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Tax Update

Direct Tax

- CBDT notifies new valuation rules for equity and compulsorily convertible preference shares for angel tax provisions.
- CBDT vide Notification No.2/2023 dated 27 September 2023 provided the procedure for granting of Lower/ Nil witholding certificate under section 197 through TRACES portal Rule 28 deals with application of Form 13 for lower/Nil witholding certificate and proviso to Rule 28AA(4) provides for issuance of certificate for lower deduction certificate in case number of deductors exceed 100 in number and details of such deductors are not available at the time of making the application. In this regard the procedure applicable from 01 October 2023 is provided in the above notification. It even mentions that due to the fact that the deductors are not identifiable at the time of making the application, therefore the certificate limit is not prescribed for each deductor, in this regard, the certificate shall be utilised on FIFO basis and the deductors shall verify the consumption status before furnishing the certificate in the TDS Return.
- CBDT notified Form 6D for furnishing of 'Inventory Valuation Report' u/s 142(2A) of the IT Act

Indirect Tax

- CBIC issues notification pertaining to valuation of Corporate Guarantee provided to related persons. The rules governing valuation of services by a supplier to a recipient who is a related person, by way of providing corporate guarantee shall be deemed to be 1% of the amount of such guarantee offered, or the actual consideration, whichever is higher. The above rule will mandate entities offering corporate guarantees to their affiliates to consider 1% of the guaranteed value as taxable value and discharge GST at 18% on the taxable value.
- CBIC issues Instruction w.r.t. applicability of SC ruling on secondment of employees under GST which state that only in cases where the investigation indicates that there is material evidence of fraud or wilful mis-statement or suppression of facts to evade tax on the part of the taxpayer, provisions of section 74(1) of the Central Goods and Services Tax Act, 2017 may be invoked for issuance of show cause notice, and such evidence should also be made a part of the show cause notice
- Time limit for issuance of notice for sec 73 in GST extended.
  For FY 18-19 - Extended date is 30.04.2024.
  For FY 19-20 - Extended date is 31.08.2024
  Reference notification no 56/2023 dt 28.12.23

Trade

- MCA notifies mandatory dematerialisation for securities of private companies
- The Ministry of Commerce and Industry has inserted a new Rule 11B in the SEZ Rules, 2006 - 'Non-processing areas for IT/ITeS SEZ' allowing co-existence of SEZ units and non-SEZ IT/ITeS business in the same SEZ premises. This amendment will enable SEZ developers to optimally utilize the vacant space in existing SEZs.
- The RBI recently barred banks, NBFCs and all-India financial institutions from investing in Alternative investment funds (AIFs) if the AIF has an investment in a borrower/investee of the lender. This prohibition applies immediately. While done with the explicit intent of curbing evergreening (lender investing money in the AIF which in turns invests in a borrower, and that helps the borrower to pay the lender), the bar has been cast in a very wide manner, and will affect the flow of funds into AIFs and hedge funds.

Direct Tax Case laws

- The Supreme Court set aside a 2021 Delhi High Court ruling that allowed Nestle SA, Concentrix Services, Steria and others a concessional withholding tax rate of 5% on dividend income from their Indian arms, extending the MFN clause in the OECD.
- In the case of Bharti Hexacom the Supreme Court held that License Fee paid by Telecom Operators is Capital in nature.
- The Supreme court in the case of Vegetable products Ltd held that If two or more possible interpretations are possible for a particular taxing provision, which interpretation should be adopted, the one in the favour of the taxpayer, or one against?. If we find that language to be ambiguous or capable of more meanings than one, then we have to adopt that interpretation which favours the assessee,
- In the case of Jigar Jashwantlal Shah, the Gujarat High court held that Section 56(2)(viic) does not apply to fresh issuances or allotments of shares by a company.
- Karnataka High court in the case of I.G Petrochemicals held that waiver of loan is not income u/s 28
- Delhi High Court in the case of Biorad laboratories held that If make available clause as per DTAA between India and Singapore is not satisfied, managerial charges cannot be FTS.
- In the case of Shreyash retail, the Delhi HC held that rate of LDC cannot be provided at higher rates without application of mind
- In the case of Chintan Bindra the Delhi HC held that Employee Can’t Be Penalized For Non-Deposit Of TDS By Employer
- Mumbai ITAT in the case of TCS held that there is no need to charge brand royalty from AEs.
- Mumbai ITAT in the case of Total energies marketing held that ESOP is taxable in the hands of employees not at the time of grant of ESOP but at the time of vesting ESOP right
- ITAT Delhi in the case of LIFESTYLE PROBUILD PVT. LTD held that prescribed method for unquoted shares is not any specific method but it provides that assessee may obtain valuation report from merchant banker or accountant. In this case the assessee has obtained valuation report of the accountant. To this extent, valuation adopted by the assessee cannot be said to be not in accordance with law.
- Delhi ITAT in another case held that In absence of 'FTS/ Royalty' clause, Technical Fee is Taxable under 'Business Profit' clause, not under 'Other Income' clause.
- Jaipur ITAT in the case of Mangalam Art held that Interest paid on TDS is compensatory in nature and is a business expenditure allowable u/s 37(1) of the Income Tax.
- Delhi ITAT in the case of Serco India held that Income Tax Authorities Can’t Step Into Shoes Of Businessmen To determine Expenditure For Business Purpose.
- Mumbai ITAT in the case of Rustomjee Realty held that CSR Expenses could also be eligible for deduction U/S 80G, provided conditions are fulfilled.
- In the case of ICICI Bank, Mumbai ITAT held that Club Membership Fees Paid By ICICI Bank For Employees Are To Be Treated As Business Expenditure.

Indirect Tax Case laws

- Supreme court further dismiss SLP against decision of Calcutta High court given to Suncraft Energy which quashed demand of ITC against service recipient for mismatch in GSTR 2A and GSTR 3B in the absence of any investigation done at the end of supplier.
- Kerala High court in the case of Josco Bullion held that when the issue before the Central GST and the State GST were not one and same. Therefore, the bar thus created under Section 6 will not come into play & hence state GST can open the matter which was not considered by central government.
- Karnataka HC in the case of United Breweries grants ad-interim stay in a writ challenging show cause notice seeking to levy GST on salary and other costs incurred by Head Office (HO) alleging that such costs incurred at HO amount to a service being provided to Branch Offices (Bos).
- Delhi HC holds Tax Research Unit of the Department of Revenue lacks authority to issue GST circulars.
- Chennai High court in the case of Caterpillar India held that recovery can't be made directly due to difference in GSTR-1 & GSTR-3B without following the procedure under Rule 88C of the CGST Rules, 2017.
- Madras High Court in the case of Lenovo India held that time limit of 2 years for filing refund claims under section 54(1) is to be considered directory and not mandatory. The judgment emphasizes the crucial distinction between the use of the terms "may" and "shall" in Section 54(1), indicating a discretionary rather than obligatory nature
- Bombay HC in the case of Star engineers directed GST authorities to permit petitioner to rectify Form GSTR-1 either through online or manual mode for F.Y 2021-22.
- Telengana AAR in the case of Geekay wires Ltd held that ITC required to be reversed on inputs/finished goods lost in fire accident, steel scrap sold in open market.
- The AAAR, Gujarat in the case of *M/s. The Varachha Co-Op. Bank Ltd.* observed that items like the Central Air Conditioning Plant, Lift, Electrical Fittings, and Fire Safety Extinguishers were categorized as immovable property, thereby making them ineligible for Input Tax Credit ("ITC")
- The Karnataka High Court in the case of M/s Tejas Arecanut Traders vs Joint Commissioner Commercial Taxes (Appeals) & Anr in Writ Petition No. 104505 of 2023 (T- RES) has set aside the order passed by the Appellate Authority to deposit 10% of the entire amount in dispute (tax, interest, fine, fee and penalty) and held that while filing the appeal under Section 107(6) of the GST Act, the appellant is required to deposit 10% of the disputed tax amount only and not 10% of the entire disputed amount including penalty, fine and interest.

