Tax Street

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February 2022

WORLD TAX RECOMMENDED FIRM 2022

Introduction

Tax Street

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

- The **'Focus Point'** covers the requirement for a cohesive policy for classification of goods under Central Excise and Customs law.
- 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

The Unending Saga of 'Classification' – The Need for Consistency in Policy

Classification of goods for the purpose of taxation under the Central Excise and Customs laws has always been an area of dispute. The tussle on the subject between the taxpayers and Revenue authorities has continued under the GST regime as well. This is primarily due to the fact that the Indian scheme of classification is based on the Harmonized System of Nomenclature (HSN), an internationally developed mechanism for the classification of goods, which defies localization. The HSN is divided into 21 Sections and 98 Chapters, each of which contains Notes on how to classify the items of that Section.

The issue of classification on several occasions has been disputed and settled by the Hon'ble Supreme Court (SC) in the past, but the current judgment of the Apex Court, delivered on 8 March 2021, in the case of **Westinghouse Saxby Farmer Limited vs. Commr. of Central Excise, Calcutta**[1] has caused (unintended) ripple effects on various industries and sectors.

In the said case, the Hon'ble SC dealt with the question of whether 'relays' would be classifiable as parts of 'railway signaling equipment' under Heading 8608 of Central Excise Tariff (as put forth by the assessee) or independently as 'electrical equipment' under Heading 8536 (as contested by the Revenue). The dispute revolved around the interpretation of Note 2 and Note 3 of Section XVII[2] of the Central Excise Tariff, which are briefly explained hereunder:

Note 2: The expressions "parts" and "parts and accessories" do not apply to listed articles, whether or not they are identifiable as for the goods of Section XVII. The list inter alia includes electrical machinery or equipment (Chapter 85), articles of Chapter 90, etc.

Note 3: References in Chapters 86 to 88 to "parts" or "accessories" do not apply to parts or accessories which are not suitable for use solely or principally with the articles of those Chapters. A part or an accessory that answers to a description in two or more of the headings of those Chapters is to be classified under that heading that corresponds to the principal use of that part of the accessory.

To provide a historic background to this judgment's context, it may be pertinent to note that from March 1986 to February 1993, the effective excise duty rate under both headings was 15%. However, with effect from 28 February 1993, the effective excise duty for the goods under sub-heading 8536.90 became much higher than that for goods under Heading 8608.

Giving precedence to the 'predominant use' or 'sole / principal use' test of Note 3 of Section XVII over the exclusion/ embargo contained in Note 2, the Hon'ble Court ruled in favor of the appellant-assessee.

To summarize, the Hon'ble SC held that if an article/item is solely or principally designed for use with a specific finished good and the Section/Chapter Notes prescribe classification of parts basis 'principal use,' the article/item would be classifiable under "parts" as opposed to the specific heading of the particular item, notwithstanding any specific exclusions/embargo for such goods from the scope of "parts" under such Section/Chapter Notes.

Ironically, the success of the assessee in the aforesaid case has adversely impacted other taxpayers, especially the automobile sector. Demand notices are being issued to

1. [Civil Appeal No. 37 of 2009]
2. Section XVII governs Chapters 86 and 87, that include railway locomotives and motor vehicles

taxpayers dealing in automobile parts. Even investigations by intelligence authorities are being initiated against them, seeking to assess such parts at a higher GST bracket of 28% as applicable to motor vehicles falling under Chapter 87, along with interest.

Resultantly, parts like auto engine valves, switch panels, automotive chains, electric motors, transmission belts, fasteners, LCD displays, etc., which hitherto attracted a lower GST of 18%, are being proposed to be taxed at 28%.

Taking cognizance of the divergent practices arising in the assessment of 'automobile parts' and other impacted industries under Customs pursuant to the Apex Court's ruling in Westinghouse Saxby, the CBIC recently issued an advisory[3] for the field officers clarifying the implications of the said judgment.

In the Instruction, the Central Board of Indirect Taxes and Customs (CBIC) has highlighted inter alia that the judgment decided the classification of the commodity 'relays' used in railway signaling equipment of Chapter 86 and not parts of goods falling under Chapter 87. In fact, the Hon'ble Supreme Court itself has acknowledged the complexity of the issue and has pointed to the undesirability of generalizing the decisions of one case to others.

Furthermore, reference has been made to other Apex Court judgments[4] wherein the exclusionary clause under Note 2 has been given precedence over the sole or principal use of the items after considering the HSN Explanatory Notes issued by the World Customs Organization (WCO). As per the Board, these judgments did not come up for consideration in the Westinghouse Saxby case and therefore, there appears to be a variance with the stand taken in classifying other parts of goods falling under Section XVII.

Accordingly, the Board has advised that, *"…in general, the practice of assessment of such 'parts' or any change in it may holistically keep in view and in a speaking manner,* ***all relevant aspects including HS Explanatory Notes, the relevant Section and Chapter notes and the various decisions of the Hon'ble Supreme Court…"***

It has also been highlighted that the Department has filed a review petition against the Westinghouse Saxby judgment after taking cognizance of other Supreme Court decisions in case of parts and accessories and on the grounds of interpretation of Section Notes and the HSN Explanatory Notes.

