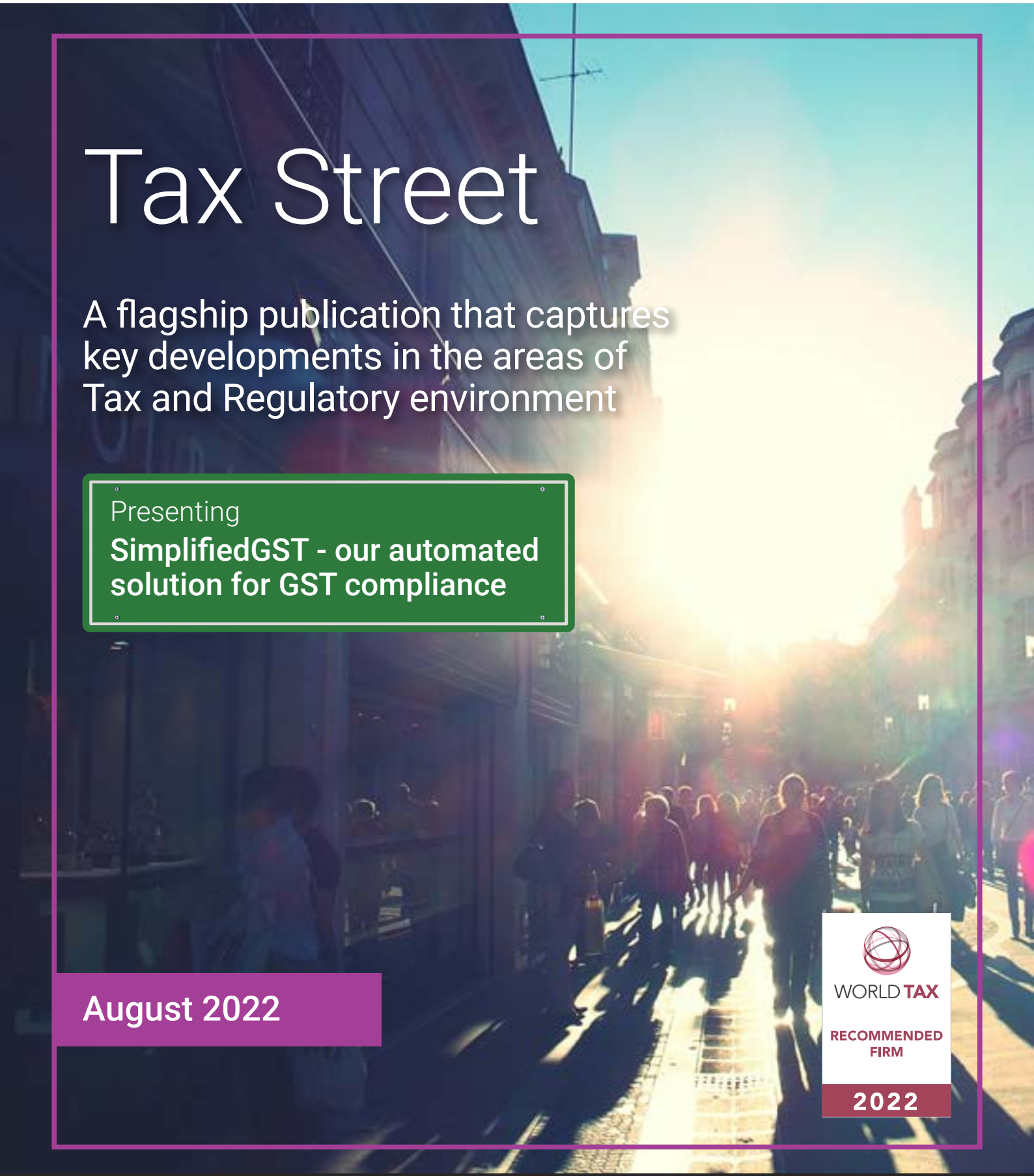
Tax Street

A flagship publication that captures key developments in the areas of Tax and Regulatory environment

Presenting

SimplifiedGST - our automated solution for GST compliance



WORLD TAX

RECOMMENDED FIRM

2022

August 2022

Introduction

Tax Street

We are pleased to present the latest edition of Tax Street – our newsletter that covers all the key developments and updates in the realm of taxation in India and across the globe for the month of August 2022.

- The **'Focus Point'** covers an overview of the provision of Section 194R, a TDS provision.
- Under the **'From the Judiciary'** section, we provide in brief, the key rulings on important cases, and our take on the same.
- Our **'Tax Talk'** provides key updates on the important tax-related news from India and across the globe.
- Under **'Compliance Calendar'**, we list down the important due dates with regard to direct tax, transfer pricing and indirect tax in the month.

We hope you find our newsletter useful and we look forward to your feedback.
You can write to us at **taxstreet@nexdigm.com**. We would be happy to hear your thoughts on what more can we include in our newsletter and incorporate your feedback in our future editions.

Warm regards,
The Nexdigm Team

Focus Point

Withholding Tax on benefits or perquisites in respect of business or profession

Section 194R is a new Tax Deducted at Source (TDS) Section introduced by the Finance Act, 2022 (w.e.f. 1 July 2022) that casts responsibility on the payer to withhold tax at 10% on the value of any "benefit" or "perquisite" provided to a resident, arising from his business or exercise of a profession.

Background

Under the Income-tax provision, the value of any 'benefit' or 'perquisite' received, whether convertible into money or not, arising from business or profession, is assessable as business income. It was observed that many times, the taxpayers do not report the receipt of taxable benefits or perquisites, especially those received in kind; hence, such income remains out of the tax authorities' radar. To catch hold of such transactions and to widen and deepen the tax base, the provision of Section 194R was introduced effective from 1 July 2022.

