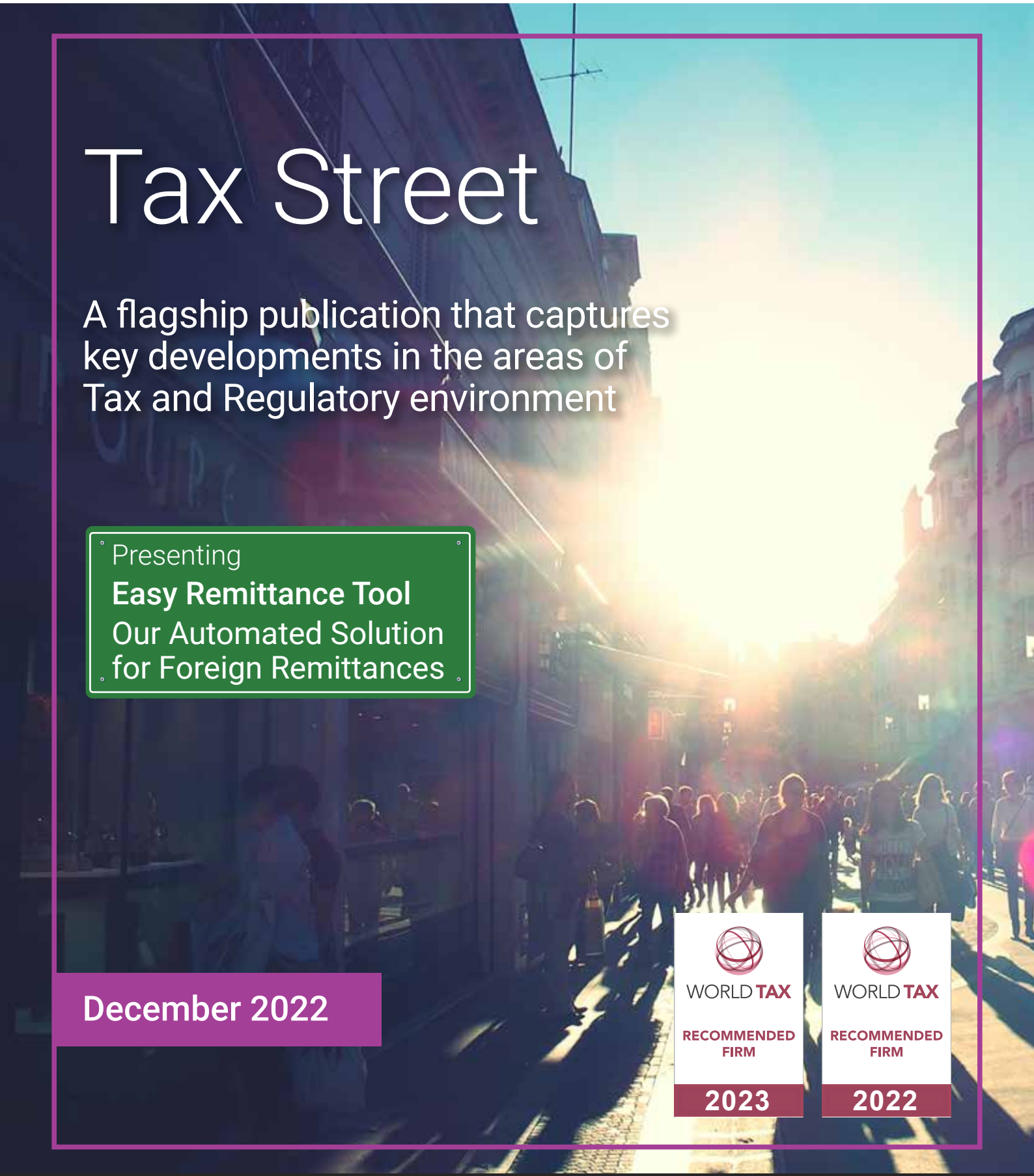


Tax Street

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

Presenting
Easy Remittance Tool
Our Automated Solution for Foreign Remittances

December 2022

WORLD TAX RECOMMENDED FIRM 2023

WORLD TAX RECOMMENDED FIRM 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 December 2022.

- The **'Focus Point'** covers various taxation aspects surrounding Virtual Digital Assets.
- 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

Overview of Taxation of Virtual Digital Assets in India

Cryptocurrency, also known as digital currency or Virtual Digital Assets (VDA), emerged in India for the first time around 2009 in the form of Bitcoin. It is a form of currency or medium of Exchange similar to any currency, but it exists digitally or virtually and uses cryptography to secure transactions mainly backed by blockchain technology. Cryptocurrency has grown in popularity among investors to facilitate financial activities.

While there is uncertainty or lack of clarity relating to the legality/regulatory framework of Cryptocurrency in India, the new regime of taxation of VDA under the Income-tax Act, 1961 (ITA) was introduced vide Finance Act, 2022.

New Regime of Taxation of VDA under ITA

Tax on VDA

Under the new regime, the income from VDA[1] is taxed at 30% plus applicable surcharge and cess. The income chargeable to tax is calculated as the sale consideration less the cost of acquisition, with no other deductions or allowances permitted.

A loss incurred on the transfer of a VDA may not be offset against any other income or carried forward to subsequent assessment years. Even the offset of loss from one VDA is not permitted against the income of another VDA.

Gifts

Any person receiving gifts of VDAs (other than from a relative or on the occasion of the marriage of the individual or under a will or by way of inheritance) exceeding INR 50,000 shall be taxable as Income from other Sources under the ITA[2].

