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**NEWSLETTER**

**March 2023**

**PUNE BRANCH OF WIRC OF ICAI**

(Subscribers copy not for sale)

# HEARTIEST CONGRATULATIONS



## OUR TORCH BEARERS F. Y. (2023 -24)



**CA. Aniket Sunil Talati**  
President, ICAI



**CA. Ranjeet Kumar Agarwal**  
Vice-President, ICAI

## Office Bearers of WIRC of ICAI F.Y. (2023 -24)



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Chairman



**CA. Hitesh Pomal**  
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Secretary



**CA. Ketan Saiya**  
Treasurer



**CA. Pinki Kedia**  
Chairperson WICASA

# HEARTIEST CONGRATULATIONS



## Central & Regional Council Members of Pune Branch of WIRC of ICAI F.Y. (2023 -24)



**CA. Chandrashekhar V. Chitale**  
Central Council Member, ICAI



**CA. Yashwant Kasar**  
Regional Council Member  
WIRC of ICAI



**CA. Ruta Chitale**  
Regional Council Member  
WIRC of ICAI

## Managing Committee Members of Pune Branch of WIRC of ICAI F.Y. (2023 -24)



**CA. Rajesh Agrawal**  
Chairman



**CA. Amruta Kulkarni**  
Vice-Chairperson



**CA. Ajinkya Ranadive**  
Secretary



**CA. Hrishikesh Badve**  
Treasurer



**CA. Sachin Miniyar**  
Chairman - WICASA



**CA. Kashinath Pathare**  
Immediate Past- Chairman



**CA. Pritesh Munot**  
Member



**CA. Pranav Apte**  
Member



**CA. Moushmi Shaha**  
Member

# HEARTIEST CONGRATULATIONS



**Regional Level Best Branch Award - 2nd Prize F.Y. 2022-2023**



**National & Regional Level Best Students Association  
(WICASA) Award 1st Prize F.Y. 2022-2023**



**National Level**



**Regional Level**

## Due Date Calender for the Month March 2023

SR. NO.	DATE	TAXATION UPDATES
1.	7th March, 2023	TDS/TCS Payment Feb 23
2.	10th March, 2023	GSTR 7/8 Feb 23
3.	11th March, 2023	GSTR 1 Feb 23 Monthly
4.	13th March, 2023	IFF Feb 23 QRMP GSTR 6 Feb 23
5.	15th March, 2023	Advance Tax 4th Inst AY 23-24 PF/ESIC Payment Feb 23
6.	20th March, 2023	GSTR 3B, GSTR 5/5A Feb 23 Monthly
6.	31st March, 2023	PAN - Aadhar Link with Late Fee Rs. 1000

## ICAI & ICAEW Joint Information Session



**Mr. Dan Westley**  
Speaker



**Ms. Vandana Saxena Poria**  
Speaker



From L to R :- CA. Amruta Kulkarni, MCM, Pune ICAI,  
CA. Sayali Chandaliya (ICAEW & ICAI), CA. Parag Kulkarni (ICAEW & ICAI),  
Mr. Dan Westley, Ms. Vandana Saxena Poria OBE, CA. Ruta Chitale, RCM



**Participants**

## Chairman's Communique

Dear Members & Students,

I am taking over the charge as a Chairman of the vibrant and prestigious 'Pune Branch of WIRC of ICAI' with great honour and deep sense of gratitude. I am overwhelmed for getting this opportunity to serve our profession.

At the same time, I am confident that with your guidance, support and blessings, I will be able to live up to your expectations. If anyone ask me what is integral part of my life, I will sincerely and proudly say, "ICAI is an integral part of my life"



CA. Rajesh Agrawal  
Chairman  
Pune Branch of WIRC of ICAI

I am extremely grateful to my Alma mater i.e. ICAI, as it has given me a lot of respect and power.

I owe everything to my alma mater and have been closely working with this branch since 2007 where I had contested election of the managing committee member for the first but unfortunately lost it. I must say, though I had lost the election, I was appointed as the Statutory Auditor of the branch and elected managing committee involved me in all the activities conducted throughout the year and I always felt as a part of them.

I take this opportunity to thank the central council members, regional council members, all committee members, professional colleagues, family, friends and well-wishers for their unending support and blessings which are always there with me and have made me what I am today.

