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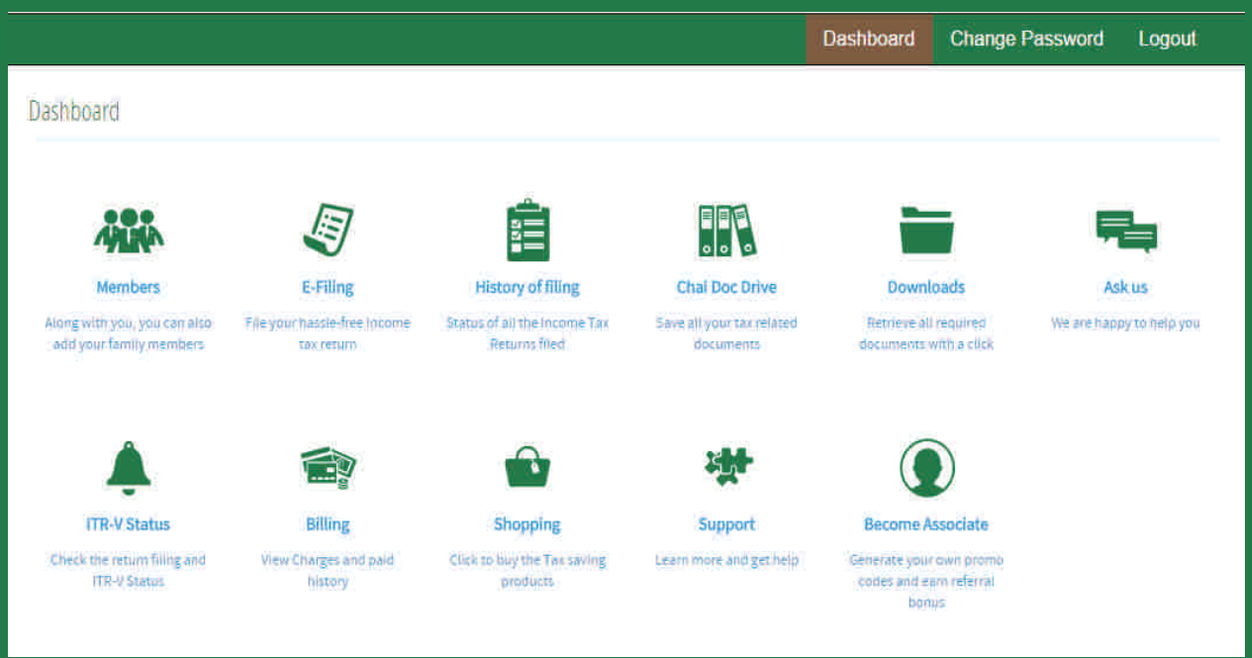

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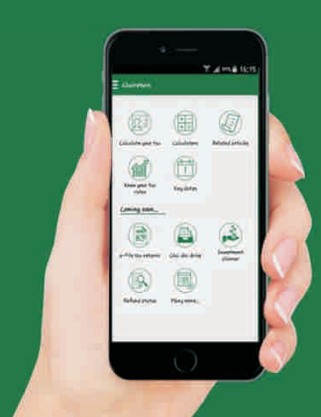

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CONTENTS

INTERNATIONAL TAXATION

BEPS - HTVI (HARD TO VALUE INTANGIBLES) - IMPLEMENTATION GUIDANCE

Contributed by CA Suresh Babu S

***What is* BEPS?** - Base Erosion and Profit Shifting (BEPS) refers to tax planning strategies

- That exploit gaps and mismatches in tax rules to make profits 'erode' for tax purposes or
- To shift profits to locations where there is little or no real activity but the taxes are low resulting in little or no overall corporate tax being paid.

What causes BEPS?

- The interaction of domestic tax systems in cross border transactions may result in double taxation of same income / leave gaps, resulting in double non taxation of income. BEPS strategies take advantage of these gaps between tax systems in order to achieve double non-taxation.
- Global corporate income tax (CIT) revenue losses estimated between 4% and 10% of global CIT revenues, i.e. USD 100 to 240 billion annually. Given developing countries' greater reliance on CIT revenues, estimates of the impact on developing countries, as a percentage of GDP, are higher than for developed countries.

India not a member of OECD, but actively engaged in taxation work of OECD. Since 2006, accorded the status of "Participant" / "Observer". OECD and G20 countries working on equal footing on the BEPS project. Recommendations under BEPS Project made on basis of consensus arrived by 34 OECD Countries and 8 non-OECD G20 countries. India as an non-OECD G20 country, is an active participant in the BEPS project and as member of "Bureau Plus", participated in the decision making process. India obliged to act on BEPS recommendations.

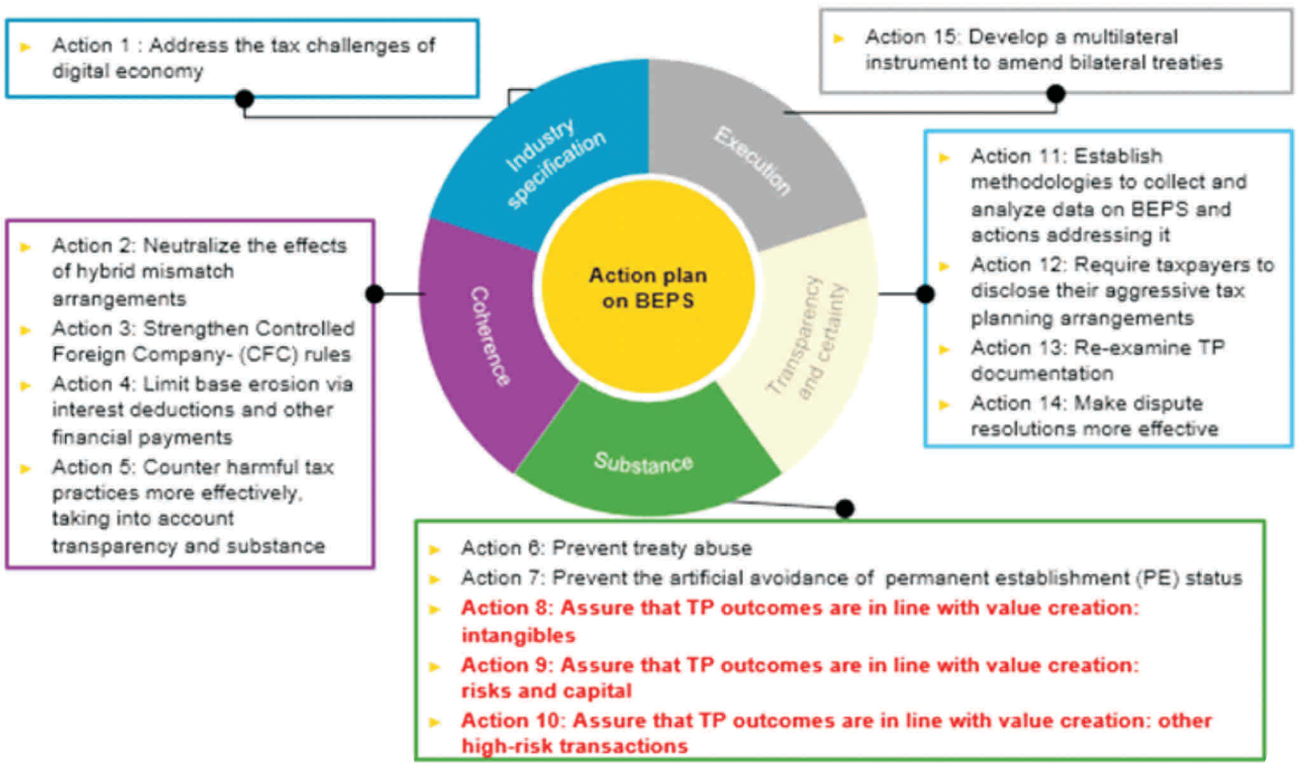
BEPS Action Plans:

The BEPS Project aims to provide governments with clear international solutions for fighting corporate tax planning strategies that exploit gaps and loopholes of the current system to artificially shift profits to locations where they are subject to more favourable tax treatment. The OECD work is based on a BEPS Action Plan endorsed by the G20, which identified 15 key areas/action plans.

With the adoption of the BEPS package, OECD and G20 countries, as well as all developing countries that have participated in its development, will lay the foundations of a modern international tax framework under which profits are taxed where economic activity and value creation occurs. It is now time to focus on the upcoming challenges, which include supporting the implementation of the recommended changes in a consistent and coherent manner, monitoring the impact on double non-taxation and on double taxation, and designing a more inclusive framework to support implementation and carry out monitoring.

Impact/Implication on the Business of MNC's:

- Identify the aspects of the Plan that have the greatest potential impact on their business models.
- Stay informed about ongoing developments in the OECD and in the countries where they operate or invest.



An approach to hard-to-value intangibles was agreed to by the OECD and G20 and published in the Action 8-10 final report on of Base Erosion Profit Shifting (BEPS) plan in October 2015. The approach was then set out in Chapter VI of the OECD Transfer Pricing Guidelines.

HTVI - Implementation guidance on hard-to-value intangibles:

On 23 May 2017, the Organisation for Economic Co-operation and Development (OECD) released a discussion draft (the Discussion Draft or Draft) on the implementation guidance on hard-to-value intangibles (HTVI) in connection with Base Erosion and Profit Shifting (BEPS) Action 8. The Discussion Draft provides guidance on the implementation of the approach to HTVI.

The HTVI approach is stipulated in the final report on transfer pricing under BEPS Actions 8-10 and formally incorporated into the OECD Transfer Pricing Guidelines.The Discussion Draft contains three sections that present

(i) The principles that should underlie the implementation of the HTVI approach,
(ii) Three examples to clarify the implementation of the HTVI approach in different scenarios, and
(iii) The interaction between the HTVI approach and the access to the mutual agreement procedure (MAP) under the applicable treaty. The guidance included in the Draft is aimed at reaching a common understanding and practice among tax administrations on how to apply adjustments resulting from the application of the HTVI approach.

The proposals included in the Discussion Draft do not represent a consensus view of the OECD's Committee on Fiscal Affairs, but were released in draft form in order to provide an opportunity for public comments, to be submitted by 30 June 2017.

Principles that should underlie the implementation of the HTVI approach

The HTVI approach authorizes tax administrations to use ex post evidence on the financial outcomes of an HTVI transaction (i.e., information gathered in hindsight about how valuable an intangible has turned out to be) as presumptive evidence on the appropriateness of the pricing arrangements. The Actions 8-10 Report also describes certain circumstances or safe harbors where such presumptive evidence may not be used. The ex post outcomes provide information on the determination of the valuation at the time of the transaction, but a potential revised valuation should not be based on actual income or cash flow without also taking into account the probability of such income or cash flow at the time of the transfer of the HTVI.

The Discussion Draft discusses the impact of timing issues on the HTVI approach. In this respect, tax administrations should apply audit practices to identify and act upon HTVI transactions as early as possible. However, inherent to this approach, ex post outcomes relating to the transfer of the intangible may not be available shortly after the transaction. It is recognized that the elapsed time between the transaction and the moment the ex post outcomes become available to tax administrations may not always correspond with the audit cycles or administrative and statutory time periods, in particular for intangibles that will not be exploited commercially until years after the transaction.

