INTERNATIONAL BUSINESS ADVISORS

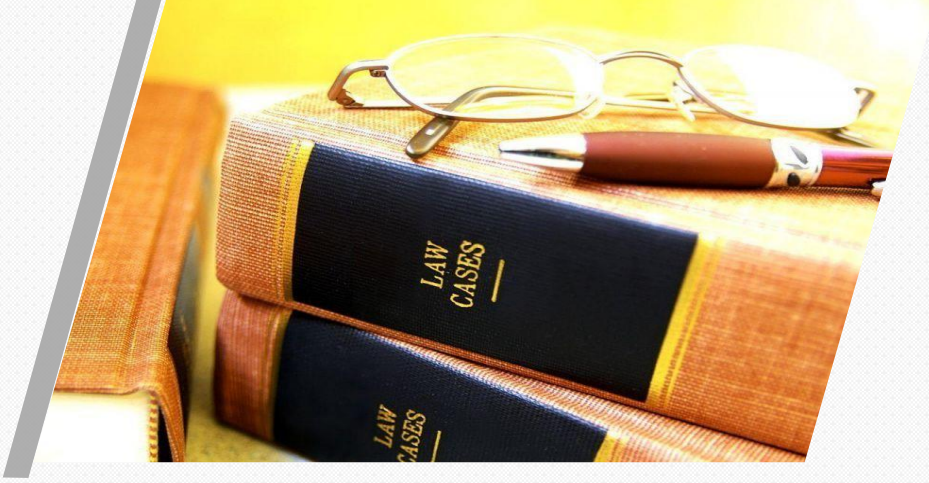
CONNEKT

April - 2019

Content

Direct Tax – Case Laws	3
Indirect Tax – Case Laws	6
Indirect Tax Notifications	9
Corporate Legal & Regulatory Notifications	13
Column	17
IBA News	20
Compliance Calendar	21
About us	22

Direct Tax Case Laws



Case Law 1:

No deemed dividend if the lender company were substantially involved in money lending business.

The Assessing Officer ('AO') made an addition of INR 1.2 crores to the income of assessee for AY 2000-01 as deemed dividend u/s 2(22)(e) of the Income-tax Act ('Act'). The assessee had received such sum from two companies, namely DHPL and JHPL. The AO contended that since the business of lender companies did not involve substantial money lending, the amount did not fall within the proviso (ii) to Section 2(22)(e) but were rather taxable as deemed dividend. The addition was confirmed by CIT(A). The ITAT disagreed with the findings of facts rendered by revenue. The revenue argued that DHPL's business did not involve substantial money lending since out of its total income only 8.18% constituted interest income and out of its total investments lending business constituted only 18.77%. Likewise, out of the total investments made by JHPL, lending business constituted only 32%. The counsel for revenue relied upon the definition of NBFC as per RBI Act, 1934. It contended that since in the instant case the business of money lending constituted less than 50% and did not constitute the predominant business of lending companies, the amount received could not be excluded from deemed dividend. The assessee contended that the two companies were also engaged in other activities some of which constituted non-banking financial activities such as investments, lease funding in different sectors, etc. The HC held that test of substantiality is not confined to what the RBI declares it to be, generally. In the instant case, the companies were carrying upto 3 or 4 non-banking financial activities. Therefore, in such event, the 50% test to benchmark whether the amount falls within or outside the second proviso to Section 2(22)(e) of the Act would fail. Therefore, the ruling was held in favour of assessee.

High Court of Delhi: Commissioner of Income-tax, Delhi v. Bharat Hotels Ltd.

Case Law 2:

Where assessee was engaged in development of real estate and letting out the same, income so derived would be assessed as income from business and not as income from house property.

The assessee was engaged in the business of construction and promotion of residential and commercial complexes. The assessee constructed a shopping mall and let out the shop rooms. In the revised return of income filed by the assessee for the assessment year 2009-10, the amount received by it on letting out the shop rooms, was shown as income from business. The assessing officer treated this amount as income from house property and after deducting municipal taxes and statutory benefit of 30%,

computed tax on the balance amount and passed assessment order dated under Section 143(3) of the Act. The assessee challenged the assessment before the Commissioner of Income Tax (Appeals). But the appeal was dismissed by the order. On appeal, assessee contended that the amount received by letting out the rooms in the shopping mall cannot be considered as income from house property since letting out the shop rooms in the mall amounts to commercial exploitation of the building constructed by the assessee and it is a part of the business activity of the assessee company. The assessee was actively engaged in the day to day operations and the management of the mall which includes house keeping services, customer support, technical and electrical support, security, car parking facilities, maintenance of lifts and escalators etc. The ITAT ruled in favour of the assessee. The HC confirmed that the order passed by ITAT.

High Court of Kerala: Commissioner of Income-tax. v. Oberon Edifices & Estates (P.) Ltd

Case Law 3

Sum paid to law firms for preparing documents to facilitate sale of share was allowable deduct u/s 48.

The assessee, a foreign company, was carrying on activities in India as a Foreign Institutional Investor (FII). In the relevant assessment year, the assessee sold shares held in its Indian subsidiary. In the return of income, the assessee offered long-term capital gain, on account of sale of shares in the Indian Subsidiary. While computing long-term capital gain on sale of shares, the assessee has claimed deduction of certain expenditure incurred towards transfer of shares. The assessee submitted that the said expenditure represented legal/professional fees paid to lawyers/accounting firms for assisting in transfer of shares. The Assessing Officer opined that the expenditure claimed by the assessee could not be considered to have been incurred wholly and exclusively in connection with transfer of shares. He thus rejected assessee's claim. The CIT(A) confirmed the order passed by Assessing Officer. The ITAT held that the phraseology 'in connection with the transfer of capital asset' used in the aforesaid provision has been interpreted by the Jurisdictional High Court in CIT v. Shakuntala Kantilal [1991] 190 ITR 56/58 Taxman 106 (Bom.) to be wider in scope than the expression 'for the transfer'. The Jurisdictional High Court held that payment of any amount which is absolutely necessary to effect the transfer will be an expenditure covered by section 48(i). The Jurisdictional High Court held that if the assessee incurs certain expenditure for removing any encumbrance over the asset, it will qualify for deduction under section 48(i) of the Act, since, without removing such encumbrance sale or transfer could not be effected. Hence, any expenditure intrinsically connected to the transfer of the capital asset is allowable as deduction under section 48(i) of the Act. The ITAT relied on correspondences, agreements, invoices, etc. between the assessee and accounting/law firms to confirm its order. Hence, the ruling was held in favour of assessee