I assure you all that we will work for the professional betterment with a high degree of transparency, integrity and accountability. I am confident that this will be a truly memorable year.

Once again, I am thankful for the confidence placed on me and look forward to working with all of you to make our branch at a newer height in 2023-24.

My best wishes to members, students and their family members on the occasions of different festivals we celebrate during this month.

Thank you for your trust and support.

JAI HIND  
JAI ICAI

With warm regards,

CA. Rajesh Agrawal,  
Chairman  
Pune Branch of WIRC of ICAI



## Three Tier Documentation

Contributed by :- CA Amit Dhadphale and CA Chetan Laddha  
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### A. Overview of “Base Erosion and Profit Shifting” (BEPS) project by Organisation for Economic Co-operation and Development (OECD)

The erstwhile worldwide tax laws were framed based on brick-and-mortar business models and were not able to fix the gaps and mismatches in tax rules to make profits disappear for tax purposes, which resulted in “economic double non-taxation” on account of “base erosion through profit shifting” owing to the tax planning strategies implemented by the Multi-National Enterprises (MNEs). G20 countries mandated OECD to develop action plans to provide countries with domestic and international instruments that will better align taxing rights to economic activity. Accordingly, OECD took up the project to prevent BEPS and in October 2015, released 15 Action Plans (AP).

### B. APs dedicated to Transfer Pricing (TP)

Four out of these fifteen APs were dedicated to Transfer Pricing (TP) as follows:

Objective	AP	Brief coverage
Ensuring Substance in TP	8 to 10	Aligning TP outcomes to value creation: AP 8: Intangibles AP9: Risk and capital AP10: Other high-risk transactions
Ensuring transparency and certainty	13	Transfer Pricing Documentation and Country-by-Country Reporting (CbCR)

### C. AP 13: objective and coverage

· The objective of AP 13 is as follows:

- Ø Provide tax administration information to conduct informed TP risk assessment.
- Ø Ensure that taxpayers give appropriate consideration to TP requirements; and
- Ø Provide tax administration with adequate information to conduct a thorough TP audit.

· AP 13 introduced a standardized three – tiered approach to TP documentation for MNEs as follows:

CbCR	Master File (MF)	Local File (LF)
CbCR aims to cover high level information about the jurisdictional allocation of revenues, profits, taxes, employees, and assets be shared with all tax authorities where MNE has operations.	High level information about the MNE’s business, TP policies and agreements with tax authorities in a single document available to all tax authorities where the MNE has operations.	LF is nothing but TP documentation which was already incorporated as a part of domestic laws by many countries, which aimed at covering detailed information about the local business including related party payments and receipts for products, services, royalties, interest, etc. and computation of arm’s length price of such transactions.

### D. Introduction of CbCR and MF in Indian tax laws

CbCR and MF required amendments in the domestic laws of the countries to include this compliance requirement. The Indian Government, through Finance Act, 2016, introduced provisions for additional TP documentation i.e., MF and CbCR to implement guidance contained in AP 13 (applicable from Financial Year 2016-17). Detailed rules in relation to implementation of CbCR and MF were released on 31 October 2017.

We will cover more details about AP 13 as a part of this article.

## E. Tier I: CbCR

### • OECD guidance on CbCR:

CbCR is expected to be filed by the Ultimate Parent Entity (UPE) of the MNE Group with the tax authority of its country of residence. The provisions also appoint an Alternate Reporting Entity (ARE) from some other country to file the CbCR in the country of residence of the ARE on behalf of the UPE: this is typically required where the country of residence of the UPE doesn't have any requirement to file CbCR.

The CbCR is available for the tax authorities of other countries under automatic exchange of information and thus, is not required to be filed multiple times by the MNE Group, however, each constituent entity should file a notification with the tax authority of its residence specifying that its UPE / ARE has filed the CbCR with appropriate tax authority.

The OECD provided a guidance that such CbCR filing requirement will be applicable to the MNE Groups with consolidated revenues of Euro 750 million for the preceding year.