Here, reference may be drawn to the clarification regarding GST rates applicable to 'External Batteries' sold along with 'UPS Systems / Inverters'. It was clarified that UPS/Inverter and external batteries are two separately identifiable items, and thus, it constitutes the supply of two distinctly identifiable items even if both the items are sold on the same invoice.

Thus, UPS/Inverter would attract a GST rate of 18% under heading 8504, while external batteries would attract the GST rate as applicable to them under heading 8507.

It, accordingly, appears that CBIC has adopted the rule of classifying two separately identifiable items as distinct, based on the recommendations provided in the 45th GST Council meeting held on 17 September 2021, read with the Circular[5].

The above instructions/advisory should mitigate the impact of the above judgment to an extent and provide an interim respite to the industry players, who have been exploring the most optimized approach against these Dept. actions. Such approach includes either - (i) engaging in prolonged litigation with the authorities; or (ii) aligning to the position prescribed by them and commercially negotiating with the customers who would eventually bear the higher tax incidence, which can be claimed as ITC; or (iii) building a case for policy action through advocacy.

One would have to await the outcome of the review petition and the ensuing suitable amendment if any, for the issue to be addressed finally.

It would be worthwhile if these longstanding classification disputes were concluded through a one-time retrospective legislative amendment, thereby entailing consistency in the position being adopted on the Revenue side. Harping on one principle for the classification of goods that is advantageous for a particular industry may not be counter-productive for another industry. Hence, a cohesive policy by the government is the need of the hour to alleviate wider ramifications from classification disputes under Customs and GST laws.

3. Instruction No. 01/2022-Customs dated January 5, 2022
4. Intel Design Systems (India) Pvt Ltd. vs. Commissioner of Customs and C. Ex. [2008-TIOL-18-SC-CX], CCE Delhi vs. Uni Products Ltd [2020 (372) ELT 465 (SC)
5. Circular No. 163/19/2021-GST dated October 6, 2021

From the Judiciary

Direct Tax

Whether payment made for Transponder fees to foreign vendors will be taxable as royalty in India?

M/s Viacom 18 Media Private Limited Vs The CIT(A)
I.T.A. No. 523,1068,1072,1063, 1064/Mum/2021

Facts

The taxpayer is a company incorporated in India and during the relevant period was engaged in broadcasting television channels from India. In order to provide such services, the taxpayer availed satellite signal reception and transmission facility (i.e., transponder facility) from non-resident entities and paid a service fee to them.

At the time of payment, the taxpayer approached the Assessing Officer (AO) to determine whether such service fee is taxable in India or not. The AO adopted a view that the payment made by the taxpayer to foreign satellite companies for utilizing its transponder facility to showcase its channel in India would be taxable in India on the footing that payment of such fees constitutes 'Royalty' as defined in Section 9(1)(vi) of the Act for being the use of 'process' (i.e., transponder) and directed taxpayer to withhold tax on such payments.

On appeal by the taxpayer, the CIT(A) held that the taxpayer was not liable to deduct tax at source on the payments made as it did not qualify as Royalty. Aggrieved by the order, the Revenue has raised the aforesaid grounds before the Tribunal.

Held

The Tribunal made a distinction between transfer of rights in respect of property and transfer of rights in the property. It followed suit of earlier judicial precedents, which have held that no amendment to the Act, whether retrospective or prospective can be read in a manner so as to the extent in operation to the terms of an international treaty. The Tribunal upheld the order of CIT(A), citing that CIT(A) has followed binding precedents of jurisdictional High Court (HC) in the case of New Sports Broadcast Pvt Ltd, wherein it is held that transponder charges are not in the nature of Royalty income in the hands of recipients despite the amendment to Section 9(1)(vi) of the Act.

Our Comments

The Mumbai Tribunal has re-confirmed the well-settled principle that unilateral amendments under the Act would not extend to the definition of 'Royalty' under existing Double Taxation Avoidance Agreements (DTAA). Thus, the transponder fees were not qualified as Royalty.

Whether the installation of IVRS Equipment and AMC cost can be construed as Fees for Technical services (FTS)?

M/s Wipro Ltd Vs DCIT.
ITA No.2681/Bang/2018

Facts

The taxpayer is an Indian company engaged in the business of providing system integration, support and maintenance services and selling products of its head office. During the year under consideration, the taxpayer paid certain charges to non-resident parties for installation of equipment, AMC charges and purchase of tool kit inspection charges, etc. and claimed the same as deduction while filing the return of income.

However, according to the AO these payments fall under the category of FTS and hence disallowed these amounts paid by the taxpayer for default in deducting tax at source under Section 195.

The CIT(A) confirmed the order of the AO. Aggrieved by the order, the taxpayer filed an appeal before the Bangalore tribunal.

Held

After considering the data on record, the Bangalore tribunal observed that

for those payments to fall under fees for technical services as per DTAA of India - Singapore, the service providers should have made available the technical knowledge, experience, skill, know-how etc. to the taxpayer.

The tribunal relied on ruling of the Karanataka High Court in De Beers India Minerals P. Ltd to hold that the definition under DTAA would override the definition under Income-tax Act.

Furthermore, Tribunal stated that these payments constitute business income and in the absence of PE of the vendors in India, these payments are not chargeable to tax in India requiring deduction of tax at source u/s 195.

