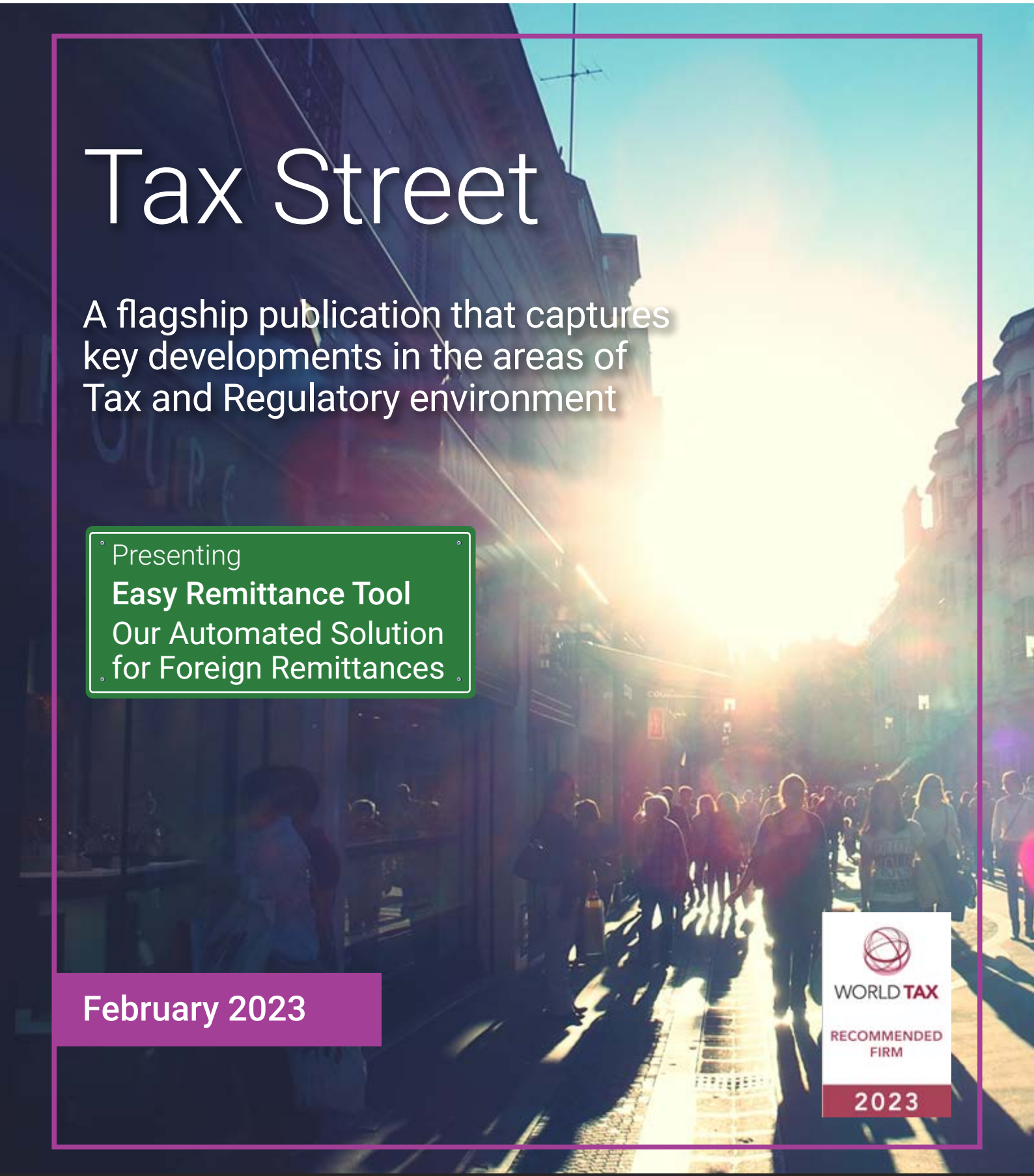


Tax Street

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

Presenting
Easy Remittance Tool
Our Automated Solution for Foreign Remittances

February 2023

WORLD TAX
RECOMMENDED FIRM
2023

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 2023.

