MPC & CO LLP
CHARTERED ACCOUNTANTS

Corporate Update

January & February | 2025

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MPC & CO LLP
CHARTERED ACCOUNTANTS

FOREWORD

Dear Reader,

Our Corporate Update for the month of January and February 2025 covers important case laws on International, Domestic Taxation as well as regulatory changes under the Foreign Exchange Management Act ('FEMA') and under Corporate Law.

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DIRECT TAXES

INTERNATIONAL TAXATION

CASE LAWS

ITAT holds that issue of Letter of Comfort is an International Transaction and directs its benchmarking as Corporate Guarantee Fee

CYIENT Ltd [TS-02-ITAT-2025(HYD)-TP]

In a recent decision Hon'ble Income Tax Appellate Tribunal (ITAT), Hyderabad bench, held that issuance of 'Letter of Comfort' is an international transaction which requires benchmarking at the same rate as Corporate Guarantee charges.

On the facts of the case, the assessee is engaged in providing wide range of services such as engineering services, computer aided design/engineering, design and modelling etc. During the year the assessee provided 19 corporate guarantees to its various AEs for period ranging from 365 days to 91 days @ 0.53%. However, Transfer Pricing Officer (TPO) benchmarked the transaction @ 1.9% and made addition to the income of the assessee. Further, the TPO treated the 'Letter of Comfort' as an international transaction and also made addition @ 1.9% for charges on such 'Letter of Comfort'. The additions as made by the TPO were upheld by Dispute Resolution Panel (DRP).

Aggrieved, the assessee filed an appeal before the Hon'ble ITAT and contented that TPO has erred in applying the rate of 1.9% for Corporate Guarantee charges as against 0.53% applied by the assessee. The rate of 1.67% was determined by the TPO for ECB loan wherein risk and rewards are more than the corporate guarantee. The assessee also contented that TPO has incorrectly computed corporate guarantee charges for 365 days for all the guarantees irrespective of the actual period of guarantee.

Furthermore, the assessee submitted that in respect of 'Letter of Comfort' issued to its AEs, no binding obligation was created nor cost has been incurred by the assessee. The assessee claimed it to be not an international transaction and no Arm's Length Price (ALP) is required to be computed as there is no financial obligation on the assessee.

The Hon'ble ITAT held that the charges of corporate guarantee are required to be computed on the basis of actual period, instead of one year. Further, ITAT held that since ALP for ECB loan was computed at 1.67%, then charges for corporate guarantee have to be substantially less. Corporate guarantee charges cannot be equated with the rate of interest at what the external commercial borrowings has been borrowed. In the case of ECB loans, risk and rewards are more than the corporate guarantees. Hence, corporate guarantee charge has been restricted to 0.53% is appropriate.

Ld DR contested that the assessee has not challenged the corporate 'Letter of Comfort' as an international transaction before Tribunal and hence it is not permissible for the assessee to raise above said issue.

Regarding the 'Letter of Comfort', the Hon'ble ITAT agreed with Ld. DR that such ground was not raised before ITAT hence cannot be adjudicated as tribunal is only duty bound to decide the grounds of appeal raised at the time of filing of appeal. However, ITAT held that 'Letter of Comfort' given by the assessee would fall within the meaning of the international transaction as per the explanation given in the section 92B

of the Act. Corporate guarantee in financial world can be worded differently one which is given to bank / financial institutions is called as "corporate guarantee fee" and when given by assessee to its related party or to business entity it is called 'Letter of Comfort', **but both are having inbuilt obligation to receive the payment to lender on behalf of borrower**. In connection with benchmarking of letter of comfort Hon'ble ITAT held that it is equivalent to letter of guarantee, and therefore required to be benchmarked accordingly. Therefore, ITAT held that the same rate as held for corporate guarantee is required to be applied for benchmarking the letter of comfort.

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Secondment of employees by foreign company to its Indian subsidiary does not lead to establishment of PE in India

PCIT– International Taxation v. Samsung Electronics Co. Ltd.
[2025] 170 taxmann.com 417 (Delhi) dated January 15, 2025

In a recent decision, the High Court of Delhi held that activities undertaken by the employees seconded by the foreign company to its Indian subsidiary did not result in constitution of permanent establishment (PE) of the foreign company in India. In the given case, the activities of seconded employees were in the nature of assisting the subsidiary with its local business operations.

