MPC & CO LLP
CHARTERED ACCOUNTANTS

Corporate Update

November - December | 2022

HAPPY NEW YEAR 2023

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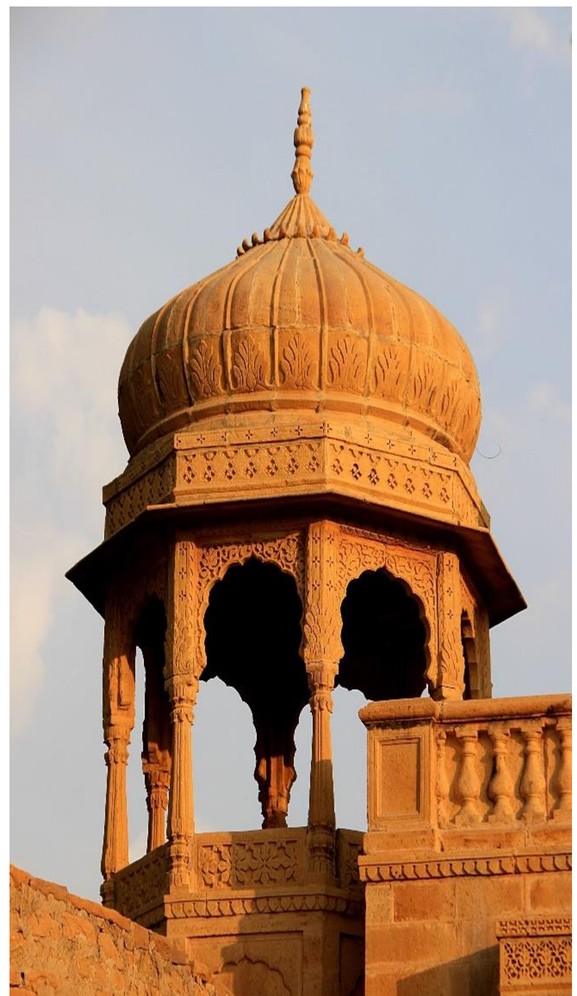

FOREWORD

Dear Reader,

The Government of India's annual budget will be presented before the Indian Parliament on February 01, 2023 by the Finance Minister of India.

Considering the fact that Indian economy is doing reasonably well in the current financial year, with GDP growth expected around 6.5 to 7%, and buoyancy in tax collections i.e. growth of nearly 25% in direct tax collections and good growth in Indirect collections, the Finance Minister has good cushion to make announcement of new schemes, increased capital outlay on infrastructure projects etc.

Nine States of India have elections in this year for the State assemblies and election to the Indian Parliament is due in the summer of 2024. Keeping this in view, it is very likely that no new taxes may be introduced by the government placing burden on the taxpayer.

This update covers analysis of important decisions on international taxation, domestic taxation as well as changes in GST regulations and Corporate Law.

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DIRECT TAXES

INTERNATIONAL TAXATION

United Arab Emirates introduces 9% Corporate tax regime

The Ministry of Finance, United Arab Emirates (UAE), published Federal Decree-Law No. (47) of 2022 on the Taxation of Corporations and Businesses (Corporate Tax Law) on December 09, 2022. This decree intends to levy direct taxes on the income or profit of Corporations and Businesses operating in UAE. Listed below are certain key points of the Decree Law:

1. This regime will be applicable for the tax period commencing on or after June 01, 2023. Where the financial year of a business starts on January 01, 2023 and ends on December 31, 2023, the regime will be effective from January 01, 2024.

   Tax Period is the twelve-month period for which financial statements are prepared or Gregorian Calender Year.

2. The decree law imposes corporate tax on the Taxable Person, which can either be a Resident Person or a Non-Resident Person.

   (i) A Resident Person includes (a) a juridical person that is incorporated or otherwise established in the State, including a Free Zone Person (except Qualifying Free Zone person fulfilling certain conditions); (b) a juridical person that is incorporated or otherwise established in a foreign jurisdiction that is effectively managed and controlled in the State; or (c) a natural person who conducts a Business or Business Activity in the State.

   (ii) A Non-Resident Person is a Person who is not considered a Resident Person and that either (a) Has a Permanent Establishment in the State; or (b) Derives State Sourced Income; or (c) Has a nexus in the State

3. Certain categories of Persons are exempt from Corporate Tax viz. Government Entities, Person engaged in an Extractive Business or Non-Extractive Natural Resource Business, Public Benefit Entity, Investment Fund, etc.