- The **'Focus Point'** Explores whether the beneficial concessional rate of 5% would be available after 1 July 2023 to interest income earned by non-residents and FIIs/ FPIs.
- 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

Concessional withholding of 5% under Section 194LC / LD for FPIs post 1 July 2023

The taxability of interest income earned by non-residents (including interest on securities) is governed by Section 115A of the Income-tax Act, 1961 (the Act). Furthermore, Section 115AD of the Act specifically deals with the taxability of income earned on securities by Foreign Portfolio Investors (FPIs) or Foreign Institutional Investor (FIIs) or Qualified Foreign Investor (QFIs).

In order to incentivize foreign borrowing, create jobs and stimulate the economy, a concessional rate of tax was introduced in Section 115A and Section 115AD. Corresponding changes for withholding taxes were brought in under Section 194LC and Section 194LD of the Act.

Section 194LC of the Act provides for a concessional rate of Tax Deductible at Source (TDS) at the rate of 5% on certain interest income payable to non-residents, including inter-alia interest on rupee-denominated bonds. Furthermore, the section specifically provides that the concessional rate of TDS shall apply only on interest arising out of **moneys borrowed before 1 July 2023.**

Similarly, Section 194LD of the Act provides for a concessional rate of TDS at 5% when FIIs/FPIs earn interest income on rupee-denominated bonds of the Indian company and government securities. Furthermore, this section also specifically states that the concessional rate of 5% would be applicable only for the **interest payable to the FIIs/FPIs before 1 July 2023.**

For ease of understanding, both Sections are summarized hereunder:

Particulars	Section 194LC	Section 194LD
Payer	Indian Company, Business Trust	Any person
Payee	Non-resident not being a company or Foreign Company	FIIs/FPIs or QFIs
Nature of income	• Interest income on moneys in foreign currency from a source outside India under a loan agreement. • Interest on moneys borrowed in foreign currency from a source outside India by way of issue of any long-term bonds, including long-term infrastructure bonds. • Interest income in respect of moneys borrowed from a source outside India by way of the issue of rupee-denominated bonds. • Interest on bonds listed on a recognized stock exchange in IFSC.	• Interest income on the investment made in rupee-denominated bonds. • Interest income on the investment made in government securities. • Interest income on the investment made in municipal debt securities.
Concessional Withholding Tax Rate	5%	5%
Cut off for concessional rate of tax	The beneficial rate of 5% withholding is available on interest income arising out of **'moneys borrowed' before 1 July 2023.**	The beneficial rate of 5% withholding is available on **'interest payable' to FIIs/ FPIs on or before 1 July 2023.**

Impact on withholding taxes on interest post 1 July 2023

The Finance Bill 2023 has not provided any extension for the applicability of the concessional rate of withholding under Section 194LC and Section 194LD of the Act. Thus, it appears that going forward, in case of FIIs/FPIs, interest payable to them after 1 July 2023 shall not be eligible for the concessional rate of withholding taxes at 5% even if the moneys were borrowed by an Indian company from such FII/FPI before 1 July 2023.

On the other hand, in case of other non-residents (not being FIIs/FPIs), the interest payable after 1 July 2023 with respect to moneys borrowed before 1 July 2023 shall be continued to be taxable at the concessional rate 5%.

Based on a plain reading of the law, interest on securities earned by FIIs/FPIs is specifically governed by Section 115AD of the Act. As per the said section, the tax rate applicable on interest income earned on rupee-denominated bonds and government securities post 1 July 2023 would be 20%. The corresponding withholding taxes would be deductible under Section 196D of the Act.

Considering the intention of the legislature while introducing the concessional rates of 5% withholding was to incentivize foreign borrowing to boost the economy, the Sections have been drafted in a manner that contradicts this intention by way of biased taxability for non-residents but carving out FPIs/FIIs.

