KATALYST ADVISORS LLP

Katalyst Kaleidoscope

April 2020: Tax and Regulatory Insights

A. Potential tax and regulatory aspects arising out of Covid-19 adjustments/ measures:

Several tax and regulatory provisions have been tweaked to provide forbearance as a result of circumstances arising out of Covid-19. Some of the key ones are tabulated below:

Possible Exposures/ Adjustments	Tax & Regulatory Impact
Availing the interest bearing 3-month moratorium offered by banks.	Interest paid would remain allowable as deduction for tax purposes on payment basis.
Realization of export proceeds, for completed exports for exports made up to or on July 31, 2020.	RBI has extended the permitted time period of 9 months to 15 months.
Permanent Establishment (PE) rules may get triggered in DTAAs if certain overseas projects continue for a stated number of months. PE exposure may be likely, resulting from extended stay of employees abroad or overseas projects on hold, thereby complying with PE cut-offs provided in respective DTAAs or vice-versa.	Maintaining proper documentation for the exact period extension due to Covid-29.
Concluded APAs and agreed safe-harbor.	Adverse impact, if safe-harbor is not achievable. APAs may not have accounted for such extra-ordinary circumstances and adjustments thereof. Need to evaluate options.
Ex-gratia payment to temporary/casual/daily wage workers, over and above the disbursement of wages, specifically for the purpose of fighting COVID-19.	Shall be admitted as a one-time exception towards admissible CSR expenditure (Refer MCA issued FAQs for further details under Corporate Law Highlights below).

B. Income-tax Highlights

1. Mumbai ITAT holds that dividend received by assessee having controlling interest is taxable as 'business income' and not income from other sources[1]

The assessee was engaged in the promotion of industries by making investment in various companies. Consequently, the resultant income was received in the form of dividend. Further, from the agreement with the said companies, it was evident that the assessee did not merely make investment in the said companies but also participated in the day to day affairs of the investee companies.

[1] Tamilnadu Industrial Development Corporation Limited [TS-149-ITAT-2020(CHNY)] dated 28th Feb, 2020

Accordingly, based on ruling in favour of the assessee in previous assessment years, the Department argued that although the first investment in the various entities partakes the character of investment in various sectors through the investee companies, the subsequent investment does not qualify as the same and hence, income from subsequent investment in same investees should be considered as dividend income, and that findings of previous decisions cannot be applied in favour of the assessee perpetually.

The Hon'ble ITAT in this regard accepted the assessee's contention that the subsequent investment was made to ensure continuity of controlling stake in the investee companies, and does not change the character of the investments made. Therefore, it ruled in favour of the assessee and allowed dividends from all investments including subsequent investments, to be taxed as business income. As a result, brought forward business losses could be set of against this income.

***Katalyst Comments**: This judgement furthers the open debate on strict categorization of income as per the heads of income prescribed under the Act vis-à-vis primary nature/ intent of income. If the nature or intent is to be seen behind every income, the prescribed heads of income would be applied inconsistently by taxpayers.*

2. Bombay High Court allows remuneration paid to a director not involved in daily affairs, as a deduction[2]

The judgement revolves around allowability of remuneration paid to a director under Section 37(1) of the Act, which is a general section allowing deduction of all expenses incurred 'wholly and exclusively' for the purpose of business; especially for dummy Directors.

The department found that the director had not attended the office of the assessee company for six years prior to the said action and that no duties were assigned to him except some consultation. Therefore, since the salary/perquisites paid to the director were not wholly and exclusively for the purpose of business, the same should be disallowed u/s 37(1).

The Hon'ble High Court relied on the judgement passed by Supreme Court in the case of *Sassoon J. David & Co. Pvt. Ltd. VS CIT (118 IT 261),* where it was laid down that the expression "wholly and exclusively" does not mean "necessarily" and that it is for the assessee to decide whether an expenditure should be incurred in the course of its business. The fact that somebody other than the assessee has benefitted from the expenditure should not affect the treatment of the said expenditure for income tax purposes. Basis this principle, the Court held that the expenditure was considered necessary by the assessee for the purpose of his business and the department cannot question the assessee's judgement on the same. Therefore, the expenditure was allowed u/s 37(1).

