KATALYST
ADVISORS LLP

Katalyst Kaleidoscope

January 2020: Tax and Regulatory Insights

A. Income-tax Highlights

1. Supreme Court ("SC") holds that benefit of TDS Credit is to be given based on the evidence provided even if the deductor files an incorrect return

- In the case of **Tata Communications Ltd**[1] the Assessing Officer ("AO") had rejected assessee's claim of Tax Deducted at Source ("TDS") from the payments made to the assessee, due to the mis-match in the TDS certificate issued by the deductors and the aggregate amounts appearing in Form 26AS (Annual Tax Statement uploaded by the Tax dept).

- The Supreme Court ("SC") dismissed the Special Leave Petition ("SLP") filed by the Revenue Department and upheld the decision of the Bombay HC and the Tribunal, wherein it was observed that in case the deductor has failed to upload the correct details in form 26AS, the benefit should nonetheless be given to the assessee on the basis of evidence produced before the tax authorities.

Katalyst Comments: *The Supreme Court verdict, re-affirms the logical flow of credit, of taxes withheld. The sole dependence of income-tax authorities on 26AS creates bottlenecks and is not conducive to ease of doing business.*

2. Bangalore ITAT[2] denies capital gains exemption under section 47(iv) of the Income-tax Act, 1961 ("IT Act") from Spanish parent holding 99.99%

- During the AY 2014-15, the assessee-company, Acciona Wind Energy Private Ltd, bought back shares from its Spanish Parent Company, Acciona Energia International S.A who held 99.99% of the shares of the assessee company. The assessee claimed that the transaction was exempt from capital gains tax under section 47(iv) of the IT Act and therefore no liability to withhold taxes arose.

- In this context, it was held by the Bangalore ITAT that provisions of Section 47(iv) of the IT Act were not applicable, since the parent company was holding only 99.99% of shares of the subsidiary company as against the requirement of holding the whole of the shares by the parent company or its nominees as envisaged in the Section.

- ITAT clarified that even if there were two or more shareholders and the other shareholder was different than the parent company, the requirement of the section could be complied with if the other shareholder/s was a nominee/s of the parent company. ITAT noted that in the present case, the other shareholder holding balance 0.01% was not the nominee of the parent company and hence, denied exemption under section 47(iv) of the IT Act.

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[1] PCIT Vs Tata Communications Ltd [2019] 111 Taxmann.com 259 (SC)

[2] M/s Acciona Wind Energy Private Limited Vs. DCIT (International Tax) – ITA No. 1783 and 1784/Bang/2018

- In the context of applicability of Section 47 to Section 46A (share buy-back), ITAT also held that section 45 and section 46A of the IT Act operate in different fields. Section 45 of the Act is applicable regarding “transfer” of a capital asset, whereas section 46A is applicable in respect of receipt of consideration from any company for purchase of its own shares and does not refer to any “transfer”. Given that Section 47 intends to disregard certain “transfers” only, it may not apply to the provisions of Section 46A.

  Katalyst Comments: *Usually, when the parent company holds 99.9% in the subsidiary company, the balance is held by a nominee shareholder (duly reported as such under Section 89 of Companies Act, 2013; Section 187C of the erstwhile law) in order to comply with minimum two shareholders under the Companies Act, 2013. However, that was not the fact in this case, and hence, exemption under section 47(iv) was not granted by the ITAT.*

3. Surplus resulting from assignment of loan on present value basis is not taxable in the hands of assessee

- The assessee[3] had borrowed an interest free loan of INR 12 Cr from a Memoric Pictures Pvt Ltd (‘MPPL’) which was to be repaid over a period of 100 years. The assessee utilized the said for purchase of shares and not for its ongoing business.

- Thereafter, a tripartite agreement was entered into between the assessee, MPPL and Champions Pictures Pvt. Ltd (“CPPL”) under which the obligation of repaying the above-mentioned loan of INR 12 Cr was assigned to CPPL at a discounted present value of INR 0.36 Cr.

