Tax & Regulatory Newsletter

July 1, 2022 to September 30, 2022

Tax & Regulatory

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A. Direct Tax Updates and Rulings

Direct Tax Updates

- CBDT vide notification no 80/2022 dated July 8, 2022, inserted new Rule 21AL of Income-tax Rules ('the IT Rule') on other Conditions to be fulfilled by the original fund that is being relocated to International Financial Services Centre ('IFSC') to claim a tax exemption under section 47 of the Income-tax Act, 1961 ('IT Act'). As per the said rule, the aggregate participation by the Indian residents shall not exceed 5% of corpus of such fund at the time of transfer.

- CBDT vide notification no 83/2022 dated July 12, 2022, notified rule 16 and form 8A which empower the Assessing officer ('AO') to defer filing of appeal before the Appellate Tribunal or the jurisdictional High Court where a similar question of law is pending before the Jurisdictional High Court or Supreme Court.
- As per section 17(2) of IT Act, any payment by the employer to an employee in respect of any illness relating to Covid-19 is not taxable as Perquisite. CBDT vide Notification No. 90/2022 dated August 5, 2022, notified that Employee shall submit the following documentation to claim the benefit:
  - COVID-19 positive report of the employee or family member, or medical report
  - All necessary documents of medical diagnosis or treatment of the employee or his family member for COVID-19.
  - A certification in respect of all the expenditure incurred for treatment of COVID-19 related illness.
- CBDT vide Notification No. 91/2022 dated August 5, 2022, notified Form No. 1 & Form A to be furnished by the taxpayer claiming exemption under proviso XII and XIII to section 56(2)(x) [Receipt of Money by Individual from any other person for treatment of self or family or death of family affected by COVID – 19] of the IT Act on or before December 31, 2022.
- CBDT vide Notification No. 03/2022 dated July 16, 2022, the DGIT (Systems) with the approval of Board, specified the forms, returns, statements, reports, orders, by whatever name called **shall be furnished electronically and verified.** The forms are Form 3CEF, 10F, 10IA, 3BB, 3BC, 10BC, 10FC, 28A, 27C, 58D, 58C and 68.
- CBDT vide circular no 17/2022 dated July 19, 2022, has authorised the Commissioner of Income tax to admit applications for condonation of delay in filing form 9A(Statement to be furnished by the Charitable institutions) and form 10(Educational/Medical institutions etc.,) for AY 2018-19 or subsequent assessment years where there is delay up to 365 days. However, the Commissioner need to exercise diligence if the delay is attributable due to **reasonable cause** faced by the Assessee.

- CBDT, vide notification no 86/2022 date July 21, 2022, has notified CPPIB credit investment VI income as a pension fund under section 10(23FE) of the IT Act subject to following conditions namely:
  - The Assessee shall file return of income for all relevant previous years falling beginning the date in which investment is made and ending on the date on which investment is liquidated on or before due date of filing return of income under section 139 of IT act.
  - The Assessee shall furnish a certificate in form no 10BBC in respect of compliance during the financial year from an **accountant** as defined under section 288 of IT Act.

  - The Assessee shall intimate the details in respect of each investment made in the **quarter** within one month from the end of quarter in form 10BBB.
- CBDT vide notification no. 04 of 2022 dated July 26, 2022, notified a new Common Application Form (CAF) in Form-FiLLiP for simplified application & allotment of PAN for Limited Liability Partnerships (LLPs). A Limited Liability Partnership Identification Number (LLPIN) will be generated after filing the Form-FiLLiP which will be transferred to Income-tax authorities in Form-49A for allotment of PAN for LLPs.
- CBDT vide notification no 5/2022 dated July 29, 2022, has reduced time limit for e-verification or submission of ITR to 30 days from transmitting /uploading the date of return electronically from earlier 120 days. The revised time limit of **30 days** stands applicable for the returns filed on or after August 1, 2022.
- CBDT vide Notification No. 94/2022 dated August 10, 2022, inserted Rule 17AA. Under Rule 17AA prescribed "**books of accounts and other documents may be kept in written form or in electronic form**" or in digital form or as printouts of data stored in electronic form or in digital form or any other form of electromagnetic data storage device.
- CBDT vide notification no. 98/2022 dated August 17, 2022, introduced Form No. 29D for claiming refund under section 239A of the IT Act (Refund , where the taxes has been borne by the Payer and tax, is not required to be deducted under section 195 of the IT Act). The Form 29D shall be accompanied by a copy of an agreement or other arrangements as specified.
- CBDT vide notification no. 99/2022 dated August 17, 2022, notified that TCS provisions under section 206C(1G) of the IT Act shall not be applicable in the case of Non-Resident buyers who does not have a Permanent Establishment in India. Earlier notification no 20/2022, has been withdrawn with this Notification 99/2022. However, any tax collected under the operative period of earlier notification shall be treated as compliance of the provisions of section 206C(1G) of the IT Act.
- CBDT vide notification no. 100/2022 dated August 18, 2022, has extended the time limit for furnishing of Form No. 67 from the due date of filing return of Income to the end of the Assessment year. i.e., for the AY 2022-23 the due date would be March 31, 2023. Further, Foreign Tax Credits can be claimed by filing belated returns as well as updated returns.

