KATALYST
ADVISORS LLP

Katalyst Kaleidoscope

August 2019: Tax and Regulatory Insights

A. Income-tax Highlights

1. The Finance (No.2) Bill, 2019 passed in Lok Sabha and Rajya Sabha

The Finance (No. 2) Bill 2019 (the Bill) was introduced by the Finance Minister in the Lok Sabha on 5th July 2019. Subsequently, on 18th July 2019, the amendments to the Bill were tabled in the Lok Sabha by notice of amendments. The amended Bill has been passed by the Lok Sabha on 18th July 2019 and by the Rajya Sabha on 23rd July 2019. As against the expectations of stakeholders, the amended Bill has not provided any change for buy-back tax applicability to listed companies or higher surcharge applicability to FPIs. The key changes have been highlighted as follows:

- **Gifts to non-resident:** The amended Bill has inserted a new clause (viii) in section 2(24) of the IT Act so as to widen the scope of 'income deemed to accrue or arise in India' to include sum of money or specified property situated in India received from a resident on or after 5th July 2019.

- **Non-applicability of section 56(2)(viib) relating to Angel Tax:** Specific reference of Category I AIF in the proposed clause (aa) to Explanation to section 56(2)(viib) has been provided, thereby extending non-applicability of section 56(2)(viib) to all sub-categories of Category I AIFs.

- **Withholding tax on cash withdrawals:** After the budget proposals, there was an ambiguity as to whether the 2% withholding tax on cash withdrawal exceeding INR 10 mn during the fiscal year should be account specific. To provide clarity, this section has been amended to specify that the limit of INR 10 mn shall be aggregate of one or more accounts.

2. Gift by HUF to its individual member not taxable as deemed income u/s 56(2)(vii) even though not covered in 'relative' definition

Chandigarh ITAT in the case of Pankil Garg[1] held that a member of the 'HUF' has a pre-existing right in the family properties. ITAT observed that on division, the share in the estate / capital of the 'HUF' cannot be treated as income of the recipient even if not covered in the definition of 'relative', rather, the same will be a capital receipt in his hands. ITAT opined that (unlike in partnership firms) in the case of an 'HUF', since there is not any determined share of any member in the family property, any amount received by a member of a 'HUF' from property of 'HUF' cannot be said to be more than his share in the property, rather, the same is given to him in the normal course of management of family affairs as is deemed fit or prudent by 'karta' of the 'HUF' and it cannot be said that such an amount received by a member of 'HUF' is the income of the said member.

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[1] Shri Pankil Garg [TS-434-ITAT-2019(CHANDI)]

3. High Court excludes "subsidy" from the definition of income, cannot be included in the definition of income due to retrospective amendment

In the given case[2], the assessee company had received incentives from State Government for setting up new industry and attracting private investment in the industrially backward areas in the form of 'Interest subsidy' and 'Power subsidy'. The assessing officer considered the same to be of revenue in nature and brought the same to tax under the MAT provisions. However, Calcutta HC held that 'Interest subsidy' and 'Power subsidy' received by assessee are in the nature of 'capital receipts' which do not fall within the pre-amended definition of 'income' u/s 2(24) and hence the same needs to be excluded from book profits for MAT purposes u/s 115JB.

Katalyst Comments:
Since the definition of 'income' u/s 2(24) has been amended vide Finance Act, 2015 so as to include 'assistance in the form of a subsidy or grant or cash incentive or duty drawback or waiver or concession or reimbursement by the Central Government or a State Government or any authority or body or agency in cash or kind to the assessee', the above judgement may not be helpful. However, as a matter of principle, High Court has again reaffirmed the key principle that 'capital receipts' cannot be brought to tax for MAT purposes, even if credited to P&L a/c.