- The resultant difference of INR 11.64 Cr was credited by the assessee to the profit and loss account; however, while computing the taxable income, the assessee reduced the said amount from the taxable receipt on the ground that same constitutes a capital receipt and was not taxable. However, the AO sought to tax the same under section 41(1) of the IT Act as a liability of the assessee was ceased / extinguished.

- The Mumbai Tribunal observed that the loan was utilized for the purpose of purchasing the shares which is not the business of the assessee. Accordingly, the surplus resulting from the assignment of loan is not resulting from trading operation and therefore, not to be treated as revenue receipt.

- Further, the surplus resulting from assignment of loan at present value of future liability is not cessation or extinguishment of liability as the loan is to be repaid by the third party and, therefore, cannot be brought to tax in the hands of the assessee.

[3] Cable Corporation of India Ltd v DCIT [2019] 106 taxmann.com 194 (Mumbai - Trib.)

Katalyst Comments: *This decision, coupled with removal of MAT, could turn out to be relevant under current circumstances to companies undergoing debt restructuring.*

4. Provisions of section 56(2)(vii)(b) not attracted if assessee receives property on account of family settlement

- In this case the assessee[4] entered into Family Settlement Deed ("FSD") wherein the following was provided:
  - Distribution of an immovable property to the assessee due to relinquishment of rights in said property by other three brothers in favour of the assessee.
  - As a part of Family Settlement, assessee to contribute certain sums from his own resources/capital or through the borrowed funds to balance the settlement between his brothers for which the assessee disbursed a sum of INR 12 Cr (i.e. INR 4 Cr) to each brother.

- Considering the above arrangement, the AO concluded that the assessee had paid a "consideration" to his brothers against relinquishment of their rights in property distributed to him under the FSD and the distribution is not out of "natural love and affection". Accordingly, the AO sought to tax the difference between the stamp duty value of the property (which was INR 28 Cr) and the "consideration" paid of INR 12 Cr as 'income from other sources' in the hands of the assesse under section 56(2)(vii)(b) of the IT Act.

- The ITAT held that in this case, since there was a Family Settlement between the assessee and his brothers and that they have acted upon FSD to distribute various properties and rights therein amongst themselves, that would show that parties have entered into genuine transaction. It is well settled law that Partition or Family Settlement is not a transfer. Therefore, no commercial transaction has been entered into between the assessee and his brothers and there is no colourable device.

- Further, it held that since the distribution of the immovable property was between "relatives" as defined under section 56(2), the same would fall outside the purview of section 56(2)(vii)(b) of the IT Act. The words "natural love and affection" have not been specified therein and therefore, this term has no consequence to the above provisions in which the A.O has made the addition.

Katalyst Comments: *This decision of the Mumbai ITAT reiterates that any that any settlement amongst the family under a FSD is a non-commercial transaction and provisions of section 56(2)(vii)(b) would not apply. There are several judicial precedents Courts to the effect that Family Settlement is not a Transfer (under section 2(47) of the IT Act). Whilst this decision was given in the context of section 56(2)(vii)(b), the same should also apply to other SAARD provisions such as section 56(2)(x) of the IT Act.*

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[4] Govind Kumar Khemka Vs ACIT [2020] 113 taxmann.com 5 (Delhi – Tribunal)

5. Central Board of Direct Taxes ("CBDT") notifies Income tax return (ITR) forms (i.e. ITR-1 and ITR-4) for AY 2020-21

➢ In order to ensure that the e-filing utility for filing of return for AY 2020-21 is available as on 1 April 2020, the CBDT notified[5] the ITR Forms ITR-1 (Sahaj) and ITR-4 (Sugam) for the said AY. The key changes in newly notified ITRs vis-a-vis last year are as under:

- ITR – 1 form is not applicable to individuals who have incurred expenses of INR 2 lakh or more on foreign travel (either on himself or any other person).
- Further, ITR-1 is also not applicable to such individuals who have deposited more than INR 1 Cr in one or more current accounts or / and paid electricity bill of more than INR 1 lakh.
- Under ITR-1, taxpayers will have to mandatorily provide their passport number (if they have one).

