March | 2021

MOHINDER PURI & CO.
CHARTERED ACCOUNTANTS

Corporate Update

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FOREWORD

Dear Reader,

The Indian Economy has been showing sharp recovery this year and as per IMF & OECD Forecast, its growth is estimated at 12.5% and as such shall be the fastest growing major economy in the world in the Financial Year 2021-22.

However, the second wave of Covid-19 infections which have grown exponentially in the last 2-3 weeks in the whole of India have cast a doubt on these projections. Government of India is taking suitable steps to control the same.

In this Corporate Update, we deal with certain important recent changes in the Companies Act, tax regulations and tax rulings on important issues, for your information.

C.S. Mathur
Partner

DIRECT TAX
International Taxation

Threshold for filing Country by Country Report extended

[CBDT Notification No.31/2021 /F.No.370142/19/2019-TPL]

The CBDT has amended Rules 10DA and 10DB of the Income-tax Rules dealing with Master file (MF) and Country by Country report (CbCR). The major changes are as under:

- The group revenue threshold to determine reporting eligibility for CbCR in India has been increased from INR 5,500 crores to INR 6,400 crores. The earlier limit of Rs 5,500 crores was aligned with the globally accepted limit of Euro 750 million. However, due to change in the exchange rate of Euro over the period, the revision in the earlier limit was required to align with the aforesaid limit and has been accordingly increased to INR 6,400 crores.

- Earlier under Rule 10DA, where more than one constituent entities resident in India of an international group were required to file MF, one constituent entity could be designated to file the MF for all the group entities in India. The Rule has been amended to allow designation of one constituent entity to file MF even where such constituent entity is not a resident but is required to file MF in India.

The aforesaid amendments are effective from April 01, 2021.

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Payment made by resident company towards advertising, marketing and other commercial rights in ICC events not taxable as royalty

LG Electronics India Private Ltd [TS-111-AAR-2021] dated February 18, 2021

Recently, the Authority for Advance Ruling (AAR) in the case of **LG Electronics India Private Ltd dated February 18, 2021** has ruled that payment for obtaining promotional, advertising, marketing and other commercial rights in ICC cricket tournament was not royalty under the Double Taxation Avoidance Agreement between India and Mauritius (the DTAA). Further, the AAR also held that withholding tax under section 194E of the Income-tax Act (the Act) was applicable on payments in respect of games played in India, even if the income is not taxable in the hands of payee.

Facts of the case:

The assessee, LG Electronics India Private Ltd, is engaged in the business of manufacturing, trading and marketing of various consumer products. International Cricket Council (ICC) is the official international governing body for cricket. ICC Development (International) Limited (IDI), a company incorporated in UAE, owns and controls the commercial rights in relation to the ICC Events. IDI had licensed the commercial rights for India in relation to the ICC events to IDI Mauritius Limited (IML), a tax resident of Mauritius.

IML entered into Marketing and Advertising Agreement (MAA) with the assessee to grant the assessee certain promotional, advertising, marketing and other commercial rights in the capacity of being a global partner in connection with the ICC events. The consideration payable by the assessee under the MAA was attributable to different events organised by ICC in India as well as outside India.

The assessee also entered into Global Partner Agreement (GPA) with IML whereby IML granted the assessee, the Global Partnership Rights in connection with the ICC events in respect of the territory of India. Under the GPA, the assessee was granted commercial rights related to the use of the brand name, logos, marks etc. of ICC. The assessee was deducting tax at source on the payments made under GPA.

The assessee sought a ruling from the AAR on the issue of taxability of the payments made towards MAA to IML as per the provisions of the DTAA.

Submissions of the assessee:

The assessee had entered into MAA with IML to seek commercial rights, which were non-intellectual property rights to promote its products through advertising and sales promotion campaigns. The payment made by the assessee for the rights granted under the MAA was not taxable in India as royalty under the relevant provisions of the DTAA.

The assessee argued that the payment was not for use of or right to use any copyright, literary, artistic or scientific work. The assessee was granted the right to display its logo in various locations and medias during various cricket tournaments organised by ICC. There was no right to use of any patent, trademark, design or model, plan, secret formula or process of IML being granted to the assessee.

The assessee was merely provided the facility of advertising of its logo through sophisticated equipment such as electronic screens, site screens etc. No consideration was paid for 'use' or 'right to use' of any equipment.

The assessee submitted that the provisions of section 115BBA(1)(b) of the Act, relating to taxation of non-resident sports associations, were not applicable as the payment was neither made to a non-resident sports association nor was in the nature of guarantee money.

AAR ruling:

1. The commercial rights under MAA are predominantly in respect of advertisement, marketing and promotion of LG products while those under GPA are on account of association, licensing, franchising, sponsorship etc. While there is no sharing of intellectual property rights (IPRs) under MAA, the rights under GPA involve sharing of IPRs.

