India Tax Konnect

January 2017

Contents

Tax article	2
International tax	4
Corporate tax	6
Transfer pricing	8
Indirect tax	9
Personal tax	12

Editorial

The Government of India has signed the third protocol with Singapore to amend the India-Singapore tax treaty. The protocol is in line with India's treaty policy to prevent double non-taxation, curb revenue loss and check the menace of black money through Automatic Exchange of Information as reflected in India's recently revised tax treaties with Mauritius and Cyprus and the joint declaration signed with Switzerland. The protocol provided for phasing out of capital gains tax exemption in line with the amended India-Mauritius tax treaty, especially with respect to grandfathering, tax rates and fulfilment of Limitation of Benefits (LOB) conditions under respective tax treaties. Further it has also been provided that the tax treaty shall not prevent a contracting state from applying its domestic law and measures concerning the prevention of tax avoidance or tax evasion.

Recently, the Government introduced the scheme 'Taxation and Investment Regime for Pradhan Mantri Garib Kalyan Yojana, 2016' (PMGKY). To operationalise the scheme, the Central Board of Direct Taxes (CBDT) and Department of Economic Affairs have issued notifications and press release providing the rules with respect to PMGKY, period for declaration under the scheme and procedure with respect to the 'Pradhan Mantri Garib Kalyan Deposit Scheme, 2016 (PMGKD).

The Finance Act, 2016 introduced the Direct Tax Dispute Resolution Scheme, 2016 to provide an opportunity to taxpayers who are under litigation to come forward and settle the dispute in accordance with the provisions of the Scheme. The provisions of the Scheme have been clarified vide Circular No. 33 of 2016. Subsequently, further queries have been received from the field authorities and other stakeholders. Recently, the CBDT has issued FAQs on the Scheme. CBDT, inter alia, has clarified that the taxpayer would be eligible to opt for the Scheme in case where an addition has been made before a retrospective amendment has been introduced to Section 9 of the Income-tax Act, 1961 (the Act) especially with respect to royalty and Fees for Technical Services (FTS), if the dispute is pending as on 29 February 2016.

The CBDT has issued a press release stating that in order to achieve the government's mission of moving towards a cashless economy and to incentivise small traders/businesses to proactively accept payments by digital means, it has been decided to reduce the existing rate of deemed profit of 8 per cent under Section 44AD of the Act to 6 per cent in respect of the amount of total turnover or gross receipts received through banking channel/digital means for the Financial Year (FY) 2016-17. However, the existing rate of deemed profit of 8 per cent referred to in Section 44AD of the Act, shall continue to apply in respect of total turnover or gross receipts received in cash. Legislative amendment in this regard shall be carried out through the Finance Bill, 2017.

The Delhi High Court in the case of Formula One World Championship Limited held that the Formula One championship circuit constitutes a fixed place of business under the India-U.K tax treaty. As long as the presence of the taxpayer is in a physically-defined geographical area, permanence in such fixed place could be relative in the context of the nature of the business. The taxpayer carried on business in India for the duration of the race, two weeks before it and a week after the race. It was also held that payments made to the taxpayer under a specific agreement are not royalty either under the Act or under the India-U.K tax treaty, as they are not for the use of trademarks or intellectual property rights, but rather for the granting of the privilege of staging, hosting and promoting the event at the promoter's racing circuit. The taxpayer carried out business in India through a Permanent Establishment [PE] (the circuit). Therefore, the payments made to the taxpayer are business income.

We at KPMG in India would like to keep you informed of the developments on the tax and regulatory front and its implications on the way you do business in India. We would be delighted to receive your suggestions on ways to make this Konnect more relevant.

© 2017 KPMG, an Indian Registered Partnership and a member firm of the KPMG network of independent member firms affiliated with KPMG International Cooperative ("KPMG International"), a Swiss entity. All rights reserved.

Tax article

Capital gains on a transfer without consideration in case of internal reorganisation

Internal reorganisation of a company may result in reorganising the legal, operational or other structures of the entity to reposition the business, improve efficiency, etc. Internal reorganisation may involve transfer of shares of an Indian company by one group entity to another, for monetary consideration in the form of a sale or without monetary consideration in the form of a gift. The transfer of shares of the Indian company are liable to capital gains tax since the situs of such shares is in India. In case of non-resident investor, the income arising from such transfer is deemed to arise in India under the provisions of the Act.

Recently, the Mumbai Tribunal in the case of Aditya Birla Telecom Limited[1] (the taxpayer) dealt with capital gain taxability in the case of a transfer of an undertaking under the scheme of demerger without consideration.

The taxpayer is a wholly owned subsidiary of Idea Cellular Limited (ICL). During the relevant year, the taxpayer filed a Scheme of Arrangement under Section 391 to 394 of the Companies Act, 1956 with the High Courts of Gujarat and Mumbai for demerging its telecom undertaking to ICL. The scheme of demerger was approved by the High Courts of Gujarat and Bombay.

Under the said Scheme, the taxpayer had transferred all the assets and liabilities of the telecom undertaking to ICL without any consideration. In terms of the scheme, the taxpayer also revalued its investment in Indus, an asset distinct from the demerged undertaking, and the difference arising on revaluation thereof was credited to Business Restructuring Reserve (the reserve). The key aspects of the decision are discussed as follows:

Business Restructuring Reserve is not a consideration

The Tribunal observed that the creation of the reserve in the books of accounts was a result of revaluation of the existing investments of the taxpayer in Indus, an asset separate and completely independent from the demerged telecom undertaking. The reserve created in the books of the taxpayer was merely an accounting entry passed in the books of the taxpayer on account of the revaluation.

In the case of any consideration being received or paid, there have to be at least two parties. In the instant case, the reserve was created on account of a unilateral action by the taxpayer, therefore, the same cannot be treated as a consideration received from ICL.

No consideration - capital gain computation mechanism fails

The Tribunal followed the principle laid down by the Supreme Court in the case of B C Srinivasa Setty[2] and various other Courts/Tribunal[3], where it was held that the charging section and the computation provisions together constitute an integrated code. Where one of the ingredients for computation of capital gains is absent, no capital gains could be levied, due to failure of the computation mechanism.

The capital gain consideration/receipts should accrue as a result of the transfer, for a transfer to be liable to capital gains tax. The consideration should have a nexus with the transfer, and it should not arise out of independent transactions wherefrom independent rights are emanating. In the absence of any sale consideration for the transfer, the capital gain computation mechanism fails and thus no capital gain tax can be levied on such transfer.