[2] VVF Ltd. [TS-156-HC-2020(BOM)] dated March 04, 2020

***Katalyst Comments**: In the absence of direct involvement of directors in the business of the Company, tax authorities may question the allowability of fees paid to them, as above. Relatives of promoter directors and other directors discharging their duties from a distance, may benefit by maintaining a record or resorting to other means of proving involvement, if the need to prove the same arises.*

3. Mumbai ITAT holds that dividend from foreign companies u/s 115BBD, eligible for set-off against business loss[3]

The issue for discussion here was whether income, in this case dividend from foreign subsidiary, taxable at a specified rate is available for set-off of businesses losses. The assessee had received dividend income from specified foreign company and was of the opinion that the same is eligible for set-off against business losses, incurred in the same year. The department contended that under Section 115BBD, the dividend received is required to be taxed separately @ 15% and that set-off of loss is not available against the same.

In this regard, the Hon'ble ITAT held that the said section provides for a separate tax rate on the dividend income covered by it. The taxable income has to be determined as per the provisions of the Act, i.e. first income is to be computed as per Chapter IV, thereafter provisions of Chapter VI are to be applied to compare aggregation and set-off of losses. After determining taxable income as per the above provisions, the tax will be computed based on prevailing rates. Further, Sec. 115BBD does not explicitly prohibit setting-off of business loss against dividend from specified company. Accordingly, the assessee's appeal was allowed and business losses were allowed to be set against such dividend.

***Katalyst Comments**: Such a set-off would mean that a business loss (which can be set-off against an income taxable at the rate of 30%); is set-off against the dividend income which is taxable at the rate of 15% under the said section 115BBD. However, one needs to make this judgement basis the cash flows and the estimates for coming year, and such a set-off could prove efficient in certain situations.*

4. Ahmedabad ITAT rules that 'profits' not gross receipts are relevant for determining foreign tax rate to claim relief u/s 91[4]

The principal issue here was, when tax is deducted in a foreign country on gross receipts and tax paid in India is on the profits earned as opposed to gross receipts, how much is the foreign tax credit available and how is it to be computed.

[3] Tata Motors Ltd. [TS-166-ITAT-2020(Mum)] dated 6th March, 2020
[4] Virmati Software & Telecommunication Limited [TS-164-ITAT-2020(Ahd)], dated 5th March, 2020

The assessee had received income of INR 3.2 Crore from Afghanistan for software services rendered and the foreign parties deducted TDS @ 7% amounting to INR 0.23 Crore on the income i.e. the gross receipts received by the assessee. The rate of tax in India on such income being higher than that in Afghanistan, i.e. 30%, the assessee contended that entire tax deducted in Afghanistan should be allowed as credit u/s 91.

The AO on the other hand was of the opinion that although tax was deducted on gross receipts in Afghanistan, the entire gross receipts were not taxed in India, as the same was reduced by allowable expenses. Therefore, the income i.e. the profit earned is being taxed twice and foreign tax pertaining only to this portion should be allowed as credit. Further, since the details of the expenses incurred in the foreign country were not available, the profit portion was calculated based on overall profit ratio as per the Profit & Loss Account.

The Hon'ble ITAT held that u/s 91, rate of tax in said country is to be calculated with respect to 'whole amount of income', which denotes income after providing for expenses. Thus, the ITAT held that only the foreign tax on profit portion of the income is allowable as foreign tax credit and allowed the manner of computation adopted by the AO.

***Katalyst Comments**: The ITAT's decision brings clarity in respect of foreign tax credit and operation of Sec. 91.*

5. Bombay ITAT allows deduction for education cess, holds that Sec. 40(a)(ii) is inapplicable[5]

As per Sec. 40(a)(ii), any 'rate or tax levied' on profits from business or profession shall not be deducted while computing income chargeable to tax. The Hon'ble ITAT has considered whether education cess is included under 'rate or tax levied'.

While considering the same, the Hon'ble ITAT placed reliance on a number of well-established tax interpretation issues, including that tax cannot be imposed by inference or analogy. Further, provisions for reliefs or exemptions can be interpreted liberally, reasonably and in favour of the assessee and that interpretation cannot go to the extent of interpreting something that is not stated in the provision.

