



India TaxHour

## Quarterly India tax updates

July – September 2024

3 October 2024

# Subject matter experts

# We will discuss...

## **Economy / International tax / Regulatory updates**

### **Direct tax updates**

- Dispute resolution under income tax
  - Key Statistics
  - Direct Tax Vivad se Vishwas Rules, 2024
  - E-dispute resolution Scheme
  - Revision of monetary limits for appeal
- Judicial developments on the telecom sector

### **Indirect tax updates**

- Key recommendations arising from the 54th GST Council Meeting and Related Circulars
- Introduction of Invoice Management System (IMS) in GST
- Insights into the PM E-Drive Scheme: Key Outcomes and Impacts

### **Recent judicial pronouncements**

# Economy / International tax / Regulatory updates

# Economy/International tax/Regulatory updates ( July – September 2024)

## Indian Economy – Growth and Inflation indicators; Tax collections

### International Taxation

#### Base Erosion and Profit Shifting ( BEPS) Project - Pillar 1 and Pillar 2 under G20/OECD Inclusive Framework (IF) :

##### Pillar 1:

- 30 June 2024 deadline for the multilateral treaty to implement Pillar One expires without an agreement.
- Bilateral agreements between the USA and several nations regarding standstill of their digital services taxes have also lapsed.

##### Pillar 2:

- Many jurisdictions have passed (35)/ are passing (17) domestic tax legislation to implement Pillar Two Global Minimum Tax provisions through GloBE rules ( IIR,QDMTT,UTPR). Most jurisdictions intend to start implementing the IIR and the QDMTT from their tax year of 2024 and the UTPR from tax year of 2025.
- September 2024-Nine countries signed the elective Multilateral Convention to Facilitate the Implementation of the Pillar Two Subject to Tax Rule (STTR MLI) to enable the implementation of the rule in their bilateral tax treaties.

### India-Regulatory Updates

- August 2024- International Financial Services Centres Authority (IFSCA) has issued the Regulatory framework (IFSCA Listing Regulations, 2024) for listing of securities on international stock exchanges located in IFSCs.
- September 2024- Cross boarder Share Swaps simplified: MoF has issued Foreign Exchange Management (Non-debt Instruments) (Fourth Amendment) Rules, 2024 to relax cross border share swap provisions. This will allow issue/transfer of equity instruments of an Indian company in exchange for foreign company equity capital.

# Direct tax updates

# Dispute resolution under income tax – Key statistics

(Amount in INR billion)

Description	Disputed amount
<b>Total taxes</b>	<b>10,482.76</b>
Corporation Tax	5,980.60
Taxes on Income other than Corporation Tax	4,502.16

<sup>1</sup>Source: Ministry Receipt Budget 2024-25

## Pendency of appeals at various levels in India\*:

Forum	Appeals
Commissioner (Appeals)	500,000
Income tax Appellate Tribunal	66,246
High Courts	
Supreme Court	

\*Source: Per various public sources



INR 10.5 trillion (~USD 126 bn) is:

- ✓ ~50% of annual direct tax collections in India; or
- ✓ 3.4% of India's GDP

# Dispute resolution under income tax (1/3)

Direct Tax Vivad Se Vishwas Rules, 2024 (“VSV”) – Effective 1 October 2024

**Forms, procedures and standards** have been rolled out on 20 September 2024

**Resolution** of cases pending before specified forums on 22 July 2024

**Process streamlined** – Four step process for settlement

Order passed by the designated authority is **conclusive**

Quantum of **payment linked to date of application**, unlike in previous schemes

Settlement **not a precedent**

**Caution** - Amount paid pursuant to VSV declaration is not refundable



# Dispute resolution under income tax (2/3)

## E-Dispute Resolution Scheme (“E-DRS”)

### What is E-DRS?

- **Alternate dispute resolution framework** to provide early relief to small and medium taxpayers; forms part of section 245MA of the Income-tax Act, 1961
- **Key conditions:**
  - Aggregate variations proposed / made  $\leq$  **INR 1 million**
  - Returned income for relevant assessment year  $\leq$  **INR 5 million**

