(iib) of the Act.

On appeal before the High Court, the Court decided the matter partly in favour of the Appellant by holding surcharge on sales tax and turnover tax to be admissible deduction, outside the ambit of Section 40(a)(iib) of the Act. Furthermore, the High Court disallowed gallonage fees, license fees and shop rental paid in relation to FL-9 licenses under Section 40(a)(iib) since such licenses were exclusively provided by the State Government to the Appellant for which it levied certain fees.

On appeal before the Apex Court, the Court held that the basic intent of the legislature to enact provisions of Section 40(a)(iib) of the Act by Finance Act, 2013 was to discourage the practice of shifting of income/ profits from state-owned government undertakings to state government's treasury by disallowing state levied fees and charges in the hands of such undertakings. The Court thus, emphasized the following aspects in relation to the provision:

- The Court disagreed with narrow interpretation to the term 'exclusively' in Section 40(a)(iib) accorded by the High Court based on the premise that FL-1 licenses were awarded to more than one undertaking and thus, were non-exclusive in nature. The Supreme Court stated that the aforesaid interpretation would defeat the basic intent behind enacting Section 40(a)(iib) of the Act.

- The Court stated that at first, various states would distribute licenses to multiple state-owned undertakings and thereafter, shall escape rigors of Section 40(a)(iib) by claiming its provisions to be applicable on exclusive undertakings only; and
- The term 'exclusively' under Section 40(a)(iib) must be viewed based upon the nature of undertaking rather than the number of undertakings.

Furthermore, surcharge on sales tax and turnover tax are outside the ambit of Section 40(a)(iib) since said provision covers only fee or charge and cannot cover tax or surcharge on tax within its ambit. The Apex Court held that the Legislature while drafting specifics of Section 40(a) of the Act have maintained a clear distinction between the term 'tax' and 'fee' and have specifically stated the term 'tax' wherever it intended to cover the same.

As such, the Apex Court partly allowed the matter in favour of the Appellant by holding that surcharge on sales tax and turnover tax are outside the ambit of Section 40(a)(iib) of the Act and therefore, allowable. Further, it was also held that gallonage fee, license fee and shop rental are within the ambit of Section 40(a)(iib) of the Act and therefore inadmissible as a deduction.

Loss incurred due to forex fluctuation on repayment of foreign currency loans is revenue expenditure if the loan is used for business activities

Wipro Finance Ltd. v. CIT [137 taxmann.com 230 (2022)] (SC)

Recently, the Apex Court has held that forex loss incurred on repayment of foreign currency loans is a revenue expenditure deductible under Section 37(1) of the Income Tax Act ('the Act').

Section 37(1) of the Act is a residuary provision whereby any expenditure (not being capital in nature) which is incurred wholly and exclusively for the purposes of business or profession is an allowable deduction in computing income under the head "Profits and Gains from Business or Profession".

Brief facts of the case are that the Appellant entered into a loan agreement with Commonwealth Development Corporation, UK. As per the said agreement, the Appellant availed a loan of GBP 5 million for expanding its primary business of leasing and hire purchase of capital equipment to its existing Indian customers. However, at the time of repayment of said loan, the Appellant incurred loss of INR 11 million approx., which it claimed as a deduction in the income-tax return filed for Assessment Year ('AY') 1997-98.

The Assessing Officer disallowed the aforesaid deduction of forex loss claimed by the Appellant, which was upheld by the First Appellate Authority. Thereafter, in appeal before the Tax Tribunal, the Tribunal decided the issue in favour of the Appellant by allowing deduction of forex loss incurred as a revenue expenditure under Section 37(1) of the Act.

The Appellant also raised an additional claim for admissibility of other expenses of INR 24 million, which was otherwise not claimed as an expenditure in its return of income. The Tax Tribunal, placing reliance on the decision of Apex Court in the case of National Thermal Power Co. Ltd. v. CIT [(1997) 7 SCC 489], allowed the claim under the premise that the Tribunal had power to entertain a fresh claim which had not been raised prior before the tax authority or first appellate authority.

On appeal before the High Court, the Court reversed the decision of Tax Tribunal on both the issues under the premise that the Tax Tribunal had not recorded sufficient reasons in support of its conclusion.

