Corporate Update

July and August | 2024

CONTENTS

FOREWORD 3

DIRECT TAXES

INTERNATIONAL TAXATION

CASE LAWS

- High Court explains interplay between Article 7 and Article 13 of the DTAA between India and the UK holds that Article 7 as not overriding; Also holds services related to IPL not FTS 4
- Faceless issue of notice for assessment/reassessment is mandatory for all assessees including Non-residents 6

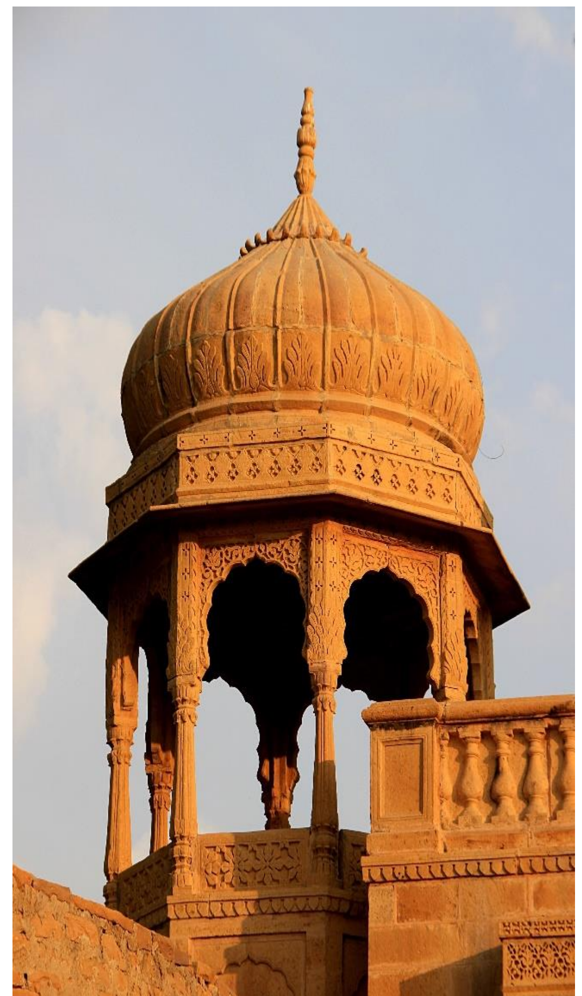
REGULATORY

- Central Board of Direct Taxes (CBDT) notifies Vivad Se Vishwas Scheme, 2024 and also Rules thereunder 8
- Enhancement of monetary limits (Tax Effect) for filing of appeals by the Income-tax Department before ITAT, High Courts and SLPs/Appeals before Supreme Court 8

DOMESTIC TAXATION

CASE LAWS

- High Court records the findings of Tax Tribunal that the share premium in excess of fair market value is not taxable in the case of transaction between a holding and its subsidiary company 9
- Delayed payment of Employees' Contribution to National Pension Scheme is an allowable deduction 10



