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YEAR IN REVIEW 2023

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As we draw the curtains on 2023, it is time to sit back and reflect on the year gone by, celebrate the hits, reflect on the misses, and set our sights on the exciting possibilities awaiting us in 2024.

Foreword

On the global front, the situation between Russia and Ukraine remained a major focal point, while the Israeli-Palestinian conflict added to geo-political tensions. Economic fluctuations, supply chain disruptions, and inflationary pressures emerged as major concerns during the year. Following a year of instability, a glimmer of hope emerges as inflation seems to have peaked in some of the developed nations, yet notable uncertainties persist and keep the outlook cautious.

Amidst negative global cues, India seems to be an oasis of hope. It is seen as a potential hub for economic growth and investment. The numbers look promising as India's real Gross Domestic Product (GDP) recorded a growth rate of 7.6% indicating a faster-than-anticipated expansion. In a year of achievements, India's remarkable Chandrayaan 3 lunar landing captured global attention. Closer home, the Indian Cricket team amazed us with a spectacular performance in the ODI World Cup 2023. With the end of 2023, India buckles up for the upcoming 2024 elections, adding to the anticipation and energy across the nation.

Globally, the world of taxes continues to see changes. With 140 countries consenting to the two-pillar proposals, the GloBE Rules have transformed from a distant possibility into an imminent reality. On the domestic front, the Union Budget 2023 outlined the vision of *Amrit Kaal,* marking the 25-year lead-up to India's 100th year of independence. On the direct tax front, the Budget brought a blend of favorable

and unfavorable outcomes for taxpayers, with changes including rationalization of tax slab rates, capping deductions from capital gains on investments in residential houses, and widening the scope of taxation of benefits or perquisites arising from business or profession to include benefits received in cash. There was significant activity in the indirect tax landscape as well. The online gaming industry encountered a major setback from the GST council's decision to levy 28% tax on online gaming - a move that will disrupt the gaming industry.

In terms of Supreme Court jurisprudence, the trend of overturning High Court decisions continued. The recent judgements delivered by the Supreme Court, concerning the deductibility of variable telecom license fees and the interpretation of the Most Favored Nation clause in tax treaties, stirred the tax community as they disrupted the legal stance taken by taxpayers over the years. With this, achieving certainty in taxation remains an ongoing endeavor.

This year also marks the completion of nine years of a fabulous Dhruva journey. Through this journey, we are immensely grateful for the trust bestowed upon us by a diverse range of prominent clients. We have assisted clients in diverse areas including restructuring, managed complex litigation, provided counsel on intricate corporate tax matters, facilitated succession planning, and engaged in a spectrum of advisory roles. Our commitment remains unwavering—to deliver high-quality services ensuring client satisfaction and fostering stronger client relationships. With the UAE introducing corporate taxes, we have bolstered our services in the region to cover these and have seen a groundswell response from clients.

In this publication, we have attempted to consolidate some of the key tax and regulatory issues that had a bearing on businesses in 2023 and their future impact. We hope you will find it an interesting read. Do reach out to us with your feedback and/or suggestions.

Dinesh Kanabar
CEO, Dhruva Advisors LLP

Year in retrospect[1]

2023 has been a year in which the spotlight has been on India for good reasons. This article attempts to capture some key events of 2023 from India's perspective.

RISING INDIA

Loosening the purse strings during covid brought stubborn inflation to major developed economies of the World, pushing interest rates north and stuttering growth. India, on the other hand, managed the situation well with tighter fiscal policies, ensuring that it recovered well from covid with inflation in check and strong growth to become the fastest growing major economy for the last three years, a position that can hopefully be maintained for the next few years.

With Chandrayan-3, India became the first country to land on the lunar south pole.

Strong and decisive political leadership, deft handling of foreign relations aided by demographics, deepening of digital public goods, strong internal demand, etc., have positioned India with a formidable opportunity to consolidate its economic footprint and standing in the world order.

INDIA'S G20 PRESIDENCY

India's G20 presidency, culminating in the successful hosting of the G20 event in India, made headlines in the global media. Accession of the African Bloc, representing 55 member countries, into G20 and agreements for climate funding worth US$5.9 trillion were key outcomes of the *One Earth, One Family, One Future* theme championed by India. At a time when the BRI initiative of China has lost some steam, India signed a pact for India-Middle East-Europe Economic (IMEC) Corridor involving seven countries and the European Union, opening doors for swift trade in the region.

GEO-POLITICAL DYNAMICS

While curtains are yet to be drawn on the Russia-Ukraine war, the Israel-Hamas war has brought attention to the Middle East. The Israel-Hamas war is likely to aggravate geopolitical tensions and increase concerns for global supply chains, oil prices and uncertainty.

GOVERNMENT POLICY

In recent years, the Union Government has clearly engraved the 'Make-in-India' vision for making India a global manufacturing hub. With global industries diversifying supply chains and adopting the 'China Plus One' strategy, India is in a sweet spot to grab immense opportunities. Buoyed by success of the initiative for manufacturing and export of mobile phones in India, the recent curbs on import of electronic goods are seen as push factors to further strengthen India's manufacturing base and reduce import dependence on electronic goods, mobiles, semi-conductors etc.

ECONOMIC BLUEPRINT OF BUDGET 2023

In a one of a kind budget, the Honorable Finance Minister set out the government's vision for "Amrit Kaal" in the upcoming 25 years, targeting four key opportunities, i.e. Economic Empowerment of Women, PM Vishwakarma Kaushal Samman, Tourism and Green Growth. The Budget also pronounced seven key priorities, 'Saptarishi', namely inclusive development, reaching the last mile, infrastructure and investment, unleashing the potential, green growth, youth power and financial sector for sustainable and inclusive growth.

1. This article is contributed by Umesh Gala (Partner, Dhruva Advisors), Rushi Shah (Senior Associate, Dhruva Advisors), Nishi Doshi (Article Trainee, Dhruva Advisors) and Aryan Jain (Article Trainee, Dhruva Advisors).

DIRECT TAX AMENDMENTS IN BUDGET

Union Budget 2023-24 has been a mixed bag for the taxpayers. While the rationalization of tax slab rates, announcement of new tax regime under section 115BAC, and a cut in the maximum surcharge applicable to individuals from 37% to 25% in the new regime, brought cheer to large individual and HUF taxpayers, an increase in the TCS rate for foreign remittance under LRS from 5% to 20%, the threshold of INR 10 Crores on value of new residential house for the relief under sections 54 and 54F, and increase in applicable tax rates for non-resident taxpayers from 10% to 20% would increase the tax burden.

Angel tax provisions have been extended to investments from non-residents. Income from debt mutual funds and capital gains from market linked debentures would be taxed as short-term capital gains. The cost of acquisition of any intangible assets would be taken as nil for the purpose of capital gain taxation. Rationalization of reassessment timelines and introduction of new provisions for taxation of unit linked insurance policies were other noteworthy amendments.

GAMING INDUSTRY - ROUGH PATCH AHEAD

In 2023, the Gaming Industry received media attention for all the wrong reasons. In addition to notices from the GST department, the GST Council's clarification for 28% GST on gross revenue from casinos and online games including skill games, flat 30% income-tax and withholding on net winnings from online games, were major blows to the industry.

CBDT CLARIFICATIONS

To soften the rigors of angel tax, CBDT has recognized five new valuation methods for non-resident investment in unquoted equity shares, provided exemption for non-resident investment from residents of 21 countries, and issued guidelines for assessment of start-ups involving angel tax disputes.

GOODS AND SERVICES TAX

The tax collection from GST has been robust throughout the year. GST assessments have picked up and put the spotlight on vagaries of open positions and uncertainties of a new law that is not yet fully settled. Notification of 31 benches of GST Appellate Tribunal signals the commencement of a new cycle of litigation. The CBIC issued a circular to clarify that the corporate guarantee by the director or holding company would be taxable supply of services, even in the absence of a consideration.

INTERNATIONAL TAX

The efforts to find solutions to taxation of the digital economy and harmful tax competition witnessed Pillar Two rules inching closer to reaching the light of the day. The UK, Japan and Switzerland have passed domestic legislation to formalize Pillar Two, whereas few other countries, such as Singapore, Australia, New Zealand, have initiated the process to integrate Pillar Two into domestic legislation. The OECD issued final Subject to tax rules ('STTR') in July 2023, along with administrative guidance. While India is yet to legislate the Pillar 2 rules, Indian MNEs that have subsidiaries in countries where these rules have been legislated need to start reporting.

Interestingly, member countries of the United Nations passed a resolution for UN international tax convention, which may lead to a parallel set of global tax rules.

GIFT CITY

The legislature moved amendments to the International Financial Services Centres Authority Act, 2019, to avoid dual regulation under Special Economic Zone Act, 2005. The IFSC Banking units of foreign banks are now permitted to undertake

acquisition financing. An EXIM Bank Subsidiary shall be set up in Gift City for trade financing.

While IFSCA clarified the scope of Single Family for setting up the Family Investment Fund ('FIF')] in Gift City, lack of clarity from RBI has discouraged investment of domestic corporate investments into family office funds.

SECURITIES LAW

SEBI has amended the Listing Obligations and Disclosure Requirement ('LODR') regulations, to introduce objective disclosure criteria, a rumor verification requirement, and a specific time limit for disclosure of material events. Further, prior shareholders' approval is now made mandatory for transfer of the business. SEBI introduced voluntary delisting norms for non-convertible debt securities and non-convertible redeemable preference shares. India is one of the few countries in the world with T+1 settlement of trades and efforts are underway to bring in same day / instantaneous settlement of trades.

The Central Government notified provisions of Companies Act, 2013 enabling direct listing of securities of an Indian company outside India or at IFSC. All private companies (excluding small companies) shall be required to dematerialize its securities on or before 30 September 2024.

RESERVE BANK OF INDIA

RBI followed its hawkish stance with the repo rate peaking up at 6.5%, keeping the inflation rate under tap. RBI's circular increasing risk weights of consumer credit exposure of commercial banks and NBFCs, is likely to increase interest rates for borrowers.

CHANGING TAX PARADIGM OF UAE

After introduction of Value Added Tax in 2018, UAE, a historically oil dependent country, introduced the corporate tax law with effect from 1 June 2023. The UAE Corporate Tax Law provides for a flat rate of 9% and contains provisions for intra-group transfer of losses, group-based taxation, transfer pricing, General Anti-avoidance Rules and tax neutral business restructurings.

BUZZING CAPITAL MARKET

The Indian Capital Market has been vibrant and buzzing throughout 2023. The year began with a deep cut following the Hindenburg report against one of the biggest Indian conglomerates. Amidst the sell-off from foreign investors, strong and sustained retail investment has enabled markets to recover lost ground, only to see net positive inflows from foreign investors towards the end of the year.

The IPO band wagon is blazing full steam with a record number and size of IPOs. With the successful closure of the merger of HDFC and HDFC Bank, HDFC Bank has become the fourth largest global private bank by market capitalization. Nifty is knocking a new lifetime high at 22,000, whereas Sensex crossed 72500 for the first time.

FROM THE LEGAL CORNERS

In continuation of a drive for legal reforms, the introduction of Personal Data Protection Act, 2023, and constitutional amendment for the Women's reservation and introduction of bills to replace colonial legislations were key highlights.

The Supreme Court expressed concerns regarding delay in appointment of judges under the Collegium system. Apart from the tax front, the Supreme Court has delivered a few landmark judgments, including order upholding abrogation of Article 370 and full integration of Jammu & Kashmir in India. With a 4:1 majority, the Hon'ble Supreme Court upheld the validity of demonetization of currency notes in 2016. The Supreme Court turned down a request from the LGBTQ community to legalize same-sex marriage.

The Supreme Court held that a person accused under PMLA need not be accused of a scheduled offence. The Supreme Court rejected a challenge to constitutional validity of the Insolvency and Bankruptcy Code ('IBC') provisions relating to personal guarantors. The Supreme Court rejected a review petition against the IBC judgment, wherein the Court held that statutory dues shall have lower priority against secured creditors for payment from liquidation proceeds.

WAY TO 2024

BJP led ruling NDA alliance has strengthened its credentials to come back for a third term with success in three key states – Rajasthan, Madhya Pradesh and Chhattisgarh – referred as semi-final by political experts. The opposition bloc in a last-ditch effort is trying to cobble together a fight, coming together as I.N.D.I.A. alliance. The buzz and shrill around the central elections scheduled in April-May 2024 will be the key event for the first half of 2024.

Trends in direct tax Supreme Court jurisprudence[2]

On the direct tax front, several notable judgments were delivered by the top Court in 2023, which are likely to have an impact on Indian jurisprudence in the years to come. We have analyzed certain landmark judgments and noted a few trends that seem to be emerging from the decisions

Back to basics - Old question, new lens

Two landmark rulings delivered in November have since dominated the headlines – the first one, in the case of *CIT v. Bharti Hexacom Ltd.*[3] and other tagged matters, has taken us back to basics with the classical debate of capital versus revenue expenditure, while the other one, in the case of *AO (International Tax) v. Nestle SA*[4] ('the MFN decision'), has dealt with the long-pending debate on the interpretation of the Most Favored Nation ('MFN') clause in tax treaties. Otherwise unrelated, but connected by the week of delivery, and more importantly the far-reaching impact, it feels like déjà vu, as these decisions remind you of the double deliveries from the last quarter of 2022 when the Supreme Court delivered two landmark rulings in the case of *New Noble Educational Society v. CCIT*[5] and *ACIT (Exemptions) v. AUDA*[6], which effectively changed the tax landscape for charitable institutions.

In the Bharti Hexacom case, the Supreme Court held that annual variable licence fees paid on a revenue-sharing basis under the New Telecom Policy of 1999, is a capital expenditure and not a deductible revenue expenditure. It held that the entry fee and annual variable fee payments were traceable to a single source, namely towards a licence to establish, maintain and operate a telecom licence. The activity of maintenance and operation cannot be separated, as they were part of one indivisible right. Failure to pay annual licence fees could invite cancellation of the licence itself. Hence, both were held to be capital in nature. This decision, which has reversed several favorable high court decisions, has the potential to create a bother for other sectors, including mining, ports, airports, cricket and other sport franchisees, etc. where similar models are at play.

