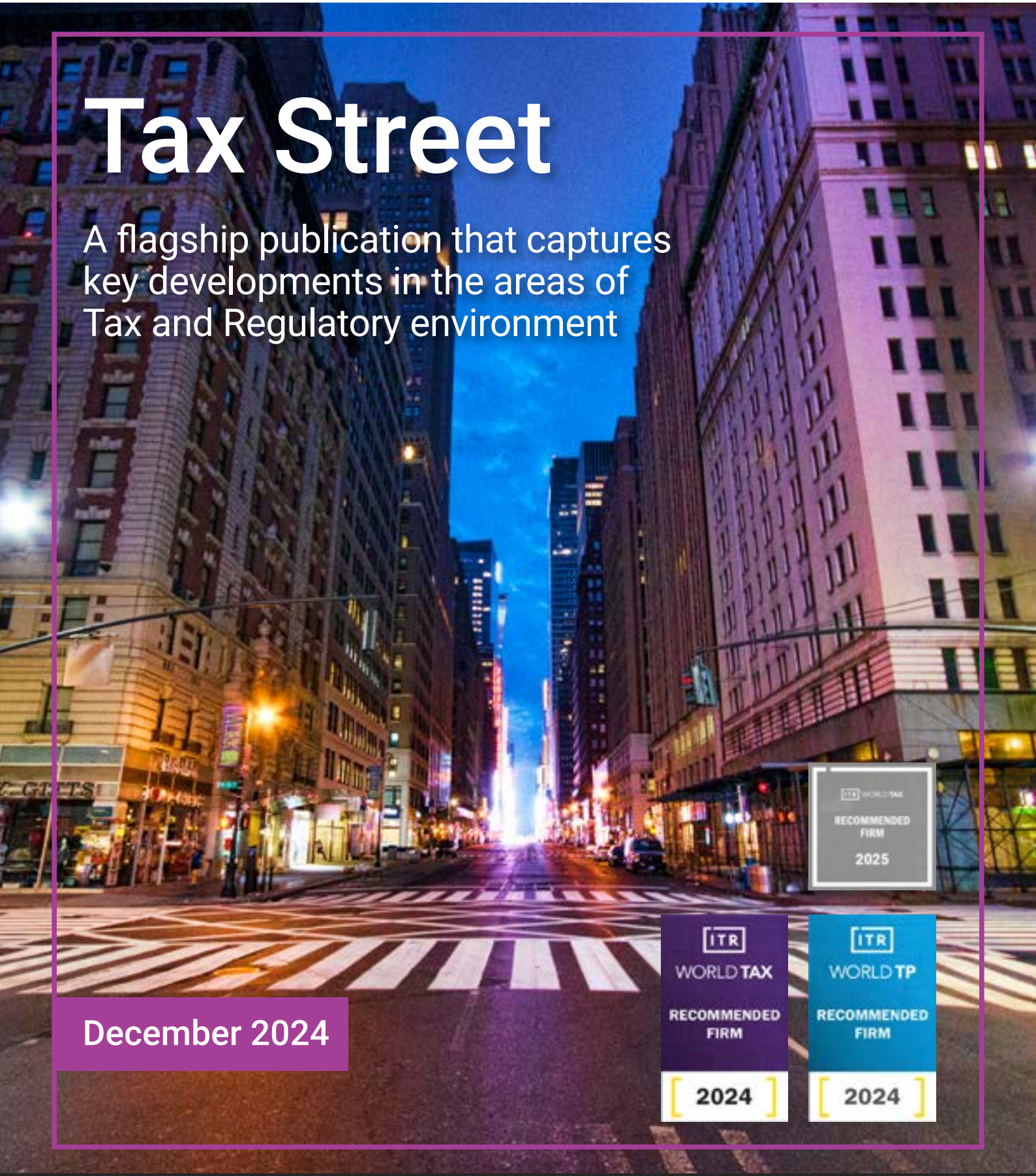
Tax Street

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



December 2024

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 2024.

- The **'Focus Point'** covers key aspects of ongoing debate on taxability in a secondment arrangement.
- 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

Secondment of employees – ongoing debate on taxability

In a secondment arrangement, an employee of an overseas company is deputed for a specified period to an Indian company, where he works for the Indian company. Such arrangements are generally entered between group companies and the main purpose is to utilize the personnel talent available in any other company in order to set up, expand, and grow the Indian businesses. During the period of secondment, the employee works on the projects of the Indian company and the duties and responsibilities of the seconded employees are generally defined by the Indian company. As the services are provided by the employees to an Indian Company, the salary earned by the employee is taxed in India and Indian host employer remits the withholding tax on such salary as well.

In a secondment arrangement, many a times from administrative convenience and uninterrupted availability of social security benefits to employees in an overseas country (i.e. home country), the overseas company pays the salary of the seconded employee and Indian company subsequently reimburses the cost to the overseas company.

The real dispute in this context/arrangement concerns the taxability of reimbursement of the salary by the Indian company to its overseas company. The assessee generally contends that the payment to the overseas company as reimbursement of salary costs would not liable to tax in India in the absence of any income element without any element of mark-up. Whereas the tax department has been alleging that the payment is for services rendered by the overseas entity through its employee and hence, taxable as Fees for Technical services (FTS). Multiple contrary rulings of various courts have reviewed employment and secondment agreements and concluded on the taxability of these payments.

Judicial Precedents

The most relied upon decision by the tax department is the Delhi High Court decision which was affirmed by Supreme Court in the case of Centrica India Offshore (P.) Ltd[1], which held that the reimbursement made by an Indian entity to the overseas entities was taxable in India as FTS/ Fees for Included Services (FIS). In this case, the High Court reviewed the secondment arrangement and the relevant agreements and observed as follows:

- The duties and responsibilities of the employees were under the control of the Indian entity and the overseas entities were not even responsible, if there were any errors or omissions on the part of the employees. Also, the services were provided to the Indian entity, and the benefit or output on such services were also transferred to the Indian entity.
- These employees retained their entitlement to participate in the overseas entity's retirement and social security plans. As per the secondment agreement, the Indian entity could not terminate the employment of the employee and could only terminate the secondment arrangement. The employees continued to exercise lien on the employment with the overseas employer
- Given the above observations, the High Court concluded that the in-effect payment by the Indian entity to the overseas entity was for the services utilized of the employees of the overseas entity and was not merely a reimbursement and concluded that the payment by the Indian entity to the overseas entity was taxable in India as FTS/FIS.

