KATALYST ADVISORS

Katalyst Kaleidoscope

July 2024: Tax and Regulatory Insights

SUMMARY OF CONTENTS

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A. Income Tax Highlights

1. SC: Tax treatment of Payment made to distributors[1]

The assessee was a manufacturer of computers and peripherals and supplied its products to various distributors; the assessee had suggested to its distributors to sell products at prices lower than those mentioned in the invoices to ensure that sales were not adversely affected by unfavorable market conditions (such as festival discounts, sudden market value changes, or the introduction of similar products). These sales were made at the distributors risk to various dealers. The AO considered the payments made by the assessee to its distributors as 'commission' and thus liable for tax deduction at source (TDS) under Section 194H of the Income-tax Act, 1961.

The High Court noted that the payments from distributors to assessee had no connection with the further sales made by the distributors, thereby ruling out the possibility of these payments being treated as commission or brokerage under Section 194H; the Supreme Court reviewed the Special Leave Petition (SLP) filed by the revenue against the High Court's decision and held that the case was covered by the decision in **Bharti Cellular Ltd[2].**

Consequently, the SLP was dismissed, affirming that the payments made by assessee to its distributors did not constitute commission or brokerage under Section 194H, and pending applications were also disposed off in favor the assessee.

2. ITAT Mumbai: Deletion of addition related to non-charging of notional interest on loan deleted[3]

During the relevant financial year, the assessee provided an interest-free loan to its Associated Enterprise (AE) located in Jebel Ali Free Zone – Dubai (JAFZA); the AE encountered difficulties in recovering a debt from a debtor, causing its net assets to fall below the required threshold of 75% of share capital under JAFZA Rules. To comply with these regulations and protect its investment in the AE, the assessee extended the loan as quasi-equity, pursuant to a board resolution. The Assessing Officer (AO) and Transfer Pricing Officer (TPO) were of the view that imputed notional interest on the loan should be added as income of the assessee.

The Tribunal held that the loan provided by the assessee was for business purposes, consistent with the Supreme Court's decision in S. A. Builders Ltd. (288 ITR 1), and also found merit in the assessee's submission that the loan was funded from interest-free sources, specifically receipts

[1]Commissioner of Income-tax (TDS) v. Acer India (P.) Ltd, March 4, 2024.
[2]Bharti Cellular Ltd. Vs Asstt. CIT [2024] 160 taxmann.com 12 (SC) dt. February 28, 2024.
[3]Tata International Ltd. vs. DCIT [TS-239-ITAT-2024(Mum)-TP] (Mum. Tribunal) dated, May 31, 2024.

from the maturity of mutual funds. Therefore, the addition related to the non-charging of interest should be deleted.

3. ITAT Mumbai: TDS credit transfer pursuant to demerger scheme. [4]

In the instant case, MSM Satellite Pte Ltd (MSM), a wholly owned subsidiary of the assessee, demerged its broadcasting business to the assessee. Post the effectiveness of the Scheme and upon completion of assessment under the Income Tax Act, the Assessing Officer disallowed the TDS credit to the assessee, which originally pertained to MSM before the demerger. The TDS credit was not allowed by the AO because the TDS certificates were in the name of MSM rather than the assessee. The assessee argued that although the certificates were not in its name, the relevant income had already been assessed in the hands of the assessee; therefore, the TDS deducted should be credited to the assessee.

In support of this argument, it was noted that co-ordinate benches have previously held that the resulting company in a demerger is eligible to claim TDS credit, even if the TDS certificates are in the name of the demerged or transferor company; in the instant case, since the assessee has declared the relevant income, the TDS credit should be allowed despite the certificates being in the name of MSM.

Katalyst Comments:

The ITAT highlights a common issue post-demerger where TDS credits were disallowed due to certificates being in the name of the demerged entity; the view that the assessee, as the resulting company, should receive credit aligns with established judicial precedents and is also acknowledged in Rule 37BA (2). The practical issue of actually getting the credit is a major administrative issue.

B. Corporate Law Highlights

1. ROC Kanpur: Penalty imposed on wholly-owned subsidiary for non-disclosure of Significant Beneficial Owner[5]

In the instant case, the reporting company failed to disclose its Significant Beneficial Owner (SBO) in Form BEN-2. In response to a Show Cause Notice (SCN), the company claimed it was a wholly-owned subsidiary of Samsung, Korea, listed on the Korean Stock Exchange, with no individual exercising control or significant influence; the company argued it was independently

[4] Culver Max Entertainment Private Limited. vs ACIT, dated May 2, 2024.
[5]Samsung SDI India Private Limited, Order No 03 /06/SBO/UP/2024/Samsung SDI/ 1587 to 1590 dt. June 12, 2024.

managed by its Board of Directors, with no individual holding a majority stake in the holding or ultimate holding company, and thus had not received any declarations in Form BEN-1 and not required to file the form BEN-2.

