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Table of Contents

- **SEBI**
 - Mandatory listing of outstanding Non-Convertible Debt Securities
 - Extension of multiple deadlines
 - Relaxation of borrowing norms for large corporates
 - Guidelines for handling complaints received via SCORES platform
- **RBI**
 - Basel-III capital framework for All India Financial Institutions
 - Revised norms for bank investments
- **Insolvency**
 - IBBI tweaks rules to speed up resolution process
- **Taxation**
 - CBDT modifies Rule 11UA related to angel tax
 - Proposed alternate framework for delisting of Investment Holding Companies
 - Analysis of the Central Goods And Services Tax (Third Amendment) Rules, 2023
- **Real Estate**
 - BMC policy changes on Lease Transfer Premium
 - Karnataka to increase guidance rates from October 01, 2023

SEBI | Mandatory listing of outstanding Non-Convertible Debt Securities

The Securities and Exchange Board of India (SEBI) vide its Notification dated September 19, 2023 amended the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (LODR). These amendments have been put in place with the objective of overseeing the mandatory listing of outstanding Non-Convertible Debt Securities (NCDS) by listed entities having outstanding NCDS.

- **Compulsory listing of NCDS:** Listed entities possessing NCDS are now mandated to list all such securities intended for issuance on or after January 1, 2024 on stock exchanges. This mandate will serve to enhance transparency and accessibility for investors in the debt securities market.
- **Listing of existing securities:** Entities that have issued non-listed NCDS on or prior to December 31, 2023, and still have these securities outstanding as of that date, have the option to list them on stock exchanges. This provision will empower entities to bring previously issued securities into the regulated market.
- **Listing of existing unlisted securities:** Listed entities looking to list NCDS on or after January 1, 2024 must also list all outstanding unlisted NCDS issued on or after that date within a 3-month period from the date of listing the proposed securities. This requirement will ensure uniformity and compliance in the debt securities market.
- **Exemptions from listing:** Certain categories of non-convertible debt securities NCDS are exempt from the listing requirement. These include bonds issued under Section 54EC of the Income Tax Act, 1961, securities issued under agreements with multilateral institutions, and those issued in accordance with court orders or regulatory mandates from financial sector regulators such as SEBI, RBI, IRDAI, or PFRDA.
- **Lock-in period for exempted securities:** For securities issued under the exemptions, investors are obligated to retain these securities until maturity, and these securities must remain unencumbered throughout this period. This measure is designed to uphold the stability and integrity of exempted securities.
- **Disclosure requirements:** Listed entities intending to issue securities under the exempted categories must disclose all crucial terms of such securities to the stock exchanges where their NCDS are listed. This includes particulars like embedded options, security features, interest rates, charges, commissions, premium, maturity periods, and any other information deemed necessary by SEBI.

These amendments are aimed at facilitating better transparency in price discovery, avoiding undesirable opacity in the corporate bond market on account of information asymmetry across listed and unlisted NCDS, and addressing concerns of mis-selling of unlisted securities and preventing arbitrage due to price differences between listed and unlisted International Securities Identification Numbers (ISIN).

SEBI | Extension of multiple deadlines

The Securities and Exchange Board of India (SEBI) has recently announced a range of extended guidelines aimed at enhancing transparency and regulatory compliance in the financial markets.

Key aspects:

Topic	Extended deadline	Details
Listed companies to verify or deny market rumors	February 1, 2024 for Top 100 and August 1, 2024 Top 250 listed companies Previous deadline: October 1, 2023	SEBI aims to enhance corporate governance by requiring listed companies to confirm, deny, or clarify market rumors within 24 hours. The extension aims to provide companies with more time to comply with the requirements outlined in the Listing Obligations and Disclosure Requirements (LODR) Rules.
Nomination of mutual fund unit holders	December 31, 2023 Previous deadline: September 30, 2023	The extension allows additional time for investors to complete the nomination process for mutual fund units. The circular urges Asset Management Companies (AMCs) and Registrar & Transfer agents (RTAs) to encourage mutual fund unit holders to fulfil the nomination requirement or opt out of nomination. This encouragement will be conveyed through regular communications, including emails and SMS, sent on a fortnightly basis to the unit holders who are not in compliance with the nomination requirement.
Nomination in demat accounts	December 31, 2023 Previous deadline: September 30, 2023	Investors have more time to submit their 'choice of nomination' for demat accounts.

Voluntary nomination for trading accounts	Voluntary Previous deadline: N/A	Trading account nomination is now optional, thereby reducing regulatory burden. This change aligns with SEBI's efforts to promote ease of doing business and reduce the regulatory burden for market participants.
Extension for physical security holders	December 31, 2023 Previous deadline: September 30, 2023	The deadline to submit PAN, nomination, contact details, bank account details, and specimen signature is extended, preventing the freezing of folios.
Compliance and Implementation	Ongoing Previous deadline: N/A	SEBI instructs relevant entities to implement the circular, communicate changes, and ensure ongoing compliance.