On appeal before the Apex Court, the Court held that the Appellant had availed and utilized the loan for financing existing Indian enterprises to procure capital equipment on hire purchase/ lease basis. Such transaction being an independent transaction/ business activity of the Appellant was essential for carrying on the business of the Appellant and did not lead to creation of asset or acquisition of asset in the hands of the Appellant.

As the loan was expended wholly and exclusively in the primary business of financing existing Indian enterprises to obtain capital equipment on hire purchase/ lease from the Appellant, the Apex Court held that the Appellant was justified in claiming a deduction of forex loss under Section 37(1) of the Act. Accordingly, the Apex Court upheld decision of Tax Tribunal by relying upon its earlier judicial pronouncements.

As regards the powers of the Tax Tribunal to entertain a fresh claim, the Apex Court observed that the Tax Tribunal had noted that the Revenue's Counsel did not have any objection in entertaining a fresh claim put forth by the Appellant before the Tribunal. Therefore, the objection of the Revenue as raised now cannot be approved. The Apex Court also turned down reliance placed by Revenue's Counsel upon decision of **Goetze (India) Ltd. V. CIT [(2006) 284 ITR 323]** by stating that the said decision limited the power to entertain fresh claims by "assessing authority" and not the Tax Tribunal. Accordingly, the Apex Court held that Tax Tribunal did have the power of entertaining a fresh claim under Section 254 of the Act.

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Refurbishment activity is in the nature of repair, does not constitute technical services

PPN Power Generating Co. (P.) Ltd. v. ACIT [2022] 137 taxmann.com 254 dated January 25, 2022

Recently, the Tax Tribunal, Chennai Bench held that refurbishment of spares/ components is in the nature of repair and thus, not in nature of technical services. As such, payment made by Indian taxpayer to foreign company providing such refurbishment services is not liable to withholding tax.

The taxpayer is in the business of generation and sale of electricity. The taxpayer owns and operates 330.5MW combined cycle power plant. To run this cycle power plant, the necessary machinery like gas turbine is purchased including components and spare parts viz., Hot Gas Path Spares (HGPS). These key spares/ components have a pre-defined standard life based on Equivalent Operating Hours. As such, the same are sent by the taxpayer to a company in Japan for refurbishment as and when required. The refurbishment work is done outside India by Japanese company and no foreign technicians are deputed to India to carry out the refurbishment/repair work. Refurbishment work carried outside India involves activities such as incoming conditional evaluation, incoming flow test, disassembling HGPS, cleaning, pressure test, non-destructive evaluation of HGPS, performing boroscope inspection on end cover gas passage, utilizing piece part flow data to best match HGPS tips and oil/water cartridges to the end covers, re-assemble all HGPS components smith new seals and lock plates, completing final quality assurance inspection and shipping back to India alongwith test results and repair report.

During the year under consideration, the taxpayer did not withheld tax while making payment to the Japanese company towards refurbishment services considering the same as non-technical in nature. In view of the taxpayer, receipt towards refurbishment work was business income in the hands of Japanese company, not taxable in India. The taxpayer relied on various judicial precedents in this regard.

The taxpayer had entered into separate agreement with Japanese company to cover for charges towards technical advisory services which include visit of technical experts from Japan to India, inspection of the turbines by the technical experts from Japan and identification of parts to be refurbished based on the technical inputs from Japanese company. The taxpayer deducted tax while making payment towards these services considering the same as technical services.

However, the tax officer contended that refurbishment of HGPS was done by technically qualified people and the equipment used for testing, evaluation and inspection of HGPS were technologically advanced. As such, he held that refurbishment of HGPS squarely fell within the meaning of technical services as envisaged under section 9(1)(vii) and hence, the taxpayer was required to withhold tax on such payments. Accordingly, the tax officer disallowed the refurbishment expense in the hands of taxpayer.

The Commissioner (Appeals) deleted the disallowance holding that even though the technical term used was refurbishment, the work was nothing but repair and maintenance of the machinery, and the expenditure incurred could not be termed as technical services.

On appeal by the Revenue, the Tribunal held that it was evident from facts that the refurbishment was only repairs and services of machinery. The Tribunal opined that payment for such repairs was outside the scope of FTS under section 9(1)(vii). As such, there was no requirement to withhold tax. The Tribunal, thus, upheld the order of the Commissioner (Appeals).