Capital gains cannot be computed on a notional price

The full value of consideration has to be based on the price that has been commercially agreed between the parties and cannot be imputed on a notional basis. Various courts[4] have held that in the case of transfer of a capital asset, only the real or actual gain that accrues/ arises from the transfer of the assets can be taxed in the hands of the seller under the Act. In the absence of any sale consideration (and resultant profit from such transfer), no notional gain can be imputed in the hands of the seller to tax such transfer.

The transfer is not a slump sale

The Assessing Officer (AO) held that demerger was a slump sale under Section 50B, whereas, the taxpayer contended that the transfer of property consequent to the scheme of arrangement approved by the High Court cannot be considered as sale[5]. Sale presupposes payment of 'lumpsum monetary consideration', and a transfer without monetary consideration is not a sale[6].

The Tribunal held that the scheme of arrangement and the financial statements, demonstrated that no consideration was received by the taxpayer or any person on account of the transfer of the telecom undertaking. In the absence of any consideration in the present case, the transfer could not be considered as a 'slump sale' under Section 50B and hence, not liable to tax.

Section 50C and Section 50D - not applicable

Sections 50C[7] and 50D[8] provide for imputation of consideration, but are not applicable to the present case and hence, no consideration can be imputed. In the taxpayer's case, there has been a transfer of the business undertaking and not of any land/building owned by the taxpayer; hence, provisions of Section 50C cannot be

---

1. Aditya Birla Telecom Limited v. DCIT (ITA No.341/Mum/2014) - Taxsutra.com
2. CIT v. B.C. Srinivasa Setty [1981] 5 Taxman 1 (SC)
3. PNB Finance Ltd. v. CIT [2008] 175 Taxman 242 (SC), Amiantit International Holding Ltd. [2010] 189 Taxman 149 (AAR), Dana Corporation [2010] 186 Taxman 187 (AAR), Goodyear Tire and Rubber Co [2010] 334 ITR 69 (AAR), Avaya Global Connect Ltd v. ACIT [2009] 122 TTJ 300 (Mum)
4. Baijnath Chaturbhuj v. CIT [1957] 31 ITR 643 (Bom), Goodyear Tire and Rubber Co [2010] 334 ITR 69 (AAR), Poona Electricity Co. Ltd. v. CIT [1965] 57 ITR 521 (SC), CIT v. Shoorji Vallabhdas & Co. [1962] 46 ITR 144 (SC), Amiantit International Holding Ltd. [2010] 189 Taxman 149 (AAR), Dana Corporation [2010] 186 Taxman 187 (AAR), K.P. Varghese v. ITO [1981] 7 Taxman 13 (SC), CIT v. Shivakami Co. (P.) Ltd. [1986] 25 Taxman 80 (SC), CIT v. Mohanbhai Pamabhai [1973] 91 ITR 393 (Guj)
5. Standard S. Varde v. State of Maharashtra [2001] 247 ITR 609 (Bom), Avaya Global Connect Ltd v. ACIT [2009] 122 TTJ 300 (Mum)
6. Motor & General Stores Private Limited (66 ITR 692) (SC), Bharat Bijlee Ltd., (54 SOT 571), Avaya Global Connect Ltd v. ACIT [2009] 122 TTJ 300 (Mum) and ITO v. M/s. Zinger Investments (P) Ltd., (ITA No.275/ Hyd/2013)
7. Section 50C of the Act provides that where consideration received/ accruing as a result of transfer of capital asset, being land or building or both, is less than the value adopted for stamp duty purposes, the stamp duty value shall be deemed to be the sale consideration for the purposes of Section 48 of the Act.
8. Section 50D of the Act provides for assumption of the fair value of an asset as its sale consideration in cases where sale consideration accruing/ received as a result of transfer is indeterminate or not ascertainable.

© 2017 KPMG, an Indian Registered Partnership and a member firm of the KPMG network of independent member firms affiliated with KPMG International Cooperative ("KPMG International"), a Swiss entity. All rights reserved.

applied. The provisions of Section 50D are effective from Assessment Year (AY) 2013-2014, and therefore, the same cannot be applied to the AY under consideration i.e. AY 2010-11.

Wherever considered appropriate, the legislature has introduced specific provisions for the assumption of sale consideration in specified cases. It is therefore unjust to impute consideration in cases, which do not fall within the ambit of such specified provisions.

Exemption of capital gains

The voluntary transfer of property by any person without any consideration is regarded as a gift. There is no requirement that gift should be made only between two natural persons. In fact, the term living persons under Section 5 of the Transfer of Property Act includes a company. Section 56(2) (viia) also recognises the concept of gift by one company to another.

The Memorandum of Association of the taxpayer permits it to grant gift. The Supreme Court decision in the case of Laksmanaswami Mudaliar[9] and other decisions[10] held that a company could do such acts, which are permitted under the Memorandum of Association. Thus, the demerger without any consideration is a valid lawful business arrangement, which is a gift for the purposes of Section 47(iii), and hence, not a taxable transfer for the purposes of Section 45.

The transfer of the telecom undertaking being a transfer by a wholly owned subsidiary company to the Indian holding company is not a transfer for the purposes of Section 45, by virtue of specific exemption prescribed under Section 47(v). Further the demerger of telecom undertaking is compliant with conditions (iv) and (v) of Section 2(19AA), and hence, transfer of the telecom undertaking is not a transfer for the purposes of Section 45, by virtue of specific exemption prescribed under Section 47(vib) of the Act.

Capital gain should accrue for taxability

In the case of Vania Silk Mills Pvt. Ltd.[11], the Gujarat High Court held that in order to attract capital gains, the sine qua non is that the receipt or accrual must originate in a transfer within the meaning of Section 45 read with Section 2(47).

As per Section 45, consideration should have a nexus with the transfer. In the instant case, there was no nexus between the transfer of telecom undertaking by the taxpayer and revaluation of the investment in Indus except that both the transactions were independent transactions arising from the same scheme of arrangement. As no consideration has accrued to the taxpayer on account of the said demerger, no profit or gain has accrued to or received by the taxpayer.

Summing up

Taxability of capital gains in the case of internal reorganisation without consideration has been a matter of debate before the Tribunal/Courts.