SEBI | Relaxation of borrowing norms for large corporates

The term Large Corporates (LCs) means all listed entities (with the exclusion of Scheduled Commercial Banks) that meet the following criteria on the last day of the financial year (FY):

- **Outstanding loan size:** With an outstanding loan exceeding INR 100 crore, and
- **Credit rating:** Holding a credit rating of AA or higher, and
- **Listing of debt securities:** Having their debt securities listed on a recognized stock exchange.

In pursuit of deepening access to the bond market and to operationalize the Union Budget announcement for FY 2018-19, the Securities and Exchange Board of India (SEBI) had issued a circular dated November 26, 2018¹ which is now incorporated under chapter XII of the Master Circular (LC Chapter)². The LC Chapter mandated LCs to satisfy one-quarter of their financing requirements from the debt market. Under this regulatory framework, a LC is obligated to procure no less than 25% of its incremental borrowings during the FY, following the FY in which it is classified as a LC. For FY 2019-20 and FY 2020-21, this requirement necessitated annual compliance and commencing from the FY 2021-2022, this obligation is to be fulfilled over a continuous span of two years. However, SEBI vide circular dated

¹ SEBI Circular on debt securities dated Nov 26, 2018
https://www.sebi.gov.in/legal/circulars/nov-2018/fund-raising-by-issuance-of-debt-securities-by-large-entities_41071.html

² SEBI Master Circular for issue and listing of Non-convertible Securities, Securitised Debt Instruments, Security Receipts, Municipal Debt Securities and Commercial Paper dated August 19, 2021 (updated as on July 07, 2023)
https://www.sebi.gov.in/legal/master-circulars/jul-2023/master-circular-for-issue-and-listing-of-non-convertible-securities-securitised-debt-instruments-security-receipts-municipal-debt-securities-and-commercial-paper_73653.html

March 31, 2023,³ extended the contiguous block of two years to three years. A penalty is to be levied on the shortfall at the end of a three-year period. It is calculated at 0.2% of the shortfall in the fund raised through corporate bonds. Moreover, the LCs are required to make disclosures on the stock exchange regarding their identification as a LC and the particulars of incremental borrowings undertaken during the FY. These disclosures are to be duly certified by both the Company Secretary and the Chief Financial Officer.

SEBI's consultation paper on framework review:

- In a consultation paper dated August 10, 2023 (**Consultation Paper**)⁴ SEBI had put forth a proposal to increase the threshold for LCs from INR 100 crore to at least INR 500 crore. Such a change in the threshold could have implications for how companies are categorized.
- The Consultation Paper had also proposed that the term 'incremental borrowings' would be replaced with 'qualified borrowings' and exclude the following three elements from the calculation of qualified borrowings: (a) inter-corporate borrowings between its holding company and/or subsidiary and associate companies; (b) grants, deposits or any other funds received as per the guidelines or directions of the Government of India; and (c) borrowings arising on account of interest capitalization.

SEBI's approval on relaxing of borrowing norms for LCs:

However, as of now, SEBI has not approved the proposal of replacement of the term 'incremental borrowings' with 'qualified borrowings' and exclusion of the three elements from the calculation of qualified borrowings, SEBI in its 202nd board meeting held on September 21, 2023⁵ has granted approval for the proposal aimed at enhancing the flexibility within the framework for LCs concerning their financing requirements from the debt market. The following measures are introduced to the existing LC framework:

- **Higher monetary threshold:** A higher monetary threshold of INR 500 crore is used to define LCs, resulting in a reduction in the number of entities that qualify as LCs.
- **Removal of penalty:** The penalty has been eliminated for LCs, in case they are unable to secure a certain percentage of incremental borrowing from the debt market. This removal of penalties aims to alleviate financial pressures which LCs may have faced.
- **Introduction of incentives and moderated disincentives:** The framework also includes the introduction of incentives along with moderated disincentives. Though, incentives and disincentives are not clear yet, it aims to encourage and incentivize LCs to participate actively in the debt market

³ SEBI Board meeting press release dated March 29, 2023
https://www.sebi.gov.in/media/press-releases/mar-2023/sebi-board-meeting_69552.html

⁴ SEBI Consultation paper on review of framework for borrowings by Large Corporates dated Aug 10, 2023 https://www.sebi.gov.in/reports-and-statistics/reports/aug-2023/consultation-paper-on-review-of-framework-for-borrowings-by-large-corporates_75179.html

⁵ SEBI Board meeting press release dated Sept 21, 2023
https://www.sebi.gov.in/media-and-notifications/press-releases/sep-2023/sebi-board-meeting_77207.html

while ensuring that disincentives are implemented in a balanced and measured manner.

Apart from the above, with the view to facilitate ease of compliance and ease of doing business, the board also decided to retain the requirement that compliance with the framework will need to be met over a contiguous block of three years. Further, it has been decided to do away with the requirement on LCs for filing a statement identifying itself as an LC and statement regarding compliance with the framework.

SEBI is expected to come out with a circular soon which will provide more clarity, but this reform signals a significant transformation in how LCs can fulfil their financing needs within the Indian debt market. This reform characterized by the relaxation of incremental borrowing requirements, elimination of penalties and disclosure requirements, grants LCs greater flexibility for ease of doing business.