➢ It is to be noted that vide the above notification issued by CBDT, an individual taxpayer jointly owning a house property was not permitted to file the return in ITR-1 or ITR4. However, after several concerns raised by the taxpayers, the CBDT issued a press release[6] granting relaxation to such taxpayers owning a single house property to utilize Form ITR-1 or ITR-4 (as applicable).

B. SEBI Highlights

1. SEBI informal guidance[7]: Non-monetary transactions fall within the ambit of "material financial relationship" under Prohibition of Insider Trading Regulations, 2015 ("PIT Regulations")

➢ Under PIT Regulations, a Designated Person ("DP") is required to disclose name and PAN of the immediate relatives and the persons with whom such DP share a "material financial relationship" which means "a relationship in which one person is a recipient of any kind of payment such as *loan or gift* from a DP during immediately preceding 12 months, equivalent to at least 25% of the annual income of such DP, but excludes relationships in which the payment is based on arm's length transactions."

➢ In this context, an informal guidance was sought whether the DPs should disclose the name of the person with whom they have entered into the following transactions and the amount of the said transactions is exceeding 25% of the DP's Annual Income:

[5] Income-tax (1st Amendment) Rules, 2020 dated 3 January 2020
[6] CBDT Press Release dated 9 January 2020
[7] SEBIIHO/ISD/ISD/OW/PI20201276/1 dated 3 January 2020 – Informal Guidance in case of Gujarat State Petronet Ltd

(i) DP making the payment of fees of his granddaughter by directly depositing such amount of fees to the account of the University;
(ii) DP gifting a small piece of land and crediting a sum of INR 2 lakhs to her daughter on her birthday;
(iii) DP undertaking to repay financial obligations of a person.

- On perusing the nature of transactions undertaken, SEBI clarified that Explanation to Clause 14 of Schedule B of the PIT Regulations explicitly states that material financial relationship shall mean a relationship in which one person is a recipient of any kind of payment such as by way of a loan or gift and therefore, even non-monetary transactions would be construed to establish a material financial relationship.

- Further it states that a DP is required to disclose names of aforesaid immediate relatives with whom he has a material financial relationship as an immediate relative may rebut connectedness with DP.

2. Notification of format for statement of deviation for proceeds of issue

- As per Regulation 32 of LODR, a listed entity is required to submit to the stock exchange, a statement of deviation or variation, pursuant to review by the audit committee, on a quarterly basis for public issue, rights issue, preferential issue etc. indicating the below;

(i) Deviations, if any, in the use of proceeds of public issue, rights issue, preferential issue etc. and
(ii) The category wise variation between projected utilisation of funds and the actual utilisation of funds.

- In order to bring uniformity in the above reporting, SEBI has notified[8] a format for Statement of Deviation in order to monitor the end use of proceeds by the Stock Exchanges. The salient features of the format are as under:

  - The format is applicable for all funds raised by listed entities through public issue, rights issue, preferential issue, QIPs etc.;

  - Listed entities to disclose the said statement on quarterly basis along with the declaration of financial results until such funds are fully utilised or the purpose for which these proceeds were raised has been achieved; and

  - Audit Committee to review the statement of deviation report and after such review, the comments of audit committee along with the report shall be disclosed/submitted to the stock exchange, as part of the format.