The decision in the case of Nestle SA goes to the heart of applicability of the MFN clause. Typically, the MFN clause provides that if after signing of a DTAA with the first state, India enters into a DTAA with a third state, providing a lower tax rate or restricted scope for taxation for certain categories of income, then that restricted rate or scope of taxation will also be offered under the first DTAA. It was earlier understood that the application of the MFN clause is automatic and the Delhi and Karnataka High Courts had also ruled in favor. In perhaps one of its most significant decisions on tax treaty interpretation, the Supreme Court reversed the favorable rulings of the High Courts on two major aspects. First, it ruled that the application of MFN clause appearing in treaties is not automatic and a specific notification under the Act is a mandatory requirement to avail benefits as per the MFN clause. Further, it clarified that the MFN clause would allow benefits as per a treaty entered into with a third state only if such third state is a member of the Organization for Economic Cooperation and Development ('OECD') at the time of entering into the treaty with India; thus, the relevant date for the third state to be an OECD member is the treaty date, and not a subsequent date when the MFN clause is sought to be applied.

There is the obvious impact in terms of losing claims made based on the MFN clause, additional tax costs, associated interest costs, potential risks of reassessment, and so on. It would also be interesting to see how the counterparties to the treaties react to this. Since this is not a matter limited to taxation, but one that extends to global diplomacy and trade, India's stance and actions could plausibly influence perceptions of its commitment to the treaties and its overall credibility in adhering to the agreements in the spirit of mutual understanding and good faith. A review petition has been filed against this decision and the outcome will be keenly awaited.

2. This article is contributed by Umesh Gala (Partner, Dhruva Advisors), Jagravi Shah (Senior Associate, Dhruva Advisors) and Aryan Jain (Article Trainee, Dhruva Advisors).
3. [2023] 155 taxmann.com 322 (SC)
4. [2023] 155 taxmann.com 384 (SC)
5. [2022] 143 taxmann.com 276 (SC)
6. [2022] 143 taxmann.com 278 (SC)

A new front opening up for transfer pricing litigation

Another landmark decision that will have a far-reaching impact is that in the case of *SAP Labs India (P.) Ltd. v. ITO*[7] rendered in the context of transfer pricing. The High Court had taken the view that the determination of the arm's length price (ALP) by the final fact-finding authority, i.e. the Tribunal, is final and that no substantial question of law arises before the High Court. The Supreme Court, while reversing the decision of various High Courts, held that there cannot be an absolute proposition of law that the ALP decided by the Tribunal is final and that it is always open for a High Court to examine whether the provisions of the income tax law have been followed or not. The ruling is likely to open a new front of litigation in respect of many transfer pricing matters, which most believed were settled at the Tribunal level.

Other notable decisions

In the case of *CIT v. Prakash Chand Lunia*[8], the two-judge bench of the Supreme Court set aside the decision of Rajasthan High Court and held that the confiscation loss incurred by the taxpayer engaged in a legitimate jewelry business is not allowable. Curiously, both judges passed separate judgements providing different reasons for the same conclusion.

The decision in the case of *US Technologies International (P.) Ltd. v. CIT*[9], while also reversing the decision of the High Court, comes as a silver lining. In a welcome ruling, the Apex Court settled the controversy on whether a penalty can be levied under section 271C on delayed remittance of withholding tax. In upholding such non-levy, the Apex Court emphasized the **need to read penal provisions strictly and literally**. It must be noted that the Apex Court ruling concerned a particular penalty provision – it should not be construed to take away from the other general penalty provisions that empower the revenue to levy penalties in cases of default in making a payment of tax (including withholding tax).

Is there a trend building up, and if so, where is it headed?

At first blush, many tax advisors feel the pendulum is swinging the other way: against the taxpayers. A desktop analysis[10] of Supreme Court judgements on direct tax of 2022 had revealed that more than 60% of the concluded matters were held in favor of the revenue. However, the statistics seem to have improved slightly in 2023, where more than 60% of the concluded matters have been held in favor of the taxpayer.

The saga of the **Supreme Court overturning high court decisions** continues. A desktop analysis[11] conducted on Supreme Court decisions relating to direct tax matters indicated that in 2023, the Supreme Court overturned more than 50% of the decisions of the High Court against which an appeal had been filed before it. This trend does not bode well for the confidence of taxpayers in the journey of litigation.

Corporations resorting to litigation to assert their tax positions will need to keep their ear to the ground and closely monitor the trends and outcomes. Favorable outcomes at the lower levels may appear transient until the final battle is won. The tax positions and the litigation strategies around them need periodic reassessment and review.

Most importantly, the tax paying community has a widespread belief that despite the litigation climb in India being steep, time consuming and costly, at the final frontier (the Supreme Court) one can hope for clarity, justice and certainty. These hopes are the bedrock for taxpayers and corporations in litigating tax positions and one expects that 2024 will see reinforcement of these hopes.

7. [2023] 454 ITR 121 (SC)
8. [Civil Appeal Nos.7689-90 OF 2022]
9. [2023] 453 ITR 644 (SC)
10. Based on the direct taxation cases reported on Taxmann.com barring SLPs
11. Based on the direct taxation cases reported on Taxmann.com barring SLPs

Key direct tax rulings of 2023[12]

Write-off of irrecoverable intra-group advances is eligible for deduction[13]

The taxpayer extended loans and financial guarantees for revival of the stressed group entity. The taxpayer also bore the operational cost of the group entity to preserve group reputation. The assessing officer denied a deduction under section 28 for write-off of the loans and the operational cost receivable from the group entity.

The High Court held that since the nexus between the taxpayer and the entity was not disputed, the expenditure/ debt could be held to be incurred based on commercial expediency, and hence, for the business purpose and directly relatable to the business of the taxpayer. The operational expenditure and the loss consequent to debt not recoverable from the group entity was accordingly allowed as deductible expenditure/ loss under section 28.

High Court allows deduction for provision for diminution in value of investment[14]

The taxpayer promoted a subsidiary company and extended loans to it from time to time. Due to the financial irregularities in the company, the corporate debt restructuring cell required the taxpayer to infuse additional funds in the company, partly as loan and partly against preference shares. The loans too were later converted into preference shares. Because of the losses incurred by the company, the value of the preference shares was eroded. Accordingly, the taxpayer made a provision for diminution in the value of preference shares and claimed deduction for it, while computing its business income as well as its book profit. The deduction was disallowed by the Revenue.

The High Court noted that the subsidiary was promoted for furtherance of the taxpayer's freight container business and the interest on the loans to the subsidiary was also assessed as taxpayer's business income. The High Court accordingly upheld the ITAT's order, wherein it was held that merely because the loss was debited under the nomenclature 'provision', it did not alter the basic character of the transaction, and the loss incurred due to non-recoverability of the amount advanced in the ordinary course of business could not have been disallowed.

With respect to the computation of book profit for section 115JB, the High Court upheld the ITAT's order, wherein the deduction for the provision was allowed relying on the judgment of the Gujarat High Court in ***PCIT v. Torrent (P.) Ltd.***[15]. The Gujarat High Court in that case had held that the provision for diminution in the value of investment could not be added to the book profit where the investment was actually written off and reduced from the asset side of the balance sheet.

ITAT grants relief under section 54F despite joint ownership of multiple house properties[16]

The taxpayer's father along with other five family members had inherited a piece of land. On this land, the six family members had constructed six flats, one flat each, on their own. One of these flats was owned and occupied by the taxpayer jointly with another person, both being legal heirs of the taxpayer's father.

The taxpayer earned long-term capital gain and claimed benefit under section 54F. Despite a confirmation letter from other co-owners to the effect that none of them had any right or interest in each other's flat, the benefit under section 54F was denied on the grounds that the taxpayer owned six residential house properties, though jointly.

12. This article is contributed by Umesh Gala (Partner, Dhruva Advisors), Keyur Rambhia (Principal, Dhruva Advisors) and Rushi Shah (Senior Associate, Dhruva Advisors).
13. *Mahindra and Mahindra Ltd. v. CIT* [2023] 456 ITR 723 (Bombay))
14. *PCIT v. Balmer Lawrie and Company Ltd.* [2023] 455 ITR 198 (Cal)
15. [2019] 266 Taxman 151 (Gujarat)
16. *Zainul Abedin Ghaswala v. CIT(A)* [2023] 201 ITD 829 (Mumbai - Trib.)

The ITAT observed that there are contrary judgments of the Karnataka High Court[17] and Madras High Court,[18] wherein the benefit was allowed in the later judgment. The ITAT observed that since no decision of the jurisdictional High Court, which is adverse to the taxpayer, was referred by the Revenue, the decision of the Madras High Court being favorable to the taxpayer is to be followed. Hence, the ITAT allowed the deduction under section 54F in the absence of material to show that the taxpayer was the exclusive owner of the other five flats.

Assessment order quashed for non-compliance with procedure of forwarding first a draft assessment order under section 144C[19]

The assessing officer issued a show cause notice to the taxpayer in relation to the proposed variations in the assessment, without complying with the requirement under section 144C, of first forwarding a draft assessment order.

The High Court held that since the procedure for carrying out assessment of non-resident was not followed, the assessment order could not be sustained. Accordingly, the High Court set aside the assessment order.

Section 79 not to be triggered in a year in which no set-off of brought forward losses is claimed[20]

As at 31 March 2016, A Ltd. and B Ltd. (ultimate holding company) were holding 75% and 25% shares of the taxpayer company, respectively. As at 31 March 2017, A Ltd. held no shares in the taxpayer company, whereas B Ltd held 99.99% of the shares of the taxpayer company. Noticing the substantial change (more than 51%) in the shareholding as compared to the shareholding as at 31 March 2016, the Revenue, pursuant to section 79, contended that the taxpayer cannot utilize its brought forward losses, resulting in potential tax liability.

The ITAT held that since no set-off of brought forward loss was claimed or allowed during the relevant assessment year, the question of invoking provisions of section 79 was unwarranted. The ITAT further observed that, when beneficial ownership is with the ultimate holding company, loss cannot be disallowed.

TDS credit to be allowed in respect of capital receipt[21]

The taxpayer earned interest income that was adjusted in the books of accounts against the cost of Capital Work-In-Progress. The Taxpayer claimed credit for taxes deducted from the interest income. Relying upon section 199 read with rule 37BA, the Revenue denied the taxpayer's claim on the ground that credit is to be claimed in the year in which the income has been offered to tax.

After referring to various co-ordinate bench orders, the ITAT granted TDS credit, wherein it was held that where the amount on which tax was deducted at source is not at all chargeable to tax, section 199 will have to be harmoniously read to allow the TDS credit in the year in which the tax was deducted.

Benefit of indexation and foreign currency fluctuation adjustment denied while computing the capital gain pursuant to section 112(1)(c)(iii)[22]

A non-resident foreign company had sold shares of an Indian company and declared a long-term capital loss applying the first proviso to section 48. According to the Revenue, section 112(1)(c)(iii) was applicable, and accordingly, the Revenue computed long-term capital gains without giving effect to the first and second proviso to section 48.

17. *M J Siwani v. CIT* [2015] 53 taxmann.com 318 (SC)
18. *Dr. P. K. Vasanthi Rangarajan v. CIT* [2012] 252 CTR 336 (Madras)
19. *Gigy Antony v. ITO* TS-66-HC-2023(Ker)
20. *Sodexo India Services Private Limited v. PCIT* TS-79-ITAT-2023(Mum)
21. *ITO v. Adani Vizhinjam Port Pvt Ltd.* TS-91-ITAT-2023(Ahd)
22. *Legatum Ventures Limited v. ACIT [*2023] 149 taxmann.com 436 (Mumbai - Trib.)

ITAT held that section 112(1)(c)(iii) is a special provision for the computation of capital gains arising to non-residents from the transfer of unlisted shares and securities, whereas section 48 of the Act is a general provision for the computation of capital gains in all the cases of transfer of capital assets. And accordingly, the computation is to be made under the special provision viz. section 112(1)(c)(iii) without giving effect to the first and second proviso to section 48. The ITAT further observed that if the computation is done only under section 48 as submitted by the taxpayer, then it would render the computation mechanism in section 112(1)(c)(iii) redundant.

Reassessment rulings

New reassessment regime has been introduced from 1 April 2021. There have been a huge number of writ petitions filed in various courts on the new regime. We cover a few rulings on the new regime herein. This may be read in conjunction with our comments / analysis on the new reassessment regime in our article on *Landscape of tax dispute resolution mechanism in India.*

The time limit for issuing a reassessment notice for assessment year 2021-22 or earlier years, if elapsed as per the unamended section 149, such notice cannot be issued on or after 1 April 2021, relying on the time limit extension provided in the TOLA[23] Notification[24]

In the present cases, the High Courts effectively held that, where the time limit for issuing reassessment notice for assessment year 2021-22 or earlier years has already elapsed as per the unamended section 149, no such notice can be issued on or after 1 April 2021, pursuant to the first proviso to section 149(1), and such restriction under the proviso cannot be overridden on the basis of the time limit extension provided vide the Notifications under TOLA. It is pertinent to note that the Supreme Court has stayed the High Court orders after admitting SLP. Final outcome keenly awaited as a large number of matters impacted.

Extended time limit of ten years for re-assessment proceedings applies only in the case of serious tax evasion[25]

The High Court quashed the re-assessment notices issued beyond three years, where the income escaping assessment was below Rs. 50 lakhs. The High Court further observed that the extended period of ten years would apply only in case of serious tax evasion where the concealment of income is Rs. 50 lakh or more.

Re-assessment notice quashed for divergent views without cogent reasoning[26]

In the instant case, the tax department issued two reassessment notices for assessment years 2015-16 and 2016-17. With identical facts in both years, the department dropped proceedings for 2016-17, but continued the proceedings for 2015-16. The High Court quashed the notice for assessment year 2015-16 on the grounds of inconsistent and divergent approach of the department without recording cogent reasons.

A 'personal opinion' cannot be regarded as 'information' for the initiation of re-assessment proceedings[27]

The assessing officer issued a reassessment notice based on the 'personal opinion' that no businessman will withdraw crores of cash from a bank account and then deposit it again at various stages. The Calcutta High Court held that 'personal opinion' does not constitute tangible material for the initiation of reassessment proceedings and quashed the notice.

