The TAX POST

A bimonthly bulletin on the world of Indirect Taxes

Edition 7- July, 2021

Presented by BDO in India

CONTENTS

PREFACE

Dear Readers,

This edition of 'The Tax Post', reaches you around the 4th anniversary of the pathbreaking GST law. As the policy framers look back at the road travelled thus far, there is enough cause for satisfaction as eventually, the country has been able to roll-out this important fiscal legislation, despite many obstacles, often perceived as insurmountable. The legislation appears to be settling down well and with loopholes being plugged one after another, the revenue trend is showing steady growth.

However, it is of equal importance to introspect and suitably address the gaps, starting with the frequent glitches of the technology platform and the inability to find a lasting solution to the credit matching challenges, refund processing, return filing, etc. While the administration on one hand is required to deal with a large and an ever-increasing number of assessees and increasing amount of information required to manage the complexity of their interactions, on the other they are expected to respond to greater transparency in operations, efficiency, and faster response to the needs of the stakeholders.

The integration of national economies and international national markets has increased substantially in the last two decades putting strains on national and international tax frameworks and the use of technology in tax administration, which has not been able to keep pace with the fast emergence and growth of businesses, especially the digital economy, which runs on robust technology platforms.

Taxation of the digital transaction itself has been an area of major tax controversy across jurisdictions and the 'Cover Story' of this issue of 'The Tax Post' discusses the magnitude of the issue in the global and specifically in the Indian context, in respect of digital services. We are confident that this insightful feature would be topical in the light of the momentum of digital transactions tax in the global arena (and you will see the waves of this in the section 'Global Trends' too).

Technology has been central not only in the administration of tax by the GST authorities; there have been elevated discussions surrounding the role of technology in the tax compliance for the taxpayer community. A Partner from BDO India's Indirect Tax practice shares his expert insights on tax transformation, which we hope would be of interest to the taxpayer community.

This edition of the Tax Post in the section 'In-Tales' highlights the Renewable Energy sector of India and its role in growth, industrialisation, and rural development. Governmental policies in the last couple of decades have facilitated the growth of this sector and reduced carbon footprint, in the process.

We analyse one important indirect tax judgment in each edition of the Tax Post. Section 'Decoded' of this edition deals with a very important judgment of a Customs, Excise, and Service Tax Appellate Tribunal (CESTAT). This July 2021 judgment has raised many eyebrows and got industry captains to scurry for cover in the VCF/MF/Asset Management space. Many established positions and practices have been placed under the scanner and the conclusions of the CESTAT would have a deep impact on many companies.

We hope you find this edition interesting and insightful.

COVER STORY

The riddle of taxation of digital services

The Backdrop

Digital Transformation spurs innovation creates efficiencies, improves quality and accelerates the speed of delivery of services sans physical contact, permeating inclusive growth and enhanced customer satisfaction. These advantages coincide with challenges in envisioning a suitable policy framework, including that of taxation. Reforming national and international taxation eco-systems to be future ready and restore stability to tax frameworks requires coordinated efforts and shared vision of framers of the policy from multiple jurisdictions.

In the context of Covid-19 rattled economies, it becomes imperative and compelling to craft a suitable solution, than the one which was originally designed and evolved through the subsequent phases. Sovereign governments have significantly increased public spending to address increased healthcare needs and augment nursing infrastructure to control the pandemic. The time is not too far (with the pandemic subsiding on account of vaccination programmes), when the governments will find it necessary to focus on putting finances back on a fair and sustainable track.

The integration of national economies and international national markets has increased substantially in the last two decades putting strains on international tax frameworks, which have not been able to keep pace with the fast emergence and growth of the digital economy. Weakness in the current tax framework and increasing tax rates, persuaded multinational enterprises to shift business delivery/profits to lesser tax jurisdictions or escape tax through digital connects.

OECD[1] has observed that with a view to curate a future ready taxation framework to administer the digital world, two categories of activities have to be identified and categorised under the digital business model. The first being Automated Digital Service (ADS) and the other being 'Consumer Facing Business' (CFB). The taxation of ADS has been a bone of contention and often it is found that the existing taxation framework is archaic to meet the challenges of a highly technology driven and evolved digital world. The OECD also, had attempted to provide guidance in this aspect at different points in time, including the recent OECD document referred to above, according to which –

[1]OECD (2020) Tax Challenges Arising from Digitalisation – Report on Pillar One Blueprint: Inclusive Framework on BEPS

"The proposed definition of ADS is comprised of a general definition; a positive list of services that are in any event in scope of ADS business and a negative list of services that are not in scope of ADS business…..The benefit of positive and negative lists is that it provides certainty and precision with respect to the business models that are currently known and avoids the need of those businesses to apply to the general test. As these lists are then updated as the jurisdictions gain experience with the rules (including being informed by the early certainty process) and the new business models evolve, those lists also continue to provide certainty over time."

It further states that "businesses and tax administrations could generally apply the rules by going through the following process. First, identify whether an activity is on the positive list (ie. included); if it is, it is an ADS business. Second, if the activity is not on the positive list, identify whether it is on the negative list (ie. excluded); if it is, it is not an ADS business. Only if an activity is not on either list is it necessary to consider whether, on first principles, it meets the conditions in the general definition. It is noted that if an MNE does not fall within the definition of ADS following this approach, it may however be in scope as consumer-facing business. The legal implementation of the positive and negative lists and the general definition (such as in a multilateral convention) remains under consideration, as well as more broadly the process and implementation of changes to the lists."

Further, as per this OECD document "The general definition of ADS (which also informs the positive and negative lists) is built on two elements: automated, i.e. once the system is set up the provision of the service to a particular user requires minimal human involvement on the part of the service provider; and digital, i.e. provided over the Internet or an electronic network…. The first part, "automated," reflects the fact that that the user's ability to make use of the service is possible because of the equipment and systems in place, which allow the user to obtain the service automatically, as opposed to requiring a bespoke interaction with the supplier to provide the service…. The second part, "digital," distinguishes it from other service provision methods, such as the onsite physical performance of a service."

The principals contained in the above OECD document are followed and relevant in the context of every digitally delivered service, including in the domain of taxation law. Service tax laws of India and the succeeding GST law seem to tread on the same lines as in the case of other jurisdictions. With a view to levy tax on such online services delivered from outside India, legislature first shifted the liability to pay tax on B2B transactions to the service recipients located in India under a Reverse Charge Mechanism (RCM). A specific category of service 'Online Information and Database Access and Retrieval' (OIDAR) was also introduced in the category of taxable service in the Service Tax law, to scope-in electronic delivery of services.

Under GST also, online services have been brought within the ambit of OIDAR services, which encompasses services whose delivery is mediated by information technology or an electronic network, the nature of which renders their supply essentially automated, involving minimal human intervention and impossible to ensure in the absence of information technology. Thus, services provided through the medium of the internet and received by the recipient online without having any physical interface became characterised as OIDAR.

This undoubtedly diluted the territorial boundaries with respect to power to levy tax and accordingly OIDAR would be liable to tax irrespective of the location from where such services were provided - within or outside India to recipients in India. An overseas OIDAR service provider, who does not have a physical presence or a representative in India, has been mandated to appoint a person in India for the purpose of obtaining a registration and remitting GST.

The Statutory Provision

Taking into the account the complex nature of the online services, OIDAR service was included within the scope of the GST law (as in the Service Tax law) of India to specifically bring certain transactions, scope-out what is not sought to be taxed and incorporate a general definition to in-scope general category transactions that are intended to be brought under the ambit of levy of tax. As per Section 2(17) of Integrated Goods & Services Tax Act, 2017 (IGST Act)

"Online information and database access or retrieval services means services whose delivery is mediated by information technology over the internet or an electronic network and the nature of which renders their supply essentially automated and involving minimal human intervention and impossible to ensure in the absence of information technology and includes electronic services such as, -

- *advertising on the internet;*
- *providing cloud services;*
- *provision of e-books, movie, music, software and other intangibles through telecommunication networks or internet;*
- *providing data or information, retrievable or otherwise, to any person in electronic form through a computer network;*
- *online supplies of digital content (movies, television shows, music and the like);*
- *digital data storage; and*
- *online gaming."*

A bare reading of the above definition would clearly indicate that it has specifically included seven types of transactions, excluded transactions that are not automated or not involving significant manual intervention and specified a general definition to scope-in services whose delivery is mediated by information technology over

internet or electronic network. It would also reveal that anything other than 'service' cannot be brought within the sweep of OIDAR.

The IGST law also mandates that if the location of either of the supplier or service recipient is outside India, Section-13 of IGST Act has to be resorted to, to resolve the 'Place of Supply' question, which is an important determinant for levy of GST. As per section-13, if 'Place of supply' is determined to be outside India, GST would not be leviable. As per sub-section-12 of Section-13, *"the place of supply of online information and database access or retrieval service shall be the location of the recipient of service."* This provision together with the mandate[2] of RCM, a B2B recipient was required to discharge the tax liability if the service provider is located outside India.

However, in B2C cross-border supplies (including supplies to Government) into India, the recipient was not required to discharge tax liability; however, a specific provision was introduced in the Service Tax law in December, 2016[3] which mandated the OIDAR service provider to appoint a person in India in order to obtain registration and discharge tax liability. This mandate was introduced[4] in the GST law from its inception in July 2017.