The guidance set forth in the Draft should not be used to delay or bypass a country's normal audit procedures. Some countries may encounter difficulties in implementing the HTVI approach due to for example short audit cycles or statute of limitations. Such countries may consider targeted changes to procedures or legislation to counter these implementation difficulties, such as mandatory prompt notifications in the case of a HTVI transfer or an amendment of the normal statute of limitations.

HTVI and the mutual agreement procedure

The Actions 8-10 Report stresses the importance of permitting the resolution of cases of double taxation arising from the application of the HTVI approach through access to the MAP under the applicable treaty. The Discussion Draft should therefore be read in conjunction with the final report on BEPS Action 14 (Making Dispute Resolution Mechanisms More Effective).

This article is contributed by CA Suresh Babu S, Partner of SBS and Company LLP, Chartered Accountants. The author can be reached at suresh@sbsandco.com

GST

CHALLENGES AND OPPORTUNITIES FOR BUILDERS IN TRANSITION TO GST

Contributed by CA Sri Harsha & CA Manindar

With GST implementation around the corner, a look on the transitional items pertaining to builders engaged in construction of residential or complex is paramount. As all the readers would by this time know that the proposed rate of GST on supplies made by construction of complex, building, civil structure or a part thereof, intended for sale to buyer, wholly or partly is 12% with a condition that the value of land is included in the amount charged from the recipient. The proposed rate has also has a remark that full input tax credit can be availed.

With this in place, we have tried to analyse certain important aspects which have to be taken care while moving into the GST regime from the current regime. The article is majorly divided into two segments, one dealing with the income and other dealing with the credits.

Aspects to be considered:

1. Taxation under GST;
2. Treatment for Works Completed prior to GST;
3. Treatment of Advances received prior to appointed day for the supplies to be made post GST;
4. Treatment of transactions with Land Owners in light of Joint Development Agreement;
5. Availment of Credit of Excise Duties paid on Inputs;
6. Availment of Credit of Value Added Tax paid on Inputs;
7. Availment of Credit of Excise Duties paid on Capital Goods;
8. Availment of Credit of Value Added Tax paid on Capital Goods;
9. Carry Forward of Credit of Service Tax paid on Input Services;
10. Carry Forward of Credit of Excise Duty paid on Capital Goods;
11. Credits in Transit;
12. Advances received but no service is provided eventually;
13. Anti – Profiteering

A. *Taxation under GST:*

1. If a person is engaged in making supplies of construction of complex, building, civil structure or part thereof, including a complex or building intended for sale to buyer, wholly or partly, except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier is subjected to GST. However, the phrase 'first occupation' has not been defined in the GST laws. It is assumed that the said phrase applies to situation where there are multiple towers in a residential complex and one of the tower is ready to occupy and hence the project does not get the completion certificate. In such a scenario, the phrase 'first occupation' might be used.

2. Only if the entire consideration is received by the supplier post completion certificate or its first occupation whichever is earlier, then such transaction is outside the ambit of GST, since it shall be treated as a transaction in sale of building. The transaction of sale of building is specified in Schedule III to Central Goods & Services Tax Act, 2017 (for brevity 'CGST') which deals with supplies which are neither goods nor services. Section 7(2) of CGST deals with transactions which are neither supply of goods nor supply of services, wherein Schedule III is mentioned.

3. Hence, the transaction of supply of construction services in relation to complex/building shall be falling in the ambit of Section 7(1), in a case only where the consideration is received prior to completion certificate or first occupation whichever is earlier. Further, as per Schedule II read with Section 7(1)(d), the activity of supply of construction services in relation to complex/building shall be treated as supply of services.

4. The proposed rate of GST on such supply of services as a result of GST council meeting on 19th May, 17 is 12% with a condition that the amount charged from the recipient of supply shall include the value of land. Further, the builder shall be eligible to full credit with no refund of overflow of input tax.

5. Hence, the builder can avail the credit of GST paid on all eligible inputs, input services and capital goods which are used for the purposes of making such supplies. Section 17(5) deals with certain credits which are not eligible for availment. Apart from such credits, a builder can avail all credits and use the same against the GST payable.

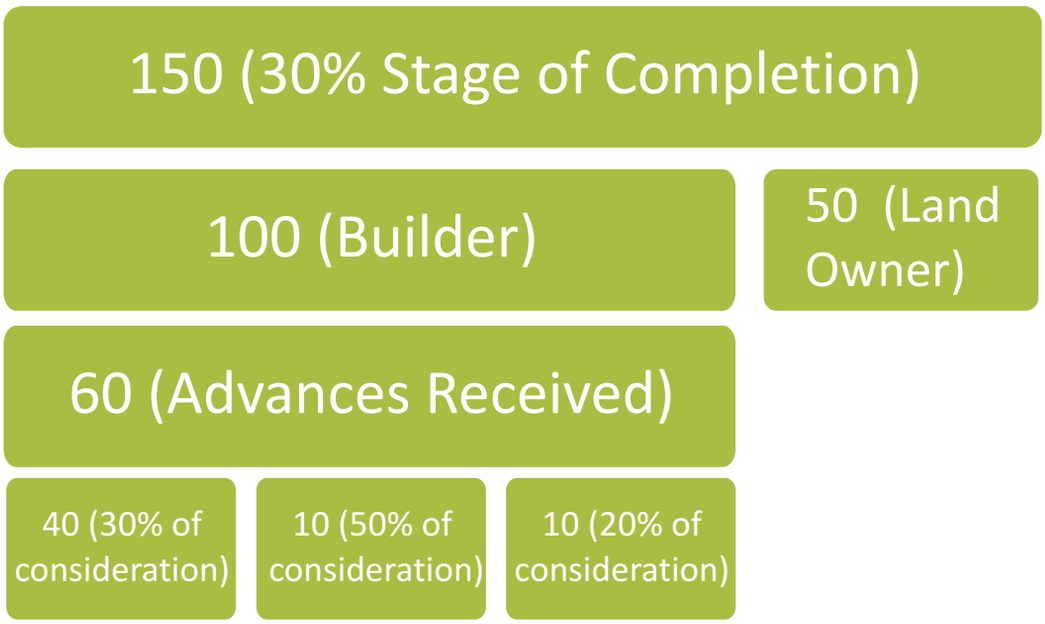
Certain Assumptions:

6. Let us assume that GST is being rolled out from July 1st, 2017 and the preceding day would be 30th June, 2017.

7. Let us consider ABC Limited, a builder who is engaged in construction of residential complex consisting of 150 flats. ABC Limited has entered a joint development agreement with land owners and as per the said agreement land owner is entitled for 50 flats.

8. Assume that 30% of the works are completed as on 30th June, 17 in respect of the total 150 flats.

9. Among 100 flats pertaining to the builder, let us assume that the builder has received advances against 60 flats as on 30th June, 17. Among 60 flats, let us assume that against 40 flats, the advances paid by the recipient are equivalent to the stage of completion and for 10 flats, the advances are more than the stage of completion of works and remaining 10 flats, the advances are received less than the stage of completion.



B. ***Treatment for Works Completed prior to GST:***

10. This is the instance where the 40 flats are falling, that is to say, the advance received from such 40 customers is equivalent to the stage of completion as on 30th June, 17. The service taxon such considerations was already paid under the current laws since the advances are subjected to tax irrespective whether supply is initiated or not. Now, let us see what the transitional provisions under CGST Act specify for such situations.

11. As per Section 142(11)(c) of CGST Act, ***where tax was paid on any supply both under value added tax and under Chapter V of Finance Act, 1994, tax shall be leviable under this Act*** and the taxable person shall be entitled to take credit of value added tax or service tax paid under the existing law ***to the extent of supplies made after the appointed day*** and such credit shall be calculated in such manner as may be prescribed.

12. From the highlighted portion, it can be understood that Section 142(11)(c) specifies that the credit of already paid taxes shall be taken only to the extent of supplies being made post appointed day. In other words, if part of the supply is completed prior to the appointed day, there shall not be any adjustments required to such extent.

13. Accordingly, there cannot be any GST on such 40 flats where advances received prior to appointed day match with the stage of completion as per the contract.

14. Further, as far as the 10 flats are concerned, where advances received are falling short of the stage of completion, the above rationale would be applicable since the part of supply has happened prior to the appointed day and the builder is responsible to pay service tax on such short fall of advance in light of Point of Taxation Rules, 2011.

15. The above treatment shall apply in case of VAT laws also. There is no requirement to pay VAT on such completed portions, since in majority of states, VAT is also required to be paid on advances.

16. However, in the state of Andhra Pradesh and Telangana, VAT is required to be paid when the builder registers such flats to the customer before the Office of Sub-Registrar (brought through a circular) and not at the time of advances. If proper set of provisions are not made for such states, there is a probability for loss of revenue in terms of VAT since the registration might happen post appointed day and circular issued insisting to pay VAT at the time of registration might not be in force on such date. Hence, we have to wait and see how the transaction shall be treated under VAT laws of Andhra Pradesh and Telangana.

17. Further, the said advances for the works completed but tax not being paid under the existing laws, shall be taxed at GST rates in terms of Section 142(9) of SGST Act, where by the customer has to shell out more amount in form of tax (6% of SGST compared to 1.25% of VAT).

C. *Treatment of Advances received prior to appointed day for the supplies to be made post GST:*

18. This is the instance where the 10 flats would fall, where advances received from them is more than the stage of completion as on the appointed day. The stage of completion is 30%, whereas the advances received are 50% of the entire consideration. In such a scenario, we have to treat the transaction as per Section 142(11)(c) of CGST Act.

19. As reproduced above, Section 142(11)(c) covers this exact situation. ABC Limited is required to pay service tax on such advances as per the current Point of Taxation Rules, 2011. ABC Limited now has to identify the service tax component pertaining to the advances for which supply is being made post appointed day, that is in our example, on 20% (50% - 30%) and take the credit of the same.

20. ABC Limited has to charge GST on such 20% of the supplies made post appointed day at 12% and take the set – off of the credit of service tax already paid on such 20%. Hence, builders who are planning to take advances under the current law to benefit the customer because of lower tax incidence has to be careful, since such supplies would attract tax under GST regime.

21. The above treatment shall apply in case of VAT laws also. Since VAT is also required to be paid on advances, ABC Limited shall take the credit of VAT paid on such advances and pay GST on such portions where supplies are made post GST.

22. As discussed earlier, however, in the state of Andhra Pradesh and Telangana, VAT is required to be paid when the builder registers such flats to the customer before the Office of Sub-Registrar (brought through a circular) and not at the time of advances. Hence, there might be a chance where the builder might state that they do not fall under the ambit of Section 142(11)(c) since the said section talks about supply where VAT **and service** tax was paid. The builders might take an argument that since only service tax was paid and VAT was not paid, Section 142(11)(c) cannot be made applicable to them and advances received from the customers for supplies to be made post GST shall be treated in terms of Section 142(11)(a) and 142(11)(b).