INDIRECT TAXES

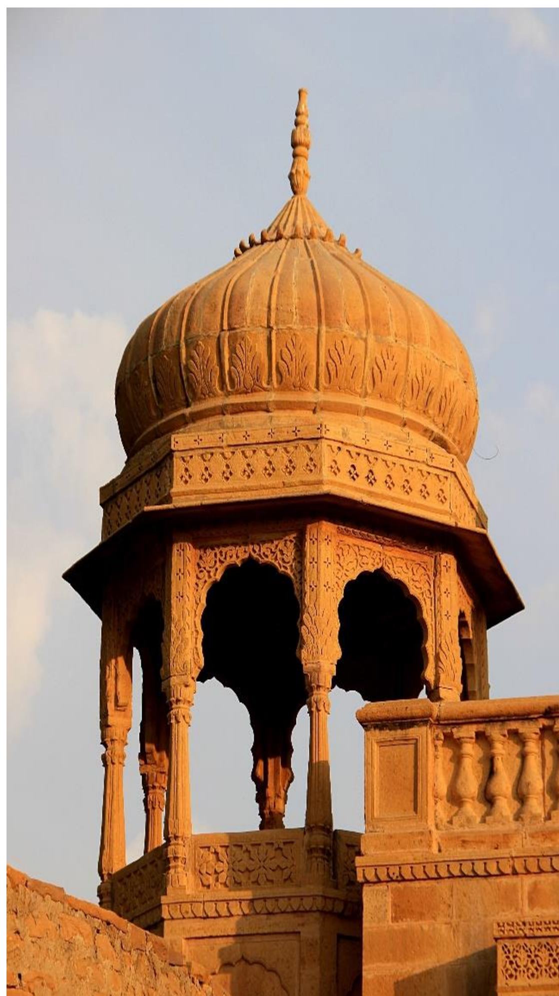
REGULATORY

- Central Excise and Service Tax law (legacy issues) 11

REGULATORY UNDER FEMA

- (i) Foreign Exchange Management (Non-Debt Instruments) (Fourth Amendment) Rules, 2024; (ii) Amendment to Master Direction on Foreign Investment in India, as updated in Master Direction dated August 08, 2024; and (iii) Submission of Form A2 as modified under RBI Circular No. 12 dated July 03, 2024. 12

IMPORTANT DATES TO REMEMBER 16



FOREWORD

Dear Reader,

As announced in the Annual Budget presented by the Finance Minister in the month of July 2024, with a view to reduce tax litigation, Ministry of Finance has taken steps to increase the monetary limits for filing of appeal by the income tax department before the Appellate Tribunal, High Court and Supreme Court. This will have an effect of reducing appeals being filed by the tax department in various forums and thus litigation.

The Central Board to Direct Taxes, Ministry of Finance has also notified applicability of tax dispute settlement scheme known as "Vivad Se Vishwas Scheme 2024" w.e.f. October 01, 2024. This will also help taxpayers in availing possibility of settlement of certain pending tax disputes in terms of the Scheme.

In addition to the above in this Corporate Update, we also cover certain important decisions of High Court, Appellate Tribunal, including important notifications under various regulations.

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DIRECT TAXES

INTERNATIONAL TAXATION

CASE LAWS

High Court explains interplay between Article 7 and Article 13 of the DTAA between India and the UK holds that Article 7 as not overriding; Also holds services related to IPL not FTS

International Management Group (UK) Ltd. [TS-474-HC-2024(DEL)]

Recently, the High Court of Delhi held that the advice and consultancy services rendered by the assessee, International Management Group (UK) Ltd. ('IMG') did not constitute fees for technical services ('FTS') under Article 13 of India-UK Double Taxation Avoidance Agreement ('the DTAA') as the same did not enable Board of Control for Cricket in India ('BCCI') to absorb and apply the information and advice for organising the Indian Premier League (IPL).

Regarding the issue of division of income under the Articles 7 and 13 of the DTAA despite arising from a single contract, the High Court held that merely because a part of the revenue earned by IMG was attributable to functions performed by the 'Service PE', it did not preclude the Revenue from examining the taxability of other part of revenue under separate Articles of the DTAA, in the light of para 9 of Article 7. In this regard, the High Court referred to the OECD Model Convention and also Klaus Vogel's commentary for explaining the purpose of Article 7(9).

On facts, IMG entered into a Memorandum of Understanding and Service Agreement with BCCI for provision of services relating to assistance in establishment, commercialization and operation of the IPL. IMG was responsible for various functions which inter-alia included research into structure of IPL and advice on constitution of IPL, governing council, rules and regulations, franchise tender/ agreement, budget, media rights, sponsorships, licensing rights, marketing strategies, etc. Significant proportion of services constituted advice provided by IMG to the BCCI from outside India. There was composite consideration towards all the obligations of IMG under the Service Agreement. The IPL events took place in India, except that in years 2009 and 2014, the event took place in South Africa and UAE, respectively.

The assessee asserted before the Revenue that income earned by it in terms of the Service Agreement constituted business income and only such of the receipts as attributable to the Service PE were offered to tax in India on net basis. The attribution of receipts to the Service PE was based on profit split method prescribed under the Indian Transfer Pricing Regulations. The receipts which were not attributable to the Service PE were claimed to be non-taxable in India by IMG.

However, the tax officer took the position that receipts for work done outside India was liable to be taxed as FTS. The Dispute Resolution Panel as well as the Tax Tribunal held that apart from the income which was attributable to the Service PE of IMG, the balance receipts would be liable to tax under Article 13 of the DTAA as FTS.

Before the High Court, the Assessee contended as under:

- Receipts received from BCCI by IMG arose from one single contract and neither the contract nor the DTAA empowered the Revenue to segregate

the composite consideration received between business profits and FTS.