- CBDT vide circular no 18/2022 dated September 13, 2022, had clarified applicability on the Section 194R of the IT Act. The key clarifications are as follows:
  - Loan Waivers/settlement are not liable for TDS under section 194R of the IT Act
  - Amount incurred as Pure Agent would not be treated as benefit/perquisite.
  - Amount of Benefit/perquisite offered to tax will be eligible for Depreciation if the same is considered as Capital asset.
- CBDT vide notification no 109/2022 dated September 14, 2022, notified that the statement required to be furnished under section 285B of the IT Act by a person carrying on production of cinematographic film or engaged in specified activities, or both, shall be in Form No. 52A under Rule 121A.
- CBDT vide notification no 110/2022 dated September 19, 2022, notifies Rule 12AD for modified return of income under section 170A of the IT Act to be furnished by a successor entity to a business reorganisation, in the Form ITR-A and verified in the manner specified.
- CBDT vide notification no 111/2022 dated September 28, 2022, notified Income tax application in form 69 for re-computation of income of the previous year without allowing the claim for deduction of surcharge or cess, which has been claimed and allowed as deduction under section 40 of the IT Act in the said previous year on or before 31 March 2023. The Assessee shall, after making the payment of the tax, furnish the details of payment of tax in Form No. 70 to the AO within thirty days from the date of making the payment.

Rulings

A. Payments to Domain Name Registration is "Royalty" in nature.

M/s. GoDaddy.com LLC, USA VS DCIT [2022] ITA No. 8085/Del/2018 (Delhi ITAT)

Facts:

- GoDaddy.com LLC ('Assessee') is a non-resident corporate entity incorporated in USA and is engaged in the business of web hosting services, web designing and domain name registration services through its website "GoDaddy.com".
- The Assessee is also one of the accredited domain name registrars of world's largest Internet Corporation for Assigned Names and Numbers (ICAAN). The Assessee is authorized by ICAAN to take domain name requests from registrants/customers through an agreement entered between ICAAN and the Assessee.
- In the course of assessment proceedings, the Assessee was given a show-cause notice regarding the receipts received towards the domain name registration, to be treated as Fee for Technical Services (FTS). The Assessing Officer (AO) was convinced that receipts cannot be regarded as FTS, however, he held that the amount received was in the nature of royalty as per Section 9(1)(vi) read with Section 115A of the IT Act.
- The Assessee preferred an appeal before the DRP. Learned DRP upheld the decision of the AO treating the receipts from domain registration as royalty. The aggrieved Assessee preferred an appeal before the Delhi ITAT.

Issue:

- Whether amounts received from domain name registration are in the nature of royalty under Section 9(1)(vi) read with Section 115A of the IT Act or not?

Held:

- Explanation 2 to Section 9(1)(vi) of the IT Act (definition of royalty), domain name is an intangible asset similar to trademark and while registering the domain name in favour of a customer the Assessee transfers the right to use the trademark. Therefore, it is in the nature of royalty under section 9(1)(vi) of the IT Act.
- Rediff Communications Ltd. Vs. Cyberbooth & Anr. AIR (2000) Bombay HC 27, wherein it was held that domain names or internet sites are entitled to protection as a trademark. The rendering of Internet services is also entitled to protection in the same way as goods and services are, and trademark law applies to activities on internet.
- In the light of the above, the consideration received by the Assessee from registration of domain names is in the nature of royalty under section 9(1)(vi) of the IT Act and is taxable as such. Thus, the appeal by the Assessee before the Hon'ble ITAT was dismissed.

B. Agreements with Group entities with proper commercial rationale cannot be treated as Sham transactions.

M/s. K. Raheja Pvt. Ltd. VS DCIT, Central Circle 4(2), Mumbai, ITA No. 1970/Mum/2021 (Mumbai ITAT)

Facts:

- K. Raheja Private Limited ('Assessee") is engaged in the business of real estate development, constructing residential & commercial buildings and trading in shares.
- The Assessee entered into an option agreement during the FY 2009-10 with one of its group entity - Hypercity Retail Pvt Ltd (HRPL), whereby HRPL was given an option to purchase 20 flats at a pre-determined price on a future date, against interest-free adjustable option deposits placed with the Assessee (Option Agreement).
- HRPL surrendered the options in favour of actual buyers against the option premium and sold such flats to the actual buyers in later years for which a tripartite agreement was entered into between the actual buyer, the Assessee and HRPL.
- According to the AO, the price fixed in the Option Agreement was on the lower side. The AO, while passing the assessment order, held that such Option Agreement is a sham transaction and was a way to divert part of the sales consideration and the profits from the books of the Assessee to HRPL.
- The Assessee preferred an appeal before the learned CIT. The Learned CIT held that the option agreement undertaken by the Assessee and HRPL was acceptable and not a sham transaction, however, the learned CIT benchmarked the option price to be based on the price at which the options were assigned to third parties by HRPL i.e., FY 2010-11.

Issue:

- Whether option agreement undertaken with group entity for business purposes to be treated as sham transaction or not and determination of fair value of option agreement.

Held:

- The Hon'ble ITAT upheld that Option Agreement entered between the Assessee and HRPL was commercially prudent and not a sham transaction.