### Why E-DRS?

- **Roll out of the E-DRS Scheme 2022** to:
  - Reduce interface between Dispute Resolution Committee (**DRC**) and taxpayers;
  - Introduce dynamic jurisdiction and
  - Ensure optimal utilisation of resources with functional specialisation
- DRC may grant **reduction / waiver of penalty and prosecution**

### How and when to file?

- Application to be made **electronically** now in Form 34BC on income tax portal
- **Time limit** for filing application:
  - Appeal is already filed and pending before CIT(A) – on or before **30 September 2024**
  - Specified order passed on or before 31 August 2024 but time for filing appeal has not lapsed – on or before **30 September 2024**
  - In other cases – **within 1 month** from date of receipt of order
- Order by DRC – **within 6 months** from end of month in which application is admitted

# Dispute resolution under income tax (3/3)

## Revision of monetary limits for appeal

Monetary limits for filing of appeals by the Revenue authorities have been revised upwards

S#	Appeals/ SLPs	Previous monetary limit (ie, tax effect)	Revised monetary limits (wef 17 September 2024)
1	Before ITAT	5 million	<b>6 million</b>
2	Before High Court	10 million	<b>20 million</b>
3	Before Supreme Court	20 million	<b>50 million</b>

As a result of above revised monetary limits, approximately **4,300 cases** are expected to be withdrawn over time

**Impact so far:** The Supreme Court of India has already disposed 573 direct tax cases pursuant to above revised limits

# Telecom sector update

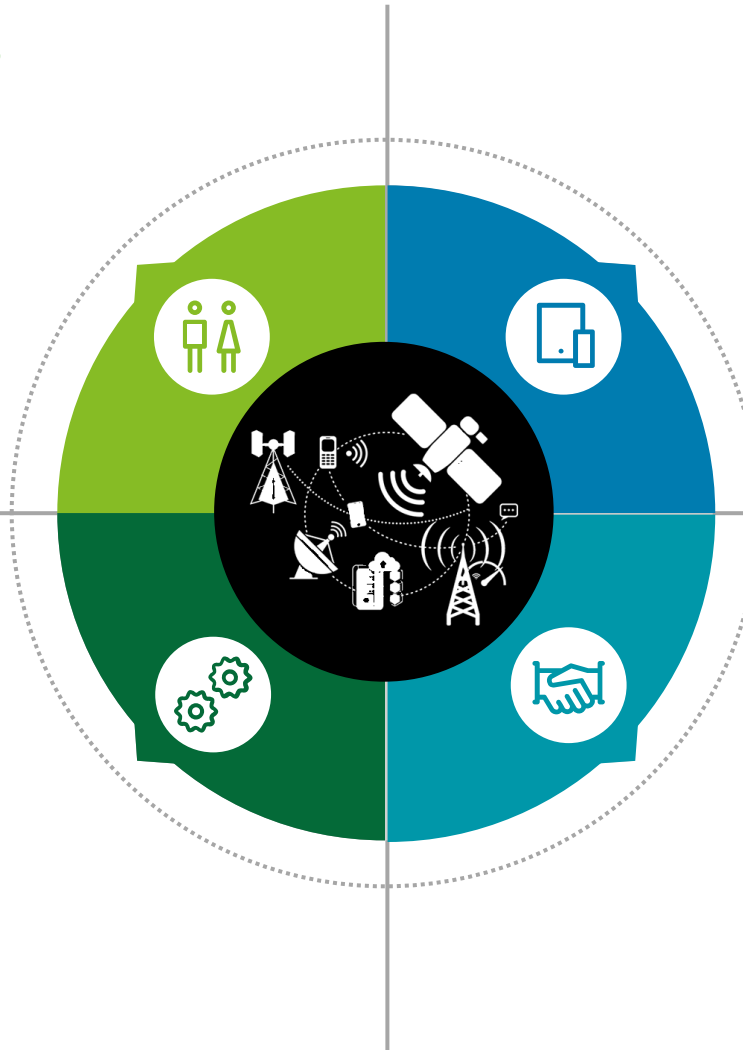
## Payments for connectivity services (Bandwidth/Roaming services)

### Roaming charges - Fees for technical services under domestic law ?

- Is human intervention necessary to qualify as a 'technical service'?
- Is a standard facility a technical service?