Definition of VDA

VDA is defined under the ITA[3] to include any information or code or number or token (not being Indian currency or foreign currency) which meets certain conditions, non-fungible token (NFT) or any other token of similar nature, by whatever name called or any other digital asset, as the government may specify by notification.

The Central Board of Direct Taxes (CBDT) thereafter issued two notifications[4], the first one to exclude certain assets from the definition of VDA and the second to define NFT for the purpose of taxation of VDA under the ITA. The assets notified to be excluded from the definition of VDA are:

- Gift cards or vouchers or mileage points, reward points, or loyalty card being a record that may be used to obtain goods or services or a discount on goods or services.
- Subscription to websites or platforms or applications.
- NFT, whose transfer results in the transfer of ownership of the underlying tangible asset and the transfer of ownership of such underlying tangible asset is legally enforceable, is excluded from the definition of VDA.

Withholding tax obligations

Any person responsible for paying consideration (in cash or in kind or in both) for the transfer of VDA to a resident is liable to withhold tax at source at 1%[5] with effect from 1 July 2022. As such, the payment to a non-resident is not governed by this provision and will be governed by Section 195 of the ITA.

1. Section 115BBH of ITA.
2. Section 56(2)(x) of ITA.
3. Section 2(47A) of ITA.
4. Notification No. 74/2022, dated 30 June 2022 under proviso to Section 2(47A), Notification No. 75/2022, dated 30 June 2022 under clause (a) of Explanation to Section 2(47A) of ITA.
5. Section 194S of ITA.

However, there shall be no TDS liability if the value of the consideration payable is not exceeding specified limits, in case of consideration payable by the specified person[6], the limit is INR 50,000 and in case of consideration payable by a person other than the specified person, the limit is INR 10,000. Furthermore, if the tax is deducted under this section, there shall be no requirement to deduct tax under another section.

The ambiguities relating to the implementation of the above withholding provisions got clarified by CBDT vide Circulars[7] which are summarized below:

Responsibility to withhold tax when VDA asset is transacted through Exchange[8]

a. ***VDA owned by a person other than Exchange:*** Exchange shall be responsible for withholding tax. Where the transaction between the Exchange and the seller is through a broker, then the broker shall also be liable to withhold tax. However, only a broker can discharge the liability if an arrangement to that effect is entered between the broker and Exchange.

b. ***VDA owned by Exchange:*** Buyer shall be responsible for withholding tax. However, Exchange can also discharge the liability provided an arrangement is entered on the same with the buyer.

How to discharge TDS obligation where consideration is in kind or in exchange for another VDA?

The person responsible for paying such consideration (in kind) is required to ensure the payment of withholding tax by the seller before releasing the consideration. In case of exchange of VDAs other than through Exchange, both persons are buyer and seller for VDA exchanged. TDS needs to be deducted by both on each leg of VDA and furnish TDS return.

In a case where the exchange of VDAs is transacted through Exchange, Exchange can deduct tax if there is a written contractual agreement between the Exchange and buyer/seller.

a. ***GST:*** TDS to be deducted on consideration, excluding GST.

b. ***TDS deduction under Section 194O:*** Not required, as tax is deducted under Section 194S.

c. ***Payment made through Payment Gateway (PG):*** Buyer will need to withhold tax at source, as PG is only a facilitator. PG needs to take an undertaking from the buyer relating to the discharge of TDS.

The new regime on taxation of VDA under ITA provides clarity and certainty on the taxation of VDA. However, there are certain aspects, like the valuation of VDA, on which there is no clarity provided under the ITA.

Taxation under Indirect Taxes

The GST Act 2017 does not clearly classify virtual digital currencies as 'goods' or 'services' to determine the levy. In its absence, they have been at the legal framework's mercy to be classified as lottery, betting, and gambling. Accordingly, they could be considered as actionable claims.

On the other hand, cryptocurrency defies the identification as an actionable claim considering it does not give a right to recover the debt on the non-happening of a certain event. Furthermore, analyzing this reveals that buying and selling securities gives the person dealing in the crypto asset a right to sell the same on profit. Furthermore, until the profit element is not accrued, the owner can retain the virtual asset with them. Thus, giving them a similar nature of "transactions in shares" and not as an "actionable claim."

While currently, GST is levied only on the part of the services provided by crypto exchanges, subjecting the whole transaction to tax at a higher slab of 28% could give the markets a free fall.

Considering this, the government, in consultation with the stakeholders, is working on a comprehensive indirect tax regime for cryptocurrencies, whereby it would define their characteristics, their use, and how they fit into the existing legal framework.

Comments

Cryptocurrency in India is growing and continues to remain popular among traders. However, clarity on the legality and regulatory framework is awaited. The new regime of taxation of VDAs under ITA is certainly a welcome move, and the similar clarity under GST law would help to determine whether virtual digital currencies can be considered as 'goods' or 'services' and also provide clarity on related aspects of the levy, place of supply, time of supply, and most importantly, the valuation.

6. Specified person means Individual/HUF where Gross Receipts/Turnover/Total Sales < INR 1crore in business, Gross Receipts < INR 50 lacs in profession as per the preceding Financial Year.
7. Circular Nos. 13 of 2022 dated 22nd June 2022 and 14 of 2022 dated 28th June 2022.
8. Exchange means any person that operates an application/platform for transferring of VDAs.

From the Judiciary

Direct Tax

Whether it can be said that profit accrues to a PE in India where the entity has incurred a global net loss?

Nokia Solutions & Networks OY
960-HC-2022(DEL)

Facts

The taxpayer is a foreign company incorporated in Finland. The company is engaged in the supply of telecom equipment to Indian telecom operators. It was alleged by the Revenue that the taxpayer had a Permanent Establishment (PE) in India, and accordingly, part of the gross profit of the taxpayer should be attributed to such PE in India.