4. The corporate tax will apply at the rate of 0% if the taxable income does not exceed AED 375,000 and at the rate of 9% if the taxable income exceeds AED 375,000 on the income exceeding 375,000. The taxable income for tax purposes will be the accounting profits of the business subject to some deductions as provided in the law.

5. Two or more Taxable Persons who meet certain conditions can form a Tax Group and be treated as a single Taxable Person for Corporate Tax purposes.

6. Taxable Person shall be required to obtain a Tax Registration Number and file its Tax Return within a period of nine months from the end of the relevant Tax Period.

   Disclosure of transactions with Related Parties/ Connected Persons shall be required to be filed and Transfer Pricing Documentation may also be required to be maintained.

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Tribunal holds that Indian subsidiary engaged in marketing activities did not constitute Dependent Agent Permanent Establishment (DAPE)

Krones AG vs. DCIT, International Taxation [ITA No. 907/DEL/2017 [A.Y 2011-12]

Recently, the Tax Tribunal, Delhi Bench held that the Indian subsidiary of a non-resident company did not constitute DAPE of such non-resident in India. While holding so, the Tribunal observed that the subsidiary was neither economically dependent, nor was involved in securing or concluding orders or maintaining stock on behalf of the non-resident.

On facts, the assessee, Krones AG is a German company. It supplies machinery and complete systems to various Indian customers in beverage filling and packaging industry from outside India. It does not have any office, warehouse or any construction site in India.

Krones India Private Limited [KIPL] is a wholly owned subsidiary of the assessee and is primarily engaged in trading in machinery spares, undertaking installation projects, providing after sales services and marketing of products of its group companies.

In the course of assessment, the Assessing Officer placed reliance on the TP Study Report of KIPL which stated that KIPL is wholly dependent on use of intangibles owned by Krones AG. Based on such statement, the AO formed a view that KIPL was financially dependent upon the assessee and habitually maintained stock of the assessee and received commission for habitually securing orders of the assessee. The AO held that KIPL was to be treated as DAPE and accordingly, a part of the profit on offshore supplies made to customers in India ought to be attributed to such DAPE in India.

On appeal, the Commissioner (Appeals) confirmed the order of the AO. Consequently, the matter travelled to the Tribunal.

Before the Tribunal, the assessee's counsel submitted the following facts:

- KIPL did not carry out any manufacturing or processing activity in India using intangibles of the assessee. Furthermore, the research and development function as well as the risk in respect of technical obsolescence was assumed by the assessee only and not by KIPL.

- Contracts for such supplies were directly negotiated, concluded and signed by the assessee with the Indian customers, based on referrals made by KIPL.

- Supplies were made by the assessee directly to the customers who bore the responsibility of clearance,transportation, insurance etc.

- KIPL was undertaking marketing activities. It was also required to coordinate the delivery and payment with the customers. It got the commission from assessee for undertaking such activities.

- No evidence was brought on record that KIPL had habitually secured orders for the assessee.

- No adverse view had been taken by the Revenue, neither in the past nor after the relevant year of dispute.

- No adverse view had been taken in Transfer Pricing proceedings of both the companies.

The Tribunal, after examination of facts,

observed that for an enterprise to be considered as habitually securing orders for the non-resident, it is essential that

- the enterprise frequently accepts orders on behalf of such non-resident; or
- the enterprise habitually represents to the customers that acceptance of an order by it would constitute the agreement with the non-resident; and
- the non-resident takes such actions that leads the customers to reasonably believe that such enterprise has authority to bind the non-resident.

As such, the Tribunal held that mere undertaking marketing by meeting customers by one enterprise did not constitute habitually securing and concluding orders on behalf of the other enterprise.

The Tribunal also held that KIPL was not economically dependent on the assessee, owing to the fact that the commission income was only 11.5% of total revenue of KIPL, while the remaining revenue was from KIPL's own sources. As such, the Tribunal concluded that KIPL was not economically dependent on the assessee.

Further, regarding maintaining stock/ inventory, the Tribunal noted that KIPL was maintaining its own trading inventory.

