



Vision

"To be a global leader in promoting good corporate governance"

Motto

सत्यं वद। धर्मं चर। इष्टार्थं कुरु। त्वात्कैः कुरुते ह्यु कुरुते इव।

Mission

"To develop high calibre professionals facilitating good corporate governance"

Info Capsule

Thursday, March 21, 2024

President

CS B. Narasimhan

Vice President

CS Dhananjay Shukla

❖ Direct Tax

CBDT Amends India-Spain Double Taxation Avoidance Agreement (DTAA) [Notification No. 33 March 19, 2024]

The Central Board of Direct Taxes (CBDT) has issued a significant amendment to paragraph 2 of Article 13 of the India-Spain DTAA, affecting the taxation of royalties and fees for technical services.

The CBDT has substituted paragraph 2 of Article 13 in the India-Spain DTAA. The amended paragraph now stipulates that royalties and fees for technical services may be taxed in the Contracting State in which they arise, subject to the law of that State. However, if the recipient is the beneficial owner of the royalties or fees for technical services, the tax charged shall not exceed ten percent of the gross amount of royalties or fees for technical services.

For details:

<https://incometaxindia.gov.in/communications/notification/notification-33-2024.pdf>

❖ ICSI News

• **ICSI- NISM Joint Certification on Corporate and Securities Markets Compliances (Integrated Program for CS Students)**

The Institute has launched the Joint Certification Courses on Corporate and Securities Markets Compliances (CSMC) [Integrated Program for the CS Course] in collaboration with National Institute of Securities Markets (NISM), an educational institution founded by SEBI, for the students of ICSI. This course is an ideal platform for students who are passionate about corporate and securities market compliances, and aspire to gain in-depth knowledge and build a long-term career in these areas. The launch of this course in collaboration with NISM marks the beginning of a transformative educational experience that will equip the CS students with the skills, knowledge and align with the market demand and need of the India Inc. in a unique way. CSMC students are positioned to take up a wide range of roles and responsibilities of compliance professionals with the listed companies, market infrastructure institutions, and intermediaries. For Prospectus and FAQs, please click on: <https://www.icsi.edu/home/icsi-nism/>

• **First ICSI International ADR Centre at Noida**

With the intent to facilitate Arbitration, Mediation and Conciliation at National and International level, the Institute of Company Secretaries of India (ICSI) established its first ICSI International ADR Centre at Noida (U.P.). Hon'ble Mr. Justice P. Sathasivam, former Chief Justice of India and former Governor of Kerala inaugurated the ICSI International ADR Centre at ICSI House, C-36, Institutional Area, Sector - 62, Noida (U.P.) on 29th of February, 2024.

The ICSI International ADR Centre at Noida is a state-of-the-art facility with world-class infrastructure, advance Video Conferencing facility, top notch administrative facilities, etc.

The Objective of the ICSI International ADR Centre is to promote Alternate Dispute Resolution (ADR) methods including Mediation, Conciliation and Arbitration to assist and educate all sections of Society, Individuals, Corporates, Firms, Institutions and Establishments (Local or International).

❖ **Capital Market and Securities Laws**

• **Safeguards to address the concerns of the investors on transfer of securities in dematerialized mode (March 20, 2024)**

To harmonize the classification of inactive/dormant accounts across Stock Exchanges & Depositories and to strengthen the measures to prevent fraud / misappropriation for inoperative demat accounts, SEBI has amended Para 1.12 of its Master circular for Depositories dated October 06, 2023. The amendment prescribed the safeguards to address the concerns of the investors on transfer of securities in dematerialized mode. The provisions, inter alia, provide that the depositories shall give more emphasis on investor education particularly with regard to careful preservation of Delivery Instruction Slip (DIS) by the Beneficial Owners. The provisions of this circular shall come into effect from April 1, 2024.

For details:

<https://www.sebi.gov.in/legal/circulars/mar-2024/safeguards-to-address-the-concerns-of-the-investors-on-transfer-of-securities-in-dematerialized-mode-82417.html>

• **SEBI issues circular to exempt certain FPIs from additional disclosure framework (March 20, 2024)**

The market regulator has issued directions to exempt a section of foreign portfolio investors (FPIs) who hold concentrated holdings in one corporate group from the additional disclosure framework issued last August. The regulator's Board had recently given the go-ahead for this amendment. In a circular dated March 20, 2024, the SEBI stated that an FPI having more than 50 percent of its Indian equity AUM (assets under management) in a corporate group shall not be required to make the additional disclosures as in the circular dated August 24, 2023, subject to compliance with conditions.

