ricago

GRC Bulletin

July 2022

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About

ricago is a dynamic next generation company focusing on Enterprise Governance, Risk Management and Compliance Management (GRC) solutions.

In a globalized business environment, organizations need to comply with complex and dynamic regulatory requirements as they grow and expand into different geographies and industry verticals. With the right mix of rich domain & technology expertise, and insights from both CFO & CIO worlds, Clonect helps organizations to leverage technology optimally and innovatively, addressing GRC and GST needs.

ricago focuses on niche products in the area of Enterprise Governance, Risk Management and Compliance Management (GRC). The solution suite is a mix of products and services. Compliance Management System (CMS), Audit Management System (AMS), Labour Law Services, Compliance Enablement Services that helps firms to efficiently manage end-to-end compliance requirements and address the risk of non-compliance.

ricago CLASS (Comprehensive Labour Advisory & Special Services), New age platform for end-to-end labour law related information. Our expert team constantly monitors updates & amendments and advises clients accordingly

CORPORATE LAWS

SEBI ISSUED A CIRCULAR ON GUIDELINES FOR LARGER VALUE FUND FOR ACCREDITED INVESTORS

On June 24, 2022 SEBI issued Guidelines for Large Value Fund for Accredited Investors under SEBI (Alternative Investment Funds) Regulations, 2012 and Requirement of Compliance Officer for Managers of all AIFs.

A. Guidelines for Large Value Fund for Accredited Investors

1. SEBI introduction of framework for "Accredited Investors" in the securities market, SEBI (Alternative Investment Funds) Regulations, 2012 [referred as 'AIF Regulations']have been amended to provide certain relaxations from regulatory requirements to 'Large Value Fund for Accredited Investors'[LVF]
2. In terms of proviso to Regulation 12 of AIF Regulations, LVFs are exempt from filing their placement memorandum with SEBI through Merchant Banker and incorporate comments of SEBI, if any, in their placement memorandum i.e. LVFs can launch their scheme under intimation to SEBI.
3. While filing the placement memorandum for LVF schemes with SEBI, a duly signed and stamped undertaking by CEO of the Manager to the AIF (or person holding equivalent role or position depending on the legal structure of Manager) and Compliance Officer of Manager to the AIF shall be submitted in the format as mentioned at Annexure A.
4. In case of LVF schemes already filed with SEBI, similar duly signed and stamped undertaking by CEO of the Manager to the AIF (or person holding equivalent role or position depending on the legal structure of Manager) and Compliance Officer of Manager to the AIF shall be submitted to SEBI on or before July 31, 2022
5. Regulation 13(4) of AIF Regulations permits close ended AIFs to extend its tenure up to two years with the approval of two-third of its unit holders by value of their investment in the said AIF, while the proviso to Regulation 13 (4) of AIF Regulations permits LVF to extend its tenure beyond two years, subject to terms of the contribution agreement, other fund documents and such conditions as may be specified by the Board from time to time.

B. Requirement of Compliance Officer for Managers of all AIFs

1. All AIFs shall ensure that Manager to AIF designates an employee or director as Compliance Officer who shall be a person other than CEO of the Manager.

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2. The compliance officer shall be responsible for monitoring compliance with the provisions of the SEBI Act, AIF Regulations and circulars issued thereunder.

ANNEXURE A- Format for undertaking to be submitted by CEO if the manager to AIF and Compliance Officer of Manager to AIF.

ANNEXURE I - Details of disclosures in the placement memorandum with respect to compliance with provisions of SEBI.

ANNEXURE II - Information with respect to disclosures in the placement memorandum.

#Source: Click here for more details

TAX LAWS

CBDT NOTIFIES THE INCOME TAX (SEVENTEENTH AMENDMENT) RULES 2022

On 16th June 2022, the Ministry of Finance notified a circular on Income Tax (seventeenth amendment) Rule, 2022. This amendment came into force on the same date.

Sr. No	Amendment
1.	**Inserted: In Rule 21AI (2A)** The income attributable to units held by a non-resident (not being the permanent establishment of a non-resident in India) in a specified fund shall not be exempt under clause (4D) of section 10 of the Act unless the specified fund complies with sub-rule (2)
2.	**Inserted: In Rule 21AI (2AIA)** Other conditions required to be fulfilled by a specified fund referred to in clause (4D) of section 10 of the Act. 1. Explanation to clause (4D) of section 10 of the Act, the "other conditions" are required to be fulfilled by a specified fund. 2. The specified fund shall certify that it has fulfilled the conditions under sub-rule (1) and furnish information in respect of units held by residents in the annual statement of exempt income in Form No. 10-IG. 3. The income attributable to units held by non-residents (not being the permanent establishment of non-residents in India) in a specified fund shall not be exempt under clause (4D) of section 10 unless the specified fund complies with sub-rule (2).
3	**Inserted: In Rule 21AJ (3A)** The income of a specified fund referred to in clause (a) and clause (b) of sub-section (1) of section 115AD, attributable to the units held by a non-resident (not being the permanent establishment of a non-resident in India), shall not be eligible for tax rates specified in section 115AD unless it furnishes the annual statement of income eligible for concessional taxation in Form

