Dear readers,

We are pleased to present the December 2016 edition of EY’s quarterly newsletter, Tax Digest, which summarizes significant tax and regulatory developments during the October to December quarter.

This newsletter is designed as a ready reckoner and covers landmark tax judgments, an update on tax treaties and alerts on topical developments in the tax arena. The “In the press” section includes published articles on various issues in the tax realm over the last quarter. It also details key thought leadership reports and other topics of interest to tax professionals.

We hope you find this edition, both timely and insightful.

Best regards,
EY Tax Update team

Direct tax

Verdicts

- Reported decisions supported by our Litigation team
  - Mumbai ITAT holds withholding not applicable on legal fees payment for foreign branch setup
  - AAR rules offshore supply of goods is taxable in India as a result of composite contract of supply of goods and rendering of service in India

- Significant Supreme Court rulings
  - SC rules transfer of business as a going concern for specific value of assets and liability is not slump sale
  - Presumptive taxation provision not applicable where gross receipts exceed the eligible limit

- Rulings on availability of depreciation
  - Madras HC denies higher rate of depreciation for machineries that were computerized
  - Chennai Tribunal allows depreciation on cost of brand acquired from a company that subsequently amalgamated with taxpayer
  - Delhi Tribunal allows depreciation on assets that were not used for business in the current year

- Rulings on capital gains
  - AAR affirms the availability of India-Mauritius Double Taxation Avoidance Agreement (DTAA) benefit on sale of shares of an Indian company, distinguishes the Bombay High Court (HC) ruling of Aditya Birla Nuvo
  - AAR rules on the economic substance of a special purpose Mauritius company and its control and management in India
Mumbai ITAT rules that consideration for grant of call option results in capital gains though not taxable under the India-Singapore DTAA

No capital gains taxation on land development agreement in the absence of transfer of possession of land

Rulings on concealment penalty

Bombay HC deletes concealment penalty based on bonafide belief of taxpayer on non-taxability of income

Mumbai Income Tax Appellate Tribunal (ITAT) upholds concealment penalty for claiming double deduction of expenses

Taxability of off-shore supply

Delhi ITAT rules offshore supply of goods is not taxable in India since the supply of goods and title in goods were passed outside India

Is there a PE?

Chennai ITAT rules fixed PE and agency PE created due to the presence of director and affiliate company in India

Other significant decisions

Bombay HC holds share issue expenses not deductible as revenue expenditure

Delhi HC rules non-refundable lump sum fees received by doctor for five years taxable on receipt basis

Gujarat HC allows set off of losses of old business against profits of new business

Gujarat HC rules that income earned by a Singapore shipping company will be eligible for relief under shipping income article and not be restricted by limitations of benefit clause of India-Singapore DTAA

AAR rules foreign amalgamation eligible for tax exemption in India by applying non-discrimination clause

AAR rules income earned by non-profit US university by running a management program in India is not taxable in India

Hyderabad Tribunal upholds disallowance of expense on failure to prove the genuineness of the payee

Some key issues where Special Leave Petition (SLP) was accepted by the SC

Some key issues on which SLP was dismissed by the SC

Decisions on royalty/fees for technical services (FTS)

From the tax gatherer’s desk

CBDT notifies buyers to be excluded from applicability of “tax collection provisions” applicable to cash transactions for sale of goods or provision of services

CBDT provides clarifications on Direct Tax Dispute Resolution Scheme, 2016

CBDT notifies rules for deduction of amount paid for acquiring spectrum rights

CBDT issues draft Exit Tax Rules for charitable organizations inviting comments from stakeholders

CBDT notifies additional conditions under newly inserted Explanation 5 to Section 2(19AA) dealing with tax neutrality of demerger of erstwhile PSUs

CBDT directs tax authorities to follow the Circular clarifying quantum of disallowance upon failure to withhold taxes on payments made to a non-resident

CBDT issues final rules on certain aspects for determining buy-back tax in India

CBDT relaxes deadline for closure of financial accounts under FATCA

Government of India amends Income Computation and Disclosure Standards (ICDS) and also defers them by one year to tax year 2016-17
Treaty updates
- New India-Korea DTAA enters into force and will be effective in 2017
- Protocol to DTAA between India and Japan enters into force
- India notifies limited purpose agreement with Maldives

Happenings across the border
- Panama joins international efforts against tax evasion and avoidance
- OECD releases report on “Tax Policy Reforms”
- Five new jurisdictions sign tax co-operation agreement to enable automatic sharing of country-by-country information
- Ecuador establishes new rules to treat certain special tax regimes as tax havens
- India revises Country Chapter comments in UN Practical Manual on Transfer Pricing Issues for Developing Countries
- European Commission proposes corporate tax reform package
- Cyprus introduces new rules for application of IP box regime
- India-US sign first bilateral APA and also resolve 108 MAP cases

BEPS updates
- OECD holds public consultation on attribution of profits to PE and profit splits
- OECD releases multilateral instrument to modify bilateral tax treaties under BEPS Action 15
- Proposed changes to the UN Model Convention and Commentary in light of BEPS reports
- OECD releases BEPS Action 14 on More Effective Dispute Resolution Mechanisms, Peer Review

Indirect tax

Case laws
- Customs
  - High Court, Delhi
    - High Court interference not required in relation to findings of facts recorded by the statutory authorities
  - High Court, Hyderabad
    - Validity of show cause notice cannot be challenged once the issue involved therein has been decided by the judiciary up to the Supreme Court on the ground of doctrine of merger
  - High Court, Hyderabad
    - Revenue should exercise the rights granted under Section 61(2) of the Customs Act, 1962 in relation to waiver of interest for keeping the goods in customs private bonded warehouse beyond specified period
- Central Excise
  - Supreme Court
    - Penalty cannot be reduced by CESTAT, where Section 11AC levies penalty equivalent to duty
  - High Court, Jharkhand
    - Processing such as de-coiling, straightening and cutting of TMT coils into TMT bars/rods would not amount to manufacture
  - High Court, Allahabad
    - Refund allowed to the manufacturer, unjust enrichment not applicable to intermediate products
  - High Court, Karnataka
    - Company financially not stable to pay pre-deposit, considered as sufficient cause for filing of condonation of delay
CENVAT Credit
- Tribunal, Ahmedabad
  - Rent-a-cab and cleaning services are input services as defined under rule 20 of CCR
- Tribunal, New Delhi
  - CENVAT credit can be availed on the input service of outward transportation
- Tribunal, Ahmedabad
  - CENVAT credit inadmissible on services used in construction of residential flats outside factory premises to be used by the employees
- Tribunal, Bangalore
  - EOU is entitled to claim CENVAT credit of duty paid in terms of the Notification No. 22/2003 dated 31 March 2003 on procurement of High Speed Diesel (HSD) to be used as fuel

Service tax
- Tribunal
  - Input services to be approved by SEZ Approval Committee for claiming refund of service tax paid on such services
  - Allegation of suppression is not sustainable when the information is declared in the balance sheet which is a publicly available document
- Advance ruling
  - Clinical pharmacology and research undertaken of the formulations i.e. tablets, capsules, etc. on the volunteers is a performance based service taxable under rule 4(a) of Place of Provision of Service Rules
  - Money received by the company against shares from prospective members for raising funds which can be used for establishing a luxurious club is a taxable service

VAT
- Supreme Court
  - Entry Tax exemption and concessional rate is not available on “packing materials” as they are distinct from “inputs”
  - Levy of surcharge on gross sales tax payable; before entry tax deduction
- High Court, Delhi
  - Rule imposing luxury tax on VAT turnover of banquet hall owners declared ultravires in relation to the Act
- High Court, Allahabad
  - Assessment once closed cannot be opened on the basis of judgment/s pronounced subsequently

Key statutory updates
- Customs
- Foreign Trade Policy 2015-20
- Central Excise
- Service Tax
- VAT/CST
Regulatory

Foreign Exchange Management Act (FEMA) 1999
- RBI permitted Foreign Portfolio Investors (FPIs) to invest in unlisted debt instruments.
- RBI issued relaxed ECB guidelines for start-ups.
- Simplification of ECB guidelines - Extension and conversion of unpaid ECBs.
- Amendment in conditions with respect to a person resident outside India entering into exchange traded currency derivatives.
- RBI permitted issue of shares or convertible debentures against pre-incorporation/pre-operative expenses.

Foreign direct investment (FDI) Policy
- Amendment of FDI linked conditions prescribed for pension sector.
- RBI permitted FDI in unregistered Asset Reconstruction Companies (ARCs).
- Applicability of Foreign investment in “Other Financial Services”.

In the press

Compilation of alerts
- Direct Tax
- Indirect Tax
### What's new

- All about GST in India
- India focus on Base Erosion and Profit Shifting (BEPS)
- Working outside India
- Corporate Secretarial Services (CSS)

### Useful links

- India Tax Insights magazine
- Tax Insights magazine
- India Tax Webcast
- Tax Library
- [Follow us on Social Media:](#)
- Tax Insights Linkedin Group
- Indian Tax Insights Blog
- [www.ey.com](http://www.ey.com)
Reported decisions supported by our Litigation team

Mumbai ITAT holds withholding not applicable on legal fees payment for foreign branch setup

In case of Kotak Mahindra Bank Ltd. [TS-528-ITAT-2016(Mum)], the taxpayer paid fees to a UK LLP for legal services in relation to the acquisition of a banking company and setting up of a US branch. The ITAT held that since the payments to the UK LLP were made for earning a new source of income or earning income from business outside India, by way of acquisition of a banking company or setting up of a branch outside India, such payments would be covered by the source rule exclusion under the ITL. Further, it was held that Article 15 of the DTAA dealing with Independent Personnel Services (IPS) is a specific provision dealing with legal services and overrides the general provisions of Article 13 (Royalty/FTS) dealing with technical and consultancy services. However, in absence of satisfaction of the conditions specified in Article 15, such income would not be taxable in India under the DTAA.

Additional, AAR held that since the PE of the taxpayer in India had played a significant role in the procurement of offshore supply of the goods from designing, selecting and assisting in delivering goods to site, the whole of the contract price is liable to tax in India.

Significant Supreme Court rulings

SC rules on transfer of business as going concern for specific value of assets and liability is not slump sale

In the case of Vatsala Shenoy v. JCIT [TS-562-SC-2016], the issue before the SC was whether transfer of business of a dissolved partnership firm on a going concern basis to a group of erstwhile partners under a court direction constituted a slump sale and hence not liable to capital gains tax. Additionally the SC was also required to consider on the issue of whether capital gains are chargeable to tax in the hands of individual partners or in the hands of the firm.

The SC held that since the winding up affairs of the firm are carried out under court direction and the reserved price for the purposes of bidding among the partners is determined based on values of individual assets of the firm, the transfer of business as a going concern is for specific value of assets and liability and hence the transaction cannot be treated as slump sale. Transfer of individual assets was thus held to be liable to capital gains tax.

As regards the issue of determining taxable entity, the SC held that once a partnership is dissolved, the partners become entitled to a specific share in the assets of the firm proportionate to their share in the profits of the firm, and on the transfer of assets of the firm, each partner is entitled to receive his share in net value of the assets of the firm. Hence, the SC concluded on facts that each partner was liable to capital gains tax in his own right.
Presumptive taxation provision not applicable where gross receipts exceed eligible limit

In the case of Awasthi Traders v. CIT [TS-520-SC-2016], the tax authority denied depreciation to the taxpayer, by invoking the presumptive taxation provision despite the fact that the turnover of the taxpayer exceeded the specified limit beyond which presumptive taxation provision does not apply. The tax authority applied the presumptive provision for the reason that the expenses claimed by the taxpayer were not properly evidenced and the turnover declared by the taxpayer was not acceptable. As per a specific provision of the ITL, the taxpayer can offer income on a presumptive basis if the taxpayer is engaged in an eligible business and the gross receipts of the taxpayer do not exceed a specified limit, presumptive taxation will absorb the deduction of all expenses and claim for depreciation. In the case of the taxpayer, the SC, however, held that since the gross receipts of the taxpayer had exceeded the specified limit, the presumptive taxation provisions would not be applicable to the taxpayer and therefore the taxpayer was entitled to claim depreciation.

Chennai Tribunal allows depreciation on the cost of brand acquired from a company that subsequently amalgamated with the taxpayer

In the case of Emerald Jewel Industry India Ltd v. ACIT [TS-573-ITAT-2016 (Chny)], the taxpayer first acquired a brand from an Indian company (I Co) and subsequently the I Co amalgamated with the taxpayer. The taxpayer claimed depreciation on the brand acquired. The tax authority denied the claim of depreciation by contending that, as a result of the amalgamation, all the intangible assets were transferred to the taxpayer and the payment for the acquisition of the brand before amalgamation was a colorable device for the purpose of claiming depreciation on the brand value. The Tribunal held that merely because there was a subsequent amalgamation, it could not be construed as if the taxpayer had not acquired any brand. The Tribunal further ruled that since the brand name was acquired by the taxpayer by making payment through the banking channel before amalgamation, the taxpayer should be eligible for depreciation on the acquisition of the brand name.

Rulings on availability of depreciation

Madras HC denies higher rate of depreciation for machineries that were computerized

In the case of Dinamalar [TS-492-HC-2016(Mad)], the taxpayer, engaged in the business of publishing a daily newspaper, claimed higher depreciation at the rate of 60%¹ as applicable for “computers” for certain machineries that were computerized in nature. The tax authority granted depreciation on such computerized machineries at the general rate of 15% applicable to plant and machineries contending that the machineries were computerized but not “computers” by themselves. The First Appellate Authority (FAA) and Tribunal confirmed the tax authority’s view by applying a “functional” test to hold that a machinery cannot be classified as “computer” merely because it is operated through a computer. The Madras HC upheld the orders of lower authorities holding that no substantial question of law arose therefrom.

Chennai Tribunal allows depreciation on the cost of brand acquired from a company that subsequently amalgamated with the taxpayer

In the case of Emerald Jewel Industry India Ltd v. ACIT [TS-573-ITAT-2016 (Chny)], the taxpayer first acquired a brand from an Indian company (I Co) and subsequently the I Co amalgamated with the taxpayer. The taxpayer claimed depreciation on the brand acquired. The tax authority denied the claim of depreciation by contending that, as a result of the amalgamation, all the intangible assets were transferred to the taxpayer and the payment for the acquisition of the brand before amalgamation was a colorable device for the purpose of claiming depreciation on the brand value. The Tribunal held that merely because there was a subsequent amalgamation, it could not be construed as if the taxpayer had not acquired any brand. The Tribunal further ruled that since the brand name was acquired by the taxpayer by making payment through the banking channel before amalgamation, the taxpayer should be eligible for depreciation on the acquisition of the brand name.

¹ As per the Income Tax Rules, depreciation at the rate of 60% applies to computer and computer software
Delhi Tribunal allows depreciation on assets that were not used for business in the current year

In the case of DCIT v. Galileo India Pvt. Ltd. [TS-522-ITAT-2016(DEL)], the taxpayer had claimed depreciation on assets relating to a business that had ceased to exist in one of the earlier years, whereas the taxpayer continued its other business. It appears that the assets of the discontinued activity and the assets of the continued business were part of a single block of assets. The tax authority contended that the taxpayer could not claim depreciation on the assets that were not used for the purpose of business during the year to minimize the taxable income from other business. The Delhi Tribunal relied on the Delhi HC’s ruling in the case of Yamaha Motor India Pvt. Ltd and held that once an asset becomes a part of a block of assets, it loses its individual identity and once any asset of the block is put to use, the depreciation on that block of asset can be claimed until the entire block ceases to exist, and in this case the block of assets did not cease to exist. The HC added that even a passive user of the assets is also entitled for depreciation. Accordingly, the HC allowed depreciation on the assets of a business that had ceased to exist.

Rulings on capital gains

AAR affirms the availability of India-Mauritius Double Taxation Avoidance Agreement (DTAA) benefit on the sale of shares of and Indian company, distinguishes the Bombay HC ruling of Aditya Birla Nuvo

In case of Shinsei Investment Ltd. [TS-473-AAR-2016], the taxpayer, a Mauritian company, along with its Japanese parent company (Parent Co), entered into a share purchase agreement (SPA) for the transfer of shares of Indian companies (I Cos) in which the taxpayer held more than 75% stake. I Cos were the asset management and trustee of a mutual fund in India. By placing reliance on the Bombay HC ruling in the case of Aditya Birla Nuvo v. DCIT (Aditya Birla Nuvo case) and based on the involvement of the Parent Co in the SPA, the tax authority contended that the Parent Co was in effective control of the transaction and the taxpayer was merely a “permitted transferee” as stated in the SPA. Accordingly, the tax authority challenged that the benefit of the DTAA should not be available.

The AAR distinguished the Aditya Birla Nuvo case on facts. It noted that the taxpayer had subscribed to shares of I Cos in its own name and had also made payment for the shares from its own account. The Parent Co was made a party to the SPA only in its capacity as sponsor and settler of the mutual fund, to comply with the applicable regulations. Accordingly, the taxpayer was eligible to claim the benefit under the DTAA, based on which capital gains arising to it from the sale of shares of an Indian company were taxable only in Mauritius. Furthermore, in view of the exemption, the taxpayer is not required to file a return of income in India. Also, provisions of minimum alternate tax (MAT) under the ITLs do not apply to foreign companies.

AAR rules on the economic substance of a special purpose Mauritius company and its control and management in India

In the case of Mahindra-BT Investment Company (Mauritius) Ltd. [TS-479-AAR-2016], the issue before the AAR was of the taxability of capital gains arising to a Mauritius company from the sale of shares of an Indian company (I Co) to a US company (US Co), under the India-Mauritius DTAA. The tax authority contended that the taxpayer was incorporated solely for the purpose of obtaining benefits under the DTAA for facilitating tax-neutral transfer of the I Co’s shares to the US Co, and the real transaction was between the I Co and the US Co.
Furthermore, the I Co was a resident in India since its control and management were situated in India. Hence, capital gains arising on sale of the I Co's shares were taxable in India.

The AAR observed that the option granted to the US Co five years back (pursuant to which the US Co acquired the shares of the I Co) was a normal commercial transaction and cannot be regarded as unusual or abnormal, and hence rejected the tax authority's contention that the taxpayer was a special purpose vehicle incorporated solely to sell the shares of the I Co and did not have any other economic substance. Based on the minutes of board meetings of the taxpayer, the AAR observed that important decisions in respect of all its financial matters were taken in Mauritius by the board of directors of the taxpayer. It was, therefore, held that the control and management of the affairs of the taxpayer were situated only in Mauritius and hence it did not qualify as a resident of India. Accordingly, capital gains arising to the taxpayer, which held a valid Tax Residency Certificate, would be taxable only in the resident country, i.e., Mauritius, as per the DTAA.

