Detailed representations on (a) amending definition of 'demerger' u/s. 2(19AA) to cover hive off of business through divestment of shares of operating subsidiary (b) expanding scope of s.72A to cover service sector and (c) further clarifications on TDS u/s. 194R on business perquisites

1. Clarify that definition of 'undertaking' in section (s.) 2(19AA) covers hive-off of business through divestment of shares of operating subsidiary

Background

- S. 47(vib)/(vid) of the Income tax Act ('Act) provides for exemption from capital gains taxation to the resulting company as well as the shareholders in case of a 'demerger' where resulting company is an Indian company.

- Similar exemption is also provided in s.47(vic) w.r.t. capital gains arising from transfer of shares of an Indian Company or shares of a foreign company deriving substantial value from shares of an Indian company, held by the demerged foreign company to the foreign resulting company.

- For this purpose, the term 'demerger' is defined in s. 2(19AA) to mean a transfer of one or more 'undertakings' by the demerged company to a resulting company subject to satisfaction of conditions specified therein.

- Explanation 1 to s. 2(19AA) defines 'undertaking' to include any part of an undertaking, or a unit or division of an undertaking or a business activity taken as a whole but specifically excludes individual assets or liabilities or any combination thereof not constituting a business activity.

Issue

- In many cases, businesses are housed in an operating subsidiary company for regulatory or commercial reasons.

- For instance, extant RBI or IRDA or SEBI guidelines do not permit banking, NBFC, insurance or AMC business to be undertaken along with any other business activity under the same legal entity. Any business group desiring to enter any such regulated business is required to set up a separate SPV/subsidiary to undertake such business.

- Similarly, in infrastructure sector, separate SPVs are required to be set up for executing individual infrastructure projects due to mandate of tender conditions issued by NHAI.

- Even commercially, business groups find it more expedient to commence any new business within the fold of a new subsidiary for diverse reasons like protection of existing business from risks of new business, invite PE investors, ease of divestment, etc.

- In this regard, it may be noted that, while the business/ project may be housed in a separate subsidiary/SPV, the holding company and its management are actively involved in the business of the SPV. The holding company raises borrowing for the SPV through its own credentials. The financial parameters of the holding company and other subsidiaries like turnover, net worth, work experience, past performance, etc. are considered for granting new projects to SPV. The operating subsidiary is virtually identified as extension of business group.

- S.2(19AA) refers to transfer of an 'undertaking' from one company to another. There is an ambiguity whether it encompasses ownership of business through operating subsidiary and transfer of shares of such operating subsidiary as a mode of transfer of business.

- More particularly, in regulated businesses, it is difficult to transfer the business from one legal entity to another. Even the acquiring business group is required to house the business activity in a separate company. Hence, the transfer of shares of the operating subsidiary is a more efficient mode of hive off of business.

- This also resonates with divestment programme of Government where Government transfers shares representing controlling interest in an operating company (like Air India) to successful bidder from private sector instead of transferring the business from the legal entity.

- S. 2(19AA) already has protective conditions in respect of court approved scheme, continuity of business in the form of transfer of all assets and liabilities, going concern requirement, 75% of shareholders of demerged company becoming shareholders in resulting company, etc. Further, it requires consideration for transfer to be paid in the form of issue of shares of resulting company to shareholders of demerged company.

- If the definition of 'undertaking' is expressly clarified to include shares representing controlling interest in operating subsidiary, it will clear the ambiguity in the matter and enable business groups to undertake demerger of operating subsidiary in a tax efficient manner. There is no revenue loss to the Government since the resulting company and shareholders of demerged company inherit the same tax cost as demerged company. The tax cost of shares of operating subsidiary in the hands of the demerged company will become tax cost in hands of resulting company (Refer, s.49(1)(iii)(e)). In the hands of shareholders of demerged company, the tax cost of demerged company shares is pro-rated on the basis of net book value of assets and split between shares of demerged company and shares of resulting company (Refer, s.49(2C)/(2D)).