2. Revenue's contention that both the agreements should be viewed together as just one bundle of commercial rights and the composite payment should be considered to be in the nature of royalty, is without substance. To determine the taxability, what is relevant is not the agreement but the rights transferred under the agreement. Even in a single agreement only those rights can be brought to tax which fulfil the conditions for 'royalty' as defined in the DTAA.

3. As regards the fee paid for rights under GPA being just half of fee under MAA, if the Revenue is of the opinion that fee for commercial rights under MAA were unduly loaded, the Revenue could make transfer pricing adjustment after carrying out a comparative analysis.

4. The payment under MAA was neither on account of use or right to use any copyright of literary, artistic or scientific work nor for any information concerning industrial, commercial or scientific experience. In this regard, the AAR relied on the decision of Hon'ble High Court of Delhi in the case of DIT Vs Sahara India Financial Corporation Limited (189 Taxmann 102) (Delhi). In the said decision, the

name "Sahara" and its logo was incorporated as the official tournament logo which was prominently displayed in the cricket ground on the outfield, on the stumps and the scoreboards. The players' clothing was also required to display Sahara logo. Further, there were other rights in the form of certain number of VVIPs tickets, VIPs tickets and season tickets as part of Title Sponsor Package. The official awards and trophies were also required to carry the Sahara name and/or logo. The Hon'ble High Court of Delhi had held that there was no transfer of a copyright or the right to use the copyright and that payments made would not fall within the definition of royalty within article 13(3)(c) of the relevant DTAA.

5. The rights under the MAA were in respect of grant of tickets, boards and branding, parking passes, promotion of products, signage, replay screens, hospitality, publications, press conferences, printed materials, cricket zones & event promotions, exclusive marketing programmes, hospitality tickets for ICC awards and match partner rights. These rights were purely for the promotion, advertisement and publicity of the assessee's brand name and products. None of these rights were in respect of any "trademark" as contended by the Revenue. The right for use of trademark of ICC was found to be covered under the GPA and not under the MAA.

6. The use of trademark "ICC" in the advertisement, publicity campaigns etc. put alongside the assessee's logo was only incidental to the main services obtained by the assessee under MAA. In this regard, the AAR relied on the decision of Hon'ble High Court of Delhi in the case of DIT Vs. Sheraton International Inc. (2009) 313 ITR 267 (Delhi).

7. Revenue's contention that the exercise of commercial rights granted under MAA required use and right to use commercial equipments like electronic scoreboards, signage, boundary ropes, ground space etc. is not tenable as no advertisement/ branding activity could be conducted in vacuum and the equipments and appliances were only being used for advertisement, branding and promotional activities. These equipments were neither in physical possession nor at exclusive control and disposal of the assessee. As such, the payments under MAA could not be considered to be for use or right to use of any equipment so as to cover it within the definition of royalty.

8. The payment made by the assessee under MAA was purely for advertisement and publicity of the brand name of the assessee and for promotion of its product during the Cricketing events of ICC and it was not "royalty" as defined in Article 12(3) of the DTAA. Further, the payment did not qualify as "Fee for Technical Services" as no service was rendered. Moreover, payments may constitute "business profits" under Article 7 of the DTAA, however the same are not taxable in India in the absence of permanent establishment of IML in India.

9. There was no clause for right for the use of marks of 'ICC' in manufacture and sale of licensed products in MAA. Such right was only under the GPA and therefore, there was no element of royalty in the consideration paid for various rights under MAA.

10. Since the payment made by the assessee to IML under the MAA was not chargeable to tax in India, there was no obligation to withhold tax under section 195 of the Act on amount paid

in respect of games played outside India.

11. As regards games played in India, the payment was made to non-resident sports association/institution as IML was only acting as a commercial arm of the ICC to negotiate the commercial rights pertaining to India and all the payments under MAA and GPA were ultimately flowing to ICC, which was the owner of commercial rights for ICC events. The relation between ICC and IML was further evident from Notification No. 28/20116 dated 27 May 2011 issued under section 10(39) of the Act, whereby the government had exempted the income arising to IML in India from sponsorship agreement with the assessee and directly related to the ICC Cricket World Cup, 2011. As the ICC did not undertake any financial transactions directly, the payment for grant of rights under the agreements was received through the group entities owned by ICC. The payment under MAA was guaranteed to be paid as the fee payable was intricately connected with the events where various cricket teams were scheduled to play and participate in the event. The provision of section 115BBA of the Act was attracted as there was a guarantee of amount payable to non-resident sports association in relation to games played in India. There was direct nexus between the games played and the fee guaranteed to be paid.

