Tax Street

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Introduction

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 February 2021.

- The **'Focus Point'** explores the aspects of Equalization Levy and its impact on e-commerce transactions.
- 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 (SKP) Team

Focus Point

India's Digital Tax - Are you covered?

India had introduced Equalization Levy (EL) in 2016, which mainly covered online advertisement, any provision of digital advertising space or any other facility or service for the purpose of online advertisement. EL was payable at the rate of 6% and the onus was on the resident to collect and pay the same to the Government Treasury.

Budget 2020 extended the scope of EL to cover digital transactions. EL was extended to include e-commerce supply or service, including the online sale of goods or online provision of services or both facilitated/owned by e-commerce operators. For this purpose, an e-commerce operator means a non-resident who owns, operates, or manages digital or e-facility or platform for the online sale of goods or online provision of services or both.

The EL on these services was applicable at 2% of the consideration received on e-commerce supply of goods or services or both by the e-commerce operator for the sale or facilities provided to a resident in India or a non-resident in specified circumstances or to a person who buys goods or services or both using internet protocol address located in India. Overall, a threshold of INR 20 million has been provided for applicability.

However, since the terms online sale of goods and online provision of services were not defined, there was ambiguity around the applicability of levy. Also, there was a fear of double taxation in cases where payments were covered both under EL as well as taxable under Royalty/Fees For Technical Services (FTS) provisions.

In light of the above, Union Budget 2021 provided the following clarifications/amendments:

- EL shall not be applicable for cases where consideration for e-commerce supply or services is taxable as royalty or FTS in India. Thus, taxation as royalty/fee for technical services under the Income-tax law would have priority over EL.
- Scope of online sale of goods/ online provision of services has been defined to include cases where one or more of the following activities are carried out online:
  - Acceptance of an offer for sale; or
  - Placing or acceptance of purchase order; or
  - Payment of consideration; or
  - Supply of goods or provision of services, partly or wholly.
- Consideration for the purpose of levy of EL clarified to include the value of goods or services, regardless of ownership or facilitation by the e-commerce operator.
- Further, these amendments shall be applicable retrospectively from AY 2021-22.

Our Comments

The new EL provisions would have a huge impact on various companies doing business with India. Thus, IT, cloud-based services, subscription-based models, video conferencing, online courses, gaming industry, etc., would be highly impacted.

Also, the clarification provided in respect of the definition of online sale of goods/online provision of services results in expanding the scope of EL even to non-digital transactions. The term 'digital or electronic facility or platform' has not been defined. In normal parlance, it could cover any digital communication that would include emails or calls, which would cover all kinds of cross-border transactions, where goods are ordered over call/online but delivery and payment is made through regular mode. No clarification has been provided whether a digital or electronic facility or platform includes only the transactions, which are concluded through technology, without physical involvement of any person or it would also include the one-to-one communication between the parties through emails, video call, etc. In our view, the intention of the levy was not to cover the transactions, where the same are concluded or delivered over emails, video calls, etc., given the current global trade scenario, such would be similar to physical supply of goods or services. However, such anomaly continues, as the tax authorities have not defined the term 'Online', and this may result in prolonged litigations unless appropriate clarifications are issued. Also, since payment of consideration is covered, it creates an ambiguity whether payments made through normal banking channels or through online banking platforms would also get covered.

One of the clarifications states that an e-commerce operator would be liable to pay the EL on the entire value of the transaction and not on the convenience fee received by them. This will result in significant hardship for the e-commerce operators as this levy may eat up their margins if they are not able to pass this on to their vendors. On the contrary, this clarification is a welcome step for Indian e-commerce operators since it will create a level-playing field between foreign and domestic companies.

Tax on Royalty/FTS and EL are considered mutually exclusive effective from 1 April 2020. This would mean that one will have to evaluate the taxability of the transaction as Royalty/FTS before evaluating the EL applicability. It's a known fact that taxability of transactions as Royalty/FTS has been a highly debatable issue for various types of transactions (like software payments, web hosting, cloud hosting, management services, online subscriptions, etc.) and judicial views are divided on these transactions. Accordingly, while adopting the view on FTS/Royalty v/s EL in India, MNE's will have to evaluate the position thoroughly, specifically because there is no provision for refund of EL under the law. Accordingly, if a view is adopted that EL is applicable on a particular transaction and it is not Royalty/FTS, and in the future, if tax authorities rule the said transaction as Royalty/FTS, the taxpayer may not be able to claim back the EL already deposited by them. This may result in double taxation.