[8] CIR/CFD/CMD1/162/2019 dated 24 December 2019

The first submission of the New Statement of Deviation shall be made by listed entities for the quarter ending 31 December 2019

Katalyst Comments: *SEBI has issued the relevant format after it noticed that there is no uniformity in the formats of statement of deviation or variation in proceeds of public issue, rights issue and preferential issue submitted by listed entities to stock exchanges.*

3. Other regulatory changes by SEBI:

➢ **Introduction of the Informant Mechanism[9] into the PIT Regulations**

With effect from 26 December 2019 the informant policy in relation to insider trading laws shall come into force. The key features of the informant policy are as under:

- Establishment Office of Informant Protection ("OIP") as an independent office for receiving and processing Voluntarily Information Disclosure Form ("VID Forms");
- An informant can voluntarily submit original information relating to any violation of PIT Regulations to the OIP, through a VID Form.
- In case of direct submission of information, identity of the informant will be revealed at time of submission of the VID form. In case the information is submitted through a legal representative, the identity of the informant is not required to be revealed at the time of submission of VID Form.
- Reward to the informants prescribed where in case the information provided leads to a disgorgement of at least INR 1 Cr, in accordance with the PIT Regulations.
- Confidentiality regarding the identity of the informant to be protected through the OIP and protection to the whistle-blowers against any victimization on sharing the information relating to insider trading.

Katalyst Comments: *This mechanism introduced by SEBI is to mainly protect the interest of investors at large and initiate action based on evidence at the earliest to ensure the integrity of the market.*

➢ **Guidelines issued for listing of Infrastructure Investment Trusts ("InvITs") issuing units on private placement basis[10]**

[9] Dated 24 December 2019
[10] SEBI/HO/DDHS/DDHS/CIR/P/2019/161 dated 24 December 2019

With effect from 15 January 2020, SEBI has mandated the InvITs issuing units on private placement basis that are proposed to be listed, as under:

- To file a draft placement memorandum ("DPM") with SEBI and stock exchanges through a registered merchant banker not less than 30 days prior to opening of the issue.

- DPM to contain specific disclosures as required under the SEBI (Infrastructure Investment Trust) Regulations, 2014 along with a due diligence certificate issued by the merchant banker.

- SEBI may issue observations (if any) on the DPM within 15 days of receipt of DPM or date of receipt of satisfactory reply from the issuer / merchant banker to the issue or from any regulator or agency (incase SEBI has sought any clarifications in this regard), whichever is later.

- The merchant banker to ensure that all comments are suitably incorporated in the DPM prior to filing of the final placement Memorandum.

➢ **SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 ("LODR") amended as under**

- **Business Responsibility Reporting for top 1,000 listed entities:**

  With effect from 26 December 2019, SEBI amended the LODR[11] mandating the top 1,000 listed entities, based on their market capitalization calculated as on 31st March every financial year, to include a business responsibility report in their annual report describing the initiatives taken by them from an environmental, social and governance perspective, in the specified format.

- **Reducing the communication of record date to stock exchanges**:

  In case of communication of record date to stock exchanges (for declaration of dividend, issue of bonus shares, issue of shares for conversion of securities etc.), SEBI has provided that all listed entities are required to give notice of such record date to stock exchanges, in advance of at **least 3 working days** (excluding the date of intimation and the record date) along with specifying the purpose of the record date.

[11] Vide Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) (Fifth Amendment) Regulations, 2019 dated 26 December 2019

- **Deferring deadline for splitting of Chairman and MD roles to 1 April 2022:**

  Regulation 17(1B) of the LODR Regulations has been amended to defer the deadline for splitting of Chairman and Managing Director or the Chief Executive Officer roles of top 500 listed entities from 1 April 2020 **to 1 April 2022**.

C. Corporate Law Highlights

1. SC stays[12] the National Company Law Appellate Tribunal ("NCLAT") order in favour of Mr. Cyrus Mistry reinstating him as the Executive Chairman of Tata Sons

- The SC has stayed that NCLAT order[13] dated 18 December 2019 reinstating Mr. Cyrus Mistry as Executive Chairman of Tata Sons Limited. Please refer to the December edition of the Katalyst Kaleidoscope for the key observations/ directions passed by the NCLAT in relation to the same here.