SEBI | Guidelines for handling complaints received via SCORES platform

The Securities and Exchange Board of India (SEBI) through Circular titled 'Redressal of investor grievances through the SEBI Complaint Redressal Platform and linking it to Online Dispute Resolution platform', dated September 20, 2023, effective from December 4, 2023 (Guidelines)⁶, introduced significant enhancements to SEBI's Complaint Redressal System (SCORES) platform. and its linkage to an Online Dispute Resolution platform.

SCORES is a centralized web-based platform that was launched in 2011 to provide a convenient and efficient platform for investors to file complaints related to issues such as non-receipt of shares or dividends, issues with brokers or intermediaries, and various other securities market-related grievances that remain unresolved by the concerned listed company, registered intermediary or recognized market infrastructure institutions (Entities).

The main aim of the Guidelines is to increase efficiency by including features like auto-routing and auto-escalation of complaints, as well as the involvement of Designated Bodies for each category of Entity as specified in Schedule II of the Guidelines, such as stock exchanges for listed companies, and depositories for depository participants, to monitor the redressal process against respective Entities under their domain.

Key aspects:

- Investors are encouraged to initially address their grievances with the concerned Entity through designated individuals responsible for compliance and grievance redressal.⁷ If the Entity rejects the complaint or fails to respond, or when the

investor is dissatisfied with the Entity's reply or resolution, investors can file complaints against any entity on SCORES within one year from the date of the cause of action, after which such complaints may be rejected. Further, SEBI shall handle the first review complaint for categories of intermediaries where no Designated Body has been appointed for the purpose.

- Any actions taken or purported to have been taken under the previously rescinded circulars will be considered as if they were taken under the corresponding provisions of the new circular. Additionally, any rights, obligations, liabilities, penalties, or ongoing legal proceedings related to the previous circulars will remain unaffected.⁸
- Entities must submit an Action Task Report (ATR) on SCORES within 21 days from the date of receiving a complaint. All Entities must periodically review and enhance their investors' grievance redressal mechanisms. Complaints received through SCORES must be resolved within 21 calendar days, with ATRs uploaded on SCORES. SCORES automatically forwards complaints to entities and routes ATRs back to complainants. Simultaneously, complaints are sent to relevant Designated Bodies overseeing ATR submissions. Designated Bodies monitor ATRs, providing feedback for improvement. SEBI has concurrent oversight of grievance redressal processes by both Entities and Designated Bodies.⁹ If the complainant is not satisfied with the Entity's resolution or if the Entity fails to submit the ATR on time, the concerned Designated Body conducts a review through SCORES, facilitating timely revisions and maintaining transparency.¹⁰
- The complainant may choose to opt for a second review if dissatisfied and SEBI is then mandated to take cognizance of such complaint through SCORES. SEBI then in its stipulated time frame resolves the complaint. Further, SEBI must treat the complaint as 'resolved' or 'disposed' or 'closed' only then the complaint stands resolved in SCORES.¹¹
- Additionally, if investors remain unsatisfied after SEBI's review on SCORES, they can pursue remedies through the Online Dispute Resolution (ODR) mechanism provided by SEBI through conciliation and arbitration. Alternatively, the complainants are free to approach legal forums like civil and consumer courts at any time. If a complainant opts for the aforementioned alternatives while a complaint is pending on SCORES, it will be considered resolved on SCORES.
- Furthermore, where listed companies fail to address investor complaints, the Designated Stock Exchange (DSE) can impose fines of INR 1,000 per day per complaint as a penalty for violating Regulation 13(1) of SEBI (Listing Obligation and Disclosure Requirements) Regulations, 2015¹². If these companies do not resolve grievances, pay fines, or respond to DSE notices within set timeframes,

⁶ Circular: SEBI/HO/OIAE/IGRD/CIR/P/2023/156, dated September 20, 2023, available at, <https://www.sebi.gov.in/legal/circulars/sep-2023/redressal-of-investor-grievances-through-the-sebi-complaint-redressal-scores-platform-and-linking-it-to-online-dispute-resolution-platform-77159.html>

⁷ Supra note 1, Annexure II, Guideline 1.

⁸ Supra note 1, Paragraph 7 of the circular.

⁹ Supra note 1, Annexure 1, Guideline 1.

¹⁰ Id., Guideline 2.

¹¹ Supra note 1, Annexure 1, Guideline 3.

¹² Circular No.: SEBI/HO/CFD/CMD/CIR/P/2020/12, dated January 22, 2020, available at, <https://www.sebi.gov.in/legal/circulars/jan-2020/non-compliance-with-certain-provisions-of-the-sebi-listing-obligations-and-disclosure-requirements-regulations-2015-and-the-standard-operating-procedure-for-suspension-and-revocation-of-trading-of-45752.html>

there's a possibility of freezing the shareholdings of their promoters. Further actions, including SEBI's involvement, may be triggered if the number or value of pending complaints exceeds specific thresholds.¹³