► For transfer of business undertaking in demerger, s.72A(4) permits transition of business loss and unabsorbed depreciation relatable to the demerged undertaking to the resulting company. In case of transfer of shares of operating subsidiary, there will be no requirement to transition such loss or unabsorbed depreciation since the losses/unabsorbed depreciation remain within the fold of subsidiary company. However, a consequential amendment is required in s.79 to protect the carry forward of business loss in the hands of the operating subsidiary, being a closely held company, in view of change in shareholding beyond 49%.

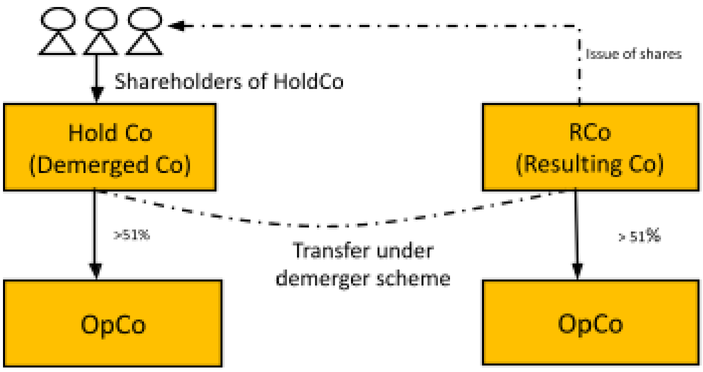
Recommendations

► It is recommended that S. 2(19AA) be amended to expressly clarify that shares of operating subsidiaries qualify as eligible undertaking capable of being demerged in a tax-neutral manner under a court-approved scheme.

► Furthermore, a consequential amendment be also made to s.79 to protect the carry forward of business loss in the hands of the operating subsidiary, being a closely held company, in view of change in shareholding beyond 49% by such court approved demerger.

Illustration to demonstrate ability of existing tax framework to ensure that 'tax neutrality' granted to hive-off of business through divestment of shares of operating subsidiary does not result in tax leakage

Below is a simple illustration which shows that once such amendment is made, the existing framework of demerger related provisions in the Act ensure that the transaction is tax neutral for demerged company, its shareholders and resulting company.



Assume that Hold Co (Demerged company/DCo) holds more than 51% shares in OpCo which is an operating subsidiary in a regulated business. The transaction of demerger involves transfer of shares in OpCo to RCo (Resulting company) under NCLT approved demerger scheme in consideration of which RCo issues its own shares to shareholders of DCo. All three companies DCo, OpCo and RCo are Indian companies.

All other conditions of 'demerger' u/s. 2(19AA) are fulfilled as follows :-

1. Entire shareholding in Opco is transferred by DCo to RCo which results in transfer of all the assets and liabilities of regulated business carried on by OpCo getting transferred to RCo by virtue of demerger

2. The transfer of shares of OpCo is at value incompliance with clause (iii) of s.2(19AA)

3. In consideration of demerger, RCo issues its own shares to shareholders of DCo on a proportionate basis

4. Shareholders holding not less than 75% of value of shares in DCo become shareholders in RCo by virtue of demerger

5. The control over regulated business carried on by OpCo is transferred on a going concern basis through the medium of transfer of shares

The Balance Sheet of DCo prior to demerger is as follows :-

Liabilities		Rs. in Cr	Assets	Rs. in Cr
Share Capital (A)	500		Shares of OpCo	1000
General Reserves (B)	1500		Other Assets	2000
Net worth (A + B)		2000		
Liabilities (unrelated to OpCo shares)		1000		
Total		3000	Total	3000

RCo will issue its own shares to shareholders of DCo on proportionate basis based on fair exchange ratio as determined by registered valuers/merchant bankers and approved by shareholders and creditors of both DCo and RCo, NCLT and other regulatory authorities like RBI, IRDA, SEBI, etc.