For details: <https://www.moneycontrol.com/news/business/markets/sebi-issues-circular-to-exempt-certain-fpis-from-additional-disclosure-framework-12496001.html>

❖ **Banking**

All Agency Banks to remain open for public on March 31, 2024 (Sunday) (March 20, 2024)

The Government of India has made a request to keep all branches of the banks dealing with Government receipts and payments open for transactions on March 31, 2024 (Sunday) so as to account for all the Government transactions relating to receipts and payments in the FY 2023-24 itself. Accordingly, Agency Banks are advised to keep all their branches dealing with government business open on March 31, 2024 (Sunday).

For details: <https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=12635&Mode=0>

❖ **Market Watch**

Stock Market Indices as on 21.03.2024	
S & P BSE Sensex	72,641.19 (+0.75%)
Nifty 50	22,011.95(+0.79%)

Foreign Exchange Rates as on 21.03.2024 (https://m.rbi.org.in/scripts/ReferenceRateArchive.aspx)			
INR / 1 USD	INR / 1 EUR	INR / 1 GBP	INR / 1 JPY
83.13	90.91	106.36	0.55

❖ **Competition Law**

CCI denies interim order restricting Google from charging its service fee (March 20, 2024)

The Competition Commission of India (CCI) on Wednesday (March 20, 2024) declined an interim relief order that would restrain Google from levying service fees on app developers until a final decision is made by the regulator. The CCI also said the Director General (DG) would continue its investigation as ordered by the commission in its March 15 order.

“The Commission is of the considered opinion that no case whatsoever has been made out by the informants which warrant the grant of interim relief. Resultantly, the applications stand dismissed,” said the CCI while rejecting the plea by app developers in its order. “The DG shall investigate without being swayed in any manner whatsoever by the observations made herein,” the order reads.

The regulator in its order said that while there might be concerns about the fairness of Google’s fee structure, it was essential to recognise the costs and responsibilities associated with maintaining and operating app stores. Google had argued that restricting it from charging a fee in the interim would virtually mean that the tech giant would have to provide its Playstore for free to developers in India.

“No other court or regulator has passed a similar relief despite repeated requests. This recognises that Google cannot provide its platform without any consideration, especially when developers continue to charge their users for digital in-app purchases and enjoy the services of Play,” said the CCI in its order.

For details: https://www.business-standard.com/companies/news/cci-denies-interim-order-restricting-google-from-charging-its-service-fee-124032001020_1.html

❖ **Ministry of Information & Broadcasting**

Government notifies PIB’s Fact Check Unit under IT Rules 2021(March 20, 2024)

Government of India today notified Fact Check Unit (FCU) under the Press Information Bureau (PIB) of the Ministry of Information and Broadcasting (MIB) as the fact check unit of the Central Government. In a Gazette notification issued today, the Ministry of Electronics and Information Technology (MeitY) notified the PIB FCU under the provisions of the sub-clause (v) of sub-rule (1) of rule 3 of the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021. MIB and MeitY have been working closely on the subject to address the challenge of fake news, especially on social media.

The Fact Check Unit under PIB was established in November 2019 with a stated objective of acting as a deterrent to creators and disseminators of fake news and misinformation. It also provides people with an easy avenue to report suspicious and questionable information pertaining to the Government of India. The FCU is mandated to counter misinformation on Government policies, initiatives and schemes either *suo motu* or under a reference via complaints. The FCU actively monitors, detects, and counters disinformation campaigns, ensuring that false information about the Government is promptly exposed and corrected.

Citizens can reach out to the PIB Fact Check Unit through various modes, including through WhatsApp (+918799711259), email (pibfactcheck[at]gmail[dot]com), Twitter (@PIBFactCheck) and PIB’s website (<https://factcheck.pib.gov.in/>). The Fact Check Unit’s WhatsApp Hotline Number is a handy tool for such people where one only has to forward a suspicious message.

For details: <https://pib.gov.in/PressReleasePage.aspx?PRID=2015792>

❖ **Pronouncement**

19.03.2024	NBCC (India) Limited versus Zillion Infra Projects Pvt. Ltd.	Supreme Court
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Reference in one contract to the terms and conditions of the other contract would not ipso facto make the arbitration clause applicable unless there is a specific mention/reference thereto

Facts

The appellant, NBCC (India) Limited is a Government of India undertaking, engaged in construction of power plants and other infrastructure projects. The respondent, M/s Zillion Infraprojects Pvt. Ltd. is engaged in the construction and infrastructure sector. The appellant issued an Invitation to tender majorly for Construction of the Weir. The Respondent submitted the bid and appellant awarded the contract for Construction of the Weir to the respondent. A dispute arose and the respondent issued a notice invoking arbitration and further seeking consent for the appointment of a former Judge of a High Court, as Sole Arbitrator. The appellant did not respond so the respondent filed an application at the High Court under Section 11(6) of the Arbitration Act. The High Court confirmed the proposed appointment of the former Judge of the Delhi High Court, as the Sole Arbitrator. Aggrieved by the orders, the appellant filed the appeals before Supreme Court.

