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Financial services insight: Tax and regulatory updates

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Preface

COVID-19 has left the world struggling to deal with its social, emotional and economic impact. It has not only had ramifications on people's health but also led to slowdown/shutdown of business activity across sectors and geographies as well as uncertainties and challenges for the people and the governments. To address some of the issues arising out of this pandemic, the governments and the central banks of various countries have come out with various relief measures to support people and businesses. Policy action has also led to the revival of some business activities.

In India too, the government and the Reserve Bank of India (RBI) have done their bit to revive the faltering economy. As a result, a steady recovery of the economy is on the anvil as people start spending and corporate India restart reviving their business activity. For the first time since the outbreak of the pandemic, there is a gradual improvement in business sentiments and India Inc. is now estimating a capacity utilisation of more than 50% in the second half of this financial year (FY).

To support the growth objective of various sectors, the Indian tax and regulatory authorities too have been quite proactive with policy decisions to make India a preferred investment destination. There has also been a stronger inclination towards creating an environment for greater fund management activity.

August 2020 has seen the highest foreign capital inflow from foreign portfolio investors (FPIs) since the beginning of the pandemic. Additionally, while the banking sector is still struggling to get back on track, the life insurance sector has witnessed increased inflows in terms of life insurance premium during this pandemic.

In the past six months, the government has announced several measures under the Atmanirbhar Bharat Abhiyan to ease liquidity with banks and non-banking finance companies (NBFCs) and provide income in the hands of the people. Some key reform bills have also been passed in the Parliament. The result of these measures will surely bear fruit in the coming few months.

As we enter the second half of the current FY, the general expectation is survival of the businesses and any meaningful growth can be expected only in the next FY.

*Note: The updates in this publication are from July-September 2020

Key tax updates

Direct tax

Government notifies Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 (TOLA 2020)

(No. 38 dated 29 September 2020)

Due to the COVID-19 pandemic, the Ministry of Law and Justice (Legislative department) had issued the Taxation and Other Laws (Relaxation of Certain Provisions) Ordinance, 2020 (the Ordinance) on 31 March 2020. The government provided further relief to taxpayers for undertaking compliances, by extending various timelines under various laws amending the Ordinance vide a Notification and a Press Release dated 24 June 2020.

The central government had introduced the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Bill, 2020 before the Lok Sabha to replace the Ordinance. The said Bill received the President's assent and the government notified the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 (TOLA 2020) on 29 September 2020. The TOLA 2020 ratifies various extensions, reliefs and amendments provided through the Ordinance and the notifications issued there under.

Key highlights of TOLA 2020

Extension of due dates

All the due dates that fall during between 20 March 2020 to 31 December 2020 under certain specified acts extended by the Ordinance have been enacted under the TOLA 2020[1]. The due date for filing belated/ revised return of income for Assessment Year (AY) 2019-20 have been further extended to 30 November 2020 from 30 September 2020 vide Order F. No 225/150/2020-ITA-II dated 30 September 2020.

Amendment to the deemed residency provisions

The Finance Act 2020 had amended Section 6 of the Act. However, there were certain ambiguities in the amended provisions. The TOLA 2020 has made the following amendments to the provisions of Section 6 of the Act with effect from FY 2020-21:

1. The reduced number of days to determine residency will apply only to a citizen of India, or a person of Indian origin **who, being outside India, comes on a visit to India** and has India sourced income exceeding INR 15 lakh.
2. The above-mentioned deemed residency clause would not apply to an individual who qualifies as 'resident and ordinarily resident' under the normal provisions of the Act.
3. Further, income from foreign sources would exclude income which is deemed to accrue or arise in India.

New tax regime for Category III alternative investment fund (AIFs) located in IFSC

Exemption to Category-III AIF

- The existing provisions of Section 10(4D) of the Act provides tax exemption to Category III AIF operating in International Financial Services Centre (IFSC), where all the units are held by non-residents other than unit held by a sponsor or manager (known as specified fund), with respect to capital gains arising on transfer of specified capital assets listed on recognised stock exchange established in IFSC.
- The TOLA 2020 extends the tax exemption for specified fund from the following income as well:
  a Transfer of securities (other than shares in a company resident in India)
  b Any income from securities issued by non-residents (not being a permanent establishment of a non-resident in India), if such income otherwise does not accrue or arise in India
  c Any income from a securitisation trust that is taxable as business income
- The exemption would be available only for income attributable to units held by non-resident (not being a permanent establishment of the non-resident in India)

1. The details of due dates extended under the Ordinance are provided under the previous edition (http://gtw3.grantthornton.in/assets/A/Financial-services-insight-tax-and-regulatory-updates.pdf)

Exemption to unitholders of Category-III AIF in IFSC

The income earned by unit holders of specified fund, whether from such units of AIF or on transfer of units of such AIFs, shall be exempt in the hands of the unitholders under Section 10(23FBC) of the Act.

Tax rates for Category III-AIFs in IFSC

- Provisions of Section 115AD of the Act are amended to include the taxation of the specified fund in the following manner:

Income	Tax rate	Withholding rate
Interest income referred to in section 194LD of the Act	5%	5%
Income in respect of securities (except covered under section 194LD of the Act)	10%	10%
Short-term capital gains	15%/30%	Nil
Long-term capital gains	10%	Nil

The above provisions shall apply only to the extent of the income that is attributable to the units held by non-residents (not being a permanent establishment of the non-resident in India). Thus, any person responsible for paying any income (other than capital gains) to a Category III AIF in IFSC shall withhold tax at the rate of 10% at the time of payment or credit, whichever is earlier.

The provisions of alternate minimum tax shall not be applicable to such specified funds.

Faceless Assessment Scheme

- The Amendment Act codifies the Faceless Assessment Scheme notified on 13 August 2020 by the Central Board of Direct Taxes (CBDT). Now, the National E-assessment Centre has been re-designated as the National Faceless Assessment Centre (NFAC) and the Regional Assessment Centre has been re-designated as the Regional Faceless Assessment Centre (RFAC). Procedure for referring to the Dispute Resolution Panel (DRP) proceedings has also been prescribed.
- It has also been specified that personal hearings, will not be automatic or at the choice of the taxpayer. The Chief Commissioner or the Director General in charge of the RFAC, may approve the request of a personal hearing due to circumstances, in which personal hearing is permitted.
- The Amendment Act has introduced enabling provisions for the extension of the Faceless Scheme in several cases. Some key ones being:
  - Re-assessment and revision proceedings
  - Transfer pricing assessment proceedings
  - Approvals and registrations
  - Rectification proceedings
  - Order giving effect to orders passed by the Commissioner of Income-tax (Appeals), Income-tax Appellate Tribunal, High Courts, the Supreme Court and revision orders passed by the Commissioner of Income-tax
  - Prosecution and compounding proceedings
  - Stay and tax recovery proceedings
  - Special audit and valuation by valuation officer

Sovereign wealth fund and pension fund

Exemption from dividend, interest and capital gains income earned by wholly owned subsidiaries of Abu Dhabi Investment Authority has now been restricted to funds owned by Abu Dhabi instead of United Arab Emirates

Surcharge on dividend income earned by non-corporate FPIs

- The Finance Act 2020 abolished the dividend distribution tax and shifted the tax incidence on the dividends in hands of the shareholders. Accordingly, the dividends earned by FPIs (both corporate and non-corporate) would be taxable at 20%, excluding surcharge and cess.
- The surcharge on dividend income earned by non-corporate FPIs results into higher surcharge as much as 37%.
- The TOLA 2020 has now capped the surcharge rate for non-corporate FPIs at 15%. Accordingly, the effective tax rate is restricted to 23.92%. The revised surcharge rate is applicable from 1 April 2020.

Direct Tax Vivad se Vishwas Scheme

- Finance Minister announced the extension of time-limit for payment under the Vivad se Vishwas Scheme (VSV Scheme) until 31 December 2020 (from 30 June 2020) without paying any additional amount of 10%, vide a press release dated 13 May 2020.
- In addition, vide a notification dated 24 June 2020, the compliances falling due under the VSV Scheme during the period 20 March 2020 to 30 December 2020 was extended from 30 June to 31 December 2020.
- The necessary legislative amendment has now been notified under the TOLA 2020 to give effect to the above-mentioned amendments.

Our view

Through TOLA 2020, various amendments have been introduced in the Act that are welcomed by taxpayers as they aim to bring more transparency in the tax administration process, provide extension for various compliance due dates under the Income-tax Act and address some of the concerns/demands of the taxpayers.

New tax platform – 'Transparent Taxation – Honoring the Honest' and CBDT amends the E-assessment Scheme, 2019 to implement Faceless Assessment Scheme

(Press Release dated 13 August 2020, Notification No. 60 / 2020 and Notification No. 61/2020 dated 13 August 2020)

The Finance Act 2018 introduced statutory provisions empowering the central government to notify scheme for electronic assessment so as to impart greater efficiency, transparency and accountability by eliminating the interface between the tax authority and the taxpayer to the extent technologically feasible and introducing a team-based assessment with dynamic jurisdiction.

Accordingly, an electronic assessment scheme (e-assessment scheme) was launched in 2019 for automation of various proceedings of assessment. Further, the Finance Act 2020 also introduced provision for enabling the central government for framing a scheme of conducting faceless appeal proceedings before the first appellate authority known as Commissioner (Appeals).

Prime Minister on 13 August 2020 launched the new tax regime known as 'Transparent Taxation – Honoring the Honest' with the objective of:

1 Introducing faceless assessment
2 Adopting a taxpayer's charter
3 Moving towards the faceless appeal

(i) Faceless assessment

The e-assessment scheme notified in 2019 is amended by CBDT vide notification dated 13 August 2020 and the name has been changed to Faceless Assessment Scheme 2019 that shall be effective form 13 August 2020.

(ii) Faceless appeals

The details about Faceless Appeals has been notified on 25 September 2020, details of which are provided in subsequent point.

(iii) Taxpayer's charter

Section 119A, introduced by the Finance Act 2020, empowers the CBDT to issue the Taxpayer's Charter. The intent of introducing Taxpayer's Charter is to bring fairness and increase the efficiency in the tax administration process. The commitments of the income tax department and the rights and duties of the taxpayers have been codified in the taxpayers charter.

The structure of the 2020 Charter is also simpler and has only two parts – 14 commitments from the tax department and six expectations from the taxpayer. The Taxpayer's Charter is effective from 13 August 2020.

Taxpayer's charter

It lays down commitments towards and expectations from the taxpayer, by the tax department.

Tax department is committed to	Tax department expects taxpayers to
1. Provide fair, courteous and reasonable treatment	1. Be honest and compliant
2. Treat taxpayer as honest	2. Be informed
3. Provide mechanism for appeal and review	3. Know what the representative does on his behalf
4. Provide complete and accurate information	4. Accurate records
5. Provide timely decisions	5. Respond in time
6. Collect the correct amount of tax	6. Pay in time
7. Respect privacy of taxpayer	
8. Maintain confidentiality	
9. Hold its authorities accountable	
10. Enable representative of choice	
11. Provide mechanism to lodge complaint	
12. Provide a fair and just system	
13. Publish service standards and reports periodically	
14. Reduce cost of compliance	

Our view

The new regime represents a paradigm shift in policy and governance of the Indian tax administration and is an attempt to make the tax administration taxpayer-centric and taxpayer-friendly. This will go a long way in improving the way in which the Indian tax administration works with taxpayers. Taxpayers are more likely to comply voluntarily when tax administrations adopt a service-oriented approach towards them. It shall also improve the speed and efficiency of the administration and shall bridge the trust deficit gap between taxpayers and tax authorities. India is the first country to completely digitalise the scrutiny assessment proceedings.

The Taxpayer's charter will significantly reduce litigation, increase efficiency of the tax department and promote transparency. It seeks to establish mutual trust between the tax authorities and the taxpayer and it would be interesting to see how it evolves as India seeks to establish a stable and tax friendly regime.

Government notifies Faceless Appeal Scheme, 2020 (Notification nos. 76 and 77 dated 25 September 2020)

The government vide Notification dated 25 September 2020 has now notified the Faceless Appeal Scheme, 2020 (the Scheme).

Key highlights of the Scheme are:

Faceless Appeal Centres

The CBDT will set up following centres/units for the purpose of facilitating faceless appeals in a centralised manner:

Centres/Units	
National Faceless Appeal Centre (NFAC)	• A nodal point of communication between the taxpayer, Appeal Unit (AU) and National e-assessment Centre (NeAC)/assessing officer (AO) • All communications with respect to any information, documents or any other details relating to appeal proceedings to be routed through NFAC
Regional Faceless Appeal Centre (RFAC)	• Facilitate the conduct of faceless appeal proceedings and will consist of various AUs
Appeal Units (AUs)	• It will consist of one or more Commissioner (Appeals) [CIT(A)] and such other income-tax authority, ministerial staff, executive or consultant to assist the CIT(A) as considered necessary by the CBDT. • It will perform the function of disposing appeal, namely: – Admitting additional grounds of appeal – Making further inquiry, as deemed fit – Directing the NeAC/AO for making further inquiry – Seeking information or clarification on admitted grounds of appeal – Providing opportunity of being heard to the taxpayer – Analysing of the material furnished by the taxpayer – Reviewing of draft order – Other functions as required for the purposes of the scheme

Procedure for appeal

Assignment of appeals

The NFAC will assign appeal to an AU, in any one RFAC, through an automated allocation system.