12. As section 115BBA was applicable, the obligation of the assessee to deduct tax under section 194E of the Act was absolute, even though the income of IML was not chargeable to tax. The AAR relied on the decision of the Hon'ble Supreme Court in the case of PILCOM Vs CIT West Bengal (425 ITR 312) (SC) wherein on similar facts, the Hon'ble Supreme Court had held that the liability to deduct tax under section 194E of the Act was distinct from the liability under section 195 of the Act. Further, withholding tax obligation under section 194E of the Act was not affected by the tax treaty. The assessee was liable to withhold tax under section 194E of the Act on payments made to IML for grant of commercial rights under MAA in respect of games played in India.

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Domestic Taxation

Claim of Foreign Tax Credit whether could be denied in the absence of tax liability in India

Bank of India v. ACIT. (2020) ITA No. 869/Mum/2018 (Mum ITAT)

Recently, the Hon'ble Mumbai Bench of the Tax Tribunal has in the captioned case held that the Appellant could not claim credit/ refund of taxes paid on income earned outside India when it did not have any tax liability in India and had in aggregate incurred a loss in India. Apart from the aforesaid, the other issue examined by the Tax Tribunal was whether taxes paid in foreign jurisdiction are allowable as an expenditure for the purpose of computing income under the head 'Profits and Gains of Business and Profession' (PGBP/ Business Income) to the extent the same are not claimed as a credit in India.

Brief Facts of the Case

The captioned case of the Appellant relates to Assessment Year 2012-13 (i.e.,

Financial Year 2011-12) when the Appellant, a major Indian bank, had several branches abroad in treaty partner jurisdictions and non-treaty partner jurisdictions from where it had earned business profits. The Appellant paid income tax aggregating to INR 1.66 billion in treaty partner jurisdictions and INR 0.15 billion in non-treaty partner jurisdictions in accordance with the relevant domestic tax laws prevailing in said respective jurisdictions. However, even though the Appellant earned profits from its foreign operations, its computation of global income resulted in a net loss of INR 1.91 billion. Accordingly, the Appellant claimed credit of taxes paid in foreign jurisdictions even though it did not have any tax liability in India and sought a refund of such foreign taxes paid. Further, the Appellant raised an alternate plea that where the foreign taxes paid are not refundable, the same may be allowable as a deductible expenditure for the purpose of computing income under the head Business Income.

Before the Tax Tribunal, the Appellant contended that taxes paid abroad can be refunded in India and that actual taxation of income is not a condition for availing tax treaty benefits in the resident jurisdiction. The Appellant further stated that the income of the foreign branches had been subjected to tax in both jurisdictions (i.e. source as well as resident jurisdiction) as the Appellant had actually paid taxes in the foreign jurisdictions and the income in respect of which the taxes had been paid in foreign jurisdictions had gone on to reduce the quantum of losses to be carried forward in India. While contending so, the Appellant relied upon the decision of the Karnataka High Court in the case of **Wipro Ltd. vs DCIT (2015) 382 ITR 179.**

The Revenue contended that foreign tax credit can only be granted when there is tax payable in India by the Appellant. Revenue then distinguished decision of Karnataka High Court in case of Wipro Ltd. *(Supra)* by stating that the said decision was different as it was based on whether foreign tax credit was available against income which although taxable in the hands of the Appellant was exempt under provisions of Section 10A of the Income Tax Act, 1961 (the Act). Further, the Revenue stated that the said decision was rendered by a non-jurisdictional High Court and hence, was not binding upon the Tax Tribunal.

The Decision

The Tax Tribunal while analyzing various decisions of foreign jurisdictions, Indian tax jurisprudence, OECD commentary, OECD Model Tax Convention along with writings of well-established international tax experts/ authors held as follows:

Decision on Allowability of Foreign Tax Credit

1. Article 24(2) of the India-UK Double Taxation Avoidance Agreement (DTAA) can be interpreted to mean as follows:

    i. The tax credit being granted is subject to the provisions of the domestic tax laws. As the captioned case related to Assessment Year 2012-13, the Indian domestic tax law provisions introduced Rule 128 of the Income Tax Rules, 1962, with effect from April 1st, 2017 rendering the same not applicable to the present scheme of things;
    ii. Income in respect of which foreign tax credit is to be given, must have been “subjected to tax” in both the jurisdictions, i.e. United Kingdom as also in India; and
    iii. Where the income in question is ‘subjected to tax’ in both the jurisdictions, i.e. UK and India, only so much of tax credit is given as is proportionate to the doubly taxed income vis-à-vis entire income chargeable to tax in India.

2. The Tax Tribunal also relied on the case of AAR in **General Electric Pension Trust In Re [(2006) 280 ITR 425]** wherein, the term "subjected to tax" was analyzed and it was held that the term in plain word means when an income is actually subjected to tax, i.e. tax is levied on the said income.

