ACCOUNTING, REGULATORY & TAX NEWSLETTER

Vol 67
August, 2022
www.bdo.in

TABLE OF CONTENTS

ACCOUNTING UPDATES

INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA ("ICAI")

EAC Opinion – Presentation of accrued interest in the Statement of Cash Flows

Facts of the case

A Corporation is a Central Public Sector Undertaking (CPSU) under the Administrative Ministry of Social Justice and Empowerment and is registered under section 25 of Companies Act, 1956 (Now section 8 of the Companies Act, 2013).

The querist has stated that the financial statements of the Corporation are being prepared as per Indian Accounting Standards (Ind ASs) as applicable from the financial year (F.Y.) 2018- 19.

The querist has further stated that the Corporation prepares its statement of cash flows as per indirect method. The Corporation has invested its saving/liquid assets in fixed deposit and gained interest of Rs. 2405.54 lakh during the F.Y. 2020-21 on accrual basis. An amount of Rs. 2244.75 lakh has been credited in its bank account against such gain and Rs. 160.79 lakh (net) accrued during the F.Y. 2020-21. The working of net accrued interest, as given in Note No. 7.01 of balance sheet (F.Y. 2020-21) is as follows:

Particulars	Amount (Rs. In Lakh)
Accrued Interest for the F.Y.2020-21	696.30
Accrued Interest for The F.Y. 2019-20	535.51
Net Accrued Interest	**160.79**

The querist has also stated that for the presentation of above-mentioned interest amount, the Corporation deducted Rs. 2405.54 lakh from the profit to reach the actual cash flows from operating activities and the same amount is also shown in cash inflows from investing activities as per the past practices of the Corporation and statutory auditor is also satisfied with this presentation. Also, in many Central Public Sector Enterprises (CPSEs), the same procedure is followed for the presentation of interest received in the statement of cash flows.

According to the querist, it is pertinent to mention that there is no standard format in Schedule III to the Companies Act, 2013 for presentation of statement of cash flows but it refers to follow Indian Accounting Standard (Ind AS) 7 for presentation of statement of cash flows.

C&AG, while conducting supplementary audit, issued an audit memo regarding the presentation of interest amount received by the Corporation and pointed out as follows:

- As per paragraph 31 of the Ind AS 7, 'Statement of Cash flows', "interest and dividends received should be classified as cash flows from investing activities".
- The interest received by the Corporation during the year 2020-21 was Rs. 2244.75 lakh; however, the same has been incorrectly depicted as Rs. 2405.54 lakh in cash flows from investing activities due to non-adjustment of accrued interest. Further, the cash outflow due to increase in accrued interest of Rs. 160.79 lakh has incorrectly been included in cash flows from operating activities.
- This resulted in understatement of cash flows from operating activities and overstatement of cash flows from investing activities by Rs. 160.79 lakh.

The impasse was resolved after resolving to approach the Expert Advisory Committee (EAC) of the Institute of Chartered Accountants of India for its opinion.

Query

On the basis of the above, the querist has sought the opinion of the Expert Advisory Committee (EAC) on continuance/discontinuance of presentation of interest received on accrual basis, in the statement of cash flows.

Points considered by the Committee

The Committee notes that the basic issue raised in the query relates to presentation of accrued interest receivable in the statement of cash flows, prepared in accordance with Indian Accounting Standard (Ind AS) 7, 'Statement of Cash Flows'. The Committee has considered only this issue and has not examined any other issue that may arise from the Facts of the Case. Further, the Committee, while expressing its opinion, has presumed that investment in fixed deposits is not part of cash and cash equivalents of the Corporation.

The Committee notes that the Corporation in the extant case is preparing its statement of cash flows as per indirect method. The Corporation has invested its savings in fixed deposit and gained interest of Rs. 2405.54 lakh during F.Y. 2020-21 including interest accrued but not received of Rs. 160.79 lakh. The Corporation deducted Rs. 2405.54 lakh from the profit to reach the actual cash flows from operating activities and the same amount is also shown in cash flows from investing activities.

Ind AS 1

"27 An entity shall prepare its financial statements, except for cash flow information, using the accrual basis of accounting."

Ind AS 7

"Objective … The objective of this Standard is to require the provision of information about the historical changes in cash and cash equivalents of an entity by means of a statement of cash flows which classifies cash flows during the period from operating, investing and financing activities."

ACCOUNTING UPDATES

"Cash flows are inflows and outflows of cash and cash equivalents."

From the above, the Committee notes that the statement of cash flows as per the requirements of Ind AS 7 is essentially a statement of changes in cash and cash equivalents and that the cash flow information is not provided based on the accrual basis of accounting. Thus, an item of income and expenses recognised on accrual basis of accounting in the statement of profit and loss and balance sheet will not become part of changes in cash flows unless it represents changes in cash and cash equivalents during the reporting period.

The Committee also notes the following requirements of Ind AS 7:

"20 Under the indirect method, the net cash flow from operating activities is determined by adjusting profit or loss for the effects of:

- changes during the period in inventories and operating receivables and payables;
- non-cash items such as depreciation, provisions, deferred taxes, unrealised foreign currency gains and losses, and undistributed profits of associates; and
- all other items for which the cash effects are investing or financing cash flows.

Alternatively, the net cash flow from operating activities may be presented under the indirect method by showing the revenues and expenses disclosed in the statement of profit and loss and the changes during the period in inventories and operating receivables and payables."

"31 Cash flows from interest and dividends received and paid shall each be disclosed separately. Cash flows arising from interest paid and interest and dividends received in the case of a financial institution should be classified as cash flows arising from operating activities. In the case of other entities, cash flows arising from interest paid should be classified as cash flows from financing activities while interest and dividends received should be classified as cash flows from investing activities. Dividends paid should be classified as cash flows from financing activities."

"Non-cash transactions

43 Investing and financing transactions that do not require the use of cash or cash equivalents shall be excluded from a statement of cash flows. Such transactions shall be disclosed elsewhere in the financial statements in a way that provides all the relevant information about these investing and financing activities.

44 Many investing and financing activities do not have a direct impact on current cash flows although they do affect the capital and asset structure of an entity. The exclusion of non-cash transactions from the statement of cash flows is consistent with the objective of a statement of cash flows as these items do not involve cash flows in the current period. Examples of non-cash transactions are:

- the acquisition of assets either by assuming directly related liabilities or by means of a lease;
- the acquisition of an entity by means of an equity issue; and
- the conversion of debt to equity."

From the above, the Committee notes that in the case of entities (other than financial institutions), cash flows arising from interest received should be classified as cash flows from investing activities. Further, investing transactions (interest received in the extant case) that do not require use of cash or cash equivalents shall be excluded from the statement of cash flows. The Committee further notes that under indirect method of preparation of statement of cash flows, profit or loss is adjusted for the effects of items for which the cash effects are investing and then while presenting cash flows from investing activities, non-cash transactions are excluded.