On facts, the taxpayer, Samsung Electronics Co. Ltd. (SECL), a company and tax resident of South Korea, seconded its employees to its wholly owned subsidiary in India i.e. Samsung India Electronics Private Limited (SIEL) on the basis of tripartite agreement entered into between the taxpayer, SIEL and the seconded employee. While the Revenue alleged that the taxpayer had fixed place PE, Service PE as well as Dependent Agent PE (DAPE) in India under Article 5 of the India-Korea Double Taxation Avoidance Agreement (the DTAA), the DRP took the view that the taxpayer had deemed fixed place PE in India merely by the virtue of secondment of employees. The DRP ruled out constitution of Service PE and DAPE in the given case.

On appeal by the taxpayer, the Tribunal observed that although information was exchanged and future plans and strategies for the Indian market were also discussed between the taxpayer and SIEL, however none of those statements could substantiate that any activity of the global business of taxpayer was conducted in India. The Tribunal further noted that the statements and other material relied upon by the Revenue showed that the seconded employees were only discharging the duties of the subsidiary company towards the holding company by way of the seamless communication between SIEL and the taxpayer. Accordingly, the Tribunal concluded that activities of the seconded employees did not constitute deemed fixed place PE under Article 5 of the DTAA.

The Revenue carried the matter in appeal to the High Court. The issue before the High Court in the appeal filed by the Revenue was whether SIEL constituted "deemed fixed place PE" of the taxpayer in India by virtue of secondment of employees. The High Court observed that the seconded employees were

working under the control and direction of SIEL and were engaged solely in assisting SIEL with its local business operations, such as market research, collation of data, and operational support. The High Court noted that the seconded employees were performing activities exclusively for SIEL's benefit and these activities were not undertaken towards furthering taxpayer's business in India.

The High Court also referred to its earlier decisions wherein it was held that a fixed place PE of an enterprise would come into existence only if the premises are at the disposal and under the control of that enterprise.

The High Court also referred to the OECD Model Commentary 2017 and also UN Model Commentary 2021 and noted that the secondment of employees is an arrangement which is common in today's world of business. The High Court stated that it needs to be looked into whether the deployment of such employees is in furtherance of the business of their formal employer or intended to be utilized for the business of the enterprise with whom they are placed. The High Court held that in the given case, their engagement could be viewed as one for the benefit of SIEL.

In view of the above, the High Court concurred with the decision of the Tribunal and reaffirmed that the taxpayer did not have a PE in India under the DTAA.

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Foreign tax credit is not allowable as a deduction under Section 37(1) in view of Section 40(a)(ii) of the Income-tax Act, 1961

Zoho Corporation Private Limited v. DCIT [TS-105-ITAT-2025(CHNY)]

Recently, the Chennai Tax Tribunal in the above order, has held that taxes paid outside India on foreign income is not allowable as a deduction under Section 37(1) as such taxes have been prohibited from being claimed as a deduction under Section 40(a)(ii) of the Income-tax Act, 1961.

As per the provisions of Section 40(a)(ii), any sum paid on account of any rate or tax levied on the profits and gains of business or profession (PGBP) shall not be allowed as a deduction in computing income under the head 'PGBP'. Explanation 1 to Section 40(a)(ii) clarifies that any sum paid on account of any rate or tax levied shall be deemed to include any sum eligible as foreign tax credit under Section 90 and Section 91 and accordingly, such sum shall not be allowed as a deduction under Section 40(a)(ii). Section 90 and Section 91 provide relief from double taxation of income on which tax is payable/ has been paid in jurisdictions which have or do not have any tax treaty with India.

Further, Section 37(1) provides for claiming of deduction of an expenditure which is not capital or personal in nature and is specifically not covered under Section 30 to Section 36 provided such expenditure has been laid out or expended wholly and exclusively for the purposes of business or profession of the Assessee.