One may argue that as the benefit of 5% withholding under Section 194LD is not applicable, the FIIs/FPIs may look for shelter under Section 194LC for the 5% withholding in respect of 'moneys borrowed' before 1 July 2023 as they are non-residents should also fall within the purview of Section 194LC. This argument may not be sustainable as the Act provides for a separate specific section for taxability of interest on securities earned by FIIs/FPIs (i.e., Section 115AD). It is an established principle that while analyzing the tax laws, the specific sections will prevail over the general taxability.

It is noteworthy that while Section 115AD specifically excludes interest income under Section 194LD for the rate of 20%, once the income stops being a part of Section 194LD (i.e., if payable post 1 July 2023), it would be covered under Section 115AD for which a separate rate of withholding tax at 20% is provided under Section 196D.

For argument's sake, even if one assumes that since the intention of the statute was the same for providing a beneficial rate of tax to FPIs/FIIs and other non-residents, the benefit under Section 194LC should be extended FPIs/FIIs as well, the taxability in India of such income would still continue to be at 20% under Section 115AD. Thus, even where the withholding taxes are restricted to 5% by relying on Section 194LC for 'moneys borrowed' before 1 July 2023, the taxability for FIIs / FPIs would still be at 20% in light of Section 115AD of the Act.

Going forward, it would be interesting to see whether there would be any recommendations being made by FPIs / FIIs on this disparity in the manner in which the cut-off for concessional interest taxation has been drafted and whether the tax department comes with any clarification regarding the same.

Note: The above analysis is strictly restricted to the provisions of the Act, and the taxability under Double Tax Avoidance Agreements has not been discussed. The FII/FPI can still be able to take benefit of the Double Tax Avoidance Agreement (DTAA) if the tax rates are more beneficial than the provision of the Act for such interest.

Webinars and Events

6th Annual Direct Tax Summit and Awards 2023
23 March 2023
Maulik Doshi, Abhay Saboo

UAE Corporate Tax - Need for re-aligning existing policies
21 March 2023
Lokesh Gupta

6th Annual GST Summit and Awards- Conference and Awards
15 March 2023
Haroon Qureshi, Pushpendra Dixit, Sanjay Chhabria

From the Judiciary

Direct Tax

Whether MFN clause can be invoked for IT and SAP support services not to qualify as FTS in light of make-available provisions?

Netafim Ltd
ITA No.1427/Del/2015 & 975/Del/2015 (Del)

Facts

The taxpayer is an entity incorporated in Israel. The taxpayer had provided IT and SAP support services to various group entities, including its subsidiary in India.

In the course of assessment proceedings, it was contended by the taxpayer that these services were not in the nature of 'Fees for Technical Services' (FTS) as they did not 'make available' technical knowledge to the service recipient. While making this claim, the taxpayer relied on the Most Favored Nation (MFN) clause of the India-Israel tax treaty to invoke the restricted scope of FTS from the India - Portugal and India – Canada tax treaties. The tax officer rejected the taxpayer's contention and argued that MFN cannot be invoked in the absence of a separate notification by both countries. On further appeal, the DRP held that MFN can be invoked. However, the services are, in fact, 'making-available' technical knowledge and thus are in the nature of FTS. Aggrieved by the DRP's decision, the taxpayer filed an appeal with the Tribunal.

Held

The Tribunal allowed the taxpayer to take benefit of the MFN clause and apply the restrictive provision of FTS as contained in India-Portugal and India-Canada tax treaty by relying on jurisdictional High Court ruling in the case of Steria (India) and observed that tax treaty provisions are subject to the Protocol without a separate notification. The Tribunal observed that the taxpayer procured SAP licenses for group entities and the expense incurred on such licenses is recharged on a cost-to-cost basis. Furthermore, the Tribunal held that the taxpayer had not made available technical knowledge, experience, or skill know-how that could have enabled the recipient of such services to apply technology independently and without any assistance of the taxpayer.

Our Comments

The Delhi Tribunal held that the benefit of restrictive scope of the FTS definition in a tax treaty can be availed through the MFN clause as per Protocol without a separate notification.