The OECD prescribed following tables to cover the content of the CbCR: the objective is to provide quantitative details of all the constituent entities and tax jurisdictions having footprint of the MNE:

Table	Brief content
Table 1	Tax jurisdiction wise details of following: Revenues split into: ★ Unrelated party revenues ★ Related party revenues ★ Total revenues Profit / loss before tax Cash tax paid Current year tax accrual Stated capital Accumulated earnings Tangible assets other than cash and cash equivalents Number of employees
Table 2	Tax jurisdiction and constituent entity wise details of main business activities, such as R&D, holding or managing Intellectual Property (IP), purchasing or procurement, manufacturing or production, sales, marketing or distribution, administration or management of support services, provision of services to unrelated parties, internal group finance, regulated financial services, insurance, holding shares or other equity instruments, dormant, or other
Table 3	Other important notes



**· CbCR Provisions under Indian Income-tax Act, 1961 (the Act)**

**Ø Snapshot of Indian CbCR regulations (adopted the OECD guidance in detail):**

Entity Responsible	Filing Obligation	Applicability Threshold	Accounting Period	Due Date for compliance	Penalty
UPE in India	CbCR to be filed in Form 3CEAD	Consolidated Group Revenue of INR 6,400 crores for the preceding accounting period	April to March	Within 12 months from the end of reporting accounting year	Graded penalty structure from Rs.5,000 to Rs. 50,000 per day for: Non-furnishing of CbCR
UPE not Resident in India	Only notification report to be filed with respect to the CbCR in Form 3CEAC		Accounting period followed the jurisdiction of ultimate parent company	At least two months prior to the due date of furnishing Form 3CEAD	Non-submission of required information

**Ø Filing of CbCR by other Constituent Entities:**

As mentioned above, the CbCR is to be submitted by either UPE or ARE, which is available to other tax authorities under OECD's recommended automatic exchange of CbCR. However, in the following situations, CbCR may not be shared with other tax jurisdictions:

- Parent entity is not obligated to file CbCR by virtue of local laws
- India does not have agreement for exchange of CbCR
- There is a systemic failure of the country for exchanging of CbCR

In such circumstances, constituent entity residing in India shall file CbCR in Form 3CEAD. However, where there is more than one constituent entity residing in India, such CbCR shall be filed by any constituent entity which is designated for submitting CbCR through Form 3CEAE (no time limit is prescribed for filling Form 3CEAE).

**Ø Possible use of CbCR by Indian Revenue Authorities (IRA)**

Based on guidance by OECD, the CbCR cannot be the basis for imposing any TP adjustments, however, the same could be used to ascertain / assess BEPS risks and then provide inputs for a detailed TP audit. Accordingly, the Central Board of Direct Taxes (CBDT) has created a position of Director General of Risk Assessment (DGRA), under which, a Central Risk Assessment Unit (CRAU) has been set up to collate the CbCR under automatic exchange route and analyse the BEPS risks. Such risk assessment is then provided to the field TP Officer (TPO) to undertake more detailed TP audits, based on such inputs. The CRAU may undertake the analysis of BEPS risks based on ratio analysis of the quantitative and qualitative information available under the CbCR, such as turnover / profit per employee, effective tax ratio, tax paid ratio, tangible assets to turnover ratio, related party to total turnover ratio, etc.

**F. Tier II: MF**

- The MF provides blueprint of MNE's Transfer Pricing in qualitative aspects, such as business drivers, key products, key markets / geographies, IP arrangements, financing arrangements, etc.
- India has adopted the OECD's guidance as such, but has also included certain additional requirements as a part of MF, as follows:

