ACCOUNTING, REGULATORY & TAX NEWSLETTER
VOLUME 83

www.bdo.in
December 2023

TABLE OF CONTENTS

ACCOUNTING UPDATES

INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA (ICAI)

EAC OPINION

RESIDUAL VALUE OF GAS TRANSMISSION PIPELINE UNDER IND AS FRAMEWORK

Facts of the Case:

A Company (hereinafter referred to as 'the Company' was incorporated on 16 August 1984 for procuring, transmission, processing, and marketing of Natural Gas. The Government of India holds 51.52% equity of the Company at present. The securities of the Company are listed with NSE, BSE and London Stock Exchange.

At present, the Company owns over 14,500 km of Natural Gas pipeline and currently transmits about 206 million standard cubic meters (MMSCM) per day of Natural Gas. The Company operates five liquid hydrocarbon processing plants in different parts of the country with an installed capacity of 1.42 million metric tons (MT) of liquid hydrocarbons (LHC) per annum. The Company has an integrated petrochemical plant for manufacturing polymers. The Company has the world's longest pipeline for transmission of liquefied petroleum gas (LPG). The Company has integrated its business activities and operates into the city gas distribution (CGD), exploration of natural gas, wind power and solar power plants and telecom business. The Company has formed subsidiaries/associates/joint venture companies for CGD, petrochemicals, liquefied natural gas (LNG), gas trading, power generation and shale gas.

The Company has prepared its accounts as per Indian Accounting Standards (Ind AS) w.e.f. 1 April 2016. In compliance with Companies (Indian Accounting Standards) Rules, 2015 as amended from time to time, the Company has prepared its first Ind AS financial statements for the financial year (F.Y.) 2016-17 with comparative figures for F.Y. 2015-16.

The Company has natural gas pipelines and LPG pipelines across the country. The useful life of the said pipeline is considered 30 years as per the Schedule II of the Companies Act, 2013. The Company's accounting policy for depreciation of Property, Plant and Equipment (PPE) is as under:

- Depreciation on PPE (including enabling assets) is provided in accordance with the manner and useful life as specified in Schedule II of the Companies Act, 2013, on straight line method (SLM) on a pro-rata basis (monthly pro-rata for bought-out assets), except for the assets as mentioned below where different useful life has been taken on the basis of external/internal technical evaluation:

PARTICULARS	YEARS
Furniture provided for the use of employees	6 years
Electrical Equipment provided for the use of employees	4 years
Mobile Phones provided for the use of employees	2 years

- Cost of the leasehold land is amortised over the lease period except for perpetual leases
- Depreciation due to price adjustment in the original cost of fixed assets is charged prospectively.

Further, as per Schedule II to the Companies Act, 2013

The useful life and the residual value shall not be different from that as indicated in Part C, provided that if such a company uses a useful life or residual value which is different from the useful life or residual value indicated therein, it shall disclose the justification for the same. Ordinarily, the residual value of an asset is often insignificant, but it should generally be not more than 5% of the original cost of the asset.

The Company has adopted the residual value of an asset as 5% in line with industry practice.

Further, as per the Operation and Maintenance (O&M) Policy of the Company on Pipeline Decommissioning, Recommissioning and Abandonment:

The decommissioning option to permanently abandon a pipeline section and leave it in situ or retrieve shall be made on the basis of a pre-assessment that shall give consideration to the current and future RoU, use and size of the pipeline.

The Company is charging depreciation on pipelines over 30 years (which is as per Schedule II to the Companies Act, 2013) after keeping 5% towards residual value (which is as per Schedule II to the Companies Act, 2013 and industry practice).

During the F.Y. 2021-22, the Comptroller and Auditor General of India (C&AG) has raised observations in regard to the consideration of 5% of capital expenditure (CAPEX) as the residual value of the pipelines as under:

Standalone Balance Sheet as of 31 March 2022

Assets

Non-Current Assets

Property, Plant & Equipment (Note 2)

INR 35,736.71cr

The above includes an amount of INR 1,761cr as a 5 % residual value of the pipelines. However, the same should have been zero since the cost to sales thereof is higher than its residual value considered in the books of account.

Ind AS 16, Property, Plant and Equipment stipulates that the residual value and the useful life of an asset shall be reviewed at least at each financial year-end and if expectations differ from previous estimates, the change(s) shall be accounted for as a change in an accounting estimate in accordance with Ind AS 8, Accounting Policies, Changes in Accounting Estimates and Errors.

It was noticed that the Company had neither formed any accounting policy with reference to the periodicity of reviewing the residual value and the useful life of assets nor it is reviewing the residual value of the PPE in line with the aforesaid Ind AS provision. It was also noticed that the Company replaced one of its line pipes having a carrying value of INR 19.67cr in the books of account by incurring a cost of INR 24.37cr for digging out and disposing of the same, for which it ultimately recovered an amount of INR 14.61cr only. This not only represents an overstatement of residual value in the books but has also resulted in less charge of depreciation in the earlier years due to the same. Since the cost of disposal for line pipes was much more than what the entity might obtain from disposing of the said asset, the residual value for the same shall be considered zero.

Thus, non-considering the residual value of line pipes as zero resulted in an overstatement of PPE and Profits for the year to the extent of INR 1,761cr each and an understatement of depreciation to the same extent. Moreover, the accounting policies of the Company were deficient to that extent.

Management/Joint Statutory Auditors replied that the depreciation on PPE (including enabling assets) was provided in accordance with the manner and useful life as specified in Schedule II of the Companies Act, 2013. Further, as per the Company's O&M policy the decommissioning option to permanently abandon a pipeline section, and leave it in situ or retrieve, shall be made on the basis of a pre-assessment that shall give consideration to the current and future RoU, use and size of the pipeline.

Management/Joint Statutory Auditors' replies could be viewed in light of the fact that the Company has neither framed any accounting policy nor it was reviewing the residual value & useful life of the asset, at each financial year-end. Further, the Company was well aware of the fact that the extractability of the pipeline after its useful life from beneath the ground would not be feasible on technical as well as commercial aspects, thus residual value shall be considered as zero instead of the current consideration.

CAG is of the view that generally, the pipelines are not taken out after the completion of their useful life and are left as it is under the ground. Further, if the pipelines are taken out, the cost to take out the pipelines will be more than the scrap value of the pipeline. Thus, the net residual value is zero or negative. Therefore, the Company should have kept zero as the residual value for the pipeline instead of 5%.

To the said Query, the management of the Company has submitted the reply as under:

It is submitted that as per the Company's accounting policy No. 1.11, regarding depreciation/amortisation:

Depreciation on PPE (including enabling assets) is provided in accordance with the manner and useful life as specified in Schedule II of the Companies Act, 2013, on (SLM) on a pro-rata basis (monthly pro-rata for bought-out assets).

As per Schedule II to the Companies Act, 2013:

The useful life and the residual value shall not be different from that as indicated in Part C, provided that if such a company uses a useful life or residual value which is different from the useful life or residual value indicated therein, it shall disclose the justification for the same.

Ordinarily, the residual value of an asset is often insignificant, but it should generally be not more than 5% of the original cost of the asset.

The Company has adopted the residual value of an asset as 5% in line with industry practice.

Further, as per the Company's O&M policy,

The decommissioning option to permanently abandon a pipeline section, and leave it in situ or retrieve, shall be made on the basis of a pre-assessment that shall give consideration to the current and future ROU, use and size of the pipeline.

It is further submitted that the residual value for the pipeline whose useful life has already been completed but in use is around INR 10cr only. It may be noted that while arriving at the financial impact of INR 1,761cr, the Auditor has not considered the depreciation already adjusted against the Gross Block to arrive at the deemed cost of PPE at the time of transition to Ind AS. (refer to Point No.1.1(e) of Note 1A).

Further, by considering residual value as NIL for the pipeline whose useful life is yet to be completed, the same (i.e. residual value) will be depreciated over the remaining useful life of the asset instead of immediately charging off to the statement of profit and loss as per Ind AS 16.

However, the residual value of the pipeline will be reviewed based on technical analysis including industry practice and necessary action will be taken along with the necessary disclosure of residual value during F.Y. 2022-23.

It may be noted that the Pipeline Tariff is being fixed by the Petroleum Natural Gas Regulatory Board (PNGRB) and the CAPEX, operating expenditure (OPEX) and Terminal value etc. are considered while fixing the Pipeline Tariff. Tariff Regulation does not specifically deal with the value of terminal value to be considered. However, as a practice, the terminal value based on SLM depreciation basis is considered for the calculation of tariff with the residual value being not less than 5% of the CAPEX. In case the terminal value is reduced from 5% then there would be a possibility of an increase in tariff.

As per the O&M Policy of the company, the decommissioning option to permanently abandon a pipeline section, and leave it in situ or retrieve, shall be made on the basis of a pre-assessment that shall give consideration to the current and future RoU, use and size of the pipeline.

The Company analyses whether to take out the pipeline or not on a case-to-case basis considering various technical parameters and availability of RoU and other safety factors. Further, in some of the cases in past, due to the non-availability of RoU land, the Company replaced the old pipeline (damaged) with the high-diameter pipeline in the same route and the extracted pipelines were sold out as scrap. The digging cost was capitalised along with the new pipeline and the scrap value of the old pipeline after adjusting the carrying value (i.e. residual value) is recognised in the profit and loss account as profit/(loss) on the sale of the asset.

It is impracticable to say which pipeline will be taken out and which will not. It must be seen on a case-to-case basis. Further, in one pipeline, some portion might have to be taken out and the rest may be left as it is.

Considering the above, the Company has kept the residual value of the pipeline at 5%.

Query

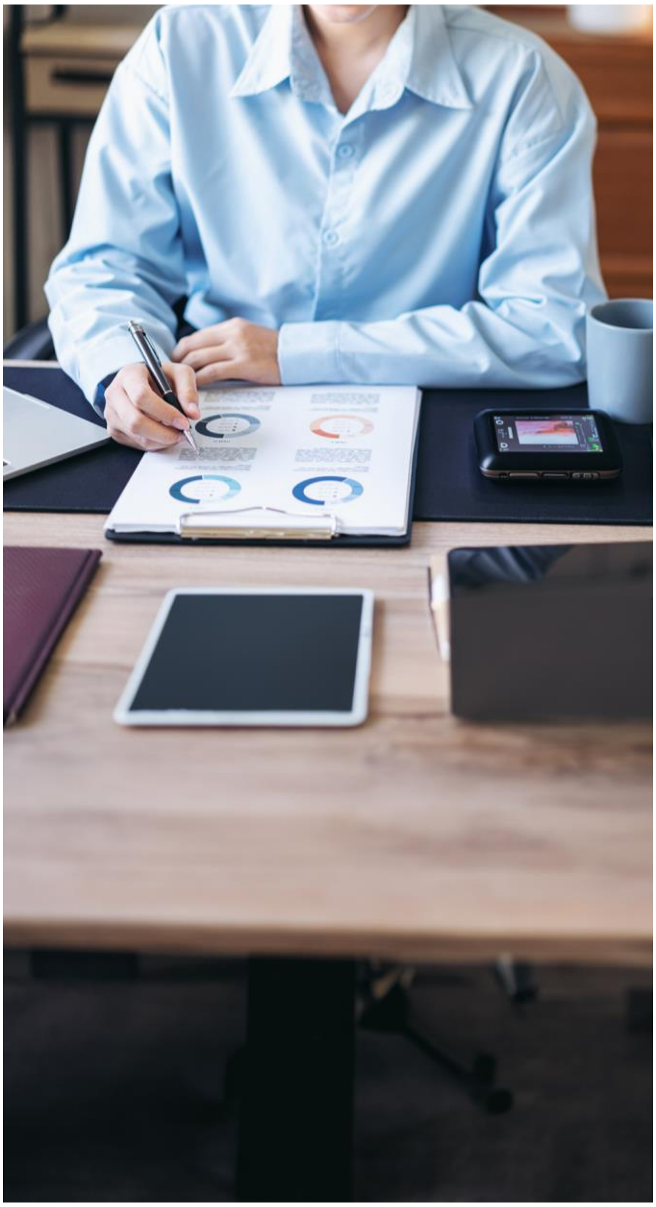
In view of the above, the Company has sought the opinion of the Expert Advisory Committee (EAC) of the Institute of Chartered Accountants of India (ICAI) on the following issues:

i. Whether the Company's accounting policy to keep residual value at 5% is in order and in line with applicable Ind AS and Companies Act, 2013.

ii. In case the answer to (i) above is not affirmative,
   - whether any other percentage of the residual value of the pipeline may be considered.
   - if so, the manner and form of such disclosure etc.