3. Article 24(2) of India-UK DTAA and other treaties which follow the ordinary tax credit method rather than the full tax credit method, makes it clear that foreign tax credit is available only against the Indian tax payable on such income and where the Indian tax payable is Nil, there cannot be any foreign tax credit available to the Appellant.

4. Foreign tax credit, being a notional credit in respect of taxes paid in foreign jurisdiction, cannot in any case exceed the home jurisdiction tax liability for the resident taxpayer in respect of the doubly taxed income. Furthermore, it was held that based on similar operation of ordinary tax credit system in tax treaties, there is no possibility of refund of taxes paid in the source jurisdiction by the residence jurisdiction.

5. Dismissing the Appellant's plea of having faced double jeopardy whereby, the Appellant has paid taxes on income in foreign jurisdictions which have gone on to reduce the quantum of losses in India, the Tax Tribunal held the same to be a contingent event which would arise in the year in which the Appellant seeks to set off the carried forward losses.

6. Distinguishing facts of Wipro Ltd. *(supra),* following points came to the fore:
   i. The said case is based upon a full tax credit method specifically worded into the India-Namibia DTAA rather than an ordinary tax credit method which is applicable for all the other tax treaties.

   ii. None of the situations in the case entailed resulting in refund of taxes paid in India as the quantum of returned income exceeded the amount of admissible foreign tax credit.

   iii. Unlike the decision of jurisdictional High Courts which bind the lower authorities, decisions of non-jurisdictional High Courts can only have a persuasive effect on lower authorities and are subjective in nature. Thus, as the subject decision was rendered by Karnataka High Court, same could only be followed by the Tax Tribunal based on a subjective call considering facts of each case.

   iv. The subject decision did not consider variations in principles of interpretation of tax treaties vis-à-vis normal statutes which had been discussed at length by Hon'ble Apex Court in **UOI v. Azadi Bachao Andolan [2003 132 Taxmann 373]** and **UOI v. Ram Jethmalani [(2011) 12 taxmann.com 27]** which were legally binding upon Tax Tribunal and ought to be followed.

   v. For taxes paid abroad in non-tax treaty partner jurisdictions, the Tax Tribunal held that Section 91 of the Act does not provide for tax credit when there is no doubly taxed income (i.e. no part of income earned abroad had suffered tax in India).

__Decision on Deductibility of Foreign Taxes Paid__

Placing reliance on decision of Hon'ble jurisdictional Bombay High Court in the case of **Reliance Infrastructure Limited Vs CIT [(2016) 390 ITR 271]**, it was held that the taxes paid by the Appellant in

foreign jurisdiction which are inadmissible as credit in India, shall be allowed as a deduction in computing Business Income and shall not be hit by the rigours of Section 40(a)(ii) of the Act as said taxes have been incurred for the purpose of earning income in foreign jurisdiction.

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INDIRECT TAX
Goods and Services Tax

A. Changes effective from April 01, 2021

- Every Registered person, having aggregate turnover in the preceding Financial Year of more than INR 5 crores, is required to mention 6-digit HSN code on its Invoices.

- Every Registered person, having aggregate turnover of more than INR 50 crores in any of the Financial Years since April 2017, is mandatorily required to raise E-Invoice for B2B Supply of Goods and/ or Services.

B. QR Code on B2C Invoices effective from July 01, 2021

Every Registered person, having aggregate turnover of more than INR 500 crores in any of the Financial Years since 2017, is mandatorily required to have a dynamic QR code on its Invoices for B2C Supply of Goods and/ or Services w.e.f. July 01, 2021.

C. Key Finance Act, 2021 changes from Goods & Services Tax perspective:

Finance Act 2021 has been passed and notified in the Gazette of India. Hence, the changes have taken effect from March 28, 2021.

- **Availment of ITC based on GSTR 2A/2B:** Section 16(2)(aa) inserted to provide that ITC on invoice or debit note may be availed only when the details of such invoice or debit note have been furnished by the supplier in its GSTR-1.

  Taxpayer's can now claim ITC based on GSTR 2A/2B only. One-to-One co-relation on invoice level and regular follow-ups with Vendors would become the need of the hour. Purchase Orders and Contracts need to include appropriate indemnities and warranties so that there is no ITC loss to the Service Recipient/ Purchaser of goods.

- **GSTR 9C (GST Audit Report) no longer required to be filed by Taxpayers:** Section 35(5) to be omitted, thus removing the mandatory requirement of getting annual accounts audited by Chartered Accountants/ Cost Accountants.