(Click here for EY Tax Alert dated 8 September 2016)

Mumbai ITAT rules that consideration for the grant of call option results in capital gains though not taxable under the India-Singapore DTAA

In the case of Praful Chandaria [TS-482-ITAT-2016(Mum)], the taxpayer was a tax resident of Singapore and held certain shares of an Indian company (I Co). The taxpayer entered into a call option agreement (COA) with a Mauritius company (Mau Co), granting an option to the Mau Co to buy the shares of the I Co at a strike price of US$1 within a period of 150 years. The taxpayer also executed an irrevocable power of attorney and an undertaking that he would not, at any time, revoke the undertaking and transfer the shares in any other manner. During the year under consideration, the taxpayer received consideration for the COA that was claimed to be a non-chargeable receipt.

While confirming that under normal circumstances mere grant of a call option does not result in the transfer of the actual asset, the Mumbai ITAT held that in view of the peculiar facts of the case, a valuable and substantive right in the shares of the I Co, separate from shares, was transferred by the taxpayer. However, the capital gain from the transfer of such rights was held to be not taxable in India under the capital gain provisions of the India-Singapore DTAA.

(Click here for EY Tax Alert dated 8 September 2016)

No capital gains taxation on land development agreement in the absence of transfer of possession of land

In the case of ACIT v. Jawaharlal L. Agicha [TS-551-ITAT-2016(Mum)], the taxpayer owned a land that was occupied by slum dwellers and on which construction was not permissible. The taxpayer entered into a development agreement with a developer wherein the developer had to relocate the slum dwellers and obtain permission from the competent authorities and also make other legal compliances. As a part of the agreement, the taxpayer would receive a part of the developed land and the balance portion would be retained by the developer. The taxpayer also received part of the consideration in cash for entering into a development agreement. The tax authority contended that the consideration received by the taxpayer would be taxable as capital gain since the taxpayer had transferred the land to the developer. Noting the terms of development agreement, the ITAT held that the taxpayer had not transferred the possession of the land, since the possession of the land could be transferred only on obtaining the requisite permission from the competent authorities, which was not obtained. Further, since the development agreement was not registered, the ITAT ruled in favor of the taxpayer and held that the consideration received by the taxpayer as a part of the development agreement would not be taxed as capital gains.

(Click here for EY Tax Alert dated 8 September 2016)
Rulings on concealment penalty

Bombay HC deletes concealment penalty based on bonafide belief of taxpayer on non-taxability of income

In the case of DIT v. Koninklijke DSMNV [TS-519-HC-2016(BOM)], the taxpayer was a tax resident of the Netherlands and had received income for rendering certain corporate services to its Indian affiliates. The taxpayer contended, based on its interpretation of the India-Netherlands DTAA and judicial decisions, that the income received from its affiliates was not taxable in India. Accordingly, the taxpayer filed a nil return of income. The tax authority held the income to be taxable in India as fees for technical services and further imposed a concealment penalty on the taxpayer.

The Bombay HC held that where the issue is debatable, then mere making of a claim on the basis of a particular interpretation would not amount to concealment of income or furnishing of inaccurate particulars of income leading to imposition of penalty. The Bombay HC took note of the fact that in earlier years, the taxes withheld by the affiliates were refunded to the taxpayer since the income received for corporate services was held to be not taxable. This supported the bonafide belief of the taxpayer that the income was not taxable and hence the HC deleted the imposition of concealment penalty.

Mumbai ITAT upholds concealment penalty for claiming double deduction of expenses

In case of State Bank of Mauritius [TS-556-ITAT-2016(Mum)], the taxpayer, a Mauritius resident, had claimed 100% deduction of expenses on acquisition of capital assets under the provisions of the India-Mauritius DTAA as well as claimed depreciation on such capital expenditure. The tax authority disallowed the entire 100% deduction and passed a penalty order for furnishing inaccurate particulars. The Mumbai ITAT observed that no judgment or opinion was brought to the notice of the tax authorities indicating that the stand taken by the taxpayer was based on some reasonable basis. Accordingly, it held that the claim made by the taxpayer falls under the category of a “fanciful claims under the garb of interpretation,” and it is not bonafide. Further, the ITAT upheld the tax authority’s penalty order stating that if a taxpayer interprets the provisions of the law without any legal basis and resultantly deprives the state of its due taxes, it is a case of filing of inaccurate particulars. The ITAT also clarified that mere recording of the notes in the return cannot absolve and protect the taxpayer who had not furnished accurate particulars.

Taxability of offshore supply

Delhi ITAT rules offshore supply of goods is not taxable in India since the supply of goods and title in goods were passed outside India

In case of Ion Geophysical Corporation [72 Taxmann.com 298], the taxpayer had entered into a contract with Oil and Gas Corporation Limited (ONGC) for the supply of materials and equipment in India, installation and commissioning of that equipment, and provision of training to the employees and engineers of ONGC. The issue before Delhi ITAT was to determine the taxability of offshore supplies in India. In this regard, the ITAT observed from the terms of contract that though the taxpayer had entered into a single contract with multiple scopes of work, the whole contract was divisible into different components and consideration was separately contemplated for each limb of the contract. Further, the ITAT stated that if the title in goods is passed
offshore, then no income could be attributed from this part of the contract in India. The ITAT proceeded to examine whether the title of goods is passed offshore to determine the taxability of the amount received in India for the supply of goods. In this regard, the ITAT observed from the terms of the contract that the goods were supplied on freight on board (FOB)/free carrier (FCA) basis. The terms of the FOB/FCA reveal that the seller fulfils his obligations to deliver the goods when he has handed over the goods, cleared for export, into the charge of the carrier named by the buyer at the named place of point. This means that the buyer is to bear all costs and risks of loss of or damage to the goods from that point. Thus, irrespective of whether the goods were transported by ship or by air, the title of the goods was transferred outside India and hence no part of consideration could be attributed to supplies in India.

Is there a PE?

Chennai ITAT rules fixed PE and agency PE created due to the presence of director and affiliate company in India

In the case of Carpi Tech SA [TS-587.ITAT-2016(Chny)], the taxpayer, a Swiss entity, had undertaken a short duration project to provide geo membrane waterproofing work for an Indian customer. For carrying out the project work, an Indian director of an Indian affiliate (I Co) was given work-specific power of attorney (PoA) to undertake certain activities on behalf of the taxpayer. The director of the IC o was also director in the taxpayer company as well the project coordinator for the India project of the taxpayer. Further, the I Co was a representative of the taxpayer for the project undertaken in India and incurred all project-related expenses in India, which were later reimbursed by the Taxpayer.

The ITAT held that the taxpayer had a fixed PE in India at the residence-cum-office of the director that was used for all official purposes in India, including correspondences with India customers, participation in bids, and signing and execution of contracts etc. Given the nature of activities undertaken in India, the ITAT held that there was no significance of a construction PE threshold as a fixed place PE was created. Further, the director played a critical role in the Indian project of the taxpayer from the stage of signing the contract till its execution and he was a dependent agent working almost exclusively for the taxpayer during the relevant period of time. Hence, his activities also resulted in the creation of an agency PE. Further, the I Co also created a PE of the taxpayer since it was the face of the taxpayer in India and it carried out various activities on behalf of the taxpayer. Hence, it was held that the taxpayer had a fixed PE as well as an agency PE in India through the director or I Co.

(Click here for EY Tax Alert dated 7 November 2016)

Other significant decisions

Bombay HC holds share issue expenses not deductible as revenue expenditure

In the case of Hindustan Lever Ltd. v. CIT [TS-516-HC-2016(BOM)], the taxpayer was required to reduce its foreign shareholding for obtaining an industrial license. For this purpose, the taxpayer issued additional shares to some Indian shareholders and reduced the shareholding of foreign shareholders. The expenses incurred on the issue of shares to Indian shareholders were claimed as revenue expenditure by the taxpayer, since the taxpayer claimed that the additional shares were issued to reduce foreign shareholding in order to obtain industrial license, which would in turn allow the taxpayer to expand its business and possibly increase its profitability. Further, the taxpayer claimed that the interest earned on share application money should be adjusted against the share issue expenses and not taxed separately.

Bombay HC denied deductibility of expenditure incurred for the issue of fresh capital relying on the SC ruling in the case of Kodak India Ltd [253 ITR 445] holding such expenses to be capital in nature. On the second issue, Bombay HC relied on the Gujarat HC ruling in the case of Shree Rama Multi Tech Ltd [214 Taxman 650] and held that since the taxpayer was statutorily required to keep the share application money in a separate account and since earning of interest was linked to raising of share capital, hence the interest earned on the share application money was adjustable against the expenditure incurred for issue of share capital.
Delhi HC rules non-refundable lump sum fees received by doctor for five years taxable on receipt basis

In the case of CIT v. Dr. Aman Khera [TS-447-HC-2016(Del) ITA No. 653/ 2012 (Del)], the issue before Delhi HC was whether a non-refundable lump sum amount received by the taxpayer for rendering of services over a period of five years was taxable upfront in the year of receipt or spread over the period of rendering of service. The taxpayers involved were three family members (out of which two were doctors) attached to a hospital. The management of the hospital was taken over by an unrelated corporate entity (company) for 25 years for a monthly consideration. The company separately paid a lump sum consideration to the taxpayers indicating that they were appointed as management consultants for a period of five years for the chain of hospitals run and managed by the company and that the sum paid was a consolidated advance amount net of tax deduction but the formal agreement was entered after four years. The HC held that the fees received by the taxpayers were taxable on an upfront basis in the year of receipt considering that the taxpayers were following the cash method of accounting and the fees were non-refundable in nature from claiming the losses. Furthermore, on consideration of overall facts, Gujarat HC held that while the taxpayer discontinued one activity and commenced another, it continued to be in business and therefore loss made in the earlier activity can be permitted to be carried forward and set off against the profits of the new activity.

Gujarat HC rules that income earned by a Singapore shipping company will be eligible for relief under shipping income article and not be restricted by the Limitations of Benefit (LOB) clause of the India-Singapore DTAA.

In case of M.T. Maersk Mikage [72 taxmann.com 359 (Guj)], the issue before Gujarat HC was whether shipping income article was inoperative by virtue of the LOB clause in the India-Singapore DTAA. As per the provisions of the India-Singapore DTAA, if an income was taxable in Singapore on the basis of receipt or remission and not by reference to the full amount of income accruing, the LOB clause would apply and dependent on the facts of the case, exemption under the shipping article would be excluded either in whole or in part.

In the facts of the case, it was certified by the Singapore tax authorities that the income in question derived by the taxpayer would be considered as income accruing in or derived from the business carried on in Singapore and such income, therefore, would be assessable in Singapore on an accrual basis. The HC held that the essence of the LOB clause is that in case certain income is taxed by a contracting state not on the basis of accrual but on the basis of remittance, applicability of the shipping income article would be ousted to the extent such income is not remitted. This clause does not provide that in every case of non-remittance of income to the contracting state, the shipping income article would not apply irrespective of the tax treatment such income is given. The HC concluded that since in the present case the income in question was not taxable in Singapore on the basis of remittance but on the basis of accrual, the very basis for applying the LOB clause would not survive and exemption under shipping income article would be available.

Gujarat HC allows set off of losses of old business against profits of new business

In the case of Master Silk Mills (P) Ltd. v. DCIT [TS-442-HC-2016(Guj)], the taxpayer discontinued the business of silk textiles, commenced some trading activity and later ventured into the business of land development. In tax years 1993–94 and 1994–95 when the ITL did not permit set off of losses of discontinued business, the taxpayer sought to set off losses from the silk textile business against the profits of the land development business. The tax authority denied the taxpayer’s claim on the ground that the land development business had not started when the silk textile business was closed. Gujarat HC reversed the tax authority’s ruling and allowed the taxpayer to set off the losses of the old business against the new business. The HC held that although the nature of business may be different, but that would not disentitle the taxpayer from claiming the losses. Furthermore, on considering the overall facts, Gujarat HC held that while the taxpayer discontinued one activity and commenced another, it continued to be in business and therefore loss made in the earlier activity can be permitted to be carried forward and set off against the profits of the new activity.
AAR rules foreign amalgamation eligible for tax exemption in India by applying the non-discrimination clause

In the case of Banca Sella SPA [TS-468-AAR-2016], the issue before the AAR was on the tax implications arising under the ITL and the India-Italy DTAA on the amalgamation of two Italian companies, which resulted in transfer of a branch office in India to the amalgamated company. The AAR ruled that in the absence of consideration flowing to the amalgamating company, the transfer cannot be taxed as capital gains in India. Furthermore, it was held that tax exemption given in the ITL to capital gains arising from the transfer of capital asset pursuant to an amalgamation in India, should also be extended to the amalgamation of Italian companies by applying the nationality non-discrimination clause of the DTAA. Furthermore, there would be no tax liability in the hands of the amalgamated company on the extinguishment of its shares in the amalgamating company in the absence of any consideration paid to the amalgamated company.

Furthermore, capital gains arising to the Italian shareholders of the amalgamating company were held to be taxable only in Italy under the DTAA. The AAR also concluded that since the value derived by the amalgamating company was less than 50%, it cannot be regarded as deriving substantial value from India and hence the indirect transfer provisions of the ITL were not triggered on the transfer of shares of the amalgamating company.

(Click here for EY Tax Alert dated 31 August 2016)

AAR rules that income earned by a non-profit US university by running a management program in India is not taxable in India

In case of The Regents of the University of California [TS-490-AAR-2016], the taxpayer was a non-profit public benefit corporation registered in the US and planned to launch short-term management programs in India. In this regard, its Indian counterpart was to arrange the place for conducting these short-term programs in India. The AAR agreed with the taxpayer that by virtue of a specific exclusion under the FTS Article of the India-US DTAA with respect to payment made for teaching in or by an educational institution, the income earned by the taxpayer from these programs would not qualify as FTS under the India-US DTAA.

Furthermore, on the objection of the tax authority of such income being business income, the AAR stated that since the taxpayer is registered as a non-profit public benefit corporation in the US, its activities, i.e., providing education, cannot be said to be a business activity and hence Article 7 does not have any application thereto. Without prejudice to this, the taxpayer also did not have any fixed place PE in India since the taxpayer’s Indian counterpart was the one responsible for arranging for the place to conduct the program, which can be at different locations for very short durations.
Hyderabad Tribunal uphold disallowance of expense on failure to prove the genuineness of the payee

In the case of Transport Corporation of India Ltd. V. ACIT [TS-542-ITAT-2016(Hyd)], the taxpayer had made commission payments to an individual after withholding higher tax at the rate of 20%, since the recipient did not have a tax identification number (PAN). In the assessment proceedings, the tax authority disallowed the commission expenditure since the taxpayer could not establish the existence of the recipient. The taxpayer argued that commission expenditure should be allowable since the taxpayer had made the payment through the banking channel and had withheld appropriate taxes. The Hyderabad Tribunal rejected the taxpayer’s argument and ruled that the genuineness of the expenditure and transaction should be provided with proper records beyond doubt. The Tribunal therefore upheld the tax authority’s conclusion and held that unless the taxpayer proves the genuineness of existence of the individual, the transaction cannot be held as genuine merely because relevant taxes have been withheld.
Some key issues where Special Leave Petition (SLP) was accepted by the SC

<table>
<thead>
<tr>
<th>Citation of High Court</th>
<th>Particulars</th>
<th>Ruling of HC</th>
</tr>
</thead>
<tbody>
<tr>
<td>DIT v. National Petroleum Construction Company [TS-558-SC-2016(Del)]</td>
<td>The tax authority preferred an SLP against Delhi HC’s ruling wherein the HC had denied existence of fixed PE as well as construction PE since activities of the project office (PO) were preparatory or auxiliary in nature and the threshold for construction PE was not satisfied</td>
<td>In this case, the taxpayer entered into a contract with an Indian enterprise (ICO) for the installation of petroleum platforms, submarine pipelines and pipeline coating at various sites. While activities relating to survey, installation and commissioning were carried out in India, the platforms were designed, engineered and fabricated overseas.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Based on facts and the available records, Delhi HC held that, the PO of the taxpayer in India was a mere communication link and had no role to play in the execution of the contract. Therefore, the activities of the PO were preparatory and auxiliary in nature and remained excluded from PE.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>On the establishment of a construction PE in terms of Article 5(2)(h) of the India-UAR DTAA, the HC ruled on various aspects of computation of threshold such as the start date for installation PE, activities to be considered, effect of interruption for a substantial period and time spent by independent sub-contractor etc.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Based on the relevant facts, the HC confirmed that in the absence of crossing the nine months threshold, the taxpayer did not have a construction PE in India in terms of the DTAA. (Refer our March 2016 edition for details on the HC ruling)</td>
</tr>
<tr>
<td>DIT v. New Skies Satellite B.V. (242 Taxman 3)(SC) and DIT v. Shin Satellite Public Co. Ltd. (Special leave Petition No. 15426/2016)</td>
<td>The tax authority preferred an SLP against Delhi HC’s ruling wherein the data transmission service fee was held to be not a royalty payment</td>
<td>The issue in these two cases was whether the payment made by the customers to New Skies Satellite (a Netherlands company) and Shin Satellite Public Co. Ltd. (a Thailand company) for providing digital broadcasting services was taxable as “royalty” under the India-Netherlands and India-Thailand DTAA and hence not taxable in India.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>The HC relied on its own ruling in the case of Asia Satellite Telecommunication Company Ltd. and held that income from data transmission services does not amount to the use of secret process or use of any equipment. Accordingly, income from such services does not amount to royalty under the India-Netherlands or India-Thailand DTAA and hence not taxable in India.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>The HC also observed that the amendments to expand the definition of “royalty” under the ITL cannot be read into a DTAA.</td>
</tr>
<tr>
<td>DIT v. Copal Market Research Limited [TS-552-SC-2016(Del)]</td>
<td>The tax authority preferred an appeal against Delhi HC’s order setting 50% at threshold for constituting “substantial value” of asset for the purpose of indirect transfer provisions under the ITL prior to amendment made with effect from tax year 2015–16.</td>
<td>In this case, shares of the Indian and US entities were transferred by Mauritius companies in a series of transactions.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Under the indirect transfer provisions of the ITL, sale of shares of an overseas entity are taxable in India if it derives “substantial value” from underlying assets in India.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>In the absence of the specific provision under the ITL providing a threshold for establishing “substantial value,” at that point in time, the HC ruled that the requirement of “substantial value” for indirect transfer provisions under the ITL was met if the underlying value of Indian assets exceeded 50% of the total value of the overseas entity.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Further, having regard to the facts of the case, the HC held that the corporate veil of the Mauritius companies cannot be pierced since the entities had an independent corporate personality, and business purpose, and were not a device for avoiding Indian tax. (Refer EY Tax Alert dated 28 August 2014 for details on HC ruling)</td>
</tr>
</tbody>
</table>