23. As per the Section 142(11)(a) and (b), there cannot be any VAT/service tax once the said sale/service was already subjected to tax under Value Added Tax or Finance Act, 1994. Since the advances are subjected to VAT and service tax under the current laws, the stand that they take that there cannot be any further tax under GST is bright.

24. However, it has to be understood that the payment of VAT at the time of registration is only a procedural thing and cannot be a hindrance for satisfaction of Section 142 (11) (c). Hence, we are of the opinion that the builder cannot take recourse to payment methodology specified for VAT under the current laws and take shelter of Section 142 (11) (a)/(b).

D. *Treatment of transactions with Land Owners in light of Joint Development Agreement:*

25. Majority of the constructions of complexes, today we see, are the result of development agreements entered by builders with the land owners. Under the current service tax laws, the services provided by builder to land owner in light of joint development agreement attracts service tax, since consideration includes non-monetary consideration, in this case, the land which is foregone by the land owner for completed flats. For detail understanding of the taxation of joint development agreements under the service tax law, please refer to **http://sbsandco.com/wp-content/uploads/2014/08/Feb2015-e-Journal.pdf**

26. However, the valuation of the services provided to the land owner and the point of taxation for such services is not clearly spelt out in the law. There was a circular issued by CBEC vide 151/2/2012 – ST dated 10th Feb, 2012 detailing the valuation to be adopted by the builder for the constructions services provided to the land owner. ***Ignoring the legal validity of the circular,*** the circular also has tried to lay out the time when the builder has to pay service tax on such transaction. The circular states the point of taxation for such services provided by builder to the land owners is the point of time when the possession or right in the property of the flats belonging to the land owner are transferred to the land owner by entering into a conveyance deed or similar instrument (for example allotment letter).

27. Normally, the builder enters another agreement with land owners called as supplementary agreement, wherein such agreement details the flats belonging to the builder and land owner. In some case, the supplementary agreement forms part of the joint development agreement itself. The date of such agreement is normally deemed as point of completion of services provided by builder to the land owner irrespective of the fact, the construction of flats belonging to the land owners has been initiated or not.

28. Now, the question before us, in the example, we have taken ABC Limited has completed 30% of completion prior to the appointed day in respect of flats belonging to the land owner. If ABC Limited has entered the supplementary agreement with land owners prior to appointed day, what should be the treatment of such transaction? Let us assume that ABC Limited has paid service tax on the construction services provided to the land owner since supplementary agreement is entered prior to the appointed day.

29. The point of taxation of such services to land owners is deemed to happen before appointed day as per the current Point of Taxation Rules, 2011. However, the stage of completion with respect to such flats is 30%, that is to say, post appointed day, there would be supplies to the extent of 70%. Whether, this would be treated in terms of Section 142(11)(c) or Section 142(11)(b)?

30. If we assume that service is completed prior to appointed day because the supplementary agreement is entered prior to the appointed day, then the builder can take the shelter of Section 142(11)(b), which states that there cannot be any tax under GST laws to the extent, the tax was leviable on the said services under Chapter V of Finance Act, 1994. Since the transaction with the land owners is subjected to tax under the current laws and builder has paid service tax on such transaction, one line of argument can be taken as there would not be any further tax under GST laws for the supplies to be made post appointed day to land owners to extent of 70%.

31. Alternatively, the GST authorities can state that the transaction falls under the ambit of Section 142(11)(c), by which the builder has to take the credit of service tax already paid on the land owner's share and charge GST on the supplies made post appointed day to the extent of 70% (as 30% is completed prior to appointed day in our example).

32. In such case, the builder might take a stand that Section 142(11)(c) is not applicable to the transactions between the builder and land owner, since as discussed earlier, the pre-requisite for a transaction to fall under 142(11)(c) is that the transaction is subjected to both VAT and service tax. However, the transaction between the builder and land owner is not subjected to VAT since the VAT laws does not cover the non-monetary/barter transactions.

33. However, if we closely see the language used in Section 142(11)(c), there is a chance for another interpretation. The exact text of such section is reproduced 'where tax was paid on any supply both under the ***Value Added Tax Act and under Chapter V*** of the Finance Act, 1994, tax shall be leviable under this Act and the taxable person shall be entitled to ***take credit of value added tax or service tax paid*** under the existing law to the extent of supplies made after the appointed day and such credit shall be calculated in such manner as may be prescribed'

34. The opening part of the section talks about that the service tax **and** VAT has to be paid on such supply, whereas the middle part of the section talks about the availment of service tax or VAT, by which we can infer that the **'and'** in the opening part can be interpreted as 'or'.The intention of the legislature might be where the supply is taxable both under VAT and service tax but not necessarily tax as required to be paid.

35. From the above, it is evident that the transactions with the land owner where the point of taxation has exhausted in the earlier law but supplies are being made in current law, the taxation would be litigative because of the language used in the section. We have to wait and see the clarifications to be issued to put rest to the ambiguity involved.

36. Further, keeping the Circular 151 ibid aside, the builder gets non-monetary consideration from the land owners, moment the development agreement is entered. The development agreement contains the percentage of built up area belonging to the land owners and builders. The supplementary agreement only specifies the flats that belongs to the land owners and builders

and hence the supplementary agreement need not be taken as point in time when the service is deemed to be completed. The entering of development agreement can be taken as the point in time when the service is deemed to be completed.

37. Hence, if the development agreement is entered prior to the appointed day and the supplementary agreement is entered post appointed day, the builder can take the recourse to Section 142 (11)(b) of CGST Act to the extent works completed as on the day preceding the appointed day.

E. *Availment of Credit of Excise Duties paid on Inputs:*

38. Under the current law, the credit of excise duty paid on inputs used for construction of complex is not allowed vide the Cenvat Credit Rules, 2004. This is for the reason that the builder pays service tax only on 30% of the gross amount charged vide Notification No 26/2012-ST dated 20.06.2012, which comes with a condition that credit of input services and capital goods can only be availed. Hence, builders were not entitled to credit of excise duty paid on inputs used for construction.

39. However, under GST laws, the proposed rate is 12% on the total value and credit of eligible input tax is available. Hence, the question comes, whether the builder is eligible to avail the credit of inputs which are used for making supplies post GST? The transitional provisions provide for availment of credit in certain circumstances which is discussed hereunder.

40. As per Section 140(3) of CGST Act, if registered person who is engaged in provision of works contract services and availing the benefit of Notification No 26/2012-ST dated 20.06.2012, can avail the credit of excise duty in respect of inputs held in stock and inputs in semi-finished or finished goods held in stock on the appointed day subject to certain conditions. We will deal with conditions at a later stage, while we continue to discuss about the eligible credits.

41. Hence, the builder can avail the credit of excise duty which is embedded in the inputs held in stock, inputs contained in semi-finished or finished goods which are used for making supplies post appointed day. That is to say, the builder has to adopt the treatment as specified in the Para B, C and D in the article and decide what is the quantum of supplies being made post GST. Once such quantum is available, the credit to such extent of supplies which are being made post GST can be availed. Further, Section 140 (10) specifies that there will be rules in place to decide the quantum of such credit which is eligible under Section 140 (3).

42. The builder has to be cautious in availing the credit of duties which are contained in inputs, semi-finished or finished goods which are used for making supplies post GST. All duties are not eligible. Only such duties which are specified vide Explanation 1 to Section 140 are eligible. Now, let us proceed to understand the conditions with which this benefit of credit of excise duty paid on inputs is eligible. The conditions mentioned in Section 140 (3) are as under:

a. such inputs/goods are used or intended to be used for making taxable supplies under GST;
b. said registered person is eligible for input tax credit on such inputs under GST;
c. said registered person is in possession of invoice/tax paying doc in respect of inputs;
d. invoices were issued not earlier than 12 months immediately preceding appointed day;
e. supplier of services is not eligible for any abatement under this Act

43. Only if the builder satisfies all the above conditions, then he is eligible to take credit of eligible duties on inputs contained in stock/WIP/FG as on the appointed day. Now, let us analyse whether the builder satisfies all the above conditions or not.

Such Inputs/Goods are used or intended to be used for making taxable supplies under GST:

44. The builder shall invariably use such inputs/goods which are in stock/WIP/FG for making taxable supplies under GST. The proposed rate of GST on such transactions is 12%, hence we can conclude that the supplies made post GST are taxable and hence accordingly this condition gets satisfied.

Said registered person is eligible for input tax credit on such inputs under GST:

45. The builder has to check, whether the inputs on which he is going to avail credit of eligible duties, are eligible under GST or not. Section 17(5) of CGST Act deals with items on which credit is not eligible for availment of input tax. If such inputs on which builder is intending to avail credit under Section 140 (3) are falling under Section 17(5), he cannot avail credit.

46. Section 17(5)(d) deals with ***'goods or services or both received by a taxable person for construction of an immovable property (other than plant and machinery) on his own account including when such goods or services or both are used in course or furtherance of business'.***

47. The above clause puts restriction on goods which are used for construction of an immovable property. Since the construction of complex which is sold prior to completion certificate is not an immovable property transaction, the credit of goods which are used can be availed.

Said registered person is in possession of invoice/tax paying doc in respect of inputs:

48. The builder has to possess invoice or any other document evidencing payment of tax in order to avail the credit of eligible duties on inputs contained in stock/WIP/finished goods. If the supplier of services does not have such documents, the credit cannot be availed. Assume ABC Limited has purchased steel from first stage/second stage dealer and does not have excise paying document. In such case, the credit of steel lying in stock/WIP/finished goods cannot be availed. ABC Limited has to approach the first stage/second stage dealer for obtaining necessary documents to transfer such credit to GST regime.

49. The proviso to Section 140(3) prescribes a scheme for availment of credits if the registered person does not have documents. But the said proviso is applicable only for persons other than manufacturer or supplier of services. Hence, there is no other alternative for builders to avail the credit if they do not possess invoices or tax paying docs.

Invoices were issued not earlier than 12 months immediately preceding appointed day:

50. The credit of such inputs pertaining to last 12 months immediately preceding the appointed day only can be availed. Hence, the builder has to identify the inputs pertaining to last 12 months and then segregate such inputs into inputs which are to be used for making supplies post GST and inputs which were already used for works prior to appointed day.

51. After such segregation, the builder can take credit pertaining to such inputs contained in stock/WIP/finished goods which are used for making supplies post appointed day subject to containing the duty paid docs or invoices.

Supplier of services is not eligible for any abatement under this Act:

52. The supplier of services should not be eligible for any abatement under the GST laws. If such supplier of services is eligible for abatement, then credit of eligible duties cannot be availed. Now, the question before us is, whether the builder is eligible for abatement under GST laws or not.

53. The proposed rate of 12% on construction of complex is subjected to a condition that the amount charged from the recipient contains the value of land. Vide Schedule III, the transactions in sale of land are neither supply of goods or nor supply of services, that is to say there cannot be any GST on sale of land or land component in the supply. Hence, there should be an appropriate mechanism to make sure that the undivided share of land portion is not subjected to GST and accordingly there might be any abatement for builder to the extent of land value or the rate of 12% is post abatement.