Therefore payments made to Singaporean entities for various services did not constitute fees for technical services under the India-Singapore DTAA as no technical knowledge was made available.

Our Comments

The Bangalore tribunal has appraised the fact that the "make available test" is a pre-requisite for qualification of a transaction to be FTS where the definition of FTS is restrictive. It is pertinent to note that while there are a number of judicial precedents in favor of the taxpayer in a similar scenario, the "make available test" remains situation-specific.

Transfer Pricing

Should Royalty be computed on the total turnover of the taxpayer or only on profit-making products/ services?

Ford Global Technologies LLC [ITA No. 3095/Chny/2019]

Facts

The taxpayer owns and develops Intellectual Property (IP) rights by evaluating new inventions developing intellectual plans for critical technologies. The company manages key aspects of intellectual property for M/s. Ford Motor Company, USA and its brands and charges royalty for the aforementioned services.

The taxpayer entered into a license agreement with its Associated Enterprises (AE) viz., M/s. Ford India Private Limited (Ford India) and has charged Royalty for the IP services. As per the license agreement, minimum Royalty of 2.5% (if Ford India's financial showed loss) or minimum Royalty of 5% (if Ford India's financial showed profit) on sale of vehicles assembled in India was agreed (i.e., a turnover base for computing Royalty)

Ford India paid Royalty only on those sales models from which it earned profit and excluded loss-making sales models for the purpose of Royalty.

After considering relevant submissions of the taxpayer (wherein the sales for the models, which had reported losses were excluded from the turnover base on which Royalty was computed), made a Transfer Pricing adjustment considering total sales declared in the financial statement.

The CIT(A) concurred with the contentions of the taxpayer that if sales from models with losses were also to be considered in the 'turnover base' for Royalty computation, the cost associated with such models should also be excluded for arriving at the total net sales (i.e., turnover base) and accordingly, CIT(A) deleted Transfer Pricing addition considering that under the revised turnover base the royalty income receivable by the taxpayer was lower than actually booked.

Held by the ITAT

The Income Tax Appellate Tribunal (ITAT) held that Ford India had to pay Royalty of 2.5% on the sales of vehicles assembled in India by Ford India, including the revenue from the sales model from which Ford India had incurred a loss.

Furthermore, the ITAT held that once the gross revenue from all the sales models was considered, the related cost associated with all models (including loss-making models) were also to be considered while computing the net sales on which, ideally, Royalty is to be charged.

ITAT observed that the AO's working did not reflect consideration of costs with respect to sales for models where a loss was reported and the fact that the taxpayer's reconciliation statement was not furnished before the AO, the matter was remitted back to the AO for further verification.

Our Comments

The transaction pertaining to Royalty is litigative in nature and has been under detailed Transfer Pricing scrutiny where the taxpayers need to demonstrate the benefit received with respect to the payment of Royalty.

Furthermore, the importance and need of documentation with respect to the base on which Royalty is computed (i.e., net sales) is further enunciated from the said ruling.

Whether Berry Ratio can be used for manufacturers performing entrepreneurial functions?

Vaibhav Global Limited [ITA No. 97/JP/2021]

Facts

The taxpayer is engaged in the business of manufacturing and export of gold jewelry studded with precious and semi-precious stones.

The taxpayer has entered into international transactions pertaining to sale and purchase of goods to/ from AEs and benchmarked the same by using Cost Plus Method as the Most Appropriate Method (MAM) and selected Gross Profit Margin/Cost of Production (GPM/COP) as the Profit Level Indicator (PLI).

The taxpayer, with respect to its functional and risk profile, is characterized as a routine manufacturer performing all the entrepreneurial functions.

However, the Transfer Pricing Officer (TPO) during the course of assessment proceedings held that since the taxpayer is purchasing from related parties as well as selling to related parties, both cost and revenue sides are tainted and hence, GP/COP cannot be applied as PLI and determined the arm's length price by using the 'Berry Ratio' with Operating Profit/Value Added Expenses (OP/VAE) as the PLI.

The aforesaid approach was upheld by the Dispute Resolution Panel (DRP) as well.

Held by the ITAT

The ITAT drew reference to the Organization for Economic Co-operation and Development (OECD) Transfer Pricing Guidelines and UN Guidelines, wherein the applicability and use of 'Berry Ratio' is discussed.

The ITAT also took recourse to various judicial precedents wherein it is mentioned that the Function, Asses and Risk (FAR) analysis needs to be undertaken with respect to the applicability of the 'Berry Ratio.' Furthermore, the 'Berry Ratio' is effectively applied only in the case of stripped-down distributors, which have no financial exposure and risk in respect of goods so distributed by them.

The ITAT held that on perusal of the FAR profile of the taxpayer, it is evident that the taxpayer is a routine manufacturer performing all the entrepreneurial functions and assuming significant risks.

The ITAT upheld the use of the MAM and the PLI, which was adopted by the taxpayer and directed the Transfer Pricing adjustment to be deleted.

Our Comments

The above ruling further enunciates the importance of a robust and correct functional and risk analysis with respect to the inter-company transactions. The ITAT has rightly addressed the issue with respect to the incorrect use of 'Berry Ratio' as a PLI in the case of a routine manufacturer who performs all the entrepreneurial functions.