This is a welcome decision by the Mumbai Tribunal with respect to an internal reorganisation without consideration. It has been held that the reorganisation is a genuine transaction and not liable to attract capital gain tax. The Tribunal has considered many taxation aspects from a mergers and acquisition perspective. Since no consideration accrued to or was received by the taxpayer for the demerger of its telecom undertaking, no consideration can be imputed in the hands of the taxpayer. Consequently, no capital gains tax can be levied on the taxpayer.

The taxpayer had contended that provisions of Section 50D are not applicable and it can claim exemption from capital gains under Section 47. However, the Tribunal merely observed that the provisions of Section 50D are not applicable to the years under consideration. Therefore, such arguments still need to be tested before the Tribunal/Courts.

Whether any consideration can be further attributed to a transaction or whether the case falls under the purview of specific provisions whereby the law permits imputation of value for the purposes of computing gains, is a matter of fact. Also, the consideration mentioned along with other terms of the arrangement, as approved by the High Courts, assumes significance in determining the consideration for computing capital gains in such cases of organisational restructuring.

In the case of transactions without consideration, the tax department may ask the taxpayer to justify the commercial rationale of such transactions, especially after the provisions of the General Anti-Avoidance Rules will come into effect from 1 April 2017. Therefore, it is important that the taxpayer should have appropriate rationale behind such transactions and it is also backed by adequate documentation.

---

9. A. Lakshmana swami Mudaliar v. Life Insurance Corporation of India [1963] 33 Comp. Cas. 420 (SC)
10. DCIT v. KDA Enterprises (P.) Ltd. [2015] 57 taxmann.com 284 (Mum), D.P. World (P.) Ltd. v. Dy. CIT [2012] 26 taxmann.com 163 (Mum), Redington (India) Ltd. v. Jt. CIT [2014] 49 taxmann.com 146 (Chennai)
11. CIT v. Vania Silk Mills (P.) Ltd. [1977] 107 ITR 300 (Guj)

© 2017 KPMG, an Indian Registered Partnership and a member firm of the KPMG network of independent member firms affiliated with KPMG International Cooperative ("KPMG International"), a Swiss entity. All rights reserved.

International tax

Decisions

Benefit of restricted scope of FTS Article provided under India-Portuguese tax treaty cannot apply automatically to India-Switzerland tax treaty

The taxpayer is engaged in the business of manufacturing and marketing of pharmaceutical products. During the year under consideration, the taxpayer remitted payments to overseas payees located in Switzerland, Canada and U.S.A without deducting any tax at source. The AO passed withholding of tax order under Section 201 and interest under Section 201(1A) of the Act holding that the remittances were in the nature of royalty/technical services covered by deeming fiction under Section 9(1)(vi) and 9(1)(vii) of the Act. The Commissioner of Income-tax (Appeals) [CIT(A)] held that payment made to Canadian and U.S residents were not taxable in India. However, payment made to Swiss resident is liable to tax in India.

The taxpayer contended that though there is no 'make available' clause under FTS Article in the India-Switzerland tax treaty, as per the protocol to the tax treaty it is entitled to the benefit of 'make available' clause provided under the India-Portuguese tax treaty by virtue of Most Favoured Nation (MFN) clause. The taxpayer relied on the decision of Sandvik AB[12].

Tribunal's ruling

Payment to Swiss entity

There is no dispute about the fact that in case there exists a tax treaty in respect of any country, provisions of the Act shall apply to the extent they are more beneficial to such taxpayer and not otherwise. The Tribunal observed that there is no 'make available' clause present in the FTS Article under the tax treaty or Protocol. The said protocol only postulates that India and Switzerland shall enter into negotiation to this effect if former state enters into a tax treaty with a member of OECD state either reducing rate of tax or restricting the scope of specified categories of income.

The decision relied upon by the taxpayer in the case of Sandvik AB is distinguishable to the facts of the present case since the said tax treaty contains a Protocol to the effect that in case India and an OECD member State enter into an agreement limiting taxation in case of various categories of income or restricted the rate and scope on the said items of income, similar rate or scope as provided for in that tax treaty shall apply under India-Sweden tax treaty. Accordingly, the taxpayer's argument is rejected.

Payment to Canadian and the U.S. entity

India have entered into tax treaties in Canada and U.S.A. which contains 'make available' clause with respect to the impugned services. The tax department failed to provide any evidence that taxpayer's payees in question based in Canada or U.S.A. have 'made available' their expertise and technical knowhow thereby enabling it to use the same independently without their assistance. These payees have merely rendered consultancy services without imparting any knowledge. Therefore, payments made to Canada and the U.S. parties are not taxable in India.

Accordingly, the Tribunal upheld the CIT(A)'s order.

ITO v. Torrent Pharmaceuticals Ltd. (ITA No. 624/Ahd/2012C) – Taxsutra.com

Formula One championship circuit constitutes a fixed place of business/PE in India under the India-U.K. tax treaty

The taxpayer, a U.K. tax resident company; the Federation Internationale de l' automobile (FIA), an international motor sports events regulating association; and Formula One Asset Management Limited (FOAM) entered into certain agreements. Based on these agreements, FOAM licensed all commercial rights in the FIA Formula One World Championship (Championship) to the taxpayer for the 100-year term effective 1 January 2011. The taxpayer entered into a Race Promotion Contract (RPC) dated 13 September 2011, by which it granted to Jaypee Sports (Jaypee) the right to host, stage and promote the Formula One Grand Prix of India event for a consideration of USD40 million. An artworks licence agreement (ALA) contemplated in RPC was also entered into between the taxpayer and Jaypee, permitting the use of certain marks and intellectual property (IP) belonging to the taxpayer for a consideration of USD1. The RPC of 2011 was preceded by another RPC of 25 October 2007; signed by the taxpayer and Jaypee.

All the participating teams known as 'constructors' enter into a contract, known as the 'concorde agreement' with the taxpayer and the FIA. The concorde agreement assured the participating teams that the FIA would have the exclusive right in the F1 championship and would be entitled to grant to the Commercial Rights Holder the exclusive right to exploit the commercial rights in the F1 championship. In this agreement, they bind themselves to an unequivocal negative covenant with the taxpayer that they would not participate in any other similar motor racing

12. Sandvik AB v. DDIT [2015] 167 TTJ 217 (Pune)

© 2017 KPMG, an Indian Registered Partnership and a member firm of the KPMG network of independent member firms affiliated with KPMG International Cooperative ("KPMG International"), a Swiss entity. All rights reserved.

event. This is, in effect, a closed circuit event since no team other than those bound by contract with the taxpayer is permitted participation.