In addition to the above, provisions of Significant Economic Presence (SEP) would also be applicable from Financial Year 2021-22. While these provisions would become applicable from 1 April 2021, but the threshold limits have not been prescribed yet. It would be important to note that recently, the indian government has notified Information Technology (Intermediary guidelines and Digital Media Ethics Code) Rules 2021, which provides additional conditions for 'significant social media intermediary,' which is defined based on the number of users in India. Taking a cue from this, in our view government should be out with the thresholds soon. While SEP provisions are applicable only to non-treaty countries, it would be interesting to see the interplay between SEP and EL

From the Judiciary

Direct Tax

Whether income from offshore equipment supplies can be attributed to the Indian Permanent Establishment(PE) ?

Whether offshore services connected with setting up a plant in India are taxable in India?

Technip France SAS
AAR No 1413 of 2012.

Facts

The taxpayer is a resident company in France and is engaged in Engineering, Procurement and Construction (EPC) business for oil production. ONGC Petro Additions Limited (OPAL) desired to set-up a Butene-1 Plant at Dahej Petro Chemicals Complex, Gujarat, on a lump-sum turnkey basis. The tender was awarded to the taxpayer, who then set-up a Project Office (PO) in India for the execution of the onshore scope of work under the contract in respect of installation/supervisory activities, and thus, the applicant had a PE in India under Article 5(3) of the India-France DTAA.

As a part of the turnkey project, the taxpayer supplied equipment and claimed that although supply was a part of the composite agreement, the title of such equipment was passed on a FOB basis outside India and the consideration for the same was also received outside India. Thus, such income should not be attributed to India. Reliance was placed on the Hon'ble Supreme Court's judgment in the case of Ishikawajima-Harima Heavy Industries Limited.

Under the contract, the taxpayer also rendered basic engineering design services (in relation to the construction, erection, installation, commissioning, and testing of the Plant at Dahej) and advisory services (in relation to detailed engineering). As per the taxpayer, these services were rendered in France and thus shall not be attributed to Indian PE. Further, according to India-France Double Tax Avoidance Agreement (DTAA), read with India-Finland DTAA, imported by virtue of Protocol, Fees for Technical Services (FTS) shall be taxable in the state where the services were rendered, i.e., France as per the taxpayer.

Without prejudice to the aforementioned, the taxpayer was of the view that even when such services are considered to be rendered in India, the same cannot be considered as FTS as it would not make any technical knowledge available (as per India-France DTAA read with India-Portuguese DTAA). Thus, such income shall also not be taxed in India.

Contrary to the above, the Revenue strongly contended that:

- Responsibilities of the taxpayer did not end with simply handing over the equipment of offshore supply to OPAL; rather, the responsibilities were not discharged till the work contract was executed to the satisfaction of OPAL. Thus, the title cannot be said to have passed outside India;
- As far as the basic engineering services and advisory services are concerned, the preparations of designs was a highly technical service, many elements of which were carried out in India. Further, the Protocol to the India-France DTAA cannot be used to import the 'make available' clause from a treaty with a third country. Even if the 'make available' clause has been imported, the said condition was satisfied in this case as the taxpayer had imparted technical knowledge.

Ruling

Considering the arguments laid down by both the parties, the Authority for Advance Ruling (AAR) pronounced the following ruling:

Taxability of Offshore Supply

The offshore supply of equipment and materials was part of this composite contract and there was no separate agreement for such offshore supply. However, it is apparent from the terms of the contract that ownership of the equipment and materials under the offshore supply part of the contract was transferred outside India. 90% of the payment was made till FOB delivery of materials, 5% on arrival of materials at site and the rest of the 5% on successful completion of work. Even if the goods were in the custody of the applicant for the purpose of erection and installation, OPAL had already become the owner of equipment and materials well before the goods had reached the Indian port. Thus, no income arising in the hands of the applicant from the offshore supply of equipment and materials can be held chargeable to tax in India, under the Income Tax Act (ITA) 1961, as the sale was completed outside India and there was no accrual or deemed accrual in India.

Taxability of offshore services:

It was found from the terms of the contract that basic engineering design and detail engineering services, even if developed in France, were not final and could not have been rendered directly from France without the involvement of the project office in India and also without prior consultation with the company, i.e., OPAL. In this process, the applicant was making the design services available to OPAL but the design, even if prepared in France, was not being rendered directly from France.

Further, such engineering design had to be customized and prepared vis-a-vis the site's location and taking into account the local factors and could not have been delivered exclusively from France.

Thus, the involvement of the PE of the applicant in such a designing process was inevitable. Accordingly, income from these services shall be attributed to the Indian PE and shall be taxed as per the provision of Article 7 of India-France DTAA.

Our Comments

Although there have been multiple instances where the courts have dealt with the taxability of offshore supply (services as well as goods), based on the facts of the respective cases, courts have delivered their decision. Under EPC contracts, a detailed analysis of a contract with respective terms and conditions plays a vital role in determining the taxability of offshore as well as onshore transactions.

Whether logistic support and reimbursement of Global Account Management (GAM) expense qualify to be FTS?