Time-barred appeals

Where appeal is time barred, the AU will, if it satisfied that there was sufficient cause for the delay, admit the appeal. The NFAC would then intimate the taxpayer about admission of rejection of appeal.

Process to be followed once the appeal is admitted

Where the appeal is admitted, the AU may request NFAC to:

- Obtain further information, document or evidence from the taxpayer;
- Obtain report from the NeAC/AO on the grounds of appeal or on the information, document or evidence filed by the taxpayer;
- Direct NeAC/AO to conduct further enquiry and submit a report

The NFAC will serve a notice to the taxpayer or NeAC/AO to submit such information, document or evidence or report.

Response by the taxpayer/NeAC/AO

Within the time allowed by the NFAC:

- The taxpayer will file the response to the notice with the NFAC
- The NeAC/AO will furnish the report with the NFAC

The NFAC will share the response/report with the AU.

Additional grounds of appeal or additional evidence

The taxpayer can file additional grounds of appeal and additional evidence with the NFAC. The AU will, after examining the details filed by the taxpayer and obtaining relevant report from the NeAC/AO, either approve or reject the filings made by the taxpayer. The NFAC will intimate the taxpayer regarding acceptance or rejection of additional grounds or additional evidence.

Procedure in case of enhancement of assessment/penalty or reduction of loss

- **Show cause notice (SCN):** The AU will prepare an SCN. The NFAC will issue notice to the taxpayer.
- **Draft order by the AU:** The AU will examine taxpayer's response together with all relevant material available, prepare a draft order and provide it to the NFAC.
- **Allocation of draft order for review:** Where the aggregate amount of tax, interest, penalty or fee, including surcharge and cess is more than a prescribed amount, the NFAC will send the draft order to another AU (selected through automated allocation system) for review. In any other case, the NFAC will review the draft order in accordance with the CBDT's risk management strategy by automated examination tool. Thereafter, it may decide to finalise the draft order or send the draft order to another AU (selected through automated allocation system).
- **Review of draft order:** The AU will review the draft order. Upon review, the AU may either concur with the draft order or suggest variation(s) to it.
  - **Concurrence with the draft order:** The NFAC will finalise the appellate order.
  - **Variation suggested in the draft order:** The NFAC will assign the appeal to a different AU (other than the AU that prepared or reviewed the draft order). This newly appointed AU will, after considering the suggestions, prepare a revised draft order as per laid down procedure.
- **Passing of appeal order**: The NFAC will finalise the appeal order and communicate the same to the (i) taxpayer (ii) Principal Chief Commissioner (PCC) (iii) NeAC/AO. The NFAC will also initiate penalty proceedings, wherever required.

Other aspects of the scheme

- **Appellate proceedings:** Order passed by the NFAC will be appealable before the Income Tax Appellate Tribunal having jurisdiction over the jurisdictional AO.
- **Penalty proceedings:**An AU may, in the appeal proceedings, for non-compliance of any notice, direction or order issued, send recommendation for initiating penalty proceedings to the NFAC.
- **Rectification proceedings:** With a view to rectifying any mistake apparent from record, the NFAC may amend any order passed by it. Application for rectification of mistakes can be made by the (i) taxpayer (ii) AU (preparing or reviewing or revising the draft order) (iii) NeAC/AO.
- **No personal appearance either before NFAC or AU:** The scheme provides that a taxpayer may request for personal hearing to make oral submissions. The CC or the Director General shall approve the request in accordance with the policy to be notified. All such hearing will be conducted exclusively through videoconferencing or video telephony.
- **Transfer of cases to CIT(A):** The PCC or Principal Director General in charge of NFAC may, with prior approval of CBDT, transfer the appeal to any CIT(A).
- **Exclusion from the Faceless Appeal Scheme:** The CBDT, vide press release dated 25 September 2020, has stated that appeals relating to serious frauds, major tax evasion, sensitive and search matters, International Tax and Black Money Act shall not be finalised under the Faceless Appeal Scheme.

Our view

After faceless assessments, the government has now notified the Faceless Appeal Scheme, which is a welcome move towards tax transparency. It should lead to consistent tax positions and ultimately help reduce litigation, especially on repetitive issues. However, there are several practical challenges around the operational aspects of faceless appeals and one may have to wait and see how the functioning of the scheme in overall aspects facilitate taxpayers.

CBDT amends TDS (tax deducted at source) rules – Rule 31A and Form 26Q and Form 27Q in line with TDS related amendments

(Notification No. 43/2020-Income Tax dated 3 July 2020)

The Finance Act 2020 introduced/amended various provisions related to withholding tax provisions under the Income-tax Act, 1961 (the Act) that inter-alia included introduction of a new Section 194-O of the Act for withholding of taxes on payments made by e-commerce operator to e-commerce participant, amending the provisions of Section 194N of the Act on payments to be made in cash. Further, the provisions of Section 197A of the Act were also amended to allow the central government to prescribe lower rate of deduction for specified entities.

Accordingly, the CBDT vide notification dated 3 July 2020 has now made consequential amendments in Rule 31A[2] of the Income-tax Rules, 1962 (the Rules). The revised rule requires certain disclosure in the following situations:

- Situation where taxes have been deducted at source at a lower rate in accordance with the provisions of Section 197A(1F) amended by the Finance Act 2020
- Situations where no tax has been deducted or where tax has been deducted at a lower rate by virtue of an exemption/ notification in Section 194N of the Act
- Disclosure of particulars of non-deduction or lower deduction in various cases including Section 194A(5), Section 197A(1D) of the Act

Further, the said notification has also amended Form 26Q and Form 27Q in line with the amendments mentioned above. These include details of taxes deducted on payments made to e-commerce participants under Section 194-O and certain additional disclosure requirements for cash payments under Section 194N of the Act.

Our view

The amended rules and forms are made more comprehensive and require tax deductors to report not only those cases where TDS is deducted, but also cases where it is not deducted or deducted at a lower rate for any reason. These additional requirements shall result in more disclosures, consequently leading to a more transparent system.

2. which in-turn prescribes statement of deduction of tax to be filed by the deductor in Form 26Q (quarterly statement of deduction of tax in respect of payments other than salary) and Form 27Q (quarterly statement of deduction of tax in respect of payments other than salary made to non-residents)pdf)

CBDT widens the definition of specified infrastructure business under Section 10(23FE) and prescribes conditions and forms for an eligible sovereign wealth funds and pension funds for getting notified under Section 10(23FE)

(Notification No. 44/2020 dated 6 July 2020, Circular No. 15/2020, dated 22 July 2020 and Notification No. 67/2020 dated 17 August 2020)

The Finance Act 2020 introduced a new Section 10(23FE) under the Act, granting exemption to wholly-owned subsidiaries of Abu Dhabi Investment Authority (ADIA) and sovereign wealth funds (SWFs) and notified pension funds (PFs), from dividend, interest and long term capital gains income earned from investments made in specified infrastructure business during the period 1 April 2020 to 31 March 2021 , subject to satisfaction of conditions.

Specified infrastructure business

The specified infrastructure business for the purpose of section 10(23FE) of the Act included infrastructure facility as defined under explanation to Section 80IA(4)(i) of the Act and such other business as may be notified by the CBDT.

In this regard, CBDT, vide Notification dated 6 July 2020, has notified that infrastructure facility shall also include infrastructure sub-sectors as mentioned in the updated harmonised master list of infrastructure sub-sectors in the notification dated 13 August 2018 issued by Government of India (GoI). This notification shall come into force from AY 2021-22.

This list contains a list of 33 infrastructure sub-sectors that are broadly classified into five categories viz. (i) Transport and Logistics (ii) Energy (iii) Water and Sanitation (iv) Communication and (v) Social and Commercial Infrastructure[3].

Application and other compliance requirements for claiming exemption under Section 10(23FE) of the Act

CBDT vide circular dated 22 July 2020 and notification dated 17 August 2020 has prescribed the process for application by SWFs and PFs, respectively, in order to be notified for the purpose of claiming the exemption under Section 10(23FE) of the Act along with the other compliance requirements

Following are the key highlights:

- **Filing of an application with the CBDT** – SWFs and PFs proposing to be notified in order claim exemption under Section 10(23FE) of the Act will have to file an application with the CBDT in Form I and Form 10BBA, respectively.
- **Compliance requirements for claiming tax exemption** - CBDT has specified certain compliance requirements for SWFs and PFs to claim tax exemption under Section 10(23FE) of the Act, failure of which would make the income taxable in the year to which the income relates:
  - **Quarterly statements specifying the investments made in India under Section 10(23FE) of the Act**
    SWFs and PFs are required to give details of their investments in the format prescribed in Form II and Form 10BBB, respectively made during each quarter. These

3. http://egazette.nic.in/WriteReadData/2018/188713.pdf

quarterly statements are required to be filed within one month from the end of each quarter.

- **Filing of return of income and audit report**
  SWFs and PFs are required to file their return of income in accordance with the provisions of the Act, which has to be accompanied by a auditors report specifying its compliance with the provisions of Section 10(23FE) of the Act.

  In case of PFs, it shall furnish along with the return of income, a certificate in Form No. 10BBC issued by a Chartered Accountant in respect of its compliance with the provisions of Section 10(23FE) of the Act, during the financial year.

- **Application and other compliance requirements for claiming exemption under Section 10(23FE) of the Act**
  Section 10(23FE) of the Act prescribes certain conditions for eligibility of PFs to claim exemption under the said section. CBDT, vide notification dated 17 August 2020, inserted a new Rule 2DB and Rule 2DC to provide certain additional conditions to be fulfilled by the PFs which inter-alia include the following:
  - It needs to be regulated under the law of foreign country (including the laws made by any of its political constituents being a province, state or local body, by whatever named called, under which it is created or established);
  - It is responsible for administering or investing the assets for meeting the statutory obligations and defined contributions of one or more funds or plans established for providing retirement, social security, employment, disability, death benefits or any similar compensation to the participants or beneficiaries of such funds or plans, as the case may be;
  - The earnings and assets of the pension fund are used only for meeting statutory obligations and defined contribution and no portion of the earnings or assets inures any benefit to any other private person;
  - It does not undertake any commercial activity whether within or outside India
  - It shall intimate the details in respect of each investment made by it in India during the quarter within one month from the end of the quarter in Form No. 10BBB

Our view

Widening the definition of 'infrastructure' under specified infrastructure business under Section 10(23FE) of the Act will encourage investment in a wide range of infrastructure sub-sectors. This will attract sovereign funds, such as SWFs and PFs to a more diverse range of infrastructure companies in sectors, such as telecom, energy, logistics, hospitals and cold chains. Further, while the CBDT has notified forms for making application with the CBDT, certain clarifications on the period of validity of the approval received, eligibility to claim exemption before the approval received, are still awaited.

Revised Form 26AS to include information on specified financial transactions

(Press release dated 18 July 2020)

The erstwhile provisions under the Act and the Rules required the tax authorities to furnish information regarding the TDS and TCS from the income of a person in Form 26AS. The Finance Act 2020 increased the scope of Form 26AS with effect from 1 June 2020, by introducing Section 285BB in the Act to include annual financial statement.

In this regard, CBDT vide a notification dated 28 May 2020, introduced Rule 114-I, wherein the revised Form 26AS would include additional details, such as information relating to specified financial transactions (SFT), pending and completed proceedings, demand and refund. Thus, the new Form 26AS would now act as an annual information statement (AIS), the same has been covered in our earlier edition[4].

CBDT has now issued a press release in relation to the introduction of new Form 26AS, wherein the new Form 26AS shall be the faceless hand-holding of the taxpayers to electronically file their income-tax returns in a more accurate and quick way.

The earlier Form 26AS included information regarding TDS and TCS relating to a PAN, besides certain additional information including details of other taxes paid, refunds and TDS defaults.

The new Form 26AS in Part E will specify the details of the financial transactions received by the income-tax authorities from the entities filing Statement of Financial Transactions (SFTs) viz. banks, NBFC, company issuing shares, trustee of mutual fund, etc. The new Form 26AS will, inter alia, provides the information (relating to the transactions undertaken by the taxpayer) that would include the type of transaction, name of SFT filer, date of transaction, number of parties to the transaction, amount (Payment/receipt), etc.

Information related to individuals having high-value financial transactions, such as cash deposit/withdrawal from saving bank accounts, sale/purchase of immovable property, time deposits, credit card payments, purchase of shares, debentures, foreign currency, mutual funds, buy back of shares, cash payment for goods and services, etc. received by the income-tax department under the SFT reporting will also be shown in the new Form 26AS.