One of the shareholders of DCo is Mr. X who holds 20% in DCo. The cost of such shares in his hands is Rs. 100. By virtue of demerger, he gets proportionate shares of RCo.

Tax implications in hands of DCo (Demerged company)

1. The transfer of shares of OpCo to RCo will be exempt from capital gains u/s. 47(vib)

2. The transfer of shares of OpCo of Rs. 1000 will be reduced from Reserves of DCo. But it is clarified by s.2(22)(v) that such reduction does not constitute 'dividend' in the hands of shareholders of DCo.

Tax implications in hands of RCo (Resulting company)

1. The tax cost of OpCo shares in hands of RCowill be same as cost of acquisition in the hands of DCoi.e Rs. 1000. (Refer, s. 49(1)(iii)(e) r.w.s 47(vib)).

2. Furthermore, the holding period of shares of OpCo in hands of RCo will include the period for which shares were held by DCo. (Refer, Exp 1(b) to s. 2(42A)r.w.s 49(1))

3. The receipt of shares of OpCo does not trigger 'gift tax' implications in hands of RCo u/s. 56(2)(x) in view of clause (IX) of proviso to s.56(2)(x) in terms of which transaction exempt u/s. 47(vib) is excluded from the applicability of s.56(2)(x)

Tax implications in hands of OpCo

1. There is no tax implication in hands of OpCosince there is mere change in its shareholding. However, if OpCohas brought forward losses, it may lapse due to change in shareholding beyond 49% for which it is represented that consequential amendment may be made in s.79 to protect carry forward and set off of such losses.

Tax implications in hands of Mr. X – shareholder of DCo

1. Mr. X gets shares of RCoin addition to holding in DCo. It is clarified by s.2(22)(v) that such receipt does not constitute 'dividend' in hands of Mr. X

2. The transaction of receipt of shares of RCois not regarded as 'transfer' u/s. 47(vid)

3. The receipt of shares of RCo is protected from 'gift tax' implications u/s. 56(2)(x) in view of clause (IX) of proviso to s.56(2)(x) in terms of which transaction exempt u/s. 47(vib)/(vid) is excluded from the applicability of s.56(2)(x)

4. The cost of acquisition of shares of DCo of Rs. 100 will be split between shares of DCo and RCo in the proportion of net book value of assets of DCo to 'net worth' (i.e share capital + general reserves) of DCo. The split will be as follows :-

Particulars	Prior to demerger	Ratio of net book value to net worth	Post demerger	Section
Cost of shares of RCo	-	1000 (50%)	50	49(2C)
Cost of shares of DCo	100	2000	50	49(2D)
Total	100		100	

Furthermore, the holding period of shares of RCowill include period for which shares of DCo were held by Mr. X (Refer, Exp 1(g) to s.2(42A))

In future, if Mr. X sells shares of RCo, the cost of acquisition will be taken at Rs. 50

2. Extend carry forward and set off of accumulated business loss and unabsorbed depreciation on amalgamation to service sector or organised retail/trading sector

Issue

- ► Provisions of s. 72A of the Act permit carry forward of business loss and accumulated depreciation in case of amalgamation only to certain specific types of companies such as those owning an industrial undertaking, banking companies, etc. Moreover, the provision deems such losses to be incurred in the year of amalgamation thereby resetting the 8-year clock for set-off of business losses against profits of subsequent years in the hands of the amalgamated company.

- ► Companies in the service or organized retail/trading sector are generally not eligible for such benefits.

- ► The services sector has been the bulwark of the Indian economy contributing about 54% of the total GVA in FY21[1]. It has also attracted significant foreign investment totaling to more than 16%[2] of the total FDI inflows into India. This sector also contributes significantly to India's exports wherein India's service exports in 2020-21 were USD 208.8 billion (constituting 41.8% of total exports)[3]. The sector provides large scale employment. As per ILO estimates (2019), services sector in India contributed 32% of the total employment in the country, with industry's share only at 25% and manufacturing sector's share at merely 12%.