Expeditors International of Washington Inc. Vs. DCIT
ITA No. 1705/DEL/2016

Facts

The Expeditors group, headquartered in Seattle, is engaged in providing logistic services. The group also provides services related to distribution management, vendor consolidation, cargo insurance, purchase order management and customize logistics information and value-added services. The operations of the group span over various countries, including USA, Europe, India, etc. In India, the assessee provides services through its wholly-owned subsidiary Expeditors International (India) Pvt. Ltd.

During the year under consideration, the taxpayer, a US resident, earned certain income from Indian customers and the Associated Enterprise (AE).

These incomes, among others, included international freight logistics service and reimbursement of GAM expense. The taxpayer was of the view that such income would not constitute FTS under the Act or India-USA Treaty. The Assessing Officer (AO) made additions considering reimbursement of GAM expense as FTS. The draft assessment order was upheld by the Dispute Resolution Panel (DRP).

Aggrieved by the assessment order, the taxpayer filed an appeal with the Delhi Tribunal.

Held

After considering the arguments of both parties, the Delhi Tribunal was of the opinion that the logistic support services are general in nature and thus, would not fall within the purview of Managerial/Technical or Consultancy Expertise.

Regarding the GAM service, the cost of the group has been allocated to the respective country that benefited from the services. The reimbursement does not include any income element and thus shall not be subject to any tax.

Our Comments

Whether a service would constitute FTS or not depends on the intricacies of the activities undertaken to execute the service. One needs to analyze the agreement and the modus operandi of the services.

Transfer Pricing

Whether issuance of a letter of comfort/ support towards loans availed by AE be considered as an international transaction?

Asian Paints Ltd
I.T.A. No.2754/Mum/2014
A.Y. 2009-10

Facts

The taxpayer is engaged in the business of manufacturing paints and synthetic enamel in India. During the year under consideration, the taxpayer issued a non-contractual letter of comfort/ support to banks towards the loan availed by its AE. The taxpayer did not charge any fees to the AE for providing such facility to the bank on behalf of AEs.

The Transfer Pricing Officer (TPO) alleged that the fee ought to have been charged on such a letter of comfort at 1.41% on loan availed by the AEs and proposed a TP adjustment accordingly.

The Commissioner of Income Tax(Appeals) [CIT(A)] also considered the provision of the letter of comfort on behalf of AE as an international transaction on the grounds that provision of a letter of comfort is similar to the provision of guarantee and upheld the adjustment, however at a reduced rate of commission, thus a partial relief was achieved.

The taxpayer submitted that in case of any default by AE, it was not required to make good any losses. The taxpayer was only responsible to intimate the bank in case it makes divestment of its shares in AE. The taxpayer also argued that since there is no financial implication borne by it, providing such a facility cannot be covered under the scope of transfer pricing provisions.

Ruling by Income Tax Appellate Tribunal (ITAT)

The ITAT observed that letter of comfort/support given to the bank does not cover any liability. It observed that there is nothing on record to showcase that the loan will be recovered from the taxpayer in case of any default by the AE.

Further, ITAT upheld that letter of comfort cannot be equated to a corporate guarantee and thus cannot be covered under the transfer pricing provisions. Accordingly, TP adjustment was deleted.

Our Comments

Provision of letter of comfort/support having no financial implication on the taxpayer cannot be said to be akin to corporate guarantee, thus not qualifying the definition of international transaction.

Allocation of profits between taxpayer and AEs performing marketing activities

Sitel India Ltd – ITA No. 561/ Mum/2011 – A.Y. 2005-06

Facts

The taxpayer is engaged in the business of providing contact center services. During the year under consideration, the taxpayer has provided services in the nature of email web-based chart solutions and voice responses to its AEs in the USA and UK. While the AEs perform marketing activities in the USA and UK, they retain the revenue in a range of 0% to 28% (an average of 12%) of total gross revenue earned from third parties for marketing activities performed.

The taxpayer benchmarked the said transaction using (taxpayer as the tested party) and selecting the Transactional Net Margin Method (TNMM), wherein the average margin earned by comparables worked out to 9.95% using multiple year data and 9.73% using current year data, whereas taxpayers being the tested party earned 12.83%. The said margin earned by the taxpayer was after the application of the idle capacity adjustment. The TPO disallowed such idle capacity adjustment on the grounds that the taxpayer provides services only to its AE and such idle capacity is on account of AEs not giving enough business to the taxpayer and proposed transfer pricing adjustment.

CIT(A) rejected the tested party selection by the taxpayer. The CIT(A) selected the AE as the tested party and held that profit earned by AEs from the amount retained by it varies between losses to 20.93%, while arm's length range in the USA and UK for marketing services ranges from 5% to 7%. Thus, considering 6% as the arm's length rate, CIT(A) proposed an adjustment for profits earned by AEs over 6%. As a result of the said approach adopted by CIT(A), the adjustment proposed by the TPO was significantly reduced.