- The Hon'ble ITAT found that the option price agreed in 2010 was at par with the prevailing market value. Hence, the agreement was not given to HRPL at an understated value and the correct approach to determine the option price should be based on the market conditions, facts and circumstances prevalent during the year 2010 when the option agreement was entered into by the Assessee and HRPL.
- The Hon'ble ITAT has also stated that the only provisions that could be invoked regarding fair value of option price would be Section 50C or 43CA of the IT Act. The Hon'ble ITAT also observed that the Assessee has entered into similar agreements with third parties but the same was not disputed by the revenue.
- In light of the above, option agreement undertaken with the group entity for business purposes is not a sham transaction. Accordingly, the appeal of the Assessee was allowed.

C. Liability to deduct TDS arise only based on the Law prevailing at the time of making payment

M/s. Subex Technologies Limited vs. JCIT [2022] ITA No.715/Bang/2014, IT(TP)A No.2638/Bang/2019 AY 2008-09 (Bangalore ITAT)

Facts:

- M/s. Subex Technologies Limited ("the Assessee") is engaged in the business of development, sales and service of software products. The Assessee made a sub-contractor service payment to the Associate Enterprise i.e., Subex Technologies INC (STI).
- The Assessing Officer on perusal of the statement of accounts, noticed that Assessee has debited a sum as subcontract charges under the head of 'personnel cost' as per profit and loss account. Accordingly, for the AY 2008-09, the return of income was filed by the Assessee.
- The Assessment was selected for scrutiny and served notice u/s 143(2) of the IT Act. During the course of assessment proceedings, the matter was referred to the Transfer Pricing Officer (TPO) to determine the Arm's Length Price (ALP) of the international transaction undertaken by the Assessee and STI.
- The TPO passed order u/s 92CA of the IT Act concluding that no adjustment was required to be made to the ALP. Later on, the AO passed an order u/s 143(3) of the IT Act by disallowing the payment made by the Assessee to STI by invoking the provisions of section 40(a)(i) of the IT Act
- The aggrieved Assessee preferred an appeal before the learned CIT(A). The learned CIT(A) dismissed the appeal of the Assessee. Therefore, the Assessee preferred an appeal before the Tribunal. The Tribunal disposed the appeal in-favour of the Assessee. On further appeal, the Hon'ble High Court has restored the matter to the Tribunal.

Issue:

- Whether the Assessee must deduct tax at source u/s 195 of the IT Act and the said expenditure of the Assessee is to be deduct u/s 40(a)(i) of the IT Act.?

Held:

- The Assessee cannot be held liable for default in not deducting tax at source, when there was no such liability as per the law in force at that time of the payment. Initially., the income is deemed to accrue or arise in India only when the services are rendered in India and as well as utilised in India.

- Later, an Explanation was inserted into Section 9(2) vide Finance Act, 2007 clarifying that income is deemed to accrue or arise in India whether or not the non-resident has a residence or place of business or business connection in India which was given effect retrospectively.
- The law as on the date of payment has to be considered for withholding purposes and upholds the legal maxim lex non cogit ad impossibilia. i.e, The law does not compel a man to do what he cannot possibly perform.
- Thus, the disallowance under section 40(a)(i) of the IT Act was dismissed.

D. Sale of carbon credit not related to business is capital in nature

DCIT vs. M/s. Essel Mining & Industries Limited [2022] ITA No. 602/Mum/2021(Mumbai ITAT)

Facts:

- M/s. Essel Mining & Industries Limited ('Company or Assessee') engaged in the business of raising of ore manufacturing of nitrogen gas, trading of iron ore etc.
- During the course of its operations, the Company generated carbon credits. Subsequently, the company sold the carbon credits, and such income was not offered to tax as the same is of capital nature.
- Assessee contended that the carbon credits are capital in nature as the same is not linked to any business/it is not an asset generated in course of business. Such credits are generated as a result of complying with environmental concerns.
- However, the revenue contended that the carbon credits are generated as a result of green business practices and hence taxable as Business income.

Issue:

- Whether the receipts received by the Assessee on the sale of carbon credit is revenue or capital in nature?

Held:

- Any sum received on account of carbon credit for protecting the environment is not included in the business income. This is evident from the amendment by Finance Act, 2017 whereby Section 115BBG has been inserted in the statute w.e.f April 1, 2018.
- According to section 115BBG of the IT Act, tax on income from the transfer of carbon credit is treated as special income at the rate of 10% and not a part of the normal business income of the Assessee.
- The said amendment is prospective in nature and cannot be applied to the years prior to 2018.
- Carbon Credit by nature is not an offshoot of business but an offshoot of environmental concerns. The asset is generated due to environmental concerns.
- Given the above, the sale of carbon credit cannot be brought into tax as business income and in absence of specific provisions, such income would not be taxable.

- In the light of the above, the carbon credits are treated as special income and should not be treated as normal income from business.

