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CHARTERED ACCOUNTANTS

Corporate Update

June | 2021

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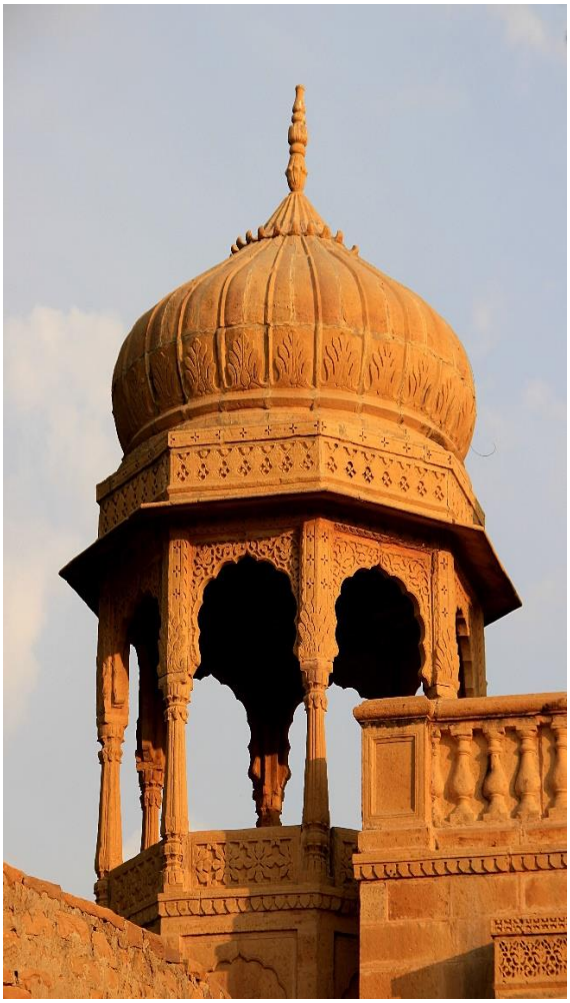

FOREWORD

Dear Reader,

With a view to provide boost to Covid-19 affected sectors, the finance minister on June 28, 2021 announced various relief measures for the sectors that were badly affected by the second wave of Covid-19 Pandemic. These sectors include tourism, hospitality, healthcare & Medium and small-scale enterprises.

The Ministry of Finance also extended dates for various compliances under Income-tax Regulations keeping in view the difficulties faced by taxpayers due to second wave.

Further, the dates for completion of certain tax assessments by the tax officers were also extended in view of the difficulties faced by the tax department officials, refer details in this Update.

New provision extending obligation to withhold tax by buyer (Section 194Q) on purchase of goods, came into effect from July 01, 2021. Clarifications issued in this regard by Central Board of Direct Taxes (CBDT) form part of this Update.

In addition, notes on certain important tax rulings, recent notifications on Accounting Standards, Goods and Services Tax, Corporate Law are reported in this Update for your information.

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DIRECT TAX
International Taxation

Madras High Court: Tested party can be changed to Foreign AE, contrary to TP documentation

Virtusa Consulting Services Private Limited [TS-45-HC-2021(MAD)-TP]

In the recent judgement, Hon'ble High Court of Madras overruled the decision of Tribunal and held that the assessee's selection of tested party in its transfer pricing study documentation does not preclude it from treating its foreign associated enterprise as tested party during the assessment proceedings.

On the facts of the case, the assessee is an Indian company engaged in the business of software development services globally. For the relevant year, the case of the assessee was selected for scrutiny assessment and was further referred to TPO for determining the arm's length price (ALP). The assessee undertook benchmarking analysis by making three segments- a. Subsidiary, b. Citibank and c. other/ third party segment. The assessee applied Transaction Net Margin Method (TNMM) (wherein the assessee was used as tested party) and Comparable Uncontrolled Price (CUP) method for Subsidiary and Citibank segment, respectively. The other/ third party segment which included transactions of reimbursement were claimed to be actuals. The TPO rejected the benchmarking analysis carried out by assessee for Subsidiary and Citibank segment and proceeded with the TNMM analysis at combined segment level undertaking fresh search of comparable and making adjustment to the transfer price.

Aggrieved, the assessee raised objections before the Dispute Resolution Panel (DRP). The DRP upheld the adjustments made by the TPO. Subsequently, the assessee filed an appeal before the Tribunal.

Before Tribunal, the assessee, amongst other issues, contended that its overseas subsidiaries are least complex entities to the international transactions and should be considered as tested party, thus contradicting its own transfer pricing study documentation. However, the Tribunal rejected the same by stating that the assessee failed to produce material evidences/ documents to establish the functional profile and risks assumed by the overseas AEs. Also, it held that the Indian transfer pricing provisions do not allow to select foreign AE as tested party for benchmarking the international transactions and the Indian Enterprise should always be taken as the tested party.

The assessee filed appeal before High Court against the aforesaid order of Tribunal.