The taxpayer stated that since the AEs arranged customers and provided marketing services, an average 12% margin on gross revenue was retained from end customers. Further, it pointed out that for few projects, the AEs did not retain anything and the entire revenue was passed on to the taxpayer. Considering the function performed by the AEs and the cost incurred, profits earned by AEs can be said to be at an arm's length.

Ruling by the ITAT

The ITAT observed that considering the marketing functions performed by the AEs and cost incurred in that regard, AEs have earned negligible profits except for two projects wherein the AEs earned profits of 6.97% and 20.93%. Therefore, the amount retained by the AEs cannot be considered as unreasonably high not to meet arm's length requirements.

Thus, based on the facts captured above and considering that similar treatment by CIT(A) was upheld by the AO in the previous assessment year, the reduced adjustment proposed by CIT(A) was upheld by the ITAT.

Our Comments

The said ruling has re-iterated the importance of robust documentary evidence to support the benchmarking analysis of the taxpayer and to justify the transactions at arm's length.

Whether share application money can be treated as an interest-free loan until equity shares are issued?

Reliance Life Sciences Pvt Ltd. – I.T.A. No. 4957 & 6434/Mum/2018, I.T.A. No.2130/Mum/2018, I.T.A. No. 4842/Mum/2018

Facts

The taxpayer subscribed to 100% equity shares of its AE as a part of its capital investment and to provide finance to AE to develop global business opportunities and expansion outside India. However, no shares have actually been allotted by the AE to the taxpayer against share application money.

The TPO has re-characterized the provision of share application money as an interest-free loan provided to the AE and proposed a transfer pricing adjustment considering a notional interest at 6% per annum. The CIT(A) upheld the TPO's order and therefore, the taxpayer has now filed an appeal before the ITAT.

Ruling by the ITAT

The ITAT has ruled that re-characterization of a transaction is not permitted in the absence of specific provisions under the Act. It states that such treatment of re-characterizing debt into equity or vice versa was only provided in the proposed Direct Tax Code Bill of 2010 as a part of the General Anti Avoidance Rules (GAAR), but there is no law in existence that allows it.

The ITAT upheld that the TPO cannot question taxpayer's commercial expediency in the absence of any material or evidence to justify that the entire transaction was a bogus transaction. The ITAT thus, based on facts of the case, rejected the Revenue's contentions regarding adjustment proposed to charge interest on share application money.

Further, relying on a co-ordinate bench ruling of the taxpayer's own case for previous assessment years, the ITAT ruled in favor of the taxpayer.

Our Comments

Provision of share application money cannot be characterized as an interest-free loan till the equity shares are actually allotted.

Taxpayers will also need to re-evaluate their financing arrangements and conduct a transfer pricing analysis such that it meets the accurate delineation of the transaction test.

Indirect Tax

Whether GST should be applicable only on the services charges for providing manpower services or on the total bill amount?

KSF-9 Corporate Services Pvt. Ltd. [2021 (2) TMI 198 – Authority for Advance Ruling, Karnataka]

Facts

- The applicant provides manpower supply services and complies with all the labor laws in relation to its workers. It ensures payment of minimum wages to the workers engaged in providing the said services on an outsourcing basis;
- The applicant deposits the EST/PF contributions of the workers to the appropriate authority as per the Rules and also pays taxes, duties, fees, and other impositions as may be levied under the applicable law. These amounts are deemed to have been included in the contract price;
- The customer pays service charges to the applicant at the rate of 2% in addition to the wages of the employees, such that the applicant does not deduct any amount from the wages.

Based on the above facts, the AAR ruled as follows:

- In the instant case, the applicant (supplier) and the recipients (customers) are not related, and the price is the sole consideration;
- Therefore, the value of the applicant's taxable supply of manpower services shall be the transaction value, i.e., the total bill amount inclusive of actual wages of the manpower supplied and the additional 2% amount paid to the applicant.

Our Comments

Under the GST regime, a similar view has also been taken by AAR, Gujarat, in the case of Gujarat Industrial Security Force Society.

However, under the service tax law, a contrary view was also prevalent, and in a few cases, abatement towards payments made on account of contribution to ESI, PF, etc., was allowed to determine service tax.

Whether electricity/incidental charges recovered by the landlord from the tenant can be considered as the amount recovered as 'pure agent' of the tenant?

[Background: As per Rule 33 of CGST Rules, expenditure or costs incurred by a supplier as a pure agent of the recipient of supply shall be excluded from the value of supply.]

M/S. Gujarat Narmada Valley Fertilizers & Chemicals Ltd. [2021 (1) TMI 596 - AAR, Gujarat]

Facts

- The applicant has entered into a lease agreement to lease its premises along with the interior infrastructure to various tenants;
- It recovers electricity and incidental expenses proportionately from the tenants based on the reading from the sub-meters on an actual basis;
- The lessee pays GST only on the rent portion and not on the electricity/ incidental expenses.