In this context, the Committee notes that in the extant case, out of total interest income amounting to Rs. 2405.54 lakh, net accrued interest for the reporting period is Rs. 160.79 lakh, which is a non-cash transaction, i.e. not received in the form of cash or cash equivalent. Therefore, this portion of accrued interest which is non-cash should be excluded from the cash flows from investing activities while presenting the statement of cash flows as there is no cash inflow during the current reporting period. However, under indirect method, while adjusting the profit or loss for the effects of items for which cash effects are investing, the amount to be adjusted would be total interest income during the reporting period (i.e. including accrued interest) as the total effect of the investing transaction is to be nullified from the net profit under the cash flows from operating activity. Accordingly, on the basis of above-mentioned requirements, the Committee is of the view that the inclusion of accrued interest amounting to Rs. 160.79 lakh, under the cash flows from investing activities in the statement of cash flows of the Corporation, is not correct.

Opinion

On the basis of the above, the Committee is of the view that the inclusion of accrued interest amounting to Rs. 160.79 lakh, under the cash flows from investing activities in the statement of cash flows of the Corporation, is not correct.

REGULATORY UPDATES

SECURITIES AND EXCHANGE BOARD OF INDIA (SEBI)

Levy of Goods & Services Tax (GST) on the fees payable to SEBI

The SEBI vide circular dated July 18, 2022 has clarified on levy of GST on the fees payable to SEBI.

The GST Council in its meeting held on June 28 and June 29, 2022, recommended inter alia to withdraw the exemption granted to services by SEBI and the same has been notified vide Notification No.4/2022 dated 13th July, 2022. Accordingly, all the Market Infrastructure Institutions, Companies who have listed / are intending list their securities, other intermediaries and persons who are dealing in the securities market, shall be subject to GST at the rate of 18% with effect from July 18, 2022 on the fees and other charges payable to SEBI.

Notification dated 25th July 2022: SEBI (Alternate Investment Funds) (Third Amendment) Regulations, 2022 ("Amended AIF Regulations")

The highlights of the Amended AIF Regulations are as under:

- The definitions of 'Not-For-Profit Organization', 'Social Enterprise', 'Social Impact Fund', 'Social Stock Exchange', Social Units' etc. are introduced.
- The Amended AIF Regulations allows a Social Impact Fund or Schemes of a Social Impact Fund to raise funds from any investor (whether Indian, foreign or non-resident Indian) by way of issue of Social Units.
- Each scheme of the Social Impact Fund must have a corpus of at least INR 5 Crores (as against INR 25 Crores for each scheme of AIF).
- For Social Impact Fund which invests only in securities of 'Not-For-Profit Organizations' registered or listed on a Social Stock Exchange ("SSE"), the minimum investment value by an individual investor shall be INR 2 Lacs (as against minimum investment value of INR 1 crore for an AIF).
- Social Impact Funds must invest at least 70% of the investable funds in unlisted securities or partnership interest / units of Social Ventures or in securities of Social Enterprises (provided that an existing Social Impact Fund may invest the remaining investable funds in securities of 'Not-For-Profit Organizations' registered or listed on an SSE with the prior consent of at least 75% of the investors by value of their investment).
- The minimum amount of grant to be accepted by Social Impact Funds is INR 10 Lacs.
- A Social Impact Fund or schemes of a Social Impact Fund launched exclusively for a Not-For-Profit Organization registered or listed on a SSE, shall be permitted to deploy or invest 100% of the investable funds in the securities of such organizations.

Notification dated 25th July 2022: SEBI (Issue of Capital and Disclosure Requirements) (Third Amendment) Regulations, 2022 ("Amended ICDR Regulations")

Pursuant to the Amended ICDR Regulations, Chapter X-A pertaining to 'Social Stock Exchange' is introduced, provisions of which shall apply to:

- 'Not-for-Profit Organization' seeking to only get registered with SSE,
- 'Not-for-Profit Organization' seeking to get registered and raise funds through SSE, and
- 'For Profit Social Enterprise' seeking to be identified as a Social Enterprise under the provisions of this Chapter.

Highlights of the Amended ICDR Regulations are as under:

- **'Social Stock Exchange'** is defined to mean a separate segment of a recognized stock exchange having nationwide trading terminal permitted to register Not-For Profit Organizations and / or list the securities issued by Not-for-Profit Organizations in accordance with provisions of these regulations.
- Definitions of 'For Profit Social Enterprise', 'No- For-Profit Organization', 'Social Enterprise', 'Social Auditor', 'draft fund-raising document', 'final fund-raising document' etc. are introduced.
- The accessibility of SSE shall only be provided to institutional investors and non-institutional investors subject to special permission provided by SEBI to any other class(es) of investors.
- To be identified as a Social Enterprise, a Not-for-Profit Organization or a For Profit Social Enterprise must establish primacy of its social intent by meeting prescribed eligibility criteria.
- It is mandatory for a Not-for-Profit Organization to seek registration with an SSE before raising funds through it.
- A Not-for-Profit Organization may raise funds on an SSE through:

REGULATORY UPDATES

  - issuance of Zero Coupon Zero Principal Instruments to institutional investors and/or non-institutional investors
  - donations through Mutual Fund schemes
  - any other means as specified by the Board from time to time.
- A For Profit Social Enterprise may raise funds through
  - issuance of equity shares on the main board, SME platform or innovators growth platform or equity shares issued to an AIF, including a Social Impact Fund.
  - issuance of debt securities; and
  - any other means as specified by the Board from time to time
- A Social Enterprise would be ineligible to register or raise funds through SSE or a stock exchange upon meeting certain prescribed conditions like being debarred from accessing securities markets, wilful defaulter, fraudulent borrower, fugitive economic offender, debarred by MCA or any other ministry of Central/State government etc.

Notification dated 25th July 2022: SEBI (Listing Obligations and Disclosure Requirement) ("LODR") (Fifth Amendment) Regulations, 2022 ("Amended LODR Regulations")

The Amended LODR Regulations inter-alia provide for the following:

- The definition of 'Designated Securities' is amended to include 'Zero Coupon Zero Principal Instruments'.
- Chapter IX-A pertaining to 'Obligations of Social Enterprises' is inserted and notified which deals with the obligation of Social Enterprises.
- The provisions of Chapter IX-A shall apply to 'For Profit Social Enterprise' whose designated securities are listed on the applicable segment of the Stock Exchange(s) and 'Not-for-Profit Organizations' that is registered on the SSE.
- Other provisions of new Chapter IX-A provide for various disclosure requirements viz.
  - Disclosures by a 'For Profit Social Enterprise'.
  - Annual Disclosures by a 'Not-for-Profit Organization'.
  - Intimations and disclosures by Social Enterprise of events or information to SSE. This inter-alia includes, framing of policy for determination of materiality, its disclosure, appointment of key managerial personnel for determining the materiality of event, disclosure of event that may have a material impact on the planned achievement of outputs or outcomes, disclosing various events on the website of Social Enterprise etc.
  - Disclosures by a Social Enterprise in respect of Social Impact – Submitting Annual Impact Report.
  - Submission of various statements in respect of utilisation of the funds raised, on a quarterly basis by 'Not-for-Profit Organization'.