Key features of Section 194R

The key features of section 194R are as under:

- **What kind of payment is covered:** Any 'benefit' or 'perquisite' arising from business or exercise of the profession of the recipient.
- **Payer:** It covers all the persons. However, the individual/ HUF whose total sales/gross receipts/ gross turnover in the immediately preceding financial year does not exceed INR 10 million (in case of business) and INR 5 million (in case of profession) are excluded.
- **Payee:** Resident of India, TDS rate: 10% on the value of benefit or perquisite.
- **Timing of deduction:** Before providing benefit or perquisite, where the benefit or perquisite is provided wholly in kind or partly in kind, the person providing such benefit or perquisite shall, before releasing the benefit or perquisite, ensure that the tax required to be deducted has been paid.
- **Threshold limit:** Exceeding INR 20,000 per year per recipient.

CBDT Circular No. 12 of 2022 dated 16 June 2022

The Central Board of Direct Taxes (CBDT) has issued guidelines for removal of difficulties in implementing the provisions of Section 194R of the Income-tax Act, 1961 (ITA). The synopsis of the CBDT circular is as under:

Particulars	CBDT Guidelines relating to applicability of 194R
Taxability in the hands of a recipient – whether relevant	Not relevant. TDS needs to be deducted irrespective of the taxability in the hands of the recipient.
Value of Perquisite	TDS to be deducted on Purchase Value (Actual Cost Basis) of such benefit or perquisite, if such benefit or perquisite has been purchased before giving the same to the recipient, and in other cases, on Fair Market Value (FMV) of such benefit or perquisite.
GST to be factored	GST to be excluded

<table>
<tr><th>Particulars</th><th>CBDT Guidelines relating to applicability of 194R</th></tr>
<tr><td>Perquisite in cash or kind or in of capital asset</td><td>TDS to be deducted. It covers the benefit or perquisite provided in cash, kind or partly in cash and partly in kind. It also covers the benefit or perquisite provided in the form of capital assets.</td></tr>
<tr><td>Sales/cash discount</td><td>TDS not applicable.</td></tr>
<tr><td>Free medicine samples to medical practitioners</td><td>TDS applicable.</td></tr>
<tr><td>Where the recipient is government</td><td>TDS shall not apply if the benefit or perquisite is being provided to a government entity, like a government hospital, not carrying on business or profession.</td></tr>
<tr><td>Out-of-pocket expense</td><td>TDS would be required to be deducted even on out-of-pocket expenses, being incurred by the Service Provider, and being reimbursed to him by the Service Recipient, if the Bill/Invoice of such out-of-pocket-expenses is not in the name of Service Recipient. However, if the Invoice/ Bill of such out-of-pocket expenses is in the name of Service Recipient, then TDS provisions under Section 194R would not be applicable.</td></tr>
<tr><td>Social media influencer</td><td>In case a social media influencer is given a benefit or perquisite being a product like car, mobile, outfit, cosmetics, etc., and the influencer retains the said product, then it will be liable to TDS. In case the same is returned, then such product will not be treated as a benefit or perquisite for the purpose of Section 194R.</td></tr>
<tr><td>Transaction with dealer/ distributors</td><td>
<table>
<tr><th>TDS Not Applicable</th><th>TDS Applicable</th></tr>
<tr><td>• Dealer/business conference where it is held with the prime object to educate dealers/customers about any of the following or similar aspects:
– new product being launched.
– discussion as to how the product is better than others.
– obtaining orders from dealers/ customers.
– teaching sales techniques to dealers/ customers e. addressing queries of the dealers/customers.
– reconciliation of accounts with dealers/customers.</td><td>• Dealer/business conference where it is in the nature of incentives/benefits to select dealers/customers who have achieved particular targets.
• Expense attributable to leisure trip or leisure component, even if it is incidental to the dealer/business conference.
• Expenditure incurred for family members accompanying the person attending dealer/business conference.
• Expenditure on participants of dealer/ business conference for days which are on account of prior stay or overstay beyond the dates of such conference.</td></tr>
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</td></tr>
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In view of the above circular, one needs to be mindful in respect of the following transactions:

a. Where the expenses are incurred on behalf of/for the company by the service provider, invoices are collected in the name of the company.

b. Reading the circular, TDS provisions are attracted on any benefit or perquisite arising in the course of business or profession of the recipient. As such, any waiver of loan or write back of payables etc., one may have to evaluate the applicability of Section 194R.

c. Where benefit is provided wholly or partly in kind, one will have to ensure that adequate TDS on the same has been paid before providing such benefit.

d. Where any gifts or benefits are provided to the employee or director or owner of any other company on festive occasions etc., one may have to evaluate the applicability of Section 194R.

e. Where free samples are provided to the doctor or hospital, one will have to evaluate the FMV of the product to determine the withholding tax.

f. Where any product or benefit is given to a social media influencer and the product is retained, tax is required to be deducted.

g. While holding events/meetings with dealers and distributors, the company will have to evaluate the applicability of Section 194R on benefits or perquisites provided to them.

Comments

Given that Section 194R is a TDS provision, one needs to be mindful of the guidelines provided in the CBDT circular. Every kind of benefit or perquisite provided in the course of business or profession needs to be thoroughly evaluated for the applicability of Section 194R to avoid non-compliance with TDS provisions and consequential implications.

From the Judiciary

Direct Tax

Whether payment made by an Indian Advertising agency for advertising space owned by a non-resident is taxable as Royalty?

M/s. Interactive Avenues Private Limited Vs DCIT
ITA No.3130/Mum/2019

Facts

The taxpayer is a company incorporated in India conducting business in the field of an internet advertising agency for Indian clients. During the year under consideration, the taxpayer had made certain payments to Facebook Ireland Limited towards the cost of advertisements carried by Facebook for placing its clients' advertisements. The taxpayer adopted a view that such charges for the use of digital space were not taxable as Royalty under the India-Ireland Double Tax Avoidance Agreement (DTAA) or Indian Domestic Tax Laws (IDTL) and made such payments without deduction of tax.