Based on the above facts, the AAR held as follows:

- Careful scrutiny of the agreement indicates that the supplier of service has made it mandatory that the recipient should pay all charges in respect of electric power used;
- Therefore, it cannot be said that the electricity charges would be covered by Sec.15(2)(c) of the CGST Act for the sole reason that the rate for renting of premises has been fixed at an amount and the electricity charges are to be borne by the lessee as per the actual usage of electric power;
- The lessor and lessee have mutually agreed to collect the electricity charges on the basis of actual usage based on the sub-meters and onward payment to the electricity company;
- Thus, the conditions of Rule 33 are satisfied in the instant case, and as such, it is concluded that the electricity expenses incurred by the applicant on behalf of the lessee have been incurred in the capacity of a pure agent.

Our Comments

Similar arrangements between landlords and tenants for collection and payment of utility bills are common across the industry, and this ruling can provide clarity on the taxability of such recovery.

However, usually, the liability to pay charges to the utility service provider is on the landlord (being the owner of the premises), and therefore, whether he can be considered as a 'pure agent' of the tenants for payment of such charges may be disputed by the GST authorities.

Whether a liaison office is required to obtain registration under GST?

[Background: Earlier, AAR had ruled that the applicant is required to obtain GST registration in India and is liable to pay GST as its activities do not qualify as 'export of services'.]

Fraunhofer-Gessellschaft Zur Forderung Der Angewwandten Forschung – AAAR, Karnataka [2021 (2) TMI 1164]

Facts

- The appellant has a liaison office which is acting as an extended arm of the Head Office to carry out activities as permitted by the Reserve Bank of India (RBI);
- As per the permission granted by RBI, the liaison office will not generate income in India and will not engage in any trade/ commercial activity;
- The liaison office does not account for any form of income, with the only source of income being remittance from the Head office, which is purely to meet the liaison office's working.

Based on the above facts, the AAAR has now ruled as follows:

- The appellant's HO in Germany is no doubt a 'person' by virtue of Section 2(84)(h) of the CGST Act;
- However, the liaison office is not recognized as a separate legal entity in India;
- The concept of 'related person' arises only when there are two 'persons' in existence as per law;
- In this case, there is only one legal entity, i.e., the company in Germany and the liaison office in India is only an extension of the foreign company having no separate identity in India;
- We disagree with the findings of the lower authority that the liaison office is an 'artificial juridical person.' Artificial juridical persons are not natural persons but separate entities under the law;
- The liaison activity performed by the appellant for the parent company is in the nature of a service rendered to self. A service rendered to oneself does not come within the purview of 'supply' under GST.

Hence, there is no 'supply,' and there is no requirement for obtaining a GST registration or payment of GST.

Our Comments

This ruling by the appellate authority provides some relief as the earlier decision by the AAR was contrary to the understanding prevalent in the industry. The decision of the appellate authority is also in sync with rulings of AAR Tamil Nadu in Takko Holding Gmbh and AAR Rajasthan in Habufa Meubelen B.V. wherein it was held that a liaison office does not undertake any 'business' and, therefore, is not required to obtain GST registration.

However, with the proposed amendment to Section 7 of CGST Act to treat transactions or activities involving supply of goods and / or services by persons (other than individuals) to their members / constituents or vice versa for a consideration, as 'supply' for the purposes of GST, it would be interesting to see the stand being adopted by the Revenue in the near future.

Tax Talk

Indian Developments

Direct Tax

Income Tax department starts scrutinizing fake entries, fake invoices of companies

[Excerpts from The Economic Times, 21 January 2021]

The Income Tax department has initiated a drive for scrutinizing the financial statements of companies to check for any fraudulent transactions/ false entries with the objective of tax evasion. This action of the tax department is basis its suspicion that several companies are forging financial statements to evade taxes. The objective of the above action appears to be in line with the objective of the recent amendment to Section 281B of the Income-tax Act, 1961 (the IT Act), wherein the scope of provisional attachment of property was extended to cases of failure to pay the penalty in case of false/omitted entries from books of accounts.

Central Board of Direct Taxes (CBDT) directs the National Faceless Appeal Centre (NFAC)/ National e-Assessment Scheme (NeAC) to dispose of penalty cases until units under Faceless Penalty Scheme, 2021 are set-up

[Excerpts from Taxsutra 23 January 2021]

The CBDT directs that all penalty cases, pending as well as initiated subsequently, assigned to National Faceless Penalty Centre shall be disposed of by the NFAC, except where penalty proceedings are assigned to central charges, International tax charge and TDS charge. Further, the CBDT directs the income tax authorities of NeAC/ReAC/AUs/RUs to act and perform the functions corresponding to income tax authorities under the Penalty Scheme.