4. Equity Oriented Mutual Fund units are not 'shares'; Capital gains not liable to tax in India under Article 13(5) of India-UAE DTAA

The Cochin ITAT in the case of Sri K.E. Faizal[3] held that capital gains arising from sale of units of equity oriented mutual funds are taxable in UAE and not in India under Article 13(5) of India-UAE DTAA; Observes that the term 'share' has not been defined in the subject DTAA as well as IT Act and based on definition of securities under allied laws held that that 'shares' and 'units of a mutual fund' are two separate types of securities and hence, units of equity oriented mutual fund is not akin to a `share' and cannot be taxed in India under Article 13(4) of India-UAE DTAA.

5. Amount received on Singapore subsidiary's liquidation taxable as 'capital gains' in parent's hands u/s 46(2)

Kolkata ITAT in the case of Turner Morrison Limited[4] held that since the assessee-company having received money as shareholder on the liquidation of a Company, Sec 46(2) is clearly applicable and the capital gain or loss is required to be computed by applying the said provision. ITAT also affirmed that the capital gain or loss was chargeable to tax on the date on which the company is wound up or the winding process is complete and not on the date on which the assessee-company received money.

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[2] Ankit Metal & Power Ltd [TS-410-HC-2019(CAL)]
[3] Sri. K. E. Faizal [TS-389-ITAT-2019(COCH)]
[4] Turner Morrison Limited [TS-441-ITAT-2019(Kol)]

6. **No disallowance of expenses incurred in relation to exempt income u/s 14A where an assessee earns share of loss from partnership firm**

   In this case[5], the assessee earned the share of loss from the partnership firm (of which the assessee was a partner) which was debited in the profit and loss account and was excluded from the total income in the computation. Relying on Delhi HC ruling in case of Cheminvest Ltd[6], Bangalore ITAT held that in the absence of any exempt income, there cannot be any disallowance u/s 14A. ITAT also held that the CBDT Circular No.5/2014 dated 11th February 2014 (which clarified that section 14A would apply even when exempt income was not earned in a particular year) cannot override the express provisions of section 14A, read with rule 8D.

7. **Condonation of delay needs to be obtained for filing revised return (pursuant to amalgamation) beyond prescribed time-line**

   In this case[7], assessees had filed revised return u/s 139(5) pursuant to amalgamation, wherein the returns were filed 'manually' beyond the prescribed time limits and without obtaining a condonation of delay from CBDT u/s 119 considering that the Schemes of Arrangement expressly provided for the filing of revised returns beyond the specified time. However, since the condonation of delay was not obtained from the CBDT, Revenue considered the revised returns as invalid.

   On appeal, division bench of Madras HC directed the assessees to comply with the condonation procedure for filing a revised return belatedly and upon such filing, directed Revenue to consider the same in accordance with law. In the context of examining whether the Scheme of Arrangement approved by NCLT is binding on the statutory authorities, HC remarked that the court exercises supervisory jurisdiction and not appellate jurisdiction while sanctioning schemes of arrangement so as to ensure that the scheme is broadly fair and reasonable and not in violation of public policy or law, NCLT only examines whether the scheme is a lawful contract and does not examine the scheme minutely with a 'tooth comb'.

   Katalyst Comments:
   HC has reiterated the principle that approval of the scheme of arrangement by NCLT does not absolve the petitioner companies from the requirements / compliances under the IT Act and are subject to regular scrutiny during the course of assessment proceedings.

8. **Long-Term Capital Loss (LTCL) on sale of securities transaction tax (STT) paid listed shares is eligible to be carried forward even if capital gains are exempt u/s 10(38)**

[5] Chayadeep Enterprises LLP [TS-380-ITAT-2019(Bang)]
[6] Cheminvest Ltd. [TS-504-HC-2015(DEL)]
[7] Dalmia Power Limited [TS-385-HC-2019(MAD)]