The High Court observed that Tribunal, while deciding that the foreign AE cannot be taken as tested party, was largely guided by the decision of the Mumbai Tribunal in the case of Aurionpro Solutions Limited [2013 (33) Taxman.com 187], wherein it was held that the tested party for the purpose of determination of ALP is always the assessee and not the AE. It was observed that several decisions have been rendered after the decision of Aurionpro Solutions Limited and in the assessee's own case for the subsequent three years, wherein foreign AE has been accepted as tested party.

Reliance placed by the assessee on the decision of the Delhi Tribunal in the case of Ranbaxy Laboratories Limited [2016 (68) Taxman.com 322 (Delhi-Trib.)] was upheld, which, however, was distinguished by the Tribunal by stating that the same cannot be applied in the case of the assessee as there is no material evidence that the AE outside the Country performed least complex operation with a minimum risk and that the decision is based on OECD guidelines only and does not take income tax provisions into consideration.

The High court held that the tested party

normally should be the least complex party and that there is no bar for selection of tested party either local or foreign. Also, with regard to the non-availability of evidence regarding the establishment of functional risk by the High Court held that it is clear from the Miscellaneous Application that all the materials were filed before the Tribunal.

Further, the High Court held that the definition of 'Enterprise' and 'Associated Enterprise' in the Act nowhere indicates that the Enterprise shall mean the assessee and the Associated Enterprise will mean other than the assessee and that these words have been used interchangeably and the finding of the Tribunal that the Enterprise will mean the assessee and Associated Enterprise will mean the other party to whom the assessee has sold or purchased the goods is incorrect.

Furthermore, regarding the contention of the revenue that the assessee has changed its stance from the auditor's certification as filed in Form 3CEB, High Court observed that the said Form only pertains to the transactional claims and does not mention tested party. As such, the revenue cannot compare the case of the assessee with that of the assessee who failed to claim in his return of income a deduction or a benefit which he would be otherwise entitled to.

Accordingly, the issue regarding consideration of foreign AE as tested party was remanded to the TPO for a fresh decision on merits and in accordance with law having due regard to the orders passed by the TPO in the assessee's own case for the subsequent assessment years.

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Salaries reimbursed by Indian group company to Foreign assessee for seconded foreign nationals working exclusively for Indian company not allocable to supervisory PE in India, deputed employees do not constitute agency PE

Lubrizol Advanced Materials Inc [TS-433-ITAT-2021(Ahd)]

Recently, the Tax Tribunal, Ahmedabad Bench, held that personnel deputed by the assessee Foreign Company to its Indian group company were in effect employees of Indian company and their salaries reimbursed by Indian company to the assessee were not attributable to supervisory PE of the assessee in India. The Tribunal further held that such personnel did not constitute agency PE of the assessee in India.

On facts, the assessee is a foreign company, based in USA. The assessee has an associated enterprise (AE) in India. The AE was in the process of establishing a new manufacturing plant and in this regard entered into agreement with the assessee for providing engineering, technology, design and project supervisory services. The assessee sent its personnel to India for supervision of the project, admitted supervisory PE and filed return of income in India for the relevant financial year accordingly.

During the year under consideration, the assessee also seconded two persons, Mr. Tim and Mr. Mat to the Indian AE as full-time working employees who were acting as the Managing Director and getting salary from the AE. However, for the administrative convenience part of the salary was paid by the assessee in the USA but the same was reimbursed to it on cost-to-cost basis by the AE.

However, the Assessing Officer (AO) observed that in the event of opening ceremony of the manufacturing unit in India, a news release was published on the website

of the assessee wherein Mr. Tim was referred as managing director of South Asia of the assessee. The AO noted that Mr. Tim and Mr. Mat were highly skilled supervisors and held that they were working on behalf of the assessee and their services constituted activities carried on with respect to supervisory PE in India. The AO added the amount of salary reimbursed by the AE to the assessee to the income of the supervisory PE of the assessee.

Further, the AO also held that Mr. Tim and Mr. Matt constituted Agency PE of the assessee in India and attributed 100% of the profits from offshore supplies as part of the income taxable in India.

On appeal, the Tax Tribunal observed that the AE deducted taxes on the salary paid to these managing directors including the amount reimbursed to the assessee and both the employees offered their income to tax in India. The Tribunal noted that as per the agreement between the assessee and the AE, the deputed personnel would be the employee of the AE and would work under the supervision and guidance of the AE. It was also agreed between the parties that the part of the salary will be paid in foreign currency to those personnel by the assessee for the purpose of convenience and the AE would reimburse to the assessee the actual amount paid to employees outside India by the assessee. The Tribunal also perused the employment agreement between the AE and the employees which stated that the employees were working exclusively for the AE. The Tribunal stated that the information displayed on the website cannot precede the documents which were available on record for deciding the issue.

Accordingly, the Tribunal held that the employees were not working on behalf of the assessee in India and as such, deleted the addition of income to supervisory PE of the amount reimbursed towards salary as made by the AO.