The taxpayer was of the contention that primarily it does not have a PE in India, and even in case it is held that it has a PE, the taxpayer had incurred a net loss at the global level, and thus there could not be any profits which could be attributed to such theoretical PE in India.

The Income Tax Appellate Authority (ITAT) accepted the taxpayer's contention. Aggrieved by this, the Revenue further appealed to the High Court.

Held

The High Court agreed with the ITAT's finding and quoting the ITAT's decision, the High Court held that there would not arise any question of law in this regard.

Also, based on a plain reading of Article 7 of the India–Finland Double Taxation Avoidance Agreement (DTAA), the issue of taxability would arise only if profits accrue to the taxpayer and that too only to the extent they can be attributed to its PE in India. Accordingly, the High Court dismissed the appeal.

Our Comments

The Delhi High Court has opined that only if profits accrue to the taxpayer, and that too only to the extent, then they can be attributed to its PE in India shall it be taxable in India.

Whether granting exclusive rights for broadcasting a channel be regarded as copyright Royalty?

BBC World Distribution Limited
ITA Nos. 1907/Del/2011, 610/Del/2011 & 5415/Del/2011

Facts

BBC World News Ltd (BBC World) granted a non-exclusive global right to BBC World Distribution Limited (the taxpayer) to distribute the BBC channel.

The taxpayer then entered into an agreement with BBC World India Pvt. Ltd. (BBC India) to distribute the channel to cable operators, DTH operators, hotels, institutions, etc., in India.

Post AY 2008-09, there was a change in the Ministry of Information and Broadcasting Guidelines, which mandatorily required an Indian Company to have exclusive distribution rights in a channel uplinked from abroad. In line with the new guidelines, the taxpayer entered into an agreement with BBC India under which exclusive rights were granted to distribute the channel in India. BBC India now directly entered into a contract with subscribers on its own, and the entire revenue from the subscription was received by BBC India, which was offered to tax in India.

It was the Revenue's contention that while granting rights to distribute BBC Channel in India, the taxpayer has transferred the right to use copyright to BBC India. The Revenue also contented that BBC India can be considered a taxpayer's PE in India as it is authorized to conclude contracts on behalf of the taxpayer.

Held

The ITAT ruled that the payment from BBC India to the taxpayer could neither be termed as Royalty under Section 9(1)(vi) of the ITA nor under the India-UK DTAA.

It was observed that the taxpayer does not have the right to the BBC Channel as per its agreement with BBC World. Furthermore, the agreement is only for the re-transmission or broadcasting of a program that is different from the transfer of copyright. The ITAT rejected Revenue's submission on the taxability of distribution revenue as equipment or process Royalty as preposterous in the absence of any finding by lower authorities. Furthermore, as the revenue was already being offered to tax by BBC India, no part of such income can again be attributed to the taxpayer notionally and be taxed in India. On the issue of taxpayer constituting PE in India, the ITAT held that it is purely academic in nature as the entire income has been offered to tax by BBC India, and thus, the question of profit attribution to PE in India does not arise.

Our Comments

The Delhi Tribunal explains that the distribution agreement, which is confined to broadcasting rights, is not copyright and thus does not fall under Royalty under Section 9(1)(vii) of ITA.

Transfer Pricing

The time limit for passing the Transfer Pricing Order (TP Order) - 60 days' prior to' the last day on which the period of limitation expires

Verizon Data Services India Pvt Ltd.
IT(TP)A No.37/Chny/2021

Facts

For AY 2016-17, the taxpayer carried out certain international transactions, which were referred to the Transfer Pricing Officer (TPO). The relevant dates of Assessing Officer (AO) and TPO orders in the said case were as follows:

Chronology of Events	Date
TP Order	1 November 2019
Draft Assessment order	30 December 2019
Filing Dispute Resolution Panel (DRP) Objections	29 January 2020
DRP Directions	26 March 2021
Final Assessment Order	30 April 2021

Under ITA, the AO can make a reference to the TPO in order to determine whether international transactions carried out by the taxpayer are at arm's length. As per Section 92CA(3A) of the Act, TP Order 'may' be passed at any time before 60 days prior to the date on which the period of limitation as per Section 153 of ITA for passing the assessment order expires. Thus, the limitation date for the TPO to pass TP Order is linked with the limitation date for AO to pass the assessment order.

In the instant case, the limitation for AO to pass the assessment order for AY 2016-17 was 21 months (further extended by 12 months because of reference to TPO) from the end of AY i.e. 31 December 2019. The question before the Tribunal was whether the TP Order passed on 1 November 2019 was valid and in accordance with the 60 days time limit prescribed under Section 92CA(3A) of ITA.

Held by ITAT

ITAT explained that in terms of Section 92CA(3A), TPO has to pass its order 60 days prior to the last day on which the period of limitation (referred to in Section 153 for making assessment) expires. Relying on the Single Bench Madras High Court decision in Pfizer's[9] case, wherein it was held that the assessment was to be framed on or before 31 December 2019. Furthermore, as per Section 92CA(3A), the period of 60 days prior thereto would run till 1 November 2019 and any date prior thereto would mean 31 October 2019 or before. Since the order was passed on 1 November 2019, the same was held to be barred by limitation, which eventually laid down the principle that the period of 60 days needs to be calculated excluding the last date because of the use of the words' prior to' and that the TPO needs to pass TP Order before the expiry of the period of limitation of 60 days. Furthermore, ITAT rejected DRP's finding that the language used in Section 92CA (3A) of the Act is "may" in contrast to "shall" and held that TPO order was barred by limitation and the AO was not required to pass the draft AO order thereto DRP would not have any jurisdiction to adjudicate the matter. Accordingly, TPO's order dated 1 November 2019 was barred by limitation and the subsequent final order from AO was quashed.