- ► However, with the advent of globalization and liberalization resulting in the influx of foreign entities into India, the increasing competition has resulted in a pressing need for small companies in the service and organised retail/ trading to consolidate their resources to survive. Moreover, several service sector companies are looking for optimizing the operations by amalgamation with other companies even due to unprecedented Covid-19 situation.

- ► With growing emphasis on the digitization of economy and major portion of Indian GDP being contributed by service sector there seems to be no

[1] Ministry of Statistics and Programme Implementation (MOSPI)
[2]Finance, Banking, Insurance, Non-Fin / Business, Outsourcing, R&D, Courier, Tech. Testing and Analysis, Other
[3] Ministry of Commerce

rationale for treating the service sector differently than manufacturing sector and restricting the applicability of s.72A only to manufacturing sector and select service sector.

- Even internationally, where transition of losses is permitted in major developed countries such as US, UK, Singapore or even developing countries such as China and Russia (which are members of BRICS),no such artificial distinction is made and transition of losses is permitted to companies in all sectors with the safeguards of continuity of business and/or continuity of ownership.

- While admittedly, safeguards to ensure continuity of business in case of manufacturing sector [in terms of achieving production of 50% of installed capacity and maintenance of 75% of assets post-merger] may not be feasible for service/ trading sector, safeguards inserted internationally may be illuminative:

  - United Kingdom – Transition of losses to amalgamated company is subject to there being no scale down of business or change in its nature or ownership for 5 years subsequent to merger

  - Singapore – Transition of losses to amalgamated company is permitted subject to shareholders holding 50% or more shares being the same and there being no break in continuity of the business

  - Hong Kong – Transition of losses is to amalgamated company is subject to bona fides. Where sole/ dominant purpose is utilization of losses and there is change in the nature of business such losses are lost.

  - China – Transition of losses to amalgamated company are permitted subject to satisfaction of the following conditions:

    - The amalgamation must have bona fide business purpose and must not be carried out with the primary objective of reducing, avoid or deferring tax payments.

    - At least 75% of equity interest in acquired company must be acquired in an equity acquisition or at least 75% of transferring company's assets must be acquired in an asset acquisition.

    - At least 85% of total consideration received must be in the form of shares.

    - There must be no change in the nature of activities for 12 months post amalgamation.

- Shareholders holding atleast 20% of shares in the amalgamating company must continue to hold shares in amalgamated company for atleast 12 months post amalgamation.

► The extension of s.72A to service sector will enable tax efficient business reorganization of companies and thereby protect value for shareholders. It will enable stronger companies to absorb small/weak companies, protect jobs and also secure the interests of financial and operating creditors by avoiding liquidation of financially stressed companies. The revenue's interest can be protected by providing appropriate safeguard based on international precedence.

► The parameter of employee headcount or payroll expenditure is recognized in several contexts of income tax as parameter indicating "substance" of the entity. Refer, the following illustrations :-

- **Employee headcount**

  - Prior to 2016, deduction u/s. 80JJAA was linked to condition of at least 10% increase in the number of 'regular workmen'. Post 2016, it is linked to increase by at least one employee as compared to last day of preceding year.

  - Circular No. 6 of 2017 dated 24 January 2017 laying down guidelines for determination of 'place of effective management' (POEM) adopts number of employees in India and number of employees outside India as one of the criterion in 'active business outside India' (ABOI) test. For this purpose, it is clarified that the number of employees shall be the average number of employees as at the beginning and at the end of the year and shall include persons, who though not employed directly by the company, perform tasks similar to those performed by the employees.

