The Institute of Chartered Accountants of India

(Setup by an Act of Parliament)

Ahmedabad Branch (WIRC)

E-NEWSLETTER

WORLD ENVIRONMENT DAY

05th June

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The Institute of Chartered Accountants of India

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Ahmedabad Branch (WIRC)

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Chairman's Message

CA. Sunil Sanghvi
Chairman,
ICAI - Ahmedabad (WIRC)

Dear Esteemed Members,

It gives me immense pleasure to connect with you through this newsletter as we embark on yet another month filled with insightful and enriching activities at the Ahmedabad Branch of WIRC of ICAI. May has been a month of learning, growth, and professional development with a series of impactful seminars and events designed to enhance our knowledge and skills.
We commenced the month with insightful **Seminar on GST** On **3rd May 2024**, we had an, led by CA Yash Dhaddha from Jaipur and Adv. (CA) Uchit Sheth from Ahmedabad. Their deep dive into GST nuances was both informative and engaging.

Following this, on **4th May 2024**, we hosted a **Seminar on Financial Reporting under Schedule III & Accounting** with expert speakers CA Vishal Mulchandani and CA Marmik Shah, both from Ahmedabad. Their session provided clarity and updates on the latest financial reporting standards.

On **6th May 2024**, we turned our focus to valuation with a seminar featuring Shri Rajeev Shah Ahmedabad, and CA Devagnaya Shah, Ahmedabad. Their expertise provided valuable insights into the principles and practices of valuation.

Our **Seminar on Income Tax** on **11th May 2024** saw CA Palak Pavagadhi and CA Mehul Thakker, both from Ahmedabad, sharing their extensive knowledge on the latest developments and practical aspects of income tax.
On **18th May 2024**, we delved into the realm of technology with a **Seminar on Information Technology**, presented by CA G. C. Pipara from Ahmedabad and CA Ajay Mehta from Chennai. Their session covered the critical aspects of IT in the modern accounting landscape.

Towards the end of the month, we launched our **GST Series**, beginning on **27th May 2024**. The first day featured a session on "Excel to GPT in GST" by CA Venugopal Gella and a practical approach to handling litigation by Adv. CA Jigar Shah.

The series continued on **28th May 2024** with discussions on the "Use of Technology in Demand & Recoveries" by CA Shubham Khaitan and "Tax Technology" by CA Rashmin Vaja.

The final day of the series, **29th May 2024**, provided a pragmatic approach to GST appeals by Adv. (Dr.) CA Gaurav Gupta and concluded with a panel discussion featuring Adv. CA Bharat Raichandani and Adv. (Dr.) CA Avinash Poddar, which addressed open house questions from the attendees.

Each of these events was designed with the intent to keep our members at the forefront of the ever-evolving accounting profession. I extend my heartfelt gratitude to all the speakers and participants who contributed to making these events a success.

Apart from members program mentioned above Ahmedabad Branch has Done remarkable programs for students also:

- **Session at i-hub on 5th May, 2024**
- **Old Age Home Visit on 12th May, 2024**
- **National Talent Search - Pitch Deck and Essay Writing Competition on 25th May, 2024**
- **Case O Mania on 26th May, 2024**
- **WICASA Premier League on 31st May to 2nd June,2024**

I congratulate WICASA team for putting their best for students Development.
As we continue our journey, let us stay committed to our mission of excellence and professional development. I look forward to your active participation in our upcoming events and seminars.

Upcoming Events in June 2024

- **7th-8th June**: National Tax Convention
- **22nd-23rd June**: National Conference on Capital Markets
- **29th-30th June**: National Students Conference

This month newsletter committee also tried to give a new shape to our newsletter of our branch. I request readers to please share your feedback for the same.

Editorial

CA. Rinkesh shah

Editor and Chairman, Newsletter Committee
ICAI - Ahmedabad (WIRC)

Dear Esteemed Members,

As we transition into the month of June, it is with great excitement that we bring to you the latest edition of our newsletter. ***This edition of our newsletter , we have tried to have some presentation modification. We love to have feedback on that from your end.*** The Ahmedabad Branch of WIRC of ICAI continues to thrive with the active participation and contributions of our dynamic members. This month's newsletter is a testament to the rich diversity of knowledge and expertise within our community.

We are delighted to present a collection of insightful articles that span a wide array of topics pertinent to our profession:

1. **Understanding SEZ Units' RCM Exemption: Key Legal Insights and Litigation** by CA Tarjani Shah offers an in-depth analysis of the reverse charge mechanism exemption for SEZ units, providing valuable legal perspectives and an overview of recent litigation.
2. **RBI Updates** by CA Mayur Modha keeps us abreast of the latest developments and changes in the policies of the Reserve Bank of India, ensuring we stay informed about crucial regulatory shifts.
3. **Gold Card Scheme 2005** by CA Rahul Sharma revisits this important initiative, shedding light on its benefits and implementation details for the benefit of our members.
4. **It Is Not Compulsory to Prepare a Will But It Is Advisable to Prepare One** by CA Ajit Shah underscores the importance of estate planning and the practical benefits of drafting a will, even though it is not legally mandatory.
5. **Deciphering RBI's Crackdown on Currency Trading: Implications and Speculations** by CA Swati Panchal explores the recent regulatory measures taken by the RBI in the currency trading sector, analyzing their potential impacts and future implications.
6. **Tax Tit-bits** by CA Parag Raval brings us concise and valuable tax insights, helping us navigate the complex landscape of tax regulations with ease.
7. **Trading in the US Market through FME-AIF Gift City June 2024** by CA Swetang Pandya provides a comprehensive guide on leveraging the framework of Gift City for trading in the US market, highlighting key strategies and compliance requirements.
8. **Navigating Section 29A: Professional Insights into Due Diligence under IBC** by CA Jigar Bhatt delves into the intricacies of Section 29A of the Insolvency and Bankruptcy Code, offering professional insights on conducting due diligence.
9. **Compliance Calendar June 2024** by CA Niket K. Rasania is an essential tool for our members, listing important compliance deadlines and ensuring we stay on top of our regulatory obligations.

These articles reflect the depth of expertise and commitment to excellence that defines our branch. I encourage you to delve into each piece, as they are crafted to enhance your knowledge and support your professional journey.

In our ongoing pursuit of excellence, we invite all members to contribute articles on various aspects of professional development and other matters of interest. Additionally, if any member has received social recognition or accolades, please do not hesitate to inform us. We are keen to publish relevant content that adds value to our profession.

Please feel free to reach out to the Newsletter Committee with your article submissions or ideas for future editions. Together, let us uphold the highest standards of professional excellence and knowledge sharing within our esteemed community.

Thank you for your continued support and dedication. Let us strive together towards greater achievements and professional growth.

Warm regards,

Compliance Calendar June,2024

Contributed by:
CA. Niket Rasania

GST Compliance Due Dates

Compliance	Due Date
GSTR-1 (May, 2024) - Summary of outward supplies where turnover exceeds Rs.5 Crores or have not chosen the QRMP scheme for the 1st quarter of F.Y.2024-25	11th June, 2024
IFF Return (Optional) (May, 2024) - Uploading of outward supplies affected during the second month of the quarter by quarterly return filers opting for the Invoice Furnishing Facility (IFF) under the QRMP scheme	13th June, 2024
GSTR-3B (May, 2024) - Summary of outward supplies, ITC claimed, and net tax payable for taxpayers with turnover more than Rs.5 Crores or have not chosen the QRMP scheme for the 1st quarter of F.Y.2024-25	20th June, 2024
GSTR-5 (May, 2024) - Summary of outward taxable supplies and tax payable by a non-resident taxable person	13th June, 2024
GSTR-6 (May, 2024) - Details of ITC received and distributed by an Input Service Distributor	13th June, 2024
GSTR-8 (May, 2024) - Summary of Tax Collected at Source (TCS) and deposited by e-commerce operators under GST laws	10th June, 2024
GSTR-5A (May, 2024) - Summary of outward taxable supplies and tax payable by a person supplying OIDAR services	20th June, 2024
GSTR-7 (May, 2024) - Summary of Tax Deducted at Source (TDS) and deposited under GST laws	10th June, 2024
GST PMT-06 (Monthly Payment May, 2024) - Due date of payment of GST by taxpayer with Aggregate turnover upto Rs.5 Crores during the previous year and who has opted for QRMP Scheme for the 1st quarter of F.Y.2024-25	25th June, 2024