In a Supreme Court decision[2], in the context of service tax

1. Centrica India Offshore (P.) Ltd vs CIT [2014] 364 ITR 336 (Delhi)
2. C.C.,C.E. & S.T. Bangalore v. Northern Operating Systems (P.) Ltd. [2022] 138 taxmann.com 359 (SC)

law, the Apex court held that such transactions would be considered as service under the head 'manpower recruitment and supply service and thus, service tax/GST would apply on the same. This has further aggravated the dispute further and the moot issue resulting in the taxability dispute is who is the employer of the seconded employee. The Apex Court interpreted the concept of a secondment agreement taking note of the contemporary business practice and held that the traditional control test to determine who the employer is not the sole test to be applied. The facts noted by the Supreme Court were as follows:

- The overseas entity seconded these employees in relation to its own business and the services, roles, and responsibilities of such employees were controlled by the Indian entity. They were on the payroll of the overseas entity for the continuity of their social security benefits and the Indian entity could only terminate the secondment arrangement.

Given these observations, it was concluded by the Apex court that the assessee was a service recipient of the overseas group company concerned, which can be said to have provided manpower supply service eligible to service tax.

While the decision was in the context of Service tax law, it has been pronounced by the Supreme Court and hence, is the law of the land. Now the question still arises that if a payment is characterized as payment for service under one statutory law, could it be distinguished and held to be reimbursement in the Income tax law?

However, the story goes both ways and there are rulings by various courts contrary to the above ruling, basis the facts and circumstances of each case.

Further, another interesting aspect to be considered here is that, even if it is considered as service, can an assessee contend that the said services would not be considered as FTS/FIS as per the provisions of the Income Tax Act,1961 (ITA) or the respective Double Taxation Avoidance Agreement(DTAA)? Similar view has been held by the Karnataka High Court, in the case of Flipkart Internet (P.) Ltd.[3], that the salary reimbursed by the Indian Entity to the Overseas entity was not FIS as the services did not satisfy the 'make available' condition in the DTAA. Thus, while the payment was characterized as a service payment, the assessee could still avail of the beneficial provisions of the tax treaty regarding 'make available'.

So, it may be inferred that even if it is considered as service payment under the service tax/GST law, the applicability of Income Tax provisions would depend on facts and circumstances of each case.

Similar findings have been made in the case of BOEING India (P.) Ltd.[4] and M/s. Google LLC vs. JCIT (OSD) (IT)/DCIT (IT)[5].

Conclusion

Concluding the discussion, it can be observed that the issue of taxability of the secondment arrangement is a litigative issue and will depend on the facts and circumstances of each case. The agreements and terms of the secondment would define who can be held as liable to tax for the said transaction. A recent Karnataka High Court[6] ruling passed in favor of assessee is again appealed to the Supreme Court by the revenue. It would be interesting to see what the Court holds.

3. Flipkart Internet (P.) Ltd. Vs. DCIT [2022] 139 taxmann.com 595 (Karnataka)
4. [2020] 121 taxmann.com 276 (Delhi - Trib.)
5. IT(IT)A No. 167/Bang/2021
6. [2020] 122 taxmann.com 174 (Karnataka)

From the Judiciary

Direct Tax

Whether Foreign Tax Credit (FTC) can be denied on the grounds of belated filing of requisite Form-67?

Rahul Anand
TS-901-ITAT-2024(Kol)

Facts

Rahul Anand, the assessee, filed an appeal against the order of the Commissioner of Income Tax (Appeals) in Kolkata, which dismissed his claim for Foreign Tax Credit (FTC) for the assessment year 2019-20. The issue arose when the assessee filed his income tax return on 27 August 2019 but did not submit Form 67, required for claiming FTC, within the prescribed due date. The form was only submitted on 8 April 2021, well after the return was processed on 23 March 2021. The assessee contended that his substantive right to claim FTC under the DTAA should not be denied due to the procedural delay in filing Form 67. The Commissioner (Appeals) upheld the denial, referring to the CBDT notification which required the form to be filed before the due date of the income tax return.

Held

The Income Tax Appellate Tribunal (ITAT) held that the filing of Form 67 is a directory requirement, not a mandatory one, and the failure to file it within the prescribed time does not extinguish the taxpayer's right to claim FTC.

The Tribunal noted that the provisions of the DTAA, which allow for the elimination of double taxation, override the procedural rules of the Income Tax Act.

Judicial precedents, including the ruling in **Ashish Agrawal vs. Income Tax Officer and Duraiswamy Kumaraswamy vs. PCIT**, supported the view that procedural delays should not prevent the taxpayer from claiming FTC if the form is filed before the final assessment. Consequently, the ITAT directed the Assessing Officer to allow the FTC claim in accordance with the DTAA between India and Thailand, emphasizing that the taxpayer's right to claim the credit for foreign taxes paid should be honoured.

Our Comments

This case highlights that the late filing of Form 67, a procedural requirement for claiming Foreign Tax Credit (FTC), does not invalidate the taxpayer's right to claim FTC under the relevant DTAA.

Notably, as of now, the time available to file Form 67 for claiming FTC, is the end of the relevant assessment year and not along with the due date to file tax return.

Does the operation of a Liaison Office and agents in India create a Permanent Establishment under the India-USA DTAA for a foreign company?