Furthermore, it held that IT and SAP support services cannot be qualified as FTS when there is a 'make available' clause.

Can Revenue go beyond a TRC to challenge tax treaty benefits, residency and beneficial ownership?

Blackstone Capital Partners (Singapore) VI FDI Three Pte. Ltd
TS-41-HC-2023(DEL)

Facts

The taxpayer earned capital gains from the sale of shares in an Indian company that was acquired in April 2013. The taxpayer claimed exemption from capital gains under the India-Singapore tax treaty by relying on its Tax Residency Certificate (TRC) issued by the Singapore tax authority.

The taxpayer's return was processed without any discrepancies. However, a reassessment was initiated on the grounds that the capital gains should be taxable in India. The Revenue contended that the taxpayer was not the beneficial owner of the shares and just by furnishing TRC, it does not become eligible to claim any relief under the tax treaty. Aggrieved by the reassessment proceedings, the taxpayer filed a writ petition with the Delhi High Court.

Held

High Court held that TRC is statutorily the only evidence required to be eligible for benefit under tax treaties and questioning this is wholly contrary to the Indian government's consistent policy and repeated assurances to

Foreign Investors. The High Court relied on Punjab and Haryana High Court's decision in the case of Serco BPO, wherein it was held that TRC is sufficient to claim benefit under the tax treaty and the Revenue did not challenge this decision before the Supreme Court.

Furthermore, the High Court was of the opinion that the Inland Revenue Authority of Singapore has granted the taxpayer the TRC after a detailed analysis of the documents, and the Indian authorities cannot disregard the same as doing the same would be contrary to international law.

The Court also relied on Circular No. 682, dated 30 March 1994, and the Circular No. 789 dated 13 April 2000, issued by the Central Board of Direct Taxes (CBDT) and also the press release dated 1 March 2013, wherein it has been clarified that TRC is a valid and sufficient document for establishing residency and beneficial ownership.

With respect to Revenue's contention on beneficial ownership, the High Court held that capital gain was to be taxed on the basis of legal ownership and not on the basis of beneficial ownership. The Court further noted that the concept of beneficial ownership, at the relevant time under the India-Singapore tax treaty, was attracted for taxation purposes only qua three transactions, i.e., dividend, interest and Royalty and not for capital gains.

In light of the above, the High Court permitted the taxpayer to claim an exemption from capital gains under the India-Singapore tax treaty on the basis of its TRC.

Our Comments

The Delhi High Court held that Revenue cannot go beyond a TRC to deny tax treaty benefits to a non-resident.

Furthermore, it was held that the concept of beneficial ownership is relevant for three transactions under the tax treaty viz. interest, dividend and Royalty, and not for capital gains.

Transfer Pricing

Advances to Associated Enterprises are considered as Loans and not Quasi Equity and charging of interest to the specific period

M/s Adani Power Limited
ITA Nos. 3563/Ahd/2015 & 2216/Ahd/2016
TS-82-ITAT-2023(Ahd)-TP

Facts

During AYs 2010-11 and 2011-12, the taxpayer, Adani Power Ltd, advanced funds to its Associate Enterprises (AE)s:

- M/s Adani Power Pte Ltd incorporated with the object of investing in coal mines and carrying on the business of an investment holding company, and
- M/s Adani Shipping Pte Ltd incorporated with the object of carrying on the business of chartering and owning ships.

Taxpayers contested that funds advanced are quasi-equity and not debt. However, the Transfer Pricing Officer (TPO) noted that advances were in the nature of debt as per financial statements. Thus, TPO held that the taxpayer should have charged interest at 5.38%, as Prime Lending Rate is prevalent in Singapore.

The Commissioner of Income Tax (Appeals) [CIT (A)] revised benchmarking of interest at 2.48% p.a. for Adani Shipping Pte Ltd and 2.62% for Adani Power Pte Ltd on the basis that the interest rate should be benchmarked to the currency concerned in which the loan has to be repaid (USD in this case). Along with that, CIT(A) also restricted the period of interest to the specific period for which the loan was advanced to the AEs, and not for the entire year.