Our view

The new Form 26AS is a welcome step towards the goal of providing prefilled income-tax returns (ITRs) to taxpayers. It will help taxpayers to fill correct and accurate information in the ITRs and also, verify the same with the details as available with the IT department. It will desist those taxpayers who inadvertently conceal financial transactions in their return. The additional details shown in the Form 26AS will facilitate voluntary compliance, tax accountability and ease of filing ITRs leading to higher transparency.

4. http://gtw3.grantthornton.in/assets/A/Financial-services-insight-tax-and-regulatory-updates.pdf

CBDT amends Rule 12CB with respect to statement to be filed under Section 115UB and notifies new Forms 64C and 64D

(Notification No. 55/2020-Income Tax dated 28 July 2020)

Section 115UB of the Act which inter-alia provides pass-through of income earned by the Category I and Category II Alternative Investment Funds (AIFs) (i.e. investment funds) was amended by the Finance Act (No 2), 2019. Pursuant to the amendment, pass-through of losses, which was earlier retained at the AIF level, was allowed to the unit holders for carrying forward and set off in accordance with Chapter VI of the Act. The said amendment came into effect from 1 April 2020.

To incorporate the said amendments in the filings to be made by the AIFs, CBDT vide notification dated 28 July 2020 amended Rule 12CB[5] of the Rules. Additionally, new forms have also been notified.

Key amendments made in Rule 12CB and the forms prescribed are as under:

- CBDT has specified new formats for Form 64C[6] and 64D[7] in order to incorporate the details of losses that shall now be available for carried and set-off to the unit holders in accordance with the provisions of Chapter VI.
- Form 64C to be furnished with the unit-holders will have to be generated. The Form is required to be downloaded from a specified web portal[8]. The due date for filing Form 64D with the tax authorities have been brought down to 15 June of the AY[9] from 30 November of the AY.

Our view

The revised rule and new forms incorporate the changes brought in by the Finance Act (No 2) 2019, which was much awaited. Further, fast-tracking the due date for filing Form 64D to 15 June from 30 November will enable the investors to file the return of income within the due date prescribed under the Act.

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5. which prescribes statements to be filed by the AIFs with the unitholders and tax authorities
6. Statement of income distributed by an investment fund to be provided to the unit holder under section 115UB of the Act
7. Statement of income paid or credited by investment fund to be furnished under section 115UB of the Act
8. yet to been notified
9. AY is the year following the Financial Year

CBDT provides exemption to non-resident investors investing in Category I and Category II AIFs set-up in IFSC from obtaining PAN

(Notification No. 58/2020/F dated 10 August 2020)

In November 2018, the Securities and Exchange Board of India (SEBI) issued detailed operational guidelines for setting-up of AIFs in an IFSC. This was intended to encourage fund managers to set-up funds in IFSC. Further, the Finance Act (No 2), 2019 also provided various tax incentives to promote investments in IFSC.

In view of the same, CBDT vide notification dated 26 July 2019, also provided an exemption from the requirement of filing a return of income to non-resident investors or unit holders (not being a company or a foreign company) of Category I and Category II AIFs set-up in an IFSC subject to satisfaction of certain conditions.

Though the above relaxation eased the rigour of filing of tax returns for such non-resident investors/unit holders, there was no specific exemption from the requirement to obtain a PAN. CBDT by way of inserting Rule 114AAB has provided exemption to non-resident investors/unit holders of a specified fund (i.e. Category I and Category II AIF set-up in IFSC) from the requirement of obtaining PAN on satisfaction of the certain conditions which include:

- Non-resident investor does not earn any income in India during the relevant financial year, other than the income from investment in the specified fund; and
- Withholding taxes as applicable, under Section 194LBB of the Act, have been deducted at source and remitted to central government by the specified fund while making payments to non-residents; and
- The non-resident furnishes below mentioned details and documents to specified fund namely:
  a. Name, e-mail id, contact number
  b. Address in the country or specified territory outside India of which he is a resident
  c. A declaration that the person is a resident of a country or specified territory outside India
  d. Tax Identification Number (if not available, then the unique number of identifications by the government) in the country or specified territory of residence

The specified fund is required to furnish a quarterly statement for the quarter in Form 49BA electronically within 15 days from the end of the relevant quarter, specifying the aforementioned details and the tax residency declaration (as mentioned in Point (c) above) received from the non-resident investor.

Consequently, CBDT has also amended Rule 37BC to provide that Section 206AA (deduction of tax at higher rate) shall not apply if the provisions of Section 139A do not apply to such person on account of newly inserted Rule 114AAB.

Our view

The large list of compliance requirements in India has always been a concern for non-resident investors making investments in Indian capital markets. This relaxation is a step in the right direction to attract foreign investments in the IFSC. It further brings India on a par with IFSCs in other countries. Ease of compliances will attract foreign investments in IFSC.

CBDT amends Rule 29B to allow Indian branch of foreign re-insurers to make an application for lower deduction of taxes at source under section 195(3) of the Act

(Notification No. 75/2020-Income Tax dated 22 September 2020)

CBDT has amended Rule 29B of the Income-tax Rules, 1962 (the Rules) to allow India branch of foreign re-insurers to make an application with the income-tax authorities for receiving certain specified interest income and any other income (not being dividends) without any tax withholding. Correspondingly, CBDT has amended Form 15C, i.e. form used for making such application under Section 195(3) of the Income-tax Act, 1961.

The extension of NIL WHT certificate facility provided to foreign insurance branches is on the similar lines as provided in the case of Indian branches of foreign banks. Accordingly, the key conditions applicable in case of foreign bank branches are also applicable in case of branch of foreign re-insurers. These conditions are:

1. Such interest or other income is receivable by India branch on its own account and not on behalf of its head office or any branch situated outside India or any other person;
2. The person concerned has been regularly assessed to income-tax in India and has furnished the returns of income for all assessment years for which such returns became due on or before the date on which the nil WHT application is made; and
3. The person was not in default or deemed to be in default in respect of any tax (including advance tax and tax payable under section 140A), interest, penalty, fine, or any other sum payable under the Act.

Our view

The aforesaid amendment provides a welcome relief for the re-insurance branches operating in India. It will help in improving their cash flow and provide a level playing field with domestic insurers/reinsurers. However, it is pertinent to note that the above relief may not apply to the income earned from direct business of the head office or group entities and hence, the need to obtain separate NIL WHT certificate for such businesses may continue.

CBDT issues guidance on TDS under Section 194-O and TCS under Section 206C(1H)

(Circular no. 17 of 2020 dated 29 September 2020 and Press Release 1660392 dated 30 September 2020)

The CBDT has issued guidance on TDS under Section 194-O and TCS under Section 206C(1H) of the Act vide circular dated 29 September 2020. Both the provisions come into effect from 1 October 2020.

The provisions of Sections 194-O and 206C(1H) are as follows:

1 Section 194-O: E-commerce operators are required to deduct tax at the time of payment or credit of amount of sale of goods, provision of services, or both, to an e-commerce participant at the rate of 1% of the gross amount of sales or service or both.

   Payments made or credited to an individual or a Hindu Undivided Family (HUF) e-commerce participant are exempted from TDS, if the gross amount of sale or services or both facilitated through the e-commerce operator does not exceed INR 5 lakh, during a FY and PAN/Aadhaar has been furnished to e-commerce operator.

2 Section 206C(1H): Tax is required to be collected by a seller on consideration received from a buyer for sale of any goods in excess of INR 50 lakh in a year, at the rate of 0.1% (1% in absence of PAN/Aadhaar of the buyer). The provision carves out certain transactions on which TCS is not required to be collected.

The summary of guidelines issued by the CBDT:

- Calculation of threshold for FY 2020-21:

Particulars	Interpretation of provisions	Guidelines
Section 194-O – Manner of computing threshold of INR 5 lakh	Since the threshold for an individual/HUF e-commerce participant is with respect to the FY, calculation of amount of sale or service or both, for triggering TDS, shall be counted from 1 April 2020.	If the gross sales/services (or both) facilitated during FY 2020-21 (including period up to 30 September 2020) in relation to such an individual/HUF exceeds INR 5 lakh, the provisions of Section 194O shall apply on any sum credited or paid on or after 1 October 2020.
Section 206C(1H) – Trigger for TCS provisions	Since TCS provisions applies on receipt of sale consideration, the provisions shall not apply on any sale consideration received before 1 October 2020.	TCS provisions shall apply on all sale consideration (including advance received for sale) received on or after 1 October 2020 even if the sale was carried out before 1 October 2020.
Section 206C(IH) – Manner of computing threshold of INR 50 lakh	Since the threshold is with respect to the FY, calculation of receipt of sale consideration shall be computed from 1 April 2020.	If a person, being a seller, has already received INR 50 lakh or more up to 30 September 2020 from a buyer, TCS provision shall apply on all receipt of sale consideration on or after 1 October 2020 from such buyer.

Applicability of TDS/TCS provisions on transactions carried out through various exchanges:

It has been provided that the TDS/TCS provisions shall not apply to:

1 Transactions in securities and commodities, which are traded through recognised stock exchange or cleared and settled by recognised clearing corporation, including recognised stock exchanges or recognised clearing corporation located in an IFSC.

2 Transactions in electricity, renewable energy certificates and energy savings certificates traded through registered power exchanges.

Applicability of TDS on payment gateways

Payment gateways are not required to deduct tax at source under Section 194-O on a transaction if the tax has already been deducted by the e-commerce operator on the same transaction. It further provides that to facilitate proper implementation, payment gateways may obtain undertaking from e-commerce operator regarding deduction of tax at source.

Applicability of TDS on insurance agent or insurance aggregator

In order to remove difficulty, it has been provided that in years subsequent to the first year, if the insurance agent/aggregator has no involvement in transaction between insurance company and the buyer of insurance policy, he would not be liable to deduct TDS under Section 194-O of the Act for those subsequent year(s). However, the insurance company shall be required to deduct tax on commission payment (if any), made to insurance agent/aggregator for those subsequent year(s) under the relevant provisions of the Act.

Applicability of TCS on sale of motor vehicles

Section 206C(1F) prescribes TCS on sale of motor vehicles of value exceeding INR 10 lakh. Section 206C(IH) excludes from its applicability goods covered under Section 206C(IF). Following has been clarified in this regard:

- Scope of Sections 206C(1F) and 206C(1H) are different. While Section 206C(1F) is based on single sale of motor vehicle, Section 206C(1H) is for receipt above INR 50 lakh during an year against aggregate sale of goods. Further, while Section 206C(1F) applies on sale to consumers and not to dealers, Section 206C(1H) is for all sale above the threshold.
- Receipt of sale consideration from a **dealer** would be subject to TCS under Section 206C(1H), if such sales are not subject to TCS under Section 206C(1F).
- Receipt from sale of motor vehicles of **INR 10 lakh or less to a consumer** would be subject to TCS under Section 206C(1H), if the receipt of sale consideration for such vehicles during the FY exceeds INR 50 lakh.
- Receipt from sale of motor vehicles exceeding **INR 10 lakh to a consumer** would not be subject to TCS under Section 206C(1H), if such sale is subject to TCS under Section 206C(IF) of the Act.

Adjustment for sales return, discount or indirect taxes

It has been clarified that, since the TCS under Section 206C(1H) is with respect to receipt of amount of sale consideration, **no adjustment** on account of sales return or discount or indirect taxes (including GST) is required to be made.

Fuel supplied to non-resident airlines

It has been provided that TCS under Section 206C(1H) shall **not apply** on sale consideration received for fuel supplied to non-resident airlines at airports in India.

With a view to remove the doubts raised and ambiguity created due to the above circular on the applicability of the above TCS provisions, CBDT issued a press release on 30 September 2020, clarifying the following:

- TCS is applicable to only those sellers whose turnover exceeds INR 10 crore in the preceding financial year.
- TCS is applicable only on receipt of sale consideration on or after 1 October 2020. Therefore, it will not apply with respect to any receipt prior to 1 October 2020. However, for the purposes of computing the threshold limit of INR 50 lakh, the receipts from 1 April 2020 have to be taken into account.
- The press release pre-supposes that the seller in most of the cases maintains running account of the buyer in which payments are generally not linked with a particular sale invoice. Therefore, it states that in order to simplify and ease the compliance of the collector, TCS provision shall be applicable on the amount of all sale consideration received on or after 1 October 2020 (without making any adjustment for the amount received in respect of sales made before 1 October, 2020). This will help reduce the compliance burden and avoid unnecessary litigation.
- TCS collected on sale of goods by the seller is not an additional tax, but in the nature of advance tax/ withholding tax for the buyer and the buyer will be able to avail credit of such TCS against their income tax liability. Further, in a situation where TCS is in excess of the actual tax liability of the buyer, the buyer is eligible to claim refund along with interest thereon.
- The new TCS will not impose significant tax burden on the buyer since it is collected at very nominal rate of 0.1%.