  Taxpayers would no longer be required to file GSTR 9C through their Chartered Accountants/ Cost Accountants, thus reducing the compliance burden. Going forward, GSTR 9, i.e. Annual Return would include a self-certified reconciliation statement by the Taxpayer.

- **Interest to be charged on net cash liability w.e.f. July 01, 2017:** Section 50 to be amended retrospectively, w.e.f. July 01, 2017, so as to charge interest on net cash liability, i.e. tax payable on outward

supplies less input tax credit, instead of earlier gross tax liability, i.e. tax payable on outward supplies.

It's a welcome and beneficial retrospective amendment for taxpayers, as this issue has led to various litigations before the Judicial forums.

- **Stricter penalties upon Detention and Seizure of goods during transit**: Penalty as high as 200% of tax amount or 50% of value of goods, whichever is higher, is proposed to be levied in case of detention and seizure of goods during transit under Section 129. Taxpayer must ensure that the movement of goods is accompanied by all the proper documents including E-Waybills and Invoices.

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CORPORATE LAW

Schedule III to the Companies Act, 2013

Amendments to Schedule III to the Companies Act, 2013

[Notification No. G.S.R 207(E) dated March 24, 2021, issued by the Ministry of Corporate Affairs, Govt. of India]

Schedule III to the Companies Act, 2013 (the Companies Act) prescribes the form for preparation of the financial statements of companies.

Rule 4A of the Companies (Accounts) Rules, 2014 lays down that the items contained in the financial statements shall be prepared in accordance with the definitions and other requirements specified in the Accounting Standards or the Indian Accounting Standards, as the case may be.

The Central Government has been empowered to amend the schedules to the Companies Act. Accordingly, the Ministry of Corporate Affairs has recently amended Schedule III to the Companies Act. These Amendments are effective from April 01, 2021.

These amendments have far reaching changes in disclosures and presentation in the financial statements [vide Notification No. GSR 207E dated March 24, 2021].

The present amendments to the Schedule III cover all the three Divisions therein. Since the amendments are much detailed in scope and content, for the purpose of this publication, it is considered appropriate to outline the gist of those amendments which are more or less common to all the three Divisions in the Schedule III. In any case, it will be necessary for the ultimate user to go

through the entire Notification dated March 24, 2021 so as to implement or incorporate the required or prescribed details in the financial statements.

With the above objective, gist of amendments made to the Schedule III on disclosures and presentations are highlighted below:

(1) Disclosure of Shareholding of Promoters including name, number of shares and percentage change in shareholding during the year;

(2) Trade Payables ageing schedule with age 1 year, 1-2 years, 2-3 years & More than 3 years for Micro, Small & Medium Enterprises (MSME) and others showing separately the disputed dues of each;

(3) Reconciliation of the gross and net carrying amounts of each class of assets for both property, plant and equipment (PPE) and Intangibles showing separately amount of change due to revaluations (if change is 10% or more in aggregate of net carrying value of each class of PPE);

(4) Trade Receivables ageing schedule with age 1 year, 1-2 years, 2-3 years & More than 3 years showing undisputed and disputed separately and further classifying as good and doubtful;

(5) Details of loans from Banks and Financial Institutions not used for the purpose for which it was taken and if so, where it has been used (**Also covered in CARO 2020**);

(6) Detailed disclosure regarding title deeds of Immovable Property not held in name of the company, whether disclosed under PPE, investment property or PPE retired from active use, and the reasons thereof (**Also covered in CARO 2020**);

(7) Disclosure regarding revaluation, as to whether it was done by approved valuer under the Companies Act (**Also covered in CARO 2020**);

(8) Disclosure of Capital Work in Progress ageing with age 1 year, 1-2 years, 2-3 years & More for Projects in Progress and Projects temporarily suspended separately, and in case of cost over-runs, the expected completion dates;

(9) Disclosure of Loans or Advances granted to promoters, directors, KMPs and the related parties and percentage to the total loans and advances for each category (**Also covered in CARO 2020**);

(10) Details of Benami Property held (**Also covered in CARO 2020**), where any proceedings have been initiated or pending against the company for holding any benami property under the Benami Transactions (Prohibition) Act, 1988, and the rules made thereunder;

(11) Reconciliation and reason for material discrepancies between quarterly statements submitted to bank and books of accounts (**Also covered in CARO 2020**);

(12) Disclosure where the company is a declared willful defaulter by any bank or financial Institution (**Also covered in CARO 2020**):

(a) Date of declaration as willful defaulter,

(b) Details of defaults (amount and nature of defaults);

(13) Details of the following shall be disclosed:

(a) Relationship with Struck off Companies including details of investments, receivables, payables, shares held in the company by struck off company/(ies) and any other outstanding in relation to such company;

(b) Details of any pending registration of charges or pending satisfaction of charges with Registrar of Companies, along with reasons for delay.