The facts of the case are that the Assessee is a company engaged in software development business. The tax scrutiny

proceedings of Assessment Year 2015-16 got initiated in case of the Assessee and the primary reason for such initiation had been large foreign tax credit claim of INR 89.30 million under Section 90/ Section 91 of the Income-tax Act, 1961. In such proceedings before the tax officer, the Assessee admitted that it was only eligible to foreign tax credit of INR 43.35 million under Section 90/ Section 91 and the balance ineligible foreign tax credit of INR 45.95 million ought to be allowed as a deduction under Section 37(1). The tax officer denied the ineligible foreign tax credit claim to the Assessee in light of the specific prohibition contained in Explanation 1 to Section 40(a)(ii). Thereafter, the Commissioner (Appeals) upheld the order of the tax officer denying the aforesaid claim to the Assessee.

On further appeal before the Chennai Tax Tribunal, the Tribunal held the following:

- The provisions of Section 90/ Section 91 have been specifically introduced to avoid double taxation of income and to provide for the manner in which the credit of taxes paid in foreign jurisdictions would be allowed to the Assessee. There is nothing in the Income-tax Act, 1961 which allows deduction of excess taxes paid in foreign jurisdictions which are not eligible for tax credit under Section 90/ Section 91;

- The clear and unambiguous legislative intent appearing from Section 40(a)(ii) provides that any sum paid as rate or tax levied on the profits and gains of business or profession would not be allowed as a deduction. The Tribunal noted that the Supreme Court, in various decisions had held that no different interpretation ought to be adopted where the provisions of the statute are unambiguously clear;

- The foreign taxes claimed as a deduction are in respect of taxes levied on income earned in foreign tax jurisdiction and same cannot be allowed as a deduction under Section 40(a)(ii). Claiming of deduction of ineligible foreign tax credit under Section 37(1) would defeat the legislative intent behind introducing Section 90/ Section 91; and

- The Tribunal distinguished the decision of Bombay High Court in the case of Reliance Infrastructure Ltd. v. CIT [76 taxman.com 256 Bom (2010)] as in such decision the Court had adopted a restrictive manner and analyzed and disjoint the term 'tax' defined in Section 2(43) of Income-tax Act, 1961. Rather, the Tribunal placed reliance on various decisions of Courts wherein, it had been held that the tax in Section 40(a)(ii) extends to any tax ascertainable with reference to profits of the Assessee and as such, cannot be restricted to tax under the Income-tax Act, 1961.

Based on the above reasonings, the Tribunal disallowed the claim of ineligible foreign tax credit of INR 45.95 million to the Assessee.

MPCO's Critical Note:

The Chennai Tribunal has mixed up both the Section 90 and Section 91 of the Act. Strictly speaking, where Section 90 applies, Section 91 does not apply and vice versa and, in any case, both the Sections, simultaneously, cannot apply to a particular case.

The above view is expressed without disputing the decision of the Chennai Tribunal in the given case.

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High Court dismisses Revenue's appeal against order in writ petition directing Nil withholding tax on reimbursement of salaries of seconded employees to foreign company

Flipkart Internet Private Limited [TS-115-HC-2025(KAR)] dated February 18, 2025

Recently, the High Court of Karnataka dismissed Revenue's appeal against the Single Judge Bench order in the writ petition filed by Flipkart Internet Private Limited ("Flipkart"). The High Court in its order dated June 24, 2022 had allowed the writ petition filed by Flipkart and directed the Assessing Officer to issue 'NIL' tax deduction certificate under Section 195(2) of the Act on payment to Walmart Inc. towards reimbursement of salaries of seconded employees.

On facts, Flipkart, an information technology solutions and support service provider for e-commerce industry, entered into Master Service Agreement (MSA) with Walmart Inc., USA for secondment of employees. Flipkart entered into Global Assignment Agreement with seconded employees which provided that the employees would work for Flipkart. It also issued appointment letters to seconded employees. Flipkart deducted TDS on the salary of seconded employees. Payment of salaries to seconded employees was firstly made by Walmart Inc. and then Flipkart reimbursed salary amount to 'Walmart Inc. on cost-to-cost basis.

Flipkart had filed application before the Assessing Officer under section 195(2) for grant of NIL Tax Deduction Certificate (TDC) on the said reimbursement. However, the Assessing Officer had rejected that application on the premise that no employer-employee relationship existed between Flipkart and seconded employees since the right to decide continuation of services vested with Walmart Inc. On writ petition filed by Flipkart, the Single Judge bench of the High Court had set aside Revenue's order rejecting the TDC application.