INR 0.95 trillion disputed amount settled under 'Vivad se Vishwas'

[Excerpts from The Economic Times, 2 February 2021]

The Vivad se Vishwas Scheme, which was announced by the finance minister in her Budget speech last year, has helped various categories of taxpayers like corporates, non-corporates, state governments and public sector undertakings (PSUs) to settle their tax disputes. As per the CBDT Chairman, the disputed amount of INR 0.95 trillion has been settled by about 0.12 million entities who opted for the Vivad se Vishwas Scheme to resolve long pending litigation issues with the Income Tax Department.

Faceless assessment bucket has 0.2 million cases; 35,000 completed: CBDT chairman

[Excerpts from The Economic Times, 5 February 2021]

The Faceless Assessment Scheme has evaluated about 0.2 million income tax cases, out of which finality has been achieved in an estimated 35,000 cases. The Income Tax Department has been able to complete more than 35,000 cases under this scheme and of which only 1000 cases faced additions.

Indirect Tax

Extension of Form GSTR-9 and Form GSTR-9C due dates for FY 2019-20

[Notification No. 04/2021 – Central Tax dated 28 February 2021]

In view of various representations received from the industry, the government has extended the due date for furnishing Form GSTR-9 (annual return) and Form GSTR-9C (reconciliation statement) for the financial year 2019-20 to 31 March 2021 (from the earlier 28 February 2021).

Clarification in respect of applicability of Dynamic Quick Response (QR) Code on B2C invoices

[Circular No. 146/02/2021 – GST dated 23 February 2021]

The government has provided certain clarifications on the applicability of the Dynamic QR code on B2C invoices issued by taxpayers having an aggregate turnover of more than INR 5 billions. Some of the key clarifications issued are as follows:

- **Exports** - Supplies for exports are required to comply with e-invoicing provisions by treating them as B2B supplies. Therefore, Dynamic QR code is not applicable on export invoices;
- **Payment capability** - Dynamic QR Code should be such that it can be scanned to make a digital payment;
- **Prepaid invoices** - In case of prepaid invoices, if cross-reference of the payment received is made on the invoice, then the invoice would be deemed to have complied with the requirement of Dynamic QR Code;
- **Supplies through e-commerce** - In case the supplier is making supply through an e-commerce portal or application, and the said supplier gives a cross-reference of the payment received in respect of the said supply on the invoice, then such invoices would be deemed to have complied with the requirements of Dynamic QR Code. In cases other than prepaid supply, i.e., where payment is made after generation/ issuance of the invoice, the supplier shall provide a Dynamic QR Code on the invoice.

Tax Talk

Global Developments

Direct Tax

Organization for Economic Co-operation and Development (OECD) agrees new peer review process to foster transparency on tax rulings

[Excerpts from OECD, 22 February 2021]

In order to maintain and further improve transparency on tax rulings, the OECD/G20 Inclusive Framework on BEPS, which groups over 135 countries and jurisdictions on an equal footing for multilateral negotiation of international tax rules, approved the process for the BEPS Action 5 peer review of the transparency framework for the years 2021 to 2025.

The new process builds on the first phase of peer reviews covering the years 2017 to 2020, with the most recent statistics gathered from the 124 peer-reviewed jurisdictions showing that so far, 36,000 exchanges on more than 20,000 tax rulings have taken place. Its success was further underlined in the latest peer review undertaken by the Inclusive Framework on BEPS, which found that 81 jurisdictions are fully compliant with the minimum standard.

UN Panel Recommends a Global Corporate Income Tax To Cut Down On Tax Avoidance

[Excerpts from Forbes, 25 February 2021]

The High-Level Panel for the International Financial Accountability, Transparency and Integrity for Achieving the 2030 Agenda (FACTI) said a 20% to 30% global corporate tax on profits would "help limit incentives against profit shifting, tax competition and a race to the bottom."

The panel recommends the creation of a body that collects and disseminates data about corporate profits, where the assets of multinational corporations are located, as well as which entities own them. The panel called such data the 'bare minimum' necessity to even begin addressing the issue of tax avoidance and evasion. The minimum tax, the panel notes, should be designed to incentivize sustainable development investment while retaining sufficiently high effective taxation.

Britain's Cairn hopeful of a solution in USD 1.2 billion-plus tax tussle with India

[Excerpts from The Financial Express, 21 February 2021]

Cairn Energy Plc said, it had discussed multiple proposals with Indian government officials in recent days in an attempt to find a 'swift solution' to a long-drawn-out tax dispute with the South Asian nation. In December, an arbitration body awarded the British firm damages of USD 1.2 billion-plus interest and costs, after ruling India had breached its obligations to Cairn under the U.K.-India Bilateral Investment Treaty.

This month, Cairn filed a case in a US district court to enforce the arbitration award, taking an initial step in its efforts toward recovering dues. The US court this week issued electronic summons to the Indian government to file its response to the lawsuit within 60 days or face a judgment by default.

