

Katalyst Kaleidoscope

December 2024: Tax and Regulatory Insights

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A. Income Tax Highlights

1. Mumbai ITAT¹: Allows depreciation on goodwill under amalgamation, towards payment over value of tangible assets taken over

The AO disallowed depreciation @25% on goodwill u/s 32(1)(ii) on the grounds that the Assessee (the amalgamated company) has failed to substantiate the nature and element of “goodwill” that it has acquired from the amalgamating company upon amalgamation; instead “goodwill” was accounted as a balancing factor while merging the accounts of the amalgamating company into the accounts of the Assessee.

The Assessee referring to AS-14, stated that it allocated the consideration to the identified individual assets and liabilities based on their fair values; further, to support its claim contended that the intangible assets recognized during the amalgamation process qualify as depreciable assets “any other business or commercial rights of similar nature.”

The ITAT held that, once goodwill has been recognised by the Assessee in its financial statement pursuant to the amalgamation, in accordance with AS-14, the Assessee is entitled to claim depreciation on the same under section 32(1)(ii); it relied on the SC judgment in case of *Smifs Securities Ltd*², wherein it was held that excess consideration paid over the value of net assets acquired of the amalgamating company was considered as goodwill arising on account of amalgamation.

Katalyst comment:

Depreciation on goodwill has been expressly negated by an amendment w.e.f. April 01, 2021; however, the principle of depreciation on goodwill should apply to other intangible assets arising on amalgamation.

2. Mumbai ITAT³: Indexation benefit u/s 48 is available for sale of shares of foreign company

The Assessee tendered shares of its wholly-owned foreign subsidiary under a buyback scheme, and calculated long term capital loss using indexed cost of acquisition. The AO disallowed the indexation benefit u/s 48 of the Act, claiming that cost inflation index is based on Indian inflation and cannot apply to foreign assets. On appeal, CIT(A) granted the benefit of indexation; the Revenue challenged this decision in ITAT.

The ITAT held that second proviso to section 48 which grants indexation benefit, does not distinguish between the assets held in India and held outside India; further it was held that, only in case of ambiguity in provisions, reference to internal aids or external aids for interpreting the provisions is to be made wherein in the present case, the language of the section is clear. Hence, indexation benefit on sale of shares of foreign company was allowed.

¹ Dow Chemical International Private Ltd. [TS-874-ITAT-2024(Mum)] dated November 29, 2024

² SC 348 ITR 302 dated August 22, 2012

³ Aarav Fragrances and Flavors Private Limited [TS-897-ITAT-2024(Mum)] dated December 09, 2024

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Katalyst comment:

The ITAT's ruling has clarified that provisions under section 48 does not differentiate between domestic and foreign assets; further it has, emphasized that unambiguous statutory language should be applied as written, without resorting to interpretative aids.

3. Permanent Account Number 2.0 Project⁴

The Cabinet Committee on Economic Affairs (CCEA) has approved the Income Tax Department's PAN 2.0 Project; this project aims to streamline and modernize the process of issuing and managing PAN and TAN, making it more user-friendly and efficient.

Currently, PAN-related services are spread across three different platforms: the e-Filing Portal, UTI Infrastructure Technology and Service Limited (UTIITSL) Portal, and Protean e-Gov Portal. With the implementation of PAN 2.0, all these services will be integrated into a single, unified portal. This one-stop platform will handle comprehensively issues/matters related to PAN and TAN, including application, updates, corrections, Aadhaar-PAN linking, re-issuance requests, and even online PAN validation. By doing so, the Income Tax Department aims to simplify processes, eliminate delays, and improve grievance redressal mechanisms.

4. Supreme Court⁵: Permits deceased Assessee's legal representative to challenge reassessment notice as being vitiated

The Income Tax Department issued a reassessment notice in the name of deceased individual to which legal representative informed to the tax department regarding the death and provided details of the legal heirs. The key issue was the validity of the reassessment proceedings initiated against the deceased taxpayer.