- Separately, NCLAT in its order dated 18 December 2019 had also directed the Registrar of Companies ("RoC") to reverse Tata Sons' status from a 'private company' to a 'public company, in response to which, the RoC had preferred an Interlocutory Applications for seeking amendment in the NCLATs to the extent that it termed the RoC's order converting Tata Sons from a Public Co. to a Private Co. as 'illegal'; however, the NCLAT struck down the ROCs plea by noting the RoCs action went against the provisions of Section 14 of the Companies Act, 2013, which mandates that approval for any change in a company's status has to come from the National Company Law Tribunal ("NCLT"). Accordingly, it held that there is no ground to amend the NCLATs judgment dated 18 December 2019.

2. NCLAT dismisses Income-tax Departments plea against demerger of tower and fiber units of Reliance Jio

- The NCLAT has dismissed a petition[14] of the Income Tax Department ("IT Department") which had objected to the Ahmedabad NCLT's order approving the Composite Scheme of Arrangement for Demerger of fibre and tower businesses of Reliance Jio Infocomm Ltd into Jio Digital Fibre Pvt. Ltd. ("Jio Digital") and Reliance Jio Infratel Ltd. ("Jio Infratel") ("Demerger Scheme") respectively.

- Under the Demerger Scheme, it was provided that, along with the demerger of business undertaking, the preference share capital, issued by Jio, and the Securities Premium received

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[12] Tata Sons Private Limited Vs Cyrus Investments Pvt Ltd (Civil Appeal No. 13-14/2020)
[13] In the case of Cyrus Investments Private Limited Versus Tata Sons Limited & Ors (Company Appeal (AT) No. 254 of 2018) and Cyrus Pallonji Mistry versus Tata Sons Limited (Company Appeal (AT) No. 268 of 2018)
[14] Joint Commissioner of Income Tax vs. Reliance Jio Infocomm Ltd. & Ors. [2019] 112 taxmann.com 275 (NCL-AT)]

thereon, shall stand cancelled such that there is a constructive receipt of an identical amount as loan from the preference shareholders to Jio.

- The IT Department objected to the above on the ground that such conversion of redeemable preference shares was contrary to section 55[15] of the Companies Act, 2013 ("Companies Act") and led to reduction of profitability or the net total income of Jio on account of interest expenses. Accordingly, the IT Department concluded that this Scheme was that of a tax planning to avoid payment of dividend distribution tax.

- However, NCLAT rejected the above plea and held as under:

  - NCLAT noted that Jio had affirmed on Affidavit that it had no objection to being subjected to tax on the transactions under the Scheme as per law and that the sanctioning of the Demerger Scheme would not adversely impact the rights of the IT Department.

  - It further observed that the IT Department had represented that it would reserve the right to ascertain aspect of any tax payable as a result of the Demerger Scheme.

  - Accordingly, it was held that without placing any evidence, it was not open to the IT Department to hold that the Demerger Scheme is giving undue favour to the shareholders of the company and also the overall scheme of arrangement results into tax avoidance.

Katalyst Comments: *The key objection of the tax dept was regarding tax impact on conversion of preference shares into loan, vis-à-vis loss of potential DDT which was rejected by the NCLAT. In any case, interest payment on loans would be taxable in recipient hands; of course, interest would be deductible for borrowing (interest paying) company, subject to the latter having profits. This case is another instance where tax authorities have tried objecting to the Scheme being approved and judicial authorities have held that tax authorities have independent recourse under the income-tax laws to investigate the transaction/ assess the income arising therefrom.*

3. NCLT rejects Sun Pharma's Outbound Demerger Scheme on interpretational grounds

- Ahmedabad NCLT rejected[16] the Scheme of Arrangement which envisaged a cross border arrangement for outbound demerger of two specified investment undertakings of Sun Pharmaceutical Industries Limited ("Sun Pharma India") into two overseas (being direct and indirect wholly owned subsidiaries) Resulting companies viz. Sun Pharma (Netherlands) B.V and Sun Pharmaceuticals Holdings USA Inc ("Demerger").

