N. D. KAPUR & CO.
CHARTERED ACCOUNTANTS

Monthly Updates

JULY 2024

(I) CORPORATE LAW

EXTENSION OF TIME FOR FILING PAS-7

On July 6, 2024, the Ministry of Corporate Affairs ("**MCA**") extended the deadline for public companies to file Form PAS-7 regarding share warrants issued before the commencement of the Companies Act, 2013. This filing, initially required within 3 months of the Companies (Prospectus and Allotment of Securities) Second Amendment Rules, 2023, can now be completed without any additional fees until August 5, 2024. The Web-form PAS-7 has been deployed on the MCA-21 Portal for stakeholders to submit the required details.

MCA ALLOWS DIRECTORS TO UPDATE MOBILE NUMBERS AND EMAIL IDS

The MCA issued Notification No. G.S.R. 412(E) on July 16, 2024, amending Rule 12A of the Companies (Appointment and Qualifications of Directors) Rules, 2014, concerning Directors' KYC. The amendment allows directors to update their mobile numbers or email addresses at any time during the financial year by submitting e-form DIR-3KYC, upon payment of a fee of Rs 500. This is in addition to the annual update permitted under the existing rules.

E-FORM MGT-6 AND PAN VALIDATION FOR SHAREHOLDERS

The MCA has issued Notification No. G.S.R. 403, dated July 15, 2024, amending the Companies (Management and Administration) Rules, 2014. This amendment introduces a new format for Form MGT-6, now available on the MCA V3 Portal. A notable feature of this update is the introduction of PAN validation for shareholders and beneficial owners, enhancing the accuracy and authenticity of information submitted through the portal.

INTRODUCTION OF E-FORM BEN-2 FOR MCA V3 PORTAL

The MCA has notified an amendment to the Companies (Significant Beneficial Owners) Rules, 2018. This amendment introduces a new format for Form BEN-2, now available on the MCA V3 Portal. The updated form allows users to report changes in the particulars of existing Significant Beneficial Ownership (SBO) or update the details of existing SBOs under Section 90 of the Companies Act, 2013.

WAIVER OF ADDITIONAL FEES FOR IEPF E-FORMS

The MCA, through General Circular No. 06/2024 dated July 16, 2024, has waived additional fees for filing various IEPF e-forms (IEPF-1, IEPF-1A, IEPF-2, IEPF-4) and e-verification of claims in e-form IEPF-5 due to the migration from MCA 21 V2 to MCA 21 V3 Portal.

This waiver is available until August 16, 2024. Additionally, a one-time relaxation is provided for filing e-verification under the third proviso to rule 7(3) of the IEPFA Rules, also until August 16, 2024.

MERGER OF IEPF FORMS FOR SIMPLIFIED COMPLIANCE

The MCA has announced the merger of Form IEPF-3 with Form IEPF-4 and Form IEPF-7 with Form IEPF-1 in the MCA V3 Portal, as per General Circular No. 07/2024 dated July 17, 2024. This change aims to simplify the filing process and reduce the compliance burden on companies. The revised forms will now follow a straight-through process (STP). Additionally, companies can now transfer amounts due on shares directly to the IEPF Authority through the "Pay Miscellaneous Fee" service on the MCA 21 platform.

REMOVAL OF 'NIDHI LIMITED' REQUIREMENT IN COMPANY NAMES

The Central Government has issued Notification No. G.S.R. 411(E) on July 16, 2024, amending Rule 8A of the Companies (Incorporation) Rules, 2014. The amendment omits clause (v), which previously mandated that the proposed name of a Nidhi company must include the words "Nidhi Limited" as part of its name. With this change, it is no longer mandatory for Nidhi companies to include "Nidhi Limited" in their proposed names, simplifying the naming process for such entities.

TAX LIABILITY ON HAIRCUTS UNDER THE INSOLVENCY AND BANKRUPTCY CODE, 2016

On July 30, 2024, the MCA addressed the tax implications of haircuts taken by banks, financial institutions, and other creditors for companies resolved under the Insolvency and Bankruptcy Code, 2016 ("**Code**"). The clarification was provided in response to an unstarred question by Shri Sanjeev Arora in the Rajya Sabha, shedding light on how these haircuts are treated under the Income-tax Act, 1961 ("**IT Act**").