On the issue of Agency PE, the assessee submitted that it sold certain goods to the AE and the transaction of sale was made at arm length price. The assessee contended that the sale was executed and completed outside India, the risk and tittle of the goods were transferred outside India and payment was also made outside India. As such the offshore sale was not taxable in India as per the provision of section 5 and 9 of the Act. The assessee in this regard also relied on judgment of Hon'ble SC in case of Ishikawajima-Harima Heavy Industries Limited vs. DIT (288 ITR 408).

The Tribunal noted that the purchase agreement was signed by Mr. Tim and Matt on behalf of AE. Based on the finding that Mr. Tim and Mr. Matt were not the employees of the assessee, the Tribunal concluded that there was no connection between the employees and the assessee which can establish the Agency PE in India and as such, the whole basis for treating the transaction of impugned sale and purchase as attributable to the Agency PE was not sustainable.

Accordingly, attribution made in respect of profits on offshore supplies was also totally deleted by the Tribunal.

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Tribunal allows deduction for trademark royalty paid to Associated Enterprise, charged for the first time in the relevant year

In a recent decision in the case of Thyssenkrupp Electrical Steel India Pvt Ltd. v. DCIT [ITA No. 297/PUN/2017], tax tribunal, Pune Bench, has held that the assessee is entitled to deduction for royalty paid for the use of Corporate Mark, even if the assessee

was not paying any royalty on use of the Corporate Mark in the earlier years. The tribunal further held that deduction is allowable for the period covered by the agreement, whether such period falls within the relevant financial year or not.

The assessee entered into an agreement with its Associated Enterprise (AE), Thyssenkrupp AG (TKAG), in June, 2010 under which the assessee was to make royalty payment to TKAG at @ 0.5% of sales for use of the Corporate Mark owned by TKAG. TKAG granted a global, non-exclusive right to use the Corporate Mark for the purpose of highlighting the assessee's affiliation to ThyssenKrupp Group and to identify as well as sell its products or perform services using the licensed rights.

In terms of the agreement, the assessee made royalty payment in the financial year 2010-11 (relevant to assessment year 2011-12) to its AE, which however covered the period from October 2008 to March 2011.

In the transfer pricing determination, the Transfer Pricing Officer (TPO), observing that no payment was ever made by the assessee in the earlier years for use of the corporate mark, asked the assessee to explain the benefits received on making the payment towards the Corporate Mark Fees, warranting royalty payment in the relevant financial year. The TPO further asked for the rationale of payment of corporate mark fee for the earlier periods covered by the agreement. The assessee submitted that the use of Corporate Mark for its products and services is an assurance to the customers of its standard of quality and has a major positive impact on the sales of the assessee. It was also submitted that the liability for payment of corporate mark fee for the earlier period crystallised in the relevant year, pursuant to the agreement with the AE and as such, the deduction was claimed in the relevant financial year, though the same covered the earlier period also.
The TPO considered the arm's length price ("ALP") of the royalty as NIL, concluding that no such benefits have accrued to the assessee and the assessee has failed to substantiate the need for making said payments for a period pertaining to earlier two financial years. Further, the assessee was using the same corporate mark in earlier years and no fees was charged by its AE in the earlier years. As such, no new benefit has been derived by the assessee in the relevant financial year, requiring payment of corporate mark fees.

The CIT(A) rejected the aforesaid arguments of the assessee.

Before the tax tribunal, the tax department argued that the transfer pricing study relied upon by the assessee belongs to its AE, TKAG. Further, the payment made by the assessee retrospectively under the support of Article 2 of the agreement for prior periods viz. F.Y. 2008-09 and FY 2009-10 is not permissible under the year under consideration.

The tribunal, accepting the arguments of the assessee, held that the assessee is entitled to deduction when the liability is incurred irrespective of date of payment. The incurring of liability coincides with its crystallization. It thus held that in respect of the period October 2009 to September, 2010, the royalty is allowable as deduction, holding that such period is covered by the relevant agreement between the assessee and its A.E., even though such period falls outside the relevant financial year. However, in respect of the royalty payment pertaining to the period October 2008 to September 2009, the tribunal has not accepted the claim for deduction, holding that such period falls outside the agreement as well, and as such, the deduction is not to be granted.

In our view, this decision of the tribunal reiterates that tax deduction is allowable based on crystallisation of liability under the relevant agreement, irrespective of its applicability period which may be anterior to the relevant financial year. Further, the tribunal reaffirmed the principle that the fact of no royalty payment in the initial

years would not act as an estoppel for payment of royalty in the subsequent years, if the payment is made at arm's length.

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Domestic Taxation

CBDT issues guidelines for implementation of section 194Q (Withholding tax on purchase of goods) applicable with effect from July 01, 2021

The Finance Act, 2021 introduced Section 194Q under the Income-tax Act ("the Act") to provide for deduction of tax at source ("TDS") by a buyer, who purchases goods from a resident seller with effect from July 01, 2021. Under the aforesaid section, tax at 0.1% of the sum exceeding Rs. 50 Lakh (5 million) in any financial year is required to be deducted while making payment to the seller or at the time of credit of such sum to the account of the seller, whichever is earlier.