Circular dated 29th July 2022: Operational Circular for LODR for Non-convertible Securities, Securitized Debt Instruments and/ or Commercial Paper

SEBI (LODR) Regulations, 2015 has prescribed continuous disclosure requirements for issuers of listed Non-Convertible Securities, Securitized Debt Instruments and Commercial Papers through multiple circulars issued over the years.

With an objective to enable the issuers and other market stakeholders to get access to all the applicable circulars at one place, SEBI has merged all the existing circulars into a single operational circular ('Operational Circular').

This operational circular is in a chapter-wise framework and provides for various formats, processes, disclosure obligations, provision related to Scheme of Arrangement involving NCDs, NCRPS etc.

This circular has come into force with effect from 1st August 2022 and supersedes 7 circulars issued by SEBI earlier in relation to this, list of which is provided in in Annex – 1 of the Operational Circular.

MINISTRY OF CORPORATE AFFAIRS ("MCA")

Circular dated 26th July 2022: Clarification on spending of CSR funds for 'Har Ghar Tiranga' campaign

MCA has clarified that the spending of CSR funds for activities relating to 'Har Ghar Tiranga' campaign such as mass production and supply of the Indian National Flag, outreach and amplification efforts and other related activities is an eligible CSR activity under Schedule VII of the Companies Act, 2013, relating to promotion of education.

Procedure of Permanent Account Number (PAN) application & allotment for incorporating LLPs electronically

The Central Board of Direct Taxes (CBDT) on 26th July 2022 has issued procedure of PAN application & allotment by notifying a Common Application Form in the form of Simplified Proforma for incorporating Limited Liability Partnerships ("LLPs") electronically (Form FiLLiP).

The circular lays down that:

- Form FiLLiP, as issued and notified vide notification G.S.R. 173(E) by MCA, dated 4th March 2022, will apply to newly incorporated LLPs, and
- Application for PAN allotment to be filed in Form FiLLip using digital signature of the applicant as specified by the MCA. After generation of LLP Identification Number, the data shall be forwarded by the MCA to the Income-tax Authority under its digital signature.

RESERVE BANK OF INDIA ("RBI")

Circular dated 7th July 2022: Investment by Foreign Portfolio Investors ("FPI") in Debt – Relaxations

Vide this circular, RBI has exempted investments by FPIs in government securities and corporate bonds made between 8th July 2022 and 31st October 2022 (both dates inclusive) from the limit (30% of the total investment of that FPI in any category) on short-term investments till maturity or sale of such investments.

REGULATORY UPDATES

Further, FPIs are allowed to invest in commercial papers and non-convertible debentures with maturity of up to 1 year, during the period between 8th July 2022 and 31st October 2022 (both dates inclusive). These investments are exempted from the limit on short-term investments till maturity or sale of such investments.

Circular dated 11th July 2022: International Trade Settlement in Indian National Rupees ("INR")

RBI, vide this circular, has allowed a trade settlement between India and other countries in INR and introduced a Rupee Payment Mechanism, highlights of which are as under:

- AD banks in India have been permitted to open INR VOSTRO Accounts. The bank of a partner country may approach the AD bank in India for opening of Special INR VOSTRO account, subject to certain exemptions.
- Indian importers/exporters undertaking imports/exports through this mechanism shall make payment / be paid in INR which shall be credited into / paid from the balances in the designated INR VOSTRO account of the correspondent bank of the partner country.
- Receipt of advance payment in INR by Indian exporters against exports is permitted through this mechanism provided Indian banks should ensure that available funds in these accounts are first used towards payment obligations arising out of already executed export orders and payments in the pipeline.
- Issue of bank guarantee for trade transactions, undertaken through this arrangement, is permitted subject to adherence to extant FEMA provisions.

Institute of Chartered Accountants of India ("ICAI")

Guidance Note on the Companies (Auditor's Report) Order, 2020 (Revised 2022 Edition)

The ICAI has revised the Guidance Note on the Companies (Auditor's Report) Order, 2020 (Revised 2022 Edition) and released the same on July 14, 2022. The Guidance Note has been revised to provide guidance on the corresponding disclosure requirements of Schedule III to the Companies Act, 2013 which pertain to the clauses of CARO 2020 and to align guidance with latest provisions of Companies Act, 2013 and rules thereunder and other relevant laws & regulations which are referred to in the Guidance Note.

Technical Guide on Valuation of Business in Telecom Tower Industry

The ICAI has issued Technical Guide on Valuation of Business in Telecom Tower Industry on July 20, 2022. The Valuation Standards Board of ICAI together with ICAI Registered Valuers Organisation has brought out this "Technical Guide on Valuation of Business in Telecom Tower Industry".

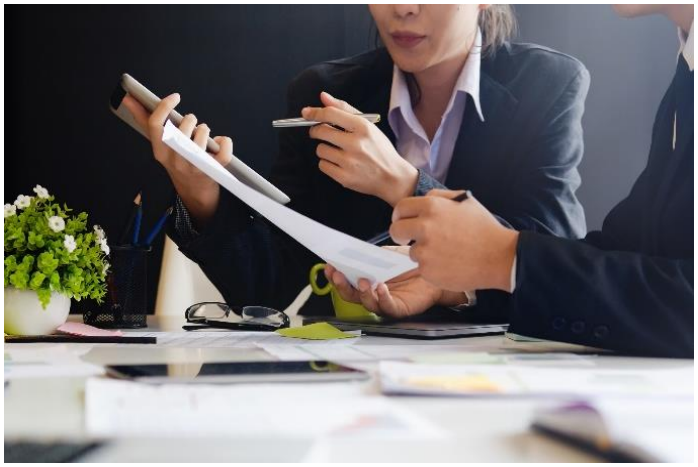
Telecom companies are dependent on the telecom infrastructure for which they either rent or share the tower infrastructure through telecom tower companies. This publication aims to provide guidelines for valuation of business in telecom tower industry and includes the study of overall telecom industry including telecom operators and telecom tower industry, business valuation methodology, Industry's history and future outlook and the key drivers impacting the valuation in this industry.

INDIA INSOLVENCY AND BANKRUPTCY BOARD OF ("IBBI")

Notification dated 4th July 2022: IBBI (Insolvency Professionals) (Amendment) Regulations, 2022 ("Amended Regulations")

The Amended Regulations provide for the following:

- The disciplinary proceedings shall now be conducted in accordance with the IBBI (Inspection and Investigation) Regulations, 2017.
- An Insolvency Professional ("IP"), within the time as mentioned in the regulations, must disclose his relationship or the relationship of other professionals as engaged by him, if any, with persons as specified in the Amended Regulations, to the IP agency of which he is a member.
- The Amended Regulations provides for the four kinds of/nature of relationship which would mean 'relationship' for the purpose of above-mentioned point.
- The IP must ensure timely and correct disclosures by him and other professionals appointed by him. Further, upon appointment of any other professional, an IP must provide a confirmation to the IP agency (of which he is a member) stating the fact that such appointment was made at arm's length relationship.
- An IP must:
  - in all his communications to a stakeholder, state his name, address, e-mail, registration number and validity of authorisation of assignment, if any, issued by the IP agency.
  - raise invoices in his name towards his fees.
  - ensure that the IP agency or the professional engaged by him also raises invoice in their own name.
  - undertake assignment with reasonable care and ensure that necessary steps are taken making corporate person comply with the applicable laws.
  - not include any amount towards any loss (including penalty, if any) in the insolvency resolution process cost or liquidation cost, incurred on account of non-compliance with the applicable laws by the corporate person while conducting various insolvency resolution process, liquidation/voluntary liquidation processes as specified under the Insolvency & Bankruptcy Code.