Western Union Financial Services Inc.
TS-920-HC-2024(DEL)

Facts

Western Union, a USA-based money transfer company (Assessee), operates in India through a Liaison Office (LO) and various agents, including banks and tour operators. The LO, approved by the Reserve Bank of India (RBI), is involved solely in non-commercial functions, such as training agents, distributing literature, and maintaining contacts with government officials. It does not engage in income-generating activities. Western Union's agents in India facilitate money transfers and earn a commission of 25%-30%.

The revenue officers contended that the LO's activities were not merely preparatory or auxiliary. They argued that the LO's role in training agents and assisting in software installation contributed directly to the company's business, thereby potentially creating a Fixed Place PE or Dependent Agent PE in India. They further claimed that the commission earned by agents,

combined with the LO's activities, could establish a taxable presence in India under the India-U.S. DTAA.

Held

The ITAT ruled in favor of Western Union, determining that the activities of the LO were indeed preparatory and auxiliary in nature, as they were primarily focused on agent training and liaising with authorities, and did not directly contribute to income generation in India. The Tribunal emphasized that preparatory activities, such as the LO's functions, do not establish a Permanent Establishment under the DTAA. The court also rejected the argument that the use of software or agents' premises could lead to the creation of a PE. In conclusion, there was no Fixed Place PE or Dependent Agent PE, as the activities in India did not meet the threshold required for a PE under the India-U.S. DTAA.

Our Comments

This case calls attention, that just having a presence or doing preparatory or auxiliary activities in a Source country is not enough to create a Permanent Establishment (PE) for tax purposes; only substantial business operations that generate income will trigger tax exposure.

Indirect Tax

Whether service of order/notice through online mode alone could be considered as sufficient compliance with Section 169 of the Tamil Nadu GST Act?

Mr. Sahulhameed & Ors. vs. The Commercial Tax Officer, Tuticorin-II & Ors. W.P. (MD) No. 26481 of 2024

Facts

- The petitioners had approached the Madras HC challenging the service of notices/orders only by uploading on the web portal and not by any other modes as prescribed under Section 169 of the Tamil Nadu GST Act.
- They submitted that even though the provisions under Section 169 (1) (a) to (f) are disjunctive, they should be read conjunctively, failing which the basic principles of natural justice would be violated.
- Countering these arguments, Revenue relied on the SC judgment in **M. Satyanarayana vs. State of Karnataka and Anr. [1986 (2) SCC 512]** to contend that Section 169 should be read only disjunctively and therefore, if any of the modes prescribed under clauses (a) to (f) were complied with by the Department, there would be no violation of natural justice principles.
- Revenue also relied on Madras HC's Division Bench judgements rendered in the context of Rule 52 of the Tamil Nadu General Sales Tax Rules (TNGST Rules).

Held

- HC noted that in the earlier cases, the Division Bench had held that the authority would have to comply with any of the three modes under (a), (b), or (c) of Rule 52 and if such service was found not effective, then clause (d) would have to be complied with.
- Hence, an application of these decisions to Section 169(1) would mean that clauses (a) to (c) thereof would be alternative and if such service was not practical, then clauses (d) to (f) would have to be followed.
- As per the Court, an interpretation of Section 169 in such a manner would effectively comply with the principles of natural justice, as also the condition stipulated by Section 169(3) which mandates that the decisions, orders, summons, notices, or any communication sent by Registered/Speed Post shall be deemed to have been received by the assessee, unless the contrary is proved.
- Consequently, a conjoint reading of sub-Sections (1), (2), and (3) of Section 169 amply made it clear that the State was obliged to comply with clauses (a) to (c) alternatively and thereafter, comply with clauses (d) to (f).
- Even though clause (f) was preceded with the word 'or' indicating it to be disjunctive/alternative mode of service, a reading thereof would indicate that the same could be resorted to by the State if any of the preceding clauses were not practicable.
- Therefore, the object of Section 169 was for strict observance of the principles of natural justice, held the Court.
- Further, HC rejected Revenue's reliance on Rule 149 of the CGST Rules which only provides for electronic issuance of notices/ summons/orders, holding that rules cannot circumscribe the mode provided in the statute.
- In view of the above, HC concluded that Section 169 mandates a notice in person or by registered post or to the registered e-mail ID alternatively and on failure or impracticability of adopting any of the aforesaid modes, the State can, in addition, make the publication of such notice

in the portal/newspaper through the concerned officials.

- Accordingly, HC set aside the impugned assessment orders and directed reconsideration with the opportunity for the petitioners to respond and be heard.

Our Comments

Without a proper mechanism/tool in place, tracking of notices and orders on the GST portal has often proved to be a challenge for the businesses. Any failure in responding to such notices/ orders could lead them in a legal soup.

The present judgement of Madras HC could assist the taxpayers in defending against any adverse actions taken by the tax authorities, where such notices/ orders have only been uploaded on the GST portal.

Transfer Pricing

Deletes TP-adjustment qua interest on overdue receivables, considers assessee's debt-free status

Temenos India Pvt. Ltd.
IT(TP)A No.: 32/CHNY/2024

Facts of the case

Assessee is a captive service provider of software development services for banking solutions to its associated enterprise ('AE'), Temenos AG. The case of the Assessee was selected for assessment and a reference u/s. 92CA of the ITA was made to the Transfer Pricing Officer (TPO). Pursuant to the Transfer Pricing assessment proceedings, the TPO passed an order u/s.92CA of the Act on 31 March 2023 treating the overdue outstanding trade receivables as international transaction. The credit period extended by the Assessee exceeding 30 days was considered as overdue receivables for determining adjustment on account of such receivables.The TPO applied LIBOR (London Interbank offered Rate) + 350 BPS (effective rate of 5.818%) on the outstanding receivables of INR 32,848 lakhs as on 31 March 2020 and imputed interest of INR 31,415,287 representing the arm's length interest income from outstanding trade receivables.

Following the TPO's order, the Assessing Officer (AO) passed the draft assessment order incorporating the aforesaid adjustment proposed by the TPO. The AO also made certain corporate tax addition/disallowances.