ITAT Mumbai: AIG Offshore Systems Services Inc. v. ACIT International Taxation, Circle-1(1)

Direct Tax : Case Laws

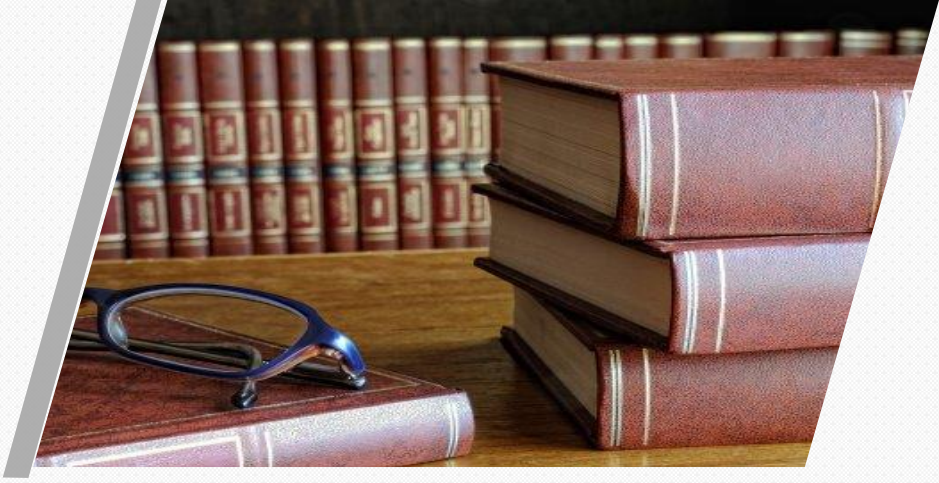
Case Law 4

ITAT Delhi: Mentor Graphics Ireland Ltd. v. ACIT (International Taxation), Circle 2(2)(1), New Delhi

Payment to foreign Co. for outright purchase of software is not "royalty"

The assessee was a company incorporated in Ireland and during the year under consideration it was in receipt of certain sum towards 'Sale of Software' from its Indian distributors. During the course of assessment, the Assessing Officer ('AO') opined that receipts on account of 'Sale of Software' was to be taxed as income from royalty as per the provisions of section 9(1)(vi) and Article 12 of the DTAA, India and Ireland. The DRP confirmed the additions made by the AO. On appeal by assessee, the ITAT ruled that treaty provisions between India and Ireland unambiguously require that the use of copyright is to be taxed in the source country. In the instant case, the payment was made by assessee for use of 'copyrighted material' rather than for the use of copyright. The lower authorities had factually doubted the contention of the assessee that it has received consideration for the transfer of a copyrighted product and not for the transfer of copyrights in the computer software programme. Thus, it is not in dispute that there is no transfer of any copyright in the computer software by the assessee to its customers and receipts derived by the assessee from 'Sale of Software' was not in nature of 'Royalty' as defined under article 12 of India-Ireland DTAA. Since treaty provisions were more beneficial, an adjudication on nature of receipts vis a vis provisions of section 9(1)(vi) was not required. The ITAT held that income received by assessee from its customers was not royalty and hence not taxable in India.

Indirect Tax : Case Laws



Case Law 1:

Proportionate ITC Reversal required in case of post invoice discount given by the supplier

The applicant is a manufacturing concern registered under GST in the state of Tamil Nadu. They intend to enter into an agreement with M/s C2FO India LLP for setting up an automated platform wherein the suppliers and the recipient (applicant) would be registered on. The applicant submitted that a schedule would be defined based on which supplier data would be picked for discounting the invoice, and if the supplier agrees to offer certain discount, the said invoices would be placed for early payment. Further, the discount offer could either be APR (Annual Percentage Rate) or flat discount pre-fixed. The supplier would pay the applicable GST at the undiscounted price and the applicant would avail the ITC of the said GST paid at the full undiscounted price. The applicant had sought advance ruling on whether the proportionate ITC pertaining to the discount amount needs to be reversed or not. The applicant further stated that the discount in question is not captured in the Purchase Orders or agreements. The ruling authority referring to the provisions of the CGST Act 2017, decided that the value of supply in such transactions would be the full undiscounted value mentioned in the invoice and the time of supply would be the date of raising the invoice. In addition, referring to Section 16 of the CGST Act 2017, it was observed that if any amount is not paid to the supplier as per the value of supply, the same would be added to the output liability of the recipient. Therefore, in the instant case it was ruled that the applicant is eligible to avail ITC only to the extent of the amount mentioned in the invoice less the discount amount as per the C2FO Software, which is finally paid by the applicant to the suppliers. Hence, the applicant would be required to reverse the proportionate ITC availed on the discount amount.

AUTHORITY FOR ADVANCE RULINGS – TAMIL NADU IN M/s MRF LIMITED [ADVANCE RULING NO. 05/AAR/2019 dated 22nd January 2019]

Case Law 2:

Penalty/ liquidated damages collected from the customer to be treated as "supply"

The applicant is a non–banking financial company providing various types of loans such as auto loans, personal loans, etc. to their customers & charges interest on such loans, the applicant enter into an agreement with borrowers and allow them to pay the consideration of loan into monthly EMIs. An advance ruling has been sought on whether the Bounce charges which is collected by the applicant from customers is treated as supply under the GST regime. As per section 7(1) of the CGST Act,2017 "Supply" means all forms of supply of goods or services such

Indirect Tax : Case Laws

as sale, transfer, etc. Scope of supply is defined in section 7(1)(d) of CGST Act "the activities to treated as a supply of goods or supply of services". As per para 5 of clause (e) in schedule 2 of CGST Act,2017 "agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act" i.e. as per above provision it's an activity or transaction which is treated as a supply of services & applicant is required to pay tax on such amount, as per CGST Act the transaction value is price actually paid or payable for the said supply, where the supplier and the recipient are not related person and the price is the sole consideration, further as per the provision of section 15 of the CGST Act,2017 the value of supply shall also include interest or late fees or penalty for delayed payment of any consideration for any supply. Therefore, the authority ruled that bounce charges collected by applicant is treated as a supply of service & is required to pay tax on such amount.