- The Service Agreement between the assessee and BCCI continued for more than ten years. The fact that IMG was involved on a yearly basis to provide assistance in the conduct of the IPL evidenced that no transfer of technical knowledge, experience or skill took place.

- Even if one were to assume that the receipts towards services rendered by IMG qualified as FTS under Article 13, the same could be taxed only to the extent envisaged under Article 7. This is for the reason that the fees so received were effectively connected with the Service PE of IMG and the source of revenue was only one contract.

- The entire receipts from BCCI would go out of the ambit of Article 13 being effectively connected and become taxable as income under Article 7 to the extent attributable to the PE.

- Alternatively, the IPL event was hosted outside India in 2009 and 2014. The sources of income were gate receipts, in-stadia advertisements, telecasting rights, etc. In the years in which the IPL event took place outside India, the services rendered by IMG to the extent not attributable to its PE, were utilized by BCCI for earning income from a source outside India. As such, the case would be covered by the exception under Section 9(1)(vii)(b) of the Act which states that any FTS payable in respect of services utilised in a business or profession carried on by resident person outside India or for the purposes of making or earning any income from any source outside India shall not be deemed to accrue/ arise in India.

Observations of Delhi High Court:

- IMG's obligations required coordination and strategic planning on an international scale and thus travelling beyond the borders of India.

- Merely because a part of the revenue earned by IMG was attributable to functions performed by the Service PE, the Revenue was clearly not estopped in law from examining whether revenue other than that attributable to the Service PE could be subjected to tax under the separate and individual Articles of the DTAA.

- Article 5 of the DTAA neither serves as a head of taxation nor does it concern itself with a categorization of income. Rather, Article 5 lists the circumstances in which a PE could be said to have come into existence. The role is that Article 5 does not extend to the tax treatment of the income derived from the PE's activities.

- The contracts could be complex and may envisage separate and distinct obligations and sources of revenue, each of which may warrant separate consideration for the purposes of tax characterization.

- The argument of bifurcation of income being impermissible would also fail in light of Article 7(9) of the DTAA which states that profits, if otherwise classifiable or being found to have been separately dealt with by the other Articles of the DTAA, would move out of the ambit of Article 7.

- Article 7 is clearly not intended to be an

overriding provision which would eclipse all other independent Articles of the DTAA. This is evident from para 9 of Article 7.

- Regarding the years 2009 and 2014 in which the events took place outside India, the services were clearly utilized outside India and were availed of for the purposes of earning income from a source outside India. As such, the receipts pertaining to these years which were not attributable to Service PE were not taxable in India as FTS as the same fall within the exception to Section 9(1)(vii)(b) of the Act.

- Further, with regard to other years in which the event took place in India, the receipts which were not attributable to Service PE did not qualify as FTS under Article 13 of the DTAA as no expertise, skill or know-how which could be said to have been made available to BCCI, especially in view of the fact that IMG was retained to perform all of the aforenoted functions for a period of ten years.

In light of the above, the High Court held that the income attributable to the Service PE was correctly offered to tax under Article 7 of the DTAA. With regard to the receipts that were not attributed to the Service PE, the High Court held that the tax authorities were empowered to examine taxability of such receipts under Article 13. However, since the "make available" test was not satisfied, the same did not qualify for taxation under Article 13 and in any case, receipts for events outside India were not liable to tax under domestic provisions under section 9(1)(vii)(b) of the Act.

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Faceless issue of notice for assessment/reassessment is mandatory for all assessees including Non-residents

[Sri Venkataramana Reddy Patloola v. DCIT Circle 1(1) Hyderabad and Others [TS-557-HC-2024(TEL)]

In the above case, the issue under consideration was whether show cause notices issued under Section 148 of the Income-tax Act ("the Act") in matters relating to international tax charges are exempted from the statutory faceless procedure.

The petitioner assessee contended that notices under Section 148 were issued by DCIT, Circle 1(1), Hyderabad and that too not by an officer holding charge of international tax cases. Relying upon the decision of the High Court of Telengana in ***Kankanala Ravindra Reddy v. Income-tax Officer*** and the division Bench judgement of Bombay High Court in ***Hexaware Technologies Ltd. v. Assistant Commissioner of Income-Tax***, the assessee stated that the show cause notices issued under section 148 were contrary to the faceless procedure outlined in the e-Assessment Scheme dated 29.03.2022.