Points considered by the Committee

The Committee notes that the basic issue raised by the Company relates to whether the Company's accounting policy to keep the residual value of pipelines at 5% is in order and in line with applicable Ind AS and requirements of the Companies Act, 2013. The Committee has,



therefore, examined only this issue and has not examined any other issue that may arise from the Facts of the Case. Further, the Indian Accounting Standards referred to in the Opinion are the Standards notified under the Companies (Indian Accounting Standards) Rules, 2015, as revised or amended from time to time.

At the outset, it is clarified that the Committee has not considered the situation where the Company has included in the cost of the pipeline, the estimated cost towards the obligation to dismantle, remove the pipeline and restore the items of PPE viz., decommissioning, restoration and similar liabilities. The same will be dealt with as per the requirements of Ind AS 16.

In the context of the issue raised, the Committee notes the following definitions and requirements of Ind AS 16, and Schedule II to the Companies Act, 2013, as follows:

Ind AS 16

Cost is the amount of cash or cash equivalents paid or the fair value of the other consideration given to acquire an asset at the time of its acquisition or construction or, where applicable, the amount attributed to that asset when initially recognised in accordance with the specific requirements of other Indian Accounting Standards, e.g. Ind AS 102, Share-based Payment.

The residual value of an asset is the estimated amount that an entity would currently obtain from the disposal of the asset, after deducting the estimated costs of disposal, if the asset were already of the age and in the condition expected at the end of its useful life.

51 The residual value and the useful life of an asset shall be reviewed at least at each financial year-end and, if expectations differ from previous estimates, the change(s) shall be accounted for as a change in an accounting estimate in accordance with Ind AS 8, Accounting Policies, Changes in Accounting Estimates and Errors.

53 The depreciable amount of an asset is determined after deducting its residual value. In practice, the residual value of an asset is often insignificant and therefore immaterial in the calculation of the depreciable amount.

54 The residual value of an asset may increase to an amount equal to or greater than the asset's carrying amount. If it does, the asset's depreciation charge is zero unless and until its residual value subsequently decreases to an amount below the asset's carrying amount.

76 In accordance with Ind AS 8 an entity discloses the nature and effect of a change in an accounting estimate that has an effect in the current period or is expected to have an effect in subsequent periods. For property, plant and equipment, such disclosure may arise from changes in estimates with respect to:

- residual values;
- …

Part A of Schedule II to the Companies Act:

- Depreciation is the systematic allocation of the depreciable amount of an asset over its useful life. The depreciable amount of an asset is the cost of an asset or other amount substituted for cost, less its residual value. …
- Without prejudice to the foregoing provisions of paragraph 1, —
  - The useful life of an asset shall not ordinarily be different from the useful life specified in Part C and the residual value of an asset shall not be more than five percent of the original cost of the asset:

Provided that where a company adopts a useful life different from what is specified in Part C or uses a residual value different from the limit specified above, the financial statements shall disclose such difference and provide justification in this behalf duly supported by technical advice.

The Committee also notes the following requirements of the Guidance Note on Accounting for Depreciation in Companies in the context of Schedule II to the Companies Act, 2013 (Issued 2016), issued by the ICAI (hereinafter referred to as 'the Guidance Note' as follows:

Residual Value of an Asset

As mentioned above, paragraph 3(i) of Part A of Schedule II, inter alia, states that the residual value of an asset shall not be more than five percent of the original cost of the asset; provided that where a company uses a residual value different from the limit specified above, the financial statements shall disclose such difference and provide justification in this behalf duly supported by technical advice. The aforesaid proviso can be taken to mean that the residual value of the asset is indicative. Thus, where the estimate of the residual value of the asset is more than five percent of the original cost of the asset, the company should use that estimate of residual value provided it is supported by technical advice, external or internal, and disclosures in this regard are made as recommended later in this Guidance Note. In case the residual value is estimated to be less than five percent of the original cost of the asset, the same should be used and it would not be necessary to make a disclosure in such a case. The chart given below summarises the position as stated above.

From the above, the Committee notes that residual value is determined for the purpose of determining the depreciable amount of an asset to allocate that depreciable amount over the useful life of the asset in a systematic manner. Determination of the residual value of PPE is an independent technical process of estimation based on the amount recoverable from the disposal of a specific asset or the item of PPE after deducting the estimated costs of disposal, using prices prevailing at the date of the estimate for the sale of a similar asset that has reached the end of its useful life and has operated under conditions similar to those in which the asset will be used. The Committee is of the view that the residual value is estimated technically at the beginning of the useful life of the asset and is assessed/reviewed periodically to determine whether there is any change in the original estimate or not. Further, considering the requirements of Schedule II to the Companies Act, 2013, Ind AS 16 and Guidance Note, the Committee is of the view that the Company has to first estimate the residual value of an item of PPE/asset as per the requirements of Ind AS 16 and then compare it with 5% of its original cost. Even if the estimated residual value is more than 5% of the original cost of the asset, the Company should use that estimated residual value along with appropriate disclosure and justification as per the requirements of Schedule II.

Therefore, the contention of the Company in this regard to keep the residual value of pipelines at standard 5% as per Schedule II requirements is not appropriate. The Committee is of the view that providing depreciation and estimation of useful life as well as residual value is an asset-specific process. The basic purpose of charging depreciation is to allocate a depreciable amount of an asset over its useful life. For each asset(s), the conditions (in which it is operating) during the useful life may be different leading to a different residual value. For example, in the extant case, pipelines operating in different geographical locations may be subject to different working conditions and environments and therefore, the residual value at the end of their useful lives may be different from one another.

Therefore, it is not appropriate to consider the same residual value for all the pipelines in such a case.

The Committee further notes that the Company has also stated that it is impracticable to determine which pipelines will be extracted and which will not. The Committee is of the view that a reasonable estimate based on the various factors such as terms of lease/contract for Right of way or Right to use of land to lay pipelines, location of pipelines, past experience or historical data and future estimate etc. should nevertheless be made by the Company at the beginning of useful life, considering the facts and circumstances at that time, which should further be reviewed at each financial year-end, as per requirements of Ind AS 16. Thus, any change in circumstances or situations in future (like a change in decision with regard to whether the pipeline will be extracted or not, etc.) shall be considered while determining residual value every year. Therefore, the Committee is of the view that the Company should consider its facts and circumstances at the date of making estimates/reviews while determining the residual value of its various pipelines. Further, the estimated costs of disposal should also be considered as per the definition of residual value given in Ind AS 16. In case, the pipeline will not be extracted and will just be abandoned, the residual value should be considered nil as nothing can be sold as scrap or otherwise. Further, in case, it is estimated that the pipeline will be extracted and sold, the cost attributable to extraction activity should also be considered/adjusted while determining the residual value.

Opinion

On the basis of the above, the Committee is of the following opinion:

- The Company's accounting policy to keep a standard residual value of 5% without considering all the facts and circumstances is not appropriate.
- The Company should determine the residual value of its various pipelines considering its facts and circumstances at the beginning of their useful life, which should be reviewed at each financial year-end, as discussed above. Further, the estimated costs of disposal should also be considered as per the definition of residual value given in Ind AS. In case, the pipeline will not be extracted and will just be abandoned, the residual value should be considered nil as nothing can be sold as scrap or otherwise. Further, in case, it is estimated that the pipeline will be extracted and sold, the cost attributable to extraction activity should also be considered/adjusted while determining the residual value.

REGULATORY UPDATES

INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA (ICAI)

QRB REPORT ON AUDIT QUALITY REVIEW 2022-23

The Quality Review Board (QRB) of the ICAI issued a Report on Audit Quality Review on 9 November 2023, which highlights the key findings observed in the audit quality reviews conducted by the QRB in respect of audits of private limited companies up to 31 March 2023. Up to FY 2022-23, QRB has completed reviews of 64 audit engagements of 64 private limited companies in respect of 57 Audit Firms under review (AFURs. Of these:

- 1 case - Forwarded to the Disciplinary Directorate of ICAI for its examination in terms of the requirements of Sec. 28B(d) of the Chartered Accountants Act, 1949.
- 50 cases - Advisories were issued by the Quality Review Board to concerned AFURs for improvement in quality in terms of the requirements of Sec. 28B(c) of Chartered Accountants Act, 1949.
- 13 cases - Closed.

The report contains detailed observations with respect to Standards on Auditing (SAs), Indian Accounting Standard (Ind AS), Accounting Standards (AS), CARO other relevant Laws and Regulations, and Schedule III to the Companies Act 2013.

The report further includes overall trends, analysis of reviewed audit files in terms of technical standards, analysis of observations in audit files under major industries, findings in major focus areas for reviews, summary of observations in other areas, matters of general guidance for Audit Firms etc.

The approach for review, expectations, how audit firms are selected for review and how audit quality reviews are conducted has also been summarized in the report.

MINISTRY OF CORPORATE AFFAIRS (MCA)

COMMENCEMENT OF SECTION 5 OF THE COMPANIES (AMENDMENT) ACT, 2020

MCA vide Notification dated 30 October 2023, has appointed 30 October 2023, as the date on which the provisions of section 5 of the Companies (Amendment) Act, 2020 dated 28 September 2020, shall come into force. Section 5 of the Companies (Amendment) Act of 2020 brought an amendment to Section 23 of the Companies Act, 2013 which contains provisions relating to public offer.

In view of this notification, certain classes of public companies may now issue specific classes of securities for the purposes of listing on permitted stock exchanges in permissible foreign jurisdictions or such other jurisdictions, as may be prescribed.

Additionally, the Central Government reserves the right to exempt, by notification, any class or classes of public companies, from any of the provisions of this Chapter, Chapter IV, section 89, section 90 or Section 127 and a copy of every such notification shall, as soon as may be after it is issued, be laid before both Houses of Parliament.

LIMITED LIABILITY PARTNERSHIP (SIGNIFICANT BENEFICIAL OWNERS) RULES, 2023

MCA has issued a notification dated 9 November 2023, introducing Limited Liability Partnership (Significant Beneficial Owners) Rules, 2023, and shall apply to all Limited Liability Partnerships (LLP). Following are the key provisions of the said rules:

- **Definition of Significant Beneficial Owner (SBO)** - An SBO (in relation to a reporting LLP) is an individual, who acting alone or together or through one or more persons or trusts, possesses one or more of the following rights or entitlements in such reporting LLP, namely:
  - holds indirectly or together with any direct holdings, not less than 10% of the contribution;
  - holds indirectly or together with any direct holdings, not less than 10% of voting rights in respect of the management or policy decisions in such LLP;
  - has the right to receive or participate in not less than 10% of the total distributable profits, or any other distribution, in a financial year through indirect holdings alone or together with any direct holdings;
  - has the right to exercise or actually exercise, significant influence or control, in any manner other than through direct holdings alone.

Further, these rules contain detailed guidelines on the determination of individuals who shall be considered to hold a right or entitlement indirectly in the reporting LLP in different cases.

- **Obligations of LLPs**
  - **Identification of SBO** - Every reporting LLP will be required to take necessary steps to find out if there is any individual who is an SBO in relation to that LLP and if so, identify him and cause such individual to make a declaration in Form No. LLP BEN-I.
  - **Reporting to Registrar of Companies** - Upon identification of SBO, the reporting LLP is required to file a return in Form No. LLP BEN-2 with the Registrar of Companies within a period of 30 days from the date of receipt of declaration in this connection.
  - **Register of SBOs** – Each LLP shall maintain a register of SBOs in Form No. LLP BEN-3
- **Declaration of SBO** - The Notification includes an Annexure wherein; Form No. LLP BEN-1 has been prescribed. The declaration by the beneficial owner who holds or acquires Significant Beneficial Ownership in contribution has to be made in this form within 90 days of the commencement of these rules. Any individual who subsequently becomes an SBO or undergoes any change in significant beneficial ownership is required to file a declaration in Form No. LLP BEN-1 within 30 days (of acquiring such SBO or any change therein) to the reporting LLP.
- **Non-Applicability -** These rules will not be applicable to the extent the contribution of the reporting LLP is held by. -
  - the Central Government, State Government or any local authority;
  - a reporting LLP or a body corporate or an entity, controlled by the Central Government or by one or more State Governments, or partly by the Central Government and partly by one or more State Governments;
  - investment vehicles registered with, and regulated by the SEBI, such as mutual funds, alternative investment funds (AIF), Real Estate Investment Trusts (REITs), and Infrastructure Investment Trust (InVITs);
  - an investment vehicle regulated by the Reserve Bank of India, the Insurance Regulatory and Development Authority of India, or the Pension Fund Regulatory and Development Authority.