- The SCORES platform is not applicable for complaints herein below:
 - Lodged against delisted or unlisted companies
 - Entities no longer traded on stock exchanges (excluding securities valuation-related grievances)
 - Firms whose names have been removed from the register of companies
 - Companies undergoing liquidation or already liquidated
 - Complaints associated with ongoing court cases or quasi-judicial proceedings
 - Matters falling under different regulatory bodies or ministries
 - Issues governed by relevant provisions of the insolvency and bankruptcy code, 2016.¹⁴

RBI | Basel-III capital framework for All India Financial Institutions

The Reserve Bank of India (RBI) introduced the Basel III capital framework (**Framework**) for All India Financial Institutions (**AIFIs**) which shall come into effect from April 2024. This Framework is based on a set of international banking measures that aim to enhance the stability and resilience of banks and financial institutions and is a significant step taken by RBI to strengthen the financial sector in India and protect it from potential risks. It requires banks to maintain a minimum level of capital to absorb losses and withstand financial shocks. The Framework is governed by the Reserve Bank of India (Prudential Regulations on Basel III Capital Framework, Exposure Norms, Significant Investments, Classification, Valuation and Operation of Investment Portfolio Norms and Resource Raising Norms for All India Financial Institutions) Directions, 2023 (**Directions**).

Key aspects:

- The Framework pursuant to the Directions shall be applicable on the AIFIs which are regulated by RBI under the provisions of the Reserve Bank of India Act, 1934 and the non-banking financial institutions publication of RBI dated December 23, 2015. The AIFIs included under the Framework are the Export-Import Bank of India, the National Bank for Agriculture and Rural Development, the National Bank for Financing Infrastructure and Development, the National Housing Bank, and the Small Industries Development Bank of India.
- The Directions specify an indicative list excluding banks and insurance companies which can be considered financial institutions for the purpose of capital adequacy under the Framework. These are: (a) Asset Management Companies of Mutual Funds / Alternative Investment Funds / Private Equity Funds etc.; (b) Non-Banking Finance Companies; (c) Housing Finance Companies; (d) Primary Dealers; (e)

Merchant Banking Companies; (f) Entities engaged in activities which are ancillary to the business of banking as defined under the Banking Regulation Act, 1949; and (g) Central Counterparties.

- Pursuant to the Directions, the financial institutions are required to maintain a minimum total capital adequacy ratio (**CAR**) of 9% of total risk weighted assets (**RWAs**), wherein minimum Tier-1 capital ratio will need to be at 7% of RWAs which includes minimum common equity Tier-1 ratio at 5.5% of RWAs and additional Tier 1 capital at 1.5% of RWAs and maximum Tier 2 capital at 2% of RWAs.
- AIFIs are required to comply with the CAR requirements at 2 levels i.e., firstly at the consolidated or group level and secondly at the standalone or solo level. At the consolidated level, the CAR is based on the capital strength and risk profile of its consolidated assets and liabilities excluding insurance and any other non-financial activities and at the standalone level, the CAR is based on its standalone capital strength and risk profile.
- Equity investment made by AIFIs in a single investee cannot exceed 49% of the equity of the investee entity.
- RBI has capped investments by AIFIs in capital instruments of banking, financial, and insurance entities at 10% of their capital fund. Also, AIFIs are restricted to acquire a fresh stake in a bank's or AIFIs' equity share if the acquisition leads to its holding exceeding 5% of the investee banks or AIFIs' equity capital.
- Banks are now required to have a robust risk management system in place to identify, assess, and manage various risks, such as credit risk, market risk, and operational risk. This helps banks make informed decisions and mitigate potential losses.
- Transparency and public disclosure are also important components of the Framework, and banks are expected to provide accurate and timely information about their financial condition, risk exposures, and capital adequacy to stakeholders.

By implementing this Framework, RBI aims to enhance the resilience of Indian banks, strengthen risk management practices, and promote the overall stability of the financial system which helps protect the interests of depositors, investors, and the economy as a whole.

RBI | Revised norms for bank investments

The Reserve Bank of India (RBI) has introduced new principle-based classification, valuation and operation of commercial banks' investment portfolios. These include stringent regulations overseeing transfers into and out of the Held to Maturity (**HTM**) category and the possibility of including non-statutory liquidity ratio securities in HTM.

Currently, banks can allocate more than 25% of their investments to the HTM category. However, this flexibility comes with a condition that their investments in government securities used to satisfy the Statutory Liquidity Ratio (**SLR**)

¹³ *Supra note 1, Annexure I, Guideline 7.*

¹⁴ *Supra note 1, Annexure II, Guideline 5.*

requirement must not exceed 18%. The updated norms are based on a discussion paper published by the regulatory authority on January 14, 2022 encompassing several subtle modifications. These revisions bring the regulatory guidelines in line with international standards, but RBI has maintained crucial domestic safeguards such as the Investment Fluctuation Reserve (IFR), due diligence and limits for non-SLR investments, internal control systems, and rigorous reviews and reporting.