Indirect Tax

Whether SEZ unit engaged in Zero-rated supply, can claim a refund of unutilized ITC, including ITC distributed by an ISD?

M/S. IPCA Laboratories Ltd. Versus Commissioner [2022 (2) TMI 947]

Facts and Contentions

- The writ applicant is a pharmaceutical company operating as a Special Economic Zone (SEZ) unit at the Kandla SEZ.
- It is engaged in the export of goods (Zero-rated supply) under the Letter of Undertaking (LUT).
- For the FY2017-18, the applicant has accumulated utilized ITC, relating to inward supplies, to the tune of INR 2.166 million, including credit distributed by an ISD of INR 1.867 million.
- Accordingly, the applicant had filed a refund claim application, which was later rejected by the department through a Show Cause Notice (SCN), alleging the following:
  a. Supply of goods and/or services to a SEZ unit is Zero-rated, accordingly, not eligible for refund claim.
  b. The refund application cannot be processed under any category of refund under circular no. 17/17/2017-GST dated 15 November 2017.
  c. SEZ unit is not supposed to pay any tax on the inward supply and thus, there would be no question of ITC.
  d. In the absence of any circular/ notification/relevant guidelines to process GST refund claim applications of units related to SEZ, the office is unable to process refund applications.

Ruling

- The applicant is entitled to a refund because ITC has been received from an ISD and there is no other specific supplier who can claim the refund under the provisions of the CGST Act and Rules on the supplies made to a SEZ unit.
- While delivering this ruling, Hon'ble HC has also relied upon the decision given by the Gujarat HC in the case of M/s. Britannia Industries Limited[6].

Our Comments

The case can be relied on by the SEZ units in the matters wherein the refund on account of ISD has been held/ rejected by the department.

However, a clarity in law is still required on the eligibility of SEZ units to apply for a refund where ITC is availed on the direct supplies made to them and tax component is paid to the suppliers.

Whether the petitioner can file an appeal manually?

Ali Cotton Mill vs. Appellate Joint Commissioner (ST) [2022 (56) GSTL 270 (AP)]

Facts and Contentions

- The petitioner has received assessment orders for the tax periods September 2017 to April 2018.
- Upon which, the petitioner attempted to file the appeal before appellate authority under Andhra Pradesh (AP) GST Act electronically. Due to certain technical glitches, the department did not receive the same.
- The petitioner then filed the said appeal manually.
- Thereafter, the respondent has rejected the appeal on the sole ground that APGST Rules mandatorily require filing an appeal electronically.
- The respondent also states that, since the Chief Commissioner has not given any instructions to accept the manual filing of appeals, the petitioner cannot file the same manually.
- The respondent further argued that as many as three check memos were issued to the petitioner to comply with certain defects in filing an appeal electronically. However, without first rectifying these defects and electronically uploading the appeal, the appellant has resorted to the writ petition, which is untenable.

Ruling

The court has observed that:

- An appeal under Section 107(1) of the APGST Act shall be filed along with Form GST APL-01 and the relevant documents 'either electronically or otherwise as may be notified by the Chief Commissioner'.
- Chief Commissioner specifies one particular mode of filing, the concerned appellant can choose to file the appeal either electronically or otherwise, i.e., manually.
- The interpretation of the respondent is contrary to the purpose of Rule 108(1) of APGST Rules.
- All the check memos were issued only after filing the appeal manually. Thereafter, the appellate authority has rejected the appeal not on the merits but on the sole ground as we mentioned supra.
- Held that, since the rejection order is contrary to Rule 108(1) of APGST Rules, the same is liable to be set aside. Petition allowed.

Our Comments

This case sets a precedent that the manual application can be entertained if there are any technical glitches in the system while filing any application electronically.

Practically, many of the state GST authorities e.g., Maharashtra, have developed/ are in the development of their own system of admitting an appeal. However, sometimes due to technical glitches, an appeal cannot be filed through the electronic mode prescribed.

6. GUJARAT HIGH COURT - M/S. BRITANNIA INDUSTRIES LIMITED VERSUS UNION OF INDIA (2020 (9) TMI 294)

Merger & Acquisition Tax

Chandigarh ITAT: Balance Sheet on valuation date sufficient even if subsequently audited without any difference

Electra Paper and Board Pvt. Ltd [TS-58-ITAT-2022(CHANDI)]

A private limited company (assessee) allotted 31,950 shares of INR 10 each at a premium of INR 10, aggregating to INR 20 per share to family members and related group companies on 31 March 2016. The assessee had determined the Fair Market value (FMV) of shares by taking an average of NAVs on 31 March 2015 and 31 March 2016.

However, as the financials as of 31 March 2016 were not audited, the AO considered FMV of INR 17.32 based on the last audited Balance Sheet as of 31 March 2015 and made the addition for premium in excess of the FMV so computed under the provisions of Section 56(2)(viib) of the Act. The CIT(A) upheld the AO's order.