On intra court appeal before the High Court, the Revenue, inter-alia, contended that absence of power to terminate the services of the seconded employees falsified the existence of employer-employee relationship between Flipkart and the seconded employees. In this regard, the High Court observed that the Single judge relied heavily on co-ordinate bench ruling in Abbey Business Services India [2020] 122 Taxmann.com 174 (Kar) to hold that the Secondment Agreement constitutes an independent contract of service qua the Assessee. The DB of the High Court in the present intra-court appeal noted that the coordinate bench decision in Abbey Business Service India had attained finality, the revision petition having been dismissed. On perusal of the MSA and appointment letters issued to the seconded employees, the Court observed the following and concluded that all indicia of employer employee relationship were present between Flipkart and the seconded employees:

- the seconded employees would work under the supervision and instructions of Flipkart, they were answerable to Flipkart and would work for the benefit of Flipkart.
- Flipkart was authorized to terminate the services of seconded employees in India

whereas Walmart might decide to continue their services with Walmart in US.

- Flipkart had the authority to take disciplinary actions against the seconded employees.
- The seconded employees had the right to legal recourse against Flipkart in relation to payment of their salaries, terms of employment, etc., during the secondment period.
- The seconded employees were also subject to the same working rules, labour regulations and other internal policies as were applicable to the domestic employees.

The Court noted that the review petition against Abbey Business judgment was dismissed. The High Court stated that if Triple Tests namely (i) Direct Control, (ii) Supervision & (iii) Direction, are satisfied, in terms of Abbey Business decision, a strong case was made out as to the existence of employer-employee relationship even if a few indicia were absent. The Court opined that an argument to the contrary would offend the stark truths of the business world.

Accordingly, the Court dismissed the Revenue's appeal and upheld the order under the writ petition.

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Notification under Section 44BBC of the Income-tax Act

Conditions prescribed for non-resident cruise ship operators opting for presumptive taxation regime

[Notification G.S.R. 67(E) (No. 9/2025/F. No. 370142/18/2024-TPL] dated January 21, 2025)

The Indian Government vide Finance (No. 2) Act, 2024 had introduced a presumptive scheme (Section 44BBC of the Income-tax Act, 1961) for a non-resident cruise ship operator which is effective from Assessment Year 2025-26. Such provision was introduced to promote the cruise shipping industry in India and to make India an attractive tourist destination. Under such a regime, 20% of the prescribed receipts/ payments shall be deemed as income under the 'profit and gains of business' of such operator. The effective tax rate shall be 7.64% of gross receipts/ payments (including maximum applicable surcharge of 5% and cess of 4%).

This provision is applicable to non-residents who satisfy the prescribed conditions. Such conditions have now been notified as Rule 6GB of the Income-tax Rules, 1962.

Under such Rule, the non-resident cruise ship operator is required to meet all of the below conditions in order to be able to opt for a presumptive taxation regime under Section 44BBC:

1. Operate a passenger ship for leisure and recreational purposes with cabin and dining facilities which has (a) carrying capacity of more than 200 passengers; or (b) length of 75 meters or more;

2. Operate such ship on scheduled voyage or shore excursion touching at least two seaports of India or same seaports of India twice;
3. Operate such ship primarily for carrying passengers and not for carrying cargo; and
4. Operate such ship as per procedure and guidelines, if any, issued by the Ministry of Tourism or Ministry of Shipping.

The aforesaid Rule 6GB has come into force with effect from January 22, 2025.

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DOMESTIC TAXATION

CASE LAWS

Assessment Order passed in the name of the non-existent entity is invalid and cannot be rectified by invoking section 292B of the Act

Vedanta Ltd. [TS-10-HC-2025(Del)-TP]

The Delhi High Court in the case of **Vedanta Limited vs. Assistant Commissioner of Income Tax held that** the assessment order issued in the name of a non-existent company, following an amalgamation, is fundamentally invalid and cannot be rectified under section 154 of the Act. It is also held by the court that such order cannot be salvaged under section 292B of the Act.