Every F1 racing event is hosted, promoted and staged by a promoter with whom the taxpayer as the right holder, enters into a contract and whose event is nominated by the CRH (i.e. Contract Right Holder, which is in effect, the taxpayer), to the FIA for inclusion in the official F1 racing calendar. The FOWC had the right to draw the FIA F1 Championship for any season to be approved by FIA.

The taxpayer and Jaypee both approached the Authority for Advance Ruling (AAR). The AAR held that the taxpayer had no fixed place of business in India; it is not doing any business activity in India and has not authorised any entity to conclude contracts on their behalf, and therefore has no PE in India in terms of Article 5 of the tax treaty. Further, it was held that the amounts paid were royalties. The taxpayer, Jaypee and the tax department then filed a writ petition before the High Court under Article 226 of the Constitution.

The Delhi High Court held that as long as the presence of the taxpayer is in a physically-defined geographical area, permanence in such fixed place could be relative in the context of the nature of the business. The taxpayer carried on business in India for the duration of the race, two weeks before it and a week after the race. Consequently, the Formula One championship circuit (the circuit) constitutes a fixed place of business under Article 5(1) of the India-U.K. tax treaty (the tax treaty).

Payments made to the taxpayer under a specific agreement are not royalty either under the Act or under the tax treaty, as they are not for the use of trademarks or intellectual property (IP) rights, but rather for granting of the privilege of staging, hosting and promoting the event at the promoter's racing circuit. The taxpayer carried out business in India through a PE (the circuit); therefore, the payments made to the taxpayer are business income.

Formula One World Championship Limited v. CIT [W.P.(C) 10307/2016, C.M. APPL.40563/2016 & 40564/2016]

© 2017 KPMG, an Indian Registered Partnership and a member firm of the KPMG network of independent member firms affiliated with KPMG International Cooperative ("KPMG International"), a Swiss entity. All rights reserved.

Corporate tax

Decisions

Revenue not debarred from making Section 14A disallowance absent express recording of dissatisfaction

The taxpayer had reported a tax exempt income to the tune of INR105.24 crore during AY 2009-10. The taxpayer further offered disallowance of INR25 lakhs as expenses attributable to that exempt income. The AO after carrying out an elaborate analysis of the provisions as well as Rule 8D concluded that INR3.87 crore had to be disallowed. On further appeal the CIT(A) held that by independent reasoning and analysis of Section 14A and Rule 8D the preliminary stage of recording the satisfaction with regard to amount offered by the taxpayer as disallowance i.e. expenses attributable to earning of exempt income was not carried out by AO and thus he did not have jurisdiction to enter into next stage and calculate the disallowance in terms of Rule 8D. On further appeal, the Tribunal held that the opinion expressed by AO was sufficient and justified the disallowance ultimately made.

The Delhi High Court held that even though the language of Section 14A presupposes that the AO has to adduce some reasons if he is not satisfied with the amount offered by way of disallowance by the taxpayer, Section 14A(2) read Rule 8D(i) leave the AO equally with no choice in the matter inasmuch as the statute in both these provisions mandates that the particular methodology enacted should be followed. The High Court held that the AO is under a mandate to apply the formulae under Rule 8D because of Section 14A(2) of the Act. Therefore, if the AO is confronted with a figure which, prima facie, is not in accord with what should approximately be the figure on a fair working out of the provisions, he is bound to reject it. In such circumstances, the AO ordinarily would express his opinion by rejecting the disallowance offered and then proceed to work out the methodology enacted.

In this case, elaborate analysis was carried out by the AO and three important steps as indicated by him in the order show that all elements were present in his mind and that he did not expressly record his dissatisfaction. It would not per se justify this Court in concluding that the AO was not satisfied or did not record cogent reasons for his dissatisfaction. To insist that the AO should pay such lip service regardless of the substantial compliance with the provisions would, in fact, destroy the mandate of Section 14A. Having regard to these facts, this Court is satisfied that the disallowance which is otherwise in accord with Rule 8D was justified.

Indiabulls Financial Services Ltd v. DCIT (ITA 470/2016) (Delhi High Court)

Subvention receipt from the parent company to recoup losses of the subsidiary is not taxable as revenue receipt

The taxpayer was engaged in the business of manufacturing digital electronic switching systems, computer software and also software services. The taxpayer was a potentially sick company, and that its capacity to borrow had reduced substantially leading to shortage of working capital. During the AYs 1999-2000 and 2001-02, the taxpayer received subvention amount from its parent company. The taxpayer claimed that the subvention payment received was to make good the loss incurred by it, and it was capital receipt in nature and, hence, could not be treated as income or revenue receipt. The AO treated such subvention as a revenue receipt. However, CIT(A) and Income-tax Appellate Tribunal (the Tribunal) held it as capital receipt.

The Karnataka High Court held that subvention received from the parent company to recoup the losses of the subsidiary is taxable as revenue receipt, since the subvention was extended to run the subsidiary's business more profitably. Further, the purpose of the subvention was to meet the working capital needs/recurring expenditure and hence the payments were on revenue account. The High Court has observed that the purpose of the subsidy/subvention determines the character of the payment (i.e. revenue or capital). Further, the High Court also observed that the point of time at which the subsidy was paid, the source, or the form of subsidy, is not relevant.

Supreme Court ruling

The Supreme Court in the case of Ponni Sugars & Chemicals Ltd.[13] and Sahney Steel and Press Works Ltd.[14] observed that unless the grant-in-aid received by the taxpayer is utilised for acquisition of an asset, the same must be understood to be in the nature of a revenue receipt. In these cases the subsidies received were in the nature of grant-in-aid from public funds and not by way of voluntary contribution by the parent company as in the present cases.

The voluntary payments made by the parent company to its loss-making Indian company can also be understood to be payments made in order to protect the capital investment of the taxpayer. Therefore, there was no hesitation to hold that the payments made to the taxpayer by the parent company for AYs in question cannot be held to be revenue receipts. The Supreme Court referred the favourable view adopted by the Delhi High Court in the case of Handicrafts and Handlooms Export Corporation of India Ltd[15]. The Delhi High Court in that case held that receipt of subvention from parent in order to enable the subsidiary company to recoup losses and meet its liabilities is akin to equity support and is not chargeable capital receipt. The Supreme Court respectfully agreed with the view adopted by the Delhi High Court in that case.

Accordingly, the Supreme Court set aside the order of the High Court and held the decision in favour of the taxpayer.