Kolkata ITAT in the case of United Investments[8] allowed assessee's claim of carry forward of LTCL arising from sale of STT paid listed shares and rejected Revenue's stand that since specified long term capital gains are exempt u/s 10(38), the corresponding LTCL should be ignored. ITAT affirmed the judicial principle that if a source of income is completely exempt from tax, the set-off and carry forward of loss shall not be available. However, if the exemption applies only to a part of the source of income [such as exemption u/s 10(38)] and/ or is subject to fulfilment of some conditions, the loss from such source of income will be allowed to be set-off and carried forward. ITAT accepted assessee's reliance on Jurisdictional Calcutta High Court in the case of Royal Calcutta Turf Club[9], which was also applied by Mumbai ITAT in case of Raptakos Bret & Co. Ltd[10].

However, it should be noted that the Mumbai ITAT in case of Asia Pacific Performance[11] had rejected set-off of STT paid long term capital loss against taxable gains.

9. Revenue cannot question the commercial wisdom of investors and challenge DCF valuation for the purpose Angel Tax

In this case[12], assessee-company (a closely held start-up company engaged in film production) was in the initial phase of setting up its production business, and had received share premium from three partners/subscribers which included Anand Mahindra, Rakesh Jhunjhunwala and Radhakishan Damani. AO had disregarded assessee's DCF based valuation [supported by CA valuation report] of equity shares on the grounds that the projections did not match with the actual revenue for subsequent years and thereby invoked Sec 56(2)(viib). On appeal, Delhi ITAT remarked that commercial wisdom of the investors who are one of the top investors and businessman of the country, and if they had seen certain potential and accepted this valuation, then how the AO or CIT(A) could question their wisdom, without understanding that strategic investments and risks that have been undertaken for appreciation of capital and larger returns and not simply dividend and interest.

Additionally, with respect to method DCF valuation being adopted, ITAT observed that Section 56(2)(viib) is a deeming provision and one cannot expand the meaning or scope while interpreting such deeming provision. The assessee had an option to compute the value basis DCF method. This was solely at the discretion of the assessee and if one of the prescribed methods has been adopted by the assessee, then AO has to accept the same and in case he is not satisfied, then there is no express provision under the Act or rules, where AO can adopt his own valuation in DCF method or get it valued by some different Valuer.

[8] United Investments [TS-379-ITAT-2019(Kol)]
[9] Royal Calcutta Turf Club[TS-5313-HC-1982(CALCUTTA)-O]
[10] Raptakos Bret & Co. Ltd [TS-326-ITAT-2015(Mum)]
[11] Asia Pacific Performance SICAV [TS-655-ITAT-2013(Mum)]
[12] Cinestaan Entertainment P. Ltd (TS-347-ITAT-2019(DEL)

10. Mumbai ITAT rules that no capital gains on additional FSI made available by the Land Development Control Rules

Mumbai ITAT deletes capital gains addition in the hands of assessee being a co-operative housing society[13] in respect of a re-development agreement with Developer whereby it had authorized the Developer to demolish and reconstruct the new proposed building, after utilizing the entire Floor Space Index (FSI) of the said property as well as maximum permissible Transferable Development Rights (TDR) FSI in respect of the said property. The Developer had paid 50% of the corpus amount as agreed upon execution of the agreement. Noting that possession was not given to the Developer by the assessee society, ITAT opined that no capital asset was transferred as envisaged u/s.2(47)(v) and even if the property is not transferred, there was a right created by the "Land Development Control Rules, 1991" [DCR] attached with the land embedded in it" However, it observed that the additional FSI became available to assessee, only due to operation of DCR and there was no element of cost in acquiring such rights.

11. Unpaid price of a flat sold to a shareholder-director taxable as deemed dividend

The Madras High Court in the case of Bhagavathy Velan[14] ruled that when the assessee, a director in a closely held company holding shares in excess of 10% bought a flat from the employer company with the consideration in the form of a debit to the current account of the assessee, the outstanding balance shall be construed as deemed dividend in the hands of the assessee. The High Court affirmed the decision of the Tribunal basis which dividend need not be distributed in money terms only; it may be distributed by delivery of property or right having monetary value and that the that the payment made to the assessee by the company was rightly brought to tax by the AO as deemed dividend and the addition made by the AO was confirmed.