In view of the aforesaid, the Tribunal concluded that KIPL was not DAPE of the assessee in India. The Tribunal, while relying on the decision of the Hon'ble Supreme Court in the case of Morgan Stanley (292 ITR 416) held that even otherwise, since KIPL was remunerated by the assessee for commission activities on arm's length basis, no further attribution was required.

Accordingly, the appeal of the assessee against the attribution made in respect of profit on offshore supplies was allowed and the addition as made by the Assessing officer was directed to be deleted.

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Adjustment relating to Interest on receivable is a question of fact; no substantial question of law arises from the same

BOEING India Pvt. Ltd [TS-790-HC-2022(DEL)]

In a recent judgement the Hon'ble High Court of Delhi upheld the decision of Tribunal deleting adjustment pertaining to interest on receivables from AE. The Tribunal observed that the assessee is a debt free company which has not paid any interest to unrelated party and since the assessee is a 100% captive service provider, no question of interest on receivables arises. The Hon'ble HC relied on the decision of Bechtel India Pvt. Ltd. vs. DCIT [ITA No.1478/Del/2015] and Principal Commissioner of Income Tax vs. Kusum Health Care Pvt. Ltd., (2017) SCC online Del 12956 where the addition on account of interest on receivable was deleted. Consequently, the court dismissed holding that no substantial question of law arises in the case.

High Court Dismisses the appeal in the absence of evidence of rendition of services and no substantial question of law

Akzonobel India Private Limited [TS-774-HC-2022(DEL)-TP]

The Hon'ble High court of Delhi dismissed the appeal of the assessee for failure to furnish any evidence of the rendition of services by the AE. On the facts of the case, the assessee has entered into international transaction of receipt of business support services from its AE. The Arm's length price of the said transaction was computed at 'Nil' by the TPO since the assessee failed to furnish evidence of rendition of services by the AE. The Hon'ble Tribunal upheld the order as the assessee failed to demonstrate the rendition of services by the AE, even on upon specific query raised by the Tribunal. The Court upheld the order of the Tribunal as the assessee did not provide any evidence but contended that similar services had been provided in subsequent years and were accepted by ITAT. The Court held that every assessment year is a separate unit which is governed by its own peculiar facts. Thus, the appeal of the assessee was dismissed.

In case of no defects/discrepancy in documents, 78% documents can be regarded as sufficient compliance for reimbursement of expenses

Infinity Retail Limited [TS-721-ITAT-2022(Mum)-TP]

In a recent judgement the Hon'ble Tribunal, Mumbai bench, amongst other issues, held that substantial documents filed in relation to reimbursement of expenses can be regarded as sufficient. On the facts of the case, the assessee is a company engaged in the business of wholesale trading of consumer electronics and appliances. During the relevant year, the Transfer Pricing Officer made addition in respect of reimbursement of expenses. The assessee had submitted supporting bills/ documents to justify the claim of about 78% of expenses reimbursed, for which no defect or discrepancy were pointed out by TPO and balance 22% of amount were not allowed in the absence of any supporting bill/documents. The decision was upheld by DRP. The Tribunal on the basis of observations held that though assessee cannot be directed to produce bills/supporting documents pertaining to entire amount of expenses claimed as deduction, but the assessee is bound to furnish any/ all details which are found to be not sufficient by the tax officer. Since, the assessee is under obligation to maintain proper books of account and is subjected to statutory and tax audit for which no qualified report has been issued for the relevant year and the TPO has also not pointed out any defects/ discrepancy in relation to the submitted documents, the Tribunal held that the assessee by submitting documents for 78% of expenses has substantially complied with the direction given by the TPO and thus, deleted the adjustment.

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CBDT provides relaxation, allows manual filing of Form 10F by non-resident taxpayers not having PAN till March 31, 2023

Notification No. F. No. DGIT(S)-ADG(S)-3/e-filing Notification/ Forms/ 2022/9227 dated December 12, 2022

Under Indian tax law, a non-resident

claiming tax treaty benefits is required to substantiate that it is a tax resident of a foreign country. This becomes crucial for the purpose of claiming a lower / nil withholding tax rate under the tax treaty, when such non-resident is expecting a remittance from an Indian payer / customer.

For this purpose, such non-resident is required to produce a Tax Residency Certificate ('TRC') from the concerned tax authority of the foreign country. Furthermore, as per Indian Income tax Rules, such TRC is required to be supplemented by an additional statutory Form 10F. This form seeks information such as status, nationality, tax identification number, address of the non-resident as well as the relevant coverage period of the TRC.