23. Taxation and Other Laws (Relaxation & Amendment of Certain Provisions) Act, 2020
24. *Keenara Industries (P.) Ltd. v. ITO* [2023] 453 ITR 51 (Gujarat), *Rajeev Bansal v. UOI* [2023] 453 ITR 153 (Allahabad)
25. *Ganesh Dass Khanna v. ITO* [2023] 156 taxmann.com 417 (Delhi)
26. *Prem Kumar Chopra v. ACIT* [2023] 456 ITR 8 (Delhi)
27. *Dinesh Kumar Goyal HUF v. ITO* TS-704-HC-2023 (Cal)

Key indirect tax rulings of 2023[28]

Supreme Court upholds refund claims for excess customs duty paid by filing amendments to the bill of entry - Union of India v. Sony India Pvt Ltd[29]

Importers have always faced an uphill battle seeking corrections to the Bill of Entry ('BoE') filed upon the customs clearance of goods. The issue rose to prominence with the judgment of the Supreme Court in *ITC v. CCE, Kolkata,*[30] wherein it was held that an amendment to or modification of the BoE/assessment order can be made through an appeal under Section 128 of the Customs Act, 1962 (the 'Customs Act'). This judgment means that the option to make amendments/rectifications under Section 149 / Section 154 respectively of the Customs Act did not gain wider acceptance.

In the present case, the taxpayer (Sony India) imported mobile phones and paid Countervailing Duty ('CVD') at the rate of 6% as per Notification No.12/2012-CE, dated March 17, 2012, which also provided a concessionary rate of 1% duty on imports of mobile phones, on the condition that no credits are utilised on the inputs for, and no capital goods are used in the manufacture of, such mobile phones.

The taxpayer was not able to opt for the said concessionary rate because the Electronic Data Interchange System at the port of import did not permit the lower rate of duty to be claimed, and the department took the position that the taxpayer, being an importer-trader, was not eligible for this concession.

Pursuant to the judgment of the Supreme Court in the case of *SRF Limited v. CC, Chennai*[31], the taxpayer filed an application under Section 149 of the Customs Act claiming a refund of the excess CVD paid, which was rejected. The taxpayer subsequently filed a writ petition before the Telangana High Court, which was granted on the grounds that an amendment to the BoE under Section 149 (which does not prescribe any time limit for such amendments) is an additional remedy available to the taxpayer, separately from the appeals mechanism available under Section 128. The Revenue filed a SLP against this order, which was dismissed by the Supreme Court.

The judgment thus establishes that importers have the option of making modifications to the BoE either through the appeals mechanism set out under Section 128 or, subject to the availability of sufficient documentary evidence, through an amendment /rectification under Section 149 or Section 154 of the Customs Act.

Supreme Court upholds non-payment of interest and penalty on additional customs duties - UOI & Ors. v. Mahindra and Mahindra Ltd[32]

In this case, the taxpayer (Mahindra and Mahindra) challenged the levying of interest and penalties on Countervailing Duty ('CVD'), Special Additional Duty ('SAD') and Surcharges imposed on imports of goods before the Bombay High Court, arguing that there are no provisions under the Customs Law enabling the imposition of interest and penalty on such additional customs duties.

The High Court held that CVD and SAD are levied under Section 3 and Section 3A of the Customs Tariff Act, 1975 ('CTA') respectively, and that there is no specific provision under CTA permitting the levying of interest and/or penalties on the same. This is similar to the case of surcharges levied under Section 90 of the Finance Act, 2000. Further, a taxation statute must be construed strictly, and taxes can be imposed only when the language of the statute expressly provides for this. In the absence of any substantive provision under the CTA, interest or penalties cannot be levied on underpaid CVD, SAD, or surcharges on imports of goods. The Revenue filed a SLP against this High Court order before the Supreme Court, which was dismissed.

The ruling thus provides an opportunity for taxpayers to claim refunds of interest and penalties paid on CVD, SAD, and surcharges. It also has

28. This article is contributed by Kulraj Ashpnani (Partner, Dhruva Advisors) and Kiran Tahelani (Senior Associate, Dhruva Advisors).
29. TS-164-SC-2023-CUST
30. TS-719-SC-2019-CUST
31. TS-362-SC-2015-CUST
32. TS-434-SC-2023-CUST

a similar impact on the applicability of interest/ penalties on IGST paid on imports of goods post July 2017 (which is a similar levy under Section 3(7) of the CTA).

High Court holds that recipient is not entitled to credits unless tax is paid by the supplier - Aastha Enterprises v. The State of Bihar[33]

The payment of GST by a supplier is one of the conditions for an entitlement to Input Tax Credit ('ITC') under the GST Law. Section 16(2)(c) of the Central Goods and Services Tax Act, 2017 ('CGST Act'), which sets out the vires of this condition, has been challenged before various High Courts. While there have been numerous rulings under the former VAT regime, including by the Supreme Court in *Commissioner of Trade and Taxes Delhi v. Arise India Limited,*[34] wherein it was held that tax credits cannot be denied to a bona fide buyer as a result of non-compliance by the supplier, this GST issue is far from being settled.

In this case (Aastha Enterprises), the Patna High Court relied upon the decision of the Supreme Court in the case of *ALD Automotive Pvt Ltd v. The Commercial Tax Officer & Ors*[35] and held that ITC is a benefit or concession rather than a vested right. This benefit is available only if all the conditions for claiming it have been complied with. Hence, if the supplier has not paid the tax to the Government, then despite the collection of tax from the purchasing dealer, the benefit of the ITC cannot be granted to the recipient.

This ruling is in line with the decisions of the Madras High Court in the case of *Pinstar Automotive India Pvt Ltd v. Additional Commissioner, Chennai*[36] and *Jai Balaji Paper Cones v. Assistant Commissioner,*[37] wherein it was held that the recipient shall not be granted the ITC if the conditions prescribed in Section 16(2)(c) of the CGST Act are not fulfilled.

By contrast, the Kerala High Court in the case of *Diya Agencies v. The State Tax Officer*[38] held that if the supplier has not remitted the amount to the government, the recipient cannot be held responsible for this provided that the recipient has discharged the burden of proof of the remittance of tax. Likewise, the Calcutta High Court in the case of *Suncraft Energy Private Limited v. The Assistant Commissioner, State Tax*[39] held that an ITC credit cannot be denied unless appropriate action has been taken against the defaulting supplier. A Special Leave Petition against this order of the Calcutta High Court was dismissed by the Supreme Court.

The entire issue of tax payments by suppliers puts recipients into an onerous position, given that historically there has been no mechanism for recipients to verify the payment of tax by their suppliers. Hence, the doctrine of *"lex non cogit ad impossibilia"* could yet come to the rescue of recipient taxpayers. But until an authoritative ruling is issued, recipient taxpayers will continue to face the burden of non-payment of tax by their suppliers, and must navigate this issue through the channels for litigation available under the GST Law.

33. TS-407-HC(PAT)-2023-GST
34. TS-2-SC-2018-VAT
35. 2018 (70) GST 751 (SC)
36. 2023 (3) TMI 1168 - Madras High Court
37. 2023 (8) TMI 573 - Madras High Court
38. TS-461-HC(KER)-2023-GST
39. TS-367-HC(CAL)-2023-GST

Indirect taxes – Trends and outlook[40]

2023 has been a rollercoaster ride looking at the enormous changes introduced in GST. We have witnessed record GST collections, a plethora of demand notices being issued, assessments being undertaken, widening of e-invoicing ambit, and bringing the online gaming industry within the tax ambit, etc. Let's look at a few important changes introduced this year.

GST collections in 2023

The gross GST collections in 2023 (till date) have been the highest yet, exceeding INR 18 lakh crores. All the months comfortably crossed the INR 1.5 lakh crore per month threshold (except for the month of February, which missed the INR 1.5 lakh crore mark marginally).

The collection for the month of April 2023 exceeded INR 1.8 Lakh crore, which is the highest collection since the introduction of GST. The second highest collection, of a whopping INR 1.72 Lakh crore, was recorded in the month of October 2023 and can be attributed to the festive season.

These record collections, apart from being indicators of strong economic activity, can also be attributed to the measures introduced by the Central Government, such as structural changes like the calibration of GST rates for correcting inverted duty structure and pruning of exemptions; measures for improving tax compliance such as mandating e-way bills, input tax credit matching, mandating e-invoices, deployment of artificial intelligence and machine-based analytics, aadhaar authentication for registration, calibrated action on non-filers and stop filers.

Also, system-based analytical tools and system-generated red flag reports are being shared with the central as well as the state tax authorities to take action against tax evaders.

Online gaming

Various changes in the legislative law turned out to be the biggest disruptor for the online gaming industry. Generally, the imposition of the highest rate of tax of 28% would have caused heartburn, but in this case, it was not the rate of tax but the value on which it has been sought to be imposed that has led to disruption. The revised law provides for the imposition of GST at the rate of 28% on the face value of casino chips, or the value of bets placed as against levying it on the fees charged by the industry players.

A survey of the number of gamers in India was 421 million in 2022, which was expected to exceed 440 million in the year 2023. This change came into effect from October 1, 2023, having adverse effects on the industry.

Moreover, GST notices valued at more than Rs one lakh crore have been issued so far this year to online gaming companies for transactions undertaken prior to the amendment of the law.

Virtually every High Court has been swamped with writ petitions being filed by online gaming companies challenging the retrospective applicability of the amendments.

These amendments are bound to affect the growth prospects of the industry, which had otherwise been growing at breakneck speed.

We are yet to see the last word on this issue, and the litigation is certainly going to be carried out over the next several years.

INR 1.5 lakh crore per month threshold (except for the month of February,

Assessment for FY 2017-18 and FY 2018-19

After a hiatus due to COVID 19, this year saw the deadline for the issue of demand notices within the normal period of limitation. For the first time, the tax department made extensive use of technology to identify the mismatches in the numbers being reported by the taxpayers. The data analytics became the backbone for issuing the demand notices. These notices were issued based on auto-populated data received from the

40. This article is contributed by Niraj Bagri (Partner, Dhruva Advisors) and Vaibhav Jajoo (Principal, Dhruva Advisors).

technology infrastructure's set-up tools, alleging a shortfall in payment of GST, for the reversal of input tax credit on grounds of a mismatch etc. It is more than likely that the majority of the differences can be explained by the taxpayers. But the use of technology demonstrated that it may be possible to identify tax leakages with wide coverage. What is required is the application of the human mind before issuing demand notices, since the data generated by the system is auto-populated and needs further calibration.

Improvising the technology to make assessments smoother and less reliant on face-to-face interactions with taxpayers. The goal is to automate much of the process based on the lessons learned from this experience.

It is advisable for the businesses to implement standardised processes to navigate these challenges and mitigate their impact on their operations and finances.

GST Tribunal – a work in progress

After the challenge to various provisions relating to the setting up of a Tribunal, several amendments have been undertaken to remove the deficiencies. The process of setting up the Tribunal has been initiated.

The system of a robust appellate mechanism, which permits the taxpayer to challenge the tax demands, is an essential part of the tax collection ecosystem. Due to the current delay, the taxpayers are left with no choice but to knock on the doors of the High Court to seek remedy against their grievances.

Now, with the conclusion of assessments for two financial years, there is going to be a huge spurt in litigation. The importance of setting up the Tribunal without any further delay is the need of the hour to ensure that litigations don't pile up, which would take several years to conclude.

The government has notified 31 Benches of the Tribunal and it is expected that they will become functional by April 2024.

No sunset for Foreign Trade Policy 2023

A new Foreign Trade Policy (FTP) 2023 was made effective from April 1, 2023. The goal of this policy is to make India a trusted trading partner with the vision of increasing exports boosted by government schemes and creating a favourable environment for MSMEs and other businesses to access export benefits.

The new policy is a shift from an incentive-based approach to a regime that facilitates a technology interface. The government aims to increase India's overall exports to USD 2 trillion by 2030 and also intends to encourage the use of the Indian currency in cross-border trade.

Approach on Free Trade Agreements ('FTAs') and discussion on EU and UK

The Government's approach towards the signing of FTAs appears to have changed. The concentration is on signing FTAs, which outweighs benefits and growth to the Indian economy and boosts manufacture to earn forex. This can be evidenced from the FTAs signed with the Nations in the recent past, such as (i) United Arab Emirates (India-UAE Comprehensive Economic Partnership Agreement); and (ii) Australia (India-Australia Economic Cooperation and Trade Agreement) during the months of April 2022 and May 2022.

Further, a round of discussions and negotiations are on for signing FTAs with the UK and EU. The FTA with the UK is the priority of the Government and it is anticipated that it will be signed before the end of this financial year.

Conclusion

The gestation period needed for a new tax system to settle down, along with the intervention of technology, is over. Now the time is for consolidation of the efforts made in the last six years. Tax litigation could become a major hurdle in the ease of doing business. Proactive efforts should be made to clarify emerging issues, without any bias towards tax collection, to ensure that litigation is nipped in the bud and the businesses can spend more time and effort towards growth prospects.

Landscape of tax dispute resolution mechanism in India[41]

India ushered in the faceless era of communicating with Income-tax authorities in 2020, redefining the landscape of resolving tax disputes and marking a revolutionary shift from traditional tax assessments and appeals. With the intention of modernising and streamlining administration of taxes, the faceless regime was introduced to enhance efficiency and encourage transparency in tax matters.

The faceless regime garnered positive feedback from various stakeholders for simplifying the taxation process and reducing hurdles, yet it has also seen a fair share of practical challenges in implementation at the ground level.

Further, there was a complete overhaul in the provisions governing reassessment of cases under the Income-tax Act, 1961 ('Act') a couple of years ago, which was aimed at simplifying the regime but has in turn resulted in a myriad of controversies.

This has led to choking the litigation pipeline at judicial forums that were already clogged with tax disputes. This article delves in some of the key practical experiences faced by taxpayers, tax professionals, and tax authorities alike.