12. CBDT clarification on Non-resident investor's income from offshore investment routed through AIF[15]

Sec. 115UB(1) provides that the investments made by Category I or Category II AIFs are deemed to have been made by the investor directly. In this regard, CBDT has clarified that "any income in the hands of the non-resident investor from off-shore investments routed through the Category I or Category II AIF, being a deemed direct investment outside India by the non-resident investor, is not taxable in India u/s 5(2) of the Act". CBDT also clarified that loss arising from the off-shore investment relating to non-resident investor, being an exempt loss, shall not be allowed to be set-off or carried-forward and set off against the income of the Category I or Category II AIF.

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[13] State Bank of India Staff Vaibhav Co-op Hsg. Ltd [TS-371-ITAT-2019(Mum)]
[14] Bhagavathy Velan [TS-358-HC-2019(MAD)]
[15] CBDT Circular No. 14/2019 dt. 19 June, 2019

B. Corporate Law Highlights and Schemes

1. The Companies Amendment Bill has been passed in the Rajya Sabha

The Companies Amendment Bill, 2019 has been passed in Rajya Sabha on 30th July 2019 and received the assent of the President on 31st July 2019. While introducing the Bill in the Lok Sabha, the Hon'ble Finance and Corporate Affairs Minister, Nirmala Sitharaman said, "the Bill seeks to ensure more accountability and better enforcement to strengthen the corporate governance norms and compliance management in corporate sector as enshrined in the Companies Act, 2013". Key amendments have been highlighted below:

Particulars	Amendment
Dematerialisation of securities – Section 29	- The term 'public' has been omitted under Section 29(1)(b). As a result, the Central Government can now prescribe even private companies ton issue, hold or transfer securities in dematerialised form.
Corporate Social Responsibility framework – Section 135	- It has been clarified that if the company has not completed 3 years from incorporation, the amount to be spent on SCR shall be 2% of the average of net profits for the years since incorporation. - Unspent CSR funds, other than the amount that relates to any ongoing projects, is required to be transferred to any of the funds mentioned in Schedule VII of the Companies Act (which includes Prime Minister's National Relief Fund or any other fund set up by the central government), within a period of 6 months from the end of the financial year. - Unspent CSR funds, in relation to on-going CSR project, are required to be transferred to a special bank account (to be opened with Scheduled bank and will be called Unspent CSR Account) within a period of 30 days from the end of the financial year. - The proceeds of Unspent CSR Account will have to be spend within a period of 3 financial years from the date of such transfer. If the company is not able to do so, the unspent amount will need to be transferred to a fund specified under Schedule VII of the Companies Act within a period of 30 days from the date of completion of the third financial year. - In case of contravention of the above requirements, the respective company shall be punishable with fine ranging from INR 0.05mn to INR 2.5mn and every officer of the such company who is in default shall be punishable with imprisonment for a term which may extend

	upto 3 years or with fine ranging from INR 0.05mn to INR 0.5mn or with both.
De-clogging NCLT	- Central Government has been vested with the power (which may be further delegated to the registrar of companies / regional director, to approve change in financial year of a company (which is a holding company or a subsidiary or associate company of a company incorporated outside India and is required to follow a different financial year for consolidation of its accounts outside India) and conversion of public company into private company and vice versa.

C. RBI and Foreign Exchange Regulations Highlights

1. RBI rationalizes end user restrictions for ECBs

Presently, ECB proceeds cannot be utilized for working capital purposes, general corporate purposes and repayment of Rupee loans except when the ECB is availed from foreign equity holder for minimum average maturity period of 5 years.