MNE's business details	Intangibles details	Financial / tax related details
<ul style="list-style-type: none"> <li>★ Organizational structure: legal and ownership ④ Address of all entities in the Group</li> </ul>	<ul style="list-style-type: none"> <li>★ Description of overall strategy for the development, ownership, and exploitation of intangibles, including location of principal R&amp;D, facilities, and location of R&amp;D management</li> </ul>	<ul style="list-style-type: none"> <li>★ Description of financing arrangements with unrelated lenders</li> </ul>
<ul style="list-style-type: none"> <li>★ Operating geographical locations</li> </ul>	<ul style="list-style-type: none"> <li>★ List of intangibles and legal owners of the same ④ along with addresses of owner entities and entities involved in important transfers</li> </ul>	<ul style="list-style-type: none"> <li>★ Details of top 10 unrelated lenders</li> </ul>
<ul style="list-style-type: none"> <li>★ Nature of business</li> </ul>	<ul style="list-style-type: none"> <li>★ Names and addresses of all entities of the Group engaged in development and management of intangibles</li> </ul>	<ul style="list-style-type: none"> <li>★ List of entities providing central financing functions and their place of effective management</li> </ul>
<ul style="list-style-type: none"> <li>★ Important drivers of profit</li> </ul>	<ul style="list-style-type: none"> <li>★ List and brief description of important agreement relating to intangibles: cost contribution, research services and licensing</li> </ul>	<ul style="list-style-type: none"> <li>★ Names and addresses of entities providing central financing functions.</li> </ul>
<ul style="list-style-type: none"> <li>★ Description of the supply chain for the group's five largest products and/ or service (including products and/ or service contributing more than 5% of group's revenue)</li> </ul>	<ul style="list-style-type: none"> <li>★ Description of the group's TP policies related to R&amp;D and intangibles</li> </ul>	<ul style="list-style-type: none"> <li>★ Description of TP policies related to financing arrangements</li> </ul>
<ul style="list-style-type: none"> <li>★ Important service arrangements (other than for R&amp;D services)</li> </ul>	<ul style="list-style-type: none"> <li>★ Description of important transfers of interests in intangibles and compensation paid for such transfers.</li> </ul>	<ul style="list-style-type: none"> <li>★ Annual consolidated financial statement of the Group</li> </ul>
<ul style="list-style-type: none"> <li>★ Description of capabilities of main service provider</li> </ul>		<ul style="list-style-type: none"> <li>★ List and description of existing APAs and other tax rulings</li> </ul>
<ul style="list-style-type: none"> <li>★ TP Policy for intra-group service</li> </ul>		
<ul style="list-style-type: none"> <li>★ List and description of major geographical market</li> </ul>		
<ul style="list-style-type: none"> <li>★ FAR of group companies that contribute to value creation ④ for entities contributing 10% of revenue / assets / profits</li> </ul>		
<ul style="list-style-type: none"> <li>★ Description of important business restructuring, acquisitions, and divestments</li> </ul>		

· MF regulations under the Act:

Compliance	Entity Responsible	Due date of filing	Penalty for non - compliance
Detailed Master File in Form 3CEAA	Constituent Entity, Where -	By due date of filing the return of income as per section 139(1), i.e., by 30 November of succeeding financial year	Rs. 500,000 for non-furnishing of the prescribed information / documents
	Consolidated group revenue of INR 500 crores  AND (i) Aggregate value of international transaction exceeds INR 50 crores; OR (ii) Value of purchase, sale, transfer, etc. of Intangible property exceeds INR 10 crores		A possible penalty of 2% of value of international transactions for non-maintenance of the Master File cannot be ruled out.
Notification report in Form 3CEAB	Designated CE (in case of multiple constituent entities in India, one CE can be designated for complying)	At least 30 days before filing due date of filing return of income as per section 139(1), i.e., by 31 October of succeeding financial year	

The law also requires Part A of Form 3CEAA to be filed by every constituent entity / designated entity (if more than one entity exists in India) irrespective of the above thresholds.

#### · Possible use of information in MF by IRA

As mentioned above, the MF is to be filed with the DGRA and it is the CRAU which will ascertain / assess the BEPS risks and provide these as inputs to TPO. The qualitative MF could be used along with quantitative CbCR details to assess the BEPS risks by the CRAU.

#### **G. Tier III: LF**

The LF is nothing but the TP documentation which covers details such as ownership structure, profile of MNE Group, industry overview, transaction related details such as terms, FAR analysis, economic analysis, etc.

The Indian regulations mandate maintenance of TP documentation where the aggregate value of international transactions exceeds Rs. 10 million, failing which, stringent penalties have been prescribed which can extend from 2% of aggregate value of international transactions to 6% of the same. For taxpayers where the aggregate value is less than the above threshold, the law mandates maintenance of such documentation which can demonstrate arm's length nature of international transactions, thus, mandating undertaking of economic analysis at the least. The due date for maintenance of TP documentation under the Act is 30 days prior to the due date for filing of tax return, i.e., currently 31st October.

#### **H. TP certification**

In addition to the LF, Indian TP Regulations mandate obtaining and furnishing of certification by a Chartered Accountant in Form 3CEB, which covers the details of international transactions, method used to compute arm's length price, details of arm's length price computed by the taxpayer, etc. Non furnishing of Form 3CEB attracts penalty of Rs. 100,000 and non-reporting of any transaction could attract penalty of 2% of value of such international transaction.