Held by ITAT

The Ahmedabad Income Tax appellate tribunal (ITAT) concluded that the amount advanced to the AEs is to be treated as a loan. Nothing on record supported that the advances were quasi-capital.

Furthermore, ITAT relied on the judgment of Ahmedabad ITAT in the case of M/s Kalpataru Power Transmission Ltd vs CIT (A)-Gandhinagar[1] and M/s Soma Textile & Industries Ltd vs CIT(A)[2]. for considering advances to AEs as loans.

Ahmedabad ITAT also upheld that the CIT (A) correctly observed that:

- Arm's Length Pricing (ALP) of the interest rate for the loan advanced to a foreign subsidiary should be computed based on the market-determined rate applicable to the currency in which the loan has to be repaid, i.e., USD.
  Reliance was placed by Ahmedabad ITAT judgment on Hon'ble Delhi HC ruling in CIT vs M/s Cotton Naturals (I) (P.) Ltd[3] and Delhi ITAT ruling in M/s Assotech Moonshine Urban Developers (P.) Ltd[4].
- Ahmedabad ITAT also concluded that the interest is to be computed only for the period for which the loans were advanced to AEs and not for the entire year.

Our Comments

Interest-free loans to related parties are a very big area of concern from a Transfer Pricing standpoint. It has found a very low level of acceptability from the tax authorities. In the given case, the second appellate authority (i.e., ITAT) has completely rejected the argument of the taxpayer to justify an interest-free loan.

Whether duty drawback to be considered as part of the Operating income or Non-Operating Income?

M/s Kirloskar Toyota Textile Machinery Private Limited
IT (TP) A No. 271/Bang/2021
TS-112-ITAT-2023(Bang)-TP

Facts

The taxpayer is a company engaged in the business of manufacturing textile machinery. TPO recomputed taxpayer's

1. Ahmedabad ITAT- ITA No. 2471 & 2853/Ahd/2017
2. Ahmedabad ITAT- ITA No. 262(Ahd) of 2012
3. Delhi High Court- ITA No. 233/2014
4. Delhi ITAT- ITA No. 1749/DEL/2017

segmental financials by treating duty drawback as non-operating in nature. The taxpayer raised objections before the DRP and DRP confirmed the TPO's decision by relying on the Hon'ble Supreme Court case of Liberty India vs CIT[5].

An appeal was filed before the Bangalore Tribunal stating that Duty drawback is a benefit arising from business operations and, therefore, should be considered part of operating income.

Held by the ITAT

Bangalore ITAT held the following:

- Duty drawback is provided to the manufacturer and exporter for the purpose of compensating in the duty component, which is already included in the cost of raw material and the duty drawback received against the duty paid is part of the operating profit of the taxpayer. Reliance was placed on the judgment of the Tribunal's coordinate Bench in the Sami Labs case. Ltd (supra) vs. CIT [6] and judgment of Hon'ble Bombay High Court rendered in the case of CIT Vs. Welspun Zucchi Textiles Ltd. (supra)[7].
- Bangalore ITAT also noted that it should be ensured that such an export incentive is in respect of the present year's and previous years' turnover.

Our Comments

The judgment would provide clarity for the taxpayers at large on the issue where the tax authorities have often been taking the view that export incentives are to be treated as non-operating.

Literal interpretation of the definition of Associate Enterprises u/s 92A (2) of Income-tax Act, 1961

M/s Kirloskar Toyota Textile Machinery Private Limited
IT (TP) A No. 271/Bang/2021
TS-112-ITAT-2023(Bang)-TP

Facts

The taxpayer is a company established in the British Virgin Islands (BVI) and is primarily engaged in investment activities. It is a wholly-owned subsidiary of M/s. United Spirits Ltd. (USL). The taxpayer executed a Share Purchase Agreement (SPA) with a Dutch company (Relay BV) (whose ultimate holding company was Diageo Plc) to sell shares of USL. The taxpayer benchmarked the transaction at INR 1440 per share, basis the open offer price at which Relay purchased shares of USL from the open market. However, TPO arrived at ALP of INR 2039.25 per share, stating that ALP determination must be based on the valuation of USL as an entity and using the Discounted Cash Flow (DCF) method. The taxpayer contested before the Bangalore ITAT that the transaction was not an international transaction as Relay was not its AE on the date of SPA, and Relay acquired 26% stake in USL only after acquiring shares of USL from the stock market.