The RBI has now relaxed[16] the ECB end-use restrictions for all eligible borrowers including non-banking financial companies (NBFC) and companies having stressed loans

Accordingly, all eligible borrowers are now be permitted to raise ECBs for the following purposes from recognised lenders, except foreign branches / overseas subsidiaries of Indian banks:

ECBs end-use	Minimum Average Maturity period
For working capital purposes and general corporate purposes	10 years
For repayment of Rupee loans availed domestically for capital expenditure	7 years
For repayment of Rupee loans availed domestically for purposes other than capital expenditure	10 years

a) Borrowing by NBFCs for the above maturity for on lending for the above purposes is also permitted.

b) It has been decided to permit eligible corporate borrowers to avail ECB for repayment of Rupee loans availed domestically for capital expenditure in manufacturing and

[16] vide A.P. (DIR Series) circular no. 04 dated 30th July 2019

infrastructure sector if classified as SMA-2 or NPA, under any one-time settlement with lenders.

c) Lender banks are also permitted to sell, through assignment, such loans to eligible ECB lenders, except foreign branches/ overseas subsidiaries of Indian banks, provided, the resultant external commercial borrowing complies with all-in-cost, minimum average maturity period and other relevant norms of the ECB framework.

Katalyst Comment: *By bringing in this liberalization, the regulators do not want solvent corporates or NBFCs to suffer because of the lack of liquidity being available at a reasonable cost. These measures are likely being used as a transitional remedy.*

2. RBI permits ARCs to acquire financial assets from its peers

The RBI vide its circular dated 28th June, 2019[17] has permitted Asset Reconstruction Companies ("ARCs") to acquire financial assets from other ARCs subject to certain conditions.

3. RBI Introduces Foreign Liabilities and Assets Information and Reporting System (FLAIR) system

All Indian companies / LLPs which have received FDI and/or made overseas investment are required file the annual return on Foreign Liabilities and Assets (FLA) in the soft form which is sent by e-mail to the Reserve Bank by July 15 of every year. It is now proposed to replace the erstwhile FLA form with the web-based system online reporting portal which will also facilitate filing of information by such entities including such as SEBI registered AIFs. This portal will be known as FLAIR.

D. Securities' Laws Highlights

1. SEBI issues Consultative Paper on Policy Proposals with respect to Resignation of Statutory Auditors from Listed Companies

There have been a significant number of instances of abrupt resignation of Statutory Auditors from listed entities in recent times. It is seen that the commonly cited reason by the auditors while resigning is 'pre-occupation'. Taking note of such resignations, whereby auditors have resigned without assigning detailed reasons, SEBI has proposed to tighten disclosure norms with respect to resignations of statutory auditors and has issued a 'Consultative Paper on Policy Proposals with respect to Resignation of Statutory Auditors from Listed Companies' dated 18th July 2019. Key changes proposed are as under:

a) Conditions prior to resignation

[17] RBI/DNBR/2018-19/227

With respect to auditor of a listed entity: 1. If the auditor has signed the audit report for all the quarters (*limited review/ audit*) of a financial year, except the last quarter, then the auditor shall finalize the audit report for the said financial year before such resignation. 2. In all other cases, the auditor shall issue limited review/audit report for that quarter before such resignation *(i.e. previous quarter in reference to the date of resignation)*.
With respect to the auditor of a material unlisted subsidiary of the listed entity: 1. The auditor shall issue the limited review/audit report for that financial year/ quarter, as applicable, before such resignation *(i.e. previous financial year/ quarter in reference to the date of resignation)*.
If the reason for the auditor's resignation is the entity not providing information, the auditor shall provide an appropriate disclaimer in the audit report to that extent.

b) Format of resignation prescribed

The resignation letter shall include detailed reasons for resignation, declaration by the auditor that there are no other material reasons other than those provided (similar to the requirement in case of resignation of independent directors) and in case of any concerns, efforts made by the auditor prior to resignation. If the resignation is due to information not being made available to the auditor, further details shall be provided including details of the information requested by auditor which was not provided, whether the auditor could have performed alternative procedures to obtain appropriate evidence for the purposes of the audit/limited review, etc.