It thus become clear that in case of supply of OIDAR into India in a B2B transaction, a business entity in India would be legally obliged to pay GST on RCM basis. In a B2C situation, the supplier himself is required to remit the taxes by appointing a person in India to undertake the responsibility of complying to the provision of the law.

The Challenge

While the statutory provisions, as encapsulated in the above paragraphs, point to a clear taxation approach, the practical implementation of these provisions have been fraught with many challenges. As explained, considering the typical nature of services, the delivery of which is mediated through deeply encrypted and embedded modern information technology platforms, the tax policy and frameworks have not been able to keep pace with the quickly evolving digital economy.

Considering the complexities associated with the administration of the taxes of the digital world (especially ADS), the Government has issued a flyer[5] to clarify the provisions and further proactively addressed various aspects relating to OIDAR in an Education Guide[6]. However, it may not be feasible to uncover all aspects until the taxation provisions are tested in the context of real-life situations. Few of these challenges/doubts are captured herein below:

- The definition of OIDAR seeks to cover services mediated by information technology over internet or an electronic network; it also mandates that the supply is 'automated' and involves 'minimal human intervention'. It is not unclear what is the level of automation or what does it mean by 'minimal human intervention'. What if a lecture is delivered by a tutor through the internet? Would that be considered OIDAR - the delivery of the service having been mediated through internet? The CBIC flyer (referred to above) in the illustrations doesn't view this as OIDAR presumably due to physical support of the live tutor. The Advance Ruling Authority[7] also appear to favour this view taken by the Government in the flyer.

  However, a closer look at the definition of OIDAR may prompt one to argue that 'minimal human intervention' is with respect to the information technology or an electronic network through which the delivery of the service is mediated, and, the phraseology "their supply essentially automated and involving minimal intervention" indicates to the medium (or the technology backbone) and not the service provider. It is expected that more clarity will emerge sooner than later, to avoid uncertainty looming large.

- Prior to GST, the indirect tax ecosystem, was infested with litigation regarding whether a particular activity would be regarded as 'Goods' or 'Services' – for e.g., software (customised and non-customized), works contract (which was bisected into 'Goods' and 'Service' for levy of VAT/Service tax), transfer of right to use, activity of club/hotel, etc. It was expected that GST, which need not differentiate between 'Goods' and 'Service', would provide relief to such fundamental areas of difference of opinion. However, these doubts continue to be raised, leading to uncertainties and litigations.

  In the case of OIDAR, as per the definition, it seeks to bring only 'Services' mediated through internet or electronic network and not 'Goods'. This calls for classification of the specified activity as 'Goods' or 'Service' as in the pre-GST era. Take the case of non-customised software, supplied by an overseas service provider. The definition of OIDAR specifically includes electronic services such as 'provision of e-books, movie, music, software…' within its scope. Schedule-II of CGST Act in clause 5, covers "(c) temporary transfer or permitting use or enjoyment of any intellectual property right; (d) development, design, programming, customisation, adaptation, upgradation, enhancement, implementation of information technology software' within the ambit of 'supply of service'.

  However, the sectoral FAQ[8] and the Explanatory Notes to Classification of Service issued by CBIC views certain Software supply as supply of 'Goods'. The answer to question no:1 in the above FAQ, clarifies that "But, if a **pre-developed or pre-designed software** is supplied in any medium/storage (commonly bought off-the-shelf) or **made available through the use of encryption keys,** the same is treated as a **supply of goods** classifiable under heading 8523."

Moreover, the Explanatory notes of Service code 997331 reads as follows:

[2] Notification no:10/2017-IT (R) dated 27 June 2017 (as amended from time to time).
[3] Notification no:48/2016-ST dated 09 November 2016
[4] Section 14 of the IGST Act, 2017
[5] https://www.cbic.gov.in/resources//htdocs-cbec/gst/OIDAR.pdf;jsessionid=E8FFBE1C5F3CD3186BD2788A19F5867F
[6] Taxation of Services – An Education Guide – 20 June 2012 under Service Tax.
[7] NCS Pearson Inc. - KAR ADRG 37/2020 dated 22 May 2020)
[8] http://www.gstcouncil.gov.in/sectoral-faqs-it-ites

"997331 Licensing services for the right to use computer software and databases.

This service code includes: -

- *licensing services for the right to reproduce, distribute or incorporate computer programs, program descriptions and supporting materials for both systems and applications software. This applies to various levels of licensing rights such as rights to reproduce and distribute the software, rights to use software components for the creation of and inclusion in other software products,*
- *licensing services for the right to reproduce, distribute or incorporate databases (i.e. compilations of facts/information) in other databases or applications. This applies to various levels of licensing rights such as rights to reproduce and distribute the database, rights to use database components for the creation of and inclusion in other databases and applications.*

This service code ***does not include****: -*

- *Packaged (non-customised) software/database,*
- *Limited end-user licence as part of packaged software,*
- *Licensing services for the right to use database software, cf. 997331*

There are genuine doubts in the mind of a taxpayer (the OIDAR service provider), when he supplies non-customised, packaged software - Is there a requirement to register in India and remit taxes, especially if it is seen a 'Goods' and stands excluded from the scope of OIDAR? A taxpayer may feel reasonably emboldened by the views[9] of the Advance Ruling Authorities also in an identical situation. It would thus be possible to argue that the supply of software (non-customised) cannot be construed to be 'Service' and hence stands outside the purview of OIDAR (for B2C supplies) requiring registration and payment of tax.

- That takes us to another interesting proposition as to whether 'betting' and 'gambling' fall within the scope of OIDAR. While 'online gaming' is specifically included under the OIDAR definition, many questions are being raised whether 'betting' and 'gambling' too would fall within its scope. The IGST Act adopts the definition of 'Supply', as defined in Section-7 of CGST Act and the words and expressions used but not defined in IGST (but defined in CGST) shall have meaning as assigned to CGST Act.
  Section-7 of CGST Act, which defines the term 'Supply' postulate that activities specified in Schedule-III of CGST Act shall be treated as neither supply of goods nor a supply of service. Schedule-III specifically excludes 'Actionable claims, other than lottery, betting and gambling'. It is thus reasonable to assume that lottery, betting and gambling would be actionable claims and they are not excluded from the scope of supply. Further, the definition of the term 'Goods' in section-2(52) of CGST Act, specifically 'includes actionable claims' within its ambit and by virtue of this section, read with Schedule-III, it is reasonable to conclude that 'Betting' and 'Gambling' are actionable claims and would be treated as goods. It is also relevant at this juncture to refer to the recent judgement[10] of the Apex Court in which it has been concluded that "It cannot be said that the question as to whether lottery is a goods or actionable claim had not arisen in the decision in Sunrise Associates. When an item was covered by excluded category, the said conclusion could have been arisen only after consideration of the definition and the exclusionary clause. We, thus, are not in agreement with the submission of the Learned Counsel for the petitioner that the observations of the Constitution Bench holding lottery as actionable claim is only obiter dicta and not binding. The Constitution Bench in Sunrise Associates has categorically held that lottery is actionable claim after due consideration which is ratio of the judgment. When Section 2(52) of Act, 2017 expanded the definition of goods by including actionable claim also, the said definition in Section 2(52) is in the line with the Constitution Bench pronouncement in Sunrise Associates and **no exception can be taken to the definition of the goods as occurring in Section 2(52)."**

  Now if 'betting' and 'gambling' fall within the wide definition of the scope of 'Actionable claim' and therefore 'Goods', how could the same be brought to tax under OIDAR? Insertion of serial no:229 (wide notification no:6/2018-CT(R) dated 25-0-2018) in the CGST rate notification no:1/2017-CT(R) dated 28 June 2017 for goods also indicates that "Actionable claim in the form of chance to win in betting, gambling, or horse racing in race club" would fall within the scope of 'goods' and automatically stands excluded from the scope of OIDAR, when such 'betting' and 'gambling' is mediated from outside India. That leaves us with a larger question, if so, will this activity stands completely excluded from tax levy, especially these 'goods' are not passed through the customs frontiers! To compound the matters further, notification no:11/2017-CT(R) dated 28 June 2017stipulating rate of tax on service in sl no:34 specifies these activities under Service code:9996 with tax rate of 28%. It won't be inappropriate at his stage to cite the minutes of GST Council (GSTC) meeting in which it has cited the issue before the Supreme Court in the case of Skill Lotto and recorded that –

  "Recommendation of 37th GSTC meeting on 20-09-2019 (Annexure VII of the Agenda, Vol 3)

  - *GoM on lottery to decide on the rate of Lottery*
  - *GoM to decide on the associated issues related to Casinos, Horse Racing and Online Gaming.*

  Decision on 37th GSTC meeting: GOM on lottery to meet on the above two issues and bring it before the GST Council."

  Does it indicate the GST Council is ceased of the

9 Solize India Technologies P Ltd - KAR/ADRG/25/2020 dated 24-04-2020, SPSS South Asia P Ltd – KAR/ADRG/15/2021 dated 24 March 2021.

10 Skill Lotto Solutions P Ltd. Vs. UoI (2020 (43) G.S.T.L. 289 (S.C.)

matter and a suitable amendment would be brought about in the legislation to dispel the apprehensions and uncertainty lingering in the minds of the taxpayers?
The above appear to give the impression that the dispute about the nature of supply as to whether it is nature of 'Goods' or 'Service' continues to cast a shadow over the indirect tax horizon in India, inevitably in a fast paced, technology driven global market.