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Indirect Taxes

Changes in GST Law

Scrutiny of Returns by GST Department

In order to ensure uniformity in selection of returns for scrutiny, CBIC has recently issued instructions to the GST officials regarding Standard Operating Procedure (SOP) for scrutiny of GST returns for FY 2017-18 and 2018-19 vide Instruction No. 02/2022-GST dated March 22, 2022.

Section 61 of the CGST Act, 2017 read with Rule 99 of the CGST Rules, 2017 deals with scrutiny of GST returns, wherein the proper officer can scrutinize the returns by issuing the notice vide Form ASMT-10. In response to ASMT-10, the taxpayer can either pay the tax liability stipulated in the notice or can furnish reply in Form ASMT-11. Upon receipt of taxpayer's reply in ASMT-11, the proper officer can either issue Form ASMT-12 where the reply is found to be satisfactory, or can take up the matter for further enquiry in case he is not satisfied with the reply furnished by the taxpayer.

CBIC has issued the following indicative list of parameters for scrutiny of GST returns:

1. **Comparison of tax liability between GSTR-1 and GSTR-3B:** Where tax liability declared in GSTR-1 exceeds the tax liability in GSTR-3B, the same may be treated as short payment of tax.

2. **Comparison of RCM (Reverse Charge Mechanism) liability with RCM ITC:** Availment of ITC in excess of the liability discharged on account of reverse charge supplies may indicate either short payment of tax liability on account of RCM supplies or excess availment of input tax credit in respect of RCM supplies.

3. **Comparison of RCM liability in GSTR-2A with liability declared in GSTR-3B:** Where the RCM supplies declared in table 3.1(d) of GSTR-3B are less than the inward supplies attracting reverse charge as per details available in GSTR-2A, it may indicate short payment of tax liability on account of RCM supplies.

4. **Comparison of tax liability paid in cash and RCM liability:** Where tax liability paid in cash is less than the liability declared under RCM, the same would be treated as short payment of taxes.

5. **Comparison of ITC availed on ISD in GSTR-3B with ISD credit in GSTR-2A.**

6. **Comparison of outward tax liability declared in GSTR-3B and net amount liable for TCS and TDS as per GSTR-2A:** Where the outward tax liability declared in GSTR-3B is less than the net amount liable for TDS and TCS as per GSTR-2A, the same may be treated as short payment of taxes.

7. **Comparison of liability declared in GSTR-3B with E-way Bill Report:** Where the liability declared in GSTR-3B appears to be less than the tax liability as declared in the e-way bills, the same may be treated as short payment of taxes.

8. **ITC availed in respect of vendors whose registration is cancelled retrospectively:** The same may be considered as a wrongful availment.

9. **ITC availed in GSTR-3B in respect of supplies received from vendors who have not filed GSTR-3B:** The same may be considered as a wrongful availment.

10. **Filing of GSTR-3B after the last date of availment of ITC as per Section 16(4) of the CGST Act, 2017:** The said ITC would be declared as inadmissible.

11. **Comparison of ITC availed in respect of Import of goods in GSTR-3B vis-à-vis the ITC appearing in GSTR-2A:** Wherever required, the details of such imports may also be cross-verified from the ICEGATE portal.

12. **Verification of ITC reversals under Rule 42 and 43:** ITC reversals under Rule 42 and 43 would be verified vis-a-vis exempted supplies declared in the returns and any discrepancies would

be considered as an excessive availment of ITC.

13. **Payment of Interest and Late fees:** Where the taxpayer files its return after the prescribed due date, the same would attract payment of interest and late fees. If the same is not paid as per the GST law, the same may be deemed as payable.

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CORPORATE LAW

Coming into effect of Section 56 of Companies (Amendment) Act, 2020 and Section 80(i) of the Companies (Amendment) Act, 2017

The Ministry of Corporate Affairs, vide its notification dated January 11, 2022, has appointed July 01, 2022, as the date on which the provisions of Section 56 of the Companies (Amendment Act), 2020, and the provisions of the second and third proviso to Section 80(i) of the Companies (Amendment) Act, 2017 shall come into force.

Both these amendments relate to Section 403 of the Companies Act, 2013 empowering the Government to prescribe higher additional fees [which shall not be less than twice the amount of normal additional fees, otherwise applicable] in those cases where there has been default on two or more occasions in filing of forms / submitting of documents within prescribed time.