Faceless assessment

The faceless assessment scheme was a pivotal reform introduced by the government in 2020 in a bid to bring about much-needed changes in the way taxes were administered. While the provisions regarding the regime were inserted in the law books earlier, the COVID-19 pandemic acted as a catalyst and provided an impetus to introduce operating guidelines and make the scheme fully functional across the country.

The scheme provided complete elimination of the interface between taxpayers and the revenue, with all communications between them being routed through a nodal agency [National Faceless Assessment Centre ('NFAC')]. The NFAC would be ably supported by designated specialized units for completing assessments.

The same was welcomed by taxpayers as well as professionals, since it brought an element of objectivity and eliminated the need for assessees/ tax professionals to visit tax offices on multiple occasions to explain their cases. However, every coin has two sides!

Audi Alteram Partem (in Latin, let the other side be heard) forms the basis of any judicial proceeding. The elimination of the human interface impeded the taxpayers' ability to explain their case to revenue authorities, especially where transactions were complex and difficult to understand.

To that end, the guidelines laid down by the government provided that taxpayers should be accorded with an opportunity for personal hearing when requested. However, on multiple occasions, assessments proceedings were concluded based on the best judgement of Revenue officials without giving any personal hearing to taxpayers.

While various High Courts across the country have come down heavily on revenue authorities for blatantly violating the principles of natural justice, practically, assessment orders continue to be passed without giving an opportunity for a personal hearing. Earlier, the law itself provided that any assessment order passed without following provisions under section 144B of the Act (dealing with faceless assessments) would be non-est. However, this provision was subsequently deleted, effectively providing free wings to the revenue authorities to pass assessment orders which were not in consonance with the letter or spirit of law.

It has also been observed that many proceedings initiated under the faceless regime are often transferred to the jurisdictional assessing officer ('AO') at any stage without any prior intimation or reasons being furnished to taxpayers. There are no objective guidelines prescribed by the Central Board of Direct Taxes ('CBDT') in this regard.

41. This article is contributed by Sandeep Bhalla (Partner, Dhruva Advisors), Ashish Agrawal (Associate Partner, Dhruva Advisors) and Ritesh Thakkar (Principal, Dhruva Advisors).

The fully operational faceless assessment scheme has been in force for only about three years. However, it is time that the issues that have emerged thus far are ironed out to enable taxpayers to reap the intended benefits of the scheme.

Faceless Commissioner (Appeals)

As another part of the Hon'ble Prime Minister's initiative of *Transparent Taxation – Honouring the Honest,* the Faceless Appeal Scheme was introduced alongside the faceless assessment scheme in 2020 in a bid to conduct faceless proceedings at the first appellate level. The National Faceless Appeal Centre is the centralized agency for conducting first-level appeals in a faceless manner.

Given the time involved in setting up the infrastructure to make the scheme fully operational, notices were issued sporadically and the first year witnessed a minimal number of appeals being heard and disposed off. The backlog of appeals pending disposal at Commissioner (Appeals) is huge.

The scheme also saw plenty of modifications in 2021. While the earlier scheme involved granting of personal hearing at the discretion of tax officials, the amended scheme eliminated this subjectivity and mandated the grant of personal hearing wherever the same was requested by the taxpayer.

It has been observed that taxpayers must wait for a considerable time before their submissions are considered or a personal hearing is accorded to explain their matter. To expedite matters, recently, the Delhi High Court directed that the sanctioned strength of Commissioner (Appeals) be increased by filling up vacant posts. The process for peer review has also been done away with under the new scheme, to reduce the time involved in disposing of appeals.

While the above should have expedited the resolution of longstanding appeals, the faceless appeal scheme is yet to gather steam. In fact, as per recent reports the number of appeals pending as on 31st March, 2023 had increased to 5.16 lakhs from 4.98 lakhs as on 31st March, 2022. As a result, appeal units have been reportedly directed to dispose all cases pending as on 31st March, 2023 where the tax demand is INR 50 crores and above, and mandatorily dispose all appeals filed prior to April 2020 where the tax demand exceeds INR 10 lakhs[42].

Reassessment

The due dates for issue of reassessment notices (under the old regime) were extended during the covid pandemic, with the last deadline being June 30, 2021. In the meantime, a new reassessment regime became operational from April 1, 2023. The litigation was resolved last year with the Supreme Court in the case of Ashish Agarwal, pronouncing the verdict that from April 1, 2021, only the new reassessment regime would apply.

While the decision took cognizance of the fact that notices issued between April 2021 and June 2021 were not in accordance with the new regime, special provisions under Article 142 of the Constitution of India were invoked and it was directed that such notices would be deemed to be issued under the new regime so that revenue authorities are not left remediless.

Although the Apex Court ruled in favor of revenue authorities, it left an open window for taxpayers to resort to defenses available under the new regime for contesting the notices. The above judgment has, instead of nipping the bud on the entire controversy, led to a host of new issues, plenty of which are now pending in a fresh round of litigation before various High Courts.

The following is an illustrative list of issues arising pursuant to the above judgement:

- While the erstwhile regime stipulated the recording of *reasons to believe* ('reasons') as the basis for reopening the assessment,

42. As per media reports - https://www.cnbctv18.com/finance/tax-department-sets-strict-targets-to-resolve-appeals-sources-18368031.htm. No announcement has been made by the CBDT to this effect in public domain.

under the new regime it is *information with the assessing officer* ('information') that forms the basis for reopening. Since the above notices were initially issued under the erstwhile regime based on reasons, it is debatable whether such reasons constitute information under the new regime and whether reassessment orders passed pursuant to the Apex Court judgment are valid.

- Whether the Relaxation Act could have extended the timelines under the new reassessment regime (for notices issued under the erstwhile regime that ceased to exist from 1 April 2021) is a separate issue in itself that has not been addressed by the Hon'ble Supreme Court. While the Bombay High Court[43] has provided some much-needed clarity on this aspect in a recent ruling favoring the taxpayer pertaining to AY 2016-17, a uniform call on the matter would go a long way towards resolving several pending disputes.

- It is often observed that reassessment notices are issued mechanically without obtaining approval of the appropriate sanctioning authority under the Act. The second round of litigation has also seen a major controversy around who would be the appropriate sanctioning authority for notices issued under the old regime and blessed by the Hon'ble Supreme Court.

The above, and several other grounds, are already being litigated before various Courts and it is anyone's guess as to which way the needle moves before these issues are finally put to rest. For now, the reassessment saga continues to be mired in controversy.

Tax disputes – Pending litigation pipeline

While the government's initiatives of introducing a host of initiatives are worthy of appreciation, the burden of past litigation weighs heavily on Revenue as well as judicial authorities. As of July 2023, only 4.5 lakh faceless assessments, 4.1 lakh penalty cases and 2 lakh faceless appeals have been disposed of[44].

To reduce the pendency of small cases before the Commissioner (Appeals), a new appellate authority called Joint Commissioner (Appeals) ['JCIT(A)'] was constituted under section 246 of the Act in 2023, whose salient features are as follows:

- JCIT(A) would handle appeals against orders passed by an AO below the rank of Joint Commissioner of Income Tax.

- Existing appeals filed before CIT(A) may be transferred to JCIT(A).

- Appellants have recently started receiving notices from JCIT(A) wherein the proceedings are conducted virtually by a known person [unlike faceless appeals, where the Commissioner (Appeals) is not known].

Further, to alleviate the uncertainty caused by longstanding tax matters, the Supreme Court of India started constituting special benches for hearing tax matters from July 2023. The Supreme Court also directed High Courts and Income Tax Tribunals across the country to implement uniform Standard Operating Procedures for conducting hearings through video conferencing mode, rebuking the inadaptability of the High Courts, where such hearings are scarcely conducted.

Apart from costing the economy a fortune, India's tax litigation is also viewed in an adverse manner, both domestically as well as internationally. A collective and focused approach of tax administrators, appellate forums and Courts alike is required to unclog the existing pipeline and instill confidence in taxpayers and investors.

43. *Siemens Financial Services (P.) Ltd. v. DCIT* [2023] 457 ITR 647 (Bombay)
44. https://www.thehindubusinessline.com/opinion/faceless-assessment-of-tax-has-gained-traction/article67112465.ece

The road ahead

The faceless schemes were met with a lot of optimism and were perceived to be a game-changer when it comes to tax disputes. While the schemes have shown promise, it would be a long shot to say that they are close to achieving a seamless resolution of tax disputes.

While discretion of granting personal hearing has been done away with at the first appellate level, orders under the faceless assessment scheme continue to be passed in several cases without according an opportunity for personal hearing.

An attempt has also been made for extending the faceless regime to appeals before the Income Tax Appellate Tribunal ('ITAT'). However, given that the ITAT is the final fact-finding authority in the appellate hierarchy, the idea of eliminating the human interface at that level could be severe, depriving taxpayers and revenue alike from a final opportunity to present their factual arguments.

The reassessment saga is also seeing another round of litigation being contested before various Courts and it would be interesting to see is how the entire controversy is finally put to rest.

Pillar Two rules in 2023 – A spectrum of responses from acceptance to reservations[45]

The rules for taxing international business income, which have prevailed for more than 100 years, have created opportunities for Base Erosion and Profit Shifting (BEPS) in the digitalised and globalised business environment. OECD's BEPS 1.0, published in 2015, comprised 15 action plans that aimed to enhance transparency, prevent treaty abuse, align taxation with substance, and ensure fair distribution of profits among MNEs. BEPS 1.0 Action Plans fell short in addressing the tax challenges arising from the digitalisation of the economy which emerged as the genesis for BEPS 2.0 providing a two-pillar policy.

BEPS 2.0 represents a transformation in global taxation, tackling issues related to the digital economy and multinational tax avoidance by implementing rules for fair profit allocation and establishing a global minimum tax. While Pillar One is yet to be formally adopted, it is a proposal to tax large MNEs (global turnover > 20 billion euros) in jurisdictions where they have a significant consumer presence, even if they lack a physical presence. Pillar Two, on the other hand comprises the Global Anti-Base Erosion (GloBE) Rules and the Subject to Tax Rule (STTR). The GloBE Rules propose to impose a global minimum tax on specified multinational enterprises (MNEs) (turnover exceeding 750 million euros in two out of the preceding four years) in every jurisdiction where they have a meaningful presence, thereby discouraging profit shifting. The Rules lay down a detailed computation mechanism for MNEs to compute the effective tax rate (ETR) in each jurisdiction where they have meaningful presence and also require the payment of top-up taxes (TUT) if such ETR falls short of the minimum rate of 15%. The STTR is a source-based rule that gives the source jurisdiction the authority to levy tax on specific intra-group cross-border payments, including interest, royalties, or fees if such payments are subjected to taxation at nominal rates of less than 9% in the country of residence.

Major developments in 2023

2023 brought a whirlwind of activity in the realm of the GloBE Framework, with many countries taking significant steps towards its implementation. The OECD Inclusive Framework (OECD IF) also published several significant documents to navigate the nuances of the Rules. The European Union (EU) took the lead in the implementation of GloBE Rules by adopting a Minimum Tax Directive in December 2022, which mandates member states to mandatorily implement GloBE Rules from 2024. Furthermore, among the 140 IF countries that agreed to the two-pillar proposals, approximately 50 countries are already at various advanced stages of implementation. Five of them (Japan, South Korea, United Kingdom, Switzerland, and Hungary) have formally passed domestic legislation for the same. The OECD IF also came up with two administrative guidance documents to elucidate the granularities of the Rules along with the final template of the GloBE Information Return (GIR) and a Minimum Tax Implementation Handbook, which provides a high-level summary of the GloBE Rules and guidance to administrations on implementation options. With the law being finalized and many countries initiating implementation (most notably the European Union), it is safe to say that the GloBE Rules are no longer a distant rumor but a tangible force knocking at our doors. On the STTR front, the OECD IF released the MLI to facilitate the implementation of STTR, which provides the final STTR framework.

Where does the US stand?

The US is an IF member and a signatory to the two-pillar proposal but is yet to formally adopt the Rules in its domestic legislation. Global Intangible Low-Taxed Income (GILTI) is a US tax rule that specifically addresses income derived from intangible assets, such as patents and copyrights, that can be easily shifted to low-tax jurisdictions. While GILTI tax may be temporarily creditable for GloBE Rules purposes, Qualified Domestic Minimum Top-up Tax (QDMTT) gets precedence over GILTI implying that the introduction of QDMTT may lead to loss of GILTI tax revenue for the US. Furthermore, the US alleges that extraterritorial taxing rights offered vide the UTPR would infringe on jurisdictional sovereignty and weaken the international tax

45. This article is contributed by Aditya Hans (Partner, Dhruva Advisors), Radhakishan Rawal (Senior Advisor, Dhruva Advisors), Ashish Jain (Principal, Dhruva Advisors) and Nilesh Chandak (Senior Associate, Dhruva Advisors).

system. This was in response to the UTPR that the Ways and Means Committee proposed legislation which required the Treasury Department to issue a report identifying countries which imposed an 'extraterritorial' or 'discriminatory' tax. For a country so identified, the various income and withholding taxes imposed by the Internal Revenue Code on a taxpayer resident in that country were proposed to increase by 5-20 percentage points. In order to ensure smooth global implementation and to accommodate various global interests, the OECD IF also introduced UTPR Safe Harbour, which prevents the application of UTPR in certain circumstances.

The tussle for power between OECD and UN

Many developing countries have expressed concerns that the OECD IF's two-pillar proposals have been designed to favor developed nations and to harm incentives for developing countries. The UN too has been vocal in criticizing OECD's actions. In August, the UN issued a report on international taxation wherein it alleged that the OECD was not inclusive enough to handle international tax reforms and that *"enhancing the UN role in tax-norm shaping and rule setting, fully taking into account existing multilateral and international arrangements, appears the most viable path for making international tax cooperation fully inclusive and more effective."* Furthermore, in November, 125 mostly developing countries backed a draft U.N. resolution calling for a "framework convention on international tax cooperation", which aims to shift the mantle of international tax reforms from the OECD's hands to the UN. While the actual impact remains to be seen, this resolution could have far-reaching consequences on the future of the two-pillar proposals.