Income Tax Compliance Due Dates

Compliance	Due Date
Deposit of Securities Transaction Tax / Commodities Transaction Tax collected for the month of May, 2024.	07th June, 2024
Deposit of Tax deducted / collected for the month of May, 2024.	07th June, 2024
Collection and recovery of equalisation levy on specified services in the month of May, 2024.	07th June, 2024
Form 27C - Declaration under sub-section (1A) of section 206C of the Income-tax Act, 1961 to be made by a buyer for obtaining goods without collection of tax for declarations received in the month of May, 2024	07th June, 2024
Issue of TDS Certificate for tax deducted under section 194-IA Form 16B (Property), section 194-IB Form 16C (Rent), section 194M Form 16D (Contractor Payments) and 194S Form 16E (virtual digital assets) in the month of April, 2024	14th June, 2024
Furnishing of Form 24G by an office of the Government where TDS/TCS for the month of May, 2024 has been paid without the production of a challan	15th June, 2024
Form 16A - Quarterly TDS certificate (in respect of tax deducted for payments other than salary) for the quarter ending March 31, 2024	15th June, 2024
Advance Tax 1st Instalment for AY 2025-26	15th June, 2024
Form 16 - Certificate of tax deducted at source to employees in respect of salary paid and tax deducted during FY 2023-24	15th June, 2024
Form 12BA - Statement showing particulars of perquisites, other fringe benefits or amenities and profits in lieu of salary with value thereof during FY 2023-24 by the employer	15th June, 2024
Due date for furnishing statement in Form no. 3BB by a stock exchange in respect of transactions in which client codes been modified after registering in the system for the month of May, 2024	15th June, 2024
Due date for furnishing statement in Form No. 3BC by a recognised association in respect of transactions in which client codes have been modified after registering in the system for the month of May, 2024	15th June, 2024
Form 64D - Statement to be furnished by Alternative Investment Fund (AIF) to Principal CIT or CIT in respect of income distributed during previous year 2023-24 to unitholders	15th June, 2024
Form 49D - Information and documents to be furnished by an Indian concern under section 285A	29th June, 2024
Due date for e-filing of a statement in Form No. 3CEK by an eligible investment fund under section 9A in respect of its activities in Financial Year 2023-24	29th June, 2024
Furnishing of challan-cum-statement in respect of tax deducted under section 194-IA Form 26QB (Property), 194-IB Form 26QC (Rent), 194M Form 26QD (Contractor Payments) and 194S Form 26QE (Virtual Digital Assets) in the month of May, 2024	30th June, 2024

Compliance	Due Date
For Recognised Stock Exchange (Form 1) and Mutual Fund (Form 2), Return in respect of Securities Transaction Tax for the FY 2023-24	30th June, 2024
Form 26QAA - Quarterly return of non-deduction of tax at source by a banking company from interest on time deposit in respect of the quarter ending March 31, 2024	30th June, 2024
Form 64C - Statement to be furnished in Form No. 64C by Alternative Investment Fund (AIF) to unit holders in respect of income distributed during the previous year 2023-24	30th June, 2024
Form 58C and 58D - Report by an approved institution/public sector company under section 35AC(4)/(5) for the year ending 31st March, 2024	30th June, 2024
Form 64B - Statement of income distributed by business trust to its unit holders during the Financial Year 2023-24. This statement is required to be furnished to the unit holders in Form No. 64B.	30th June, 2024
Form 64F - Statement of income distributed by securitization trust to be provided to the investor under section 115TCA of the Income-tax Act, 1961 during the Financial Year 2023-24. This statement is required to be furnished to the investors in Form No. 64F.	30th June, 2024
Commodities Transaction Tax - Return for taxable commodities transactions for Financial Year 2023-24	30th June, 2024
Form 1 Equalisation Levy - Statement of Specified Services or E-Commerce Supply or Services during Financial Year 2023-24	30th June, 2024
Form 3AF – Statement regarding preliminary expenses incurred to be furnished under proviso to clause (a) of sub-section (2) of Section 35D of the Income Tax Act,1961 by the assessee (if due date of submission of return of income is 31st July,2024)	30th June, 2024
Form 10-IJ – Certificate to be issued by Accountant under clause (23FF) to Section 10 of the Income Tax Act,1961 (if due date of submission of return of income is 31st July,2024)	30th June, 2024
Form 10-IL – Verification by an Accountant under sub-rule (3) of Rule 21AJA (if due date of submission of return of income is 31st July,2024)	30th June, 2024

Other Compliances Due Dates

Compliance	Due Date
e-Form DPT-3 Return of Deposits under Companies Act,2013	30th June, 2024
PF / ESIC Payment Date (May, 2024)	15th June, 2024
PF Return (ECR) Filing Date (May, 2024)	15th June, 2024
Employees Professional Tax Payment Date (May, 2024)	15th June, 2024

Contributed by:
CA. Mayur Modha

In the month of May-2024, there are various Master directions, Master circulars, notifications issued by RBI, Summary and brief understanding of few of them are as under:

Date of issue: 03.05.2024
Master directions/ Master circulars/ notifications No.: RBI/2024-25/33
DOR.CRE.REC.22/21.03.054/2024-25
Applicability: All Scheduled Commercial Banks (excluding RRBs)
Brief understanding : Banks' Exposure to Capital Market - Issue of Irrevocable Payment Commitments (IPCs):
The risk mitigation measures prescribed in the earlier circular were based on T+2 rolling settlement for equities (T being the Trade Day). The Stock Exchanges have since introduced T+1 rolling settlement, and accordingly the extant guidelines on issuance of IPCs by banks have been reviewed. Henceforth, all IPCs issued by custodian banks under the T+1 settlement cycle shall comply with the instructions of this circular.

Date of issue: 26.04.2024
Master directions/ Master circulars/ notifications No.: RBI/2024-25/28
DOR.LIC.REC.20/16.13.218/2024-25
Applicability: All Small Finance Banks
Brief understanding : Voluntary transition of Small Finance Banks to Universal Banks:
"Guidelines for 'on-tap' Licensing of Small Finance Banks in Private Sector" dated December 5, 2019, which provides a transition path for Small Finance Banks (SFBs) to convert into Universal Banks. Such conversion shall be subject to the SFB's fulfilling minimum paid-up capital/ net worth requirement as applicable to Universal Banks, satisfactory track record of performance as an SFB for a minimum period of five years and RBI's due diligence exercise.

Commencement:
The provisions contained in the circular shall be effective from the date of this circular

Provisions:
the eligibility criteria for an SFB to transition into a Universal bank will now be as follows:

1. scheduled status with a satisfactory track record of performance for a minimum period of five years;
2. shares of the bank should have been listed on a recognised stock exchange;
3. having a minimum net worth of ₹1,000 crore as at the end of the previous quarter (audited);
4. meeting the prescribed CRAR requirements for SFBs;
5. having a net profit in the last two financial years; and
6. having GNPA and NNPA of less than or equal to 3 percent and 1 percent respectively in the last two financial years.

The following conditions shall be applicable with regard to shareholding pattern:

1. There is no mandatory requirement for an eligible SFB to have an identified promoter. However, the existing promoters of the eligible SFB, if any, shall continue as the promoters on transition to Universal Bank.
2. Addition of new promoters or change in promoters shall not be permitted for an eligible SFB while transitioning to

Universal Bank.

3. There shall be no new mandatory lock-in requirement of minimum shareholding for existing promoters in the transitioned Universal Bank.
4. There shall be no change to the promoter shareholding dilution plan already approved by the Reserve Bank.
5. The eligible SFBs having diversified loan portfolio will be preferred.

The eligible SFB may submit its application for transition to Universal Bank, in the prescribed form (Form III) in terms of Rule 11 of the Banking Regulation (Companies) Rules, 1949, along with other requisite documents.

Date of issue: 29.04.2024
Master directions/ Master circulars/ notifications No.: RBI/2024-25/30 DoS.CO.PPG.SEC.1/11.01.005/2024-25
Applicability: All Commercial Banks (including Small Finance Banks, Local Area Banks and Regional Rural Banks) excluding Payments Banks, All Primary (Urban) Co-operative Banks/ State Co-operative Banks/ District Central Co-operative Banks, All Non-Banking Financial Companies (including Microfinance Institutions and Housing Finance Companies)
Brief understanding : Fair Practices Code for Lenders – Charging of Interest:
The guidelines on Fair Practices Code issued to various Regulated Entities (REs) since 2003, inter-alia, advocate fairness and transparency in charging of interest by the lenders, while providing adequate freedom to REs as regards their loan pricing policy.

