KATALYST
ADVISORS LLP

# Katalyst Kaleidoscope

August 2018: Tax and Regulatory Highlights

## A. Income-tax Highlights

1. **Deferral of Reporting of General Anti-Avoidance Rules ("GAAR") in Tax Audit Report[1]:** CBDT had amended the format of Form 3CD (i.e. Tax Audit Report)[2] to include disclosure of transactions which are impermissible avoidance arrangement ("IAA") under Chapter X-A of the Income-tax Act, 1961 ("ITA") (i.e. GAAR) under Clause 30C. However, the disclosure of the same has been kept in abeyance till 31 March 2019.

   *Katalyst Comments: Reporting of transactions that could be construed as IAA casted an immense onus on the tax auditor; deferral of the same is certainly a partial relief for the tax auditors. However, reporting of what could be construed as an IAA, being subjective in nature, would still lay the burden on the tax auditor when such reporting in the tax audit report is re-notified.*

2. **Conversion of a partnership firm into a company – capital gains tax liability in the hands of partners?** The Supreme Court[3] recently held that where the assets of the partnership firm were firstly revalued and such revaluation was credited to the partners' accounts, and thereafter, the said partnership firm was converted into a company, the said assets were never distributed to the partners nor was it a case of dissolution of the firm and therefore, mere revaluation should not result in capital gains in the hands of the partners since there is no "transfer" as defined under the ITA.

   *Katalyst Comments: Upholding the basic tenets of "real income theory", the Supreme Court reaffirmed the fact that there cannot be any capital gains in the hands of the partners on revaluation of assets of the firm notwithstanding that such firm was converted into a company.*

3. **"Goodwill" upon taking over a business of partnership firm – whether depreciable?** In a case concerning takeover of business of a partnership firm by a company and consequent recording of goodwill by the successor company on the difference between value of shares issued to the partners of the partnership firm and the book value of assets of the partnership firm, the question put forth before the Special Bench of Delhi ITAT was whether goodwill is a depreciable asset, the ITAT observed that[4] *genuine* goodwill is indeed a depreciable asset following the decision of the Supreme Court in the case of Smifs Securities Limited[5].

   However, the Special Bench sent the matter back to the Division Bench on the grounds that since the business of partnership firm has been "succeeded" by the company, there is no "transfer" of goodwill in real sense and that the valuation of goodwill was erroneous.

   *Katalyst comments: While it is reassuring to see that that Special Bench upheld the principle established by the Supreme Court in relation to depreciation on goodwill, the question as to whether there was actually a transfer of goodwill in real sense in case of succession of business was not asked and therefore, remained unanswered. Therefore, in cases of amalgamation/ demerger, where the businesses are succeeded by the transferee company, it would be interesting to see the decision of the Division Bench on whether there is transfer of goodwill in real sense or not and*

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1 CBDT Circular No. 6/ 2018 dated 17th August 2018
2 Notification No. GSR 666(E) dated 20th July 2018
3 CIT v. Ravishankar R. Singh (Income Tax Appeal No. 207 of 2015)
4 CLC & Sons (P.) Ltd. v. ACIT [2018] 95 Taxmann.com 219
5 [2012] 348 ITR 302

*therefore, if the answer is in the negative, may impact depreciation on goodwill arising out of business restructuring.*

4. **Handing over "possession" to the developer – whether transfer?** The Calcutta High Court[6] ruled that mere handing over possession of land by the owner to a developer under a Development Agreement would not amount to transfer u/s 2(47)(v) of the ITA and therefore, should not be subject to capital gains tax u/s 45 of the ITA. The High Court further observed that when the owner of a land enters into an agreement with a developer for the purpose of developing the land, the terms of the contract would indicate when the transfer would take place and it would be a rare situation wherein the transfer would be simultaneous with the execution of the agreement especially when the owner retains a certain right in the constructed area.

   *Katalyst comments: This is a welcome ruling especially from the perspective of a corporate assessee entering into a development agreement since a scheme of deferral of capital gains to the time where completion certificate was introduced[7] in a development agreement entered into by an individual/ HUF owing land; however, non-individual/ HUF entities were left out of the scope of the said deferral of capital gains tax.*

5. **Where no exempt income earned during a year – whether disallowance u/s 14A warranted?** The Supreme Court recently held that[8] where, in a particular assessment year, no exempt income was earned by the assessee, there could not be any disallowance u/s 14A of the ITA of the any "deemed" expenditure presumed to be made while earning the said exempt income.