The said rules shall come into force on the date of their publication in the Official Gazette.

SECURITIES AND EXCHANGE BOARD OF INDIA (SEBI)

SIMPLIFICATION AND STREAMLINING OF OFFER DOCUMENTS OF MUTUAL FUND SCHEMES

SEBI has issued a circular dated 1 November 2023 on the Simplification and streamlining of Offer Documents of Mutual Fund Schemes.

In order to enhance the ease of preparation by Mutual Funds (MFs) and increase their readability for investors, SEBI in consultation with the Association of Mutual Funds in India (AMFI) has modified the format of the Scheme Information Document (SID) specified through circular dated 23 May 2008 and incorporated as Clause 1.1.2 of Master Circular dated 19 May 2023.

The revised format of SID was simplified and rationalised and is aimed at streamlining the dissemination of relevant information to investors, rationalising the preparation of SID and facilitating its periodic updation by mutual funds.

In line with the new SID format, AMFI shall carry out the necessary changes in the formats of the Key Information Memorandum (KIM) and Statement of Additional Information (SAI) in consultation with SEBI, within two months from the date of this circular.

Applicability: The revised format for SID, KIM and SAI shall be adopted as under:

- Updated format for SID/KIM/SAI to be implemented w.e.f. 1 April 2024.
- Draft SIDs to be filed with SEBI on or before 31 March 2024 or SIDs already filed with SEBI (final observations yet to be issued) or SIDs for which the final observations have already been received from SEBI (if launched on or before 31 March 2024), can use the old format of SID, provided that the SIDs are updated as per the timeline mentioned at (c) below.
- For Existing SIDs – by 30 April 2024, with data as of 31 March 2024.

The Circular is applicable to all MFs, Asset Management Companies (AMCs), Trustee Companies/Board of Trustees of Mutual Funds, and AMFI.

PROCEDURAL FRAMEWORK FOR DEALING WITH UNCLAIMED AMOUNTS LYING WITH ENTITIES HAVING LISTED NON-CONVERTIBLE SECURITIES AND MANNER OF CLAIMING SUCH AMOUNTS BY INVESTORS

SEBI has issued a circular dated 8 November 2023, prescribing a uniform process of claiming unclaimed funds in a streamlined manner for the ease and convenience of investors.

Regulation 61A (2) of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (LODR Regulations) mandated the transfer of the unclaimed amounts within 7 days of expiry of 30 days of the due date of payment.

Further, Regulation 61A (3) of the LODR Regulations, inter-alia, provides that any amount transferred to the Escrow Account in terms of Regulation 61A (2), remaining unclaimed for a period of 7 years shall be transferred to Investor Education and Protection Fund (IEPF) in case of listed entity being a Company and to Investor Protection and Education Fund (IPEF) in case of listed entity being not a Company.

Accordingly, the circular contains the following Annexures:

Annexure A - Framework for transfer of unclaimed amounts by the listed entities to Escrow Accounts and claim thereof by investors.

Annexure B - Framework for transfer of unclaimed amounts from the Escrow Account of the listed entity to IPEF and claim thereof by the investors.

The provisions of the circular shall come into effect from 1 March 2024.

Further, listed entities having unclaimed amounts in the Escrow Account for less than 7 years, as of 29 February 2024, shall start computing interest, as per provisions of Annexure A, from 1 March 2024. For listed entities which are not companies and have unclaimed amounts in the Escrow Account for more than 7 years, as of 29 February 2024, shall transfer the unclaimed amounts of the investors to IPEF, in compliance with the provisions of Annexure B, on or before 31 March 2024.

The Circular is applicable to all issuers who have listed Non-Convertible Securities, All Recognised Stock Exchanges, and All Depositories.

PROCEDURAL FRAMEWORK FOR DEALING WITH UNCLAIMED AMOUNTS LYING WITH INFRASTRUCTURE INVESTMENT TRUSTS (INVITS) AND MANNER OF CLAIMING SUCH AMOUNTS BY UNIT HOLDERS

SEBI has issued a circular dated 8 November 2023, prescribing the framework as prescribed in Annexure A to this circular, defining the manner of handling the unclaimed amounts lying with the InvITs, transfer of such amounts to the IPEF and claim thereof by the unitholders.

As per SEBI (Infrastructure Investment Trusts) Regulations, 2014 (InvIT Regulations), not less than 90% of the Net Distributable Cash Flows (NDCFs) of the InvIT shall be declared and distributed to the unitholders. Any amount remaining unclaimed or unpaid out of the distributions declared by an InvIT shall be transferred to the Investor Protection and Education Fund which may be claimed by the unitholders.

The provisions of the circular shall come into effect from 1 March 2024.

Further, InvITs having unclaimed amounts for less than 7 years, as of 29 February 2024, shall start computing interest, as per provisions of Part I of Annexure A, from 1 March 2024. For InvITs which shall be holding unclaimed amounts for more than 7 years, as of 29 February 2024, shall transfer the unclaimed amounts of the unitholders to IPEF, in compliance with the provisions of Part II of Annexure A, on or before 31 March 2024.

The Circular is applicable to All Infrastructure Investment Trusts (InvITs), All Parties to InvITs, All Recognised Stock Exchanges and All Depositories

PROCEDURAL FRAMEWORK FOR DEALING WITH UNCLAIMED AMOUNTS LYING WITH REAL ESTATE INVESTMENT TRUSTS (REITS) AND MANNER OF CLAIMING SUCH AMOUNTS BY UNITHOLDERS.

SEBI has issued a circular dated 8 November 2023, prescribing the framework as prescribed in Annexure A to this circular, for dealing with unclaimed amounts lying with REITs and the manner of claiming such amounts by unitholders.

As per SEBI (Real Estate Investment Trusts) Regulations, 2014 (REIT Regulations), not less than 90% of the Net Distributable Cash Flows (NDCFs) of the REIT shall be declared and distributed to the unitholders. Any amount remaining unclaimed or unpaid out of the distributions declared by a REIT shall be transferred to the IPEF which may be claimed by the unitholders.

The provisions of the circular shall come into effect from 1 March 2024.

Further, REITs having unclaimed amounts for less than 7 years, as of 29 February 2024, shall start computing interest, as per provisions of Part I of Annexure A, from 1 March 2024. For REITs which shall be holding unclaimed amounts for more than 7 years, as of 29 February 2024, shall transfer the unclaimed amounts of the unitholders to IPEF, in compliance with the provisions of Part II of Annexure A, on or before 31 March 2024.

The Circular Impacts is applicable to all Real Estate Investment Trusts (REITs), all Parties to REITs, all Recognised Stock Exchanges, and all Depositories.

RESERVE BANK OF INDIA (RBI)

BANKING REGULATION (AMENDMENT) ACT 2020 - CHANGE IN NAME OF CO-OPERATIVE BANKS

RBI has issued a circular dated 30 October 2023, on Banking Regulation (Amendment) Act 2020 for Change in Name of Co-operative Banks, incorporating Sections 49B and 49C of the Banking Regulation Act, 1949, requiring the Reserve Bank's certification for any change in a co-operative bank's name or bye-laws.

In terms of Section 49B, the Central Registrar of Cooperative Societies (CRCS)/Registrar of Cooperative Societies (RCS) shall not signify its approval to the change of name of any co-operative bank unless the RBI certifies in writing that it has no objection to such change. Further, in terms of Section 49C, no application for the confirmation of the alteration of the bye-laws of a cooperative bank shall be maintainable unless RBI certifies that there is no objection to such alteration.

Accordingly, RBI has issued guidelines with regard to the procedure to be followed for any change in name by a Co-operative Bank in Annexure 1 of the circular.

These guidelines will come into effect from the date of issue of this circular.

This Circular is applicable to the Chairman/Managing Director/Chief Executive Officer, all Primary (Urban) Co-operative Banks, all State Co-operative Banks, and all District Central Co-operative Banks.

REGULATION OF PAYMENT AGGREGATOR – CROSS BORDER (PA - CROSS BORDER)

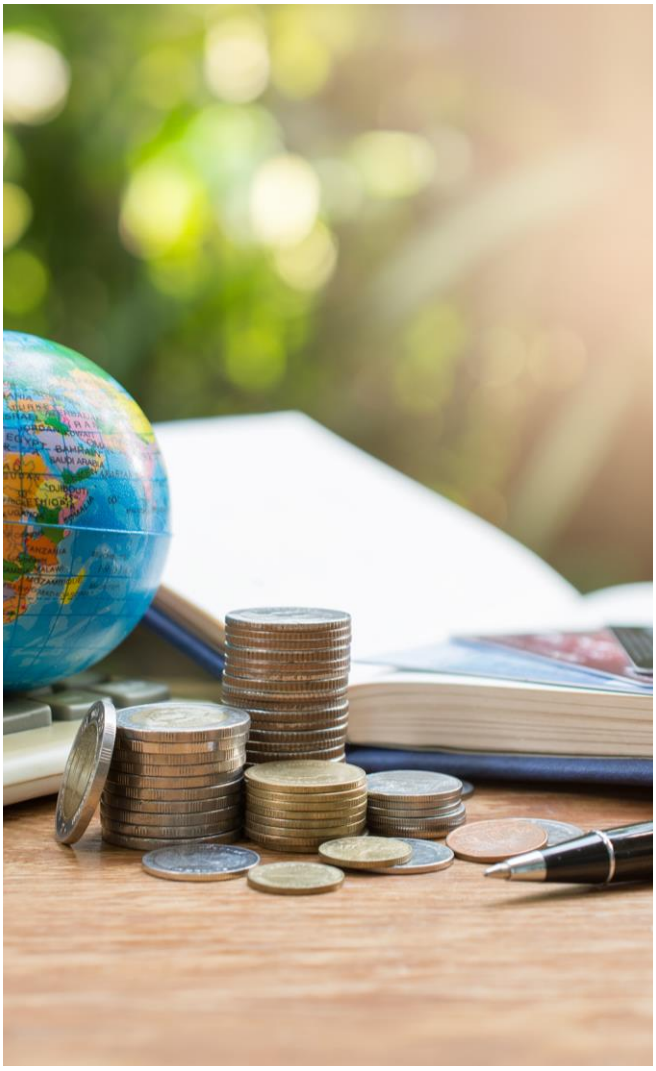
RBI has issued a circular dated 31 October 2023, on bringing in all entities facilitating cross-border payment transactions for import and export of goods and services under direct regulation of the RBI. Such entities shall be treated as Payment Aggregator-Cross Border (PA-CB) and the details thereof are provided in Annexure to this circular.

The following are the key provisions of the circular:

- **RBI Authorisation** – Non-banks which provide PA-CB services as of the date of this circular, shall apply to the RBI for authorisation by 30 April 2024.
- **Compliances** - The entities, currently carrying out this activity should ensure adherence to the guidelines on governance, merchant on-boarding, customer grievance redressal and dispute management framework, baseline technology recommendations, security, fraud prevention and risk management framework within 3 months from the date of this circular and should be complied with on an ongoing basis thereafter.
- **Net worth criteria –** Non-bank PA-CBs, shall have a minimum net worth of INR 15cr at the time of submitting an application to the RBI for authorisation and a minimum net worth of INR 25cr by 31 March 2026. New non-bank PA-CBs (i.e. entities which have not commenced operations before the date of this circular) shall have a minimum net worth of INR 15cr at the time of submitting an application to the RBI for authorisation and shall attain a minimum net worth of INR 25cr by end of the third financial year of grant of authorisation.
- **Winding up of PA CBs** - All existing non-bank PA-CBs which are not able to comply with the net worth requirement or do not apply for authorisation within the stipulated time frame, shall wind up PA-CB activity by 31 July 2024.
- **Rules for different types of PA-CBs** – The circular also prescribes various rules and requirements for Import only PA-CB & Export only PA-CB including but not limited to maintenance of import/export collection amount, on-boarding & due diligence of merchants etc.