4 ITA No. 131 to 134 of 2003. Refer EY alert dated 2 February 2011
Some key issues on which the SLP was dismissed by the SC

<table>
<thead>
<tr>
<th>Citation</th>
<th>Particulars</th>
<th>Ruling of HC</th>
</tr>
</thead>
</table>
| ACIT vs. P&O Nedlloyd Ltd. & Ors | Taxpayer preferred an SLP against Madras HC’s order holding rental income derived from leasing of commercial property as house property income. | ▶ In this case, the petitioners, being corporate partners of a UK partnership, had filed a return of income (ROI) and claimed the benefits of UK DTAA on the income of the UK partnership. A separate ROI of the UK partnership was not filed.  
▶ The tax authorities contended that the income of the UK partnership has escaped assessment. Further, since the UK partnership was not taxable in the UK at an entity level, it did not qualify as a “person” under UK DTAA to avail DTAA benefits. Accordingly, a reassessment notice was issued to the UK partnership.  
▶ The HC acknowledged that the UK partnership is a taxable unit distinct from its partners. Therefore, the tax authority was justified in issuing a separate notice to the UK partnership.  
▶ However, the HC held that a UK partnership qualifies as a “firm” under the provision of the ITL and hence satisfies the requirement of qualifying as a “person” on the application of Article 3(2) of the UK DTAA. Therefore, it is eligible to avail benefits of UK DTAA. |

Decisions on royalty/fees for technical services (FTS)

<table>
<thead>
<tr>
<th>Name of decision</th>
<th>Description of payment</th>
<th>Ruling</th>
</tr>
</thead>
</table>
| Ashok Piramal Management Corp. Ltd. 74 taxmann.com 111 (Mum ITAT) India-France DTAA | Payment for rendering due diligence services | ▶ The taxpayer paid professional fees to a French non-resident entity for rendering due diligence services. The taxpayer contended that since the services were rendered by the French service provider outside of India, such amount was not taxable in India and hence taxes were not withheld.  
▶ On the other hand, the tax authority contended that by virtue of retrospective amendment to the ITL, income received from services rendered outside India was taxable in India as FTS. Accordingly, upon failure to withhold taxes, the tax authority disallowed deduction of such payment in the hands of the taxpayer.  
▶ The ITAT held that withholding tax obligations are to be discharged in the light of the law as it stands at that point of time. Retrospective amendment does not create any liability upon the taxpayer to withhold taxes if the payment was made much before the retrospective amendment.  
▶ In this case, the payment made by the taxpayer was much before the retrospective amendment was introduced in the ITL. Since the taxpayer was not liable to withhold taxes at the time of payment to the French service provider, the disallowance of such payment was factually and legally unsustainable. |
<table>
<thead>
<tr>
<th>Name of decision</th>
<th>Description of payment</th>
<th>Ruling</th>
</tr>
</thead>
</table>
| Stempeutics Research Pvt. Ltd. [TS-560-ITAT-2016 (Bang)] India-Malaysia DTAA | Payment for research and development (R&D) | ▶ The taxpayer and its Malaysian subsidiary entered into a tri-patriate agreement with an Indian company (I Co) for carrying out R&D work for product development. As per the MOU, the I Co made payments toward product development fees to the taxpayer to be utilized by it for clinical trials, R&D and operational expenditure in India as well as Malaysia. The taxpayer was required to reimburse the expenditure of the Malaysian subsidiary out of it.  
▶ The tax authority contended that such payment by the taxpayer to the Malaysian subsidiary was in nature of FTS under the ITL as well as DTAA.  
▶ Considering the terms of the MOU, the ITAT held that conducting clinical trials and R&D was a technical service and is covered within the ambit of FTS under the India-Malaysia DTAA.  
▶ The ITAT, further, held that though the taxpayer has reimbursed the expenses to its subsidiary, once the payment qualifies as FTS, then such payment is taxable on gross basis under the DTAA and the element of profit is irrelevant.  
▶ Accordingly, the ITAT held that the taxpayer was liable to withhold taxes on reimbursement made to its Malaysian subsidiary. |
| ABB FZ-LLC [2016] 75 taxmann.com 83 (Bangalore ITAT) India-UAE DTAA | Services rendered under the service agreement, although the nature of service is not discernible from the text of the decision | ▶ The taxpayer provided certain services to its Indian group entity that qualified as FTS in the ITL; however, the relevant India-UAE DTAA did not have any provision on FTS.  
▶ The tax authority contended that in the absence of an FTS article under the DTAA, provisions of the ITL would govern the taxation and hence the payments would be taxable in India.  
▶ Relying on its earlier decision in case of IBM India Private Limited5, the ITAT concluded that in the absence of the provision in the DTAA to tax FTS, it would be taxed under the business profits article or other income article, based on the fact of the case.  
▶ In the given case, since the services provided by the taxpayer were in the nature of business income, they would be governed by the business article of the DTAA and hence would not be chargeable to tax in India since the taxpayer did not have a PE in India. |
| International Management Group (UK) Ltd. [TS-545-ITAT-2016 (Del)] India-UK DTAA | Providing services related to assistance in the establishment, commercialization and operation of the Indian Premier League (IPL) events | ▶ The taxpayer had entered into a contract with the Board of Cricket Control in India (BCCI) for providing services related to assistance in the establishment, commercialization and operation of the IPL events.  
▶ The taxpayer rendered services through its employees in India and, thus, triggered a service PE under the India-UK DTAA. However, a part of the services was rendered in South Africa, as certain IPL matches were relocated to South Africa.  
▶ The ITAT held that profits, only to the extent of the activities carried on by the taxpayer through its service PE will be taxable as business profits under the India-UK DTAA and the balance activities, which are not at all connected with the activities of the service PE, will be taxed as FTS under the India-UK DTAA.  
▶ Under the provisions of the ITL, the ITAT ruled that the whole amount was taxable as FTS as the services provided by the taxpayer were utilized by the BCCI for carrying on business in India and the source of income of the BCCI was in India. Accordingly, the services did not fall under the source rule exclusion applicable to FTS under the ITL.  
(Click here for EY Tax Alert dated 12 October 2016) |

---

5 IT(IT)A Nos. 489 to 498/ Bang/ 2013
<table>
<thead>
<tr>
<th>Name of decision</th>
<th>Description of payment</th>
<th>Ruling</th>
</tr>
</thead>
</table>
| Foster Wheeler (G.B.) Limited [TS-491-AAR-2016] India - UK DTAA | Payments made to third-party service providers outside India for services in connection with expatriate movement to India and payments made to a foreign group entity for support services | ► The taxpayer had set up a PO in India to carry out a contract with Indian Oil Corporation Limited.  
► The taxpayer had made certain payments to third-party service providers outside India for services in connection with expatriate movement to India in relation to the PO, and such payments were in the nature of travel costs, vaccination costs etc.  
► Further, a foreign group entity of the taxpayer also provided certain support services and charged the taxpayer under the Inter Company Agreement.  
► The tax authorities argued that since the invoices raised on the third parties and on the group entity mention the description as “engineering services,” the payment was taxable as FTS under the India-UK DTAA.  
► However, the AAR ruled as under:  
  ► The mention of “engineering service” on the invoice was for the purpose of identifying the project that the support services relate to.  
  ► The services rendered by third parties and the group entity were administrative support services rendered from abroad and were in the nature of “managerial services.”  
  ► Such services do not make available any technical skill information or knowledge to the employees of the taxpayer deputed in the India PO.  
  ► Thus, AAR held that the applicant was not liable to withhold taxes on such payments made abroad. |
| Outotec Oyj [TS-569-ITAT-2016(Kol)] India-Finland DTAA | Providing IT services and other support services such as repairs and supervisory services to its group entities in India | ► The taxpayer, in this case, provided IT and other support services to its group entities in India.  
► Relying on the Memorandum of Understanding to the India-US DTAA, the Kolkata ITAT held that merely because the provision of the service may require technical input by the person providing the service, it cannot be said that technical knowledge, skills etc. are made available to the person purchasing the service.  
► The ITAT held that the IT services rendered by the taxpayer to the Indian group entities did not make available any technology or technical knowhow, skills etc. to its Indian group entities.  
► Further, the ITAT also held that the repair and supervision services provided to some Indian entities also did not satisfy the make available test, as these were routine repairs and supervisory services without involving any transfer of technology or skill or experience. |
CBDT notifies buyers to be excluded from applicability of “tax collection provisions” applicable to cash transactions for sale of goods or provision of services

In relation to cash transactions, the Finance Act 2016 (FA 2016) obligated the seller to collect tax at source at the rate of 1% on consideration received in cash from the buyer if the transaction value exceeds INR0.2 million. FA 2016 also provided that such requirement will not apply to such classes of buyers who fulfill such conditions as may be prescribed. The CBDT, in an earlier Circular No. 22/2016 dated 8 June 2016, mentioned that the requirement to collect tax at source would not apply if the sale of goods or provision of services is made to the following category of persons:

- Government
- Embassies, consulates, high commissions, legation or commission, and trade representation, of a foreign state

The CBDT has now formally notified the aforesaid classes of buyers for whom the requirement to collect tax at source on cash transactions would not apply. Accordingly, the sellers will not be required to collect tax at source for cash transactions with buyers falling within the above specified category.

CBDT provides clarifications on Direct Tax Dispute Resolution Scheme, 2016

CBDT issued a circular, which contained clarifications on various issues relating to the operation of the Direct Tax Dispute Resolution Scheme, 2016 (Scheme). The clarifications touch upon aspects such as eligibility of a taxpayer to file declaration under the Scheme, quantification of amount payable under the Scheme and procedural compliances required by the taxpayer in connection with the Scheme, etc.

(Click here for EY Alert dated 13 September 2016)

CBDT notifies rules for deduction of amount paid for acquiring spectrum rights

A new section was inserted in the ITL vide FA 2016, which provided for the deduction of the amount paid for acquiring spectrum rights over the period for which the right to use the spectrum is in force. However, the deduction provided under the new section was made subject to the satisfaction of certain conditions that were proposed to be prescribed in this regard. Recently, the CBDT, the apex administrative body of direct taxes in India, has issued rules as empowered under the new section.

The rules state that where the taxpayer has opted to make upfront payment for acquiring spectrum rights and it is allowed by the Department of Telecommunication (DOT), deduction shall be available upon actual payment made by the taxpayer over the years for which the spectrum rights are in force. In case the taxpayer opts for making a deferred payment and it is permitted by the DOT, the deduction will be available on such amount that would have been paid by the taxpayer had it opted for full upfront payment. Further, the rules also provide that upon cancellation of the spectrum allotment, the deduction available to the taxpayer will be limited to the actual payment made, on a proportionate basis up to the date of termination of allotment of spectrum rights.
CBDT issues draft Exit Tax Rules for charitable organizations inviting comments from stakeholders

New provisions were inserted in the ITI vide FA 2016, which provide for taxation of charitable trusts or institutions on their winding up, merger, dissolution or conversion into non-charitable organizations. Under these provisions, tax is levied on charitable institutions or trusts at the maximum marginal rate on the accreted income of the trust or institutions on a specified date in case of the specified circumstances laid down. The term “accreted income” is defined to mean the fair market value of the assets held by the trust as reduced by liabilities computed in accordance with the method of valuation prescribed.

In deference to the powers conferred, the CBDT issued draft rules, which provide for the valuation mechanism. Comments and suggestions of stakeholders and general public were invited on the rules.

(Click here for EY Alert dated 26 October 2016)

CBDT notifies additional conditions under newly inserted Explanation 5 to Section 2(19AA) dealing with tax neutrality of demerger of erstwhile PSUs

Recently, Taxation Laws (Amendment) Bill, 2016 expanded the scope of definition of “demerger” by inserting Explanation 5 under Section 2(19AA) of the ITL to include within its ambit the splitting up or reconstruction of an “erstwhile” public sector company (PSU) pursuant to the condition attached to the transfer of its shares by the Central Government (CG) at the time of disinvestment.

Explanation 5 also empowered the CG to specify certain conditions that taxpayers would be required to fulfill to fall under the expanded definition of “demerger.” In lieu of such powers, CBDT has released a notification providing additional conditions under Explanation 5. The Notification provides that the reconstruction or splitting up of a company that ceased to be a PSU as a result of transfer of its shares by the CG, into separate companies, shall be deemed to be a demerger under the ITL if the following conditions are fulfilled:

- Such transfer give effect to the condition agreed in the shareholder agreement as well as the share purchase agreement
- The resulting company to which the asset is transferred is a PSU

CBDT directs tax authorities to follow the Circular clarifying quantum of disallowance upon failure to withhold taxes on payments made to a non-resident

Under the provisions of the ITL, any payer paying to a non-resident, interest or any other sum chargeable to tax in India is required to withhold taxes therefrom at the rates in force. Failure to comply with withholding tax results in disallowance of the payment under the ITL in computation of the business income of the taxpayer.

Earlier, the CBDT had issued an Instruction clarifying that tax is to be withheld only on the portion representing the sum chargeable to tax and not on the whole sum being remitted to an NR. Further, a Circular was issued to clarify that the quantum of disallowance is interlinked with the sum chargeable to tax in India. Thus, where the taxpayer or the recipient has made an application to the tax authority under the ITL to determine the “other sum chargeable” or where the appropriate proportion of sum chargeable is determined as per the aforesaid Instruction, such sum will form the basis for disallowance of “other sum chargeable” under the ITL.

However, CBDT has noticed that the tax authorities are still taking a position that disallowance should be based on the gross amount of offshore payments such as purchases. Hence, the CBDT has directed the tax authorities vide an Instruction dated 26 October 2016 to take into account the content of the circular of 2015 (circular referred above), which provides that disallowance should be made on the income component of the remittance and not the gross amount remitted while filing further appeal or in their litigation before ITAT/ Courts.

---

09 F. No. 370142/21/2016-TPL dated 24 October 2016
10 Notification No. 93 dated 14 October 2016
11 Instruction No. 2 of 2014
12 Circular No. 3 of 2015
CBDT issues final rules on certain aspects for determining buy-back tax in India

The ITL provides for a levy of buy-back tax (BBT) at the rate of 20% \(^{13}\) of the distributed income arising on buy-back of unlisted shares by a domestic company. “Distributed income” is defined as the difference between the consideration paid by domestic company on buy-back of shares and the amount received by such company on issue of such shares bought back. There was a lack of clarity about the determination of the amount received by a domestic company in different circumstances. Based on the comments received by stakeholders and the public on the Draft BBT Rules, the CBDT released Final BBT Rules on 17 October 2016 \(^{14}\). The Final BBT Rules provide for the methodology for determining the amount received by a domestic company on issue of shares under different circumstances. The Final BBT Rules have come into force with effect from 1 June 2016.

(Click here for EY Tax Alert dated 18 October 2016)

CBDT relaxes deadline for closure of financial accounts under FATCA

Under the Indian Income Tax Rules prescribed for FATCA compliance, financial institutions need to obtain self-certification and carry out due diligence procedure on or before 31 August 2016 in respect of all individuals and entity accounts opened between 1 July 2014 and 31 August 2015. Upon failure to obtain so, the financial accounts are required to be closed and to be reported if it is found to be a “reportable account”.

In view of the difficulties that may arise to different stakeholders following the “closure” of financial accounts, the CBDT has issued a press release \(^{15}\) stating that the financial institutions may not close the accounts by 31st August 2016 in respect of which self-certifications have not been obtained and the revised timelines for completing due diligence in respect of such accounts will be notified in due course.

Government of India amends Income Computation and Disclosure Standards (ICDS) and also defers them by one year to tax year 2016-17

The CG had earlier notified \(^{16}\) ICDS (old ICDS), effective from tax year 2015-16, for compliance by all taxpayers following the mercantile system of accounting for the purposes of computation of income chargeable to income tax under the head “profits and gains of business or profession” (Business) or “income from other sources” (Other Sources). Having regard to concerns raised by stakeholders on challenges arising from implementation of old ICDS and pending revision of tax audit form to capture disclosures required in terms of ICDS, the CBDT had announced deferrment of the effective date of old ICDS by one year, i.e., to be applicable from tax year 2016-17 \(^{17}\). The Press Release had also clarified that an appropriate notification will be issued shortly.

In deference to this, CG rescinded the old ICDS and has now notified \(^{18}\) ICDS (amended ICDS) to be effective from tax year 2016-17 and onwards. These amended ICDS continue to be applicable for compliance by the taxpayers following the mercantile system of accounting and for the purposes of computation of income chargeable to income tax under the Business head or Other Sources head. However, the amended ICDS do not apply to taxpayers who are individuals and Hindu Undivided Family, who are not liable for tax audit under the provisions of the ITL.

The amendments aim to bring the amended ICDS closer to Accounting Standards issued by the Institute of Chartered Accountants of India. Furthermore, changes have also been introduced in Tax Audit Report for including ICDS related disclosure requirements and for quantifying adjustment to profits or loss for complying with the ICDS.

(Click here for EY Tax Alert dated 3 October 2016)

---

\(^{13}\) Excluding applicable surcharge and cess

\(^{14}\) CBDT Notification No. 94 of 2016

\(^{15}\) CBDT Press Release dated 31 August 2016

\(^{16}\) Refer EY Tax Alert dated 2 April, 2015 “Indian Government notifies 10 Income Computation and Disclosure Standards effective from tax year 2015-16 onwards”

\(^{17}\) Refer EY Tax Alert dated 7 July 2016 “Government of India defers effective date of Income Computation and Disclosure Standards by one year to tax year 2016-17

New India-Korea DTAA enters into force and will be effective in 2017

The revised DTAA signed between India and Korea on 18 May 2015 entered into force on 12 September 2016. It will be effective on or after 1 January 2017 for Korea and on or after 1 April 2017 for India. Significant changes in the treaty include changes to PE definition, reduction in withholding tax rates in case of interest and royalties, and the introduction of a recourse to Mutual Agreement Procedure (MAP) in transfer pricing (TP) disputes as well as for bilateral Advance Pricing Agreements (APAs).

*(Click here for EY Global Alert)*

Protocol to DTAA between India and Japan enters into force

On 29 October 2016, the protocol amending the India-Japan DTAA entered into force. The protocol was signed on 11 December 2015. The protocol is applicable from 29 October 2016 for matters relating to the exchange of information and assistance in the collection of taxes. For all other matters, it will apply from 1 January 2017 for Japan and from 1 April 2017 for India.¹⁹

India notifies limited purpose agreement with Maldives

An agreement was signed on 11 April 2016 between India and Maldives for Avoidance of Double Taxation of income derived from International Air Transport. This agreement entered into force on 1 August 2016 and will be effective from 1 August 2016.²⁰

¹⁹ Source: www.ibfd.org
²⁰ Notification No. So 2853(E) [No.77/2016 (F.No.503/4/2013-
So/F1&Tr-k(1)], Dated 2-9-2016
Panama joins international efforts against tax evasion and avoidance

On 27 October, Panama signed the Multilateral Convention on Mutual Administrative Assistance in Tax Matters, making it the 105th jurisdiction to join the world’s leading instrument for boosting transparency and combating cross-border tax evasion.