Transfer Pricing

Thailand: Guidance on Transfer Pricing Rules and Related Party Transactions

Background

Director-General of the Thai revenue department has issued two notifications as guidance regarding transfer pricing and related party transactions. The said notifications are applicable for all accounting periods starting on or after 1 January 2021. While most of the provisions are in line with the draft version, some key updates in the regulations have been summarized below:

Intra-Group Services

In case of intra-group services, remuneration will be said to meet at arm's length requirements if:

- Services are actually rendered;
- Service provider provides economic or commercial value to service recipient;
- An independent entity would have been willing to pay for such services provided by an independent enterprise in comparable circumstances, or would have performed said activities in-house for itself and,
- Amount charged would have been charged and accepted between independent enterprises for similar services

The final guidelines now specifically state that any remuneration for a service that benefits the shareholders or partners of a company or juristic partnership would not be considered at an arm's length.

Intangibles

Where a controlled transaction is in relation to an intangible property, the following factors need to be considered to determine the arm's length consideration:

- For the **use of** intangibles - Consideration to be based on party involvement in development, enhancement, maintenance, protection and exploitation of intangibles, assets used and risks assumed.
- For **sale, transfer, or grant of use rights of** intangibles - Consideration to be based on benefits, geographical limitations, specifications and the right to develop the intangibles.

Corresponding Adjustment

Other party can be allowed to make corresponding adjustments to a transaction if:

- Tested party has already paid the tax following the official's adjustment; and,
- Adjusted income/expense has been included in the other party's tax computation, and that the other party has not concealed information or falsely informed tax authorities of a controlled transaction.

Also, the corresponding adjustment shall have to be in accordance with the applicable tax treaty.

Advance Pricing Agreement

In case of cross-border related party transactions, an advance pricing arrangement can be requested between Thailand and other jurisdictions.

The said notification also provides guidance on the process of filing a Transfer Pricing Disclosure Form (TPDF).

Our Comments

MNEs in Thailand meeting the threshold requirements shall have to comply with the Transfer Pricing Documentation and Transfer Pricing laws keeping in mind the guidance provided. The said guidance shall help in preparing Transfer Pricing Documentation(TPD) adhering to Thailand's transfer pricing laws and assist in negotiating with tax authorities regarding primary and secondary adjustments, entering into Advance Pricing Agreement(APA), defending penalties if any levied, etc.

Source: https://www.rd.go.th/fileadmin/user_upload/kormor/newlaw/dg400.pdf

Qatar: Introduces new Transfer Pricing Documentation rules

While the requirement for transactions between related parties to be undertaken at arm's length existed in accordance with the OECD accepted pricing method, there was no specific provision with regards to filing the TPD with Qatar's General Tax Authority (GTA).

By way of a webinar, the GTA introduced additional clarification regarding the TPD requirements. The said requirements are applicable from 1 January 2020, for taxpayers with financial year-end as 31 December 2020, where the first submission deadline shall be due on 30 April 2021. The Qatar transfer pricing requirements are in line with OECD three-tiered approach, which are summarized as below:

Type of form	Applicable entities	Other requirements
TPDF/Annual Questionnaire	Resident entities and PEs having domestic or international transactions where turnover or total assets in the financial year is more than QAR 10 million.	• To be filed as part of annual income tax return on or before the due date for filing the income tax return; • Form must contain details of: – Overview of the group's activities; – Key intangible assets owned/used by the resident entity, country of residence of related parties that own intangibles; – Description of group's TP policy; – For each transaction with a related party, details of related party country of residence, value of the transaction, and transfer pricing method used; – A brief statement with details of nature and value of transactions, country of residence of related parties where the aggregate value of transactions with related entities exceed QAR 0.2 million • Arabic is a preferred language of submission, but in practice, both Arabic and English are accepted.
Master File and Local File	To be submitted on request by all resident entities and PEs in Qatar where turnover or total assets in the financial year is more than QAR 50 million.	• Master File can be updated every three years (unless there are material changes) • Local file is to be updated each year.
Country by Country Reporting (CbCR)	The same was already introduced in 2018 to meet one of the minimum standards for a member of the OECD Inclusive Framework.	

Other important points for consideration:

- The first annual cycle of transfer pricing compliance will begin post submission of April 2021 tax returns and transfer pricing questionnaires. It is expected that audits will commence thereafter;
- No specific penalty for non-compliance with new regulations, however, tax authorities have a right to impose a penalty up to QAR 0.5 million for non-compliance under general tax audit provisions;
- In addition to the above documentation, Qatar GTA may ask for additional information on the intercompany transactions entered into by a taxpayer. The same needs to be submitted within a period of 30 days from the date of request to provide such information.