Entities, including Authorised Dealer (AD) banks, PAs, and PAs-CB, involved in processing/settlement of cross-border payment transactions for import and export of goods and services are expected to comply with these instructions.

The circular applies to all Payment System Providers and Payment System Participants.



MASTER DIRECTION ON INFORMATION TECHNOLOGY GOVERNANCE, RISK, CONTROLS AND ASSURANCE PRACTICES

RBI has issued a Master Direction dated 7 November 2023, to incorporate, consolidate and update the guidelines, instructions and circulars on IT Governance, Risk, Controls, Assurance Practices and Business Continuity/Disaster Recovery Management. Based on public comments and feedback received on the draft Master Direction published in October 2022, final Reserve Bank of India (Information Technology Governance, Risk, Controls and Assurance Practices) Directions, 2023.

It includes provisions relating to IT Governance, IT Infrastructure and services management, IT and Information Security Risk Management, Business Continuity and Disaster Recovery Management, Information Systems (IS) Audit and Repeal and Other Provisions.

These Directions shall be applicable to the following entities:

- All Banking Companies, Corresponding New Banks, and State Bank of India
- Non-Banking Financial Companies
- Credit Information Companies
- EXIM Bank, National Bank for Agriculture and Rural Development (NABARD), National Bank for Financing Infrastructure and Development (NaBFID), National Housing Bank (NHB) and Small Industries Development Bank of India (SIDBI).

Further, these directions shall not apply to NBFC – Core Investment Companies and Local Area Banks.

These Directions shall come into effect from 1 April 2024.

GUIDELINES ON THE IMPORT OF SILVER BY QUALIFIED JEWELLERS AS NOTIFIED BY – THE INTERNATIONAL FINANCIAL SERVICES CENTRES AUTHORITY (IFSCA)

RBI has issued Guidelines dated 10 November 2023, on the import of silver by Qualified Jewellers as notified by IFSCA.

In this notification, AD Category-I banks are directed to allow Qualified Jewellers to remit advance payments for the import of silver through India International Bullion Exchange IFSC Ltd (IIBX), following the conditions as mentioned in the Circular dated 25 May 2022 in terms of which, AD- Banks were permitted to remit advance payments on behalf of qualified jewellers for eleven days for import of Gold through IIBX in compliance to the extant Foreign Trade Policy and regulations issued under IFSC Act.

The circular is applicable to all Category-I Authorised Dealer Banks.

INTERNATIONAL TRADE SETTLEMENT IN INDIAN RUPEES (INR) – OPENING OF ADDITIONAL CURRENT ACCOUNT FOR EXPORT PROCEEDS

RBI has issued a circular dated 17 November 2023, allowing AD-Category-I Banks to open additional accounts for export proceeds, in order to provide greater operational flexibility to the exporters and AD-Category-I Banks.

It refers to the RBI Circular dated 11 July 2022 in terms of which an additional arrangement has been put in place for invoicing, payment, and settlement of exports/imports in INR through Special Rupee Vostro Accounts of the correspondent bank/s of the partner trading country maintained with AD Category-I banks in India and Circular dated 19 April 2022, on Opening of Current Accounts and CC/OD Accounts by Banks.

The circular permits AD Category-I banks to maintain a Special Rupee Vostro Account as per the provisions of the Reserve Bank circular dated 11 July 2022, to open an additional special current account for its exporter constituent exclusively for settlement of their export transactions.

This circular is applicable to all Scheduled Commercial Banks (holding AD Category-I license).

REGULATORY UPDATES

RESERVE BANK OF INDIA (RBI)

CIRCULAR DATED 17 NOVEMBER 2023: INTERNATIONAL TRADE SETTLEMENT IN INDIAN RUPEES (INR) – OPENING OF ADDITIONAL CURRENT ACCOUNT FOR EXPORT PROCEEDS

RBI on 17 November 2023 has decided to put in place an additional arrangement for invoicing, payment, and settlement of exports/imports in INR through Special Rupee Vostro Accounts of the correspondent bank/s of the partner trading country maintained with AD Category-I banks in India.

Further, AD Category – 1 Banks maintaining Special Rupee Vostro Accounts are permitted to open an additional special current account and CC/OD Accounts for its exporter constituent exclusively for settlement of their export transactions to provide greater operational flexibility to the exporters.

CIRCULAR DATED 8 NOVEMBER 2023: FULLY ACCESSIBLE ROUTE FOR INVESTMENT BY NON-RESIDENTS IN GOVERNMENT SECURITIES – INCLUSION OF SOVEREIGN GREEN BONDS

The government of India had introduced a separate channel, called the Fully Accessible Route (FAR), to enable non-residents to invest in specified Government of India securities vide Circular dated 30 March 2020.

Specified securities have been defined as the Government Securities periodically notified by the RBI for investment under the FAR route.

In this regard, RBI has vide Circular dated 8 November 2023, designated all Sovereign Green Bonds issued by the Government in the fiscal year 2023-24 as specified securities under FAR for investment by non-residents.

CIRCULAR DATED 16 NOVEMBER 2023: REGULATORY MEASURES TOWARDS CONSUMER CREDIT AND BANK CREDIT TO NBFCS

By this Circular, RBI has introduced certain regulatory measures which include an increase in the risk weights of consumer credit exposure of commercial banks and NBFCs and credit card receivables exposure of SCBs and NBFCs as under:

- Increase the risk weights with respect to consumer credit exposure of commercial banks (outstanding as well as new), including personal loans (excluding housing loans, education loans, vehicle loans and loans secured by gold and gold jewellery) by 25 percentage points to 125%;
- Similarly, Consumer credit exposure of NBFCs has also been raised to 125% in place of 100%;
- Increase the risk weights in exposures of credit card receivables of SCBs and NBFCs by 25% points to 150% and 125% respectively.

Further, RBI has increased the risk weights on exposures of SCBs to NBFCs by 25% points (over and above the risk weight associated with the given external rating) in all cases where the extant risk weight as per external rating of NBFCs is below 100%.

The provisions of this circular shall come into force with immediate effect.

NOTIFICATION DATED 10 NOVEMBER 2023: RBI NOTIFIES GUIDELINES ON IMPORT OF SILVER BY QUALIFIED JEWELLERS AS NOTIFIED BY IFSCA (THE CIRCULAR)

As per Circular No. 04 dated 25 May 2022, AD Category-I banks have been permitted to remit advance payments on behalf of Qualified Jewellers on the import of Gold as notified by IFSCA for eleven days under specific ITC(HS) Codes through India International Bullion Exchange IFSC Ltd. (IIBX) subject to the satisfaction of following conditions:

- Advance remittance for such import shall be as per the terms of the sale contract
- AD Category-I Bank shall carry out due diligence and ensure all the remittances sent are for bona fide import transactions only
- Advance remittance should not be leveraged in any form for importing Gold worth more than the advance remittances made
- If the import transaction does not materialise or the advance remittance made is more than the amount required, the unutilised amount shall be remitted back within eleven days
- All payments shall be made through exchange mechanisms approved by IFSCA. Any deviations need to be approved in advance by IFSCA
- All required documentation, custom duty-related procedures and filing of Bill of Entry (BoE) shall be complete
- Outward Remittance Messages (ORMs) shall be created and matched with the corresponding BoE and shall be closed in the Import Data Processing and Monitoring System (IDPMS)
- Qualified Jewellers shall comply with all the extant instructions relating to imports under the Foreign Exchange Management Act, Foreign Trade (Development and Regulation) Act, Foreign Trade Policy and regulations of IFSCA

As per The Circular, AD Category-I Banks have also been permitted to remit advance payments on the import of Silver on behalf of Qualified Jewellers, along with nominated agencies notified by RBI and DGFT for eleven days under specific ITC(HS) Codes through IIBX subject to the conditions mentioned above.

SECURITIES AND EXCHANGE BOARD OF INDIA (SEBI)

CIRCULAR DATED 8 NOVEMBER 2023: PROCEDURAL FRAMEWORK FOR DEALING WITH UNCLAIMED AMOUNTS LYING WITH ENTITIES HAVING LISTED NON-CONVERTIBLE SECURITIES AND MANNER OF CLAIMING SUCH AMOUNTS BY INVESTORS.

The Circular shall come into effect from 1 March 2024.

As per Regulation 61A of SEBI regulations, where interest/dividend/redemption amount has not been claimed within thirty days from the due date of payment, a listed entity shall within the next seven days transfer the said amount to an Escrow Account. If the said amount is unclaimed within a period of seven years, then such amount shall be transferred to the Investor Education and Protection Fund (IEPF).

While the said provision mandated the transfer of the unclaimed amounts, there was a need to standardise the process to be followed by a listed entity for the transfer of such amounts to the Escrow Account and by the investors for making claims thereof. Hence, a framework has been created for defining the manner of transfer of such un While the said provision mandated transfer of the unclaimed amounts1, there was a need to standardise the process to be followed by a listed entity for transfer of such amounts to Escrow Account and by the investors for making claims thereof. Hence, a framework has now been created for defining the manner of transfer of such unclaimed amounts by a listed entity and a listed entity which is not a company to an Escrow Account and claim thereof by an investor.

Stock Exchanges are directed to bring the provisions of this circular to the notice of listed entities/ issuers of listed Non-Convertible Securities and make consequential changes, if any, to their respective bye-laws.

CIRCULAR DATED 8 NOVEMBER 2023: PRESS RELEASE DATED 25 NOVEMBER 2023: 2023RD MEETING OF THE SEBI BOARD (PRESS RELEASE)

As per the Press Release, SEBI on 25 November 2023 approved the following changes which are summarised below –

- The Board approved the following changes in the framework for the Social Stock Exchange (SSE) to provide impetus to fundraising by Not-for-Profit Organisations (NPOs)-
  - Reduction in minimum issue size and minimum application size in case of public issuance of Zero Coupon Zero Principal Instruments (ZCZP) by NPOs on SSE from INR 1 crore to INR 50 lakhs and from INR 2 lakhs to INR 10,000 respectively to enable wider participation.
  - Permitting entities registered under section 10(23C) and 10(46) of the Income Tax Act, 1961 to be eligible for registration and fundraising through the issuance and listing of ZCZP on SSE
  - Change of nomenclature of Social Auditor with Social impact Assessor
  - Permitting NPOs to disclose past social impact reports in fundraising documents subject to disclosure of key parameters
- The Board approved a regulatory framework applicable for the registration of Index Providers which license Significant Indices that shall be notified by SEBI based on objective criteria. The regulatory framework which is in accordance with IOSCO Principles for Financial Benchmarks shall only be applicable to Significant Indices.
- The Board approved amendments to SEBI (Real Estate Investment Trusts) Regulations, 2014 to create a regulatory framework for the facilitation of Small and Medium REITs (SM REITs), with an asset value of at least INR 50 crore vis-à-vis minimum asset value of INR 500 crore for existing REITs.
  SM REITs shall have the ability to create separate schemes for owning real estate assets through SPVs constituted as companies.
- The framework inter-alia, provides for the structure of SM REITs, migration of existing structures meeting certain specified criteria, and obligations of investment managers including net worth, investment conditions, etc.

- The Board approved the following amendments to SEBI (Alternative Investment Funds) Regulations, 2012 to facilitate ease of compliance and to strengthen investor protection in Alternative Investment Funds (AIFs) –
  - Any fresh investments by AIFs, beyond September 2024, and existing investments where
    - The Investee company has been mandated under applicable law; and
    - Investments where the AIF, on its own, or along with other SEBI registered intermediaries/entities which are mandated to hold their investment in dematerialised form, has control in the investee company shall be held in dematerialised form.
  - Dematerialisation of investments is exempted for investments held by
    - Liquidation schemes of AIFs;
    - Schemes of an AIF whose tenure (not including the permissible extension of tenure) ends within one year from the date of issuance of necessary notification in this regard; and
    - Schemes of an AIF which are in extended tenure as of the date of issuance of the notification.
  - The requirement of mandatorily appointing a custodian who is an associate of the manager or sponsor of the AIF, subject to conditions similar to those prescribed under SEBI (Mutual Funds) Regulations, 1996 has now been extended to all AIFs.