The Tax Department argued that the CBDT's order dated 06.09.2021 and Section 144B are not applicable to international tax charges and the same are thus exempted from faceless procedure. The Tax Department asserted that the faceless procedure applies to assessments and

reassessments but not to notices issued under Section 148. The tax department also urged that the issuance of notice under Section 148 of the Act in a faceless manner is subject to exclusions to Section 144B of the Act, and as per CBDT's order dated September 06, 2021. According to the Tax Department the assessment orders assigned to international tax charges cases are exempt from the purview of the faceless assessment system.

Even after introduction of faceless Scheme, except for completion of assessment and penalty proceedings, all other works, including conducting of proceeding under Section 148A and issuance of notice under Section 148 remain with the Jurisdictional Assessing Officers.

The High court noted that the scope of the faceless Scheme as defined under Clause 3 thereof, provides as under:

"3. Scope of the Scheme- For the purpose of this Scheme: -

a. assessment, reassessment of recomputation under Section 147 of the Act,
b. issuance of notice under Section 148 of the Act,

shall be through automated allocation, in accordance with risk management strategy formulated by the Board as referred to in Section 148 of the Act for issuance of notice

and

in a faceless manner, to the extent provided in Section 144B of the Act with reference to making assessment or reassessment of total income or loss of assessee."

A careful reading of the Scheme points out that law makers consciously provided two different sub clauses (a) and (b). Clause 3 '(a)' specifically deals with assessment, reassessment and recomputation whereas sub-clause '(b)' deals with notice under Section 148 of the Act and gives reference of Section 144B for providing 'extent' for the purpose of 'assessment' and 'reassessment'. Putting it differently, sub-clause (b) of Clause 3 of the Scheme, before use of word 'and' is complete in itself and makes it obligatory to issue notice under Section 148 as per automated allocation procedure envisaged in clause 2 (b) of the Scheme. The sentence after use of word 'and' in sub-clause (b) of clause 3 talks about 'extent' provided in Section 144B with reference to assessment and reassessment. The second portion of sub-clause (b) of clause 3 after 'and' does not deal with issuance of notice under Section 148 of the Act. Therefore, sub-clause (b) of clause 3 is in two parts. First part is confined to notice under Section 148 of the Act, whereas second part after the word 'and' is confined to 'assessment' and 'reassessment'.

The Court further held that the order of CBDT dated September 06, 2021 deals with "assessment orders". The said order gives exemption from following the mandatory faceless procedure only in relation to passing of assessment orders in cases of central charges and international tax charges. The notice under Section 148 does not fall within the exemption.

The Hon'ble High Court agreeing with the view taken by the Bombay High Court opined that the expression used in clause 3(b) of the Scheme dated March 29, 2022 does not preclude the mandatory faceless procedure for issuance of notice under Section 148 of the Act. Any other interpretation of clause 3(b) will not only cause violence to the language used but will

also defeat the object for which a transparent 'faceless procedure' was introduced.

In view of the foregoing analysis, it is clear that the respondents have erred in not following the mandatory faceless procedure as prescribed in the Scheme dated March 29, 2022. Since notices under Section 148 of the Act were not issued in a faceless manner, the entire further proceeding founded upon it and assessment orders stand vitiated. Thus, the impugned notices under Section 148 of the Act and all consequential assessment orders based thereupon are set aside. The Writ Petitions were allowed to the extent indicated above.

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REGULATORY

Central Board of Direct Taxes (CBDT) notifies Vivad Se Vishwas Scheme, 2024 and also Rules thereunder

1. The Income-tax Act, 1961 provides for a mechanism of filing of appeals against orders passed under the proceedings of the Act, both by the taxpayer and the Department before respective appellate fora, such as Joint Commissioner of Income-tax (Appeals, commissioner of Income-tax (Appeals), the Income-tax Appellate Tribunal, High Courts and Hon'ble Supreme Court. It has been the endeavour of the Central Board of Direct Taxes to provide expeditious disposal of appeals by appellate authorities under its administrative control. One such measure was the Direct Tax Vivaad Se Vishwas Act, 2020 launched for appeals pending as on January 31, 2020. The Scheme got a very encouraging response from the taxpayers and also resulted in garnering substantial revenue for the Government.