Our view

Sections 194-O and Section 2016(1H) were introduced by the Finance Act 2020. However, taxpayers were facing various issues relating to the implementation of these provisions. CBDT, through these guidelines, clarified various issues including calculation of threshold, applicability of provisions of payment gateways and exchanges, no adjustment for sale return, discounts on indirect taxes. However, the language of the CBDT circular seems to create further ambiguities while trying to clarify doubts in certain situations.

The press release provides clarity on some of the finer points for implementing the TCS provisions. It attempts to clarify that the new TCS on sale of goods will not be burdensome for either sellers or buyers. However, from an industry perspective, the new TCS adds to the existing withholding/TCS compliance on several different types of payments or receipts.

Key tax jurisprudence: Direct tax

a. M/s. JCT Limited[10]

Summary

Kolkata Income-tax Appellate Tribunal (ITAT) rejects invocation of General Anti- Avoidance Rules (GAAR) provisions on a transaction undertaken pursuant to a Scheme of Amalgamation. The ITAT has allowed set-off of brought forward unabsorbed depreciation of the taxpayer against income from long term capital gains (LTCG) earned by the transferor company. It reiterated that a Scheme of Amalgamation once approved by the High Court, becomes binding on everyone including the statutory and revenue authorities. Further, in such situation, it is illegal and without any factual basis to hold such a Scheme to be a 'colorable device'.

Facts

- The taxpayer is a Public Limited Company and is engaged in the business of manufacturing and selling (including export) of textiles, yarns, nylon chips, readymade garments, etc.
- During the AY 2011-12, a wholly owned subsidiary of the taxpayer (M/s. Gupta and Syal Ltd.) amalgamated with it from 1 April 2010 under a Scheme of Amalgamation approved by the High Court of Punjab, Haryana and Delhi. The subsidiary, during the year, converted its leasehold land into freehold land and sold the same thereby earning a LTCG.
- For AY 2011-12, the taxpayer has filed its return of income declaring NIL income under the normal provisions. The taxpayer further computed book profit at INR 210,666,822, and computed total tax liability of INR 1,986,951 under the provisions of MAT [Section 115JB of the Act]. In the return of income, the taxpayer set-off the entire LTCG against the brought forward unabsorbed depreciation of the taxpayer.
- The return was selected for scrutiny assessment and the tax officer made various disallowances in the final assessment order under Section 143(3) of the Act and assessed total income of the assessee of INR 21,37,16,635 under the MAT provisions thereby raising a demand of INR 429,970.
- The CIT(A) granted partial relief both to the tax department as well as to the taxpayer.
- The CIT(A) relied on the decision of Kolkata ITAT in the case of Stewarts & Lloyds of India Ltd. vs. CIT and held that the land so transferred shall be long-term capital asset. Further, the Commissioner (Appeals) held that the entire scheme of amalgamation was a colorable device to avoid payment of capital gains tax on sale of land by setting off such gains against the brought forward losses of the taxpayer.
- Further, while the CIT(A) acknowledged that GAAR provisions are not applicable in the year under consideration, however; he formed a view that he had a right to pierce the corporate veil and look through the entire transaction, solely on substance other than form.
- Aggrieved by this order, both the tax department and the taxpayer preferred an appeal before the Kolkata ITAT.

10. I.T.A. No. 84/Kol/2019

Held

- The ITAT observed the High Court's order and noted that it had specifically ordered all incomes and profits of the transferor company to be treated as income and profits of the taxpayer. Thus, it held that the decision of the CIT(A) was against the Scheme of Amalgamation approved by the High Court. Thus, the ITAT held that the CIT(A) cannot take a contrary view. It further held that there is no basis to conclude that the amalgamation as approved by the High Court is a colorable device.
- The ITAT also referred to various judicial precedents [Electrocast Sales India Ltd. vs. DCIT (ITA 2145/Kol/2014), Wood Polymer Limited 109 ITR 177 (Guj), Pentamedia Graphics Ltd. vs ITO (236 CTR 204 (Mad), Supreme Court] wherein it was held that a Scheme is approved by the High Court only after ensuring that the same is not prejudicial to the interest of the members or public interest. Once a Scheme is sanctioned by the High Court, it is binding on everyone including the statutory authorities.
- Further, the ITAT held that invoking provisions of GAAR when they are not applicable for the impugned AY is also bad in law.
- Thus, it directed that tax officer to grant benefit of set off and carry forward of losses in respect of the said capital gains both under the normal and MAT provisions.
- The ITAT also upheld the view of CIT(A) with regards to the nature of the capital gains being long-term and allowed this ground in favour of the taxpayer.

Our view

The ruling clearly lays down the principle that once a scheme is approved by the High Court, it cannot be said to be against public interest and is binding on the members, creditors and all the statutory authorities, including the revenue authorities. The income tax authorities have full opportunity to file their objection during the amalgamation process i.e., before issuance of the final order. However, it is pertinent to note that presently, the National Company Law Tribunal (NCLT) order approving schemes, specifically provide the flexibility to the revenue authorities to challenge the transaction at a later stage and does not preclude them from imposing the requisite tax as applicable on the merger transaction. The ruling also emphasises non-applicability of GAAR provisions on the transactions that have taken place during the period before the GAAR provisions became applicable.

b. M/s. Vishwas Co-operative Bank Ltd.[11]

Summary

Pune Bench of the ITAT rendered its decision that diminution in value of government securities that is held till maturity by the bank is deductible for tax purposes. Further, deduction for bad and doubtful debts in respect of advances made by rural branches under Section 36(1)(viia) of the Act, is not allowable in excess of the provision made.

Issue 1: Deduction for diminution in value of securities

Facts

- The taxpayer, a co-operative bank, had purchased government securities, held till maturity, at a premium. The said premium was amortised by the taxpayer in the profit and loss account.
- The taxpayer, in its return of income filed for AY 2012-13, claimed deduction of INR 2,65,85,621 on account of diminution in value (difference between the face value and the market value at the end of the year) of government securities – held till maturity, without routing it through the profit and loss account.
- The tax officer disallowed the deduction for diminution in value of the government securities on the following grounds:
  - a Amount of diminution was not routed through profit and loss account by the taxpayer
  - b Securities were in the nature of investments
  - c Manner of computing amount of diminution
- On appeal, the CIT(A) upheld the decision of the tax officer. Aggrieved by the decision of the CIT(A), the taxpayer preferred an appeal before the Pune Bench of the ITAT.
- During the course of the hearing in the ITAT, the Ld. DR harped on the point that in addition to the diminution in the value of such securities, the assessee also amortized premium on such investments, which amounted to double deduction; firstly, as premium on year to year basis and secondly, difference between the market value and the face value of the securities. In this regard, we find that the amount of premium on investment has been separately claimed as deduction by the assessee. Such premium has been offloaded from the purchase cost to bring such securities at face value and all the subsequent calculations for valuing at the market price at the end of the year and calculation of profit at the time of sale in a later year, have been done with reference to the face value without premium. Thus, it is clear the amount of premium on investment has not been taken into consideration at the time of computing diminution of the value of the securities.

11. ITA No.1060/PUN/2017

Held

- On the first ground, the ITAT was of the view that if a particular amount was deductible under the Act, then the same shall be allowed as deduction even if the same is not recorded in the books of account. Further, the ITAT observed that the taxpayer did not record the diminution in value of securities in its books of account in order to comply with the Reserve Bank of India (RBI) norms, as per which securities need to be valued at the year-end without any diminution.
- On the second ground, the taxpayer relied upon the decision of Bombay High Court in the case of
- Pr. CIT v. Bank of Maharashtra wherein it was held that the securities held by a bank as held till maturity would not be treated as investment. Since nothing contrary was brought on record by the tax department, the ITAT held that such securities should be treated as stock-in-trade and not investment.
- As regards manner of computing diminution, the taxpayer contended that at the time of sale of securities, the taxpayer had deducted the reduced market value (i.e. diminished value) of the securities for calculating income from sale of such securities. Further, such income/profit from sale of such securities is reflected as business income and not as capital gains. The ITAT agreed with the taxpayer's contention on this ground.
- Basis the above, the ITAT held that taxpayer was eligible to claim deduction of the diminution in value of such securities.

Issue 2: Deduction for bad and doubtful debts in respect of advances made by rural branches under Section 36(1)(viia) of the Act

Facts

- The taxpayer had made a provision for bad and doubtful debts of INR 6,69,000 with respect to advances by rural branches, in its books of accounts. However, the taxpayer, relying on the decision of Delhi ITAT in the case of Prathma Bank, claimed a higher deduction under Section 36(1)(viia) of the Act of INR 44,25,718, being 10% of the aggregate average advances made by its rural branches during the year under consideration.
- Based on the provisions of Section 36(1)(viia) read with Section 36(2)(v) of the Act, the tax officer allowed the taxpayer a deduction only to the extent of provision made and disallowed the excess deduction claimed.
- On appeal, the CIT(A) affirmed the disallowances made by the tax officer's under both the issues.
- Aggrieved by the decision of the CIT(A), the taxpayer filed an appeal before the ITAT.

Held

- The ITAT noted that Section 36(1)(viia) of the Act specifically provides deduction of provision of bad and doubtful debts actually made by the taxpayer.
- The ITAT referred Pune ITAT decision in the case of Bank of Maharashtra vs. ACIT[12] wherein it had disallowed the deduction in excess of provision made under Section 36(1)(viia) by the taxpayer. The Pune ITAT, in Bank of Maharashtra case, had relied on the decision of the Punjab and Haryana High Court in the case of State Bank of Patiala vs. CIT[13] and of Pune ITAT in the case of Shri Mahalakshmi Cooperative Bank Ltd.[14] while arriving at its decision.
- The ITAT distinguished decision of the Delhi ITAT relied upon by the taxpayer by holding that the said decision was based on an earlier case in the context of Section 263[15] of the Act in the said taxpayer's own case.
- Considering the above, the ITAT disallowed the claim of deduction in excess of provision made by the taxpayer.

12. [2014] 41 CCH 108 (Pune-Trib)
13. [2005] 272 ITR 54 (P&H)
14. ITA No. 1658/PN/2011
15. pertaining to revision of orders prejudicial to the Revenue

Our view

This ruling affirms that diminution in value of securities held till maturity, held by banks is an allowable expense, even if the same is not routed through the profit and loss account. Further, such securities, if held by banks, shall always be treated as stock-in-trade and not investments. The ruling also reiterates that deduction under Section 36(1)(viia) of the Act for provision of bad and doubtful debts (in respect of advances made by rural branches of a bank) cannot exceed the actual provision made by the taxpayer in this regard.

c. Goldman Sachs Investments (Mauritius) Limited[16]

Summary

Mumbai ITAT grants relief to Goldman Sachs Investments (a Mauritian tax resident), by revoking set off of short term capital loss (STCL) against capital gains from transfer of securities that are exempt under India-Mauritius Double Taxation Avoidance Agreement (DTAA or Tax Treaty) during subject year AY 2013-14 and allows carry forward of STCL to subsequent years. ITAT accepts taxpayer's stand and states that when admittedly the short and long term capital gains earned by the taxpayer during the year are exempt under Article 13 of the India-Mauritius Tax Treaty, there would be no occasion for seeking adjustment of the brought forward STCL against such exempt income.

Facts

- Goldman Sachs Investments (assessee-company) which is a tax resident of Mauritius is registered with SEBI as a Foreign Institutional Investor (FII) for carrying out portfolio investment activity in Indian capital market.
- Taxpayer filed its return of income for AY 2013-14, declaring its total income at INR 1,73,91,400/-. In the return of income, taxpayer claimed exemption of capital gains earned on transfer of securities in India as per Article 13 of the India Mauritius Tax Treaty and claimed the benefit of Section 74(1) of the Act for carrying forward the capital losses pertaining to the same type and nature of income for set-off against future capital gains in subsequent AYs. Additionally, taxpayer had not set-off the brought forward capital losses against the capital gain earned during the consideration year, which is claimed as exempt.
- The AO was of the view that capital gains derived by the taxpayer was exempt in India and hence the question of carry forward of capital losses from such transactions would not arise at all either in India or Mauritius. Further, the words income or profits and gains were to include losses also, therefore, now when Section 45 by virtue of the India-Mauritius tax treaty was rendered unworkable in respect of capital gains derived by a tax resident of Mauritius from transfer transactions carried out in India, the capital losses on a similar footing would also not form part of the total income of the taxpayer and were thus, not required to be computed under the Act. It also made an observation that as the claim of non-taxability of the capital gains derived by the taxpayer (a tax resident of Mauritius) from the transfer transactions carried out in India was pursuant to Section 90(2) of the Act, which allowed it to be governed by the provisions of the India-Mauritius tax treaty, therefore, it would not be permissible on its part to revert to the provisions of the Act for the loss incurring capital gain transactions.