### Bandwidth/ Roaming charges – Process royalty under domestic law?

- “Secret” process
- Is deriving a benefit from a service the same as use of the 'process'?
- Impact of amendment in definition of 'royalties' in 2012.



### Bandwidth/ Roaming charges - Equipment royalty under domestic law?

- Relevance of dominion or control over equipment?
- Is deriving a benefit from a technology enabled service the same as use of the 'equipment'?
- Impact of amendment in definition of 'royalties' in 2012.

### Bandwidth/ roaming charges – Royalty/FTS under tax treaties?

- Is the 'make available' clause satisfied in respect of roaming charges to qualify as 'fees for technical services'?
- Impact of amendment of royalty definition under domestic tax law on the treaty?

# Telecom sector update

## Recent rulings

### Dishnet Wireless Ltd. (Madras HC) [2024] 165 taxmann.com 416 (Madras)

#### Domestic law - Roaming charges qualify as 'Fees for technical services' under the Act

- Human intervention by skilled technical personnel ~ integral and unavoidable part of roaming services
- "Technical service" can be automated and also with human intervention at various stages which can be either managerial or consultancy or both.
- Discussed Bharti Cellular Ltd [2010] 193 Taxman 97 (SC)
- Distinguished Skycell Communications Ltd. [2001] 251 ITR 53 (Madras)
- No TDS under section 194J



### Telstra Singapore Pte. Ltd (Delhi HC) [2024] 165 taxmann.com 85 (Delhi)

#### Treaty context - Bandwidth services do not qualify as 'Royalty' as per tax treaty

- Equipment Royalty - No control, possession or right over equipment/ infrastructure granted
- Process Royalty – No right to use the process nor transfer of technology
- Mere benefit derived from a service provided cannot fall within the meaning of the expression's "use" or "right to use".
- Not royalty income as per tax treaty.
- Explanations 5 and 6 to Section 9(1)(vi) would not impact the meaning of the term "Royalty" in the Tax Treaty



# Indirect tax updates

# GST

## 54<sup>th</sup> GST Council Meeting (9<sup>th</sup> September 2024) : Key recommendations and Related Circulars

1

Payments for tax demands from FY 2017-18 to 2019-20 must be made by **31.03.2025** to avail benefit of waiver of Interest and penalty. Proposed effective date **01.11.2024**

2

Council has recommended clarification on Place of supply (PoS) for advertisement services to recipients located outside India

3

GST Council recommended to clarify on Data hosting services to cloud computing services provider located outside India.

4

Recommendation to implement the Reverse Charge Mechanism (RCM) liability ledger under the GST. RCM ledger shall facilitate the reconciliation of RCM paid and RCM availed

## 54<sup>th</sup> GST Council Meeting : Key recommendations and Related Circulars (Contd.)

- 5 Council recommended clarification on ITC availment on demo vehicles. The **Circular** clarifies that **ITC is eligible if used for further supply**. However, ITC is blocked if marketed by **dealer's agent** or used for **staff transporting**
- 6 GST Council recommended for insertion of **Section 16(5) and 16(6) with effect from 1.7.2017**. Circular to be notified for procedure to rectify the ITC claim related to FY 17-18 to 20-21
- 7 **Renting of Commercial Property** from **unregistered person** to bring **under Reverse Charge Mechanism** in to prevent revenue leakage
- 8 To prevent false invoicing, **e-invoicing for B2C transactions to be implemented in a phased manner**
- 9 RCM Exemption to Foreign Airlines
- 10 The GST Council formed a Group of Ministers (GoM) to review **GST issues related to life and health insurance**



# Introduction of Invoice Management System (IMS) in GST



1

IMS is a tool introduced with an intention to reduce input tax credit (ITC) errors and improve reconciliation between taxpayers and their suppliers. Draft manual is rolled out on GSTN portal

2

Recipients can either accept, reject, or mark invoices as pending. Pending invoices are deferred until acted upon. No action taken - ITC shall flow into the recipient's GSTR 3B