The Conclusion

Taxation of digital transactions has been an area of major tax controversy across jurisdiction and hence it would be incorrect to assume that these are isolated and inherent to the Indian system of indirect tax alone. Concerted effort is underway across jurisdictions to resolve existing disputes and draft a framework which keeps pace with the changing times and is future ready. Experiences of the recent past is expected to serve as a guiding light to address future concerns, which must be in consultation with industry forums so that a smooth transition can be made in the foreseeable future.
Taxing everything may not get revenue but would only prove counter-productive; choosing to tax the right one may bring reward. As Winston Churchill exclaimed 'for a nation to try to tax itself into prosperity is like a man standing in a bucket and trying to lift himself up by the handle'.

THE EXPERT SPEAK

Rahul Aggarwal
Partner - Indirect Tax
BDO in India

Changing face of Tax compliances in a technology enabled world

Introduction

Over the past 5 years, we have witnessed continuous efforts on the part of the Government to digitally empower the country. The leadership of the country has well understood, the significance that technology plays in the growth and administration of an economy. Further, 100% transparency in matters concerning utilisation of public funds is possible only if end-to-end processes are technologically driven.

The government led by Prime Minister Mr Narendra Modi aims to digitise the economy and minimise manual intervention. It aims to simplify tax compliances and at the same time prepare an automated, digital environment for policy implementations, administration of welfare measures and identification/plugging revenue leakages by using tax transformation audit tools.

The digitisation measures in the field of taxation, which started with the successful transition to paperless processing of Income Tax returns and refunds, have been taken forward to Customs as well as GST.

It is also widely believed that GST would evolve over a period of time in a manner that its reporting mechanism would be interlinked with the data available with the Income Tax authorities. This belief is on account of the exhaustive reporting sought by the Government in the GST annual reporting requirements viz. Annual return and Audit Report along with the corresponding proposed reporting requirements in the Income Tax Audit report. Thus, updating IT systems as well as designing them to meet the robust tax information requirement is the need of the hour.

In the recent times, more and more organisations are scaling-up their global operations with an increased focus on digital tax transformation. We are witnessing transformation of the tax world with changing laws and digitisation of tax administration. Businesses are moving towards a paperless environment with access to up-to-date and accurate information.

In this article, we analyse what is Tax Technology and how it is changing the way tax compliance are handled. Tax Technology simply refers to reap-in the benefits of today's technology in an organisation's tax function. It essentially involves use of technology with the help of sophisticated and intelligent applications to create a digital tax ecosystem within an organisation. Tax Technology enables the following:

- Automation of routine manual processes
- Creation of tax compliance database
- Direct integration of ERP with tax compliance tools
- Development of online documentation storage tools
- Real-time monitoring and tracking of transactions with vendors and customers
- Data collation and access across multiple functions of the organisation

Current Tax landscape in India

The Indian business and regulatory environments very dynamic and in these rapidly changing times, it is affecting the way the tax function is currently managed. Businesses are switching over to large scale automation of tax processes to increase transparency and overcome shortcomings of manual processes. The government has been extensively working on digitising tax collections and administration functions using emerging technologies. Within the last 3 years, we have witnessed multiple initiatives of digitisation processes launched by the government in the field of GST, Customs, and Income tax viz.

- Automation of all tax return filings
- Co-operation and exchange of information between CBIC, CBDT and other regulatory wings
- The contact-less (referred to as faceless), scheme of tax assessment applicable to all taxpayers across the country
- Introduction of ICEGATE (Indian Customs Electronic Gateway), SANCHIT, SWIFT and ECSS (Express Cargo Clearance System)
- Implementation of e-invoicing and tracking of payment received from un-registered customer (through B2C QR code implementation)
- Auto transfer of data from IRP and ICEGATE to GSTIN
- Complete reliance on artificial intelligence for selection of tax filings for undertaking tax assessment

Challenges in the tax compliance environment

Leaders of tax functions are recognising the need of technology in governance and minimisation of financial risks.

In the current scenario, significant time is being channelised in routine manual functions to support tax compliance and administration functions. For instance, monthly reconciliation of Input Tax Credit (ITC) availed in GSTR-3B return vis-a-vis GSTR-2A/2B for computing provisional limit of ITC prescribed under Rule 36(4) of CGST Rules is a mammoth manual exercise.

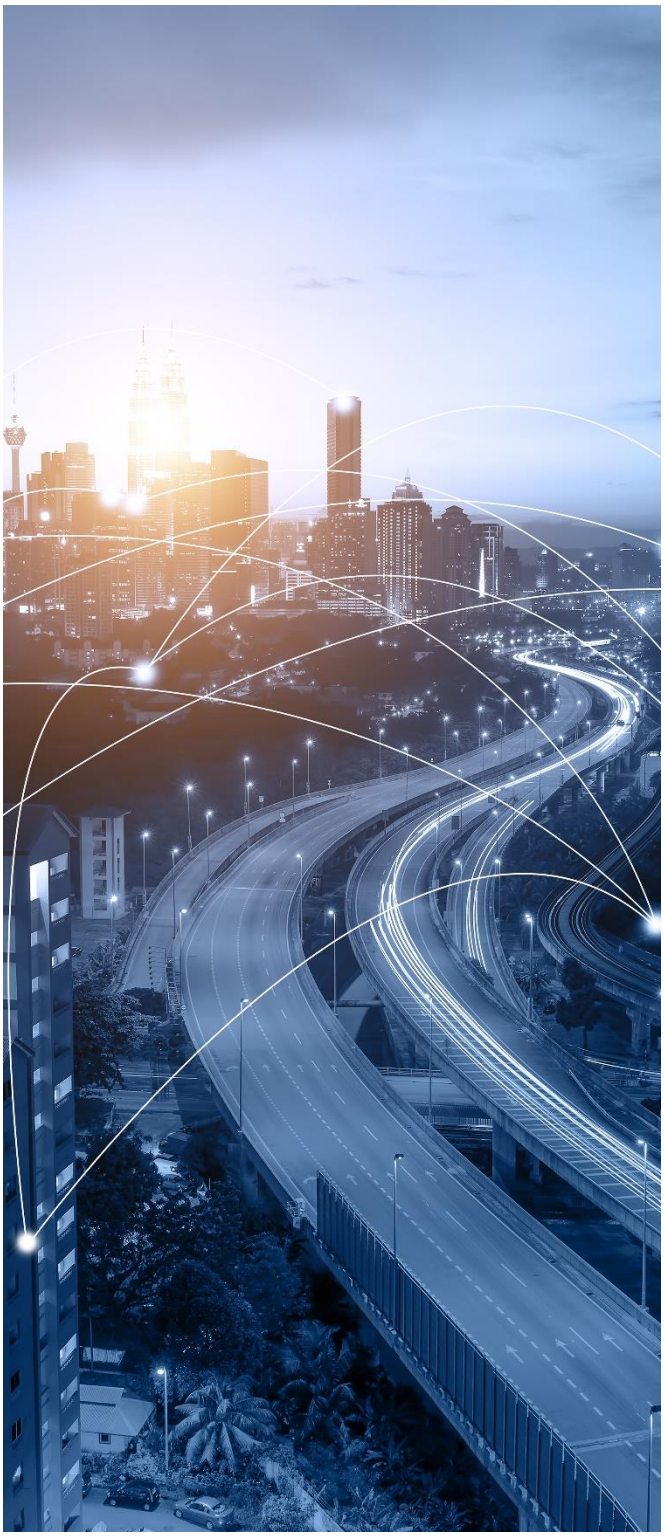
Another challenge in the present compliance methodology is the use of stand-alone, un-sophisticated and archaic tools in unsecured environments, resulting in mammoth manual exercise which can be minimised using an appropriate technology tool. Further, non-integration of tax tools with ERP acts as a bottleneck in the transition towards technology driven compliances.

Tax teams involved in reporting, reviewing and interface departmental audit team, have recognised the challenges faced in the absence of a centralised tax data/documentation database as manual collation and sharing of large volume of data is turning out to be a nightmarish experience. Further, deployment of multiple ERPs results in inconsistency in the data/information used for various tax filings and reconciliation efforts to tie-up numbers.

Why Tax-Technology?

- Organisations are switching to a virtual environment on account of the global pandemic
- New start-ups/businesses are largely dependent on virtual goods/services and operating through electronic platforms
- To meet the ever-increasing data reporting requirements introduced by regulators
- Government's push for Digital India wherein steps are also being taken by tax authorities for automation of return filing mechanisms
- Need of accurate data as the same needs to be shared with tax authorities and regulators on real time basis viz. E-Invoice data
- To maintain confidentiality of tax data and filings
- Data back-up management to avoid loss of data which is required for assessments/audits

The need of the hour for efficient and smooth running of business operations is a robust tax compliance system which can be connected to the existing ERPs and automate the various tax filing. The most critical aspect would be to interlink data from various sources to avoid duplication of effort in reconciling it and ensuring data consistency.



IN-TALES

Shape of India's future energy needs – Go Green!