Following the above principles and the principle laid down by the Rajasthan High Court[6], the ITAT held that it is clear that cess is not sought to be disallowed since it is not expressly disallowed. It clarified that when introduced in the Parliament, the said section included a specific reference to 'cess', but the bill was passed after omitting the word 'cess' and referenced a CBDT circular dated

[5] Sesa Goa Limited [TS-163-HC-2020(BOM)], dated 28th Feb, 2020
[6] Pr. CIT v. Chambal Fertilizers and Chemicals Limited [D.B. IT Appeal No. 52 of 2018, Dated 31-07-2018]

18th May, 1967 which advocated the same interpretation. Therefore, it allowed education cess as a deduction.

***Katalyst Comments**: The decision does not address other facets of this issue. Education cess is calculated as a percentage of income tax payable and thereby fits the description of 'rate or tax' provided u/s 40(a)(ii). Further, whether payment of cess is 'wholly and exclusively for the purpose of business' is itself, debatable. The above mentioned decision of the Rajasthan High Court has been challenged by the Revenue and is pending in the Supreme Court.*

6. Delhi ITAT holds that 'cess' is not leviable on DTAA rates[7]

In respect of whether education cess is leviable when income is taxed on gross basis under the India-France DTAA, the Hon'ble Tribunal relied on the decision of the Kolkata Tribunal[8] in respect of the India-UK DTAA where it was held that DTAA rates should be applied strictly without any additional taxes thereon.

The Kolkata Tribunal had held that since education cess was introduced as an additional surcharge on income tax and that surcharge is specifically covered in Article 2 of the treaty. Further, though the education cess was introduced years after the treaty was signed, Article 2 provides that 'any identical or substantially similar taxes introduced' shall also be included in taxes covered. Thus, surcharge and cess, are in fact included in the rates mentioned therein and therefore, not to be levied separately on rates mentioned in the DTAA.

***Katalyst Comments:** An identical position has been upheld by the Delhi Tribunal in considering leviability of cess on DTAA rates.*

7. Mumbai ITAT holds compensation for reduction in partner's share not taxable as capital gains[9]

In the present case, the assessee received compensation from other existing partners for reduction in the assessee's profit sharing ratio from 30% to 25%. The AO was of the opinion that compensation received for surrender of 5% share in partnership firm was taxable as capital gains.

At the outset, the Hon'ble Tribunal found that Sec. 45(4) of the Act dealing with capital gains on distribution of assets on dissolution of firm shall not be applicable as there is no dissolution. The existing business of the firm continued as is and there was only an inter-se adjustment of profit-sharing ratio amongst the partners, adjusted through their current accounts.

The Hon'ble Tribunal drew principles from a number of judicial precedents to conclude that the

[7] JCDecaux S.A [TS-183-ITAT-2020(DEL)], dated 20th March, 2020
[8] DCIT Vs BOC Group Ltd reported in (2015) 64 taxmann.com 386 (kolkatta-Trib)
[9] Anik Industries Ltd [TS-179-ITAT-2020(Mum)], dated 19th March, 2020

partnership property simply signifies a common or joint interest in the property of all the partners and that the firm as such has no separate legal rights of its own in the said property. On dissolution, it not the firm's rights that are extinguished but that of the other partners. In the instant case, the firm property continues to be held jointly by all the existing partners. Further, there is no provision to tax the consideration received by the partner on reduction in share of profit. Therefore, the assessee's appeal was allowed and the said compensation remained untaxed.

Katalyst Comments: *There have been conflicting situations where a transfer/ assignment of share of profit has been considered a taxable transfer. The Limited Liability Partnership Act, 2008 envisages a specific provision to allow transfer of share of profit, without losing partnership right.*

8. **Mumbai ITAT holds that issue of redeemable debentures to sister concern does not amount to loan for deemed dividend u/s 2(22)(e)[10]**

The assessee obtained loans from two of its associates, in which it held 23.75% and 26.76% respectively, and the total value of loans was less than reserves available for distribution in the books of the respective associates. Further, the associate companies were companies in which the public was not substantially interested, and therefore the AO invoked Sec. 2(22)(e), for taxing such loans as deemed dividend.