Key Points from the Clarification:

1. **Taxability under Section 28(iv) of the Income-tax Act, 1961**: According to Section 28(iv) of the IT Act, any waiver of loan amounts is considered a benefit or perquisite arising from the business or exercise of a profession. This benefit, whether in cash or kind, is taxable as income under the "Profits and Gains of Business or Profession."

2. **TDS under Section 194R**: Section 194R of the IT Act mandates a 10% TDS on benefits or perquisites arising from business or profession provided to a resident. However, this does not apply to one-time loan settlements or waivers, as clarified by the CBDT.

3. **CBDT Circular No. 18/2022**: The Circular issued on September 13, 2022, clarified that one-time loan settlements or waivers granted by financial institutions are not subject to TDS under Section 194R of the IT Act. However, the amount waived remains taxable in the hands of the beneficiary under relevant provisions of the IT Act.

Companies undergoing resolution under the Code are required to treat any loan waivers as taxable income. This tax liability must be factored into the resolution plans to ensure compliance with the IT Act

Financial institutions and companies must carefully navigate these tax implications when formulating and implementing resolution strategies under the Code.

The MCA's clarification highlights that while TDS may not apply to one-time settlements or waivers, the taxability of the waived amounts as income remains. Companies resolved under the IBC must incorporate this tax obligation into their financial planning, ensuring adherence to the IT Act.

(II) INDIRECT TAXATION

GUIDELINES FOR RECOVERY OF OUTSTANDING DUES IN CASES WHEREIN FIRST APPEAL HAS BEEN DISPOSED OF

The Central Board of Indirect Taxes & Customs ("CBIC") has issued circular dated July 11, 2024 to issue guidelines for recovery of outstanding dues in cases wherein first appeal is disposed of till Appellate Tribunal comes into operation. It is also clarified that in cases where the taxpayer decides to file an appeal against the order of the appellate authority, he can make the payment of an amount equal to the amount of pre-deposit by navigating to Services >> Ledgers>> Payment towards demand, from his dashboard.

In case, the taxpayer does not make the payment of the amount equal to amount of pre-deposit or does not provide the undertaking/ declaration to the proper officer, then it will be presumed that taxpayer is not willing to file appeal against the order of the appellate authority and in such cases, recovery proceedings can be initiated as per the provisions of law.

CBIC ISSUED CLARIFICATION ON TAXABILITY AND VALUATION OF SUPPLY OF SERVICES OF PROVIDING CORPORATE GUARANTEE BETWEEN RELATED PERSONS

The CBIC has issued a circular dated July 11, 2024 which provides clarifications regarding the taxability and valuation of the supply of services related to providing corporate guarantees between related persons under the Goods and Services Tax (GST) framework.

Rule 28(2) of the Central Goods and Services Tax (CGST) Rules, 2017 was inserted via Notification No. 52/2023-Central Tax dated October 26, 2023, to provide specific guidelines for valuing the supply of services when a corporate guarantee is provided by an entity on behalf of a related person to any banking company or financial institution. The rule was further amended retrospectively from October 26, 2023, by Notification No. 12/2024 dated July 10, 2024, to clarify certain provisions.

Clarifications Provided:

1. **Applicability of Rule 28(2):** The provision of corporate guarantees was taxable even before the insertion of Rule 28(2) on October 26, 2023. The rule focuses on the valuation of the service, not on the taxability itself. For corporate guarantees issued or renewed before this date, valuation must be done as per the pre-existing rules.

2. **Valuation of Corporate Guarantees:** The value of the supply of providing a corporate guarantee is based on the amount guaranteed, irrespective of whether the loan is fully availed or not. The recipient of the service can claim Input Tax Credit (ITC) subject to other conditions, irrespective of the loan disbursement status.

3. **Impact of Loan Takeover:** The takeover of existing loans does not attract GST unless a new corporate guarantee is issued, or an existing one is renewed.

4. **Co-guarantors:** When multiple entities provide a corporate guarantee, GST is payable proportionately by each co-guarantor based on the amount guaranteed by them or 1% of the total guaranteed amount, whichever is higher.