2. The pendency of litigation at various levels has been on the rise due to larger number of cases going for appeal than the number of disposals. Keeping in view the success of the previous Vivaad Se Vishwas Act, 2020 and the mounting pendency of appeals at various levels, the Direct Tax Vivad se Vishwas Scheme, 2024 has been notified, with the objective of providing a mechanism of settlement of disputed issues, thereby reducing litigation without much cost to the exchequer.

3. CBDT also has notified the Direct Tax Vivad Se Vishwas Rules, 2024, for the purpose of implementation of the Scheme.

Enhancement of monetary limits (Tax Effect) for filing of appeals by the Income-tax Department before ITAT, High Courts and SLPs/Appeals before Supreme Court

CBDT had laid down certain monetary limits, the terms and conditions and exceptions thereto in Circular No.5/2024 dated March 15, 2024.

With a view to reduce further litigation, it was announced by the Finance Minister in the budget speech for 2024-2025 to increase the monetary threshold for filing appeals by the Income Tax department at appellate forums. Pursuant to the same, in partial modification of the earlier Circular No.5/2024 dated March 15, 2024, issued under Section 268A of the Income-tax Act. The CBDT vide

Circular No. 09/2024 [F.NO.279/MISC./M-74/2024-ITJ] dated September 17, 2024, has increased the monetary limits limit for filing of departmental appeals at various levels as under:

Appeal filed	Earlier Monetary Limit (In Rs.)	Revised Monetary Limit (In Rs.)
Before Appellate Tribunal	50,00,000	60,00,000
Before High Court	1,00,00,000	2,00,00,000
Before Supreme Court	2,00,00,000	5,00,00,000

The monetary limits specified above with regard to filing of appeal/ SLP are applicable to all cases including those related to TDS/TCS under the Income Tax Act. 1961, subject to the terms and conditions and exceptions mentioned in the earlier Circular No 5/2024 dated March 15, 2024.

The CBDT has clarified that an appeal should not be filed by the tax department merely because the monetary limit in a case exceeds the limits prescribed above. Filing of appeal in such cases is to be decided on merits of the case. The Officers concerned shall keep in mind the overall objective of reducing unnecessary litigation and providing certainty to tax payers, while taking a decision requiring filing an appeal.

The above change in monetary limits are effective from 17.09.2024 and will apply to SLPs/ appeals to be filed henceforth in SC/HC/Tribunal. The revised monetary limits will also apply to pending cases and such cases may accordingly be withdrawn.

Note:

As per information available to us, about 4300 cases will be withdrawn from various judicial forums, over a period of time.

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DOMESTIC TAXATION

CASE LAWS

High Court records the findings of Tax Tribunal that the share premium in excess of fair market value is not taxable in the case of transaction between a holding and its subsidiary company

FIS Payment Solutions and Services India Private Limited vs UOI & Others [TS-601-HC-2024(DEL)]

In a recent decision in the case of FIS Payment Solutions and Services India Private Limited, the High Court of Delhi, while disposing off the writ petition of the Assessee, has approved the principle laid down by the Delhi Tax Tribunal on the issue of taxability of excess share premium money. The Delhi Tax Tribunal, in the said decisions, had held that the excess premium charged in the transaction of issue of shares between holding and wholly owned subsidiary company is not liable to tax.

In the instant case, the Assessee had issued shares to its holding company at a premium.

The Dispute Resolution Panel ('DRP'), directed the Assessing Officer to make additions to the total income of the Assessee on account of share premium received in excess of their fair market value in terms of Section 56(2)(viib) of the Income-tax Act, 1956 ('the Act'). Aggrieved by the directions of DRP, the Assessee filed a writ petition before the High Court of Delhi challenging the legality of Section 56(2)(viib) of the Act or to declare such provisions as not applicable to the issuance of shares by a wholly owned subsidiary to its holding company.

The High Court of Delhi noted that the issue of taxability of excess share premium from holding company had already been decided by the Delhi Tax Tribunal in the case of *BLP Vayu (Project-1) (P.) Ltd. vs. PCIT [2023] 151 taxmann.com 47 (Delhi - Trib.)* and DCIT vs. *Kissandhan Agri Financial Services (P.) Ltd. [2023] 150 taxmann.com 390 (Delhi - Trib.)*. As per these pronouncements, Delhi Tax Tribunal held that the credibility of excess premium in case of issue shares to holding company would not matter as no income can be said to accrue to ultimate beneficiary i.e. holding company itself. As such, the Tax Tribunal held that the share premium charged in excess of fair market value, in such cases, is not deemed to be as Income.