India and Pillar Two

The GloBE Rules have been framed and agreed upon to be applied as a 'common approach', i.e., jurisdictions are not required to formally adopt the Rules, but if they choose to do so, they agree to implement and administer them in a way that is consistent with the agreed outcomes set out under those rules. India is yet to formally adopt the Rules in its domestic legislation, but it is an IF member and a signatory to the 'common approach'. This implies that Indian headquartered MNEs with a presence in jurisdictions which have already adopted the GloBE Rules need to gear up and be prepared to comply with the legislative provisions of the rules. During its G20 presidency, India had requested the OECD Secretariat, in July 2023, to develop a handbook to support the effective implementation of the GloBE Rules to be delivered to Finance Ministers and Central Bank Governors. Responding to India's request, the OECD IF's Centre for Tax Policy and Administration thanked the Indian G20 Presidency and published the Handbook in October 2023. Given India's proactive participation in international forums, it would not be surprising to see a domestic legislation in India on Pillar Two. However, the parameter for the adoption of these rules in the domestic law could be the potential additional tax revenue that such rules could generate in India. Based on publicly available information for FY 2021-22, it is estimated that the number of in-scope Indian headquartered MNEs could be about 150 to 200. With regard to STTR, most of the Indian tax treaties provide for a 10%/15% withholding on interest, royalty, and FTS, and thus may not be subject to STTR.

The road ahead

With approximately 50 countries at various advanced stages of implementation, in-scope MNE Groups have kickstarted their campaigns to prepare themselves for compliance with the GloBE Rules. Many in-scope MNEs have initiated the process of analyzing transitional CbCR safe harbor basis data for fiscal years 2022-23 and 2021-22 to get a broad understanding of the jurisdictions which could be impacted by GloBE Rules. They have also deployed dedicated teams to obtain an understanding of the rules, the complicated calculations required, and the filing requirements. However, it is imperative that these efforts are accompanied by simultaneous assessment of data-gap analysis, i.e., MNEs need to assess the data requirements and existing data sources to assess the data gaps, if any. In a nutshell, the crux of the matter is for stakeholders to understand that global minimum taxation is quite a reality now, and systematic planning could prevent last-minute chaos and ensure smooth compliance.

Trends in treaty analysis – An India perspective[46]

The year 2023 saw notable developments in legal interpretations relating to international tax matters, shaping India's jurisprudence in this domain. We have analyzed certain relevant landmark decisions that are likely to impact Indian jurisprudence in the future.

Treaty eligibility – To be or not to be?

The revenue frequently contests the availability of tax treaty benefits, particularly in the case of tax treaties entered into with countries such as Singapore and Mauritius, where exemptions are granted for capital gains. The treaties have now been modified to allow India to tax capital gains from the transfer of equity shares acquired post April 1, 2017; however, the department often disputes the entitlement to treaty benefits where investments have been grandfathered.

While the scrutiny of treaty eligibility might concern foreign companies eyeing investments or transactions with Indian companies, the outcome is fortunately favorable. 2023 witnessed a myriad of cases ruled in favor of the taxpayer. Early in January 2023, in the case of *Blackstone Capital Partners Singapore v. ACIT (International tax)*[47], the Delhi High Court quashed reassessment proceedings initiated by the department and upheld the sanctity of the Tax Residency Certificate ('TRC') as sufficient evidence to claim treaty benefits, residential status, and legal ownership. It also observed that the revenue's attempt to challenge and go behind the TRC was *"wholly contrary to the Government of India's repeated assurances to foreign investors."* Even on the validity of the reassessment proceedings, the High Court observed that the revenue did a *"cut-and-paste job"* by issuing a notice based on borrowed satisfaction without any independent application of mind or verification. Even on the allegation of the revenue that the taxpayer is not the beneficial owner of capital gains income from the sale of shares, the Court ruled that the satisfaction of beneficial ownership is not required to claim an exemption in the case of capital gains.

The Delhi High Court's favorable ruling signaled the trend for subsequent decisions. Taking a cue from the Delhi High Court, the Delhi ITAT in *Sarva Capital LLC v. ACIT*[48] reaffirmed the sanctity of the TRC and went a step further. It allowed exemption from capital gains to the Mauritius-based investment company on the disposal of shares that arose from the conversion of cumulative preference shares that were bought before April 1, 2017, although the conversion took place after that date.

Dividend – Whose tax is it anyway?

In 2020, the dividend distribution tax ('DDT') was scrapped, shifting India to the classical system where dividends are taxed directly in the hands of investors. Even as the old regime gave way to the new, the legacy question as to whether DDT was a tax on the company or the shareholders persisted. Investors aimed to classify it as a shareholder's tax to access treaty benefits, while tax authorities insisted on labeling it as a tax on the company, sparking a significant debate.

In the case of *DCIT v. Total Oil India Private Limited,*[49] the the Mumbai Bench of the Tribunal expressed concerns over the correctness of decisions rendered in favor of the taxpayers to the effect that the rate of DDT payable by an Indian company cannot exceed applicable treaty rates for dividend income and requested the constitution of a Special Bench to adjudicate on the issue. The Special Bench[50] held in favor of the revenue to say that the DDT is a levy on the distributed profits of the and not on the dividend income of the non-resident shareholder, thereby denying treaty benefits. It also referred to the India – Hungary treaty, where the beneficial rate for DDT is provided for, to expound that wherever the benefit was intended to be granted, it is specifically provided for in the treaty itself. Curiously, in the case of *Van Oord India Pvt. Ltd. v. DCIT,*[51] the Mumbai ITAT observed that on perusal of the order of the Special Bench, it is not recognized that domestic companies are

46. This article is contributed by Umesh Gala (Partner, Dhruva Advisors), Jagravi Shah (Senior Associate, Dhruva Advisors) and Nishi Doshi (Article Trainee, Dhruva Advisors).
47. [2023] 452 ITR 111 (Delhi HC)
48. [2023] 153 taxmann.com 618 (Delhi - Trib.)
49. [2021] 127 taxmann.com 774 (Mumbai - Trib.)
50. [2023] 104 ITR(T) 1 (Mumbai - Trib.) (SB)
51. I.T.A. No. 792/Mum/2014

covered under the India – Hungary treaty, thus raising questions if the observations of the Special Bench regarding the India – Hungary treaty can be taken at face value.

The MFN clause controversy – Challenging the black letter approach

In perhaps the most significant ruling of the year, the Supreme Court in *Assessing Officer v. Nestle SA*[52] ('MFN ruling') overturned favorable decisions of the Delhi High Court and Karnataka High Court and held that the most favored nation ('MFN') clause in treaties cannot be given automatic effect but will come into place only after a notification is issued to that effect. In doing so, the Supreme Court emphasized the role of subsequent practice in treaty interpretation and expounded that one cannot approach treaty interpretation in the black letter manner adopted for interpreting enacted binding law. This decision is poised to significantly shape how treaties are understood and applied in practice. It has been discussed in depth in our article *Trends in direct tax Supreme Court jurisdiction*, forming part of the Year in Review 2023.

Secondment – Substance first, form second!

The taxability of reimbursement of salaries for seconded employees, by an Indian host company to an overseas entity, has sparked considerable debate, amplified by conflicting judicial decisions. The Supreme Court decision rendered last year in the case of *C.C., C.E. & S.T v. Northern Operating Systems (P.) Ltd.*[53] in the context of service tax, holding that the secondment of employees between group companies is a taxable service, complicated matters. Nonetheless, this year saw decisions on the direct tax front, which have provided much-needed clarity.

In Google *LLC v. JCIT*[54], ITAT Bengaluru held that the sum paid by the Indian entity to the overseas entity, towards reimbursement of salary of seconded employees working solely for Google India, is not taxable as fees for included services or fees for technical services. In reaching this conclusion, the Tribunal observed that Google India is *"the economic and de facto employer of the seconded employees."* ITAT Delhi in *Ernst & Young U.S. LLP v. ACIT (International Tax)*[55] also held that where seconded personnel are employees of the Indian firm, whose income has been taxed as salary in their respective hands, the same amount could not be subject to tax again in the hands of the overseas entity. While dealing with the decision of the Supreme Court in the NOS case, the ITAT observed that the decision has to be read in the context in which it was delivered, which was to discern the true nature of the relationship between the seconded employees and the assessee and the nature of the service provided by the overseas group company to the assessee.

At the core of the dispute is determining the employer of the seconded employee. For this, it is imperative to analyze each arrangement and corresponding agreement entered into between the relevant parties. Unraveling the true substance of the arrangement is essential for determining subsequent tax implications.

Permanent establishment – A fleeting concept!

In 2023, the debate sparked by the Delhi AAR ruling in case of *Mastercard*[56], continued to dominate the headlines. The Delhi HC is currently hearing the writ petition filed by the taxpayer against the AAR ruling, which had held that Mastercard's activities in India constituted a PE in India on several counts. Given its potential implications on a fixed place PE, dependent agency PE, service PE, and profit attribution concepts, the verdict of the High Court is keenly awaited.

The year also saw a handful of welcome rulings. In *CIT (International tax) v. Alibaba.Com Singapore E-Commerce (P.) Ltd.*[57], where the taxpayer availed payment collection services of an Indian company and had no financial or managerial participation

52. [2023] 155 taxmann.com 384 (SC)
53. [2022] 138 taxmann.com 359 (SC)
54. [2023] 147 taxmann.com 428 (Bengaluru – Trib)
55. [2023] 153 taxmann.com 95 (Delhi - Trib.)
56. [2018] 406 ITR 43 (AAR)
57. [2023] 459 ITR 508 (Bom)

in the activities of the Indian company and the activities of the Indian company were also not wholly dedicated to the assessee, the Bombay High Court held that the Indian company was not a dependent agency PE of the non-resident.

With decisions on both sides of the fence, the concept of permanent establishment seems to be ever-evolving. It will be interesting to see how it takes shape in the time to come.

58. Based on international tax matters reported on Taxmann.com

The road ahead

A desktop analysis[58] of decisions at all judicial levels relating to international tax matters points to a staggering 90% of decisions that are ruled in favor of the assessee. While the numbers look promising, decisions like the MFN ruling have the potential to unexpectedly disrupt the status quo. The significance of certainty in interpreting tax treaties cannot be overstated. It appears we have some ground to cover in ensuring a predictable and stable environment for cross-border transactions and fostering trust in the tax system.

Major developments in financial services sector[59]

Fund regime in Gujarat International Finance Tech-city ('GIFT') - Family investment funds

The GIFT International Financial Services Centre ('IFSC') is a financial centre in GIFT City. GIFT IFSC is India's maiden international financial services centre. It is being developed as a global financial services hub to provide world-class infrastructure and services for financial institutions and companies operating in areas such as banking, insurance, capital markets and asset management. International Financial Services Centres Authority ('IFSCA') is responsible for regulating IFSC.

Entities set up within GIFT IFSC are treated as 'persons resident outside India' for the purposes of the Indian foreign exchange laws and can undertake transactions in freely convertible currencies.

Fund Management Regulations issued by IFSCA govern registration of pooling vehicles such as Alternative Investment Funds, Real Estate Investment Trusts, Infrastructure Investment Trusts and Family Investment Funds. These Regulations seek to regulate the Fund Management Entity instead of the existing approach of regulating the Funds. This marks a paradigm shift from the existing regulatory framework in India for pooling vehicles.

The Regulations provide various conditions for the registration of the Fund Management Entity, including minimum staffing and competency requirements for key managerial personnel, thus providing credence to the substance requirements.

As mentioned above, under the Fund Management Regulations, IFSCA specifically permits family offices to pool money and set up a Family Investment Fund ('FIF') in IFSC who can then invest globally. The regime works as good as any other offshore structure, whilst being closer to the ground in India.

As a construct, FIF in IFSCA can be set up in the form of a company, a determinate trust and a limited liability partnership ('LLP') with prior permission from the IFSCA. The FIF will need to have a minimum corpus of USD 10 million within 3 years from the date of its registration. Through the FIF, families will be able to invest broadly in unlisted and listed securities (in India, IFSC, globally). The FIF may borrow funds or engage in leveraging activities without any limit/ cap, however, the borrowed amount will not be considered towards the corpus of USD 10 million.

FIF was initially defined to pool money only from individual family members of a single family. IFSCA later clarified to permit pooling of money from entities such as sole proprietorship firm, partnership firm, company, LLP, trust or a body corporate, in which an individual or a group of individuals of a family exercise control and directly or indirectly hold substantial economic interest.

This clarification may potentially enable resident entities to invest up to 50% of their net worth into the FIF, subject to complying with other conditions. However, it remains to be seen whether the Reserve Bank of India ('RBI') would be forthcoming in providing approvals to resident entities for investment in FIF. In any case, for resident individuals, the limit of USD 2,50,000 per year would apply.

FIF may definitely have certain advantages over offshore set ups. It is easier to establish presence and substance at IFSC. This flexibility coupled with tax holidays/ incentives and certain indirect tax exemptions make it a compelling alternative for HNIs.

Real Estate Investment Trusts ('REITs') - Fractional Ownership Platforms ('FOPs')

REITs can invest in real estate assets located in India, either directly or through holding companies and/ or special purpose vehicles ('SPVs'). Although there is immense potential in real estate investment, one of the reasons for lesser number of REITs may be attributed to the requirement of minimum asset size of INR 500 crores and a minimum offer size of INR 250 crores, as envisaged in the REIT Regulations.

In the last few years, India has witnessed an emergence of web-based platforms that provide investors an opportunity to invest in real estate assets, in exchange for fractional ownership in these real estate assets. Usually, the investors are required to invest on these platforms, popularly known as, FOPs. The strategy generally adopted by these FOPs is that the investors subscribe to the securities of a SPV established by the FOPs, which in turn purchases the actual real estate asset. Through this approach, the cost of acquisition of any identified real estate is split among several investors. It has been seen that these FOPs do not register themselves as real estate agents under RERA, even though they act as real estate agents or property managers.

59. This article is contributed by Punit Shah (Partner, Dhruva Advisors), Vishal Lohia (Associate Partner, Dhruva Advisors), Meet Mehta (Principal, Dhruva Advisors) and Pranav Shah (Senior Associate, Dhruva Advisors).