Unraveling the Web of Taxation: A Call for Clarity and Fairness

In recent months, a series of Supreme Court judgments on tax-related matters have overwhelmingly favored the taxpayers. While these rulings have provided much-needed relief to appellants, they have also shed light on a concerning trend in the tax department's approach to collections.

It appears that the tax department, in its pursuit of aggressive tax collection targets, has been creating tax demands based on shaky grounds that are unsustainable in court. The rationale behind this approach becomes clearer when one considers the financial burden placed on taxpayers who wish to appeal such demands. The tax department understands that imposing a hefty tax demand requires taxpayers to pay a significant amount, typically 10% to 20%, under protest to initiate an appeal.

This strategy allows the tax department to meet its collection goals swiftly. Moreover, the department is aware that the final resolution of these issues often lies with the Supreme Court, a process that can take several years. During this time, the tax department retains the collected taxes without an immediate obligation to refund the amounts paid under protest.

As a consequence of this aggressive approach, taxpayers in India find themselves living in a state of tax-related anxiety, lacking clarity on how they will be taxed. Additionally, businesses must allocate substantial funds towards litigation costs to navigate the complexities of the Indian tax system.

To substantiate the captioned facts I would like to refer the recent Supreme court ruling in the case of Suncraft Energy. The court upheld a demand for Input Tax Credit (ITC) against the service recipient based on discrepancies between GSTR-2A and GSTR-3B, despite the absence of any investigation at the supplier's end. Prior to this judgment, the tax department had already issued substantial tax demands to numerous taxpayers, collecting taxes from them. Now, taxpayers who complied with these demands are left wondering about the process to obtain refunds for the taxes paid.

In another significant ruling, the Supreme Court, in the case of Vegetable Products Ltd, emphasized that when a taxing provision allows for multiple interpretations, the one favoring the taxpayer should be adopted. This ruling provides relief to taxpayers who faced hefty tax demands based on differing interpretations rejected by the tax department, resulting in substantial litigation costs and the burden of taxes paid under protest.

It is evident that not all taxpayers have the financial capacity to pursue legal recourse through writs in the High Court and continued litigation in the Supreme Court. The tax department's awareness of this fact raises concerns about the harassment of genuine taxpayers solely to meet collection targets.

In light of the government's efforts to promote "Make in India" and improve the country's economy, there is a pressing need to address the ambiguity in taxation. This entails halting the blind collection of taxes when a taxpayer wishes to appeal and establishing mechanisms to compensate taxpayers for their litigation costs when they prevail in court. Such measures would instill confidence in businesses and contribute to a more equitable and transparent taxation system.

GST an unsolved puzzle to do business at India

In the annals of 2017, when the advent of GST dawned upon the business milieu, optimism pervaded. It was widely believed that the tapestry of commerce in our land would be woven with the seamless threads of simplified indirect tax compliance. Alas, the reality unfolded in stark contrast. The enactment and the system proved neither facile nor smooth. A colossal ordeal awaited businesses during the transition.

Since that pivotal year, the GST council has convened a staggering 52 meetings. Each meeting has birthed a multitude of CBIC notifications, orders, circulars, and instructions, their cumulative volume now numbering in the thousands. The government's expectation is unequivocal - enterprises, regardless of their scale, must vigilantly stay abreast of these alterations and proficiently integrate them into their operations.

Enter the COVID era, an unforeseen hiatus halting business operations for over two years. Despite the challenging circumstances, GST compliances were exempt from any reprieve. Monthly and annual returns were obligatory, and the meticulous matching of 2A with 3B to assert input credit persisted.

Following these tribulations, the GST department has embarked on yet another endeavor, casting a shadow over businesses by issuing show cause notices with substantial tax demands for the period spanning 2017 to 2019. Remarkably, these compliance activities were conducted amidst the throes of the pandemic. The common perception upon hearing of such tax demands is one of assumed wrongdoing, yet the reality is far from it. A multitude of tax demands meet their demise at higher appellate forums, as their foundational premises are often based on fictional constructs.

Consider, for instance, a scenario where a tax demand is conceived by positing that overseas branches do not directly serve their international clientele. Instead, the services are purportedly rendered first by the branch to the Indian headquarters, which subsequently provides them to overseas customers. This narrative places the Indian headquarters in a dual predicament - firstly, for not accurately reporting export turnover in their GST returns, and secondly, for neglecting to remit GST under reverse charge for the import of services.

Had business been apprised beforehand, with lucid communication mandating the treatment of overseas branch transactions as imports of services to the Indian headquarters, this issue might have been averted. Input credit would be available for GST paid under reverse charge, and no GST would be levied on exports. The absence of such communication places business in a quandary, facing substantial tax demands today for assumptions not anticipated at the outset. For these companies, it feels akin to a penalty for merely conducting business in India.

It is incumbent upon the government to intervene and issue imperative guidelines, providing clarity for transactions henceforth. A stringent check is warranted to ensure that businesses are not unduly harassed for transactions that, from the government's perspective, have a neutral impact on tax revenue.

Income Tax benefits to startups

In the collective yearning for enlightenment, the inquiry arises regarding the fiscal inducements accessible to fledgling enterprises within the Indian realm. Hereinafter, I proffer a concise compendium delineating the aforesaid tax benefits bestowed upon such nascent entities.

1. Section 80-IAC provides for a deduction of 100 percent of profits from eligible business activities. This deduction spans a block of three consecutive financial years, allowing startups flexibility in choosing this period within their first five years from the year of incorporation.

2. The eligibility criteria include an annual turnover not exceeding Rs. 100 crores in the previous year, and possession of a certificate of eligible business from the Inter-Ministerial Board of Certification.

3. An eligible business involves innovation, development, or improvement of products, processes, or services. Additionally, a scalable business model with high potential for employment generation or wealth creation aligns with the criteria. This nuanced definition ensures that startups engaged in transformative work are the primary beneficiaries of this tax incentive.

4. The certification is available for private limited companies or LLPs, with the entity's existence and operations not exceeding ten years from incorporation. The annual turnover must not exceed Rs. 100 crores, and the entity should not have been formed by splitting up an existing business. Furthermore, the entity should actively work towards the development or improvement of a product, process, or service, demonstrating a commitment to innovation.

5. Startups looking to avail tax exemption under Section 80-IAC should register on the Startup India portal. Entities certified by DPIIT are not automatically eligible for Section 80-IAC deduction.

Goods Import value more than Rs. 2 Crore – don't forget to submit Form 10F.

Requirement of Form 10F, Tax Residency Certificate and No Permanent Establishment Declaration from the Non-resident Supplier in case of payment for import of goods for more than Rs. 2 crore in a year.

1. As per the amended Explanation 2A to Section 9(1)(i) of the Income-tax Act, 1961, significant economic presence of a non-resident in India shall constitute "business connection" in India and "significant economic presence" for this purpose, shall mean transaction in respect of any goods, services or property carried out by a non-resident with any person in India including provision of download of data or software in India, if the aggregate of payments arising from such transaction or transactions during the previous year exceeds Rs. 2 crore (as prescribed under Rule 11UD of the Income-tax Rules, 1962).

2. For the purpose of availing benefit of DTAA under Section 90 in respect of taxation of "Business Profits", it is now essential to obtain Form 10F, Tax Residency Certificate (TRC) and No Permanent Establishment Declaration from the Supplier in case of payment for import of goods as well for making payment without TDS under Section 195.