9. Pfizer Healthcare India Pvt. Ltd [TS-271-HC-2022(MAD)] by single judge bench order further upheld by the division bench of the Madras HC (Writ Appeal No. 1148, 1149/2021)

Our Comments

The ruling has emphasized the importance of evaluating the basic premises of question of law in each case. It would also be interesting to watch whether the tax department would seek to challenge the High Court judgment in Pfizer's case before the Apex Court.

Basis the message emanating from the above ruling, to calculate the limitation date for TPO to pass the TP order for the relevant year, a period of 60 days needs to be calculated, excluding the last date because of the use of the words' prior to' thereby obliging the TPO to pass TP Order before the expiry of the 60th day.

Can Fixed Asset Turnover Ratio be an indicator of capacity utilization of the taxpayer?

Witzenmann India Pvt Ltd.
ITA No. 2022/Kol/2021

Facts

The taxpayer is engaged in the distribution (through its unit in Kolkata) and assembling activity (unit in Chennai, which is in its first year of operations). International transactions were benchmarked using Transactional Net Margin Method (TNMM) and adjustments were made towards capacity utilization and working capital to eliminate the material differences for the purpose of comparability.

Outcome of TPO's order

TPO disregarded the capacity adjustment made by the taxpayer and applied the Fixed Asset Turnover Ratio (FATR) by keeping turnover in the denominator and fixed assets in the numerator. TPO contended that the FATR of the taxpayer is at an optimum level as compared to the comparable companies. Further, the TPO disregarded the working capital adjustment made by the taxpayer without providing any reasons for the same.

Outcome of CIT(A)'s order

Commissioner of Income-tax (Appeals) (CIT(A)) upheld the order of the TPO and held that the entire machinery of the taxpayer was put to use and a full claim of depreciation was made. CIT(A) also linked the capacity utilization levels of the taxpayer with the price charged for the products.

Held by the ITAT

ITAT relying on Rule 10B of the Income-tax Rules, 1962 (Rules), Institute of Chartered Accountants of India (ICAI) Guidance Note on report u/s 92E of ITA and Organisation for Economic Co-Operation and Development (OECD) Transfer Pricing Guidelines held that reliable Arm's Length Price (ALP) be applied basis reliable and accurate adjustments depending on availability of reliable and accurate information. ITAT observed that the taxpayer had utilized only 22% of its installed operating capacity viz-a-viz 71% average capacity utilized by the comparable companies. Capacity utilization has a co-relation with the company's profits, leading to under-absorption of fixed cost, especially with TNMM as Most Appropriate Method (MAM). Furthermore, ITAT held that FATR is not an indicator of capacity utilization.

ITAT also granted the application of working capital adjustment basis the methodology adopted by the taxpayer. The ITAT also directed the TPO to exercise powers under Section 133(6) of ITA to call for the requisite information on carrying out capacity adjustment and working capital adjustment.

Our Comments

The comparability of the companies cannot be justified only basis of the nature of business, due consideration should also be given to the economic factors impacting the profitability or prices of the products/services. In the instant case, the taxpayer furnished the details relating to licensed capacity, installed capacity, and production details in the audited financial statements. Also, detailed working relating to financial adjustments undertaken to eliminate material differences towards capacity utilization and working capital was furnished at the time of assessment, laying down the significance of maintaining robust documentation to substantiate comparability adjustments.

Indirect Tax

Whether refund of GST paid on notice pay recovery could be claimed pursuant to CBIC clarification?

Manappuram Finance Ltd vs. Assistant Commissioner, Central Tax and Excise, Thrissur
TS-648-HC(KER)-2022-GST

Facts

- Manappuram Finance Ltd. (petitioner) had claimed a refund of the GST paid on notice pay recovered from its former employees, pursuant to CBIC Circular No. 178/10/2022-GST dated 3 August 2022.
- However, the Adjudicating Authority rejected the same, which the First Appellate Authority further upheld.
- Hence, the petitioner challenged the order-in-appeal before the Kerala High Court under Article 226 of the Constitution in the absence GST Appellate Tribunal.

Ruling

- The High Court observed that the CBIC Circular specifically clarifies that the amount of money received by the petitioner as notice pay from the erstwhile employees is not a taxable transaction for the purposes of the GST laws.
- It accepted petitioner's stand that the decisions of the Supreme Court in Navnit Lal C. Javeri vs. K.K. Sen[10] and K.P. Varghese vs. Income Tax Officer, Ernakulam and another[11] are binding precedents for the proposition that Circulars are binding on the Department and no officer can take a view contrary to stipulations contained in such Circulars.
- As per the High Court, the fact that the Circular was issued only after the issuance of an order of the First Appellate Authority is no reason to hold that the petitioner is not entitled to the benefits of the clarification.
- In this context, the High Court relied on the law laid down in Suchitra Components Limited vs. Commissioner of Central Excise[12] that the provisions of a Circular will have to be deemed to apply retrospectively.
- Accordingly, the writ petition was allowed while rejecting Revenue's contention that the petitioner had an effective alternative remedy before the GST Appellate Tribunal and it could wait for the constitution.
- The Court quipped, "The fact that the period of limitation will start to run only from the date of the constitution of the Appellate Tribunal is no solace to the petitioner."
- In view of the above, the Court restored the refund applications before the Adjudicating Authority with a direction to reconsider the matter having regard to the findings in this judgment.