A similar provision was introduced under Tax Collection at Source ("TCS") in 2020, requiring collection of TCS by the seller at 0.1% on sale of goods from the buyer.

As the applicability of the TDS under section 194Q is applicable from July 01, 2021 and not from start of the financial year, this posed questions relating to its applicability for the payments already made and whether such payment would be considered for computing the aforesaid limit of Rs. 50 lakh (5 million) for the purpose of TDS.
Further, various questions relating to its applicability to Non-resident buyer or in the case of a seller whose income is exempt or where TDS is already deducted under any other section were being raised by the industries.

In order to provide certainty on various such issues including in relation to TCS and applicable provision where more than one provision covers the situation, the Central Board of Direct Taxes ("CBDT") vide Circular No. 13 of 2021 dated June 30, 2021 has answered the queries in the form of FAQs, which are given hereunder:

1. **Calculation for threshold for F.Y. 2021-22:**

   It has been clarified that since the threshold of Rs. 50 lakh (5 million) is with respect to a financial year, the calculation of sum for triggering TDS under section 194Q shall be computed from April 01, 2021. Hence, if a buyer has already credited or paid Rs. 50 Lakh or more up to June 30, 2021 to a seller, the TDS under section 194Q shall apply on all credit or payment during the financial year 2021-22, on or after July 01, 2021 to such seller.

2. **Treatment of GST:**

   The CBDT has clarified that when the GST comprised in the amount payable to the seller is indicated separately, tax shall be deducted under section 194Q on the amount credited without including such GST.

   However, if the tax is deducted on payment basis because the payment is earlier than the credit, the tax would be deducted on the whole amount as it is not possible to identify that payment with GST component of the amount to be invoiced in future.

3. **Purchase returns:**

   With respect to Purchase Return, it has

been clarified that before purchase return, the tax must have already been deducted under section 194Q of the Act on that purchase. If that is the case and against the Purchase Return, the money is refunded by the seller, then the tax deducted may be adjusted against the next purchase against the same seller. No adjustment is required in case of replacement of goods.

4. Whether Non-Resident can be the Buyer under section 194Q of the Act:

Under the provisions of section 194Q, there is no specific exemption to a buyer being a Non-Resident form the applicability of such section. However, in order to remove difficulties, it has been clarified by the CBDT that the provisions of section 194Q shall not apply to a Non-Resident whose purchase of goods from a seller resident in India is not effectively connected with the permanent establishment of such non-Resident in India.

5. Whether tax is to be deducted when the seller is a person whose income is exempt:

Since the above issue is not specially addressed in Section 194Q of the Act, the above provision may have caused difficulties for the seller whose income is unconditionally exempt under the Act. In order to remove difficulty, the CBDT has clarified that the provisions of section 194Q shall not apply on purchase of goods from a person, being a seller, who as a person is exempt from income tax under the Act (Like person exempt under section 10) or under any other Act passed by the parliament (like RBI Act).

Similarly, with respect to TCS applicable under section 206C(1H), it has been clarified that the provisions of such section shall not apply to sale of goods to a buyer, who as a person is exempt from income-tax under the Act or any other Act passed by the parliament.

The above clarification will not apply if only part of the income of the person (being a seller or being a buyer, as the case may be) is exempt.

6. Whether tax is to be deducted on Advance payment:

As the provisions of the Section 194Q apply on payment or credit, whichever is earlier, it has been clarified that the provisions of section 194Q shall apply to the advance payment made by the buyer to the seller.

7. Whether Section 194Q shall apply to the Buyer in the year of incorporation:

As the provisions of Section 194Q of the Act are applicable to a buyer whose total sales, gross receipts or turnover from the business carried on by him exceed Rs. 10 Crore (100 million) during the financial year immediately preceding the financial year in which the purchase of goods is carried out, this condition would not be satisfied in the year of incorporation. Therefore, it has been clarified that the provisions of Section 194Q shall not apply in the year of incorporation.

8. Whether the provisions of Section 194Q shall apply to a Buyer if the business turnover is less than 10 Crore (100 million) but total turnover exceeds Rs. 10 Crore:

It has been clarified that a buyer is required to have total sales or gross receipts or turnover from the business carried on by him exceeding Rs.10 Crore during the financial year immediately preceding the financial year in which the purchase of goods is carried out. Hence, only the sales or turnover from business carried on by him must exceed Rs. 10 Crore. The turnover or receipts from non-business activity is not to be counted for this purpose.

9. Inter-play between Section 194-O, Section 206C(1H) and Section 194Q:

After conjoint reading of all these provisions the following has been clarified:

(i) If tax has been deducted by the e-commerce operator on a transaction under section 194-O of the Act [including transactions on which tax is not deducted on account of sub-section (2) of section 194-O], that transaction shall not be subjected to tax deduction under section 194Q of the Act.