(c) Non Compliance with number of layers of companies as per Section 2(87) of Companies Act disclosing the name and CIN of the companies beyond the specified layers and the relationship/ extent of holding of the company in such downstream companies;

(14) Disclosure of following Ratios along with details and reasons for variation of more than 25% as compared to the preceding year:

i. Current Ratio,
ii. Debt-Equity Ratio,
iii. Debt Service Coverage Ratio,
iv. Return on Equity Ratio,
v. Inventory turnover ratio,
vi. Trade Receivables turnover ratio,
vii. Trade Payables turnover ratio,
viii. Net capital turnover ratio,
ix. Net profit ratio,
x. Return on Capital employed,
xi. Return on investment;

However, in the case of Non-Banking Financial Companies, the following Ratios will be disclosed:

a) Capital to risk-weighted assets ratio (CRAR),
b) Tier I CRAR,
c) Tier II CRAR,
d) Liquidity Coverage Ratio;

(15) Compliance with approved Scheme/(s) of Arrangement where any Scheme of Arrangement has been approved in terms of Section 230 to 237 of the Companies Act: The company shall disclose that the effect of such Scheme of Arrangement has been accounted for in the books of accounts of the company 'in accordance with the Scheme' and 'in accordance with accounting standard. Any deviation in this regard shall be explained';

(16) Utilisation of Borrowed funds and advances (**Auditor's Report has been amended to give additional comments in this regard**):

A. Where company has advanced or loaned or invested funds (either borrowed funds or share premium or any other source or kind of funds) to any other person(s) or entity(ies), including foreign entities (Intermediaries) with the understanding (whether recorded in writing or otherwise) that the Intermediary shall (i) directly or indirectly lend or invest in other persons or entities identified in any manner whatsoever by or on behalf of the company (Ultimate Beneficiaries) or, (ii) provide any guarantee, security or the like to or on behalf of the Ultimate Beneficiaries; the company shall disclose the following:-

I. date and amount of fund advanced or loaned or invested in Intermediaries with complete details of each Intermediary;
II. date and amount of fund further advanced or loaned or invested by such Intermediaries to other Intermediaries or Ultimate

Beneficiaries along with complete details of the Ultimate Beneficiaries;

III. date and amount of guarantee, security or the like provided to or on behalf of the Ultimate Beneficiaries;

IV. declaration that relevant provisions of the Foreign Exchange Management Act, 1999 and Companies Act has been complied with for such transactions and the transactions are not violative of the Prevention of Money-Laundering Act, 2002;

B. Where a company has received any fund from any person(s) or entity(ies), including foreign entities (Funding Party) with the understanding (whether recorded in writing or otherwise) that the company shall (i) directly or indirectly lend or invest in other persons or entities identified in any manner whatsoever by or on behalf of the Funding Party (Ultimate Beneficiaries), or, (ii) provide any guarantee, security or the like on behalf of the Ultimate Beneficiaries, the company shall disclose the following:-

I. date and amount of fund received from Funding Parties with complete details of each Funding Party;

II. date and amount of fund further advanced or loaned or invested in other intermediaries or Ultimate Beneficiaries along with complete details of the other intermediaries or Ultimate Beneficiaries;

III. date and amount of guarantee, security or the like provided to or on behalf of the Ultimate Beneficiaries;

IV. declaration that relevant provisions of the Foreign Exchange Management Act, 1999 and Companies Act have been complied with for such transactions and the transactions are not violative of the Prevention of Money-Laundering Act, 2002;

(17) Details of transaction not recorded in the books that have been surrendered or disclosed as income in the tax assessments;

(18) Disclosure regarding Corporate Social Responsibility (CSR):-

a) amount required to be spent by the company during the year;
b) amount of expenditure incurred;
c) shortfall at the end of the year;
d) total of previous years shortfall;
e) reason for shortfall;
f) nature of CSR activities;
g) details of related party transactions, e.g. contribution to a trust controlled by the company in relation to CSR expenditure as per relevant Accounting Standard;
h) where a provision is made with respect to a liability incurred by entering into a contractual obligation, the movements in the provision during the year should be shown separately;

19) Details of Crypto Currency or Virtual Currency:-

Where the company has traded or invested in Crypto currency or Virtual Currency during the financial year, the following shall be disclosed:-

a) profit or loss on transactions involving Crypto currency or Virtual Currency;
b) amount of currency held as at the reporting date;

c) deposits or advances from any person for the purpose of trading or investing in Crypto Currency/ virtual currency;

20) Some other amendments with respect to presentation of financial statements are as follows:

20.1 Division I [Regarding Financial Statements which are required to comply with the Companies (Accounting Standards) Rules, 2006]

a) Rounding off requirements made mandatory;
b) Tangible assets reworded as Property, Plant and Equipment (PPE);
c) Security Deposits shifted from Long-term Loans and Advances to Other Non-Current Assets;
d) Current maturities of Long term Borrowings shifted from Other Current Liabilities to Short term Borrowings;
e) For Total Revenue in statement of Profit and Loss, the word Total Income has been substituted;
f) For Section 8 companies, disclosure of grants and donations is required under Revenue from Operations.