Our Comments

The industry has been seeking refunds of GST paid on notice pay recoveries pursuant to the CBIC Circular. This judgment should help substantiate their claims for the past period, given the retrospective applicability of the clarification.

M&A Tax Update

Splitting up or reconstruction conditions to be examined only in the formative year for availing the deduction under Section 10AA

Infosys Ltd
TS-986-ITAT-2022(Bang)

The Bangalore Tribunal has recently upheld that the tests of splitting up or reconstruction of a business already in existence as per Section 10AA of ITA have to be applied only at the time of formation of a unit. It held that the condition of splitting up and reconstruction cannot be examined once it stands satisfied and accepted by the revenue authorities in the initial years.

In the case under consideration, as the undertaking had satisfied and duly fulfilled the requirements of Section 10AA of ITA and there was no factual finding with respect to its formation by splitting up or reconstruction of an existing business, the deduction claim was accepted.

Our Comments

The decision of the Tribunal firms up the existing prevailing position that the test of splitting up or reconstruction has to be examined only in the formative years and not subsequently. This interpretation of the Tribunal would be of assistance for new provisions such as Section 115BAB (concessional tax regime for new manufacturing companies), wherein there is a requirement that the business should not be formed by splitting up or reconstruction of a business already in existence.

Buy-back of shares pursuant to family arrangement does not amount to transfer for the purpose of capital gain tax

Sujan Azad Parikh V. DCIT [2022]
145 taxmann.com
167 (Mumbai - Trib.)

10. [1965 (56) ITR 198]
11. [(1981) 4 SCC 173]
12. [(2006) 12 SCC 452]

The Mumbai Tribunal, in a recent decision, has upheld non-taxability on shares transferred under the buy-back route under the family arrangement.

The taxpayer and other family members held shares in a business concern. Due to a dispute in the functioning of the family-owned company and other group concerns, in order to restore peace and harmony in the family, all family members agreed to a family arrangement by filing a petition before Company Law Board (CLB). As per the CLB's direction, the taxpayer transferred said shares through buy-back under a family arrangement. The taxpayer did not treat the same as a transfer to avoid the liability of capital gains tax. While this position was not accepted at lower levels, the Tribunal held in favor of the taxpayer basis the settled position laid down in several decisions that transfer made under a family arrangement to settle disputes is not liable for capital gains taxation.

Our Comments

It has been a settled position that transfers made under family arrangement do not tantamount to 'transfer' within the meaning of Section 2(47) of the Act for capital gains tax to apply. In cases where corporates are involved in the arrangement, the taxability has been litigious considering corporate entities have separate legal existence and are not part of a family. There have been decisions, including that of the jurisdictional Bombay High Court in case of B. A Mohota wherein it has held transfers involving corporate entities to be taxable transfers.

Interestingly, the said decision has been distinguished by the Tribunal on the ground that in the said case, the taxability under consideration was of the company, whereas in the present case, it is of the family member. This is an interesting proposition and it would be worthwhile to see the view other courts adopt, considering the Bombay High Court's ruling.

Regulatory Updates

Company Law Regulations

Ministry of Corporate Affairs will be launching the second set of Company Forms covering 56 Forms on the MCA21 V3 portal

The Ministry of Corporate Affairs (MCA) upgraded the MCA portal from Version 2 to Version 3 (V3) in March 2022 and all the Company and LLP E-form was planned to be migrated to this new V3 portal in a phased manner.

In Version 2, forms were required to be filled and uploaded in the portal, while in V3, the forms are to be filled online. This enables user convenience, including saving a half-filled form and filing it later. Also, in Version 3, there is a personalized "My Application" feature that allows one to view all the forms filed by them to date along with the status of the forms, such as pending for DSC upload, Under Processing, Pay fees, Resubmission, etc.

Presently, only LLP Forms and 9 Company forms (DIR3-KYC, DIR3-KYC web, CHG-1,4,6,8,9, DPT-3, DPT-4) are available in V3 portal of MCA for filing purposes. However, MCA is now launching a second set of Company Forms covering 56 forms in two different lots on MCA21 V3 portal. 10 out of 56 forms will be launched on 9 January 2023 and the remaining 46 forms on 23 January 2022.

Following forms will be rolled-out on 9 January 2023: SPICe+ PART A, SPICe+ PART B, RUN, AGILE PRO-S, INC-33, INC-34, INC-13, INC-31, INC-9 and URC-1. The list of 46 forms that will be rolled out on 23 January 2023 can be checked here, https://bit.ly/3lnh4N9

Our Comments

Aided by artificial intelligence and machine learning, the MCA V3 portal is envisioned to transform the corporate regulatory environment in India. It will help the Ministry with in-depth scrutiny of filings, create a compliance management system to identify non-compliant companies and LLPs, and undertake e-adjudication of various regulatory proceedings. However, the new V3 portal did face a number of technical glitches and issues, which the MCA is resolving in consultation with its stakeholders. This planned phase-wise migration of all Company Forms to the new V3 portal will further facilitate the stakeholders and ensure a smooth transition and implementation.