(ii) Though section 206C(1H) of the Act provides exemption from TCS if the buyer has deducted tax at source on goods purchased by him, to remove difficulties it has been clarified that this exemption would also cover a situation where instead of the buyer, the e-commerce operator has deducted tax at source on that transaction of sale of goods by seller to buyer through e-commerce operator.

(iii) If a transaction is both within the purview of section 194-O of the Act as well as section 194Q of the Act, tax is required to be deducted under section 194-O of the Act and not under section 194Q of the Act.

(iv) Similarly, if a transaction is both within the purview of section 194-O of the Act as well as section 206C(1H) of the Act, tax is required to be deducted under section 194-O of the Act. The transaction shall come out of the purview of section 206C(1H) of the Act after tax has been deducted by the e-commerce operator on that transaction. Once the e-commerce operator has deducted the tax on a transaction, the seller is not required to collect the tax under section 206C(1H) of the Act on the same transaction. It is clarified that here primary responsibility is on e-commerce operator to deduct the tax under section 194-O of the Act and that responsibility cannot be condoned if the seller has collected the tax under section 206C(1H) of the Act. This is for the reason that the rate of TDS under section 194-O is higher than rate of TCS under section 206C(1H) of the Act.

(v) If a transaction is both within the purview of section 194-Q of the Act as well as section 206C(1H) of the Act, the tax is required to be deducted under section 194-Q of the Act. However, if, for any reason, tax has been collected by the seller under section 206C(1H) of the Act, before the buyer could deduct tax under section 194-Q of the Act on the same transaction, such transaction would not be subjected to tax deduction again by the buyer. This concession is provided to remove difficulty, since tax rate of deduction and collection are same in section 194Q and section 206C(1H) of the Act.

10. Applicability on transactions carried through various Exchanges:

In order to remove difficulties, it has been clarified that the provisions of section 194Q shall not be applicable in relation to:

(i) Transactions in securities and commodities which are traded through recognized stock exchanges or cleared and settled by the recognized clearing corporation, including recognized stock exchanges or recognized clearing corporation located in International Financial Service Centre;

(ii) transactions in electricity, renewable energy certificates and energy saving certificates traded through power exchanges registered in

accordance with Regulation 21 of the CERC.

In our view, the above clarifications would greatly help in implementation of the provisions of section 194Q on purchases of goods made on or after July 01, 2021.

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CORPORATE LAW

Accounting Standards

MCA Notifications dated June 18, 2021 and June 23, 2021

Introduction:

The Central Government had notified two sets of Rules on Accounting Standards:

1. The Companies (Accounting Standards) Rules, 2006; and

2. The Companies (Indian Accounting Standards) Rules, 2015

Recently, Rules at (1) above have been superseded by The Companies (Accounting Standards) Rules, 2021, as notified on June 23, 2021 and the Rules at (2) above have been amended, by the Amendment Rules, notified on June 18, 2021.

As a result, two sets of Accounting Standards are applicable in terms of the respective Rules.

The salient features of these two Rules are given below:

A. The Companies (Accounting Standards) Rules, 2006 (referred to as "2006 Rules") as superseded by The Companies (Accounting Standards) Rules, 2021 (referred to as "2021 New Rules")

The Central Government had notified The Companies (Accounting Standards) Rules, 2006 with effect from December 07, 2006. The above Accounting Standards applied to every company and its Auditors.

In view of the changes in the statutory framework, the Central Government has now notified The Companies (Accounting Standards) Rules, 2021 in supersession of the earlier Rules notified in the year 2006.

A brief review of the 2021 New Rules is given below:

Pursuant to the Companies (Accounting Standards) Rules 2021, every company other than companies on which the Indian Accounting Standards as notified under The Companies (Indian Accounting Standards) Rules, 2015 are applicable and its auditors shall comply with the Accounting Standards 1 to 5, 7 and 9 to 29 in the manner specified in the Annexure to these Rules.

It may be noted that the above Rules continue to be the same as the 2006 Rules, except that there is a change in the definition of Small and Medium Sized Companies.

In terms of these changes, the limit of turnover of these companies have been increased to Rs. 250 crores from the earlier limit of Rs. 50 crores and the borrowing limit has been increased to Rs. 50 crores as against the earlier limit of Rs. 10 crores.

These Accounting Standards have come into effect in respect of accounting periods commencing on or after April 01, 2021.

B. The Companies (Indian Accounting Standards) Rules, 2015 (referred to as the "2015 Rules") as amended by the Amendments Rules, 2021 (referred to as "2021 Amended Rules")

These Accounting Standards pursuant 2015 Rules, were made applicable to companies other than the companies specified in Rule 4 therein. Rule 4 specified a detailed list of companies to whom Ind AS were made applicable.

Rule 3 specifically provides that the Company which follows Ind AS shall follow such standards only. Further, Rules 3(2) and 3(4) specify that the companies other than those to which Ind AS would be applicable, would follow the Accounting Standards as specified in Annexure to The Companies (Accounting Standards) Rules, 2006 and presently would follow the 2021 Amended Rules.