54. In absence of clarity regarding the abatement, we cannot comment whether the builder is eligible for credit or not. However, considering the intention of the legislature, because Section 140 (3), specifically covers the transactions of works contract service providers availed Notification No 26/2012-ST benefit, we might conclude that the builder is eligible for credit.

F. ***Availment of Credit of Value Added Tax paid on Inputs:***

55. The builder can take the credit of eligible central duties (except CST) on input contained in stock/WIP/finished goods in light of Section 140 (3) of CGST Act. However, to take the credit of state taxes namely VAT, we have to see the transitional provisions under the respective State Goods & Services Tax (SGST) Act. In the current article, we are taking the provisions of Telangana State Goods & Services Tax Act, 2017 for analysing.

56. Section 140 (3) of Telangana SGST Act specifies credits of taxes can be availed if the register person is engaged in sale of exempted goods or tax-free goods. Since the builder does not fall into either of such categories, the said section does not serve the purpose. However, the appropriate section for builders to avail the credit of VAT lying in inputs/WIP/finished goods is Section 140 (6).

57. Section 140 (6) of SGST Act specifies that a registered person, who was either paying tax at a fixed rate or paying a fixed amount in lieu of tax payable under the Value Added Tax law, then the registered person shall be entitled to take credit of VAT in respect of inputs contained in stock/semi-finished/finished goods held in stock on the appointed day subject to certain conditions.

58. The builder is paying VAT at a fixed rate of 1.25% on the total amount charged from the recipient and hence falls under the purview of Section 140 (6) of Telangana GST Act. Hence, the builder can avail the credit of VAT lying in inputs/WIP/Finished goods which are used for making supplies post GST. Further, as per Section 140 (7) of Telangana GST Act, the quantum of eligible VAT shall be specified by making appropriate rules.

G. *Availment of Credit of Excise Duties paid on Capital Goods:*

59. The builder shall be using many capital goods for providing the construction services. As per the service tax laws, a builder can avail the credit of excise duty on capital goods used for providing construction services. The definition of 'capital goods' for the purposes of transitional provisions has to be taken as per Cenvat Credit Rules, 2004 which is made clear vide Explanation to Section 142 of CGST Act.

60. Hence, the builder if he has not availed the credit of capital goods, he can avail the credit of capital goods while filing the last returns under the service tax laws. If he has already availed the credit of capital goods, the same shall be sitting in the last returns filed under the service tax law and such credit shall be carried forward to GST regime by virtue of Section 140 (1) of CGST Act, 2017. However, one of the important condition to carry such credit to GST regime is that the credit of capital goods is to be eligible even under the GST laws. The builder has to check for examination of such credit before carrying it forward.

61. As all of us are aware, the credit of excise duty on capital goods is available only to the extent of 50% in the year of receipt and the balance in the succeeding year as per the current Cenvat Credit Rules. Hence, capital goods procured during FY 17-18, only 50% of such credit shall be carried forward to the GST regime in light of Section 140 (1). In order to make the balance credit available in GST regime, Section 140 (2) has been introduced in the GST laws. Hence, by virtue of Section 140 (2), the balance credit of capital goods can be availed.

H. *Availment of Credit of VAT paid on Capital Goods:*

62. The Telangana and Andhra Pradesh Value Added Taxes does not make a distinction between the capital goods and inputs for availment. Hence, for such states, the credit of VAT paid on capital goods is eligible as credit of VAT paid on inputs and they can avail the credit either under Section 140 (1) (if the builder is in regular scheme) or under Section 140 (6) (if the builder is in composition scheme).

63. For other states, where there is a distinction between the capital goods and inputs and timing difference exists for availment of credit on capital goods, in such states, adopting the rationale as discussed above for the purposes of excise duty on capital goods would be relevant.

I. *Carry Forward of Credit of Service Tax paid on Input Services:*

64. As stated earlier, the builder is eligible to take credit of service tax paid on input services used for providing construction related services. He is eligible to take credit either he is paying service tax under Notification No 26/2012-ST dated 20.06.2012 or under Rule 2A of Service Tax (Determination of Value) Rules, 2006.

65. Such availed credit will be normally shown in the ST-3 returns filed periodically. The credit disclosed in such ST-3 returns can be carried forward to GST regime under Section 140 (1) of CGST Act. However, such credit is subjected to certain conditions, which are as under:

    a. such carried forward credit should be eligible as ITC under GST;
    b. he has to furnish all returns for period of 6 months immediately preceding the appointed day under the existing law;

66. Only if the builder satisfies all the above conditions, then he is eligible to take credit of service tax to the GST regime. Now, let us analyse whether the builder satisfies all the above conditions or not.

Such carried forward credit should be eligible as ITC under GST:

67. All credits are not eligible under the GST laws. Section 17(5) of CGST Act lays down certain restrictions on which credit is not eligible. The builder has to analyse the closing balance of cenvat credit of input services against the items under Section 17(5) and if the builder thinks certain items are not eligible under GST, the credit to such an extent should not be carried forward to GST regime.

68. Hence, it has to be noted that the credit flow to GST regime is not automatic and involves understanding of eligible credits under GST laws. While doing the analysis of closing balance of credit against Section 17(5), the builder might adopt the first in first out basis. Hence, the credits which came last are deemed to be staying in the closing balance and those have to be seen for eligibility under Section 17(5).

69. Where any sum of consideration is not received for certain flats and if the builder is of the intention that such flats shall be sold after obtaining occupation certificate, the credit to such an extent has to be reversed in terms of Rule 6 of Cenvatand the balance only to be carried forward to the GST regime.

He has to furnish all returns for period of 6 months immediately preceding the appointed day under the existing law:

70. The builder in order to carry forward the credit to GST regime, must have filed all the returns for a period of 6 months immediately preceding the appointed day. That is to say he has to file his ST-3 returns for the period of January 17 to June 17, assuming the appointed day is 01st July, 17.

71. The credit shall be allowed to be carried forward only if the returns for such period has been filed. Hence, appropriate care has to be taken to see that the last returns have been filed so that the carry forward would be smooth.

J. *Carry Forward of Credit of Excise Duty paid on Capital Goods:*

72. The discussion related to 'Availment of Credit of Excise Duties paid on Capital Goods' vide Para G can be referred.

K. *Credits in Transit:*

73. There might be an instance where the builder receives inputs or input services after appointed day for which duty or taxes were paid before appointed day. In such cases, the credit can be claimed by the builder under GST in light of Section 140 (5) of CGST Act subject to a condition that such transaction has been recorded in books of accounts within 30 days from the appointed day.

74. However, this benefit is not applicable to capital goods in transit as the section restricts the availment to inputs and input services. We are expecting a suitable amendment to extend the benefits to the capital goods also.

L. *Advances received but no service is provided eventually:*

75. The builder might receive advances for booking of flats under the existing laws and service tax might be paid on such advances. However, eventually, customer might cancel the agreement after the appointed day and demand the amounts paid vide booking.

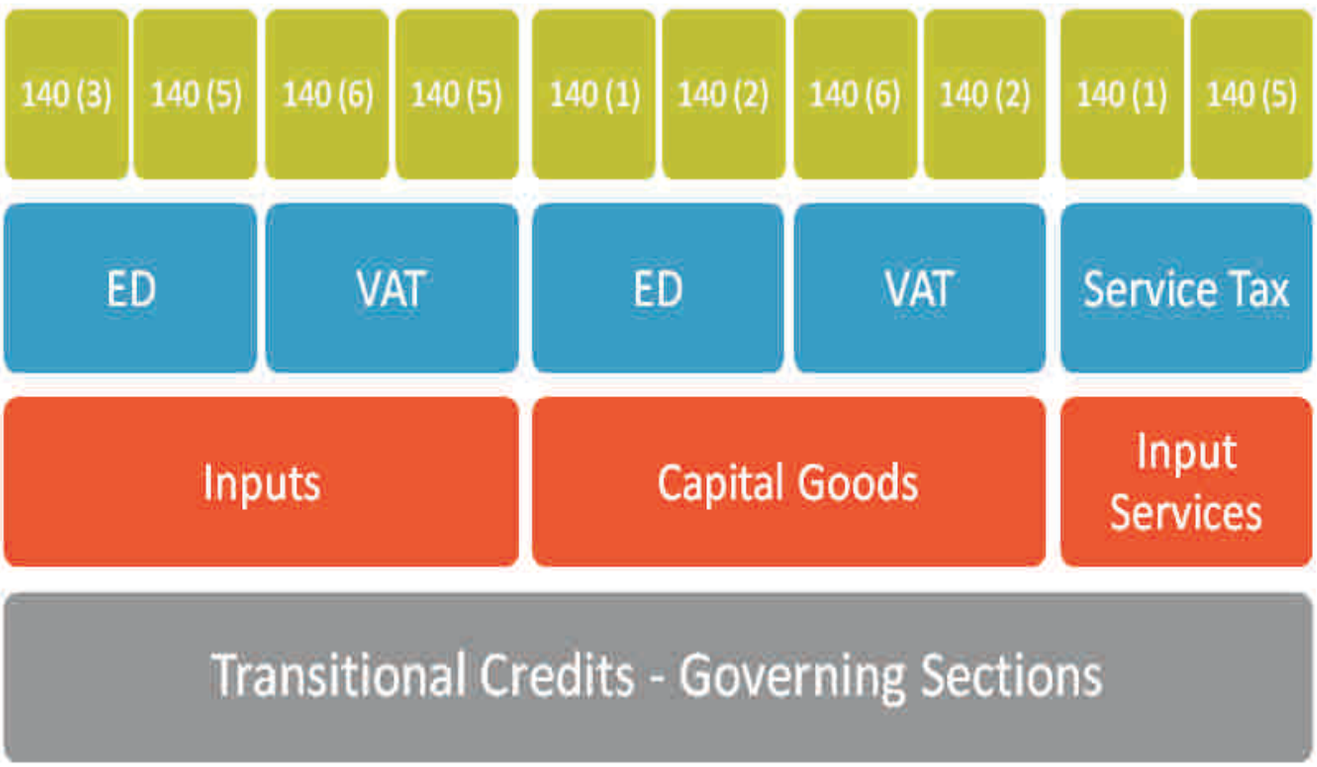
76. In such cases, the builder has to be refund the amount to the customer and claim refund of service tax paid under the GST laws in light of Section 142 (5) of CGST Act.

M. *Anti – Profiteering:*

77. Section 171 of CGST Act deals with the concept of anti-profiteering. The section states that any reduction in rate of tax on any supply of goods or services or benefit of input tax credit shall be passed on to the recipient by way of commensurate reduction in prices.

78. Hence, builders who are availing the benefit of ITC under Sections 140 (3) or 140 (6) has to keep in mind such benefit has to be passed to the consumers by way of reduction in prices. In case the benefit is not passed, the committee responsible might take necessary actions.