AUTHORITY FOR ADVANCE RULINGS – MAHARASHTRA in M/s BAJAJ FINANCE LIMITED [No. GST-ARA-21/2018-19/B-84) dated 06th August 2018]

Case Law-3

A Management consultant does not fall under the definition of 'Intermediary' as per Sec.2(13) of IGST Act, 2017

The applicant is a resident in India engaged in the supply of services of 'management consultancy' to clients abroad. The applicant is a one-man entity, working from his residence in India by providing management consultancy services directly to foreign clients and the remuneration will be paid by the clients as fixed monthly consultancy fees specified in the contract. An Advance Ruling has been sought on whether the management consultancy services as provided by the client falls within the definition of 'Intermediary' as per Sec.2(13) of IGST Act, 2017. The authorized representative states that the applicant is not an employee of his client and his provision of services is based on consultancy contracts entered into with the clients. There is no partnership, joint venture, agency or any other relationship between the applicant and the clients as per the consultancy contract entered into between them. His services of consultancy purely based on his expertise and experience in such fields. As per Section 2(13) of IGST Act, "intermediary" means "a broker, an agent or any other person by whatever name called who arranges or facilitates the supply of goods or services or both or securities between two, or more persons but does not include a person who supplies such goods or service or both or securities on his own account".

Therefore, the services provided by the applicant will appropriately fall under the SAC 9983 as management consultancy services as the applicant is directly providing service to his clients and is not engaged in facilitating or arranging the supply of goods or services or both between two or more persons as in the case of intermediary services. Accordingly, the service provided by the applicant is rightly classified under

Indirect Tax : Case Laws

"Management Consultancy Services" and does not come within the meaning of the term "Intermediary" as defined in Section 2(13) of IGST Act, 2017.

AUTHORITY FOR ADVANCE RULINGS- ADVANCE RULING No. KER/37/2019 (Dated 02nd March 2019)

Case Law-4

The Imported Embroidery Needles technically different from Sewing Machine needles liable to anti dumping Duty(Notification No. 31/2017-Customs (ADD) Date 22/06/2017)-Remanded Back

The dispute pertains to the import of 'Needles' which was held liable to anti-dumping duty imposed by the **Notification No. 31/2017-Customs (ADD) Date 22/06/2017.** The appellant claims that along with the import of parts of sewing machine and of the 'embroidery machines',12400 cartons were also covered, and of which 300 cartons did contain Sewing machine needles but the remaining were embroidery needles which were not subject to Anti Dumping duty by explaining the technical differences between the two. He further points out that 'embroidery needles' are distinct from 'sewing needles' as the latter finds coverage under heading no. 8452 3090 of First Schedule to Customs Tariff Act.The first appellate authority allowed the appeal to the limited extent of setting aside the enhancement of value and reduction of redemption fine and penalties, though, nevertheless, for re-export. He further informs that the impugned order, though acknowledging the distinction between 'embroidery needles' and 'sewing machine needles' Having considered the rival submissions, it would appear that both Revenue and the assessee are not in disagreement that 'embroidery needles' are distinct from 'sewing machine needles.' From the orders of the lower authorities, we are unable to ascertain the distinction between the two. There is also no reference to any authentic source for the distinction between the two noted by the original authority. Circumstantial evidence, such as stickers on the packing, that part of the consignment declared to be 'embroidery needles' was, admittedly, composed of 'sewing machine needles' and that a different model number designates 'embroidery needles', are not acceptable in a dispute on classification.

In the following order, we are unable to ascertain the distinction between the two because there was no reference to any authentic source for the distinction between the two noted by the original authority. Circumstantial evidence the matter had remanded back to the original authority for its technical and chemical test to figure out the differences between the two, and opportunity is provided to the importer to respond before the final order.

M/S SUPER SONIC IMPEX VERSUS COMMISSIONER OF CUSTOMS ,NHAVA SHEVA II

Indirect Tax Notification

1. To give exemption from registration under GST

CBIC vide Notification No. 10/2019 – Central Tax dated 7th March 2019 has decided to provide exemption from registration under GST for any person engaged in exclusive supply of goods and whose aggregate turnover in the financial year does not exceed INR 40 Lakhs.

http://www.cbic.gov.in/resources//htdocs-cbec/gst/notfctn-10-central-tax-english-2019.pdf

2. Seeks to prescribe the due date of quarterly FORM GSTR-1

CBIC vide Notification No. 11/2019 – Central Tax dated 7th March 2019 has prescribed the due date of quarterly FORM GSTR-1 for the taxpayers having aggregate turnover upto Rs. 1.5 crores for the quarter April to June 2019 as 31st July 2019

http://www.cbic.gov.in/resources//htdocs-cbec/gst/notfctn-09-central-tax-english-2019.pdf

3. Seeks to prescribe the due dates of monthly FORM GSTR-1

CBIC vide Notification No. 12/2019 – Central Tax dated 7th March 2019 has prescribed the due dates of monthly FORM GSTR-1 for the taxpayers having aggregate turnover of more than Rs. 1.5 crores for the months of April to June 2019 as the eleventh day of succeeding month.

http://www.cbic.gov.in/resources//htdocs-cbec/gst/notfctn-12-central-tax-english-2019.pdf

4. Seeks to prescribe the due dates of FORM GSTR-3B

CBIC vide Notification No. 13/2019 – Central Tax dated 7th March 2019 has prescribed the due dates of FORM GSTR-3B for the months of April to June 2019 as the twentieth day of succeeding month.

http://www.cbic.gov.in/resources//htdocs-cbec/gst/notfctn-13-central-tax-english-2019.pdf