TAX UPDATES
Direct Tax

CIRCULARS/ NOTIFICATIONS/PRESS RELEASE

CBDT notifies certain Forms to be furnished electronically

In pursuance of powers granted by Rule 131 of the IT Rules and with the approval of Central Board of Direct Taxes (CBDT), Director General of the Income Tax (Systems) has specified the following forms, returns, statements, reports, orders which shall be furnished electronically and verified in the manner prescribed under Rule 131(1) of the IT Rules:

Sr. No.	Form	Description
1.	3CEF	Annual Compliance Report on Advance Pricing Agreement
2.	10F	Declaration by the taxpayer regarding tax residency in foreign country which is covered under a Double Taxation Avoidance Agreement with India
3.	10IA	Certificate of the medical authority for certifying 'person with disability', 'severe disability', 'autism', 'cerebral palsy' and 'multiple disability' for purposes of sections 80DD and 80U
4.	3BB	Monthly statement to be furnished by a Stock Exchange in respect of transactions in which client codes have been modified after registering
5.	3BC	Monthly statement to be furnished by a Recognized Association in respect of transactions in which client codes have been modified after registering

6.	10BC	Audit report in the case of an electoral trust
7.	10FC	Authorization for claiming deduction for any payment made to any financial institution located in a Notified jurisdictional area
8.	28A	Intimation by the taxpayer to the tax officer in case estimated income and tax computed by tax officer is more than estimated income computed and tax by him and specifying reason for such difference
9.	27C	Declaration under sec 206C(1A) of the IT Act to be made by a buyer for obtaining goods without collection of tax
10.	5BD	Report to be submitted by a public sector company to the National Committee on a notified eligible project or scheme for claiming deduction
11.	58C	Report to be submitted by an approved association or institution to the National Committee on a notified eligible project or scheme for claiming deduction
12.	68	Application to the tax officer to grant immunity from imposition of penalty under sec 270AA(2) of the IT Act

[Notification No. 3/2022, dated 16 July 2022]

TAX UPDATES
Direct Tax

CBDT notifies simplified procedure of PAN application and allotment in case of LLP

Ministry of Corporate Affairs (MCA) has notified a common application form for incorporating Limited Liability Partnership (LLP) (Form FiLLiP). The Director General of Income Tax (Systems) has laid down the following:

Sr. No.	Particulars	
1.	Classes of person	Newly incorporated LLP
2.	Procedure	Application for allotment of PAN will be filed in FiLLiP form using digital signature of the applicant as specified by the MCA. After generation of LLP Identification number, MCA will forward the data in form 49A to the Income-tax authority.
3.	Format	XML

[Notification No. 4/2022, dated 26 July 2022]

CBDT notifies Form for applying to defer filing of appeal before the Appellate Tribunal or the jurisdictional High Court

Section 158AB of the IT Act provides that where an identical question of law is pending before the High Court or Supreme Court, the Revenue Authority may not file an appeal before the Appellate Tribunal or the jurisdictional High Court. For this purpose, an application is to be made with the Appellate Tribunal / High Court by the concerned Assessing Officer. The CBDT has notified Form 8A for the purpose of such application.

[Notification No. 83/2022 dated 12 July 2022]

CBDT issues FAQ on Annual Information Statement

CBDT has issued FAQ containing answers to 15 commonly asked questions. These have been summarized hereunder:

- The objectives of AIS are:
  - display complete information to the taxpayer with a facility to capture online feedback,
  - promote voluntary compliance and enable seamless prefilling of return and
  - deter non-compliance.
- AIS is the extension of Form 26AS. While Form 26AS displays details of property purchases, high-value investments, and TDS/TCS transactions carried out during the fiscal year, AIS also includes savings account interest, dividend, rent received, purchase and sale transactions of securities / immovable properties, foreign remittances, interest on deposits, GST turnover etc.
- AIS also provides the taxpayer an option to give feedback on the transactions reported. Further, the aggregation of transactions on information source level is also reported in Taxpayer Information Summary ('TIS'). TIS is an information category wise aggregated information summary for a taxpayer. It shows processed value (i.e. value generated after deduplication of information based on pre-defined rules) and derived value (i.e. value derived after considering the taxpayer feedback and processed value) under each information category (e.g. Salary, Interest, Dividend etc.). The derived information in TIS will be used for prefilling of return, if applicable.
- **Steps to access AIS functionality:**
  - Step 1: Login to URL https://www.incometax.gov.in/
  - Step 2: Click on "Annual Information Statement (AIS)" under "Services" tab from the e-filing portal after successful login on e-filing portal.
  - Step 3: Click on AIS tab, on the homepage.
  - Step 4: Select the relevant Financial Year('FY') and click on AIS tile to view the AIS.
- **Components Of AIS**

  The information shown on AIS is divided into two parts:

  PART A- General Information

  Part-A displays general information pertaining to the taxpayer - PAN, Masked Aadhar Number, Name of the Taxpayer, Date of Birth / Incorporation / Formation, mobile number, e-mail address and address of Taxpayer.

  PART- B

  - TDS/TCS Information: Information related to tax deducted/collected at source is displayed here. The Information code of the TDS/TCS, Information description and Information value is shown.
  - SFT Information: Under this head, information received from reporting entities under Statement of Financial transaction (SFT) is displayed. The SFT code, Information description and Information value is made available.
  - Payment of Taxes: Information relating to payment of taxes under different heads, such as Advance Tax and Self-Assessment Tax, is shown.
  - Demand and Refund: The details of the demand raised and refund initiated (AY and amount) during a financial year is reflected here.
  - Other Information: Details of the information received from the other sources, such as data pertaining to Annexure II salary, Interest on refund, Outward Foreign Remittance/Purchase of Foreign Currency etc., is displayed here.

TAX UPDATES
Direct Tax

- The taxpayer can submit feedback on active information displayed under TDS/TCS Information, SFT Information or Other information by following below mentioned steps:
  - Step 1: Click on "Optional" button mentioned in the Feedback column for relevant information. Taxpayer will be directed to 'Add Feedback' screen.
  - Step 2: Choose the relevant feedback option and enter the feedback details (dependent on feedback option).
  - Step 3: Click "Submit" to submit the feedback
- Upon successful submission of feedback on AIS information, the feedback will be displayed with the information and the modified value of the information will also be visible with the reported value. The activity history tab will also be updated, and the taxpayer will be able to download Acknowledgement Receipt. Email and SMS confirmations for submission of feedback will also be sent.
- AIS Consolidated Feedback file (ACF) gives the taxpayers a facility to view all their AIS feedback (other than feedback, 'Information is correct') related information in one pdf for easy understanding. After submitting the feedback of the AIS, the taxpayer can download the AIS consolidated feedback file.
- Currently, there is no limit on the number of times taxpayer can modify previously given feedbacks.