Snapshot of Credits vis-à-vis Transitional Provisions



This article is contributed by CA Sri Harsha Vardhan K & CA Manindar K Partners of SBS and Company LLP, Chartered Accountants. The authors can be reached at harsha@sbsandco.com & manindar@sbsandco.com

FEMA

RECENT CHANGES TO FCRA

Contributed by CA Murali Krishna G

The Foreign Contribution (Regulation) Act, 2010 (for brevity 'FC(R)A'), which has replaced the erstwhile Foreign Contribution (Regulation) Act, 1976 w.e.f 1st May, 2011 ,has been introduced with an objective to regulate the acceptance and utilization of foreign contribution or foreign hospitality by certain individuals or associations or companies and to prohibit the acceptance and utilization of foreign contribution or foreign hospitality for activities detrimental to the national interest. FC(R)A is administered by Ministry of Home Affairs (for brevity 'MHA') under Government of India (for brevity 'GoI').

The author earlier had drafted detailed article on FCRA and request the reader to refer the page no. 12 to 15 of WIKI for February, 2016 and it is accessible at
http://www.sbsandco.com/2016/06/15/february-2016-volume-19/

In recent past many changes had been made in FC(R)A for close scrutiny of receipt and utilization and Foreign Contributions or Foreign Hospitality. Hence, in light of the tough regulations, it is very important for individuals, associations or companies who are in receipt of foreign contribution to be updated with the changes made to FC(R)A, more specifically areas pertaining to the registrations and filing of returns. Here is the glimpse of the few significant changes which need to be complied with by the individuals, associations or companies who are in the receipt of the Foreign Contribution.

Registration & Related Matters:

Every person having a definite cultural, economic, educational, religious or social programme shall not accept foreign contribution unless such person is registered with central government or granted prior permission for the receipt of the foreign contribution.
Section 11 to Section 16 of FC(R)A read with Rules made there under deals with registration and related matters under the Act.

Procedure for obtaining registration:

Person intending to obtain registration shall:

- Make an online application vide Form FC-3 with the requisite information and documents;
- The applicant shall pay a fee of Rs 2,000/-

Certificate of Registration:

The certificate of Registration will be granted within 90 days from the date of the receipt of the application with a validity of 5 years from the date of its issue, which need to renewed upon the expiry of the validity period.

Procedure for Renewal of CoI:

Every person who need to renew the CoI have to make an online application vide Form-FC-3 before six months of the date of expiry with the application fee of Rs. 500/-.

The renewed certificate of registration will be granted within 90 days from the date of receipt of application, if not the reasons for the same would be communicated to the applicant.

Amendment: As per the Public Notice circulated by the MHA vide file no. II/21022/36(0207)/2015-FCRA-II dated 12th May, 2017 the registrations for which the Renewal is sought cannot be granted unless the pending Annual Returns from FY 2010-11 to FY 2014-15 are submitted by the defaulting organizations.

Amendment: An opportunity have been given to the defaulting organizations by the MHA vide public notice dated 12th May, 2017 to submit the pending annual returns from FY 2010-11 to FY 2014-15 within period of 30 days from 15th May, 2017 to 15th June, 2017 and no compounding fee will be imposed on the returns submitted during the said period.

Intimation of the Quarterly Receipts (w.e.f 03.03.2016):

Every person receiving the Foreign Contribution shall place the details of the Foreign Contribution on its official website or on the website specified by CG, within 15 days of the last day of the quarter in which it is received, clearly indicating the details of the donors, amount received and date of receipt. Associations not having own official website can file the prescribed information of the receipts on the MHA's Website.

Filing of Returns:

Annual Returns under FCRA:

Every person registered under Section 12 of the Act, shall file an annual return in Form-FC-4 electronically at www.fcraonline.nic.in with the requisite documents specifying the amount, source of foreign contribution received and manner, purposes for which it has been utilized within 9 months i.e., 31st December from the closure of the financial year.

Levy of Compounding Fee for Late Filing or Non-Filing of Annual Returns under FCRA (w.e.f 16.06.2016):

S.NO	NON-FURNISHING OF RETURNS	AMOUNT OF PENALTY	OFFICER COMPETENT FOR COMPOUNDING
1	Upto 3 Months from due date	2% of FC received during Financial Year Or Rs. 10,000/- (whichever is lower)	The Director or Deputy Secretary in charge of the FC(R)A Wing of Foreign Division in MHA
2	From 3 - 6 Months from due date	3% of FC received during Financial Year Or Rs. 50,000/- (whichever is lower)	
3	From 6 Months – 1 Year from due date	4% of FC received during Financial Year Or Rs. 2,00,000/- (whichever is lower)	
4	From 1 - 2 Years from due date	5% of FC received during Financial Year Or Rs. 5,00,000/- (whichever is lower)	
5	From 2 – 3 Years from due date	10% of FC received during Financial Year Or Rs. 10,00,000/- (whichever is lower)	

Annual returns under Lokpal and Lokayuktas Act, 2013:

Any person who is or has been a director, manager, secretary or other officer of every other society or association of persons or trust (whether registered under any law for the time being in force or not) in receipt of any donation from any Foreign Source under FC(R)A in excess of Rs. 10 lakh rupees in a year are required to furnish annual return of assets and liabilities till such time the entire amount of donation aforesaid received by such society or association of persons or trust stands fully utilized.

Due date of filing:

On or before 31st July of every year.

This article is contributed by CA Murali Krishna G, Partner of SBS and Company LLP, Chartered Accountants. The author can be reached at gmk@sbsandco.com

DIRECT TAX

TDS/TCS- CHANGES BROUGHT IN BY FA 2017

Contributed by CA Ramprasad T

Finance Act, 2017 has introduced few changes to TDS ('Tax Deducted at Source')/TCS ('Tax Collected at Source') provisions ranging from introduction of new sections, rate changes and extension of concessional rate TDS. This article summaries the changes which are applicable w.e.f 01-04-2017/01-06-2017.

Section 194IB: - The Section provides that an Individual or HUF, other than one covered by Section 194-I[1], responsible for paying to resident any income by way of rent exceeding Rs. 50,000/- per month or part of the month thereof after 01-06-2017 would be required to deduct tax @5%.

The tax is to be deducted at the time of credit of rent for the last month of previous year or last month of tenancy, if the property is vacated before the end of the previous year, to the account of the payee or at the time of payment, by cash, cheque or draft, whichever is earlier.

In short, TDS should be deducted earliest of credit or payment of rent to the payee. Payer is not required to obtain TAN for complying this section.

'Rent' for this section means any payment, by whatever name called, under any lease, sub-lease, tenancy or any other arrangement or agreement for the use of any land or building or both.

FAQ: -

1) whether Rent for agricultural land is also covered?

Ans: - Going by the definition of the term 'Rent' it has not provided any exception to the agricultural land. However, rent from agricultural land is exempted from tax U/S 10(1). If the payment is not income, TDS provisions are not applicable.

2) If the rent for few months is less than Rs. 50,000/- and for few months is more than Rs. 50,000/-, is TDS is required to be deducted for the aggregate rent?

Ans: - TDS U/S 194IB is required to be deducted only if the rent per month or part of the month exceeding Rs. 50,000/-.so, TDS is required to be deducted from the month rent is more than Rs. 50,000/-

3) Whether the section is applicable if the Payer is Non-resident?

Ans: - Yes. Section is applicable even if the individual paying rent is Non-resident.

4) Whether the section is applicable if the Payee is Non-resident?

Ans: - No. Section is applicable only if the Payee is Resident.

[1]Who is subject to Audit U/S 44AB in the preceding financial year.

5) If the owner doesn't provide his PAN, whether provisions of section 206AA are applicable?

Ans: - Yes. However, the deduction shall not exceed the amount of rent payable for the last month or last month of tenancy. Ex: - If monthly rent is Rs. 55,000/- and the payee has not provided his PAN the TDS amount would be @20% (Sec 206AA) is Rs. 132000/- (Rs. 55,000*12= Rs. 6,60,000/- TDS @20% is Rs. 1,32,000). However, the TDS should not exceed Rs. 55,000/-.

6) Is Certificate for lower or nil rate of deduction be obtained U/S 197?

Ans: - No.

Section 194J: - The rate of TDS would be @2% in case of the payee engaged only in the business of operation of call centers. (w.e.f 01/06/2017)

Section 194-IC: - Any person responsible for paying to resident payee, being individual or HUF with whom any specified agreement is entered, any sum by way of monetary consideration under specified agreement (Joint Development Agreement) referred to in section 45(5A) shall deduct tax @10%. (w.e.f 01/04/2017)

The tax is to be deducted at the time of credit of such sum to the credit of account of payee or at the time of payment, whichever is earlier.

FAQ: -

1) Whether TDS is required to be deducted if the payment is less than 50,00,000/-?

Ans: - TDS is required to be deducted irrespective any amount.

2) In which year TDS credit can be adjusted?

Ans: - TDS credit can be utilized in the year in which the capital gain is chargeable to tax U/S 45(5A)

3) Is advance payment before execution of the agreement is subject to TDS?

Ans: - The agreement referred to in section 45(5A) should be registered to treat it as specified agreement. So, no TDS is required at the time of payment of advance before registration of agreement. However, TDS is required to be deducted when the agreement is registered or advance is adjusted. (Grossing may apply)

4) Is Certificate for lower or nil rate of deduction be obtained U/S 197?

Ans: - No.

Other Changes: -

Section	Change	w.e.f.
194LC	Concessional rate of TDS @5% is available in relation to interest payment in respect of borrowings made on or after 01/10/2014 but before 01/07/2020	01/04/2017
	Interest in respect of monies borrowed from a source outside India by way of issue of rupee denominated bond before 01/07/2020	
194LD	Concessional rate of TDS @5% is available in relation to interest payment to FII/Qualified Foreign Investors payable on or after 01/06/2013 but before 01/07/2020 in respect of investment in rupee denominated bonds of Indian Company or Government Security.	01/04/2017
194D	Self -declaration by Individual or HUF for non- deduction of TDS in form 15G/15H	01/06/2017
40(a)(ia)	Disallowance for non-deduction of TDS from payment to Residents applicable to Income under the Head "Income from Other Sources"	01/04/2017
206CC	Failure to furnish PAN to the person responsible for Collecting Tax at Source will attract TCS @twice the applicable rate or 5%, whichever is higher.	01/04/2017

This article is contributed by CA Ram Prasad Partner of SBS and Company LLP, Chartered Accountant. The author can be reached at caram@sbsandco.com

AN ANALYSIS

CROSS BORDER MERGERS AND AMALGAMATIONS

Contributed by Team SBS

Introduction

Due to ever growing Globalisation and Cross Border Trade, many of the Indian Companies have acquired Foreign Companies.

Here are the top 10 acquisitions made by Indian companies worldwide: [1]

Acquirer	Target Company	Country targeted	Deal value ($ ml)	Industry
Tata Steel	Corus Group plc	UK	12,000	Steel
Hindalco	Novelis	Canada	5,982	Steel
Videocon	Daewoo Electronics Corp.	Korea	729	Electronics
Dr. Reddy's Labs	Betapharm	Germany	597	Pharmaceutical
Suzlon Energy	Hansen Group	Belgium	565	Energy
HPCL	Kenya Petroleum Refinery Ltd.	Kenya	500	Oil and Gas
Ranbaxy Labs	Terapia SA	Romania	324	Pharmaceutical
Tata Steel	Natsteel	Singapore	293	Steel
Videocon	Thomson SA	France	290	Electronics
VSNL	Teleglobe	Canada	239	Telecom

[1]Source: http://trak.in/tags/business/2007/08/16/indian-mergers-acquisitions-changing-indian-business/

If you calculate top 10 deals itself account for nearly US $ 21,500 million. This is more than double the amount involved in US companies' acquisition of Indian counterparts.