The Assessing Officer (AO) stated that the payments received by taxpayer should be considered as Royalty both under India-Ireland DTAA and IDTL since Facebook's Ad platform is driven by complex algorithms and involves 'the right to use or access the Facebook Ad Platform'. This was upheld by the first appellate authority.

Aggrieved by the order, the taxpayer filed an appeal before the Mumbai Tribunal

Held

The Tribunal referred to the Bangalore bench ruling in Urban Ladder Home Decor Solutions Pvt. Ltd[1], wherein it was held that payment for online advertising on Facebook and Rocket Science Group cannot be brought to tax in India under the IDTL or the India-Ireland DTAA. The Tribunal emphasized the said ruling and held that the amount paid by the taxpayer is not for 'use' of equipment (server) or for any process nor imparting any information concerning technical, industrial, commercial, or scientific knowledge, experience or skill. Furthermore, the copyright attached to the server or website belonging to Facebook is not parted or conferred to the taxpayer. The taxpayer merely places its clients' advertisements on a space it purchases on Facebook's website.

The Tribunal also stated that the taxpayer was an independent agent of an Indian client, thereby earning commission income and was not working on behalf of Facebook. Furthermore, the Tribunal observed that the taxpayer did not use Facebook's logo even while raising invoices to its clients. Thus, Tribunal concluded that the taxpayer did not constitute a Agency Permanent Establishment (PE) of Facebook in India.

Our Comments

Whether a payment constitutes Royalty or not is a long-standing debate. The Mumbai Tribunal followed suite of earlier rulings and stated that mere use of the standard facility would not be considered as Royalty. However, it is imperative to look at the agreements thoroughly to determine whether a payment would be considered as Royalty or not.

Whether payment made for research activity and collaboration of research project is taxable as Fees for Technical Services (FTS) or Royalty?

Oil and Natural Gas Corporation Limited vs ITO
ITA Nos. 1881-1882/AHD/2019

Facts

The taxpayer is a Central Public Sector Undertaking engaged in the extraction and production of mineral oil and natural gas. The taxpayer entered into an agreement with the University of Texas at Austin, USA to carry out research activity in collaboration with the taxpayer for a project. During the year under consideration, the taxpayer had to pay USD 4.95 million in aggregate towards research activity.

1. TS-773-ITAT-2021(Bang)

Hence, the taxpayer applied for a lower deduction certificate to determine the proportion of the sum chargeable to tax on which tax is required to be deducted.

The AO observed that the payments to be made to University of Texas are in the nature of Royalties/FTS and directed the taxpayer to deduct the TDS at 10% (excluding education cess/surcharge) on gross payments.

This was upheld by the first appellate authority. Aggrieved by the order, the taxpayer filed an appeal before the Ahmedabad Tribunal.

Held

The Tribunal held that there was no material evidence to demonstrate that while doing the research activity, the University of Texas has made available any technical knowledge, know-how, skill, etc., to enable the recipient of such service to use it independently. The Tribunal stated that since the make available condition of Article 12 under India-USA DTAA is not satisfied, the amount received will not be treated as FTS.

On the issue of classification of income from research activity as Royalty, the Tribunal stated that there was no patent/copyright used by the taxpayer against which the Royalty was paid. Based on the same, the Tribunal held that the payment cannot be categorized as Royalty.

Our Comments

The Tribunal had observed that a payment cannot be taxable as Royalty/ FTS when neither patent nor copyright was used by the taxpayer against which the royalty was paid nor any technical know-how made available to the taxpayer.

Transfer Pricing

Whether the credit score of the borrowing entity can be ignored while computing ALP with respect to the interest payment?

Greenko Rayala Wind Power Private Limited
TS-486-ITAT-2022 (HYD)-TP

Facts

The taxpayer is engaged in the business of generation of wind power.
The taxpayer had issued non-convertible debentures (NCD) to its Associated Enterprise (AE) and benchmarked the same by using Comparable Uncontrolled Price (CUP) Method and Other Method. The taxpayer paid 11% interest on NCD to its AE.

TPO's Contentions

The Transfer Pricing Officer (TPO) held that the said transaction was quasi-capital in nature on the grounds that the recipient of the interest amount had substantial losses and therefore was not liable to tax.

The TPO thereby determined the arm's length price (ALP) by rejecting the approach adopted by the taxpayer and determining the ALP at 9.88%.

CIT(A)'s Contentions

The CIT(A) was not in agreement with the approach adopted by the TPO with respect to disregarding the credit score of the taxpayer, being i.e.
'BBB '. The said credit rating indicates that there is risk involved with regard to lending to the taxpayer. Furthermore, the CIT(A) observed that the TPO calculated the risk free return of the ten year government bond yield rates for the financial year 2014-15 of the Government of India at 8.28%, but failed to adopt the same in final calculation.

Furthermore, CIT(A) benchmarked the transaction considering interest rates of comparable transactions above INR 50 million BBB rating and MCLR rate of SBI for lending as on 1 April 2016.

On the basis of this working the CIT(A) held that no TP adjustment is required in the instant case.

Held by the ITAT

On perusal of the relevant information on record, the ITAT observed that the CIT(A) has provided a reasonable basis to determine the ALP in the instant case. Accordingly, relying on the ALP determination done by CIT(A), the ITAT agreed to delete the TP addition made by the TPO. The ITAT held that instruments having credit rating which falls in the category of 'BBB' denote some sort of moderate risk, therefore the AO to say that there is absolutely no risk involved in this transaction firstly because it is a debenture not a loan and secondly because the transaction was with an AE would not be appropriate.