During the course of hearing the petition in the subject case in the Delhi High Court, the Revenue accepted the legal position decided in the above-mentioned cases, and agreed that the directions issued by the DRP ought to be revisited in the wake of declaration of law embodied in these decisions.

Considering that the Revenue had already conceded to the legal positions of the decisions referred during the hearing of the petition, the High Court of Delhi observed that there is no need to go into the challenge raised in respect of Section 56(2)(viib) of the Act. As such, the High Court of Delhi refrained from making any observations as to the legality of the relevant statutory provisions of the law.

In view of the aforesaid, the Hon'ble High Court quashed the directions issued by the DRP and restored the matter back for fresh consideration in terms of the decisions of Delhi Tax Tribunal in the above-mentioned judgements.

The provision in Section 56(2)(viib) was extended to Non-Residents with effect from 01-04-2024 by the Finance Act, 2023. However, the entire provisions of Section 56(2)(viib) of the Act have been made inapplicable from the Financial Year 2024-25 by Finance (No. 2) Act 2024.

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Delayed payment of Employees' Contribution to National Pension Scheme is an allowable deduction

Adani Petronet (Dahej) Port (P.) Ltd. v. AO [2024] 165 taxmann.com 531 (Ahmedabad ITAT)

Recently, the Ahmedabad Bench of Tax Tribunal ('Tax Tribunal') has held that payment of employees' contribution to National Pension Scheme ('NPS') on or before the due date prescribed for filing of tax return under Section 139(1) is an allowable deduction under Section 43B(b) of the Income-tax Act, 1961.

Brief facts of the case are that the Assessee is a domestic company engaged in port activities and filed its tax return for Assessment Year ('AY') 2019-20. In the said return filed, the Assessee had claimed a deduction of payment of employees' contribution to NPS which had been paid before the due date for filing of tax return under Section 139(1). The Centralized Processing Centre ('CPC') disallowed the aforesaid deduction claimed by the Assessee under Section 36(1)(va) as such payments had been made beyond the due date prescribed under the Employees Provident Fund or Employees State Insurance Act..

It may be mentioned that the provisions of Section 36(1)(va) are applicable where any sum is received by an employer as employees' contribution to certain specified funds and such sum is deposited on or before the due date prescribed in the respective governing laws.

In appeal before the Tax Tribunal, the Tribunal noted that the NPS is regulated by Pension Fund Regulatory and Development Authority ('PFRDA') under the PFRDA Act, 2013 and no due date has been prescribed in such Act as to when the payment is required to be made to the NPS account of an employee. Further, the Tribunal mentioned that Section 12(3)(iii) of the PFRDA Act, 2013, stipulates that the provisions of that Act shall not apply to the Employees' Provident Fund and Miscellaneous Provisions Act, 1952.

Emphasizing on the legal position that no due date for deposit of the employees' contribution to NPS has been specified in the PFRDA Act, 2013, the Tribunal held that payment made by the Assessee on or before the due date for filing of tax return under Section 139(1) is an allowable deduction under Section 43B(b) of the Act.

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INDIRECT TAXES

REGULATORY

Central Excise and Service Tax law (legacy issues)

Earlier monetary limits for filing appeals before CESTAT, High Court and Supreme Court were laid down by CESTAT in Instructions No. F.No. 390/Misc/193/2010-JC dated August 17, 2021.

The Finance Minister in the Budget Speech for 2024-2025 had announced to increase the said monetary limits. Therefore, in partial modification of the earlier instructions dated August 17, 2021, the CBEC has fixed the revised monetary limits as under, with effect from August 06, 2024.

Revised monetary limits:

CESTAT	....	Rs. 60 lakhs
High Court	....	Rs. 2 Crore
Supreme Court	....	Rs. 5 Crore

These revised monetary limits have been fixed subject to the terms and conditions and exceptions as laid down in the said Instructions dated August 17, 2011.

The revised monetary limits will be applicable to Central Excise and Service Tax legacy issues that may be instituted w.e.f August 06, 2024 and will also apply to pending cases as well.

