

Monthly tax bulletin

July 2024



The tax and regulatory space is ever-evolving, with multiple developments happening on the judicial front, as well as legislative aspects. To keep our readers abreast of the developments in the tax and regulatory space, we present the July edition of the Grant Thornton Bharat Monthly Tax Bulletin. This bulletin offers a quick recap of the major developments under the direct taxes, transfer pricing, indirect taxes, and FEMA, for June 2024.

On the direct tax front, the Telangana High Court has upheld the application of GAAR over SAAR in the case of bonus-stripping transactions. The CBDT has notified that the higher rate of TDS/TCS would not apply to payments made to/received from RBI.

Besides, the RBI has issued clarifications regarding the liberalisation of rules for investment in overseas funds.

Under the transfer pricing law, the Income Tax Appellate Tribunal has allowed the deduction of foreign travel expenses to be reimbursed to its associated enterprise. It held that the expenses were incurred for business purposes, and the reimbursement was benchmarked as per the Advance Pricing Agreement (APA). The disallowance by the Assessing Officer was deemed to be in breach of the APA.

Under indirect taxes, the 53rd GST Council meeting was held recently, wherein various much-awaited recommendations were announced, aimed at simplifying operational issues and reducing litigation. In addition, considering these recommendations, the CBIC has issued clarifications addressing various concerns and certain sector-specific clarifications. On the judicial front, the Bombay High Court ruled that splitting the consideration for a slump sale into intellectual property rights and other assets does not constitute an 'itemised sale.'

We hope you will find it informative and useful.



Riaz Thingna
Partner, Tax
Grant Thornton Bharat



A

Key developments under direct tax laws

Legislative/other developments

- **Central Board of Direct Taxes (CBDT) excludes Reserve Bank of India (RBI) from specified persons' definition for higher TDS/TCS rate in case of non-filers of income-tax return (ITR)¹:** The CBDT has notified that the higher rate of TDS/TCS provided in Section 206AB(3) and 206CCA(3) of the IT Act² would not apply on payment made to/received from the RBI.
- **The CBDT directs the Principal Commissioner of Income-tax (PCIT) to accept delayed tax payments under Vivad se Vishwas Act, 2020 (VSV Act) on fulfilling certain conditions³:** The CBDT has directed that the delayed tax payments under the VSV Act can be accepted, subject to the following conditions:
 - Full payment of taxes [including the amount payable after the due date as per Form No. 3 of the Vivad se Vishwas Rules (VsV Rules)] has been made up to 28 February 2022; and
 - Appeals mentioned in Form No. 1 of the VsV Rules have either been withdrawn or undecided as of the date of full tax payments [including the amount payable after the due date as prescribed in Form No. 3 of the VsV Rules].
 - Further, it has been clarified that all the processes would take place manually. The PCIT will examine the conditions as per the VsV Act, and the entire process must be completed by 30 September 2024.
- **The Director General of Income Tax (Systems) (DGIT) specifies certain forms to be furnished electronically⁴:** The DGIT (Systems) has specified that the following forms are required to be furnished electronically and verified in the manner prescribed under Rule 131(1) of the IT Rules:

Form No.	Description
3CN	Application for notification of affordable housing project as specified business under Section 35AD of the IT Act
3CS	Application for notification of a semiconductor wafer fabrication manufacturing unit (as specified business under Section 35AD of the IT Act)

1. Notification no. 45 and 46 of 2024 dated 27 May 2024
2. Income Tax Act, 1961 (IT Act)
3. Order dated 27 June 2024
4. Notification No. 1/2024-25 dated 24 June 2024
5. Ayodhya Rami Reddy Alla (Writ Petition Nos.46510 and 46467 of 2022)

3CEC	Application for a pre-filing meeting
3CEFB	Application for opting for safe harbour in respect of specified domestic transactions
59	Application for approval of issue of public companies under Section 80C(2)(xix) of the IT Act
59A	Application for approval of mutual funds investing in the eligible issue of public companies under Section 80C(2)(xx) of the IT Act

Judicial developments

- **The Telangana High Court (HC) upholds the application of the general anti-avoidance rule (GAAR) over the specific anti-avoidance rule (SAAR) in the case of a bonus-stripping transaction⁵:** The HC dismissed the taxpayers' writ petitions against the invocation of GAAR provisions under the IT Act in case of bonus-stripping transaction. The HC also disregarded the taxpayers' contention that the transaction is covered under the ambit of SAAR (i.e., Section 94(8) of the IT Act), and hence, the GAAR should not apply. The HC held that the arrangement in the instant case was an impermissible avoidance arrangement, as it lacked commercial substance. Also, both GAAR and SAAR provisions could be applied, depending on the facts of each case

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B

Key developments under FEMA

Legislative/other developments

- **Liberalisation of rules for investment in overseas funds⁶:** Investment via overseas portfolio investment is permitted in overseas funds where the regulator oversees the fund and oversees the activities of such fund through a fund manager. Further, permissible investment is no longer limited to 'units' issued by the overseas funds but also includes other instruments such as shares or partnership interests issued by overseas funds, which are incorporated as companies, partnership firms, or limited liability companies in the host jurisdiction.