Siemens Public Communication Networks Ltd. v. CIT (SLP No. 6946/2014) – Taxsutra.com

13. CIT v. Ponni Sugars & Chemicals Ltd. [2008] 306 ITR 392 (SC)
14. Sahney Steel and press Works Ltd. v. CIT [1997] 228 ITR 253 (SC)
15. CIT v. Handicraft and Handlooms Export Corpn of India Ltd [2014] 360 ITR 130 (Del)

© 2017 KPMG, an Indian Registered Partnership and a member firm of the KPMG network of independent member firms affiliated with KPMG International Cooperative ("KPMG International"), a Swiss entity. All rights reserved.

Mumbai Tribunal rejects taxpayer's 'transaction genuineness' contention and disallowed expenditure under Section 40A(3) of the Act

The taxpayer was inter alia engaged in the business of supplier of ship stores to ocean-going ships calling at different Indian ports. The respective supplies were to be made at various ports of calls, wherein though at certain ports the taxpayer had its own offices, while for the remaining ports they had to rely on local agents, who as required by the vessels at their port of call would locally procure the items and supply the same on board.

Since the ships usually halt for a period ranging from a few hours to a maximum of two days, therefore the supplies had to be procured and supplied on board the ship prior to its sailing, failing which the taxpayer would lose its clients. During the year under consideration, certain supplies of stores were required at Vishakhapatnam port where the vessel of the customer had docked, however as the taxpayer did not have an office at the said place, it had to rely on the local supplies. Keeping in view the short period within which the supplies were to be made and the taxpayer not being known personally in the said city, their cheque was not accepted by the local suppliers, coupled with the fact that during the year under consideration the bank of the taxpayer was not having RTGS/NEFT facility. Therefore in light of the pressing business exigency and being left with no other alternative, the payments were made to the suppliers upfront in cash.

The AO had made disallowance of expenditure under Section 40A(3) of the Act.

The Tribunal held that Section 40A(3) of the Act is an overriding provision over other provisions related to the computation of income under the head 'Profits and gains of business or profession' and being mandatory in nature, calls for a strict compliance with the only exceptions under Rule 6DD.

The taxpayer had contended that when the genuineness of the purchase transactions, identity of the parties and the unavoidable circumstances compelling making of cash payments was demonstrated to the satisfaction of the AO, then no disallowance under Section 40A(3) was warranted. The Tribunal believed that such a proposition could be appreciated under the pre-amended provisions of Section 40A(3) read with Rule 6DD up to AY 1995-96. Rule 6DD(J) which laid down an exception to attract Section 40(A)(3) disallowance in case of genuine bonafide cases was scrapped with effect from 1 April 1996. The Tribunal held that pursuant to omission of the Rule 6DD(J) with effect from 1 April 1996 from the statute, and absence of any such pari materia rule or exception being thereafter made available, the concession or benefit which was earlier available to the taxpayer as per Sub-rule (J) of the pre amended Rule 6DD, cannot be transposed from the said pre-amended provisions and read into the post-amended provisions.

International Ships Stores Suppliers v. JCIT (ITA No. 2502/MUM/2013) – Taxsutra.com

Notifications/Circulars/Press Releases

Transport, power and interest subsidy received by an industrial undertaking is eligible for deduction under Section 80-IB/80-IC of the Income-tax Act

The issue whether revenue receipts such as transport, power and interest subsidies received by an industrial undertaking/eligible business are part of profits and gains of business derived from its business activities within the meaning of Sections 80-IB/80-IC of the Act and thus eligible for claim of corresponding deduction under Chapter VI-A of the Act has been a contentious one. Such receipts are often treated as 'income from other sources' by the AOs.

The Supreme Court in the case of Meghalaya Steels Ltd in (CA No. 7622 of 2014, dated 9 March 2016) has held that the subsidies of transport, power and interest given by the Government to the industrial undertaking are receipts, which have been reimbursed for elements of cost relating to manufacture/sale of the products. Thus, there is a direct nexus between profit and gains of the industrial undertaking/business and reimbursement of such business subsidies, and therefore such subsidies are eligible for deduction under Section 80-IB/80-IC of the Act.

Recently, the CBDT has issued a Circular No. 39/2016, dated 29 November 2016 stating that in view of the decision of the Supreme Court, the revenue subsidies received from the Government towards reimbursement of cost of production/manufacture or for sale of the manufactured goods are part of profits and gains of business derived from the industrial undertaking/eligible business, and are eligible for deduction under Chapter VI-A of the Act. Therefore, henceforth, appeals may not be filed by the tax department on the above settled issue, and those already filed may be withdrawn/not pressed upon.

Circular No. 39/2016, dated 29 November 2016

© 2017 KPMG, an Indian Registered Partnership and a member firm of the KPMG network of independent member firms affiliated with KPMG International Cooperative ("KPMG International"), a Swiss entity. All rights reserved.

Transfer pricing

Decisions

AO cannot initiate and levy a penalty if the TPO's order contains no recommendation for initiating a penalty proceeding under section 271AA of the Act

The taxpayer is a foreign company engaged in providing services for manufacturing and selling fast moving consumer good (FMCG) products. The Transfer Pricing Officer (TPO) accepted the Arm's Length Price (ALP) with respect to international transactions. The TPO made an observation in his order that the taxpayer had failed to furnish the information or documents under section 92D of the Income Tax Act, 1961 (the Act). After completing the assessment under Section 143(3) of the Act, the AO initiated penalty proceedings u/s 271AA and levied a penalty at the rate of 2 per cent of the value of the taxpayer's international transaction. The CIT(A) upheld the penalty order.

Tribunal's ruling

- There is no dispute regarding the fact that TPO has not made any adjustment in respect of the international transactions of taxpayer with its Associated Enterprise (AE) and no further addition was proposed.
- The order of TPO under Section 92CA(3) of the Act does not mention that there was any failure on the part of the taxpayer to maintain documents as required under Rule 10D of the Income Tax Rules, 1962 (the Rules) but contains a reference that the taxpayer failed to submit documents and a TP Report. The TPO also stated in its order that since the transactions in question were replica transactions of the AE, the ALP determined by taxpayer is not being disturbed. Further, the taxpayer filed Form 3CEB and royalty agreements entered into with AE, which were duly acknowledged. The TPO order was made after due consideration of the documents and information furnished by the taxpayer.
- The Tribunal held that the taxpayer had sufficiently complied with the maintenance of records as required u/s 92D read with Rule 10D. Further in the TPO's order there was no recommendation for initiating any penalty proceeding u/s 271AA of the Act nor any finding that the taxpayer failed to maintain the records prescribed under Rule 10D of the Rules. Thus, the Tribunal upheld the taxpayer's appeal.