### **Concluding thoughts:**

While the compliances under the three-tier documentation as prescribed by AP 13 would increase the burden on MNEs, the quality of TP audits are set to be more informed, detailed, qualitative, and rigorous with the availability of the plethora of information with the tax authorities. Thus, the MNEs would not only need to spend appropriate time and efforts on ensuring timely compliances but are advised to undertake an appropriate internal risk analysis based on the three-tiered documentation. Thus, Indian taxpayer's positioning in the larger 'jigsaw' puzzle needs to be consistent across documents, ratios, and facts.



## **Direct Tax Refresher Course 2022-2023**



**CA. Vinod Jain**  
Speaker



**CA. Sanjay Vanbhatte**  
Speaker



**CA. G. Sekar**  
Speaker



**CA. Manoj Fadnis**  
Speaker

## **Seminar on "Analysis of Union Budget 2023"**



**CA. Sandeep Sachdeva**  
Speaker



**CA. Ameya Kunte**  
Speaker



Participants

## **Live Telecast of Union Budget 2023**



## Most Favoured Nation Clause - Nuances in Indian Context

Contributed by :- CA. Manoj Rathi and CA. Rushabh Bhandari

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In the world of International Taxation, the Most Favoured Nation ('MFN') Clause in the tax treaties has been a subject matter of significant debate. In India, the debate has now reached the Apex Court with huge amounts of tax revenue at stake. In the ensuing paras, we have made an attempt at touching upon some nuances of this issue in the Indian context.

### **MFN Clause –background**

The principle of MFN Clause is based on principle of non-discrimination. MFN clause generally provides that if a tax jurisdiction provides any concession to anyone in a parity group (say OECD Members, as is common in Indian tax treaties), the same concession will be extended to the other treaty partner as well, provided that the treaty with the other treaty partner was signed with MFN clause. The parity group could be a well-defined group (such as OECD countries), or it could be any jurisdiction qualifying the stipulated conditions. The conceptual justification for this tax treaty practice seems to be that if a jurisdiction similarly placed as the treaty partner gets any concession from taxation, the existing treaty partner must get the same concession as well.

OECD members have traditionally been considered a homogenous lot (mostly capital exporting tax jurisdictions) and are treated as a parity object. However, when the OECD expansion process began, it eventually brought in Czechoslovakia, Hungary and Poland as also Mexico and South Korea by 2000. Subsequently, it became even more broad-based, taking Chile, Slovenia, Israel, Estonia, Latvia, Lithuania, Columbia and Costa Rica. The nature of economies of these jurisdictions being more inclusive, the homogeneity factor got diluted.

Tax treaties with the subsequent lot of OECD members such as Hungary, Slovenia, etc, which are lesser developed countries were negotiated basis the economics of these countries. Thus, provisions more beneficial to the other treaty partners were agreed in these subsequent treaties. This resulted into triggering of the MFN clause in various tax treaties entered into by India.

### **Impact of MFN Clause in Tax treaties -**

In Indian context, the MFN clause to a tax treaty usually forms part of a protocol the tax treaties. However, it can also form part of the original treaty as well. The same usually relates to –

- Granting of lower rate for taxation of specified income (e.g. Royalty/Fees for Technical Services ('FTS')/Dividends)
- Restricting the scope of income taxable in the source state (e.g. Royalty/FTS)
- Relief with respect to method of elimination of double taxation
- Other benefits e.g. in terms of expense deduction for determination of income attributable to permanent establishment in the source state.
- Exchange of information

The practical application of MFN clause can be better understood with the following example in the context of India Sweden DTAA -

India entered a tax treaty with Sweden which provides for 10% source taxation on interest income, dividend income, and fees from technical services, and vice versa. But the treaty (vide a protocol) also provides that in respect of Articles 10 (Dividends), 11 (Interest) and 12 (Royalties and fees for technical services) if under any Convention, Agreement or Protocol between India and a third State which is a member of the OECD, India limits its taxation at source on dividends, interest, royalties, or fees for technical services to a rate lower or a scope more restricted than the rate or scope provided for in this Convention on the said items of income, then the same rate or scope as provided for in that Convention, Agreement or Protocol on the said items of income shall also apply under the India Sweden DTAA.

India entered into a tax treaty with Portugal (a member of OECD) wherein the scope for taxation of FTS was restricted to only technical and consultancy services and does not include managerial services.

Further, if the services do not make available any technical knowledge, experience, skill, know-how or processes or consist of the development and transfer of a technical plan or technical design which enables the person acquiring the services to apply the technology contained therein, then the same are not considered as taxable as FTS.

However, a position to import such beneficial provisions directly has been challenged by the Indian Revenue authorities and multiple interpretational issues have arisen in this regard.

### **Key issues in interpretation of MFN clause from Indian context**

#### **a. Whether MFN Clause forming part of a protocol forms integral part of the Tax Treaties or requires separate notification to be effective**

In majority of cases, the MFN clause is incorporated through Protocol. There has been a lot of debate in the Indian judicial landscape as to whether a protocol forms an integral part of the tax treaties and whether beneficial provisions of other tax treaties can be imported directly or whether a separate notification to import the beneficial provisions is required.

The Central Board of Direct taxes ('CBDT') has issued separate notifications to import benefits through MFN for certain tax treaties such as Netherlands, France etc. However, such notifications do not import all the beneficial provisions available for importing. Further, such notifications are not issued for all countries where the tax treaties have MFN clause. An issue thus arises that whether only such beneficial provisions can be accessed where the CBDT has specifically issued notifications or whether such notifications are not mandatory for importing the beneficial provisions.

In this regard, multiple courts including the Hon'ble Delhi High Court in case of Steria India Limited (386 ITR 390 (Delhi)) has held that protocol forms an integral part of the tax treaty, and no separate notification is required to import the beneficial provision of a tax treaty with any relevant third country. This judgement is challenged by the Revenue before the Supreme Court and is pending finalisation thereof as of the date of this article.

#### **b. MFN application – Importance of Dates**

##### **Date of such third country qualifying the stipulated condition**

It is also pertinent to note that a controversy arises as to whether a third country (with whom India enters into a tax treaty with beneficial provisions) should qualify the stipulated condition such as being a part of parity group (OECD member country) while signing the tax treaty with India or whether it should be a qualifying the condition as on the date of importing the beneficial provisions.

While the Revenue adopts the view that the countries should qualify the condition as on the date of signing the treaty, the tax-payers would like to claim that such countries should qualify the condition as on the date of importing the beneficial provisions.

To understand the issue better, example of India France DTAA can be considered, wherein as per the MFN clause, in case India enters into a DTAA with any other OECD member country after 1 September 1989 and restricts the scope or rate of dividend at a rate lower or scope narrower, such beneficial provisions may be imported in India France treaty. However, it is not specifically mentioned whether such country needs to be an OECD member at the time of signing the treaty with India.

Subsequently, India entered into a treaty with Slovenia, Lithuania and Columbia wherein the rate of taxation of dividends was restricted to 5% whereas the said rate in India France DTAA is 10%. However, these countries were not OECD members at the time of signing the DTAA's with India and entered the club at a later date. Accordingly, whether the tax treaties with these countries qualify the stipulated condition is a subject matter of debate.

It may be noted that certain non-Indian tax treaties such as Australia-Netherlands, Australia-Italy etc have a specific requirement of the third country being an OECD member as on the date of signing the tax treaty.

In absence of such a specific condition in the Indian tax treaties, a view arises that such requirement of the third country (such as Slovenia/ Lithuania / Columbia) need not be OECD members as on the date of signing the tax treaties with India and once they become OECD members, the beneficial provisions can be automatically imported in tax treaties such as India France through MFN.

In this context, the Delhi High Court in case of Concentrix Services & Optum Global Solutions (TS-286-HC-2021) has ruled in favour of the taxpayers by observing that the lower tax rate under the India-Slovenia tax treaty will be applicable on the date when Slovenia became a member of the OECD (i.e. from year 2010 onwards), although, Slovenia was not a member at the time of entering into a tax treaty with India (i.e. in 2005). The said principle has been upheld in some other rulings as well.

#### Date of entering into a tax treaty with the third country

In the context of MFN clauses, the cut-off date for eligibility of a tax treaty with third country for triggering the MFN clause is important. In simpler words, the MFN clauses generally stipulate a cut-off date after which India has to enter into a tax treaty to make it eligible for importing the beneficial provisions thereof. For example – the MFN clause in India-France Tax Treaty requires adoption of a beneficial Treaty entered into by India with an OECD member country which has been signed after 1 September 1989. Accordingly, any beneficial provisions of India's tax treaties signed prior to this date will not be eligible to be imported in the India France DTAA.