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[15] Section 55 – Issue and Redemption of Preference Shares
[16] CP (CAA) No. 79 of 2019 in CA(CAA) No. 28/NCLT/AHM/2019 dated 19 December 2019

- Whilst Sun Pharma India submitted that it would comply with all the applicable rules and regulations under the Foreign Exchange Management (Cross Border Merger) Regulations, 2018[17] ("Cross Border Regulations"), the NCLT held as under:

  - Provisions of section 234 of the Companies Act which relate to the cross-border merger of Indian Companies and vice versa, mention only about "merger" and / or "amalgamation" and do not seem to contain the words "compromise" and/ or "arrangement" and / or "demerger" (unlike section 230 and 232 of the Companies Act);

  - It may be construed that the provisions of section 234 of the Companies Act do not permit "compromise" and/ or "arrangement" and / or "demerger" with a foreign company and vice-versa, thereby restricting demerger of Indian Companies with foreign company.

  - Rule 25A of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 is silent on "demergers" and mentions only "mergers" and "amalgamations."

  - On further reference to Cross Border Regulations, NCLT observed that the term "Cross Border Merger" which is defined to mean any merger, amalgamation or arrangement between an Indian company and foreign company has specifically excluded the term "demerger", which was otherwise provided in the draft Regulations issued in April 2017.

- Accordingly, following the 'Literal Interpretation Rule' NCLT held that once the meaning is clear and plain, it is not the province of the Court to substitute its opinion. If any provision of law is clear beyond all ambiguity, it is to be implemented regardless of the fact that it causes hardship to a particular party.

  Katalyst Comments: *Although the doors have now been opened for outbound mergers, the law is still silent on cross-border de-mergers, thereby restricting any cross-border restructuring activities only to merger/ amalgamations.*

4. NCLAT holds that outstanding tax dues payment cannot form a pre-condition for sanctioning a Scheme of Arrangement[18]

- In this case, the NCLT while allowing the Scheme of Arrangement, directed the Transferor Company to pay entire income-tax and service tax liability (which was not yet crystallized) as a condition precedent for sanctioning the Scheme even after obtaining an express undertaking from the Transferee Company to make such payment (on behalf of Transferor Company) if such dues are payable after the adjudication.

- The Transferee company appealed before the NCLAT which held that it is well settled that, while sanctioning a Scheme, the right of Tax Authorities remains intact to initiate appropriate

[17] Notification No. FEMA.389/2018-RB dated 20 March 2018
[18] Ad2pro Global Creative Solutions Pt. Ltd & Ors. V Regional Director & Ors., Company Appeal No. 98/99 of 2019

proceedings regarding recovery of any taxes. Once a Scheme has been sanctioned nothing precludes the Tax Authorities from recovering its legitimate and recoverable outstanding tax dues from the Transferor or the Transferee Company, as provided in the Scheme.

- Accordingly, the NCLAT directed the NCLT to incorporate the modification in terms of this judgment in the Scheme of Arrangement which shall be implemented without insisting upon compliance of demands.

5. Increase in threshold for appointment of a whole time Company Secretary ('CS') expansion of scope of Secretarial Audit in Private Companies

The Ministry of Corporate Affairs ('MCA') has amended the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014 a notification[19] dated 3 January 2020 which provides as under:

- **Increase in threshold limit for appointing a Company Secretary:** Rule 8A - Appointment of Company Secretaries, is amended to provide that private companies, having paid up share capital of INR 10 Cr (at present INR 5 Cr) or more are required appoint a whole time CS.

- **Expanding the of scope of Secretarial Audit** – MCA has expanded the scope of Secretarial Audit by including every company (including private companies) having outstanding loans or borrowings from banks or public financial institutions of INR 100 Cr or more to provide a Secretarial Audit Report as an annexure to the Board Report.