Introduction

Thomas A Edison remarked that 'we will make electricity so cheap that only the rich will burn candles!' The real potential of electricity lies not in providing social amenities but in stimulating long-term economic development.

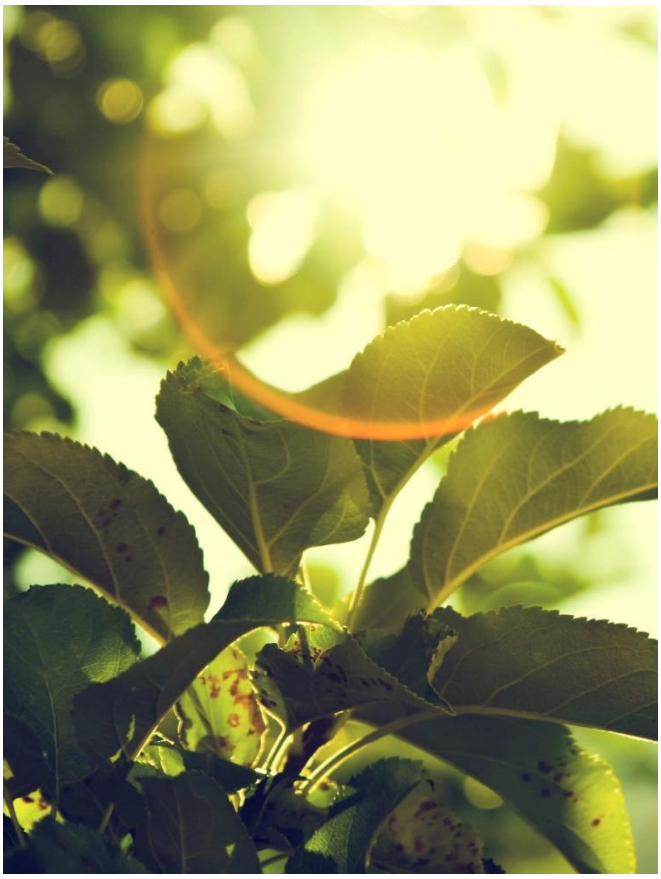
While electricity access in itself is likely not sufficient for economic growth, the empirical analysis points that electricity use and GDP tend to go hand-in-hand. Research indicates that countries (such as South Korea, China, Thailand, Egypt, Paraguay, Vietnam, sub-Saharan Africa, etc.) with relatively low GDP growth in 1971, have removed leaps and bounds in the next four decades, riding on power generation capacity build-up and higher per capita consumption of electricity.

Currently, India is the third largest producer and second largest consumer of electricity in the world as of February 2021. India has been on a path to achieve 100% household electrification and the progress, so far, has been very encouraging. According to the Union Budget 2021-22, near 140 Gigawatt (GW) of installed capacity 141,000 circuit KMs of transmission lines have been added and around 28mn households are connected since year 2015.

While India is making long strides in building capacities and increasing power generation and consumption, the Renewable Energy space has made enviable progress and it is expected to do better in the coming times. India is ranked 5th in wind and solar power installed capacity as of 2019. It is expected that solar energy (114 GW), wind power (67 GW), bio-mass (15 GW), along with other renewable energy sources would enable India to meet the renewable energy generation target of 227 GW, in 2022.

It is also proposed to increase the green energy generation capacity to 523 GW by 2030. India ranked 6th in the list of countries to make significant investments in clean energy by allotting USD 90bn between 2010 and 2019. With significant increase in roof-top installation in states like Gujrat, Maharashtra, Rajasthan, Tamil Nadu, etc., India is poised to take the country to the league of the leaders in the category.

The non-conventional energy sector received FDI inflows of nearly 10bn in the last decades, reflecting the tremendous opportunity that it opens-up. It is expected that by 2028, India would attract an additional FDI of USD 500bn in the renewable energy sector. The cost competitiveness of solar and wind power will be superior compared to thermal power by year 2025-30, besides the inherent advantages of green energy.



Key growth drivers

India is now very uniquely positioned to take strides in the energy sector, especially in the renewable energy space, riding on significant momentum in industrial activity, increased household consumption coupled with rising income levels, favourable policy framework, etc.

Due to favourable locations in the solar belt (400 S to 400 N), India is one of the best recipients of abundant solar energy. Growth in solar power generation is expected to reach 114 GW in 2022, surpassing the overall wind power generation capacity.

Rapid industrial growth and household consumption requires significant capacity enhancement and investment, which opens-up opportunity for domestic as well international investments. India has allowed 100% FDI in power including renewal energy segment.

Energy efficient LED bulbs, tubes and fans are being supplied by government to the public to be energy efficient and to reduce carbon footprint. In the Union Budget 2021-22, the government allocated USD 42mn to increase capacity of the Green Energy Corridor Project, along with USD 152mn for wind and USD 327.15mn for solar power projects. In order to decarbonise energy consumption, India needs a 30-fold increase in renewable energy.

In the current decade (2020-2029), the Indian electricity sector is likely to witness a major transformation with respect to demand growth, energy mix and market operations. The current production levels are not enough to meet demands as the annual demand outstrips supply by about 7.5%. The country has been witnessing a deficit in the peak demand over the last few years, which continue to rise around 7% annually. According to the Central Electricity Authority (CEA) estimates, by 2029-30 share of renewable energy generation would increase from 18% to 44%, while that of thermal is expected to reduce from 78% to 52%.

These favourable future outlooks throw open a world of opportunity in India with a population of 1.3bn and demographics heavily leaning towards young.

Government Policies

Environment, Forest and Climate, Government of India have clarified that solar PV (photovoltaic) power, solar thermal power projects and solar parks will not require the environmental clearances, which is mandatory under the provisions of Environment Impact Assessment (EIA) notification of 2006. The Ministry of Power has issued a draft National Electricity Policy in 2021 to provide necessary support this sector which promises huge growth potential.

Under the Union Budget 2020-21, the government has proposed the launch of National Hydrogen Mission for generating hydrogen from green power sources. National Policy on Biofuels 2018 is expected to benefit from healthy and clean environment, employment generation, reduced import dependency and boost infrastructure investment in rural India. Rent-a-Roof policy, which is in the anvil is expected to give a boost to solar roof tops projects by year 2022.

In the current fiscal year, the Government of India approved the Ministry of New and Renewable Energy proposal for implementation of Performance Linked Incentive (PLI) scheme with an outlay of INR 4.50bn, under the National Programme on High Efficiency Solar PV (Photovoltaic) Modules for manufacture capacity of Giga watt scale. The PLI scheme is also expected to augment generation capacity by over 10,000 MW, generate fresh investment of INR 17bn and additional material demand of INR 17bn over 5 years, generation of additional employment of 50,000 and import substitution worth INR 17bn besides opportunity for R&D.

With a view to give impetus to this green energy sector, the government has kept the domestic taxes in the lowest bracket so that the products are accessible and affordable to public. The GST rate for most of the renewable energy equipment are kept at 5% to contain the price and encourage consumption.

Challenges from an Indirect Tax angle

While the next wave of Industrial growth is promised to ride on availability of sufficient supply of power, especially green power owing to ecological imbalances caused by overdependence of fossil fuel, an enabling ecosystem and investment friendly climate is imperative. Fiscal support could be one of the major encouragements to promote investment in the renewable energy sector and successive governments realising the potential has been considerate towards this industry. However, much more needs to be done. We capture some of the challenges faced by the industry in the following paragraphs:

In the early part of this century, solar cells and modules were exempt from levy of Basic Customs duty in India. But the growth of solar cells and modules manufacturing capacity in China, Taiwan and Malaysia coincided with the increasing demand for it in India, this led to a sharp rise in imports of solar cells and modules in India, leading to enhancement of domestic manufacturing capacities.

Levy of Safeguard Duty (SGD) till July 2021 to protect domestic manufacturers and curb imports did not serve the domestic manufacturers for long and imports of solar cells continues to soar. The decision taken to increase Basic

Custom duty rate in the future, to promote domestic manufacturing may help them in the immediate future but can be a dis-incentive for producers who have set-up facilities in SEZs. Further, unless domestic manufacturers can augment their production capacity to meet domestic demand, higher customs duty rate would significantly increase the cost of equipment and discourage creation of fresh generation capacity.

While most of the products in the renewable energy space are liable to a lower GST rate of 5%, the input materials and service suffer a higher GST of 18%. This results in accumulation of ITC credit and blockage of working capital, particularly when the refund process is not free from delay. Further, GST suffered on input service is not available as refund under 'inverted duty' refund route, adding to further accumulations.

IGST notification no:1/2017-IT(R) dated 28 June 2017 artificially deems 70% as value of material, in a composite contract for supply of goods as well as service, leaving 30% as value of services. While renewable energy equipment (goods) are subject to GST of 5%, services are liable to a higher GST of 18% tax. The 70:30 proportion for goods and services, according to the industry, does not reflect a accurate proportion and the actual service composition would be far less, leading to higher GST load in a composite supply contract.

Electricity, being free from of levy of GST, generators of power are unable to take ITC of GST suffered on the equipment and associated services. This adds to the ultimate price of power due to non-availability of credit in input side. In the early years of the discussions for switch over to GST, there were demands for inclusion of power sector too in the GST regime, so that the input tax load in the finished goods can be reduced; however, this discussion lost steam mid-way through the GST implementation plans.