5. **Intra-group Corporate Guarantees:** For domestic guarantees, GST is payable under the forward charge mechanism. For guarantees provided by foreign entities to Indian entities, GST is payable under the reverse charge mechanism.

6. **Discharge of Tax Liability:** GST on corporate guarantees is to be paid annually, based on 1% of the guaranteed amount or the actual consideration, whichever is higher. If the guarantee is for less than a year, the tax is proportionately calculated.

7. **Invoice Value:** The value declared in the invoice for corporate guarantee services between related persons is deemed to be the value of supply if the recipient is eligible for full ITC.

8. **Export of Corporate Guarantee Services:** Rule 28(2) does not apply to the export of services related to corporate guarantees between related persons where the recipient is located outside India.

MECHANISM FOR REFUND OF ADDITIONAL IGST PAID ON ACCOUNT OF UPWARD REVISION IN PRICE OF GOODS SUBSEQUENT TO EXPORTS:

The CBIC has issued a circular which provides a mechanism for exporters to claim a refund of additional Integrated Goods and Services Tax (IGST) paid due to an upward revision in the price of goods after their export. The circular establishes a clear and structured procedure for exporters to reclaim additional IGST paid due to post-export price increases.

Exporters must submit several documents with their refund claim, including shipping bills, original and revised invoices, proof of payment of additional IGST and interest, and a certificate from a practicing Chartered Accountant or Cost Accountant.

Refund claims below INR 1,000 will not be processed. Exporters must file their refund application within 2 years from the "relevant date".

CBIC EXEMPTS SEVERAL SERVICES FROM LEVY OF GST AS RECOMMENDED IN 53RD GST COUNCIL MEETING: NOTIFICATION

CBIC has issued a circular on July 15, 2024 which provides clarifications on the applicability of GST on specific services based on the recommendations from the 53rd GST Council meeting held on June 22, 2024.

1. **GST on Statutory Collections by RERA**: The circular clarifies that the statutory collections made by the Real Estate Regulatory Authority (RERA) under the Real Estate (Regulation and Development) Act, 2016, are exempt from GST. RERA, being a governmental authority, falls under the scope of the exemption notification No. 12/2017-CT(R) dated 28.06.2017.

2. **GST on Accommodation Services:** Accommodation services with a value of supply less than or equal to INR 20,000 per person per month, provided for a minimum continuous period of 90 days, are exempt from GST, effective from July 15, 2024. The exemption is also extended retroactively for services provided from July 1, 2017, to July 14, 2024, under the same conditions.

CLARIFICATIONS ON GST RATES AND CLASSIFICATION OF GOODS

The CBIC has issued a circular dated July 15, 2024, which provides clarifications on GST rates and the classification of goods based on the recommendations of the GST Council's 53rd meeting held on June 22, 2024. The clarifications address various issues raised by stakeholders regarding the appropriate classification and GST rates applicable to specific goods.

1. GST Rate on Solar Cookers: Solar cookers that operate on dual energy sources (solar energy and grid electricity) are classified under heading 8516 and are subject to a 12% GST rate as per the existing notification.

2. **GST Rate on Fire Water Sprinklers:** It is clarified that all types of sprinklers, including fire water sprinklers, attract a 12% GST rate. This clarification is provided to resolve any doubts and regularize past instances on an "as is where is" basis.

3. **GST Rate on Parts of Poultry-Keeping Machinery:** Parts of poultry-keeping machinery are classified under tariff item 8436 91 00 and attract a 12% GST rate. The relevant entry has been amended to explicitly include these parts, ensuring clarity on the applicable rate. Past issues are also regularized on an "as is where is" basis.

4. Scope of 'Pre-Packaged and Labelled' for Agricultural Produce: The definition of 'pre-packaged and labelled' has been amended to exclude agricultural farm produce in packages exceeding 25 kilograms or 25 liters from GST liability. This change ensures that such bulk agricultural products do not attract the 5% GST levy.

5. GST on Supplies to or by Agencies Engaged by Government: Supplies of pulses and cereals made to or by government agencies engaged in procurement and distribution under approved schemes are regularized for the period from July 1, 2017, to July 17, 2022. These goods, when distributed at free or subsidized rates to economically weaker sections, are subject to certain conditions for regularization, including the requirement of a certificate from a government officer and reversal of Input Tax Credit (ITC) if availed.