The ITAT, while deciding the matter in favor of the assessee, made the following observations:

- Referring to the definition of "Balance Sheet" for the purpose of valuation of shares on issuance, two mandatory requirements of the valuation rules are:
  i. Balance sheet should be drawn on date of valuation; and
  ii. The said Balance Sheet should be duly audited by the Auditor and where the Balance Sheet is not drawn on date of valuation, the Balance Sheet drawn on a date immediately preceding the date of valuation approved and adopted in AGM should be considered.
- It is noted that even though the Balance Sheet was unaudited after the audit, apparently, there was no material change in the Balance Sheet. This provided to abide by the definition of 'Balance Sheet' in spirit and purpose.
- Thus ITAT ruled in favor of the assessee and deleted the addition made by AO under Section 56(2)(viib) on the basis that sufficient compliance with the valuation rule is made.

Our Comments

This is a welcome decision that has proceeded basis the spirit and purpose of the requirement of the provision and not by its technical reading. This would be relevant for the other valuation provisions as well where there is a requirement for audited financials. For instance, as per the provisions of Section 56(2)(x) r.w. Rule 11UA, there is a requirement of working out fair market valuation basis the audited financials as on the valuation date. This exercise needs to be carried out even for the underlying equity investments in the entity. In such instances, auditing the financials as on a particular date creates practical challenges. Such spirit-driven interpretations would certainly aid in addressing the practical challenges faced.

Regulatory Updates

Securities and Exchange Board of India (SEBI)

SEBI (Listing Obligations and Disclosure Requirements) (Amendment) Regulations, 2022

SEBI vide its notification dated 24 January 2022, introduced SEBI (Listing Obligations and Disclosure Requirements (LODR)) (Amendment) Regulations, 2022, which brings the below important amendments in the SEBI (LODR) Regulations 2015:

1. **Amendment to Regulation 17(1)(C)** pursuant to which all listed Companies are now required to take the approval of shareholders for appointment of a person as a manager of the company at the next general meeting or within a time period of three months from the date of appointment, whichever is earlier.

   Furthermore, the appointment or a re-appointment of a person, including as a managing director or a whole-time director or a manager, who was earlier rejected by the shareholders at a general meeting, shall be done only with the **prior approval** of the shareholders and the explanatory statement annexed to the notice shall contain a detailed explanation and justification by the Nomination and Remuneration Committee and the Board of directors for recommending such a person for appointment or re-appointment.

2. **Amendment to Regulation 32,** which now requires the listed entity who had appointed a monitoring agency to monitor the utilization of proceeds of a public or rights issue, to place the monitoring report of such agency before the audit committee on a quarterly basis which was earlier required to be placed on an annual basis.

3. **Amendment to Regulation 40** now mandates listed companies to effect transmission or transposition of securities held in physical form only in dematerialized form.

Our Comments

As per the Companies Act, 2013, the Board cannot continue the appointment of an additional director who fails to get elected as a director at a general meeting, however, this does not explicitly prohibit the Board from re-appointing such person as its MD or WTD or Manager. SEBI has tried to fix the loophole with respect to the appointments by bringing this new amendment. Also, SEBI has now standardized the requirement for effecting the transfer as well as transmission or transposition of securities in dematerialized form only. This shall help SEBI reduce the securities held in physical mode and encourage the practice of corporate governance in the corporates.

Separation of role of Chairperson and MD/CEO

In a meeting held on 15 February 2022, SEBI has inter-alia decided to make the requirement of separation of the role of Chairperson and MD/CEO of listed companies optional. Prior to this amendment, this requirement was supposed to become applicable from 1 April 2022 to top 500 Companies. However, citing the unsatisfactory level of compliance achieved so far and also representations from industry bodies and corporates expressing various compelling reasons, difficulties and challenges for not being able to comply with this regulatory mandate, SEBI has now decided to make this requirement applicable to the listed entities on a "voluntary basis."

Our Comments

The need to separate MD and CEO roles is not a compulsion in western economies. Also, India's existing corporate governance framework is very strong and day by day, enforcement is also becoming stronger. Hence, the separation of MD and Chairman positions was not a very big corporate governance issue. Making it voluntary reflects that government is adaptive to changes suggested by Industry.

Ministry of Corporate Affairs (MCA)

The Ministry of Corporate Affairs (MCA) vide a series of notifications dated 11 February 2022, has notified the following:

- Section 1 to 29 of the Limited Liability Partnership (Amendment) Act, 2021 (Amendment Act) amending the Limited Liability Partnership Act, 2008 (LLP Act)
- Limited Liability Partnership (Amendment) Rules, 2022
- Delegation of powers vested in Central Government under Section 17 to Regional Director
- Appointment of Registrar of Companies (RoC) as the Adjudicating Officers for the purpose of the LLP Act
- Sections 90, 164, 165, 167, 206(5), 207(3), 252 and 439 of the Companies Act, 2013 have been made applicable to the LLPs

All of the above notifications shall come into effect from 1 April 2022 and the provisions of the Companies Act 2013 shall become applicable w.e.f the date of notification.