The Department issued subsequent notices addressed to the legal representative. However, the initial defect in issuing the reassessment notice u/s 148A(1) to a deceased person raised questions about the validity of the proceedings. The Bombay High Court allowed the reassessment proceedings to continue but restricted the legal representative from challenging the validity of the initial notice issued to the deceased.

The SC overturned this restriction, allowing the legal representative to challenge the validity of the initial notice as a defect that could potentially vitiate the entire reassessment process; further, The SC remanded the case to the AO directing that all contentions, including the issue of the defective notice, be considered on merits.

⁴ Press release dated November 26, 2024

⁵ Ghanyashyam Anil Dhanani [TS-882-SC-2024] dated December 03, 2024

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Katalyst comment:

The SC emphasized that participation by the legal representative in the proceedings does not cure the fundamental defect of issuing a notice to a deceased person; the judgement strengthens the right of legal representatives to contest procedural lapses in tax reassessment cases.

B. Corporate Law Highlights

1. NCLT Mumbai⁶: Allows proposed equity share capital reduction, not in nature of buy-back

The Petitioner Company sought the NCLT's confirmation to reduce its equity share capital under Section 66 (capital reduction) of the Companies Act, 2013 to which, the Regional Director (RD) raised concerns that the reduction resembled a share buy-back under Section 68 of the Companies Act and questioned compliance with section 68 in relation to one-year cooling off period for buy back.

NCLT noted that provisions under section 66 and 68 are separate and independent and the conditions prescribed under section 68 of the Act shall not be applicable in case of capital reduction under section 66 of the Act, which was also held in *SEBI vs Sterlite Industries*⁷ and *Capgemini India Private Limited*⁸; accordingly, it was held that the Company can opt for reduction under section 66 of the Act even if conditions prescribed under section 68 of the Act are not met.

2. NCLT Mumbai⁹: No statutory mandate for legal heir to produce probate; allows securities-transmission basis Will

The Appellant's request for share transmission of his deceased mother was rejected by the Registrar and the Share transfer agent on the grounds that; i) Will was unregistered, and ii) share transmission require probate or letter of administration from competent court.

The NCLT noted that the appellant submitted Will and notarised indemnity bond in accordance with the format outlined in a SEBI circular; further, the NCLT relied on SEBI circular¹⁰ which emphasis on procedure and documentation required for share transmission which mentions that "there is no mandatory requirement of production of a probate by the legal heir, rather, a probate is indicated as optional; Will is clarified to be acceptable as one of the valid documents for transmission of securities".

Additionally, NCLT insisted that share transfer agent being a SEBI regulated entity should act strictly in accordance with the SEBI circular; accordingly, NCLT allowed appeal and order the Registrar and the Share transfer agent to transmit share in the name of Appellant.

⁶ Ferro India Pvt Ltd - LSI-1258-NCLT-2024-(MUM) dated December 11, 2024

⁷ 2003 45 SCL 475 dated July 15, 2002

⁸ 2015 SCC Online BOM 1754 dated May 06, 2015

⁹ Vijay Data vs. Reliance Industries Ltd. & Anr. -LSI-1288-NCLT-2024-(MUM) dated December 18, 2024

¹⁰ SEBI Circular No. SEBI/HO/MIRSD/MIRSD_RTAMB/P/CIR/2022/65 dated May 18, 2022

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3. NFRA¹¹: Finalises and recommends 40 auditing standards for LLPs

The National Financial Reporting Authority has finalised and recommended Auditing Standards to the Central Government for notifying under Section 34A of LLP (Amendment) Act, 2021. The Authority decided to recommend 40 Standards on Auditing (SAs) and related Standards on Quality Management (SQM), for audit of Companies, to be applicable to audit of LLPs on a mutatis - mutandis basis.

Upon the approval of the Central Government, these Standards are recommended to be effective from April 01, 2026.