XYZ Ltd. vs ACIT (ITA No.921/Mum/2014) (Mum)

Intra-group services may be rendered orally and would not necessarily be recorded in writing

- The taxpayer is engaged in various activities through different divisions such as packaging, metallise, max foil, pharmaceuticals, treasury and healthcare divisions.
- During the year, the taxpayer incurred an expenditure of about INR1.25 crore towards legal and professional charges paid to its AE viz. Max UK Ltd. The taxpayer had entered into an agreement with its AE for provision of various services such as exploration of business opportunities initially in the field of healthcare, financial services, identification and due diligence of potential collaborators/partners, etc. that may be required from time-to-time for facilitating collaboration/joint venture arrangements, etc.
- During the assessment proceedings, the AO disallowed the aforesaid expenditure on the ground that taxpayer had not furnished any details to establish that the services were actually rendered. The CIT(A) upheld the same. Aggrieved, the taxpayer filed an appeal before the Tribunal.
- The Tribunal accepted the taxpayer's contention that the taxpayer was in fact able to achieve an export turnover of INR29 crore, and it has benefited in the area of healthcare services, which prima-facie demonstrated that the services were rendered by AE. Thus, the Tribunal ruled in favour of the taxpayer. Aggrieved by the said Tribunal order, the revenue preferred an appeal before the High Court.

Issue before the High Court

Whether the Tribunal was right in holding that the legal and professional expenses are allowable, ignoring the fact that the taxpayer has failed to discharge its onus with respect to providing evidence of services rendered and benefits received.

High Court's ruling

- The High Court observed that this issue was essentially a question of fact and not one of law and held that the conclusion arrived at by the Tribunal was not absurd or perverse, and it was a possible view.
- The High Court observed that nature of services mentioned in the agreement between the taxpayer and its AE would not necessarily be recorded in writing. Further, the High Court observed that advice, introductions, information can be communicated orally and the possibility of the same would be enhanced on account of the fact that these were group companies.
- Thus, considering all the facts together, the High Court upheld the view taken by the Tribunal.
- The High Court also ruled on disallowance under Section 14A of the Act.

CIT vs Max India Limited - ITA No.186 of 2013 (O&M) (P&H)

© 2017 KPMG, an Indian Registered Partnership and a member firm of the KPMG network of independent member firms affiliated with KPMG International Cooperative ("KPMG International"), a Swiss entity. All rights reserved.

Indirect tax

Service tax - Decisions

Sharing of expenses for a common storage facility does not constitute 'service'

The issue in the instant case was whether an arrangement between two parties for sharing cost of certain expenses in relation to a common pipeline would amount to provision of a service from one party to another.

The Supreme Court held that there has to be an element of 'service' provided by one person to another for which consideration towards provision of services are collected. Therefore, mere arrangement for sharing of expenditure for a common pipeline facility between two parties would not qualify as a 'service'.

Gujarat State Fertilizers & Chemical Ltd & Anr v. Commissioner of Central Excise [2016-VIL-67-SC-ST]

Service tax levy on 'construction service' under Joint Development Agreement upheld

The issue in the instant case was whether Service tax levy on construction services provided under a Joint Development Agreement (JDA) was constitutionally valid.

The Supreme Court dismissed the petition by upholding the decision of the High Court that Service tax levy on construction services under a JDA was constitutionally valid. Further, the Supreme Court also held that since a JDA provides a bouquet of rights to a developer, one of which is to put up a construction of an area and sell it to third parties along with an undivided share of land, such parties certainly availed services of developer as a service provider.

N Balabaskar v. Union of India [2016-TIOL-225-CESTAT-SC -ST]

Notifications/Circulars/Press Releases

Invoice related relaxation and other amendments for online information and database access or retrieval

The Service tax law has been amended to allow foreign-service providers providing online information and database access or retrieval (OIDAR) services to Government, local authority or an individual, to issue online invoices without authentication by means of digital signature up to 31 January 2017. Also, the definition of 'telecommunication services' has been amended to exclude OIDAR services from its ambit.

Further, for all OIDAR services provided by a foreign-service provider, Principle Commissioner, Large Taxpayer Unit, Bangalore shall have exclusive jurisdiction on the same.

Notification No. 53/2016-Service Tax dated 19 December 2016, Notification No. 51/2016-Service Tax dated 30 November 2016 and Notification No. 50/2016-Service Tax dated 22 November 2016

Exemption on settlement services provided by acquiring bank for transactions below INR2000

The services by an acquiring bank to any person in relation to settlement of an amount up to INR2000 in a single card transaction has been exempted from the ambit of Service tax.

Notification No. 52/2016-Service Tax dated 8 December 2016

Non-reopening of past assessments due to increased turnover after demonetisation

In the context of apprehensions that increased turnover due to use of digital means of payment may lead to demands for earlier periods, it has been clarified that in indirect taxes, past assessments will not be reopened for this reason alone.

Circular F.No.137/155/2012-Service Tax (Part-I) dated 9 December 2016

Central Excise - Decisions

CENVAT credit admissible if availed against debit note

In the present case, the taxpayer availed CENVAT credit on the strength of debit notes issued by the service provider. The adjudicating authority as well as first appellate authority denied CENVAT credit on the ground that debit note is not a prescribed document for availing CENVAT credit and such debit notes do not bear the information required in terms of Rule 9 of CENVAT Credit Rules, 2004 ('the CENVAT Rules'). Being aggrieved by the impugned order, the taxpayer filed this appeal.

The Mumbai Tribunal held that the information on the debit notes primarily contains all the information required to be mentioned in terms of Rule 9 of the CENVAT Rules. As regards the registration number of service provider, which was not mentioned on the debit notes, the taxpayer has provided a copy of service tax registration certificate of the service provider who issued the debit notes. Accordingly, the CENVAT credit should be allowed on basis of debit notes.

SPM Tools vs CCE, Kolhapur (2016-TIOL-3226-CESTAT-MUM)

© 2017 KPMG, an Indian Registered Partnership and a member firm of the KPMG network of independent member firms affiliated with KPMG International Cooperative ("KPMG International"), a Swiss entity. All rights reserved.