Key highlights of the notifications brought in by MCA are discussed below:

Areas	Particulars
Small LLP/ Start-Up LLP	• New concept of small LLP having contribution not exceeding INR 2.5 million and turnover not exceeding INR 4 million (or such higher amounts as may be prescribed) has been introduced. • Recognition is also given to Start-Up LLPs. • Pursuant to the said initiative, Small LLPs and start-up LLPs will have an advantage over other LLPs in terms of fewer compliances and reduced penalties in case of default and consequent reduction in cost to run the LLPs.
Change of name	• Any LLP registered with a name which is identical or nearly resembles to that of any other LLP or a company registered trademark of any other person under the Trade Marks Act, 1999 will have to change its name upon direction being issued by the Central Government within 3 months as per the procedure provided under the Amendment Rules. • In case the LLP fails to change its name in accordance with the prescribed rules as mentioned above, the letters **'ORDNC'** (Order of Regional Director not complied) along with other few details shall be added to its name.
Reduction in Additional RoC Fees	• Previously all overdue LLP RoC Filings had to be completed within a period of 300 days with an additional fee of INR 100 per day, post 300 days with fee and additional fee as prescribed. Now, the criteria for 300 days is totally removed. As per the new Rules, the new additional fee has been extended upto 25 times of the original fees for small LLPs and upto 50 times for other than small LLPs. As the base original RoC fees for LLP filings is very minimal, this will bring a sigh of relief to small LLP's who were being subjected to hefty penalties under the old rules.

Areas	Particulars
Compounding of offenses and adjudication of penalties	• Regional Directors have been delegated powers to compound any offense which is punishable by a fine in case of commission of any offense under the LLP Act. • The Central Government has appointed Adjudication Officers with powers to adjudicate penalties in case of non-compliance with the provisions of the LLP Act, similar to the process prescribed for the companies under the Companies Act 2013. • The Amendment Act has decriminalized the provisions of the LLP Act by reducing penal provisions from 24 to 22 while decriminalizing 12 other provisions.
Applicability of Sections of Companies Act, 2013 to LLPs	• Sections 90, 164, 165, 167, 206(5), 207(3), 252, and 439 of the Companies Act, 2013 have been made applicable to LLPs, which have brought LLPs under the ambit of compliances with provisions like reporting significant beneficial owner, disqualification of Directors, a limit on a number of designated partnerships allowed to be taken by any designated partner, a vacation of office of designated partners, inspection and inquiries on LLPs just like companies. Furthermore, it has been provided that an LLP, its partners or creditors, or any person aggrieved by the striking off of the LLP may make an appeal to the Tribunal for the revival of the LLP within the prescribed period.

Our Comments

This plethora of amendments brought in by the government to the LLP regime in India has been appreciated by the Corporates as one more step towards bringing ease of doing business. Although certain compliances have increased for the LLPs, introducing the concept of small LLPs and start-up LLPs and reducing the penalties has made LLP a more viable option for the new business in India. The new compliances shall bring in more transparency and visibility to the LLP structure.

Tax Talk

Indian Developments

Indirect Tax

Focus on scrutiny and audit of GST returns

[Excerpts from The Economic Times]

Vivek Johri, the Chairman of CBIC, indicated in a recent interview that one of the Board's key priorities in the next year would be to undertake scrutiny and audit of GST returns and make compliance easier for SEZs.

Extension of compensation cess

[Excerpts from Moneycontrol]

In a press conference, Nirmala Sitharaman stated that the GST Council has decided to continue the Compensation Cess till March 2026. This extension will be used to pay interest on the borrowed money.

ATF likely to be included under GST

[Excerpts from Moneycontrol]

The government is likely to propose a formula to bring aviation turbine fuel (ATF) under the ambit of GST. The government is expected to propose 18% GST in addition to the VAT or excise duty, with the formula being implemented only if it is agreeable to all the states. The proposal is expected to be tabled before the states and union territories at the next GST Council meeting.

Technical changes on GST Portal

[Excerpts from the news and updates on gst.gov.in]

Recently, the GST authorities have facilitated a few technical changes on the GST portal for the benefit of the registered taxpayers. The two key changes are as follows:

- From 1 January 2022 onwards, a taxpayer will not be allowed to file GSTR-1 of a month until the GSTR-3B of the preceding month has been filed.
- A new functionality has been introduced on the GST Portal to assist the taxpayers in the tax self-assessment. The interest applicable, if any, will be computed after the filing of the said GSTR-3B and will be auto-populated in the GSTR-3B of the next tax period.

Changes in Customs Duty rates

Pursuant to Union Budget 2022, multiple notifications have been issued to:

- Prune the list of customs duty exemptions [02/2022-Customs dated 1 February 2022] [05/2022-Customs dated 1 February 2022] while prescribing the validity/end dates for a few conditional exemptions [09/2022-Customs dated 1 February 2022]
- Exempt certain goods like pine nuts, crude granite, etc. from Social Welfare Surcharge (SWS) while imposing the same on certain textile items [03/2022-Customs dated 1 February 2022]
- Prescribe additional duty of customs on imports of transformer oil commonly known as 'transformer oil base stock' or 'transformer oil feedstock' [04/2022-Customs dated 1 February 2022]
- Prescribing effective rate on certain textile items up to 30 April 2022 [07/2022-Customs dated 1 February 2022]
- Exempt Agriculture Infrastructure and Development Cess (AIDC)/ Health cess/RIC on goods imported under specified notifications [08/2022-Customs dated 1 February 2022]