All in all, the ITAT deleted the TP addition in the instant case.

Our Comments

In the above ruling, the Tribunal emphasized on the fact that computing the credit rating of the borrowing entity is the core factor in determining the interest rate on lending transactions.

ITAT upholds Transactional Net Margin Method (TNMM) over CUP, says cannot adopt two methods for benchmarking same class of transactions by cherry picking few transactions undertaken by the taxpayer.

Madura Coats Pvt Ltd.
TS–538–ITAT–2022 (CHNY)-TP

Facts

The taxpayer is engaged in the business of manufacture and sale of threads and accessories. The taxpayer entered into various international transactions with its AEs (including import of raw materials, export of threads,

payment of royalty and management service fee, import of machinery, reimbursements, etc). It benchmarked the transactions using TNMM as Most Appropriate Method (MAM) on an aggregated basis.

TPO's contention

In the course of assessment proceedings, the TPO rejected TNMM method and applied CUP method only in respect of certain transactions pertaining to export of threads to AEs, thereby passing an order making an adjustment to total income.

DRP's contention

Aggrieved by the order of TPO, it filed an objection before DRP-2, which rejected the arguments of the taxpayer stating that an identical issue had been considered in previous year by ITAT, where taxpayer had undertaken external comparables in respect of transactions considered for CUP method.

ITAT's contention

Taxpayer then challenged the DRP before the ITAT which set aside the issue. The taxpayer then challenged the ITAT before Hon'ble Madras High court, which restored the appeal.

Held

The High Court observed that the TPO never disputed TNMM as MAM in respect of all transactions including export of threads to the extent of 99.95% of transactions. However, in respect of 0.05% transactions, TPO applied external CUP method by cherry picking 12-13 transactions without assigning any reason as to why and how a small portion of transactions are not at ALP. The High Court held that it is incorrect to adopt two methods for one class of transactions and benchmark such transactions by cherry picking few transactions out of a lot of transactions undertaken by the taxpayer with its AEs. It also referred to two relevant rulings[2], where it was held that when TPO had accepted TNMM as MAM for overwhelming majority of exports, there is no reason why TNMM shouldn't be applied to balance exports.

Accordingly, the High court directed AO/ TPO to delete the TP adjustment made towards few transactions by adopting CUP as MAM.

Our Comments

Two methods cannot be adopted for a similar class and nature of transaction, by cherry picking few transactions out of a whole lot of transactions.

2. Pune ITAT – Amphenol Interconnect India Pvt Ltd v. DCIT – ITA No.1486/PN/2019
Hon'ble Bombay High Court – PCIT v. Amphenol Interconnect India (P) Ltd reported in [2018] 91.taxmann.com 441 (Bombay)

Indirect Tax

Taxability of composite works contracts prior to 1 June 2007, i.e., before the introduction of Section 65(105)(zzzza) pertaining to "works contracts services."

Total Environment Building Systems Pvt. Ltd. & Ors. vs. The Deputy Commissioner of Commercial Taxes & Ors.
2022 (8) TMI 168 – Supreme Court

Note: In the case of **CCE, Kerala vs. Larsen and Toubro Limited [(2016) 1 SCC 170]**, the Supreme Court had held that service tax was not leviable on indivisible works contracts for the period prior to 2007. It was specifically observed that the works contracts on which service tax was levied under the Finance Act, 1994, were distinct from contracts of service.

Facts

- Aggrieved by the judgments of the lower Courts, viz. High Courts and Customs Excise and Service Tax Appellate Tribunal (CESTAT), the appellants preferred appeals before the Supreme Court.
- The issue involved in these appeals was whether service tax could be levied on composite works contracts before introducing the Finance Act, 2007.
- While the Revenue did not dispute that this issue was squarely covered by the decision of Apex Court in the case of Larsen and Toubro Limited, it was of the view that the same needed to be re-considered and, therefore, be referred to the Larger Bench.
- According to the Revenue, even prior to 2007, there was an elaborate mechanism for segregating the value of goods and services in a works contract. Therefore, it could not be said that there was no machinery provision to charge as such the service component in a composite works contract.

Ruling

- Expressing that it is bound by the principle of stare decisis, Supreme Court remarked that the judgment has "….stood the test of time and has never been doubted earlier…" and accepting Revenue's plea may unsettle the law, which has been consistently followed since 2015 onwards and there could be possibilities of contradictory orders.
- Hence, the judgment neither needs to be revisited nor referred to the Larger Bench after almost seven years, given that no efforts were made to file any review application on the grounds which are now canvassed by the Revenue.
- Supplementing the findings, Justice B. V. Nagarathna traced the evolution of "works contract" in the context of Sales tax law as well as under the Service tax regime.
- It was observed that prior to the amendment in 2007, service tax was being levied on pure service contracts and there was no concept of "works contract" under the Finance Act, 1994.
- Hence, the definition inserted for the first time by virtue of Section 65(105)(zzzza) assumes significance and has to be applied w.e.f. 1 June 2007. Such an amendment is not clarificatory in nature.
- Thus, the Apex judgment does not call for reconsideration; accordingly, all the appeals (except one) were allowed.

Our Comments

The judgment has sealed the law on the taxability of 'works contract'. The Supreme Court has confirmed that the service element in a works contract is leviable to tax only w.e.f. 2007.

Said decision would greatly relieve the taxpayers who had to indulge in prolonged litigation despite a favorable binding precedent.

Whether the service provider is required to hold a valid Importer -Exporter Code (IEC) while rendering services in order to claim Services Export from India Scheme (SEIS) benefit?