Aggrieved by the outcome, the Assessee filed objections before the Dispute Resolution Panel (DRP) which was dismissed by the DRP and the final order was passed by AO. The Assessee then filed an appeal against the order of the AO before the ITAT.

The contentions of the Assessee before the ITAT were as follows:

Not an international transaction – The Assessee contended before the ITAT that the receivables are consequential/ closely-linked/aggregated with the principle transaction which were already determined to be at arm's length by the TPO. Furthermore, the Assessee contended that outstanding balance from debtors is a continuing debit balance arisen as a result of primary transaction and cannot be considered as a separate transaction for determination of arm's length price.

Timely realization – The Assessee contended that the DRP and the TPO failed to appreciate that all the receivables were collected as per the agreed credit period as per the intercompany agreement and there were no overdue receivables.

Arbitrary application of credit period - It was contended that the credit period of 30 days imposed by the TPO is arbitrary, as the credit period specified in the intercompany agreement was 180 days. Further, the credit period provided by the comparable companies, and various judicial pronouncements allows a credit period of around 90 to 120 days.

Debt free company - Placing reliance on the Supreme Court ruling in the case of Bechtel India[7], the Assessee contended that the Assessee company is debt-free company, no adjustment is required for imputing interest on outstanding trade receivables from its AEs.

Grant of working capital adjustment - The Assessee contended that TPO/ DRP should have granted a working capital adjustment, and by considering the impact of receivables on working capital, no separate adjustment on trade receivables was necessary.

Examination on a case to case basis - The Hon'ble High Court has previously held that delays in collecting payments for supplies, even beyond the agreed period, can occur due to various factors. The delays should be examined on a case-by-case basis. Additionally, the impact of such delays on the assessee's working capital should be reviewed separately. If the assessee has already considered the effect of receivables

7. CCNo. 4956/2017/SC (Judgement dated 21 July 2017)

on its working capital and profitability, particularly in comparison to its comparable, no further adjustment is necessary.

Outcome of the ITAT order

The Tribunal placing reliance on the judicial precedents cited by the Assessee during the proceedings, held that no transfer pricing adjustment shall be made to impute interest on outstanding trade receivables from the AE when the Assessee is a debt-free company. As a result, the transfer pricing adjustment imputing interest income on outstanding trade receivables was deleted.

Our Comments

In light of the facts and established legal precedents, the Tribunal has ruled in favor of the Assessee, determining that no transfer pricing adjustment is required to impute interest on outstanding trade receivables from AEs in the case of a debt-free company. The Tribunal highlighted the necessity of evaluating delays in receivables on a case-by-case basis, taking into account their specific impact on working capital and profitability. In the instant case, given that the Assessee was a captive service provider and relied solely on its own funds - it does not incur debt obligations; delayed receivables do not materially affect its financial position. This ruling is consistent with prior decisions by the Hon'ble Delhi High Court and the Supreme Court, reinforcing the conclusion that no further adjustments are justified in such circumstances.

Upcoming Webinars

UAE VAT - Current Policies and the Way Ahead
17 December 2024
Nexdigm | Sanjay Chhabria

Recent trends and issues surrounding domestic TDS & TCS
17 December 2024
Taxsutra | Sneha Pai

Navigating the Impact of IFRS policies on your Corporate tax
10 December 2024
Nexdigm | Krunal Jogani

Past Webinars

UAE VAT - Current Policies and the Way Ahead
17 December 2024
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Recent trends and issues surrounding domestic TDS & TCS
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Taxsutra | Sneha Pai

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10 December 2024
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Tax Talk

Indian Developments

Direct Tax

No Deduction In Cases Payment Received By Credit Guarantee Fund Trust For Micro And Small Enterprises

Notification S.O. 5476(E) NO. 128/2024/F.NO. 275/77/2024-IT(B) Dated 18 December 2024

i. The Central Government hereby notifies that no deduction of income-tax shall be made on any payment received by the Credit Guarantee Fund Trust for Micro and Small Enterprises as referred to in clause (46B) of Section 10 of the said Act.

Extension Of Due Date For Determining Amount Payable As Per Column (3) Of Table Specified In Section 90 Of The Direct Tax Vivad Se Vishwas Scheme, 2024

Circular No. 20/2024 [F. NO. 370149/213/2024-TPL], Dated 30 December 2024

i. The Income Tax Department had provided with different rates for calculating amount payable under Vivad Se Vishwas Scheme based on whether Form 1 is filed before 31 December 2024 or after the said date.

ii. The department has extended the said deadline of Vivad Se Vishwas Scheme 2024 from 31 December 2024 to 31 January 2025.

iii. This extension provides relief to the taxpayers who are still in the process of evaluating whether to opt for the scheme or not.

iv. Now, taxpayers can file Form 1 declaration for settlement of dispute till 31 January 2025. However, this extension is not for those cases where Form 2 (Certificate of Settlement) has been issued where Form 1 has been already filed by the taxpayer.

Extension Of Due Date For Furnishing Belated/Revised Return Of Income For Assessment Year 2024-25 In Case Of Resident Individuals

Circular No. 21/2024 [F. NO. 225/205/2024/ ITA-II], Dated 31 December 2024

i. CBDT extends the last date for furnishing belated return of income under sub-section (4) of section 139 of the Act or for furnishing revised return of income under sub-section (5) of section 139 of the Act for the Assessment Year 2024-25 in the case of resident individuals from 31 December 2024 to 15 January 2025.

Indirect Tax

SEZ

Government extends 'work from home' benefit for SEZ units until December 2027

Notification No. K-43013(12)/1/2021-SEZ dated 26 December 2024

The Government has amended Rule 43A of the Special Economic Zone (SEZ) Rules, 2006 to allow employees of SEZ unit to work from home (WFH) or from any place outside the SEZ unit until 31 December 2027.