Katalyst Comments: *At present, Private companies are outside purview of Secretarial Audit irrespective of the Paid-up capital, Turnover or Outstanding Loan amount limits. Currently, the Secretarial Audit is restricted to listed companies and public companies having a paid-up share capital of Rs. 50 Cr or more and having a turnover of INR 250 Cr or more. This amendment, enhancing the scope of Secretarial Audit by including Private Companies, will increase the number of companies to undergo Secretarial Audit and would certainly increase compliances by private companies.*

D. Stamp Duty

1. Gujarat HC decision regarding stamp duty on merger of unlisted companies

- The Gujarat HC[20] was called upon to consider the base for stamp duty in relation to merger of a holding company (transferor) into its wholly owned subsidiary (transferee), both being unlisted entities.

[19] Companies (Appointment and Remuneration of Managerial Personnel) Amendment Rules, 2020
[20] Unique Mercantile India Limited Vs the Chief Controlling Revenue Authority dated 20 December 2019 (Special Civil Application No. 14597 of 2019)

- Pursuant to the amalgamation, the transferee had issued shares to the shareholders of the transferor based on the Net Asset Value of the transferee company. Such shares were issued at INR 98 / share (i.e. Face Value of INR 10 and Securities Premium of INR 88).

- The question before the Gujarat HC was whether the share premium of INR 88 on the shares allotted by the transferee company to the transferor company can be treated as part of consideration paid for such amalgamation for the purposes determining the Stamp Duty under Article 20(d)[21] of Schedule 1 of the Gujarat Stamp Act 1958.

- In this context, the Gujarat HC observed that since the swap ratio provided that equity shares issued by the transferee to the shareholders of transferor company at a premium of INR 88, the same would fall part of the consideration which has flown from the transferee to the transferor. Accordingly, the stamp duty would be leviable not on the face value but on the value including share premium.

  Katalyst Comments: *Considering that Article 20(d) r.w. Explanation III under the Gujarat Stamp Act has a specific entry to the fact that fair market value for unlisted shares is the "face value", the above ruling is adverse for companies registered in Gujarat undertaking stamp duty adjudication.*

  However, one important question which remains unanswered in the judgment is that this was a case of HoldCo collapse into its subsidiary. While the petitioners had taken an alternative stand that since, in case of a HoldCo collapse, it is mere replacement of shares by new shares and there is no transfer of property, no stamp duty should be leviable; however, the Gujarat HC has remained silent on this question.

2. Ministry of Finance defers the date for applicability of amendments to Indian Stamp Act, 1899 to 1 April 2020

Finance Act 2019 (No.1) had made certain amendments to Indian Stamp Act, 1899 (Refer our KK February 2019: Interim Budget Special Issue here for more details) with effect from a date to be notified by the Central Government.

The Central Government had appointed 9 January 2020 as the date from which the above amendments will become effective. However, vide notification[22] dated 8 January 2020, the Central Government deferred the applicability to 1 April 2020.

[21] As per Article 20(d) stamp duty equal to 1% of the market value of shares issued, or the face value of shares, whichever is higher and the amount of consideration paid for such amalgamation.

[22] S.O. 115(E) dated 8 January 2020

E. Foreign Exchange Regulations Highlights

Clarification on Contract Manufacturing under the FDI Policy

The Department for Promotion of Industry and Internal Trade has issued a clarification[23] with respect to contract manufacturing under the FDI Policy as under:

- Manufacturing activity in India, which falls under the automatic route for Foreign Investment, can be either self-manufacturing or contract manufacturing.
- Contract manufacturing is also covered under the definition of manufacturing provided the manufacturing is done with third party under a legally tenable contract.
- A manufacturer is permitted to sell its products manufactured in India through wholesale and/or retail, including through e-commerce, without Government approval.