Vedanta Limited, the taxpayer, is the resultant entity after Clairn India Ltd was amalgamated with it w.e.f 01.4.2017. Post amalgamation, Clairn India Ltd ceased to exist as a separate legal entity. The tax officer however issued the reassessment order for the Assessment Year 2015-16 in the name of Clairn India Ltd, which no longer existed post the amalgamation. Later on, such assessment order was rectified u/s 154 of the Act, a section that allows for rectification of mistake apparent from record. For this purpose, the assessing officer relied on the provisions of section 292B of the Act which stipulates that an assessment order shall not be invalidated merely due to a technical or clerical error if the taxpayer is not prejudiced by it. Further, the assessing officer sought to contend that the mistake which had crept into the original order was one which was rectifiable in view of the earlier decision of the Delhi High Court (affirmed by SC by way of rejection of SLP by the tax department) in the case of **Sky Light Hospitality LLP v. ACIT.**

The main contention of the tax payer was that the assessment order, passed in the name of the merged entity, suffered from a patent and fatal mistake which was clearly not rectifiable either under section 154 or section 292B of the Act. The tax payer placed reliance on the decision of the Hon'ble Supreme Court in the case of **Maruti Suzuki India Limited v. Commissioner of Income Tax.**

On appeal by the tax payer, the Delhi Bench of Income Tax Appellate Tribunal upheld the contentions of the tax payer and thus found the assessment to be void ab initio as the defect in the assessment order was a non-curable defect. On appeal by the tax department, the High Court held as under:

1. Distinction from Sky Light Hospitality - In Sky Light Hospitality, the court had dealt with a situation where there was clear evidence that the assessment order

issued in the name of a dissolved entity was merely a clerical mistake. The intention of the department was always to assess the successor entity, which made the error rectifiable. Moreover, in the Sky Light case, the assessee (the taxpayer) had participated in the assessment proceedings without objecting to the discrepancy. In the Vedanta case, however, the assessment was issued against an entity that no longer existed, and there was no such clear evidence to demonstrate that the assessment was meant for Vedanta Ltd. The High Court found that the error was substantive, not merely procedural.

2. Reliance of the decision in case of Maruti Suzuki - The Delhi High Court reinforced the principle laid down in *Maruti Suzuki* that issuing an assessment order against a non-existent entity following a merger was a jurisdictional error and not a mere clerical mistake. Since the assessment was issued in the name of a non-existent entity, it could not be treated as a procedural error and could not be cured under Section 292B or Section 154.

3. The Delhi High Court noted that once the merger is completed, the non-existent entity no longer exists in law, and any order passed in its name would be invalid. In such cases, the tax authorities should have reassessed the entity using the correct legal name post-merger.

4. The Court emphasized that while Section 154 allows rectification of mistakes, it only applies to obvious errors and not to substantial errors that go to the root of the case. An assessment order issued in the name of a non-existent entity is a fundamental flaw, not a simple mistake that could be corrected under Section 154.

5. The Court also observed that Section 292B did not apply in this case. While Section 292B seeks to address technical errors, it does not apply when the error is so fundamental that it results in the invalidation of the entire assessment.

The Delhi High Court ruled in favour of Vedanta Limited, concluding that the assessment order issued in the name of a non-existent entity was invalid and cannot be corrected under Section 154 or section 292B of the Act.

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INDIRECT TAXES

GOODS AND SERVICE TAX

Notification, Circular and Other Changes

I. GST implication on sale of old and used Vehicle (Notification No. 04/2025-Central Tax (Rate), dated January 16, 2025)

GST on sale of all old and used vehicles including EVs shall be taxable at 18% instead of 12% effective from January 16, 2025 (GST is leviable on margin price between purchase price and sales price).

II. GST implication on restaurant services at Hotels (Notification No. 05/2025-Central Tax (Rate), dated January 16, 2025)

In case of restaurant services, the concept of Declared Tariff would be done away w.e.f April 1, 2025. The taxability of Restaurant services shall be as follows:

Particular	Tax Rate
Stand-Alone Restaurants	GST @5% without ITC
Restaurants located in a specified premise which has rendered 'Hotel Accommodation services' having value of supply of any unit of accommodation of INR 7,500/- or below per unit per day in the preceding FY	GST @5% without ITC. However, Restaurant would have option to opt for GST @18% with ITC by filing declaration on or after January 1, but not later than March 31 of the preceding FY. In case of new registration, declaration should be filed within 15 days of registration.
Restaurants located in a specified premise which has rendered 'Hotel Accommodation services' having value of supply of any unit of accommodation above INR 7,500/- per unit per day in the preceding FY	GST @18% with ITC