CENVAT credit cannot be denied on short payment of invoice value by the recipient

In the instant case, the taxpayer, on basis of terms of contract with the service providers, while making payment to such service providers against the invoices raised by them, retained a percentage of the billed amount towards performance guarantee, which was being paid subsequently after a certain period. The invoices raised by the service providers showed payment of service tax on full invoice value. This fact was not disputed by the tax authorities.

The taxpayer took CENVAT credit of full amount of service tax shown on the invoices while the balance amount was paid much later. Rule 4 (7) of the CENVAT Rules provides that the CENVAT credit in respect of input services for which payment to vendor has not been done within 90 days of invoice, shall be allowed on or after the day on which payment is made of the value of input service and the service tax paid or payable, as is indicated in the invoice, bill or as the case may be, challan referred to in the said Rule 9.

However, revenue denied CENVAT credit. The show cause notice was adjudicated by the jurisdictional Assistant Commissioner who confirmed the above-mentioned CENVAT credit demand along with interest and imposed penalty.

The taxpayer filed an appeal against Order-in-Original, which was decided by the Commissioner (A), wherein the demand was set aside and appeal was allowed. Against this impugned order passed by the Commissioner (Appeals), Revenue filed the present appeal.

The Delhi Tribunal relying on the Board Circular dated 30 April 2010 held that CENVAT credit of full service tax paid by a service provider in respect of service provided to a manufacturer would be available to the manufacturer even if the amount payable to the service provider has been reduced, so long as the service tax paid by the service provider has not changed. Accordingly, the appeal filed by Revenue was rejected

CCE, Jaipur Vs Hindustan Zinc Ltd. (2016-TIOL-3174-CESTAT-DEL)

Customs duty - Circular

Outsourcing by an authorised courier

According to Courier Imports and Exports (Clearance) Regulations, 1998, an authorised courier is obligated not to subcontract/outsource functions permitted to any other person, without the written permission of the Commissioner of Customs.

In view of this, Board is of the view that relaxation from such permission merits consideration with regard to certain components of the supply chain before entry inwards/after

© 2017 KPMG, an Indian Registered Partnership and a member firm of the KPMG network of independent member firms affiliated with KPMG International Cooperative ("KPMG International"), a Swiss entity. All rights reserved.

clearance of the imported courier shipments and before carting in/after 'Let Export' of the export shipments.

Accordingly, Board has decided that for functions namely pick-up or local delivery of export/imported courier packages/ shipments, transportation for officials and housekeeping activities, permission will not be required. Prior intimation would suffice.

Circular No. 59/2016-Customs, dated 2 December 2016

VAT - Decisions

Sale of goods from customs bonded warehouse to licence holders does not amount of 'sale in course of import'

The taxpayer, in the present case, is engaged in import, sale and marketing of liquor, including wines and spirits. The taxpayer had applied for deferment of custom duty by executing bond and transferred the imported goods to a custom bonded warehouse. In this regard, the taxpayer had claimed that he had transferred goods from bond to bond by issuing delivery challan. Further, the taxpayer had contended that since such transfer occurred before the removal of goods from a bonded warehouse, it will be 'sale in course of import' in terms of section 5(2) of Central State Act, 1956 (CST Act) and accordingly, will not be subject to VAT.

In this connection, the taxpayer made an application to advance ruling authority for determination of taxability in case of sale of imported goods to licence holders from a customs bonded warehouse.

Advance Ruling authority examined the meaning of 'sale in course of import' in terms of section 5(2) of CST Act and stated that, a transaction in order to constitute as 'sale in course of import' in terms of section 5(2) of CST Act, relevant documents in relation to title to goods shall be transferred before the goods have crossed customs frontiers of India. Further, 'crossing of custom frontier' as defined under section 2(ab) of CST Act shall mean crossing the limits of area of customs station in which imported goods are kept before clearance by customs authorities. In a nutshell, if goods are kept in a port before clearance by custom authorities, then only the transfer of documents of title to goods amounts to 'sale in course of import'.

Further, Advance Ruling authority analysed the definition of customs station, which includes customs port, customs airport and land customs station. Also, warehouse is not a declared custom station under Section 7 of Custom Act, 1962 though it may be part of custom area but not a part of customs station. Thus, goods stored outside the customs station as per any special scheme does not get the status of goods stored in customs station. Further, it also highlighted that the term 'custom area', which covers the custom bonded warehouse is a wider term as compared to customs station i.e. all customs stations can be termed as custom area but all custom areas cannot be construed as customs station.

There are various judicial pronouncements by the apex court, which specifically states that in order to consider a particular transaction as 'sale in course of import', transfer of title in goods before crossing of custom frontier is a mandate.

Accordingly, in the present scenario, the advance ruling authority concluded that the sale of imported goods to licence holders from custom bonded warehouse not be treated as sale in the course of import under Section 5(2) of CST Act and accordingly, shall be considered as normal sale under provisions of MVAT and hence, liable to VAT.

Advance Ruling Authority's ruling in case of Moet Hennessy India Private Limited - [TS-502-AAR-2016-VAT

Notifications/Circulars/Press Release

Rajasthan

With effect from 30 November 2016, Point of Sale (PoS) devices including Micro ATM, have been exempted from VAT levy.

Notification No. F12 (102)/FD/TAX/2016-62 Dated 30 November 2016

The Rajasthan Government has introduced New Amnesty Scheme 2016 which shall be effective from 2 December 2016, up to 15 February 2017. This scheme shall be applicable to the dealer against whom total outstanding demand is less than INR25 crore and has been created upto 31 July 2016.

Notification No. F12 (16)/FD/TAX/2009-65 Dated 2 December 2016

© 2017 KPMG, an Indian Registered Partnership and a member firm of the KPMG network of independent member firms affiliated with KPMG International Cooperative ("KPMG International"), a Swiss entity. All rights reserved.

Personal tax

Decisions

Determination of consideration in case of sale at less than stamp duty value and for computing exemption from capital gains tax

The Act provides for determination of full value of consideration in certain cases of sale of immovable property. The Act also allows for tax exemption of capital gains arising from sale of a capital asset other than a house property upon investment in a house property. The Vishakhapatnam Tribunal held that in case of sale of house property under an unpossessory sale-cum-General Power of Attorney (GPA) for a value less than that considered for stamp duty and registration, the full value of consideration shall be the value as adopted for the purpose of stamp duty and registration of the property. The Tribunal also held that for computation of tax exemption as per the Act, net consideration received would be applicable and not the value adopted for stamp duty/ registration of the property.