   *Katalyst Comments: In the context of various issues surrounding section 14A of the ITA, the issue of whether any disallowance under the said section is warranted in case where no exempt income is earned is now put to rest by the Supreme Court.*

6. **Business losses of a closely held company which is sold to a widely held company – whether permitted to be carried forward u/s 79 of the ITA?** The Mumbai ITAT recently held that[9] the business losses of a company which is closely held would not be carried forward and available for set off upon acquisition of more than 51% of the voting rights of such closely held company u/s 79 of the ITA notwithstanding the fact that such acquisition was by a widely held company and that at the time of set-off of such losses at the end of the assessment year, the said company was held by a widely held company.

   *Katalyst Comments: This decision espouses the intent of the legislature that section 79 of the ITA was essentially an anti-abuse provision to curb the practice of transfer of losses by way of transfer of shareholding excess of 51%. This decision would especially be relevant in today's time where many listed companies seek to acquire various unlisted companies including startups which have brought forward business losses and which may lapse upon acquisition. However, subject to conditionalities u/s 72A of the Act, the said business losses would nonetheless continue to be available in case of an amalgamation of a closely held company with another company (either closely held or otherwise). Further, any change in shareholding in excess of 51% would not have any impact on transfer of unabsorbed depreciation of such closely held company and should be available for set-off even post acquisition.*

[6] PCIT v. Infinity Infotech Parks Limited. [TS-404-HC-2018(CAL)]
[7] Insertion of section 45(5A) vide Finance Act, 2017
[8] CIT v. Chettinad Logistics Pvt. Ltd. [2018] 95 taxmann.com 250
[9] ITO v. Edelweiss Commodities Services Ltd. TS-377-ITAT-2018(Mum)

7. **Buyback of shares from a Mauritian entity at an abnormally high price – whether dividend?** In a recent ruling by the Karnataka High Court[10], the High Court observed that any buy back of shares at an abnormally high price, albeit not subject to Dividend Distribution Tax ("DDT") u/s 115-O since a buy back is specifically carved out as an exception to the definition of dividend u/s 2(22) of the ITA, warrants an enquiry by the Assessing Officer into the bona fides of the fair market value and therefore, ascertain whether such price paid could be treated as dividend u/s 2(22) of the ITA and therefore, subject to DDT in the hands of the company itself.

   It is pertinent to note that the shareholder whose shares were bought back was a Mauritius company and therefore, any capital gains arising on buy back was subject to exemption under the India Mauritius DTAA.

   *Katalyst Comments: With the introduction of section 115QA of the ITA, any buyback is subject tax in the hands of the company buying back the shares (akin to DDT) and is exempt in the hands of the shareholders and therefore, this judgment would only impact those transactions which were undertaken prior to introduction of section115QA of the ITA with effect from 1 June 2013. It is further pertinent to note that the tax department, while not challenging capital gains exemption in the hands of the shareholder under the India Mauritius DTAA, has sought to rewrite the transaction as distribution of dividend and subjecting the same to DDT in the hands of the investee company itself.*

8. **Grant of stay of demand of an amount of lesser than 20% - whether permissible?** The Supreme Court[11] has held that the Commissioner is not bound by the Office Memorandum issued by the CBDT which stipulates that a minimum of 20% of the disputed tax demand shall be deposited by taxpayers. Therefore, the Supreme Court further held that depending on the merits of individual cases, the Commissioner can grant stay of demand of an amount which is lower than 20% of the disputed tax demand.

   *Katalyst comments: This decision reiterates the underlying principle that the duty of the tax authorities is not merely to discharge their obligations perfunctorily by following the Office Memorandum issued by the CBDT, but to take into consideration the merits of each case to arrive at the quantum of amount while granting stay of demand.*

## B. Corporate Law Highlights

1. **MCA makes New Private Placement Provisions prescribed under Companies (Amendment) Act, 2017 ('Amendment Act') effective[12]:** S. 10 of the Amendment Act replaces the existing provisions in relation to private placement prescribed under S. 42 of the Companies Act, 2013 ("Cos Act"). Key highlights of the new Private Placement Provisions are as under:

   - The Amendment Act expressly provides that the private placement offer and application shall not carry any right of renunciation.