CIRCULAR DATED 8 NOVEMBER 2023: PROCEDURAL FRAMEWORK FOR DEALING WITH UNCLAIMED AMOUNTS LYING WITH INFRASTRUCTURE INVESTMENT TRUSTS (INVITS), REAL ESTATE INVESTMENT TRUSTS (REITS) AND MANNER OF CLAIMING SUCH AMOUNTS BY UNITHOLDERS

The Circular shall come into effect from 1 March 2024.

As per SEBI Regulations, REITs and InvITs are required to distribute a certain percentage of distributable cash to unit holders within a specified time. To deal with the amount remaining unclaimed or unpaid out of distribution; Regulation 18(6)(f) of the REIT Regulations and Regulation 18(6)(e) of the InvIT Regulations inserted which states that the unclaimed amounts shall be transferred to the Investor Protection and Education Fund (IPEF) constituted by SEBI.

- Further, a detailed framework has been provided, wherein, REITs and InvITs are required to transfer any amount unclaimed for 15 days within 7 working days in a separate escrow account.
- Any amount unclaimed continuing for more than 7 years will be transferred to the IPEF within 30 days from the end of 7 years.
- Further, the Circular also provides for appointing a Nodal Office who would be in charge of the above compliances and filling in necessary details/information as required by SEBI. A delay in depositing the above amount to either the escrow account or IPEF would trigger penalties as prescribed.
- The Circular also provides for the mechanism in which unitholders can claim the unclaimed amount by applying with the Manager of the respective REIT or InvIT.

CIRCULAR DATED 13 NOVEMBER 2023: MOST IMPORTANT TERMS AND CONDITIONS (MITC) FOR STOCK BROKER AND CLIENT RELATIONSHIP

SEBI has via the Master Circular on stockbrokers prescribed a list of uniform documents for formalising the broker-client relationship, a copy of which is required to be provided by the broker to the client. Since these documents are voluminous, the Investor may lose focus on critical aspects of the relationship with the broker. Hence, it has been decided that the broker shall inform a standard MITC which shall be acknowledged by the client.

The form, nature of communication, documentation, and other details of MITC shall be published on or before 1 January 2024 by the brokers Industry Standard Forum (ISF) under the aegis of stock exchanges. If ISF fails to do so then SEBI at its discretion may publish standards in respect of same.

MITC shall be informed to the existing clients via email or any other suitable mode of communication by 1 June 2024 and for new clients, the date of implementation and compliance by the market participants shall be 1 April 2024.

CIRCULAR DATED 1 NOVEMBER 2023: SIMPLIFICATION AND STREAMLINING OF OFFER DOCUMENTS OF MUTUAL FUND SCHEMES

In order to enhance the ease of preparation of and streamline the Scheme Information Document (SID) by mutual funds, SEBI in consultation with the Association of Mutual Funds of India (AMFI) and recommendations of the Mutual Fund Advisory Committee the format of SID was simplified and rationalised

Key highlights of the Circular include:

- Updated formats to be implemented w.e.f. 1 April 2024 and the existing draft SIDs (to be filed or already filed and final observation yet to be issued) to be revised to updated formats by 30 April 2024 with data as on 31 March 2023
- Modification of various clauses of the SEBI Master Circular dated May 19 2023 along with format for SID including - the scheme's top 10 portfolio holdings, disclosure w.r.t investments by fund manager being board of directors of AMC and other key personnel, Risk-o-meter of the Benchmark, provisions related to segregated portfolio, detailed disclosures for provision in SAI, etc.

CIRCULAR DATED 17 NOVEMBER 2023: SEBI AMENDS MASTER CIRCULAR FOR REGISTRARS TO AN ISSUE AND SHARE TRANSFER AGENTS DATED 17 MAY 2023 (MASTER CIRCULAR) TO REMOVE DIFFICULTIES DUE TO FREEZING OF FOLIOS IN THE ABSENCE OF PRESCRIBED DETAILS OF SECURITY HOLDERS, (THE CIRCULAR)

The Circular addresses all registered Registrars to Issue and Share Transfer Agents (RTA), Listed Companies, Recognised stock exchanges, Recognised depositories and Depository participants.

The Circular amends the Master Circular to remove unintended challenges due to the freezing of folios (holders of physical securities did not furnish prescribed details in Annexure 8 of the Master Circular) and referring to the administering authorities under Benami Transactions (Prohibitions) Act, 1988 (Benami Act) and/or Prevention of Money Laundering Act, 2002 (PMLA).

With this Circular, SEBI has removed such reference to the term freezing/frozen and referral of such folios to the administering authority of the Benami Act and PMLA.

This circular comes into force with immediate effect.

CIRCULAR DATED 1 NOVEMBER 2023: SIMPLIFICATION AND STREAMLINING OF OFFER DOCUMENTS OF MUTUAL FUND SCHEMES

In order to enhance the ease of preparation of and streamline the Scheme Information Document (SID) by mutual funds, SEBI in consultation with the Association of Mutual Funds of India (AMFI) and recommendations of the Mutual Fund Advisory Committee the format of SID was simplified and rationalised

Key highlights of the Circular include:

- Updated formats to be implemented w.e.f. 1 April 2024 and the existing draft SIDs (to be filed or already filed and final observation yet to be issued) to be revised to updated formats by 30 April 2024 with data as of 31 March 2023
- Modification of various clauses of the SEBI Master Circular dated May 19, 2023, along with the format for SID including - the scheme's top 10 portfolio holdings, disclosure w.r.t investments by fund manager being board of directors of AMC and other key personnel, Risk-o-meter of the Benchmark, provisions related to segregated portfolio, detailed disclosures for provision in SAI, etc

MINISTRY OF CORPORATE AFFAIRS (MCA)

NOTIFICATION DATED 9 NOVEMBER 2023: LIMITED LIABILITY PARTNERSHIP (SIGNIFICANT BENEFICIAL OWNERS) RULES, 2023

The MCA has notified Limited Liability Partnership (Significant Beneficial Owners) Rules, 2023 (SBO Rules) on 9 November 2023. These rules aim to regulate the identification and reporting of SBOs in Limited Liability Partnerships (LLPs) in India. Key highlights of the LLP SBO Rules 2023 are:

- The SBO rules define SBO in an LLP and other relevant definitions such as control, majority stake, etc. maintain a register of its partners in Form 4A, from the date of its incorporation, which shall be kept at the registered office.
- All LLPs must take steps to identify SBOs and ensure they submit declarations in Form LLP BEN-1.
- The rules provide that every reporting LLP shall give notice to such identified partners in Form LLP BEN-4 in accordance with section 90 of the Companies Act, 2013 as applied to LLPs as per the notification.
- Existing SBOs must provide declarations to LLPs in Form LLP BEN-1 within 90 days of the commencement of rules.
- Every individual who subsequently becomes SBO must provide declarations to LLPs in Form LLP BEN-1 within 30 days of acquiring such SBO or any change therein.
- Upon receiving declarations in Form LLP BEN-1, LLPs are required to file such declarations with the Registrar of Companies (RoC) in Form LLP BEN-2 within a period of 30 days.
- LLPs are required to maintain a register of SBOs in Form LLP BEN-3.
- The notification also provides a recourse to LLPs to approach the tribunal if any person fails to give information in Form LLP BEN-1 within the time specified or where the information is not satisfactory.
- These rules shall not apply to the extent the contribution of the reporting LLP is held by:
  - the Central Government, State Government or any local authority;
  - a reporting LLP or a body corporate, or an entity controlled by the Central Government or by one or more State Governments, or partly by the Central Government and partly by one or more State Governments;
  - an investment vehicle registered with and regulated by SEBI, such as mutual funds, AIF, REITs, InVITs;
  - investment vehicles regulated by RBI or IRDAI or Pension Fund Regulatory and Development Authority.

NOTIFICATION DATED 30 OCTOBER 2023: EFFECTIVE DATE FOR CERTAIN SECTIONS OF THE COMPANIES (AMENDMENT) ACT, 2020 (AMENDMENT ACT)

The MCA has appointed 30 October 2023 as the date on which the provisions of section 5 of the Companies (Amendment) Act, 2020 (Amendment Act) shall be effective.

Section 5 of the Amendment Act amends section 23 of the Companies Act, 2013 (The Act) by inserting the following sub-sections after section 23(2) of the Act.

Section 23(3):

Such class of public companies may issue such class of securities for the purposes of listing on permitted stock exchanges in permissible foreign jurisdictions or such other jurisdictions, as may be prescribed.

Section 23(4):

The Central Government may, by notification, exempt any class or classes of public companies referred to in sub-section (3) from any of the provisions of this Chapter, Chapter IV, section 89, section 90 or section 127 and a copy of every such notification shall, as soon as may be after it is issued, be laid before both Houses of Parliament.

CIRCULARS / NOTIFICATIONS / PRESS RELEASE

CBDT MAKES CERTAIN CHANGES PERTAINING TO SUBMITTING A STATEMENT OF FINANCIAL TRANSACTIONS OR REPORTABLE ACCOUNTS.

Section 285BA of the Income-tax Act, 1961 (IT Act) read with Rule 114E of the Income-tax Rules, 1962, (IT Rules) requires certain specified entities to furnish a statement of “Financial transactions or Reportable account” registered/recorded/maintained by them during the Fiscal year (FY) to the tax authorities.

The Central Board of Direct Taxes (CBDT) vide Notification no. 4 of 2021 dated 30 April 2021 issued the format, procedure and guidelines for submission for SFT. Subsequently, discussions were held with various stakeholders whereby certain changes were suggested. In this regard, recently, the CBDT has recently issued a Corrigendum to Notification no. 4 of 2021 making the following changes:

- With effect from 1 April 2023, the SFT data will be submitted on a half-yearly basis instead of an existing quarterly basis. Data relating to the first half of the FY ending 30 September shall be submitted by 31 October and for second half ending 31 March shall be submitted by 30 April.
- With effect from 1 April 2023, the minimum period of holding to classify the asset as short-term or long-term should be read as below:

SECURITY CLASS DESCRIPTION	MINIMUM PERIOD OF HOLDING	REMARKS
Unit of Equity-Oriented Mutual Fund	12 months	
Units of UTI	12 months	▪ Where more than 35% of its total proceeds are invested in the equity shares of domestic companies, this information should be provided. ▪ It will always be classified as a short-term capital asset if not more than 35% of its total proceeds are invested in equity shares of domestic companies, (Specified Mutual Fund)
Other Units	36 months	

[Corrigendum to Notification No. 04/2021, dated 15 November 2023]

INDIA ENTERS INTO AN EXCHANGE OF INFORMATION AND COLLECTION OF TAX AGREEMENTS WITH SAINT VINCENT AND THE GRENADINES.

- Section 90(1)(c) of the IT Act gives power to the Central Government to enter into an agreement with another country for the exchange of information to prevent tax evasion or tax avoidance on income chargeable under the IT Act or corresponding law in force in that country or specified territory.
- In this regard, recently, the Central Government has recently entered into an exchange of information agreement with the Government of Saint Vincent and Grenadines to promote the exchange of information relevant to the administration and enforcement of domestic tax laws in both India and Saint Vincent and Grenadines.
- This exchange encompasses information necessary for determining, assessing, and collecting taxes, as well as recovering and enforcing tax claims or investigating and prosecuting tax matters.

[Notification No. 96/2023, dated 1 November 2023]

CBDT PRESCRIBES PROCESS; MONETARY AND TIME LIMITS FOR WITHHOLDING TAX REFUND

Recently, the CBDT has issued an instruction laying down:

- Monetary limits for applicability of Section 245 of the IT Act;
- Timelines; and
- Procedure for recording reasons before withholding refunds under Section 245(2) of the IT Act.