The said Sub-Rules 3 & 4 have not been amended in the 2021 Amended Rules.

Extensive amendments have been carried out by the said Amendment Rules

The salient features of some important amendments are noted below:

1. The notification will be effective for accounting years commencing on or after April 01, 2022 excepting changes in case of Ind AS 116 relating to covid concessions on leases which shall be effective for annual reporting periods beginning on or after April 01, 2020 in case the lessee has not approved the financial statements for issue before the issuance of the amendment.

11. Certain significant changes have been made in Ind AS 104 (Insurance Contracts), Ind AS 107 and Ind AS 109 (Financial Instruments) and Ind AS 116 (Leases).

12. Certain minor Changes have been made in the following standards with reference to the Conceptual Framework for Financial Reporting under Indian Accounting Standards. These changes mostly relate to changes in certain definitions and words and phrases to align with the conceptual framework or consistency with IFRS

    Ind AS 101 Presentation of Financial Statements

    Ind AS 102 Share Based Payment

    Ind AS 103 Business Combinations

    Ind AS 111 Joint Arrangements

    Ind AS 114 Regulatory Deferral Accounts

    Ind AS 115 Revenue from Contracts with Customers

    Ind AS 8 Accounting Policies, Changes in Accounting Estimates and Errors

    Ind AS 16 Property, Plant and Equipment

    Ind AS 34 Interim Financial Reporting

    Ind AS 37 Provisions, Contingent Liabilities and Contingent Assets

    Ind AS 38 Intangible Assets:

As a result of the above notifications,

there are two sets of Accounting Standards applicable to companies pursuant to the terms of the said Notifications. These Accounting Standards, as stated above, are contained in The Companies (Indian Accounting Standards) Rules, 2015, as amended and The Companies (Accounting Standards) Rules, 2021.

In terms of the applicability of these Accounting Standards, care should be taken as to which standard will apply to a particular company in terms of the provisions contained therein. Since extensive notifications have been made, readers are advised to refer to the respective Notification carrying out substitution of new Rules in 2021 and Amendment to 2015 Rules.

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INDIRECT TAX

Goods and Services Tax

GST Clarification - Circular No. 156/12/2021-GST dated June 21, 2021

To clarify the applicability of Dynamic Quick Response (QR) Code on B2C (Registered person to Customer) invoices and compliance of notification 14/2020-Central Tax, dated March 21, 2020 as amended, the board has issued Circular No. 156/12/2021-GST dated June 21, 2021. The issues clarified are mentioned as under:

(i) Any invoice, issued to such person having a UIN, shall be considered as invoice issued for a B2C supply and shall be required to comply with the requirement of Dynamic QR Code.

(ii) Given that UPI ID is linked to a specific bank account of the payee/ person collecting money, separate details of bank account and IFSC may not be provided in the Dynamic QR Code.

(iii) In cases where the payment is collected by some person other than the supplier, authorized by the supplier on his/ her behalf, the UPI ID of such person may be provided in the Dynamic QR Code, instead of UPI ID of the supplier.

(iv) Wherever an invoice is issued to a recipient located outside India, for supply of services, for which the place of supply is in India, as per the provisions of IGST Act 2017, and the payment is received by the supplier in foreign currency, through RBI approved mediums, such invoice may be issued without having a Dynamic QR Code, as such dynamic QR code cannot be used by the recipient located outside India for making payment to the supplier.

v) Where the invoice number is not available at the time of digital display of dynamic QR code in case of over the counter sales and the invoice number and invoices are generated after receipt of payment, the unique order ID/ unique sales reference number, which is uniquely linked to the invoice issued for the said transaction, may be provided in the Dynamic QR Code for digital display, as long as the details of such unique order ID/ sales reference number linkage with the invoice are available on the processing system of the merchant/ supplier and the cross reference of such payment along with unique order ID/ sales reference number are also provided on the invoice.

(vi) When the part-payment for any supply has already been received from the customer/ recipient, in form of either advance or adjustment through voucher/ discount coupon etc., then the dynamic

QR code may provide only the remaining amount payable by the customer/ recipient against "invoice value". The details of total invoice value, along with details/ cross reference of the part payment/ advance/ adjustment done, and the remaining amount to be paid, should be provided on the invoice.

Exemption Granted to Covid related medical supplies

- Vide Notification No. 33/2021-Customs, Dated-June 14, 2021, COVID-19 related goods such as medical oxygen, oxygen concentrators and other oxygen storage and transportation equipment, certain diagnostic markers test kits and COVID-19 vaccines, etc., have been exempted from IGST, even if imported on payment basis, for donating to the government or, on the recommendation of state authority, to any relief agency. This exemption shall be valid up to August 31, 2021.

  It is pertinent to note that similar condition has been placed earlier wherein ad-hoc exemption was granted for free of cost (FOC) supplies received from abroad by a State Government or, any entity, relief agency or statutory body, authorized in this regard by any State Government.