Key aspects:

- Creating a clearly distinguishable trading book category within the Held for Trading (HFT) classification.
- Removing the ceiling of a 90 days maximum holding period under HFT and also eliminating the period for HTM in lenders' investment portfolio. This clarification addresses the uncertainty that arose from the previous approach to selling securities within 90 days of acquiring and will encourage banks to categorize illiquid bonds and state development loans as HFT assets.
- Enhanced transparency regarding the composition of the investment portfolio. Under the revised norms, banks will have to formulate board approved investment policy and categorize their investment books into 3 sections, namely, HTM, Available for Sale (AFS) and Fair Value through Profit and Loss (FVTPL) accounts. Investments made by banks in subsidiaries, associates, and joint ventures will be managed in a distinct account, separate from the 3 categories mentioned earlier.
- Introducing a symmetric approach for fair-value gains and losses:
 - FVTPL is introduced as a new category which covers investments that do not meet qualifications for HTM or AFS, specifically including equity shares that are not associated with subsidiaries, associates, or joint ventures.
 - The investments within the FVTPL account will undergo fair valuation, and any resulting net gain or loss will be directly recorded in the profit and loss account, as specified by the regulator. High Frequency Trading securities will be a subset of the FVTPL account and will be valued daily. Other sub-accounts will be valued at a minimum frequency of once every quarter, as mandated by the RBI.
 - FVTPL includes:
 - Equity shares that are not related to subsidiaries, associates, or joint ventures.
 - Investments in mutual funds, alternative investment funds, real estate investment trusts, infrastructure investment trusts, and similar instruments.
 - Investment in securitization notes representing the equity tranche of a securitization transaction.
 - It covers bonds, debentures, and similar assets where the returns are tied to the performance of a specific index, such as an equity index, as opposed to an interest rate benchmark.
- Investments in subsidiaries, associates, and JVs will need to be held at acquisition cost, and any discount or premium on

the debt acquisition will be required to be amortized over the life of the instrument.

The regulatory changes are set to be enforced starting April 1, 2024 and will apply to all commercial banks, excluding regional rural banks, according to the regulator's announcement. Banks will be required to reclassify their investments from one category to another starting from the effective date of these guidelines. They must also disclose such reclassifications in their financial statements for FY 2024.

Insolvency | IBBI tweaks rules to speed up resolution process

The Insolvency and Bankruptcy Board of India (IBBI) introduced the IBBI (Insolvency Resolution Process for Corporate Persons) (Second Amendment) Regulations in 2023 to simplify the insolvency resolution process for corporate entities. The amendment primarily aims to facilitate the handling of applications made under Sections 7 and 9 of the Insolvency and Bankruptcy Code (IBC), 2016 concerning the admission or rejection of claims by the National Company Law Tribunal (NCLT) benches.

Key aspects:

- **Assistance to NCLT benches:** In addition to the evidence required by Sections 7 and 9 of the IBC, financial or operational creditors are required to submit a chronology of debt and default that includes the date on which the debt became due, date of part payments, date of default, date of last acknowledgement of debt, and the limitation that will apply. This requirement is outlined in Regulation 2D of the IBBI Regulation.
- **Obligation on Resolution Professional (RP):** By giving the RP a list of the corporate debtor's assets, finances, and business operations, Regulation 3A was added to encourage assistance and cooperation from the corporate debtor's staff members. This makes sure that the RP not only accepts the assets' transfer but also examines the list of assets and matches it to the corporate debtor's financials.
- **Flexibility to the creditors:** Regulation 12(1) has been modified to give creditors more freedom and relief to submit claims even after 90 days from the Insolvency Commencement Date (ICD) to the date of the Request for Resolution Plan (RFRP) by providing a justification for the delay. In addition to the above, if creditors fail to submit their claims within the deadline specified in the public announcement, they are given an additional 15 days to do so.
- **Verification of claims:** Regulations 13(1A), 13(1B), and 13(1C) have been added, and as a result, in the event of a delayed claim or Corporate Insolvency Resolution Process (CIRP), the RP will need to compile such claims, classify them as acceptable or non-acceptable, and present them to the Committee of Creditors (CoC) at the following meeting for recommendation and inclusion in the list of creditors, as well as to Adjudicating Authority (AA) for a delay pardon.
- **Authorized representative:** The purpose of adding Regulation 10 was to provide creditors with the option of choosing a different authorized representative to represent

them and address their concerns. It also expanded the tasks and duties of the authorized representatives.

- **Transfer of debt due to creditors:** Following the amendment to Regulation 28(1), the transferor and transferee now have 7 days to furnish information regarding any assignment or transfer of debts.
- **Audit of corporate debtor:** To improve the efficiency and transparency of the CIRP, Regulation 30B has been added, which includes a new requirement relating to the audit of the corporate debtor.
- **Request for resolution plan:** According to a revised version of Regulation 36B(1), the RP is now under an obligation to provide an information memo, an evaluation matrix, and a request for resolution plans to each resolution applicant within 5 days of creating the final list of potential resolution applicants.

The amendment represents a significant step towards improving transparency and expediting the CIRP by augmenting the responsibilities of the RP.