SEBI Consultation Paper - Micro, Small and Medium ('MSM') REITs

In May 2023, SEBI had floated a consultation paper for regulating the FOPs. SEBI has suggested that there is a need to govern the FOPs as the varying nature of structures adopted by the FOPs raise concerns regarding adequate protection to the investors and potential violation of the norms relating to Companies Act, 2013, Prevention of Money Laundering Act, 2022 and other laws.

SEBI intends to label these FOPs as MSM REITs. Under the proposed MSM REITs regulations, SEBI has indicated the MSM REIT be set up as a trust under the Indian Trusts Act, 1882. Further, similar to the existing REITs, MSM REITs shall have parties such as trustees, sponsors and investment managers.

While the criteria for a sponsor of a MSM REITs is like that of existing REITs, the net worth for managers of MSM REIT is proposed to be reduced.

The consultation paper proposes mandatory unitholding of 15% for 3 years (from the date of the listing of the units of the MSM REITs) by the sponsor of MSM REITs. This will ensure that the party establishing the MSM REIT will have skin in the game – resulting in comfort to the investors.

The minimum asset size to be acquired by such MSM REITs is INR 25 crores (which is far less as compared to the minimum asset size of INR 500 crores applicable to existing REITs).

The MSM REIT will be required to hold 100% equity share capital in all the SPVs, which is much stricter when compared to a 26% threshold for existing REITs.

The minimum number of investors in case of MSM REITs is proposed to be 20, which is significantly less than the 200 investors required in case of existing REITs. Under the MSM REITs, the minimum ticket price is proposed at INR 10 Lakhs (as compared to INR 1 Lakh in case of existing REITs).

MSM REITs would not be allowed to raise debt, whereas REITs have historically been allowed to raise external debt.

SEBI in its consultation paper has indicated that such MSM REITs shall be eligible for the same taxation framework as those applicable to the existing REITs, as MSM REITs will qualify as business trusts. The table below depicts the taxability of interest, capital gains, dividend and rental income for the REIT and its' unit holders:

Particulars	Interest/Dividend/ Rental Income	Capital Gains
Unit Holders	Taxable	Exempt
TDS by REITs	Yes	No
REITs	Exempt	Taxable

Note: The above taxability is based on the assumption that SPVs have adopted the concessional tax regime.

With respect to the repayment of debt by REITs, typically, REITs lend to SPVs and SPVs may repay this loan with interest ('surplus'). REIT will then distribute this surplus to the unit holders. This surplus (considered as repayment of debt) earlier was not subject to tax. Effective 1 April 2023, the repayment of debt will be taxable as income from other sources as per a prescribed formula in the hands of the unit holders.

While there are potential benefits expected with the introduction of MSM REITs, the long-term impact would have to be seen on the investors and the FOP business model.

Specified Mutual Funds ('SMF') and Market Linked Debentures ('MLDs')

In order to bring parity between plain vanilla debt securities and MLDs, Finance Bill, 2023 introduced a new section which provided that gains arising on transfer or redemption or maturity of MLDs shall be treated as gains arising from the transfer of a short-term capital asset.

Further, the amended Finance Bill, 2023 expanded the proposed levy by covering units of SMF on similar lines as MLDs. Accordingly, notwithstanding the period of holding, the gains arising from the transfer of units of SMF acquired on or after 1 April 2023 will be taxable as gains arising from a short-term capital asset. The term 'Specified Mutual Fund' has been defined to mean a mutual fund by whatever name called, where not more than 35% of its total proceeds is invested in the equity shares of domestic companies. The inclusion of the term 'by whatever name called' under the definition of SMF coupled with 'mutual funds' not being defined under the relevant section has caused a stir amongst the foreign funds as to whether they would be covered by the definition of SMF.

M&A – Trends and jurisprudence[60]

The year 2023 saw the announcement of several deals, with the merger of IDFC with IDFC First Bank, Government of India acquiring larger stake in Vodafone India, Axis Bank acquiring India retail business of Citibank, Brookfield AMC acquiring controlling stake in Rostrum Realty, being some of the most notable. Cash rich corporations continue to make acquisitions to strengthen their businesses. The IPO market in India continues to see a huge boom with a record-breaking number of IPO listings this year and the momentum continues unabated. Many Indian start-ups are also opting to reverse flip their structures back to India, due to a growing domestic market, favorable policies and stronger investor confidence. With India emerging as a credible alternative to China, inbound transactions are expected to increase.

As with most countries, the tax and regulatory framework is critical to M&A transactions in India. The last year witnessed several developments in the M&A tax jurisprudence, leading to clarity on various fronts. The regulatory framework also saw quite a few notable changes from an M&A perspective. Below we have listed some of the key changes to the M&A tax and regulatory framework in India.

Income-tax

Angel tax – Section 56(2)(viib)

Overview

It seeks to tax the consideration received by closely held issuer company for issue of shares in excess of fair market value of the issuer company (which is determined in accordance with the prescribed rules).

Amendment in valuation rules

The Finance Act, 2023, has expanded the scope of section 56(2)(viib) of the Act to also cover shares issued to non-residents by closely held companies. The CBDT has issued notifications providing relief to recognized start-ups, as well as to certain non-residents, which are residents of 21 specified countries. Further, for shares issued to non-residents, CBDT has notified additional valuation methodologies[61]. Additionally, valuation methods prescribed for equity shares can also be used to determine the FMV of Compulsorily Convertible Preference Shares ('CCPS'). Furthermore, a safe harbor provision is inserted therein if the issue price does not exceed 10% of the FMV determined, then the issue price shall be deemed to be FMV.

Recent interesting rulings

Different benches of the ITAT in different cases, while ruling in favor of the taxpayer, have held that section 56(2)(viib) of the IT Act is not applicable in the case of issue of shares at a premium:

- By a wholly-owned subsidiary to its holding company since no income is said to accrue to the ultimate beneficiary i.e., holding company[62].
- To existing shareholders in the ratio of their shareholding (i.e., rights issue) since the shareholding before and after the rights issue remained the same and no benefit is derived by the shareholders or issuing company[63].
- On conversion of a loan due to the absence of receipt of any monetary consideration during the relevant year[64].

Gift tax – Section 56(2)(x)

Fresh issue of shares

In a case of rights issue of shares, the Gujarat High Court[65] has held that section 56(2)(vii)(c)[66] of the Act is not applicable to the allotee of a fresh issue of shares by the company.

60. This article is contributed by Mehul Bheda (Partner, Dhruva Advisors), Drishti Kankariya (Principal, Dhruva Advisors), Ketan Sakhala (Senior Associate, Dhruva Advisors) and Nehal Jain (Senior Associate, Dhruva Advisors).
61. Comparable Company Multiple method, Probability Weighted Expected Return method, Option Pricing method, Milestone Analysis method or Replacement Cost method.
62. BLP Vayu (Project-1) (P.) Ltd v. PCIT [2023] 151 taxmann.com 47 (Delhi – Trib.)
63. Chhattisgarh Metaliks and Alloys (P.) Ltd. v. Income-tax Officer [2023] 147 taxmann.com 441 (Raipur - Trib.)
64. ACIT v. I.A. Hydro Energy Pvt. Ltd. (ITA No. 548/CHD/2022)
65. PCIT v. Jigar Jashwantlal Shah [2023] 154 taxmann.com 568 (Gujarat)
66. From April 1, 2017, the relevant section is 56(2)(x)

Buy-back

In another favorable ruling, the Delhi ITAT[67] has reaffirmed that section 56(2)(x) of the IT Act is not applicable to the buy-back of shares in the hands of the company.

Revised return after merger approval

The due date to revise the return had passed, but to give effect of the amalgamation the taxpayer had manually filed the revised return with the tax department. Telangana High Court[68] following the decision of Supreme Court in the case of Dalmia Power Ltd. v. Assistant CIT[69] have directed the revenue to accept the manual revised return filed by the taxpayer after the due date. With effect from April 1, 2022, the law has been amended and now in the case of merger/ demerger the mechanism to file the revised return after the due date is specifically provided. A time limit of six months from the end of the month in which a merger / demerger order is issued has been prescribed for filing the revised return.

Depreciation on brand name

The Delhi High Court[70] held that a brand name is akin to a trademark, which is covered within the definition of intangible assets, also brand name is other commercial rights and therefore a brand name is an intangible asset and a taxpayer is eligible to claim depreciation on it.

SEBI

SEBI delisting regulations – Delisting of listed subsidiary without following the reverse book-building process

Applying a specific framework provided under the SEBI delisting regulations[71], ICICI Securities has recently announced its delisting where the public shareholders of ICICI Securities will get equity shares of ICICI Bank, and ICICI Securities will become a wholly-owned subsidiary of ICICI Bank.

SEBI LODR Regulations – Disclosure of agreements/ arrangements

SEBI has recently amended LODR and added a new regulation[72] in LODR to mitigate information asymmetry, promote transparency, and prevent unfair practices. Pursuant to the new regulation, SEBI has mandated the disclosure of agreements (including rescission, amendment or alteration), which, either directly or indirectly or potentially, affects the management or control of the listed entity or imposes any restriction or creates any liability upon the listed entity, even where the listed entity is not a party to the agreement (which can include family arrangement / agreements entered into between the promoters / shareholders as well).

Companies Act

Amendment to fast-track merger rules

A Scheme of merger/demerger/arrangement by way of a National Company Law Tribunal (NCLT) route (i.e., obtaining approval from NCLT) takes a longer time to complete as compared to a Scheme routed through a fast-track mode (i.e., obtaining approval from Regional Director). The amendments[73] to the fast-track merger rules will now further reduce the timeline for completion of Scheme under the fast- track route, since the RoC, Official Liquidator and Regional Director will have to provide observations and approve/reject the Scheme within the prescribed time period.

67. DCIT v. Globe Capital Market Ltd. [2023] 156 taxmann.com 620 (Delhi - Trib.)
68. TSI Business Parks Hyderabad (P.) Ltd. v. DCIT [2023] 151 taxmann.com 514 (Telangana)
69. 2019] 112 taxmann.com 252 (SC)
70. PCIT v. Kuantum Papers Ltd. [2023] 154 taxmann.com 255 (Delhi)
71. Securities and Exchange Board of India (Delisting of Equity Shares) Regulations, 2021
72. Regulation 30 and 30A of LODR and Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) (Second Amendment) Regulations, 2023 w.e.f July 15, 2023
73. Notification No. G.S.R. 367(E) dated 15 May 2023

Private company to issue shares in demat form

Dematerialization of securities, which was mandatory for public companies, has now been extended to private companies as well[74]. This requirement will come into force from September 30, 2024. Any transfer or subscription to securities of private companies after the notified date can be done only in dematerialized form. This rule does not apply to Government Companies and small companies.

Notice to nodal officers of the tax department

The principal chief commissioner of the region where a particular bench of the NCLAT and NCLT is situated are designated as Nodal officers of the income tax department for receipt of communication and updating details of pending tax matters to the concerned NCLAT / NCLT benches. Hence, notices for scheme matters are now required to be sent to the designated nodal officer of income tax instead of the designated income tax ward.

Recent interesting rulings of NCLT or NCLAT

Dispensation of shareholders or creditors meeting

The Mumbai bench of NCLT,[75] in the case of demerger from a wholly-owned subsidiary to its holding company, directed to hold meeting of shareholders and creditors or to procure consent affidavits for dispensation of meeting even of the holding company. On appeal to the National Company Law Appellate Tribunal (NCLAT)[76], the impugned order of Mumbai Bench of NCLT was set aside, and dispensation was granted from holding meetings and taking consents from shareholders and creditors of the holding company. While this is a welcome ruling for demerger from a wholly-owned subsidiary to its holding company, different approaches are usually followed by different benches of NCLT for convening shareholder or creditor meetings, which would need to be considered.

Tax arrangement through scheme

The Delhi bench of NCLT[77] rejected a scheme of amalgamation on the grounds that upon merger, the transferee entity would be entitled to claim benefit of the brought-forward business losses and depreciation available with the transferor company and would lead to a loss of revenue to the tax department. It also held that the scheme was non-compliant with section 72A of the Income-tax Act, as there was no mention nor any undertaking in the scheme that the transferee company would comply with the conditions of section 72A of the Income-tax Act. The Chandigarh Bench of NCLT[78] in similar facts had previously approved the scheme on the grounds that the rationale of the scheme justified the business consolidation and that the tax arrangements were merely consequential.

Stamp duty

Gujarat High Court ruling in case of Ambuja Cements Limited[79]

In this case, the Gujarat High Court dealt with several aspects under the Gujarat Stamp Act, 1958 on a NCLT-approved composite scheme of arrangement. Some of the prominent observations of the court are as follows:

- A composite scheme of arrangement comprising the transfer of undertakings by way of demerger(s)/ slump sale and merger shall be treated as a single instrument for levying

74. The Companies (Prospectus and Allotment of Securities) Second Amendment Rules, 2023 vide notification no G.S.R. 802(E) dated October 27, 2023.
75. Scheme of Arrangement between Reliance Projects & Property Management Services Limited and Reliance Industries Limited - CA(CAA)/116/MB/2023
76. Company Appeal (AT) No. 109 of 202
77. Scheme of amalgamation between Minda TG Rubber Private Limited and Toyoda Gosei Minda India Private Limited [CA (CAA) – 111(ND)/2021]
78. Scheme of Amalgamation between Panasonic India Private Limited and Panasonic Life Solutions India Private Limited CP (CAA) No.8/ Chd/Hry/2021
79. Ambuja Cements Limited v Chief Controlling Revenue Authority (C/SR/1/2020)

stamp duty. This provides much-needed clarity that maximum stamp duty prescribed will be in respect of the entire composite scheme, and not each arrangement in the scheme.

- In view of the specific language in the Gujarat Stamp Act, for schemes involving only unlisted companies, the market value of shares shall be deemed to be its face value, irrespective of whether the shares are being issued at a premium.
- Stamp duty applicable as on the Appointed Date of the scheme is payable.
- Stamp duty paid on the same instrument in another state is allowed to be set off against the stamp duty payable in Gujarat.
- Capital work in progress cannot be considered as immovable property and shall not be subject to stamp duty levy.