However, the Registrar of Companies (RoC) found that the reporting company had declared a person's name as the Ultimate Beneficial Owner (UBO) in a declaration filed with Citi Bank, Gurgaon; consequently, the company should have also filed Form BEN-2 under the Companies Act, 2013 to declare the SBO.

The RoC concluded that the company, being a wholly-owned subsidiary, was legally obligated to serve Form BEN-4 to its immediate holding company, regardless of the presence of an SBO. The company failed to take necessary actions to identify the SBO. As a result, a monetary penalty was imposed on the company, its directors, and the company secretary for allegedly violating Section 90(4A).

2. NCLT Mumbai: ZEEL allowed to withdraw merger implementation application amid arbitration dispute[6]

The National Company Law Tribunal (NCLT) has permitted Zee Entertainment Enterprises Ltd (ZEEL) to withdraw its 'implementation application,' which sought directives to enforce the composite scheme of merger with Culver Max Entertainment Pvt. Ltd. (formerly Sony Pictures Networks) and Bangla Entertainment. ZEEL's decision to withdraw the application was prompted by the ongoing arbitration proceedings initiated by Sony, which alleged breaches of the Merger Cooperation Agreement (MCA) by ZEEL. ZEEL disputes Sony's termination of the MCA and plans to seek damages for what it claims are Sony's illegal actions and breaches. The withdrawal, endorsed by ZEEL's board, is aimed at addressing the arbitration claims and protecting the company's interests and those of its shareholders.

Initially, ZEEL had applied for enforcement of the merger scheme approved by NCLT in August 2023, seeking directives for Sony to adhere to the sanctioned scheme and prevent interference with the merger process; however, Sony terminated the $10 billion merger agreement in January 2024, citing alleged breaches by ZEEL, including financial mismanagement and failure to recover dues. This led to arbitration proceedings against ZEEL at the Singapore International Arbitration Centre (SIAC) and company applications challenging ZEEL's enforcement application.

By allowing the withdrawal, NCLT noted that ZEEL could pursue its claims in arbitration and other forums, thus avoiding multiple litigations. The NCLT emphasized that it did not comment on the merits of the case and granted liberty to all parties to pursue their legal remedies.

[6]Zee Entertainment Enterprises Ltd. vs. Bangla Entertainment Pvt. Ltd. & Anr. [LSI-634-NCLT-2024-(MUM)] June 24, 2024

C. SEBI / Stamp Act / Other Highlights

1. SEBI: Amendment in SEBI (Prohibition of Insider Trading) Regulations, 2015[7] w.r.t. to trading plans frame work for insiders and KMPs.

The provision related to Trading Plan allows individuals who consistently have access to Unpublished Price Sensitive Information ('UPSI') to trade securities legally; it permits insiders to create a trading plan, allowing them to schedule future trades; as such, by having this pre-approved plan, they can execute trades without being restricted by possessing UPSI information at the time of the trade, as the trades were planned in advance.

The new regulation liberalizes the previous framework; key changes are tabulated comparatively below:

S no	Particulars	Previous Regulation	Amended Regulation
I.	**Commencement of Trading**	Earlier the minimum cool-off period between the disclosure and implementation of a trading plan has been ***six months.***	In the amended regulation, the period of six months is reduced to ***one hundred and twenty calendar days.***
II.	**Trading Period Restriction**	No trading from 20 trading days before a company's financial results are due until the second trading day after they are announced.	**Clause omitted**
III.	**Minimum Trading Period**	Not less than twelve months	**Clause omitted**
IV.	**Trading Parameters**	Trading Plan should set out either the value of trades or the number of securities along with the nature of the trade and intervals or dates on which trades shall be affected.	The trading plan must specify either the monetary value or quantity of securities, indicate whether it involves buying or selling, and set a specific date or a period not exceeding five consecutive trading days for each trade. ***It may include price limits: for buy trades, the limit can be up to 20% higher than the previous day's closing price, rounded off to the nearest numeral; for sell trades, up to 20% lower***.
V.	**Notification of Trading Plan**	Compliance officer to notify the trading plan to stock	Compliance officer to ***approve or reject*** the trading plan within

[7]Securities And Exchange Board of India (Prohibition of Insider Trading) (Second Amendment) Regulations, 2024