There has been a controversy surrounding the applicability of GST on Renewable Energy Certificate (REC). The Central Board of Indirect Taxes & Customs (CBIC) vide circular no:46/20/2018-GST dated 6 June 2018 had clarified that REC is classifiable under chapter heading 4907 of Customs Tariff Act, liable to GST of 12%. However, the industry is of the view that RECs are Securities (as defined in Securities Contract Regulation Act and traded in Indian Energy Exchange and Power Exchange India) and thus falls outside the scope of definition of 'goods' as well as 'service' thus not liable to GST. This caused uncertainties in the minds of renewable power companies and the matter is challenged before the Court of law.

Conclusion

With an ambitious target for green energy sector, India has become very attractive from investors' point of view, both domestic and foreign, and would continue to generate more investment in the future, if used judicially and strategically.

Beyond the discussion on monetary gains, industrial growth, GDP growth, the benefits of renewables can go far beyond the traditional and restricted measurements of economic development. The process of generating renewable sources of energy mainly takes place in the rural areas of the country. In this way, while supplying a fair share of the power generated to these areas, the renewable sector also acts as a catalyst in the upliftment of India's rural poor and jump start country's journey towards green power and reduction in carbon foot-print.

DECODED

CESTAT confirms service tax on 'carry'; treats 'trust' and 'contributors' as service provider and service recipient – a landmark ruling

The CESTAT, Bangalore vide order no:20372-20402/2021, dated 01 July 2021, in the case of M/s. ICICI Econet Internet and Technology Fund (Taxpayer) has confirmed demand of Service tax on 'Carried Interest and Expenses incurred, in the hands of Venture Capital Fund (VCF) Trust.

Before dwelling into the finer aspects of the judgement, it is pertinent to briefly understand the modus operandi of a VCF model.

Generally, VCF is established as a Trust under the Indian Trust Act, 1882 as an investment pooling fund. While the person who reposes or declares the confidence is called as the 'Settlor' or the 'Author' of the Trust, the person who accepts the confidence is called the 'Trustee'. While the Trustee is entitled to trusteeship fees for the services provided to the Trust, the Trustee may appoint an 'Investment Manager' or 'Asset Manager' to ensure professional and experienced advice is received by the Trust.

The person for whose benefit the confidence is accepted is referred as the 'Contributor'/'Beneficiary' of the Trust. These Contributors/Beneficiaries are the investors classified as Category A, B and C based on various parameters linked to quantum of investment, time duration etc. The VCF primarily invests in portfolio company securities such as shares, debt instruments and generates returns in the form of interest, dividend etc. The return is paid back to the investors after retaining the amount of expenses incurred by the Trust for earning the returns. Additionally, in certain cases the Investment Manager or Asset Manager also contributes as an investor to the VCF and paid 'carry' (or carried) interest.

Brief facts of the case

- The taxpayer trust established under the Indian Trusts Act, 1882, (Trusts Act) is registered with SEBI as a VCF. The Trust is represented and managed by a Trustee and the terms and conditions pertaining to the formation and the management is contained in the Indenture of Trust (IOT) and Private Placement Memorandum (PPM), which is an Offer Document for inviting contributors or subscribers to be part of trust set-up by the settlor.

- Money contributed by investors is held in a trust by the trustee on behalf of the beneficiary contributors.
- The Trust Deed lays-down the objectives, establishment, management of the trust.
- The trustee receives trusteeship fees for its services from the taxpayer.
- The trustee appoints an Investment Manager (or Asset Manager) to manage the assets/investments, the terms of which is contained in 'Investment Management Agreement' (IMA) and receives management fee.
- The trust is responsible for holding, using for gain, the monies received from the investors during the lifetime of the Scheme,
- As per PPM, the trust (i) will pay the asset manager an annual management fee of 2.50% of aggregate capital

commitments of the fund; (ii) will bear all other costs and expenses associated with the organisation, establishment, operation, expenses, and cost associated with the management of fund.

- The fund had three class of investors 'A', 'B' and 'C' - 'A' being regular institutional investors besides their employees. 'B' and 'C' Class unit holders were AMC, Investment Manager, and its employees/nominees.
- The Service tax Department made an investigation into the affairs of the taxpayer to ascertain the taxability of the services of the fund/manager under 'Banking and other financial services' under Section 65(12) of the Finance Act, 1994, resulting into issue of series of notices demanding Service tax on the said activities, which came to be confirmed by adjudicating authority. Aggrieved, the Taxpayer approached CESTAT.

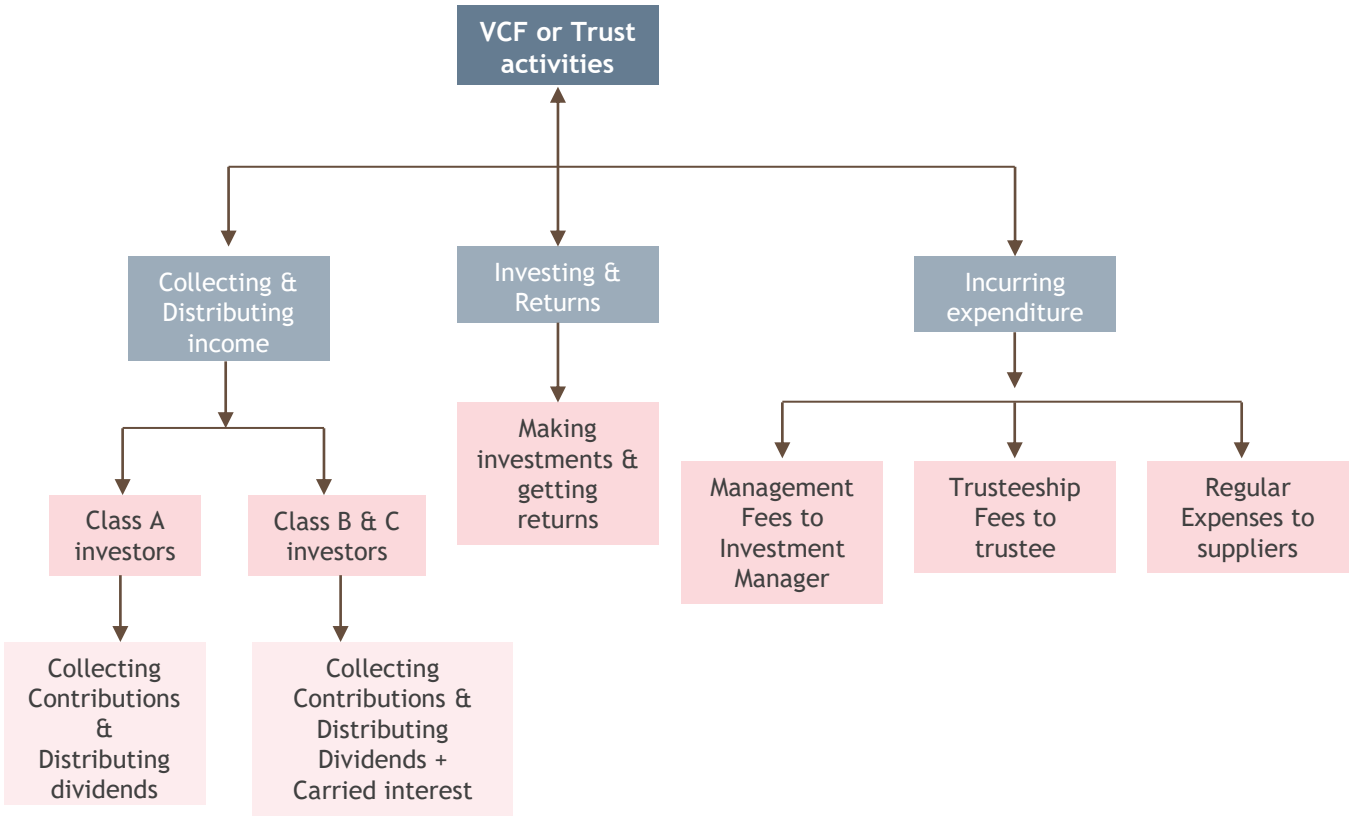
Given below is a gist of various grounds under which notices were issued on the taxpayer, defence put forth by taxpayer and the conclusions of the CESTAT:

- 'Mutuality of Interest' does not exist between the trust and the contributors/beneficiaries and the VCF is a commercial concern.

Taxpayer Contention

The fundamental ground for defence of the tax demand on the trust is based on the well-recognised doctrine of 'mutuality of interest' i.e., the trust and the contributors/ investors are not separate persons. Accordingly, there is absence of relationship as the service provider-service recipient between the trust and the contributors; there is no question of 'Service' inter se, meriting levy of service tax.

Representation of various activities undertaken by a VCF or the Trust.



The trust is neither a corporate entity nor does it have a personality distinct from the contributors/ subscribers/investors and the VCF is not a commercial concern.

Taxation of trusts under the Income Tax law is also in the hands of the trustee, who is the representative assessee on behalf of beneficiaries or directly in the hands of the person represented (viz. the beneficiary). The trust is not a separate legal entity which is evident from the fact that it is not a party to the Trust deed/Indenture of Trust. Lawfully, the trust is only an obligation attached to the ownership of the property, this shows that a trust can be sued or sue only through a trustee.