To read our detailed analysis, please go to: https://www.bdo.in/en-gb/insights/alerts-updates/direct-tax-alert-cbdt-prescribes-process-monetary-and-time-limits-for-withholding-tax-refund

[Instruction No. 02/2023 dated 10 November 2023]

JUDICIAL UPDATES

TEN YEAR PERIOD FOR REOPENING ASSESSMENT APPLIES ONLY IN CASES WHERE THE ALLEGED ESCAPEMENT OF INCOME IS MORE THAN INR 5MN

- Taxpayers were issued reassessment notices under Section 148[1] of the IT Act for FY 2015-16 i.e. Assessment Year (AY) 2016-17 and FY 2016-17 i.e. AY 2017-18 between 1 April 2021 to June 2021 under the old reassessment scheme which was revived by the Supreme Court ruling in the case of *Ashish Agarwal*[2].
- Taxpayers filed their objections in terms of Section 148A(c)[3] of the IT Act to the aforementioned notices, which were aligned with the provisions of Section 148A(b) of the IT Act. They flagged that the time limit prescribed under Section 149(1)(a)[4] of the IT Act had expired and given the fact that the income chargeable to tax which had allegedly escaped assessment amounted to less than INR 5mn, the tax authorities could not take recourse to the extended limitation period provided in Section 149(1)(b) of the IT Act.
- Taxpayers submitted that the time limit to issue notices under Section 148 of the IT Act for AY 2016-17 and AY 2017-18 expires on 31 March 2020 and 31 March 2021 respectively whereas the reassessment notices are issued on or after 1 April 2021. The Tax Officer contended that notices issued were within the limitation period thereby rejecting the objection preferred by the taxpayer. Tax officers passed an order under Section 148A(d)[5] of the IT Act and consequently issued reassessment notices under Section 148 of the IT Act to taxpayers.
- Aggrieved, taxpayers filed a Writ Petition before the Delhi High Court. The issue for consideration pertaining to AY 2016-17 and AY 2017-18 is whether the order passed under Section 148A(d) of the IT Act and consequent notice issued under Section 148 of the IT Act, falls foul of the limitation prescribed under Section 149(1)(a) of the IT Act.
- The Delhi High Court made the following observations while ruling in favour of the taxpayer:
  - As per the amended Section 149(1) of the IT Act, no reassessment notice shall be issued beyond a period of 3 years from the end of the relevant AY if the escaped income is less than INR 5mn. Further, a perusal of Section 149(1)(b) of the IT Act shows that one of the conditions for triggering the extended period of 10 years in cases where 3 years have elapsed, is when income chargeable to tax which has escaped assessment amounts to or is likely to amount to INR 5mn or more for the AY in issue.
  - The limitation period under Section 149(1)(a) of the IT Act for FY 2015-16 i.e. AY 2016-17 would be 31 March 2020 and for FY 2016-17 i.e. AY 2017-18 would be 31 March 2021.
  - Tax authorities have relied on Section 3(1)[6] of the Taxation and Other Laws (Relaxation of certain provisions) Act (TOLA)[7] and the Notifications issued thereunder dated 31 March 2021[8] and 27 April 2021[9], from time to time, which, in effect, extended the end date for completion of proceedings up until 30 June 2021.

[1] Section 148 of the IT Act empowers a tax officer to issue reassessment notice to taxpayer in case tax officer believes that some income earned by taxpayer has escaped assessment. Section 148A of the IT Act lays down a procedure to be followed by tax officer before issuing reassessment notice to taxpayer.

[2] Please refer our Tax Alert- https://www.bdo.in/en-gb/insights/alerts-updates/direct-tax-alert-supreme-court-treats-reassessment-notices-issued-between-april-to-june-2021-unde

[3] Section 148A(b) of the IT Act provides taxpayer an opportunity of being heard and give reply as per Section 148A(c) of the IT Act by serving upon him a show cause notice as to why notice under Section 148 should not be issued basis the information available with tax officer.

[4] Section 149 of the IT Act provides time limit to issue reassessment notices. Section 149(1)(a) of the IT Act provides that reassessment notices shall not be issued if 3 years have elapsed from the end of the relevant AY. Section 149(1)(b) of the IT Act provides that reassessment notices can be issued if 3 years, but not more than 10 years have elapsed from the end of the relevant AY in case where the escaped assessment amount is INR 5mn or more.

[5] Section 148A(d) of the IT Act provides that tax officer can decide basis the material available on record whether or not it is a fit case to issue notice under Section 148 of the IT Act, by passing an order, with the prior approval of the specified authority.

[6] Section 3(1) of the TOLA provides that where any time-limit has been specified in, or prescribed or notified, under the specified Act which falls during the period 20 March 2020 to 31 December 2020 or such other date after 31 December 2020 as may be notified by the Central Government.

[7] Please refer our Tax Alert- https://www.bdo.in/en-gb/insights/alerts-updates/direct-tax-alert-lok-sabha-passes-taxation-and-other-laws-(relaxation-and-amendment-of-certain-prov

[8] Please refer our Tax Alert- https://www.bdo.in/en-gb/insights/alerts-updates/direct-tax-alert-cbdt-further-extends-few-statutory-deadlines

[9] Please refer our Tax Alert- https://www.bdo.in/en-gb/insights/alerts-updates/direct-tax-alert-cbdt-further-extends-few-statutory-deadlines-and-payment-under-vivad-se-vishwas-s

- The Supreme Court in the case of Ashish Agarwal, having regard to the fact that the procedure prescribed under the new regime (as encapsulated in Finance Act 2021) had not been followed, modified various High Court's rulings by issuing specific directions to balance the interests of the taxpayers and the tax authorities.
- In the case of Ashish Agarwal, there was no discussion or deliberation concerning the provisions of TOLA or the Notifications issued thereunder. However, the Supreme Court issued two significant directions which have some bearing on the case before us. First, all defences, including those available under Section 149 of the amended IT Act, would remain open to taxpayers. Second, all rights and contentions available to the taxpayers and tax authorities under the Finance Act 2021 and in law will continue to subsist.
- Therefore, the tax authorities cannot contend that the defence of limitation available under Section 149(1)(a) of the IT Act cannot be taken. Likewise, it is open for tax authorities to resort to the amended provisions.
- The observations of the coordinate bench in the case of Mon Mohan Kohli[10] make it amply clear that Section 149 of the IT Act continued to operate despite attempts to the contrary made by the introduction of explanations in Notification dated 31 March 2021 and 27 April 2021.
- The arguments advanced by the Tax Authorities that since time limits have been extended by the Central Government by virtue of the Notifications issued under Section 3(1) of TOLA and the impugned actions taken before 30 June 2021 were valid in eyes is law, is misconceived for the following reasons:
  - There was no power invested in TOLA and that too via Notifications, to amend the statute. Since, with effect from 1 April 2021 when the Finance Act 2021 came into force, the Notifications dated 31 March 2021 and 27 April 2021, which are sought to be portrayed by the Tax Authorities as extending the period of limitation, were contrary to the provisions of Section 149(1)(a) of the IT Act and hence they lost their efficacy.
  - The extension of the end date for completion of proceedings and compliances, a power which was conferred on the Central Government under Section 3(1) of the TOLA, cannot be construed as one which could extend the period of limitation provided under Section 149(1)(a) of the IT Act. As per the ratio enunciated in Ashish Agarwal's case, Section 149(1)(a) of the IT Act would apply to AY 2016-17 and AY 2017-18.
- A careful perusal of the Ashish Agrawal ruling would show that neither the said ruling nor TOLA allowed that extended reassessment notice would "travel back in time" to their original date when such notices were to be issued and thereupon the provisions of amended Section 149 of the IT Act would apply.
- The "travel back in time" provisions contained in Instruction No.1 of 2022 are ultra vires the amended provision of Section 149(1) of the IT Act. Further, there is no clarity in the aforementioned Instruction regarding the "original date when such notices were to be issued" and hence are unsustainable in law because they are vague.
- On referring to the Memorandum explanation to the Finance Bill 2021 and the Finance Minister's speech, it can be inferred that the State did not deem it worthwhile to chase taxpayers beyond 3 years, where the alleged escaped income was less than INR 5mn.

  [Ganesh Dass Khanna vs. ITO and ANR, WP (C) 11527/2022 & CM APPL. 34097/2022, Delhi High Court]

PROSECUTION PROCEEDINGS CANNOT BE SUSTAINED IF THE TAXPAYER HAS NOT FILED A RETURN OF INCOME BUT HAS PAID A SUBSTANTIAL AMOUNT OF TAXES AS PER SECTION 276CC OF THE IT ACT

Taxpayer, an Individual was subject to assessment proceedings for the FY 2012-13 whereby the tax authorities detected that he had not filed his return of Income. As per Section 139(1) of the IT Act, the taxpayer was required to file his return of income on or before 30 September 2013. The tax officer also noticed that during the said period, the taxpayer had earned certain income and tax was withheld on the same. Accordingly, the taxpayer was issued a show cause notice under Section 276CC[11] of the IT Act to initiate prosecution proceedings in response to which no reply was given by the taxpayer. However, the taxpayer did file a delayed return of income whereby the tax payable by him did not exceed INR 3000. The tax officer initiated prosecution proceedings under Section 276CC of the IT Act. Aggrieved, the taxpayer filed a petition before the Madras High Court which held that initiation of prosecution proceedings under Section 276CC of the IT Act cannot be sustained by making the following observations:

- The proviso to Section 276CC of the IT Act gives some relief to genuine taxpayers. Section 276CC(b)(ii) of the IT Act provides that if the tax payable determined by regular assessment as reduced by advance tax paid and tax deducted at source does not exceed INR 3000, such a taxpayer shall not be prosecuted for non-furnishing return of income under Section 139(1) of the IT Act. Therefore, this proviso takes care of genuine taxpayers from the rigour of prosecution under Section 276CC of the IT Act who either file the returns belatedly but within the end of the AY (i.e. AY 2013-14 in this case) or those who have paid substantial amounts of their taxes dues by prepaid taxes.
- Admittedly, the taxpayer has paid Advance tax, Tax deducted and Collected at Source, Self-Assessment, in total a sum of INR 2.375mn and had also claimed a refund of INR 460 for FY 2012-13 and hence the aforementioned proviso comes for rescue from prosecution proceedings under Section 276CC of the IT Act.

[Manav Menon Vs. DCIT, CRL.O.P.No.26013 of 2021 and Crl.M.P.Nos.14387 & 14390 of 2021, Madras High Court]

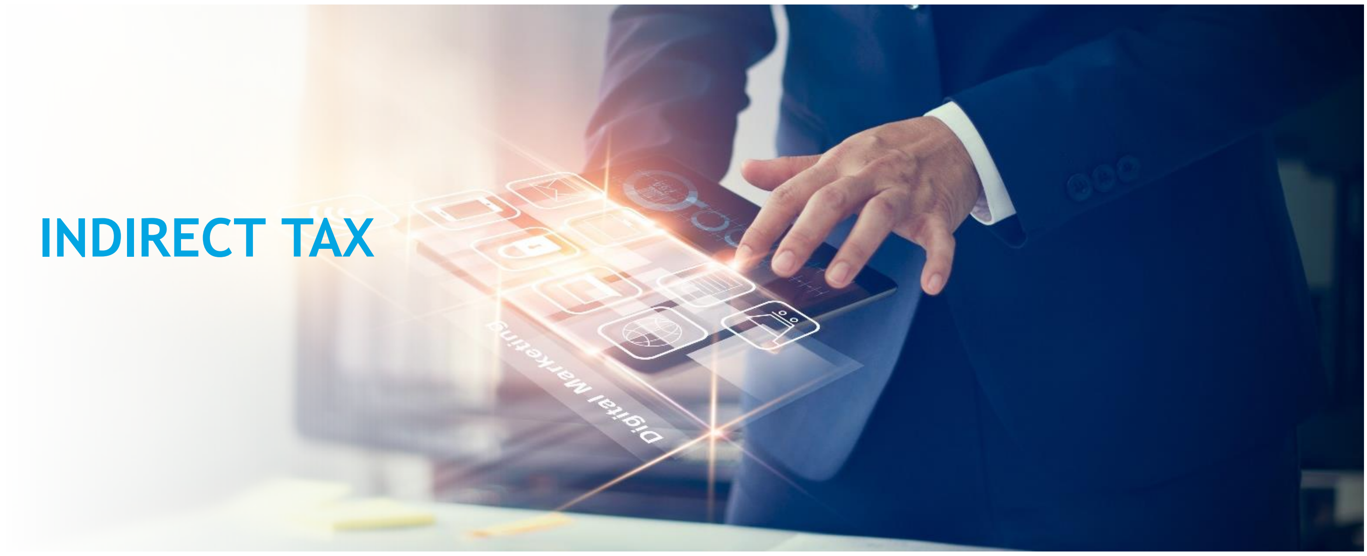
[10] Mon Mohan Kohli vs ACIT & ANR (2021) SCC OnLine Del 5250

[11] Section 276CC of the IT Act provides that where a taxpayer willfully fails to furnish the tax return (either under Section 139(1) of IT Act or in pursuance to notice issued under Section 142(1) or Section 148 or Section 153A of IT Act) within the prescribed due date, such taxpayer shall be prosecuted.