Webinars and Events

Event

16 December 2022

Decoding UAE's Corporate Tax & Transfer Pricing Regulations

Maulik Doshi

https://bit.ly/3GZ54QZ

Upcoming Event

24 January 2023

Conference on GST and Customs- Contemporary Issues

Saket Patawari

https://bit.ly/3iw8uRM

Tax Talk

Indian Developments

Direct Tax

Partial Relaxation with Respect to Electronic Submission of Form 10F by Select Category of Taxpayers

CIRCULAR F.NO. DGIT(S)-ADG(S)-3/e-FILING NOTIFICATION/ FORMS/2022/9227
dated 12 December 2022

- Earlier, the CBDT had mandated the furnishing of Form 10F electronically via Notification No. 3/2022, dated 16 July 2022.
- However, on consideration of the practical challenge being faced by non-resident (NR) taxpayers not having PAN in making compliance as per the above notification and with a view to mitigating the same, it has been decided that such non-residents who are neither having PAN nor required to have PAN, are exempted from mandatory electronic filing of Form 10F till 31 March 2023.
- The above category of exempted taxpayers may make statutory compliance by filing Form 10F in manual format till 31 March 2023.

Indirect Tax

GST Updates

Pursuant to the GST Council's 48th meeting, the Central Board of Indirect Taxes and Customs (CBIC) has issued a host of clarificatory Circulars on 27 December 2022

Clarification to deal with the difference in Input Tax Credit (ITC) availed in GSTR-3B as compared to that detailed in GSTR-2A for FY 2017-18 and 2018-19 due to bona fide errors

183/15/2022-GST

Clarification on the entitlement of ITC where the place of supply is determined in terms of the proviso to Section 12(8) of IGST Act, 2017

184/16/2022-GST

Clarification with regard to the applicability of provisions of Section 75(2) of CGST, 2017 and its effect on limitation

185/17/2022-GST

Manner of filing an application for refund by unregistered persons

188/20/2022-GST

The CBIC has notified amendments to the CGST Rules, 2017 pursuant to recommendations of the GST Council. Some of the key changes are as follows:

a. The mechanism for reversal of ITC in the event of non-payment of tax by the supplier by a specified date (viz. 30th September following the end of financial year) and the subsequent re-availment of credit upon payment of tax.
b. The manner of dealing with difference in liability reported in GSTR-1 vis-à-vis GSTR-3B.
c. The facility to withdraw appeal application and the requirement of submission of certified copy of the order appealed against.
d. The biometric-based Aadhaar authentication and risk-based physical verification for GST registration purposes in the State of Gujarat.

Notification No. 26/2022-Central Tax and Notification No. 27/2022-Central Tax both dated 26 December 2022

Click here to read these updates in detail: https://bit.ly/3w37RCd

Tax Talk

Global Developments

Direct Tax

Significant progress on countering harmful tax practices with almost 50,000 exchanges of information on tax rulings undertaken to date under the BEPS Action 5 standard

Excerpts from OECD Website, 14 December 2022

The OECD/G20 Inclusive Framework on BEPS released the latest peer review assessments for 131 jurisdictions in relation to the compulsory spontaneous exchange of information on tax rulings. This is the 6th annual peer review of the implementation of the BEPS Action 5 minimum standard on tax rulings, which aims to provide tax administrations with the necessary information concerning their taxpayers to tackle tax avoidance and other BEPS risks efficiently.

The 2021 Peer Review Reports on the Exchange of Information on Tax Rulings indicate that significant progress continues in countering harmful tax practices. Almost 50,000 exchanges of information have taken place to date in respect of the 23,000 tax rulings that have been identified.

The new peer review results also show that 73 jurisdictions are fully in line with the BEPS Action 5 minimum standard, with the remaining 58 jurisdictions receiving a total of 61 recommendations to improve their legal or operational framework to identify the relevant tax rulings and exchange information. The feedback given by Inclusive Framework members under this peer review process and in earlier years has allowed many jurisdictions to revise their processes and improve the clarity and quality of the information exchanged.

The Inclusive Framework will continue to pursue progress in this area, with the next annual peer review of the year 2022, to continue to track the progress of jurisdictions and actions taken to respond to any remaining recommendations.

Tax challenges of digitalization: OECD invites public input on the draft MLC provisions on digital services taxes and other relevant similar measures under Amount A of Pillar One

Excerpts from OECD Website, 20 December 2022

As part of the ongoing work of the OECD/G20 Inclusive Framework on BEPS to implement the Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalization of the Economy, the OECD is seeking public comments on the draft MLC Provisions on DSTs and other Relevant Similar Measures of Amount A of Pillar One.

The draft MLC provisions reflect the commitments with respect to the removal of all existing DSTs and other relevant similar measures and the standstill of such future measures. These commitments are integral to achieve Pillar One's goal of stabilizing the international tax architecture.

The Inclusive Framework on BEPS has agreed to release this public consultation document (également disponible en français) in order to obtain public comments, but the draft provisions do not reflect consensus regarding the substance of the document. The stakeholder input received on the draft MLC Provisions on DSTs and other relevant similar measures will assist members of the Inclusive Framework on BEPS in further refining and finalizing the relevant provisions.

Interested parties are invited to send their written comments* no later than 20 January 2023. Instructions for submitting comments can be found in the consultation document.

Transfer Pricing

An overview of Pillar One – Amount B public consultation document

The OECD/G20 has been relentlessly working to address tax issues arising from the digital economy's challenges since the OECD's initial recommendations of BEPS Action Plans. In 2019, a two-pillar approach was suggested by the OECD Secretariat. While Amount A under Pillar One provides new taxing right for market jurisdictions (where consumers and users are located), with a share of the MNEs residual profit being reallocated. On the other hand, Amount B talks about remuneration for certain baseline marketing and distribution activities having regard to ALP to enhance tax certainty and reduce tax litigations.

On 8 December 2022, the OECD released a document for public consultation to invite comments on design elements of Amount B with an intent to simplify and streamline the application of ALP to in-country baseline marketing and distribution activities.