Prior to July 16, 2022, this Form 10F was required to be furnished manually to the Indian payer for the purpose of claiming tax treaty benefits at the stage of withholding tax.

Whilst the statutory Form 10F also contained the field 'Permanent Account Number' ('**PAN**'), filling such field could be avoided in manual submission mode by foreign companies which did not hold a PAN or were not even required to obtain a PAN.

However, the notification dated Notification No. 03/2022 stipulated that such Form 10F shall be furnished electronically on the Indian e-filing portal, with effect from July 16, 2022. Such requirement of filing Form 10F electronically created practical difficulties for foreign companies who did not hold a PAN. These difficulties arose on two counts:

(a) Firstly, in order to file Form 10F electronically, an account has to be created on the e-filing portal. Such account cannot be created without a valid PAN;

(b) Secondly, in the statutory Form 10F itself, PAN is a mandatory field.

Usually, an Indian payer would be unwilling to release contractual remittances without obtaining the acknowledgment of the electronically filed Form 10F from the foreign recipient. Thus, the contractual remittances of foreign vendors were being held up due to such new requirement.

Taking cognizance of these difficulties faced by certain non-residents, the Government has, by a fresh notification dated December 12, 2022, relaxed the requirements of the earlier notification. In terms of such relaxation, the applicability of manual mode of submission of Form 10F has been extended till **March 31, 2023** for non-residents, who do not have a PAN in India and are also not obligated to hold a PAN in India.

It may be mentioned that Indian Tax Rules dispense with the requirement of submitting Form 10F if the TRC contains all the prescribed particulars like status, tax identification number, address, etc. (as otherwise sought in Form 10F). The usual formats of TRCs of countries like Germany, Austria do contain these requisite particulars. As such, strictly speaking, TRCs of such countries are not required to be supplemented with Form 10F. However, considering the onerous nature of withholding tax compliances, Indian customers do generally insist on furnishing Form 10F in all cases.

Nevertheless, as the relaxation is applicable only till March 31, 2023 and if the same is not extended, it would be necessary for a non-resident who is not obligated to hold a PAN, to now obtain the same to facilitate claiming relief under the tax treaty. In particular, this would be essential in cases where the TRC does not contain the prescribed information or where the Indian

customer (payer) insists on an electronic version of Form 10F.

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DOMESTIC TAXATION

SC upholds Airlines liability to withhold TDS on Supplementary Commission earned by Travel Agents from customers

The Supreme Court of India ('SC') in the case of Singapore Airlines vs CIT (TDS) has upheld the applicability of TDS under Section 194H on the amount earned by Air Travel Agents from the customers (referred to as 'supplementary commission') on sale of tickets over and above the Net Fare demanded by the Airline from the Travel Agents.

The case pertains to AY 01-02. During the relevant financial year, the International Air Transport Association ('IATA') was required to determine the 'Base Fare' for air tickets. The Base Fare was the maximum price that can be charged from the customers for the air tickets. The Airlines could demand a selling price lower than the Base Fare which was referred to as the 'Net Fare'. Agents were given blank tickets to market and sell. Passenger Sales Agency Agreement ('PSA') used to govern the terms between the Airlines and the Travel Agents. Actual fare paid by customer to the Travel Agents could be any amount that is above Net Fare but below Base Fare.

The Travel Agents were entitled to Standard Commission at the rate of 7% of Base Fare and is paid by the Airlines after deducting TDS. The Supplementary Commission is collected directly from the customers by the Travel Agents and is an extra amount over and above the Net Fare charged by the Airlines.

The details of the amounts at which the tickets were sold were transmitted by the Travel Agents to an organization known as the Billing and Settlement Plan ('BSP'). The BSP functions under the aegis of IATA and manages, inter alia, logistics vis-à-vis payments and acts as a forum for the Travel Agents and Airlines to examine details pertaining to the sale of flight tickets. The BSP agglomerates the data from multiple transactions and transmits it twice a month to IATA.

It may be noted that Section 194H was re-inserted by the Finance Act, 2001 and came into force with effect from June 01, 2001.

The Revenue carried out surveys under Section 133A and found that the assessee Airlines failed to deduct tax under Section 194H on supplementary commission earned by the Travel Agents and accordingly held the assessee Airlines to be 'assessee-in-default' under Section 201 and also initiated penalty proceedings under section 271C simultaneously.