	Approval	exchanges upon approval of trading plan	***two trading days*** of receipt and ***notify the approved plan to stock exchanges on the day of approval.***

2. SEBI: Circular on mandatory use of email for dispatching of Consolidated Account Statements[8]

SEBI, through its circular dated July 1, 2024 (effective August 1, 2024), has amended the SEBI Master Circular on Depositories dated October 6, 2023; as per the circular, Depositories, Mutual Fund Registrar and Transfer Agents (MF-RTAs), and Depository Participants (DPs) must use email as the default mode for dispatching Consolidated Account Statements (CAS) and holding statements. Given the increasing reach of digital technology, electronic communication is now the preferred mode, aiming to promote green initiatives and streamline regulatory guidelines for dispatching account statements. Depositories are directed to amend relevant bye-laws, rules, and regulations; implement necessary system changes; and disseminate the circular's provisions on their websites.

CAS will be dispatched at varying frequencies based on account activity:

- **Monthly:** For investors with transactions in their demat or mutual fund accounts.
- **Half Yearly:** For accounts with no recent transactions.
- **Annually**: For accounts with no transactions and nil balances.

This approach ensures regular updates for active investors while maintaining compliance and minimizing paper usage.

3. SEBI: Share transfer to Trust and exemption application under SEBI Takeover Regulations[9]

The promoters of a listed company, whose shares are listed on the SME Exchange, intend to transfer their shares to a trust, thereby creating a mirror image of promoter shareholdings. They intend to apply under Regulation 11 of the Takeover Regulations for a specific exemption from the obligation to make an open offer for acquiring shares by the trust, as per Chapter 8 of the Master Circular dated February 16, 2023.

The specified conditions for this exemption include:

i. The Trust is in substance, only a mirror image of the promoters' holdings and consequently, there is no change of ownership or control of the shares or voting rights in the target company.

[8] SEBI Circular No SEBI/HO/MRD-PoD2/CIR/P/2024/93, dated July 1, 2024.
[9] SEBI Informal Guidance No. SEBI/HO/CFD/PoD/OW/P/2023/47033/1 dated November 30,2023.

ii. ***Only individual promoters or their immediate relatives or lineal descendants are Trustees and beneficiaries***;
iii. The beneficial interest of the beneficiaries of the trust has not been and will not in the future, be transferred, assigned or encumbered in any manner including by way of pledge/mortgage;
iv. In case of dissolution of the Trust, the assets will be distributed only to the beneficiaries of the trust or to their legal heirs;
v. The Trustees will not be entitled to transfer or delegate any of their powers to any person other than one or more of themselves.

The promoters intended to seek SEBI's approval to appoint neutral trustees who were neither promoters nor part of the promoter group, nor their relatives. SEBI concluded that appointing neutral trustees does not align with Chapter 8 of the Master Circular dated February 16, 2023 (condition II, as highlighted above, is not satisfied). Therefore, the Trust shall not be eligible for a specific exemption from the obligation to make an open offer for acquiring shares.

4. SEBI: Consultation paper on simplifying business and harmonizing ICDR and LODR Regulation[10]

The Union Budget FY 2023-24 had announced a review of financial sector regulations to simplify compliance and reduce costs; this led to the formation of an Expert Committee to review Listing Obligations and Disclosure Requirements (LODR) and Issue of Capital and Disclosure Requirements (ICDR) Regulations with the aim of enhancing ease of doing business and harmonize these regulations.

The Expert Committee has submitted its final recommendations on the Listing Obligations and Disclosure Requirements (LODR) and Issue of Capital and Disclosure Requirements (ICDR) Regulations, focusing on harmonizing these provisions; the report is divided into three parts:

- ***Part A*** addresses ease of doing business under **LODR Regulations**,
- ***Part B*** focuses on ease of doing business under **ICDR Regulations**, and
- ***Part C*** deals with **harmonizing** the provisions of **LODR and ICDR regulations**.