Held by the ITAT

Bangalore ITAT rejects the taxpayer's contention and concludes:

- Relay BV held a controlling stake in USL (more than 26%) on 28 November 2013, during the relevant previous year. ITAT adopts a literal interpretation of the provisions of Section 92A(2), which states that "two enterprises shall be deemed to be an AEs if, at any time during the previous year, one enterprise holds, directly or indirectly, shares carrying not less than 26% of the voting power in the other enterprise."
- Placing reliance on Hon'ble Supreme Court decision in the case of Vodafone - each share represents a vote in the company's management, which can be utilized to control the company. ITAT concluded that taxpayers and other associates contributed and assisted Relay BV in acquiring controlling interests in USL.
- Reliance was placed on Mumbai ITAT's decision in the case of Lanxess India that the control premium of 30% to 50% is justifiable in case of acquisition of shares and hence upheld TPO ALP computation.

Our Comments

While dealing with the transfer of shares transactions, all provisions are to be interpreted very carefully and reference should be drawn to the Hon'ble Supreme Court judgment in the case of Vodafone to avoid litigations.

5. Civil Appeal No. 5891 of 2009
6. Bangalore ITAT- IT(TP)A No. 186/Bang/2015
7. Bombay High Court- ITA No. 1286 of 2014

Indirect Tax

Whether SEZ unit is allowed to claim a refund of unutilized ITC in accordance with Section 54 of the CGST Act, 2017 r/w Rule 89(4) of the CGST Rules, 2017?

SE Forge Ltd vs. Union of India
TS-67-HC(GUJ)-2023-GST

Note: In a similar case, the Madras High Court had allowed the refund to the petitioner SEZ unit holding that the statutory scheme for refund admits applications to be filed by any entity that believes it is so entitled, including the petitioner SEZ.

Platinum Holdings Pvt. Ltd. vs. Additional Commissioner of GST and Central Excise
TS-527-HC(MAD)-2021-GST

Facts

- The petitioner is an SEZ unit engaged in manufacturing engineering components, tower flanges and bearing rings for the wind energy sector.
- The jurisdictional GST authorities, including the First Appellate Authority, rejected the petitioner's applications for a refund of utilized Input Tax Credit (ITC) for various periods filed under Section 54 of the CGST Act, 2017, read with Rule 89(4) of the CGST Rules, 2017, on the ground that only the suppliers/ vendors could claim a refund of ITC.
- Hence, the petitioner approached the Gujarat High Court, contending that there is no express denial of refund of output tax or ITC to an SEZ under Section 54. According to the petitioner, the averment that since the supply to SEZ units is zero-rated, the units are not eligible for refund was unsustainable.
- On the other hand, Revenue defended its stand by stating that SEZ is not required to pay taxes to the supplier and that if it has done so, it should then recover the same through an appropriate civil case. It would be an additional burden on the administration to verify whether the supplier has claimed the refund or not and whether the SEZ unit has actually paid the taxes to the supplier.

Ruling

- As per the Court, the issue was squarely covered by the decision in Britannia Industries vs. Union of India, wherein the Bench had rejected Revenue's stand that SEZ unit is not entitled to seek an ITC refund.
- It rejected Revenue's attempt to distinguish the aforesaid case basis the stand that the matter therein related to IGST distributed by ISD for services pertaining to SEZ unit as it was not possible for a supplier to file a refund application and that a Special Leave Petitions (SLP) was currently pending before the Supreme Court.
- The High Court also noticed that while claiming the refunds, the petitioner had specified that its suppliers had not claimed any refund, and if any such eventuality was found, it would pay back the amount.
- Accordingly, it quashed the rejection orders and directed the Revenue to grant ITC refund after proper verification and by obtaining a specific undertaking/bond from the petitioner, allowing it to recover the refund with interest if at any point it was found that the supplier had claimed a refund as well.