Customs

CBIC withdraws Additional Customs Duty exemption on Petroleum Crude and ATF imports

Notification No. 48/2024-Customs dated 3 December 2024

The Central Board of Indirect Taxes and Customs (CBIC) has rescinded Notification No. 32/2022-Cus which provided exemption from additional customs duty equivalent to special additional excise duty on import of Petroleum Crude and Aviation Turbine Fuel (ATF).

Solar power generation projects ineligible for MOOWR scheme, notifies CBIC

Notification No. 86/2024-Customs dated 16 December 2024

To nullify the impact of Delhi High Court's judgement in Acme Heergarh Powertech Private Limited, the Finance Act (No. 2), 2024 has granted power to the Central Government to specify certain manufacturing processes and other operations in relation to a class of goods that shall not be permitted in a warehouse under the Manufacture and Other Operations (MOOWR) scheme.

Consequently, w.e.f. 17 December 2024, it has been notified that the goods imported for solar power generation projects that supply electricity will not be permitted under the MOOWR scheme. The restriction would apply only when electricity results from the manufacturing processes and other operations in relation to the warehoused goods under Section 65 of the Customs Act.

CBIC enables self-initiated payment facility at ICEGATE, replacing TR-6 Challan mode

Circular No. 27/2024-Customs dated 23 December 2024

The CBIC has introduced an electronic Voluntary/Self-Initiated Payment (SIP) facility on the Indian Customs EDI Gateway (ICEGATE) platform, designed to streamline and digitize payment processes. This system replaces the manual TR-6 payments currently used at Customs stations.

With the new system, users can generate self-initiated challans for payments related to past imports and exports, without requiring approval from Customs officers. ICEGATE-registered users can choose from various predefined payment categories, such as audit, investigation, EPCG & Advance Authorization, IGCR, interest and penalties, etc. The payment options include internet banking, NEFT/RTGS, and payment aggregator modes, with additional banks to be added after testing.

Accordingly, w.e.f. 1 January 2025, this system has become mandatory for all payments, unless specifically authorized (with reasons) for manual TR-6 payments by senior Customs officials.

However, it has been clarified that the facility is not a replacement for challans generated by ICES/ECCS/SEZ online/ACES applications, and that it should not be used for payment of customs duties for clearance of any live consignments.

Foreign Trade Policy

Import Management System for restricted IT Hardware: 2025 guidelines

Policy Circular No. 09/2024-25 dated 11 December 2024

The Directorate General of Foreign Trade (DGFT) has outlined the procedure for implementation of the Import Management System (IMS) for restricted IT hardware imports in the calendar year 2025. The restricted items include laptops, tablets, all-in-one personal computers, ultra-small form factor computers, and servers under HSN Code 8471 (except IT hardware items essential for capital goods, spares, parts, assemblies etc.) as specified in earlier Notification Nos. 23/2023 r/w 26/2023 and 38/2023.

The DGFT portal for obtaining Import Authorizations has been opened from 13 December 2024 until 15 December 2025. Key details include:

i. Authorization validity extends through 31 December 2025

ii. Importers can submit multiple applications throughout the year

iii. Online requests for amendments to the authorization can be made during its validity period.

Launch of Revamped Preferential Certificate of Origin (eCoO) 2.0 System

Trade Notice No. 23/2024-25 dated 6 December 2024 r/w Trade Notice No. 24/2024-25 Dated 20 December 2024

The enhanced Preferential Certificate of Origin (eCoO) system 2.0 is set to launch on 17 January 2025. The revamped system aims at simplifying and enhancing the certification process for exporters by introducing several features such as multi-user access under single Importer Exporter Code (IEC), Aadhaar-based e-signing option, an integrated dashboard, and improved digitization for easier preparation of cost sheets.

Exporters will be able to file Preferential Certificates of Origin through the upgraded system, which will also facilitate the migration of data from the legacy platform. Issuing agencies are required to register on the new system and ensure the accuracy of data management. The eCoO 2.0 platform will support an e-wallet facility and enable seamless certificate verification/validation by – (i) scanning the QR code provided on issued CoO, or (ii) through platform.

On the other hand, the electronic filing of Non-Preferential Certificates of Origin has been made mandatory through the eCoO 2.0 platform, starting 1 January 2025.

Alerts

Major Clarifications provided by Federal Tax Authority
16 January 2025
https://bit.ly/40BSmS2

NCLAT allows capital reduction u/s 66 to be repaid as loan; upholds shareholder discretion
16 January 2025
https://bit.ly/4awC547

Key Highlights of GST Notifications and Clarification Circulars December 2024
07 January 2025
https://bit.ly/4gZGoHL

Highlights of CBDT's 6th Annual Report on APA Program
02 January 2025
https://bit.ly/3ChqPfc

Key Amendments to Ministerial Decision on Tax Groups
27 December 2024
https://bit.ly/3WkTyqb

Key amendments to ministerial decision on Participation Exemption and Foreign Permanent Establishment
27 December 2024
https://bit.ly/3Wq2xGU

Switzerland suspends application of Most Favoured Nation (MFN) Clause for India-Switzerland Tax Treaty
17 December 2024
https://bit.ly/3Wn1Xtm

SEBI amends Listing Regulations
17 December 2024
https://bit.ly/4jrPa2T

Tax Talk

Global Developments

Direct Tax

International tax reform: Release of new tools for the implementation of Amount B relating to the simplification of transfer pricing rules

(Excerpts from oecd.org – dated 19 December 2024)

The OECD has released a pricing tool and fact sheets to facilitate the understanding and operation of the simplified and streamlined approach to transfer pricing.

Amount B under the Two-Pillar Solution to Address the Tax Challenges of the Digitalising Economy provides for a simplified and streamlined approach to the application of the arm's length principle to in-country baseline marketing and distribution activities, with a particular focus on the needs of low-capacity countries. This includes:

- The fact sheets provide a high-level overview of the mechanics of Amount B, including the steps taxpayers and tax administrations should take to apply Amount B.
- The Pricing Automation Tool has been developed to automatically compute the Amount B return for an in-scope tested party, requiring only minimal data inputs, and is intended to further optimise the administrative and simplification benefits for both tax administrations and taxpayers. The tool will be updated annually to reflect any changes to the pricing matrix and other data points relevant to the application of Amount B adjustment features. As referenced in the Amount B guidance published in February 2025, jurisdictions can choose to apply the simplified and streamlined approach for in-scope transactions of tested parties in their jurisdictions for fiscal years commencing on or after 1 January 2025. The inclusion of jurisdictions in this tool is illustrative and does not mean any particular jurisdiction has adopted or intends to adopt Amount B. The list of jurisdictions implementing Amount B will be maintained separately.

The adoption of Amount B is still under consideration by many Inclusive Framework members as they take time to complete domestic administrative and legislative procedures along with other competing fiscal priorities in 2025/2026.

Amount B is optional, and Inclusive Framework members are encouraged to provide sufficient notice to taxpayers in advance of Amount B coming into effect in their respective jurisdiction.

To facilitate co-ordination, the OECD will maintain a list of countries that have officially confirmed that they will adopt Amount B, including the date of adoption. This list will be maintained on the OECD website and regularly updated as jurisdictions begin to make those formal announcements.

Indirect Tax

New excise duty on liquids for e-cigarettes and other tobacco-related products, from 1 April 2025

Excerpts from various sources

Spain has enacted Law 7/2024 dated 20 December 2024, as amended by Royal Decree-Law 9/2024, to introduce an excise duty on the consumption of liquids for e-cigarettes, nicotine pouches and other similar products in Spain and the Balearic Islands, except Ceuta, Melilla, and the Canary Islands. The levy will take effect on 1 April 2025 and would impact those who manufacture, import, store, or market such products, including tobacconists, petrol stations, supermarkets, chemists, and variety stores. Products that are sent directly to a bonded or tax warehouse would be placed under a duty suspension arrangement.

China enacts VAT law, will take effect from 1 January 2026

Excerpts from various sources

China is set to transform its VAT legislation with effect from 1 January 2026. The new Law, which was passed on 25 December 2024, maintains the current three-tier tax rate system (13% for general goods sales and imports, 9% for services like transportation, post, telecommunication, water, gas, publication of books etc., and 6% for modern services) while introducing significant policy changes and improvements in alignment with OECD International VAT/GST guidelines. Notably, the law adopts the place of consumption approach to determine the place of supply within China and introduces provisions for refunds of excess input VAT credits.

Greece introduces tax incentives for innovation and corporate transformations

Excerpts from various sources

Greece has enacted Law 5162/2024, titled "Measures for Income Support, Tax Incentives for Innovation and Business Transformation, and Other Provisions", which introduces various incentives for innovation and development, as well as new framework for tax incentives for corporate transformations.

The law inter alia has extended the optional VAT exemption on the sale of new buildings until 31 December 2025, while repealing the stamp duty as of 1 December 2024 (which was previously set to be 1 January 2025) in alignment with the implementation of the digital transaction tax.

Canada mandates large businesses to register for DST by 31 January 2025

[Excerpts from various sources]

Under Canada's new 3% Digital Services Tax (DST) rules, businesses with a corporate group that has global consolidated revenues of at least € 750 million and earn Canadian digital services revenue exceeding CAD 20 million from providing online marketplace services, online advertising, social media services, and the monetizing of user data, must register for a DST program account on the Canada Revenue Agency (CRA) portal by 31 January 2025. Affected businesses shall file their first DST return and pay any due tax by 30 June 2025. This initial return must also include DST on qualifying online revenues earned since 1 January 2022.

Transfer Pricing

International Compliance Assurance Programme (ICAP) – Forum on Tax Administration by OECD[8]

Introduction

ICAP is a voluntary risk assessment and assurance programme to facilitate open and co-operative multilateral engagements between Multinational entities (MNE) groups willing to engage actively and transparently and tax administrations in jurisdictions where they have activities. It supports effective use of transfer pricing documentation by coordinating conversations between an MNE group and multiple tax administrations to provide a faster, clearer and more efficient route to improved multilateral tax certainty[9].

ICAP focuses on developing mechanisms to achieve tax certainty and assurance between MNE and tax administrations, building on the outcomes of OECD/G20 Base Erosion and Profit Shifting (BEPS) Project and establishment of the OECD Inclusive framework on BEPS. It is a tool available to tax administrations to provide greater certainty to MNE groups with respect to their tax risk.

Key drivers of ICAP

- Providing MNE group with tax certainty, improve tax compliances
- Mechanism to prevent disputes by having multilateral risk assessment and assurance programme
- Framework for co-operative compliance, joint audits, tax control frameworks, and differentiated risk management.
- Enhancing internal collaboration
- Using information contained in MNE group Country-by-Country (CbC) report, master file and local files provides standardized information for transfer pricing risk assessment.
- Enables tax administrators to identify and respond to compliance risk in a

8. Organization for Economic Co-operation and Development
9. https://www.oecd.org/en/about/programmes/icap.html

more efficient way by having huge volume of data.

An MNE group's suitability for ICAP is considered on a case-by-case basis and MNE groups are encouraged to get in touch with their local ICAP participating tax administration to discuss potential options. Even if an MNE group is headquartered in a jurisdiction that does not currently participate in ICAP, it may still be possible for a suitable tax administration that does participate in ICAP to act as a Surrogate Lead Tax Administration (Surrogate LTA) for the purposes of the MNE group's ICAP risk assessment.