  - For testing newness of SEZ unit engaged in software development or ITES, it was clarified in CBDT Circular No. 14/2014 dated 8 Oct 2014 that taxpayer can demonstrate newness of the SEZ unit by satisfying any one of following two tests :-

    - Number of technical manpower transferred in the first year of commencement of business of new unit does not exceed 50% of total technical manpower actually engaged in development of software/providing ITES

- The net addition of the new technical manpower in all units of the taxpayer is at least equal to the number that represents 50% of the total technical manpower of the new SEZ unit during the first year of commencement of business of new unit.

▪ Form No. 3CEAD (CbCR report) prescribed vide Section 286 r.w. Rule 10DB requires reporting entity to report, as one parameter, the number of employees in each tax jurisdiction

▪ In 'Under Taxed Payments Rule' (UTPR) under proposed Pillar 2 of BEPS laying down global minimum tax standard, one of the criterion for allocating UTPR to a jurisdiction is 50% of the ratio of number of employees in that jurisdiction as compared to number of employees in all UTPR jurisdictions.

o **Payroll expenditure**

▪ Circular No. 6 of 2017 (POEM Guidelines) also adopts payroll expenses of employees in India and payroll expenses of employees outside India as one of the criterion in ABOI test. For this purpose, it is clarified that the term "pay roll" shall include the cost of salaries, wages, bonus and all other employee compensation including related pension and social costs borne by the employer

▪ The ongoing discussions on Pillar One in OECD proposes to compute "marketing and distribution safe harbour" to avoid double taxation of non-routine profits in a jurisdiction by adopting return on payroll cost (amongst others like depreciation).

▪ In 'substance based carve out' under Income Inclusion Rule under proposed Pillar 2 of BEPS laying down global minimum tax standard, one of the criterion for carve out from minimum tax is 10% of eligible payroll expenditure in the source jurisdiction.

► Hence, employee headcount or payroll expenditure can be adopted as a relevant parameter for evaluating business continuity condition in service sector. This condition ensures that jobs are protected while transitioning the losses.

Recommendation

► Benefit of carry forward and set off of accumulated business loss and unabsorbed depreciation prescribed under s. 72A be extended to amalgamation of service and organized retail/trading companies.

► In Indian context, the following safeguards may be considered by the Government for service sector :-

Conditions for amalgamating company

- Should be engaged in business in which the accumulated loss occurred or depreciation remains unabsorbed, for three or more years
- Should continuously hold as on date of amalgamation at least three-fourths of the book value of the fixed assets held by it two years prior to the date of amalgamation
- Should have a minimum number of average employee head-count (-say, 100 to 500) or average payroll expenditure of minimum threshold (- say, Rs. 5 Cr or Rs. 10 Cr) for two years prior to the date of amalgamation

Conditions for amalgamated company

- Should continue the business of the amalgamating company for minimum period of five years from the date of amalgamation
- Should hold continuously for a minimum period of five years from the date of amalgamation at least three-fourths of the book value of fixed assets of the amalgamating company acquired in a scheme of amalgamation.
- No fall in average employee head-count of employees or average payroll expenditure for 3 years post-merger beyond specified limit (-say, 75%). For this purpose, Government may also consider some further conditions like qualifying employees who are enrolled in PF and/or have PAN/Aadhar numbers.

The reporting requirement in Form No. 62 to be furnished by practicing CA for verifying claim made u/s. 72A may also be expanded to cover the employee related details which the Tax Department can cross verify using Digital technology with PF records, UIDAI's Aadhar database, salary TDS returns, etc

3. Removal of further difficulties in giving effect to TDS under s.194R on business perquisites

We may draw attention to our earlier detailed representations dated 19 July 2022 on CBDT Circular no. 12 of 2022 (hereinafter referred as 'the Circular') issued by CBDT on 16 June 2022 with subject: "Guidelines for removal of difficulties under sub-section (2) of section 194R of the Income-tax Act, 1961". This representation is being made to seek further clarifications on specific issues discussed below :-

Clarifications sought and recommendations:

1. <u>Clarification sought on FAQ # 3 – Benefit/perquisite received in the form of capital asset – Clarify that unilateral or agreed bad debt write off does not constitute benefit or perquisite</u>

   Response to Question 3 of the Circular has sought to provide an illustrative list of the perquisites or benefits received in the form of capital assets that can be taxable in the hands of the recipient and therefore, subject to TDS under Section 194R of the Income-tax Act, 1961 ("the Act"). One of the illustrations provided relates to an amount representing principal loan waived by bank under one time settlement scheme would constitute income falling under section 28(iv) relating to value of any benefit or perquisite, arising from business or exercise of profession. CIT v Ramaniyam Homes (P) Ltd (2016) 68 taxmann.com 289 (Mad). The inclusion of this illustration creates an ambiguity inasmuch as this ruling has been reversed by the Hon'ble Supreme Court in the case of CIT v. Mahindra & Mahindra (404 ITR 1)(SC). Also, the waiver of loan does not result in capital asset in the hands of the taxpayer.

   In this regard, clarification is required on the treatment of bad debts arising out of the general trade practice and the receivables required to be written off owing to non-recovery and / or by generally accepted accounting principles. The receivables towards the principal dues may be non-realisable, despite the genuine efforts of the taxpayer and such reasons can be attributable to the financial position of the debtor, debtor not being traceable, etc. The machinery provision of recovery of TDS in such cases cannot be exercised as the principal sum itself would be non-realisable & therefore, TDS cannot be deducted. Further, in case the taxpayer has to gross up the TDS & bear the TDS liability owing to bad debts' write-off in books, it leads to an out-of-pocket situation and undue hardship to the taxpayer.

   Furthermore, a bad debt write off is a unilateral action taken in the books of the creditor and at times emanating out of accounting principles. The creditor is not legally precluded from pursuing the recovery from the debtor even after such unilateral write off and hence, the write off in books of creditor cannot be regarded as benefit or perquisite in the hands of the debtor. If a TDS were to be done on this and reflected in the Form 26AS, then it would make it even more difficult to recover any amounts against the debt from the debtor, as the debtor would then argue that the debt is no longer payable or the liability stands waived off.

Therefore, a clarification may be issued on the non-applicability of TDS under Section 194R in cases of write-off of bad debts in the books of accounts of the taxpayers.

2. Clarifications sought on FAQ # 4 – Sales discount, cash discount and rebates

a. Response to Question no. 4 of the Circular states that Sales discounts, cash discounts or rebates allowed to the customers from the listed retail price represent lesser realisation of the sale price itself. To that extent purchase price of customer is also reduced.

   In normal trade practice prevalent in FMCG industry, the sales discounts or rebates are generally passed on to the customers via credit notes. In addition to discounts linked directly with the price of a particular product, these discounts could also be offered on the basis of certain volume of purchases by the distributor or for making payments in a reduced credit period or could be linked to various other parameters/ targets, normally referred as post-sales or target-linked discounts. In all such scenarios, the discounts will lead to lower sales realization in the books of the manufacturer and lower purchase price in the books of the purchaser. However, the use of the word “listed retail price” is causing ambiguity in interpretation in scenarios where discounts lead to a lower purchase price but is not linked to a specific product (e.g., cash discount or target-linked discounts) or may not be passed on to the end consumer in the chain (e.g., volume discount or other such trade discounts).

   Therefore, to avoid ambiguity, it may be clarified that any kind of sales discounts, trade discounts, volume discounts or adjustments by way of credit notes, which will effectively reduce the purchase price of the buyer, should be kept outside the ambit of TDS under Section 194R.

b. Response to Question no. 4 of the Circular has granted relaxation to the seller for giving "its” free items given from its stock in trade along with purchase of certain quantity of items e.g., in a situation where 2 items are offered free with purchase of 10 items. However, the reading of the answer has created an ambiguity that such relaxation can be applied only where the free items given are the same items being purchased by the buyer and not where, the free items are from the other product portfolio of the seller (2 toothpaste with 10 soap bars) or purchased by the seller from another manufacturer (e.g., a plastic mug free with 10 soap bars).

   Given that the underlying principle remains the same in situations where free product offered with the main product is of another type, whether or not manufactured by the seller, it is requested to clarify that the seller can give free items, which are either purchased by the manufacturer or own manufactured products and the same relaxation would apply to free items of different class/ category.

3. Clarifications sought on FAQ # 7: Reimbursement of out of pocket expenses of service providers

Response to Question no. 7 of the Circular has clarified that if the invoice for the expenses incurred by a service provider wholly and exclusively for the purposes of rendering services and claimed as reimbursement of expenses will not attract TDS under Section 194R of the Act. However, TDS under Section 194R would apply if the invoice of the expenses being claimed as reimbursement are not in the name of the service recipient.

Presently, in the transactions where TDS under a different section of the Act is applicable on the service invoice, say under section 194 C or under section 194J and reimbursement of expenses is claimed at actuals in the invoice along with the service fees, TDS is deductible under the relevant section 194C or 194J on the total value of the invoice. With the clarification provided in FAQ 7 of the Circular, it would become practically challenging to apply a different TDS section on the primary service fees but apply Section 194R on the component of reimbursement of expenses relating to the primary service fees. This could practically even lead to a situation where the main service fees attract TDS under 194C at 2% but the reimbursement of expenses will need to be bifurcated for TDS under 194R @ 10%; e.g., in case of a works contract, TDS under Section 194C would be applicable @ 2% on the works' contract consideration agreed between the service recipient and the contractor & by virtue of clarification in FAQ 7, TDS under Section 194R would require TDS deduction @ 10%.

Bringing reimbursement of expenses under the ambit of Section 194R would create practical challenges for the deductor to bifurcate the elements from one invoice and lead to a lot of difficulty. This will also lead to litigation especially in cases where the service fees would attract TDS at a rate lower than 10% (like 1%/2% u/s. 194C and 2% for Fees for technical services u/s. 194J).

Therefore, it is recommended to clarify that if a TDS is being deducted on an invoice comprising service fees and reimbursement of expenses under a different section, separate TDS is not required under Section 194R on such reimbursement of expenses.

4. Clarifications sought on FAQ # 8: Business conferences

Response to Question no. 8 of the Circular has clarified that any business conference must not be in the nature of incentives/benefits to select dealers/ customers who have achieved specified targets. Further, it has also been clarified that the expenditure incurred on participants of dealer/ business conference for days which are prior stay or overstay beyond the dates of such conference would be considered as perquisite or benefit for Section 194R purpose.

In this regard, we wish to highlight few practical challenges:

- There is a possibility that the manufacturer may arrange for a dealer/ customer conference for targeted set of dealers for its top performing dealers, or due to budget or accommodation constraints etc. The clarification suggests that if select dealers are invited instead of all dealers then 194R will apply even on a non-leisure component

- Further, it is also possible that the participants may reach a particular venue a day prior to the conference as a matter of convenience, owing to personal context/ health, or airline/ train schedules, dynamic travel fares, etc. and also may stay back a day extra for the same reasons

- Also, as a part of collaborating activities and knowing the customer better, there may be team building activities or interactive activities undertaken that may involve general hospitality and entertainment

- Leisure is a very subjective concept, e.g., a five-star hotel for a CEO of the organisation may be a basic lifestyle requirement

It is recommended to reconsider the above and clarify the position on the conditions stated in FAQ 8 as these are due to practical and genuine reasons and do not necessarily entail a benefit/ leisure for the recipient. It may be considered to clarify that the spends, upto a prescribed threshold or as a % of turnover, incurred by a taxpayer in any given financial year, for such business/dealer conferences may not be covered under the ambit of Section 194R.