Smarte Solutions Pvt Ltd. vs. Union of India and Ors.
TS-326-HC-2022 (BOM)-FTP

Facts

- The Director General of Foreign Trade (DGFT) authorities, including the Policy Relaxation Committee, had rejected the petitioner's SEIS applications for FY 2015-16 and 2016-17 on the ground that there was no valid IEC at the time of rendition of export services.

Ruling

- High Court observed that the language employed in Section 7 of the Foreign Trade (Development and Regulation) Act, 1992 (FTDR Act) pertaining to IEC and its requirement is in the negative form, which states that no one shall make any import or export except under a valid IEC.
- However, an exception thereto has been carved out by way of a proviso which clarifies that an IEC is necessary only when the import or export is of services or technology and the service provider is taking benefits under the Foreign Trade Policy (FTP).

- Hence, it is abundantly clear that the eligibility criterion of Para 3.08(f) has imposed additional restrictions on having IEC at the time of rendering services which was not the intent or purport of the statute.
- Accordingly, High Court held that the said condition was against the principal legislation and could not be termed as of mandatory nature for availing benefits under the scheme.
- In the present case, it was admitted that when the services were rendered, the petitioner did not have a valid IEC; however, the same was obtained while applying for the reward / benefit under the scheme.
- In view of the above, the High Court allowed the petition and directed the DGFT authorities to consider the petitioner's applications without insisting for an active IEC at the time of rendering services.

Our Comments

The ruling reiterates the settled principle that delegated legislation cannot be contrary to the original statute.

This decision would provide impetus to similarly placed service exporters whose SEIS claims have not been processed/ have been rejected for want of valid IEC at the time of rendition of services.

With the new FTP slated to be introduced in the coming months, it would be interesting to see if benefits similar to SEIS are extended to the service exporters and if so, the eligibility criteria prescribed thereto.

M&A Tax Update

Terming consideration to be wider than receipt of money, conversion of CCDs into equity shares held to be covered under Section 56(2)(viib)

Milk Mantra Dairy Pvt. Ltd
TS-525-ITAT-2022 (Kol)

During the period under consideration, i.e., FY 2012-13, the assessee had converted completely convertible debentures (CCDs) into equity shares basis the pre-agreed conversion price. The AO sought to invoke the provisions of Section 56(2)(viib) of the ITA, which deals with the taxability of excess premium over the fair market valuation received by a company in which the public is not substantially interested.

The provisions of Section 56(2)(viib) were introduced effective FY 2012-13. Amongst other issues, one of the issues under consideration was whether these provisions shall apply in the present case as the CCDs were issued and money was received during FY 2010-11 and FY 2011-12 (before the provisions became applicable) however, the conversion of the CCDs into shares took place in FY 2012-13 (after the provisions became applicable).

The contention of the assessee for non-applicability of the provisions was that the entire consideration was received by the assessee at the time of issuance of CCDs, i.e., in AY 2011-12 and AY 2012-13, when the provisions were not under the statute. Furthermore, conversion of CCDs by issuing equity shares did not entail any further payment of money.

The Kolkata bench of the Income Tax Appellate Tribunal (ITAT) observed that the word 'consideration' is a wider term and not only restricted to 'receipt of money'. The receipt of money is one of the several modes for having a consideration in a transaction. Consideration can partake in many forms.

Some of the 'considerations' which the assessee 'receives' on the conversion of its CCDs into equity shares would be an extinguishment of the debt obligation, the release of the charge created on the assets/properties, interest cost saving, widening of the capital base, debt equity ratio, etc. The terms of the Investment Agreement corroborate some of the considerations listed above. Thus, when looked at from these aspects, Section 56(2)(viib) of the Act envisages a much wider outlook to the 'receipt of any consideration,' which cannot be limited to just receipt of money.

Our Comments

As technically, CCDs are not equity shares, while the provisions could not be applied at the time of its issuance, the same certainly should hold applicability at the time of conversion. The decision has been rendered with due regard to the spirit and objective with which the same was introduced and not merely on its literal reading.

The valuation at the time of conversion into equity shares would be taken into consideration while assessing the implications under Section 56(2)(viib). However, this may have an adverse impact where the conversion price/ratio is pre-determined and in the interim period, valuation stands negatively impacted. It is imperative that the applicability of the provision must be tested basis the valuation at the time of issuance of the original instrument and the commercial consideration, future events/developments for future conversion.

The ruling may raise concerns around fund raisings in the form of convertible instruments where loans are converted into equity on account of commercial difficulties/challenges.

Regulatory Updates

Securities and Exchange Board of India (SEBI) Regulations

SEBI makes use of digital signature certificate mandatory for announcements submitted by listed companies.

Considering the advantages of using digital signature certifications for authentication of documents/filings, Stock Exchanges, in consultation with each other and SEBI, has decided to make it mandatory to file announcements under various SEBI Regulations using digital signature certification to the Stock Exchange except for Outcome of Board Meeting which includes only financial result, any disclosure in which documents issued by entities other than listed company are included (For e.g., Auditors certificate, NCLT/other court's order, Credit Rating, etc.), newspaper advertisement and any other disclosure as specified by Stock Exchanges from time to time. The circular shall be effective from 1 September 2022.

Our Comments

In the wake of the COVID-19 pandemic, SEBI had initially permitted the use of digital signature certification for authentication/certification of filings/ submissions made to Stock Exchanges. However, as this aforesaid measure has been received well by the market participants and considering the advantages of using digital signature certifications for authentication of documents/filings, Stock Exchanges, in consultation with each other and SEBI, have decided to make it mandatory to file all announcements to the Stock Exchanges under various SEBI Regulations using digital signature certification (except for certain exempted category of disclosures/ events) w.e.f. 1 September 2022.

NSE tracks insider trading rules compliance.