16. ITA No.2201/Mum/2017

- Accordingly, in the backdrop of her aforesaid deliberations, the AO vide her draft assessment order passed u/s 143(3) r.w.s. 144C(1), declined the taxpayer claim for carry forward of capital losses from transactions of transfer of securities in India.
- The taxpayer filed objections before Dispute Resolution Panel (DRP) against the draft assessment order. DRP stated that the AO had no jurisdiction to disallow carry forward of losses which were approved by its predecessors. Hence, the STCL brought forward from the earlier years was allowed to be carried forward after setting off the same against the short term and LTCG for the current AY. But the taxpayer was not entitled to carry forward the STCL/LTCL from current AY onwards to the subsequent years.
- Following the directions issued by the DRP, the AO passed the final assessment order. Aggrieved by the final assessment order passed, the taxpayer filed an appeal before the ITAT.

Held

- ITAT held that when admittedly the short term and long term capital gains earned by the assessee from transfer of securities during the year in question were exempt under Article 13 of the India-Mauritius Tax Treaty, there would be no occasion for seeking adjustment of the brought forward STCL against such exempt income.
- The claim of the AO that the capital losses brought forward from the earlier years, pertaining to a source of income that was exempt from tax was thus not to be carried forward to the subsequent years, being devoid of any merit, was thus rejected.
- ITAT observed, "it is for the taxpayer to examine whether or not in the light of the applicable legal provisions and the precise factual position the provisions of the IT Act are beneficial to him or that of the applicable DTAA."
- Further, ITAT held, "the tax treaty cannot be thrust upon an assessee. In case the assessee during one year does not opt for the tax treaty, it would not be precluded from availing the benefits of the said treaty in the subsequent years."
- ITAT concluded that the taxpayer was duly entitled for carry forward of it brought forward Long-term capital losses to the subsequent years. On the same basis, it concluded the brought forward STCL of the earlier years were not to be adjusted against the STCG earned by the assessee during the year in question.

Our view

This ruling affirms that capital gains earned on transfer of securities claimed as exempt under Article 13 of the India-Mauritius Tax treaty cannot be set-off against the losses incurred during the year (taxable) under the Act as well as against the brought forward losses. The losses claimed under the Act shall be allowed to be carried forward to subsequent years to be set-off against capital gains (taxable) under the Act. The ruling placed reliance on the principal that every assessment year is to be treated as a different year and basis that has held that it is upon the taxpayer to opt treaty vis-a-vis the Act, whichever is more beneficial to them.

Indirect tax updates

Format/Schema - FORM GST INV-1

- The CBIC vide Notification No. 60/2020-Central Tax dated 30 July 2020 has notified a new format/ schema for FORM GST-INV 01. The said invoice format shall come into force from 1 August 2020.
- However, e-invoicing provisions shall not be applicable to an insurer, banking company or financial institution including NBFC.

Applicability of FORM GST INV-1

- The CBIC vide Notification No. 61/2020 – Central Tax dated 30 July 2020 has increased the aggregate turnover limit for applicability of e-invoicing provisions from INR 100 crore to INR 500 crore for notified registered persons.
- Further e-invoicing provisions shall not be applicable to an insurer, banking company or financial institution including NBFC or persons located in SEZ unit.

Aadhaar authentication rules

- The CBIC vide Notification No. 62/2020 – Central Tax dated 20 August 2020 has notified few Aadhaar authentication procedures to be followed with effect from 21 August 2020 and amended Rule 8 and Rule 9 of CGST Act, 2017.

Rule	Activity	Amendment
Rule 8 (4A)	Where an applicant, other than a person notified under Section 25 (6D) opts for authentication of Aadhaar number	Date of submission of application shall be the date of authentication of the Aadhaar number or 15 days from the submission of the application in Part B of FORM GST REG-01 (whichever is earlier)
Rule 9 (1)	Where an applicant fails to undergo authentication of Aadhaar number or does not opt for authentication of Aadhaar number	Registration shall be granted only after physical verification of the place of business in the presence of the said person
Rule 9 (2)	Where an applicant, fails to undergo authentication of Aadhaar number or does not opt for authentication of Aadhaar number	Notice in Form GST REG-03 may be issued not later than 21 days from the date of submission of the application
Rule 9 (5)	If the proper officer fails to take any action	a) The grant of registration shall be deemed to have been granted Or b) Within a period of three working days from the date of submission of the application in cases where a person successfully undergoes authentication of Aadhaar number. Or c) Within 21 days from date of submission of application in cases where a person, fails to undergo authentication of Aadhaar number or does not opt for authentication of Aadhaar number. Or d) Within a period of seven working days from the date of the receipt of the clarification, information or documents furnished by the applicant

Enforcement of section 100 of the Finance (No.2) Act, 2019

- The CBIC vide Notification No. 63/2020 – Central Tax dated 25 August 2020 notifies the date on which the provisions of section 100 of the Finance (No. 2) Act, 2019 (23 of 2019), shall come into force as **1 September 2020.**
- As per the aforesaid provision, interest on tax payable shall be levied on that portion of tax which is paid by way of debit to electronic cash ledger.

Extension in time for completion or compliance of any action by authority notified under Section 171

- The CBIC vide Notification No. 65/2020 –CT dated 1 September 2020 has extended the time limit till **30 November 2020** for completion or compliance of any action under Section 171 (i.e Anti-profiteering provisions) by any authority, from period ranging from 20 March 2020 to 29 November 2020

Waiver of late fees for furnishing FORM GSTR 10

- The CBIC vide Notification No. 68/2020 – Central Tax has waived the late fees payable which is in excess of INR 250 for the registered persons who fail to furnish the return in FORM GSTR-10 by the due date but furnishes the said return between the period from 22 September 2020 to 31 December 2020.

Availability of Form GSTR-2B on the GST portal

- The Goods and Services Tax Network (GSTN) has made an offline tool available to the taxpayers to match ITC as auto-populated in their Form GSTR-2B with their purchase register.
- This tool will help taxpayer compare their ITC as per their purchase register with ITC as shown in their auto-populated GSTR-2B.

Guide released by Supreme Court for limited physical hearing

- To reduce physical presence and ensure social distancing, the Supreme Court (SC) has issued a user guide for implementing processes relating to limited physical hearing.
- The user guide shall contain the following process:
  - E-nomination of counsel and clerk
  - E-application for special hearing pass
  - E-submission of self-declaration
- Pursuant to the above, CBIC has also issued revised guidelines which has been enlisted below
  - Mandatory conduct of hearing through virtual mode
  - Date and time of hearing to be intimated in advance
  - Vakalatnama to be filed along with photo ID
  - Submission made during the hearing shall be recorded in writing

Interim measure for filing revocation of cancellation order pending in appeal channel

- GSTN has issued interim measure for filing revocation of cancellation order for cases pending in appeal channel. This is applicable where application for revocation of cancellation of registration was rejected by tax authorities before **12 June 2020.**
- The steps to be followed in this regard are enlisted below:
  - **Request to pass offline order:** Taxpayer can request appellate authority to pass simple offline order on it for restoration of application.
  - **Restoration by jurisdictional authority:** Based on such an order, the jurisdictional authority can restore the application for revocation of cancellation.
  - **Reapplication by the taxpayer:** The taxpayers need to re-apply after login. For this purpose, taxpayers will have to enter application reference number (ARN) of the order and would require to upload scanned copy of the order passed after clicking appeal in favour.

Amendment in provisions for e-invoicing

- he CBIC vide Notification No 70/2020 and 71/2020 Central Tax dated 30 September 2020 has provided that the class of registered person whose aggregate turnover in any preceding FY from 2017-18 onwards exceeds INR 500 crore are required to issue e-invoice.
- The class of registered person required to issue invoice having dynamic quick response (QR) code and implementation of requirement of dynamic QR code on B2C invoices has been deferred to 1 December 2020.
- E-invoicing provisions shall not be applicable to an insurer, banking company or financial institution including NBFC.
- Extension in due date for filing of GST annual return/audit report for FY 2018-2019
- The CBIC vide Notification No 69/2020 Central Tax dated 30 September 2020 has extended the time limit of filing the GST Annual return (Form GSTR-9) and Audit report (Form GSTR-9C) for the financial year 2018-2019 till the 31 October 2020.

Key tax jurisprudence: Indirect tax

a) M/s Repco Home Finance Ltd. [2020-VIL-309-CESTAT-CHE-ST]

M/s Repco Home Finance Limited (the appellant) provides housing loan to customers. There are circumstances when a borrower decides to close the loan before the stipulated period. In such a situation, the banks and NBFCs collect foreclosure charges.

The foreclosure of loan is, therefore, a material breach of contract as it curtails the loan service period unilaterally, which can prompt the promisor to claim damages. The foreclosure charges are nothing but damages that the banks are entitled to receive when the contract is broken.

The appellant contended that foreclosure charges are not towards any consideration for a service provided but are collected to compensate the banks for the breach of the contract as the borrower seeks to make the payment before the agreed period of time.

Service tax would be leviable only when an activity is considered a service and such service is classified as a 'taxable service'. There is a 'consideration' for the provision of such service.

The clauses related to damages for foreclosure of loan are usually incorporated in contracts as an agreed measure of damages that can be enforced in the event if there is a breach of contract These clauses do not and cannot give rise to any consideration. These clauses also come into effect only after the contract comes to an end.

Therefore, it clearly follows that foreclosure charges are recovered as compensation for disruption of a service and not towards 'lending' services. Foreclosure is anti-thesis to lending and therefore, cannot be construed to be 'in relation to lending'.

These foreclosure charges should not be viewed as alternative mode of performance of the contract but an express repudiation of the contractual terms giving rise to the levy of these charges.

Thus, foreclosure charges collected by the banks and NBFCs on premature termination of loans are not leviable to service tax under "banking and other financial services".

b) M/s The Knanaya Multi-purpose Cooperative Credit Society Ltd. [2020-VIL-243-AAR]

M/s Knanya Multi-Purpose Cooperative Credit Society (the applicant) is a co-operative society registered with the Central Registrar of Co-operative Societies engaged in the business of accepting deposits and granting loans and advances.

The applicant states that they are collecting and paying tax on services rendered in respect of admission fees, share transfer fee, notice charges, processing fees and insurance charges. They are also availing credit on telephone bill payment, printing charges, advertisement charges etc.

The applicant is engaged in provision of both taxable as well as non-taxable services and are availing input tax credit as per provisions of Section 17(2) of the CGST/SGST Act.

The applicant sought advance ruling for the following:

1 Whether the applicant is considered as a financial institution as envisaged under 17(4) of the CGST Act.
2 Whether the applicant is eligible for availing the option provided under Section 17(4) of the CGST Act, which prescribes to avail an amount equal to 50% of eligible credit of input tax on inputs, capital goods and input services in that month and the rest shall lapse.

Section 17(4) of the CGST Act, 2017 provides that a banking company or a financial institution including an NBFC, engaged in supplying services by way of accepting deposits, extending loans or advances shall have the option to avail every month an amount equal to 50% of the eligible input tax credit on inputs, capital goods and input services in that month and the rest shall lapse.

According to Section 45-I(c) of RBI Act, 1934; 'financial institution' means any non-banking institution that carries on as its business or part of its business in financing, whether by way of making loans or advances or otherwise, of any activity other than its own.

Non-banking institution is defined as per Section 45-I(e) of RBI Act, 1934, as a company, corporation or co-operative society.

Therefore, the applicant is qualified as a financial institution under the RBI Act, 1934 and shall be eligible for availing the option provided under Section 17(4) of the CGST Act.

c) M/s Ushabala Chits Private Limited [2020 (7) TMI 447]

The applicant, M/s Usha Bala Chits Private Limited, is dealing in finance and related services and engaged in conducting chits. They have been paying GST on the foreman commission and claiming exemption on the money part being auction in money.

The foreman is responsible for registering the members, collection of money from the members, conduct of auctions and other related matters.

The applicant is responsible to pay the prize money by due date to the winner of auction. Therefore, collection of amount from members is mandatory for payment of prize money to the winner by due date.

However, many a time, the subscribers fail to deposit subscriptions by the specified date. In such scenario, the applicant is borrowing the money from banks by payment of interest and making payment to the prized subscribers and recovers the interest amount along with the subscription money of such subscriber who failed to pay within the stipulated time.

The applicant has sought advance ruling on the following issues:

1. Whether the interest/penalty collected for delay in payment of monthly subscription by the members forms a supply under GST?
2. If the said interest/penalty is a supply, what is the classification and rate of duty applicable on the said supply?

To qualify the amount as interest, there must be some specific percentage to be charged on daily/monthly or some periodic basis. Hence the amount charged cannot be qualified as interest. Penalty is levied for something wrong you have done or what you should have done but could not do so. Penalty can be in absolute as well as in percentage terms.