During the course of the onsite examination of REs for the period ended March 31, 2023, the Reserve Bank came across instances of lenders resorting to certain unfair practices in charging of interest.

Some of the unfair practices observed are briefly explained below:

1. Charging of interest from the date of sanction of loan or date of execution of loan agreement and not from the date of actual disbursement of the funds to the customer. Similarly, in the case of loans being disbursed by cheque, instances were observed where interest was charged from the date of the cheque whereas the cheque was handed over to the customer several days later.

2. In the case of disbursal or repayment of loans during the course of the month, some REs were charging interest for the entire month, rather than charging interest only for the period for which the loan was outstanding.

3. In some cases, it was observed that REs were collecting one or more instalments in advance but reckoning the full loan amount for charging interest.

These and other such non-standard practices of charging interest are not in consonance with the spirit of fairness and transparency while dealing with customers. These are matters of serious concern to the Reserve Bank. Wherever such practices have come to light, RBI through its supervisory teams has advised REs to refund such excess interest and other charges to customers. REs are also being encouraged to use online account transfers in lieu of cheques being issued in a few cases for loan disbursal.

Therefore, in the interest of fairness and transparency, all REs are directed to review their practices regarding mode of disbursal of loans, application of interest and other charges and take corrective action, including system level changes, as may be necessary, to address the issues highlighted above.

This circular takes immediate effect.

Contributed by:
CA. Parag Raval

A. Tax Recovery Officer cannot declare the sale by assessee to third party void: Madras HC : K. N. Subramaniam Vs PCIT (Madras High Court) Appeal Number : W.P.No.5336 of 2023

Facts:

1. The Income Tax Department, through the Tax Recovery Officer (TRO), attached the property for recovery of tax dues. The petitioner challenged the attachment, claiming ownership of the property through the sale deed. The TRO, however, declared the sale deed void, considering it was made during the pendency of tax proceedings.

2. The petitioner challenged the attachment, claiming ownership of the property through the sale deed. The TRO, however, declared the sale deed void, considering it was made during the pendency of tax proceedings.

Hon. Madras HC held as below:

1. As per Rule 11(4) of the Income Tax Rules, the TRO, has to examine who is in possession of the property and in what capacity. He can only attach property in possession of the assessee in his own right, or in possession of a tenant or a third party on behalf of/for the benefit of the assessee. He cannot declare any transfer made by the assessee in favour of a third party as void.

2. If the Department finds that a property of the assessee is transferred by him to a third party with the intention to defraud the Revenue, it will have to file a suit under Rule 11(6) to have the transfer declared void under Section 281.

B. Expenses wholly incurred for transfer is allowable as a deduction while computing capital gains : Adil Rehman, Hyderabad (ITA No. 15/Hyd/2024)

Facts:

1. While computing capital gains in respect of the immoveable property sold during the financial year 2013-14, the assessee claimed the transfer expenses at Rs. 2,81,425/- which included expenses towards obtaining special power of attorney from India Consulate in USA, air tickets, hotel accommodation receipts, postal charges receipts, conveyance charges, lawyer fees, photocopying expenses receipts, etc., which was specifically needed to execute the sale.

2. Learned Assessing Officer allowed transfer expenses to the tune of Rs. 46,000/- incurred in respect of brokerage, air tickets, hotel accommodation receipts, postal charges receipts, conveyance charges, lawyer fees, photocopying expenses and disallowed Rs. 2,35,425/- claimed by the assessee in respect of brokerage, air tickets, hotel accommodation receipts, postal charges receipts, conveyance charges, lawyer fees, photocopying expenses.

3. Assessee preferred objections before the learned DRP and submitted that all the expenses incurred by the assessee in connection with transfer are allowable expenditure and relied upon by the decision of the Hon'ble Bombay High Court in the case of CIT vs. Shakuntala Kantilal (1991) 190 ITR 56 (BOM).

4. Learned DRP, however, was of the opinion that such an expenditure was merely incidental to the sale transaction and cannot be allowed to be deduction since such an expenditure was not wholly and exclusively for the transfer of property.

ITAT Hyderabad held as below:

1. The assessee is a non resident and for the purpose of effecting transfer of property, he

has to travel to India and has incurred expenses for obtaining power of attorney from Indian consulate in USA, air tickets, accommodation receipts, postal charges receipts, conveyance charges, lawyer fees, photocopying expenses, without which, the transfer could not have taken place.
2. So the said expenses are covered by Sec 48(i) of the Income Tax and are allowable expenses.

C. More on recent HRA fraud detected by the IT Authorities:

1. Recently a case came to light where income tax authorities found alleged rent receipts of around Rs 1 crore by an individual. Further probe revealed that the individual indeed did not receive the rent that was shown against his name.
2. The case prompted the income tax department to further investigate the matter and it turned out that there was rampant misuse of PANs by unscrupulous individuals to claim tax deductions from their employers.
3. So much so that officials have now come across cases where employees of certain companies have used the same PAN to claim tax deductions.
4. Tax officials have announced a crackdown on employees who have made fraudulent claims, with the aim of recovering owed taxes. It remains uncertain whether legal action will be pursued against these individuals.
5. This situation underscores another occurrence of PAN misuse. Complicating matters further is the current application of TDS only for monthly rents exceeding Rs. 50,000 or annual payments surpassing Rs. 6 lakh.
6. Consequently, many employees have exploited this loophole to evade taxes on rental income.
7. Are employers liable for this? Tax officials have emphasized that the responsibility rests solely on the employee, absolving the employer of any liability, even in cases where multiple individuals cite the same PAN for rent payments.
8. While employers are not required to conduct extensive investigations, they are expected to implement reasonable checks and balances when verifying proof of rent paid for HRA exemption. Some employers have established policies wherein employees found to have submitted false claims for HRA or LTA shall face termination from employment.

D. Sum Received on Maturity of Keyman Insurance Policy Purchased by Employee From Employer is Exempt u/s 10(10D) | ITAT : Mihir Parikh vs. ACIT - [2024] 160 taxmann 141 (Delhi-Trib.)

Facts:
1. A Keyman Insurance policy was taken by a proprietorship concern in which the assessee was a Keyman. Subsequently, the proprietorship concern was dissolved, and the assessee purchased the Keyman Insurance policy after paying a surrender value.
2. During the year under consideration, the assessee received maturity proceeds from such insurance policy.
3. While furnishing the return of income, the assessee claimed exemption of such maturity proceeds under section 10(10D) of the Income Tax Act.
4. During the assessment proceedings, the Assessing Officer (AO) contended that the maturity proceeds were received from the Keyman Insurance policy and denied exemption under section 10(10D).
5. On appeal, CIT(A) confirmed the additions made by AO. Aggrieved by the order, the assessee filed an appeal before the Delhi Tribunal.

ITAT Delhi held as below:

1. There was merit in the assessee's contention that if the policy was transferred before its maturity, it would lose its character. There was no prohibition on the assignment or conversion under the Income-tax Act.
2. Once there is an assignment, it leads to conversion, and the character of the policy changes. The insurance company has also clarified that on assignment, the policy does not remain a keyman policy but is converted into an ordinary one.
3. In these circumstances, it is not open to the AO to still allege that the policy in question is a keyman policy, and when it matures, the advantage drawn from it is taxable.
4. One has to keep in mind that at maturity, it is not the company but the individual who is getting the matured value of the insurance.
5. Accordingly, the AO was directed to delete the additions.

E. Payments made under distribution agreements by ESPN India is not taxable in India: Delhi HC CIT – International Taxation Vs. ESPN Star Sports Mauritius S.N.C ET Compagnie (Delhi High Court); ITA 333/2023

Facts:
1. Taxpayer, a Mauritius based company entered into two distribution agreements with ESPN Star Sports and ESPN Software India Private Limited ["ESPN India"] (collectively, with ESPN Start Sports referred to as "Indian Distributors"), for the distribution of Star Sports and ESPN channels in India.
2. The agreements between Taxpayer and the Indian Distributor was such that:
Indian Distributors stood conferred with an independent right to enter into contracts with cable operators for channel distribution and the Taxpayer was not privy to those agreements

The Indian Distributors bear associated distribution costs and expenses.The agreements unequivocally establish that the Taxpayer is in no manner connected with the contracts executed by the Indian Distributors with cable operators and other intermediaries.