5. Seeks to extend the threshold limit for opting in composition scheme

CBIC vide Notification No. 14/2019 – Central Tax dated 7th March 2019 superseding Notification No. 08/2017 – Central Tax dated 27th June 2017 has extended the threshold limit of aggregate turnover for availing Composition Scheme under Section 10 of the CGST Act 2017. The revised threshold limit shall be INR one crore and fifty lakhs and INR Seventy-Five Lakhs for special category states.

http://www.cbic.gov.in/resources//htdocs-cbec/gst/notfctn-14-central-tax-english-2019.pdf

Indirect Tax Notification

6. Seeks to extend the due date of FORM ITC-04

CBIC vide Notification No. 15/2019 – Central Tax dated 28th March 2019 has extended the due date for furnishing of FORM ITC-04 in respect of goods dispatched to or received from a job worker for the period July 2017 to March 2019 till 30th June 2019.

http://www.cbic.gov.in/resources//htdocs-cbec/gst/notfctn-15-central-tax-english-2019.pdf

7. Seeks to make amendments to CGST Rules

CBIC vide Notification No. 16/2019 – Central Tax dated 29th March 2019 has further amended the Central Goods and Services Tax Rules, 2017 which would be known as Central Goods and Service Tax (Second Amendment) Rules, 2019.

http://www.cbic.gov.in/resources//htdocs-cbec/gst/notfctn-16-central-tax-english-2019.pdf

8. Seeks to provide an option to supplier of services to avail composition scheme

CBIC vide Notification No. 02/2019 – Central Tax (Rate) dated 07th March 2019 has decided to provide an option to supplier of services to pay tax under composition scheme at the rate of 6% for those eligible taxpayers having annual turnover in preceding financial year upto INR 50 Lakhs.

http://www.cbic.gov.in/resources//htdocs-cbec/gst/notfctn-2-2019-cgst-rate-english.pdf

9. Seeks to notify rates of various services for real estate sector

CBIC vide Notification No. 03/2019 – Central Tax (Rate) dated 29th March 2019 has notified CGST rates of various services as recommended by Goods and Services Tax Council for real estate sector.

Similar notification has been issued to notify IGST rates as well.

http://www.cbic.gov.in/resources//htdocs-cbec/gst/notfctn-3-2019-cgst-rate-english.pdf

http://www.cbic.gov.in/resources//htdocs-cbec/gst/notfctn-3-2019-igst-rate-english.pdf

10. Seeks to exempt certain services for real estate sector

CBIC vide Notification No. 04/2019 – Central Tax (Rate) dated 29th March 2019 has exempted certain services as recommended by the Goods and Services Tax Council for real estate sector.

Similar notification has been issued under integrated tax as well.

http://www.cbic.gov.in/resources//htdocs-cbec/gst/notfctn-4-2019-cgst-rate-english.pdf

http://www.cbic.gov.in/resources//htdocs-cbec/gst/notfctn-4-2019-igst-rate-english.pdf

Indirect Tax Notification

11. Seeks to specify services to be taxed under Reverse Charge Mechanism

CBIC vide Notification No. 05/2019 – Central Tax (Rate) dated 29th March 2019 has specified certain services to be taxed under Reverse Charge Mechanism (RCM) as recommended by GST Council for real estate sector.

Similar notification has been issued under integrated tax as well

http://cbic.gov.in/resources//htdocs-cbec/gst/notfctn-5-2019-cgst-rate-english.pdf

http://cbic.gov.in/resources//htdocs-cbec/gst/notfctn-5-2019-igst-rate-english.pdf

12. Seeks to notify certain services to be taxed under RCM for real estate sector

CBIC vide Notification No. 07/2019 – Central Tax (Rate) dated 29th March 2019 has notified certain services to be taxed under RCM under Section 9(4) of the CGST Act 2017 as recommended by GST Council for real estate sector.

Similar notification has been issued under Section 5(4) of the IGST Act 2017 as well.

http://cbic.gov.in/resources//htdocs-cbec/gst/notfctn-7-2019-cgst-rate-english.pdf

http://cbic.gov.in/resources//htdocs-cbec/gst/notfctn-7-2019-igst-rate-english.pdf

13. Seeks to notify GST rate of certain goods for real estate sector

CBIC vide Notification No. 08/2019 – Central Tax (Rate) dated 29th March 2019 has notified CGST rate of certain goods as recommended by GST Council for real estate sector.

Similar notification has been issued under integrated tax as well.

http://cbic.gov.in/resources//htdocs-cbec/gst/notfctn-8-2019-cgst-rate-english.pdf

http://cbic.gov.in/resources//htdocs-cbec/gst/notfctn-8-2019-igst-rate-english.pdf

14. Seeks to clarify various doubts related to sales promotional schemes

CBIC vide Circular No. 92/11/2019 – GST dated 07th March 2019 has issued clarifications on various doubts raised through representations related to treatment of sales promotion schemes under GST.

http://cbic.gov.in/resources//htdocs-cbec/gst/circular-cgst-92.pdf

15. Seeks to clarify certain refund related issues under GST

CBIC vide Circular No. 94/13/2019 – GST dated 28th March 2019 has issued clarifications on various refund related issues under GST.

http://cbic.gov.in/resources//htdocs-cbec/gst/circular-cgst-94.pdf

Indirect Tax Notification

16. Seeks to clarify verification for grant of new registration under GST

CBIC vide Circular No. 95/14/2019 – GST dated 28th March 2019 has clarified instructions regarding exercising due caution in granting of new registration under GST by the proper officer.

http://cbic.gov.in/resources//htdocs-cbec/gst/circular-cgst-95.pdf

17. Seeks to clarify issues in respect of transfer of ITC in case of death of sole proprietor

CBIC vide Circular No. 96/15/2019 – GST dated 28th March 2019 has issued clarifications in respect of transfer of input tax credit in case of death of sole proprietor.

http://cbic.gov.in/resources//htdocs-cbec/gst/circular-cgst-96.pdf

Corporate Legal & Regulatory Notifications

S. No	Notifications

1. COMPANIES (INCORPORATION) SECOND AMENDMENT RULES, 2019

(MCA notification dated March 6, 2019)

The Ministry of Corporate Affairs (MCA) vide its notification dated March 6, 2019 has amended the Companies (Incorporation) Rules, 2014, through the Companies (incorporation) Second Amendment Rules, 2019 which shall come into force with effect from the date of publication.
Through the said amendment, MCA has amended rules for, shifting of registered office to another state and Simplified Proforma for Incorporating Company Electronically (SPICe).