3

Data will be populated by 14<sup>th</sup> of each month [Quarter end for in case of QRMP scheme] from suppliers' GSTR 1, GSTR 1A or IFF. Pending option not available for credit notes or amended invoices

4

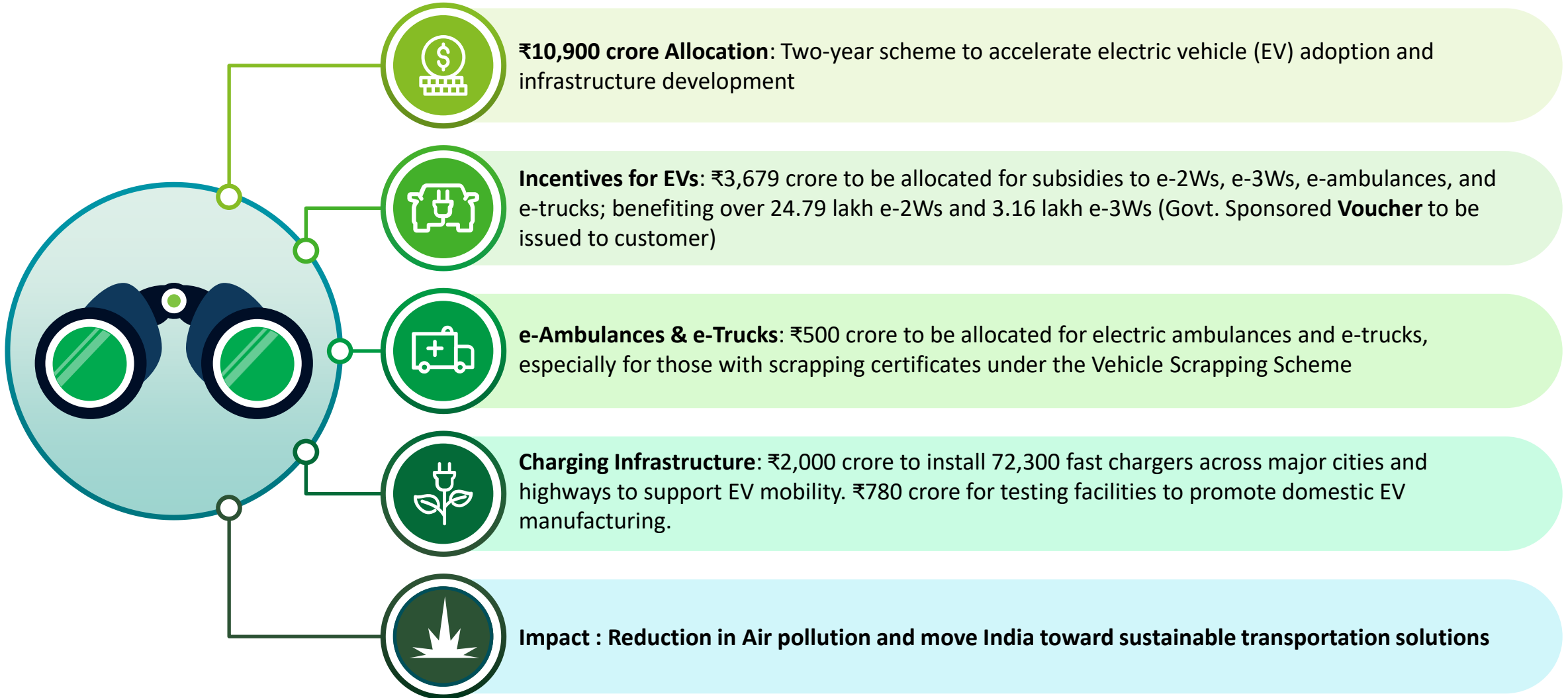
The IMS is available on the GST portal and via APIs, allowing taxpayers to search, filter, download data, and reset actions before filing GSTR 3B.