Even the right to initiate legal action by the latter is available to be exercised only against the Indian Distributors.
3. The AO however held that the Taxpayer had a fixed place PE in India and consequently assessed 70% of the gross distribution revenue as business income of the Taxpayer in India.

Hon Delhi HC held as below:

1. The transaction is on a principal to principal basis between the Taxpayer and the Indian Distributors and is limited only to conferring the right of distribution of sport channels in India through the cable operators. No privity of contract between the Taxpayer and the end customers/cable operators.
2. The agreements unequivocally establish that the Taxpayer is in no manner connected with the contracts executed by the Indian Distributors with cable operators and other intermediaries.
3. The taxpayer does not a fixed PE in India in terms of Article 5(2) of India- Mauritius DTAA.
4. Taxpayer does not have a Dependent Agent PE in accordance with Article 5(4) of India-Mauritius DTAA
5. Since there is no PE in the present case, the issue of profit attribution would clearly not arise

F. What is Form 10IE and Form 10IEA:

1. Form 10IE is a form which is required to be filed when an assessee wants to shift from old tax regime to new tax regime.
2. In last year's budget, the new tax regime was made the default regime, due to which the taxpayers automatically moved to the new tax regime, that is, for opting of the old tax regime, they will have to choose it separately through form 10IEA.
3. Both the forms should be filed before the last date of filing of the income tax return.
4. Both these forms have to be filed by professionals and business owners.

G. ITAT : TDS is Not Deductible U/S 195 for Expenses Related to Support Services Paid to a Foreign Company
NTL Lemnis India Pvt Ltd. Vs. The ACIT, Circle 18(2), New Delhi (ITA No. 6006/Del/2019)

Facts:
1. The taxpayer is in the business of import/export, trading, manufacturing, commission agency, consulting, and advising in any way dealing with lighting products and lighting solutions in the fields of home lighting, public lighting, greenhouse lighting, and solar lighting. The company is also involved in research and development in the area of lighting products and solutions.
2. The taxpayer availed management and sales and marketing support services amounting to Rs. 9,85,54,700/ – and Rs. 1,08,57,200/- from NTL Lemnis Holding BV. The AO ruled that the type of services considered under the Agreement was that of advisory and consultancy services which shall be counted under the meaning of 'fee for technical services' ("FTS") both under the Income Tax Act 1961 along with the treaty.
3. Directing to the provisions of section 9(1) and the Explanation to section 9 of the Income Tax Act, AO ruled that FTS is liable to be paid via a resident and shall become an income of the non-resident payee supposed to accrue or emerge in India and shall be levied to tax under the provisions of the Income Tax Act.

ITAT Delhi held as below:

1. The amount obtained via NTL Lemnis Holding BV for management and sales marketing support services is non-taxable because of the beneficial provisions of the India-Netherland tax treaty read with the MFN clause and the India-Netherland treaty. Also the make available clause in the DTAA is not satisfied.
H. Impact of Supreme Court Judgement on Political Contributions:

1. The Supreme Court had delivered a seminal judgement in the case of Association for Democratic Reforms & Anr v/s Union of India & Ors. declaring Section 182(3) of the Companies Act (as amended by Section 154 of the Finance Act 2017) violative of Article 19(1)(a) and unconstitutional.
2. The Court also declared the deletion of the proviso to Section 182(1) of the Companies Act that permits unlimited corporate contributions to political parties is arbitrary and violative of Article 14. Further, the Court has declared the Electoral Bond Scheme, the proviso to Section 29C(1) of the Representation of the People Act 1951 (as amended by Section 137 of Finance Act 2017) and Section 13A(b) (as amended by Section 11 of Finance Act 2017) as violative ofArticle 19(1)(a) and unconstitutional.
3. Now, the amendment made under Section 182 in 2017 is void or as if it was not made at all. Therefore, the original provisions of Section 182 (i.e. prior to the amendment made by the Finance Act, 2017) are restored.

Considering the amendment made to Section 182 of the Companies Act, 2013 vide Finance Act, 2017 have been declared unconstitutional, now a Company needs to ensure the following :-

Contribution to a Political Party (either directly or through an Electoral Trust) in any financial year should not exceed 7.5% of the average net profits during the 3 immediately preceding Financial years.

Details of name of the Political Parties and the amounts contributed to such political parties have to be disclosed in the Profit and Loss account.

Note :

1. Proviso to Sec 182(1) before 2017 amendment, restricted the contributions to political parties to 7.5% of the average net profits of the last three preceding financial years.
2. Under Section 182(3) as it existed before the amendment, if a Company contributed funds to a political party, the company was required to disclose in its Profit and Loss account, the details of the specific contributions made to that political party. However, after the 2017 amendment, the Company is only required to disclose the contribution to a political party without disclosing the details of the political party to which the contribution was made.
3. Section 29C of the Representation of the People Act exempts political parties from disclosing information of contributions received through Electoral Bonds.

I. Exemption U/S 54 cannot be denied merely due to mistake by the developer: ITAT Mukesh Harilal Mehta Vs ITO 16(3)(1) (ITAT Mumbai) Appeal Number : ITA No. 2256/MUM/2023

Facts :
1. During the course of assessment proceedings, the Appellant was asked to provide the details of purchase/sale of property, and exemption claimed u/s. 54 of the Income Tax Act.
2. Appellant responded it received sale consideration of INR 14,40,00,000/- as his share from sale of property. The sale transaction resulted in capital gains income of INR 11,27,41,786/. However, since the Appellant had paid INR 12,00,00,000/- towards purchase of a residential flat, being payment towards the cost of purchase including, stamp duty, pre-possession charge, service tax etc., the Appellant was entitled to claim deduction u/s. 54 of the Act in respect of the same.
3. However, AO rejected the submission and brought to tax capital gains income of INR 11,27,41,786/-. AO noted that there was no registered sale deed evidencing purchase of new flat/asset. Further, the details of new flat/asset purchased mentioned in the possession letter were different from the flat/asset towards the purchase of which the payment of INR 12,00,00,000/- was said to have been made by the Appellant.

ITAT Mumbai held as under:

1. The denial of exemption under section 54 of the Income Tax Act is unjustified as appellant cannot be penalized for the mistake committed by the developer/seller in allocating the flat.
2. Appellant cannot be penalized for the mistake committed by the developer/seller by allotting Flat No. B-702 to the Appellant and thereafter selling the same Flat to Mr. C.N. Jha. Clearly, the developer/seller had accepted the aforesaid mistake and accommodated the Appellant by allotting a similarly placed flat (i.e. Flat No. B-902) in the same building.
3. Appellant is entitled to claim deduction under Section 54 of the Act in respect of payment of INR 12,00,00,000/- as claimed by the Appellant. Accordingly, the addition of INR 11,27,41,786/- made by the Assessing Officer, which was confirmed by the CIT(A), is set aside.

J. Taxation of unexplained income or investment:

1. Section 68 of Income Tax Act:
Cash Credits Where any sum is found credited in the books of an assessee maintained for any previous year, and the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the sum so credited may be charged to income- tax as the income of the assessee of that previous year.

2. Section 69 – Un Explained Investments:
Where in the financial year immediately preceding the assessment year the assessee has made investments which are not recorded in the books of account, if any, maintained by him for any source of income, and the assessee offers no explanation about the nature and source of the investments or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the value of the investments may be deemed to be the income of the assessee of such financial year.

3. Section 69 A – Un Explained Money etc.:
Where in any financial year the assessee is found to be the owner of any money, bullion, jewelry or other valuable article and such money, bullion, jewelry or valuable article is not recorded in the books of account, if any, maintained by him for any source of income, and the assessee offers no explanation about the nature and source of acquisition of the money, bullion, jewelry or other valuable article, or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the money and the value of the bullion, jewelry or other valuable article may be deemed to be the income of the assessee for such financial year.