Tribunal Interpretation

The principal object of a taxpayer is to achieve capital appreciation through the investment of contributions and gain profit, which is a commercial activity. The trust has an independent identity and distinct personality of its own as is evident from registration with SEBI, investment in various companies, managing capital contributed by subscribers to the fund. The trust also collects KYC forms from the contributors, thus Trust acts as a commercial concern.

The trust is essentially a mutual fund engaged in portfolio management, etc. The documents establishes that the fund shall be managed by the trust and the object of the trust is to carry on the activity of a VCF. For the distribution of dividends in respect of units, a PPM and/or Scheme Document is created. Thus, the profit motive of the trust is evident. Service Tax law being a specific legislation just as the SEBI Act, 1992 should prevail over other legislations like Trust Act and the definition given thereof. VCF's do not bear comparison to that of a club and its members. Unlike the clubs, the taxpayer manages activities with a profit motive like the activities of a Bank and other Financial Institutions and hence, cannot be compared to clubs and thus the Apex Court decisions relied-on by the taxpayer (in the context of clubs) are not applicable. Thus, there exists a relationship that of a Service provider and Service recipient between the trust and the contributors and the consideration (expenses incurred by the trust out of the contribution and profit earned from investment of the contribution) would be liable to the tax in the hands of the trust.

- Services rendered by the VCFs are taxable services.

Taxpayer Contention

The trust need not pay service tax as the entities, where they are further investing their monies are paying service tax. Reliance placed on circulars no:94/5/2007-Service Tax dated 15.05.2007 and circular no:96/7/2007-ST dated 23.08.2007, which is claimed to have clarified that the 'entry load' and 'exit load' charged by the mutual fund being for management of asset are not liable to service tax.

Tribunal Interpretation

The trust manages monies invested by the contributor investors and the trusts are not amorphous entities; mutuality of interest is no longer applicable in the instant case. They are rendering the service of portfolio

management or asset management under BoFS to the contributor investors and the consideration is in the form of withholding of the dividends/profits otherwise distributable to the contributor Investors.

These are huge amounts retained and distributed to the AMCs or their nominees subject to achieving certain levels of performance. Thus, it is a variable expenditure and cannot be equated to 'Entry' or 'Exit' load. Moreover, it is found that the taxpayer's trusts are managing VCF and not 'mutual funds', therefore the circular is not relevant.

In a typical commercial activity, various entities in the chain of activity need to pay service tax and the subsequent entity may avail the credit of tax paid by the preceding entity. Hence the claim that the entities, where the VCFs are investing, are paying service tax is not tenable. Thus, it qualifies as taxable services.

- Service tax is leviable on carry interest, performance fee and other expenses.

Taxpayer Contention

The 'Carry' interest is part of the share of profits received by class B/C unit holders. On the other side, performance fee is not contingent upon an investment by the AMC and not related to units held by the AMC. Therefore, it is erroneous to equate with performance fee. In any case, it is not a fee received by the taxpayer's trusts. It is the recipients of such income who need to evaluate tax liability if any with respect to the same.

Additionally, one of the important elements for a transaction to qualify as a service is 'Consideration'. The taxpayer only recoups the expenses incurred in relation to earning the return on investments/provisions made as per accounting policies and there is no specific consideration charged which can be attributed to any services.

The amounts collected are the expenses incurred by the trust for achieving a common objective of the trust. Therefore, this is not a consideration. Even assuming the amounts incurred by the taxpayer are to be treated as consideration, at best, they qualify as reimbursement of expenses as a 'pure agent', which do not attract service tax in terms of Section 67(1) (i) of the Finance Act, 1994 during the period under dispute.

Wherever performance fee (for example Asset Management Fee) has been paid, service tax has been paid by the recipient viz. the AMC.

Tribunal Interpretation:

The taxpayer who manages the amounts invested by contributor investors have discretion over the distribution of dividend/profit to entities other than subscribers and they devised the structure of the fund in such a manner that the AMC and/or their nominees would get huge sums of money as 'Carried interest' which is nothing but a performance fee, with the motive of benefitting the AMC and/or their nominees, at the expense of the subscribers, to avoid taxes. The fact that the AMC, settlors, and trustees are all group concerns, would further give credence to the inference. It is also seen that the roles of different companies are rotated.

By way of carried interest, large amounts are paid in disproportion to the investment of a special class of investors, representing the same as 'return on investment'. The tribunal observed that it is beyond doubt that the regular investor would not cede his/her gains to make good the gain of other class of investors unless such gains are on account of certain performance parameters. Holding gains of Class B unitholders in Escrow to compensate any shortfall in performance parameters point to performance guarantee of Class B investors. Thus, contention by taxpayer that 'carry interest' is return on investment cannot be accepted, it being fee for meeting performance parameter.
In terms of Rule 1, 2 and 5 of Service Tax Determination of Value Rules, all expenses incurred by the trust/fund in the course of providing taxable services to contributor is to be treated as value of taxable service where value shall not be less than the cost of provision of taxable service; the exemption available to 'pure agents' and the trust/fund does not qualify as 'pure agent' in the light of Rule 5. While the initial expenses (Entry load, etc.) is not includible in the value of the service, the recurring expenses incurred by the taxpayer integral to the primary service, is not. Thus, the expenses incurred are also liable to service tax.

- Revenue Neutrality:

The taxpayer claimed that it is eligible to claim CENVAT Credit of the Service tax paid on input services in terms of Rule 3 of the CENVAT Credit Rules, 2004 read with Rule 2(1) thereof. The expenditure incurred by the taxpayer as shown in the revenue account discloses actual expenses incurred by the taxpayer and the accounting provisions created. CENVAT credit shall be eligible to be taken with respect to the services provided by the taxpayer and provisions should be excluded from the demand.

Tribunal Interpretation:

CESTAT also rejected the contention of 'Revenue Neutrality' taking into the account the requirement of all assesses paying their due share of tax, with corresponding CENVAT credit.

- CENVAT Credit, Accounting Errors, Penalty and Interest:

As regards the above, the Tribunal decided as under:

- The taxpayer's claim of eligibility to CENVAT Credit to be verified and allowed (if found in order) by the adjudicating authority.
- Claim that the amounts on account of "Loss of sale of investment", "Accrued interest considered doubtful", "Loss on revaluation of assets", etc. are not actual expenses but are only accounting adjustments, to be verified by the adjudicating authority and allow if found in order.
- Penalties are imposable under Section 76, 77 and 78 of Finance Act, 1994 for suppression, non-registration and non-payment of taxes.
- Claim of cum tax benefit (ie. the service consideration would be considered as amount inclusive of tax) to be verified and allowed, if found in order.

BDO Comments:

This decision assumes significance as it appears that this is the first time that a VCF operating through a trust structure has come under the service tax lens. While this may not be last word on the issue as there is good possibility of challenge to this tribunal order on various grounds. Few challenges are tabulated below:

Tribunal Decision	Possible challenge
Non-existence of 'mutuality of interest'.	Discretion powers of the trust must be scrutinised based on the trust deed and scheme documents in detail. Can the 'Trust' investing the contributors fund for return, disentitle them principle of 'mutuality interest'.
Recouping of expenses as consideration	Due regard should also be provided to the fact that such recoupment is permitted by SEBI, the regulator of VCFs.
Classification of services provided by the trust as banking and other financial services.	No concrete basis has been provided by the CESTAT for classifying it as Banking and Other Financial Services. Only a mere similarity has been drawn.

The historical industry practices/positions, such as existence of 'Mutuality of interest between Trust and Contributors', 'Carried interest represents Return of Investments', 'Expenses are characterised as reimbursement', etc. are under fresh scrutiny. This would upset the established practices and open-up litigation for players in this space/industry. If the Tax Authority can substantiate suppression/misstatement/collusion, etc. on the part of the taxpayer, the demand can go back to a larger period of 5 years, resulting in large tax demand, without a corresponding reference of CENVAT credit, which is considered to be significant leaving little net tax liability. The CESTAT order running into over 115 pages deals with multiple concepts and arguments advanced by the taxpayer, department's views and final finding of the tribunal and it requires very careful analysis in the context of the fact that pattern exists in respect of each taxpayer. It is important that the taxpayers examine these aspects and prepare well to defend demands, if any. This decision also opens-up an opportunity to revisit the existing arrangements to ring fence potential tax disputes.

Further, the issue is not confined to service tax but also from a GST perspective, especially given that the Union Budget 2021-22 proposes to include supplies by any person to its members within the ambit of supply for levy of GST.

[CESTAT- Bangalore-M/S. ICICI Econet Internet and Technology Fund and Others Vs. Commissioner of central Tax, Bangalore North dated 01 July 2021]

[7]State of Punjab Vs. Shamlal Murari AIR (1976 (1) SCC 719)

GLOBAL TRENDS

VAT/GST News:

International:

Portugal to launch VAT discount scheme for tourism sector

Portugal's finance ministry is testing out a new way to boost revenue for the country's struggling tourism sector. Letting local customers use the VAT included in their bills as credit to spend in other tourist venues, such as restaurants and theatres.

Only people tax-registered in Portugal will be eligible for the scheme. Customers provide their tax number when paying the bill, and their credits will be logged in an online portal.