The country's largest bourse, National Stock Exchange (NSE), recently shared a compliance certificate format with Listed Companies instructing them to give a specific declaration on whether they are maintaining a Structured Digital Database (SDD) to store Unpublished Price Sensitive Information (UPSI), they have control over who can access UPSI, if the information shared is time-stamped to keep a track on who is receiving it and when, and whether there is a chance of anyone tampering with the records. This move is to scrutinize whether large and actively traded companies are falling in line with the rules to curb insider trading, one of the scourges of the Indian stock market.

Our Comments

As per SEBI (Prohibition of Insider Trading) Regulations, 2015, listed companies have to maintain an SDD to store UPSI, which includes a range of information like financial numbers, business plan, decision to sell off a factory, merger, demerger, dividend, etc., that can move the stock price. But currently, there is no proper system to ensure that all listed companies have a proper SDD in place.

NSE vide this compliance certificate has sought a confirmation of compliance from companies, probably to ensure whether companies have been maintaining SDD in a duly compliant manner. The current move seems to be in line with SEBI's objective of curbing insider trading and reviewing the compliance status of databases maintained by listed entities.

Tax Talk

Indian Developments

Direct Tax

CBDT extends time limit for furnishing Form 67 for claiming foreign tax credit

Notification No. 100/2022/F. No. 370142/35/2022-TPL
Dated 18 August 2022

- In exercise of the power conferred as per Section 295 of ITA 1961, the CBDT amends rule 128, sub-rule (9), which will be applicable from 1 April 2022.
- Now for claiming Foreign Tax Credit (FTC), Form 67 and the certificate mentioned in sub-rule (8) has to be filed on or before the end of AY relevant to the previous year in which income to in sub-rule (1) has been offered to tax or assessed to tax in India and the return for that AY should be filed on time.
- If any updated return is filed in which the income related to has been updated, then Form 67 should be new Form 67 shall be filed on or before an updated return is filed.

Central Government excludes NR with No PE in India from 206C (1G)

Notification No. 99/2022/F. No. 370142/9/2022-TPL Part (2)
Dated 17 August 2022

For promoting the ease of transaction, CBDT notified that the provisions of sub-section 206C(1G) shall not apply to a person who is a non-resident and who don't possess PE in India for the following transactions:

- Remitting amount under Liberalized Remittance Scheme of RBI; or
- Buying overseas tour program package.

Time limit for e-verification of ITR-V reduced

Notification No. 5 of 2022
Dated 29 July 2022

- The Directorate of systems has reduced the time limit for verification of ITR-V to 30 days from 120 days.
- This will be effective for electronically transmitted returns on or after 1 August 2022.
- Returns transmitted before 1 August 2022 will have an earlier time limit of 120 days.

CBDT notifies Form 29D for claiming tax refund under Sec.239A

Notification No. 98/2022/F. No. 370142/33/2022-TPL
Dated 17 August 2022

- CBDT has introduced rule 40G for refund under Section 239A.
- As per the new rule, a claim under this Section should be made in Form no. 29D and the form should be accompanied by a copy of an agreement or other arrangement referred to in Section 239A.

Indirect Tax

GST Updates

The Central Board of Indirect Taxes and Customs (CBIC) has issued various clarifications pursuant to the recommendations made by the GST Council. Click on the link below to read the gist of noteworthy clarifications:
https://bit.ly/3CtE4qX

Customs Updates

Unauthorized publication of export-import data becomes a compoundable offense

Notification No. 69/2022 – Customs (N.T.)
Dated 22 August 2022

Along with simplifying of procedure for compounding of offenses under the Customs Act, the government has made the offense of unauthorized publication of the Export-Import (EXIM) data (under Section 135AA of the Customs Act) a compoundable one.

First such offense can be compounded by paying INR 0.1 million which would be increased by 100% for each subsequent offense. Furthermore, immunity from prosecution has been granted to the offender. In this context, the Customs (Compounding of Offences) Rules, 2005 stand amended.

Extension of customs clearances beyond normal working hours in Inland Container Depot(s) (ICDs)

Circular No. 11/2022-Customs
Dated 29 July 2022

As a measure of trade facilitation and the ease of doing business, the CBIC has advised all the Principal Chie /Chief Commissioners having jurisdictions over ICDs to consider having an extended facility of customs clearance beyond normal working hours. Presently, this facility is available at 20 seaports and 17 airports.

CBIC's guidelines for the launching of prosecution and for arrest and bail in relation to offenses punishable under Customs Act

Circular Nos. 12/2022-Customs and 13/2022-Customs both
Dated 18 August 2022

The monetary threshold for launching prosecution and making an arrest in respect of offenses punishable under the Customs Act have been prescribed. These offenses are as follows:

- Cases involving unauthorized importation of baggage and outright smuggling of high value goods - INR 5 million or more.
- Cases relating to importation or exportation of trade goods involving misdeclaration in value/description, concealment of restricted goods, fraudulent/attempt of evasion of duty, fraudulent availment of duty drawback where the market value of goods/amount of duty evaded / amount of duty drawback exceeds INR 20 million.
- Cases involving obtaining an instrument from any authority by fraud, collusion, wilful misstatement or suppression of facts and duty relatable to the utilization of such instrument exceed INR 20 million.

Provisions of arrest and bail can be invoked by the Customs Authorities in the aforesaid cases.

Customs duty on Display Assembly of cellular mobile phone

Circular No. 14/2022-Customs
Dated 18 August 2022

CBIC has clarified that the import of display assembly of cellular mobile phones with merely a back-support frame of metal/plastic will attract a basic customs duty (BCD) of 10%. However, if other items such as the sim tray, antenna pin, speaker net, power key, battery compartment, etc. come fitted with the Display Assembly with or without the metal/plastic back support frame, the duty on the whole assembly would be 15%.