The Companies (Registration Offices and Fees) Amendment Rules, 2022

In context of above referred amendments, the Ministry of Corporate Affairs, vide its notification dated January 11, 2022, has notified the Companies (Registration Offices and Fees) Amendment Rules, 2022 [hereinafter referred to as “the Amendment Rules”] in order to amend the Companies (Registration Offices and Fees) Rules, 2014. The Amendment Rules shall be effective w.e.f. July 01, 2022.

The Amendment Rules contains a Table, as reproduced in ***Annexure A***, containing the manner of ascertaining the additional fees as well as higher additional fees. The Amendment Rules have specified that higher additional fees shall be payable, if there is a delay in filing of Form INC-22 [intimation pertaining to change in registered office] or Form PAS-3 [intimating regarding allotment of securities] on two or more occasions, within a period of 365 days from the date of filing last such belated e-form, on which additional fees or higher additional fees were paid by the Company.

It may be noted that wherever higher additional fees is payable, additional fees shall not be charged.

Companies (Accounts) Amendment Rules, 2022

The Ministry of Corporate Affairs [MCA], by way of Notification No. G.S.R. 107(E), dated February 11, 2022, has notified the Companies (Accounts) Amendment Rules, 2022 (“**Amendment Rules**”), which has the effect of amending the Companies (Accounts) Rules, 2014 (“**Accounts Rules**”). The Amendment Rules have inserted a new sub-rule, whereby every company covered under Corporate Social Responsibility [CSR] provisions of Sec 135 of the Companies Act, 2013 [i.e. having a net worth of Rupees Five

Hundred Crores or more, or a turnover of Rupees One Thousand Crores or more, or a net profit of Rupees Five Crores or more during the immediately preceding F/Y] is required to furnish a report to the ROC, in a newly introduced Form CSR-2, for the preceding F/Y 2020-21, and onwards as an addendum to Form AOC-4 / AOC-4 xbrl, as the case may be.

Further, for the preceding F/Y 2020-21, Form CSR-2 shall be filed separately as a web-based form on or before March 31, 2022, after filing Form AOC-4 or AOC-4 XBRL, as the case may be.

Subsequently, the MCA by way of Notification dated March 31, 2022 has extended the timeline for filing of Form CSR-2 for F/Y 2020-21 from March 31, 2022 to May 31, 2022.

The Amendment Rules also contain the format of Form CSR-2. Form CSR - 2 is a web form for reporting CSR compliance, and is required to be digitally signed by any one director of the Company.

Hitherto, the details of the CSR are only provided as an annexure to the Board's Report and no separate form was prescribed. Form CSR-2 is in addition to the CSR annual report annexed to the Board' Report.

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REGULATORY

Regulations Review Authority 2.0 - Interim Recommendations - Second tranche

Reserve Bank of India ("RBI") had established the second Regulatory Review Authority ("RRA 2.0") with an objective to reduce the compliance burden on Regulated Entities (REs). RRA had recommended withdrawal of 150 circulars in the first tranche of recommendations vide its Press Release dated November 16, 2021.

In continuation of the exercise, vide Press Release dated February 18, 2022, RRA 2.0 has recommended withdrawal of additional 100 circulars in the second tranche of recommendations. Further, it has recommended elimination of paper-based returns and has identified 65 regulatory returns which would either be discontinued/ merged with other returns or would be converted into online returns. RRA 2.0 has also recommended creation of a separate web page "Regulatory Reporting" in the RBI website to consolidate information relating to regulatory reporting and return submission by the regulated entities at a single source.

As part of implementation of the above interim recommendations, it is proposed to discontinue/merge specified returns and also convert specified paper based/ e-mail-based returns into online submission which would inter alia include the following returns:

S. No.	Return Type	Return Description
	List of Returns to be converted into Online submission	
1.	Form ECB	Application and Reporting of loan agreement details
2.	Form ECB-2	Reporting of actual ECB transactions through AD Category -1 banks
3.	Form TC	Compilation of short-term credit extended for imports and payments
4.	LO/BO/PO	Consolidated list of all the Branch Office (BO)/ Liaison Office (LO)/ Project Office (PO) opened and closed by them during a month
5.	ESOP Reporting	Statement of shares repurchased by the issuing foreign company from Indian employees/ Directors under ESOP Schemes for the year ended March 31, …………. (Year)
	List of Returns to be Discontinued/ Merged	
1.	Details of guarantee availed of and invoked from non-resident entities	Non-resident guarantee for fund based and non-fund based facilities (such as Letters of Credit/ guarantees/ Letter of Undertaking (LoU)/ Letter of Comfort (LoC) entered into between two persons resident in India

The exact date of discontinuation/merger and online filing of the returns, would be notified by RRA 2.0 in due course.