Source: https://www.reuters.com/article/idUSL5N2N83FF

Georgia: Taxing of digital services companies begins

Georgian tax code established that a taxable person outside of Georgia who provides digital services in Georgia must pay VAT starting July 1st. This concerns taxable persons who are providing digital services and are not established or have no habitual residence or a fixed establishment in Georgia. Businesses must pay a VAT rate of 18% no later than the last day of the month following the accounting period. At the same time tax returns must be filed no later than the 20th day of the month following the accounting period (quarter).

Source: https://www.globalvatcompliance.com/georgia-taxing-of-digital-service-companies-begins/

EU: The European Commission issues a release on the new VAT rules

"New VAT rules for online shopping enter into force later this week as part of efforts to ensure a more level playing field for all businesses, to simplify cross-border e-commerce, and to introduce greater transparency for EU shoppers when it comes to pricing and consumer choice." In the release, the main summary of the EU eCommerce VAT package is also mentioned along with the unification of the VAT thresholds and the abolishment of the exemption of low-value consignments arriving in the EU from sellers established abroad.

Source: https://www.globalvatcompliance.com/eu-european-commission-issues-release-new-vat-rules/

Canada to charge sales tax on digital goods and services

On 23rd June, Canada passed a legislation that would expand the sales tax to digital goods and services. Bill C-30 passed by Canada's senate in a 63-19 vote indicates that non-resident vendors supplying digital products or services (including traditional services) to consumers in Canada be required to register for the Goods and Services Tax/Harmonized Sales Tax (GST/HST), and to collect and remit the tax on their taxable supplies to consumers in Canada.

The expansion of a sales tax according to Bill C-30 means that corporate giants like Amazon.com Inc. and Netflix Inc. will have to start paying taxes on their services very soon, once the bill receives a formal procedure that will make it law.

Source: https://www.globalvatcompliance.com/canada-charges-tax-on-digital-services/

Greece implements permanent VAT cuts for five Aegean Island.

Greece has permanently cut the VAT rate on five islands by 30%. The VAT reduction applies to the Aegean islands of Chios, Kos, Leros, Lesbos and Samos.

As of 1 July 2021, a permanently lowered VAT rate applies on the islands.

A reduced VAT rate on the islands has been in effect since 2018. However, the reduction was subject to renewal every six months. Following approval by Greece's parliament, the reduction is now permanent.

Source: https://www.vatglobal.com/greece-implements-permanent-vat-cuts-for-five-aegean-island/

Brexit six months on: The state of play for UK business

By now, six months into Brexit, many people have Brexit fatigue. Or rather, people have sensationalist Brexit news fatigue. However, for many companies, Brexit presents a concrete and urgent challenge.

A survey now reveals that nearly a third of British businesses have experienced a decline in trade since Brexit took effect. Small businesses have been particularly hard hit by the added cost of bureaucracy involved in exporting to the EU or importing into the UK from the EU.

Source: https://www.vatglobal.com/brexit-six-months-on-the-state-of-play-for-uk-business/

UK - Northern Ireland VAT on moving goods

Following the end of the UK's Brexit transition period, moving goods between Northern Ireland (NI) and the rest of the UK (Great Britain, GB) has taken on new compliance obligations. This is because NI remains part of the EU Single Market, Customs Union and EU VAT regime.

Under the NI Protocol, EU VAT rules will continue to apply in NI in respect of goods.

If you're a VAT-registered business trading between NI and the EU, you'll need to be identified as operating under the Northern Ireland Protocol.

Source https://www.avalara.com/vatlive/en/vat-news/uk-northern-ireland-vat-on-moving-goods.html

The Great EU VAT Reform: Are you ready?

On 01 July 2021, member states of the European Union (EU) will roll out the most significant changes to VAT obligations of B2C ecommerce in 30 years – the introduction of the Union & Non-Union One-Stop Shop (OSS), the Import One-Stop Shop (IOSS) and Marketplace Deemed Supplier Obligations.

While the reforms are designed to simplify tax, as with any change, understanding what the reforms mean can feel overwhelming for business leaders.

Source: https://www.avalara.com/vatlive/en/vat-news/the-great-eu-vat-reform-are-you-ready.html

India

New business registrations pick up in June

More than 16,600 businesses were registered in June, according to data from the corporate affairs ministry, representing a 26% year-on-year jump and indicating that entrepreneurship is picking up even as the second wave of the pandemic is abating.

Of the businesses incorporated in June, 12722 were new companies and 3940 were limited liability partnerships (LLPs), a more flexible business vehicle preferred by the service sector.

There has been a 16.7% jump in the incorporation of businesses in June compared to May, when 14,269 businesses were registered, including companies and LLPs.

Source: https://www.hindustantimes.com/business/new-business-registrations-pick-up-in-june-101626115252102.html)

GST collections fell below ₹1 lakh crore after 8 months, but rose 2% Y-o-Y

The Goods and Services Tax (GST) collection in June'21which reflects actual business transactions in the previous month, fell below ₹1 lakh crore for the first time after eight months due to the second wave of pandemic, but posted about 2% year-on-year growth at ₹92,849 crore.

The revenue of June this year includes GST collections from domestic transactions between June 5 and July 5 as the government gave various relief measures such as reduction in interest on delayed return filing because of the second wave, a ministry spokesperson said.

Source https://www.hindustantimes.com/business/gst-collections-fell-below-rs-1-lakh-crore-after-8-months-but-rose-2-yoy-101625574255066.html

A 'Good & Simple Tax'? 4 years of GST and the road ahead

On the fourth anniversary of the introduction of GST in India, on looking back to the journey so far, the reaction on success or failure of it is a mixed bag. There are many hooraying this dynamic change in the Indian indirect tax system, which has undoubtedly streamlined the taxes and compliances for taxpayers. However, on the other side, there are also illustrations highlighting the challenges under the GST regime, such as technical glitches on the GST portal, delays in refund etc.
Source: https://economictimes.indiatimes.com/small-biz/gst/a-good-simple-tax-4-years-of-gst-and-the-road-ahead/articleshow/84019991.cms

Customs News

International:

WCO and UNODC launch new Project to enhance capacity for detecting illegal shipments of plastic and hazardous waste

The WCO and the United Nations Office on Drugs and Crime (UNODC) have launched a new Project to improve the capacity of enforcement agencies to counter illegal shipments of plastic and hazardous waste in the cargo trade supply chain. The Project is part of the Container Control Programme (CCP), under which the two Organizations have established and provided training to dedicated Port Control Units (PCUs) and Air Cargo Control Units (ACCUs) at key seaports and airports.

The Project was launched on 15 June 2021 with a kick-off meeting involving representatives from several international organizations. It gave participants an opportunity to learn about the findings of technical assessments undertaken by the CCP team jointly with the authorities in Cambodia, Malaysia, Philippines, Thailand and Vietnam and to discuss cooperation at the national, regional and international levels.

Source:
http://www.wcoomd.org/en/media/newsroom/2021/july/wco-and-unodc-launch-new-project.aspx

WCO Secretariat supports Frontex in the development of a Handbook on Firearms for Customs and Border Guards

A new training publication, the Handbook on Firearms for Customs and Border Guards, is available for officers controlling passengers and vehicles in the European Union (EU) and wishing to boost their capacity to detect, handle and seize firearms, along with firearm parts and ammunition. Published by the European Border and Coast Guard Agency (Frontex), the Handbook looks at methods of arms trafficking and provides guidelines on search techniques as well as on security measures to be taken when handling seized firearms and ammunition.

Source:
http://www.wcoomd.org/en/media/newsroom/2021/july/wco-secretariat-supports-frontex-in-the-development-of-a-handbook-on-firearms.aspx

WCO completes virtual diagnostic mission in Sri Lanka for the implementation of the Basel Convention's plastic waste amendments

An integrated team consisting of Enforcement and Facilitation staff of the Compliance and Facilitation Directorate successfully conducted a virtual diagnostic mission with Sri Lanka Customs (28 June to 2 July 2021).

The Asia Pacific Border Management Waste Project aims to strengthen the response of various Asia Pacific Customs Administrations to effectively deal with legal imports of plastic waste, to mitigate the threat of illegal plastic waste shipments, and to sensitise the Administrations on the Basel Convention's plastic waste amendments that became effective on 1 January 2021.

Source:
http://www.wcoomd.org/en/media/newsroom/2021/july/wco-completes-virtual-diagnostic-mission-in-sri-lanka.aspx

India

Govt identifies items for customs exemptions review, seeks industry views

The government has identified a host of customs exemptions for review and has invited suggestions from trade and industry bodies on the same.

Importers, exporters, domestic industry and trade associations are invited to give views on the subject for consideration by the government by 10 August 2021 on the 'MyGov.in' portal.

Some key products covered under the list include fabrics, games/sports requisites, magnetron for microwave manufacturing, specified parts for PCB, set-up box, routers, broadband modem, contraceptives and artificial kidney.

Source:
https://economictimes.indiatimes.com/news/economy/policy/govt-identifies-items-for-customs-exemptions-review-seeks-industry-views/articleshow/84312841.cms

CBIC measures from 15 July to improve faceless assessment in customs

The Central Board of Indirect Taxes and Customs (CBIC) will increase facilitation level across all customs stations to 90% from 15 July, to enable faster clearances of non-risky imports, as it introduced measures to expedite customs clearances.