India also has received huge FDI for setting up subsidiaries of MNCs and also Joint Ventures. In order to provide the enabling platform, Indian Laws have been amended to permit Cross Border Mergers.

The intent of this Article to dwell upon the compliances relating to Merger or Amalgamation of Indian Company with Foreign Company **(Cross Border Mergers),** under the following enactments, statues, regulations:

1. Companies Act, 2013
2. Income Tax Act, 1961
3. Competition Act, 2002
4. SEBI regulations
5. FEMA regulations
6. Valuation and Accounting Standards
7. Indirect Tax matters

1. <u>Companies Act, 2013</u>

1.1. The Companies Act, 2013, does not define the term "Amalgamation". In general parlance, Amalgamation/Merger can be defined as a combination of two or more entities into one, thereby coming into existence of a new and different entity which may or may not be one of those existing entities. Amalgamation was defined by the Supreme Court of India in the case of *Saraswati* Industrial Syndicate Ltd. v. CIT[2]

1.2. Whereas, the term Amalgamation is defined under the Income Tax Act, 1961, as the merger of one or more companies with another company, or the merger of two or more companies to form one company, and following conditions must be met by virtue of the merger, for such merger to qualify as an **"Amalgamation",** under the Income Tax Act, 1961:

- ➔ All the property of the amalgamating company(ies) becomes the property of the amalgamated company;
- ➔ All the liabilities of the amalgamating company(ies) become the liabilities of the amalgamated company; and
- ➔ Shareholders holding not less than 75% of the value of the shares of the amalgamating company become shareholders of the amalgamated company.

1.3. The effect of Amalgamation being not just the accumulation of assets and liabilities of the distinct entities, but organization of such entity into one business, expansion and diversification of their business and to achieve their under lying objectives.

[2] [1990] 186 ITR 278/53 Taxman 92

1.4. The possible objectives of mergers are manifold - economies of scale, acquisition of technologies, access to sectors / markets etc. Generally, in a merger, the merging entities would cease to be in existence and would merge into a single surviving entity.

Provisions under the Companies Act, 2013:

1.5. Chapter XV [Sections 230 to 240] of the Companies Act, 2013, and the rules framed therein, govern the various aspects relating to the Compromises, Arrangements and Amalgamations of Companies.

1.6. In view of globalisation, there are some revolutionary and much required concepts introduced in the Companies Act, 2013 like:

➔ **Fast Track Merge**r for Small Companies and merger of Holding companies with its wholly owned Subsidiary Companies, which has resulted in the simplification of the process of Amalgamation.

➔ Merger or Amalgamation of Company with Foreign Company(Cross Border Mergers)

➔ Purchase of Minority Shareholding

1.7. Section 234 of the Companies Act, 2013, and rules framed there under deals with Merger of Amalgamation of Company with Foreign Company. The provisions of Section 234 came into force with effect from 13.04.2017, and to this effect, the Central Government, after consultation with the Reserve Bank of India, had made necessary amendments to the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, by including Rule 25-A, to the existing rules. The said amendment rules also came into effect from 13.04.2017.

1.8. Unlike under the Companies Act, 1956, where only merger of a foreign company with an Indian company was permitted, the provisions of Section 234 of the Companies Act, 2013, now allows Cross Border Mergers both ways viz.,

- A foreign company can merge with/into an Indian company; and
- An Indian company can merge with/into a foreign company, situated ina jurisdiction permitted under the rules.

1.9. **"Foreign Company"** for the purpose of Section 234 (2), means any company or body corporate incorporated outside India whether having a place of business in India or not.

1.10. In addition to the Compliance of the provisions of Section 234 and rules framed thereunder, in case of a Cross Border Mergers, the provisions of Section 230 to 232 of the Companies Act, 2013, and the rules framed thereunder are also to be complied.

1.11. **Aspects involved in Cross Border Mergers:**

➔ **Prior approval of Reserve Bank of India:**

Prior approval of Reserve Bank of India is mandatory for both the Inbound and Outbound Cross border mergers.

On receipt of the approval from the Reserve Bank of India, application can be made by the Indian company concerned with the National Company Law Tribunal, under whose jurisdiction, the State in which the Company is registered comes.

➔ **Payment of consideration to the Shareholders:**

Section 234 (2) provides that the scheme of merger may provide, among other things, for payment of consideration to the shareholders of the merging company in the form of cash or depository receipts or partly in cash and partly in depository receipts.

➔ **Restriction on the Jurisdiction:**

In case of an Inbound Merger, no specific restriction is provided in the rules, which means, any Foreign Company, can merge with an Indian Company.

Whereas, in case of an Outbound Merger, a Indian Company can merge only with a Foreign Company which is incorporated in jurisdictions whose :

- Securities market regulator is a signatory to the International Organisation of Securities Commission's Multilateral Memorandum of Understanding (MoU) (Appendix A signatories) or a signatory to the bilateral MoU with Securities and Exchange Board of India (SEBI); or
- Central Bank is a member of the Bank for International Settlements (BIS); and
- jurisdiction which is not identified in the public statement of Financial Action Task Force (FATF) as:

  (i) a jurisdiction having strategic 'Anti-Money Laundering or Combating the Financing of Terrorism' deficiencies to which counter measures apply; or

  (ii) jurisdiction that has not made sufficient progress in addressing the deficiencies or has not committed to an action plan developed with the FATF to address the deficiencies.

➔ **Valuation of Shares (In case of Outbound Merger):**

The rules framed under Companies Act, 2013 lay down the following requirements as to the valuation of the shares of the Foreign Company in case of Outbound Merger:

- The Foreign Company/Transferee Company shall ensure that the valuation is conducted by valuers who are members of recognised professional body in their country, and

- The valuation is in accordance with internationally accepted principles on accounting and valuation.

The valuation report also needs to be annexed to the notice for meetings for approval of the scheme. This is expected to enable the shareholders to understand the business rationale of the transaction and take an informed decision.

It is to be noted that rules does not prescribe any valuation guidelines for the case of Inbound Merger

1.12. DIVISIONS AND DEMERGERS OF THE COMPANIES

In the Act of 1956 there was no mention of Divisions or Demergers. Section 232 of the Act of 2013 takes note of 'Division' (Section 232, Explanation (iii)). The Act, however, is silent on cross-border splits and demergers.

Amalgamation is to be distinguished from takeovers. It contemplates dissolution of the transferor-company without winding up. In a takeover, on the other hand, shares are acquired in order to get controlling interest. The Securities and Exchange Board of India has set rules to regulate such takeovers. Under the Act of 1956, it was possible for a company to secure a partial merger of one of its divisions with another company with incidental benefits like quota rights and licenses. This was known as 'spin off ' and would not amount to amalgamation under the income-tax law. Tax law operates differently, depending on the situation, namely, whether it is a case of amalgamation, takeover or spin off ?

1.13. The process flow of a Merger/Amalgamation application under the Companies Act, 2013, is as below:

Step-1: To consider the proposal of Merger by the Board of Directors

Step-2: Getting the Valuation of the proposed entities, and Fairness opinion from the Valuer.

Step-3: Preparation of the Scheme of Amalgamation, and obtaining the approval of the Audit Committee, if the Company has a Audit Committee.

Step-4: Board of Directors to consider and approve the scheme of Amalgamation and the Valuation.

Step-5: In case of Listed Companies, filing of the Scheme and other related documents with the respective Stock Exchange, SEBI, for their approvals, and receipt of approvals.

Step-6: Filing of the Application with the National Company Law Tribunal, and seeking directions from NCLT, for sending notice of meeting along with the Scheme and valuation report, and fairness opinion on the valuation, to be sent to shareholders, creditors, all the Statutory Authorities like Central Government, Income Tax Department, Registrar of Companies, Official Liquidator, SEBI and the respective stock exchanges, seeking their objections, and their representations shall be made within 30 days from the date of receipt of the notice.

Step-7: Convening of meeting and approval of the Scheme.

Step-8: Filing of certificate by the company's auditor with the Tribunal to the effect that the accounting treatment, if any, proposed in the scheme of compromise or arrangement is in conformity with the accounting standards.

Step-9: Receipt of Order of the Tribunal and filing of the same within a period of 30 days of receipt of the Order.

2. Income Tax Act, 1961 and rules made thereunder

2.1. Section 47 provides that transfer of capital asset in a scheme of amalgamation is not subject to tax in the hands of the transferor company and shareholders thereof.

2.2. Section 47(vi) provides that any transfer, in a scheme of amalgamation, of a capital asset by the amalgamating company (transferor) to the amalgamated company, if it is an Indian Company.

2.3. Section 47(vii) provides that any transfer by a shareholder in a scheme of amalgamation of a capital asset being a share or shares held by him in the amalgamating company provided: -

(i) The transfer is made in consideration of the allotment to him of any share or share in the amalgamated company[3] and
(ii) Amalgamated company is an Indian Company.

2.4. The Income Tax Act, 1961 as of now provide exemption only in relation to transfer of capital assets/shares where the transferee company is an Indian Company (Inbound Merger/Amalgamation). Therefore, with the introduction of cross-border mergers under the 2013 Act, corresponding changes would have to be made in the IT Act.

2.5. No exemption is provided in relation to transfer of capital assets/shares where transferee company is not an Indian Company (Outbound Merger/Amalgamation).

2.6. Even in case of Inbound merger or amalgamation if the consideration for transfer of shares in the foreign company paid by way of cash or depository receipts the exemption provided U/S 47 (vii) is not available to shareholders of foreign company. To achieve tax-neutrality for the amalgamating company transferring the assets, the amalgamated company should be an Indian company and the amalgamation should be as per Section 2(IB). In an amalgamation as per Section 2(IB) of the IT Act,

[3]Except to the extent shares already held by the amalgamated company.

all the properties and liabilities of the merging companies immediately before the amalgamation should become the properties and liabilities of the amalgamated company, and 75% of the shareholders of the amalgamating companies have to remain the shareholders of the amalgamated company as well. Additionally, to achieve tax-neutrality for shareholders of the amalgamating company, the entire consideration should comprise of shares in the amalgamated company.

2.7. In case of outbound merger, the surviving company would be foreign company and it acquires the business interest and assets in India of transferor Indian Company.

2.8. No exemption is provided in section 47 for outbound merger/amalgamation and hence is subject to tax both in the hands of Indian Company and as well as their shareholders.

2.9. Global Mergers- A global merger takes place when a foreign company holding controlling stake (of more than 51%) in an Indian company merges with another foreign company, resulting in the transfer of shares of the Indian company to such other foreign company. Such a scheme is exempt from tax in India if 25% shareholders of the amalgamating company continue to be shareholders of the amalgamated company, and the transfer does not attract capital gains tax in the country in which the amalgamating company is incorporated.