6. Clarification issued by the RBI vide RBI/2024-25/41 A.P. (DIR Series) Circular No. 9 dated 7 June 2024
7. GE Power Conversation India Private Limited [TS-755-HC-2023(MAD)-TP]
8. Lummus Technology Heat Transfer BV [TS-238-HC-2024(DEL)-TP]
9. Siemens Aktiengesellschaft [TS-236-ITAT-2024(Mum)-TP]
10. Fidelity Information Services India Pvt. Ltd [TS-241-ITAT-2024(CHANDI)-TP]

C

Key developments under transfer pricing law

Judicial developments

- **Madras HC sets aside order mistakenly formatted as the final order, quashes penalty and demand notices⁷:** The Madras HC ruled in favour of the assessee, setting aside the ITAT's order and remitting the matter to the TPO to reformat as a draft assessment order for AY 2018-19. The court found that the Revenue should have passed a draft assessment order under Section 144B(1) of the IT Act and that the formatting mistake was not fatal, considering technical difficulties. The court also extended the assessment proceeding by 12 months due to COVID-19 and quashed the demand and penalty notice.
- **Delhi HC dismisses Revenue's appeal and upholds internal TNMM, citing the principle of consistency⁸:** The HC dismissed the Revenue's appeals against the ITAT's orders for AY 2007-08 and AY 2009-10 on the assessee's transfer pricing adjustments. The HC observed that the transaction size influenced the TPO, but the ITAT rightly allowed the assessee's internal TNMM method. The HC refrained from interfering with the ITAT's views, citing consistency with decisions made in the previous years.
- **ITAT Mumbai deletes ad hoc TP adjustment on royalty payments, differences on account of receipt vis-à-vis accrual basis of accounting valid⁹:** The ITAT has deleted TP adjustment on royalty payments received by a German tax resident from its Indian subsidiaries for AY 2009-10. The TPO had added a 10% mark-up on an ad hoc basis, citing a discrepancy in the amount disclosed by the assessee and its Indian associated enterprise (AE). However, the ITAT held that the assessee's explanation for the discrepancy was valid and that the TPO should have determined the arm's length price (ALP) in accordance with the rules rather than resorting to an ad hoc adjustment. The ITAT also noted that the same transaction had been benchmarked and accepted as ALP in the case of the Indian AE, and therefore, the same ALP should be accepted in the case of the foreign company.
- **ITAT allows a deduction for reimbursed foreign travel expenses, highlighting AO's breach of APA¹⁰:** The ITAT Chandigarh has allowed the deduction of foreign travel expenses reimbursed to its AE for AY 2014-15. The assessee, a cost-plus entity, had included the expenses in its cost base and marked them up by 16.60% as per the Advance Pricing Agreement (APA). The ITAT held that the expenses were incurred for business purposes, and the reimbursement was benchmarked as per the APA. The disallowance by the AO was deemed to be in breach of the APA, and the Revenue's ground was dismissed.

D

Key developments under GST law

Legislative/other developments

- **Key recommendations and decisions of the 53rd GST Council meeting:** The Goods and Service Tax (GST) Council convened its 53rd meeting on 22 June 2024, wherein various tax-friendly measures were proposed. The key legislative changes proposed are as follows:
 - **Relaxation in the time limit for availing input tax credit (ITC):** The time limit for availing ITC from FY 2017-18 to FY 2020-21 is proposed to be extended to 30 November 2021.
 - **Conditional waiver of interest and penalty:** Waiver of the amount of interest or penalty or both for demand notices issued under Section 73 of the CGST Act¹¹ for FY 2017-18, 2018-19, and 2019-20, where the total amount of tax is paid up to 31 March 2025.
 - **Common time limit for demand notice and order:** Section 74A of the CGST Act is to be introduced, prescribing a common time limit for issuing demand notices and orders from FY 2024-25 onwards. The time limit for availing the benefit of reduced penalty will be increased from 30 to 60 days.
 - The GST Council has also proposed a reduction in the pre-deposit amount, a sunset clause for anti-profiteering provisions, changes in the GST rates on goods and services, etc.