However, there could also be some exceptions to this general language where such cut off dates are not mentioned. For instance, the Protocol to India Sweden tax treaty is silent on the cut-off date for selection of tax treaty with a third country. Thus, it could be debated that any beneficial provisions of a tax treaty which existed prior to the India Sweden tax treaty could also be imported in the India Sweden tax treaty.

This view has also been upheld by a South African Advance Tax Authorities wherein it was held that in case where there is no cut-off date mentioned in a tax treaty, the beneficial provisions agreed in another treaty entered into on an older date can be imported in such tax treaty.

#### a. Government circular

The Central Board of Direct Taxes ("CBDT") has issued Circular No 3/2022 dated 3 February 2022 (hereinafter referred to as 'the Circular') on the issue of MFN. The Circular goes on to provide that benefit of lower rate and restricted scope via MFN clause will be extended only when all the below conditions are satisfied cumulatively:

- India's treaty with the country which has beneficial lower rate or restricted scope (referred as the third State) is entered into after the signature/entry into force, depending on language of MFN Clause, of India's treaty.
- The third state has to be an OECD member at the time of signing its treaty with India.
- India limits its taxing rights in relation to rate or scope of taxation in its treaty with the third State.
- India issues a separate notification under the Income Tax Laws (ITL) for importing the favourable benefits of third State treaty into the original treaty.

Thus, the revenue's view on the subject matter is clarified in the circular. However, the taxpayers have challenged the circular in the judicial proceedings and certain courts have ruled on the same.

The Pune Tribunal in case of GRI Renewable Industries S.L. ITA No.202/PUN/2021 has held that the CBDT circular is binding only on Assessing Officer but not on Tribunal. The Tribunal also held that protocol to DTAA forms an integral part of the DTAA and no separate notification as per section 90(1) is required for its implementation and further held that the said circular can be applicable only prospectively and not with retrospective effect.

Further, the Karnataka High Court has also admitted a challenge against MFN Circular & consequent denial of lower TDS on dividend (WP No. 6595 of 2022). The HC issued notice in a writ petition preferred by a Dutch Shareholder (DXC Gatriam Holdings BV) for quashing of CBDT's Circular No. 3 of 2022 and consequent Certificate issued under Section 197 denying lower TDS on dividend income.

### Step 5: Pay the application money

In the central govt fee has to be paid by way of postal order/bankers cheque. In most of the state the amount can be paid by way of postal order, DD, money order or by affixing court fee stamp in case of State Government.

### Step 6: Receive the acknowledgment

After submitting application PIO has to give an acknowledgment specifying date on which the application has been filed. The RTI act promises to deliver required information within 30 days of filing application or 48 hours if the matter involves life and liberty of an individual.

Procedure to file an Appeal:

In case the applicant has not received the information fully/partially or information received is not satisfactory or no reply is received within 30 day she can go in appeal against the PIO to the first appellate authority ("FAA") who is from the same department and senior to PIO. If PIO refuses to give information he is also supposed to provide the name and address of appellate authority.No fee is required to be paid to the FAA for filing appeal in the department/ministries of central govt. In Maharashtra a fee of Rs 20 is payable for filing of appeal before FAA.

- FAA must dispose of the appeal within 30 days or after giving reason for delay in a further period of 15 days.
- If the FAA may give an opportunity of personal hearing to the appellant and PIO in accordance with principle of natural justice. However, it is not mandatory for appellant to attend a personal hearing.
- Appeal with FAA must be made within 30 days of receiving the PIO reply or within 30 days from the last date on which information should have been received.
- Abbreviation used  
PIO: public information officer, FAA: First Appellate Authority



## Interactive Meeting with Shri. Bhagawat Karad, Minister of State in the Ministry of Finance





## Seminar on "Critical Analysis of Union Budget 2023"



Felicitation



CA. (Dr.) Girish Ahuja  
Speaker



Participants

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CA. Chandrashekhar V. Chitale  
Speaker



Participants

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CA. Swapnil Munot  
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CA. Vivek Baj  
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CA. Sandeep Sachdeva & Shri. Damodar Vaidya  
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CA. Pritam Mahure  
Speaker



CA. Ravi Somani  
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