MADRAS HC HOLDS THAT INCOME TAX ADJUDICATION PROCEEDINGS ARE INDEPENDENT OF CRIMINAL PROSECUTION; CONFIRMS PROSECUTION ON THE BELATED TAX RETURN AND WILLFUL CONCEALMENT OF INCOME

Taxpayers are required to file their tax return (unless exempted) every year on or before the due date. To ensure its compliance, the IT Act has provided for interest, penalty, fee, and prosecution where there is non-compliance on the part of the taxpayer. While the IT Act provides for belated tax returns (i.e., filing of tax return post the due date), Section 276CC of the IT Act provides that where a taxpayer willfully fails to furnish the tax return (either under Section 139(1) of IT Act or in pursuance to notice issued under Section 142(1) or Section 148 or Section 153A of IT Act) within the prescribed due date, such taxpayer shall be prosecuted. Recently, the Madras High Court has analysed the applicability of prosecution proceedings where the tax return was filed belatedly. To read our detailed analysis, please go to Direct Tax Alert - Madras HC holds that income tax adjudication proceedings are independent of cri – BDO

[R. P. Darrmalingam vs. Assistant Commissioner of Income Tax (Crl. O.P.No.28572 of 2018), Madras High Court]



INDIRECT TAX

GST - REFUND ON ACCOUNT OF INVERTED DUTY STRUCTURE (IDS) CAN BE CLAIMED BY THE RECIPIENT WHERE GST ON INPUTS IS INADVERTENTLY PAID AT A HIGHER RATE THAN THE APPLICABLE RATE OF TAX BY THE SUPPLIER.

Facts of the case

- M/s. Suzlon Energy Ltd. (Taxpayer) is a registered person under the GST law and procures materials from its suppliers which are used for the outward supply of its products on which the Taxpayer discharges GST @ 5%.
- In respect of procurements made by the Taxpayer, one of its suppliers had incorrectly levied GST @ 18% (although the applicable GST rate in respect of the said product was 5%).
- In respect of the aforesaid procurements, since the GST rate on inputs was higher than the GST payable on outward supply, the Taxpayer filed an application for a refund of unutilised Input Tax Credit (ITC) on account of IDS under Section 54(3) of the Central Goods and Services Tax Act, 2017 (CGST Act).
- In response to the refund application, the Tax Authorities issued a Show Cause Notice (SCN) for rejecting the refund application alleging that the Taxpayer should have discharged GST @ 18% on its outward supply.
- The SCN was adjudicated and vide the Order-in-Original, the refund application was rejected on the following grounds:
  - The product procured and supplied by the Taxpayer attracts GST @ 5%;
  - The supplier has wrongly paid GST @ 18% and hence, the same does not qualify as IDS.
- Against this, the Taxpayer filed an appeal before the Appellate Authority, which was allowed *vide* the Impugned Order and the Tax Authorities were directed to sanction a refund.
- Aggrieved by the above, the Tax Authorities filed a Writ Petition before the Hon'ble Madras High Court.

Contentions by the Tax Authorities

- The supplier ought to have discharged GST @ 5% but had wrongly charged GST @18%. Hence, the transaction in the present case cannot be said to be suffering from IDS. Thus, the refund application was rightly rejected in the Order-in-Original.
- Alternatively, if the supplier had discharged GST @ 18%, the Taxpayer should also have discharged GST @ 18% on its final products. Consequently, the question of refund on account of IDS would not arise. Accordingly, the Impugned Order should be set aside.

Contentions by the Taxpayer

- It is undisputed that the supplier had discharged GST @ 18%. Since the assessment in respect of the year to which the refund application pertains was already completed, the Tax Authorities cannot contend that the assessment order was incorrect.
- In Order-in-Original, the Tax Authorities had confirmed that the product supplied by the Taxpayer is leviable to GST @ 5%. Accordingly, at this stage, the Tax Authorities cannot take a contrary view and contend that the Taxpayer ought to have discharged GST @ 18%.
- The Tax Authorities have taken different views from time to time as per their convenience and accordingly, have filed the present petition. Since all the aforesaid aspects have been considered in the Impugned Order, the petition is unsustainable and should be dismissed.

Observations and Ruling by the Hon'ble High Court

- It is undisputed that procurements made by the Taxpayer are leviable to GST @ 5%. In the present case, the supplier has inadvertently discharged GST @ 18% (although leviable to GST @ 5%).

- Since the GST rate on inputs is higher than the GST rate on output, the transaction is covered under the purview of IDS. Accordingly, the Taxpayer is entitled to claim a refund as per Section 54(3)(ii) of the CGST Act and the same was upheld vide the Impugned Order. In view of the above, there is no error or illegality in the Impugned Order.
- The contention of the Tax Authorities that the Taxpayer should have discharged GST @ 18% on outward supplies is untenable because the Tax Authorities cannot insist or advise the Taxpayer to pay an excess rate of tax/duty than the rate stipulated under the law.
- In view of the above, the Writ Petition filed by the Tax Authorities was dismissed with a direction to sanction the refund amount along with interest @ 9% per annum for the period of delay in a time-bound manner.

Commercial Tax Officer Vs. Suzlon Energy Ltd. & Anr., dated 16 November 2023, [TS-603-HC(MAD)-2023-GST]

GST - AN 'UNSIGNED ORDER' IS NOT ENFORCEABLE IN THE EYES OF LAW

Facts of the case

- M/s. SRK Enterprises (Taxpayer) has received an order ('Impugned Order') under Section 73(9) of the CGST Act on the ground that on verification of the Taxpayer's bank statement, it was found that the Taxpayer had received payment from Andhra Pradesh Mineral Development Corporation Ltd. in FY 2020-21 which was not reflected in its Form GSTR-3B return. However, the SCN issued to the Taxpayer was based on a different ground altogether. Further, the Impugned Order was not signed by the Tax Authorities.
- Aggrieved by the above, the Taxpayer filed a Writ Petition before the Hon'ble Andhra Pradesh High Court challenging the validity of the Impugned Order.

Contentions by the Taxpayer

- The Impugned Order, being an unsigned order is not an order in the eyes of law and hence, unenforceable.
- While the SCN was issued on one ground, the Impugned Order has been passed on an altogether different ground (not covered in the SCN). Consequently, the Taxpayer was not provided with an opportunity of being heard to reply to the allegations which have resulted in the issuance of the Impugned Order, thus, violating the principles of natural justice.

Contentions by the Tax Authorities

- Although the Impugned Order is unsigned, it was uploaded on the GST portal which can only be done by the Authority competent to pass the order.
- As per Section 160 of the CGST Act, an assessment, or re-assessment, initiated under the GST law cannot be invalid or deemed to be invalid merely by reason of any mistake, defect or omission therein, if it is in substance and effect in conformity with the intent, purpose and requirements of the CGST Act.
- Reliance was also placed on Section 169 of CGST Act which deals with the service of notice in specified circumstances.

Observations and Ruling by the Hon'ble High Court

- The expression 'any mistake, defect or omission therein' under Section 160 of the CGST Act refers to any mistake, defect, or omission in an order with respect to assessment, re-assessment, adjudication etc. and would not cover an omission to sign the order. An unsigned order is no order in the eyes of the law.
- Mere uploading of the Impugned Order by the Competent Authority would not cure the defect which goes to the very root of the matter i.e., the validity of the Impugned Order.
- Further, Section 169 of the CGST Act is not applicable as the issue involved pertains to the non-signing of the Impugned Order and not pertaining to its service or the mode of service.
- In ***A. V. Bhanoji Row vs. Assistant Commissioner (ST) [W.P. No.: 2830/2023],*** it was held that the signatures cannot be dispensed with and Sections 160 and 169 of the CGST Act would not come to the rescue of the Tax Authorities.
- Accordingly, on this ground alone, the Writ Petition was allowed. Consequently, the merits of the second ground (i.e., the Impugned Order issued on a different ground from that mentioned in the show cause notice) were not required to be examined.
- In view of the above, the Writ Petition was partly allowed with a direction to the Tax Authorities to pass a fresh order after considering the Taxpayer's reply in a timely manner.

[SRK Enterprises Vs. Assistant Commissioner & Ors. [TS-596-HC(AP)-2023-GST], dated 23 November 2023]

UP VAT – MERELY SHOWING PURCHASE INVOICES IS INSUFFICIENT TO PROVE THAT THE PURCHASES HAVE BEEN MADE BONAFIDELY

Facts of the case

- M/s. Ramway Foods Ltd. (Taxpayer) is engaged in the manufacture of atta, maida, and suji.
- During a survey of the Taxpayer's business premises, the Surveying Authority found the Taxpayer's books of accounts to be incomplete and various transactions were found to be not properly recorded in the books of account.
- The Tax Authorities had obtained details of the purchases made by the Taxpayer from outside the state of Uttar Pradesh along with supporting documents. However, on verification, it was observed that the registration numbers of some vehicles were not traceable while some other registration numbers were registered for auto-rickshaws, two-wheelers, three-wheelers, passenger vehicles, etc.
- Accordingly, the Tax Authorities concluded that the transactions (which are contended as inter-state procurements) were made from unregistered dealers located within the State of Uttar Pradesh. Consequently, the Tax Authorities sought to impose a purchase tax on HDPE bands sought to levy entry tax, by treating the purchases as made from outside the local area. Accordingly, the best judgement assessment was made by the Tax Authorities while rejecting the books of accounts.
- Against this, the Taxpayer filed an appeal before the Appellate Authority, which was partially allowed. Subsequently, the Taxpayer then filed an appeal before the Commercial Tax Tribunal (CTT). Vide the Impugned Order, the CTT confirmed the rejection of the books of account but accepted the declared turnover and tax, rejecting the amount of tax assessed by the Tax Authorities. Further, the burden of proof to prove that the goods were purchased from an unregistered dealer was shifted to the Tax Authorities.
- Aggrieved by the above, the Tax Authorities filed a Sales Tax Revision before the Hon'ble Allahabad High Court.

Contentions by the Tax Authorities

- Section 16 of the Uttar Pradesh Value Added Tax Act, 2005 (UPVAT Act) provides that in any assessment proceedings, where a particular fact is within the knowledge of the Taxpayer, the burden of proving the fact shall lie upon the Taxpayer.
- The Taxpayer claimed that purchases were made from outside the State of Uttar Pradesh. However, the Taxpayer failed to provide evidence of goods being transported by trucks, as the truck numbers provided were found to be untraceable or for two-wheelers, three-wheelers, passenger vehicles, etc. Accordingly, the Impugned Order is liable to be set aside.

Contentions by the Taxpayer

- The Tax Authorities do not have any cogent reason or material to show that the goods are purchased by the Company from unregistered dealers.
- In this regard, the Taxpayer has brought on record the copies of the invoices in respect of which, payments have been made through banking channels. Further, the Mandi Parishad has also issued requisite forms and the copy of GRs and other documents substantiating that the goods were procured by the Taxpayer from outside the State of Uttar Pradesh.
- The Tax Authorities have failed to justify that the purchases were made from unregistered dealers within the State of Uttar Pradesh.