OTHER IMPORTANT POINTS

- The taxpayer can track the activity history in AIS by clicking on the Activity history button on AIS homepage. The taxpayer will be provided a summary view of activity performed on the AIS functionality. System generated ID (Activity ID) will be created for each performed activity, Activity date, Activity description and detail will be displayed under this tab.
- The taxpayer can download AIS in PDF, JSON, CSV file formats. AIS also displays the information related to GST turnover under information code (EXC-GSTR3B). The same would be visible in the Other Information tab in AIS.

The time-limit for verification of tax returns revised to 30 days in certain cases

Where a taxpayer is filing a tax return, he has an option to either digitally sign the tax return or e-verify it or submit the duly signed ITR-V to CPC subsequently. Recently, the CBDT has revised the time-limit for verifying the tax return to 30 days (from existing 120 days). This revised time limit shall be applicable to tax returns filed on or after 1 August 2022. To read our detailed analysis, please go to : https://www.bdo.in/en-gb/insights/alerts-updates/direct-tax-alert-the-time-limit-for-verification-of-itr-revised-to-30-days

[CBDT Notification No. 5/2022, dated 29 July 2022]

JUDICIAL UPDATES

Set off of losses disallowed since sole underlying purpose of demerger was tax-benefit

Taxpayer is engaged in the business of sale and services of diesel engines, its spare parts and related equipments. During FY 2005-06, a division of its wholly owned subsidiary was demerged and vested with the taxpayer w.e.f. 1 April 2005 under a demerger scheme approved by the Bombay High Court. The taxpayer claimed setoff of brought forward business losses and unabsorbed depreciation attributable to the demerged undertaking in terms of section 72A(4) of the IT Act. The tax officer observed that the assets of demerged undertaking were held for sale which clearly indicated that there was no intention to continue the business of demerged undertaking. Accordingly, the tax officer opined that this defeats the object behind enacting provisions of section 72A(4) of the IT Act and therefore he denied the claim of set-off of business losses unabsorbed depreciation. Aggrieved, the taxpayer filed an appeal before the First-Appellate Authority which allowed in favour of the assessee holding that once the demerger had been approved by the jurisdictional High Court, it was not within the jurisdiction of the tax authorities to question the motive behind the demerger. Aggrieved, the tax authority filed an appeal before Pune Tax Tribunal which while reversing the order of First Appellate Authority , made following observations:

- There was no intention on the part of the taxpayer to continue the business of demerged undertaking. This is based on the information contained in the Balance Sheet as on 31 March 2006, wherein it has been mentioned that the assets of demerged undertaking were held for sale.
- The provisions of IT Act prescribes conditions under which the set-off of brought forward business losses can be allowed in the case of amalgamation and demerger, which means that mere fact that amalgamation or demerger ipso facto does not entitle the taxpayer to claim benefit of the set-off of brought forward business losses.
- The scheme approved by the Bombay High Court was silent about condition for set-off of brought forward business loss and unabsorbed depreciation losses.
- Delhi High Court in the case of IEL Ltd vs UOI (195 ITR 232)(Del HC) has held that the benefits of section 72A of the IT Act cannot be availed if the sole intention of the amalgamation was only to avail the benefit of carried forward business losses and unabsorbed depreciation losses. This ratio of Delhi High Court was quoted by the Jurisdictional High Court in the case of Ballarpur Industries Ltd vs. CIT (398 ITR 145)(Bom HC).
- On perusing sub-section (1), (2) and (4) of section 72A of the IT Act, it is observed that there is no difference in the object of enacting section 72A(1) of the IT Act governing the scheme of amalgamation and section 72A(4) of the IT Act governing the scheme of demerger. Both the provisions have been enacted with the same objective.

TAX UPDATES
Direct Tax

- The object behind enactment of entire section 72A of the IT Act has been explained by the Hon'ble Supreme Court in the case of CIT vs. Mahindra & Mahindra Ltd, (144 ITR 225)(SC).
- The object behind enactment of section 72A of the IT Act as provided in Memorandum to Finance (no.2) Bill of 1997 is revival of sick units and relieving the Government of uneconomical burden of taking over and running the sick units and at the same time saving the Government from social costs in terms of loss of production and unemployment.
- In the present case, post demerger, taxpayer did not carry any business of demerged undertaking and put the assets of demerged unit for sale, thereby clearly indicating that it did not have any intention of carrying on business of demerged unit.
- The fact that the Government of India has not laid down the criteria to determine circumstances under which demerger can said to be for non-genuine purpose, does not alter the position since the Hon'ble Jurisdictional High Court in the case of Ballarpur Industries Ltd. (supra) had approved the principle that the benefit of set-off of brought forward business losses cannot be allowed when sole idea behind the scheme of amalgamation is only to avail the benefit of set-off of brought forward business losses.

[DCIT, Circle- 1(1), Pune vs. M/s Cummins Sales & Services (I) Ltd, ITA No. 2121/Pun/2017, (Pune Tribunal)]

Requirement for filing declaration under section 10B of the IT Act before due date is mandatory

Section 10B of the IT Act is a special provision allowing a 100% deduction of profits and gains derived by newly established 100% Export Oriented Undertakings (EOU) subject to fulfilment of specified conditions. Taxpayer is required to furnish a declaration to the tax officer that the provisions of this section shall not be made applicable to it. Whether the requirement of furnishing this declaration before the due date is mandatory or directory in nature is a matter which have been raised before the judicial authorities. Recently the Supreme Court has examined this issue. To read our detailed analysis, please go to: https://www.bdo.in/en-gb/insights/alerts-updates/direct-tax-alert-requirement-of-filing-declaration-under-section-10b-before-due-date-is-mandatory

[PCIT-III, Bangalore and another vs. M/s Wipro Limited, Civil Appeal No. 1449 of 2022, (Supreme Court)]

"Consideration" for issue of shares for the purpose of section 56(2)(viib) of the IT Act encompasses conversion of CCD

Section 56(2)(viib) of the IT Act is attracted when a closely held company issues shares at premium and the consideration exceeds Fair Market Value (FMV). It provides that the difference between the actual consideration and the FMV of the shares or Face value of shares (in case FMV is lower than Face Value) shall be deemed to be income of such closely held company and accordingly taxable under the head 'Income from other Sources'. Apart from issue of equity/preference shares, company can also raise funds through issue of hybrid instruments. In this regard, recently, the Kolkata Tax Tribunal had an occasion to examine the applicability of section 56(2)(viib) of the IT Act to conversion of Compulsorily Convertible Debentures (CCD) into equity shares. To read our detailed analysis, please go to: https://www.bdo.in/en-gb/insights/alerts-updates/direct-tax-alert-consideration%E2%80%9D-for-the-issue-of-shares-for-the-purpose-of-section-56(2)(viib)-of