3. Non-residents can submit Form 10F through e-filing only on the Income Tax portal (furnishing it manually is not permissible). For this purpose, they can register on the Income Tax portal without having a PAN now.

4. To avoid any litigation for non-deduction of tax at source at a later stage, it is advisable that importers of goods making payment of more than Rs. 2 crore in a year to a non-resident supplier should inform the supplier about the above compliance requirement and obtain these documents from them. It should be noted that a fresh Form 10F is required to be obtained each year.

TDS @ 20% in case PAN not linked with Aadhar.- Verify & deduct.

TDS deductors receiving notices for not deducting TDS at 20% in case of payee not linking PAN with Aadhar:

Of late, assessees have received notices from Income Tax (TDS) department for not deducting TDS of payee having inoperative PANs at the rate of 20%. This is because the payee has missed linking PAN with his Aadhar.

As per Section 139AA of the Income-tax Act,1961 ('the Act') that every person who has been allotted a Permanent Account Number ('PAN') shall also be required to link the same with his Aadhaar.

If the PAN is not linked with Aadhaar by 30th June 2023, it shall become inoperative immediately.

Rule 114AAA of the Income-tax Rules ('the Rules') provides that in case of a person whose PAN has become inoperative, it shall be deemed that he has not furnished, intimated or quoted the PAN at all, and he shall be liable for all the consequences under the Act for not furnishing, intimating or quoting the PAN.

However, the person can make his PAN operative again by linking his Aadhaar and the PAN shall be operative from the date of intimation of Aadhaar.

As per the provisions of Section 206AA of the Act, where a payee fails to furnish his PAN to the deductor, tax shall be deducted at a higher rate of:

· rate specified in the relevant provision of the Act or
· at the rates in force or
· at the rate of 20%

Now, strictly going by the provisions of Rule 114AAA, TDS will indeed have to be deducted at 20% even if the payee later on links his PAN with Aadhar to make it operative.

Understanding Intra-Group Management Services Taxability!!

Intra-group management services typically involve the provision of managerial, administrative, or support services by one entity within a corporate group to another. These services can span a wide spectrum, including strategic planning, financial management, human resources, and other shared services that contribute to the overall efficiency of the group.

Key Tax Implications:

1. Arm's Length Principle: Management fee should be charged on arm's length basis, as if the transaction is between unrelated parties, ensuring fair and market-driven pricing for the services rendered.

2. Transfer Pricing Compliance: Benefit of services availed should be documented. Proper documentation and analysis are essential to demonstrate compliance with transfer pricing rules

3. VAT / GST and Tax Withholding: In some jurisdictions, VAT or GST and Tax Withholding may be applicable to intra-group management services. Understanding the local direct and indirect tax regulations is crucial to determine tax efficiency in the structure.

In conclusion, understanding and managing the tax implications of intra-group management services demand a comprehensive approach. By adhering to transfer pricing rules, staying informed about local tax regulations, and implementing robust documentation practices, businesses can navigate this intricate terrain effectively.

Forms required to be filled to report international transactions with related parties under Income Tax.

a) Form 3CEB – As per section 92E of the Income-tax Act, every person who has entered into International Transaction or Specified Domestic Transaction during previous year shall obtain a report from a Chartered Accountant in Form 3CEB. Further, as per Rule 10E read with section 92F (Definitions), due date for furnishing report in Form 3CEB is 1 month prior to the due date for furnishing ROI u/s 139(1).

b) Form 3CEAA (Part-A) – As per rule 10DA, every person being a constituent entity of an international group is required to furnish Part-A of Form 3CEAA irrespective of satisfying the conditions mentioned in the said rule on or before the due date of furnishing the ROI as specified u/s 139(1).

c) Form 3CEAA (Part-B) - As per rule 10DA, every person being a constituent entity of an international group having consolidated group revenue of the international group exceeding INR 500 crores and aggregate value of international transactions during the accounting year exceeds INR 50 crores or in respect of purchase, sale, transfer, lease or use of intangible property exceeds INR 10 crores shall furnish Form 3CEAA (Part-B) on or before the due date of furnishing the ROI as specified u/s 139(1).

d) Form 3CEAB – As per rule 10DA, where there are more than one constituent entities of the international group required to file Form 3CEAA, the Form 3CEAA may be furnished by any one constituent entity if international group has designated such entity through Form 3CEAA. It will be filed within 30 days before the due date of filing Form 3CEAA. Form 3CEAB is the deciding factor who will file form 3CEAA.

e) Form 3CEAC – As per rule 10DB read with section 286(1), every constituent entity resident in India of an international group, the parent entity of which is not a resident in India shall furnish details 2 months prior to due date for furnishing report in Form 3CEAD in respect of whether it is the alternate reporting entity of the international group; or the details of the parent entity or the alternate reporting entity, if any, of the international group, and the country or territory of which the said entities are resident.

f) Form 3CEAD - As per rule 10DB read with section 286(2), every parent entity or the alternate reporting entity, if any shall, for every reporting accounting year, in respect of the international group furnish a report in Form 3CEAD within a period of 12 months from the end of the said reporting accounting year.

g) Form 3CEAE – As per rule 10DB read with proviso to section 286(4), where more than one resident constituent entities of an international group, Form 3CEAE is the deciding factor of who will file form 3CEAD. No due date has been specified but it should be filed before the due date of Form 3CEAD.

What does Domestic Transfer Pricing mean?

Sec 92BA of the Income Tax Act: Section 92BA defines specified domestic transactions that are governed by the Transfer Pricing provisions, which include the domestic transactions related to any of the following activities in the case of an assesses:

1. Some expense incurred or incurred in conjunction with a payments made or to be made to an individual referred to in point (b) of section 40A(2).

2. Transactions related to in Section 80A.
Some transaction related to business between the assessee and another individual referred to in Section 8 of Section 80 IA.

3. Every activity referred to in section VI-A or section 10AA, or an individual to whom the requirements of subsection 8 or subsection 10 of section 80 IA relate.

4. And where the total of such payments entered into by the assessee in the intervening year reaches 20 crores.

5. Any other transactions that may be recommended

What is the Threshold Limit has been prescribed in the law?

1. The provisions referred to above shall apply only if the aggregate value of the turnover of the transactions referred to above exceeds Rs. 20 crore A.Y. 2017-18 onwards.

2. If the threshold has been reached, the consumer will be expected to conform with the Transfer Pricing provisions for all purchases, despite the fact that the volume of transactions under any head may be low. There is therefore no criterion for each head of the description.

Applicability of Domestic Transfer Pricing?

1. Monetary threshold limit of 20 crores is to be calculated on the basis of the aggregate of payments and receipts to which these provisions apply.

2. Definition of Related party includes expenses disallowed to cover the entities which have common beneficial ownership

3. Transfer pricing is mostly applicable to international transactions and specified domestic transactions and specifically excludes Advance Pricing Agreement provisions.

Concept of Arm's Length Price(ALP)

The concept of ALP has also been extended to Specified Domestic Transactions. ALP is defined as the price which is applied to proposed to be applied in a transaction the assessed and any other unrelated person in uncontrollable condition

Methods of Computing ALP

1. Comparable uncontrolled price method

2. Resale price method

3. Cost plus method

4. Profit Split method

5. Transactional net margin method

6. Such other method as may be notified by the Board

New TCS from 1st October 2023 for various foreign remittances:

- **Educational Usage**: Concerning sending money abroad for educational purposes, no Tax Collection at Source (TCS) is applied for amounts below Rs 7 lakhs. However, if the educational remittance exceeds Rs 7 lakhs, a modest TCS rate of 0.5% is levied. It's important to note that if the educational remittance is not funded by a loan, a slightly higher TCS rate of 5% is imposed. This ensures that significant educational expenses exceeding Rs 7 lakhs incur a reasonable TCS.