(Click here for EY Global Alert)

OECD releases report on Tax Policy Reforms

In September 2016, OECD has released a report on “Tax Policy Reforms,” which focuses on the tax reforms that were introduced in 2015 and identifies the most significant tax policy reforms as well as common tax policy trends across groups of countries. The report is primarily based on responses to the OECD Tax Policy Reform Questionnaire, which is sent yearly to all member countries to collect information on tax reforms and their expected revenue effects. Monitoring tax policy reforms across the OECD and understanding the context in which they were undertaken are crucial to inform tax policy discussions but also to support member and non-member countries in their assessment and design of future tax reforms.

(Click here for OECD Report)

Five new jurisdictions sign tax cooperation agreement to enable automatic sharing of country-by-country information

As part of continuing efforts to boost transparency by multinational enterprises, Brazil, Guernsey, Jersey, the Isle of Man and Latvia have signed the Multilateral Competent Authority Agreement for the automatic exchange of Country-by-Country reports, bringing the total number of signatories to 49. This marks a further milestone toward the implementation of the OECD/G20 BEPS Project and a significant increase in cross-border cooperation on tax matters.

Ecuador establishes new rules to treat certain special tax regimes as tax havens

The Ecuadorian Tax Authority has established new rules and conditions under which a country, jurisdiction or location may be considered a special tax regime to which the tax haven rules apply. As per the rules, a regime within a country or jurisdiction will be treated as a tax haven if it satisfies any two or more of the given set of conditions:

- It is established that the economic activity performed under the regime is not substantially developed in the jurisdiction to which the regime applies.
- The effective rate of tax is lower than 13.2%.
- No information is required to be maintained or supplied to the tax authorities on beneficial owners, accounting books and records, bank information or similar financial information.
- The jurisdiction requires information to be maintained for trusts, including information on the trustees, beneficiaries and the percentage of each share in the trust.
- Entities are allowed to hold the capital rights of property holders that cannot prove that they own the property (i.e., substance-over-form doctrine).

Further, the rule also prescribes the situations where a jurisdiction can be considered as a tax heaven.

(Click here for EY Global Alert)

---

India revises Country Chapter comments in UN Practical Manual on Transfer Pricing Issues for Developing Countries

The United Nations (UN) Tax Committee formed a subcommittee on TP at its fifth annual session in 2009 to meet the needs of developing countries in the area of TP. The subcommittee was mandated to prepare a practical manual on TP for developing countries.

The subcommittee has now presented a proposed version of the updated UN TP Manual for the approval of the Committee, with a view to publish the revised UN TP Manual in 2017. The proposed version of the updated TP Manual also contains an update to the India Country practices. The key changes in the India Chapter relate to India's position of BEPS Final Reports on Actions 8, 9, 10 and 13 as well as updated stand in respect of marketing intangibles, location savings, intra-group services dispute resolution etc.

(Click here for EY Global Alert)

Cyprus introduces new rules for application of IP box regime

On 14 October 2016, the Cypriot Parliament approved the laws amending the Income Tax Law with respect to the application of the Cypriot intellectual property regime (the IP box regime). The provisions of the IP box regime have been aligned with the recommendations of the OECD Action 5 of the BEPS plan on Countering Harmful Tax Practices More Effectively, Taking into Account Transparency and Substance.

The new legislation is effective as of 1 July 2016. However, the relevant laws and regulations implementing the new IP Box regime will take legal effect once they are published in the Official Gazette of the Republic.

(Click here for EY Global Alert)

India-US sign first bilateral APA, also resolve 108 MAP cases

The Bilateral Competent Authority Mutual Agreement Procedure (MAP)/Advance Pricing Agreement (APA) meeting between India and the US was held in Washington DC, US, during October 2016. During the meeting, 66 MAP cases relating to Transfer Pricing issues and 42 MAP cases relating to Treaty Interpretation issues were agreed to be resolved successfully. Further, during the meeting, the two Competent Authorities reached an agreement on the terms and conditions of the first ever Bilateral APA involving India and the US.

European Commission proposes corporate tax reform package

On 25 October 2016, the European Commission announced a new package of corporate tax reforms.

The package includes three separate legislative initiatives: (i) a two-stage proposal toward a Common Consolidated Corporate Tax Base (CCCTB), (ii) a Directive on Double Taxation Dispute Resolution Mechanisms in the EU and (iii) amendments to the Anti-Tax Avoidance Directive agreed in June 2016, as regards hybrid mismatches with third countries. The package also contains a Chapeau Communication, outlining the political and economic rationale behind the proposals, as well as impact assessments on the CCCTB and the dispute-resolution mechanism.

(Click here for EY Global Alert)

Cyprus introduces new rules for application of IP box regime

On 14 October 2016, the Cypriot Parliament approved the laws amending the Income Tax Law with respect to the application of the Cypriot intellectual property regime (the IP box regime). The provisions of the IP box regime have been aligned with the recommendations of the OECD Action 5 of the BEPS plan on Countering Harmful Tax Practices More Effectively, Taking into Account Transparency and Substance.

The new legislation is effective as of 1 July 2016. However, the relevant laws and regulations implementing the new IP Box regime will take legal effect once they are published in the Official Gazette of the Republic.

(Click here for EY Global Alert)

India-US sign first bilateral APA, also resolve 108 MAP cases

The Bilateral Competent Authority Mutual Agreement Procedure (MAP)/Advance Pricing Agreement (APA) meeting between India and the US was held in Washington DC, US, during October 2016. During the meeting, 66 MAP cases relating to Transfer Pricing issues and 42 MAP cases relating to Treaty Interpretation issues were agreed to be resolved successfully. Further, during the meeting, the two Competent Authorities reached an agreement on the terms and conditions of the first ever Bilateral APA involving India and the US.

European Commission proposes corporate tax reform package

On 25 October 2016, the European Commission announced a new package of corporate tax reforms.

The package includes three separate legislative initiatives: (i) a two-stage proposal toward a Common Consolidated Corporate Tax Base (CCCTB), (ii) a Directive on Double Taxation Dispute Resolution Mechanisms in the EU and (iii) amendments to the Anti-Tax Avoidance Directive agreed in June 2016, as regards hybrid mismatches with third countries. The package also contains a Chapeau Communication, outlining the political and economic rationale behind the proposals, as well as impact assessments on the CCCTB and the dispute-resolution mechanism.

(Click here for EY Global Alert)

India revises Country Chapter comments in UN Practical Manual on Transfer Pricing Issues for Developing Countries

The United Nations (UN) Tax Committee formed a subcommittee on TP at its fifth annual session in 2009 to meet the needs of developing countries in the area of TP. The subcommittee was mandated to prepare a practical manual on TP for developing countries.

The subcommittee has now presented a proposed version of the updated UN TP Manual for the approval of the Committee, with a view to publish the revised UN TP Manual in 2017. The proposed version of the updated TP Manual also contains an update to the India Country practices. The key changes in the India Chapter relate to India's position of BEPS Final Reports on Actions 8, 9, 10 and 13 as well as updated stand in respect of marketing intangibles, location savings, intra-group services dispute resolution etc.

(Click here for EY Global Alert)
BEPS update:

OECD holds public consultation on attribution of profits to PE and profit splits

On 11 and 12 October 2016, the OECD held a public consultation with respect to the discussion drafts on Additional Guidance on Profit Attribution to Permanent Establishments and on Revised Guidance on Profit Splits that were released earlier this year. The consultation was an opportunity for stakeholders to engage directly with the OECD Secretariat and the country delegates who are responsible for the OECD’s TP work. The OECD Working Party will discuss the comments and next steps at its next meeting in November 2016.

OECD releases multilateral instrument to modify bilateral tax treaties under BEPS Action 15

On 24 November 2016, the OECD released the text of the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (BEPS) under BEPS Action 15 (the multilateral instrument). The text and the related explanatory statement were formally adopted by approximately 100 countries at a ceremony hosted by the OECD following the conclusion of the negotiations during the week of 21 November 2016. The text of the multilateral instrument and explanatory notes are available on the OECD website.

The multilateral instrument under BEPS Action 15 is a key part of the OECD’s effort toward implementation of the tax treaty–related BEPS measures into existing bilateral or regional tax treaties as quickly and consistently as possible.

In general, the multilateral instrument will only enter into force after five countries have ratified it and will apply for a specific tax treaty, after all parties to that treaty have ratified the instrument and a certain period has passed to ensure clarity and legal certainty.

It is expected that the multilateral instrument will be open for signature as of 31 December 2016 and a first high-level signing ceremony will take place in the week beginning 5 June 2017.

Proposed changes to the UN Model Convention and Commentary in light of BEPS reports

Recently a report has been submitted by the UN Subcommittee to the Committee of Experts on International Cooperation in Tax Matters on proposed changes to be made to the UN Model Double Taxation Convention (the Model) in light of recent developments, including a greater awareness of BEPS issues and the OECD/G20’s work in this area.

Some of the significant changes proposed and discussed in the report include:

- A new version on scope of persons covered and also to include a principal purpose test, a third-state PE rule and a savings clause
- A modified version of residency test, including a new new tie-breaker rule for determining the treaty residence of dual-resident
- A modified version of the PE Article to prevent the artificial avoidance of PE status
- A modified Dividend Article to circumvent the abuse of direct ownership threshold of 10% (increased to 25%) to obtain lower rate of withholding on dividends in the source state
- A new article to provide for source taxation of FTS
- A new version of the Capital Gain Article to include trust and partnership interest within the scope of capital gains
- Respective changes to the Commentaries on the Articles to reflect the changes referred to above

These changes are proposed to be reflected in the 2017 update of the Model and commentary thereon.
OECD releases BEPS Action 14 on More Effective Dispute Resolution Mechanisms, Peer Review

The OECD released on 20 October 2016, BEPS Action 14 on More Effective Dispute Resolution Mechanisms, Peer Review Documents, which will form the basis of the MAP peer review and monitoring process under Action 14 of the BEPS Action Plan.

Later, on 31 October 2016, the OECD published the schedule of peer reviews. The schedule covers Stage 1 of the peer review process and catalogs the assessed jurisdictions into eight batches for review. The first batch is scheduled to be launched in December 2016 and comprises the review of Belgium, Canada, the Netherlands, Switzerland, the UK and the US. The assessment reports of the first batch would be published in the second half of 2017. The OECD also invited business representatives to provide input into the peer review process through the completion of a questionnaire.

(Click here for EY Global Alert)
**Customs**

**High Court, Delhi**

**High Court interference not required in relation to findings of facts recorded by the statutory authorities**

Foreign Trade (Development and Regulation Act), 1992; in favor of Revenue

The assessee was granted an advance license under the Duty Exemption Scheme under the Foreign Trade (Development and Regulation) Act, 1992 (FTDR Act). As per the conditions of the license, the appellant was required to complete the export obligation of a prescribed value within a prescribed period. Further, after the prescribed period, the appellant was required to submit all the required documents to establish that the condition as to the value of the export has been fulfilled. Since, the appellant could not furnish the required documents within the prescribed period, show cause notices (SCNs) were issued by the appropriate original authority and an opportunity of being heard was given to the appellant. After due process of hearing, the issue was decided by the original authority against the appellant and imposed penalty.

An appeal filed by the assessee was dismissed by the appellate authority and a subsequent appeal was dismissed by the Review Authority. Being aggrieved, the assessee further filed an appeal before the High Court, who also decided the issue in favor of Authority by referring to Article 226 of the Constitution of India. The High Court observed that the power under Article 226 was only to ensure that the authorities, whose action is subject matter to judicial review, have acted in accordance with the law and not to distribute reliefs, to which the petitioner in accordance with law and rules is not entitled to.

Aggrieved by the ruling of the single judge, the petitioner filed an appeal before the Division Bench.

The Division Bench decided the appeal in favor of Revenue on the following grounds:

- Interference by High Court is not warranted under Article 226;
- It is a fact that the appellant could not furnish the authenticated documents to prove the fulfilment of export obligation under the terms and conditions of the advance license and hence, penalty has been imposed accordingly.
- Based on facts, the allegation that the SCNs were silent about the action proposed has no factual basis.

Rotomac Electricals Ltd. v. Union of India and Anr [2016-TIOL-2780-HC-DEL-CUS]

**High Court, Hyderabad**

**Validity of SCN cannot be challenged once the issue involved therein has been decided by judiciary up to Supreme Court on the ground of doctrine of merger**

Customs Act, 1962

The petitioner had been issued a SCN calling upon them to show cause in relation to classification of goods imported. The issue was decided by the original authority by following due process of law. At every stage of appeal, till the Supreme Court (SC), the same were decided in favor of Revenue.

Thereafter, the petition was filed by the petitioner before the High Court (HC) to treat the SCN as null and void on the ground of non-issuance of SCN by the authority duly authorized by law in this regard. In support of its contention, the petitioner relied on the judgment of Division Bench of Delhi HC in the case of Mangali Impex Ltd. v. Union of India [2016-TIOL:877-HC-DEL-CUS] and the judgment of a Division Bench of the Punjab and Haryana High Court in Rajinder Arora and Others v. Union of India and Ors. [CWP No. 12678 of 2016]. Summarily it was held in both the judgments that it was a proper officer who has been assigned specific functions, could undertake the task of non-levy, short-levy etc. and that if any officer other than the proper officer had undertaken these tasks, and then it would not be valid.

The HC, in both the cases referred above, did not consider the issue from the point of view of a merger. The underlying principle of a doctrine of merger is that there
cannot be more than one decree. Since, the issue involved in the SCN as to classification has been decided by the SC it would not be appropriate to approach the judiciary on the grounds of validity of SCN which was not the ground of appeal in the earlier appeals till SC.

The H C agreed that the contention of the petitioner was perhaps right as a simple statement of a proposition of law, but it is not without exceptions. It further held that the theory of nullity and voidity cannot be extended to such an extent as to lead to such disastrous consequences.

Thus, the petition filed by the petitioner was dismissed by the HC.

Vuppalamritha Magnetic Components Ltd., Secunderabad v. Directorate of Revenue Intelligence, Chennai [2016-TIOL-2789-HC-AP-CUS]

High Court, Hyderabad

Revenue should exercise the rights granted under Section 61(2) of the Customs Act, 1962 in relation to waiver of interest for keeping the goods in customs private bonded warehouse beyond specified period

Customs Act, 1962

The petitioner had imported the goods in 1994—1995 and cleared the same under the bill of entry. Subsequently, those were transferred under a bond to the customs private bonded warehouse under Section 67 of the Customs Act, 1962 (CA).

Litigation between the importer and Revenue resulted in warehousing the imported goods beyond the permitted period of 90 days. With the intention to recover the dues, the goods so stored were sold by Revenue and recovered a substantial amount which was however, marginally less than the liability. Therefore, Revenue demanded the difference with interest. The petitioner paid the tax dues under protest and filed a petition before the HC seeking relief by issuing an order to Revenue to waive the interest by exercising the authority granted under Section 61(2) of CA.

In this regard, the HC observed that the entire goods imported by the petitioner were sold by Revenue to recover a major part of the dues. The demand of differential dues was also settled by the importer. Section 62 of CA empowers Customs authorities to waive the interest amount which may arise on amount dues with effect from the period exceeding 90 days of storing the goods till the actual date of payment. The section also authorizes Revenue to issue notification for a waiver of interest under exceptional circumstances.

In the absence of clear guidelines in this regard, the HC expressed that such discretion may have to be exercised, in an objective manner.

The HC observed that the Chief Commissioner simply went by a decision of the Gujarat HC in Panchsil Exim Private v. Union of India and the plain language of the proviso to Section 61(2). The history of a long drawn litigation was not examined by the authority in detail, resulting in a non-considering payment against a demand of INR5.4 million (approximately).

In view of the fact that the sale of entire goods by Revenue, previously paid dues in part and final payment of dues under protest resulted in excess payment. Hence, the HC allowed the Writ Petition.

Essar Steel Ltd. v. CBEC, New Delhi and Ors. [2016-TIOL-2768-HC-AP-CUS]

Central Excise

Supreme Court

Penalty cannot be reduced by CESTAT, where Section 11AC levies penalty equivalent to duty

Central Excise Act, 1944 in favor of Revenue

The assessee is engaged in the business of manufacturing of Manmade Fabrics (MMF) falling under chapters 54 and 55 of the Central Excise Tariff Act, 1985 (CETA). Based on the intelligence, search was conducted by the Officers of Directorate General of Anti Evasion in the factory premises of the assessee, residential premises of some of its staff and also business premises of different merchant
manufacturers who are connected with the business of the assessee. During the search, it was found that the assessee had indulged in the evasion of excise duty on MMF by resorting to clandestine removals. Further, it was found that there was a shortage of 1,78,351 L. Mtrs of MMF and certain quantities of MMF were not recorded in the lot register with the intention of clearing them without the payment of duty. Further, it was found that the assessee neither maintained correct books of accounts in respect to excisable goods manufactured in the factory nor did it clear the said goods with the correct Central Excise Invoices. After receiving the statements of the Director, Accountant, excise clerk and other concerned staff, three SCN were issued to the assessee for recovery of excise duty in the following manner:

1. Duty demand of INR26 million based on Delivery challans.
2. Duty demand of INR13 million based on duplicate invoices.
3. Duty demand of INR79 million based two diaries seized and on the statement of the assessee of the company.

Being aggrieved by the order, the appellant filed an appeal with CESTAT. In the said appeal, CESTAT set aside the demand of INR79 million on the grounds that two diaries seized were already in the possession of the department in relation to the job charges. Therefore, in such circumstances, the material on record was not sufficient to prove clandestine removal. Therefore, CESTAT reduced the penalty to INR20 million in terms of Section 11AC of the Act.

Being aggrieved by the order of CESTAT, Commissioner of Central Excise and Customs, Surat – I v. Vandana Art Prints Pvt. Ltd. [2016-TIOL-178-SC-CX] filed an appeal with the Supreme Court (SC). In this said appeal, the appellant submitted that the penalty has to be equal to the duty so determined as per Section 11 AC of the Act. On the basis of the said section, a submission made by the appellant was meritorious. However, the adjudicating authority held that the CESTAT cannot reduce the penalty lesser than the duty which has been upheld in the SCN. The duty in respect of two demands comes to INR40 million. Thus, going by the provisions of the Section 11AC of the Act, the penalty should also have been INR40 million and not INR 20 million. Therefore, the Supreme Court allowed the appeal filed by Revenue and held that appellant has to pay a penalty of INR40 million. A sum of INR20 million already paid by the appellant shall be adjusted and the balance amount of penalty shall be paid by the appellant within two months.