4. Section 115 BBE – Rates of Tax:
Those incomes referred in sections 68, 69, 69 A, 69 B, 69 C and 69 D shall be taxed at the rate specified under section 115 BBE inserted via Finance Act 2012. After amendment w.e.f. 1st of April 2017, it is expressly provided that no set of any losses shall be allowed in respect of these incomes and also to increase the rate of tax to 60% (prior to which it was 30%).

5. This means that such income, though already offered to tax by the taxpayer, would be taxable at flat rate of 60 per cent on gross basis (i.e., without any deduction / allowance), (plus surcharge @ 25% on such tax and cess, as applicable). Thus, effectively the rate comes to 77.25 per cent if such income is reflected in the return of income furnished u/s. 139.

6. Section 115BBE of the Act is only a machinery provision to levy tax on income and it should not enlarge the ambit of before mentioned sections of the Act to create a deeming fiction to tax any sum already credited/offered to tax as income.

7. Burden of proof:
The Supreme Court in the cases of Roshan Di Hatti v. CIT [1977] 107 ITR 938 (SC) and Kale Khan Mohammad Hanif v. CIT [1963] 50 ITR 1 (SC) has held that the law is well-settled that the onus of proving the source of a sum of money found to have been received by an assessee is on him. Where the nature and source of a receipt, whether it be of money or other property, cannot be satisfactorily explained by the assessee, it is open to the revenue to hold that it is the income of the assessee and no further burden lies on the revenue to show that the income is from any particular source.

The environment is our spiritual friend and we should take care of it.

WORLD ENVIRONMENT DAY
05th June

It Is Not Compulsory To Prepared Will But It Is Advisable To Prepared Will

Contributed by:
CA. Ajit C. Shah

Generally, Indian Succession Act, 1925 governs the preparation of Wills. This Act does not apply in its entirety to all Indians. Most of its provisions do not apply to Muslims and some of them are not applicable even to Hindus, Sikhs, Buddhists, Jains or Christians. It will apply to all other communities in its entirety.

The person who makes a Will called "TESTATOR" and the person who get the benefits under the Will are called "LEGATEES".

If the properties of the deceased distributed according to the Will prepared by him during his life time, it is called 'TESTANEBTARY SUCCESSION"; while if such distribution of properties without the Will, it is called "INTESTATE SUCCESSION". Both the types of succession are governed by the Indian Succession Act, 1925.

Section 2(h) of Indian Succession Act, 1925 defines the Will as:
A will is the legal declaration of the intentions of the testator with respect to his property which he desires to be carried into effect after his death.
This a WILL is the legal declaration of the wish or intent of the Testator about the disposal of his/her properties, and it becomes operative ONLY on his/her death. Actually, it is nothing but distribution of properties of the Testator on his/her death according to his/her wishes. A Will clearly demarcates what should go to whom and in what proportion.
The fundamental characteristic of the Will is – it can be revoked, altered, or distributed by the Testator any number of times at any time during his/her lifetime. In other words, Will can be change every day.
Section 61 speaks that WILL shall be *void ab initio,* if made under coercion or undue influence or in fraud.
There are different kinds if WILLS, one can prepared.

1. Unprivileged Wills;
2. Privileged Wills;
3. Joint Wills;
4. Contingent or Conditional Wills;
5. Mutual Wills;
6. Parallel Wills;
7. Living Wills

Who are competent to make WILL?
The following persons are considered competent to make a Will for disposal of their properties:

- All persons of sound mind (not being minors)
- Deaf, dumb or blind persons, if they are capable of knowing what they are doing.
- Insane persons
- A normal person (without any physical or mental illness), but does not know what he is doing, cannot make a Will
- A person who is under the influence of intoxication has been considered as incompetent to make Will.

Execution of a WILL
Section 63 lays down the requirements of a valid WILL. Mandatory prerequisites are as under:

1. It must be in writing and bears the signature or mark of Testator.
2. It shall be attested by two or more witnesses each of whom has seen the Testator sign or put the mark.
3. Each of the attesting witness has to sign the WILL in presence of the Testator.
4. It is not necessary to be executed on a

stamp paper nor does it require to be registered. Though its registration has been made voluntary, it is advisable to do it as when the WILL is registered, it becomes easier to obtain probate from the Court. Also it avoids probable disputes on the death of the Testator.

To whom bequest can be made.

There are no restriction whatsoever imposed by any law on choosing the legatees under a WILL made by the Testator. He has an unfettered right to decide not only the legatees but also their shares in his estate.

A competent person can make bequest in favor of any living person, an idiot, lunatic, idol, Charitable Trust, firm, HUF, any institution, corporate body, society etc.

If there are clear instruction in WILL, it is possible to create New HUF by making request to a person not as individual property but as HUF property with such individual as its Karta. And a new status of assessment would come up.

Codicil:

As defined under Section 2(b) of Indian Succession Act, 1925 it means an instrument made in relation to a WILL and explaining, altering or adding to its disposition and shall be deemed to form part of the WILL.

A codicil is nothing else but a supplementary WILL if the Testator wishes to carry out any changes/ amendments in the WILL already made by him. He can execute Codicil instead of rewriting the entire WILL. This can be made anytime during his life time and executed in a similar manner as the WILL.

Once executed, it becomes part and parcel of the original WILL and should be tagged with it. It may be carefully noted that all the requirements of a valid WILL are required to be complied with for execution of a Codicil. Therefore, sometimes it is advised to make a fresh new WILL.

Executor / Administrator:

The most common question is who will manage the estate of the deceased – either Testamentary or interstate. The answer is one who is Executor or **Administrator.**

In case of Testamentary succession, the Testator has the option to appoint Executor under a WILL. While in case of intestate succession Court can appoint administrator on application of the legal heirs of the deceased.

The "Executor" or the "Administrator" of the WILL is the legal representative of the deceased and entire property vest in him for all purposes. An executor appointed can also be one of the legatees under the WILL.

Registration of WILL.

The procedures of registration of the WILL is governed by the provisions of Registration Act, 1908. This formality is optional at the will of the Testator and are ONLY for the purpose of ensuring the legal execution of the WILL and its safety.

Even this procedure is carried out by the Testator, it does not confer any additional benefit or sanctity to the WILL nor does it prevent him from making another WILL.

Though the WILL is not legally required to be registered, it is advisable to get it done- particularly when there is likelihood of any disputes or chances of challenging the validity of the WILL. Even in order to avoid any chances of its misplacement, the same may also be useful.

Section 40 of the said Act, provides the procedures for registration of the WILL, while section 41 speaks of the procedures to be followed for its registration as required for any other document.

Deciphering RBI's Crackdown on Currency Trading: Implications and Speculations

Contributed by:
CA. Swati Panchal

In recent times, the Reserve Bank of India (RBI) has implemented stringent measures aimed at regulating the currency derivatives market, causing ripples of concern and speculation among traders and investors. This crackdown comes amidst a backdrop of increasing volatility in the Indian rupee and concerns regarding speculative activities in the currency markets. In this article, we delve into the intricacies of RBI's actions, exploring the rationale behind these measures and their potential impact on the financial landscape.

Understanding Currency Derivatives:
Currency derivatives are financial instruments that allow market participants to hedge their exposure to foreign exchange risk or speculate on currency movements. These derivatives include forward contracts, futures, and options, providing a mechanism for managing currency-related uncertainties in international trade and investment.

The Role of Speculators:
While currency derivatives serve a vital function in facilitating hedging for businesses engaged in international transactions, a significant portion of trading activity in these markets is driven by speculators. These speculators, accounting for approximately 70% of the market volume, engage in trading purely for profit-making purposes, without underlying foreign currency exposure.

RBI's Crackdown: A Closer Look:
The recent move by the RBI mandates traders to declare genuine exposure to foreign currency and prohibits speculative trading in currency derivatives. This regulatory intervention aims to curb excessive speculation and ensure that trading activity is aligned with real economic transactions.

Potential Rationale Behind RBI's Actions:
While the precise motivations behind RBI's crackdown remain speculative, one plausible explanation revolves around the central bank's efforts to manage currency volatility effectively. The Indian rupee, though partially managed by the RBI, is susceptible to fluctuations driven by speculative activities in the derivatives market. By imposing stricter regulations, the RBI aims to stabilize the rupee and mitigate the risks associated with speculative pressures.