III. Change in Reverse Charge Mechanism (Notification No 07/2025-Central Tax (Rate) dated January 16, 2025)

- **RCM on supply of sponsorship services:** Sponsorship services provided by body corporates will be taxed under the Forward charge. In other words, sponsorship services rendered by a body corporate to any other body corporate or partnership firm will no longer be subject to the reverse charge mechanism. RCM shall be applicable only in cases where sponsorship services are rendered by "Any person other than body corporate" to a body corporate or a partnership firm. (Effective from January 16, 2025)

- **RCM on Renting of Commercial property**: If an unregistered person lets out a commercial property (other than residential dwelling) to a registered person, the said registered person is required to pay GST under RCM. However, it has now been notified that in case such registered recipient of service is registered as a Composition dealer, then RCM provisions would not be applicable on the said registered service recipient and he/she won't be required to pay GST under RCM. (Effective from January 16, 2025)

IV. Instruction on the procedure to be followed in departmental appeal filed against interest and/or penalty only related to Section 128A - [Instruction No. 02/2025-GST, dated February 7, 2025]

CBIC has clarified that if the taxpayer has paid the full amount of tax demand

under Section 73 of the CGST Act, and only interest and/or penalty amounts have been disputed by the department, the taxpayer would be eligible to avail the benefit of Section 128A of the CGST Act and the department may proceed towards withdrawing such appeal filed by it.

V. Clarification regarding GST rates and classification (goods) - [Circular No 247/04/2025-GST, dated February 14, 2025]

Based on the recommendations of the GST Council in its 55th meeting held on December 21, 2024, CBIC has clarified the following:

Nature of Goods	Clarification
(a) Pepper of Genus Piper (green/fresh/white/black) (b) Dried Pepper	(a) Covered under HSN 0904 and attracts GST @ 5% (b) Supply of dried pepper by an agriculturist from his plantations is exempt from GST.
Raisins supplied by agriculturist	Supply of raisins by an agriculturist from his plantation is exempt from GST.
Ready-to-eat Popcorn	(c) If popcorn is mixed with salt & spices: GST @ 5% (if not pre-packaged) / 12% (if pre-packaged and labelled) (d) If popcorn is mixed with sugar (e.g., caramel popcorn): GST @ 18% is applicable. The GST rate on ready-to-eat popcorn mixed with salt and spices is regularized for the period up to February 14, 2025, on an "as-is-where-is" basis, @ 5%.
Fly Ash-based Autoclaved Aerated Concrete Blocks	Autoclaved Aerated Concrete Blocks containing more than 50% fly ash content will fall under HSN 6815 and attract 12% GST.

VI. Instruction on the procedure to be followed in departmental appeal filed against interest and/or penalty only related to Section 128A - [Instruction No. 02/2025-GST, dated February 7, 2025]

CBIC has clarified that if the taxpayer has paid the full amount of tax demand under Section 73 of the CGST Act, and only interest and/or penalty amounts have been disputed by the department,

the taxpayer would be eligible to avail the benefit of Section 128A of the CGST Act and the department may proceed towards withdrawing such appeal filed by it.

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CORPORATE LAW

NOTIFICATION

Extension of timeline with respect to dematerialisation of securities

The Ministry of Corporate Affairs (MCA) vide its earlier notification dated October 27, 2023, had made dematerialisation of securities mandatory for all Private Limited Companies [except for small companies] and a period of 18 months was provided, commencing from the closure of financial year ended March 31, 2023, to comply with the said requirement i.e. latest by September 30, 2024. The same was reported earlier in the November 2023 edition of the Corporate Update.

In the above context, the MCA vide its notification dated February 12, 2025, has now extended the earlier prescribed timeline of **September 30, 2024 to June 30, 2025**.

Accordingly, on or after June 30, 2025, any issue / transfer / buyback of a security or issue of bonus shares or rights offer, or even subscription to any security, can only be in demat form, in private limited companies.

In order to give effect to the above, a private company shall facilitate dematerialisation of all its existing securities, by obtaining the International Security Identification Number [ISIN] for all its securities, on or before June 30, 2025.