OECD Forum on Tax Administration (FTA) has released multiple frequently asked questions (FAQs) over a period of time, the summary of the FAQ's is elaborated below:

- As per the revamped application timelines, the application for ICAP risk assessment can be made on rolling basis (earlier it was biannual i.e. 31 March and 30 September). The timelines to process the risk assessment would be selection stage: 8 – 12 weeks, risk assessment stage (including issue resolution): 30 – 45 weeks, outcome stage: 6 – 8 weeks. Such timeframe may differ based on other factors viz. number of covered tax administrator, complexity of transactions, unavailability of MNE group/ tax administration staff member, or risk assessment includes issue resolution.
- Based on the preferences of the transactions and tax administrations the scope for the ICAP risk assessment would be decided by MNE group.
- ICAP uses CbC reports and other relevant information of the MNE group to facilitate multilateral engagements between MNE group and tax administrations which helps to achieve tax certainty and efficient use of resources. This further enables the tax administrations to have consistent interpretation and treatment of transactions thereby reducing the instances of disputes.
- Based on the risk assessment undertaken by tax administration, it will issue outcome letters to MNE group along with categorization of risks. Depending on such categorization the tax administration would determine whether to undertake any further enquiries or not.
- For the purpose of assessing the risk, ICAP generally covers one or two consecutive periods agreed with MNE group.

Other Attributes

- The list of Tax administrations participating in ICAP is listed on the OECD website.
- The selection of MNE group for ICAP risk assessment depends on several factors mainly would be the volume and materiality of the MNE groups covered transactions and its willingness to participate in a transparent manner by way of providing required documents.
- Less documentation are required as compared to documentation required during the course of Advance Pricing Agreements (APA) or MAP. The timelines to conclude a risk assessment is less as compared to APA or MAP.
- MNE groups are not restricted to further place a request for undertaking a risk assessment process for a later period.
- MNE groups considering the threshold limits in its respective jurisdiction who are not required to submit CbC report can apply for ICAP risk assessment by submitting report that includes full information as specified in Annexure III to Chapter V of the Transfer Pricing guidelines.
- External advisors may assist an MNE group during the ICAP risk assessment process.

On 29 January 2024, the OECD released the first-published statistics on ICAP since the start of the program in 2018, covering all 20 cases completed by October 2023. No further statistics have been furnished by the OECD since then. Amidst the criticality of the tax certainty in ever changing tax landscape, it would be worthwhile to see the implementation and administration of ICAP risk assessment parameters by the tax administrations.

Transfer Pricing (TP) documentation - Germany

With a view to increase tax audit efficiency and reduce administrative burden for companies the Fourth Bureaucracy Relief Act (BEG IV) with effect from 1 January 2025 requires mandatory submission of the prescribed TP documentation within timelines of 30 days of notification of audit order (earlier 60 days from date of request by tax auditor) The TP documentation would broadly include the following:

i. Local file (applicable if total value of supply of tangible goods exceeds Euro 6 million or if total value of transaction with related parties exceeds Euro 600,000)

ii. Transaction matrix (an overview of the business transactions);

iii. Master File (applicable if group turnover exceeds Euro 100 million);

iv. Records of the extraordinary business transactions.

In case of justified cases the aforementioned submission timelines can be extended.

Compliance Calendar

Direct Tax
Indirect Tax

7 January 2025

- Securities Transaction Tax - Due date for deposit of tax collected for the month of December 2024
- Commodities Transaction Tax - Due date for deposit of tax collected for the month of December 2024
- Declaration under sub-section (1A) of Section 206C of the ITA to be made by a buyer for obtaining goods without collection of tax for declarations received in the month of December 2024 in Form 27C
- Collection and recovery of equalisation levy on specified services in the month of December 2024
- Collection and recovery of equalisation levy on e-commerce supply or services for the quarter ending 31 December 2024
- Due date for deposit of Tax deducted/collected for the month of December 2024. 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 2024 to December 2024 when Assessing Officer has permitted quarterly deposit of TDS under Section 192, Section 194A, 194D, or 194H

15 January 2025

- Due date for furnishing statement in Form No. 3BB by a stock exchange in respect of transactions in which client codes been modified after registering in the system for the month of December, 2024
- Due date for furnishing statement in Form No. 3BC by a recognised association in respect of transactions in which client codes have been modified after registering in the system for the month of December, 2024
- Quarterly statement to be furnished by specified fund in respect of a non-resident referred to in rule 114AAB in respect of the quarter ending December 31, 2024 in Form 49BA
- Due date for furnishing of Form 24G by an office of the Government where TDS/TCS for the month of December, 2024
- Quarterly statement of TCS deposited for the quarter ending 31 December 2024 in Form 27EQ
- Quarterly statement in respect of foreign remittances (to be furnished by authorized dealers) in Form No. 15CC for quarter ending December, 2024)
- Due date for furnishing of Form 15G/15H declarations received during the quarter ending December, 2024
- Quarterly statement to be furnished by a unit of an International Financial Services Centre, as referred to in sub-section (1A) of Section 80LA, in respect of remittances, made for the quarter of Oct to Dec of 2024-25 (Financial Year) in Form 15CD
- Furnishing of belated or revised return of income for Assessment Year 2024-25 in the case of resident individuals

10 January 2025

- GSTR-7 for the month of December 2024 to be filed by authorities liable to Tax Deduction at Source (TDS).
- GSTR-8 for the month of December 2024 to be filed by E-Commerce Operators liable to Tax Collection at Source (TCS).

11 January 2025

- GSTR-1 for the month of December 2024 to be filed by all registered taxpayers not under QRMP scheme

13 January 2025

- GSTR-6 for the month of December 2024 to be filed by Input Service Distributors (ISDs)
- Uploading B2B invoices using Invoice Furnishing Facility (IFF) under QRMP scheme for the month of December 2024 by taxpayers with aggregate turnover of up to INR 50 million
- GSTR-5 for the month of December 2024 to be filed by Non-Resident Foreign Taxpayers

14 January 2025

- Due date for issue of TDS Certificate for tax deducted under Section 194-IA in the month of November, 2024 in Form 16B
- Due date for issue of TDS Certificate for tax deducted under Section 194-IB in the month of November, 2024 in Form 16C
- Due date for issue of TDS Certificate for tax deducted under Section 194M in the month of November, 2024 in Form 16D
- Due date for issue of TDS Certificate for tax deducted under Section 194S in the month of November, 2024 in Form 16E