Our Comments

This decision is yet another instance where the Court has interpreted the legal provisions to find no restriction on the SEZ units to claim refunds of unutilized ITC.

While this decision would further fortify the stand of the SEZ units, a verdict from the Apex Court should finally resolve the litigation on the said subject matter.

Whether pre-paid payment instruments or vouchers themselves or the act of supplying them, are liable to GST?

Premier Sales Promotion Pvt Ltd vs. The Union of India & Ors.
TS-23-HC(KAR)-2023-GST

Note: Tamil Nadu AAAR, in the case of Kalyan Jewellers India Ltd [TS-131-AAAR(TN)-2021-GST], has held that 'Vouchers/Pre-Paid Instruments (PPIs)/ Gift cards' per se are neither 'goods' nor 'services' but are "a means/instrument for payment of consideration."

Facts

- The petitioner trades in pre-paid payment instruments (PPIs) like gift vouchers, cashback vouchers, and e-vouchers for specified face value.
- The petitioner's clients issue such vouchers to their employees as incentives or to other beneficiaries under promotional schemes for use as consideration for the purchase of goods and/or services.
- Both, the Karnataka Advance Ruling Authority (KAAR) as well as Appellate Advance Ruling Authority (KAAAR) affirmed that the supply of vouchers is taxable at 18% as a supply of goods and the time of supply in all three cases would be governed by Section 12(5) of CGST Act, 2017.
- Aggrieved thereby, the petitioner filed a writ petition before the Karnataka High Court.
- The petitioner relied inter alia on RBI's Master Circular to submit that since vouchers or PPIs are 'payment instruments' that do not disclose goods and services at the time of issuance, the 'time of supply' shall be the date of redemption and at best, can only be considered as an 'actionable claim.'

Ruling

- The definition of 'voucher' under Section 2(118) of the CGST Act, 2017 makes it clear that they are

mere instruments accepted as consideration for the supply of goods or services. They have no inherent value of their own.

- As vouchers are considered as instruments, they would fall under the definition of 'money' which is excluded from the ambit of "goods" and "services," and therefore, they are not leviable to tax.
- High Court observed that the vouchers are semi-closed PPIs in which the goods or services to be redeemed are not identified at the time of issuance. These PPIs do not permit cash withdrawals, irrespective of whether banks or NBFCs issue them and they can be issued only with prior approval of RBI.
- In substance, the transaction between the petitioner and its clients is the procurement and delivery of printed forms, which are like currency. The value printed on such form can be transacted only at the time of redemption and not at the time of client delivery.
- Therefore, the issuance of vouchers is similar to pre-deposit and not a supply of goods or services.
- Accordingly, the High Court allowed the writ petition and quashed the orders of KAAR and KAAAR while holding that vouchers are exempted from the levy of tax.

Our Comments

With vouchers becoming a popular gifting choice recently, the High Court decision offers much needed clarity on the taxability thereof. This would avoid the possibility of double taxation since the underlying goods or services (which are redeemed through the voucher) already incur GST levy.

However, as the supply of vouchers has been considered exempt from GST, the ITC in relation thereto would become ineligible, thereby inviting reversal if already availed.

M&A Tax Update

Section 79 is inapplicable where the ultimate beneficial shareholding remains unaltered in case of intra-group share transfer

Sodexo India Services Private Limited
TS-79-ITAT-2023(Mum)

Mumbai Income Tax Appellate Tribunal (ITAT) has held that even in the event of a change in shareholding by more than 51% due to intra-group share transfer, section 79 does not get triggered unless the beneficial ownership changes. Accordingly, the eligibility to carry forward and set off the losses shall continue.