Note:

As per information available to us, about 1050 cases are estimated to be withdrawn from various judicial forums.

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REGULATORY UNDER FEMA

(i) Foreign Exchange Management (Non-Debt Instruments) (Fourth Amendment) Rules, 2024; (ii) Amendment to Master Direction on Foreign Investment in India, as updated in Master Direction dated August 08, 2024; and (iii) Submission of Form A2 as modified under RBI Circular No. 12 dated July 03, 2024.

The Government of India has recently revised the Foreign Exchange Management (Non-Debt Instruments) Rules, 2019 **("NDI Rules")** vide issue of Foreign Exchange Management (Non-debt Instruments) (Fourth Amendment) Rules, 2024 dated August 16, 2024 **("Amended Rules")**. Further, the Reserve Bank of India **("RBI")** has also updated its Master Direction on Foreign Investment in India and also modified Guidelines for submission Form A2.

The key amendments that have been notified vide the Amended Rules are enumerated below:

i) <u>Standardisation in definition of the term "control"</u>

The concept of control is relevant for various aspects under NDI Rules – Rule 23 dealing with downstream investment.

The definition of the term "control" as provided under Explanation (d) to Rule 23 (Downstream Investments) of the NDI Rules has now been substituted and a common definition has been inserted in Rule 2 (Definitions) as follows:

Previous Definition [As provided under Explanation (d) to Rule 23 of the NDI Rules]	**New Definition** [As inserted in Rule 2(da) of the NDI Rules]
"control" shall mean the right to appoint majority of the directors or to control the management or policy decisions including by virtue of their shareholding or management rights or shareholders agreement or voting agreement and for the purpose of LLP, "control" shall mean the right to appoint majority of the designated partners, where such designated partners, with specific exclusion to others, have control over all the policies of an LLP.	*"control" shall have the same meaning as assigned to it in the Companies Act, 2013 and for the purposes of Limited Liability Partnership, shall mean the right to appoint majority of the designated partners, where such designated partners, with specific exclusion to others, have control over all the policies of an LLP.*

The definition of the term "control" has been aligned with the same meaning as under Companies Act, 2013.

The definition in the context of a limited liability partnership remains the same as earlier.

ii) <u>*Revised definition of "Start-up company"*</u>

The definition of the term "start-up company" in terms of Rule 2 of the NDI Rules has been amended to align the same with the latest notification issued by Department for Promotion of Industry and Internal Trade, Ministry of Commerce ('DPIIT') and Industry dated February 19, 2019 **('DPIIT Notification')**, as below:

Previous Definition [As provided under Rule 2(an) of the NDI Rules]	**New Definition** [As inserted in Rule 2(an) of the NDI Rules]
"startup company" means a private company incorporated under the Companies Act, 2013 and identified under G.S.R. 180(E), dated the 17th February, 2016 issued by the Department of Industrial Policy and Promotion, Ministry of Commerce and Industry.	*"startup company" means a private company incorporated under the Companies Act, 2013 (18 of 2013) and identified as "startup" the notification of the Government of India number G.S.R. 127 (E), dated the 19th February, 2019 issued by the Department for Promotion of Industry and Internal Trade, Ministry of Commerce and Industry, as amended from time to time.*

In terms of the DPIIT Notification dated February 19, 2024, *an entity shall be considered as a Startup:*

1. *Upto a period of ten years from the date of incorporation/ registration, if it is incorporated as a private limited company (as defined in the Companies Act, 2013) or registered as a partnership firm (registered under section 59 of the Partnership Act, 1932) or a limited liability partnership (under the Limited Liability Partnership Act, 2008) in India.*
2. *Turnover of the entity for any of the financial years since incorporation/ registration has not exceeded one hundred crore rupees.*
3. *Entity is working towards innovation, development or improvement of products or processes or services, or if it is a scalable business model with a high potential of employment generation or wealth creation*

iii) <u>*Requirement of prior government approval*</u>

Prior to the amendment, the proviso (i) to Rule 9 (1) of the NDI Rules provided, amongst others, that prior government approval was required for any transfer of equity instruments from any person resident outside India to another person resident outside India, in case the Indian target company was engaged in a sector that required government approval.

