

# Monthly tax bulletin

June 2024



The tax and regulatory space is ever evolving, with multiple developments happening on the judicial front, as well as legislative aspects. To keep our readers abreast of the developments in the tax and regulatory space, we present the first edition of the Grant Thornton Bharat Monthly Tax Bulletin. With this publication, we aim to offer a quick recap of the major developments in the tax and regulatory areas during the previous month.

This bulletin captures key developments under the direct taxes, transfer pricing, indirect taxes, and FEMA, for the month of May 2024. On the direct tax front, the Central Board of Direct Taxes (CBDT) has released a new functionality in the Annual Information Statement (AIS) to track the status of action taken based on taxpayers' feedback. The Reserve Bank of India has now clarified that the Alternate Investment Funds (AIFs), which had issued partly paid units to non-residents before 14 March 2024, can regularise the contravention by applying for compounding of offences.

Under the transfer pricing law, the ITAT has held that the assessee is not justified in seeking to net off amounts payable to AEs with outstanding amounts receivable from AEs on a consolidated basis or an entity level basis.

Under indirect taxes, the Central Board of Indirect Taxes and Customs (CBIC) has issued strict guidelines for initiating recovery proceedings within three months of serving a demand order. The circular clarifying taxability of corporate guarantee has been stayed by the P&H High Court. In addition, the Delhi High Court has struck down instructions restricting solar power-generating plants from availing benefits under the MOOWR Scheme and held that they are eligible to avail benefits under the scheme.

We hope you will find it informative and useful.



**Riaz Thingna**  
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# A

## Key developments under direct tax laws

### Important amendments/updates

- **The Central Board of Direct Taxes (CBDT) releases a new functionality in the Annual Information Statement (AIS) to track the status of action taken based on taxpayers' feedback<sup>1</sup>:** To increase transparency, the CBDT has recently introduced a new functionality in the AIS, which provides the status of action taken by the reporting source (i.e., tax deductors, tax collectors, reporting entities) on taxpayers' feedback. Taxpayers will now be able to check whether their feedback has been fully/partially accepted or rejected. Details, such as whether the feedback has been shared with the reporting source, the date on which it has been shared, the date on which the reporting source has responded to the feedback, and the details of such response, will be shared with the taxpayer.
- **CBDT notifies the Cost Inflation Index for Financial Year (FY) 2024-25<sup>2</sup>:** The CBDT has notified the Cost Inflation Index for FY 2024-25 as 363.

### Judicial developments

- **Traders' federation withdraws writ petition challenging the constitutionality of Section 43B(h) of the Income Tax Act, 1961 (IT Act)<sup>3</sup>:** In April 2024, a writ petition challenging the constitutionality of Section 43B(h) of the IT Act, which was inserted vide Finance Act, 2023 (w.e.f. 1 April 2024), was filed before the Supreme Court (SC). The traders' federation has now withdrawn this writ petition.
- **The SC waives off interest on the demand raised on telecom companies because of treating variable license fee as capital in nature<sup>4</sup>:** In October 2023, the SC had held that the variable license fee paid by telecom companies is a capital expenditure and should be amortised over the remaining license period. Telecom companies claimed such expenditure was revenue in nature. Consequently, demands were raised on such companies because of the aforesaid SC order (due to the re-computation of the expenditure claim from AY 2000-01 onwards). The SC has waived the payment of interest in relation to the tax demands recomputed for AY 2000-01 onwards pursuant to a miscellaneous application filed by the telecom companies for waiver of interest on the aforesaid demands raised on them.



1. Press Release dated 13 May 2024  
2. Notification no. 44 of 2024 dated 24 May 2024  
3. Federation of All India Vyapar Mandal  
4. Bharti Hexacom Limited [Miscellaneous Application No.218 / 2024 in Civil Appeal No.1128 of 2016]

# B

## Key developments under FEMA

### Legislative/other developments

- **Non-residents permitted to open a bank account in India for derivative contracts<sup>5</sup>:** A non-resident has been permitted to open, hold, and maintain an interest-bearing INR/ foreign currency account in India for posting and collecting margin money for a permitted derivative contract in line with the Foreign Exchange Management (Margin for Derivate Contract Regulations), 2020.
- **Compounding extended to regularise the contravention pertaining to the issue of partly paid units by AIFs<sup>6</sup>:** Investment vehicles have been permitted to issue partly paid units to non-residents w.e.f. 14 March 2024. The Reserve Bank of India has now clarified that the Alternate Investment Funds (AIFs), which had issued partly paid units to non-residents before 14 March 2024, can regularise the contravention by applying for compounding of offences.

# C

## Key developments under transfer pricing law

### Judicial developments

- **Netting off amounts payable to AEs with outstanding receivables, on the entity level, unjustified - ITAT<sup>7</sup>:** The ITAT has held that the assessee is not justified in seeking to net off amounts payable to AEs with outstanding amounts receivable from AEs on a consolidated basis or an entity level basis. It was affirmed that any amounts payable to the AEs should be netted off against amounts due from the AEs on a case-by-case basis (i.e., specific to each AE) before determining the chargeable interest.
- **Acceptance of CUP, rather than TNMM, for benchmarking technical fees - ITAT<sup>8</sup>:** The Delhi ITAT upheld CUP as MAM for ALP computation to pay technical fees. The Revenue had rejected CUP because it relied on hypothetical quotation prices rather than real transactions, and applied TNMM. The ITAT held that the rates quoted in the hypothetical quotations were similar to the prices actually paid and accepted by the Revenue during other years.
- **Held TPO reference in itself causes no prejudice, warranting invocation of writ jurisdiction<sup>9</sup>:** The Delhi High Court has dismissed a petition challenging a reference under Section 92CA(1) of the IT Act. The court stated that the AO can refer to the TPO, while the CBDT instructions and the risk parameters serve as guides for exercising that power. It deemed the petitioner's attempt to invoke Article 226 at the reference stage unjustified, emphasising remedies under the IT Act.