Summary of Part A, Part B and Part C is as follows:

S. no.	Particulars	Key Recommendations
Part A: Ease of doing business under LODR Regulations		
1)	Filing and Disclosures	• Single filing system and integration between stock exchanges
2)	Board of Directors and Committees	• Providing a timeline of 3 months to fill up vacancies in Board Committees

[10] SEBI Consultation paper on facilitating ease doing business and harmonization of the provisions of ICDR and LODR Regulations dated June 26, 2024

		• Time taken for regulatory, statutory or government approvals to be excluded from the timeline specified for obtaining shareholder
3)	Promoters and controlling shareholders:	• Streamlining the process of reclassification of promoter or promoter group entities of a listed company.
4)	Related Party Transactions (RPTs)	• Exempting transactions which are uniformly applicable or offered to all shareholders / public from the definition of RPT. • Exempting payment of remuneration and sitting fees to director, key managerial personnel or senior management, except those who are part of promoter or promoter group, from the requirement of audit committee approval and half-yearly disclosures • Permitting ratification of RPTs by the audit committee subject to certain conditions
5)	Disclosure of material events or information under regulation 30;	• Streamlining the disclosure requirements for acquisitions by listed entities
6)	Facilitating shareholder participation in governance of listed entities	• Recommendation on permitting listed entities to conduct virtual or hybrid shareholder meetings on a permanent basis
7)	Strengthening corporate governance at listed entities	• Mandating Compliance Officer to be designated as key managerial personnel and to be a whole-time employee not one level below the board of directors.
Part B: Ease of doing business under ICDR Regulations		
1)	Price Band Advertisement and other issue related advertisements.	
2)	Voluntarily disclosure of proforma financials in public issue, rights issue and for QIPs.	
3)	Illustration on disclosure of weighted averages of certain ratios.	
4)	Pre-IPO transactions.	
Part C: Harmonization of the provisions of the ICDR and LODR Regulations		
1)	Disclosures related to Material Litigation	
2)	Aligning definition for identification of Material Subsidiary thresholds	
3)	Disclosure of material agreements in offer documents	
4)	Alignment of qualifications for the compliance officer under ICDR with the provisions of the LODR	
5)	Aligning certain definitions under ICDR and LODR	

Katalyst Comments:

The SEBI consultation paper outlines a comprehensive set of recommendations aimed at simplifying compliance, reducing costs, and enhancing corporate governance for listed entities. By focusing on both LODR and ICDR regulations, the Expert Committee's proposals aim to streamline regulatory processes, improve transparency, and foster ease of doing business.

5. Gov of Rajasthan (DoF): Amendment to Rajasthan Stamp Act, 1998 regarding schemes of arrangement[11]

The Department of Finance (DoF) of the Government of Rajasthan has amended the Rajasthan Stamp Act, 1998, through a notification, introducing significant changes to the stamp duty rates applicable to conveyance deeds related to orders of amalgamation, demerger, or reconstruction between two or more companies.

A comparative analysis of the key changes is tabulated below:

S no	Aspect	Before Amendment	After Amendment
i.	Maximum Stamp Duty	**25 crores**	**No change**
ii.	Aggregate Value of Shares Issued or Allotted	**4%** of the aggregate amount comprising the market value of shares issued/allotted/cancelled or face value, whichever is higher, and the amount of consideration, if any, paid for such amalgamation, demerger, or reconstruction.	***1%*** of the aggregate amount comprising the market value of fully paid-up shares issued/allotted or face value, whichever is higher, and the amount of consideration, if any, paid for such amalgamation, demerger, or reconstruction.
iii.	Market Value of Immovable Property	4% of the market value of immovable property situated in the State of Rajasthan of the ***transferor company***, whichever is higher	4% of the market value of immovable property situated in the State of Rajasthan of the transferor company ***or resultant company***, as the case may be, whichever is higher.

Katalyst Comments:

- *The reference to "resulting company" above seems inappropriate, since in a demerger the transferor of property is the demerged company not the "resulting company"; one hopes that this issue will be added through a notification.*

[11]Notification no. F. 4(2)FD/Tax/2024-75 dated July 10, 2024 by DoF of Rajasthan Government.

- *As an elaboration of the point above, it appears to be a drafting error, in the sense that the highlighted words above should logically been drafted on the lines of clause 25 of Schedule 1 of the Maharashtra Stamp Act, 1958, the relevant part of which is reproduced below:*

  "Provided further that, in case of reconstruction or demerger the duty chargeable shall not exceed:

  (i) an amount equal to 5% of the true market value of the immovable property located within the State of Maharashtra **transferred by the Demerging Company to the Resulting Company**;

  or

  (ii) an amount equal to 0.7 per centum of the aggregate of the market value of the shares issued or allotted to the Resulting Company and the amount of consideration paid for such demerger,

  whichever is higher**."**

D. Goods and Service Tax Highlights

Based on the recommendations of the GST Council in its 53rd meeting held on June 22, 2024, various notifications (issued on July 10, 2024) and circulars (issued on June 26, 2024, and July 11, 2024) have been released by the Central Board of Indirect Taxes and Customs (CBIC). The CBIC has amended the CGST Rules to address various issues, which, inter-alia, include the valuation aspect of providing corporate guarantees to related/distinct persons, verification procedures for registration, reduction in the rate of TCS, applicability of annual returns, amendments to provisions relating to the appellate tribunal, introduction of new Form GSTR-1A for amending Form GSTR-1, and the taxability of ESOPs/ESPP/RSUs provided by a company to its employees through its overseas holding company.