The loan from the first associate company was obtained in two parts, inter-corporate deposit ("ICD") of 9 lakhs and payment made by associate towards purchase of machinery by the assessee. Sec. 2(22)(e) was squarely applicable in this case of the ICD. However, the associate was repaid in full towards the purchase of machinery and the same being a business transaction, the said section was held as not applicable.

In respect of the second associate, loan was obtained by issue of redeemable debentures, subscribed to by the associate. It was held that issue of securities, though by private placement, cannot be considered to be a loan transaction. Sec. 2(22)(e) is applicable when loan is obtained in place of direct issue of dividends. The securities have a standalone capital liability as opposed to loan which is a current liability. Therefore, it was held that, the issue of debentures does not fall within the purview of deemed dividend.

9. **Clarification in respect of deduction of TDS by employer in light of optional tax regime available to employee under Sec. 115BAC[11].**

Sec. 115BAC of the Act provides an individual or an HUF, having income other than income from business or profession, with the option of opting for a lower tax regime on a year-on-year basis, without availing specified exemptions or deductions.

[10] Jasubhai Engineering Pvt. Ltd [TS-167-ITAT-2020(Mum)], dated 6th March, 2020
[11] Circular C1 of 2020, dated April 13, 2020

The said option is required to be exercised at the time of filing return of income i.e. at the end of the year. Thus, there was a lack of clarity about the rate of tax at which TDS is to be deducted by the employer.

In this regard, the Circular provides that where the employee intimates the employer about the tax regime chosen by him, the employer shall make TDS accordingly and where no intimation has been received, tax shall be deducted under the old regime, i.e. ignoring the provisions of Sec. 115BAC. It is also clarified that the intimation so made shall not be allowed to be modified during the year and does not amount to exercising the option under 115BAC; the employee is free to change the same at the time of filing of return.

In case of employees having income from business of profession, option once exercised cannot be modified, except under some circumstances. Thus, the above provisions would apply in respect of such an employee with a modification that in subsequent years, the employer shall not deviate from deducting tax as per the regime in 115BAC, once the employee has opted for the same.

C. Corporate Law Highlights

1. The Companies (Meetings of Board and its Powers) Amendment Rules, 2020

As per the amended rules, meetings on below mentioned matters may be held through video conferencing or other audio visual means, in accordance with Rule 3, for period beginning from the commencement of the said Amendment Rules, 2020 i.e. 19th March, 2020 and ending on 30th June, 2020. These matters include:

- approval of financials;
- approval of Board's report;
- approval of the prospectus;
- Audit Committee meetings for consideration of financials, to be approved by the Board;
- approval of matters relating to amalgamation, merger, demerger, acquisition and takeover.

2. MCA issued clarification on passing of ordinary and special resolutions by Companies in light of Covid-19[12]

In light of the extraordinary circumstances caused by the pandemic and the absence of specific provisions in the Companies Act, 2013 for allowing conduct of members' meeting through video conferencing (VC) or other audio visual means (OAVM), this clarification was issued by MCA.

[12] Circular No. 14/2020 dated 8th April, 2020

Sec. 108 of the Act allows e-voting in respect of a general meeting, in respect of relevant companies and Sec. 110 allows companies to pass resolutions (except items of ordinary business and items where any person has a right to be heard) through postal ballot. In view of the social distancing due to the pandemic, companies are requested to take all decisions of urgent nature requiring approval of members, other than items of ordinary business and items where any person has a right to be heard, through e-voting or postal ballot.

However, where extraordinary general meeting is unavoidable before 30th June, 2020, the procedure prescribed in the Circular is required to be followed in addition to other requirements of the Act. The Circular provides basic requirements as to how the quorum is to be counted, provision of a two-way teleconferencing facility, maintaining a recorded transcript of the meeting, etc.

3. MCA issues Covid-19 related FAQs on CSR expenses[13]

- Contribution to "PM CARES Fund' and State Disaster Management Authority shall qualify as CSR expenditure item no. (viii) and no. (xii) respectively, of Schedule VII of Act.

- Contribution to "Chief Minister's Relief Funds" or "State Relief Fund for COVID-19" shall NOT qualify as CSR expenditure.

- Further, spending of funds for COVID-19 related activities shall under item nos. (i) and (xii) of the said Schedule relating to promotion of healthcare, sanitation and disaster management.
- Payment of salary/wages to employees and worked including contract labour and daily/casual or temporary wage workers, is a contractual, statutory and moral obligation of employers, and shall not qualify as CSR expenditure.