The assessees contented that the supplementary commission did not fall within the purview of section 194H and was neither paid by it nor the amount was known to them.

While CIT(A) upheld Revenue's order, Delhi ITAT set aside the order of CIT(A), under Section 201. The matter went to the SC.

Before the SC, the assessee argued that the usage of nomenclature "Supplementary Commission" by the BSP when aggregating

the amounts involved in the transaction is of no legal consequence as this terminology is employed purely for convenience. The actions undertaken by the Travel Agents in collecting supplementary commission are of their own accord and do not fall under the terms of the PSA.

In support of its arguments, the assessee had placed reliance on the Bombay HC ruling in case of CIT v. Qatar Airways [2011, 332 ITR 253], wherein it was held that as the supplementary commission was not ascertainable in hands of the assessee airline, it would be impracticable for it to collect data in respect of each ticket sold and hence, liability to deduct TDS under section 194H would not arise on the supplementary commission.

The SC observed that Section 194H of the Act has to be read with Section 182 of the Indian Contract Act,1872 and endeavour must be made to determine whether the Travel Agents were "acting on behalf of" the Airlines during the process of selling flight tickets. The SC came to the conclusion that there existed Principal-Agent relationship in the transaction. The SC found that the ticket remained the property of the Airlines and earning of the Supplementary Commission by the Travel Agents were on account of the Principal-Agent relationship under the PSA and thus the Airline was liable to deduct TDS under section 194H of the Act.

The SC placed reliance on Explanation (V) to Section 194H and came to the conclusion that the "commission" (which includes supplementary commission) included the amount earned by the Travel Agents either directly or indirectly.
The above judgment has settled a long term pending issue relating to the said liability.

The SC overruled the applicability of Bom HC ruling in Qatar Airways (supra) stating that the mechanics of how the airlines may utilize the BSP system to discern the amounts earned as Supplementary Commission and deduct TDS was not placed before the Bombay High Court.

The lack of control on the amount of such commission or no direct payment of the same to the Travel Agent does not absolve the Airline of its obligation to comply with the TDS laws. For all practical purposes, the assessee Airlines could have made use of the data shared with them by BSP, calculated TDS at the end of each month and made a single comprehensive deduction.

Therefore, the SC decided that the Airlines was liable to deduct TDS on the supplementary commission.

However, the SC, while accepting the submission of the assessee, held that for the Travel Agents who have already paid taxes on this supplementary commission at the time of filing of the Income Tax Return in India, there cannot be any recovery from the Airline for shortfall of tax though interest under section 201(1A) can be charged from the date of default to the date of payment of tax by the Travel Agents. Holding that the issue of TDS deduction on supplementary commission was a debatable legal issue and hence, there was a reasonable cause in terms of section 273B for failure to deduct TDS in the given case, the SC quashed the penal proceedings initiated against the Assessee under Section 271C of the Act.

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Treatment of cost of Free Samples distributed to doctors is an allowable expenditure under Section 37(1)

Merk Ltd. vs. DCIT [TS-974-ITAT-2022 (Mum ITAT)]

Recently, the Mumbai Bench of Tax Tribunal has allowed the cost of free samples distributed to doctors as expenditure under Section 37(1) of the Income-tax Act, 1961.

As per provisions of Section 37(1) of the Act, an expenditure which is laid out or expended wholly and exclusively for business or profession shall be allowed as a deduction while computing income under the head 'profit and gains from business or profession'. However, such expenditure shall not be allowed as a deduction if it is capital or personal in nature or is specifically covered under Section 30 to Section 36 of the Act.

Furthermore, Explanation 3 to Section 37(1) introduced vide Finance Act, 2022 w.e.f., April 01, 2022, *inter-alia* provides that any benefit or perquisite given to a person in violation of any law, rule, regulation, or guideline shall always be regarded as an expenditure incurred towards an offence or in prohibition of law. Such expenditure shall not be allowed as a deduction under Section 37(1) of the Act.

On facts, the Appellant had incurred a total cost of INR 60 million towards cost of free samples distributed to doctors who had been disallowed to the extent of 50% by the tax officer in tax scrutiny proceedings. In proceedings before the Dispute Resolution Panel, the Panel sustained the disallowance made by the tax officer.