Issue

Learned Senior Counsel *inter alia* submitted before the Supreme Court that a mere reference to the terms and conditions without there being an incorporation in the L.O.I. would not make the *lis* between the parties amenable to the arbitration proceedings. Relying on the judgment of Supreme Court in the case of *M.R. Engineers and Contractors Private Limited vs. Som Datt Builders Limited*, he submitted that unless the L.O.I. specifically provides for incorporation of the arbitration clause, a reference to the arbitration proceedings would not be permitted in view of the provisions of sub-section (5) of Section 7 of the Arbitration Act.

Decision

The Hon'ble Supreme Court held that:

“when there is a reference in the second contract to the terms and conditions of the first contract, the arbitration clause would not ipso facto be applicable to the second contract unless there is a specific mention/reference thereto.

We are of the considered view that the present case is not a case of ‘incorporation’ but a case of ‘reference’. As such, a general reference would not have the effect of incorporating the arbitration clause. In any case, Clause 7.0 of the L.O.I., which is also a part of the agreement, makes it amply clear that the redressal of the dispute between the NBCC and the respondent has to be only through civil courts having jurisdiction of Delhi alone.”

For details: https://www.sci.gov.in/wp-admin/admin-ajax.php?action=get_judgements_pdf&diary_no=127472021&type=j&order_date=2024-03-19

❖ **ESG**

70% of Passive ESG Funds Are Exposed to New Oil and Gas Projects (March 20, 2023)

A total of 70% of passive funds passed off as “sustainable” by five of the largest asset managers in the U.S. and Europe are exposed to companies developing new oil and gas projects, environmental organization Reclaim Finance said in a report on Wednesday, March 20, 2024 calling out asset managers for greenwashing ESG-labeled passive funds.

For details: <https://oilprice.com/Latest-Energy-News/World-News/70-of-Passive-ESG-Funds-Are-Exposed-to-New-Oil-and-Gas-Projects.html>



**THE INSTITUTE OF
Company Secretaries of India**
भारतीय कम्पनी सचिव संस्थान
IN PURSUIT OF PROFESSIONAL EXCELLENCE
Statutory body under an Act of Parliament
(Under the jurisdiction of Ministry of Corporate Affairs)

Vision

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Motto

सत्यं वद। वर्ज्यं घट। *speak the truth; abide by the law*

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List of ICSI Latest Publication 2023 Onwards



1. Company Law Exploring Procedural Dimensions VOL I / II / III-December 2023 (A comprehensive and practical oriented publication (in three volumes) covers step by step procedural aspects of company law, specimens of resolutions, applications/petitions to ROC/RD/NCLT information/approvals required, reference to relevant e-forms for filing and so on.)
2. Charter of Audit Committee - January 2023
3. Corporate Governance from Compliance to Excellence (Handbook on Best Practices) Version 2.0 - March 2023
4. FAQs on SEBI (Real Estate Investment Trusts) Regulations, 2014 - March 2023
5. FAQs on SEBI (Infrastructure Investment Trusts) Regulations, 2014 - March 2023
6. Handbook on IFSCA - April 2023
7. Handbook on Business Responsibility and Sustainability- May 2023
8. FAQs on Section 8 Companies 2nd Edition-June 2023
9. Ready Reckoner for Private Companies (Revised Edition)-June 2023
10. One Person Company - A Referencer - July 2023
11. Chartered Secretary Collector's Series (First Edition) - September 2023
12. Handbook on Producer Companies - November 2023
13. NBFC - A Quick Referencer - November 2023
14. CHARTERED SECRETARY COLLECTOR'S SERIES (Second Edition) - November 2023
15. ICSI (Management and Development of Company Secretaries in Practice) Guidelines, 2023 - November 2023
16. Charter of Board of Directors - January 2024
17. Charter of Nomination and Remuneration Committee - January 2024
18. Guidance Note on Annual Secretarial Compliance Report (Revised Edition) - January 2024
19. SS-1 (Secretarial Standard on Meeting of the Board of Directors)-February 2024
20. SS-2 (Secretarial Standard on General Meetings) - February 2024
21. Compilation of SEBI (LODR) Informal Guidance
22. Compilation of Informal Guidance by SEBI

Weblink for Purchase: <https://www.icsi.edu/home/icsipublications/>

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