Proposed amendment in stamp duty rates for merger/ demerger in Karnataka

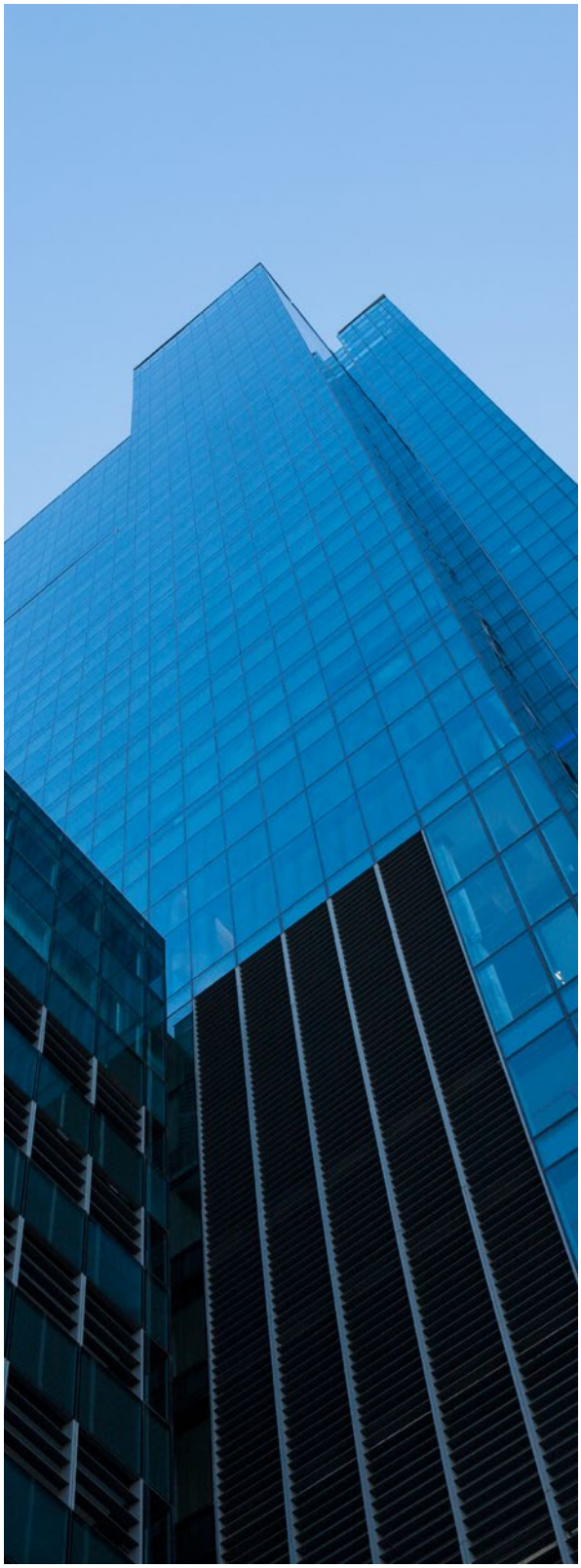
The Karnataka Stamp Duty Amendment Bill, 2023 was introduced, proposing to increase the stamp duty on amalgamations and demergers. The duty shall be levied at the higher of the following, subject to a maximum of INR 25 crores.:

i. 5% (instead of 3% previously) of market value of the property located in Karnataka; or

ii. 5% (instead of 1% previously) of the consideration/ shares issued or cancelled.

Competition Commission of India (CCI)

The Competition (Amendment) Act, 2023 was passed with the aim of strengthening competition regulation and fostering a business-friendly environment. In addition to the turnover and assets thresholds relating to the parties involved in the deal, thresholds relating to the deal value are now also included. Hence, transactions where the deal value exceeds INR 2,000 crores and where the target entity has substantial business operations in India will require the approval of CCI.



Transfer pricing trends in 2023[80]

The transfer pricing is gaining a newer dimension not only in India but also across the world with convergence of trends in global tax reforms. The businesses are focused and keen to make transfer pricing function more agile, adaptable and resilient to avoid uncertainty and tax disputes. As businesses navigate the complexities of intercompany transactions in this evolving environment, understanding the key trends in India's transfer pricing landscape becomes pivotal.

Some of the key developments in transfer pricing in India during 2023 are:

1. The time limit to submit the transfer pricing documentation to the Assessing Officer or the Commissioner (Appeal) during the course of any proceedings under the law has been reduced to 10 days (w.e.f. AY 2023-24) from the earlier allowed period of 30 days from the date of receipt of notice.
2. The transactions between a manufacturing co-operative society and a closely connected person are covered under the purview of Specified Domestic Transactions w.e.f. AY 2023-24, if the manufacturing co-operative society is opting for the concessional tax regime.
3. Safe Harbour Rules provide a fixed margin or rate of interest, at which certain transactions like IT/ITeS/KPO, contract R&D services, the manufacture of automobile components, financial transactions and the receipt of low value-added intragroup services may be undertaken, subject to the fulfilment of certain conditions. The CBDT has extended the applicability of the existing Safe Harbour Rules to FY 2022-23 *[Notification No. 58/2023 dated 9 August 2023]*.
4. The Central Government has extended the existing arm's length price tolerance range of 1% for wholesale trading and 3% in all other cases to FY 2022-23 *[Notification No. 46/2023, dated 26 June 2023]*.

Statistics on Alternate Dispute Resolution mechanisms

Mutual Agreement Procedure (MAP) statistics for India

In November 2023, the OECD released '2022 MAP statistics' for the jurisdictions that are part of the OECD/G20 BEPS framework. As per the said MAP statistics, India has resolved 122 TP related MAP cases in the year 2022 out of which 22% of cases were resolved via domestic remedy; 31% of cases were resolved by fully eliminating double taxation or fully resolving taxation not in accordance with the tax treaty; 6% of cases were withdrawn by the taxpayers; in 3% of cases the objection raised was not justified, and the remaining 38% cases were closed for other reasons. There was no instance of denial of MAP access.

The summary of the MAP inventory (TP cases) for India as published by the OECD is as under:

Particulars	2022 Start Inventory	Cases admitted	Cases closed	2022 End Inventory
Cases started before 1 January 2016	234	-	19	215
Cases started from 1 January 2016	356	89	103	342
Total	590	89	122	557

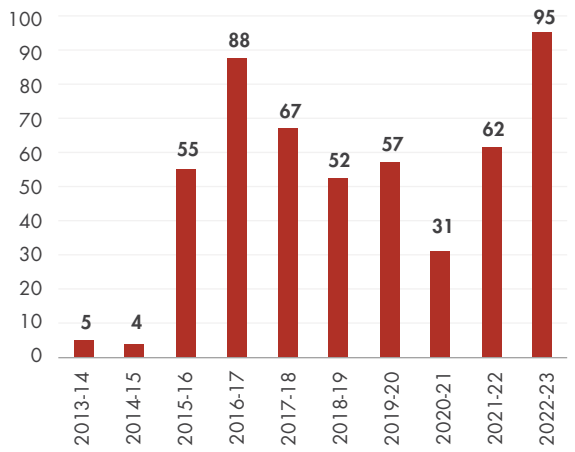
The MAP partners of India for the TP cases included Australia, Switzerland, Germany, the United Kingdom, Japan, Sweden, the United States, etc.

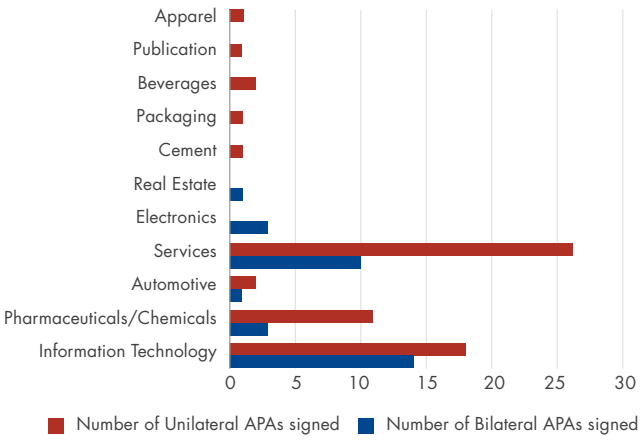
80. This article is contributed by Sudhir Nayak (Partner, Dhruva Advisors), Sunil Nayak (Principal, Dhruva Advisors), Maher Doshi (Senior Associate, Dhruva Advisors) and Hariram Iyer (Senior Associate, Dhruva Advisors).

Advance Pricing Agreements (APA) statistics for FY 2022-23.

The APA programme witnessed the highest number of APA signings in FY 2022-23 since its inception. The total number of APAs signed by India has gone up to 516. Refer to Figure 1 for year-wise data of APA signings by India. As per the statement from CBDT, during FY 2022-23, India entered 95 APAs, which includes 32 bilateral APAs and 63 unilateral APAs. Refer to Figure 2 for the bifurcation by industry of Bilateral APAs and Unilateral APAs signed by India during FY 2022-23.

Year-wise bifurcation of 516 APAs sign till date





The 95 signed APAs covered 446 international transactions which primarily included provision of software development services, provision of Information technology enabled services, purchase of capital assets, import of ingredients / raw materials / consumables, payment of interest on borrowings, reimbursement / recovery of expenses, etc.

Some of the key judicial rulings of 2023

The Supreme Court held that arm's length price ('ALP') determination is a 'substantial question of law'.

SAP Labs India (P.) Ltd ([2023] 149 taxmann.com 327 (SC))

In the instant case, the question under consideration was whether determination of ALP can be the subject matter of scrutiny by a High Court, where a Tribunal has already determined ALP.

The Supreme Court held that High Courts, while determining ALP, can always examine whether the guidelines as laid down under the Income Tax Act, 1961 ('the Act') and the Income Tax Rules are followed or not. It further observed that, any determination of ALP without considering the relevant guidelines can be considered as perverse. ***Hence, determination of ALP may be considered as a substantial question of law.***

The Special Bench ('SB') of the Mumbai Income Tax Appellate Tribunal ('ITAT') held that an assessee can switch over from a method selected in TP Study report to another method.

Star India Private Limited [TS-329-ITAT-2023(Mum)-TP]

During AY 2015-16, the assessee purchased Bundle of Sports Broadcasting Rights from its associated enterprise and benchmarked this transaction by adopting 'Other Method' in the TP Study Report and supported its analysis with a

valuation report obtained from an independent valuer. TP adjustment was made on account of deficiencies in the valuation report identified by TPO and was upheld by the DRP.

Before Mumbai ITAT, the assessee argued for the application of the Comparable Uncontrolled Price Method ('CUP') instead of the Other Method adopted in the TP study report. ***The ITAT SB ruled that the assessee has the prerogative to deviate from the method chosen in the TP Study report, provided it can substantiate the shortcomings of the previously selected method.*** However, ITAT SB by majority asserted that the most appropriate method for the specified transaction should be the 'Other Method' rather than the CUP method.

Bangalore Tribunal held the sale of shares subject to ALP determination and emphasized a literal reading of Section 92A.

Palmer Investment Group Ltd [TS-117-ITAT-2023(Bang)-TP]

The assessee is a BVI based investment company, and a wholly owned subsidiary of United Spirits Ltd. ('USL'), an Indian Company. It executed a share purchase agreement ('SPA') with a Dutch company, Relay BV, to sell shares of USL and benchmarked the transaction based on the open market price, whereas TPO determined the ALP using the DCF method which was also upheld by the DRP. The assessee before the ITAT argued that the SPA was between two unrelated entities, and hence transfer pricing provisions should not be applicable as Relay BV held less than 26% in USL when the transaction was undertaken. The assessee further stated that subsequent to the SPA, Relay BV acquired additional shares from unrelated shareholders on the stock market, which led to Relay BV having more than a 26% holding in USL.

The Bangalore ITAT did not agree with such contentions and, emphasizing the words ***"any time during the previous year"*** u/s 92A(2) of the Act, it held that Relay BV acquired a 26% controlling interest in USL, during the relevant previous year. ***Hence, it was held that the transaction was an international transaction even though it was undertaken before acquisition of controlling interest.***

Future outlook

In the Indian context, while some issues have found resolution through judicial rulings over the years, other issues relating to advertisement, marketing and promotion expenses, corporate guarantees, centralised procurement, payment for management services, royalty etc., still await a settled status. In the upcoming years, both taxpayers and tax authorities can anticipate greater clarity on these matters.

In the international arena, addressing the unfair practices in transfer pricing and to simplify the transfer pricing rules, Pillar One and Pillar Two initiatives have been proposed by OECD. In the recent times, significant developments have taken place in this field and, with the introduction of these initiatives, there may be a rise in the number of compliances to be undertaken by the taxpayer. Adapting to these changes and fostering collaboration between businesses, tax authorities and policymakers will be crucial in navigating the evolving transfer pricing landscape in India.

Tax landscape in the UAE[81]

United Arab Emirates ('UAE') published the English translation of the new Corporate Tax Law[82] ('UAE CT Law') on December 9, 2022. UAE CT Law is effective from the financial year beginning on or after June 1, 2023. For most businesses, the calendar year is the accounting year. For these entities, UAE CT Law would take effect from January 1, 2024. Financial statements drawn as per IFRS are the basis for computation of Taxable Income.

UAE CT Law is based on international best practices and includes the concepts of tax grouping, thin capitalization, participation exemption, anti-avoidance rules, transfer pricing ('TP') and more. The past twelve months have been quite a busy period for tax authorities, corporates and tax professionals. While the businesses are gearing up to assess the impact of the CT Law, tax professionals have been busy with undertaking the impact assessments and assisting with the implementation measures. Tax authorities have issued multiple Cabinet / Ministerial Decisions along with FAQs and guides on various topics. Guides have been issued on participation exemption, accounting considerations, TP and more. All these have been very welcome and have facilitated the understanding of the Law and positions.

Free Zone entities are incentivized with a 0% corporate tax ('CT') rate on income from specified set of qualifying activities, provided they have substance in the free zone. Exemptions are available on capital gains that meet participation exemption conditions. In the case of Tax Groups, tax grouped financial statements are required to be prepared by aggregating standalone financial statements of the Parent company and each subsidiary (with a minimum 95% shareholding) forming part of the Tax Group.