Other Key Rulings

- The Assessee cannot opt out of the exemption available under section 10B of the IT Act and claim a loss without providing a declaration in a prescribed form to the Assessing officer before the due date of filing of return of Income. The wording in section 10B(8) is clear and unambiguous and therefore, all the conditions would be mandatory and not directory. - **Principal Commissioner of Income Tax-III, Bangalore vs. M/s Wipro Limited [2022] Civil appeal no. 1449 OF 2022 (Arising out of SLP(Civil) No. 7620/2021) (SC).**
- The appeals filed against every decision of the ITAT shall lie only before the High Court within those jurisdictions, where the AO who passed the order is situated. Even if the case or cases of an Assessee are transferred in exercise of power under Section 127 of the IT Act, the High Court within whose jurisdiction the Assessing Officer has passed the order, shall continue to exercise the jurisdiction of appeal. – **PCIT Chandigarh vs. ABC Papers Limited [2022] Civil appeal no. 4252 of 2022 (arising out of SLP (c) no. 23352 of 2019) (SC).**
- The Hon'ble Delhi HC rejected Revenue's contention that any award of interest on the refund would amount to 'interest on interest' and that refund amount does not bear the character of interest either in the hands of the Assessee or in the hands of the Revenue. Accordingly, the Assessee would be eligible to interest under Section 244A(1)(b) of the IT Act on a sum refunded to the Assessee on re-computation as a result of a reduction of taxable income. **Principal Commissioner of Income-tax vs Punjab & Sind Bank [2022] ITA No. 5486/Del/2014 (Delhi ITAT).**
- The law laid down by this Court in a decision delivered by a bench of larger strength is binding on any subsequent bench of lesser or coequal strength. It is the strength of the bench and not the number of Judges who have taken a particular view which is said to be relevant. Clear that a bench of lesser quorum (bench strength which was hearing the matter) cannot disagree or dissent from the view of law taken by a bench of larger quorum - **M/s Trimurthi Fragrances Pvt. Ltd. Vs. Government of N.C.T. of Delhi [2022] Civil Appeal No. 8486 OF 2011 (SC).**
- Any agitations of the Assessee regarding notice issued u/s. 148A(d) of the IT Act, even after considering the Assessee's objections shall be agitated before the AO in the re-assessment proceedings and assessee cannot file a writ petition challenging the order and assessment notice issued u/s. 148(d) of the IT Act. Hence, the special leave petition of the Assessee was dismissed - **Anshul Jain vs. PCIT & Anr. (Petition(s) for Special Leave to Appeal (C) No(s). 14823/2022) (In the Supreme Court of India).**

B. Indirect Tax and Foreign Trade Policy Updates

GST

- CBIC vide notification no. 10/2022 dated July 5, 2022, notified that those registered persons whose aggregate turnover in the FY 2021-22 does not exceed two crore rupees are exempt from filing annual return for the financial year 2021-22.
- CBIC vide notification no. 13/2022 July 5, 2022, notified that the time limit specified under sub section (10) of section 73 has been extended up to September 30, 2023 for the recovery of tax not paid or short paid or of input tax credit wrongly availed or utilized, in respect of tax period for the FY 2017-18.
- CBIC vide circular no. 170/02/2022-GST dated July 6, 2022, clarified that the mandatory information regarding inter-state supplies and amount of ineligible/blocked input tax credit and reversal thereof to be furnished in Form GSTR-3B and statement in Form GSTR-1at the appropriate places.
- CBIC vide circular no. 174/06/2022-GST dated July 6, 2022, clarified a new Form GST PMT-03A for the purpose of claiming re-credit of erroneous refunds in the electronic credit ledger.
- CBIC vide circular no. 175/07/2022-GST dated July 6, 2022, notified that a new statement (Statement-3B) has been inserted in Form GST RFD-01 for the purpose of filing refund of unutilized ITC on account of export of electricity. w.e.f 1 October 2022.
- CBIC vide notification no. 17/2022-GST dated August 1, 2022, notified that every registered taxable person whose aggregate annual turnover exceeds Rs. 10 Cr in any of the financial year since 2017-18 shall be liable to issue E-Invoice.
- CBIC vide. circular no.180/12/2022 -GST dated September 9, 2022, Goods and Service Tax Network (GSTN) is directed to open common portal for filing concerned forms for availing Transitional Credit through TRAN-1 and TRAN-2 for two months i.e., w.e.f. 01.09.2022 to 31.10.2022.
- CBIC vide circular no. 18/2022-Customs dated September 10, 2022 Customs (Import of Goods at Concessional Rate of Duty or for Specified End Use) Rules, 2022 has notified that when time period for utilisation is specified in the notifications, the said time period will apply. If not specified, the time period of six months will apply. Additional provision has been introduced wherein the jurisdictional Commissioner can further extend such period of six months by another 3 months if the assessee is unable to utilise the goods for the intended purpose on furnishing sufficient reasons.

Foreign Trade Policy

- DGFT vide notification no. 15/2015-2020 dated July 1, 2022, extended the due date of submitting applications under MEIS, for exports made between September 2020 to December 2020 to August 31, 2022.
- DGFT vide notification no. 19/2015-2020 dated July 7, 2022, that the requirement of advance registration of minimum 5 days from the expected date of arrival of import consignment under SIMS has been abolished.

- DGFT vide notification no. 26 /2015-2020 dated August 10, 2022, notified that the requirement of advance registration of minimum 5 days from the expected date of arrival of import consignment under NFMIMS has been abolished.
- DGFT vide notification no. 37/2015-2020 dated September 29, 2022, notified that the existing Foreign Trade Policy 2015-2020 is extended to March 31, 2023 from September 30, 2022.