High Court, Jharkhand

Processing such as de-coiling, straightening and cutting of TMT coils into TMT bars/rods would not amount to manufacture

Central Excise Act, 1944; in favor of assessee

One of the assessee, is a conversion/external processing agent of another assessee. The assessee, after undertaking activities such as de-coiling, straightening and cutting of TMT coils into TMT bars, delivers the said bars to another assessee. For the said activity performed, the assessee received processing charges as per the agreed terms and conditions. Observing that the end product was priced higher than the TMT coils and noting that TMT coils and TMT bars/rods are covered under different tariff rates, Revenue issued six SCNs to the assesses’ demanding payment of differential duty on account of substantial value addition to TMT bars. Revenue alleged that conversion of TMT coils into TMT bars results into different items falling within sub-heading 7213.90 of the Central Excise Tariff Act, 1985 and the same have been cleared from the factory of castings without the payment of excise duty contravening Sections 4 and 6 of the Central Excise Act, 1944. Subsequently, penalty was also imposed on another assessee along with the interest at the appropriate rate. In this case, CESTAT allowed the appeal filed by the assessee by setting aside the order passed by the adjudicating authority. Being aggrieved by the decision CESTAT, Revenue approached the Jharkhand HC.

The HC examined the definition of ‘manufacture’ under Section 2(f) of the Central Excise Act, 1944 and relied on various judicial pronouncements wherein it was held that, it is a settled principle of law that if no new, different and distinct article emerges with a distinct name, character and use, there is no manufacturing at all. The HC referred to a decision of the Delhi HC in the case of Faridabad Iron & Steel Trader Association v. Union of India [2004 (178) ELT 1099 (Del)] wherein it was held that to ascertain whether a
process amounts to manufacture or not, one has to check whether the change brought by the process changes the original commodity. Mere cutting or slitting of steel sheets does not amount to manufacture because the identity of the product remains unchanged. Every change is not a manufacture and for a change to qualify as manufacturing there must be a transformation and a new and different article should emerge. The HC also relied on the Supreme Court (SC) decisions in case of the Commissioner of Central Excise, New Delhi vs. S.R. Tissues Pvt. Ltd. [2005(181) ELT page A68 (S.C.)] wherein it was observed that since no different and distinct article having different name, character and use had emerged from the process, there was no manufacturing at all. The HC referred to SC ruling in case of Aman Marble Industries Pvt. Ltd. vs. Collector of Central Excise, Jaipur [2003 (157) ELT 393 (SC)] wherein it was held that cutting and polishing stones into slabs did not result in any manufacture of new commodity and the end product remained the same. Therefore, the HC observed that original identity of TMT coils also remains as it was even after being converted into TMT bars and rods. The HC relied on the decision made in Prabhat Sound Studios vs. Additional Collector of Central Excise [1996 (88) ELT 635 (SC)] wherein it was held that the raw material and final product fell under different tariff headings, which does not mean that it automatically amounted to manufacturing. The HC observed that Revenue in the present case failed in proving that the activity performed by castings amounts to manufacture.

Therefore, on the basis of the above judgements, the HC rejected Revenue's contention that mere applicability of different tariff rates does not mean that the two products are different or any new article or product has been emerged. Further, there was neither any section note nor chapter note in this regard, de-coiling, straightening and cutting into sizeable sizes of TMT coil does not amount to manufacture. Accordingly, the HC ruled in favor of the assesses and dismissed Revenue appeals.

CCE, Jamshedpur v. Castings India Inc. & Anr; [TS-393-HC-2016(JHAR)-EXC]

High Court, Allahabad

**Refund allowed to the manufacturer, unjust enrichment not applicable to intermediate products**

Central Excise Act, 1944; in favor of assessee

The assessee was engaged in the manufacture of HDPE/Polypropylene Tapes, fabrics and sacks both laminated as well as un-laminated. The basic raw material used for the manufacture of HDPE/sack and bags is plastic granules, which is classified under chapter 39 of the Central Excise Tariff Act, 1944 (CETA). The assessee filed a classification list categorizing the finished product under chapter 54, 59 and 63 of CETA. However, referring to some CESTAT judgements wherein, it was confirmed that the finished product falls under chapter 39 of CETA. Accordingly, the assessee filed a revised classification list with the Assistant Collector (AC). However, the same was rejected by the AC and ordered to continue classifying the finished product under chapter 54, 59 and 63 of CETA.

Being aggrieved by the order, the assessee preferred an appeal before the Commissioner of Central Excise (Appeals), Allahabad (CCE). However, the said appeal was rejected by CCE. Further, being aggrieved by the order of the CCE, the assessee filed an appeal before CESTAT who granted relief to the assessee and set aside the appellate order.

Based on the relief order received by the CESTAT, the assessee submitted an application for a refund claim of excise duty paid on tapes of INR18.5 million before the AC. It was observed that CESTAT had held that the raw material consumed for manufacturing of the fabric falls under chapter 39 of CETA, an the same were exempted from duty. However, the AC rejected the refund claim on the ground that the refund claim is “time barred as also unjust enrichment.” The assessee further approached the appellate authority; however the matter was remanded back to the AC. Later, the AC again passed an order wherein the time barred aspect was dropped but continued the ground of unjust enrichment. It was held that “excise duty” under Section 12B of the Act includes duty paid on intermediate product and hence, the burden to prove that incidence of duty was not passed on to the customer is on the assessee. Again, the assessee approached the appellate authority that had set aside the order.
and directed refund of INR16 million (approx.). Being aggrieved, Revenue filed an appeal before the CESTAT. However, CESTAT observed that refund of duty paid on tapes is admissible in terms of proviso to Section 11(B) of the Central Excise Act (‘Act’) and the bar of unjust enrichment does not apply to the refund of credit of duty paid on inputs. In this regard, Revenue filed reference application under Section 35H(a) of the Act and Allahabad High Court (HC) accordingly directed CESTAT to send the statement of case referring the questions of law.

The HC took note of the earlier proceedings and noticed that the appellate authority’s order which allowed refund holding ‘unjust enrichment’ principle was not applicable to the intermediate products. The order has attained its finality, as revenue had not challenged it in appeal. Accordingly, the HC held that once the appellate authority has given his view, the AC had no jurisdiction to reiterate and follow his overruled view of ‘unjust enrichment’. The HC further held that, “AC was wholly unauthorized, beyond jurisdiction, illegal and unjustified in denying refund on the ground of ‘unjust enrichment’ since it was beyond his powers”. As regards, Section 11B(2)(c), the HC stated that it was focused on granting refund to the assessee instead of crediting it to the fund. The HC held that in order to attract plea of ‘unjust enrichment’, reference made by CESTAT under Sections 11B(1) and 11B(2) was not justified. The refund allowed by the appellate authority and CESTAT was correct and the ultimate order passed by CESTAT is justified and warranted no interference.

Accordingly, the HC ruled in favor of the assessee and reference was disposed of.


High Court, Karnataka

Company financially not stable to pay pre-deposit, considered as sufficient cause for filing of condonation of delay

Central Excise Act, 1944 in favor of assessee

The assessee’s appeal had been dismissed by CESTAT for a delay of 117 days in filing an appeal. The assessee explained that there were a financial crisis in the company and therefore they were unable to deposit the 10% requisite amount which caused the delay in the preferring appeal. The assessee further stated that on merit, the case was arguable. However, Revenue contented that there had been a lapse on the assessee’s part by not putting the matter before the Board of Directors and therefore, Revenue said that the delay was not properly explained and CESTAT exercised the powers.

The Karnataka High Court (HC) observed that it is well settled that the condonation of delay needed to be sufficiently explained but if the court finds that there is sufficient case to be considered in appeal, then it may condone the delay by imposing suitable costs or not. It is true that, the delay may operate as a bar in pursuing the proceedings but to what extent the discretion should be exercised would vary from fact to fact. One of the things that cannot be considered as a condonation of delay would be financial inability.. According to the HC, financial instability can be valid ground for accepting the contention that the assessee was prevented by sufficient reason in not preferring an appeal.

In view of the above, the HC observed that CESTAT ought to have exercised the discretion for a condonation of delay. The HC further states that declining the discretion may result in a great injustice to the assessee. Under these circumstances, the HC held, that an appeal should be deserved to be allowed, delay to be condoned and directed CESTAT to decide the appeal on merit. The HC directed the assessee to pay INR10,000 whereupon the appeal would stand restored before CESTAT. At the request of Revenue, it directed such a deposit with the Karnataka State legal services authority for utilizing towards the betterment of the poor.

Concept Hydro Pneumatic Pvt. Ltd. v. Commissioner of Central Excise, Bangalore [TS-402-HC-2016(KAR)-EXC]
CENVAT Credit

Tribunal, Ahmedabad

Rent-a-cab and cleaning services are input services as defined under rule 2(l) of CCR

CENVAT Credit Rules, 2004; in favor of the assessee

The assessee was engaged in providing taxable service viz. telephone services as well as exempted services. The assessee has availed CENVAT credit on input services viz. rent a cab and cleaning services and utilized the entire credit for discharging service tax liability. Revenue contended that the said services do not satisfy the definition of input service under rule 2(l) of the CENVAT Credit Rules, 2004 (CCR). Further, more than 20% of the CENVAT credit is being utilized in contravention of Rule 6(3)(c) of the CCR. The assessee referred to the ruling in case of Hindustan Zinc Ltd. v. CCE, Jaipur (2013-TIOL-287-CESTAT-DEL) wherein Tribunal has held that the rent-a-cab and cleaning services provided are covered under the scope of input service.

The tribunal, by relying on the ruling in case of Hindustan Zinc Ltd. held that the rent-a-cab and cleaning services are input services as defined under rule 2(l) of the CCR. The cleaning services are incurred in cleaning the telephone exchanges for providing the telephone service and, hence, eligible for credit. Further, the assessee shall also eligible to utilize the 20% of the CENVAT credit as laid down under rule 6(3)(c) of the CCR.

CCE, Rajkot v. A O Cash BSNL GMTD [2016-TIOL-2947-CESTAT-AHM]

Tribunal, New Delhi

CENVAT credit can be availed on the input service of outward transportation

CENVAT Credit Rules, 2004; in favor of the assessee

The assessee was involved in the sale of manufactured goods at the depot except in very few cases where delivery was on Free on Railway (FOR) basis. The cost of transportation from the factory to the depot is borne by the assessee. These costs are also included in the part of the assessable value on which excise duty is paid by the assessee. The issue involved in this case is whether the assessee is entitled for the CENVAT credit on the input service of outward transportation.

In this regard, the assessee contends that if the sale takes place from a premise after its removal from the factory, then such a place should be treated as a place of removal. It also referred rule 2(l)(ii) of the CCR which provides that input service credit on the outward transportation is admissible upto the place of removal. Further, on reading rule 2(l)(ii) of CCR with Section 4(3) of the Central Excise Act 1944, it can be concluded that the credit of service tax on outward transportation is admissible upto the place of removal, from where the sale of goods takes place.

Tribunal held that when the ownership of the goods was passed onto the buyer, only after the sale was made. Since the sale was completed at the depot, the place of removal in terms of definition of input service in rule 2(l) of CCR would be the depot of the assessee. Further, the revenue has failed to provide any evidence to disapprove the submission of the assessee that sale of the goods took place from the depot only. The tribunal relied on the ruling of Punjab and Haryana HC in case of Ambuja Cements (2007-TIOL-539-CESTAT DEL) and Karnataka HC ruling in case of ABB Ltd. (2011-TIOL-395-HC-KAR-ST) and accordingly held that the assessee is entitled to take CENVAT credit on the input service of outward transportation.

Triveni Conductors Ltd. v. CCE, Indore [2016-TIOL-2585-CESTAT-DEL]

Tribunal, Ahmedabad

CENVAT credit inadmissible on services used in construction of residential flats outside factory premises to be used by the employees

CENVAT Credit Rules, 2004; in favor of Revenue

The assessee was engaged in a manufacturing business and had availed CENVAT credit of various services used in construction of 20 residential flats outside the factory premises to be used by the employees of the assessee.

The assessee contended that the construction of flats to be used by the employees has a nexus with his manufacturing business and, hence, CENVAT credit availed on services
used for construction of flats shall be admissible. The assessee referred to the Andhra Pradesh HC ruling in case of CCE Hyderabad v. ITC Ltd. (2012-TIOL:199-HC-AP-ST) wherein HC held that services which were crucial for maintaining the staff colony are to be considered as input services falling within the ambit of Rule 2(l) of the CCR. However, revenue referred to the Gujarat HC judgment in case of CCE v. Gujarat Heavy Chemicals (2011-TIOL:383HC-AHM-ST) and CCE v. Ultratech Cement Ltd. (2014-33-STR-501) wherein the services provided in residential colony have been held to be inadmissible.

Thus, the issue in the present case is whether the assessee is eligible for CENVAT credit on the various services used in construction of flats for employees. By relying on the HC ruling in case of Gujarat Heavy Chemicals Ltd. and Ultratech Cement Ltd. the tribunal held that the CENVAT credit on various services used in the construction of residential flats was inadmissible on the ground that the same was not an input service as defined under rule 2(l) of the CCR.

Piramal Glass Ltd. v. CCE, Surat [2016-TIOL:2963-CESTAT-AHM]

EOU is entitled to claim CENVAT credit of duty paid in terms of the Notification No. 22/2003 dated 31 March 2003 on procurement of High Speed Diesel (HSD) to be used as fuel

CENVAT Credit Rules, 2004; in favor of the assessee

The assessee, a 100% EOU was engaged in the manufacturing cut and polished granites and was registered under the Central Excise Act, 1944. The assessee was granted private bonded warehouse license under Section 58 of the Customs Act, 1962 and in-bond manufacturing sanction order under Section 65 of the Customs Act, 1962. Consequent to withdrawal of the warehousing facility, CBEC vide Circular no. 799/32/2004-CX dated 23 September 2004 clarified that EOUS could receive goods on payment of duty and take CENVAT credit of the duty paid thereon. Accordingly, the assessee started procuring HSD on payment of duty and availed CENVAT credit of the duty paid thereon.

The main issue involved in this case is with respect to the CENVAT credit taken by the assessee who is 100% EOU. Revenue contended that the assessee is not entitled to take CENVAT credit as the definition of ‘input’ given in rule 2(k) excludes light diesel oil and high speed oil or motor spirit. The assessee on the other hand cites Notification no. 22/2003-CE dated 31 March 2003 (notification) which says that as a 100% EOU they are entitled to procure HSD from the Domestic Tariff Area as fuel for earth moving equipment and generators, etc. and claim exemption for payment of duty in terms of the said notification.

The tribunal held that in case of EOU, the definition of an input given in Rule 2(k) of CCR cannot restrict the entitlement of CENVAT credit when it is being taken in terms of notification. Further, relied on the decision of the Ahmedabad tribunal in case of Hindustan Unilever Ltd. (2009-TIOL:2160-CESTAT-MUM) and Delhi tribunal’s ruling in case of CCE v. Jagmini Micro Knit Pvt. Ltd. (2009-TIOL:318-CESTAT-DEL) wherein it has been clarified that the assessee as an EOU can claim CENVAT credit for the duty paid on HSD oil used as fuel. Thus, in the light of the notification, the assessee is entitled to claim CENVAT credit on the procurement of HSD used as fuel.

Gem Granites v. CCE, Bangalore [2016-TIOL:2990-CESTAT-BANG]

Service tax

Tribunal

Input services to be approved by SEZ Approval Committee for claiming refund of service tax paid on such services

Finance Act, 1994; In favor of Revenue

The appellant, a SEZ developer, filed a refund claim in respect of services availed by it in terms of Notification No 12/2013-ST dated 1 July 2013. The said notification granted exemption from service tax, provided, the SEZ unit/developer gets an approval from the Approval Committee of the list of the services as are required for the authorized operations on which the SEZ unit/developer wished to claim exemption.
The refund claim of the appellant was rejected by the lower authorities on the ground that the receipt of specified services was not approved by the Approval Committee at the time when the said services were availed. The appellant argued that there is no condition that the list of services is to be approved before availing the benefit under the Notification.

The tribunal held that Notification No. 12/2013 provides exemption by way of refund. To avail the exemption, the assessee must fulfill the conditions of the notification at the time of availing the services. In the instant case, admittedly the appellants had not got the impugned services approved from the Approval Committee. In view of the above, the refund claim was rejected since at the time of availing services, the condition of the Notification was not fulfilled.

Kolland Developers Pvt. Ltd. v. CCE, Nagpur [2016-TIOL-1479-CESTAT-MUM]

Allegation of suppression is not sustainable when the information is declared in the balance sheet which is a publicly available document

Finance Act, 1994; In favor of the assessee

The assessee acted as an intermediary between two working companies in connection with the transfer of the title of equipment and machineries. It also received brokerage for such services but failed to discharge service tax on the same. The original adjudicating authority confirmed the demand under category of Business Auxiliary Services. However, the Commissioner (Appeals) set aside such a demand, holding that the collection of brokerage was well within the knowledge of the department at the time of visit of audit officers in December 2005.

The tribunal observed that the assessee acted as a commission agent and hence, the service rendered will be covered under the category of Business Auxiliary Services. Further, it observed, that since an annual audit of the books of accounts of the assessee had also been conducted earlier in the year 2005 but the same issue regarding non-payment of service tax on the brokerage was not raised and further necessary action to recover the service tax was not done. There is also no dispute on the fact that the receipt of such brokerage for the transaction has also been declared in the published balance sheets of the company. The tribunal in various cases has time and again held that once information is declared in the balance sheets of the company, allegation of suppression of such information is not sustainable as balance sheet of companies are publicly available documents.

CCE, Raipur v. Hira Ferro Alloys Ltd. [2016-TIOL-2520-CESTAT-DEL]

Advance ruling

Clinical pharmacology and research undertaken of the formulations i.e. tablets, capsules, etc. on the volunteers is a performance based service taxable under rule 4(a) of Place of Provision of Service Rules

Place of Provision of Supply Rules, 2012; In favor of Revenue

Applicant is in the process of establishing, developing and carrying on research in basic and applied sciences in relation to all kinds of drugs, pharmaceuticals and formulations, health care and bio-technology. Services to be provided include clinical pharmacology, a study undertaken for generic drugs. The study is proposed to be undertaken using formulations in the form of tablets, capsules, syrups, inhalers, etc. The applicant also proposes to conduct clinical trial of drugs provided by its customers located outside India on eligible volunteers within the applicant's facilities which are proposed to be in India.

The applicant will be conducting a screening of such volunteers and their blood samples will be tested for identification of various parameters. Pursuant to the said clinical trials, reports would be sent to overseas customers via online channels. The applicant would be charging consideration from the customers on a project-to-project basis. The above activities form part of the main activity which is of providing research assistance services to the customers and would not be provided in isolation.