[Milk Mantra Dairy Pvt. Ltd. vs. DCIT, ITA No. 413/Kol/2020, (Kolkata Tribunal)]

No tax to be deducted at source by the Indian insurance brokers on remittance of re-insurance premium to overseas co-broking entity

Many foreign reinsurers do not have an office/ place of business in India and therefore they rely on brokers in India for premium remittance and claim settlement for ease of their operations. There have been instances where a resident Indian entity/ broker undertake transactions or execute contracts on behalf of a foreign entity/broker. Such a foreign entity/ broker is typically not taxed in India because the foreign entity has no fixed place of business or No Permanent Establishment ('PE') in India. In order to tax such arrangements, India's DTAA with several countries have a Dependent Agency PE ('DAPE') clause to cover such transaction under the ambit of tax. In this regard, recently the Mumbai Tax Tribunal has held that no DAPE is constituted in case of insurance brokers merely facilitating payments. To read our detailed analysis, please go to: https://www.bdo.in/en-gb/insights/alerts-updates/direct-tax-alert-no-tax-to-be-deducted-at-source-by-the-indian-insurance-brokers-on-remittance-of

[International Reinsurance and Insurance Consultancy & Broking Services Pvt. Ltd. v. ITO(IT) - 2(2)(2), ITA No. 2823/Mum/2019, (Mumbai Tribunal)]

TAX UPDATES
Transfer Pricing

Super normal profits of taxpayer cannot be ground for disallowance of deduction under Section 80IA/10AA if taxpayer raises invoices to AE on man hour basis in line with third party agreements:

The taxpayer is engaged in providing engineering services, IT services, ITES services and business support services to its Associated Enterprises (AEs). The taxpayer had furnished the return of income declaring income of ₹ 14.26 crores (approx.) after claiming the benefit under section 10AA of the Act amounting to ₹ 322.19 crores, on profits derived from various services provided by it to its AEs. The Assessing Officer (AO) in the draft assessment order proposed an adjustment of ₹ 2.53 crores alleging that the taxpayer had claimed excess deduction under section 10AA of the Act, on the ground that operating profit / operating cost of taxpayer was abnormally high at 150.55% as against 27.72% of comparable companies. The taxpayer filed objections before the Dispute Resolution Panel (DRP). The DRP allowed partial relief to the taxpayer against which taxpayer approached Tax Tribunal.

Tax Tribunal decision:

The Pune Tax Tribunal held that the there is no merit in invoking provisions of section 10AA(9) r.w.s. 80IA(10) of the Act in the case of taxpayer. The concept of PLI i.e. OP/OC is relevant for comparability for TP analysis and AO cannot adopt the same for holding that taxpayer has earned supernormal profits. The AO only has to look at net profit shown by taxpayer. Revenue authorities had not pointed out any arrangement that enabled taxpayer to earn extraordinary profit. The TPO having accepted the transactions to be at arm's length and where the taxpayer was raising invoices on manhour basis, in line with the third party agreement and where net profit was shown by the taxpayer at 63%, there is no merit in applying the concept of OP/OC, which cannot be the basis for benchmarking the profits of any business. Hence, Tax Tribunal directed the AO to allow the deduction claimed under section 10AA of the Act in entirety.

DCIT Vs. M/s. Eaton Technologies Pvt. Ltd. [TS-427-ITAT-2022(PUN)-TP]

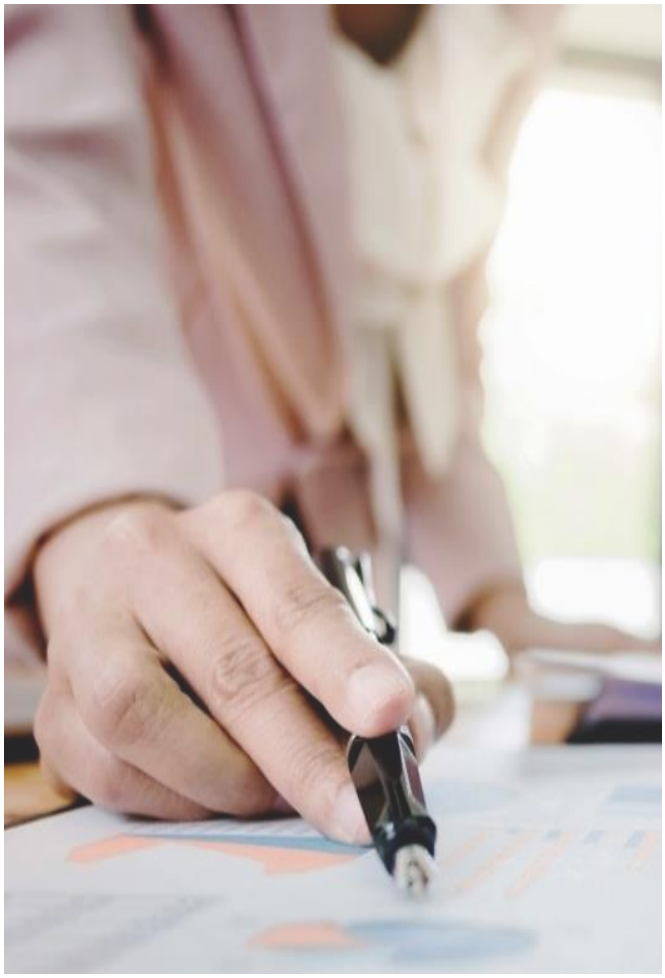
Tax Tribunal upholds importance of credit rating of borrower in determining ALP of interest on NCD issued to AE:

The taxpayer is a company engaged in the business of generation of wind power. The TPO proposed an adjustment of Rs. 4.42 crores on account of interest expense on non-convertible debentures by considering it as loan transaction and adopting interest at prime lending rate of SBI viz. 9.88% as against 11% paid by the taxpayer. CIT(A) deleted the entire addition in appeal. Hence, the Revenue appealed before Tax Tribunal. Learned DR, while heavily relying upon the assessment order and argued that in as much as the transaction was between the associated enterprises, there was no risk.

Tax Tribunal decision:

Tax Tribunal upholds CIT(A)'s conclusion that with respect to interest on non-convertible debentures, to consider only the base rate of SBI and to ignore the credit rating of taxpayer (borrower) would be fatal in benchmarking of the transaction. Tax Tribunal observed that tax payer's 'BBB' credit rating classification shows involvement of risk in lending to the taxpayer and this was not taken into consideration by the AO. It is therefore, not open for the AO to say that absolutely there is no risk involved in this transaction. CIT(A) had noted the implication that for the credit rating of BBB, it would be a minimum of 3.4% above the MCLR rate of the bank. CIT(A) had also found that all banks provide for a premium and in the case of the best rating with AAA, the premium would be 2.4% over and above the MCLR rate and it would definitely be 1% more in case of entity with BBB rating. Tax Tribunal thus dismissed Revenue's appeal and deleted TP adjustment.