- Ex-gratia payment to temporary/casual/daily wage workers, over and above the disbursement of wages, specifically for the purpose of fighting COVID-19, shall be admitted as a one-time exception towards admissible CSR expenditure, provided an explicit declaration is made by the Board, which is duly certified by the Board.

4. High Court of Madras holds that merely because shares were allotted on right basis to existing shareholders, it cannot be said that the rights issue converted into a public issue[14]

The Company allotted shares to existing shareholders on a right basis and many of the existing shareholders renounced their right in favour of others who were not shareholders. On that basis, the ROC alleged that since the right was renounced in favour of more than 50 persons, the rights issue has converted into a public issue and thereby, a prospectus is to be issued.

[13] Circular No. 15/2020 dated 10th April, 2020
[14] Vikramjit Singh Oberoi vs Registrar of Companies [2020] 114 taxmann.com 512 (Madras)

The Court held that the Company has no control on the right of renunciation by shareholders, which maybe in favour of any person including a third person (non-shareholder). It also referred to the clarification issued by MCA stating that right issue does not require issue of prospectus. Thus, it was held that the rights issue continued to remain as such and no public issue related requirements applied in this case.

5. NCLT-New Delhi allows scheme of arrangement dismissing Income Tax Department's objection that transferee was a loss making company and hence scheme was to evade taxes[15]

The Transferor Company was the wholly owned subsidiary of the Transferee Company. As per the proposed Scheme of Arrangement and Amalgamation ("the Scheme"), the Transferor Company would amalgamate with and into the Transferee Company, which would result in consolidation of the business carried on by the Transferor and Transferee Companies into one entity. A Joint Application was filed by the Applicant Companies under Sections 230-232 of the Companies Act, seeking sanction for the Scheme.

The Income Tax department raised an objection that since the transferee was a loss making company, post implementation of the scheme, profits of the transferor would be set-off by losses of the transferee, resulting in reduced tax outgo. Therefore, as the proposed Scheme intends to evade taxes, the same should not be approved.

The NCLT held that while the right of Revenue is to be protected, there is no bar in streamlining the affairs of a Company with its Wholly-owned Subsidiary. In view of the foregoing and considering the approval accorded by the members and creditors to the proposed Scheme, and no sustainable observation being made to impede the granting of the sanction, NCLT approved the Scheme.

D. RBI and Foreign Exchange Regulations Highlights

1. Reserve Bank of India ("RBI") extends period for realization of export proceeds[16]

RBI has increased the present period of realization and repatriation to India of the amount representing the full export value of good or software or services exported, **from nine months to fifteen months,** from the date of export, for exports made up to or on July 31, 2020.

The provisions in regard to period of realization and repatriation to India of the full export value of goods exported to warehouses established outside India remain unchanged.

[15] IMA (P.) Ltd. v. Skyroof Builders Ltd., CAA-54/ND/2017, dated 15.12.2019, NCLT, New Delhi
[16] A.P. (DIR) Series Circular No. 27 dated 1st April, 2020

E. Securities and Exchange Board of India ("SEBI")

1. Encumbrance of units of InvITs[17] and REITs[18]

Particulars	InvITs	REITs
Regulation requiring mandatory holding of units by Sponsor/(s)	Regulation 12 of SEBI (Infrastructure Investment Trusts) Regulations, 2014 ("InvIT Regulations")	Regulation 11(3) of SEBI (Real Estate Investment Trusts) Regulations, 2014 ("REIT Regulations")
Encumbrance of units held by sponsor/(s) during mandatory holding period	Allowed, provided: a) Conditions mentioned in the Circular are included in the agreement for encumbrance, and b) Encumbrance is not invoked during the mandatory holding period	Allowed, provided conditions mentioned in the Circular are included in the agreement for encumbrance
Can encumbrance be invoked during the mandatory holding period?	No	Yes, subject to the following: a) The person invoking the encumbrance shall get itself of its nominee to become the re-designated sponsor as per the Regulations, and b) Re-designated sponsor shall comply with all obligations applicable to the Sponsor as per the REIT Regulations
Disclosure obligations on the Sponsor/(s) creating encumbrance	a) The Sponsor shall provide details of encumbrance to the manager within two working days. Changes in particulars shall also be informed in two working days. b) The InvIT/REIT shall inform the stock exchange of the same, within two working days from receipt of details.	