[10] Fidelity Business Services India (P.) Ltd. v. ACIT [2018] 95 taxmann.com 253
[11] PCIT v. LG Electronics India (P.) Ltd Civil Appeal No. 6850 of 2018
[12] MCA Notification S.O. 3921(E) dated 7 August 2018

*Katalyst Comments: Only a select group of people identified by the Board of Directors would be eligible to subscribe to the private placement offer without having the right to renounce the offer in favor of persons to whom the private placement offer was not made.*

- The Amendment Act has removed the restriction of making fresh offer or invitation unless the allotments with respect to existing offer or invitation have been completed or withdrawn.
  *Katalyst Comments: This amendment would lead to providing flexibility to companies seeking to raise fresh funds pending allotment under the earlier private placement offer.*

- The Amendment Act restricts utilization of funds received from identified persons unless allotment is made and requisite forms are filed with the Registrar of Companies. Further, the Amendment Act also provides for filing of return of allotment within 15 days (as opposed to 30 days earlier) with the Registrar of Companies.

2. **MCA amends[13] Companies (Management and Administration) Rules, 2014 ("Management and Administration Rules"):** MCA inserted a proviso in Rule 22 of the Management and Administration Rules providing that all the items which are required to be transacted by way of postal ballot (such as approval for buyback, variation in rights of shareholders, sale of whole or substantially whole of the undertaking, extending loans in excess of specified limited u/s 186 of the Act, etc.) may be transacted at a general meeting provided that e-voting facility is provided to the shareholders.

   *Katalyst Comments: This amendment aligns the provisions enforced u/s 29 of the Amendment Act which provided for a similar amendment to Section 110 of the Act (i.e. items prescribed for postal ballot could now be dealt with in a general meeting with e-voting facility).*

3. **NCLAT interprets[14] "reduction of capital" vis-à-vis rectification in register of members leniently:**

- Relisys Medical Devices ("Relisys") had wrongly allotted excess equity shares upon conversion of Compulsorily Converted Debentures ("CCD") to a non-resident and had been directed by the RBI to unwind the excess share allotted in response to a compounding application filed by Relisys with the RBI.

- Therefore, Relisys filed a petition with the National Company Law Tribunal ("NCLT") to rectify the register of members u/s 59 of the Act and classify the monies so received as share premium. NCLT dismissed the petition observing that such rectification would tantamount to reduction of share capital.

- On appeal, NCLAT allowed the appeal observing that change in composition between the security premium account and paid up share capital will not amount to reduction in capital as both the components are treated as paid up capital.

*Katalyst Comments: This is a welcome judgment by the NCLAT since NCLAT took a purposive interpretation of the provisions of the Act, thereby, resolving the undue hardship faced by the appellant to rectify an RBI-directed rectification. This example could be considered as a step towards an integrated enforcement of various regulatory laws which is the need of the hour.*

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[13] MCA Notification G.S.R. 560(E) dated 13th June 2018
[14] Relisys Medical Devices Ltd. v. D. Raju Reddy, Company Appeal (AT) No. 387 of 2017, dated 23.05.2018, NCLAT

## C. Securities' Law Highlights

1. **SEBI issues Informal Guidance[15] interpreting conversion of a company into LLP as "succession" under SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 2011 ("Takeover Code"):** SEBI purposively interpreted the meaning of the term "succession" in the context of conversion of a company into LLP whereby the shares of a listed company held by the company would be vested upon the LLP upon conversion. The said interpretation enables conversion of company into LLP to come in the fold of "succession" and therefore, be covered within the ambit of general exemption under R. 10(1)(g) of the Takeover Code, thereby, being exempt from the obligation to make open offer under R. 3 of the Takeover Code.

   *Katalyst Comments: Since vesting of shares of a listed company by way of conversion of company into LLP is not specifically covered within the fold of general exemptions under the Takeover Code, any transfer of shares of listed company (in excess of threshold limited for triggering open offer obligation) would trigger open offer obligations. This Informal Guidance, by purposively interpreting the term "succession" in the context of conversion by way of operation law, enabled transfer and vesting of shares of a listed company to an LLP upon conversion without having to make an open offer.*

2. **SEBI issued Informal Guidances[16] to exempt Scheme of Arrangement involving unlisted companies pursuant to which shares of listed companies were sought to be transferred:**

   **Case 1: In the matter of Bhoruka Financial Corporation of India Limited ("Bhoruka")**

   - Under a Composite Scheme of Arrangement, shares of three listed companies held by various promoter companies ("Transferor Companies") is contemplated to be transferred to and vested upon the Transferee Company i.e. BFCIL by way of amalgamation/ demerger of the promoter companies with and into BFCIL. Thereafter, under the same Composite Scheme of Arrangement, the shares of the listed companies so vested would be demerged into three different companies ("Resulting Companies").