Consolidated financial statements prepared using International Financial Reporting Standards ('IFRS'), which contains various consolidation related adjustments, such as goodwill and intangible assets arising on a business combination, will not appear in the Tax Grouped financial statements. This will give rise to deferred tax adjustments in the consolidated financial statements.

The Law has also provided for the ability of a Taxpayer to seek private clarification and an advance pricing agreement.

The UAE CT Law entails TP regulations and documentation requirements in line with OECD TP Guidelines. TP regulations are applicable to transactions or arrangements between related parties and connected persons. The in-scope controlled transactions should meet the arm's length standard and taxable persons need to determine the arm's length price using one or a combination of internationally accepted TP methods. The flexibility to adopt any other method apart from the prescribed five methods is also available.

The master file and a local file are to be maintained only if the taxpayer has a revenue of AED 200 million or more in the tax period or if it is part of a multinational enterprises ('MNE') group with total consolidated revenue of AED 3.15 billion. The local file of a Taxable Person doesn't need to include transactions with a UAE resident related party that is subject to the same CT rate as the Taxable Person and natural persons (for e.g., with the key management personnel if the transactions are undertaken in an independent manner).

The Federal Tax Authority ('FTA') has also issued the TP Guide, providing insight and practical guidance on TP rules and regulations. The TP Guide provides clarity on many operational aspects of UAE TP provisions, including the following:

TP rules apply not only to MNE groups, but also to domestic groups and businesses, which are required to ensure arm's length pricing of all the related party transactions. However, TP compliance and documentation is mandated only upon meeting the prescribed thresholds.

Threshold and format for annual TP disclosure form shall be prescribed by the FTA in due course.

With respect to the Master File, no compliance to be undertaken for the UAE-headquartered group, that is not an MNE group.

81. This article is contributed by our UAE team.
82. Federal Decree-Law No. 47 of 2022 on the Taxation of Corporations and Businesses

With respect to BEPS Pillar Two, the UAE Ministry of Finance ('MoF'), in the regional forum on the Global Minimum Tax, has announced that UAE will not implement BEPS Pillar Two rules before 2025. The public consultation on Pillar Two rules is likely to be released in the first quarter of 2024. Recently, UAE MoF has issued a Federal-Decree Law No. 60 of 2023 to amend the provisions of the UAE CT Law, by including the definitions of Top-up tax and Multi-national Enterprises in the UAE CT Law. This is a significant step towards the implementation of BEPS Pillar Two provisions. A decision will be issued soon to elaborate more on the scope, details of calculations, exemptions, effective date of imposition and more.

Alignment with global best practices demonstrates UAE's commitment towards a transparent tax regime. Guidance and clarity provided by the MoF and FTA from time to time is commendable. As corporate tax regulations evolve in the region, further clarity is expected on various aspects like free zones, TP on transactions with connected persons like remuneration to KMPs, TP on capital nature transactions, application of transitional rules and other operational aspects.

Businesses need to assess the impact of corporate tax and CT and ensure readiness. Some of the key measures to be considered are substance and other related conditions to obtain the 0% CT rate benefit available to free zones, finalization of tax groups, establish and formalize TP policies, the impact of current and deferred taxes, accounting policies, elections to be made, changes to the accounting systems, anti-abuse provisions, and more. Necessary changes to the existing accounting systems need to be undertaken to ensure readiness for the preparation of standalone / tax grouped financial statements and ease in identification of adjustments in the computation of income.

UAE – VAT

The implementation of VAT in the UAE in 2018 was a transformative milestone in the country's taxation landscape. Over the past five years, the FTA has issued several clarifications, guides, and amendments to create awareness among taxpayers. Thus, it would be desirable to note some of the recent developments and amendments in 2023 to evaluate the impact on the taxpayers' businesses.

Statute of limitation

Previously, a tax audit could not be initiated after five years from the end of a relevant tax period. However, pursuant to the amendment, if a taxpayer receives an audit notification within five years, the FTA will have an additional period of four years in which to complete the tax audit, provided a notice of tax audit is issued before the expiry of the five-year period.

Voluntary disclosure

Taxpayers will be required to correct their VAT returns even in cases of errors/ omissions that do not result in any additional tax liability. Prior to the amendment, taxpayers could rectify an error (e.g.in disclosing the value of zero-rated or exempt supplies) in the subsequent VAT return.

Reverse charge on electronic devices

The domestic reverse charge has only been used in the UAE for supplies of crude or refined oil, unprocessed or processed natural gas, or pure hydrocarbons, and for gold and gold products.

However, the new Cabinet Resolution introduces a reverse charge mechanism on supplies of electronic devices to VAT-registered persons, where the devices are purchased either for resale or to be used to produce or manufacture other electronic devices. This was introduced primarily to counter missing trader fraud.

Given the significant changes in the UAE VAT, it is crucial for businesses to stay updated and assess the proactive implications of these recent changes. Additionally, the FTA is anticipated to issue more audit notices, underscoring the importance for businesses to be prepared with comprehensive audit files and reconciliation measures in order to be audit-ready.

Journey to India@100 – Bugbears to bright spots[83]

Can India become a developed nation by 2047? Amrit Kaal, or India's Century: the opportunity is immense and with huge pay-offs. Numerous initiatives are in the pipeline. We pick a few specific areas and ideas that need sustained attention and action and we hope it makes for interesting reading.

The areas are divided into:

A. **Bugbears** – Areas that require a surgical strike/radical correction. If left unattended, they have the potential to disrupt the growth path.

B. **Bullseye –** Focus areas that directly add to the bottom line of economic development goals.

C. **Bright spots –** India advantages that need to be deepened.

Bugbears

Governance and political system

Our ancient texts say *Yatha Raja Tatha Praja*: transformational changes need to start from the ruling class before they trickle to the rest.

- Cleaning the Political/ Electoral Funding, enabling the migrant population and citizens of India residing overseas to vote remotely through modern technology, reducing or eliminating multiple cycles of elections (central, state, local). More watchdogs and citizens forums to educate about the credentials of candidates and critically read through election manifestos/ promises.
- The freebies culture for electoral gains without adequate economic analysis to be curbed as soon as possible.
- Governance for the sole benefit of people, citizens charters for all departments with time-bound resolution of claims/ complaints, dashboard monitoring open to the public.
- Increase in accountability of bureaucrats, clipping misuse of powers, stiff penalties and stringent consequences for corruption, fast track implementation of the benami laws.

Legal system

Aim: to become a Rule-based Society. Fair and just laws, efficacious justice delivery systems and effective enforcement with punishment/ deterrence commensurate with the violation.

- Repeal or completely abolish archaic or obsolete laws. Preserve settled jurisprudence. New laws to replace existing laws to be brought in only in exceptional cases, after fully preserving existing jurisprudence, and preferably prospectively.
- Do not frame laws with a focus on the minority - unscrupulous and dishonest, making them complex and unworkable.
- Strengthen drafting of laws through robust training, specialized teams, SOPs, independent review.
- Fill up judicial vacancies, de-clog the judicial pipeline. Create two parallel tracks: Track 1, for old cases before a particular date, suitably fast tracked, and Track 2, for all new cases to be disposed of within a preset time-based deadline.
- Specialized courts/ tribunals for economic offences.

Agri reforms

Almost two-thirds of the population is dependent on Agriculture, contributing barely 20% to the GDP; this needs to change as of yesterday.

- Re-enact the repealed farm laws after due consultation process, to bring in large-scale investments, modern technology, wider market access, eliminating middlemen with a focus on higher prices to farmers, etc.
- Create a focus on value addition through co-operatives and corporate partnerships for farmers.
- Massive investment in farming R&D, with

83. This article is contributed by the KnS team (Dhruva Advisors).

an emphasis on adoption of newer farming methods such as hydroponic farming and vertical farming.

Reduction in income inequality

The benefits of economic growth need to trickle down widely.

- Focus on skill development and education reform to enable all segments to participate in economic development.
- Investment projects with employment creation to be fast-tracked and incentivized.
- Spread the use of digitalization and technology platforms such as ONDC, etc for self-employed, retail etc.
- Increase investment of pension and PF funds in stock markets, Incentives for broad-based employee stock ownership.

Bullseye

Manufacturing sector

- An import-substitution based mass production approach with focused sectors can help the nation to achieve foreign trade surplus and reduce dependence on foreign countries.
- Incentives for Innovation and technology transfer can provide competitive advantage for the manufacture of globally-recognized high-end value-added products.
- Promote domestic manufacturing of modern defense equipment and exports to enable India to emerge as a military superpower.
- Increase network of bilateral and multilateral free-trade agreements to ease trade barriers and boost export industries.

Service sector

- Expanding the reach of banking, insurance, fintech, investment and financial services to the last mile.
- Incentivizing information technology sector for making India a digital hub, leveraging India's engineering and software skills in Artificial Intelligence labs for the world.
- Focus on education and medical institutions can have dual benefits: promotion of educational and medical tourism and improving standards of human capital.
- India needs to focus on becoming the talent capital of the world, providing a balanced, value-added, asset-light, innovation-led economic growth model.

Infrastructure development

- Long-term, sustained Infrastructure development that will strongly support our manufacturing and services sector and also improve quality of life.
- Incentives for Public Private Partnerships to build sustainable, safe and eco-friendly public infrastructure and transportation facilities.
- R&D activities should be awarded Infrastructure status to encourage R&D investment.
- Progressive policies for green and renewable energy can help the nation achieve net-zero carbon emissions.

Financial system

- Extremely strong focus on the macroeconomic structural health of our financial systems, with focus on budgetary deficits both at central and state levels, overall borrowings, inflation control, banking sector reforms, avoiding asset price bubbles, etc.
- Robust credit policies and strengthening surveillance to detect early NPAs in the system, severely punish financial fraud and white-collar financial crimes that eat into the trust and reliability of the financial system.
- Ensuring widespread credit availability to all levels of the economic / entrepreneurial pipeline, based on use of technology and monitoring of digital payments.

- Widen availability of robust asset classes (other than gold and property) to promote savings and ensure they are channeled into asset classes that support economic development.

Bright spots

Demographic dividend

- Continuously deepen the education and skill development curve across all segments of the population to provide jobs, increase entrepreneurial opportunities, and create talent pool availability for the world.
- Encourage wider participation of women in all areas of economic activities, with gender neutral pay, a reset of sociocultural barriers, flexible work opportunities, and healthy workplace regulations.
- Create a collective framework that can reverse the impact of 1,000 years of foreign subjugation on our collective psyche. We need to create a mindset that is willing to assert its rights, take risks, become winners, and think big.

Democracy

- The foundations of our democratic institutions need to be strengthened by inclusive governance, greater empowerment, increased accountability, widespread participation, and open and healthy debate.
- Through use of modern technology, make voting compulsory and / or increase participation in the democratic process through well thought-out and balanced incentives and disincentives.
- Selective toning down of reservations in a time-bound manner, replacing caste-based reservations with reservations on economic criteria. A meritocracy needs to be promoted to ensure divisions across caste lines do not become permanent fault lines for national unity.

Digitalization

- India's championship in digital public infrastructure in respect of the digital platforms for identification (Aadhar), payments (UPI) and information (Account Aggregators) should be further leveraged. Through this infrastructure, innovative and convenient public and private services can be rolled out to overcome inclusion or accessibility barriers, increase transparency and accountability with real-time data.

Geopolitical positioning

- The current turbulent geopolitical situation creates an opportunity for India to increase its weight and positioning on the global stage. Strengthen this positioning to create the right partnerships that can match our aspirational goals, and also ease global fault lines.

About Dhruva Advisors

Navigating the intricate landscape of tax regulations and compliance can be a challenge, but our team of competent professionals are here to guide you.

At Dhruva Advisors LLP, 'Excellence' is a fundamental principle defining our core values. Our team is dedicated to setting industry standards through exceptional service delivery. With strategic prowess, we have successfully managed numerous substantial and pivotal tax disputes and related matters within India.

Established in 2014, Dhruva has shown remarkable growth in the realm of taxation. We operate through a network of 7 strategically located offices in key regions across India, along with offices in Dubai, and Abu Dhabi. Our esteemed team includes 15 Partners, 5 Senior Advisors, 11 Associate Partners, 29 Principals, and over 300 exceptionally talented professionals.

Being recognized as a "Tier 1 Tax Firm in India" is a further testament to our commitment towards "Excellence". Our five-year consecutive recognition as the "India Tax Firm of the Year" has made ITR history and only serves to emphasis our pursuit of industry leadership and recognition of our contributions.

We take pride in taking accountability for the work we undertake and develop trusted relationships with all our stakeholders.

With a strong history of crafting "Innovative" solutions with great integrity, in diverse domestic and international taxation domains, our team possesses extensive industry expertise across virtually every key sector.

From Aerospace & Defence, Automobile & Ancillary to Agro & Chemicals, Conglomerates, Energy & Resources, Education, Financial Services, IT & ITes, Manufacturing & Real Estate, Pharma, Life Sciences & HealthCare, Private Equity, Transport, Telecom, and Media, we have demonstrated our proficiency as versatile tax strategists.

Dhruva Advisors is a member of the WTS Alliance, a global network of selected firms represented in more than 100 countries worldwide.

Our recognitions

- Dhruva Advisors has been consistently recognized as the "India Tax Firm of the Year" at the ITR Asia Tax Awards in 2017, 2018, 2019, 2020 and 2021.
- Dhruva Advisors has also been recognized as the "India Disputes and Litigation Firm of the Year" at the ITR Asia Tax Awards 2018 and 2020.
- WTS Dhruva Consultants has been recognized as the "Best Newcomer Firm of the Year" at the ITR European Tax Awards 2020.
- Dhruva Advisors has been recognized as the "Best Newcomer Firm of the Year" at the ITR Asia Tax Awards 2016.
- Dhruva Advisors has been consistently recognized as a Tier 1 firm in India's 'General Corporate Tax' and 'Indirect Tax' ranking tables as a part of ITR's World Tax guide. The firm is also listed as a Tier 1 firm for India's 'Transfer Pricing' ranking table in ITR's World Transfer Pricing guide.

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