- **Medical Needs**: Remittances designated for medical purposes are subjected to a 5% TCS if the amount surpasses Rs 7 lakhs. The Ministry of Finance has clarified that the TCS rate remains consistent for all travel and ancillary expenses associated with medical and educational treatments. Consequently, expenses like hostel fees for a child studying abroad can also be categorized as funds sent for medical purposes.

- **Foreign Travel**: Presently, foreign tour packages are subject to a 5% TCS without a specified threshold limit. This applies to the complete cost of the tour package. However, starting from October 1, for purchases of overseas tour packages up to Rs 7 lakhs in a financial year, a TCS of 5% will continue to apply. If the total cost of the tour package exceeds Rs 7 lakhs, a higher TCS rate of 20% will be applicable. This notable increase in TCS is aimed at regulating outward overseas remittances, encompassing various expenses like bank account transfers, forex card loading, foreign exchange, travel costs, and business trips.

- **Investments:** Regarding investments made abroad, such as buying stocks, mutual funds, and cryptocurrencies, a TCS rate of 20% is applicable when the investment amount exceeds Rs 7 lakhs. However, if the investment falls below this threshold, no TCS is imposed. This exemption promotes smaller-scale investments. It's vital to comprehend that investments in domestic mutual funds with exposure to foreign stocks are not considered remittance under the Liberalised Remittance Scheme (LRS) and thus are not subject to TCS.

- **Credit Card Transactions**: Credit card transactions are outside the scope of the Liberalised Remittance Scheme (LRS) and, therefore, not subject to TCS. However, it's essential to differentiate between payment methods: debit cards and forex cards do fall under LRS regulations. Whether TCS is charged on these cards depends on the specific purpose of the transaction.

- TCS does not impose an additional tax burden. Please remember the following points.

- The amount deducted as TCS can be utilized to offset the individual's tax while submitting the Income-Tax Return (ITR)
- An individual who does not possess any tax liability can make a formal request for a refund of the TCS amount.
- Business owners can adjust TCS in their advance tax payments.
- Salaried employees can request their employers, who may adjust TCS against the tax deducted at source (TDS) payable.

CBDT Notifies new Safe Harbour Rules for Intra Group Loans

Central Board of Direct Tax (CBDT), on 19th December 2023, notifies new Safe Harbour Rules for Intra Group Loans via Notification No. 104/2023/ F. No. 370142/26/2023-TPL, thereby amending the clause (f) of Rule 10TA and serial number (4) and (5) of sub rule (2A) of Rule 10TD.

A welcome notification by the CBDT providing more clear guidance regarding the chargeability of Interest Rates on Intra Group loans provided to Associated Enterprises denominated in different foreign currencies.

Analysis of Amendment:

Existing Rule	**Amended Rule**
Clause (f) of Rule 10TA: *(f) "intra-group loan" means loan advanced to ~~wholly owned subsidiary~~ being a non-resident, where the loan—* *~~(i) is sourced in Indian rupees;~~* *(ii) is not advanced by an enterprise, being a financial company including a bank or a financial institution or an enterprise engaged in lending or borrowing in the normal course of business; and* *(iii) does not include credit line or any other loan facility which has no fixed term for repayment.*	*'(f) "intra-group loan" means loan advanced to an associated enterprisebeing a non-resident, where the loan—* *i. is not advanced by an enterprise, being a financial company includinga bank or a financial institution or an enterprise engaged in lending or borrowing in the normal course of business; and* *ii. does not include credit line or any other loan facility which has no fixed term for repayment;*
Rule 2A of Rule 10TD- Serial No 4	
4 | *Advancing of intra-group loans referred to in item (iv) of rule 10TC where the amount of loan is denominated in Indian Rupees (INR).* | *The interest rate declared in relation to the eligible international transaction is not less than the one-year marginal cost of funds lending rate of State Bank of India as on 1st April of the relevant previous year plus,-* *i. 175 basis points, where the associated enterprise has ~~CRISIL~~ credit rating between AAA to A or its equivalent;* *ii. 325 basis points, where the associated enterprise has ~~CRISIL~~ credit rating of BBB-, BBB or BBB+ or its equivalent;*	4 | *Advancing of intra-group loans referred to in item (iv) of rule 10TC where the amount of loan is denominated in Indian Rupees (INR).* | *The interest rate declared in relation to the eligible international transaction is not less than the one-year marginal cost of funds lending rateof State Bank of India as on 1st April of therelevant previous year plus,-* *i. 175 basis points, where the associated enterprise has credit rating between AAA to A or its equivalent;* *ii. 325 basis points, where the associated enterprise has credit rating of BBB-, BBB or* *BBB+ or its equivalent;*

		iii. 475 basis points, where the associated enterprise has ~~CRISIL~~ credit rating between BB to B or its equivalent; iv. 625 basis points, where the associated enterprise has ~~CRISIL~~ credit rating between Cto D or its equivalent; or v. 425 basis points, where credit rating of the associated enterprise is not available and the amount of loan advanced to the associated enterprise including loans to all associated enterprises in Indian Rupees does not exceed a sum of one hundred crore rupees in the aggregate as on 31st March of the relevant previous year.

		iii. 475 basis points, where the associated enterprise has credit rating between BB to Bor its equivalent; iv. 625 basis points, where the associated enterprise has credit rating between C to D or its equivalent; or v. 425 basis points, where credit rating of the associated enterprise is not available andthe amount of loan advanced to the associated enterprise including loans to all associated enterprises in Indian Rupees doesnot exceed a sum of one hundred crore rupees in the aggregate as on 31st March of the relevant previous year.

Rule 2A of Rule 10TD- Serial No 5

5	*Advancing of intra-group loans referred to in item (iv) of rule 10TC where the amount of loan is denominated in foreign currency.*	~~The interest rate declared in relation to the eligible international transaction is not less than the six-month London Inter-Bank Offer Rate of the relevant foreign currency as on 30th September of the relevant previous year plus, -~~ ~~i. 150 basis points, where the associated enterprise has CRISIL credit rating between AAA to A or its equivalent;~~ ~~ii. 300 basis points, where the associated enterprise has CRISIL credit rating of BBB-, BBB or BBB+ or its equivalent;~~ ~~iii. 450 basis points, where the associated enterprise has CRISIL credit rating between BB to B or its equivalent;~~

5	*Advancing of intra-group loans referred to in item (iv) of rule 10TC where the amount of loan is denominated in foreign currency.*	The interest rate declared in relation to the eligible international transaction is not less than the **reference rate** of the relevant foreign currency as on 30th September of the relevant previous year plus, - (a) If amount of loan advanced to the associated enterprise including loans to all associated enterprises does not exceed a sum equivalent to two hundred and fifty crore Indian rupeesin the aggregate as on 31st March of the relevant previous year: i. 150 basis points, where the associated enterprise has a credit rating of AAA, AA+,AA, AA-, A+, A, A- or equivalent;

		~~iv. 600 basis points, where the associated enterprise has CRISIL credit rating between C to D or its equivalent; or~~ ~~v. 400 basis points, where credit rating of the associated enterprise is not available and the amount of loan advanced to the associated enterprise including loans to all associated enterprises does not exceed a sum equivalent to one hundred crore Indian rupees in the aggregate as on 31st March of the relevant previous year.~~	*ii. 300 basis points, where the associated enterprise has credit rating of BBB+, BBB, BBB- or equivalent;* *iii. 400 basis points, where the associated enterprise has a credit rating of BB+, BB, BB-, B+, B, B-, C+, C , C-, D or equivalent or where the credit rating of the associated enterprise is not available;* *(b) If amount of loan advanced to the associated enterprise including loans to all associated enterprises exceeds a sum equivalent to two hundred and fifty crore Indian rupees in the aggregate as on 31st March of the relevant previous year:* *i. 150 basis points, where the associated enterprise has a credit rating of AAA, AA+, AA, AA-, A+, A, A- or equivalent;* *ii. 300 basis points, where the associated enterprise has credit rating of BBB+, BBB, BBB- or equivalent;* *iii. 450 basis points, where the associated enterprise has a credit rating of BB+, BB, BB-, B+, B, B- or equivalent;* *iv. 600 basis points, where the associated enterprise has credit rating of C+, C , C-, D or equivalent or where the credit rating of the associated enterprise is not available.";*