5

**Impact: Additional compliance, reduction in notice, no partial action, working capital impacted**

# Incentives

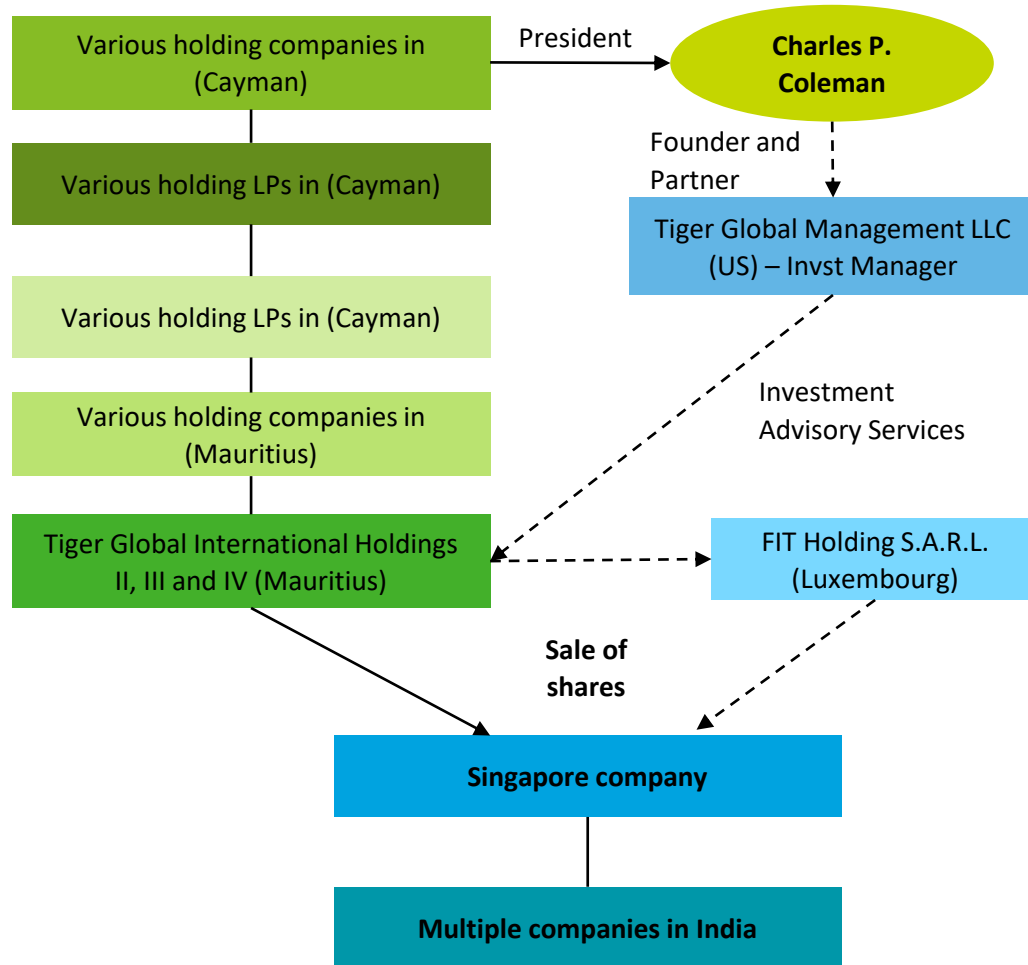
# Insights into the PM E-Drive Scheme: Key Outcomes and Impacts



# Judicial pronouncements – Direct Tax

# Delhi High Court | Examination of Mauritius investment structure for treaty benefit

Tiger Global International Holdings II, III & IV vs AAR [TS-624-HC-2024(DEL)]



## Lightbulb Facts of the case

- Tiger Global International ('TGL') II Holdings, TGL III Holdings and TGL IV Holdings were private companies under Mauritius law
- Petitioners held valid tax residency certificate (TRC) and Category 1 Global Business License
- Petitioners acquired shares in Singapore company (S Co) between October 2011 to April 2015; these shares were subsequently transferred in August 2018 in favor of Fit Holdings SARL, a Luxembourg entity
- Petitioners claimed exemption under Article 13 of the India-Mauritius tax treaty since investments in shares were made before 1 April 2017
- Authority for Advance Rulings ('AAR') rejected the application at the initial stage itself holding that the transaction was designed *prima facie* for avoidance of tax
- AAR ruling challenged by the petitioners by way of filing the writ petition before the Delhi High Court