The key amendments through these notifications and circulars are mentioned below:

1. Value of supply of goods or services or both between related or distinct person other than through agent - Amendment in Rule 28 w.e.f. October 26, 2023[12]

- Amendment in Clause (2), i.e., valuation of the supply of services by a supplier to a recipient who is a related person, by way of providing a corporate guarantee to any banking company or financial institution on behalf of the said recipient.

[12] Notification No 12/2024 of Central Tax dated July 10, 2024

- The changes stipulate that the related person must be located in India and clarify that the guarantee amount is on a per annum basis; additionally, a new proviso has been inserted, which states that if the recipient can claim the full input tax credit, the invoice value will be accepted as the value of the supplied services.

Katalyst Comments:

The amendment to rules has clarified the key aspect that if the recipient is entitled for full ITC, the value of the invoice will be accepted as the value of supplied services.

2. Clarification on various issues pertaining to taxability and valuation of supply of services of providing corporate guarantee between related persons.[13]

- **Valuation in case of export of service for providing corporate guarantee:**
  The provisions of Rule 28(2) will not apply when the recipient of the services for providing a corporate guarantee between related persons is located outside India.

- **Applicability of GST in case where corporate guarantee is provided by multiple related entities:**
  When a corporate guarantee is provided by multiple related entities, the value of such services shall be the sum of the actual consideration paid or payable to co-guarantors, if this amount is higher than 1% of the guaranteed amount. If the actual consideration is less than 1% of the guaranteed amount, then GST shall be payable by each co-guarantor proportionately on 1% of the amount guaranteed by them.

- **ITC by recipient of service of providing corporate guarantee:**
  The recipient of the service of providing a corporate guarantee is eligible to avail ITC, subject to the conditions specified in the Act and the Rules, regardless of the time and amount of loan disbursement.

Katalyst comments:

Some key aspects relating to GST on corporate guarantee have been clarified by the circular.

[13] Circular No. 225/19/2024- dated 11 July 2024

3. **Clarification[14] on the taxability of ESOP/ESPP/RSU provided by a company to its employees through its overseas holding company**

The circular has clarified that the issuance of securities/shares as Employee Stock Option Plan ('ESOP')/Employee Stock Purchase Plan ('ESPP') /Restricted Stock Unit ('RSU') by the foreign holding company to the employees of the domestic subsidiary company shall not qualify as supply of 'goods' or 'services' as securities under the GST law are neither 'goods' nor 'services'. Accordingly, GST shall not be leviable on the same.

Katalyst comments:

The Circular would rest the ongoing confusion in the industry over the issue.

4. **Other changes[15]**

- **Verification procedure for registration (Rule 8 – new proviso added – w.e.f. date to be notified) -:**
  Prescribes the verification procedure for registration in case person who has not opted for authentication of Aadhaar number. Effective date is yet to be notified for this amendment.

- **Documentary requirements and conditions for claiming ITC (Rule 36) w.e.f. July 10, 2024 -**
  Ensure that both the original return in Form GSTR-1 and any amendments in GSTR-1A are considered for Input Tax Credit (ITC) purposes. Furthermore, the GSTR-1A return for amending the original return should be notified.

- **ISD mechanism – Rule 39 substituted –**
  The facility for refunds for ISD has been provided, and the relevant period for making an application has been prescribed.

5. **Exemption from filing annual return [16]**

Registered persons are exempted from filing annual returns if their aggregate turnover in the financial year 2023-24 does not exceed two crore rupees.

[14] Circular no.213/07/2024-GST dated 26 June 2024
[15] Notification No 12/2024 of Central Tax dated July 10, 2024
[16] Notification no 14/2024 – Central Tax dated July 10, 2024

6. Reduction in rate of TCS [17]

The rate of TCS for supplies made through electronic commerce operators has been reduced from 1% (0.5%+0.5%) to 0.5% (0.25%+0.25%).

7. Relaxation from interest [18]

Rule 88B has been amended to provide a relaxation from interest for amounts deposited in the cash ledger before the due date of GSTR-3B, even if GSTR-3B is filed after the due date.

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[17] Notification no. 15/2024 – Central Tax dated July 10, 2024
[18] Notification No 12/2024 of Central Tax dated July 10, 2024