Observations and Ruling by the Hon'ble High Court

- It is undisputed that the Taxpayer's business premises were surveyed wherein incriminating material was found including loose parchas and the books of accounts were not up to date. Accordingly, the rejection of books of accounts was affirmed by the CTT, which has not been challenged by the Taxpayer.
- The Taxpayer's contention that the goods are purchased from outside the State of Uttar Pradesh cannot be accepted merely on production of invoices, payments made through banking channels or forms issued by the Mandi Parishad. To claim the benefit, the Taxpayer is required to prove beyond doubt about the actual movement of goods. Once most of the vehicle numbers provided by the Taxpayer were found to be fictitious, the movement of goods cannot be accepted.
- On perusal of Section 16 of the UPVAT Act, the burden of the claim of purchases made outside the State of Uttar Pradesh is clearly on the Taxpayer and not on the Tax Authorities. Merely showing the purchases through invoices from the registered dealers is not enough and sufficient to prove that the purchases have been made bonafidely.
- In the ***State of Karnataka Vs. Ecom Gill Coffee Trading Pvt. Ltd. [TS-99-SC-2023-VAT],*** it was held that the primary responsibility of claiming the benefit is upon the dealer to prove and establish the actual movement of goods, genuineness of the transactions, etc.
- In the present case, the dealer has failed to prove the actual physical movement of goods from outside the State of Uttar Pradesh. Once the dealer fails to establish the purchases and their physical movement, the claim for non-taxability cannot be accepted.
- The observation of the CTT to shift the burden on the Tax Authorities is contrary to the provisions of Section 16 of the UPVAT Act, and hence, is perverse.
- •In view of the above, the presumption drawn by the Tax Authorities by treating the purchases from unregistered dealers is justified. Accordingly, the levy of entry tax on HDPE bags is justified.
- In view of the above, the revision applications are allowed.

[Commissioner, Commercial Tax Vs. Ramway Foods Ltd. [TS-618-HC-2023(ALL)-VAT], dated 23 August 2023]

TRANSFER PRICING

CLAIM FOR ECONOMIC ADJUSTMENTS (WORKING CAPITAL, CUSTOMS DUTY & FOREIGN EXCHANGE LOSS) DENIED BY TAX TRIBUNAL

The taxpayer is engaged in the business of manufacturing interior parts for Hyundai Motors India Ltd.'s passenger cars. During the year, the taxpayer undertook international transactions such as the import of raw materials and fixed assets and payment of royalties, technical fees, and guarantee fees, with its Associated Enterprise (AE). The taxpayer adopted the Transactional Net Margin Method (TNMM) with operating profit to operating income (OP/OI) as the Profit Level Indicator (PLI). The taxpayer computed its OP/OI as 1.24%.

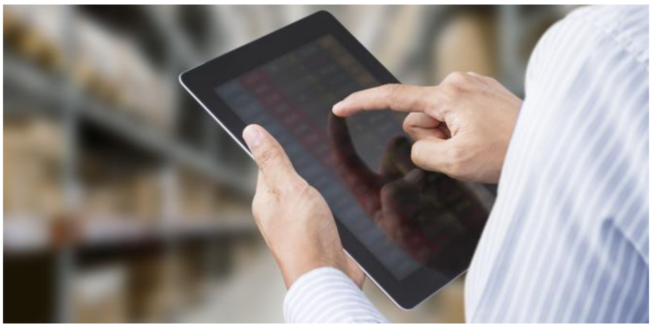
During the TP assessment proceedings, the Transfer Pricing Officer (TPO) recalculated the OP/OI of the taxpayer at 0.49% by not allowing adjustment for certain elements of costs like Customs Duty foreign exchange loss. Accordingly, the TPO adjusted INR 30.11 million which was also upheld by the Dispute Resolution Panel (DRP).

The taxpayer filed an appeal before the Hon'ble Income-tax Appellate Tribunal (ITAT) against the TP adjustments. The primary issues and the adjudication by the ITAT have been summarised below:

- ***Issue 1: Treatment of foreign exchange loss as Non-Operating Expenses***
  - The DRP/TPO had considered the foreign exchange loss as operating while computing the PLI of the taxpayer by claiming that the same is incurred by the taxpayer in its trading account; whereas the taxpayer contended that the loss is on account of fluctuation of foreign exchange rates and out of control of the taxpayer and hence is not arising from its normal business operations;
  - The ITAT held that the foreign exchange loss incurred in the trading account is directly linked to the operations of the taxpayer and should be considered as operating in nature.
- ***Issue 2: Working capital adjustment***
  - The taxpayer filed submissions supporting the need for undertaking working capital adjustment and the necessary workings for the same;
  - The DRP/TPO submitted that the taxpayer failed to provide proper workings to prove that there is a material difference in the working capital levels of the taxpayer vis-à-vis the comparable companies;
  - The ITAT observed that in order to provide working capital adjustment three factors need to be considered (i) how the comparable companies have financed their working capital i.e. by their funds or borrowed funds (ii) whether any cost has been incurred on the working capital by the comparable companies; (iii) If yes, how the said cost has impacted the margins of the comparable companies;
  - The ITAT noted that the workings provided by the taxpayer only consider the debtors and creditors at the beginning of the year and the end of the year, thereby not considering the changes in the working capital levels during the year. Further, the details do not provide the bifurcation between trade and non-trade debtors/creditors. Accordingly, the impact of such working capital difference on the margins of the comparable companies cannot be measured with reasonable accuracy;
  - Accordingly, the ITAT rejected the working capital adjustment carried out by the taxpayer.

- ***Issue 3: Customs duty adjustment:***
  - The taxpayer contended that an economic adjustment pertaining to differences in the non-cenvatable portion of the customs duty incurred by the taxpayer vis-à-vis the comparable companies (claiming that the taxpayer had significantly higher imports) should have been granted to the taxpayer by the TPO;
  - The DRP/TPO submitted that the taxpayer had not provided for an economic adjustment in its TP study report. Further, the taxpayer did not provide any evidence that the non-cenvatable duty is not already factored in its cost of manufacturing and accordingly sales;
  - The ITAT held that in the absence of any evidence, only a general argument of the taxpayer in light of certain judicial precedents cannot be accepted.

  NVH India Auto Parts Private Limited [TS-650-ITAT-2023(CHNY)-TP]



TP ADJUSTMENT ON CORPORATE GUARANTEE ('CG') PROVIDED TO UAE-BASED AE DELETED BASED ON OVERALL BUSINESS OPERATIONS OF THE TAXPAYER & AE

The taxpayer is engaged in the business of executing large and complex civil engineering projects in the infrastructure sector. During the year under consideration, the taxpayer entered into a contract with the Road Transport Authority in Dubai for the construction of the bridge. However, in view of the legal requirements of the United Arab Emirates ('UAE') and in order to carry out its business in that country, it formed a limited liability company in Dubai named Afcons Construction Mideast LLC ('Afcons Mideast' or 'the LLC'). Complying with UAE regulations, the taxpayer was restricted from owning more than 49% of the LLC. Consequently, 51% of the LLC's ownership was held by a local sponsor. However, as per the terms of the agreement, 80% of Afcons Mideast's profits would accrue to the taxpayer.

During assessment proceedings for AY 2009-10, the Transfer Pricing Officer ('TPO') proposed adjustments to the Corporate Guarantee (without any charge) provided to Afcons Mideast. The taxpayer appealed before the Dispute Resolution Panel ('DRP') and subsequently with the Income Tax Appellate Tribunal ('ITAT'). ITAT adjudicated the matter as follows.

Corporate Guarantee (without charge) provided to Afcons Mideast

With Afcons Mideast having a share capital of just INR 4.26 million, it sought credit facilities, including performance guarantees from First Gulf Bank ('FGB') in Dubai, to fulfil its contract. To secure these INR 8,240 million facilities—primarily comprising letters of credit, guarantees, advance payment letters, and performance bonds—the taxpayer furnished an irrevocable and unconditional corporate guarantee on behalf of the AE to FGB, without charging any fees to the AE. Subsequently, FGB provided a performance guarantee to the Road Transport Authority, Dubai.

The TPO observed that the taxpayer provided a guarantee on behalf of the AE, resulting in FGB charging guarantee fees at 1.00% p.a. from the AE, instead of the standard 1.5% p.a. The Ld. TPO was of the view that the benefit of 0.5% accruing to the AE should have been recovered by the taxpayer from its AE and made an adjustment of 0.50% which was also upheld by the DRP.

ITAT observed that the taxpayer effectively executed the entire contract, utilising its infrastructure, manpower, management, and technology. Furthermore, the assets used, and the risks associated with the project were also solely borne by the taxpayer. Afcons Mideast's role in executing the work was primarily on paper to comply with domestic laws, while the actual execution was conducted by the taxpayer. Further, 99.10% of the profits from the entire project had accrued to the taxpayer in the form of sub-contract by AE, support services provided to AE and share of profits in the AE.

Considering that the entire benefit had passed onto the taxpayer and negligible profits (<1%) were retained in the hands of the AE, ITAT deleted the TP adjustment made on account of corporate guarantee.

Afcons Infrastructure Limited [TS-670-ITAT-2023(Mum)-TP]

ABOUT BDO GLOBAL

BDO is a leading professional services organisation and are global leaders of the mid-tier, with a presence in 160+ countries and over 111,300 people working out of more than 1,800 offices. We endeavor to deliver an exceptional client experience through a tailored solutions approach, while partnering with our employees and clients globally.

ABOUT BDO IN INDIA

BDO in India offers Assurance, Tax, Advisory, Business Services & Outsourcing and Digital Services for both domestic and international clients across industries. The team at BDO in India consists of over 8,500 professionals led by more than 300+ partners and directors operating out of 18 offices, across 12 key cities.

CONTACT US

For any content related queries, you may please write to the service line experts at taxadvisory@bdo.in

For any other queries or feedback, kindly write to us at marketing@bdo.in

BDO IN INDIA OFFICES

Ahmedabad
The First, Block C – 907
Behind ITC Narmada, Keshavbaug
Vastrapur, Ahmedabad 380015, INDIA

Bengaluru - Office 1
Prestige Nebula, 3rd Floor,
Infantry Road,
Bengaluru 560095, INDIA

Bengaluru - Office 2
SV Tower, No. 27, Floor 4
80 Feet Road, 6th Block, Koramangala
Bengaluru 560095, INDIA

Chandigarh
Plot no. 55, Floor 5,
Industrial & Business Park,
Phase 1, Chandigarh 160002, INDIA

Chennai
No. 443 & 445, Floor 5, Main Building
Guna Complex, Mount Road, Teynampet
Chennai 600018, INDIA

Coimbatore
Pacom Square, Floor 3, 104/1, Sakthi
Main Road, Bharathi Nagar, Ganapathy
Coimbatore, Tamil Nadu – 641 006

Delhi NCR - Office 1
The Palm Springs Plaza
Office No. 1501-10, Sector-54,
Golf Course Road, Gurugram 122001, INDIA

Delhi NCR - Office 2
Windsor IT Park, Plot No: A-1
Floor 2, Tower-B, Sector-125
Noida 201301, INDIA

Goa
701, Kamat Towers
9, EDC Complex, Patto Plaza
Panaji, Goa 403001, INDIA

Hyderabad
1101/B, Manjeera Trinity Corporate
JNTU-Hitech City Road, Kukatpally
Hyderabad 500072, INDIA

Kochi
XL/215 A, Krishna Kripa
Layam Road, Ernakulam
Kochi 682011, INDIA

Kolkata
Floor 4, Duckback House
41, Shakespeare Sarani
Kolkata 700017, INDIA

Mumbai - Office 1
The Ruby, Level 9, North West Wing
Senapati Bapat Marg, Dadar (W)
Mumbai 400028, INDIA

Mumbai - Office 2
601, Floor 6, Raheja Titanium, Western
Express Highway, Geetanjali, Railway
Colony, Ram Nagar, Goregaon (E),
Mumbai 400063, INDIA

Mumbai - Office 3
Floor 20, 2001 & 2002 - A Wing, 2001 F
Wing, Lotus Corporate Park, Western
Express Highway, Ram Mandir Fatak Road,
Goregaon (E) Mumbai 400 063, INDIA

Mumbai - Office 4
The Ruby, Level 9, South East Wing
Senapati Bapat Marg, Dadar (W)
Mumbai 400028, INDIA

Pune - Office 1
Floor 6, Building No. 1
Cerebrum IT Park, Kalyani Nagar
Pune 411014, INDIA

Pune - Office 2
Floor 2 & 4, Mantri Sterling, Deep Bunglow,
Chowk, Model Colony, Shivaji Nagar
Pune 411016, INDIA