# Delhi High Court | Examination of Mauritius investment structure for treaty benefit

Tiger Global International Holdings II, III & IV vs AAR [TS-624-HC-2024(DEL)]



## Extracts from India-Mauritius tax treaty:

### Article 13: Capital Gains

**3A. Gains from the alienation of shares acquired on or after 1st April 2017 in a company which is resident of a Contracting State may be taxed in that State.**

*3B. However, the tax rate on the gains referred to in paragraph 3A of this Article and arising during the period beginning on 1st April, 2017 and ending on 31st March, 2019 shall not exceed 50% of the tax rate applicable on such gains in the State of residence of the company whose shares are being alienated;*

**4. Gains from the alienation of any property other than that referred to in paragraphs 1, 2, 3 and 3A shall be taxable only in the Contracting State of which the alienator is a resident.**

### Article 27A: Limitation of Benefits

*1. A resident of a Contracting State **shall not be entitled to the benefits of Article 13(3B) of this Convention** if its affairs were arranged with the primary purpose to take advantage of the benefits in Article 13(3B) of this Convention.*

*2. A shell/conduit company that claims it is a resident of a Contracting State shall not be entitled to the **benefits of Article 13(3B) of this Convention**. A shell/conduit company is any legal entity falling within the definition of resident with negligible or nil business operations or with no real and continuous business activities carried out in that Contracting State.*

*3. A resident of a Contracting State is deemed to be a shell/conduit company if its **expenditure on operations** in that Contracting State is less than Mauritian Rs.1,500,000 or Indian Rs. 2,700,000 in the respective Contracting State as the case may be, in the immediately preceding period of 12 months from the date the gains arise.*

*4. A resident of a Contracting State is **deemed not to be a shell/conduit company** if:*

*(a) it is listed on a recognized stock exchange of the Contracting State; or*

*(b) Its **expenditure on operations in that Contracting State is equal to or more than Mauritian Rs.1,500,000** or Indian Rs.2,700,000 in the respective Contracting State as the case may be, in the immediately preceding period of 12 months from the date the gains arise*

# Delhi High Court | Examination of Mauritius investment structure for treaty benefit

Tiger Global International Holdings II, III & IV vs AAR [TS-624-HC-2024(DEL)]



## Key principles emerging from HC decision

*Favorable*

- **CBDT Circular 789, Supreme Court jurisprudence and TRC:** TRC is sacrosanct as it substantiates bona fide identity of the entity
- **Substance requirements, tax avoidance and treaty abuse:** Incorrect to deny treaty benefits based on arguments founded on the perceived unethicity of treaty shopping, without any conclusive evidence
- **GAAR and LOB:** Share acquisitions prior to 1 April 2017 are grandfathered under general anti avoidance rules (GAAR) as well as limitation of benefit (LOB) clause under the tax treaty. TRC and LOB adequately address treaty abuse; therefore, impermissible for Revenue to construct additional barriers or qualification standards for benefits under the treaty, avail of DTAA benefits, subject to caveats of illegality, fraud and the transaction being in contravention of the underlying object and purpose of the treaty
- **Influence of parent company:** Mere exercise of influence by parent over its subsidiary does not imply the latter being a puppet or being wholly subservient to the parent
- **Beneficial ownership:** Tests laid down for beneficial ownership; Revenue's argument dismissed absent evidence to claim lack of beneficial ownership of the petitioners.

## Way forward & key takeaways

Whether transaction covered by para (3A) or (4) of Article 13?

Beneficial ownership test - Whether applies to capital gains Article?