2.10. Taxability of indirect share transfers -Where a foreign company transfers shares of a foreign company to another company and the value of the shares is derived substantially from assets situated in India, then capital gains derived on the transfer are subject to income tax in India. Further, payment for such shares is subject to Indian withholding tax (WHT). Shares of a foreign company are deemed to derive their value substantially from assets in India if the value of such Indian assets is at least INR100 million and represents at least 50 percent of the value of all the assets owned by such foreign company. Certain exemptions have also been included, e.g. for small shareholders (i.e. shareholding of 5 percent or less in foreign entity holding assets in India) and, in limited cases of group reorganizations, on satisfaction of prescribed conditions. New reporting obligations require Indian entities to submit information relating to an offshore transfer of shares in a prescribed format that is not yet released. Thus, the reporting methodology may need evaluation.

2.11. Indian Capital gain tax rates -When the shares are held for not more than 24 months (12 months for listed securities, units of equity-oriented funds and zero coupon bonds) , the gains are characterized as short-term capital gains and subject to tax at the following rates.

If the transaction is not subject to STT:
— 34.61 percent for a domestic company
— 43.26 percent for a foreign company
— 32.445 percent (flat rate) for an FII.

If the transaction is subject to STT, short-term capital gains arising on transfers of equity shares are taxed at the following rates
— 17.304 percent for a domestic company
— 16.23 percent for a foreign company or FII

Where the shares have been held for more than 24 months (12 months for listed securities, units of equity-oriented funds and zero coupon bonds), the gains are characterized as long-term capital gains and subject to tax as follows:

If the transaction is not subject to STT:

— The gains are subject to tax at a 23.072 percent rate for a domestic company and 21.63 percent for a foreign company. Resident investors are entitled to an inflation adjustment when calculating long-term capital gains based on the inflation indices prescribed by the government of India. Non-resident investors are entitled to benefit from currency fluctuation adjustments when calculating long-term capital gains on a sale of shares of an Indian company purchased in foreign currency.

— Income tax on long-term capital gains arising from the transfer of listed securities (from the stock market), which otherwise are taxable at 23.072 percent or 22.042 percent, is restricted to a concessionary rate of 11.54 percent rate for a domestic company. The concessionary rate must be applied to capital gains without applying the inflation adjustment.

— A concessionary rate of 10.82 percent applies on the transfer of capital assets being unlisted securities in the hands of non-residents (including foreign companies). The concessionary rate must be applied to capital gains without the benefit of exchange fluctuation and indexation.

If the transaction is subject to STT, long-term capital gains arising on transfers of equity shares are exempt from tax.

2.12. WHT applies at the applicable rates to any payment made to a non-resident seller for the purchase of any capital asset on account of any capital gains that accrue to the seller. Applicable tax treaty provisions also need to be evaluated in order to determine the withholding tax rates.

2.13. Carry forward of losses - Amalgamated companies have the privilege of setting off depreciation and carry forward of unabsorbed/accumulated losses against its accrued profits. The same is however not available to public companies where shareholders carrying 51% voting rights on the last date of the year in which set off is sought are different from shareholders carrying 51% voting rights on the last date of the year in which the given loss was incurred by the company. Carry forward of losses is applicable only for the sectors that are specifically provided under the IT Act or notified by authorities.

However, certain tax benefits/deductions that are available to an undertaking may be available to the acquirer when the undertaking as a whole is transferred as a going concern as a result of a slump-sale.

Tax losses consist of normal business losses and unabsorbed depreciation (where there is insufficient income to absorb the current-year depreciation). Both types of losses are eligible for carry forward and available for the purchaser. Business tax losses can be carried forward for a period of 8 years and offset against future profits. Unabsorbed depreciation can be carried forward indefinitely. However, one essential condition for setting off business losses is the shareholding

continuity test. Under this test, the beneficial ownership of shares carrying at least 51 percent of the voting power must be the same at the end of both the year during which the loss was incurred and the year during which the loss is proposed to be offset. This test only applies to business losses (not unabsorbed depreciation) and to unlisted companies (in which the public are not substantially interested).

2.14. Stamp Duty -The transfer of assets attracts stamp duty. Stamp duty implications differ from state to state. Rates generally range from 5 to 10 percent for immovable property and from 3 to 5 percent for movable property, usually based on the amount of consideration received for the transfer or the market value of the property transferred (whichever is higher). Depending on the nature of the assets transferred, appropriate structuring of the transfer mechanism may reduce the overall stamp duty cost.

2.15. Goodwill - Goodwill arises when the consideration paid is higher than the total fair value/cost of the assets acquired. This arises only in situations of a slump-sale. Under the tax law only depreciation/amortization of intangible assets, such as know-how, patents, copyrights, trademarks, licenses and franchises or any similar business or commercial rights, is permissible. Therefore, when the excess of consideration over the value of the assets arises because of these intangible assets, a depreciation allowance may be available. Recent judicial precedents have allowed depreciation on goodwill arising out of amalgamation by treating it as a depreciable asset

2.16. Dividends in India are subject to a dividend distribution tax (DDT) of 17.304 percent (as of October 2014, the effective DDT rate is 20.358 percent after applying grossing-up provisions). A parent company may be able to obtain credit for the DDT paid by its subsidiaries against its DDT liability on dividends declared.

2.17. Transfer pricing - After an acquisition, all intercompany transactions, including interest on loans, are subject to transfer pricing regulations.

2.18. If the foreign company after the outbound merger intends to continue the operations of erstwhile Indian Company (transferor), it would result in Permanent Establishment (PE) and profits attributable to PE is chargeable to tax in India.

2.19. As per section 9 of the Income Tax Act, 1961 income of a non-resident from business connection in India is deemed to accrue or arise in India and is chargeable to tax in India. Article 7 of DTAA provides for taxation of income of Permanent Establishment.

2.20. As per provisions of the section 44DAthe income by way of royalty or fees for technical services of a foreign company carries on business in India through PE in India and the right, property or contract in respect of which the royalties or fees for technical services are paid effectively connected with PE shall be computed under the head “Profits and Gains of Business and Profession”.

2.21. No deduction shall be allowed in respect of any expenditure or allowance which is not wholly and exclusively incurred for the business of such permanent establishment.

2.22. Once the provisions of section 44DA are applied no deduction shall be allowed in respect of amounts, otherwise than towards reimbursement of actual expenses, by PE to its head office or to any of its other offices.

2.23. Foreign Company shall keep and maintain books of account and other documents in accordance with the provisions in section 44AA and get accounts audited and report of such audit be furnished in form no.3CE along with return of income.

2.24. Place of Effective Management ("POEM") – The cross border mergers should also take into consideration the POEM rules in India. The test of residency for foreign companies previously required 100 percent of their control and management to be in India. These provisions were amended to align the India tax provisions with global standards. The amendment provides that a foreign company is treated as Indian resident if its place of effective management (POEM) is in India in the given year. The POEM has been defined in line with the definition provided in the commentary to the Organisation for Economic Co-operation and Development's (OECD) proposals on base erosion and profit shifting (BEPS). The POEM is the place where key management and commercial decisions that are necessary for conduct of business substantially are made.

2.25. *GAAR*- The General Anti Avoidance Rules ('GAAR') provisions will grant discretion to tax authorities to scrutinize arrangements and invalidate them as an 'impermissible avoidance agreement' ('IAA') where they lack commercial substance, resulting in denial of the tax benefit under the provisions of the Act or tax treaty. An IAA is an arrangement the main purpose of which is to obtain a tax benefit and which either, creates rights and obligations that are not ordinarily created between persons dealing at arm's length, or results in the misuse or abuse of tax provisions, or lacks commercial substance, or is not for a bona fide purpose.

GAAR's provisions would extend to all taxpayers irrespective of their residential or legal status (i.e. resident or non-resident, corporate entity or non-corporate entity). These provisions will apply only if tax benefit arising to all parties to the arrangement exceeds Rs 30 million in the relevant financial year.

2.26. Tax clearances -In the case of a pending proceeding against the transferor, the tax authorities have the power to claim any tax on account of completion of the proceeding from the transferee where the transfer is made for inadequate consideration. Income tax law provides mechanism for obtaining a tax clearance certificate for transfer of assets/ business subject to certain conditions.

In order to mitigate some of these tax risks, parties can obtain advance rulings or nil withholding tax certificates from tax authorities, negotiate and incorporate tax specific indemnities in their deal documents, and take the necessary tax insurance to cover potential tax risks.

3. Competition Act, 2002

3.1. As per section 5 of Competition Act, the Indian Company need to seek approval from Competition Commission for such M&A activity. The requirement of Section 5 are provided herein below for ready reference:

		Assets		Turnover
Enterprise Level	India	> INR 2000 Crore	OR	>INR 6000 Crore
	Worldwide with India Leg	>USD 1 Bn with atleast >INR 1000 Crore in India		>USD 3 Bn with atleast >INR 3000 Crore in India
OR				
Group Level	India	> INR 8000 Crore	OR	>INR 24000 Crore
	Worldwide with India Leg	>USD 4 Bn with atleast >INR 1000 Crore in India		>USD 12 Bn with atleast >INR 3000 Crore in India
De Minimis Exemption@				
Target Enterprise	In India	= INR 350 Crore	OR	= INR 1000 Crore

@ Acquisitions where enterprise whose control, shares, voting rights or assets are being acquired have assets or turnover as per aforesaid threshold limits, are exempt from Section 5 of Competition Act, 2002 for a period of 5 years from 27-03-2017

4. SEBI Regulations

4.1. In case of Inbound Merger, the Indian Company, if listed on any Stock Exchange, inter alia, it has to comply with Regulation 11 read with Regulation 37& 94 and Schedule XI of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, wherein the scheme ,before filed with NCLT or any court, shall be filed with each stock exchange, where the shares of the company are listed as well as SEBI and shall obtain NOC from each stock exchange. However such NOC is not required in case of merger of WOS into the holding company. However it is not clear whether this exemption is eligible for cross border M&A as well.

4.2. In case of outbound merger, in addition to the above, the Foreign Company may have to issue the IDRs for Indian shareholders and inter alia, has to comply with relevant scheme.

5. FEMA

5.1. Reserve Bank of India ("RBI") on 26th April, 2017 has published the Draft Guidelines related to Cross Border Mergers and invited the public comments. Based on the draft guidelines the following points are discussed hereinafter

5.2. The regulations may be called as Foreign Exchange Management (Cross border Merger) Regulations, 2017

5.3. 'Foreign company' means any company or body corporate incorporated outside India whether having a place of business in India or not. As per the Explanation under clause 2(v) the foreign company should be incorporated in a jurisdiction specified in Annexure B to Companies (Compromises, Arrangements and Amalgamation) Rules, 2016

5.4. 'Resultant company' means an Indian company or a foreign company which is established or formed or is proposed to be established or formed on sanction of the Scheme of cross border merger

5.5. As per clause 3 of regulations, save as otherwise provided in these regulations or with the general or special permission of RBI, no person resident in India shall acquire or transfer any security or debt or asset outside India and no person resident outside India shall acquire or transfer any security or debt or asset in India on account of cross border mergers.