Customs Act, 1962

- CBIC vide circular no. 15/2022 - Customs dated August 23, 2022 has clarified that offences under section 135AA of the Customs Act has been made compoundable and the competent authority can grant immunity by reviewing the facts and circumstances of the case.
- CBIC vide circular no. 16/2022 - Customs dated August 29,2022 has clarified based on the inputs by National Assessment Centres (NAC), National Customs Targeting Centre (NCTC) in consultation with Director General Systems and the respective NACs, has developed a system wherein standardised examination orders will be centrally generated by Risk Management System and populated on the corresponding Bill of Entry, based on a host of risk parameters concerning goods, entities, and countries, relating to that bill.
- CBIC vide circular no. 18/2022 - Customs dated September 10, 2022 has notified that when time period for utilisation is specified in the notifications, the said time period will apply. If not specified, the time period of six months will apply. Additional provision has been introduced wherein the jurisdictional Commissioner can further extend such period of six months by another 3 months if the assessee is unable to utilise the goods for the intended purpose on furnishing sufficient reasons.

C. International Tax Updates and Rulings

International Tax Updates

- OECD notification dated July 11, 2022, Implementation of the international tax reform agreement to ensure multinational enterprises pay a fair share of tax wherever they operate is progressing, according to an OECD report delivered to G20 finance ministers and central bank governors ahead of their meeting in Indonesia.
- OECD notification dated July 28, 2022, notified that Lesotho (a country in Southern Africa) deposited an instrument for the ratification for Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (BEPS Convention), which now covers over 1820 bilateral tax treaties and the Convention will enter into force on November 01, 2022, for Lesotho.
- OECD's Global Forum on Transparency and Exchange of Information for Tax Purposes published eight new Peer Review Reports on August 17, 2022, regarding transparency and exchange of information on request (EOIR) for Finland, Sweden, Portugal, Poland, Pakistan, Cook Islands, Ecuador, and Sint Maarten.
- Canada's Department of Finance released Consultation Paper on August 25, 2022, for modernising and strengthening GAAR. The Consultation Paper is divided into 5 parts: (1) Tax Benefit, (2) Avoidance Transaction, (3) Misuse or Abuse, (4) Economic Substance and (5) Penalties and other deterrents.
- UK Government delays implementation of Pillar 2 of the Global tax rules to December 2023.
- Kenya Government has proposed to implement Country-by-Country reporting to Multinational Companies whose gross turnover exceeds USD 814 Mn with effect from January 1, 2023.
- According to a report on September 5, 2022, from the OECD, increased efforts to building trust and improving communication between tax administrators and Multinational Enterprises (MNEs) would result into effective taxation of large businesses.
- OECD on September 7, 2022, released a practical guide to assist tax administrations of developing countries in designing and carrying out tax capacity building programmes.
- OECD on September 13, 2022, released the **Stage-2 peer review monitoring reports under Base Erosion Profit Shifting ('BEPS') Action-14** for Aruba, Bahrain, Barbados, Gibraltar, Greenland, Kazakhstan, Oman, Qatar, Saint Kitts and Nevis, Thailand, Trinidad, Tobago, United Arab Emirates and Vietnam.
- World Bank released a report titled "The Global Minimum Tax: from agreement to implementation", focusing on implementation of the global minimum effective tax (GMT); The report will be supplemented by detailed guidance and training materials on the Pillar Two rules, as well as more in-depth guidance on GMT and tax incentives, to support countries to better understand the complexity of the rules and the broader implications for their tax codes.
- **Bulgaria has deposited its instrument of ratification for MLI to prevent BEPS.** The conventions will enter into force on January 1, 2023.

Rulings

A. Exploitation of Capital Gains and Dividend provision to avoid taxes would be covered under GAAR

3295940 Canada INC. et Sa Majeste La Reine (2017-4685(IT)G) - Rephrase

Facts:

- During the Year 2002, 3295940 ('Taxpayer') had acquired M/s. Sabex Inc comprising of Class A common Equity shares and Class B Equity shares from Mr. Saucier. The acquisition was structured through incorporation of two new Cos. M/s. Sabex and M/s. Sabex Holdings.
- A new company M/s. Gestion Miscau was incorporated by Mr. Saucier (100% shareholder) which received the remaining shares of M/s. Sabex.
- Subsequently, the taxpayer entered into agreement to sell 80% of the Shareholding to M/s. Novartis. Prior to the sale, the following transactions were undertaken:
  - Redemption of Class B Shares by M/s. Sabex which in turn credit to Capital Dividend Account (Exempt from tax vs. normal dividend. Further, it increases the Cost of Acquisition for M/s. Sabex).
  - Incorporation of New Co. 4244 Canadian Inc. by the Taxpayer. (M/s. Gestion Miscau held Class D Preferred shares)
  - Creation of new class of Shares viz. Class D preferred shares by taxpayer and the same was issued to M/s. Gestion for purchase of Class D Preferred shares of 4244 Canadian Inc.
  - Equity shares and Class D preferred shares was transferred to M/s. Novartis
  - Through the above restructuring, resulted in increased cost of acquisition for the taxpayer to the extent of CAD 31.5 Mil.
- Revenue made additions of $31.5 million as capital gains in the hands of the taxpayer holding that the Assessee conducted a series of transactions involving cross-redemption of shares of its group companies and reorganisation of group companies that led to accumulation and transfer of capital dividend account from parent to subsidiary and back to the parent.

Issue:

- Whether the transaction resulted in abusive tax avoidance?