Tax Talk

Global Developments

Direct Tax

Lesotho deposits ratification instrument for MLI

Excerpts from oecd.org,
28 July 2022

Lesotho has deposited its instrument of ratification for the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (BEPS Convention), which now covers over 1820 bilateral tax treaties, thus underlining its strong commitment to preventing the abuse of tax treaties and base erosion and profit shifting (BEPS) by multinational enterprises. The BEPS Convention will enter into force on 1 November 2022 for Lesotho.

On 1 August 2022, over 890 treaties concluded among the 77 jurisdictions which have ratified, accepted or approved the BEPS Convention will have already been modified by the BEPS Convention. Around 930 additional treaties will be modified once all Signatories have ratified the BEPS Convention.

OECD's Global Forum publishes Eight New Peer Review Reports on transparency and exchange of information on request

Excerpts from oecd.org,
16 August 2022

The Global Forum published today eight new peer review reports on transparency and Exchange of Information on Request (EOIR) for the Cook Islands, Ecuador, Finland, Pakistan, Poland, Portugal, Sint Maarten and Sweden. The travel restrictions due to the COVID-19 pandemic have prevented assessment teams from performing on-site visits to evaluate the practical implementation of the EOIR standard, six of the eight reports only cover the first phase of the assessment, analyzing the jurisdictions' legal and regulatory frameworks. The ratings for each of the ten elements of the assessment and overall ratings will be attributed at a later stage for these six jurisdictions once on-site visits are carried out and full reviews encompassing the implementation of the standard in practice can be undertaken.

OECD issues a progress report on Harmful Tax Practices on 12 nominal or no tax jurisdictions

Excerpts from oecd.org,
27 July 2022

At its April 2022 meeting, the Forum on Harmful Tax Practices (FHTP) agreed on new conclusions on 12 regimes as part of implementing the BEPS Action 5 minimum standard on harmful tax practices. Eswatini and Honduras made government commitments, and therefore, three regimes are now in the process of being amended/eliminated. Four regimes have been amended to be in line with the standard and are now not harmful (Costa Rica, Greece and Kazakhstan). Italy abolished its patent box regime. Furthermore, three regimes were concluded as potentially harmful (Armenia and Pakistan); the FHTP will assess at its next meeting if these regimes are actually harmful. Finally, one new regime from Cabo Verde is under review.

Since the start of the OECD/G20 BEPS Project tackling international tax avoidance, the FHTP has reviewed a total of 319 regimes.

Transfer Pricing

Australia: Consultation paper on changes pertaining to thin capitalization rule

The Treasury recently released a consultation paper in relation to the pre-election tax policies of the government targeting multinational entities.

The key change of the consultation paper is as under:

Thin capitalization rule

The existing thin capitalization rules are in line with the Safe Harbour test, wherein the debt is limited to 60% of the average value of the Entity's Australian assets.

The government is proposing to replace it with a fixed ratio rule that will limit the net interest deductions to 30% of Earnings Before Interest, Tax, Depreciation and Amortization (EBITDA) in order to align with OECD's recommended approach under Action 4 of BEPS program. One of the discussion points would be the computation of EBITDA would be whether to rely on the accounting or tax numbers while computing the EBITDA.

The change proposed by the government would be applicable to the general entities, which are defined for the purpose of thin capitalization. However, in the interim, the financial entities and authorized deposit-taking institutions will continue to apply the current thin capitalization rules.

In addition to the above, the government has also proposed certain proposals pertaining to tax transparency which inter-alia would cover increased public reporting of tax information, mandating public CbC reporting on an annual basis, mandatory reporting of material tax risk to the shareholders, etc.

Indirect Tax

Free Trade Agreement negotiations between EU and India

Excerpts from fortuneindia.com

Bilateral negotiations with respect to digital trade, state-owned enterprises, and intellectual property (IP) have been proposed. Additionally, the EU has demanded that all government and sub-government procurements and all services other than construction services should be brought within the ambit of the India-EU FTA.

UK Foreign Secretary considers cutting VAT to 15% to ease UK crisis

Excerpts from business-standard.com

Liz Truss is considering cutting Britain's VAT by 5% points across the board to help tackle the cost-of-living crisis if she becomes the Prime Minister.

Introduction of a Cultural Levy of 6% on turnover generated by Danish and EU-based digital streaming platforms and services in Denmark

Excerpts from vatupdate.com

The Danish Minister of Culture published a draft bill proposing to introduce a levy calculated at 6% of the provider's turnover in Denmark as a financial culture contribution, collected from digital streaming platforms and services that offer on-demand streaming services aimed at a Danish audience. The bill is proposed to be applicable as of 1 January 2023.

Canada imposes a levy on luxury cars, yachts and private jets

Excerpts from euronews.com

Canada's 'Select Luxury Items Tax Act' imposes a 'luxury tax' on the sale and import of subject vehicles, aircrafts, and vessels that exceed specified price thresholds. The luxury tax takes effect on 1 September 2022. The tax will only apply to new vehicles purchased by consumers for personal use. The registered vendors will be required to file luxury tax returns on a calendar quarterly basis.

Compliance Calendar

Direct Tax
Indirect Tax

7 September 2022

Due date for deposit of Tax deducted/collected for the month of August 2022.

10 September 2022

- GSTR-7 for the month of August 2022 to be filed by taxpayer liable for TDS.
- GSTR-8 for the month of August 2022 to be filed by taxpayer liable for Tax Collected at Source (TCS).

11 September 2022

GSTR-1 to be filed by registered taxpayers for the month of August 2022 by all registered taxpayers not under the QRMP scheme.

13 September 2022

- GSTR-6 for the month of August 2022 to be filed by Input Service Distributor (ISD).
- Uploading B2B invoices using Invoice Furnishing Facility under the QRMP scheme for the month of August 2022 by taxpayers with aggregate turnover of up to INR 50 million.