F. Other Regulatory Highlights

Competition Commission of India ("CCI") releases a report on Market Study on E-commerce in India

- On 8 January 2020, the CCI has issued a report titled 'Market Study on E-Commerce in India – Key Findings and Observations'. The report is purportedly to better understand the functioning of e-commerce in India and its implications for markets and competition.
- The objective of releasing such report was to engage with industry and ascertain the Commission's enforcement and advocacy priorities in relation to e-commerce, with greater clarity on market development and emerging impediments to competition.
- On the basis of the study, the CCI is of the view that the market place platform should adopt self-regulatory measures on a variety of parameters, including the following:
  - **Search ranking**: Setting out in the platforms' terms and conditions, a general description of the main search ranking parameters and various other aspects.
  - **Collection use and sharing of data**: Set out a clear end transparent policy on data collected on the platform, use of such data by the platform and also the potential and actual sharing of such data with third parties or related entities.
  - **User review and rating mechanism:** Adequate transparency over user review and rating mechanism; reviews for only verified purchases to be published and mechanisms to be devised to prevent fraudulent reviews/ratings.

[23] DPIIT File No 12(1) / 2019-FDI Policy dated 9 December 2019

- **Revision in contract terms:** Notify the business users concerned of any proposed change in terms and conditions; such changes to be implemented only after the notice period.

- **Discount policy:** To bring out clear and transparent policy on discount.

Katalyst Comments: *As readers would be aware, the growth of e-commerce in India has been exponential and is expected to grow significantly in the next few years. There are two types of business models, namely market place business model and inventory model; FDI is permitted under automatic route in the market place model, but not permitted in the inventory model. The market study seems to be a pre cursor to some changes and potential suo moto action by CCI, which has the potential to impact the functioning of entities engaged in e-commerce, particularly those with FDI.*

G. Goods and Service Tax Highlights

1. Issue of pre-paid instruments (PPI) or gift vouchers/card to customers is liable to GST

The Tamil Nadu Advance Ruling Authority [24] has held that supply of PPI or gift vouchers or gift cards should not be classified as 'actionable claims', but should be covered within the definition of 'voucher' and thus, liable to GST as supply of goods. Also, time of supply of such gift vouchers/gift cards shall be the date of issue of vouchers, in case of vouchers that are specific to goods specified against the voucher. In case of gift vouchers/gift cards redeemable against any goods, time of supply shall be the date of redemption of voucher.

Katalyst Comments: *The industry has practice of treating PPI or gift cards, as 'actionable claim' and hence, considered under schedule III of the GST Law (i.e. neither goods nor services) and hence, no GST is applicable in case of 'actionable claims'. However, the AAR has treated PPI or gift cards as 'voucher' and classified it as goods. A necessary clarification in this regard is expected in Budget 2020.*

2. ITC restricted to 110% of invoices appearing in GSTR-2A

In October 2019, the Government had provided that ITC w.r.t. invoices not reflecting in GSTR-2A will be maximum of 20% invoices reflecting in GSTR-2A. This cap has been reduced to 10%[25] of ITC with respect to invoices appearing in GSTR-2A w.e.f. January 1, 2020.

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[24] In the matter of Kalyan Jewellers India Ltd. [TS-1188-AAR-2019-NT]
[25] Notification no. 75/2019-Central Tax dated December 26, 2019

3. Conditions[26] for use of amount available in electronic ledger

- The Commissioner or GST officer (not below the rank of Assistant Commissioner) has been given the power to not allow utilization or refund of any amount in electronic credit ledger, if he has reasons to believe that the credit has been fraudulently availed or is ineligible due to the following reasons –
  - The issuer/recipient of invoice is non-existent or not conducting business;
  - The recipient has not received the goods/services or is not in possession of invoice;
  - The tax charged on the invoice is not paid to the government.

- Also, such restriction can be imposed for a period of not more than a year.

- The officer may withdraw the restriction and allow utilization of amount in credit ledger upon being satisfied that the conditions for disallowing utilization no longer exist.

4. Clarification w.r.t. reverse charge mechanism ('RCM') applicable to renting of motor vehicle

The Government has clarified that RCM[27] on motor vehicle will apply only when the service provider (other than a body corporate), making supply to a body corporate does not issue invoice charging GST @12% without ITC.

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[26] Notification no. 75-2019-Central Tax dated December 26, 2019
[27] Notification no, 29/2019-Central Tax (Rate) dated December 31, 2019