The listed entity shall ensure disclosure of the resignation letter to the stock exchanges. In case of resignation by the auditor of a material unlisted subsidiary, the subsidiary shall disclose the resignation letter to the listed entity which shall, in turn, disclose the same to the stock exchanges.

c) Strengthening and clarifying the role of the Audit Committee:

In order to strengthen the role of the Audit Committee in this matter, it is proposed the following as the procedure that may be followed in such cases:

- The auditor shall approach the Chairman of the Audit Committee directly and immediately in case of any concerns with the management such as non-availability of information / any non-cooperation by the management.

- The auditor shall bring to the Audit Committee's notice, all the concerns the auditor has with respect to such resignation, along with relevant documents, details of information sought and not provided by the management (as applicable).

- The Audit Committee shall deliberate on the matter and communicate its views to the management and the auditor and it shall ensure that it fulfils its role as specified under the SEBI LODR Regulations. The listed entity shall ensure the disclosure of the Audit Committee's views to the Stock Exchanges.

Katalyst Comment: *Amidst the frenzy of auditor resignations, the Securities Market Regulator has proposed stricter norms to strengthen audit processes and curb abrupt resignations of auditors in publicly traded companies. Such a move shall ensure that statutory auditors act in a more responsible manner and resign only on genuine grounds without hurting investor sentiment.*

2. SEBI Board Meeting – Key Outcomes

The Securities Exchange Board of India conducted its Board Meeting conducted on 27th June, 2019. The minutes of these meetings were released vide press release no. 16 of 2019. The key decisions taken at the board meeting have been captured below:

a) Issue of shares with Differential Voting Rights: The SEBI Board approved the framework for issuance of shares carrying differential voting rights.

b) Amendments to SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 - payment relating to royalty and brand usage: The Board has now, decided that payments made to related parties towards brand usage or royalty may be considered material if the transaction(s) exceed 5% (earlier threshold was 2%) of the annual consolidated turnover of the listed entity during a financial year and would require approval of the shareholders, with no related party having a vote to approve such resolutions.

c) Disclosure of Encumbrances: The SEBI Board has approved the enhancement in the scope of the disclosure requirements under the SEBI Takeover Regulations, in relation to the Encumbrance on shares.

   The term 'encumbrance' as defined in the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 shall also include '*any restriction on the free and marketable title to shares, by whatever name called*' and '*any covenant, transaction, condition or arrangement in the nature of encumbrance*' the regulators have widened the definition of the term and any creation of restriction on the shares will now be considered as an encumbrance.

Promoters shall be required to disclose separately detailed reasons for encumbrance whenever the combined encumbrance by the promoters and persons acting in concert (PACs) crosses 20% of the total share capital in the company or 50% of their shareholding in the company. The stock exchanges will maintain the details of such encumbrance along with purpose of encumbrance, on their websites.

The promoters shall also be required to declare to the audit committee of the company and to the stock exchanges on a yearly basis, that they along with PACs, have not made any encumbrance directly or indirectly, other than already disclosed, during the financial year.

d) **Amendments to the PIT Regulations:** In the context of the Code of Conduct under the Insider Trading Regulations (PIT Regulations), the SEBI Board has approved several amendments to the PIT regulations clarifying that trading window closure for listed companies shall be applicable from end of every quarter till 48 hours after declaration of financial results.

The amendments further clarify that such closure shall not be applicable in respect of transactions such as off market inter-se transfer between insiders, transaction through block deal window mechanism between insiders, transaction due to statutory or regulatory obligations, exercising of stock options, pledging of shares for bona fide transaction such as raising of funds and transactions for acquiring shares under further public issue, right issue and preferential issue, exercising conversion of warrants / debentures, tendering shares under buyback, open offer and delisting etc. subject to certain conditions that are to be prescribed.