- Vide Notification No. 05/2021 Central Tax (Rate), Dated-June 14, 2021, reduced the GST rates on few specified items being used in COVID-19 pandemic. Out of few, the GST rate of most commonly used Hand Sanitizer has been reduced to 5% from earlier 18% w.e.f. June 14, 2021 up to September 30. 2021.

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CORPORATE LAW

Corporate Law Compliance

The Companies (Meetings of Board and its Powers) Amendment Rules, 2021 (June 15, 2021)

The MCA vide Notification dated June 15, 2021 has notified Companies (Meetings of Board and its Powers) Amendment Rules, 2021 [hereinafter referred to as "the amendment rules"], in order to amend the Companies (Meetings of Board and its Powers) Rules, 2014 [hereinafter referred to as "the rules"].

As per the amendment rules, the existing Rule 4, which used to restrict a company from dealing with certain matters like approval of the annual financial statements, approval of the Board's report etc. in a board meeting held through video conferencing or other audio-visual means, has been omitted.

Accordingly, now all the items, without any restriction, can be dealt with in a Board Meeting held through video conferencing or other audio-visual means.

Clarification on passing of ordinary and special resolutions by companies under the Companies Act, 2013 read with rules made thereunder on account of COVID19- Extension of time (June 23, 2021)

In view of the continued disruption caused due to COVID-19 pandemic, the MCA, vide General Circular No.10 / 2021 dated June 23, 2021, has further allowed the companies to conduct their Extraordinary General Meetings [EGMs] through Video-Conferencing [VC] or other audio-visual means [OAVM] or transact items through postal ballot up to December 31, 2021, in accordance with the framework provided in earlier MCA circulars dated April 08, 2020 and April 13, 2020.

In accordance with the aforesaid circulars, the companies have been allowed to hold EGMs through VC or OAVM complemented with e-Voting facility/simplified voting through registered emails, without requiring the shareholders to physically assemble at a common venue. The Companies Act, 2013 allows ordinary and special resolutions to be passed through postal ballot/e-voting route without holding a physical general meeting. However, in present social distancing conditions due to COVID 19, postal ballot facility cannot be utilized by the companies.

Accordingly, the General Circular dated 08.04.2020 allowed the listed companies or companies with 1,000 shareholders or more which are required to provide e-voting facility under the Companies Act, 2013 to conduct EGM through VC/ OAVM and e-Voting. For other companies, a mechanism for voting through registered emails has been put in place for easy compliance.

As the meetings will be conducted over VC/ OAVM, the facility for appointment of proxies has been dispensed with, while representatives of bodies corporate will continue to get appointed for participation in such meetings.

As an additional check, all companies using this option are required to maintain a recorded transcript of the entire proceedings in safe custody, and public companies are also required to host this transcript on their website for greater transparency. Further, all resolutions passed through this framework will be required to be filed with the Registrar of Companies within 60 days, so that such resolutions may be viewed publicly. Other safeguards have also been included in the Circular to ensure transparency, accountability and protection of interests of investors.

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MISCELLANEOUS

Arbitration proceedings

Important judicial decision

Summary of the Supreme Court decision dated April 20, 2021 in:

PASL Wind Solutions Private Limited
…… Appellant
V
GE Power Conversion India Private Limited ……Respondent

In this judgment dated April, 20, 2021, the Supreme Court of India decided as under:

ISSUES:

1. Whether the two Indian Companies can choose a Forum outside India for arbitration; and

2. Whether the Award made at such Forum outside Indian can said to be a Foreign Award and can be enforceable under Part-II of the Arbitration and Conciliation Act, 1996 of India.

FACTS:

1. The Appellant placed an order for purchase of six Converters on the Respondent in the year 2010. Dispute arose between the parties in relation to the expiry of Warranties.
2. In order to settle the above, the parties entered into a Settlement Agreement dated December 23, 2014.

3. Clause 6 of the Settlement Agreement contained the Dispute Resolution, Clause as under:

In effect, it provided that any disputes, contradictions or differences shall be

referred to arbitration in Zurich in accordance with the Rules of ICC, Paris.

4. The Parties further agreed that the substantive law applicable to disputes would be the Indian Law.

5. On July 03, 2017, the Appellant invoked Arbitration of Sole Arbitrator to be appointed by ICC.

6. The Respondent filed preliminary objections to the claim filed by the Appellant that two Indian parties could not have chosen a foreign seat of arbitration. The Appellant opposed this. The Sole Arbitrator passed a Procedural Order dated 20th February, 2018, holding as follows:

   "The Tribunal finds that two Indian Parties can arbitrate outside India. The Tribunal is persuaded that the Supreme Court of India's decision in Reliance Industries Limited Vs. Union of India (7 SCC 603) is the leading authority".

THE AWARD:

The Tribunal pronounced the Award on April 18, 2019. When the Award went against the Appellant, it was argued on behalf of the Appellant that two Indian Parties cannot designate a foreign seat of arbitration, as doing so is contrary to the Indian Contract Act, 1872 read with Section 28(1)(a) and Section 34 (2A) of the Arbitration and Conciliation Act, 1996 of India.

They supported their arguments with various case laws. However, the Court could not be persuaded to accept their above contentions.

DECISION:

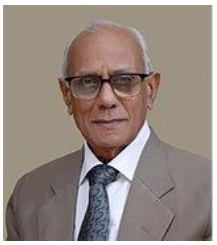
The Court after referring to some of their earlier decisions and also some of the decisions of the High Courts and also based on party autonomy, decided as under:

The Arbitration between the parties being an agreement independent of the substantive contract and the parties can choose different governing law for their arbitration, the two Indian Parties can choose a seat outside India for arbitration.

The judgment also provided that such an award would be enforceable as a Foreign Award under Part-II of the Arbitration and Conciliation Act, 1996 of India.

The Court further decided that an application under section 9 of the Arbitration and Conciliation act, 1996 of India would be maintainable.

The above decision has set at rest the ambiguity that prevailed earlier on the issues decided by the Supreme Court therein. In this sense it is a landmark decision.



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Important dates to remember

For the purpose of providing relief to the taxpayers who faced difficulties in undertaking compliances, the Central Board of Direct Taxes ('CBDT') has extended the time limits of certain compliances under the Income-tax Act, 1961 ('the Act') vide Circular No. 12/2021, Notification No. 74/2021 and Notification No. 75/2021 dated June 25, 2021.

Key highlights of the CBDT Circular and Notifications have been enunciated as under:

Compliance Event	Earlier Timeline as per Act (including earlier Circulars and Notifications)	Extension in Timelines vide Circular and Notifications dated June 25th, 2021
Assessment/ Other Litigation Related		
Objections to Dispute Resolution Panel and Assessing Officer under Section 144C of the Act for which last date for filing is June 01, 2021 or thereafter	Within 30 days of receipt of draft order	**Later of**: - 30 days of receipt of order; **OR** - August 31, 2021
Exercising of Option in Form No. 34BB under Section 245M(1) of the Act for withdrawal of application filed with Settlement Commission	Where option is required to be exercised on or before June 27, 2021	July 31, 2021
Passing of order of Assessment or Reassessment	June 30, 2021	September 30, 2021
Imposition of Penalty under Chapter XXI of the Act	June 30, 2021 (Where timelines for respective compliance falls between March 20, 2020 to June 29, 2021)	September 30, 2021
Sending Intimation of Processing of Equalization Levy under Section 168 of Finance Act 2016	June 30, 2021 (Where timelines for respective compliance falls between March 20, 2020 to March 31, 2021)	September 30, 2021
Direct Tax Vivad Se Vishwas Act, 2020		
Payment of Tax without additional charge	June 30, 2021	August 31, 2021
Last Date for Payment of Tax with additional charge	-	October 31, 2021
TDS Related		
Furnishing of TDS return for quarter ending March 2021	June 30, 2021	July 15, 2021
Issuance of TDS certificate in Form 16 (For Salaried Individuals) for Financial Year (FY) 2020-21	July 15, 2021	July 31, 2021

Miscellaneous Form Filings		
Statement of income paid or credited by an Investment Fund to its unit holder for FY 2020-21 in Form No. 64D	June 30, 2021	July 15, 2021
Statement of income paid or credited by an Investment Fund to its unit holder for FY 2020-21 in Form No. 64C	July 15, 2021	July 31, 2021
Filing Form No. 10A/ 10AB under Section 10(23C)/12AB/35(1)(ii)/35(1)((iia)/35(1)(iii)/80G of the Act for registration/ intimation/ approval/provisional approval of Trusts/ Institutions/ Research Associations	June 30, 2021	August 31, 2021
Filing of Quarterly Statement in Form No. 15CC by Authorized Dealer dealing in foreign exchange or foreign securities etc. for the quarter ending June 30, 2021	July 15, 2021	July 31, 2021
Filing of Equalization Levy Statement in Form No. 1 for FY 2020-21	June 30, 2021	July 31, 2021
Filing of Annual Statement by Eligible Investment Fund in Form No. 3CEK under Section 9A(5) of the Act	June 29, 2021	July 31, 2021
Uploading of Form No. 15G and Form No. 15H by Banks received during Quarter ending June 30, 2021	July 15, 2021	August 31, 2021
Completion of compliances by taxpayers (such as investment, deposit, payment, acquisition, purchase, construction etc.) required to be made for claiming exemption under provisions of Section 54 – 54GB of the Act	Where timelines for respective compliance fall between April 01, 2021 – September 29, 2021	September 30, 2021
Linking of Aadhar Number and Permanent Account Number	June 30, 2021	September 30, 2021

Spot News

CBDT vide Press Release dated July 05, 2021 has extended the date for filing Forms 15CA/ 15CB in manual form to July 15, 2021, from June 30, 2021.

For further information, please contact:

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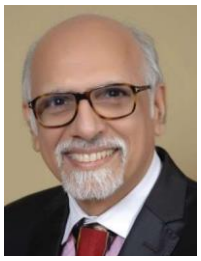

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