Due to the said amendment, the following changes shall follow:
i. A company applying to shift its registered office to another state would be required to advertise in the Form No. INC 26 in the vernacular newspaper in the principal vernacular language in the district and in English language in an English newspaper with wide circulation instead of widest circulation in the State in which the registered office of the company is situated.

ii. With effect from 18th March, 2019, fee on SPICe form shall not be applicable on companies incorporated from the 26th January, 2018, with a nominal capital of less than or equal to rupees fifteen lakhs.

http://mca.gov.in/Ministry/pdf/CompaniesIncorporationIIAmendmentRules_07032019.pdf

2. COMPANIES (INCORPORATION) THIRD AMENDMENT RULES, 2019
(MCA notification dated March 29, 2019)

The Ministry of Corporate Affairs (MCA) vide its notification dated March 29, 2019 has amended the Companies (Incorporation) Rules, 2014, through the Companies (incorporation) Third Amendment Rules, 2019 which shall come into force with effect from the date of publication in the Official Gazette.

Through the said amendment, MCA has notified that Form AGILE (INC-35) shall be accompanied with application of incorporation.

Due to the said amendment, through Form AGILE (INC-35), a Company filling for incorporation will be able to include an application for registration of the following numbers:

i. GSTIN with effect from 31st March, 2019
ii. EPFO with effect from 8th April, 2019
iii. ESIC with effect from 15th April, 2019

http://mca.gov.in/Ministry/pdf/companiesINC3rdAmendmentRules_30032019.pdf

3. Trade Credit Policy – Revised framework
(RBI notification dated March 13, 2019)

Reserve Bank of India (RBI) vide its notification dated March 13, 2019 has revised the regulations of Trade Credit Policy.

The key difference between the existing regulations and the revised regulations is as follows :

REVISED REGULATIONS	EXISTING REGULATIONS
Amount under automation route Up to USD 150 million or equivalent per import transaction for oil/gas refining & marketing, airline and shipping companies. For others, up to USD 50 million or equivalent per import transaction.	**Automatic Route:** ADs are permitted to approve trade credit for import of non-capital and capital goods up to USD 20 million or equivalent per import transaction. **Approval Route:** The proposals involving trade credit for import of non-capital and capital goods beyond USD 20 million or equivalent per import transaction are considered by the RBI.
Recognised lender **1. For suppliers' credit:** Supplier of goods located outside India. **2. For buyers' credit:** Banks, financial institutions, foreign equity holder(s) located outside India and financial institutions in International Financial Services Centres located in India.	No such provisions under existing regulations.
Period of Trade Credit The period of TC, reckoned from the date of shipment, shall be up to three years for import of capital goods. For non-capital goods, this period shall be up to one year or the operating cycle whichever is less. For shipyards / shipbuilders, the period of TC for import of non-capital goods can be up to three years.	**Period of Trade Credit** Maturity prescriptions for trade credit are same under the automatic and approval routes. While for the non-capital goods, the maturity period is up to one year from the date of shipment or the operating cycle whichever is less, for capital goods, the maturity period is up to five year from the date of shipment. For trade credit up to five years, the ab-initio contract period should be 6 (six) months. No roll-over/extension will be permitted beyond the permissible period.

Legal & Regulatory

All-in-cost ceiling per annum Benchmark rate plus 250 bps spread	**Cost of raising Trade Credit:** The all-in-cost ceiling for raising Trade Credit is 350 basis points over 6 months LIBOR (for the respective currency of credit or applicable benchmark).
Exchange Rate **FCY denominated TC** Change of currency of FCY TC into INR TC can be at the exchange rate prevailing on the date of the agreement between the parties concerned for such change or at an exchange rate, which is less than the rate prevailing on the date of agreement, if consented to by the TC lender. **INR denominated TC** For conversion to Rupee, exchange rate shall be the rate prevailing on the date of settlement.	No such provisions under existing regulations.
Hedging provision **FCY denominated TC** The entities raising TC are required to follow the guidelines for hedging, if any, issued by the concerned sectoral or prudential regulator in respect of foreign currency exposure. Such entities shall have a board approved risk management policy. **INR denominated TC** The overseas investors are eligible to hedge their exposure in Rupee through permitted derivative products with AD Category I banks in India. The investors can also access the domestic market through branches / subsidiaries of Indian banks abroad or branches of foreign banks with Indian presence on a back to back basis.	No such provisions under existing regulations.
Change of currency of borrowing **FCY denominated TC** Change of currency of TC from one freely convertible foreign currency to any other freely convertible foreign currency as well as to INR is freely permitted. **INR denominated TC** Change of currency from INR to any freely convertible foreign currency is not permitted.	No such provisions under existing regulations.

Legal & Regulatory

https://rbidocs.rbi.org.in/rdocs/notification/PDFs/23APDIR13032019BA5502742BB441DBBEEC54C9D4E04213.PDF

4. Establishment of Branch Office (BO) / Liaison Office (LO) / Project Office (PO) or any other place of business in India by foreign entities
(RBI notification dated March 28, 2019)

Reserve Bank of India(RBI) vide its notification dated March 28, 2019 has clarified that no prior approval of the RBI shall be required for opening of a branch office/liaison office/project Office or any other place of business in India, where the principal business of the applicant falls in the Defence, Telecom, Private Security and Information and Broadcasting sector and if Government approval or license/permission by the concerned Ministry/ Regulator has already been granted.
In the case of proposal for opening a Project office relating to defence sector, no separate reference or approval of Government of India shall be required if the said non-resident applicant has been awarded a contract by/entered into an agreement with the Ministry of Defence or Service Headquarters or Defence Public Sector Undertakings.
Also, RBI has explained that 'permission' here shall not include general permission received under Foreign Direct Investment in the automatic route. A specific approval from the concerned Ministry/ Regulator shall be required to fall under the criteria of 'permission.'

https://rbidocs.rbi.org.in/rdocs/notification/PDFs/APDIR27763286B8263F49EBBBE59065635213F9.PDF

Column

Sale of property in India By Non-Resident Indian

By – Neha Srivastava

IBA

A Non-Resident Indian ("NRI"), may inherit property from their parents or other close relatives or he may have an old house which is no longer needed. He may intend to sell such property however, it is not a simple task and requires a lot of planning. In order to ensure compliance of tax provisions, Indian revenue department has set some rules for withholding tax under section 195 of the income tax.