DCIT Vs. M/s.Greenko Rayala Wind Power Private Limited [TS-486-ITAT-2022(HYD)-TP]



TAX UPDATES
Indirect Tax

GOODS & SERVICE TAX

JUDICIAL UPDATES

ORDERS BY AUTHORITY FOR ADVANCE RULING (AAR)

Vessel support services provided to foreign vessel qualifies as export of services under the IGST Act as the place of supply of service is outside India

Facts of the case

- M/s. NSK Ship Management Private Limited ('NSKI' or 'Taxpayer'), is engaged in providing support services related to vessel management to its group company, M/s. New Shipping Kaisha Ltd. (Japan) (NSKJ), a company registered under the laws of Japan, for the vessels managed by NSKJ;
- NSKJ manages vessels which are carrying the country flag of Panama (7 ships) and the British Cayman Islands (3 ships). These ships are foreign going vessels and are on a world-wide route. During their voyage, these ships can be stationed at various ports and seas around the world, and on occasions also call Indian ports;
- In this regard, NSKI has entered into a contract with NSKJ for providing various support services in relation to these vessels to NSKJ, either by itself or through various outsourced vendors, whether in or outside India. NSKI charges a fixed management fee of USD 7200/- per month per vessel for providing these support services to NSKJ;
- Further, in respect of certain services provided by vendors to NSKJ, the taxpayer acts as a pass through for payment to these vendors as and when received from NSKJ.

Questions before the AAR

Whether the vessel support services provided by the taxpayer to its group company outside India qualify as "export of services" under GST?

Contention of the Taxpayer

- The taxpayer charges management fee in two categories:
  - Fee for support services provided to foreign flagships when outside India.
  - Fee for support services provided to foreign vessels temporarily placed in a port in India.
- The taxpayer's contention is that both these categories of services provided by them to its group company in Japan qualify as 'Supply' under section 7 of the CGST Act and further, they qualify as "export of services" under section 2(6) of IGST Act since all the conditions of the said provision are fulfilled;
- The fifth condition to the definition of export of services states that the supplier of service (i.e., the taxpayer) and the recipient of service (i.e., NSKJ) should not be mere establishments of a distinct person in accordance with explanation 1 to section 8 of the IGST Act. It is contended that NSKI and NSKJ are group companies and not merely an establishment of a distinct person;

- In this regard, the taxpayer has placed reliance on the decision of the Hon'ble Gujarat High Court in Linde Engineering India Pvt Ltd vs Union of India cited at 2020-VIL-349-GUJ-ST = 2020-TIOL-1285-HC-AHM-ST, wherein the Hon'ble High Court has held that services rendered by the subsidiary company to its parent company would have to be considered "export of service";
- Hence as per the taxpayer, their services shall be categorized under the definition of zero-rated supplies under section 16(1) of IGST Act.

Observations and Ruling by the AAR

- The AAR noted that condition (i), (ii) and (iv) to the definition of export of services under section 2(6) of the IGST Act have been satisfied. The condition that needs consideration is condition (iii) the place of supply should be outside India and (v) supplier and recipient of service are not merely establishments of distinct person. Upon satisfaction of the said condition, the service in question can be construed as export of services.
- As regards condition (v), the AAR observed that since the taxpayer and NSKJ are registered under the laws of India and Japan respectively, they are separate persons and would not be considered as establishments of distinct person. Hence, condition (v) is satisfied;
- The bouquet of services rendered by the taxpayer to NSKJ inter-alia includes services which require physical possession of the vessel. Thus, the place of supply of service must be determined as per section 13(3)(a) of the IGST Act and the general provision of section 13(2) will not apply to the present case;
- Further, on a joint reading of sections 13(3)(a) and 13(6) of the IGST Act, the AAR observed that when services requiring the physical availability of the vessel is supplied in taxable territory along with other non-taxable locations, the "Place of Supply" of service will be the "Location in the Taxable territory". However, where the vessel does not enter any of the location in the taxable territory and the entire services relating to water transport are extended in locations outside the taxable territory, the "place of supply" of service shall be outside India;

TAX UPDATES
Indirect Tax

- Thus, the vessel support services provided in relation to foreign vessels sailing to other countries outside India, falls under "export of services" as per section 2(6) of the IGST Act as the "place of supply" in such cases is entirely "outside India"; and
- If such vessels are calling at the port in India, then the place of supply in respect of that vessel is in India as per section 13(6) of the IGST Act 2017 and the services rendered to that vessel is not 'export of service'.

[AAR-Tamil Nadu, M/s. NSK Ship Management Pvt Ltd, Order no:26/AAR/2022 dated 30 June 2022]

A project having both affordable flats and non-affordable flats can be taxed at different rate of different units

Facts of the case

- M/s. Sri Bhavani Developers ('Taxpayer') are into constructions of residential buildings and have opted for new tax scheme as per notification no:3/2019, dated 29 March 2019. The taxpayer submitted that in a particular case they have entered into JDA with Mr. Sadanda Chary for construction of residential units at Moulali;
- The Joint Development Agreement (JDA) between land owner and builder was entered on 7 December 2017 and subsequently supplementary development agreement was entered on 17 December 2018 on area sharing basis;
- They have started the work; however, they did not have any bookings as on 31 March 2019 and therefore they require clarification if they are falling into "other than ongoing projects" as per the notification no:3/2019 and 4/2019 dated 29 March 2019 and taxable @ 5% GST without ITC.

Questions before the AAR

- Whether notification no:4/2019 can be followed and GST be paid on RCM basis for the share of landlord as the project is falling under "other than on-going Projects" as it can be considered as new project?
- Is RCM applicable to daily wages, labour charges and contract labour?
- Whether there is any limit on the percentage of material to be used in project for Eg: cement 15%, sand 10% etc?
- Whether salaries, incentives, brokerage, remuneration and interest on working capital are liable for RCM?
- In a project of combination of affordable flats (Carpet area is less than 60Sq Mts), and non-affordable flats (Carpet area is more than 60Sq Mts), can different rate of tax be adopted for different units, i.e., GST 1% in case of affordable units and 5% in case of non-affordable units based on the Carpet area?
- That, the customer is entering into two types of agreements at the time of selling the semi-finished residential flat.
  - "Sale Agreement" and
  - Completion of semi-finished works called "Work Order",

  In such case what is the rate of tax for: (i) For sale deed @ 5%; (ii) For work order @18% or 12% or 5%.
- Whether they are eligible for ITC in case of GST at the rate of 18% /12%?
- What is the tax rate in case of affordable housing project in the above situation?