20.2 Division II [Regarding Financial Statements which are required to comply with the Companies (Indian Accounting Standards) Rules, 2015]

a) Equity Share Capital: Column for Current year and Previous year showing changes in Equity Share Capital due to prior period errors has been included;
b) Other Equity: Both current and previous year figures are to be given;
c) Security Deposits moved from Loans to Other Financial Assets;
d) Current maturities of Long term Borrowings shifted from Other Current Liabilities to Borrowings under current liabilities;
e) Disclosure of Bank Deposits with more than 12 months maturity under Other Financial Assets;
f) For section 8 companies, disclosure of grants and donations is required under Revenue from Operations.

Other Corporate Law Amendments

1. Amendments to The Companies (Accounts) Rules, 2014

[MCA Notification No. G.S.R 205 (E) dated March 24, 2021 read with Notification dated April 01, 2021]

1.1 The Ministry of Company Affairs (MCA) has notified amendments to the above Rules vide Notification No. G.S.R 205 (E) dated March 24, 2021 read with Notification dated April 01, 2021.

1.2 The following amendments are notified therein:

1.2.1 The following clause shall be inserted as clause (xi), in rule 8, sub-rule 5: ***"The details of application made or any proceeding pending under the Insolvency and Bankruptcy Code, 2016 during the year along with their status as at the end of the financial year."***

1.2.2 The following clause shall be inserted as clause (xii) under the same sub-rule:

"The details of difference between amount of the valuation done at the time of one time settlement and the valuation done while taking loan from the Banks or Financial Institutions along with the reasons thereof."

1.2.3 The above amendments are effective from April 01, 2021.

1.2.4 The said amendments include one more amendment as under, which is effective from the financial year commencing on or after April 01, 2022.

In Rule 3 sub-rule 1, the following shall be inserted:

"Provided that the financial year commencing on or after the 1st day of April, 2022, every company which uses accounting software for maintaining its books of account, shall use only such accounting software which has a feature of recording audit trail of each and every transaction, creating an edit log of each change made in the books of account along with the date when such changes were made and ensuring that the audit trail cannot be disabled."

2. Amendments to The Companies (Audit & Auditors) Rules, 2014

MCA Notification No.8 G.S.R 206 (E) dated March 24, 2021 read with Notification dated April 01, 2021

2.1 MCA has notified amendments to the above Rules vide Notification No. G.S.R 206 (E) dated March 24, 2021 read with Notification dated April 01, 2021.

2.2 Following are the amendments notified therein:

2.2.1 In Rule 11, Clause (d) shall be omitted.

2.2.2 The following clause shall be inserted:

"(e)(i) Whether the management has represented that, to the best of its knowledge and belief, other than as disclosed in the notes to the accounts, no funds have been advanced or loaned or invested (either from borrowed funds or share premium or any other sources or kind of funds) by the company to or in any other person(s) or entity(ies), including foreign entities ("Intermediaries"), with the understanding, whether recorded in writing or otherwise, that the Intermediary shall, whether, directly or indirectly lend or invest in other persons or entities identified in any manner whatsoever by or on behalf of the company ("Ultimate Beneficiaries") or provide any guarantee, security or the like on behalf of the Ultimate Beneficiaries;

(ii) Whether the management has represented, that, to the best of its knowledge and belief, other than as disclosed in the notes to the accounts, no funds have been received by the company from any person(s) or entity(ies), including foreign entities ("Funding Parties"), with the understanding, whether recorded in writing or otherwise, that the company shall, whether, directly or indirectly, lend or invest in other persons or entities

identified in any manner whatsoever by or on behalf of the Funding Party ("Ultimate Beneficiaries") or provide any guarantee, security or the like on behalf of the Ultimate Beneficiaries; and

(iii) Based on such audit procedures that the auditor has considered reasonable and appropriate in the circumstances, nothing has come to their notice that has caused them to believe that the representations under sub-clause (i) and (ii) contain any material mis-statement.

(f) Whether the dividend declared or paid during the year by the company is in compliance with section 123 of the Companies Act, 2013."

The above amendments are effective from April 01, 2021 and shall, therefore, be applicable accordingly.