Indirect Tax

UK VAT – Payment of deferred VAT liability

UK's HMRC had extended a deferred VAT payment scheme for businesses to deal with the cash crunch caused due to the COVID-19 pandemic. Under the scheme, businesses were allowed to defer the payment of VAT liability due between 20 March 2020 and 30 June 2020. Such businesses are now required to repay the full amount by 31 March 2021. Alternatively, instead of paying the full amount by the end of March 2021, traders can opt for a scheme to make up to 11 smaller interest-free monthly installments. However, such installments must be paid by the end of March 2022.

Compliance Calendar

Direct Tax
Transfer Pricing
Indirect Tax

7 March 2021

Payment of TDS and TCS deducted/collected in February 2021

10 March 2021

- GSTR-7 for the month of February 2021 to be filed by taxpayer liable for Tax Deducted at Source (TDS)
- GSTR-8 for the month of February 2021 to be filed by taxpayer liable for Tax Collected at Source (TCS)

11 March 2021

GSTR-1 to be filed by registered taxpayers for the month of February 2021 by all registered taxpayers not under Quarterly Return Monthly Payment (QRMP) scheme

13 March 2021

- GSTR-6 for the month of February 2021 to be filed by Input Service Distributor (ISD)
- Uploading B2B invoices using Invoice Furnishing Facility under QRMP scheme for the month of January 2021 by taxpayers with aggregate turnover of up to INR 50 million

15 March 2021

Annual compliance report in Form 3CEF in case of a taxpayer who has entered into an Advance Pricing Agreement (APA) and who has filed its Return of Income on 15 February 2021

15 March 2021

Payment of final installment of advance tax for FY 2020-21 (100 percent of the estimated tax liability to be deposited on a cumulative basis)

20 March 2021

- GSTR-5 for the month of February 2021 to be filed by Non-Resident Foreign Taxpayer
- GSTR-5A for the month of February 2021 to be filed by Non-Resident Online Database Access and Retrieval (OIDAR) services
- GSTR-3B for the month of February 2021 to be filed by all registered taxpayers not under QRMP scheme

25 March 2021

Payment of tax through GST PMT-06 by taxpayers under QRMP scheme

30 March 2021

Due date for furnishing of challan-cum-statement in respect of tax deducted under Section 194-IA and 194-IB in the month of February 2021

31 March 2021

- Indian Ultimate Parent entity: Filing of CbCR for accounting year ended on 31 March 2019 as well as 31 March 2020
- Indian Subsidirary entity: CbCR Intimation in Form 3CEAC for the group accounting year ended on 31 Dec 2019 (Where the group will file CbCR before December 2020)

31 March 2021

- Extended due date for GSTR-9 for the FY 2019-20 to be filed by regular taxpayers
- Extended due date for GSTR-9C for the FY 2019-20 to be filed by regular taxpayers with an aggregate turnover of more than INR 50 million

31 March 2021

Filing of revise income-tax return pertaining to AY 2020-21

Insights & News

Alerts

Amendments to company law pursuant to Budget 2021-22

9 February 2021

Read Here https://bit.ly/3lil3x5

News

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- Maulik Doshi

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Read Here https://bit.ly/2NijO4l

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- Maulik Doshi

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- Maulik Doshi

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- Saket Patawari

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Read Here http://bit.ly/3qIszT7

Events & Webinars

Events

Highlights of Union Budget 2021

Organizer - BBG

1 February 2021

Webinars

Decoding Union Budget 2021-22

Organizer - FICCI

2 February 2021

Watch it here https://youtu.be/_lz5J0X-eyR8

Union Budget 2021

Organizer - IGCC

2 February 2021

Watch it here https://youtu.be/BZPGuh-3fZhI

Union Budget 2021

Organizer - IICC+EBG

2 February 2021

Union Budget 2021

Organizer - IEEMA

3 February 2021

Union Budget 2021

Organizer - SEAP

3 February 2021

Impact of Union Budget 2021

Organizer - IACC

4 February 2021

Union Budget 2021

Organizer - AFSTI

5 February 2021

The Indian Tax and Banking Landscape

Organizer - SICCI+HSBC

18 February 2021

Constitutional Validity of Search, Seizure and Arrest in GST

Organizer - Phd Chamber of Commerce

19 February 2021

Tax Landscape in India

Organizer - USICOC DFW

25 February 2021

Watch it here https://youtu.be/ZLAl-f9y44fo

Easy Remittance Tool

The Easy Remittance tool by Nexdigm (SKP) simplifies the mandatory compliance procedure for foreign remittances by automation of Form 15 CB certifications. Through its simple retrieval mechanism for documents and reduced turn around time, the tool has helped us serve large corporates with numerous foreign remittances, enabling our clients to maintain the right tax position, at all times.

Tax position vetted by specialists

Easy retrieval of documents to aid in tax scrutiny

Ability to upload Form 15 CA on the same platform

ThinkNext@nexdigm.com

Request a Demo

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Our cross-functional 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.

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

Our team provides you with solutions for tomorrow; we help you *Think Next*.

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