- Implement a graded BCD structure for wearable devices and their parts, sub-parts and sub-assembly [11/2022-Customs dated 1 February 2022], hearable devices and their parts, sub-parts and sub-assembly [12/2022-Customs dated 1 February 2022], smart meters and their parts, sub-parts and sub-assembly [13/2022-Customs dated 1 February 2022]
- Amend various notifications giving exemption to electronic items and medical devices [15/2022-Customs dated 1 February 2022]
- Amend Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017 to simplify and automate the procedures [07/2022-Customs (N.T.) dated 1 February 2022]
- Rescind the levy of anti-dumping duty on import of "Straight Length Bars and Rods of alloy-steel," "High Speed Steel of Non-Cobalt Grade", and "Flat rolled product of steel, plated or coated with alloy of Aluminum or Zinc" originating in or exported to specified countries [05/2022, 06/2022 & 7/2022-Customs (ADD) all dated 1 February, 2022]
- Rescind countervailing duty imposed on imports of "Certain Hot Rolled and Cold Rolled Stainless Steel Flat Products" originating in or exported from China PR [01/2022-Customs (CVD) dated 1 February 2022].

Tax Talk

Global Developments

Direct Tax

Vietnam joins Multilateral convention to strengthen its tax treaties

[Excerpts from the VCCI news, 11 February 2022]

Vietnam has officially become the 99th member of the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting, also known as the Multilateral Instrument (MLI). The Vietnamese Ambassador to France, Dinh Toan Thang, authorized by Foreign Minister Bui Thanh Son, signed the Convention in Paris, France, on 9 February. The MLI, covering over 1800 bilateral tax treaties, offers concrete solutions for governments to close the gaps in existing international tax rules by transposing results from the OECD G20 Base Erosion and Profit Shifting Project (G20 BEPS Project) into bilateral tax treaties worldwide.

OECD invites public input on the draft rules for nexus and revenue sourcing under Pillar One Amount A

[Excerpts from Global Compliance News 10 February 2022]

On 4 February 2022, the OECD published the draft model rules for two of the building blocks of Amount A under Pillar One, namely Nexus and Revenue Sourcing. This is the first extensive publication on Pillar One since the political agreement on the Two-Pillar Solution in the form of the joint statement from the Inclusive Framework dated 8 October 2021. The draft model rules enable an MNE group in the scope of Amount A (i.e., global turnover above EUR 20 billion (or local equivalent) and profitability above 10%, subject to some exceptions; hereafter referred to as a "Covered Group") to determine its so-called market jurisdictions to which part of the Covered Group's residual profits will be allocated. It should be noted that the draft model rules are still a work-in-progress and subject to changes. The OECD welcomes comments from the public until 18 February 2022.

Transfer Pricing

Danish Tax Agency issues clarification on transfer pricing documentation requirements – Local File to be now submitted to the Tax Authorities

Denmark has recently introduced transfer pricing documentation rules wherein it is a requirement to submit the transfer pricing documentation on an annual basis to the Tax Authorities in Denmark.

The table below encapsulates the old as well as the new documentation requirements, following changes which were amended in the new guidance published:

Old Requirements	New Requirements
• For Financial Years starting before 1 January 2021, the companies which are subject to the transfer pricing documentation requirements are obliged to prepare transfer pricing documentation on an annual basis. • Upon request by the Danish Tax authorities the same needs to be submitted by the companies within 60 days.	• For Financial Years starting on or after 1 January 2021, the transfer pricing documentation needs to be submitted annually. The same needs to be submitted within 60 days after filing the annual corporate Income-tax return. • Under the new rule, the company is required to submit both the Local file pertaining to that company and the Group-wide Master File on an annual basis. • If multinational Groups are not able to finalize the Master File in time to meet the deadline, then the Group can request an extension for the Master File submission or use the Master File prepared for the previous financial year as a temporary document if certain requirements are met.

Penalty for non-compliance:

- The penalty for non-compliance is DKK 250,000 (approximately EUR 33,500) per year for each legal entity.
- Subsequently, if sufficient transfer pricing documentation is prepared and submitted, the penalty will likely to be deduced to DKK 125,000. Additionally, on an adjustment made to the income by the Danish Tax Authorities, a penalty of 10% may be imposed.

Indirect Tax

Duty-free access to UAE for Indian goods

[Excerpts from The Indian Express]

India and the UAE have signed a Comprehensive Economic Partnership Agreement (CEPA) with the aim of increasing bilateral merchandise trade to USD 100 billion by 2030. Over the next 5-10 years, zero-tariff access for Indian products to the UAE will increase to 97% of UAE tariff lines, equating to 99 percent of India's exports by value.

USA opposes Canada's digital services tax

[Excerpts from various sources]

The USA has urged Canada to abandon its plan to impose a 3% digital service tax on large businesses, warning that the United States Trade Representative (USTR) would examine all options under bilateral trade agreements and domestic law to retaliate if such a levy is adopted. If this proposal is enacted, it would only come into effect in 2024.

Elimination of Kansas food tax to be deferred till 2024

[Excerpts from Fox4kc.com]

Senate Tax Committee is considering a measure that would repeal the state's 6.5% food sales tax by 2024.