Hence the additional amount being charged on delayed payment is in the nature of penalty which is being charged for the payments which the customer has to make within the stipulated time but failed to do so.

In the instant case, having regard to the nature of transaction it cannot be said that the chit company has extended any deposit, loans or advances to its customers hence the additional amount being charged cannot be treated as interest.

The exemption granted under entry no 27 of notification no 12/2017 is not applicable on the transaction on which advance ruling is sought.

Thus, the penalty collected for delay in payment of monthly subscription by the members forms a supply under GST and classified under Heading 9971 Financial and related services, and GST at 12% is leviable as per Notification No. 8/2017-Integrated Tax (Rate).

d) M/s Metlife India Insurance Company Limited [2020 (9) TMI 355 - CESTAT BANGALORE]]

The appellant is engaged in insurance business offering life insurance policy (term insurance policy), endowment policy and unit linked insurance policy (ULIP).

In the case of ULIP, the premium is collected for two components – risk coverage portion and investment portion, the premium payable on the portion of risk coverage was only taxable, i.e., the premium attributable to investment portion was not taxable.

The appellant was availing CENVAT credit of service tax on commission paid to agents through whom the policies were being booked under reverse charge mechanism considering them to be eligible 'input service' used for providing output service, i.e. insurance services including ULIP.

The revenue contended that since output service tax in respect of ULIP were being paid only on the premium portion charged for risk coverage and not the investment portion, the appellant was not eligible to avail CENVAT credit of service tax paid on commission expense amount.

The revenue alleged that imposition of penalty on the ground that credit was availed wrongly with the intent to evade payment of service tax.

The CESTAT held that the revenue committed a fundamental error in assuming that the sale of ULIP by the appellant results into provision of exempted service.

The CESTAT held that the appellant is only engaged in rendering the insurance services and merely for the reason that portion of the premium amount is taxable would not render the other portion of premium as exempt service which at best can be said to have been excluded from assessable value.

The policy is one and single with the feature of both risk coverage and investment opportunity simultaneously. It cannot be said that the 'insured,' i.e. the subscriber to the policy has availed two separate policies.

Thus, in view of the above, no exempt service has been rendered by the appellant to deny credit of service tax paid on insurance agents' services.

The said service constitutes eligible 'input service' under Rule 2(l) and therefore, service tax paid thereon is clearly eligible for credit in the hands of the appellant.

e) M/s Radiant Cash Management Services Pvt. Ltd. [2020-VIL-304-CESTAT-CHE-ST]

M/s Radiant Cash Management Service Private Limited (the appellant) is involved in physical transportation of currency notes on behalf of banks and insurance on cash vans was obtained as per RBI guidelines in order to secure the cash transportation.

The same is an essential requirement for rendering of output service of transportation of huge volumes of cash.

The appellant contended that the cash vans in question are capital goods covered under the CENVAT Credit Rules, 2004 and the exclusion clause under Rule 2 (l) ibid as regards General insurance should not apply since the appellant is undisputedly providing output service.

The CESTAT held when assessee is trying to make out a case cash vans are its capital goods then it should be proved that same are registered in its name during the period of dispute involved.

The registration certificate was furnished for the first time before this forum. Further, the period of dispute is from April 2013 to September 2015 and October 2015 to June 2017 whereas the photocopy of registration certificate reflects the date of registration as 25 November 2014.

The CESTAT held that the relevance of the photocopy of the registration certificate filed in the open court was never explained. Thus, the photocopy of the registration certificate cannot be accepted since its relevance has neither been explained nor established. The appellant has not been able to discharge the burden as to registration in its name.

The Motor Vehicles Act does not recognise money as goods and it makes separate and distinct categories for both goods carrier and cash vans. This is the first requirement which needs to be satisfied.

Thus, the CESTAT did not find any merit in the present appeal and hence the impugned order was upheld.

f) M/s Indian Overseas Bank [2020-VIL-367-CESTAT-CHE-ST]

The appellant is a banking company and is involved in sale and purchase of gold. The appellant imports gold from Union Bank of Switzerland and MKS Finance, Geneva and holds the same with them till such time they find a customer.

After the customer is identified and the price of the gold is confirmed, they collect money from customer after adding their mark up and send the money to the suppliers such as Union Bank of Switzerland or MKS Finance.

The appellant is also providing metal as loan to the customers. Such metal is required to be returned to the appellant by their customers.

Further, as consideration for use of such metal by their customers, customers were required to pay interest to the appellant.

The revenue contended that after the import of gold and till such time customer is identified, gold is being held by appellant and during said period the ownership of gold is with the Union Bank of Switzerland or MKS Finance and therefore appellant is providing Safe Vault Service which is part of other financial services to Union Bank of Switzerland or MKS Finance.

The revenue also considered that interest received on metal loan provided to customer consideration for demand of service tax.

The CESTAT on perusal of records held that revenue does not have any figure of the consideration alleged to have been received by the appellant from the foreign suppliers of gold for providing safe vault service which is very clear from the finding of the original authority.

The CESTAT held, therefore, that the revenue did not have any case for raising demand of service tax on providing safe vault service on the appellant. Without any consideration there is no service tax payable.

The CESTAT also held that that the revenue is of the opinion that only if the loan is in the form of Indian rupee and interest is earned on that, then alone under the provisions of Valuation Rules or Section 66D of Finance Act, 1994 interest is not to be treated as part of consideration for determination of service tax.

The CESTAT did not find any support from any provisions for such contention made by the Revenue. Thus, service tax confirmed on interest earned by the appellant by providing metal as loan is not sustainable.

g) Trivedi Ventures LLP vs. Union of India [2020(9) TMI 161]

The petitioner had approached Rajasthan High Court for allowing them to file TRAN-1 and thereby availing transitional credit.

They also challenged the constitutional validity of transitional credit provisions under GST law.

The HC granted liberty to the petitioners to submit application to the GST Council. The application should seek the Council's recommendation along with requisite particulars, evidence and a certified copy of the order from the GST Council forthwith.

The HC further directed that if the petitioners' assertion is found to be correct, the GST Council shall issue necessary recommendation to the commissioner to enable the them to claim credit within stipulated time.

Transfer pricing updates

Guidance on Mutual Agreement Procedure[17] (MAP)

A MAP request can be made by a taxpayer when it considers that the actions of the tax authorities of one or both of the treaty partners results or will result in taxation not in accordance with the relevant Double Tax Avoidance Agreement (DTAA). MAP cases involve cross-border double taxation that could either be -

- **Juridical double taxation:** Same income taxed twice in the hands of the same entity in two different countries; or
- **Economic double taxation:** Same income taxed in the hands of two separate entities, who are associated enterprises, in two different countries.

India has a wide network of tax treaties where Article 25 provides relief from taxation which is not in accordance with the treaty or from double taxation. This allows taxpayers a far and wide access to MAP route for resolution of tax disputes.

As a signatory to the OECD's BEPS Action Plan, India underwent peer review in relation to implementation of the Base Erosion and Profit Shifting (BEPS) minimum standard under Action 14 (Making Dispute Resolution Mechanisms More Effective). As per the peer review report, India met half of the minimum standards under BEPS Action Plan 14. One of the key recommendations in the peer review report was relating to a detailed guidance on MAP process in India with India's approach on key issues and on the expectations of treaty partners. Following this, the CBDT on 7 August 2020 released a guidance on MAP for the benefit of all the key stakeholders including competent authorities and treaty partners.

Guidance contains four parts:
Part A: Introduction and basic information
Part B: Access and denial of access to MAP
Part C: Technical issues
Part D: Implementation of MAP outcomes

Part A: Introduction and basic information

Part A of the guidance provides an overall understanding of MAP filing process including the forms to be used, availability of bilateral and multilateral route. The key highlight of the guidance in Part A is that CBDT has expressed an endeavour to resolve MAP cases within an average timeframe of 24 months (not a commitment but an endeavour). The guidance also mentions that Competent Authorities (CA) are independent of assessing officers assessing the company's revenue audits.

Part B: Access and denial of access to MAP

Access to MAP

MAP access is available even in a situation where the Indian tax authorities apply domestic anti-abuse provisions.

In cases, where the responsibility to withhold tax (WHT) on payments by a resident payer to a non-resident is enforced by a WHT order on the resident payer and the same is disputed by the non-resident, MAP access would be provided to such non-resident entity after an assessment order is passed in the case of the non-resident taxpayer.

In the following cases, India would provide access to MAP but the CA would not negotiate any other outcome than what has already been achieved:

- Unilateral Advance Pricing Agreement (UAPA)
- Safe Harbour
- Order of the ITAT

Denial of access to MAP

MAP access would be denied in following cases:

- Delay in filing MAP application
- Incomplete or defective MAP application (unless defect is rectified within allowed timeframe)
- In situation where the case is pending before the Settlement Commission
- In situation where the taxpayer's case is pending before the Authority for Advance Ruling (AAR) or the taxpayer has already obtained an advance ruling from the AAR on the issue sought to be covered under the MAP
- In respect of issues that are purely governed by India's domestic law and arise due to the implementation of India's domestic legal provisions
- Cases where APA and MAP have been applied simultaneously for same years under consideration

17. https://www.incometaxindia.gov.in/news/map_guidance_7_8_2020.pdf

Part C: Technical issues

The CBDT has clarified some of the technical issues in the guidance, which include the following:

- In respect of transfer pricing cases, the MAP process cannot result in reduction of income or increase in loss in India
- MAP process cannot lead to reduction in returned income in India. However, in cases where the adjustment is made by the treaty partner, reduction in returned income can be made in India
- Competent authorities cannot prevent the AOs from taking a position which is not in conformity with MAP resolution of a different year (prior year)
- MAP application can be made where a bilateral or a multilateral APA has failed
- Tax collection shall be suspended during the pendency of MAP, if the tax treaty has an MoU, in the MAP article, that provides for suspension of tax collection

Part D: Implementation of MAP outcomes

The guidance clarifies that MAP outcome is possible in every case, except in cases where an ITAT order comes to the knowledge of Indian CA before MAP implementation. In such cases, the MAP outcome cannot be implemented and the CA would inform their counterparts about the outcomes of the ITAT order as well as request them to provide correlative relief for the adjustments sustained by the ITAT, if any.

The guidance lays down a timeline of 30 days for the taxpayer to convey its acceptance of the MAP resolution and to submit evidence of withdrawal of domestic appeals. Similarly, the AO has one month (from the end of the month in which he receives the letter of the CA) for giving effect to the MAP resolution. He shall send a copy of the order giving effect to the CA.

Our view

The detailed guidance on MAP would help the taxpayers evaluate MAP route by considering the approach of Indian CAs and various aspects of the process. This would also increase India's alignment to the minimum standards under BEPS Action Plan 14 for making dispute resolution mechanism more effective. Considering the challenges with the normal litigation route under the domestic law, MAP provides an opportunity to the taxpayers to resolve tax disputes and address double taxation. It is important to consider the quantum of transactions under dispute, jurisdictions involved and complexity of the transactions and adjustments while deciding whether to opt for MAP route. For example: Though the guidance or MAP rules has no mention about availability of MAP route where the associated entity or the Indian taxpayer is a fiscally transparent entity, Indian CAs may have reservations granting MAP access in cases involving fiscally transparent entities.

Key tax jurisprudence: Transfer pricing

There is wide ranging jurisprudence available in Indian TP landscape for a range of financial transactions. Here are a few key transfer rulings published during the last quarter encompassing financial transactions.

Rule	Summary
Associated Capsules Pvt. Ltd. - ITA NO.2750/MUM/2014 (A.Y.2008-09)	**Background** The assessee is engaged in the business of manufacturing empty hard gelatin capsules. The assessee provided corporate guarantee of 2.4 million euros to its Croatian associated enterprise (AE). Corporate guarantee fee was not charged by the assessee from its AE. The TPO made an adjustment by considering 2.5% as the rate of guarantee fee. **Key argument presented by assessee** The assessee's primary argument was that corporate guarantee is not an international transaction and alternate argument was directed towards restricting the guarantee fee to 0.5% basis the ruling of the Mumbai High Court in case of Everest Kento Cylinders Ltd. (378 ITR 57) (In the case of Everest Canto Cylinders, the assessee had charged a guarantee fee of 0.5% based on internal comparable data involving guarantee fee charged by Yes Bank to the assessee) **Conclusion by ITAT** The ITAT held corporate guarantee to be an international transaction and ruled that the guarantee fee is to be restricted to 0.5% on the outstanding guarantee amount. Reliance was placed by the ITAT on the Mumbai High Court in the case of Everest Kento Cylinders Ltd.
KEC International Ltd. vs DCIT (ITA No.17/Mum/2018)	**Background** The assessee is engaged in the business of designing, fabrication, galvanising and testing of transmission lines and telecom towers, supply and erection of substation structures and overhead equipment for railway electrification and managing infrastructure sites for telecommunication services. The assessee had extended interest free advances to one of its AE, which was its joint venture (JV) in South Africa. The TPO made adjustments by imputing interest rates of 15.36% and 11.29% for FY 2010-11 and 2011-12 respectively by adopting fixed interest rates. **Key argument presented by assessee** During revenue audit, the assessee explained that during the year, the JV was facing huge operational losses and funds were advanced to meet the deficit in the cash flows to execute the project. This was just a fulfilment of the obligation of being a JV partner as any financial incapacitation of JV would adversely affect the continuation of the project and ultimately jeopardise the interest of the assessee. Hence, these business advances should be seen in light of the business scenario and expediency. **Conclusion by ITAT** The ITAT concluded that it was the responsibility of the JV partners to fund the project of the JV and due to the operational losses there is a pre-existing liability to make such advances to the JV without which the business interest of the assessee would have been adversely impacted. These advances were more in the nature of capital contribution and hence the ITAT did not agree with charging of interest on the same and deleted the interest adjustment.