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	No. 10-IH in accordance with the provision of sub-rule (3).
4	**Inserted: In Rule 21AJA (3A)** The income of a specified fund attributable to an eligible investment division shall not be exempt under clause (4D) of section 10 unless it furnishes the annual statement of exempt income in Form No. 10-IK and the report of audit in Form 10-IL in accordance with the provisions of sub-rule (2)
5	**Inserted: In Rule 21AJAA (2A)** The income of an eligible investment division referred to in clause (a) and clause (b) of sub-section (1) of section 115AD shall not be eligible for tax rates specified under section 115AD unless the eligible investment division furnishes an annual statement of income, eligible for taxation under sub-section (1B) of section 115AD of the Act, in Form No. 10-IK in accordance with sub-rule (2)
6	**Substituted: In Principal Rules Form no.10** Form No.10-IG Statement of exempt income under clause (4D) of section 10 of the Income-tax Act, 1961 [See sub-rule (2) of rule 21AI and sub-rule (2) of rule 21AIA]

#Source: Click here for more details

TAX LAWS

CBDT ISSUED A CIRCULAR ON COMPLIANCE CHECK FUNCTIONALITY FOR SECTION 206A8 & 206CCA OF INCOME-TAX ACT 1961

CBDT on 9th June, 2022 notified a circular regarding Section 206AB and 206CCA of the Income-tax Ad,1961which shall be effective from 1st July 2021 and imposed higher TDS/TCS rate on the "Specified Persons" defined as under,

"A person who has not furnished the return of income for the assessment year relevant to the previous year immediately preceding the financial year in which tax is required to be deducted, for which the time limit for furnishing the return of income under sub-section (1) of section 139 has expired and the aggregate of tax deducted at source and tax collected at source in his case is rupees fifty thousand or more in the said previous year.
Provided that the specified person shall not include a non-resident who does not have a permanent establishment in India."

To facilitate Tax Deductors and Collectors in identification of Specified Persons, the CBDT in exercise of powers conferred under section 138(1)(a)(i) of Income-tax Act, 1961 (Act), has issued order directing that Director General of Income-tax (Systems), New Delhi shall be the specified income-tax authority for furnishing information to the -Tax Deductor/Tax Collector", having registered in the reporting portal of the Project Insight through valid TAN, to identify the 'Specified Persons' for the purposes of section 206AB and 206CCA of the Act through the functionality "Compliance Check for Section 206AB& 206CCA".

This functionality is made available through (https://report.insight.gov.in) of Income-tax Department. Kindly refer to CBDT Circular No. 11 of 2021 dated 21.06.2021 and CSOT Circular No. 10 of 2022 dated 17.05.2022 regarding use of functionality under section 206AB and 206CCA of the Income-tax Act, 1961.

Procedure for sharing of information with tax deduction/collectors:

a. **Registration:** Tax Deductors and Collectors can register on the Reporting Portal by logging in to e-filing portal http://www.incometax.gov.in/ using e-filing login credential of TAN
b. **Accessing the compliance check functionality:** After successfully logging in, link to the functionality Compliance Check for Section 206AB & 206CCN will appear on the home page of the Reporting Portal.
c. **Using "PAN Search" mode:** In this mode single valid PAN along with captcha can be entered at a time and output will be available. Output will

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also provide the date on which the "Specified Person - status as per section 206AB and 206CCA is determined

d. **Using "Bulk Search" mode:** Under the Compliance Check for Section 206AB & 206CCA" functionality page, "Bulk Search" tab may be selected to access the functionality in Bulk Search mode.

For any further assistance, Tax Deductors & Collectors can refer to Quick Reference Guide on Compliance Check for Section 206AB & 206CCA and Frequently Asked Questions (FAQ) available under "Resources" section of Reporting Portal.

#Source: Click here for more details

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CBDT ISSUED GUIDELINES FOR REMOVAL OF DIFFICULTIES UNDER SUB-SECTION (6) OF SECTION 194S OF THE INCOME-TAX ACT, 1961

On 22nd June, 2022 Finance Act 2022 inserted a new section 194S in the Income-tax Act, 1961 (hereinafter referred to as "the Act") with effect from 1st July 2022.