[17] SEBI Circular dated March 23, 2020
[18] SEBI Circular dated March 23, 2020

Particulars	InvITs	REITs
	c) The unit holding pattern shall be disclosed in the format Annexed to the respective Circulars.	

2. Relaxations offered by SEBI in light of Covid-19

a) Due date of regulatory filings and compliances for InvITs and REITs for the period ending March 31, 2020 by one month, over and above the timelines.[19]

Further relaxation from SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 ("SEBI LODR")[20]:

Regulation and Associated filing	Due Date	Extended Date
Regulation 40(9) relating to Certificate from Practicing Company Secretary on timely issue of share certificates	April 30, 2020	May 31, 2020
Regulation 44(5) relating to holding of AGM by top 100 listed entities by market capitalization for FY 19-20	August 31, 2020	September 30, 2020

- Meetings of Nomination Remuneration Committee under Regulation 19(3A), Stakeholders Relationship Committee meeting under Regulation 20(3A) and Risk Management Committee under Regulation 21(3A), are required to be conducted once a year, on or before March 31, 2020. This due date has been extended to June 30, 2020.

- SEBI Circular dated January 22, 2020 on Standard Operating Procedure ("SoP"), earlier coming into effect for compliance periods ending March 31, 2020 has been deferred to June 30, 2020.

- Regulation 47 requiring publishing in the newspapers for all events until May 15, 2020 has been exempted.

b) Promoters and persons holding 25% or more along with persons acting in concert, are required to disclose aggregate shareholding under Regulation 30(1), 30(2), and promoter of every target company is required to disclose that no encumbrances have been made other than those disclosed under 31(4), of the SEBI (Substantial Acquisitions of Shares and

[19] SEBI Circular dated March 23, 2020
[20] SEBI Circular dated March 26, 2020

Takeovers) Regulations, 2011, within 7 working days from March 31, 2020, and for the current financial year, by April 15, 2020. This due date has been extended to 7 working days from June 01, 2020[21].

c) SEBI (FPI) Regulations 2019, require new FPI applicants to submit properly attested documents along with a duly signed application. SEBI has relaxed these norms and allowed applicants to submit scanned copies of these documents and/or if received from specified e-mail IDs.[22]

d) SEBI has extended the timeline for compliance requirements pertaining to Portfolio Managers by two months each, for Monthly Reporting regarding their portfolio management activity to SEBI for periods ending March 31, 2020 and April 30, 2020, and for 'Guidelines for Portfolio Managers' made applicable by SEBI Circular dated February 13, 2020[23].

e) Relaxations for compliances by Alternate Investment Funds ('AIFs') and Venture Capital Funds ('VCFs') have been offered by extending the due date by two months for regulatory filings for the period ending March 31, 2020 and April 30, 2020 as per SEBI (AIF) Regulations, 2012[24].

F. Goods and Services Tax (GST)

1. Key rulings by Authority of Advance Ruling ('AAR')

a) GST applicable under reverse charge on salary paid to directors

The AAR, Rajasthan[25] has held that GST under reverse charge mechanism ('RCM') is payable on consideration paid to director irrespective of the fact that consideration is in form of salary/commission as directors are not employees of the company but they provide services to the company. Therefore, directors are not covered under clause (1) of schedule III of the CGST Act.

Katalyst Comments: The AAR of Rajasthan seems to have erred in interpreting GST Law. Entry no. 6 of RCM notification no. 13/2017-CT (Rate) dated June 28, 2017 covers services supplied by a Director to a Company, in the capacity as a Director and typically by a Director who is not an employee of a Company; for example, sitting fees paid by the Company to a Non-executive director. By no stretch of imagination can one say that a full time Director is not an employee of the Company. where there is an employment contract between the Company and director. In the erstwhile service tax regime also, service tax was payable

