

COMPETITION LAW UPDATE

January 12, 2024

DRAFT OF COMPETITION COMMISSION OF INDIA (DETERMINATION OF TURNOVER OR INCOME) REGULATIONS, 2023

The Competition (Amendment) Act, 2023, inter alia, modified Section 27, Section 48 and Section 64 of the Competition Act, 2002 (hereinafter referred to as the "Act"), granting the authority to the Competition Commission of India (hereinafter referred to as "CCI") to formulate regulations for the imposition of penalties on enterprises and/ or individuals, considering their turnover and/ or income. In light of this, on December 22, 2023, the CCI released the draft of the Competition Commission of India (Determination of Turnover or Income) Regulations, 2023 (hereinafter referred to as "**Draft Regulations, 2023**") which provides the proposed criteria for determining turnover or income for the purpose of Section 27(b) and Section 48 of the Act.

To gather feedback, the CCI invited written comments from stakeholders until January 12, 2024, through submission of the form provided on the CCI's website.

The key highlights introduced by the Draft Regulations, 2023 are as follows:

I. Determination of Turnover or Income for Enterprise:

The Draft Regulations, 2023 has comprehensively defined turnover/ income in relation to enterprise, encompassing various elements. According to the Draft Regulations, 2023, turnover or income includes the total value of sales or revenue or receipts, and other operating income as reflected in the audited financial statements of the concerned enterprise. Furthermore, the said draft further provides clarity that turnover or income will not include indirect taxes, trade discounts and inter group sales, if any.

Moreover, the Draft Regulations, 2023 offers further clarification, stating that in the absence of audited financial statements, turnover will be determined as the amount certified by the statutory auditor of the enterprise. This certification must be accompanied by an affidavit from any individual authorized to sign financial statement for such enterprise. However, in instances where a statutory auditor is not appointed, the turnover will be the sum certified by a Chartered Accountant, accompanied by an affidavit from a person authorized to sign financial statement for the enterprise.

II. Determination of Income for an Individual:

In the case of an individual, income will be determined as the gross total income according to the Income Tax Returns (hereinafter referred to as "**ITRs**") as prescribed under the Income Tax Act, 1961, and its accompanying rules. In situations where ITRs are unavailable or tax returns are filed in multiple jurisdictions, or not filed in any jurisdiction, the income will be the total income certified by a Chartered Accountant. However, this certification must be substantiated by an affidavit from the individual concerned. For individuals not required to file ITR, the income will be the total income certified by a Chartered Accountant, accompanied by an affidavit from the individual concerned.

ABOUT THE FIRM

AKS Partners (formerly known as A.K. Singh & Co) is a law firm based in New Delhi (India) that provides a comprehensive range of legal services and solutions to domestic and international clients. The Firm offers a unique blend of the local knowledge to apply the regulatory, economic, political and cultural context to legal issues and develop case strategies.

We regularly handle technically challenging and complex multi-jurisdictional matters. Our team is spearheaded by one of the highly recognised lawyers with extensive experience in international dispute resolution and strong government and diplomatic backgrounds. This experience gives us the deepest understanding of the key decision points that are critical in navigating complex & complicated matters and managing government regulations.

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AWARDS & RECOGNITIONS



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