Held:

- Applicability of GAAR provisions:
  - Existence of Tax benefit
  - The transaction must be a tax avoidance transaction
  - There must have been abusive tax avoidance in the sense that it is not reasonable to conclude that a tax benefit would be consistent with the object or spirit of the provisions invoked by the taxpayer.
- GAAR provisions are applicable on circumvention of the Canadian Income Tax Act on cross-redemption of shares involving the transfer of Sabex's shares to Novartis.
- The total capital gain realized by taxpayer was $31.5M lower than if taxpayer had simply sold its shares of Target outright to Novartis.
- However, this result was avoided because the resulting deemed dividend paid to taxpayer was a capital dividend (representing recycling of Capital Dividend Account that had originated with it) rather than a taxable dividend.

- This represents a GAAR abuse of tax provisions and the capital dividend system. Therefore, the transaction is undertaken with the intention to avoid taxes.

B. GAAR could not be invoked where obtaining Tax benefit was not the main purpose

The Commissioners for her Majesty's Revenue and Customs vs. Euromoney Institutional Investor PLC (UT (Tax & Chancery) Case Number: UT/2021/000100)

Facts:

- The Taxpayer company ("Euromoney") agreed in principle to transfer its shares in a Company ("CDL") to an acquiring company ("DTL") for a total consideration of $80.44 million of which some $21 million consisted of cash and the remainder as ordinary shares.
- After striking the commercial deal, it realised that it would be more tax efficient if it received some $21 million worth of redeemable preference shares in DTL instead of cash consideration as no tax charge would arise on redemption of preference shares whereas it would arise on receipt of cash.
- Therefore, Euromoney renegotiated the commercial deal so that it exchanged its CDL shares for a combination of ordinary shares and Preference shares.
- In due course, the Preference shares were redeemed giving Euromoney the tax-free receipt that it sought.
- The First Tier Tribunal ('FTT') held that the Assessee's arrangement for sale of shareholding structured in a tax efficient manner, could not be inferred as an arrangement with the main purpose of tax avoidance. Aggrieved by the decision, the Revenue filed an Appeal before the UK's Upper Tribunal.

Issue:

- Whether the exchange formed on part of the main purpose or one of the main purposes is the avoidance of liability of corporation tax?

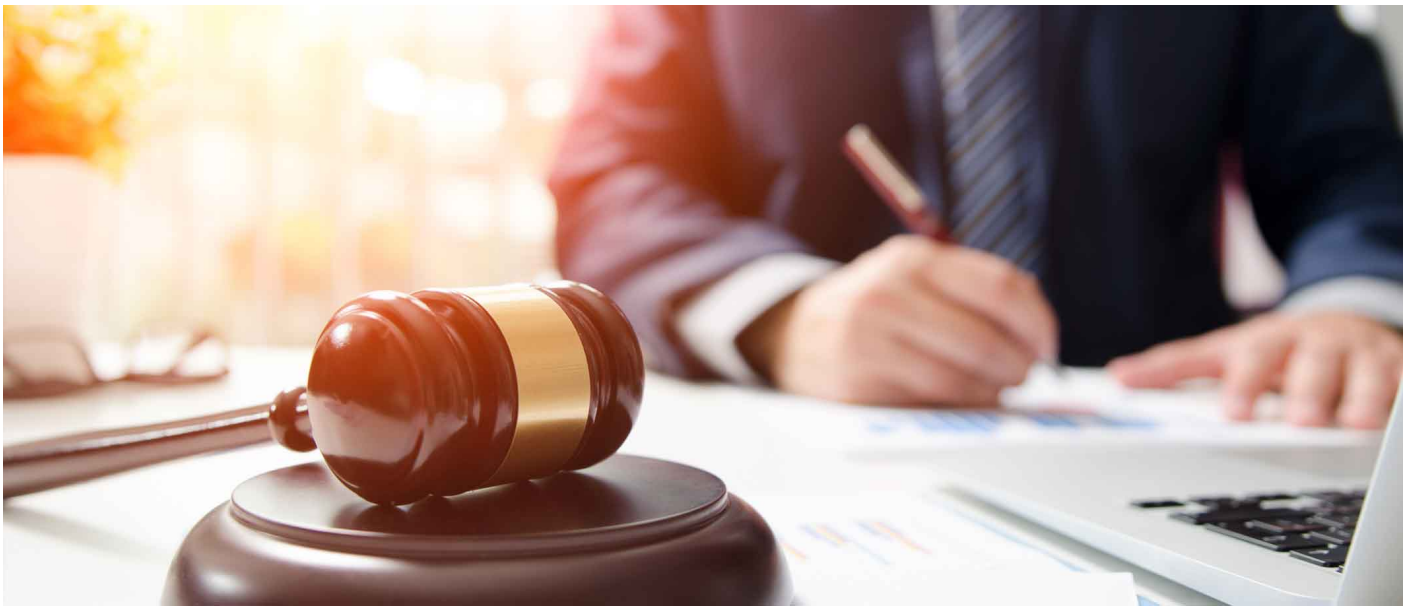
Held:

- The potential tax saving by replacing the cash component with preference share was immaterial.
- Tax element was taken into consideration at a very late stage as transaction team was keen on ensuring that the transaction went through smoothly without any delay.
- Obtaining a tax saving by use of the preference shares was a "nice to have" rather than an essential.
- The time spent on the transaction was very minimal supporting Assessee's contention that the tax avoidance was not the main purpose and opined that tax was not a main driver of the transaction.
- The transaction would have been undertaken whether or not the tax savings were possible.
- From the above analysis, tax savings was "one of the purposes", it is not the main purpose for invocation and therefore GAAR invocation was not warranted.