The public consultation document lays emphasis on four different aspects:

Scope of Amount B

This section defines the scope of controlled transactions viz. distributors wherein Amount B would apply basis certain qualitative criteria (shall not undertake significant regulatory activities, shall not perform high value adding or specialized services or shall not generate unique intangible assets) and quantitative criteria (annual thresholds on marketing and advertising expenses, expenses incurred for after-sales support, packaging and assembly, etc.). Furthermore, the document states that accurate delineation of distribution function vis-à-vis sales agents or commissionaires is crucial while determining whether the latter should be considered within the scope of Amount B or not. The document seeks consultation on potential exemptions from the application of Amount B pricing methodology on account of the difference in the selection of MAM and/or availability of local market comparables.

Pricing methodology of Amount B

The proposed pricing methodology is aligned with the present practice wherein benchmarking analysis would be conducted basis data available in the public domain to ensure consistency and mitigate the risk of tax disputes. The following methodologies are being considered:

a. ***Pricing matrix approach:*** The said approach would determine a range of variables basis output from the common benchmarking search criteria and a taxpayer would be responsible for establishing where they fall compared to subsets of the comparables grouped according to their economic characteristics.

b. ***Mechanical pricing tool:*** An econometric model shall be used to translate the underlying data derived under the common benchmarking search criteria into mechanical pricing tools, such as a formula or quantitative adjustments, to reliably derive arm's length profitability returns based on the weighting of economic characteristics of the tested party.

The consultation document recommends return on sales (net profit/sales), return on assets (cases wherein entities do not own unique or valuable intangibles), berry ratio (gross profit/operating expenses), or a combination of net profit indicators (profit level indicators) to be considered while calculating return for Amount B.

Documentation requirements

The documentation requirement is pivotal to ensure that tax administrations have sufficient and relevant information for the risk assessment of whether taxpayer's control transactions are in-scope and that the pricing mechanism of the controlled transaction is in accordance with the Amount B pricing methodology. The proposed documentation requirement aligns with the three-tiered transfer pricing documentation approach. The section also lays emphasis on the disclosure of relevant information on business restructurings in the Master File and Local File that could result in the entity meeting the criteria for the application of Amount B.

Tax certainty

Application of Amount B to a controlled transaction requires the exercise of judgment by both tax administrations and taxpayers. There could be potential situations with respect to Amount B, which may lead to disagreements between the taxpayers and tax administrations. The document addresses issues that could surface on the application or operation of Amount B. The document draws reference to the Mutual Agreement Procedure and existing treaty arbitration provisions for resolving disputes, thereby eliminating any double taxation arising from the application of Amount B.

Our Comments

Amount B aims to address the challenges faced by the low-capacity jurisdictions that apply transfer pricing rules and helps them to re-stabilize the international tax system and minimize heavy costs incurred by businesses on account of transfer pricing disputes. It would be worthwhile to look at the responses received by the members of the Inclusive Framework that addresses the improvement areas and envisage how Amount B would operate.

Indirect Tax

Bahrain allows VAT refunds on gold purchases by tourists

Excerpts from bizzbuzz.news

The Kingdom of Bahrain has decided to refund VAT on gold and jewelry (except gold coins) purchases made by tourists, pursuant to an increase in rate from 5% to 10% earlier this year. The refund shall be given at special counters opened near duty-free shopping on the production of the original bill along with the item. Instant bank transfers would be done for all those having non-rupee bank accounts. Cash in the currency of choice would also be provided through money-changer firms.

European Commission's proposal for VAT in Digital Age

Excerpts from various sources

On 8 December 2022, the European Commission (EC) published its proposals for digitalizing the VAT system in the European Union (EU). The key proposals are:

a. Standardized digital reporting requirements across the EU and e-invoicing on cross-border EU transactions.

b. Updated VAT rules for passenger transport and short-term accommodation platforms.

c. Single VAT registration across the EU, including mandatory use of the Import One Stop Shop by online platforms.

Increase in the VAT registration threshold

Excerpts from various sources

Several European countries are raising the VAT threshold, thereby lowering the number of taxpayers required to register for VAT. Accordingly, from 1 January 2023:

- The VAT threshold in Bulgaria has increased from BGN 50,000 to BGN 100,000 till 31 December 2024.
- In the Czech Republic, the threshold has doubled from CZK 1 million to CZK 2 million.

Reduced VAT rates in Luxembourg from 1 January 2023

Excerpts from mondaq.com

Beginning from 1 January 2023 till 31 December 2023, most of the VAT rates applicable in Luxembourg have been reduced by 1%. The said measure was announced through the adoption of Bill of Law No. 8083. Accordingly, the standard, intermediate, and reduced rates have been cut to 16%, 13%, and 7%, respectively. However, the super low rate remains untouched at 3%.

Alerts

Key Highlights of GST Notifications and Clarification Circulars - December 2022

11 January 2023
https://bit.ly/3w37RCd

The Reserve Bank of India simplifies the reporting in Single Master Form on the FIRMS portal

5 January 2023
https://bit.ly/3iuZs7H

NCLT reiterates that the tax department is a secured creditor

28 December 2022
https://bit.ly/3QwjCL9

SEBI amends buyback rules, NCS regulations and introduces governance norms for listed REITs and InvITs

22 December 2022
https://bit.ly/3GyP72s

Highlights of the 48th GST Council Meeting

20 December 2022
https://bit.ly/3vYsgIG

Summary of UAE Corporate Tax and Transfer Pricing Law

12 December 2022
https://bit.ly/3W9RT3P

Compliance Calendar

Direct Tax
Indirect Tax

7 January 2023

- Due date for deposit of tax deducted/collected for December 2022. However, all the sum deducted/collected by an office of the government shall be paid to the credit of the Central Government on the same day where tax is paid without production of an Income-tax challan.
- Due date for deposit of TDS for the period October 2022 to December 2022 when AO has permitted quarterly deposit of TDS under 192, 194A, 194D or 194H.