   - The Resulting Companies would directly or indirectly be owned and controlled by the same persons who owned and controlled the Transferor companies. Therefore, the question before SEBI was whether exemption from making an open offer under the Takeover Code under R. 10(1)(d)(iii) would be available.

   - R. 10(1)(d)(iii) of the Takeover Code, inter alia, provides for exemption from trigger of open offer in case of a scheme of arrangement not involving the listed company either as a transferor or the transferee company (which is so in the present case) provided, inter alia, that 33% of the voting rights are held by the same persons in the transferee company (i.e. Resulting Companies and BFCIL in the present case) post implementation of the scheme of arrangement who held the entire voting rights prior to scheme of arrangement in the transferor company (i.e. Promoter Group Companies, in the present case).

   - SEBI, after considering the fact, that there would not be any consequential change in the control of the listed company and that the shareholders of the Transferor Companies and

[15] SEBI Informal Guidance dated 23 July 2018 in the matter of India Finsec Limited
[16] SEBI Informal Guidance dated 17 April 2018 in the matter of Bhoruka Financial Corporation of India Limited and SEBI Informal Guidance dated 18 April 2018 in the matter of Jaya Hind Industries Limited

Resulting Companies would ultimately be the same, SEBI issued a "no action letter' confirming that the exemption under R. 10(1)(d)(iii) of the Takeover Code would be available and therefore, there would not be any trigger of Takeover Code.

**Case 2: In the matter of Jaya Hind Industries Limited ("JHI")**

- In a similar case akin to Case 1 above, one of the transferor companies i.e. Jaya Hind Investments Private Limited ("JHIPL") holds ~57% in a listed company. Further, JHIPL also holds ~49% in JHI (which holds 0.08% in the listed company). In turn, JHI also holds ~49% in JHIPL. The balance shareholding in JHIPL and JHI is held by other promoter group companies ("Other Transferor Companies") which hold 0.43% stake in the listed company and JHIPL and JHI, in turn, hold shares of Other Transferor Companies, thereby, creating an inter-locked holding structure. The Firodia family ultimately owns and control JHIPL, JHI and Other Transferor Companies.

- It is contemplated to amalgamation JHIPL and Other Transferor Companies into JHI with a view to consolidate and streamline the promoter holding in the listed company. Pursuant to the amalgamation, shareholding of JHI in the listed company would increase from 0.08% to ~57% and there would be no change in the shareholding of the promoter group as a whole. Therefore, the question before SEBI was whether exemption under R. 10(1)(d)(iii) of the Takeover Code would be available to such a Scheme of Arrangement.

- SEBI, taking into consideration, that the merged JHI would ultimately be controlled by the Firodia Family, provided a "no action letter" confirming that the exemption under R. 10(1)(d)(iii) shall be available to the said Scheme of Arrangement.

*Katalyst Comments: By viewing the Composite Scheme of Arrangements in a wholistic manner, SEBI's interpretation of R. 10(1)(d)(iii) of the Takeover Code should provide a boost to various schemes of arrangement only involving unlisted companies (which in turn hold shares of listed companies) thereby facilitating achievement of various objectives such as streamlining promoter holdings, removal of excess layers, segregating listed companies from a common holding vehicle to different business specific holding vehicles, etc.*

3. **SEBI denies exemption[17] for settlement of shares of a listed company in a trust sans disclosure as promoter for a period of 3 years:**

- In the facts of the present case, the shares of an unlisted company i.e. Max Ventures Investment Holdings Limited ("MVIHL") which in turn holds 31.55% in the concerned listed company, Max Ventures and Industries Limited ("MVIL") (incorporated on 20 January 2015) were proposed to be transferred to Neeman Family Foundation ("Trust") by the promoters. Since, pursuant to the transfer, the Trust would hold more than 50% stake in MVIHL (which in turn holds stake in MVIL), an exemption from trigger of Takeover Code was sought from SEBI.

- SEBI denied the exemption on the grounds that the Trust was not a disclosed promoter in MVIL for a period of 3 years (being the pre-requisite for inter-se promoter transfer under under R. 10(1)(a)(ii) of the Takeover Code for exemption from trigger of open offer) and

[17] SEBI Order dated 10 July 2018 in the application made by Neeman Family Foundation for acquisition of shares of Max Ventures and Industries Limited

therefore, shelter inter-se promoter transfer i.e. transfer of shares of MVIHL (unlisted company in turn holding shares of MVIL) from existing promoters to the Trust shall not be available notwithstanding the applicant's contentions that the trustees and the beneficiaries of the Trust were family members and immediate relatives and that the control and ownership over the listed company would not change post such transfer to the Trust.