Key regulatory updates

RBI updates

RBI revises norms for Core Investment Companies (CICs)

(RBI/2020-21/24/DoR (NBFC) (PD) CC. No. 117/03.10.001/2020-21 dated 13 August 2020)

CICs are NBFCs registered with the RBI that are engaged in the business of acquisition of shares and securities of group companies subject to the conditions specified in the guidelines prescribed by the RBI.

The RBI had constituted a working group (WG) to review regulatory and supervisory framework for CICs in 2019, with Tapan Ray, former secretary, Ministry of Corporate Affairs, GoI as the Chairperson.

Pursuant to the recommendations of the WG and inputs received from the stakeholders, guidelines for CICs have now been amended.

Key amendments are listed as under:

Amendment in definition of Adjusted Net Worth (ANW)

Direct and indirect capital contribution by a CIC in a step-down CIC, over and above 10% of its owned funds, is to be deducted from its adjusted net worth, as applicable to other NBFCs with immediate effect, i.e. 13 August 2020.

In case, where the capital contribution already exceeds 10%, the same need not be deducted till 31 March 2023.

Group structure

The number of layers of CICs in a group (including the parent CIC) should be restricted to two, irrespective of the extent of direct or indirect holding/control exercised by a CIC in the other CIC. As such, any CIC within a group shall not make investment through more than a total of two layers of CICs, including itself.

While the regulation shall be applicable from the date of the circular, existing entities shall re-organise their business structure and adhere to guideline latest by 31 March 2023.

Risk management

Every group with a CIC should have a Group Risk Management Committee (GRMC). The amended guidelines have also provided for the constitution, composition and responsibility of GRMC. The GRMC shall report to the board of the CIC that constitutes it and shall meet at least once in a quarter.

All CICs with asset size of more than INR 5,000 crore shall appoint Chief Risk Officers (CROs) with clearly specified roles and responsibilities.

Corporate governance, disclosure requirement and consolidation of financial statement

Constitution of the Board level committees viz., audit committee and nomination and remuneration committee are mandated in accordance with the provisions of the Companies Act, 2013.

Disclosure requirements will be applicable to NBFC-CICs as per the guidelines provided in the circular. The guidelines indicate basic minimum requirements and CICs shall strive to achieve higher standards of governance and disclosure.

Further, CICs should ensure that a policy is put in place with the approval of the board for ascertaining the ‘fit and proper’ status of directors not only at the time of appointment, but also on a continuous basis.

Additionally, CICs shall prepare consolidated financial statement as per the Companies Act, 2013 to provide a clear view of the financials of the group (i.e. consolidation of financial statement of all entities under the group).

Registration

The nomenclature of exemption used in the erstwhile guidelines has been deleted. Accordingly, as per the amended guidelines, the following CICs are not required to obtain registration with the RBI:

1. CICs with an asset size of less than INR 100 crore, irrespective of accepting public deposits;
2. CICs with an asset size of INR 100 crore and above and not accessing public deposits.

Our view

The said amendments are in line with an intention to monitor the complex group structures and inter-connectedness of CICs with financial systems and strengthen the corporate framework governance for them. However, these guidelines are silent on setting up of other board-level committees, such as those for audit and remuneration, as suggested in the report of the working group.

RBI exempts registration of VCF as NBFC and substitutes the word 'VCF companies' with 'AIF companies'

(Circular No. RBI/2020-21/12 DOR (NBFC).CC.PD.No.115/03.10.001/2020-21dated 10 July 2020)

Venture capital fund companies, holding a certificate of registration under the SEBI Act, 1992 (Act 15 of 1992) were not required to obtain registration with the RBI and were also exempted from the requirement to maintain reserve funds, provided that the said VCF companies do not accept public deposits.

However, the SEBI (Venture Capital Funds) Regulations, 1956 were replaced with the SEBI (Alternative Investment Funds) Regulations, 2012. Pursuant to the said amendment, no consequential amendment was taken under the NBFC regulations. The RBI vide its notification dated 10 July 2020 has substituted the word 'venture capital fund (VCF) companies' with 'alternative investment fund (AIF) companies'.

Our view

This is a much-awaited clarification as the SEBI (VCF) Regulations, 1956 were repealed with effect from 2012 by the SEBI (AIF) Regulations, 2012.

New definition of micro, small and medium enterprises - clarifications

(Circular No. RBI/2020-2021/26 FIDD.MSME & NFS.BC.No.4/06.02.31/2020-21)

Finance Ministerat the time of announcing measures under the Atmanirbhar Bharat Abhiyan has also extended certain benefits to the MSME sector that inter-alia included amendment of the definition of MSME whereby the difference between manufacturing and service sector was removed and also turnover of the entity was added as another criteria for defining an MSME. The revised definition reads as under:

	Old			Revised		
Categorisation	**Micro**	**Small**	**Medium**	**Micro**	**Small**	**Medium**
Manufacturing enterprise	Investment in plant and machinery < INR 25 lakh	Investment in plant and machinery < INR 5 crore	Investment in plant and machinery < INR 10 crore	Investment < INR 1 crore And Turnover < INR 5 crore	Investment < INR 10 crore And Turnover < INR 50 crore	Investment < INR 50 crore And Turnover < INR 250 crore
Service enterprise	Investment in equipment < INR 10 lakh	Investment in equipment < INR 2 crore	Investment in equipment < INR 5 crore			

Basis the representations from Indian Banks' Association (IBA) and banks regarding the applicability of certain aspects under new criteria of the MSME, the RBI vide its notification dated 21 August 2020 has issued certain clarifications. Key features of the clarifications have been discussed as under:

- Classification/re-classification of MSMEs is the statutory responsibility of the GoI, Ministry of MSME, as per the provisions of the MSMED Act, 2006.
- As per the Gazette notification, all enterprises are required to register online and obtain Udyam Registration certificate. Therefore, all lenders may obtain the certificate from the entrepreneurs.
- It has also been clarified that the existing Entrepreneurs Memorandum (EM) Part II and Udyog Aadhaar Memorandum (UAMs) of the MSMEs obtained until 30 June 2020 shall remain valid till 31 March 2021.

Further, all enterprises registered until 30 June 2020 shall file new registration in the Udyam Registration Portal before 31 March 2021.

- Also, Udyam Registration certificate issued on self-declaration basis for enterprises exempted from filing GSTR and/or ITR returns will be valid till 31 March 2021.
- Additionally, while filing the online form for registration as mentioned above, it captures the depreciated cost as on 31 March each year of the relevant previous year. Therefore, for that, purpose it has been clarified that, the value of plant, machinery or equipment shall mean written down value (WDV) at the end of FY as defined under the Income-tax Act, 1961.

Our view

The RBI circular brings much needed clarity in terms of registration for MSMEs and the validity of the existing registration as well as requirement of a new certificate. The circular is clarificatory in nature and provides guidance to the MSMEs on the further process and registration.

SEBI updates

SEBI notifies amendments to regulations governing investment advisers (IAs)

(Notification No. SEBI/LAD/-NRO/GN/2020/22 dated 3 July 2020 and Circular No. SEBI/ HO/ IMD/ DF1/ CIR/ P/ 2020/182 dated 23 September 2020)

Securities and Exchange Board of India (SEBI) had issued a consultation paper on Review of Regulatory Framework for IAs in January 2020 seeking comments from the public on the proposals that were intended to strengthen the regulatory framework for IAs. SEBI after considering the issues in all four consultation papers and public comments approved the proposals on regulatory changes including amendments to SEBI (Investment Advisers) Regulations, 2013 and these amendments have been notified on 3 July 2020.

SEBI vide circular dated 23 September 2020, issued additional guidelines for registered IAs on matters relating to fees, investment agreement, qualification and certification requirements, maintenance of records, audit requirements, risk profiling and suitability analysis, etc.

Some key regulatory changes under both the notifications are discussed below:

Particulars	Revised regulatory framework
Segregation of advisory and distribution services	• Segregation of advisory and distribution activities at client level to avoid conflict of interest. An individual shall have the option to register as an IA or provide distribution services as a distributor. • A non-individual IA shall have client level segregation at group level for investment advisory and distribution services and maintain an arm's length relationship between its activities by providing advisory services through a separately identifiable department or division. • Existing clients, who wish to take advisory services or distribution services respectively, will not be eligible for availing distribution services or advisory services, respectively within the group/family of IA. • New client, at the time of on-boarding will be eligible to avail either advisory or distribution services within the group/ family of IA. • PAN of each client shall be the control record for identification and client level segregation. In case of an individual client, the family of the client will be reckoned as a single client and PAN of all members in the family will jointly and severally be the control record.
Implementation services	• IAs are allowed to provide implementation services (execution) through direct schemes/products in the securities market. However, no consideration can be received directly or indirectly at IA's group or family level for these services.
Agreement between IA and client	• Mandatory agreement to be entered between IA and the client for ensuring greater transparency with reference to advisory activities. • The agreement shall cover terms and conditions specified by SEBI, such as fees charged to the client and terms of billing, scope of services, functions of IA, investment objectives/guidelines, risk factors, etc. • IA to ensure that neither any investment advice is rendered nor any fees is charged until the client has signed the agreement and such signed agreement is shared with the client. • IA shall enter into investment advisory agreements with its clients including existing clients by 1 April 2021 and is required to submit a report confirming the same to SEBI by 30 June 2021.
Fees	• The fee charged by the IA for providing investment advice from a client shall be in the manner as specified by SEBI. • Under the Asser under Advice (AUA)[18] mode, the maximum fee charged by the IA will not exceed 2.5% of AUA p.a. per client across all services offered by IA and any portion of AUA held by the client under any pre-existing distribution arrangement with any entity will be deducted from AUA for the purpose of such fees. • Under the fixed fee mode, the maximum fees will be capped at INR 1,25,000 per annum per client across all services offered by IA.

18. AUA' has been defined to mean aggregate net asset value of securities and investment products for which the IA has rendered investment advice irrespective of whether the implementation services are provided by IA or concluded by the client directly or through other service providers

Particulars	Revised regulatory framework
Eligibility criteria for IAs	• Enhanced eligibility criteria for registration as an IA including net worth of INR 50 lakh for non-individuals and INR 5 lakh for individuals. • Individual IA or a principal officer of a non-individual IA adviser to have enhanced professional or post-graduate qualification in relevant subjects and relevant experience of five years while grandfathering existing individual IAs from complying with the enhanced qualification and experience as specified by SEBI. • Individuals registered as IAs whose number of clients exceed 150 in total, shall apply for registration with SEBI as non-individual IA.
Registration as non-individual IA	• An Individual IA shall apply for registration as non-individual IA on or before reaching 150 clients. • On reaching 150 clients and till grant of registration, the individual IA shall not onboard fresh clients while providing services to their existing clients and in case, the individual IA is not granted registration to function as non-individual IA, such IA can continue to render services and ensure that the total number of clients does not exceed 150. • Existing individual IA with more than 150 clients as on 30 September 2020 shall apply for registration with SEBI as non-individual IA by 1 April 2021 and are required to report their number of clients to SEBI by 15 October 2020.
Maintenance of record	• IA shall maintain records of interactions, with all clients including prospective clients (prior to onboarding), where any conversation related to advice has taken place inter alia, in the form of physical record written and signed by client, telephone recording, email from registered email id, record of SMS messages or any other legally verifiable record. • The IA shall be required to maintain all the above-mentioned records for a period of five years from the completion of advisory services to the client. In case of disputes, the same shall be maintained till the resolution of dispute or as per directions by SEBI.
Certification and compliance audit	• The annual compliance audit shall be completed within six months from the end of each financial year. • In connection with the segregation of advisory and distribution activities, the IA shall maintain on record an annual certificate from an auditor (in case of individual IA) and statutory auditor (in case of non-individual IA) confirming compliance with the client level segregation requirements. Such annual certificate shall be obtained within six months from the end of the financial year and shall form a part of the compliance audit. • The adverse findings of the audit, if any, along with action taken thereof duly approved by the individual IA/ management of the non-individual IA, shall be reported to respective SEBI office within a period of one month from the date of the audit report but not later than 31 October of each year for the previous financial year, starting with the FY ending 31 March 2021.
Display of details on website and in other communication channels	• IAs shall display the information such as complete name of IA as registered with SEBI, type of registration-individual or non-individual, registration number, validity of registration, complete address with telephone numbers, contact details of the principal officer, corresponding SEBI regional/local office address, etc. on its website, mobile app, printed or electronic materials, know your client forms, client agreements and other correspondences with the clients.