[Note: Considering that Indian GAAR provisions are similarly worded, where an arrangement could be treated as an impermissible avoidance agreement only when the main purpose of the arrangement is to obtain undue tax benefits, it would be interesting to look forward to the Indian Judiciary views.]

D. Indian Corporate Regulations

- MCA vide notification dated August 18, 2022, in the Companies (Incorporation) Rules, 2014, after rule 25A, the following rule shall be inserted as Rule "25B. Physical verification of the Registered Office of the company".
- MCA vide notification no. G.S.R 662(E) dated August 29, 2022 notified that the Central Government hereby makes the following rules further to amend the Companies (Appointment and Qualification of Directors) as filed in the Form No.DIR-3-KYC.
- MCA vide notification no. G.S.R 663(E) dated August 29, 2022 notified companies (Acceptance of Deposits) rule 16, wherein declaration from the auditor in Form DPT-3 has been inserted in the Form DPT – 3.
- MCA vide notification no. G.S.R 664(E) dated August 29, 2022. Notified the Form No.CHG-1, CHG-4, CHG-8 and CHG-9 which shall be signed by an Insolvency resolution professional or resolution professional or liquidator for companies under resolution or liquidation, as the case may be and filed with the Registrar.
- MCA vide notification no G.S.R 700(E) dated September 15, 2022 amended the definition of the Small Company. As per the revised Definition:
  - Paid-up capital - shall not exceed rupees four crore.
  - Turnover - shall not exceed rupees Forty crore
- MCA vide notification no G.S.R. 715(E) dated September 20, 2022 made amendments to the Companies (Corporate Social Responsibility Policy) Rules, wherein Annexure II has been notified as a format for disclosure of the CSR in the Board Report.



E. Indian Foreign Exchange Regulations

- RBI vide notification No. RBI/2022-23/98 dated August 01, 2022, notified that the limit of ECB borrowers under automatic route to be increased from USD 750 million or equivalent to **USD 1.5 billion or equivalent per FY** and the all-in-cost ceiling for ECBs has been increased by **100 bps for selected eligible borrowers**. **These relaxations are available for ECBs to be raised till December 31, 2022.**
- RBI vide notification No. RBI/2022-2023/110 dated August 22, 2022, notified **directions for overseas investment by persons resident in India to significantly reduce the need for seeking specific approvals.** Some of the significant changes brought about through the new rules and regulations are:
  a) enhanced clarity with respect to various definitions
  b) introduction of the concept of "strategic sector"
  c) dispensing with the requirement of approval for:
    - *deferred payment of consideration;*
    - *investment/disinvestment by persons resident in India under investigation by any investigative agency/regulatory body;*
    - *issuance of corporate guarantees to or on behalf of second or subsequent level step down subsidiary;*
    - *write-off on account of disinvestment.*
- RBI vide notification No. RBI/2022-2023/122 dated September 30, 2022, decided to bring uniformity in imposition of Late Submission Fees of Foreign Investment, External Commercial Borrowings and Overseas Investment.