The issue before the authority was whether the proposed services of clinical pharmacology and clinical research shall be liable to Service Tax, as place of provision of service would be the location of the recipient of service in terms of rule 3 of Place of Provision of Supply Rules, 2012 (PoPS Rules) or the location where services are actually performed in terms of rule 4 of PoPS Rules?
The AAR held that the proposed activities of undertaking clinical pharmacology by the applicant are taxable in terms of rule 4 of PoPS Rules as the services are proposed to be provided in respect of goods that are required to be made physically available by the service receiver to the service provider (applicant). Further, clinical research service provided in respect of goods that are required to be made physically available by the service receiver to the service provider (applicant) are also taxable under the Act in light of rule 4. However, where service of clinical pharmacology is not provided by the applicant and only clinical research service is provided, then such service would not be in relation to formulation provided by the service receiver located outside India. Hence, it would not be taxable in light of rule 3 as the applicant renders said services to its customers and the place of provision is located outside India.

Steps Therapeutics Ltd. [2016-TIOL-26-ARAST]

Money received by the company against shares from prospective members for raising funds which can be used for establishing a luxurious club is a taxable service

Finance Act, 1994; In favor of Revenue

The applicant is a partnership firm with the main object to establish a club with luxurious amenities such as a restaurant, swimming pool and a gymnasium. The applicant has already started the process of conversion into a Limited Company. It intends to collect the money from its shareholders which shall be utilized for the purposes and object i.e. establishment of a luxurious club. Membership shall be granted to only those persons who are shareholders of the company. A part of the share subscription is towards equity share capital and the remaining is towards a development contribution fund which will be treated as a deposit in the company.

The issue before the authority was whether the money/contribution received by the company against shares and deposits from the prospective members for raising funds can be used for achieving the object of the company is taxable as a service?

In the present case, the applicant proposes to provide the services of the club such as a restaurant, swimming pool and a gymnasium for the attainment of the objects of the club. This is an activity for a consideration and shall fall under the definition of “service”. Further, explanation 3 (a) to Section 65B(44) of Finance Act, 1994 (which defines service) states that for the purposes of this chapter, an unincorporated association or a body of persons, as the case may be, and a member thereof shall be treated as distinct persons. Thus, the club and members are deemed to be separate persons. Accordingly, activity carried out by club for members would be service.

Relying on the decision in the case of Emerald Leisures Ltd. Mumbai [2015-TIOL-07-ARA-ST], the authority held that the money/contribution received by the company against shares from the prospective members for raising funds which can be used for establishing the sole object of the company i.e. establishing a luxurious club, is taxable as service. However, refundable deposit from the prospective members is not taxable as service.

Avadh Infratech Ltd. Surat, Gujarat [2016-TIOL-27-ARA-ST]

VAT

Supreme Court

Entry Tax exemption and concessional rate is not available on “packing materials” as they are distinct from “inputs”

Karnataka Tax on Entry of Goods Act, 1979; in favor of Revenue

The appellant has a tea manufacturing unit at Dharward (Karnataka) and various other units which also manufacture tea. The question that arises for a decision before the SC was whether “packing materials” which enter the local area for packing tea which is manufactured by the appellant, can be said to be raw material, components, or inputs used in the manufacture of tea for the purpose of availing exemption or lower rate of tax of 1% instead of 2%.

For tea manufactured at the Dharward unit, the appellant claimed exemption from input of entry tax exemption under notification dated 31.3.1993 issued u/s Sec 11A
of the Karnataka Tax on Entry of Goods Act, 1979 (Act) which is available to new units for tea manufactured at various other units appellant claimed concessional rate of 1% under notification dated 23 September 1998 issued u/s Sec 3 of the said act. Revenue, held that packing material cannot be regarded as raw material, component parts or inputs used in the manufacture of finished goods and therefore, such packing material is neither exempt nor chargeable at the rate of 1%. The HC, in turn, also upheld with the decision of the appellate authority.

The Supreme Court observed that the difference between items “goods” used in the manufacture of goods and “packing material” is brought out by Schedule I. Wherein, packing material is separately defined in entry 66 and raw material, component parts and inputs, which are used in the manufacture of an intermediate or finished product, are separately given in entry 80. Packing material is separately covered in Entry 66 and notification dated 23 September 1998 issued u/s sec 3 uses identical language as that contained in entries 66 and 80 of schedule I to act. Thus, notification cannot be read to include “packing material” as “raw material, component parts or inputs used in the manufacture” of tea. Accordingly, the SC dismissed the appeal filled by the appellant and upheld the decision of the High Court.

Hindustan Lever Ltd. v. State of Karnataka; [TS-358-SC-2016-VAT]

Supreme Court

**Levy of surcharge on gross sales tax payable; before entry tax deduction**

Orissa Sales Tax Act, 1947; in favor of Revenue

An assessee company is engaged in sale and purchase of motor vehicles. It has been paying entry tax as per Section 3(3) of Act on the goods bought into Orissa. It was paying surcharge on the balance amount after deduction of entry tax on motor vehicles.

The assessee company contended that in a similar case, the clarification was issued by the office of Commercial Tax to one of a dealer in motor vehicles, by virtue of which surcharge was to be levied after deducting the amount payable under the Orissa Entry Tax Act (OET Act). Revenue contended that the OET Act or the supplementary Rules do not change the mode of calculation prescribed in Sec 5A of the Orissa Sales Tax Act, 1947 (Act). Sec 4 of OET Act relates only to reduction of entry tax and has nothing to do with the computation of surcharge under Act. It further submits that illustration under Rule 18 of the OET Rules neither limits nor does it expand the scope of the provisions of the Act. The issue before the Supreme Court (SC) was whether ‘Surcharge’ u/s 5A of the Act, is to be determined on gross amount of sales tax payable or net amount of sales tax arrived at after deducting entry tax.
The SC upheld the levy of surcharge u/s 5A of the Act on gross amount of sales tax payable. It observed that surcharge is an additional tax payable on sale of goods, to be computed on amount of sales tax payable under the Act. Section 5A is a self-contained provision and surcharge is leviable at specified per cent of tax payable under the Act. Further, such tax is independent of provisions of OET Act/Rules. “Rules are to be construed to have been made for furtherance of the cause for which the statute is enacted and not for purpose of bringing inconsistencies”. Thus, a harmonious reading of rule 18 of the OET act, rules as well as Sections 4, 5, 5A of the act reveals no conflict/inconsistency. Accordingly, the SC held that surcharge is leviable on gross sales tax payable before entry day deduction.

Commissioner of Commercial Tax & Ors v.. Bajaj Auto Ltd. & Anr; [TS-444-SC-2016-VAT]

High Court, Delhi

Rule imposing luxury tax on VAT turnover of banquet hall owners declared ultravires in relation to the Act

Rule 3(2)(b)(ii) of Delhi Tax on Luxury Rules, 1996; in favor of the assessee

The petitioner is an association of banquet hall owners. A majority of its members are registered dealers under the Delhi VAT Act, 2004 (Act). The petitioner has challenged the rule 3(2)(b)(ii) of the Delhi Tax on Luxury Rules, 1996 (Rules), which requires all banquet hall owners to include the entire value of the turnover regardless of whether the substantial part or whole of it being subjected to VAT. Thus rule 3(2)(b)(ii) of Rules is ultra vires in accordance to the Act.

The HC observed that luxury tax is levied on all incidents defined as “luxury”. The provision so lays out the manner of recovery which is through an obligation on the part of the proprietor or firms to register itself and collect luxury tax charges, from its customer. At the same time, Section 3(5) incorporates an important exclusionary principle which excludes all those items of luxury which were also subjected to DVAT levy. Hence, the HC stated that the legislature was conscious of an element of overlap in the broad nature of the levy and also the circumstance where the overlap could be in respect to two different heads of taxation which are within the exclusive domain of state legislature. Accordingly, the HC opined that levy per se by legal definition is more crucial than existence of high/ lower threshold and it quashes Rule 3(2)(b)(ii) of the Rules, in as much as all banquet hall owners are required to include entire turnover value for purpose of luxury tax, irrespective of whether substantial part/whole of it is subjected to VAT levy.

Community Welfare Banquet Association, Delhi v.. Govt of NCT of Delhi and others; [TS-459-HC-2016 (DEL)-VAT]

High Court, Allahabad

Assessment once closed cannot be opened on the basis of judgment/s pronounced subsequently

Assessee is engaged in the manufacture and import of various products like mobile phones, electronics goods, home appliances etc. It is registered in the State of Uttar Pradesh under the provisions of the Uttar Pradesh Value Added Tax (UP VAT) legislations.

UP VAT authorities issued SCNs under Section 29(7) and 29 of the UP VAT Act for reassessment pertaining to previous period decided as per UP VAT statutes and passed.

SCNs were challenged on two grounds specified below:

- The assessee has been assessed for the very same period and very same products previously and there is no reason to believe that the income had escaped assessment. Section 29 of the Act qualifies change of opinion and re-assessment proceeding cannot be initiated on the basis of change of opinion.

- Just because a subsequent judgment taking a different view has been pronounced, there cannot be a change of opinion.
It was contended by the assessee that the authorities initiated re-assessment proceedings based on the judgment of High Court (HC) of Punjab and Haryana in the case of State of Punjab v. Nokia India Pvt. Ltd. [2014 (16) SCC 410] for issuance of notices. The Judgment of the case pronounced by the HC of Punjab and Haryana would not be applicable to the present issues on the ground of difference of facts involved.

High Court, Allahabad observed as under:

► Impugned notices were pre-meditated;
► It cannot be said that there was any fresh material nor any tangible material which would permit the authorities to reassess or issue said notice;
► Notices and impugned orders were in complete contravention of principles enunciated by Apex Court in the case of State of UP v. Aryaverth Chawl Udyog, C.A. No. 6714 of 2009, decided on 27 November 2014;
► Judgment of Nokia will not be applicable in the present case due to difference of facts; and
► It is a settled principle that subsequent judgment/s cannot be used to reopen assessments or disturb past assessments which have been concluded.

Accordingly, the writ petition filed by the assessee was decided by HC in its favor with cost.

[Writ Tax No. – 435 of 2016]
Pursuant to the provision of Section 7 of the Customs Act, 1962, CBEC has issued Notification No. 125/2016-Customs (NT), dated 13 October 2016 and amended master Notification No. 63/94-Customs (NT) dated 21 November 1994 dealing with appointment of customs ports, airports etc. from where goods are to be loaded for export and/or imported goods to be unloaded etc. Accordingly, Sub-Foreign Post office at Vijayawada, Leh and Hyderabad have been notified as Land Customs Stations.

Notification No. 125/2016-Customs (NT), dated 13 October 2016

Rates of duty drawback are announced by the Ministry of Finance for various categories of goods and are indicated in the schedule amended to the Customs and Central Excise Duties Drawback Rules, 1995. Rates mentioned in the schedule are called All Industry Rates (AIRs). In this regard, the Central Government has revised AIRs of Drawback for various export products vide Notification no. 131/2016 - Customs (N.T.) dated 31 October 2016, effective from 15 November 2016.

Notification No. 131/2016-Customs (NT), dated 31 October 2016

Central Government has amended the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995 vide Customs, Central Excise Duties and Service Tax Drawback (Amendment) Rules, 2016 by deleting Rule 8(1). Said sub-rule states that no amount or rate of drawback shall be determined in respect of any goods under related rules where it would be less than 1% of F.O.B. value, except where the amount of drawback per shipment exceeds INR500. Amendment will be effective from 15 November 2016.

Notification No. 132/2016-Customs (NT), dated 31 October 2016


These Rules will be applicable to the eligible importers who can defer the payment of import duty subject to the manner and conditions as specified in this Notification.

Notification No. 134/2016-Customs (NT), dated 2 November 2016

Through a separate Notification no. 135/2016 - Customs (N.T.) dated 2 November 2016, Central Government has permitted importers certified under Authorized Economic Operator (‘AEO’) program as AEO (Tier - 2) and (Tier - 3), for making deferred payment of import duty.

Notification No. 135/2016-Customs (NT), dated 2 November 2016

Revised guidelines for disposal of confiscated goods

In view of the changed scenario, the instructions are issued with regard to disposal of confiscated goods through NCCF/Kendriya Bhandar and other Consumer cooperatives. Circular also includes sale through Army Canteen/CSD, sale through e-auction/auction cum tender.

Circular No. 39/2016-Customs, dated 26 August 2016

Guidelines on safety and security of premises where imported or export goods are loaded, unloaded, handled or stored

Pursuant to the decision of the Bombay High Court in the WP No. 3651/2011, a joint Technical Committee was constituted to give recommendations on the distances to be maintained between the hazardous cargo and the general cargo in the customs area on one hand and between the hazardous cargo and the administrative building on the other. Based on the recommendations, CBEC has issued the present Circular to amend the annexure to the Circular No. 4/2011 dated 10 January 2011.

Circular No. 40/2016-Customs, dated 26 August 2016
• Admissibility of un-utilized CENVAT credit of DTA unit converted into EOU

In view of extension of CENVAT credit to EOUs, Circular No. 77/99-Customs, dated 18 November 1999 has become redundant and hence, withdrawn.

Circular No. 41/2016-Customs, dated 30 August 2016

• Courier bond executed CCSPs

In relation to issuance of insurance by Customs Cargo Service Provider (CCSP) under Handling of Cargo in Customs Area Regulations, 2009, various representations were made regarding difficulties faced. After considering the same, this circular has been issued.

Circular No. 42/2016-Customs, dated 31 August 2016

• Rebate of State Levies on export of garments

The circular has been issued to remove difficulties in relation to Rebate of State Levies Schemes (ROSL) on export of garments based on budgetary allocation of the Ministry of Textile under a scheme in which the Department of Revenue/Central Board of Excise and Customs handles disbursement along with the extant Duty Drawback.

Circular No. 43/2016-Customs, dated 31 August 2016

• Setting up of ‘Customs Clearance Facilitation Committee’ (CCFC) for Land Customs Stations and Inland Container Depots

With a view to reduce delays in Customs clearance time of imported and export goods and in resolving related trade grievances, CBEC has issued the Circular.

Circular No. 44/2016-Customs, dated 22 September 2016

• Incorrect simultaneous issuance of dual benefit of Zero duty EPCG and SHIS to exporters under the FTP 2009-14 - option providing flexibility to return either benefit.

Circular No. 45/2016-Customs, dated 23 September 2016

• Guidelines for launching of prosecution in relation to offences punishable under the Customs Act, 1962

The Circular has been issued with a view to amend the erstwhile circular dealing with prosecution. Accordingly, gold has been included among items in relation to which prosecution may preferably be launched immediately after issuance of SCN.

Circular No. 46/2016-Customs, dated 4 October 2016

• Clearance of import of metal scrap-procedure

Vide the Circular, all erstwhile circulars and public notices have been withdrawn and a procedure prescribed in the circular has been adopted.

Circular No. 48/2016-Customs, dated 26 October 2016

• Transferability of goods imported/procured by debiting duty in SFIS scrips

In view of the judgement dated 23 May 2016 of the Delhi High Court in WP(C) No. 1809/2016 in the matter of Greatship (India) Ltd. and other related notifications, the Drawback Division has provided clarification in relation to sale/transfer of goods imported/procured by utilizing SFIS scrip issued in terms of FTP 2009-14. Also, a clarification is provided in relation to transferability of goods imported under FTP 2004-09.

Circular No. 49/2016-Customs, dated 27 October 2016
• All Industry Rates of Drawback and other Drawback related changes

The Central Government has revised All Industry Rates (AIRs) of Drawback vide Notification No. 131/2016-Customs (N.T.) dated 31 October 2016 which comes into force on 15 November .2016. These AIRs take into account relevant broad average parameters including, inter alia, prevailing prices of inputs, input output norms etc. Circular has been issued covering these issues.

Circular No. 50/2016-Customs, dated 31 October 2016

• Rebate of State Levies on Export of Garments-revised rates

The circular states that revised rates on garment exports under ROSL Scheme are applicable to exports with Let Export Order dates from 15 November 2016 onwards which is the same date the revised AIRs of Drawback in terms of Notification No. 131/2016-Customs (N.T.) take effect for implementation.

Circular No. 51/2016-Customs, dated 9 November 2016

• Deferred payment of Customs duty

The circular deals with the deferred duty of customs with reference to Customs Notification No. 134/2016-Customs (N.T) & 135/2016-Customs (N.T.) dated 2 November 2016 permitting importers certified under Authorized Economic Operator Program as AEO (Tier-Two) and AEO (Tier-Three) to make deferred payment of duty of Customs.

Circular No. 52/2016-Customs, dated 15 November 2016

• Clearance of import of metal scrap-procedure

A circular has been issued to overcome the shortcomings arising out of the Circular No. 48/2016-Customs, dated 26 October 2016.

Vide the circular it is clarified that the import of shredded metallic scrap shall continue to be cleared, inter-alia, upon furnishing of pre-shipment inspection certificate.

Circular No. 53/2016-Customs, dated 18 November 2016

• Discontinuation of practice of making manual debits on physical copy of Advance Authorizations registered at EDI Customs port

The practice of manual endorsement of Advance Authorizations is not uniformly followed by Customs authorities resulting in replication of work, cause delay and may cause errors. To avoid the same, an instruction has been issued by CBEC.

Instruction F. No. 605/30/2015-DBK dated 28 September 2016
Instructions have been issued in view of the decision of the Ministry of Environment, Forests and Climate Change to treat licenses of import of plastic and PET scrap issued under previous Hazardous Waste (Management, Handling and Transboundary Movement) Rules, 2008 as legal documents where import is limited to four categories duly identified.

Instruction F. No. 401/26/2014-Cus.III (Pt.) dated 30 September 2016

Rationalization of procedures in handling exporters obligations under EPCG authorizations

As a part of further rationalizing procedures and avoiding duplication of work based on feedback on outcomes of applying extant procedures, taking into account the conditions prescribed in the Foreign Trade Policy and Customs notifications, the Board reviewed certain aspects of the directions given to field formations in Circular No. 5/2010-Cus, Instruction No. 609/119/2010-DBK dated 18 January 2011 and Circular No. 14/2015-Cus insofar as they relate to EPCG scheme. Accordingly, CBEC has issued the instruction covering various aspects in this regard.

Instruction F.No.605/71/2015-DBK dated 14 October 2016

Foreign Trade Policy 2015-20

Trade Notices/Public Notices

- Amendment in para 4.61 of Handbook of Procedures 2015-20 to cover minimum value addition for export of silver/platinum jewelry and articles thereof

This amendment applicable from 1 April 2015. Public Notice No.28/2015-20 dated 2 September 2016

- All exporters of gems and jewelry products manufactured from gold who had not been provided benefit of replenishment of gold due to RBI circular from 22 July 2013 to 14 February 2014 have been provided one-time facility to claim replenishment of gold within 120 days from the date of issuance of public notice subject to fulfilment of all other conditions of the FTP and HBP 2009-14.