Our view

Through the introduction of amended regulations and guidelines, SEBI has strengthened the regulatory framework for IAs in line with development in the securities market. SEBI has also tightened the regulations with enhanced net worth requirement, segregation of advisory and distribution functions, manner of charging fees and resolution of conflict of interest. The guidelines also detailed various other issues, such as terms and conditions of investment advisory services agreement, charging fee, certification and compliance audit, maintenance of records, registration.

SEBI extends the temporary relaxations in processing of documents pertaining to FPIs

(Circular No. SEBI/HO/FPI&C/CIR/P/2020/162 dated 31 August 2020)

SEBI vide its notification dated 31 August 2020, has further extended the temporary relaxation in the processing of documents pertaining to FPIs due to COVID-19, granted in its earlier notification dated 30 March 2020 to the entities from jurisdictions that are still under lockdown.

The temporary relaxations shall be extended to the entities from such jurisdictions until the lockdown is lifted from such jurisdictions, however for the entities from jurisdictions where lockdown has already been lifted, the relaxation provided under the aforesaid circular dated 30 March 2020 shall not be applicable. However, in-transit applications shall be processed based on provisions of aforesaid circular dated 30 March 2020.

All other terms and conditions specified in the aforesaid circular dated 30 March 2020 shall remain unchanged.

SEBI issues operating guidelines for portfolio managers in IFSC

(Circular No. SEBI/HO/IMD/DF1/CIR/P/2020/169 dated 9 September 2020)

SEBI had issued SEBI (International Financial Services Centre) Guidelines, 2015 [SEBI IFSC Guidelines] on 27 March 2015, to facilitate and regulate financial services relating to the securities market in India's first IFSC, set up under section 18(1) of the Special Economic Zones Act, 2005, at Gujarat International Finance Tec-City.

The SEBI IFSC Guidelines contained enabling provisions for various capital market players, including portfolio managers (PMs), to operate in the IFSC. On the basis of representations received from various stakeholders, the SEBI has issued a circular to put in place the operating guidelines for portfolio managers in IFSC (PMS IFSC Operating Guidelines).

Key highlights of the PMs IFSC operating guidelines:

1 All provisions of SEBI IFSC Guidelines and SEBI (Portfolio Managers) Regulations, 2020 [PMS Regulations] along with the guidelines and circulars issued thereunder shall apply to Portfolio Managers setting-up/ operating in IFSC subject to the PMS IFSC Operating Guidelines.

2 An entity being a company/limited liability partnership (LLP), which has minimum prescribed net worth of not less than USD 7,50,000 can act as a Portfolio Manager (PM) in an IFSC in the following manner:

- **SEBI registered intermediaries (except trading/ clearing member)**
  Any SEBI-registered intermediary (except trading/clearing member or its international associates in collaboration can provide portfolio management services in IFSC, by setting up a branch in IFSC, subject to the prior approval of the Board. Further, it shall ensure that it has exclusive manpower for providing portfolio management services in IFSC and the branch shall comply with all the provisions specified in guidelines.

- **Other entities**
  Other entities (being a company or LLP or a similar structure recognised under the laws of its parent jurisdiction), based in India or in a foreign jurisdiction, desirous of operating in IFSC as a PM, may form a separate company or LLP in IFSC to provide portfolio management services. However, the formation of a separate company or LLP shall not be applicable in case the applicant is already a company or LLP in IFSC.

3 SEBI may grant the certificate/ approval if it is satisfied that the applicant fulfils the requirements as specified in the PMS Regulations.

4 In case, the PM is set-up as a branch, the net worth requirement shall be met by the parent entity. Also, the obligation to meet guidelines and circulars by branch, shall be on parent entity.

5 In case, the PM is set-up as a subsidiary, the net worth requirement is to be met by the subsidiary itself. However, if the subsidiary does not meet the criteria, the net worth of the parent entity will be considered.

6 An application for grant of certificate of registration shall be made in accordance with the provisions of the PMS Regulations, accompanied by a non-refundable application fee of USD 1,500 and registration fee for grant of certificate of USD 15,000. Further, the applicant shall deposit an application fee of USD 7,500 every three years from the grant of certificate

7 To avail portfolio management services in IFSC, the client shall be:
   - A person resident outside India
   - A non-resident Indian
   - A financial institution resident in India who is eligible

under Foreign Exchange Management Act, 1999 (FEMA) to invest funds offshore, to the extent of outward investment permitted

– A person resident in India having a net worth of at least USD 1 million during the preceding financial year who is eligible under FEMA to invest funds offshore, to the extent allowed in the Liberalized Remittance Scheme of Reserve Bank of India (RBI)

Clients referred to in clauses (ii) to (iv) may be provided services, subject to guidelines of RBI.

8 PM operating in IFSC shall not accept from the client, funds or securities worth less than USD 70,000.

9 PM in the IFSC shall keep the funds of all clients in a separate account to be maintained by them in the IFSC Banking Unit.

Our view

These operating guidelines lay down several operational aspects for functioning of PMs in IFSC. These guidelines will encourage asset managers to consider evaluating their presence in the IFSC to provide PMS to global investors. This will lead to overall development of IFSC and AMI in India.

SEBI allows InvITs and REITs to list on recognised stock exchanges operating in IFSC

(Circular No. SEBI/HO/DDHS/DDHS/CIR/P/2020/174 dated 16 September 2020)

SEBI had issued SEBI (International Financial Services Centre) Guidelines, 2015 [SEBI IFSC Guidelines, 2015] on 27 March 2015, to facilitate and regulate financial services relating to the securities market in India's first IFSC, set up under Section 18(1) of the Special Economic Zones Act, 2005, at Gujarat International Finance Tec-City.

Clause 7 – Permissible securities of SEBI IFSC Guidelines, 2015 deals with types of securities in which dealing may be permitted by stock exchanges operating in IFSC. SEBI has, vide circular dated 16 September 2020, permitted the units of Infrastructure Investment Trusts (InvITs) and Real Estate Investment Trusts (REITs) (by whatever name called in the permissible jurisdictions) to be listed and traded on recognised stock exchanges in IFSC.

The units of InvITs and REITs shall be considered as permissible security under Clause 7(vi) of SEBI IFSC Guidelines, 2015, subject to the fulfilment of the following conditions:

1 InvITs and REITs shall be incorporated or settled in permissible jurisdictions, as may be notified by GoI from time to time under the Prevention of Money-Laundering (Maintenance of Records) Rules, 2005. In this regard, GoI has, vide notification no. G.S.R. 669(E) dated 28 November 2019, notified a list of permissible jurisdictions.

2 InvITs and REITs are regulated by the securities market regulators in the permissible jurisdictions.

3 InvITs and REITs are listed on any of the specified international exchanges in the permissible jurisdictions.

InvITs and REITs shall refer to the following list of permissible jurisdictions and international exchanges:

- United States of America - NASDAQ and NYSE
- Japan - Tokyo Stock Exchange
- South Korea - Korea Exchange Inc.
- United Kingdom (excluding British Overseas Territories) London Stock Exchange
- France - Euronext Paris
- Germany - Frankfurt Stock Exchange
- Canada - Toronto Stock Exchange

Further, stock exchanges in IFSC shall evolve a detailed framework prescribing the initial and continuous listing requirements for such InvITs and REITs whose units are listed/ proposed to be listed on stock exchanges in IFSC.

Our view

Allowing units of InvITs and REITs to be traded and listed in IFSC is a welcome move from SEBI and will boost overall investments in IFSC.

SEBI allows write-off of shared held by FPIs

(Circular No. SEBI/HO/IMD/FPI&C/CIR/P/2020/177 dated 21 September 2020)

In November 2019, SEBI had issued Operating Guidelines for FPIs and Designated Depository Participants (DDPs) to facilitate the implementation of SEBI (Foreign Portfolio Investors) Regulations, 2019.

In the said operational guidelines, write-off of securities held by FPIs who wish to surrender their registration was permitted only in respect of shares of companies which are unlisted/ illiquid/ suspended/ delisted. Requests were received by SEBI from various stakeholders in this regard. Thus, SEBI has decided to permit the FPIs, who wish to surrender their registration, to write-off shares of all companies which they are unable to sell.

In this regard, the process detailed at para 17 of Part C (Investment conditions or Restrictions on FPIs) of the said operational guidelines shall be complied with by the FPIs.

Our view

This amendment in operating guidelines will enable the FPIs to write off the shares of all companies including the shares of listed companies that they are unable to sell. This will further ease the process for FPIs who wish to surrender their registration.

SEBI amends the operating guidelines for Investment Advisers in IFSC

(Circular No. SEBI/HO/IMD/DF1/CIR/P/2020/185 dated 28 September 2020)

On 9 January 2020, SEBI had issued operating guidelines for IAs in IFSC and subsequently. Certain clarifications on the operating guidelines were issued on 28 February 2020.

SEBI has now issued a circular dated 28 September 2020 to further amend the provisions of the said operating guidelines:

- **Eligibility to apply for registration:** Any entity, being a company or a LLP or any other similar structure recognised under the laws of its parent jurisdiction, desirous of operating in IFSC as an IA, may form a company or LLP to provide investment advisory services. In case, the entity is already an LLP or company in IFSC then such formation of a separate company or LLP is not necessary.
- **Compliance with guidelines:** Person seeking registration under IA regulations shall provide investment advisory services only to those persons as referred in Clause 9(c) of the IFSC guidelines. Further, IA shall ensure to comply with the applicable guidelines issued by the relevant overseas regulator/authority, while dealing with persons resident outside India and non-resident Indians
- **Net worth requirement:** The IA/parent entity shall fulfil the aforesaid net worth requirement, separately and independently for each activity undertaken by it under the relevant regulations.
- **Annual Audit Compliance:** An IA shall ensure to conduct annual audit in respect of compliance with Investment Adviser Regulations and the guidelines therein from a chartered accountant or a company secretary.

Our view

Guidelines issued for registration as IA by an entity or an LLP in IFSC is a welcome move. Relaxation provided by the regulator on meeting the net worth requirement at parent entity level will benefit large number of IA proposing to set-up an operation in IFSC.

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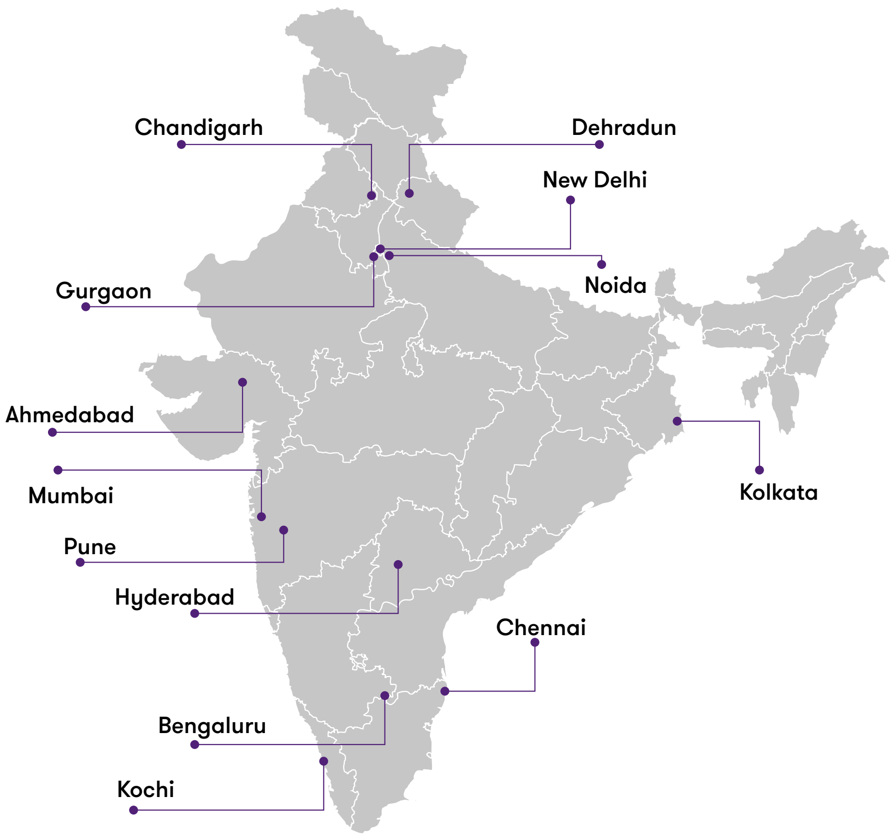

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