*Katalyst Comments: This would be seen as a setback insofar as the settlement of shares in a trust to facilitate succession planning and/ or family arrangement is concerned. With increasing amount of wealth of Indian families being tied up in the form of shares of listed companies (either directly or through investment vehicles), SEBI should come up with a comprehensive policy to facilitate succession of such assets in a smooth manner.*

4. **SEBI Discussion Paper dated 26 July 2018 on Delisting of Equity Shares:** Presently, SEBI (Delisting of Equity Shares) Regulations, 2009 provide for a reverse book building price to discover the price. If the price so discovered is accepted by the promoters, they may purchase the shares at that price (or higher) from shareholders who have tendered the shares and such offer would be successful, if the promoter shareholding reaches 90%. However, low success rate of delisting offers in India was observed mainly attributable to factors such as speculators influencing price discovery, cartelization of certain groups of shareholders to inflate the bid price, etc. Therefore, it is proposed to allow the promoter to make a counter offer for delisting to the shareholders (not less than the book value).

   *Katalyst Comments: With an abysmal rate of success for delisting offers in India, the above amendment may increase the success rate; however, a question arises as to a counter-offer (presumably at a lower price than the bid price by the public shareholders) would be accepted by the public shareholders who had higher bid price in the first place.*

5. **SEBI Consultation Paper dated 24 July 2018 to provide for single set of conditions for reclassification of promoters as public shareholders:** In order to provide for a single set of conditions, it is proposed to have a uniform process for promoter re-classification as under: Step 1) Request from the promoter to be reclassified; ii) Placing such request before the Board of Directors and recommendation to the shareholders; iii) Approval by way of ordinary resolution (with promoter group not eligible to vote) and with a time gap of 6 months between the date of board meeting and the general meeting.

   *Katalyst Comments: With structured approach to reclassification, the said framework, if implemented, should result in ease of promote reclassification.*

## D. Competition Law

1. **Proposed Amendments to Combination Regulations[18]:** In addition to various procedural amendments providing flexibility to CCI and the applicants, the aforesaid proposed amendments seek to restrict the ambit of one of the exemptions from giving notice to CCI provided under Item 1 of the Schedule 1 to Combination Regulations ("Item 1").

[18] The Competition Commission of India (Procedure in regard to the transaction of business relating to Combinations) Amendment Regulations, 2018

Item 1 provides that an acquirer is not required to give notice to the CCI in case where an acquirer acquires shares/ voting rights of the target company solely as an investment or in the ordinary course of business. Further, the said acquisition should not be more than 25% of the total shares or voting rights of the target company and that the acquirer should not acquire the control over the target company pursuant to the acquisition of shares/ voting rights. The said amendments further provide that:

i) the acquirer shall not have any special rights as a shareholder;
ii) acquirer shall not be a member of the board of the target company;
iii) acquirer and target company are not engaged in a similar line of business/ service (directly or indirectly) or in activities at different stages of production chain ("Similar Business Activity");
iv) in case of pooled investment vehicle, which already holds stake in an enterprise having Similar Business Activity, acquisition shall be less than 5% of the total shares/ voting rights of the target company.

*Katalyst Comments: Various funds or strategic investors, albeit holding less than 25% of the voting rights in the target company, have certain affirmative rights that an ordinary shareholder would not have or may have a seat on the board or be engaged in Similar Business Activity, thereby, creating (presumably, under the law) an appreciable adverse effect on competition by way of impacting the business decisions of the target company upon its acquisition. The said amendments seek to vest powers with the regulator to keep check over such transactions.*

## E. Indirect Taxes

1. The Government has issued notifications to reduce the GST of some products post the 28th GST council meet held on July 21, 2018. The key changes in rates and returns are as under:
   - Exemption granted for outward transportation of goods by air & sea has been extended from September 30, 2018 to September 30, 2019[19].
   - Multimode transportation is chargeable to GST @ 12% under the forward charge with full ITC[20].
   - GST on accommodation services will be taxable on the basis of 'transaction value'[21] rather than the 'declared tariff'.
   - GST rate reduced from 28% to 18%[22] on Special purpose motor vehicles, e.g., crane lorries, fire fighting vehicle, concrete mixer lorries, spraying lorries, Works trucks (self-propelled, not fitted with lifting or handling equipment) of the type used in factories, warehouses, dock areas or airports for short transport of goods, washing machine, television sets upto the size of 68 cm, vacuum cleaners.
   - Extension of due date for filing of GST return by an Input Service Distributor ('ISD') for the period July 2017 to August 2018 from July 31, 2018 to September 30, 2018[23]