'Explanation.– For the purposes of this sub-rule,—
(a) "reference rate" means,–

i. for US dollar, 6-month Term Secured Overnight Financing rate (SOFR), currently administered by Chicago Mercantile Exchange (CME),as increased by 45 basis points;
ii. for Euro, 6-month Euro Inter Bank Offered Rate (EURIBOR), currently administered by European Money Markets Institute;
iii. for UK Pound Sterling, 6-month Term Sterling Overnight Index Average (SONIA), currently administered by ICE BenchmarkAdministration/Refinitiv, as increased by 30 basis points;
iv. for Japanese Yen, 6-month Tokyo Term Risk Free Rate (TORF), currently benchmarked by QUICK Benchmarks Inc, as increased by 10basis points;
v. for Australian dollar, 6-month Bank Bill Swap Rates (BBSW) currently administered by Australian Securities Exchange; and
vi. for Singapore dollar, 6-month Compounded Singapore Overnight Rate Average (SORA), currently administered by Monetary Authorityof Singapore, as increased by 45 basis points;

(b) "credit rating" means the credit rating assigned to the associated enterprise by a Securities and Exchange Board of India registered andReserve Bank of India accredited credit rating agency which is applicable for the relevant previous year, so however that-

i. where the associated enterprise has only one credit rating, then such rating shall be taken as its credit rating; and
ii. where the associated enterprise has a credit rating from more than one such credit rating agency, then the least of such ratings shall betaken as its credit rating.'.

A welcome notification by the CBDT providing more clear guidance regarding the chargeability of Interest Rates on Intra Group loans provided to Associated Enterprises denominated in different foreign currencies. Previously, there was some ambiguity in respect of the chargeability of Interest rates and its tax treatment due to which the same is challenged by the Indian Revenue Authorities. The result of which was long pending tax disputes with increased burden on taxpayer in the form of additional tax liabilities.

With this guidance, taxpayer gets some sign of relief as the Interest Payment transaction will not be subject to further adjustments where the conditions as prescribed in the amended rule are satisfied.

- The Income tax rate for is 17% of its chargeable Income.

- Following tax exemptions is allowed to new start up companies (SUTE) incorporated at Singapore. The company must have 20 individual shareholders & does not engage in the business of investment & real estate. The tax exemptions for qualifying companies for their **first 3** consecutive YAs are as follows.

  (i) 75% exemption on the first $100,000 of normal chargeable income; and
  (ii) A further 50% exemption on the next $100,000 of normal chargeable income.

- Companies that do not qualify for the SUTE either in the first 3 YAs or companies that are in the fourth YA onwards will qualify for the Partial Tax Exemption ("PTE") Scheme, as follows.

  (i) 75% exemption on the first $10,000 of normal chargeable income; and
  (ii) A further 50% exemption on the next $190,000 of normal chargeable income.

- The below table explain the method of calculating depreciation under Singapore Income Tax.

Nature of assets	**% of Depreciation**
Computers & automation equipment's	100% in first year
Other assets where no deferment of depreciation allowed	75% in first year & 25% in 2nd year
Other assets with deferment of depreciation	In 3 years

- A foreign company or its Singapore branch cannot claim the tax exemption for new start-up companies as they are not incorporated in Singapore. However, a foreign company or its Singapore branch is eligible for the partial tax exemption on its normal chargeable income.

- The Singapore government further encourage various industries and based on their nature of work, contribution to the country etc, the government tax them at concessional rate which range between 5% to 10%. For getting tax incentive, the company have to present their case before the designated government department and get sanction from them. The below link provides which type of industry can get tax incentives and also provide the process of getting them.
  IRAS | Applying For Tax Incentives

- The below table provides the enhanced tax deductions who are engage into R&D.

Qualifying Activities	**Amount of Tax Deductions and/ or Allowances Granted From YA 2024 to YA 2028**
Qualifying R&D undertaken in Singapore	• 100% tax deduction on R&D expenditure plus • Additional 300% tax deduction on first $400,000 of qualifying R&D expenditure plus • Additional 150% tax deduction on balance of qualifying R&D expenditure in excess of $400,000
Registration of Ips	• 400% tax deduction on first $400,000 of qualifying IP registration costs plus

	• 100% tax deduction on balance of qualifying IP registration costs in excess of $400,000
Acquisition and licensing of IPRs	• 400% writing-down allowance ("WDA") and/ or tax deduction on first $400,000 (combined cap) of qualifying IPR acquisition costs and/ or qualifying IPR licensing expenditure plus • 100% WDA on balance of qualifying IPR acquisition costs in excess of claim for enhanced allowances plus • 100% tax deduction on qualifying IPR licensing expenditure in excess of claim for enhanced tax deduction
Training	• 400% tax deduction on first $400,000 of qualifying training expenditure plus • 100% tax deduction on balance of qualifying training expenditure in excess of $400,000 and all other training expenditure
Innovation projects carried out with polytechnics, the ITE or other qualified partners	• 400% tax deduction on first $50,000 of qualifying innovation expenditure

- **Tax exemption for foreign sourced income**

Various types of foreign-sourced income are tax exempt:

1. Foreign sourced dividends
2. Foreign branch profits
3. Foreign sourced service income

To be eligible for this exemption, foreign-sourced income has to be remitted to Singapore and it should meet these requirements:

- The headline tax rate of the foreign jurisdiction is at least 15% at the time the foreign income is received in Singapore.
- The foreign sourced income was taxed in the foreign jurisdiction (note, the rate at which the foreign income was taxed can be different from the headline tax
- The Singapore government is satisfied that the tax exemption would be beneficial to the Singapore tax resident.

Important decisions taken by GST Council in its 52nd meeting.

Decision 1 – Taxability of corporate guarantee by holding company to its subsidiary company

GST Council has proposed an amendment in GST Valuation Rules to prescribe the taxable value as 1 percent of the amount of guarantee offered by the Holding Company for its Subsidiary Company.

Remarks

- *The amendment will put to rest the question on valuation of services of corporate guarantee. However, for period prior to amendment, corporate guarantee given or renewed can have any value (e.g., ₹ 100) where ITC is fully available to the recipient entity.*
- *It is pertinent to note that the levy of GST at the first place is still a question of law. Since, the corporate guarantee for subsidiary is a shareholding function, one may argue that it should not be treated as a provision of services.*

Our Insights

- *These days holding companies are also giving '**letter of comfort**' to banks for their associate enterprises. It is not clear as to whether this 1 percent valuation will apply to 'letter of comfort' as well.*

Decision 2 – Taxability of personal guarantee by Directors

- GST Council has recommended that personal guarantee given by Directors to the bank is not chargeable to GST provided that no consideration is directly or indirectly paid to such Director.

Remarks

- *This is welcome recommendation by GST Council.*

Our Insights

- *Directors/KMPs are also giving sureties under different laws. **For example**, under Customs IGCRS Rules, surety is required to claim benefit of concessional duty benefit. If surety is not given, the Rules require submission of Bank Guarantee.*
- *Now, practically, directors or KMPs are providing surety under Customs IGCRS Rules on behalf of their entities. In such cases, Department may still argue that GST is payable on sureties given by Directors under RCM or KMPs under forward charge treating Bank Guarantee commission as basis of valuation.*

Decision 3 – Amnesty Scheme for filing of appeals against demand orders issued till March 31, 2023

- GST Council has recommended that for all assessment orders passed on or before March 31, 2023, appeal can be filed upto January 31, 2024.