3. SEBI introduces Standard Reporting of violations related to Code of Conduct under SEBI (Prohibition of Insider Trading) Regulations, 2015[18]

With the objective to standardize the reporting requirements of violations related to Code of Conduct under SEBI (Prohibition of Insider Trading) Regulations, 2015, SEBI has introduced a standardized format to report the violations by designated persons and immediate relatives of the designated persons. All listed companies, intermediaries and fiduciaries are required to report violations in such standard format to SEBI as well as maintain a database of the same.

E. Goods and Service Tax Highlights

1. High Court Decision on last date for claiming ITC for invoices issued during July 2017 to March 2018

[18] SEBI Circular No. SEBI/HO/ISD/CIR/P/2019/82 dt. 19 July, 2019

The Gujarat High Court[19] has held that, the press release dated October 18, 2018 which clarified that last date for availing input tax credit for the invoices issued during July 2017 to March 2018 was the last date of filing GSTR-3B return for the month of September 2018 i.e. October 20, 2018, is illegal and contrary to section 16(4) read with section 39(1) and Rule 61 of the CGST Rules

2. No GST on Profit Sharing Agreement ('PSA') by employee with shareholder

The Tamil Nadu AAR[20] has held that PSA between employee and shareholders, which gives employee a claim to beneficial interest in profits arising out of sale or IPO, is not liable to GST as the same is covered under the definition of 'actionable claim' under section 2(1) of the CGST Act read with Transfer of Property Act. Further, 'actionable claim is not relating to lottery, betting and gambling' and hence, is covered under Schedule III as neither a supply of goods nor supply of services.

3. Amendments in CGST Rules

CGST Rules[21] amended to include anti-profiteering related investigations, to provide mention of 'Quick Response Code' in tax invoice/bill of supply from a date to be notified, to provide facility for transfer of tax, interest, penalty, fees from one account head to another in the electronic cash ledger by filing Form GST PMT-09.

4. ITeS service – Whether 'Intermediary service' or 'Export of service'

The CBIC[22] has clarified the taxability of supplier of Information Technology Enabled Services like call centers, business process outsourcing ('BPO') provided in India to the recipient located outsider India, as under:

Sr no.	Particulars	Whether 'Export of service' or 'Intermediary service'
1	Services in form of back-end services on his own account or even client's customer	Export of service – No GST payable
2	Services by way of arrangement or facilitation i.e. back-end support services in the nature of pre-delivery, delivery and post-delivery support	Intermediary service – GST applicable
3	Supply on own account along with arrangement or facilitation (2 types of transactions)	Taxability based on type of principal/main supply

[19] R/Special Civil Application No. 18962 of 2018
[20] In the matter of Venkatasamy Jagannathan - [TS-518-AAR-2019-NT]
[21] Notification 31/2019-Central Tax dated June 28, 2019
[22] Circular no.107/26/2019-GST dated July 18, 2019

5. Clarifications regarding GST on monthly subscription from members to Residential Welfare Association ('RWA')

Issues relating to GST on monthly subscription/contribution charged by an 'RWA' from its members have been clarified by CBIC[23] as under:

- **Taxability**

Annual turnover of RWA	Monthly maintenance charge per member	Whether exempt?
More than Rs. 20 lakhs	More than Rs. 7500/-	No
	Rs. 7500/- or less	Yes
Rs. 20 lakhs or less	More than Rs. 7500/-	Yes
	Rs. 7500/- or less	Yes

- If a person owns more than one residential apartment in a housing society, the ceiling of Rs. 7500/- per month per member is applicable to each residential apartment owned by him.

- In case the maintenance charges exceed Rs. 7500/- per month per member, the entire amount is taxable

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[23] Circular no. 109/28/2019-GST dated July 22, 2019