On appeal before the Tax Tribunal, the Tribunal held that free sample of medicines supplied to doctors help the company in testing marketability and acceptability of new drug launched and impart knowledge to doctors about the new medicines available in the market. While rendering its decision, the Tribunal noted that there were no guidelines, regulations, rules etc. which prohibited distribution of such free samples to doctors.

Accordingly, the Tribunal held that cost of free sample of medicines distributed to doctors is a business promotion expense, wholly and exclusively incurred for the purposes of the business and accordingly, is an allowable expenditure under Section 37(1) of the Act.

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INDIRECT TAXES

Changes in GST Laws

CBIC has notified certain amendments and issued various circulars in order to give effect to the recommendations made in the 48th GST Council meeting held on December 17, 2022.

The key highlights of the same are provided hereunder for ready reference:

GST rate of Non-carbonated Fruit pulp or Fruit juice-based drinks:

It has been clarified that 12% GST would be applicable on Fruit Pulp or Fruit Juice based drinks (Other than Carbonated beverages of Fruit Drink or Carbonated Beverages with Fruit Juice). Further, please note that there is no change in the GST rate of Carbonated Beverages of Fruit Drink or Carbonated

Beverages with Fruit Juice, and the same would continue to be taxed at the rate of 28%. *(Vide Notification No. 12/2022-Central Tax (Rate), dated December 30, 2022)*

<u>GST not applicable on renting of residential dwelling for use in personal capacity</u>:

CBIC vide Notification No. 04/2022 – Central Tax (Rate) & Notification No. 05/2022 – Central Tax (Rate) both dated July 13, 2022, had provided that GST is applicable on "Services by way of renting of residential dwelling to a registered person" and service recipient being registered person, is required to discharge GST @18% under Reverse Charge Mechanism (RCM).

It has now been notified that no GST under RCM would be applicable wherein the following conditions are met:

a. The residential dwelling is being rented to a registered person,

b. Such registered service recipient is a proprietor of a proprietorship concern,

c. It is rented in his personal capacity for use as his own residence, and

d. It has been rented on his own account and not on account of his business. *(Vide Notification No. 15/2022-Central Tax (Rate), dated December 30, 2022)*

<u>Proportionate reversal of ITC on partial payments to suppliers (Rule 37)</u>:

GST law has been amended to provide that where a taxpayer has availed ITC on inward supplies, but has failed to make complete payment of value of supply along with tax thereon, to the supplier within 180 days, shall be required to reverse only proportionate ITC to the amount not paid to the supplier vis-à-vis the value of supply including tax payable. Post payment of balance amount, taxpayer is allowed to re-avail the reversed ITC.

<u>Reversal of ITC due to non-filing of GSTR 3B by the Supplier (Rule 37A):</u>

GST law has been amended to include Rule 37A wherein it has been provided that in case where the supplier of goods/services has declared its supply in GSTR 1, but has failed to file its corresponding GSTR 3B and has not paid tax on the same till 30th September of the subsequent financial year, the recipient shall be liable to reverse the ITC on or before 30th November of the subsequent financial year. However, recipient shall be eligible to re-avail the said ITC upon subsequent filing of GSTR 3B by the Supplier for the said period.

<u>Changes in the details to be declared on Tax Invoice (Rule 46):</u>

As per proviso to Rule 46(f), a tax invoice containing the name and address of the recipient, including the PIN code and the name of the State shall be issued where a taxable service is supplied to an unregistered recipient by or through an e-commerce operator.

<u>Intimation upon difference in tax liability reported as per GSTR 1 vis-a-vis GSTR 3B [Rule 88C read with Rule 59]:</u>

Intimation would be issued to the taxpayer for the difference between tax liabilities reported in GSTR-1 and GSTR-3B. On receipt of the said intimation, the taxpayer shall either discharge the shortfall in tax liability along with interest, or furnish the reasons thereof to the department within 7 days. Where no action is taken by the taxpayer within such period, the said amount shall be recoverable, and he shall not be allowed to furnish Form GSTR-1 for the subsequent tax period.