[21] SEBI Circular dated March 27, 2020
[22] SEBI Circular dated March 30, 2020
[23] SEBI Circular dated March 30, 2020
[24] SEBI Circular dated March 30, 2020
[25] In the matter of Clay Craft India Pvt. Ltd. [TS-218-AAR-NT]

under RCM on sitting fees or commission paid to non-executive directors only who were not considered as employees of the company, whereas whole-time director, executive directors, managing directors were considered as employees of the company.

b) Transfer of under-construction project as per Business Transfer Agreement ('BTA') on 'going concern' basis exempt from GST

Uttarakhand AAR[26] has held that transfer of under-construction project as per BTA, on 'going concern' basis is covered under definition of supply and GST on the same is exempt by notification 12/2017-CT(Rate) dated 28 June 2017. Also, AAR observed that buyer is involved in construction of residential/commercial complexes and selling thereof and authority finds no series of immediate consecutive transfers of the said business.

Katalyst comments: Welcome ruling by the AAR. GST is payable on sale of under-construction property. However, if the entire under-construction project has been transferred to the buyer under BTA on going concern basis and buyer is involved in construction business (residential or commercial), no GST is payable on said transfer due to exemption benefit provided vide notification no. 12/2017-CT(Rate) dated 28 June 2017.

c) GST payable under RCM on royalty payment to State-Government for iron-ore extraction

AAR, Goa[27] has held GST is payable under RCM on royalty payment made to State Government for mining lease as the said payment gives right to extract the minerals and GST is also payable on contributions made to District Mineral Foundation (DMF), the National Mineral Exploration Trust (NMET) and the Goa Mineral Ore Permanent Fund Trust (GMOPFT) which is mandatory in nature.

2. Other key notifications giving effect of the announcements made by the Hon'ble Finance Minister providing relief to the taxpayers in view of the ongoing situation due to COVID-19

- **E-way bill[28] -** Validity of e-way bill expiring between 20 March 2020 and 15 April 2020 extended till 30 April 2020.

[26] In the matter of Rajiv Bansal and Sudershan Mittal [TS-213-AAR-2020-NT]
[27] In the matter of Cosme Costa & Sons [[TS-221-AAR-2020-NT]]

[28] Notification no. 35/2020-CT-dated April 3, 2020

- **Relaxation in condition of capping ITC[29] -** Condition of capping the ITC to 110% of the invoices reflected in GSTR 2A to be ignored for the tax period February 2020 to August 2020 and cumulative effect to be considered in the GSTR 3B for the tax period September 2020.

- **Extension of GST return filing due dates and relaxation in interest and late fees payment [30]-** All taxpayers can file GSTR-1 returns by June 30, 2020 and for GSTR-3B returns, turnover based relaxations given for payment of tax, interest and late fees and filing of returns.

- **Extension of other statutory deadlines[31] -** Where the deadline of other statutory compliances such as completion of any proceeding, issuance of any notices, intimation, notification, by any authority, commission or tribunal or filing of any appeal, reply, return etc. falls between 20 March 2020 to 29 June 2020, the same is extended up to 30 June 2020

- **Relaxation under Sabka Vishwas Legacy Dispute Resolution Scheme('SVLDRS')[32] –** Date of payment of tax (once statement showing amount payable issued by DC) under SVLDRS has been extended till June 30, 2020.

- **Clarification - Export under Letter of Undertaking ('LUT') without payment of tax [33]**
  - Time limit for furnishing LUT for the F.Y. 2020 – 21 is extended up to 30 June 2020
  - LUT for the F.Y. 2020-21 must be obtained on or before 30 June 2020 for availing extended period
  - LUT reference number for the year 2019-20 can be used in the document of export till 30 June 2020

- **Clarification -Extension of relevant period for refund claim[34]:** If a registered person is required to make application for refund before expiry of two years from the relevant date as per section 54(1) of the CGST Act, the due date of filing refund claim has been extended up to June 30, 2020 if due date falls between 20 March 2020 to 29 June 2020.

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

[29] Notification no. 30/2020-CT-dated April 3, 2020
[30] Notification no. 31 & 32-CT dated April 3, 2020
[31] Notification no. 35-CT dated April 3, 2020
[32] Notification no. 35-CT Dated April 3, 2020
[33] Circular No. 137/07/2020-GST dated April 13, 2020
[34] Circular No. 137/07/2020-GST dated April 13, 2020

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