Public Notice No.29/2015-20 dated 8 September 2016

- Notification of procedure to be followed in cases of incorrectly issued simultaneous benefits of Zero Duty EPCG and SHIS in FTP 2009-14

The Exporters who have incorrectly availed benefit of Zero percent EPCG and SHIS have been provided an option to surrender one of the benefits subjects to certain conditions.

The notice prescribes procedure to be followed for option to return either of the benefits, conditions, time frame.

Public Notice No.30/2015-20 dated 8 September 2016
• Merchandise Exports from India Scheme (MEIS)- Additions/amendments in Table 2 of Appendix 3B

Public Notice No.32/2015-20 dated 22 September 2016

• Clarification stating that refund of Terminal Excise Duty (TED) is not available under Deemed Exports where in spite of availability of ab initio exemption, duty has been paid from accumulated CENVAT Credit, as the same amounts to encashment of accumulated CENVAT Credit.

Trade Notice No.17/2016-CE dated 22 September 2016

• Clarification in respect of definition of service provider under Common Service Providers (CSP) in Export Promotion Capital Goods (EPCG) scheme

It is clarified that in the context of common service provider under the EPCG scheme dealt with in Para 5.02 of the FTP, the definition of service provider includes job workers of the type illustrated in the example given below:

Example: there may be multiple garment exporters obtaining services at different stages of garment manufacturing (such as knitting, dyeing, compacting, printing, embroidering, labelling and cutting) from a number of other units that own these facilities but do not engage in the export of garments. The arrangement gives flexibility to exporters to not own all the infrastructures for conversion from input to final export products.

Trade Notice No.18/2016-CE dated 23 September 2016

• Para 4.94(a)(i), 4.94 (a)(ii) & ANF 4I amended so as to not club the export performance of gems and jewelry items from SEZ/EOU units with export performance from DTA units of any IEC holder for grant of Nominated Agency Certificate.

Public Notice No.37/2015-20 dated 4 October 2016

• Amendments in Product Description in MEIS Schedule-Table 2 of Appendix 3B.

Public Notice No.44/2015-20 dated 15 November 2016

Central Excise

• Amendment in form A.R.E. -2 for claiming rebate on removal of goods for export


From now there can be made a combined application for removal of goods for export under claim for rebate of duty paid on excisable materials used in the manufacture and packing of such goods and removal of dutiable excisable goods for export under claim for rebate of finished stage Central Excise Duty or under bond without payment of finished stage Central Excise Duty leviable on export goods.

Notification No. 44/2016-CX (NT) dated 16 September 2016

• CBEC issues circular that provides clarification in relation to supply of goods manufactured by EOUs without payment of Central Excise Duty against Advance Licence/Authorization

Circular No. 1046/34/2016-CX dated 16 September 2016

• CBEC issues clarification on simultaneous availment of Customs Duty drawback and rebate of Excise Duties paid on raw materials used in the manufacture or processing of export goods

Circular No. 1047/35/2016-CX dated 16 September 2016
Photocopies of Railway Receipt are no longer required to be enclosed for availing of CENVAT credit under CENVAT Credit Rules, 2004. Credit can be availed based on Service Tax Certificate for transportation of goods by rail (STTG) issued by Indian Railways.

Notification No. 45/2016-CE (N.T.) dated 20 September 2016

CBEC issues circular prescribing the procedure for issuing STTG Certificate for availing of CENVAT credit

CBEC prescribes the procedure for availing credit of service tax paid on transportation of goods by rail, pursuant to the dispensation of requirement of enclosing photocopies of Railway Receipts. As per the circular, in cases where service tax has been paid by the consignor and he intends to avail credit, he can avail it on the strength of the STTG Certificate issued in his name. However, where the consignee intends to avail credit, the consignor shall request Railways for the issuance of consignee-wise STTG Certificate duly indicating Railway Receipts details.

Circular No. 1048/36/2016-CX dated 20 September 2016

CBEC issues instruction in relation to immunity granted to a person from prosecution, penalty and fine

CBEC has made non-compliance of Section 32K(2) applicable to service tax matters by virtue of Section 83 of the Finance Act, 1994 and Section 127H(2) of the Customs Act, 1962, stating that immunity granted to a person from prosecution, penalty and fine shall stand withdrawn if such person fails to pay any sums specified under order of settlement within the stipulated time.

Further, it has also brought to the notice of the Board that if the conditions subject to which immunity has been granted are not complied, then the settlement order shall stand void.

Instruction F. No. 275/29/2016 - CX.8 A dated 21 September 2016

CBEC vide circular dispensed filing of Combined Annual Return of Central Excise and service tax for financial year 2015–16

Circular No. 1050/38/2016-CX dated 8 November 2016

Service tax

Entry 62 in Mega Exemption Notification (Notification No. 25/2012-ST) amended to widen the period of exemption for Government services in relation to telecom sector

Services provided by the Government or a local authority by way of allowing a business entity to operate as a telecom service provider or use RF spectrum on payment of licence fee or spectrum user charges, during the period prior to 01.04.2016 are exempted.

Notification No. 39/2016-Service Tax dated 2 September 2016

Entry 5 in Mega Exemption Notification amended for restricting the exemption on renting of precincts of a religious place meant for general public only to charitable or religious trust under Section 12AA or a trust or an institution registered Section 10(23C) (v) or a body or an authority covered under Section 10(23BBA) of the Income Tax Act

Notification No. 40/2016-Service Tax dated 6 September 2016

Clarification is issued regarding scope of Notification providing exemption to services by way of renting of precincts of a religious place meant for general public.

Based on the definition of “precincts” in various dictionaries, and previous judgements of court and tribunal, the Circular clarifies that:

- All immovable property of the religious place located within the outer boundary walls of the complex (of buildings and facilities) in which the religious place is located, must be considered as being located in the precincts of the religious place.
The immovable property located in the immediate vicinity and surrounding of the religious place and owned by the religious place or under the same management as the religious place, may be considered as being located in the precincts of the religious place.

Circular No. 200/10/2016-Service Tax dated 6 September 2016

Exemption is granted to services provided by state government industrial development corporations/undertakings, by way of granting long-term (30 years, or more) lease of industrial plots to industrial units, from service tax leviable on one-time upfront amount payable for such lease

Notification No. 41/2016-Service Tax dated 22 September 2016

Waiver from payment of service tax on services by way of advancement of yoga provided by entities registered under Section 12AA of Income Tax Act, 1961 for the period 1 July 2012 to 20 October 2015

Notification No. 42/2016-Service Tax dated 26 September 2016

Revision in monetary limits of adjudication in service tax for different categories of officers of Central Excise.

<table>
<thead>
<tr>
<th>Rank of Central Excise Officer</th>
<th>Amount of service tax or CENVAT credit for the purpose of adjudication (INR)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Superintendent</td>
<td>Not exceeding INR1 million (excluding the cases relating to taxability of services or valuation of services and cases involving extended period of limitation)</td>
</tr>
<tr>
<td>Assistant Commissioner or Deputy Commissioner</td>
<td>Not exceeding INR5 million (except cases where Superintendents are empowered to adjudicate)</td>
</tr>
<tr>
<td>Joint Commissioner or Additional Commissioner</td>
<td>INR5 million to INR20 million</td>
</tr>
<tr>
<td>Commissioner</td>
<td>Without limit</td>
</tr>
</tbody>
</table>

Notification No. 44/2016-Service Tax dated 28 September 2016

Waiver from payment of service tax on transportation services provided by educational institutions to their students, faculty and staff for the period 1 April 2013 to 10 July 2014

Notification No. 45/2016-Service Tax dated 30 September 2016

CBEC issues circular providing guidelines for arrest in relation to offences punishable under Finance Act, 1994 and Central Excise Act, 1944

The circular provides legal and factual conditions to be considered precedent to arrest. CBEC, by way of the said guidelines, revised monetary limits for arrests and prosecution in Central Excise to INR20 million in relation to offences specified under Clauses (a) to (d) of Section 9(1) so as to maintain uniformity of practice with Service Tax.

The circular reiterated that arrest and prosecution should not be resorted to in cases of technical nature — i.e., where the additional demand of duty/tax is based totally on difference of opinion regarding interpretation of law.

All cases where sanction for prosecution is examined and accorded after the issue of this circular shall be dealt in accordance with the provisions of this circular, irrespective of the date of the offence.

Circular No. 201/11/2016-Service Tax dated 30 September 2016

Place of Provision of Services Rules, 2012 amended to provide that the place of provision of “online information and database access or retrieval services” (OIDAR) will be the place of the service recipient with effect from 1 December 2016

Notification No. 46/2016-Service Tax dated 9 November 2016

Notification No. 47/2016-Service Tax dated 30 November 2016
Entry 34 in Mega Exemption Notification amended to withdraw exemption for OIDAR services received by the Government, local authority, governmental authority or an individual in relation to any purpose other than commerce, industry or any other business or profession located in taxable territory and provided by an overseas service provider with effect from 1 December 2016

_Notification No. 47/2016-Service Tax dated 9 November 2016_

Service Tax Rules are amended to define OIDAR services, non-assessee online recipient, person liable to pay service tax in case of OIDAR services, and other requirements such as registration and returns, with effect from 1 December 2016

_Notification No. 48/2016-Service Tax dated 9 November 2016_

Reverse charge Notification No. 30/2012-ST is amended to exclude OIDAR services provided to a non-assessee online recipient, with effect from 1 December 2016

_Notification No. 49/2016-Service Tax dated 9 November 2016_

Circular providing clarification regarding taxability of OIDAR services provided by an overseas service provider and the scope of such services

The circular provides extensive clarification regarding the taxability of cross-border B2C OIDAR services. Some of important issues covered are:

- List of services covered that will fall within the definition of OIDAR services
  - An indicative list of non-OIDAR services
  - Person liable to collect and discharge the Service Tax liability in cases of provision of cross-border B2C OIDAR services

Procedure for registration, claiming small-scale exemption, point of taxation, eligibility to avail input tax credit, rate of exchange to be applied, record-keeping and payment are also provided in the circular

LTU unit, Bengaluru, under CBEC, would be the administrative authority for the purpose of administration of overseas service provider providing cross-border OIDAR services to a non-assessee online recipient in a taxable territory.

_Circular No. 202/12/2016-Service Tax dated 9 November 2016_

Notification No. 20/2014-ST dated 16 September 2014 amended to provide exclusive jurisdiction to LTU-Bangalore w.r.t. OIDAR services provided by an overseas service provider to a non-assessee online recipient

_Notification No. 50/2016-Service Tax dated 22 November 2016_
**VAT/CST**

**Maharashtra**

- Notification of Maharashtra Settlement of Arrears in Disputes Rules, 2016

  The rules provide that 50% of the requisite amount payable under the Act should be paid on or before the 30 November 2016 and the remaining 50% amount should be paid on or before the 31 December 2016. If payment is made before the specified dates, then the proof of payment will be deemed to have been submitted on the date on which the said payment is made. The benefits accorded under the rule will not be available if the applicant has failed to submit the application in Form-1 for the Settlement of Arrears in Disputes and withdraw the appeal pending before the appellate authority or tribunal or, as the case may be, before the court on or before the 30 November 2016.

  *Notification No. SAD 1516/CR 155/Taxation-1- dated 19 November, 2016*

**Jharkhand**

- Increase in limit of turnover for tax incidence from INR0.5 million to INR1 million in case of any other business and from INR25,000 to INR 1 lakh for dealers involved in the execution of works contract and leasing

  *Notification No. S.O-90 dated 29 September, 2016*

**Orissa**

- Time period for exemption to sale of pulses and dals extended to six months from three months

  *Notification No. 28704- FIN-CT1-TAX-0029/2014 dated 26 October, 2016*

- Notification to write off arrears up to INR5,000 per case relating to repealed OST Act, 1947 and OST Act, 1975 except the arrear cases of dealers who are currently continuing their business under the Odisha VAT Act, 2004

  *Notification No. 29082- FIN-CT1-TAX-0005/2015 dated 28 October, 2016*

- Exemption to goods (as goods or any other form) sold in the course of the execution of a works contract by the Pani Panchayats to different Divisions under the water Resources Department

  *Notification No. 29275- FIN-CT1-TAX-0020/2015 dated 1 November, 2016*

**Entry tax**

**Madhya Pradesh**

- Persons bringing or causing to be brought into any local area within the State of Madhya Pradesh, the goods purchased through online shopping or e-commerce, for consumption, use or sale therein, notified for levy of entry tax if such goods are specified in Schedule II of the Entry Tax Act, and are other than motor vehicles. Entry tax shall be payable at 6%. The transporter, courier, agent or any other person bringing goods into any local area within the State of Madhya Pradesh on behalf of the notified persons notified are appointed to collect entry tax from such notified persons and to pay the collected entry tax to the State Government. The procedure for compliance is given in the notification.

  *Notification No.F-A-3·46-2016-1-V-(41, 42, 43, 44) dated 28 September 2016*
1. RBI permitted foreign portfolio investors (FPIs) to invest in unlisted debt instruments

Currently, Indian companies are permitted to raise funds from non-residents by issuance of equity instruments, raising External Commercial Borrowing (ECB) etc. Additionally, in terms of Schedule 5 of the Foreign Exchange Management (Transfer or Issue of Securities by a Person Resident Outside India) Regulations, 2000 (FEMA 20) companies are permitted to raise funds through listed non-convertible debentures (NCDs) (unlisted in case of the infrastructure sector) under the FPI route.

In order to boost fund raising from FPI through debt instruments, RBI has amended Schedule 5 of the said regulations, permitting FPI to raise funds through unlisted corporate debt securities in the form of NCDs/bonds issued by public or private companies in all sectors, subject to a minimum residual maturity period of three years and end use restriction on investment in real estate business, capital market and purchase of land.

In addition to allowing investment in unlisted debt instruments, RBI has also permitted FPI to invest in securitized debt instruments, including (i) any certificate or instrument issued by a special purpose vehicle (SPV) set up for securitization of asset/s with banks, foreign institutions or non-banking financial companies (NBFCs) as originators and/or (ii) any certificate or instrument issued and listed in terms of the SEBI “Regulations on Public Offer and Listing of Securitised Debt Instruments, 2008.”

Further, investment by FPIs in the unlisted corporate debt securities and securitized debt instruments should not exceed INR350 billion and investment by FPI in securitized debt instruments is permitted without any restriction of minimum residual maturity.


2. RBI issued relaxed ECB guidelines for start-ups

RBI has issued a framework in relation to start-ups that would like to avail ECBs under the automatic route, subject to certain conditions. The key conditions prescribed under the said framework are highlighted below:

a. An entity must be recognized as a start-up by the Central Government.

b. The minimum average maturity period should be 3 years.

c. The recognized lender/investor should be a resident of a country that is either a member of the Financial Action Task Force (FATF) or a member of FATF-style regional bodies.

d. The borrowing can be in the form of loans or non-convertible, optionally convertible or partially convertible preference shares.

e. The borrowing should be denominated in any freely convertible currency or in INR or a combination thereof.

f. The borrowing per start-up will be limited to US$3 million or equivalent per financial year in the permissible currency.

g. All-in-cost ceiling should be mutually agreed between the borrower and the lender.

h. There are no end-use restrictions.

Other provisions such as parking of ECB proceeds, reporting arrangements, powers delegated to authorized dealer (AD) banks, borrowing by entities under investigation and conversion of ECB into equity will be the same as included in the ECB framework. However, provisions on the leverage ratio and ECB liability: equity ratio, will not be applicable.

3. **Simplification of ECB guidelines: extension and conversion of unpaid ECBs**

RBI has simplified the process of dealing with matured but unpaid ECBs. It has been decided to delegate the power to approve requests from borrowers for extension of matured but unpaid ECBs and conversion of matured but unpaid ECBs into equity to AD bank subject to the following conditions:

i. No additional cost is incurred

ii. Lender’s consent is available

iii. Reporting requirements are fulfilled

Further, it may be noted that any extension of tenure/conversion of unpaid ECBs into equity (whether matured or not) by the ECB borrower who has availed credit facilities from the Indian banking system, including overseas branches/subsidiaries, will be subject to the applicable prudential guidelines issued by the Department of Banking Regulation of RBI, including guidelines on restructuring.


4. **Amendment in conditions with respect to a person resident outside India entering into exchange-traded currency derivatives**

RBI has amended Foreign Exchange Management (Foreign Exchange Derivative Contracts) Regulations, 2000, wherein it has substituted Regulation 5B in respect of permission to a person resident outside India and who is exposed to rupee currency risk, to enter into exchange-traded currency derivatives.

The amended regulation permits a person resident outside India and who is exposed to rupee currency risk (arising out of a permitted current account transaction or a rupee-denominated asset held by him or a rupee denominated liability incurred by him, as permitted under FEMA) to transact currency derivatives contracts on a stock exchange recognized under Section 4 of the Securities Contracts (Regulations) Act, 1956 to hedge such exposure, subject to such terms and conditions.


5. **RBI permitted issue of shares or convertible debentures against pre-incorporation/pre-operative expenses**

RBI vide eleventh amendment of FEMA 20 has amended Paragraph 2 Schedule 1 of the said regulations wherein a new sub-paragraph, by the name “(5)” will be inserted after the existing sub-para (4).

In terms of the said amendment, a wholly owned subsidiary set up in India by a non-resident entity, operating in a sector where 100% FDI under the automatic route is permitted and where there are no FDI-linked conditionalities, may issue equity shares or preference shares or convertible debentures or warrants to the non-resident entity against pre-incorporation/preoperative expenses subject to such expenses being incurred by the said non-resident entity up to a limit of 5% of its capital or US$500,000, whichever is less. Pre-incorporation/pre-operative expenses will include amounts remitted to the investee company’s account, to the investor’s account in India if it exists, to any consultant, attorney or to any other material/service provider for expenditure relating to incorporation or necessary for commencement of operations.

The permitted investment will be subject to certain conditions as laid down below:

a. The Indian company will report the transaction in Form FC-GPR to the RBI within 30 days from the date of issue of equity instruments but not later than one year from the date of incorporation or such time as RBI or the Government of India permits.

b. The valuation of the equity instruments should be subject to the provisions of Paragraph 5 of Schedule 1 of FEMA 20.

c. A certificate issued by the statutory auditor of the Indian company that the amount of pre-incorporation/pre-operative expenses against which equity instruments have been issued has been utilized for the purpose for which it was received, should be submitted with Form FC-GPR.

Source: Notification No.FEMA.362/2016-RB dated 15 February 2016
6. Amendment of FDI linked conditions prescribed for pension sector

In terms of extant control regulations, 49% FDI under the automatic route is permitted with respect to the pension sector. Also, transfer of ownership or control to a foreign investor through acquisition, amalgamation, merger etc. was permitted subject to the Foreign Investment Promotion Board (FIPB) approval in consultation with the Department of Financial Services.