Change in E-way bill provisions (Rule 138):

E-way bill would be required to be generated for the movement of Imitation Jewellery covered under Chapter 71, where the consignment value exceeds INR. 50,000/-. However, exemption from the provisions of e-way bill would continue to be available for the movement of Jewellery (other than Imitation Jewellery) covered under Chapter 71. *(Vide Notification No. 26/2022-Central Tax, dated December 26, 2022)*

Verification of ITC in case of difference between GSTR 3B and GSTR 2A:

The Circular deals with the differences in Input Tax Credit (ITC) availed in Form GSTR-3B vis-à-vis the ITC auto-populated in Form GSTR-2A on account of bonafide errors committed by vendors in filing their returns for F.Y. 2017-18 and 2018-19.

In cases where ITC claimed in GSTR-3B exceeds the ITC auto-populated in GSTR-2A with respect to supplies received from a vendor by INR 5 lakhs, the recipient would be required to obtain a certificate from a CA/CMA certifying that the underlying supplies have actually been made by the vendor to the recipient and tax thereon has been discharged by the said vendor in his GSTR 3B.

In other cases, i.e., where the aforesaid difference in ITC is up to INR 5 lakhs, a similar certificate issued by the concerned vendor itself shall suffice. *(Vide Circular No. 183/15/2022-GST dated December 27, 2022)*

Availability of ITC with respect to transportation services in case of movement of goods to a destination outside India (Section 12 of IGST Act):

It has been clarified by the Government that in case of transport of goods to a destination outside India, where the transportation service provider and the service recipient are located in India, though the place of supply would be outside India, however, the registered recipient of such transportation services, being located in India, shall be eligible to avail the ITC against the said services. *(Vide Circular No. 184/16/2022-GST dated December 27, 2022)*

(The Government has also issued certain other notifications and circulars, which have not been included in the above Note for the sake of brevity.)

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CORPORATE LAW

The Companies (Registered Valuers and Valuation) Amendment Rules, 2022

The Ministry of Corporate Affairs (MCA) vide its notification dated November 21, 2022 has made certain amendments to the Companies (Registered Valuers and Valuation) Rules, 2017 [hereinafter referred to as "the rules"] by notifying Companies (Registered Valuers and Valuation) Amendment Rules, 2022 [hereinafter referred to as "the amendment rules"]. The amendment rules have made the following changes:

1. Prior to the present amendment, Rule 3, sub-rule (2) read as under:

   "(2) No partnership entity or company shall be eligible to be a registered Valuer, if –

(a) x x x x x (b) x x x x x

(c) all the Partners or directors, as the case may be, are not ineligible, under clauses (c) to (k) of sub-rule (1)".

The term "not ineligible" appearing above, would mean "eligible".

The term "not ineligible" would lead to an unintended situation where all the Partners/directors do not posses the disqualification arising out of the said clause (c) to (k).

What was intended was unless all the Partners/directors are out of the deficiencies as stipulated in clauses (c) to (k), such Partnership or Company would not be eligible to become a registered Valuer. However, the term "not ineligible" meaning "eligible" used in the above sub-rule, would give the opposite meaning.

Now this deficiency in drafting has been corrected whereby the term "not ineligible" has been amended to read as "not eligible"

As per the sub-rule as now amended, it would mean that all partners or all directors should be eligible to become registered valuer in order that the organization/entity to be eligible to be a registered valuer.

2. A new eligibility criterion for a partnership or a company has been stipulated whereby such entity to become a registered valuer, is required to be member of a Registered Valuers Organization [RVO]. However, such registration cannot be with more than one such RVO. A partnership or company already registered as a valuer and is a member of more than one RVO, should correct the position as stipulated above, within a period of six months from November 21, 2022.

3. A new rule has been inserted which states that a Registered Valuer needs to intimate the authority for any change in the personal details, or any modification in the composition of partners or directors, or any modification in any clause of the partnership agreement or MOA, which may affect the registration of the valuer, after payment of prescribed fees.

4. A new rule has been inserted which provides that an RVO shall intimate the authority for any change in the composition of its governing board, or its committees or appellate panel, or other details, after payment of prescribed fees.

5. The rules have clarified that a registered valuer shall make valuations as per internationally accepted valuation standards or valuation standards adopted by any RVO, as the case may be.

6. As per the existing provisions, a registered valuer has to make an application for temporary surrender of membership from RVO at least 30 days before he takes up employment. Now, the amendment rules have allowed a registered valuer to function as a whole-time director in a company without temporarily surrendering his membership.

7. The amendment rules have also prescribed fees payable to the authority for intimating changes in details of a registered valuer and / or an RVO.

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