The intent behind setting these rules is to ensure that the tax is paid by the NRI when the property is sold by them. The government has also mandated the bank to take a certificate from a Chartered Accountant for remitting the amount out of India.

The consideration from sale of property in India by a NRI is chargeable to tax in India and therefore tax has to be deducted at the time of payment of such consideration. Sale of Immovable property can be classified into two categories based on its period of holding and would have a different taxability which has been explained below:

Taxability of sale of Immovable Property

1) Long Term Capital Assets:

Any property held for a period of more than 24 months is classified as Long-Term Capital Assets.

Taxability:

Taxable capital gain will be sale proceeds less indexed cost of acquisition (that is, adjusted as per cost of inflation index or CII) less cost of improvement less cost of transfer. Long-term capital gains (LTCG) are taxable at 20% plus surcharge, if applicable, and education cess.

2) Short Term Capital Assets:

Any property held for a period of less than 24 months is classified as Short-Term Capital Assets.

Taxability:

Taxable capital gains will be calculated as the difference between the sale proceeds and the cost of acquisition (no indexation benefit is available) at respective slab rates.

How the taxability is different in case of NRI

Capital gain taxation is same is both in case of residents Indian and NRI. The difference arises only in case of calculation and deduction of Withholding Tax ("WHT"). In case of Resident Indian, WHT is applicable at the rate of 1 % on the sale proceeds if the sale procceds exceed INR 50,00,000.

In case of NRI, WHT is applicable @ 20% if it is LTCG and Slab rate if it is STCG (plus surcharge and cess) on the amount of capital gains.

Further, the provision of Income tax act provide that, the rates of taxation prescribed under the act or tax treaty whichever is more beneficial would be applicable. However, the NRI will need to furnish its tax residency certificate to the buyer.

Challenges faced by the NRI

Though the act says that the tax is to be deducted on the income only i.e. on the amount of capital gains arising to the non-resident out of the total consideration. But as the payer is un aware of the amount of capital gain, as a general practice the payer withheld tax on the amount of sales consideration.

Further, the NR can lower the tax incidence by investing the amount of sale consideration in some other immovable property or government notified bonds as per the rules laid down.

Thus, the NRI sometimes end up paying more taxes than its actual tax liability. The NRI has to claim refund by way of filing income tax in India in such cases. Hence, there is a problem of cash Flow.

How to overcome this/ Lower Deduction Tax Certificate

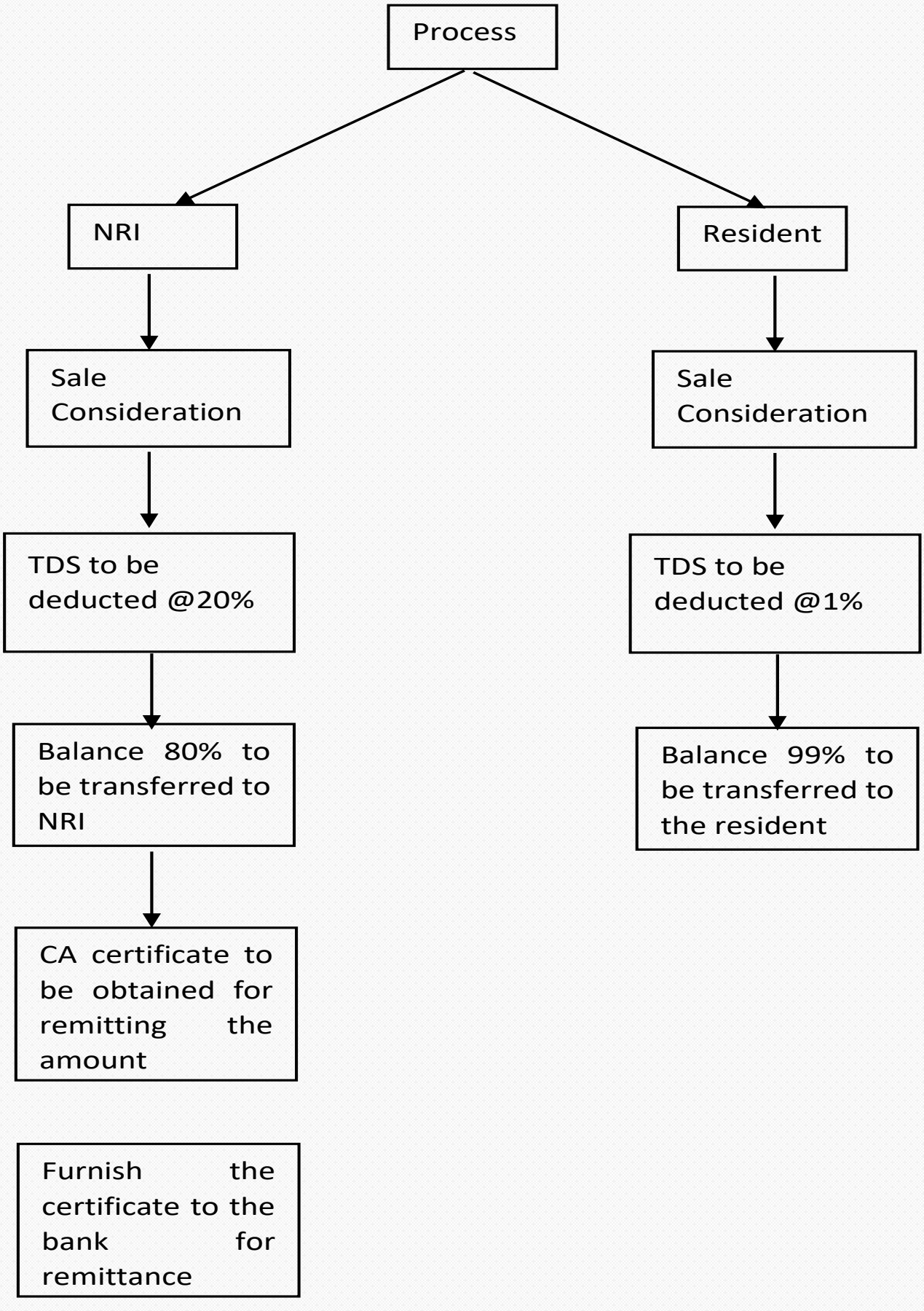
In order to over come this, the payer or transferor/payee may make an application to the jurisdictional Assessing officer to determine the sum of capital gains on which tax is to be deducted. The application to the AO will be made in the prescribed form. The amount determined by the AO will be the amount on which tax is to be deducted.