EXEMPTION FROM FILING OF ANNUAL RETURN

Registered persons with aggregate turnover up to Rs. 2 crores in the financial year 2023-24 have been exempted from filing of annual return in Form GSTR-9 for the said financial year.

AMENDMENTS IN CENTRAL GOODS & SERVICES TAX RULES, 2017

The CBIC has issued Notification No. 12/2024 - CT dated July 10, 2024 to make amendments in CGST Rules, 2017 as under:

1. **Amendment in rule 8(4A) Application for registration (To be effective from a date to be notified):** A second proviso shall be inserted in rule 8 after sub-rule (4A) which lays down that every registration application filed by a person, who has not opted for authentication of Aadhar number, shall be followed by taking photograph of the applicant along with verification of the original copy of the documents uploaded with the application in Form GST REG-01 at any of the notified Facilitation Centers to complete the application process.

2. **Amendment in rule 21 - Registration to be cancelled in certain cases (Effective from 10.07.2024):** A new clause (ga) has been inserted after clause (g) to provide that registration can be cancelled where a person violates 3rd or 4th proviso to rule 23(1). Thus, registration will be cancelled again if a person fails to file all the returns due for the period from the date of the order of cancellation of registration till the date of the order of revocation of cancellation of registration within 30 days from the date of revocation order. Similarly, registration will be cancelled again with retrospective effect, if the registered person fails to furnish all returns relating to period from the effective date of cancellation of registration till the date of order of revocation of cancellation of registration within 30 days from the date of revocation order.

3. **Amendments in rule 28 - Value of supply of goods or services or both between distinct or related persons, other than through an agent (Effective from 26.10.2023):** Sub-rule (2) of rule 28 determines value of supply in case of corporate guarantee. The said sub-rule has been amended to provide that the value of supply of services by a supplier to a recipient who is a related person located in India, by way of providing corporate guarantee to any banking company or financial institution on behalf of the said recipient, shall be deemed to be one per cent of the amount of such guarantee offered per annum, or the actual consideration, whichever is higher. Further, a proviso has been inserted after sub-rule (2) to lay down where the recipient is eligible for full input tax credit, the value declared in the invoice shall be deemed to be the value of said supply of services.

4. **Amendments in rule 39 - Procedure for distribution of input tax credit by input service distributor (ISD):** The Finance Act, 2024 has amended the definition of ISD as provided under section 2(61) of the CGST Act, 2017 and substituted section 20 of the said Act which prescribes the provisions for manner of distribution of credit by ISD. The said amendments will come into effect from a date to be notified.

Consequent to the afore-mentioned amendments, rule 39 which lays down the procedure for distribution of input tax credit by ISD has also been amended. The clauses and explanation that formed part of unamended section 20 have been incorporated in the amended rule 39.

A new sub-rule (1A) has been inserted in the rule to provide the manner of distribution of credit in respect of input services, attributable to one or more distinct persons, which are subject to reverse charge under

sections 9(3) and 9(4). The sub-rule lays down that the registered person, having the same PAN and State code as an ISD, may issue an invoice/credit note/debit note as per rule 54(1A) to transfer the credit of such common input services to the ISD, which will then distribute the credit in the prescribed manner.

OWNER OF GOODS MUST PAY CUSTOMS DUTY EVEN AFTER REDEEMING CONFISCATED GOODS BY PAYING FINE

In the case of M/s Navayuga Engineering Co. Ltd. versus Union of India & Anr. (Civil Appeal No. 1024 of 2014), the Hon'ble Supreme Court of India held that importers are liable to pay customs duty in addition to fines and other charges when redeeming confiscated goods. The case addressed key questions related to the payment of customs duty and interest on delayed payments under the Customs Act, 1962.

The Supreme Court confirmed that when confiscated goods are redeemed by paying a fine under Section 125 of the Customs Act, 1962, the importer is still liable to pay customs duty on those goods. The payment of a fine does not absolve the importer from the duty liability.

The Court also held that the liability to pay interest on delayed payment of customs duty arises under Section 28AB of the Act. Once Section 28 is invoked for assessing and determining the duty, the interest on delayed payment follows as per the statutory provisions.