Remarks

- *This is welcome recommendation by GST Council. Taxpayers whose appeal time limit got lapsed can avail the benefit of the same.*

Decision 4 – ISD Mechanism will be mandatory

- GST Council has recommended to make ISD mechanism mandatory to distribute the common Input Tax Credit.

Remarks

- *The taxpayers involved in cross-charging for each and every service including common ones, must prepare to obtain ISD registration and streamline their compliances.*
- *A proper segregation/classification of services must be made beforehand so that once the amendment is enforced, there should not be any difficulty in executive the process of distribution of ITC.*

Decision 5 – Allowing refund of IGST paid on supplies to SEZ

- GST Council has recommended that DTA units can supply to SEZ with payment of IGST and claim the refund of such IGST paid.

Remarks

- *In our last update, we mentioned that Government unintendedly missed the benefit to SEZ supplies which is now corrected in this GST Council meeting.*

Decision 6 – Consideration for export of services

- GST Council has recommended that consideration received through special vostro account should be admissible towards qualification of 'export of services'.

Process of Filing E Form 10F by non resident not having PAN of India.

Furnishing of Form 10F has been made electronic by DGIT(Systems) w.e.f. July 16, 2022 vide Notification No. 03 2022. However, in consideration of the practical challenges faced, "*non- resident taxpayers who are not having PAN and not required to have PAN as per relevant provisions of the Income-tax Act, 1961…*" were exempted from mandatory electronic filing of Form 10F till March 31, 2023. The relaxation was further extended till September 30, 2023.

The relaxation period has now expired, but CBDT has not granted any further extension.

However, recently income-tax e-portal has enabled registration of account by "Non-Residents not holding and not required to have PAN".

Procedure for Registration:

1. Go to https://www.incometax.gov.in/iec/foportal/
2. Click on "Register" option appearing on top right-hand side corner.
3. Select "Others" and then select "Non-Residents not holding and not required to have PAN" under Category
4. Certain "Basic Details" have to be filled.
5. Then "Key Person Details" must be provided.
6. Next step is to provide contact details.

   Primary mobile number and e-mail address will have to be verified through OTP. The Secondary mobile number and e-mail address have to be of the Key Person
7. Thereafter, certain documents have to be attached like TRC, address proof, identification proof and other optional attachments.
8. Final step is to secure account with password and personalised message.

Points to be noted:

To the best of our knowledge, the e-portal does not send OTPs on foreign mobile number, in which event an Indian number will have to be registered as Primary number.

∞ Verification of Form 10F:

As per Rule 131 of Income tax Rules, 1962 the prescribed forms (incl. Form 10F) have to be electronically furnished –

i. Under digital signature, if the return of income is required to be furnished under digital signature or
ii. Through electronic verification code in a case not covered under clause (i).

- Most importantly, the registration is for 'Non-residents not holding and not required to have PAN'. Thus, before registration of account, the non-residents must carefully evaluate its requirement of holding a PAN in India.

- From a TDS standpoint, the payers must now insist on furnishing electronically generated Form 10F in cases where non-residents do not have a PAN.

  If the non-resident is still hesitant to give a electronic Form 10F, then the payer/deductor will have to evaluate whether treaty benefit is to be granted or denied.

  Needless to say, if the TRC contains all the information required to be submitted in Rule 21AB(1) [as mentioned below], Form 10F per se may not required (though better to obtain and insist Form 10F) .
  - Status (individual, company, firm etc.) of the assessee;
  - Nationality (in case of an individual) or country or specified territory of incorporation or registration (in case of others);
  - Tax/Unique Identification Number in country of residence;
  - Period for which the residential status, as mentioned in TRC, is applicable; and
  - Address of the assessee in the country or specified territory outside India, during the period for which TRC, is applicable

Discard Return

The Income Tax Portal now features a "Discard ITR" option for unverified original/belated/revised Income Tax Returns (ITRs) starting from Assessment Year 2023-24. In this regard, please note the following important points.

1. Opting to discard the ITR is equivalent to non-filing of the return.

2. Following the discard, a new ITR can be submitted. However, if the fresh ITR is filed after the due date, it will incur late fees and other associated consequences.

3. Once the discard option is exercised, it cannot be reversed. Use this option cautiously.

4. The discard feature is available until the ITR filing deadline, i.e., until December 31 following the end of the financial year. Timely action is advised.

FAQ released by CBDT

Question 1:
I filed my Original ITR u/s 139(1) on 30th July 2023 but not yet verified. Can I Discard it?

Response:
Yes, user can avail the option of "Discard" for the ITRs being filed u/s 139(1) /139(4) / 139(5) if they do not want to verify it. User is provided a facility to file an ITR afresh after discarding the previous unverified ITR. However, if the "ITR filed u/s 139(1)" is Discarded and the subsequent return is filed after the due date u/s 139(1), it would attract implications of belated return like 234F etc., Thus, it is advised to check whether the due date for filing the return u/s 139(1) is available or not before discarding any previously filed return.

Question 2:
I Discard my ITR by-mistake. Is it possible to reverse it?

Response:
No, if ITR is Discarded once, it can't be reversed. Please be vigilant while availing Discarding option. If an ITR is Discarded, it means that, such ITR is not filed at all.

Question 3:
Where can I find "Discard option" ?

Response:
User can find Discard option in below path :
www.incometax.gov.in → Login → e-File → Income Tax Return → e-Verify ITR → "Discard"

Question 4:
Is it mandatory to file subsequent ITR if I "Discarded" my previous unverified ITR ?

Response:
A user, who has uploaded the return data earlier, but has made use of the facility to discard such unverified return is expected to file subsequent an ITR later on, as it is expected that he is liable to file the return of income by way of his earlier action.

Question 5:
I sent my ITR V to CPC and it is in transit and not yet reached CPC. But I don't want to verify the ITR as I get to know that details not reported correctly. Can I still avail "Discard" option?

Response:
User shall not discard such returns, where the ITR-V has already been sent to CPC. There is an undertaking to this effect before discarding the return.

Question 6:
When can I avail this "Discard" option and can I avail this "Discard" option multiple times or only once?

Response:
User can avail this option only if the ITR status is "unverified" / "Pending for verification". There is No restriction on availing this option multiple times. Precondition is "ITR status" is "Unverified" / "Pending for verification".

Question 7:
My ITR filed for AY 2022-23 is pending for verification. Can I avail this "Discard" option?

Response:
User can avail this option only from AY 2023-24 onwards for the respective ITR. This option will be available only till time limit specified for filing ITR u/s 139(1)/139(4) /139(5) (i.e., 31st December of respective AY as of now).

Question 8:
I discarded my Original ITR 1 filed on 30th July 2023 on 21st August 2023 and I want to file subsequent ITR on 22nd August 2023. Which section should I select?

Response:
If user discards the Original ITR filed u/s 139(1) for which due date u/s 139(1) is over, they are required to select 139(4) while filing subsequent return. As there is no prior valid return exist, date of Original ITR / Acknowledgement number if Original ITR fields are not applicable. Further, if user wants to file revised return in future, he needs to provide details of "Original filing date" and "Acknowledgement number" of the valid ITR i.e., ITR filed on 22nd August 2023 for filing revised ITR.

AMENDMENT TO RULE 11UA OF INCOME TAX RULES, 1962

DETERMINATION OF FAIR MARKET VALUE , NOTIFICATION NO. 81/2023 DATED SEPTEMBER 25, 2023

Background

- Section 56(2)(viib) of the Income Tax Act, 1961 ("the Act") provides that if a Company receives **consideration** for issueof shares, which **exceeds the Fair Market Value** (FMV) of such shares, then such **excess differential consideration** shall be chargeable to tax as *'Income from Other Sources'* in hands of the Company
- Accordingly, following are stipulations for applicability of Section 56(2)(viib) of the Act:
    - There should be issue of **shares**;
    - The shares should be issued **at a premium**;
    - The shares to be issued by a Company in which **public are not substantially interest;**
    - The **consideration** received by Company from issue of shares should be **in excess of FMV of such shares**.
- Rule 11UA of Income Tax Rules, 1962 ("the Rules") prescribes the manner for computation of FMV of the shares

Amendment in Budget 2023.

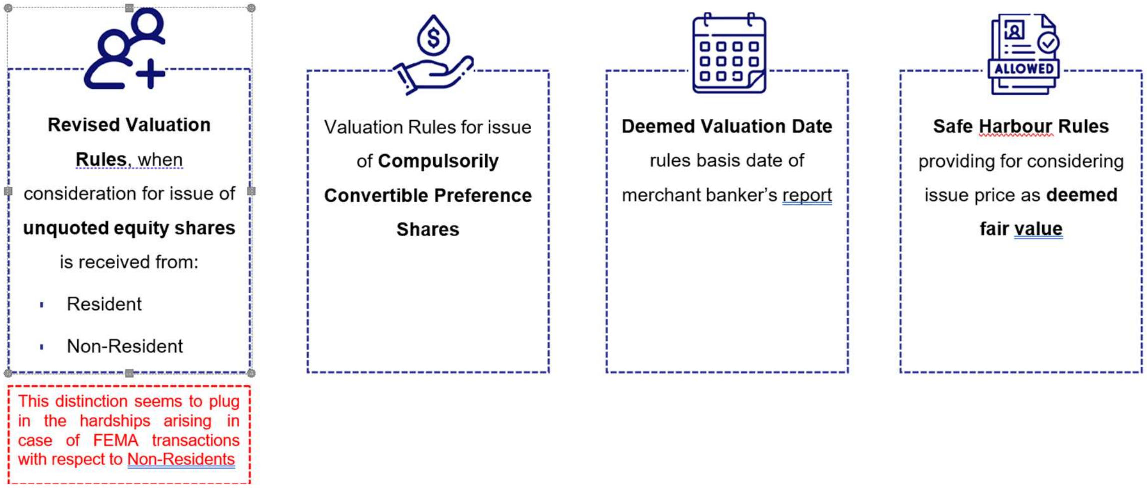
- *Prior to Finance Act, 2023, Section 56(2)(viib) provisions were applicable only when consideration for issue of shares was received by a Company from a 'Resident' person*
- *The Finance Act, 2023 amended Section 56(2)(viib) to bring into its ambit consideration received by Company from 'Non- Resident' persons as well, in addition to 'Resident' person [amendment effective from 1 April 2024]*

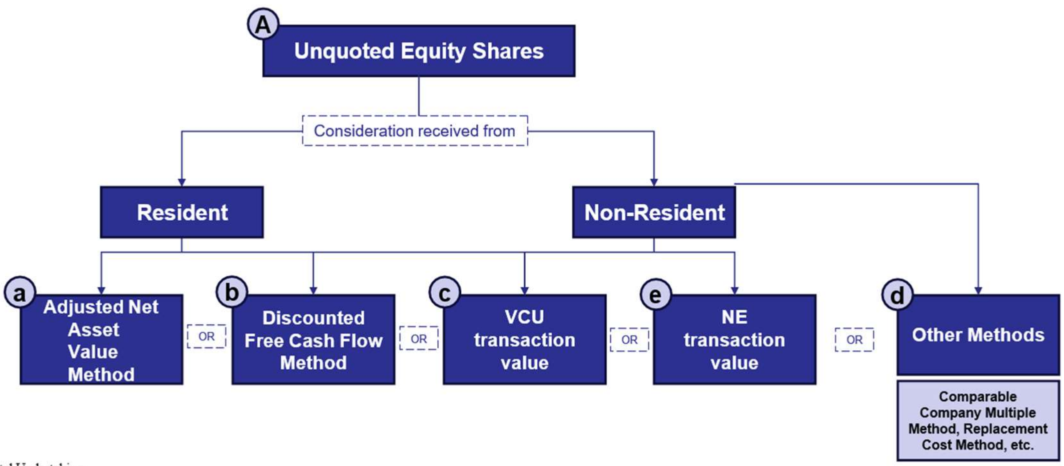
Notification No. 81/2023 dated September 25, 2023

- Pursuant to Finance Act, 2023 amendment, Central Board of Direct Taxes (CBDT) vide Notification dated May 26, 2023 released the draft of amendments to Rule 11UA for public consultation
- Now, CBDT vide Notification No. 81/2023 [GSR 685(E)] dated September 25, 2023 has released the Income-Tax (Twenty first Amendment), Rules 2023, thereby amending the provisions of Rule 11UA

The amended rules are effective from the date of the aforesaid Notification i.e. immediately.

Snapshot of Amendment.





1. VCU – Venture Capital Undertaking
2. NE – Entity notified under clause (ii) of First proviso to Section 56(2)(viib)

Equity share value for resident investor.

- **Rule 11UA(2)(A)** The FMV of Unquoted Equity shares for purpose of Section 56(2)(viib) of the Act shall be the valueas determined under sub-clauses **(a), (b), (c) and (e),** at the option of the taxpayer, as on valuation date, where consideration is received from a **RESIDENT person**
- Sub-clauses (a) and (b) deal with valuation methods under generic circumstances i.e. without any stipulation on recipient or payer, being as under:
  - Sub-clause (a) Adjusted Net Asset Value Method, basis the value of assets and liabilities in the balance sheet of the Company
    [retained from erstwhile Rule 11UA] [Refer Annexure A]

- Sub-clause (b) Discounted Free Cash Flow Method, as determined by Merchant Banker *[retained from erstwhile Rule 11UA]*

- Sub-clauses (c) and (e) deal with valuation methods for specific circumstances, as discussed below

- Sub-clause (c) Venture Capital Undertaking transaction value

  - Where consideration is received by Venture Capital Undertaking (VCU) from a Venture Capital Fund (VCF) or Venture Capital Company (VCC) or a Specified Fund (SF), the price of equity shares, at the option of VCU, may be taken as FMV of the equity shares to the extent it does not exceed the aggregate consideration that is received
  - The above FMV is acceptable if the consideration is received by the VCU from VCF/ VCC/ SF, within 90 days, either before or after, from the date of issue of shares which are subject matter of valuation
  - For instance, if VCU received INR 50,000 from VCC for issue of 100 equity shares at INR 500 per share on September 30, 2024, then such VCU can issue 100 shares at rate of INR 500 per share (as above) to any other investor within a period of 90 days before or after receipt of such consideration amount from the VCC i.e. in duration of July 2, 2024 to December 30, 2024
  - Definition of 'Venture Capital Undertaking', 'Venture Capital Fund', 'Venture Capital Company' and 'Specified Fund' to be adopted from Explanation to Section 56(2)(viib) of the Act *[Refer Annexure B]*

- Sub-clauses (c) and (e) deal with valuation methods for specific circumstances, as discussed below

- Sub-clause (e) Notified entity transaction value

  - Where consideration is received by Company from any entity notified under clause (ii) of First proviso to Section 56(2)(viib) (Notified Entity), the price of equity shares, at the option of Company, may be taken as FMV of the equity shares to the extent it does not exceed the aggregate consideration that is received from Notified Entity
  - The above FMV is acceptable if the consideration is received by the Company from the Notified Entity, within 90 days, either before or after, from the date of issue of shares which are subject matter of valuation
  - The list of entities notified under clause (ii) of First proviso to section 56(2)(viib) is available at following link – Notified Entities

- It may be noted that sub-clauses (c) and (e) are parallel in operation

Equity share value for non-resident investor.

- **Rule 11UA(2)(A)** The FMV of Unquoted Equity shares for purpose of Section 56(2)(viib) of the Act shall be the valueas determined under sub-clauses **(a), (b), (c), (d) and (e)**, at the option of the taxpayer, as on valuation date, where theconsideration is received from a **NON-RESIDENT person**

- Accordingly, where consideration is received from a Non-Resident person, apart from the methods and circumstances discussed in previous slides under sub-clauses (a), (b), (c) and (e) relating to receipt of consideration from Resident person, an additional method as per sub-clause (d) is also available

- Sub-clause (d) Other Methods

  - The FMV as determined by the **merchant banker** in accordance with any of the following methods:
    - Comparable Company Multiple Method
    - Probability Weighted Expected Return Method
    - Option Pricing Method
    - Milestone Analysis Method
    - Replacement Cost Methods

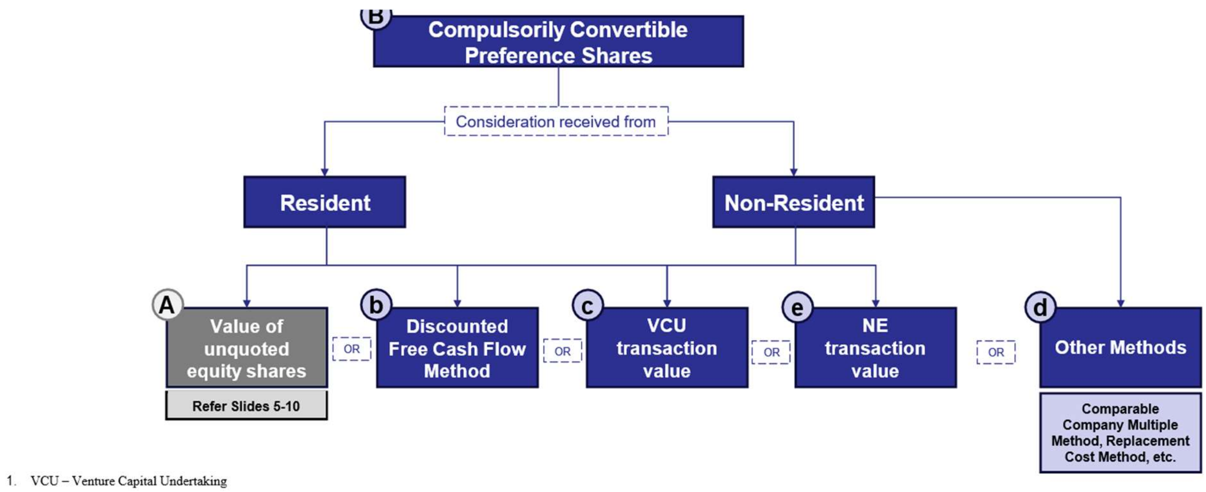
- It may be noted that the Rules neither define any of the 'Other Methods' nor provide any guidance or reference towards *adopting the same*

- Accordingly, in absence of specific guidelines, principles of interpretation may suggest to adopt the meaning of the *methods from generally acceptable parlance, as applied universally*

- Interestingly, Institute of Chartered Accountants of India (ICAI) Valuation Standards (2018) provide guidance onfollowing methods:
    - Comparable Company Multiple Method
    - Option Pricing Method
    - Replacement Cost Methods

- The International Private Equity and Venture Capital Valuation Guidelines (December 2018) provide certain guidance on *'Milestone Analysis Method'*

Snapshot of Preference share value provision.



Resident Investor

- **Rule 11UA(2)(B)(i)** The FMV of Compulsorily Convertible Preference Shares (CCPS) for purpose of Section 56(2)(viib) of the Act shall be the value as determined according to sub-clauses **(b), (c), and (e) of Rule 2(A)** at the option of the taxpayer, as on valuation date **OR** based on FMV of unquoted equity shares determined under Rule 2(A), at option of taxpayer
- Accordingly, where consideration is received from a RESIDENT, the FMV of CCPS, at the option of taxpayer, can be:
  - Based on value of CCPS determined as per Discounted Free Cashflow Method [sub-clause (b)], VCU transaction value [sub-clause(c)] or Notified entity transaction value [sub-clause (e)]; OR
  - Based on FMV of unquoted equity shares of taxpayer determined as per Rule 11UA(2)(A) of Rules *[discussed in previous slides]*

Non-Resident Investor

- **Rule 11UA(2)(B)(ii)** The FMV of Compulsorily Convertible Preference Shares (CCPS) for purpose of Section 56(2)(viib) of the Act shall be the value as determined according to sub-clauses **(b), (c), (d) and (e) of Rule 2(A)** at the option of the taxpayer, as on valuation date **OR** based on FMV of unquoted equity shares determined under Rule 2(A), at option of taxpayer
- Accordingly, where the consideration is received from a NON-RESIDENT, the FMV of CCPS, at the option of taxpayer, can be:

- Based on value of CCPS determined as per Discounted Free Cashflow Method [sub-clause (b)], VCU transaction value [sub-clause (c)], Other Methods [sub-clause (d)], or Notified entity transaction value [sub-clause (e)]; OR
- Based on FMV of unquoted equity shares of taxpayer determined as per Rule 11UA(2)(A) of Rules *[discussed in previous slides]*

Deemed valuation date

- The FMV of the shares for purpose of Section 56(2)(viib) is to be determined as at the 'valuation date'
- For purpose of Rule 11UA, the 'valuation date' is defined under **Rule 11U(j)** of the Rules as under:

> *"valuation date" means the date on which the property or consideration, as the case may be, is received by the assessee.*

- The newly inserted **Rule 11UA(3)** provides that if the **date of merchant banker's valuation report**, as required under Rule 11UA(2), is **not more than 90 days prior** to the date of issue of shares under valuation, then at the option of the taxpayer, such date shall be **deemed to be the valuation date**
- If the taxpayer **adopts the option** provided under Rule 11UA(3), the provisions of **Rule 11U(j) are not applicable**
- It may be noted that the provisions of deemed valuation date are applicable only for valuation reports issued under Rule 11UA(2) and not under rule 11UA(1) of the Rules

Safe harbour rule

- Under Section 56(2)(viib) read with erstwhile Rule 11UA, if the consideration received for the shares exceeded the FMV of such shares as determined under Rule 11UA, then the entire excess consideration was chargeable to tax
- The newly inserted **Rule 11UA(4)** provides some respite in form of safe harbour rules towards consideration received uponissue of Unquoted Equity shares or CCPS
- **Where consideration is received from a RESIDENT**
  - As per Rule 11UA(4)(i) if **the issue price of shares exceeds the FMV** determined according to the Adjusted Net Asset Value Method [Rule11UA(2)(A)(a)] or Discounted Free Cashflow Method [Rule 11UA(2)(A)(b)] **by 10%** of such FMV determined, then **such issue price** shall be **deemed to be FMV of shares** for purpose of Section 56(2)(viib)
- **Where consideration is received from a NON-RESIDENT**
  - As per Rule 11UA(4)(ii) if **the issue price of shares exceeds the FMV** determined according to the Adjusted Net Asset Value Method [Rule 11UA(2)(A)(a)] or Discounted Free Cashflow Method [Rule 11UA(2)(A)(b)] or Other Methods [Rule 11UA(2)(A)(d)] **by 10%** of such FMV determined, then **such issue price** shall be **deemed to be FMV of shares** for purpose of Section 56(2)(viib)
- Issue price is defined to mean consideration received by Company (taxpayer) for one share