Thus, an NRI, should keep following points in consideration and should be well prepared before selling any property in India:

1) Plan the transaction well in advance
2) Apply the Lower/Nil deduction certificate before entering the deed
3) If the seller is planning to invest the consideration it should also be considered while applying for the certificate.
4) Liaising with the department to get the certificate.

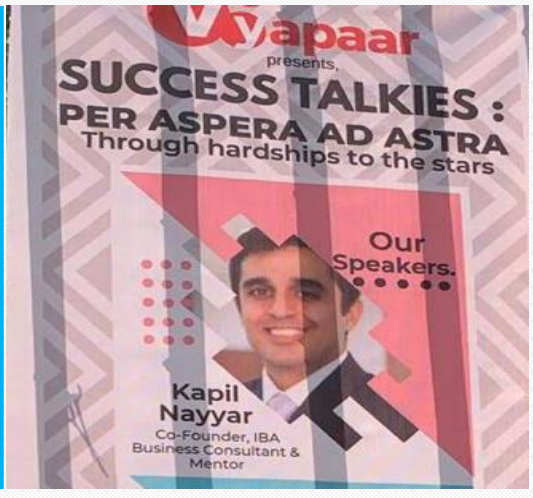
And lastly, the NRI has to be mandatorily file its income tax return in India to report the sale transaction even in the case of exempt income or if any lower/nil deduction certificate is obtained.

Process that flows from sale of property to transfer of amount to the bank account of NRI



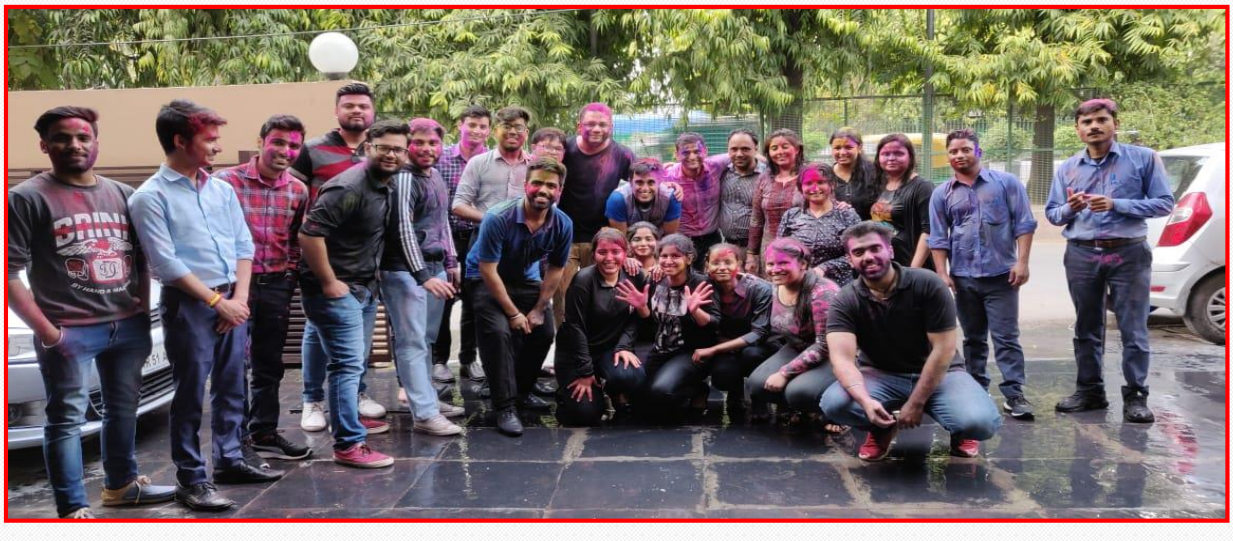
IBA NEWS

DCAC – Internship Fair



Kapil has participated as a speaker in E-Summit' 19 consisting of an internship fair and mentoring session at Delhi College of Arts and Commerce.

Splashed Colours @ IBA



We had a wonderful holi celebration with a pot luck lunch and gujiyas. It ended with a splash of colours and a lot of enjoyment.

Training @ IBA

Regular in-house trainings on technical upgradation.

Upcoming Compliances

Date	Compliance
April 11, 2019	Due date for furnishing of Form GSTR-1 for the taxpayers having aggregate turnover of more than 1.5 crore for the month of March-2019
April 13, 2019	Due date for furnishing of Form GSTR-6 for Input Service Distributor for the month of March-2019.
April 18, 2019	Due date for furnishing of quarterly return in FORM GSTR-4 by the persons opting to pay tax under Composition Scheme.
April 20, 2019	Due date for filing consolidated return in the Form GSTR-3B for the month of March-2019.
April 30,2019	Due date for furnishing of Form GSTR-1 for the taxpayers having aggregate turnover of upto 1.5 crore for the quarter January to March-2019
	Due date for deposit of Tax deducted by an assessee other than an office of the Government for the month of March, 2019.
	Due date for e-filing of a declaration in Form No. 61 containing particulars of Form No. 60 received during the period October 1, 2018 to March 31, 2019.
May 10,2019	Due date for filing of monthly return in the Form GSTR-7 by the persons required to deduct TDS under GST for the month of April-2019.
	Due date for filing of monthly return in the Form GSTR-8 by the e-commerce operators registered under GST for the month of April-2019.