Section 194S mandates a person who is responsible for paying to any resident any sum by way of consideration for transfer of a virtual digital asset (VDA), to deduct an amount equal to 1% of such sum as income tax thereon. The tax deduction is required to be made at the time of credit of such sum to the account of the resident or at the time of payment, whichever is earlier.

This deduction is not required to be made in the following cases:-

(i) the consideration is payable by a specified person and the value or aggregate value of such consideration does not exceed fifty thousand rupees during the financial year; or

(ii) the consideration is payable by any person other than a specified person and the value or aggregate value of such consideration does not exceed ten thousand rupees during the financial year.

Here "specified person" means:-

- An individual or Hindu undivided family (HUF) who does not have any income under the head "profit and gains of business or profession"; and
- An individual or HUF having income under the head "profits and gains of business or profession", whose total sales/gross receipts/turnover from business carried on by him does not exceed one crore rupee or in case of profession exercised by him does not exceed fifty lakh rupee.

Here are the Guidelines

1. According to section 194S of the Act, any person who is responsible for paying to any resident any sum by way of consideration for transfer of VDA is required to deduct tax. Thus, in a peer to peer (i.e. direct buyer to seller) transaction, the buyer (i.e person paying the consideration) is required to deduct tax under section 194S of the Act.
   (i) In a case where the transfer of VDA takes place on or through an Exchange and the VDA being transferred is owned by a person other than the Exchange.
   (ii) In a case where the transfer of VDA takes place on or through an Exchange and the VDA being transferred is owned by such Exchange.

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2. According to proviso to sub-section (1) of section 194S of the Act, there could be situations where the consideration is in kind or in exchange of another VDA or partly in kind and cash is not sufficient to meet the TDS liability.

   In these situations, the person responsible for paying such consideration is required to ensure that tax required to be deducted has been paid in respect of such consideration, before releasing the consideration.

3. If the transaction is through an Exchange there is practical issue in implementing this provision, an alternative mechanism can be exercised by the Exchange based on written contractual agreement with the buyers/sellers.
4. The tax required to be withheld under section 194S of the Act shall be on the "net" consideration after excluding GST/charges levied by the deductor for rendering service.
5. The payment gateway will not be required to deduct tax under section 194S of the Act on a transaction, if the tax has been deducted by the person ('XYZ') required to make deduction under section 194S of the Act.
6. The threshold of fifty thousand rupees (or ten thousand rupees) is with respect to the financial year, calculation of consideration for transfer of VDA triggering deduction under section 194S of the Act shall be counted from 1st April, 2022. . Hence, if the value or aggregate value of the consideration for transfer of VDA payable by a person exceeds fifty thousand rupees (or ten thousand rupees) during the financial year 2022-23 (including the period up to 30th June 2022), the provision of section 194S of the Act shall apply on any sum, representing consideration for transfer of VDA, credited or paid on or after 1st July 2022.
7. The provision of section 194S of the Act applies at the time of credit or payment (whichever is earlier) of any sum, representing consideration for transfer of VDA, such sum which has been credited or paid before 1st July 2022 would not be subjected to tax deduction under section 194S of the Act.

#Source: Click here for more details

OTHER LAWS

MINISTRY OF HEALTH AND FAMILY WELFARE NOTIFIES THE ASSISTED REPRODUCTIVE TECHNOLOGY REGULATION RULES, 2022

The Central Government has notified on 7th June 2022, the Assisted Reproductive Technology (Regulation) Rules, 2022 in order to regulate the functioning of Assisted Reproductive Technology (ART) clinics and banks.

Highlights of the Rules

Assisted Reproductive Technology (ART) clinics and banks: These shall be two levels of clinics

- Level 1 ART Clinics, where only intrauterine insemination (IUI) procedure is carried out as part of treatment;
- Level 2 ART clinics, where the procedures, or techniques, that attempt to obtain a pregnancy shall be carried out by surgical retrieval of gametes; handling the oocyte outside the human body; use sperms for fertilization of oocytes; transfer of the embryo into the reproductive system of a woman; or by carryout storage of gametes or embryos or perform any kind of procedure or technique involving gametes or embryos.
- ART banks shall be responsible for screening, collection and registration of the semen donor and cryopreservation of sperms; performing screening and registration of oocyte donor; operating as semen banks or oocyte banks or both; and maintaining the records or data of all the donors and shall regularly update the National Registry.
- Registration: An application for registration shall be made by the ART clinics or any such health facility which are carrying out procedures related to the assisted reproductive technology to the appropriate authority in Form-1 and by the ART banks in Form-2. Every application for registration shall be accompanied with a fee of: –

    1. Rupees 50,000 for Level 1 ART clinic;
    2. Rupees 2,00,000 for Level 2 ART clinic;
    3. Rupees 50,000 for ART bank

Other Duties of ART Clinic: The ART clinic shall-

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- ensure that all unused gametes or embryos shall be preserved by the assisted reproductive technology clinic for use on the same recipient and shall not be used for any other couple;
- allow cryopreservation of oocytes, sperms for onco-fertility patients undergoing treatment and for other such conditions, for duration longer than ten years with the permission from the National Board;
- ensure the controlled ovarian stimulation of woman in order to prevent ovarian hyper stimulation;
- ensure that pre-implantation genetic testing shall be used to screen the human embryos for known pre-existing heritable or genetic diseases and when medically indicated;
- ensure that no pre-implantation genetic testing shall be done for sex selection for non-medical reasons or selection of particular traits due to personal preferences of the prospective parents or to alter or with a view to alter the genetic constitution of an embryo;
- maintain consent form to be signed by the couple or woman as specified in Form-6; Intrauterine Insemination with husband's semen or sperm as specified in Form-7; Intrauterine Insemination with donor semen as specified in Form-8; freezing of embryos as specified in Form-9; freezing gametes as specified in Form-10; freezing of gametes sperm or oocytes and parental consent as specified in Form-11; oocyte retrieval as specified in Form–12; oocyte donor as specified in Form–13.

#Source: Click here for more details

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MINISTRY OF HEALTH AND FAMILY WELFARE NOTIFIES THE SURROGACY (REGULATION) RULES, 2022

The Ministry of Health and Family Welfare has notified The Surrogacy (Regulation) Rules, 2022 on 21st June 2022 which provides the Form and manner for registration and fee for a surrogacy clinic and the requirement, and qualifications for persons employed, at a registered surrogacy clinic.

- Surrogacy clinics shall have at least one gynaecologist, one anaesthetist, one embryologist and one counsellor. The clinic may employ additional staff by the Assisted Reproductive Technology Level 2 clinics; normally Director, Andrologist and shall appoint such staff as may be necessary to assist the clinic in day-to-day work.
- The manner of application for obtaining a certificate of recommendation by the Board has been specified in Form 1.
- Insurance Coverage: The intending woman or couple must purchase a general health insurance coverage in favour of a surrogate mother for a period of thirty-six months from an insurance company or an agent recognised by the Insurance Regulatory and Development Authority established under the provisions of the Insurance Regulatory and Development Authority Act, 1999 for an amount which is sufficient enough to cover all expenses for all complications arising out of pregnancy and also covering post- Partum delivery complications.
- The number of attempts of any surrogacy procedure on the surrogate mother shall not be more than three times.
- Consent of a surrogate mother shall be as specified in Form 2.
- Gynaecologists must transfer one embryo into the uterus of a surrogate mother during a treatment cycle: Provided that only in special circumstances up to three embryos may be shared.
- A surrogate mother may be allowed for abortion during the process of surrogacy in accordance with the Medical Termination of Pregnancy Act, 1971.
- An application for registration for a surrogacy clinic shall be made by the surrogacy clinic which is carrying out procedures related to Surrogacy.
- The appropriate authority shall, after making such enquiry and after satisfying itself that the applicant has complied with all the requirements, shall grant a certificate of registration in Form 4 to the applicant.
- The surrogacy clinic, or the intending woman, or couple may, within a period of thirty days from the date of receipt of the communication relating to the order of rejection of the application, suspension or cancellation of

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registration by the appropriate authority under section 13 and communication relating to the rejection of the certificates under section 14, prefer an appeal against such order. The form of appeal shall be as specified in Form 5.

- Medical indications necessitating gestational surrogacy.- A woman may opt for surrogacy
    - She has no uterus or missing uterus or abnormal uterus (like the hypoplastic uterus or intrauterine adhesions or thin endometrium or small uni-cornuate uterus, T-shaped uterus) or if the uterus is surgically removed due to any medical conditions such as gynaecological cancer,
    - Intended parent or woman who has repeatedly failed to conceive after multiple In vitro fertilization or Intracytoplasmic sperm injection attempts.
    - Multiple pregnancy losses resulting from an unexplained medical reason. unexplained graft rejection due to exaggerated immune response;
    - Any illness that makes it impossible for a woman to carry a pregnancy to viability or pregnancy that is life-threatening.

#Source: Click here for more details

OTHER LAWS

COMMISSIONERATE OF HEALTH AND FAMILY WELFARE SERVICES, KARNATAKA ISSUES GUIDELINES FOR APARTMENTS, OFFICES AND EDUCATIONAL INSTITUTIONS TO CONTAIN COVID-19

On 28th July 2022, the Commission for Health & Family Welfare Services, Karnataka notified guidelines for COVID-19.

Due to rising Covid-19 cases in Bangalore city from 10th June 2022, the state Covid-19 Technical Advisory Committee issued updated guidelines for testing, isolation, treatment, and Quarantine for clusters in Apartments/ Offices/Educational Institutions.

1. In the case of the occurrence of clusters in apartment complexes, the following actions shall be immediately taken.

    a. In case of small clusters (3-5cases), all symptomatic in the apartment block on the floor; in the large clusters less then equals to 5 cases all symptomatic in the apartments of the block/tower; in the outbreak less then equals to 15cases all symptomatic in the apartment complex as determined by the local health authority shall be tested by RAT and those positive shall be isolated and managed as per State guidelines i.e., home isolation/CCC/hospitalization depending on the medical condition of the Covid positive person.
    b. Additional samples for RT-PCR shall be taken from those who test RAT positive, for genomic sequencing and those samples with Ct value less than 25 shall be sent for WGS.
    c. All High-Risk asymptomatic, like those above 60 years of age and/or co-morbid, shall also be tested by RT-PCR.
    d. Large-scale mass testing of the asymptomatic is not recommended, except if he/she is a primary contact.
    e. Strict enforcement of Covid Appropriate Behaviour like compulsory face masking, etc. in common areas should be ensured.
    f. For domestic helps to work in households having COVID-19 infected person/s under home isolation, the following shall duly comply.
    g. The facilities in the common areas like club house, swimming pool, reading rooms, sports room, association office, etc. shall be closed till the recovery of the last case of Covid 19. In the cluster subsequently, the facilities shall be sanitized using 1% sodium hypochlorite solution (1 hour contact period) and could be reused later on.
    h. There is no need to seal down/close down the floors/towers/blocks/ apartment complexes, etc. during this period.

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i. After the cluster/outbreak is de notified by the local health authority, those due for precautionary doses of vaccination shall be motivated to take the vaccination.

2. Offices and educational institutions/colleges (other than schools up to 12th standard)

   a. It should be informed that those with Covid symptoms shall not attend office, college, etc.
   b. If someone tests positive, primary contacts who are symptomatic shall be tested by RAT and if positive shall be isolated and managed as per State protocol.
   c. All shall compulsorily wear a face mask and maintain physical distancing.
   d. Large scale / mass testing of asymptomatic is not recommended.
   e. After the cluster/ outbreak the related office area/ class room/s (from where the positive case/s were reported) shall be sanitized using 1% sodium hypochlorite solution (1 hour contact period) and could be reused from the next day.
   f. However, there is no need to close down the offices and colleges/educational institutions.

3. In schools (up to 12th standard)

   a. It should be informed that those with Covid symptoms shall not attend school.
   b. Instead they go in for RAT testing and if positive, isolate and be managed as per State protocol. If RAT negative, give sample for RT-PCR, isolate, await results of the test and act accordingly.
   c. Additional sample for RT-PCR shall be taken from those who test RAT positive for genomic sequencing and those samples with Ct value less than 25 shall be sent for WGS
   d. The related class room/s (from where the positive case/s are reported) shall be sanitized using 1% sodium hypochlorite solution (1 hour contact period) and reused from the next day.
   e. There shall be strict compliance to Covid Appropriate Behaviour (CAB) like compulsory face masking, physical distancing, provision for Hand sanitizer, screening for symptomatic at the entrance for fever using thermal scanner etc., and those found having fever/ symptoms like cough, cold, throat pain, breathing difficulty are referred to seek medical consultation.
   f. However, there is no need to close down the schools.

OTHER LAWS

4. Those due for precautionary doses of vaccination shall be motivated to take the vaccination.

#Source: Click here for more details

OTHER LAWS

CCPA ISSUED GUIDELINES FOR THE PREVENTION OF MISLEADING ADVERTISEMENTS AND ENDORSEMENTS FOR MISLEADING ADVERTISEMENTS, 2022

The Central Consumer Protection Authority on 9th June, 2022 notified a guidelines for Prevention of Misleading Advertisements and Endorsements for Misleading Advertisements, 2022.

Application of these guidelines

1. All advertisements regardless of form, format or medium.
2. A manufacturer, service provider or trader whose goods, product or service is the subject of an advertisement, or an advertising agency or endorser whose service is availed for the advertisement of such goods, product or service.

According to Section 4 of the Guideline, to classify as non-misleading and valid advertisement should fulfil the following conditions:

1. If it contains truthful and honest representation, it ensures that the claims that have not been independently substantiated but are based merely on the content of a publication do not mislead consumers,
2. It complies with the provisions contained in any other sector-specific law and the rules and regulations made thereunder.
3. It does not mislead consumers by exaggerating the accuracy, scientific validity or practical usefulness or capability or performance or service of the goods or product, it does not present rights conferred on consumers by any law as a distinctive feature of the advertiser's offer,
4. It does not suggest that the claims made in such advertisement are universally accepted if there is a significant division of informed or scientific opinion pertaining to such claims,
5. It does not mislead about the nature or extent of the risk to consumers' personal security, or that of their family if they fail to purchase the advertised goods, product or service.

According to Section 5 of the Guidelines, to classify as bait, the advertisement should fulfil the following conditions:

1. Not seek to entice consumers to purchase without any reasonable prospect of selling the advertised goods, products, or services at the price offered;
2. The advertiser must ensure that there is an adequate supply of the advertised goods, products, or services to meet the foreseeable demand generated by such advertisement;

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3. State the reasonable grounds that the advertiser has for believing that he might not be able to supply the advertised goods, products, or services within a reasonable period and in reasonable quantities;
4. Not mislead consumers about the market conditions with respect to the advertised goods, products, or services or the lack of their availability in order to induce consumers to purchase in conditions less favourable than normal market conditions.

According to Section 6 of the Guidelines, an advertisement shall be considered to be a surrogate advertisement or indirect advertisement, if:

1. such advertisement indicates or suggests that it is an advertisement for the goods, product, or service whose advertising is prohibited or restricted by law;
2. such advertisement uses any brand name, logo, color, layout, and presentation associated with such goods, products, or services whose advertisement is prohibited or restricted, provided that mere use of a brand name or company name which may also be applied to goods, product or service whose advertising is prohibited or restricted shall not be considered to be a surrogate advertisement or indirect advertisement if such advertisement is not otherwise objectionable.

According to section 7 of the Guidelines, a free claims advertisements should fulfil the following conditions:

1. Not describe any goods, products, or service to be 'free', 'without charge' or use such other terms if the consumer has to pay anything other than the unavoidable cost of responding to such advertisement and collecting or paying for the delivery of such item
2. Make clear the extent of commitment that a consumer shall make to take advantage of a free offer
3. Not describe any goods, products, or service to be free, if
    a. The consumer has to pay for packing, packaging, handling, or administration of such free goods, products, or services;
    b. The cost of response, including the price of goods, products, or services which the consumer has to purchase to take advantage of such offer, has been increased, except where such increase results from factors unrelated to the cost of promotion; or
    c. The quality or quantity of the goods, products, or services that a consumer shall purchase to take advantage of the offer has been reduced

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4. Not describe an element of a package as free if such element is included in the package price.
5. Not use the term 'free trial' to describe a 'satisfaction or your money back offer or an offer for which a non-refundable purchase is required.

According to section 8 of the guidelines, an advertisement that addresses, targets or features children shall not:

1. Condone, encourage, inspire or unreasonably emulate behaviour that could be dangerous for children,
2. Take advantage of children's inexperience, credulity or sense of loyalty,
3. Feature children for advertisements prohibited by any law for the time being in force, including tobacco or alcohol-based products,
4. Exploit children's susceptibility to charitable appeals and shall explain the extent to which their participation will help in any charity-linked promotions,
5. Claim any health or nutritional claims or benefits without being adequately and scientifically substantiated by a recognized body.
6. An advertisement for junk foods, including chips, carbonated beverages and such other snacks and drinks shall not be advertised during a program meant for children or on a channel meant exclusively for children.
7. Any advertisement which offers promotional gifts to persuade children to buy goods, product or service without necessity or promotes illogical consumerism shall be discouraged.

According to Section 11 of the guidelines, disclaimers in Advertisements should be:

1. May expand or clarify a claim made in such advertisement or make qualifications or resolve ambiguities therein in order to explain such claim in further detail, but such disclaimer shall not contradict the material claim made in the advertisement or contradict the main message conveyed by the advertiser or change the dictionary meaning of the words used in the claims received or perceived by a consumer.
2. Shall not attempt to hide material information with respect to any claim made in such advertisement, the omission or absence of which is likely to make the advertisement deceptive or conceal its commercial intent;
3. Shall not attempt to correct a misleading claim made in an advertisement.

According to Section 12 of the Guidelines, it shall be the duty of the manufacturer, service provider, advertiser, and the advertising agency to ensure the following:

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1. All descriptions, claims, and comparisons in the advertisement are capable of substantiation, and if required shall provide such substantiation to the Central Authority;
2. For advertisements that expressly state to be based on or supported by research or assessment, such advertisement shall indicate the source and date of such independent research or assessment;
3. The advertisement shall not, with a view to confer an unjustified advantage, refer, ridicule, or disrepute any person, firm, or institution without obtaining prior permission;
4. Advertisements shall not contain any statement or visual presentations that mislead consumers;
5. The advertisement, instead of using expressions such as “up to five years guarantee” or “prices from as low as X”, must clearly indicate the fixed period of guarantee, or the fixed price at which the product is being offered, or, the minimum and maximum of such variables;
6. For advertisements that invite the public to take part in lotteries, price competitions, etc (permitted under the law), the advertisement must clearly set out all terms and conditions.

According to section 13 of the Guidelines, due diligence required for the endorsement of advertisements shall be in following conditions:

1. All endorsements must reflect the genuine, reasonable current opinion of the entity making the representation, must be based on adequate information or experience, and must not be deceptive.
2. Any law for the time being in force that bars Indian professionals, whether resident in India or otherwise, from making an endorsement in any advertisement pertaining to any profession, shall apply mutatis mutandis to foreign professionals of such profession as well, and shall not permit them to make endorsements in such advertisements either.

According to section 14 of the Guidelines, disclosure of material connection shall be in following conditions:

There exists a connection between the endorser and the trader, manufacturer, or advertiser of the endorsed product that might materially affect the value or credibility of the endorsement and the connection is not reasonably expected by the audience, such connection shall be fully disclosed in making the endorsement.

#Source: Click here for more details

JUDICIAL INSIGHT

CESTAT: IT SERVICE PROVIDED BY ASSESSEE TO ASSOCIATE COMPANY IN USA AMOUNTS TO EXPORT OF SERVICE

Appellant Submissions:

1. The Appellant Company and the service recipient company are two different entities as both are separately registered as independent companies in their respective countries.
2. The shareholders of both companies are also different even though some of the directors are common, therefore, both are different and distinct people.
3. Merely because a note was given in the balance sheet of the appellant company that the service recipient's company is an Associates Company of the appellant does not alter the legal status of the independent entity of both the companies.
4. The appellant and the service recipient do not fall under the category of a person as given in item (b) of Explanation 3 of Clause (44) of Section 65B of the Finance Act, 1994.
5. The Appellant further placed reliance on the judgment of the Hon'ble High Court in the case of Linde Engineering India Pvt. Ltd. & Ors Vs. Union of India. This High Court in the case said the entity located in India was a 100% subsidiary of Linde AG Germany but both were different companies whereas the present case is on the better footing that the appellant is not 100% subsidiary of M/s Celtic Cross Holding Inc. USA."
6. Based on the Supra Case the appellant and service recipient are two distinct people, therefore, the condition of Clause (f) stands fulfilled and the supply of service clearly falls under the export of service

Adjudication Authority's Order:

1. AA demanded the Service Tax, holding that the appellant's supply of services to the corporation M/s Celtic Cross Holding Inc., USA did not constitute export. The adjudicating authority observed that the appellant could not prove that they had received the export proceeds in convertible foreign exchange. The appellant and the service recipient are not the establishments of a distinct person in accordance with item (b) of Explanation 3 of Clause (44) of Section 65B of the Finance Act. As per the department, both the appellant and service recipient fall under the same entity; hence, they are not a distinct person and the service does not fall under the category of export.

JUDICIAL INSIGHT

Issue of the case: whether the IT Service provided by the appellant to their associate company M/s Celtic Cross Holding Inc. USA is amount to export of service in terms of Rule, 6A(1) of Service Tax Rules, 1994 or otherwise

Observation of the Court:

1. The Service recipient is working under the banner of M/s Celtic Cross Holding Inc. USA. Both the companies are separately registered in their respective countries. Even the directors of the company through two directors are common but others are different.
2. Even if there is a note in the balance sheet of the appellant company that they are associate of M/s Celtic Cross Holding Inc. USA but in the eyes of law as per the companies act both companies are independent entities. Therefore, Clause (f) of Rules 6A (1) of Service Tax Rules, 1994 stands complied with.
3. After a close perusal of the case Linde Engineering India Pvt. Ltd & Ors, it is clear that in the present case the appellant and the service recipient are two distinct people, hence, the service provided by the appellant to M/s. Celtic Cross Holding Inc. USA clearly falls under export of service.

Decision held: The CESTAT held that the appellant and the service recipient are two distinct persons, hence, the service provided by the appellant to M/s. Celtic Cross Holding Inc., USA, clearly falls under the export of service.

"Therefore, we are of the view that the demand confirmed by the adjudicating authority and upheld by the Commissioner (Appeals) is not correct and legal. The impugned order is set aside. The appeal is allowed,"

Case Name: Celtic Systems Private Limited Versus C.C.E. & S.T.-VADODARA-I

JUDICIAL INSIGHT

SC: NCLT/NCLAT SHOULD NOT SIT IN APPEAL OVER COMMERCIAL WISDOM OF COC TO ALLOW WITHDRAWAL OF CIRP

Facts of the case:

- IDBI Bank Limited had filed an application under Section 7 of the IBC seeking initiation of the Corporate Insolvency Resolution Process (CIRP) against M/s Siva Industries and Holdings Limited (Corporate Debtor). On 04.07.2019, the application was admitted by the NCLT and CIRP was initiated.
- The Resolution Professional (RP) presented a resolution plan before the CoC which was not approved as it did not receive 66% votes, as per the requirement of the statute.
- The RP filed an application for initiating liquidation. Subsequently, Vallal Rck, the promoter of the Corporate Debtor filed a settlement application under Section 60(5) IBC to offer a one-time settlement plan.
- The CoC considered the Settlement plan in its 13th, 14th and 15th meeting held between October and December 2020.
- The promoter submitted the final settlement proposal and was considered by the CoC on 18.01.2021.
- Ultimately, the settlement plan was approved on 01.04.2021. Consequently, the RP filed an application seeking withdrawal of CIRP. However, the NCLT rejected the said application stating that the Settlement Plan was only a Business Restructuring Plan. Moreover, it initiated the liquidation process.
- The appeals filed before the NCLAT were dismissed.

Issue of the Case:

whether the adjudicating authority or the appellate authority can sit in an appeal over the commercial wisdom of the Committee of Creditors or not.

Observation of the Court:

- Referring to Section 12A, which deals with the withdrawal of applications admitted under Section 7, 9 or 10, the Court noted that the provision was inserted by the Insolvency and Bankruptcy Code (Second Amendment) Act, 2018 after much deliberation by the Insolvency Law Committee.
- The Committee had recommended that an exit should be allowed provided the CoC approves it by 90% voting share. The recommendation reads as under -

JUDICIAL INSIGHT

"(vii) in order to cater to exceptional circumstances warranting withdrawal of an application for CIRP post- admission, it has been recommended to allow such exit provided the CoC approves such action by ninety per cent of the voting share;"

- The Court observed that the recommendation was made as the Committee reckoned that the intent of the IBC is to discourage individual actions for enforcement and settlement. In the light of the same, it had opined that the settlement may be reached amongst all creditors and the debtor, for the purpose of a withdrawal to be granted. Pursuant to the insertion of Section 12A in the IBC, Regulation 30A was added to the Regulations, 2016 which lays down the detailed procedure for withdrawal of the application.
- It was further noted that in ***Swiss Ribbons Private Limited And Anr. v. Union of India And Ors.***, the validity of Section 12A was upheld. Moreover, considering that a catena of judgments of the Apex Court had already held that commercial wisdom of CoC is not to be interfered with by NCLT and NCLAT, it opined -

  "When 90% and more of the creditors, in their wisdom after due deliberations, find that it will be in the interest of all the stake-holders to permit settlement and withdraw CIRP, in our view, the adjudicating authority or the appellate authority cannot sit in an appeal over the commercial wisdom of CoC. The interference would be warranted only when the adjudicating authority or the appellate authority finds the decision of the CoC to be wholly capricious, arbitrary, irrational and de hors the provisions of the statute or the Rules."

Decision Held:

The SC held that when 90% or more of the creditors decide that it will be in the interest of all the stake-holders to permit the Settlement Plan filed by the promoter of the Corporate Debtor and withdraw the Corporate Insolvency Resolution Process as per Section 12A of the Insolvency and Bankruptcy Code, 2016, the adjudicating authority (NCLT) or the appellate authority (NCLAT) cannot sit in appeal over such commercial wisdom of Committee of Creditors (CoC).

Name of the Case: ***Vallal Rck v. M/s. Siva Industries And Holdings Limited And Ors.***

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