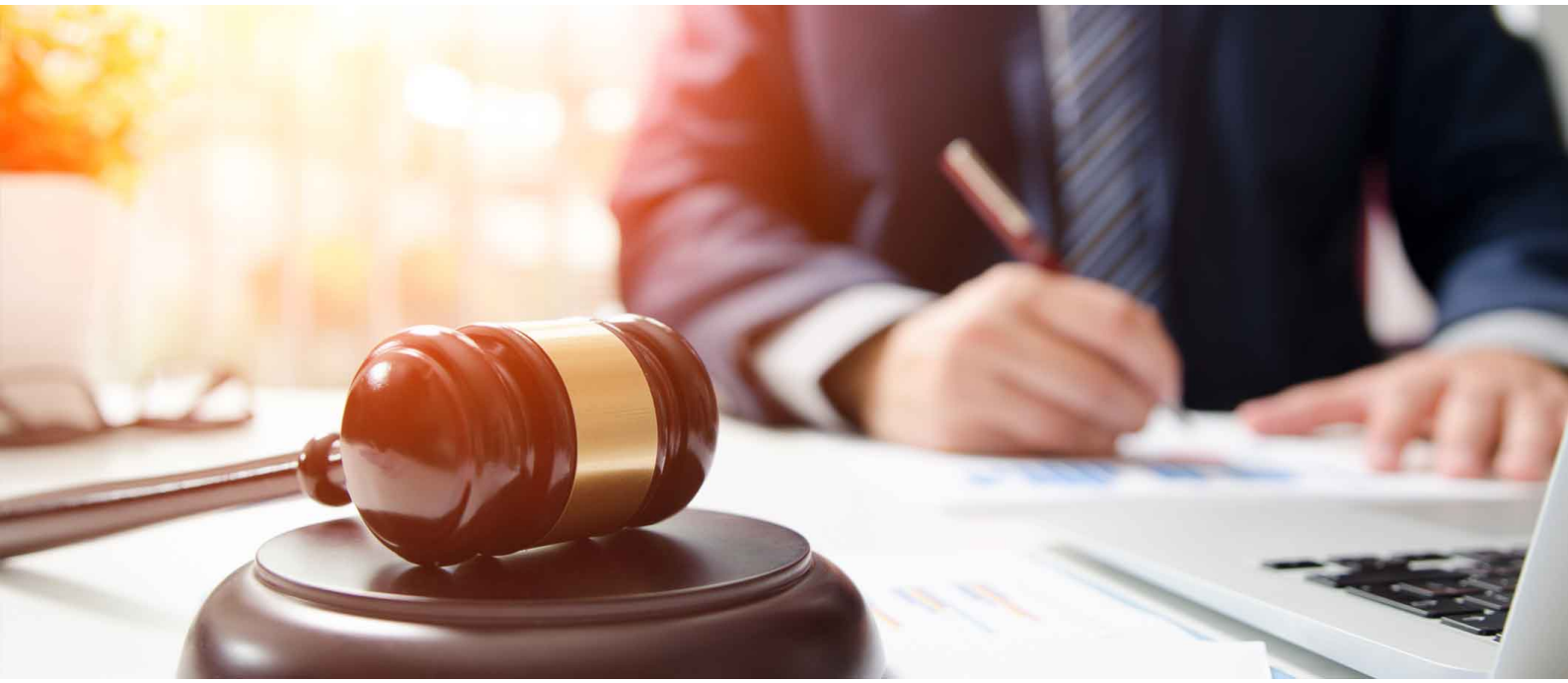
Type of reporting delays	LSF amount (INR)
Form ODI Part-II/ APR, FCGPR (B), FLA Returns, Form OPI, evidence of investment or any other return which does not capture flows or any other periodical reporting.	7500
FC-GPR, FCTRS, Form ESOP, Form LLP(I), Form LLP(II), Form CN, Form DI, Form InVi, Form ODI-Part I, Form ODI-Part III, Form FC, Form ECB, Form ECB-2, Revised Form ECB or any other return which captures flows or returns which capture reporting of non-fund transactions or any other transactional reporting	[7500 + (0.025% × amount involved in the delayed reporting × no of years of delay in submission)]

FEMA

F. Financial Services (NBFC, AIF, FPI & others)

- RBI vide notification No. RBI/2022-23/111 dated September 2, 2022, issued guidelines on Digital Lending. It clarified that outsourcing arrangements entered by Regulated Entities (REs) with a Lending Service Provider / Digital Lending App does not diminish the REs' obligations and they shall continue to conform to the extant guidelines on outsourcing.
- RBI vide Notification No. RBI/2022-23/94 dated July 28, 2022, notified Regulation of Payment Aggregators and Payment Gateways, it is observed that applications received from some PAs had to be returned as they had not complied with eligibility criteria, including the minimum net worth criterion of ₹15 crore by March 31, 2021. This also implied that they have to discontinue their operations within a period of six months from the date of return of application. Though they have the option to apply afresh on meeting the prescribed criteria, ceasing operations may lead to disruption in payment systems. It is also possible that some PAs had not applied to RBI due to non-fulfilment of eligibility criteria.
- SEBI vide circular no SEBI/HO/DDHS/DDHS_Div3/P/CIR/2022/122 and SEBI/HO/DDHS/DDHS_Div3/P/CIR/2022/123 dated September 22, 2022 notified that REIT having net worth of INR 100 crore or higher are eligible to issue Commercial Paper ('CP') and InvITs and REITs, may issue listed CP subject to the following conditions:
  - InvITs shall abide by the guidelines prescribed by RBI for issuances of CP.
  - InvITs shall abide by the conditions of listing norms prescribed by SEBI under SEBI (Issue and Listing of Non-Convertible Securities) Regulations, 2021 and circulars issued thereunder.
  - The issuance of listed CPs shall be within the overall debt limit permitted under SEBI (Infrastructure Investment Trusts) Regulations, 2014.
- SEBI vide circular no SEBI/HO/MRD/MRD-RAC-1/P/CIR/2022/131 has allowed participation of SEBI registered **Foreign portfolio investors in exchange traded commodity derivatives** in India. Foreign portfolio investors will be allowed to participate in cash settled non-agricultural commodity derivatives contracts and indices comprising non-agricultural commodities. Foreign portfolio investors other than individual family offices and corporates may participate in eligible commodity derivative products as "Clients" and shall be subject to rules regulations and instruction whereas FPI belonging to individual family offences and corporates will be allowed position limit of 20% of client level position in a particular commodity derivative commodity.
- SEBI vide circular no NSE/CML/2022/46 has issued revised standard operating procedure on application filed under regulation 37 of SEBI. The scheme of arrangement seeking stock exchange NOC under regulation shall be submitted along documents as per exchange checklist within 15 working days of board meeting. If the application is not submitted within 15 working days, the company shall take fresh approval from its board considering fresh financials valuation report.
- SEBI vide circular no SEBI/HO/DDHS/RACPOD1/CIR/P/2022/136 dated October 03, 2022 extended the timeline for existing outstanding non-convertible securities, issuers shall ensure that they enter the details into the DLT system on or before October31, 2022; DTs shall verify the same by December31, 2022.

Thank you



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