RBI vide sixteenth amendment of FEMA 20 has now prohibited the right to transfer ownership and control in the hands of foreign investor. The ownership and control of the Indian pension fund will lie in the hands of resident Indian entities at all times as determined by the Government of India/Pension Fund Regulatory and Development Authority Act, 2013 (PFRDA) rules and regulations made thereunder.

Source: Notification No.FEMA.379/2016-RB dated 04 November 2016

7. RBI permitted FDI in unregistered asset reconstruction companies (ARCs)

RBI has now permitted 100% FDI under the automatic route in unregistered ARCs as well; previously, only registered ARCs were permitted.

Source: Notification No.FEMA.372/2016-RB dated 27 October 2016

8. Applicability of foreign investment in “Other Financial Services”

The proposed amendment vide press release dated 10 August 2016 in the NBFC sector under the extant FDI policy has been notified vide Notification No. FEMA. 375/ 2016-RB dated 09 September 2016.

The new guidelines have been applicable with effect from 09 September 2016.

Source: 375/2016
Click on the links provided below to access some of our recently published articles.

**In the press**

**Long road for financial services to GST readiness**
Divyesh Lapsiwala - Money control

**Getting GST up and running**
VS Krishnan - Business world

**GST among boldest reforms in post-Independence India**
VS Krishnan - The Indian Express

**GST: can be a big positive for FMCG**
Suresh Nair - Money control

**GST: Bill passed; now focus on GST law-making process**
Rajiv Mermani - Economic Times

**GST: Will 18% be the goldilocks rate for GST?**
Abhishek Jain - DNA

**GST: Impact of GST on the telecom sector**
Bipin Sapra - Economic Times Telecom

**Six things to avoid to get your tax refund fast**
Sreenivasulu Reddy - The Financial Express

**GST’s impact on the ordinary consumer**
Abhishek Jain - DNA - The Financial Express

**Long road for financial services to GST readiness**
Divyesh Lapsiwala - Money control

**GST does not give confidence to exporting community**
Vivek Pachisia - The Financial Express

**Will GST benefit the telecom sector?**
Bipin Sapra - The Financial Express

**Pharma companies must remodel their supply chain**
Suresh Nair - The Financial Express

**GST secretariat needed in every state**
VS Krishnan - Business Line

**GST: Goods and Services Tax (GST) Rate Structure – Alternative Policy Options.**
VS Krishnan - Business Line

**Tax: Centre and state coming together for tax policies**
VS Krishnan - Mint

**Tax: GST to be boost for M&E sector**
Uday Pimprikar - Exchange 4 Media

**Tax: Urgent need for GST on natural gas**
Suresh Nair - Taxindiaonline

**Tax: Interest on NRE rupee account tax free under FEMA**
Sonu Iyer - Mint

**Tax: Model GST Law to redefine employer-employee relation**
Nilesh Shah - The Financial Express

**Tax: Things to do when you get a scrutiny notice**
Mayur Shah - The Financial Express

**GST: Fewer exemptions mean greater benefits of GST**
Satya Poddar, Tax Policy Adviser, EY India

**Jack Mintz – The Economic Times**

**GST: Big changes for small units under GST**
VS Krishnan - Business Line

**Tax: Pay your advance tax on time to avoid penalty**
Amarpal Chadha - The Financial Express
### Compilation of Tax Alerts

#### Direct Tax

<table>
<thead>
<tr>
<th>Sl. No.</th>
<th>Title</th>
<th>Date of the alert</th>
<th>Citation/Notification/Circular</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Consideration for grant of call option results into capital gains though not taxable under India-Singapore tax treaty, rules Mumbai Tribunal</td>
<td>8 September 2016</td>
<td>Praful Chandaria v. ADDIT [TS-482-ITAT-2016(Mum)]</td>
</tr>
<tr>
<td>2</td>
<td>AAR rules on economic substance of special purpose Mauritius company and its control and management in India</td>
<td>8 September 2016</td>
<td>Mahindra-BT Investment Company (Mauritius) limited [1953) 23 ITR 454]</td>
</tr>
<tr>
<td>3</td>
<td>CBDT provides clarifications on Direct Tax Dispute Resolution Scheme, 2016</td>
<td>13 September 2016</td>
<td>[Circular No. 33 of 2016 dated 12 September 2016]</td>
</tr>
<tr>
<td>4</td>
<td>PAS Flash News : New Form 11 issued by Provident Fund Office</td>
<td>27 September 2016</td>
<td>Kotak Mahindra bank Ltd. v. The income tax officer [TS-52B-ITAT-2016(Mum)]</td>
</tr>
<tr>
<td>5</td>
<td>Mumbai Tribunal rules that payment for technical services made for earning future source of income outside India is covered by the source rule exclusion under the Indian Tax Laws</td>
<td>30 September 2016</td>
<td></td>
</tr>
<tr>
<td>6</td>
<td>Social Security Agreement between India and Japan comes into force with effect from 1 October 2016</td>
<td>30 September 2016</td>
<td></td>
</tr>
<tr>
<td>7</td>
<td>Government of India amends Income Computation and Disclosure Standards and also defers them by one year to tax year 2016-17</td>
<td>3 October 2016</td>
<td>Notification No. 87/2016 dated 29 September 2016</td>
</tr>
<tr>
<td>8</td>
<td>Ahmedabad Tribunal rules that amendment brought by FA 2016 in relation to deemed consideration of immovable property is retrospective</td>
<td>10 October 2016</td>
<td>Dharamshibhai Sonani, v. Asstt. Commissioner of Income Tax,</td>
</tr>
<tr>
<td>9</td>
<td>Delhi Tribunal rules income of non-resident that is not attributable to PE in India shall still be taxable in India as FTS</td>
<td>12 October 2016</td>
<td>International Management v. ACIT, International Taxation-[TS-545-ITAT-2016]</td>
</tr>
<tr>
<td>10</td>
<td>CBDT clarifies on non-applicability of withholding on lump sum lease premium payable on long-term leases</td>
<td>14 October 2016</td>
<td>[Circular No. 35 of 2016 dated 13 October 2016]</td>
</tr>
<tr>
<td>11</td>
<td>Indian tax administration issues final rules on certain aspects for determining buy-back tax in India</td>
<td>18 October 2016</td>
<td>[Vide CBDT Notification No. 94 of 2016]</td>
</tr>
<tr>
<td>12</td>
<td>CBDT notifies additional conditions under newly inserted Explanation 5 to Section 2(19AA) dealing with tax neutrality of demerger of erstwhile PSUs</td>
<td>18 October 2016</td>
<td></td>
</tr>
<tr>
<td>13</td>
<td>Indian Administration issues draft Exit Tax Rules for charitable organisations; invites comments from stakeholders</td>
<td>26 October 2016</td>
<td>[F. No. 370142/21/2016-TPL dated 24 October 2016]</td>
</tr>
<tr>
<td>14</td>
<td>PAS Flash News - Nepalese national and Bhutanese national deemed to be Indian workers for PF purposes</td>
<td>4 November 2016</td>
<td></td>
</tr>
<tr>
<td>Sl. No.</td>
<td>Title</td>
<td>Date of the alert</td>
<td>Citation/Notification/Circular</td>
</tr>
<tr>
<td>--------</td>
<td>----------------------------------------------------------------------</td>
<td>-----------------------</td>
<td>---------------------------------------------------------------------</td>
</tr>
<tr>
<td>15</td>
<td>Chennai Tribunal rules fixed PE and agency PE created due to presence of director and affiliate company in India</td>
<td>7 November 2016</td>
<td>Carpi Tech SA.V. ADIT (TS-587-ITAT-2016(CHNY)</td>
</tr>
<tr>
<td>16</td>
<td>Government of India demonetises existing high denomination notes to tackle black money menace</td>
<td>9 November 2016</td>
<td></td>
</tr>
<tr>
<td>18</td>
<td>CBDT restricts tax depreciation rate to 40% on all depreciable assets</td>
<td>11 November 2016</td>
<td>Notification No. 103/2016/F. No. 370142/29/2016 -TPL dated 7 November 2016</td>
</tr>
<tr>
<td>19</td>
<td>PAS Alert: Change in provisions relating to Provident Fund Inoperative Account</td>
<td>14 November 2016</td>
<td>Ministry of Labour and Employment Notification on 11 November 2016</td>
</tr>
<tr>
<td>22</td>
<td>Revised tax treaty between India and Cyprus signed</td>
<td>18 November 2016</td>
<td></td>
</tr>
<tr>
<td>23</td>
<td>CBDT issues further notification on conditions for application of safe harbour rule for onshore management of offshore funds</td>
<td>25 November 2016</td>
<td>[Notification No 106/2016/F No 142/15/2015-TPL]</td>
</tr>
<tr>
<td>24</td>
<td>Global Tax Alert - OECD releases multilateral convention to modify bilateral tax treaties under BEPS Action 15</td>
<td>28 November 2016</td>
<td></td>
</tr>
<tr>
<td>25</td>
<td>Government introduces Bill in Lok Sabha to address tax treatment of black money unearthed on demonetisation</td>
<td>28 November 2016</td>
<td>Taxation Laws (Second Amendment) Bill, 2016 (Bill) introduced in Lok Sabha</td>
</tr>
<tr>
<td>26</td>
<td>CBDT clarifies on incentive deduction on receipts of revenue subsidies</td>
<td>30 November 2016</td>
<td>Circular No. 39/2016 dated 29 November 2016</td>
</tr>
<tr>
<td>Sl. No.</td>
<td>Title</td>
<td>Date of the alert</td>
<td>Citation/Notification/Circular</td>
</tr>
<tr>
<td>--------</td>
<td>----------------------------------------------------------------------</td>
<td>----------------------------</td>
<td>-------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>1</td>
<td>Constitution Amendment Bill for GST receives President’s Assent</td>
<td>8 September 2016</td>
<td>President’s assent on The Constitution (One Hundred and First Amendment) Bill</td>
</tr>
<tr>
<td>2</td>
<td>Ministry of Finance widens the period of exemption for Government services in relation to Telecom sector</td>
<td>9 September 2016</td>
<td>[Notification no. 39/2016 – ST dated 2 September 2016]</td>
</tr>
<tr>
<td>3</td>
<td>Supreme Court reaffirms the position on ‘single deemed sale’ in a sub-contracted works</td>
<td>10 September 2016</td>
<td>Laser &amp; Toubro Ltd. v. Additional Deputy Commissioner of Commercial Taxes &amp; Anr. [2016-TIOL-155-SC-VAT]</td>
</tr>
<tr>
<td>4</td>
<td>SC applies the principle of unjust enrichment to the excise duty refunds pursuant to discounts</td>
<td>12 September 2016</td>
<td>Commissioner of Central Excise, Madras v. Addison &amp; Co Ltd. [2016-TIOL-146-SC-CX-LB]</td>
</tr>
<tr>
<td>5</td>
<td>GST News Alert - Union Cabinet approves creation of GST Council and its Secretariat</td>
<td>14 September 2016</td>
<td></td>
</tr>
<tr>
<td>6</td>
<td>GST News Alert - FAQs on GST released by the Government</td>
<td>22 September 2016</td>
<td></td>
</tr>
<tr>
<td>7</td>
<td>GST News Alert - Finance Minister announces the exemption threshold and administrative control mechanism for GST</td>
<td>23 September 2016</td>
<td></td>
</tr>
<tr>
<td>8</td>
<td>Delhi High Court holds legislative process cannot be by-passed while resorting to coercive action of arrest</td>
<td>26 September 2016</td>
<td>Makemytrip Pvt. Ltd. v. Union of India &amp; Ors [TS:349:HC-2016(DEL)-ST]</td>
</tr>
<tr>
<td>9</td>
<td>Government releases draft rules for registration, invoice, payment, return and refund under GST</td>
<td>29 September 2016</td>
<td></td>
</tr>
<tr>
<td>10</td>
<td>Patna HC quashes levy of Entry tax on goods entering the State of Bihar through e-commerce transactions</td>
<td>7 October 2016</td>
<td>Instakart services Pvt Ltd v. The State of Bihar [2016-TIOL-2307:HC-PATNA-VAT]</td>
</tr>
<tr>
<td>11</td>
<td>GST Council concludes its third meeting – decision on GST rates and dual control remain inconclusive</td>
<td>20 October 2016</td>
<td></td>
</tr>
<tr>
<td>12</td>
<td>CBEC rationalizes procedures in handling export obligation under EPCG Scheme</td>
<td>21 October 2016</td>
<td>[Instruction dated 14 October 2016]</td>
</tr>
<tr>
<td>13</td>
<td>GST News Alert - GST Council finalises four-tier rate structure at 5%, 12%, 18% and 28%</td>
<td>3 November 2016</td>
<td></td>
</tr>
<tr>
<td>14</td>
<td>Rajasthan HC holds Education Cess and SHE Cess is leviable on Oil Cess</td>
<td>4 November 2016</td>
<td>[TS:425:HC-2016(RAJ)-EXC]</td>
</tr>
<tr>
<td>Sl. No.</td>
<td>Title</td>
<td>Date of the alert</td>
<td>Citation/Notification/Circular</td>
</tr>
<tr>
<td>--------</td>
<td>----------------------------------------------------------------------</td>
<td>------------------------</td>
<td>---------------------------------------------------------------------</td>
</tr>
<tr>
<td>15</td>
<td>GST News Alert - GSTN releases FAQs for enrolment of the existing taxpayer on the GST system portal</td>
<td>7 November 2016</td>
<td></td>
</tr>
<tr>
<td>16</td>
<td>CBEC issues clarification on transferability of goods procured/imported under Served from India Scheme</td>
<td>8 November 2016</td>
<td>Circular No. 49/2016 - Customs dated 27 October 2016</td>
</tr>
<tr>
<td>19</td>
<td>MoF revises All Industry rates of Drawback w.e.f. 15 November 2016</td>
<td>11 November 2016</td>
<td>Notification no. 131/2016 - Customs (N.T.) dated 31 October 2016</td>
</tr>
<tr>
<td>20</td>
<td>PoPS Rules, Mega Exemption Notification and Service tax Rules amended to tax Online Information and Database Access or Retrieval Services received from overseas service provider</td>
<td>13 November 2016</td>
<td>Notification No. 46, 47, 48 &amp; 49/2016 , Circular No. 202</td>
</tr>
<tr>
<td>22</td>
<td>GST News Alert - Highlights of the revised Model GST Law released by the Ministry of Finance</td>
<td>29 November 2016</td>
<td>Revised Model Goods and Services Tax Law released on 26 November 2016 by the Ministry of Finance</td>
</tr>
</tbody>
</table>
**About EY**

EY is a global leader in assurance, tax, transaction and advisory services. The insights and quality services we deliver help build trust and confidence in the capital markets and in economies the world over. We develop outstanding leaders who team to deliver on our promises to all of our stakeholders. In so doing, we play a critical role in building a better working world for our people, for our clients and for our communities.

EY refers to the global organization, and may refer to one or more, of the member firms of Ernst & Young Global Limited, each of which is a separate legal entity. Ernst & Young Global Limited, a UK company limited by guarantee, does not provide services to clients. For more information about our organization, please visit ey.com.

Ernst & Young LLP is one of the Indian client serving member firms of EYGM Limited. For more information about our organization, please visit www.ey.com/in.

Ernst & Young LLP is a Limited Liability Partnership, registered under the Limited Liability Partnership Act, 2008 in India, having its registered office at 22 Camac Street, 3rd Floor, Block C, Kolkata - 700016

© 2016 Ernst & Young LLP. Published in India. All Rights Reserved.

---

**EY offices**

**Ahmedabad**
2nd floor, Shivalik Ishaan
Near C.N. Vidhyalaya
Ambawadi
Ahmedabad - 380 015
Tel: +91 79 6608 3800
Fax: +91 79 6608 3900

**Bengaluru**
6th, 12th & 13th floor
“UB City”, Canberra Block
No.24 Vittal Mallya Road
Bengaluru - 560 001
Tel: +91 80 4027 5000
  +91 80 6727 5000
  +91 80 2224 0696
Fax: +91 80 2210 6000

Ground Floor, ‘A’ wing
Divyasree Chambers
# 11, O’Shaughnessy Road
Langford Gardens
Bengaluru - 560 025
Tel: +91 80 6727 5000
Fax: +91 80 2222 9914

**Chandigarh**
1st Floor, SCO: 166-167
Sector 9-C, Madhya Marg
Chandigarh - 160 009
Tel: +91 172 331 7800
Fax: +91 172 331 7888

**Chennai**
Tidel Park, 6th & 7th Floor
A Block (Module 601,701-702)
No.4, Rajiv Gandhi Salai
Taramani, Chennai - 600 113
Tel: +91 44 6654 8100
Fax: +91 44 2254 0120

**Delhi NCR**
Golf View Corporate Tower B
Sector 42, Sector Road
Gurgaon - 122 002
Tel: +91 124 464 4000
Fax: +91 124 464 4050

3rd & 6th Floor, Worldmark-1
IGI Airport Hospitality District
Aero city, New Delhi - 110 037
Tel: +91 11 6671 8000
Fax: +91 11 6671 9999

**Hyderabad**
Oval Office, 18, iLabs Centre
Hitech City, Madhapur
Hyderabad - 500 081
Tel: +91 40 6736 2000
Fax: +91 40 6736 2200

**Jamshedpur**
1st Floor, Shantiniketan Building
Holding No. 1, SB Shop Area
Bistupur, Jamshedpur - 831 001
Tel: +91 657 663 1000
BSNL: +91 657 223 0441

**Kochi**
9th Floor, ABAD Nucleus
NH-49, Maradu PO
Kochi - 682 304
Tel: +91 484 304 4000
Fax: +91 484 270 5393

**Kolkata**
22 Camac Street
3rd Floor, Block ‘C’
Kolkata - 700 016
Tel: +91 33 6615 3400
Fax: +91 33 2281 7750

**Mumbai**
14th Floor, The Ruby
29 Senapati Bapat Marg
Dadar (W), Mumbai - 400 028
Tel: +91 22 6192 0000
Fax: +91 22 6192 1000

5th Floor, Block B-2
Nirlon Knowledge Park
Off. Western Express Highway
Goregaon (E)
Mumbai - 400 063
Tel: +91 22 6192 0000
Fax: +91 22 6192 3000

**Pune**
C-401, 4th floor
Panchshil Tech Park
Yerwada
(Near Don Bosco School)
Pune - 411 006
Tel: +91 20 6603 6000
Fax: +91 20 6601 5900

---

This publication contains information in summary form and is therefore intended for general guidance only. It is not intended to be a substitute for detailed research or the exercise of professional judgment. Neither Ernst & Young LLP nor any other member of the global Ernst & Young organization can accept any responsibility for loss occasioned to any person acting or refraining from action as a result of any material in this publication. On any specific matter, reference should be made to the appropriate advisor.