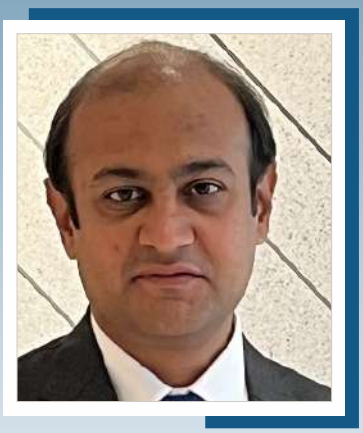
Impact on the Market:
The implications of RBI's measures on the currency derivatives market are subject to debate and conjecture. Some analysts predict a significant reduction in market participation, as the absence of speculators may dampen liquidity and hinder price discovery. This could potentially affect small businesses reliant on currency hedging for risk management purposes.

Furthermore, concerns have been raised regarding the perception of regulatory overreach and the potential implications for India's reputation as a business-friendly destination. Arbitrary regulations may deter foreign investors and undermine confidence in the regulatory environment, posing challenges for India's economic growth trajectory.

Conclusion:
As the dust settles on RBI's crackdown on currency trading, the repercussions of these measures remain uncertain. While intended to foster stability and curb speculative excesses, the regulatory intervention poses challenges and uncertainties for market participants. Moving forward, stakeholders must navigate this evolving landscape with prudence and vigilance, mindful of the broader implications for India's financial ecosystem and its global standing.

Navigating Section 29A: Professional Insights into Due Diligence under IBC

Contributed by:
CA. IP. Jigar Bhatt



In the dynamic and complex landscape of corporate insolvency, the due diligence surrounding Section 29A of the Insolvency and Bankruptcy Code, 2016 ("IBC") has emerged as a critical function for Resolution Professionals ("RPs"). Section 29A delineates specific disqualifications that bar certain entities and individuals from submitting resolution plans, thereby ensuring only credible and eligible applicants participate in the resolution process. This stringent eligibility criteria necessitate meticulous scrutiny and thorough due diligence by RPs to ensure compliance, mitigate risks, and uphold the integrity of the insolvency proceedings. Consequently, this facet of due diligence presents a significant professional opportunity for Professionals, who can adeptly navigate legal complexities, verify applicant credentials, and safeguard the interests of creditors and stakeholders within the IBC framework.

Importance and Purpose of Section 29A

Section 29A was introduced to prevent the misuse of the IBC by promoters and related parties responsible for a company's financial distress. The provision lists criteria disqualifying certain individuals and entities from submitting a resolution plan, ensuring that the insolvency process is not compromised by those who have previously mismanaged the corporate debtor.

The provision addresses:

- **Undischarged Insolvents**: Those still undergoing insolvency proceedings.
- **Wilful Defaulters**: Entities classified by the Reserve Bank of India.
- **Promoters with NPAs**: Individuals associated with accounts classified as NPAs for over a year.
- **Convicted Individuals**: Persons convicted for certain offenses.
- **Disqualified Directors**: Those barred under the Companies Act, 2013.
- **Securities Market Violators**: Individuals prohibited by SEBI.
- **Mismanagement and Fraud**: Promoters involved in fraudulent or undervalued transactions.
- **Unpaid Guarantors**: Those who guaranteed the debts of an insolvent corporate debtor and have not fulfilled their obligations.

Need for Section 29A

Section 29A serves to maintain the credibility of the insolvency process by disqualifying individuals who may adversely affect the resolution process due to their past misconduct. This helps protect the interests of creditors and promotes the objective of reviving viable companies through a fair and transparent resolution process.

Hon'ble NCLT Mumbai Bench's ruling in the Blue Frog Media case reinforces the importance of Section 29A and the responsibility of resolution professionals to ensure compliance through diligent and comprehensive verification processes. This decision acts as a safeguard against the potential abuse of the insolvency framework, ensuring that the process benefits the creditors and the distressed corporate debtor rather than enabling a backdoor entry for those who contributed to the distress.

The ruling in the case of M/s Blue Frog Media Private Limited has significant implications for the application of Section 29A of the Insolvency and Bankruptcy Code, 2016. The adjudicating authority scrutinized the eligibility of resolution applicants, reinforcing the necessity for strict compliance with the disqualification criteria outlined in Section 29A. This case underscored the judiciary's commitment to maintaining the integrity of the insolvency resolution process by ensuring that only credible and qualified applicants are allowed to participate. It

highlighted the importance of thorough due diligence by Resolution Professionals (RPs) to verify the eligibility of applicants, emphasizing that any lapse in this responsibility could undermine the objectives of the IBC. The decision also illustrated the judiciary's role in interpreting and enforcing the statutory provisions of the IBC to prevent any potential misuse or circumvention of the insolvency resolution framework.

The order of Hon'ble NCLT Mumbai in the M/s Blue Frog Media Private Limited case serves as a crucial reminder for resolution professionals to meticulously examine the material presented during the due diligence of a prospective resolution applicant. It emphasizes that relying solely on the documents and affidavit(s) furnished by the applicant is inadequate. Resolution professionals must request clarifications, additional documents, or information from prospective applicants to fulfil the objectives of the Insolvency and Bankruptcy Code and safeguard creditors' interests.

While Form H of Schedule I of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 ("CIRP Regulations") requires a certification from the resolution professional stating that an affidavit regarding the applicant's eligibility under Section 29A of the IBC has been obtained and is in order, the NCLT Mumbai's decision underscores that this submission alone is insufficient. The court implicitly referenced Regulation 36A(8) of the CIRP Regulations, concluding that effective due diligence is mandatory. Resolution professionals must conduct thorough due diligence within the prescribed timelines to ensure that the prohibitive criteria under Section 29A of the IBC are not met by any resolution applicant. This ruling reinforces the need for rigorous scrutiny and verification processes to maintain the integrity and objectives of the insolvency resolution process.

Conducting Section 29A Due Diligence: Key Steps and Best Practices

Extensive Public Record Review and Research:

- The due diligence process for Section 29A compliance extends beyond basic public domain searches.
- It requires a comprehensive review of public records, legal data repositories and research both within India and globally.
- Advanced research techniques and access to multiple global proprietary databases in English and native languages are essential to identify defaults and violations.

Independent Interaction and Communication:

- Effective Section 29A due diligence necessitates independent interactions with various stakeholders.
- This helps ensure thoroughness and accuracy in verifying the eligibility of resolution applicants.

Deep Skill-Sets for Timely Due Diligence:

- Resolution professionals must leverage specialized skill-sets and expertise for due diligence on resolution applicants and their connected persons.
- The due diligence process may involve scrutinizing hundreds of connected persons across multiple geographies and jurisdictions.
- Ensuring completion within the required timelines is critical, and engaging an independent advisor may be necessary for complex cases.

Identification of Connected Persons:

- Resolution Professional is required to scrutinise various records and documents for identifying the connected persons.
- Resolution applicants must provide an affidavit listing their connected persons.
- During due diligence, any unidentified entities or individuals that emerge must be promptly verified to determine if they qualify as connected persons and should be included in the due diligence scope.

Identification of Red Flags and Reporting:

- Conduct thorough public domain research, including media, regulatory, litigation, bankruptcy, and credit default checks across jurisdictions in English and native languages.
- Identify and review any red flags that may indicate potential ineligibility under Section 29A.
- The resolution professional must prepare a detailed due diligence report based on these findings for the Committee of Creditors ("CoC").

In conclusion, performing Section 29A due diligence presents substantial professional opportunities for professionals. This process requires extensive research and analysis, stakeholder interaction, and the identification and verification of connected persons. It also involves the identification and reporting of red flags, necessitating advanced research techniques and a deep understanding of legal and regulatory frameworks. By leveraging these opportunities, professionals can enhance domain of their services, ultimately contributing to the effective implementation of the IBC and the protection of creditors' interests.

Understanding SEZ Units' RCM Exemption: Key Legal Insights and Litigation

Contributed by:
CA. Tarjani Shah

A Special Economic Zone (SEZ) is a specifically delineated a duty-free enclave, deemed to be foreign territory for trade operations, duties, and tariffs. The Reverse Charge Mechanism (RCM) requires the recipient of goods or services to pay and deposit GST with the government, instead of the supplier. Normally, the receiver pays GST to the supplier, who then deposits it with the government.