C. SEBI and Other Highlights

1. SEBI¹²: Notifies amendments under SEBI (Listing obligation and disclosure requirements), 2015

- I. SEBI has amended the SEBI (LODR), 2015 regulations, these will be effective from December 31, 2024; key amendments are:

Reg. No.	Type	Amendment
5	Added	Requiring KMP, Directors, Promoter or any other person dealing with the company, to disclose to the company all relevant and necessary information for the listed company to ensure compliance with applicable laws.
6	Added	Eligibility criteria for compliance officer i.e. should be whole time director of the listed company, not more than one level below the BOD and shall be designated as KMP.
15	Amended	Provisions of corporate governance regulations will remain applicable till equity share capital <u>and</u> net worth of the entity reduces or remains below the threshold for a period of 3 consecutive FYs (“or” word being replaced by “and”).
16	Amended	“Material subsidiary” meaning by substituting word “income” by the word “turnover” (previously, the threshold was based on 10% of consolidated income or net worth).
17	Revised	Criteria to be fulfilled for the appointment or re-appointment of person on the BOD or as a manager including Managing Director or Whole Time Director.
23	Added	Immaterial remuneration or sitting fee paid to KMP or senior management shall not require approval from audit committee.
23	Added	Conditions for ratification of related party transaction by audit committee.

¹¹ PIB Delhi dated November 25, 2024

¹² Notification No. SEBI/LAD-NRO/GN/2024/218 dated December 12, 2024

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37	Added	Exemption for applicability of this regulation to include: Schemes that solely provide for writing off the accumulated losses against the share capital applied uniformly across all shareholders on a pro rata basis or against the entity's reserves (previously, exemption was limited to the schemes solely for merger of WOS with its holding company).
Schedule II	Added	Listed entities ranked from 1001 to 2000 based on market capitalisation is suggested to have at least one woman independent director on its BOD.
Schedule II	Added	<ul style="list-style-type: none"> The independent directors of top 2000 listed entities as per market capitalisation suggested to hold at least two meetings in a financial year, without the presence of non-independent directors. Listed entities from 1001 to 2000 based on market capitalisation are recommended to constitute a Risk Management Committee.

- II. SEBI, through a Circular¹³, has formulated industry standards on disclosure of Business Responsibility and Sustainability Report (BRSR) as required under Regulation 34(2)(f) for the top 1000 companies based on market capitalisation; these will be applicable from FY 2024-25.

2. SEBI¹⁴: Revises Prohibition of Insider Trading Regulations, 2015

The SEBI has expanded the definition of "deemed to be connected person" by modifying / incorporating the following sub-clauses under Regulation 2, sub-regulation (1):

1. Modification in item (a) and item (j) of clause (d), sub-clause (ii):

The term "immediate relative" has been replaced with "relative." The revised clauses now read as:

- (a) a relative of connected persons specified in clause (i)
 - (j) a concern, firm, trust, Hindu undivided family, company, or association of persons wherein a director of a company or his relative or banker of the company, has more than ten percent of the holding or interest.
2. Addition of item (k) and (l) under clause (d), sub-clause (ii):
 - (k) a firm or its partner or its employee in which a connected person specified in sub-clause (i) of clause (d) is also a partner; or

¹³ Circular No. SEBI/HO/CFD/CFD-PoD-1/P/CIR/2024/177 dated December 20, 2024

¹⁴ Notification No. SEBI/LAD-NRO/GN/2024/215 dated December 04, 2024

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- (l) a person sharing household or residence with a connected person specified in sub-clause (i) of clause (d)

(Sub-clause (i) of clause (d) defines the term “connected person”)

3. A new clause has been introduced to define the term “relative” as:

- (i) spouse of the person;
- (ii) parent of the person and parent of its spouse;
- (iii) sibling of the person and sibling of its spouse;
- (iv) child of the person and child of its spouse;
- (v) spouse of the person listed at sub-clause (iii); and
- (vi) spouse of the person listed at sub-clause (iv)

Katalyst comment:

The above amendment by the SEBI to broaden the definition of “connected person” seems to be very broad; its practicality in certain situations seems challenging. For example, i) in case of 'banker of the company', it is unclear which specific individuals among the bankers would be included; ii) under 'person sharing residence', does this even extend to a roommate of a company personnel staying in a shared accommodation, such as a paying guest?