DIT v. Dr. Chalasani Mallikarjuna Rao [2016] 75 taxmann.com 270 (Vis)

Notifications/Circulars/Press Release

Government of India issues a notification for changing the regulation of Inoperative Accounts under the Employees' Provident Funds Scheme, 1952

In accordance with the regulations of the Employees' Provident Funds Scheme, 1952 (EPFS), interest is not credited to the account of a member from the date on which the account has become an 'Inoperative Account'.

Para 72(6) of the EPFS regulates the classification of an 'Inoperative Account'. As per amendments made in the EPFS on 1 April 2011, interest shall not be credited to the account of a member from the date on which it has become an inoperative account.

The Ministry of Labour and Employment, Government of India issued a notification (Notification no. G.S.R. 1065 (E), published in the Gazette of India) dated 11 November 2016 to amend the provisions relating to Inoperative Accounts. This notification is effective from 11 November 2016.

Key amendments

Relevant regulation before the amendment

Accumulation in respect of any member:

i. who has either ceased to be employed or died; and

ii. no application for withdrawal under paragraphs 69 or 70 or transfer, as the case may be, has been preferred;

within a period of thirty-six months from the date it becomes payable, or if any amount remitted to a person, is received back undelivered, and is not claimed again within a period of thirty-six months from the date it becomes payable, shall be transferred to an account to be called the 'Inoperative Account'.

Relevant regulation after the amendment

Accumulation in respect of any member:

i. who has either 'retired from service after attaining age of fifty-five years or migrated abroad permanently' or died; and

ii. no application for withdrawal under paragraphs 69 or 70 has been preferred;

within a period of thirty-six months from the date it becomes payable, or if any amount remitted to a person, is received back undelivered, and is not claimed again within a period of thirty-six months from the date it becomes payable, shall be transferred to an account to be called the 'Inoperative Account'.

In addition, the current notification has also inserted a new proviso:

Provided further that if any amount becoming due to a member, as a result of supplementary contributions on account of litigation or default by the establishment or a claim, which has been settled but is received back undelivered not attributable to the member, shall not be transferred to the 'Inoperative Account'.

Therefore, this is an important notification which can have significant benefit for employees who do not apply for withdrawal after cessation of employment. This is expected to encourage employees not to withdraw the accumulated PF balance before retirement. Therefore, this move from the Government may help augment income security in retirement.

Establishments that have set up in-house PF Schemes under the ambit of Employees' Provident Funds & Miscellaneous Provisions Act, 1952 (EPF Act) should revise their schemes to incorporate these changes. The new regulations on inoperative accounts in the statutory PF scheme i.e. EPFS will automatically apply to in-house PF schemes, pending revision of the rules of in-house PF trusts.

PF authorities have clarified in the past that the provision of 'Inoperative Accounts' is not applicable in case of International Workers (IWs). Therefore, this amendment should not impact IWs and they should continue to earn interest on their accumulated PF balance till the time of actual withdrawal.

www.epfindia.com

© 2017 KPMG, an Indian Registered Partnership and a member firm of the KPMG network of independent member firms affiliated with KPMG International Cooperative ("KPMG International"), a Swiss entity. All rights reserved.

KPMG in India

Ahmedabad
Commerce House V
9th Floor, 902 and 903,
Near Vodafone House,
Corporate Road, Prahlad Nagar
Ahmedabad - 380 051.
Tel: +91 79 4040 2200
Fax: +91 79 4040 2244

Bengaluru
Maruthi Info-Tech Centre
11-12/1, Inner Ring Road
Koramangala, Bengaluru 560 071
Tel: +91 80 3980 6000
Fax: +91 80 3980 6999

Chandigarh
SCO 22-23 (Ist Floor)
Sector 8C, Madhya Marg
Chandigarh 160 009
Tel: +91 172 393 5777/781
Fax: +91 172 393 5780

Chennai
No.10, Mahatma Gandhi Road
Nungambakkam
Chennai 600 034
Tel: +91 44 3914 5000
Fax: +91 44 3914 5999

Gurgaon
Building No.10, 8th Floor
DLF Cyber City, Phase II
Gurgaon, Haryana 122 002
Tel: +91 124 307 4000
Fax: +91 124 254 9101

Hyderabad
8-2-618/2
Reliance Humsafar,
4th Floor, Road No.11,
Banjara Hills
Hyderabad 500 034
Tel: +91 40 3046 5000
Fax: +91 40 3046 5299

Kochi
Syama Business Center
3rd Floor, NH By Pass Road,
Vytilla, Kochi 682 019
Tel: +91 0484 3027000
Fax: +91 0484 3027001

Kolkata
Unit No. 603 – 604, 6th Floor,
Tower – 1, Godrej Waterside, Sector - V,
Salt Lake, Kolkata - 700 091
Tel: +91 33 4403 4000
Fax: +91 33 4403 4199

Mumbai
Lodha Excelus, Apollo Mills
N. M. Joshi Marg
Mahalaxmi, Mumbai 400 011
Tel: +91 22 3989 6000
Fax: +91 22 3983 6000

Noida
6th Floor, Tower A
Advant Navis Business Park
Plot No. 07, Sector 142
Noida Express Way
Noida 201 305
Tel: +91 0120 386 8000
Fax: +91 0120 386 8999

Pune
703, Godrej Castlemaine
Bund Garden
Pune 411 001
Tel: +91 20 3058 5764/65
Fax: +91 20 3058 5775

Vadodara
iPlex India Private Limited,
1st floor office space, No. 1004,
Vadodara Hyper, Dr. V S Marg
Bund Garden
Vadodara 390 007
Tel: +91 0265 235 1085/232 2607/232 2672

KPMG in India contact

Girish Vanvari
Partner and Head
Tax
T: +91 (22) 3090 1910
E: gvanvari@kpmg.com

Follow us on:
kpmg.com/in/socialmedia

The information contained herein is of a general nature and is not intended to address the circumstances of any particular individual or entity. Although we endeavour to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. No one should act on such information without appropriate professional advice after a thorough examination of the particular situation.

© 2017 KPMG, an Indian Registered Partnership and a member firm of the KPMG network of independent member firms affiliated with KPMG International Cooperative ("KPMG International"), a Swiss entity. All rights reserved.

The KPMG name and logo are registered trademarks or trademarks of KPMG International.

This document is meant for e-communications only. (052_NEW0117)