The above proviso (i) to Rule 9 (1) of the NDI Rules has now been amended to state that prior Government approval is required to be obtained for transfer in all cases wherever Government approval is applicable.

iv) *Swap of equity instruments and equity capital*

Rule 9A has now been inserted in the NDI Rules to permit the transfer of equity instruments of an Indian company between a person resident in India and a person resident outside India by way of swap of equity instruments of an Indian Company in compliance with the Central Government Rules and RBI regulations and/ or swap of equity capital of a foreign company in compliance with Foreign Exchange Management, (Overseas Investment) Rules, 2022 and the RBI regulations.

Para 1(d) to Schedule 1 of the NDI Rules has also been amended to permit an Indian company to issue equity instruments to a person resident outside India against swap of equity capital of a foreign company in compliance with the rules prescribed by the Central Government including Foreign Exchange Management, (Overseas Investment) Rules 2022 and RBI Regulations.

It has also been clarified that for the purposes of the above clauses, the expression "equity capital" shall have the same meaning as assigned to it in the Foreign Exchange Management, (Overseas Investment) Rules, 2022, as amended from time to time.

v) *Clarity on indirect foreign investment*

Under Rule 23, after sub-rule (7) of the NDI rules, the explanation provided in sub-clause (i) has been amended as follows:

"an investment made by an Indian entity which is owned and controlled by a Non-Resident Indian or an Overseas Citizen of India including a company, a trust and a partnership firm incorporated outside India and owned and controlled by a Non-Resident Indian or an Overseas Citizen of India, on a non-repatriation shall not be considered for calculation of indirect foreign investment."

Prior to the amendment, the NDI Rules provided that an investment made by an Indian entity which is owned and controlled by NRI(s), on a non-repatriation basis, shall not be considered for calculation of indirect foreign investment.

As a result of the amendment, this provision has now been extended to include investment made by an OCI, a company, a trust or a partnership firm incorporated outside India and owned and controlled by an NRI or an OCI, on a non-repatriation basis in compliance with Schedule IV of the NDI Rules.

Amended RBI Master Direction dated August 08, 2024 on FDI

With effect from November 12, 2012, the Indian investee company could, on an application made to it, allot to existing shareholders who are persons resident outside India additional equity instruments (other than share warrants) as a rights issue over and above their rights entitlement subject to individual or sectoral caps, as the case may be.

A person resident in India and a person resident outside India may subscribe to additional shares over and above the shares offered on rights basis by the company and also renounce the shares offered either in full or part thereof in favour of a person named by them.

A person resident outside India who has acquired a right from a person resident in

our outside India, holding equity instruments on non-repatriation basis, who has renounced it, may acquire equity instruments (other than share warrants) on repatriable basis, against the said rights subject to the adherence to entry routes, sectoral caps or investment limits, pricing guidelines and other attendant conditions as applicable for investment by a person resident outside India specified in the NDI Rules.

Provided that if the investment is made by the person resident outside India using funds which are non-repatriable in nature, then such investments shall be held by such person resident outside India on non-repatriation basis.

The equity instruments so acquired shall be subject to the same conditions as applicable to the original holding against which rights issue has been made except for the change in reparability status resulting from investments made in terms of para 6.11.4(3) of the RBI Master Direction dated August 08, 2024.

Revised RBI Guidelines on submission of Form 2 as per Circular No. 13 dated July 03, 2024.

Submission of Form A2:

With a view to streamlining the regulatory compliances and operational procedures, it is now decided that Authorised Dealers shall obtain Form A2 in physical or digital form for all cross-border remittances irrespective of the value of transaction.

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Important dates to remember

Particulars	Extended Date / Effective Date
Extended dates for conducting Annual General Meeting and Extraordinary General Meeting of Companies through Video Conference (VC) or other Audio-Visual Means (OAVM) [vide MCA General Circular No. 09/2024 dated 19.09.2024]	Extended to 30.09.2025 [From 30.09.2024]
Direct Tax: Vivad Se Vishwas Scheme, 2024 (Under Income-Tax Act)	Effective from 01.10.2024
Direct Tax: Vivad Se Vishwas, Rules, 2024 notified under Notification No. G.S.R. 584(E), dated 20.09.2024 [Under Income-tax Act]	Effective from 20.09.2024
Revision of monetary limits under Income-Tax Act for filing Appeals by the Department	Effective from 17.09.2024
Revision of monetary limits under Excise and Service Tax (legacy issues) for filing Appeals by the Department	Effective from 06.08.2024

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