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FEMA NOTIFICATION

FOREIGN INVESTMENT IN INDIA: KEY AMENDMENTS

The Reserve Bank of India **('RBI')** on January 20, 2025 updated the Master Direction on Foreign Investment in India **('Amended Master Direction')** clarifying certain aspects of the foreign investment framework in India. The key amendments/ clarifications notified vide the Amended Master Direction are enumerated below:

a. Inherited assets under Section 6(5) of FEMA

Under the Amended Master Direction, in terms of Section 6(5) of FEMA, a person resident outside India may hold, own, transfer or invest in Indian currency, security or any immovable property situated in India if such currency, security or property was

acquired, held or owned by such person when he was resident in India or inherited from a person who was resident in India. Such investment will be held by such person on a non-repatriable basis. In case of death of a person resident in India and consequent transmission of equity instruments held by the person resident in India to the non-resident legal heir by way of inheritance, the inherited equity instruments shall be held on non-repatriation basis. Therefore, reporting for the said transaction shall not be required.

In case of change of residential status of a person resident in India to a person resident outside India, the investment shall continue to be considered as investment on non-repatriation basis.

b. Issue of shares to non-residents under a Rights Issue in terms of Section 62(1)(a)(iii) of the Companies Act, 2013

It has been clarified under the Amended Master Direction that in addition to entry route, sectoral caps or investment limits, the pricing guidelines will need to be adhered to in a case where shares are issued to a non-resident subscriber by an Indian company under a rights issue in accordance with Section 62(1)(a)(iii) of the Companies Act, 2013 wherein after the expiry of the time specified in the offer notice or on receipt of earlier intimation from the person to whom such notice is given declines to accept the shares offered, the Board of Directors may dispose of them in such manner which is not disadvantageous to the shareholders and the company.

c. Transfer of equity instruments on deferred payment basis

Under the Amended Master Direction, transfer on deferred payment basis between a person resident in India and a person resident outside India under indemnification or escrow has been modified to require that such transaction should be appropriately captured in the share purchase/ transfer agreement along with the related conditions for such arrangement.

d. Downstream Investments

- The Amended Master Direction provides that the guiding principle of the downstream investment guidelines is that "what cannot be done directly, shall not be done indirectly". Accordingly, downstream investments which are treated as indirect foreign investment are subject to the entry routes, sectoral caps or the investment limits, as the case may be, pricing guidelines, and the attendant conditionalities for such investment as laid down in the NDI Rules.

  The Amended Master Direction further provides that based on the guiding principle of the downstream investment, the arrangements which are available for direct investment under the NDI Rules such as investment by way of swap of equity instruments/ equity capital, deferred payment arrangements/ mechanism, etc. shall also be available for the purpose of downstream investment provided that the transaction should not circumvent the prescribed provisions relating to downstream investment, including the restrictions on use of borrowed funds for downstream investment.

- It has been clarified that in a case where the original investment was made as a resident but later the investor entity becomes owned and/ or controlled by persons resident outside, the investment shall be reckoned as downstream investment from the date on which the investor entity is owned and/ or controlled by persons resident outside India. Such downstream investment shall be required to be reported by the investor entity in Form DI within 30 days from the date of such reclassification.

- It has also been clarified that investments made by NRIs/ OCIs on non-repatriation basis are treated as deemed domestic investment. Accordingly, an investment made by an Indian entity which is owned and controlled by a Non-Resident Indian or an Overseas Citizen of India including a company, a trust and a partnership firm incorporated outside India and owned and controlled by a Non-Resident Indian or an Overseas Citizen of India, on a non-repatriation basis in compliance with Schedule IV of the NDI Rules, shall not be considered for calculation of indirect foreign investment.

e. References to Reserve Bank of India

In terms of the Amended Master Circular, any requests for clarification pertaining to foreign investment framework may be made to the Authorized Dealer **("AD")** bank concerned. The AD bank may, if required, forward the request to the concerned Regional Office of Reserve Bank for guidance. Such representation shall be routed through a nodal office of the AD bank specifically designated for this purpose, along with specific recommendation/ observations, FEMA provisions, reason for submission to Reserve Bank and relevant documents. The jurisdiction of a regional office of Reserve Bank shall be as per the registered office of the Indian investee entity.