10 January 2023

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

11 January 2023

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

13 January 2023

- GSTR-6 for December 2022 to be filed by the Input Service Distributor (ISD).
- GSTR-1 for the quarter of October 2022 to December 2022 to be filed by all registered taxpayers under the QRMP scheme.

14 January 2023

- Due date for issue of TDS Certificate for tax deducted under Section 194-IA in November 2022.
- Due date for issue of TDS Certificate for tax deducted under Section 194-IB in November 2022.
- Due date for issue of TDS Certificate for tax deducted under Section 194M in November 2022.

15 January 2023

- Due date for furnishing of Form 24G by an office of the government where TDS/TCS for December 2022 has been paid without the production of a challan.
- Quarterly statement of TCS for the quarter ending 31 December 2022.
- Quarterly statement in respect of foreign remittances (to be furnished by authorized dealers) in Form No. 15CC for the quarter ending December 2022.
- Due date for furnishing of Form 15G/15H declarations received during the quarter ending December 2022.

20 January 2023

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

22 January 2023

- GSTR-3B for the quarter of October 2022 to December 2022 to be filed by registered taxpayers under the QRMP scheme and having principal place of business in Category 1 states.

24 January 2023

- GSTR-3B for the quarter of October 2022 to December 2022 to be filed by registered taxpayers under the QRMP scheme and having principal place of business in Category 2 states.

30 January 2023

- Quarterly TCS certificate in respect of the quarter ending 31 December 2022.
- Due date for furnishing of challan-cum-statement in respect of tax deducted under Section 194-IA in December 2022.
- Due date for furnishing of challan-cum-statement in respect of tax deducted under Section 194-IB in December 2022.
- Due date for furnishing of challan-cum-statement in respect of tax deducted under Section 194M in December 2022.

31 January 2023

- Quarterly statement of TDS for the quarter ending 31 December 2022.
- Quarterly return of non-deduction at source by a banking company from interest on time deposit in respect of the quarter ending 31 December 2022.
- Intimation under Section 286(1) in Form No. 3CEAC by a resident constituent entity of an international group whose parent is a non-resident.

Compliance Calendar

Direct Tax
Indirect Tax

7 February 2023

Due date for deposit of tax deducted/collected for the month of January 2023. However, all the sum deducted/collected by an office of the government shall be paid to the credit of the Central Government on the same day when tax is paid without the production of an income-tax challan.

10 February 2023

- GSTR-7 for January 2023 to be filed by taxpayers liable for TDS.
- GSTR-8 for January 2023 to be filed by taxpayers liable for TCS.

11 February 2023

GSTR-1 to be filed by registered taxpayers for the month of January 2023 by all registered taxpayers, not under the QRMP scheme.

13 February 2023

- GSTR-6 for January 2023 to be filed by ISD.
- Uploading B2B invoices using Invoice Furnishing Facility under QRMP scheme for January 2023 by taxpayers with aggregate turnover of up to INR 50 million.

Quotes and Coverage

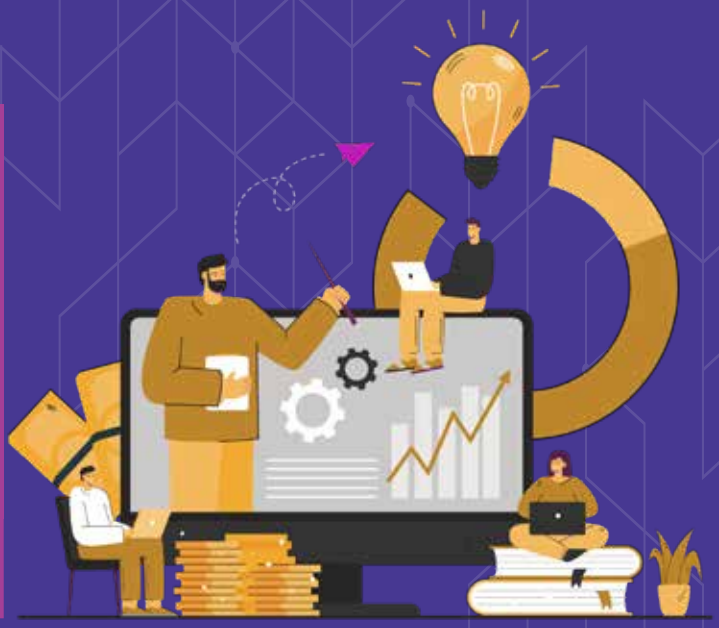
Centre, states look to widen GST taxpayer base
18 December 2022 | Financial Express
Saket Patawari
https://bit.ly/3jgBtcx

GST Council meet: Decriminalisation of certain offence, tax rate on pulses husk, key decisions taken by GST Council
17 December 2022 | LiveMint
Saket Patawari
https://bit.ly/3BGyz79

Awaiting action. GST rejig likely only after 2024 LS polls
5 December 2022 | Hindu Business Line
Saket Patawari
https://bit.ly/3Xo2IRa

Easy Remittance Tool

by Nexdigm



Form 15CA/CB Automation

- Review of tax position by experts
- Issuance of bulk certificates through Automated tool
- Repository - Access to entire set of documents
- Access to Detailed transaction wise reports
- Representation Support
- Generation 15CA bulk files & utility to generate Form A2

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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