Taxation | CBDT modifies Rule 11UA related to angel tax

- In line with the government's commitment to involve stakeholders in drafting of laws, suggestions and feedback were sought for Draft Rule 11UA, which outlines methods for calculating fair market price.
- These suggestions and interactions with stakeholders have led to modifications in Rule 11UA for share valuation under Section 56(2)(vii) of the Income Tax Act, 1961 (**Act**) as per Notification No. 81/2023 dated September 25, 2023. It is stated that if the consideration for the issuance of shares surpasses their Fair Market Value (FMV), it will be liable to be taxed under the 'Income from other sources' category.
- Section 56(2)(vii) of the Act, also known as the 'angel tax' provision, aims to prevent abuse and applies when a closely held company (**CHC**) issues shares at a premium and receives consideration exceeding FMV.
- The excess is considered income from other sources for the CHC. Similarly, Rule 11UA of the Income Tax Rules, 1962 defines the valuation methodology for various assets, including unquoted equity shares. This Rule applies not only to the angel tax but also to anti-abuse provisions concerning asset transfers without consideration or at undervalued rates.
- Before the Finance Act of 2023 (**FA 2023**) amendment, angel tax applied only to shares issued to residents. FA 2023 extended it to non-resident investors (**NRIs**) for the 2023-24 tax year. FA 2023 also granted angel tax exemption to Venture Capital Funds (**VCFs**) in International Financial Services Centers (**IFSCs**), particularly specified funds.
- The Rules introduce 5 additional valuation methods for foreign investors and include Compulsorily Convertible Preference Shares (**CCPS**), a critical aspect of startup financing. While the government has taken steps to support startups, tax-related concerns have been raised as obstacles.

Key highlights of the changes in Rule 11UA:

- 5 additional valuation methods are now available for non-resident investors, along with the existing Discounted Cash Flow (**DCF**) and Net Asset Value (**NAV**) methods. These new methods are the Comparable Company Multiple, Probability Weighted Expected Return, Option Pricing, Milestone Analysis, and Replacement Cost.
- If shares are allocated to non-resident entities notified by the Central Government, the price of the equity shares corresponding to the consideration can be deemed as FMV for both resident and non-resident investors. However, this is contingent on the condition that the consideration from this FMV does not exceed the total consideration received from the notified entity. Additionally, the company must receive this consideration from the notified entity within 90 days before or after the share issuance date, which is the subject of valuation.
- Similar price matching is applicable to resident and non-resident investors concerning investments made by Venture Capital Funds or Specified Funds.
- Valuation methods for calculating the FMV of CCPS are also provided.
- A safe harbor provision allowing for a 10% variation in value has been included.
- The notified Rules expand valuation methodologies to include globally accepted methods and aims to provide greater parity between resident and non-resident investors.
- For resident investors, if the issue price of unquoted equity shares falls within 10% of the price determined by NAV or DCF method, or if the issue price of CCPS is within 10% of the price determined using the DCF method, then this issue price is considered the FMV of those shares.
- For NRIs, if the issue price of equity shares falls within 10% of the price determined by NAV, DCF, or any of the 5 new methods, or if the issue price of CCPS is within 10% of the price determined by DCF or any of the 5 new methods, then this issue price is considered the FMV of those shares. In this context, 'issue price' refers to the consideration received by the CHC for one share.

Taxation | Proposed alternate framework for delisting of Investment Holding Companies

- In response to the evolving dynamics of the financial market, the Securities and Exchange Board of India (SEBI) has recently proposed an alternate framework for delisting of Investment Holding Companies (IHC). These IHC are companies that primarily engage in owning/holding investments in both listed and unlisted companies. In some instances, these companies may also possess additional assets, such as property or real estate.

- Currently, there is no dedicated framework designed specifically for the delisting of such IHC. Consequently, these companies are compelled to undergo delisting in accordance with the existing delisting framework. However, the existing delisting framework fails to accurately reflect the true intrinsic value of the investments held by such IHC. Additionally, the reverse book building mechanism for delisting of companies may not provide an equitable exit price for public shareholders owning/holding shares in these IHC.
- In light of these challenges, SEBI's proposed framework seeks to address these deficiencies, with the overarching objective of establishing a more effective and equitable delisting process for IHC.

Proposed process for delisting of IHC:

- **Share transfer:** At the outset, the IHC will need to transfer the shares it holds/owns in other listed companies to the public shareholders owning shares in such IHC. The shares held by the IHC in listed companies will be transferred to the public shareholders in proportion to their shareholding in the said IHC.
- **Cash payments:** The public shareholders of an IHC shall be given cash in exchange for the shares held by the IHC in non-listed companies or other investments/assets held by such IHC.
- **Extinguishment of public shareholding:** Finally, a scheme for selective reduction of capital shall be made, subject to the approval of the National Company Law Tribunal (NCLT). Once the scheme is approved and implemented following the completion of the above-mentioned requirements of share transfer and cash payment, the entire shareholding of the IHC will be held by its promoters..