[Source: Master Direction on Foreign Investment in India issued by Reserve Bank of India on January 4, 2018 (last updated as on January 20, 2025)]

FOREIGN CURRENCY ACCOUNT BY EXPORTERS

A person resident in India, being an exporter, may open, hold and maintain a Foreign Currency Account with a bank outside India, for realisation of full export value and advance remittance received by the exporter towards export of goods or services. Funds in this account may be utilised by the exporter for paying for its imports into India or repatriated into India within a period not exceeding the end of the next month from the date of receipt of the funds after adjusting for forward commitments, provided that the specific realisation and repatriation requirements as specified in the Foreign Exchange Management (Export of Goods and Services) Regulations, 2015 as may be amended from time to time are also met.

[Source: Foreign Exchange Management (Foreign Currency Accounts by a person resident in India) (Fifth Amendment) Regulations, 2025: Notification No. FEMA 10(R)(5)/2025-RB dated January 14, 2025 issued by Reserve Bank of India]

MODE OF PAYMENT/ REMITTANCES

The RBI has notified the Foreign Exchange Management (Mode of Payment and Reporting of Non-Debt Instruments) (Third Amendment) Regulations, 2025 whereunder it has been mentioned as under:

- **Schedule I - Purchase or sale of equity instruments of an Indian company by a person resident outside India**

  The mode of payment is specified therein: The amount of consideration shall be paid as inward remittance from abroad through banking channels or out of funds held in any repatriable foreign currency or Rupee account maintained in accordance with the Foreign Exchange Management (Deposit) Regulations, 2016.

- **Schedule VI - Investment in a Limited Liability Partnership,**

  The mode of payment is specified therein: Payment by an investor towards capital contribution of an LLP shall be made by way of an inward remittance through banking channels or out of funds held in any repatriable foreign currency or Rupee account maintained in accordance with the Foreign Exchange Management (Deposit) Regulations, 2016.

  Note: The said Notification also deals with certain other matters, which are not mentioned herein. For further details, the Notification as cited below may be referred.

[Source: Foreign Exchange Management (Mode of Payment and Reporting of Non-Debt Instruments) (Third Amendment) Regulations, 2025: Notification No. FEMA 395(3)/ 2025-RBI dated January 14, 2025]

SPECIAL NON-RESIDENT RUPEE ("SNRR") ACCOUNT BY PERSON RESIDENT OUTSIDE INDIA ("PROI")

The RBI has notified the Foreign Exchange Management (Deposit) (Fifth Amendment) Regulations, 2025 (**"Amended Deposit Regulations"**), whereunder certain amendments have been introduced to the SNRR Account scheme; the key ones are as follows:

- **Opening of SNRR Accounts overseas**

  Prior to the amendment, a PROI having a business interest in India, could open an SNRR account, with an authorised dealer in India.

  The Amended Deposit Regulations allow a PROI to open, hold, and maintain an SNRR Account, not only with an authorised dealer in India but also with a branch of an authorised dealer located outside India.

- **Operations of SNRR Accounts**

  Prior to the amendment, a PROI having a business interest in India, could open an SNRR account, with an authorised dealer in India for the purpose of putting through *bona fide* transactions in rupees. Further, the erstwhile deposit regulations provided for a list of bonafide business interests which were specifically permitted (such as imports, exports, investments made in India, trade credit and lending) in addition to general business interests.

  Under the Amended Deposit Regulations, a PROI may open an SNRR Account for the purpose of putting through permissible current and capital account transactions with a person resident in

India in accordance with the rules and regulations framed under the Act, and for putting through any transaction with a PROI.

- **Tenure of SNRR Accounts**

  Prior to the amendment, the tenure of the SNRR account was concurrent to the tenure of the contract / period of operation / the business of the account holder and in no case was to exceed seven years. Approval of the Reserve Bank was required to be obtained in cases requiring renewal.

  Under the Amended Deposit Regulations, the tenure of the SNRR account shall be concurrent to the tenure of the contract / period of operation / the business of the account holder.

Opening of SNRR Accounts by a unit in International Financial Services Centre (IFSC)

As per the Amended Deposit Regulations, a unit in an IFSC may open an SNRR account with an authorised dealer in India (outside IFSC) for its business related transactions outside IFSC

[Source: Foreign Exchange Management (Deposit) (Fifth Amendment) Regulations, 2025 vide Notification No. FEMA 5(R)(5)/2025-RB dated January 14, 2025]

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