The Hon'ble Court explained that the obligation to pay duty and other charges under Section 125(2) of the Customs Act arises only when the owner opts to redeem the goods by paying the fine, and the Department accepts it. The duty liability assessed under Section 125(2) must be done in accordance with Section 28 of the Act, which also triggers the application of interest on delayed payments under Section 28AB.

The Supreme Court concluded that importers redeeming confiscated goods must not only pay the fine but also the applicable customs duty and interest on any delayed payment of the duty. The judgment clarifies the legal responsibilities of importers in cases of confiscated goods and reinforces the distinct nature of penalties, duties, and interest under the Customs Act, 1962.

CO-OWNERS HOLDING IMMOVABLE PROPERTY SHALL BE INDEPENDENT SERVICE PROVIDERS FOR THE PURPOSE OF SERVICE TAX EXEMPTION

In the case of Shri Kamleshkumar K Kotecha versus Commissioner of Central Excise & ST (Service Tax Appeal No. 11244 of 2015-DB), the Ahmedabad Bench of the Customs, Excise, and Service Tax Appellate Tribunal (CESTAT) ruled that co-owners of immovable property should be considered independent service providers for the purposes of availing service tax exemptions.

The appellants, co-owners of a building, had leased their property to Punjab National Bank and received a total rent of Rs. 53,49,086 for the period of 2008-09. A show cause notice was issued demanding service tax on the aggregate rent received, which the adjudicating authority upheld.

The appellants argued that since each co-owner received rent separately, their individual share of the rent was below the exemption threshold as per Notification No. 6/2005-ST, amended by Notification No.

8/2008-ST. Thus, they contended that they should be considered individual service providers eligible for exemption.

The Hon'ble Bench referred to the precedent set in Sarojben Khushalchand versus Commissioner of Service Tax Ahmedabad and ruled that the rental income of each co-owner could not be combined for the imposition of service tax. Therefore, each co-owner's share of the rent would be treated independently for determining eligibility for service tax exemption.

(III) DIRECT TAXATION

PROPOSED AMENDMENTS TO THE BENAMI PROPERTY TRANSACTIONS ACT, 1988 UNDER THE FINANCE (NO. 2) BILL, 2024

The Finance (No. 2) Bill, 2024 ("Finance Bill") introduces significant amendments to the Prohibition of Benami Property Transactions Act, 1988 (the "Benami Act"), specifically targeting the timelines for issuing show cause notices and provisional attachments and introducing a new provision for immunity from penalty and prosecution.

These amendments aim to extend the timelines for procedural actions under the Benami Act, providing more flexibility for enforcement while also introducing a mechanism for voluntary disclosure and immunity to encourage cooperation from involved parties

9. **Changes in Timelines under Section 24 of the Benami Act:**

   - **Time Limit of provisional attachment and for passing order u/s 24(4) to continue attachment further/revoking attachment:**
     Existing Timeline: The Initiating Officer (IO) has 90 days from the end of the month in which a show cause notice under Section 24(1) is issued to file a reply and impose provisional attachment.
     Proposed Timeline: The IO now has up to 4 months from the end of the month in which the show cause notice under Section 24(1) is issued to file a reply and impose provisional attachment.
   - **Time limit for making reference to Adjudicating Authority**
     Existing Timeline: The IO must pass an order to continue or revoke the attachment within 15 days from the end of the month in which the provisional attachment is imposed.
     Proposed Timeline: This period is extended to 1 month from the end of the month in which the provisional attachment order is passed.

10. **Immunity Provisions (Section 55A)**: A new Section 55A is introduced, which grants the IO the authority to offer immunity from prosecution and penalties to a benamidar (the person in whose

name the property is held) and any other person involved in abetting or inducing the benami transaction, provided they make a full and true disclosure of all related circumstances. The immunity does not extend to the beneficial owner of the benami property. The IO must obtain prior sanction from the Central Board of Direct Taxes (CBDT) before granting immunity. Immunity can be withdrawn if the person fails to comply with conditions, conceals information, or provides false evidence. Upon withdrawal, the individual may be prosecuted and penalized under the Benami Act.