Tax implications that might follow once the new alternate framework for delisting is approved:

- The threefold mechanism provided under the new framework for delisting of an IHC shall lead to tax implications at various stages.
- As per the Income Tax Act, 1961 (**Act**), the shares held by an IHC fall under the category of capital asset unless they are held as stock in trade. Further, the realization of any profits resulting from sale of such capital assets is classified as capital gain. It is pertinent to note that the Act does not provide or specifically deal with taxation on transfer of shares of listed companies held by IHC to its public shareholders, as specified above.
- It is contemplated that there will be dual tax implication at the stage of share transfer. Firstly, as per Sections 112 and 111A of the Act, IHC will be liable to pay tax on capital gains with respect to distribution of the shares of listed companies held by it amongst its public shareholders. However, the tax rate shall depend upon the nature of investment i.e., whether the investment held by it is long term or short term.
- Secondly, even the public shareholders will be liable to pay tax on the shares they receive from the IHC. As per Section 2(22) of the Act, a dividend includes any distribution by a company of accumulated profits, whether capitalized or not, if such distribution entails the release by the company to its

shareholders of all or any part of the assets of the company. In view of this section, the distribution of shares of listed companies held by IHC to their public shareholders shall be considered as dividends paid by such companies. Dividends are taxable at the hands of shareholders, hence the public shareholders shall be liable to pay tax on shares transferred to them under this arrangement.

- Further, even the cash received by public shareholders in exchange of shares of unlisted companies and other assets held by IHC shall be considered as dividends in accordance with Section 2(22) of the Act. Therefore, the public shareholders shall be liable to pay tax on such cash received. Hence, it may be concluded that these are the major tax implication that are likely to follow once the alternative framework for delisting of IHC as proposed by SEBI is accepted and brought into force.

Taxation | Analysis of the Central Goods And Services Tax (Third Amendment) Rules, 2023

- Pursuant to the outcome of the 50th Goods and Services Tax (**GST**) Council meeting, the Ministry of Finance vide Notification dated September 06, 2023 published Central Goods and Services Tax (Third Amendment) Rules, 2023 (**CGST Rules**).
- Rule 31B and 31C were inserted in the CGST Rules. This amendment seeks to clarify the methodology of calculating GST on online gaming specifically online money games and casinos. The key objective behind this Notification was to introduce a clear bifurcation between casual online gaming and games with actionable claims involving deposits by the players in order to win amounts by way of wager.
- The GST Council reviewed the report submitted by the group of Ministers, which was appointed to examine the taxation aspects of casinos, horse racing, and online gaming and finalized the applicable GST rates for these services.

Introducing Rule 31B and 31C in GST Rules:

- Levying of GST on casinos and online money gaming was recommended to be fixed at a uniform rate of 28% on full face value by GST Council in its 50th GST Council meeting.
- The methodology of calculating the value of supply in online money gaming has been introduced under Rule 31B of the CGST Rules and the value of actionable claims in case of casino under Rule 31C. The players are now required to pay on full value of chips which were initially purchased.
- The value of supply regarding the actionable claims associated with online money gaming under Rule 31B shall be the total amount paid or payable in form of money, money's worth virtual digital assets by or on behalf of the players. The value of supply with reference to actionable claims in case of casinos under Rule 31C shall be the payment of total amount paid or incurred when purchasing tokens, chips, coins/tickets for use in casinos or on activities where chips, coins were not required.
- However, the proviso to both Rule 31B and 31C states that any amount returned or refunded to players or any unused

money on return of token, coins, chips, or tickets, cannot be deducted from value of supply.

- Further, no GST will be levied in the case where the amount received by the players by way of winning any event or game is used on a further event without withdrawing.

Impact of the amendments:

- The revised GST rates as recommended by the GST Council on implementation by way of inserting these CGST Rules will have significant implications on industries involved in online gaming involving money and casinos.
- Over the past five years, the online gaming industry in India has experienced remarkable growth, driven by the widespread availability of affordable smartphones and inexpensive mobile data. This has allowed the sector to attract USD 2.5 billion in foreign direct investment, making it one of the fastest growing industries in India, with an annual compounded growth rate of 28-30%. This Notification has clarified that winnings by any players will remain tax neutral due to the reason of tax collection at the initial stages itself.
- These CGST Rules have removed the ambiguity regarding the issue of calculation of value of supply. However, whether the deposit of money in wallets in these online gaming platforms qualifies as a supply or not is still unclear.
- Moreover, the Notification has paved the way to clarify that these rates are applicable only to online gaming involving real money, betting or wager and is not subjected on casual online gaming. With reference to the same, it is still not clear as to which all platforms or games fall under the category of online games involving money. Furthermore, the issue of such games being considered game of skill or gambling still persists. While the game of skill has not been covered under the definition of betting and gambling under the GST Act, it is still under the backstop of much needed clarity between the two.

Real Estate | BMC policy changes on Lease Transfer Premium

Brihanmumbai Municipal Corporation's (BMC) existing policy for transfer of leasehold rights and the premium charged as per Resolution No. 69 of the Reform Committee dated August 5, 2011 along with BMC Resolution No. 482 dated August 18, 2011 is 10% of the consideration mentioned in the Agreement or 10% of the value of land subject to the use of land as per the stamp duty assessment rate, whichever is higher. To bring about greater clarity, BMC issued a revised policy vide a Resolution dated July 7, 2023 on transfer of premium on leasehold lands for redevelopment projects.