3. SEBI¹⁵: Issues Self-Attestation of documents norms

SEBI has issued the Self-Attestation of Documents norm in relation to the following SEBI Regulations:

- **Takeover Code** has been amended to provide that, for seeking exemption from SEBI relating to open offer requirements for acquirer and relaxation from applicability to target company, a self-attested application must be filed (previously, such applications had to be supported by a duly sworn affidavit).
- **Buy-back & Delisting Regulations** have been amended to provide that, the application filed by the company for seeking relaxation from strict enforcement of any requirement of these regulations should be self-attested (previously, such application had to be supported by a duly sworn affidavit).
- **Settlement Regulations** have also been amended to provide that, the undertaking by the applicant (for accepting SEBI’s jurisdiction and related matters concerning settlement proceedings) should be self-attested along with stamp duty (previously, duly notarised at the time of execution).

¹⁵ Notification No. SEBI/LAD-NRO/GN/2024/212 dated November 28, 2024

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Katalyst comment:

The SEBI amendment introduces a procedural shift, replacing notarised affidavits with self-attestation for applications under the Takeover Code, Buy-back & Delisting Regulations, and Settlement Regulations; this change simplifies compliance requirements for applicants while retaining regulatory oversight.

4. **SEBI¹⁶: Streamlines Buy-Back regulations, tightens disclosure requirements to strengthen transparency**

SEBI amends Buy-Back of Securities Regulations, 2018; intended to enhance transparency, strengthen disclosure requirements and refine processes related to buy-back transactions; key amendments are:

- Adds provision to Regulation 4 stating that “that in case any member of the promoter / promoter group has declared its intention to not participate in the buy-back, the shares held by such member of the promoter / promoter group shall not be considered for computing the entitlement ratio”

“Entitlement ratio” determines the number of shares each eligible shareholder can tender in a buy-back

- Adds exception to Regulation 24, allowing to fulfill within the date of expiry of in the buyback period; any existing obligations related to warrants, stock options, sweat equity and the conversion of preference shares or debentures into equity shares; also mandates that the public announcement should disclose the details and potential impact of the subsisting obligations.

Katalyst comment:

Given the introduction of a tax on the buyback of securities under the Income Tax Act, companies are unlikely to opt for buybacks; however, these amendments must still be considered to ensure compliance with SEBI regulations.

5. **RBI¹⁷: Operational framework for reclassification of Foreign Portfolio Investor (FPI) to Foreign Direct Investment (FDI)**

The FEMA (Non-debt Instruments) Rules stipulate that, investment by FPI shall be less than 10% of the total paid-up equity capital of an investee company. In the event of breach of this limit, FPI shall be required to either divest excess holdings or reclassify as FDI.

¹⁶ Notification No. SEBI/LAD-NRO/GN/2024/210 dated November 20, 2024

¹⁷ RBI/2024-25/90 Circular No. 19 dated November 11, 2024

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In view of the above, RBI has issued the operational framework for reclassification of FPI to FDI as below:

- Reclassification shall not be permitted in any sector prohibited for FDI
- Approvals from government, as applicable should be obtained in accordance with the provisions applicable for FDI such as in adherence to entry route, sectoral caps, investment limits, pricing guidelines, and other attendant conditions for FDI under Schedule I to the Rules
- Concurrence of the Indian investee company to ensure compliance with conditions under the Rules.

Upon such transition, the entire investment of the FPI in the Indian company shall be considered as FDI and shall continue to be treated as FDI even if the investment falls to a level below 10% subsequently.

D. Goods and Service Tax Highlights

1. Key outcomes of the 55th GST council meeting¹⁸

The 55th GST council meeting was held on December 21, 2024, wherein certain trade facilitation measures, measures for streamlining GST compliance, measures relating to law and procedure, GST rate change etc. were proposed; the key proposals are:

A. GST rates

1. Non applicability of GST: on 'penal charges' levied by banks and NBFCs for non-compliance with loan terms, pepper and raisin supplied by agriculturists.
2. IGST Exemption: IGST exemption to be provided on import of systems, sub-systems, equipment, parts, sub-parts, tools, test equipment and software meant for assembly and manufacture of Long-Range Surface to Air Missile system.
3. Reduction in compensation cess rate: recommended to reduce the rate of compensation cess rate to 0.1% on supplies to merchant exporters to bring the compensation cess rate at par with the GST rate.
4. Change in taxability of sponsorship service: Levy of GST under the reverse charge mechanism ('RCM') on sponsorship services provided by body corporates recommended to be withdrawn; consequently, such services to be liable to a forward charge post issuance of the requisite amendment notification to this effect.