2.2.3 The above Notification made one more amendment in Rule 11, which is effective from April 01, 2022, which reads as under:

(g) Whether the company, in respect of financial years commencing on or after the 1st April 2022, has used such accounting software for maintaining its books of account which has a feature of recording audit trail (edit log) facility and the same has been operated throughout the year for all transactions recorded in the software and the audit trail feature has not been tampered with and the audit trail has been preserved by the company as per the statutory requirements for record retention."

3. Amendments to The Companies (Auditor's Report) Order, 2020

MCA Order No. S.O 849 (E) dated February 25, 2020 read with Order dated March 24, 2020 and December 17, 2020

3.1 In Para 2, therein contains the following:

"Auditor's report to contain matters specified in paragraphs 3 and 4 –:

Every report made by the auditor under section 143 of the Companies Act on the accounts of every company audited by him, to which this Order applies, for the financial years commencing on or after the April 01, 2021, shall in addition, contain the matters specified in paragraphs 3 and 4, as may be applicable:

Provided this Order shall not apply to the auditor's report on consolidated financial statements except clause (xxi) of paragraph 3"

3.2 It may be noted that earlier when the Order was notified on February 25, 2020 it was stated that the said Para shall be effective from April 01, 2019. This date was changed to April 01, 2020 in the Notification dated March 24, 2020. Subsequently, at present, the said date has been changed to April 01, 2021 in terms of Order dated December 17, 2020.

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4. Amendments to Section 92 (Annual Return) of the Companies Act and Amendments to the Companies (Management and Administration) Rules, 2014

MCA Notifications dated March 05, 2021

4.1 The Ministry of Corporate Affairs (MCA), vide notification dated March 05, 2021, has brought into force the provisions of Clause 23(i) of the Companies (Amendment) Act, 2017 effective March 05, 2021. Clause 23(i) of the Companies (Amendment) Act, 2017 has amended Section 92(1) of the Companies Act, 2013 dealing with particulars of Annual Return.

4.2 The amended Section 92(1) has done away with the requirement of disclosure of indebtedness (secured and unsecured loans) of a company, in Form MGT-7.

4.3 The revised Section 92(1) also empowers Central Government to prescribe an abridged form of annual return for One Person Companies (OPCs) and small companies and such other class or classes of companies, as may be prescribed.

4.4 Further, in consonance with the above, the MCA, vide notification dated March 05, 2021, has notified Companies (Management and Administration) Amendment Rules, 2021 (Amendment Rules), in order to amend, inter-alia, Rule 11 & 12 of the Companies (Management and Administration) Rules, 2014, dealing with annual return.

4.5 Up till now, Form MGT-7 was prescribed for filing of annual return for all types/ categories of companies. Now, the revised Rule 11 has prescribed a separate Form MGT-7A to be used for filing of annual return by OPCs and small companies, from financial year 2020-21 onwards. It may be noted that companies other than small companies and OPCs shall continue to file their annual return in Form MGT-7 only. Form MGT-7 has however, been modified to a certain extent by the Amendment Rules. Accordingly, the Amendment Rules have prescribed the format of newly introduced Form MGT-7A and the revised Form MGT-7, to be used for filing of annual return for F/Y 2020-21 and onwards.

4.6 Further, up till now, every company was required to prepare and attach with the Board's report, an extract of annual return, format of which was prescribed in Form MGT-9 as per Rule 12(1) of the said Rules. However, the revised Rule 12 has omitted this requirement. The only requirement presently is as embodied in sub-section 3 of section 92 which reads as under:

"Every company shall place a copy of the Annual Return on the website of the company, if any, and the web-link of such annual return shall be disclosed in the Board's Report."

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REGULATORY

Foreign Exchange Management Act

Review of FDI Policy on downstream investments made by Non-Resident Indians

[Press Note No. 1 (2021 Series) dated March 19, 2021 issued by the Department for Promotion of Industry and Internal Trade]

The Government of India has reviewed the extant FDI in relation to investments made by an Indian Company owned and controlled by Non-Resident Indians ('NRIs') on a non-repatriation basis and provided clarity on downstream investments in this regard.

It has been clarified that considering that investments by NRIs on a non-repatriation basis as stipulated under Schedule IV of Foreign Exchange Management (Non-Debt Instruments) Rules, 2019 are deemed to be domestic investments at par with the investments made by residents, the investments made by an Indian entity which is owned and controlled by NRIs on a non-repatriation basis shall not be considered for calculation of indirect foreign investment.

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Important dates to remember

Particulars	Date
Deposit of TDS/TCS for the month of March, 2021	30.04.2021
Filing of TDS return for Q4 of F/Y 2020-21	31.05.2021
Filing of TCS return for Q4 of F/Y 2020-21	15.05.2021
Filing of GSTR-1 for the month of April, 2021	11.05.2021
Filing of GSTR-3B for the month of March, 2021	20.04.2021

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