However, services imported by SEZs are exempt from IGST as per **Notification No. 18/2017 - IT (R) dated 05.07.2017**. This exemption applies to services imported for authorized operations within the SEZ. A question arises whether RCM is applicable to this scenario. Although the matter is not free from litigation, let's delve into the details to determine if SEZ units are exempt from tax under RCM.

Whether RCM provisions are applicable to SEZ Units?

This article discusses the legal aspects and litigation concerning the applicability of the Reverse Charge Mechanism (RCM) and IGST exemptions for services imported by SEZ units for authorized operations.

A cohesive reading of the CGST/IGST Act along with the SEZ Act/Rules reveals several key points:

- **Authorized Operations in SEZs:** Units set up inside SEZs carry out authorized operations listed in the Letter of Approval (LOA) issued by the Development Commissioner. The SEZ laws do not levy taxes on these authorized operations, as the SEZ Act, 2005 lacks any charging section.
- **Geographical Applicability:** Section 1(2) of the SEZ Act, 2005 applies to the entire territory of India. Similarly, Section 1(2) of the CGST Act, 2017 extends GST applicability to services rendered within India.
- **Inter-State Supplies**: Section 5 of the IGST Act, 2017 mandates IGST on the value of inter-state supplies of goods and services.
- **Taxable Territory:** The taxable territory includes regions where the provisions of the CGST Act, 2017 apply.
- **Overriding Provisions:** Section 51 of the SEZ Act, 2005 states that SEZ provisions override any inconsistent laws. Section 53 deems SEZs as territories outside the customs territory of India for authorized operations.
- A cumulative reading of Sections 51 and 53 indicates that SEZ territories are considered outside the Customs territory of India for authorized operations.
- **Benefits and Exemptions:** Section 26(2) of the SEZ Act, 2005 lists fiscal benefits extended to SEZ units and developers, including exemptions from service tax on taxable services provided to SEZ units/developers. This exemption extends to the context of GST.

Liability of RCM

Notification No. 10/2017-IT(Rate) dated 28.06.2017 states that the recipient of specified services is liable to pay GST under the reverse charge mechanism (RCM). However, this applicability to SEZ units requires further examination.

Legislative Intent and Zero-Rated Supplies

The legislature's intent is not to tax "zero-rated supplies" to SEZ units or SEZ developers, which are zero-rated under Section 16(1) of the IGST Act, 2017.

SEZ Rules and GST Exemptions

- Rule 5(5)(a) of the SEZ Rules, 2006, provides exemptions from State and local taxes for SEZ units.

- Rule 30(1) allows Domestic Tariff Area suppliers to clear services to SEZ units as zero-rated supplies.
- Notification No. 18/2017-Integrated Tax (Rate) dated 5.7.2017 exempts services imported by SEZ units for authorized operations from IGST. Receipt of services by SEZ units from DTA is treated as imports, and Section 51 of the SEZ Act, 2005, overrides inconsistent laws.

Clarifications

1. TRU, CBIC, vide letter F. No. 334/335/2017-TRU dated 18.12.2017, clarified that SEZ units can procure services under RCM without paying integrated tax if they furnish a Letter of Undertaking (LUT). The intention of the legislature is not to tax zero-rated supplies to SEZ units or developers.
2. On a similar issue, wherein clarification was sought , as to whether the SEZ unit is liable to pay GST in respect of legal services, sponsorship services etc received by an SEZ unit in IFSC, Gandhinagar, from a unit in DTA, which are chargeable to GST under RCM, Tax Research Unit, CBIC, New Delhi, clarified as under:

   "3. Since the intention of the Legislature is not to tax supplies to a unit in SEZ or a SEZ Developer which have been zero rated under clause (b) of section 16(1) of the IGST Act, by virtue of deeming provision under section 5(3) of the IGST Act, 2017, levy for procurement of input services specified under notification No. 13/2017-CT (Rate) falls upon the unit in SEZ or the SEZ developer. It is, therefore clarified that a unit in SEZ or the SEZ developer can procure such services, where they are required to pay GST under reverse charge, without payment of integrated tax provided the actual recipient, i.e. unit in SEZ or SEZ developer, furnishes a Letter of Undertaking in place of a bond as specified in condition no. (i) in para 1 of Notification No. 37/2017 —Central Tax dated 4.10.2017. The actual recipient of service is the deemed supplier/registered person for the purpose of fulfilling other conditions in para 1 of notification ibid including the manner of furnishing of Letter of Undertaking."

FAQ cannot override the Notification:

The said FAQ is reproduced below for ease of reference:-

"Q 41. Whether SEZ unit or developer needs to pay IGST when it received supplies which are under reverse charge mechanism?

Ans. All supplies to SEZs are zero rated. However, the suppliers are given two options. In this case, the supplier is not liable to pay GST as the supply is under reverse charge mechanism. The recipient is considered as deemed supplier. Therefore, SEZ has to pay GST in this case."

It can be noted from the CBIC Clarification dated 15.12.2018 that a SEZ unit recipient of RCM services is required to pay IGST on procurement of supplies on which GST is required to be paid by the recipient. However, since the above clarification was issued as FAQ by the CBIC, it can be interpreted as being merely clarificatory in nature and not binding. Hence the Notifications have a legal force as the same are issued by exercising the powers conferred under the Act and the Notification No 18/2017-IGST (Rate) dated 05.07.2017 is issued in exercise of powers conferred under sub-section (1) of section 6 of the Integrated Goods and Service Tax Act, 2017.

Several legal cases provide clarity on RCM exemptions for SEZ units:

- Waaree Energies Limited (GST AAR Gujarat): This case clarified that SEZ units are exempt from GST liability under RCM for specified services if they comply with LUT or bond requirements.

Other Relevant Cases:

- Damodar J. Malpani vs. CCE: 2002 (146) ELT 483 (SC)
- Ralli Engineering Ltd. vs. UOI: 2004 (4) TMI 590 —Guj. HC
- Steel Authority of India vs. CC, Bombay: 2000 (115) ELT 42 (SC)
- M/s Portescap India Pvt Ltd.: Order No. MAH/AAAR/DS-RM/15/2022-23 dated 13.01.2023
- Darshan Boardlam Ltd. vs. Union of India
- GMR Aerospace Engineering Limited vs. Union of India: 2019 (8) TMI 748

RCM and SEZ: An evolving tax tale – where will the next chapter lead?

The legal framework and interpretations surrounding SEZ units and the applicability of RCM highlight that SEZ units are generally exempt from GST liability under RCM for specified services. This exemption is subject to compliance with furnishing an LUT or bond, ensuring SEZ units can operate without the burden of GST on imported services for authorized operations. However, as litigation continues to evolve, will future rulings further clarify or complicate the tax obligations for SEZ units under the RCM? How will the balance between legislative intent and practical enforcement shape the future of SEZ operations in India?

Incentives to Export Finance : Gold Card Scheme 2005

Contributed by:
CA. Rahul Sharma

Ref: RBI Circuler DBOD.IECS.No. 13 /04.02.02 (Gold Card)/2004-05

Background:

Exports play a crucial role in a developing economy like India which attaches considerable importance to export promotion. As a part of the overall strategy of export promotion measures, the Reserve Bank of India has taken various steps to ensure expeditious and timely provision of financial assistance to the export sector at competitive rates of interest and remove procedural hassles. With a view to further simplifying access to bank credit by exporters especially small and medium exporters and make it borrower friendly in terms of procedure and credit terms, the **Minister for Commerce & Industry had proposed issuance of a Gold Card to creditworthy exporters with good track record for easy availability of export credit on best terms (vide Exim Policy 2003-04)**. Accordingly, a Gold Card Scheme (Scheme) has been worked out in consultation with select banks and exporters. The Scheme envisages certain additional benefits based on the record of performance of the exporters. The Gold Card holder would enjoy simpler and more efficient credit delivery mechanism in recognition of his good track record.