Editorial Team




About us:

IBA is a leading Financial and legal advisory company with specialization in Assurance, Risk Consulting, Legal, Direct Tax, Indirect Tax(GST) and Corporate Advisory for midsize, SMEs and start-up firms. IBA constitute a young team of path breaking professionals, who believe in creating value through innovation and creativity to provide ultimate client satisfaction. Clients benefit from our fresh thinking, constructive challenge and practical understanding of the issues they face. We aim to alloy a perfect blend of professionalism with high standards of service, in our pursuit of excellence.

Founded in the Year 2003, the company witnessed immense growth from 2 members to currently a 100 members team, with its offices in Delhi, Mumbai and Bengaluru and its clients from across states. IBA continues to offer wholesome service experience to boost highly valued client relationships by combining the technical and industry expertise at par with well-placed firms together with a personal commitment to optimize client service.

New Delhi (Head Office)

S-217,Panchsheel Park
New Delhi 110017
Tel - +91-11-40946000

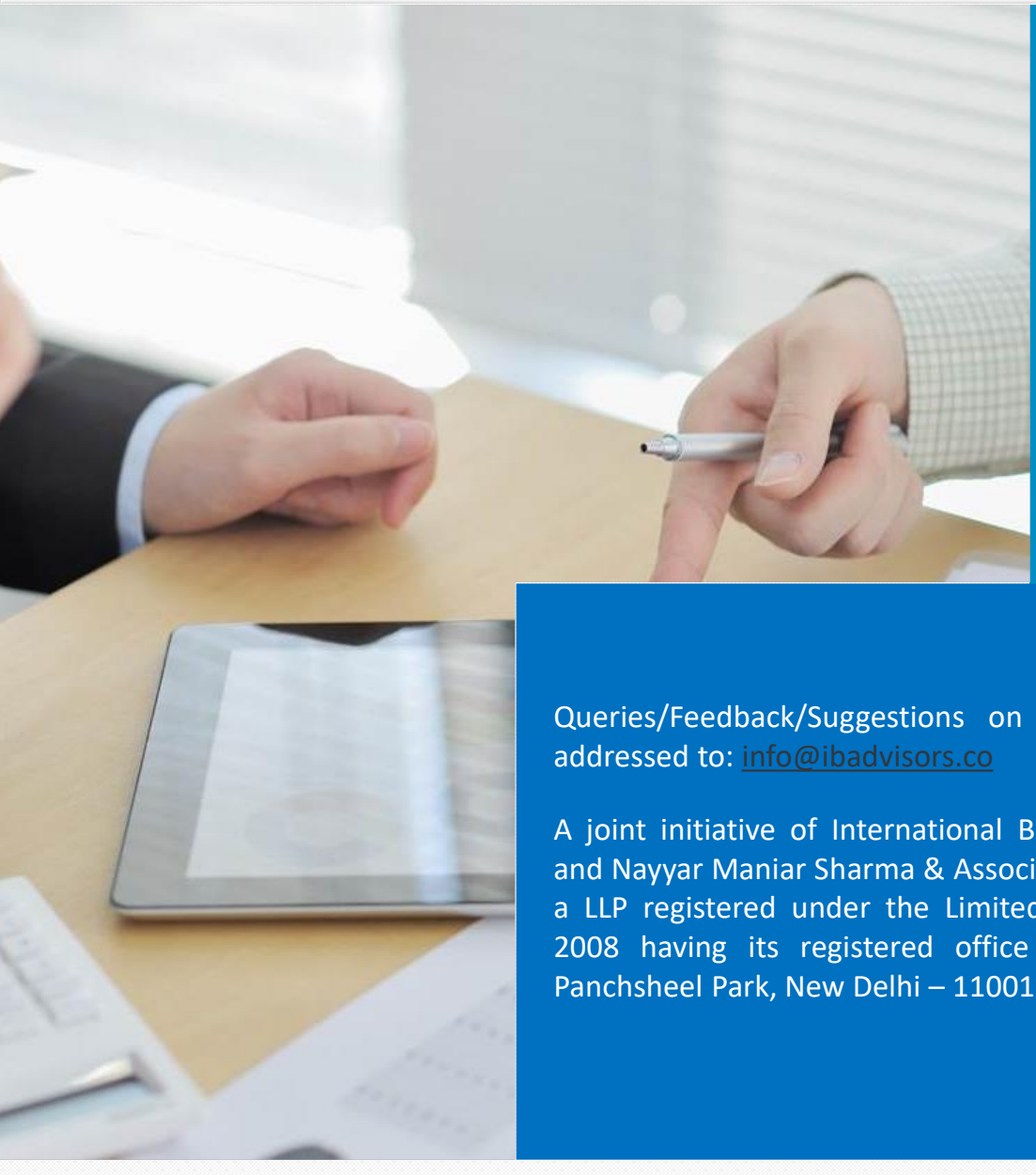
Mumbai

Level 11 -1102 Peninsula Business Park , Tower B, S B Road, Lower Parel, Mumbai 400013

Bengaluru

Golden Square Serviced Office
#No 1101, 24th Main, JP Nagar
1st Phase (above ICICI Bank)
Bengaluru 560078

INTERNATIONAL BUSINESS ADVISORS



Queries/Feedback/Suggestions on this newsletter may be addressed to: info@ibadvisors.co

A joint initiative of International Business Advisors LLP (IBA) and Nayyar Maniar Sharma & Associates LLP (NMSA LLP). IBA is a LLP registered under the Limited Liability Partnership Act, 2008 having its registered office at S-217, Ground Floor, Panchsheel Park, New Delhi – 110017, India.

For more information and past issues of ConneKt, kindly visit our website www.ibadvisors.co

You can also follow us at: