

General Statement

Competition Commission of India (Determination of Turnover or Income) Regulations, 2024

1. The Competition Act, 2002 (**Act**) was amended on April 11, 2023, *vide* the Competition (Amendment) Act, 2023 (**Amendment Act**). The Amendment Act, *inter alia*, amended section 27, 48 and section 64 of the Act, which empowers the CCI to frame regulations for imposing penalty on enterprise and/or person based on turnover or income of such enterprise and/or person. Further, it has been provided that turnover or income shall be determined in the manner as specified by regulations.

2. Accordingly, in exercise of the powers conferred by sub-section (1) and clause (fb) and (gd) of sub-section (2) of section 64 read with Explanations to clause (b) of section 27 and clause (c) of Explanation to section 48 of the Act, the CCI proposed draft Competition Commission of India (Determination of Turnover or Income) Regulations, 2023 (**Turnover or Income Regulations, 2023**).

3. The Turnover or Income Regulations, 2023 *inter alia* provides for the following:

- Determination of turnover or income for enterprise for the purposes of section 27 of the Act; and
- Determination of income for individual for the purposes of sections 27 and 48 of the Act.

4. The draft Turnover or Income Regulations, 2023 was placed on the website of the CCI from 22.12.2023 to 25.01.2024 for inviting comments from the stakeholders. The CCI received 25 (twenty-five) comments from stakeholders within the aforesaid time period from industry associations, legal fraternity, policy think-tanks, academia *etc.*

4.1 The stakeholders have submitted that imposition of penalty should be based on relevant turnover/ relevant profit in line with Excel Crop judgment passed by the Hon'ble Supreme Court and international jurisprudence. The CCI observes that the issue of Relevant Turnover has been dealt with in the CCI (Determination of Quantum of Monetary Penalty) Guidelines, 2024 (**Penalty Guidelines**). Hence, the suggestion was not accepted.

4.2 Stakeholders have highlighted that there is lack of clarity on inclusion of 'other operating income' in turnover. There were comments to exclude 'receipts' from determination of turnover. The CCI observes that the definition of 'turnover' under the Act is an inclusive definition and that 'other operating income' is a well-recognised concept, which relates to the income generated from sale of goods/services. Further, 'receipts' are included for the purpose of determination of turnover in appropriate situations, such as, in case of associations. However, for the sake of more clarity, Regulation 3 has been appropriately modified.

4.3 Stakeholders have identified issues with exclusion of 'intra-group sales' and have also suggested to exclude turnover derived from 'exports' while calculating penalty. There were comments to exclude 'other income' from turnover. The CCI observes that Regulation 3 has been suitably modified to exclude 'other income' for determination of turnover. Further, suggestions for exclusion of 'export' from turnover cannot be accepted in view of the provisions of the Act.

4.4 Stakeholders have identified issue with turnover based on consolidated financial statements and suggested that the same should be based on standalone financial statements. The CCI observes that consolidated financial statements are to be considered only in cases where the enterprise is required to prepare consolidated financial statements under any applicable law (whether domestic or otherwise).

4.5 Stakeholders suggested that requirement of certifying financial statements and the same to be supported by an affidavit by the enterprise has to be eased in a manner that accountant in any jurisdiction or even an employee should be able to certify the same and any authorised person can give affidavit in this regard. The CCI observes that since certification is required where audited financial statements are not furnished therefore, affidavit is also required. Further certification by a professional accountant regulated by Indian laws has been prescribed. Accordingly, Regulation 3 has been suitably eased to allow 'any person' duly authorised by the enterprise to sign the affidavit.

4.6 Stakeholder have suggested that turnover in foreign currency should be converted into Indian Rupees based on conversion rate as on 31st March of the relevant financial years to remove any ambiguity regarding the date used to

determine the conversion rate, ensuring that the turnover value is not subject to fluctuations due to changes in forex rates. The CCI observes that turnover or income is generated throughout the year, therefore the same should be reflective of the average rates throughout the year and not be converted based on rates on a particular date.

4.7 Stakeholders have suggested to consider 'relevant income' instead of 'gross total income' of individuals while determining the penalty to be imposed on them. The CCI has suitably modified the Regulation 4 to exclude 'income from house property' and 'income from capital gains' for the purpose of determination of income of an individual.

4.8 Stakeholders have suggested to include Cost Accountants alongside other professionals for the purposes of certification of turnover/ income. The CCI notes that only Chartered Accountants are authorised to audit financial accounts and undertake tax audit. Therefore, this suggestion cannot be accepted.

4.9 Stakeholders have raised concerns that for the purpose of removal of difficulties, the Commission has retained wide discretion/ powers through these regulations. The CCI observes that these provisions are residuary in nature and is applicable only in situations not envisaged in the regulations.

5. In light of the comments of the stakeholders and having carefully examined such comments, certain modifications have been made to the Turnover or Income Regulations, 2023. Today, CCI has notified the Competition Commission of India (Determination of Turnover or Income) Regulations, 2024.

6. In terms of Section 64A(b) of the Act, this general statement is being published to provide CCI's response to the public comments.