¹⁸ 55th GST council meeting held on December 21, 2024

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5. No GST under RCM for composition dealer on receipt of renting of commercial property from unregistered person: a reverse charge was introduced vide notification¹⁹ on renting of any commercial or immovable property (other than a residential dwelling) by an unregistered person to a registered person; it has now been recommended to exclude composition dealers from paying a reverse charge on such services and also been recommended to regularise the past on an 'as-is-where-is' basis.

B. Recommendation for trade facilitation

1. Supply of goods warehoused in SEZ/FTWZ

Entry 8(aa) of Schedule III of the CGST Act recommended to be inserted retrospectively from 1 July 2017; consequent to such insertion, supply of goods warehoused in SEZ/FTWZ to any person before clearance (for export or for domestic use) will be treated as a supply of neither goods nor services.

Katalyst comment:

Amendment intends to simplify compliance for businesses operating in the SEZ and FTWZ zones; this is based on the rationale to align SEZ or FTWZ transactions with provisions applicable to customs bonded warehouses.

2. Taxability of Vouchers: issues addressed are i) classification of vouchers as goods or services, and ii) taxability of income from unredeemed vouchers.

In this regard, it has been proposed that vouchers should be treated neither as goods nor as services; GST is applicable only on commissions or fees charged by agents for distributing and No GST on distribution of vouchers on a principal-to-principal basis. Further, proposed that no GST should be payable on income from unredeemed vouchers.

3. Clarification regarding ITC reversal by E-commerce operators ('ECOs'): ECOs paying tax under section 9(5) of the CGST Act, are not required to reverse ITC proportionally under sections 17(1) or 17(2) of the CGST Act.
4. Clarification regarding ITC availability as per section 16(2)(b) of the CGST Act, 2017, for ex-works contracts
 - There was ambiguity regarding the eligibility of ITC where the goods were delivered at a place other than the recipient's place of business, especially in case of ex-works contracts.
 - The council has recommended that when the goods delivered to the recipient or transporter at the supplier's business location (under ex-works contracts) to be deemed to be 'received' by the recipient under section 16(2)(b) of the CGST Act; further, ITC to be eligible subject to fulfilment of other conditions under sections 16 and 17 of the CGST Act.

¹⁹ Notification No. 09/2024-CTR dated October 8, 2024

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C. Recommendations regarding law and procedures

1. Amendment in section 17(5)(d) the CGST Act: retrospective amendment is recommended to section 17(5)(d) of the CGST Act to replace the phrase 'plant or machinery' with 'plant and machinery'.

Katalyst comment:

Consequent to such amendment, the recent judgement of the Supreme Court²⁰ allowing ITC on construction of immovable property based on the contention that the definition of plant and machinery is not relevant for the purposes of section 17(5)(d) of the CGST Act, has been neutralised.

2. Reduction in pre-deposit for filing an appeal: pre-deposit requirement for appeals before an appellate authority reduced from 25% to 10% for cases involving only penalties.
3. Amendment in Input service distributor ('ISD'): w.e.f. April 01, 2025, definition of ISD under section 2(61) and manner of distribution of ITC under section 20(1) of the CGST Act will explicitly include inter-state RCM transactions under the ISD mechanism, referencing supplies taxed under sections 5(3) and 5(4) of the IGST Act, 2017.
4. Payment process for non-registered persons streamlined: rule 16A has been proposed, to allow tax officers to generate a temporary identification number for persons not required to register under GST but need to make payment.

²⁰ Civil Appeal No. 2948 of 2023 dated 3 October 2024