[Source: Press Release: 2021-2022/1738 dated February 18, 2022 and A.P. (DIR Series) Circular No.26 dated February 18, 2022 issued by Reserve Bank of India]

Review of FDI Policy for permitting foreign investment in Life Insurance Corporation of India and other modifications for further clarity of the existing FDI Policy

The Department for Promotion of Industry and Internal Trade has issued a Press Note dated March 14, 2022 **("Press Note")**, to amend certain provisions of the Consolidated Foreign Direct Investment Policy, 2020 **("FDI Policy").**

One of the key changes introduced by the Press Note is that foreign investors are now permitted to invest in Life Insurance Corporation **("LIC")** up to 20% under the automatic route (i.e. without any approval from Government of India) subject to specific terms and conditions including compliance with the applicable provisions of the Life Insurance Corporation Act, 1956 and Insurance Act, 1938.

The objective behind introducing the above amendment is that the Government of India is seeking to dilute its ownership in the state owned LIC by way of an initial public offer **("IPO")** in the near future. The Press Note was required, as currently under the FDI Policy, Foreign Direct Investment **("FDI")** in Indian insurance company is permitted up to 74%. However, FDI is not allowed in LIC which is a statutory corporation established under the Life Insurance Corporation Act, 1956.

Apart from the above, the Press Note has introduced the following amendments to the FDI Policy:

- Definition of the term "Convertible Note" has been amended in terms of Para 2.1.9 of FDI Policy as follows:

  'Convertible Note' means an instrument issued by a startup company acknowledging receipt of money initially as debt, which is repayable at the option

of the holder, or which is convertible into such number of equity shares of such startup company, within a period not exceeding ten years from the date of issue of the convertible note, upon occurrence of specified events as per the other terms and conditions agreed to and indicated in the instrument.

- Definition of the term "Real Estate Business" has been amended in terms of Para 5.1(f) and Note (i) to Para 5.2.10.2 of FDI Policy as follows:

  'Real Estate Business' means dealing in land and immovable property with a view to earning profit there from and does not include development of townships, construction of residential/ commercial premises, roads or bridges, educational institutions, recreational facilities, city and regional level infrastructure, townships and Real Estate Investment Trusts (REITs) registered and regulated under the SEBI (REITs) Regulations 2014. Further, earning of rent/income on lease of the property, not amounting to transfer, will not amount to real estate business.

- In terms of Para 5 of Annexure 3 of the FDI Policy, an Indian Company has been permitted to issue Share Based Employee Benefits to its employees/ directors or to the employees/ directors of its holding company or joint venture or wholly owned overseas subsidiary/subsidiaries who are resident outside India subject to the prescribed terms and conditions.

The changes set out in the Press Note shall come into force from the date of the FEMA Notification.

[Source: Press Note No. 1 (2022 Series) dated March 14, 2022 issued by Department of Promotion of Industry and Internal Trade, Ministry of Commerce & Industry, Government of India]

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[Please refer page 11]

Annexure A

S. no.	Period of Delays	Additional fee as a multiple of normal fees	Higher Additional fees as a multiple of normal fees (for certain cases)
(1)	(2)	(3)	(4)
1.	Upto 15 days (sections 139 and 157)	One time of normal fees	-
2.	More than 15 days and up to 30 days (Section 139 and 157) and up to 30 days in remaining forms.	2 times of normal filing fees	3 times of normal filing fees
3.	More than 30 days and up to 60 days	4 times of normal filing fees	6 times of normal filing fees
4.	More than 60 days and up to 90 days	6 times of normal filing fees	9 times of normal filing fees
5.	More than 90 days and up to 180 days	10 times of normal filing fees	15 times of normal filing fees
6.	Beyond 180 days	12 times of normal filing fees	18 times of normal filing fees

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