Key aspects:

- In case of redevelopment of dilapidated buildings within Mumbai where after the redevelopment of the building, the lease holding rights of the land in the name of the proposed co-operative housing society/flat holders of federation in the redeveloped building are required to be transferred, the transfer premium shall be levied in the following manner:
 - In the event where the developer proposes to redevelop the building on the land by undertaking the

development rights from the leaseholder, the proposed co-operative housing society/allotees of federation/condominium/flat owners in the redeveloped building will be transferred 10% of the land's gross value depending on use which shall be recovered from the developer at the time of issuance of No Objection Certificate (NOC) and Occupation Certificate (OC) of the property.

- In the cases of redevelopment where the developer submits a proposal to undertake the redevelopment on lease holding rights on payment of transfer fee of the land in his name or in the name of his partnership company/organization, subject to the transfer being done within 3 years of the proposal of redevelopment and the project getting completed within the time frame as determined by the BMC subsequent to which the developer shall transfer the occupancy rights in the name of the members of the new co-operative housing society/federation/condominium/apartment owners in the redeveloped building, the transfer premium will be
- 10% of the difference between the property value at the time of issuing NOC/OC and the value of the property at the time of transferring ownership.
- In a scenario where the developer fails to complete the project within stipulated time frame, the above-mentioned exemption shall not be applicable. However, in cases where the owner himself (to whom the land has been allotted by BMC or in whose name the rights of the land have been transferred on payment of transfer premium as per prevailing policy of BMC) proposes to redevelop the building on a land after a period of 3 years from the date of transfer or 3 years from the date of effect of such transfer and such owners defaults to complete the redevelopment within the stipulated period or within the project period extended by the BMC after submitting the timely redevelopment proposal, in such cases, the transfer premium shall be transferred in the name of the proposed co-operative housing society/allotees of federation/condominium/owners of apartments of the redeveloped building. Therefore, 10% of the value of the land (gross value subject to usage) shall be recovered from the owner as per the prevailing market rate at the time of issuance of NOC from the property department for OC of buildings.
- Where the developer fails to complete the redevelopment project within the stipulated time frame then re-transfer surcharge will not be charged but an administrative lump sum amount of INR 50,000 shall be levied.
- While calculating the value of land as per the stamp duty rate, the rate of 'open developed land' shall be considered. The prevailing market value for residential, commercial, and industrial use will be considered as the prevailing assessed rate of developed land multiplied by the following multiplier:

$$= (\text{Residential/Commercial/Industrial Building} + \text{prevailing market rate per square meter of land}) / (\text{Residential building} + \text{Land rate per square meter})$$

Real Estate | Karnataka to increase guidance rates from Oct 01, 2023

- Guidance Value is the minimum selling price of a property as decided by the State Government below which a transaction for sale of such property cannot be registered formally. This concept of minimum property price is somewhat similar to the 'Ready Reckoner' rates published by the State Government of Maharashtra.
- This system of Guidance Value was introduced by the Karnataka Government in 1990s to prevent the leaks in the collection of stamp duty by under-reporting the value of the transaction.
- The Guidance Value is different for every property and is decided by the Department of Stamps and Registrations in Bengaluru and is also often called the circle value of the property. It is based on a mix of various factors like location, property type, use etc. Guidance Value plays an important role in deciding the market price of a property as any increase in the Guidance Value will automatically lead to an increase in the market value of that property. It also directly affects the property tax value.

Proposed increase

- In a recent press conference, it was announced that the State Government has proposed an increase in the Guidance Value of the properties in Karnataka by around 25-30% on average. This increase is to be implemented with effect from 1st October 2023. It was also explained how according to the law, the Guidance Value should be revised every year but it had not been increased since 2019 which was close to about 5 years since last increase.
- One primary reason behind Guidance Value not being increased since the year 2018-2019 was the onset of COVID-19 pandemic that came in 2019. Even after 2021, the real estate industry was recovering from the major drop in

property prices it had undergone in 2020. Now, after about 5 years since last increase, it was realised that there existed a huge gap between the government prescribed Guidance Value and the actual market value. An increase in the Guidance Value to make it more in tune with the market rates will automatically lead to an increase in property tax value and also an increase in the stamp duty value on sale of such property.

- According to the estimates calculated by the state stamp and registration department, this increase in Guidance Value shall lead to an increase in revenue of close to about INR 2000 crore in state revenue, most of which shall come from the state capital - Bengaluru which is also the national IT hub.
- While explaining the new proposed increase, it was stated that in those areas where the Guidance Value and actual market value was similar, i.e. with less difference, the Guidance Value was to be increased by 10%. However, in those areas where the market rate is significantly higher than the Guidance Value, a proportionate increase was to be done to the guidance rate which could range anywhere between 20 to 50% increase, which would be decided case by case for each region. Guidance Value would be decreased in those certain cases where it is more than the market value.

Since the proposed increase in Guidance Value is to be implemented in the city of Bengaluru before a State-wide implementation, it is estimated that the property prices in Bengaluru are set to get dearer by around 20% once the hike is implemented from October 01, 2023. The increase shall be noticeable the most in those properties which are located in prime areas, those that have recently been added with amenities, especially around the routes of the newly opened metro line along with the upcoming metro lines. Those areas are expected to undergo an increase in Guidance Value by almost 50%.

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