5.6. As per clause 4 of regulations, in case of Inbound Merger, the resultant company being the Indian Company, the shares proposed to be issued shall comply with FDI Regulations (Notification No. 20/2000, dated 3rd May, 2000). Also in case of outstanding foreign currency loan of transferor company are transferred to Indian Company, such oustanding loans are considered to be External Commercial Borrowings (ECBs) and shall comply with extant ECB regualtions. Also the Indian Company can hold any assets abroad, so long they are in compliance with applicable regulations under FEMA. If any assets are held not in compliance of the extant FEMA Regulations, such assets need to be disposed off within 180 days of sanction of the scheme and related sale proceeds shall be repatriated to India immediately through Banking Channels

5.7. As per clause 5 of regulations, in case of Outbound merger, the Indian Residents are permitted to acquire and hold the foreign security, in compliance with applicable FEMA Regulations. The Resultant Foreign Company shall liable to repay the outstanding borrowings as per the scheme sanctioned by NCLT under Companies Act. The Foreign Company can hold assets acquired due to the merger. Such assets can be disposed off in compliance with extant FEMA Regulations. In case of any assets are held not in compliance with extant FEMA Regulations, such assets need to be disposed off within 180 days of sanction of the scheme and related sale proceeds shall be repatriated ouside India immediately through Banking Channels

5.8. A declaration as to conformity of the Valuation as per Internationally Accepted Valuation Principles, is required to be submitted to the Reserve Bank of India.

5.9. All the transactions related to Cross Border Merger are required to be reported to RBI as per applicable FEMA Regualtions

5.10. Once the transaction has complied with aforesaid regulations, it is deemed that RBI has accorded its prior approval as required under Rule 25A of the Companies (Compromises, Arrangement and Amalgamations) Rules, 2016

5.11. In case the transaction has not complied with aforesaid regulations, separate application has to be made to RBI for seeking its prior approval as required under Companies Rules and only upon receipt of such prior approval, the scheme can be considered by NCLT

Since the above guidelines are given based on the draft regulations, the reader is required to verify the final regulations as may be notified by RBI, from time to time. The final regulations may vary from the draft regulations.

5.12. In case of Outbound Merger, the Indian business is considered to be seperate branch in India and the Foreign Company need to comply with the FEM (Establishment In India of a Branch Office or a Liaison Office or a Project Office or any Other Place Of Business) Regulations, 2016, (notification no. 22(R), dated 31-03-2016) and Chapter XXII of Companies Act, 2013

6. Share Valuation and Accounting Standards

6.1. Share Valuation

Valuation is a technique to assess the worth of the enterprise. Enterprises operate in a dynamic business environment and are subjected to possibilities such as the merger or takeover which leads to need for quantifying the value of the enterprise and the decision on the right price.

The subject of valuation has always been controversial in the accounting profession. No two accountants have ever agreed in the past or will ever agree in the future on the valuation of shares of a company, as inevitably they involve in the use of personal judgment on which professional men will necessarily differ.

The valuation exercise would now have economic overtones rather than legalistic determinants. The value of shares of a particular company will depend on various factors like history of earning, the value of its assets, nature of the business and further prospects of the company.

6.2. Compliance with Accounting Standards

Accounting norms for companies are governed by the Accounting Standards issued under the Companies Act. Normally, for amalgamations, demergers and restructurings, the Accounting Standards specify the accounting treatment to be adopted for the transaction.

The accounting treatments are broadly aligned with the provisions of the Accounting Standard covering accounting for amalgamations and acquisitions. The standard prescribes two methods of accounting: merger accounting and acquisition accounting. In merger accounting, all the assets and liabilities of the transferor are consolidated at their existing book values. Under acquisition accounting, the consideration is allocated among the assets and liabilities acquired (on a fair value basis). Therefore, acquisition accounting may give rise to goodwill, which is normally amortized over 5 years.

Under the Companies Act, 2013, the Tribunal will not sanction a scheme of capital reduction, merger, acquisition or other arrangement unless the accounting treatment prescribed in the scheme is in compliance with notified AS and a certificate to that affect by the company's auditor has been filed with the Tribunal.

As the scheme tends to have overriding effect with respect to accounting treatment (specifically mentioned in AS-14 with respect to treatment of reserves), the onus has been shifted on the auditor to confirm that accounting standards have been followed.

7. Service Tax:

The implications under service tax law for the transactions between such establishments depends upon whether establishment in India is receiving or providing services to the establishments outside India and hence analysed separately.

Treatment of Establishments of same legal entity in two different territories under Finance Act, 1994:

7.1. Even though as per Companies Act, 2013, both the establishments form part of a single legal entity, under the Finance Act, 1994, they are deemed to be different persons.

7.2. Explanation 3 to the Section 65B (44) of Finance Act, 1994 states that for the purposes of Finance Act, 1994 ***'an establishment of a person in the taxable territory and any of his other establishment in a non-taxable territory shall be treated as establishments of distinct persons'.***

7.3. Vide Explanation 4 to Section 65B (44) of Finance Act, 1994 it is stated that ***'A person carrying on business through a branch or agency or representational office in any territory shall be treated as having an establishment in that territory'.***

7.4. Hence, on a combined reading of the above, it is very clear that the branch or agency or representational office in any territory shall be treated as having an establishment in such territory and establishment in taxable territory and his other establishment in a non-taxable territory shall be treated as distinct establishments. Let us understand the implications by treating them as distinct establishments in two scenarios, namely, where services are procured from establishment in non-taxable territory (NTT) by an establishment in taxable territory (TT) and vice-versa.

7.5. The phrases taxable territory and non-taxable territory has been defined vide Section 65B (52) and (35) of Finance Act, 1994 respectively. As per Section 65B(52), 'taxable territory' means the territory to which the provisions of this Chapter apply'. As per Section 64(1) of Finance Act, 1994, the chapter extends to whole of India except State of Jammu & Kashmir. Hence, the taxable territory would mean whole India except Jammu & Kashmir.

7.6. As per Section 65B(35), 'non-taxable territory' would mean the territory which is outside the taxable territory. Hence, any territory outside India except Jammu & Kashmir shall be treated as non-taxable territory for the purposes of Finance Act.

Services procured from Establishment in NTT by an Establishment in TT:

7.7. The entire intention to treat the establishment in NTT and establishment in TT of same legal entity as distinct establishments is to levy service tax on services procured from establishment in NTT by establishment in TT.

7.8. That is to say if a service which is procured from establishment in NTT by an establishment in TT is determined as consumed in TT in terms of Section 66C read with Place of Provision of Service Rules, 2012, then the establishment in TT has to pay service tax on such services in light of Section 68(2) of Finance Act, 1994 read with Rule 2(1)(d) (G) read with Entry 10 of Notification No 30/2012-ST dated 20.06.2012.

7.9. Hence, post amalgamation, if the establishment in TT procures any services from establishment in NTT, then the same shall be subjected to service tax in the hands of the establishment in TT.

Services provided to Establishment in NTT by an Establishment in TT:

7.10. On reading the above, one might conclude that since establishment in NTT and establishment in TT are difference, the services provided by establishment in TT to an establishment in NTT would qualify as export of services.

7.11. But the answer would be in negative. In order to qualify as an export of service, the service provider that is an establishment in TT shall satisfy all the conditions as mentioned in Rule 6A of Service Tax Rules, 1994 which are reproduced hereunder:

Export of services.- (1) The provision of any service provided or agreed to be provided shall be treated as export of service when,-

(a) the provider of service is located in the taxable territory,
(b) the recipient of service is located outside India,
(c) the service is not a service specified in the section 66D of the Act,
(d) the place of provision of the service is outside India,
(e) the payment for such service has been received by the provider of service in convertible foreign exchange, and
(f) ***the provider of service and recipient of service are not merely establishments of a distinct person in accordance with item (b) of Explanation 3 of clause (44) of section 65B of the Act***

7.12. From the above, it is clearly understood that condition (f) as mentioned in Rule 6A of Service Tax Rules, 1994 fails in the given circumstance, since the establishment in TT and establishment in NTT are merely establishments of a same legal entity.

7.13. Hence, services provided to establishment in NTT by an establishment in TT cannot be qualified as export of services. However, if the services provided by establishment in TT to an establishment in NTT are deemed to be consumed in NTT in light of Section 66C read with Place of Provision of Service Rules, 2012, then there cannot be any tax on such transaction since the charging section vide Section 66B covers only services consumed in TT.

8. Goods & Service Tax:

8.1. The transactions between the establishments in NTT and establishments in TT shall have the same impact even under Goods & Services Tax laws. The transactions gets more complicated when the supplies are received from establishment in TT from an establishment in NTT even there is no consideration involved as per Schedule I of the Central Goods & Services Tax Act, 2017. The valuation rules might propose a consideration and establishment in TT has to pay GST on such consideration in the capacity of recipient of supply.

8.2. Further, the services provided by an establishment in TT to an establishment in NTT might be subjected to integrated tax even the place of supply of such services is outside India, which is explained hereunder.

8.3. As per Section 7(5)(a) of Integrated Goods & Services Tax Act (IGST), 2017, if the place of supply is outside India and location of supplier is India, then such transaction is covered as Inter-State supply and according to Section 5 of IGST Act, such transaction is subjected to IGST. Hence, establishments in TT shall be subjected to IGST when the supplies are made to establishments in NTT.

9. Conclusion:

From the above, it can be seen that the provisions of Section 234 of the Companies Act, 2013, opens a two way door, permitting both Inbound and Outbound Mergers, which will help both the Indian and Foreign Companies to expand their scope of operations, resulting in far better growth, consolidation to achieve their under lying objectives. However the **M&A** need to be evaluated from the other aspects, some of which are listed above. In addition to the above the Indian Stamp Laws need to be amended suitably to accommodate the proposed Cross Border Mergers.

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TECHNICAL SESSIONS:

S.No.	Event	Date	Speaker	Venue
1	Concept of Substiuted Income under Income Tax	09/06/2017	CA Ramprasad T	SBS - Hyd
2	Insolvency & Bankruptcy Code - Perspectives from Companies Act & Bankers	16/06/2017	CS Phanindra DVK & CA Rajesh D	SBS - Hyd
3	Anti Money Laundering - An Overview	23/06/2017	CA Murali Krishna G	SBS - Hyd
4	Advance Authorisation, Duty Free Import Authorisation	30/06/2017	CA Manindar K	SBS - Hyd
5	Internal Audit - Quality Reporting	07/07/2017	CA Bhyrav MHS	SBS - Hyd

Note:

The timings for the above events shall be from 16:30 hrs to 18:30 hrs. We request the recipients of "SBS Wiki" who are interested to attend the above events to send confirmation of your participation two days in advance to make appropriate arrangements. The relevant material will be hosted at slideshare shortly after the session. The link to download is *http://www.slideshare.net/Team-SBS*

Practical Issues related to Taxation in MSME - CA Suresh Babu

Regulations pertaining to IFSC - CA Murali Krishna G

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