14 September 2022

Due date for issue of TDS Certificate for tax deducted under Section 194-IA, 194-IB,194-M in the month of July 2022.

15 September 2022

Due date for payment of the second installment of advance tax for the assessment year 2023-24.

20 September 2022

- GSTR-5 for the month of August 2022 to be filed by a non-resident foreign taxpayer.
- GSTR-5A for the month of August 2022 to be filed by non-resident service provider of Online Database Access and Retrieval (OIDAR) services.
- GSTR-3B for the month of August 2022 to be filed by all registered taxpayers not under the QRMP scheme.

25 September 2022

Payment of tax through GST PMT-06 by taxpayers under the QRMP scheme for the month of August 2022.

30 September 2022

- Due date for filing of a tax audit report for the assessment year 2022-23 in the case of a corporate assessee or non-corporate assessee (who is required to submit his/its return of income on 31 October 2022).
- Due date for furnishing of challan-cum-statement in respect of tax deducted under Section 194-IA, 194-IB,194-M for the month of August 2022.

7 October 2022

Due date for deposit of Tax deducted/ collected for the month of September 2022.

10 October 2022

- GSTR-7 for the month of September 2022 to be filed by the taxpayer liable for TDS.
- GSTR-8 for the month of September 2022 to be filed by taxpayer liable for TCS.

11 October 2022

GSTR-1 to be filed by registered taxpayers for the month of September 2022 by all registered taxpayers not under the QRMP scheme.

13 October 2022

- GSTR-6 for the month of September 2022 to be filed by ISD.
- GSTR-1 for the quarter of July 2022 to September 2022 to be filed by all registered taxpayers under the QRMP scheme.

Webinars and Events

Upcoming Webinars and Events

Webinar
12 September 2022
Development of Enterprise and Service Hubs (DESH) Bill
Organizer - Achromic Point
Sanjay Chhabria
https://bit.ly/3ezhGmd

Event
14 September 2022
Tax leaders India Summit 2022
Organizer - Inventicon
Maulik Doshi and Saket Patawari

Event
16 September 2022
Bengaluru - GST & Customs
Organizer - Achromic Point
Sanjay Chhabria
https://bit.ly/3x262qc

Webinars and Events

Event
25 August 2022
Mumbai - GST & Customs
Organizer - Achromic Point
Saket Patawari

Webinar
9 August 2022
Development of Enterprise and Service Hubs (DESH)
Organizer - Taxsutra
Sanjay Chhabria
https://bit.ly/3TSwQDi

Webinar
2 August 2022
GST Audits and Investigations
Organizer - USIBC
Saket Patawari

Webinar
20 August 2022
Tax & FEMA aspects while investing outside India
Organizer - Acquest Advisors
Maulik Doshi

Webinar
4 August 2022
GST Refresher Program
Organizer - CorpConnect
Sanjay Chhabria

Insights

Alerts

Key Highlights of GST Notifications and Clarification Circulars August 2022

1 September 2022
https://bit.ly/3KWpVoe

CBIC issued guidelines on 'Issuance of Summons under Section 70 of the CGST Act, 2017'

22 August 2022
https://bit.ly/3RaWpxb

CBIC issued guidelines for 'Arrest and Bail' in relation to offenses punishable under the CGST Act, 2017

22 August 2022
https://bit.ly/3QNx10E

Refund of grossed up tax on non taxable payments

19 August 2022
https://bit.ly/3dSSExL

GIST of Circulars issued by CBIC on 3 August 2022

9 August 2022
https://bit.ly/3CtE4qX

In The News

Articles

Why GSTAT is the need of the hour

22 August 2022 | Financial Express
Saket Patawari
https://bit.ly/3AjDYPM

Goods and Services Tax Appellate Tribunal– Need of the hour!

11 August 2022 | Taxsutra
Saket Patawari
https://bit.ly/3pGDdLS

Transposition to E-invoicing and Connected Actions

10 August 2022 | Taxsutra
Sanjay Chhabria
https://bit.ly/3KgsXTY

Quotes

CBIC tones down penalty for wrongful publication of trade data

25 August 2022 | LiveMint
Sanjay Chhabria
https://bit.ly/3TUgI3Q

GST Council unlikely to correct inverted duty structure on textiles next month

17 August 2022 | Hindu Business Line
Saket Patawari
https://bit.ly/3AVCT17

About Nexdigm

Nexdigm is an employee-owned, privately held, independent global organization that helps companies across geographies meet the needs of a dynamic business environment. Our focus on problem-solving, supported by our multifunctional expertise enables us to provide customized solutions for our clients.

We provide integrated, digitally driven solutions encompassing Business and Professional Services, that help companies navigate challenges across all stages of their life-cycle. Through our direct operations in the USA, Poland, UAE, and India, we serve a diverse range of clients, spanning multinationals, listed companies, privately-owned companies, and family-owned businesses from over 50 countries.

Our multidisciplinary teams serve a wide range of industries, with a specific focus on healthcare, food processing, and banking and financial services. Over the last decade, we have built and leveraged capabilities across key global markets to provide transnational support to numerous clients.

From inception, our founders have propagated a culture that values professional standards and personalized service. An emphasis on collaboration and ethical conduct drives us to serve our clients with integrity while delivering high quality, innovative results. We act as partners to our clients, and take a proactive stance in understanding their needs and constraints, to provide integrated solutions. Quality at Nexdigm is of utmost importance, and we are ISO/ISE 27001 certified for information security and ISO 9001 certified for quality management.

We have been recognized over the years by global organizations, like the International Accounting Bulletin and Euro Money Publications.

Nexdigm resonates with our plunge into a new paradigm of business; it is our commitment to ***Think Next.***

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