Observations and Ruling by the AAR

- The AAR noted that the taxpayer, as a "developer-promoter" have entered into a JDA with the "land owner-promoter" on area sharing basis for Residential Real Estate Project (RREP) in December 2017. According to the statement of relevant facts submitted, the work on the project commenced in June 2018. Meanwhile, the GST structure on real estate services was greatly altered with effect from 01 April 2019 through notification no:03/2019 and notification no:04/2019 dated 29 March 2019;
- The notification no:03/2019 makes a distinction between 'ongoing project' and 'other than ongoing project'. Accordingly, 'other than ongoing project' means a project which commences on or after 01 April 2019. Therefore, the project undertaken by the taxpayer do not fall under this definition as claimed by him in the statement of facts submitted separately on 21 December 2021;
- This notification offers the promoter an option to shift to the new scheme or to continue under the earlier scheme. Under the new scheme, for residential apartments, the developer promoter has to pay @1% without ITC for affordable residential apartments and 5% without ITC for other residential apartments and reverse the ITC available in the credit ledger as on 31 March 2019;
- However, if the developer promoter intends to continue under the old scheme and avail ITC, he has to submit a declaration before 20 May 2019 to the jurisdictional authority. Taxpayer has not opted for the old scheme, and hence, they fall under new scheme, and therefore, they are liable to pay GST @1% for affordable residential apartment and @ 5% for other residential apartments without availing ITC;
- The AAR observed that as per notification no:03/2019, dated 29 March 2019 read with entry no:41(a) & 41(b) of notification no:04/2019 the liability of the developer-promoter and land owner-promoter will be as follows for projects which have commenced prior to 01 April 2019:
  - The taxpayer who is the developer-promoter shall pay GST on the supply of construction of apartment to the land owner promoter.
  - If the land owner promoter further supplies such apartment to the buyers before the issuance of completion certificate, he shall be liable to pay GST on such supplies. However, the land owner promoter

TAX UPDATES
Indirect Tax

shall be eligible for ITC of the taxes charged from him by the developer-promoter.

- Therefore, the tax on the portion of constructed area shared with the land owner-promoter has to be paid by taxpayer as his liability in the capacity of developer-promoter and not as RCM. The land owner-promoter will claim such tax as ITC as described above;
- Further, the taxpayer is liable to pay tax on RCM under the following conditions as developer-promoter:
  - Cement for the project must be purchased from registered supplier only even if total value of supplies received from unregistered suppliers is less than 80% and the promoter is required to pay GST @28% under reverse charge if the purchase is from unregistered supplier;
  - Excluding cement, minimum 80% of the procurement of inputs and input services used in supplying the real estate project service shall be received from registered supplier only. For the shortfall from this requirement GST @18% is payable on value to the shortfall. This adjustment is to be done financial year wise and not project wise;
  - In case of capital goods procured from unregistered person, the promoter is liable to pay GST under reverse charge;
  - For residential apartments, GST is not payable on TDR, FSI or payment of upfront amount for long term lease of land if such supply takes place after 01 April 2019 and if residential apartment is sold before completion. However, for residential apartments remaining unsold after completion, proportionate GST is payable on TDS, FSI or long-term lease of land by developer-promoter under RCM.
- Based on the above observations the AAR held as follows:
  - 'Other than ongoing project' means a project which commences on or after 01 April 2019. Therefore, the project undertaken by the taxpayer does not fall under this definition as the project started before the stipulated date;
  - RCM will not be applicable on daily wages, labour charges, contract labour, salaries, incentives, brokerage and remuneration and interest on working capital;
  - There is no limit on the percentage of material to be used in project on which GST has to be paid under RCM;
  - In case of a project with combination of affordable flats and non-affordable flats, different rate of tax can be adopted for different units;
  - Even if the initial contract for land and building entered through two different un-severable agreements, constitutes a single contract and hence will attract tax @1% for affordable housing and @5% for other housing under GST respectively without ITC. However, any other agreement which is beyond the scope of initial agreement and is a severable agreement vis-à-vis the initial agreement then the construction made under the contract will attract 18% GST with ITC.

    [AAR-Telangana, M/s. Sri Bhavani Developers, Order no:38/2022, A.R.Com/29/2021, dated 14 July 2022]

WRIT PETITION

Claiming tax paid under protest as transitional credit on failure to grant refund by the department does not attract provisions of section 74 under GST

Facts of the case

- M/s. TVL Rashtriya Ispat Nigam Ltd ('Taxpayer') was registered as a dealer under the provisions of the Tamil Nadu Value Added Tax Act, 2006 (in short 'TNVAT Act') and Central Sales Tax Act, 1956 (in short 'CST Act');
- Unable to substantiate its claim for the concessional levy against C-Forms, the taxpayer deposited INR 4Mn as payment under protest of which, INR 2.8Mn was adjusted towards the tax demand leaving a balance of INR 1.2Mn of tax paid under protest;
- Taxpayer filed for refund of such excess amount before the Deputy Commissioner but the same was long pending. Therefore, when an extension of time was granted for filing Form TRAN-1, it carried forwarded the credit in Form TRAN-1 despite being aware of the fact that such credit is inadmissible;
- The tax authority passed an order rejecting the transition of the ITC and levied a penalty for a wrongful transition of credit as well as interest from 27 December 2017 till the date of order for such ineligible claim. The taxpayer filed a Writ petition challenging the order of the tax authority.

Contention of the Taxpayer

- The taxpayer is well aware of the wrongful claim, but it was only done to protect the interests of the taxpayer since its claim for a refund had admittedly been kept pending since 2017 without any response;
- Taxpayer relied on the following rulings in this regard:
  - Magma Fincorp Ltd. Vs. State of Telangana and Others, [(2019) 3 ALD 695] 2019-TIOL-1094-HC-AP-GST.
  - DMR Constructions Vs. The Assistant Commissioner, Commercial Tax Department, [(2021) 91 GSTR 278]

TAX UPDATES
Indirect Tax

- Further attention was drawn to the provisions of section 42(5) of the TN VAT Act read with section 9 (2) of the CST Act and section 174 of the TN GST Act in support of his submission that the taxpayer is legally entitled to the claim of refund.

Contention by Tax authority

Section 142(8)(b) of TN GST Act restricts the availment of credit of any amount of refund to which the taxable person is entitled under the erstwhile laws. Hence, the credit availed in TRAN-1 is in-eligible and is liable to be recovered along with interest u/s. 74 of CGST Act.

Ruling by the High Court

- The motives of the taxpayer are found to be bonafide in law since it sought for refund due to disentitlement to transition as credit under GST laws;
- Taxpayer cannot be expected to wait indefinitely for the refund and according to the provisions of the TN VAT Act, interest is to be paid by the department for any delay in refund beyond 90 days;
- Further, the provisions of section 74 of the CGST Act would be applicable only in the case of wrongful availment/ utilization of ITC by reason of fraud. The pre-condition for invocation of section 74 of the CGST Act is that the tax authority must establish willful misstatement or suppression to evade tax. In the current scenario, the question is whether the availment of credit is with the intent of evading tax. However, the intentions of the taxpayer are only to protect its interests but not to evade tax;
- The Hon'ble High Court has ruled that the refund claim has to be processed within four weeks along with interest till the date of filing TRAN-1 by the taxpayer.

[M/s. TVL Rashtriya Ispat Nigam Ltd Vs The Deputy Commissioner (Ct) III Chennai 2022-TIOL-983-HC-MAD-GST dated 20 June 2022]

Contact Us

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

For any other queries, kindly write to:
marketing@bdo.in

BDO in India

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

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

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

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

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

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

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

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

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

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

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

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

Pune – Office 1
Floor 6, Building # 1
Cerebrum IT Park, Kalyani Nagar
Pune 411014, INDIA

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

Visit us at www.bdo.in