Separate Faceless Assessment Groups (FAG) for certain commodities that would contribute to revenue will also become active from 15 July.

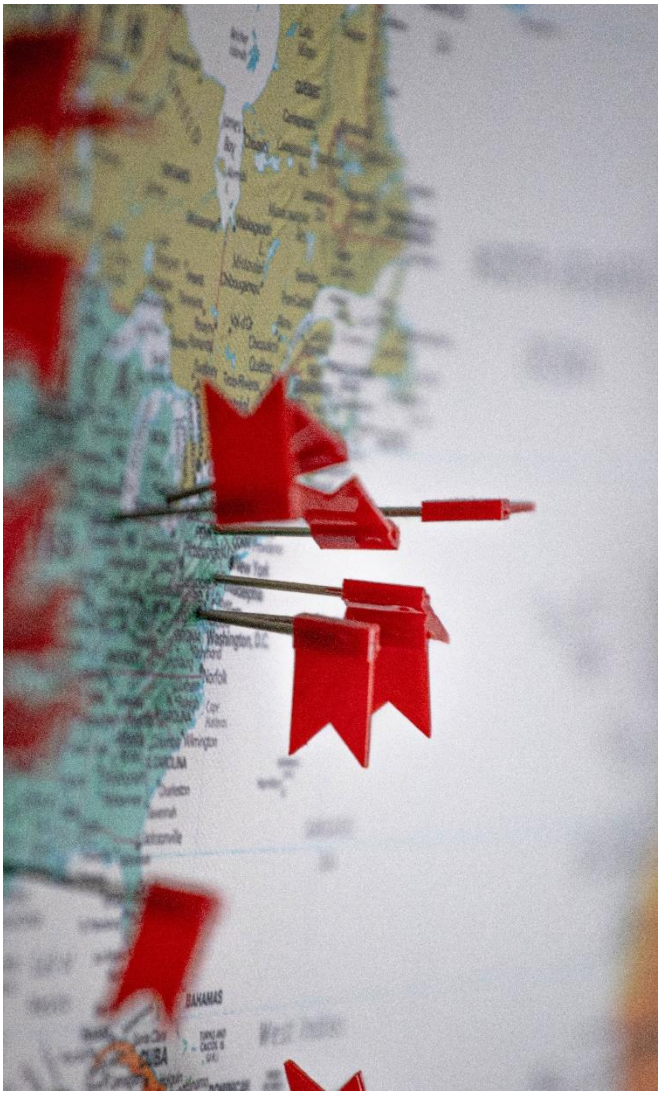
Source:
https://economictimes.indiatimes.com/news/economy/foreign-trade/cbic-measures-from-july-15-to-improve-faceless-assessment-in-customs/articleshow/84242370.cms

Clearance for customs set to get quicker

Customs clearance is set to get easier for businesses from 15 July with the Central Board of Indirect Taxes and Customs (CBIC) introducing several procedural changes to facilitate cross-border trade.

CBIC communicated the new measures aimed at speeding-up assessment and clearance of shipments in a more anonymous way to the top brass of the customs department. The idea is to further streamline the faceless assessment scheme rolled-out last October and process shipments without direct interface with the merchant.

Source:
https://www.hindustantimes.com/business/clearance-for-customs-set-to-get-quicker-101625859168020.html



ABOUT BDO GLOBAL

BDO is a leading professional services organisation with presence in 167 countries, and over 91,000 people working out of more than 1,600 offices. We deliver assurance, tax, advisory, and consulting services to clients throughout the country and around the globe.

- We offer sensible, actionable advice grounded in local knowledge backed by regional and global experience
- We set high standards and our global systems give our people responsibility for delivering tailored service that is right for clients
- We support our clients every step of the way as they expand abroad

TO BE THE LEADER FOR EXCEPTIONAL CLIENT SERVICE

ANTICIPATING CLIENT NEEDS	CLEAR COMMUNICATION	MEETING OUR COMMITMENTS	ENCOURAGING OUR PEOPLE	DELIVERING VALUE
*anticipating **client needs** and being forthright in our views to ensure the best outcome for them*	*being clear, open & swift in our **communication***	*agreeing to and meeting our **commitments**: we deliver what we promise, everyday, for every client*	*providing the right environment for our **people** and the right people for our clients*	*creating **value** through giving clients up to date ideas and valuable insight and advice that they can trust*

ABOUT BDO IN INDIA

BDO in India offers Strategic, Operational, Accounting and Tax & Regulatory advisory & assistance for both domestic and international organisations. We work cohesively, partnering with our clients to render continued expertise driven advisory. With a deep cultural understanding of business geography, our functional heads offer knowledge and expertise in establishing, structuring and operating business in India.

150 PARTNERS DIRECTORS

3500 STAFF

10 KEY CITIES

Ahmedabad, Bengaluru, Chennai, Goa
Hyderabad, Kochi, Kolkata, Mumbai
Delhi NCR, Pune

ASSURANCE

- Accounting Advisory Services
- Financial Statement Audit and Attestation Services

BUSINESS SERVICES & OUTSOURCING

- Global Outsourcing
- Shared services & Outsourcing
- Technology Services

ADVISORY

- Business Restructuring
- Corporate Finance and Investment Banking
- Cyber Security
- Business Analytics
- Due Diligence
- Forensics
- Government Advisory
- M&A Tax and Regulatory
- Resolution Advisory
- Risk and Advisory Services
- Valuations

TAX

- Direct Tax Services
- Transfer pricing Services
- Global Employer Services
- Global Tax Services
- Representation and Litigation Support
- Goods & Services Tax (GST)
- Customs & International Trade
- Pre-GST Indirect Tax Assessment & Litigation Assistance
- Tax Technology

Contact Us

For any content related queries, you may write in to taxadvisory@bdo.in or get in touch with,

GUNJAN PRABHAKARAN
Partner & Leader
Indirect Tax
D: +91 44 6131 0203
gunjanprabhakaran@bdo.in

DINESH KUMAR
Associate Partner
Indirect Tax
D: +91 9840 3100 39
dineshkumar@bdo.in

For any other queries or feedback, kindly write to us at marketing@bdo.in

BDO in India

Ahmedabad
The First, Block C – 907 & 908
Behind ITC Narmada, Keshavbaug
Vastrapur, Ahmedabad 380015, INDIA
Tel: +91 98 2564 0046

Bengaluru
SV Tower, No. 27, Floor 4
80 Feet Road, 6th Block, Koramangala
Bengaluru 560095, INDIA
Tel: +91 80 6811 1600

Chennai
No. 443 & 445, Floor 5, Main Building
Guna Complex, Anna Salai, Teynampet
Chennai 600018, INDIA
Tel: +91 44 6131 0200

Delhi NCR - Office 1
The Palm Springs Plaza
Office No. 1501-10, Sector-54
Golf Course Road
Gurugram 122001, INDIA
Tel: +91 124 281 9000

Delhi NCR - Office 2
Windsor IT Park
Plot No: A-1, Floor 2
Tower-B, Sector-125
Noida 201301, INDIA
Tel: +91 120 684 8000

Goa
701, Kamat Towers
9, EDC Complex, Patto
Panaji, Goa 403001, INDIA
Tel: +91 832 674 1600

Hyderabad
1101/B, Manjeera Trinity Corporate
JNTU-Hitech City Road, Kukatpally
Hyderabad 500072, INDIA
Tel: +91 40 6814 2999

Kochi
XL/215 A, Krishna Kripa
Layam Road, Ernakulam
Kochi 682011, INDIA
Tel: +91 484 675 1600

Kolkata
Floor 4, Duckback House
41, Shakespeare Sarani
Kolkata 700017, INDIA
Tel: +91 33 6766 1600

Mumbai - Office 1
The Ruby, Level 9, North West Wing
Senapati Bapat Marg, Dadar (W)
Mumbai 400028, INDIA
Tel: +91 22 6277 1600

Mumbai - Office 2
Floor 6, Raheja Titanium
Western Express Highway
Geetanjali Railway Colony, Ram Nagar
Goregaon (E), Mumbai 400063, INDIA
+91 22 6831 1600

Pune - Office 1
Floor 6, Building # 1
Cerebrum IT Park, Kalyani Nagar
Pune 411014, INDIA
Tel: +91 20 6763 3400

Pune - Office 2
Floor 2 & 4, Mantri Sterling, Deep
Bunglow Chowk, Model Colony,
Shivaji Nagar, Pune 411016, INDIA
Tel: +91 20 6723 3800

Note: The information contained herein has been carefully prepared, but it has been written in general terms and should be seen as broad guidance only. The information cannot be relied upon to cover specific situations and you should not act, or refrain from acting, upon the information contained therein without obtaining specific professional advice. Please contact BDO India LLP to discuss these matters in the context of your particular circumstances. BDO India LLP and each BDO member firm in India, their partners and/or directors, employees and agents do not accept or assume any liability or duty of care for any loss arising from any action taken or not taken by anyone in reliance on the information in this publication or for any decision based on it.

BDO India LLP, a limited liability partnership, is a member of BDO International Limited, a UK company limited by guarantee, and forms part of the international BDO network of independent member firms.

BDO is the brand name for the international BDO network and for each of the BDO Member Firms.

Copyright ©2021 BDO India LLP. All rights reserved.

Visit us at www.bdo.in