Proposed Scheme in Short:

RBI, in consultation with select banks and exporters, has announced as Gold Card Scheme in 2005. The Scheme envisages certain additional benefits based on the record of performance of the exporters. The Gold Card holder would enjoy simpler and more efficient credit delivery. The salient features of the scheme are :

1. Banks would clearly specify the benefits they would be offering to Gold Card holders;
2. Requests from card holders would be processed quickly by banks within 25 days / 15 days and 7 days for fresh applications / renewal of limits and adhoc limits , respectively;
3. 'in-principle' limits would be set for a period of 3 years with a provision for stand-by limit of 20 per cent to meet urgent credit needs;
4. Card Holders would be given preference in the matter of granting of packing credit in foreign currency;
5. Banks would consider waiver of collaterals and exemption from ECGC guarantee schemes on the basis of card holder's creditworthiness and track record, and
6. All creditworthy exporters, including those in small and medium sectors, with good track record would be eligible for issue of Gold Card by individual banks as per the criteria's to be laid down by the letter. Letter IECD No. 12 /04.02.02/Gold Card/2003-04 explains as follows:
    a. All credit worthy exporters with good track record in the opinion of the individual financing bank will be eligible.
    b. Exporters whose accounts have been classified as 'Standard' continuously for a period of three years and there are no irregularities / adverse features in the conduct of the accounts may be considered as having good track record.
    c. The scheme may not be applicable to those exporters who are blacklisted by ECGC or included in RBI's defaulter's list/ caution list or making losses for the past 3 years or having overdue export bills in excess of 10 per cent of the current year's turnover.
    d. A Gold Card under the Scheme may be issued to all eligible exporters including those in the

small and medium sectors who satisfy the laid down conditions.

7. Gold Card under the Scheme may be issued to all eligible exporters including those in the small and medium sectors who satisfy the laid down conditions.
8. The scheme will not be applicable for exporters blacklisted by ECGC or having overdue bills in excess of 10% of the previous year's turnover.
9. Gold Card holder exporters, depending on their track record and creditworthiness, will be granted better terms of credit such as finer rates of interest than those extended to other exporters by the bank.
    a. The applicable rate of interest to be charged under the Gold Card Scheme will not be more than the general rate for export credit in the respective bank and within the ceiling prescribed by RBI. In keeping with the spirit of the Scheme banks will endeavour to provide the best rates possible to Gold Card holders on the basis of their rating and past performance.
    b. In respect of the Gold Card holders , the concessive rate of interest on post-shipment rupee export credit applicable upto 90 days may be extended for a maximum period upto 365 days.
10. The charges schedule and fee structure in respect of services provided by banks to exporters under the Scheme will be relatively lower than those provided to other exporters.
11. The sanction and renewal of the limits under the scheme will be based on a simplified procedure to be decided by the banks. Taking into account the anticipated export turnover and track record of thee exporter the bank may determine need based finance with a liberal approach.
12. A stand by limit of not less than 20% of the assessed limit may be additionally made available to facilitate urgent credit needs for executing sudden orders. In the case of exporters of seasonal commodities, the peak and off-peak levels may be appropriately specified.
13. In the case of un anticipated export orders, norm for inventory may be relaxed, taking into the account the size and nature of the export order.
14. The facility of further value addition to their cards through supplementary services like ATM, Internet Banking, International debit/credit cards may be decided by the issuing banks.
15. Gold Card holders, on the basis of their track record of timely realization of export bills, will be considered for issuance of foreign currency credit cards for meeting urgent payment obligations, etc.
16. Banks may ensure that PCFC requirements of the Gold Card holders are met by giving them priority over non-export borrowers with regard to granting loans out of their FCNR (B), RFC, etc. funds. (Banks may not grant such loans from their overseas borrowings under the 25% window of overseas borrowings.)

Special Provisions for Sanction of Export Credit proposals:

1. The maximum time frame fixed for sanction of fresh/enhanced export credit limits is 45 days from the date of receipt of credit limit application. In case of renewal of limits and sanction of ad hoc credit facilities, the time taken by banks should not exceed 30 days and 15 days respectively, other than for Gold Card holders. Banks should adopt a flexible approach in disposing of genuine request for any ad hoc facilities.
2. No additional interest is to be charged in respect of ad hoc limits granted by way of pre-shipment/post – shipment export credit.
3. Banks should simplify the application form and reduce data requirements from exporters for assessment of their credit needs. Banks should adopt any of the methods, viz. Projected Balance Sheet Method, Turnover method or Cash Budget method, for assessment of working capital requirements of their exporter-customers, whichever is most suitable and appropriate to their business operations.
4. Bank to provide 'Line of Credit' normally for one year (can consider for longer periods upto 3 years) which is reviewed annually. In case of delay in renewal, the sanction of limits should be allowed to continue uninterrupted and urgent requirements of exporters should be met on ad hoc basis.
5. Banks should not insist on submission of export order or L/C for every disbursement of pre shipment credit, from exporters with consistently good track record. Instead, a system of periodical submission of a statement of L/Cs or export orders in hand should be introduced.

Banks should ensure that exporters' credit requirements are met in full and promptly at competitive rates. The guidelines must be implemented, both in letter and spirit, so as to bring about a perceptible improvement in credit delivery and related banking services to export sector. Banks should also address the deficiencies, if any, in the mechanism of deployment of staff in their organizations to eliminate the bottlenecks in the flow of credit to the export sector.

Other References : 1. IECD No 12/ 04.02.02/2003-04 (18.5.2004) Gold Card Scheme for Exporters

2. IECD No 13/ 04.02.01/2003-04 (18.5.2004) Rupee Export Credit Interest Rates for Gold Card holder Exporters

3. IECD No 10/ 04.02.01/2003-04 (24.4.2004) Rupee Export Credit Interest Rates

Exploring Global Markets: Trading US Securities and Financial Instruments via AIF in GIFT-IFSCA

Contributed by:
CA. Swetang Pandya

In recent years, the global financial landscape has witnessed a significant shift towards diversification and international investment opportunities. With advancements in technology and regulatory frameworks, investors are increasingly exploring avenues beyond their domestic markets to optimize their portfolios. One such avenue that has gained traction is trading in US securities and financial instruments through Alternative Investment Funds (AIF) within registered Foreign Portfolio Investors (FPIs) in the International Financial Services Centre (IFSC) at Gujarat International Finance Tec-City (GIFT-IFSCA).

The GIFT-IFSCA, located in Gujarat, India, has emerged as a prominent hub for international finance, offering a conducive environment for global investors to access a wide range of financial products and services. The establishment of the IFSCA has further bolstered its credibility, providing a robust regulatory framework that ensures investor protection and promotes market integrity.

Trading in US securities and financial instruments through AIF in registered FME (Foreign Portfolio Manager) within GIFT-IFSCA presents several compelling advantages and ease of access for investors:

1. Diversification: Investing in US securities allows investors to diversify their portfolios across different asset classes, sectors, and geographic regions, reducing overall risk and enhancing potential returns. Through AIFs, investors can gain exposure to a diverse range of US stocks, bonds, ETFs, and other financial instruments, tailored to their investment objectives and risk preferences.

2. Access to Global Markets: GIFT-IFSCA provides seamless access to global markets, enabling investors to trade US securities and financial instruments with ease and efficiency. The platform offers state-of-the-art infrastructure, connectivity, and technology solutions, facilitating real-time trading and settlement of transactions.

3. Regulatory Compliance: Trading through registered FME in GIFT-IFSCA ensures compliance with regulatory requirements and international standards. The IFSCA's robust regulatory framework, coupled with stringent oversight and supervision, instills confidence among investors and fosters a transparent and secure trading environment.

4. Tax Benefits: GIFT-IFSCA offers a tax-efficient regime for trading in US securities, with favorable tax treatment on capital gains, dividends, and interest income. Investors can benefit from exemptions or reduced tax rates on income generated from investments in US markets, enhancing overall investment returns.

5. Risk Management: AIFs within GIFT-IFSCA employ sophisticated risk management strategies to mitigate market risks and preserve capital. Fund managers utilize advanced analytics, modelling techniques, and risk assessment tools to monitor portfolio exposures and optimize asset allocation, thereby safeguarding investor interests.

6. Professional Expertise: Investors gain access to seasoned fund managers and investment professionals with extensive experience in global financial markets. AIFs in GIFT-IFSCA employ rigorous due diligence processes and investment strategies tailored to capitalize on emerging opportunities and navigate market fluctuations effectively.

In conclusion, trading in US securities and financial instruments through AIF in registered FME within GIFT-IFSCA offers investors a gateway to global markets with unparalleled ease, efficiency, and regulatory compliance. As the international financial landscape continues to evolve, GIFT-IFSCA remains at the forefront of innovation, providing a dynamic platform for investors to seize opportunities and maximize returns in the ever-changing world of finance.

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