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- **Clarifications pursuant to 53rd GST Council Meeting:** Considering the GST Council recommendations, the CBIC issued a series of circulars on key issues, including taxability in the case of related party transactions, ITC eligibility under reverse charge, ITC reversal mechanism in case of post-sale discounts, etc., aimed at the simplification of operational issues, maintaining uniformity and reducing litigation. The key clarifications are as follows:
 - **Valuation of supply of import of services by related person¹²:** Where a foreign affiliate provides services to a related domestic entity that is eligible for full ITC, the value of supply would be the value declared in the invoice or nil in case no invoice is issued.

- **Time limit for availing ITC in respect of reverse charge mechanism (RCM) supplies received from unregistered persons¹³:** The relevant financial year for calculating the time limit for availing the ITC under Section 16(4) of the CGST Act is the financial year in which the recipient issues the self-invoice.
- **Mechanism to prove ITC reversal by the recipient in case of post-supply discount¹⁴:** To substantiate compliance with the requirement of the ITC reversal attributable to post-sale discount as per Section 15(3)(b)(ii) of the CGST Act, the suppliers can procure a certificate from the recipient of the supply, issued by a CA/CMA, certifying the proportionate ITC reversal.
- **GST liability and ITC availability for replacement under warranty/extended warranty¹⁵:** Where all goods are replaced under warranty, GST is not applicable, and ITC reversal is not required. Extended warranty forms a part of composite supply only when the supplier provides the goods.

In addition to the above, clarifications have also been issued specifying the monetary limit for filing appeals by the department, taxability of ESOP¹⁶ and loans between related entities, the place of supply and time of supply issues, etc.

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11. Central Goods and Services Tax Act, 2017 (CGST Act)
12. Circular No. 210/4/2024-GST dated 26 June 2024
13. Circular No. 211/5/2024-GST dated 26 June 2024
14. Circular No. 212/6/2024-GST dated 26 June 2024
15. Circular No. 216/10/2024-GST dated 26 June 2024
16. Employee Stock Option (ESOP)

E

Key developments under erstwhile indirect tax laws, Customs, Foreign Trade Policy, SEZ laws, etc.

Legislative/other developments

- **CBIC issues instructions in relation to the transfer of goods from one warehouse to another under the MOOWR¹⁷ scheme¹⁸:** The CBIC has clarified that the transfer of resultant goods from one unit to another unit operating under the MOOWR scheme is permitted, subject to compliance with the MOOWR and Chapter IX of the Customs Act, 1962. Key aspects for consideration are that the deferred customs duty on warehoused goods becomes payable only upon home consumption clearance via ex-bond bill of entry, transfer needs to be intimated to the bond officer in the prescribed form, triple duty bond of transferee needs to be debited and suppliers bond to be recredited, etc. Prior permission from the proper officer is not required for removing warehoused goods in resultant goods.
- **Clarification regarding demarcation of ‘non-processing area’ from IT/ITES SEZ to allow set up of non-SEZ IT/ITES units²⁰:** The SEZ rules²¹ have been amended to enable the demarcation of non-processing areas in IT/ITeS SEZs w.e.f. 6 December 2023. In this regard, the CBIC has clarified

that the Specified Officer, as well as the Development Commissioner, are required to provide a certificate confirming that the developer has refunded the duty benefits while applying for the demarcation of the ‘non-processing area’ from IT/ITES SEZ to allow non-SEZ IT/ITES units to operate from this area.

Judicial developments:

- **Mere bifurcation of consideration cannot change a slump sale transaction to an ‘itemised sale’ – Bombay HC²²:** The HC ruled that mere bifurcation of consideration for a slump sale towards intellectual property rights and other assets cannot be construed as ‘itemised sale’ by vivisectioning the business transfer agreement (BTA). The HC observed that the values were assigned to intangibles only to determine stamp duty, and a holistic reading of the BTA signified the true intention of the transfer of the entire business in ‘lock, stock and barrel’, which constitutes a ‘transfer of business’ and is not leviable to VAT.

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17. Manufacturing and Other Operations in Warehouse 2019, Regulations (MOOWR Scheme)

18. Instruction 16/2024- Customs dated 25 June 2024

19. Information Technology or Information Technology Enabled Services

20. Circular No. K-43014(16)/9/2021-SEZ dated 27 June 2024

21. The Special Economic Zone Rules, 2006

22. Piramal Enterprises Limited (WP No. 2836/2021)



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