2. The Government has passed CGST, SGST, UTGST and IGST Amendment Bill, 2018 to amend the GST law for implementation of the following:
   - Increase in turnover limit for opting under composition scheme from Rs. 1 crore to Rs. 1.5 crore

19 Notification no. 15/2018-IGST (Rate) dated July 26, 2018

20 Notification no. 13/2018-CGST (Rate) dated July 26, 2018

21 Notification no. 13/2018-CGST (Rate) dated July 26, 2018

22 Notification no. 18/2018-CGST (Rate) dated July 26, 2018

23 Notification no. 30/2018-CGST dated July 30, 2018

- RCM on supply of goods from unregistered supplier applicable only in case of specified goods for notified registered person
- Changes in negative list to allow the ITC of general insurance, repair and maintenance of motor vehicles, vessels and aircrafts, purchase of motor vehicle for transportation of persons having seating capacity of more than 13 persons, supply of goods and services provided to employees if it is obligatory for the employer etc.
- The below transactions to be treated as 'no supply' under Schedule III. (1) supply of goods from a place in non-taxable territory to another place in non-taxable territory, (2) supply of warehoused goods before clearance for home consumption and (3) High-sea sale
- Maximum cap on pre-deposit for filing an appeal before the Appellate Authority and the Appellate Tribunal fixed to Rs.25 crores and Rs. 50 crores respectively.

3. In case of **Gati Kintetsu Express Pvt. Ltd. vs. Commissioner, Commercial Tax of MP & Ors**[24], the Madhya Pradesh('MP') High court confirmed the penalty of Rs. 1.32 cr for violation of Section 68 of the CGST Act read with Rule 138 of the CGST Rules and MP GST Rules by failing to mention the details of conveyance in Part B of e-way bill during inter-state movement of taxable goods.

   The HC held that the contention of assessee for non-submission of Part B of e-way bill due to technical error with no intention to evade tax, was not justified as no grievance raised either on GST portal or in writing. Also, distance travelled was more than 1200-1300 kms, and therefore, assessee was required to file Part B of the e-way bill before loading the goods and failing to do the same leads to violation of GST laws and rules. In this regard, the hon'ble Supreme Court[25] has held that a notice would be served upon standing counsel for the State of MP.

   *Katalyst Comments: The levy of penalty which is equal to value of goods and tax is harsh and not justified under the GST law. Further, IGST for inter-state movement of goods was already paid and therefore, failure to upload Part B of e-way bill providing the details of vehicle is mainly for tracking the movement of goods to prevent any tax evasion. Although the hon'ble Supreme court held that notice would be served upon standing counsel for the State of MP, suitable amendment in GST law is required to handle this type of cases and avoid the confusion amongst taxpayers.*

4. The Karnataka AAR in the matter of **Columbia Asia Hospitals Pvt. Ltd.**[26] has held that GST is applicable on the activities performed by the employees at the corporate office in course of or in relation to employment such as accounting, other administrative and IT system maintenance for the units located in other states. Further, the corporate office and its units having separate registration are 'related persons' in terms of Section 15 of the CGST Act and supply of goods/services by the corporate office to its units even without consideration is liable to GST.

   *Katalyst Comments: In the instant case, the corporate office has paid GST (as outward supply) on expenses such as rent, travel expenses, consultancy charges, communication expenses etc. attributable to other units located outside Karnataka. However, the Karnataka AAR has held that GST is also applicable on employees' services such as accounting, other administrative and IT maintenance in corporate office for managing 'distinct' units.*

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24 [TS-307-HC-2018(MP)-NT]

25 2018-TIOL-02-SC-GST

26 TS-368-AAR-2018-NT

KATALYST
ADVISORS LLP

# Katalyst Kaleidoscope

August 2018: Tax and Regulatory Highlights

**Do feel free to reach out to us for a detailed discussion on ketan.dalal@katalystadvisors.in**

**Our Offices:**
**Mumbai**
Forbes Building, 3rd Floor,
Charanjit Rai Marg, Fort,
Mumbai – 400001.
Tel: +91 22 4917 1616

**Pune**
#402, Lunkad Sky Vista
New Airport Road,
Viman Nagar,
Pune- 411014.
Tel: +91 20 6749 7700

KATALYST
ADVISORS LLP