Observations on parental control and management of the subsidiary

# Supreme Court | Fate of review petitions on MFN and software taxation

## Review petition in case of Nestle SA



### SC decision – *Against taxpayer*

Most favoured nation (MFN) provision under the tax treaty cannot be invoked without express notification of the same as per respective domestic law procedures



**Review petition** filed by taxpayer – **dismissed** by Supreme Court in August 2024.

## Review petition in case of Engineering Analysis



### SC decision – *In favor of taxpayer*

Amounts paid to computer software manufacturers or suppliers, as consideration for resale / use of computer software through EULAs / distribution agreement are not royalty for use of copyright in computer software; thus, not taxable under tax treaty



**Review petition** filed by tax department – **dismissed** by the Supreme Court



# Madras High Court | Taxability of voluntary payment for diminution in value of unexercised ESOP

N.M. Mehta [2024] 165 taxmann.com 386 (Madras)



## Facts of the case

- Assessee, an employee of a step-down subsidiary of a foreign company ('FCo'), held Employee Stock Options ('ESOPs') of FCo.
- Value of the ESOPs diminished pursuant to disinvestment of FCo's wholly owned subsidiary.
- Payout of a pre-exercise stage discretionary compensation for diminution in value of stock options by FCo.
- Tax officer rejected employee's application for Nil deduction of tax at source.



## Issue

- Whether the one-time compensation for diminution in value of unexercised ESOPs is taxable in the hands of employee?



## Decision of High Court

- Not taxable as capital gains as:
  - ESOPs are not capital assets.
  - No relinquishment as there was no contractual right to compensation for diminution in value.
- Payment is not a capital receipt as there is no loss of a profit-making apparatus.
- Compensation is taxable as salary (perquisite) – Section 17(2)(vi) covers discretionary compensation paid for the potential or actual diminution in value of ESOPs.
- Differed from the view expressed in the case of a Delhi High Court ruling on similar facts - [2024] 163 taxmann.com 116 (Delhi HC)

# Bombay High Court | Litigation in respect of reassessment notices not issued in accordance with Faceless Assessment Scheme

JD Printers Pvt. Ltd [TS-668-HC-2024(BOM)]



## Facts of the case

- Reassessment notice was issued by the Jurisdictional Assessing Officer ('JAO') instead of Faceless Assessment Officer ('FAO').
- Taxpayer filed a writ before the Bombay High Court challenging the validity of the notice
- In the case of Hexaware Technologies Limited (2024) 464 ITR 430 (Bom HC), notice was quashed on similar grounds.



## Issue

- Validity of notice issued by JAO instead of FAO



## Decision of High Court

- Writ petition admitted.
- Reassessment notice not quashed.
- Reassessment proceedings stayed until Supreme Court decides the issue in case of Hexaware.

# Judicial Pronouncement - Indirect tax

# Mineral Area Development Authority (MADA) v. Steel Authority of India

[2024] 164 taxmann.com 806 (SC)



## Facts of the case

- **Dispute:** MADA sought tax on mining land under state legislation
- **Contention:** Whether Royalty shall be termed as Tax as the same is levied under a parliamentary legislation viz. Mines and Minerals (Development and Regulation) Act, 1957.



## Issue

- Whether royalty payments are considered tax or a contractual consideration
- Whether Parliament or State legislatures have the authority to tax the mineral rights
- Impact of a Parliamentary Act on State legislative powers related to mineral development
- Whether State legislatures can levy taxes on mineral-bearing lands

# Mineral Area Development Authority (MADA) v. Steel Authority of India

[2024] 164 taxmann.com 806 (SC)



## Decision of Supreme Court

- Royalties are a contractual payment for the right to mine, not taxes, as they derive from the lease agreement rather than legislative imposition
- The authority to tax mineral rights is vested solely in State legislatures under Entry 50 of List II, excluding Parliament's jurisdiction under Entry 54 of List I
- Limitations imposed by Parliament on mineral development laws do not restrict the State's powers to tax mineral-bearing lands under Entry 49 of List II
- State legislatures are empowered to tax mineral-bearing lands based on their value or yield, as provided under Entry 49 of List II, independent of restrictions on mineral rights
- Retrospective Application of the judgement w.e.f. 01 April 2005. Mining companies allowed to discharge tax in a staggered manner within 12 years commencing from 01 April 2026

# Thank you!

Kindly spare a minute to help us with your valuable feedback for today's session...  
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