20 January 2025

- GSTR-5A for the month of December 2024 to be filed by Non-Resident Service Providers of Online Database Access and Retrieval (OIDAR) Services
- GSTR-3B for the month of December 2024 to be filed by all registered taxpayers not under QRMP scheme

22 January 2025

- GSTR-3B for the quarter of October 2024 to December 2024 to be filed by taxpayers under QRMP scheme and having principal place of business in Category 1 States

Compliance Calendar

Direct Tax
Indirect Tax

24 January 2025

- GSTR-3B for the quarter of October 2024 to December 2024 to be filed by taxpayers under QRMP scheme and having principal place of business in Category 2 States

30 January 2025

- Quarterly TCS certificate in respect of tax collected for the quarter ending 31 December 2024 in Form 27D
- Due date for furnishing of challan-cum-statement in respect of tax deducted under Section 194-IA in the month of December, 2024 in Form 26QB
- Due date for furnishing of challan-cum-statement in respect of tax deducted under Section 194-IB in the month of December, 2024 in Form 26QC
- Due date for furnishing of challan cum statement in respect of tax deducted under Section 194M in the month of December, 2024 in Form 26QD
- Due date for furnishing of challan cum statement in respect of tax deducted under Section 194S in the month of December, 2024 in Form 26QE

7 February 2025

- Securities Transaction Tax - Due date for deposit of tax collected for the month of January, 2025
- Commodities Transaction Tax - Due date for deposit of tax collected for the month of January, 2025
- Declaration under sub-section (1A) of Section 206C of the ITA to be made by a buyer for obtaining goods without collection of tax for declarations received in the month of January, 2025 in Form 27C
- Collection and recovery of equalisation levy on specified services in the month of January, 2025
- Due date for deposit of Tax deducted/collected for the month of January, 2025. 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.

Category 1 states - Chhattisgarh, Madhya Pradesh, Gujarat, Maharashtra, Karnataka, Goa, Kerala, Tamil Nadu, Telangana, Andhra Pradesh, the Union territories of Daman and Diu and Dadra and Nagar Haveli, Puducherry, Andaman and Nicobar Islands or Lakshadweep

Category 2 states - Himachal Pradesh, Punjab, Uttarakhand, Haryana, Rajasthan, Uttar Pradesh, Bihar, Sikkim, Arunachal Pradesh, Nagaland, Manipur, Mizoram, Tripura, Meghalaya, Assam, West Bengal, Jharkhand or Odisha, the Union territories of Jammu and Kashmir, Ladakh, Chandigarh or Delhi

25 January 2025

- Payment of tax through GST PMT-06 by taxpayers under QRMP scheme for the month of December 2024

31 January 2025

- Quarterly statement of TDS deposited for the quarter ending December 31, 2024 in Form 24Q/26Q/27Q
- Quarterly return of non deduction at source by a banking company from interest on time deposit in respect of the quarter ending 31 December 2024 in Form 26QAA
- Intimation under Section 286(1) in Form No. 3CEAC, by a resident constituent entity of an international group whose parent is non resident
- Quarterly statement of tax deposited in relation to transfer of virtual digital asset under Section 194S to be furnished by an exchange for the quarter ending December 30, 2024 in Form 26QF
- Intimation by Pension Fund of investment under clause (23FE) of Section 10 of the ITA for the quarter ending 31 December 2024 in Form 10BBB
- Intimation by Sovereign Wealth Fund of investment under clause (23FE) of Section 10 of the ITA for the quarter ending 31 December 2024 in Form SWF

10 February 2025

- GSTR-7 for the month of January 2025 to be filed by authorities liable to TDS
- GSTR-8 for the month of January 2025 to be filed by E-Commerce Operators liable to TCS

11 February 2025

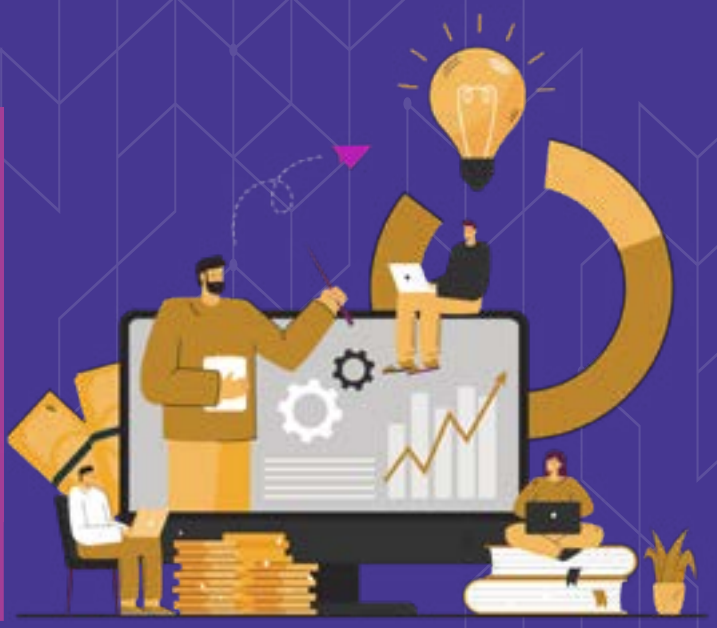
- GSTR-1 for the month of January 2025 by all registered taxpayers not under QRMP scheme

13 February 2025

- GSTR-6 for the month of January 2025 to be filed by ISDs
- Uploading B2B invoices using IFF under QRMP scheme for the month of January 2024 by taxpayers with aggregate turnover of up to INR 50 million
- GSTR-5 for the month of January 2025 to be filed by Non-Resident Foreign Taxpayers

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/IEC 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, World Commerce and Contracting, Everest Group Peak Matrix® Assessment 2022, for Procurement Outsourcing (PO) and Finance and Accounting Outsourcing (FAO), ISG Provider Lens™ Quadrant 2023 for Procurement BPO and Transformation Services and Global Sourcing Association (GSA) UK.

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

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