5. Foreign Exchange Management (Deposit) (Fourth Amendment) Regulations, 2024 issued vide Notification No. FEMA 5(R)/(4)/2024-RB dated 6 May 2024  
6. Clarification issued by the RBI vide RBI/2024-25/36 A.P. (DIR Series) Circular No. 7 dated 21 May 2024  
7. Rockwell Automation India Private Limited  
8. Takenaka India Pvt Ltd  
9. Infinox Software Private Limited

# D

## Key developments under GST law

### Legislative/other developments

- **The CBIC issues guidelines for initiating recovery proceedings before the expiry of three months from the service of a demand order<sup>10</sup>:** The CBIC has prescribed the guidelines to be followed for initiating recovery proceedings before the expiry of three months from the date of service of a demand order:
  - Such proceedings can be initiated only with the prior permission of the jurisdictional Principal Commissioner/Commissioner.
  - The peculiarities and reasons warranting such early payment should be clearly stated in the order and should be based on credible evidence.
  - Due emphasis shall be given to financial health, the status of business operations, etc., to strike a balance between the interest of the Revenue and ease of doing business.
  - In case of payment failure of the amount within the specified time, recovery proceedings can be initiated.

- **Kerala and Allahabad HCs affirm the validity of the notification extending the time limit for adjudication of proceedings<sup>14</sup>:** The HCs upheld the validity of the notification<sup>15</sup>, which extended the time limit for issuance of the order for FY 17-18, holding that the COVID-19 pandemic was a *force majeure* event, which affected economic activities globally and was in compliance with Section 168A of the CGST Act. (please [click here](#) for the detailed alert).
- **Kerala HC upholds constitutional validity of Section 16(2)(c) and Section 16(4); states retrospective applicability of extended time limit for availing ITC<sup>16</sup>:** Sections 16(2)(c), which allows credit after payment of tax by the supplier to the government and Section 16(4) of the CGST Act, which provides time limit for availing the ITC, are upheld by the HC. Emphasising that ITC is a benefit or concession extended under the statutory scheme that accrues only upon fulfilment of the attached conditions, the HC opined that the amendment extending the due date till 30 November of the succeeding financial year is procedural in nature and should be given a retrospective effect from FY 17-18 onwards. (please [click here](#) for the detailed alert).

### Judicial developments

- **P&H HC stays the operation of a circular clarifying taxability of corporate guarantee<sup>11</sup>:** The CBIC clarified<sup>12</sup> that the provision of a corporate guarantee by the holding company on behalf of the related company would construe a supply of service, liable to GST. The validity of the circular has been challenged, wherein the P&H HC has stayed the operation of the circular (please [click here](#) for the detailed alert)
- **Taxability of TDR challenged before the SC<sup>13</sup>:** The SC has issued a notice against the Telangana HC decision, which had held that the transfer of development rights (TDR) by way of a Joint Development Agreement (JDA) does not qualify as an outright 'sale of land' but qualifies as a 'supply of service' (please [click here](#) for the detailed alert). While admitting the appeal, the SC refused to grant a stay on the application of the HC's judgement and directed that GST shall continue to be paid by the developer.



10. Instruction No. 01/2024-GST dated 30 May 2024

11. ACME Cleantech Solutions Private Limited

12. Circular No. 204/16/2023-GST dated 27 October 2023

13. Prahitha Constructions Private Limited

14. Faizal Traders Private Limited

15. Notification No. 09/2023-CT dated 31 March 2023

16. M.Trade Links



# E

## Key developments under erstwhile indirect tax laws, Customs, Foreign Trade Policy, SEZ laws, etc.

### Judicial developments

- **Non-fulfilment of export obligation - No penalty sans relevant provisions under the FTDR Act – SC<sup>17</sup>:**  
The SC has held that the penalty cannot be levied for the non-fulfilment of export obligation in the absence of violation of relevant provisions under the Foreign Trade (Development and Regulation) Act, 1992 (FTDR Act). The SC observed that there was no attempt by the assessee to contravene any provisions under the FTDR Act or the Foreign Trade Policy (FTP) and, therefore, held that the penalty, being a strict liability under the penal provision, was unsustainable. (please [click here](#) for the detailed alert).
- **Solar power-generating companies eligible to claim benefits under the MOOWR Scheme – Delhi HC<sup>18</sup>:**  
The Delhi High Court has struck down instructions restricting solar power-generating plants from availing benefits under the MOOWR Scheme<sup>19</sup> and held that they are eligible to avail benefits under the scheme. The court held that the law does not require capital goods to transform themselves; they are only connected to or contribute to the manufacturing process or operations in the warehouse. (please [click here](#) for the detailed alert).

### Legislative/other developments

- **The DGFT restricts the import of all second-hand electronics and IT goods notified under the Electronics and IT Goods (Requirements of Compulsory Registration) Order, 2021 (order)<sup>20</sup>:**  
The DGFT has restricted the import of all second-hand electronics and IT goods notified under the order effective from 20 May 2024. Accordingly, such notified second-hand electronics and IT goods can be imported against a restricted import authorisation, subject to the conditions laid down under the order. Further, the import of notified unregistered/non-compliant products is prohibited.



17. Karnataka Malladi Biotics Limited

18. Acme Heergarh Powertech Private Limited

19. Manufacture and Other Operations in Warehouse Regulations, 2019

20. Notification No. 13/2024-25 dated 20 May 2024



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