The proposed amendments are set to come into effect from October 1, 2024.

PROPOSED AMENDMENTS TO THE BLACK MONEY (UNDISCLOSED FOREIGN INCOME AND ASSETS) AND IMPOSITION OF TAX ACT, 2015

The Finance Bill proposes amendments to the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 ("BMA"), specifically targeting the imposition of penalties for failing to disclose foreign income and assets in the Income Tax Return (ITR) or failing to file the ITR altogether.
Under the existing provisions of BMA, a penalty of INR 10 lakh is imposed on Indian residents (excluding those not ordinarily resident) who fail to file their ITR or fail to disclose foreign income or assets in their ITR. However, a relaxation exists if the undisclosed foreign asset is a bank account with an aggregate balance not exceeding INR 5 lakh.

The relaxation from penalties is extended to all asset classes other than immovable property. The threshold for this relaxation is increased from INR 5 lakh to INR 20 lakh in aggregate value.

The proposed amendments are scheduled to come into effect on October 1, 2024.

BOMBAY HIGH COURT HELD THAT DEFINITION OF 'BUILT-UP AREA' CANNOT BE APPLIED RETROSPECTIVELY

In the case of PCIT v. G.K. Developers (ITA NO. 1345 OF 2018), the Bombay High Court ruled that the definition of "built-up area," which was introduced on April 1, 2005, by the Finance (No.2) Act, 2004, cannot be applied retroactively. This decision came in the context of deductions claimed under Section 80IB(10) of the Income Tax Act, 1961 ("IT Act").

The term "built-up area" was first defined in Section 80IB(14) of the Income Tax Act by adding clause (a) through the Finance (No. 2) Act, 2004, effective from April 1, 2005. The issue in this case was whether this definition could be applied to assess earlier periods.

The respondent, a developer, filed a return for the 2008-09 assessment year, claiming a deduction under Section 80IB(10) for one of its housing projects. The Assessing Officer (AO) disallowed the deduction after the District Valuation Officers (DVO) found that the built-up area exceeded the 1500 sq. ft. limit, measuring it at 1602.62 sq. ft.
The AO's disallowance was overturned by the Commissioner of Income Tax (Appeal), and the Income Tax Appellate Tribunal (ITAT) also ruled in favor of the developer, excluding the balcony area from the built-up area calculation before the 2005 amendment.

The Bombay High Court upheld the ITAT's decision, confirming that the amended definition of "built-up area" could not be applied to periods prior to April 1, 2005. The court noted that before this date, the balcony area was not included in the built-up area, and applying the new definition retrospectively would be unjust.

SERVICES PROVIDED OUTSIDE INDIA, TO INDIAN CUSTOMERS IN CONNECTION WITH RIGHT TO USE OF PROCESS CAN'T BE TAXED

In the case of The Commissioner Of Income Tax - International Taxation v. Telstra Singapore Pte Ltd. (ITA 334/2022), the Delhi High Court ruled that the income earned by a foreign company from providing services to Indian customers outside India cannot be taxed as royalty under Indian law.

Telstra Singapore Pte Ltd., a Singaporean company, provided international private leased circuits and multi-protocol label switching (MPLS) services, which are types of high-speed data connectivity services. The infrastructure and equipment used to provide these services were based outside India.

The Indian tax authorities argued that the income earned by Telstra from Indian customers constituted royalty under Section 9(1)(vi) of the IT Act. They claimed that the services provided involved the use or the right to use a process or equipment, which should be taxable in India as royalty.

Telstra contended that its services were merely bandwidth services and did not involve the transfer of any intellectual property rights or control over its technology or infrastructure to its Indian customers. The company emphasized that it did not hold a telecom license in India, and its entire operation was based outside India.

The Delhi High Court upheld Telstra's position, ruling that the provision of bandwidth services does not constitute the transfer of a right to use a process or equipment. The court found that the services provided were for the use of Telstra's infrastructure and technology, without transferring any ownership or control over these assets to the customers.

The court clarified that the term "process" in the context of royalty should be interpreted alongside the phrase "or similar property," which refers to intellectual property rights. Since Telstra did not transfer any intellectual property to its customers, the income from these services could not be classified as royalty.