Cut in South Dakota's Sales tax

[Excerpts from Keloland.com]

Basis a proposal moving through the Legislature, South Dakota's sales tax is planned to be cut from 4.5% to 4% in the coming two years. It is anticipated that the legislation would call for the tax to be cut to 4.25% on 1 July 2022 and then to 4% on 1 July 2023.

Compliance Calendar

Direct Tax
Indirect Tax

2 March 2022

Due date for furnishing of challan-cum-statement in respect of tax deducted under Section 194-IA, 194-IB, 194M in the month of January 2022

7 March 2022

Payment Tax Deducted/Collected in the month of February 2022

10 March 2022

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

11 March 2022

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

13 March 2022

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

15 March 2022

- Payment of final installment of advance tax for FY2021-22 (100% of the estimated tax liability to be deposited on a cumulative basis)
- Return of income for the assessment year 2020-21 for below taxpayer
  - corporate-taxpayer; or
  - non-corporate taxpayer (whose books of account are required to be audited); or
  - partner of a firm whose accounts are required to be audited; or
  - a taxpayer who is required to furnish a report under Section 92E
- Return of income for the assessment year 2021-22 in the case of a taxpayer required to submit a report under Section 92E

17 March 2022

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

20 March 2022

- GSTR-5 for the month of February 2022 to be filed by Non-Resident Foreign Taxpayer
- GSTR-5A for the month of February 2022 to be filed by Non-Resident service provider of Online Database Access and Retrieval (OIDAR) services
- GSTR-3B for the month of February 2022 to be filed by all registered taxpayers not under QRMP scheme

25 March 2022

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

30 March 2022

- Due date for furnishing of challan-cum-statement in respect of tax deducted under Section 194-IA, 194- IB, 194M in the month of February 2022
- Due date for linking of Aadhaar number with PAN

31 March 2022

- Filing of belated/revised income-tax return pertaining to AY 2021-22
- Filing of Country-By-Country Report in Form No. 3CEAD for the previous year 2020-21 by a parent entity and a constituent entity, resident in India as applicable
- Filing of application in Form 10A/10AB for registration/provisional registration/ intimation/approval/provisional approval/conversion of provisional registration into regular registration or renewal of registration/approval after five years of registration/approval of Trust, institutions or Research Associations, etc.

10 April 2022

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

7 April 2022

Payment of TCS collected in March 2022

11 April 2022

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

13 April 2022

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

Events and Webinars

11 March 2022

5th Annual Direct Tax Summit and Awards 2022

Organizer - Achromic Point

Maulik Doshi

https://youtu.be/hvkzliAW0fk

9 March 2022

Recent tax changes/rulings which impact Pharma industry

Organizer - OPPI

Maulik Doshi

4 March 2022

5th Annual GST Summit and Awards- Conference & Awards

Organizer - Achromic Point

Saket Patawari

https://bit.ly/3MVxFHV

2 March 2022

UAE Corporate Income Tax

Organizer - Taxsutra

Maulik Doshi

https://bit.ly/3idY7yb

1 March 2022

Deciphering the GSTR-2B issues

Organizer - Nexdigm

Sanjay Chhabria

15 February 2022

Economic Substance: Common thread between (present) ESR and (proposed) Transfer Pricing regime

Organizer - French Business Council

Maulik Doshi

4 February 2022

Insights on Union Budget 2022-23

Organizer - IEEMA

Sanjay Chhabria

https://youtu.be/_ytb8Jq4nBs

Unbundling India Budget 2022

Organizer - DBS

Maulik Doshi and Saket Patawari

https://youtu.be/reklEJ5MR0E

3 February 2022

Post Budget Session on Service Exports

Organizer - SEPC

Saket Patawari

https://youtu.be/05UJjQ9_2ZA

2 February 2022

Decoding Union Budget 2022-23

Organizer - FICCI

Maulik Doshi and Saket Patawari

https://youtu.be/wReuc_exy28

Union Budget 2022

Organizer - IGCC

Sanjay Chhabria

https://youtu.be/O6MoWmeSFhk

Analyzing Budget 2022

Organizer - ICBC

Maulik Doshi and Saket Patawari

https://youtu.be/DEzH-w3zkkg

Upcoming Events and Webinars

29 March 2022

Recent amendments in Tax affecting Pharma and FMCG companies

Organizer - Taxsutra

Maulik Doshi

https://bit.ly/3ui2LRg

30 March 2022

UAE VAT - Recent Updates

Organizer - Bombay Chamber of Commerce & Industries

Sanjay Chhabria

https://bit.ly/3qcnVPE

Insights

Key Highlights of GST Notification and Clarification Circulars in February - 2022

11 March 2022

https://bit.ly/3Jryzda

Supreme Court Rejects the Special Leave Petition by Apex Laboratories

25 February 2022

https://bit.ly/36q2VxQ

Key Highlights of GST Notification and Clarification Circulars in January - 2022

24 February 2022

https://bit.ly/3iefa39

MCA introduces new Form CSR-2 for more transparent CSR reporting, mining and analysis of CSR data

16 February 2022

https://bit.ly/3N0WYZd

Key Highlights of GST Notification and Clarification Circulars in December - 2021

15 February 2022

https://bit.ly/3CNbVJw

About Nexdigm

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

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

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

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

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

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

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