In the given case, the shareholding was changed due to the transfer of shares between the group companies. However, the control and management of the company remained with the same persons. Observing that the ultimate beneficial shareholders continued to remain the same, the ITAT ruled in favor of the taxpayer.

Furthermore, the ITAT has also observed that since there is no set-off of losses brought forward during the year under consideration, the question of the applicability of Section 79 does not arise.

Our Comments

The applicability of Section 79 in cases of change in immediate shareholding with ultimate shareholding remaining the same has been debatable, with decisions both in favor and against.

While the unfavorable decisions have been taking into consideration the beneficial ownership through voting power, the favorable ones have delved into the object of enacting the said provision. The objective has been that benefit of carry forward and set-off of business losses for previous years of a company should not be misused by any new owner, who may purchase the shares of the company only to get the benefit of set-off of business losses of the previous years, which may bear profits in the subsequent years after the new owner takes over the company. In the context of this objective, in these decisions, the beneficial ownership has been considered to be with the same person where the ultimate shareholder remains the same.

The Tribunal has also upheld the contention of the taxpayer that the provision shall not apply for the year under consideration since there was no set off of tax losses during the year.

Regulatory Updates

Company Law Regulations

MCA allows the physical filling of certain important e-forms in the wake of technical issues on the new V3 MCA-21 Portal

The Ministry of Corporate Affairs has issued a general circular dated 22 February 2023 and informed that all companies intending to file the following forms:

i. Form GNL-2 (filing of prospectus-related documents and private placement),

ii. Form MGT-14 (filing of Resolutions relating to prospectus-related documents, private placement),

iii. PAS-3 (Allotment of Shares),

iv. Form SH-8 (letter of offer for buyback of own shares or other securities),

v. Form SH-9 (Declaration of Solvency) and

vi. Form SH-11 (Return in respect of buyback of securities).

During the period from 22 February 2023 to 31 March 2023 on the MCA-21 Portal, may file such Forms in physical mode duly signed by the persons concerned as per requirements of the relevant forms, along with a copy thereof in electronic media, with the concerned Registrar without payment of fee and take acknowledgment thereof. Such filing will be accompanied by an undertaking from the company that the company shall also file the relevant Form in electronic form on MCA-21 Portal along with the fee payable as per Companies (Registration Offices and Fees) Rules, 2014 once the issues with the MCA-21 Portal are resolved.

Our Comments

All companies attempting to file regulatory returns and documents had been facing issues with the V3 (version 3) of the MCA-21 Portal after the Ministry transitioned 46 important e-forms to V3 from V2 in January 2023. Furthermore, the Companies Act 2013 restricts certain important corporate actions like buybacks, IPO's, utilization of Private Placement proceeds, etc., until filling returns on the MCA 21 Portal is completed. Because of this, companies were facing delays in completing these corporate actions. Certain companies also filed petitions requesting MCA to allow the physical filling of forms until all technical glitches on V3 MCA 21 portal are resolved. This decision of the Ministry to permit companies to make certain important filings in physical mode from 22 February 2023 to 31 March 2023 has been welcomed with open arms. However, it is pertinent to note that the Companies are still required to complete the online Form filing on the V3 MCA 21 portal once the technical glitches on the Portal are stabilized.

Alerts

Assessment on non-existent company dismissed by Delhi High Court

15 March 2023
https://bit.ly/3JlDwW2

Gist of Notifications issued by CBIC effective from 1 March 2023

6 March 2023
https://bit.ly/3TmOXBt

Highlights of the 49th GST Council Meeting

21 February 2023
https://bit.ly/3JkrQTi

Tax Talk

Indian Developments

Direct Tax

CBDT notifies income tax return forms for ay 2023-24

Press Release
dated 15 February 2023

- CBDT has notified ITR Forms for AY 23-24 vide Notification No. 4 and 5 of 2023 dated 10 February 2023 and 14 February 2023, which will come into effect from 1 April 2023.
- As such, no significant changes have been made to the ITR Forms compared to last year's ITR Forms. Only the bare minimum changes necessitated due to amendments in the Act have been made, the list of new ITR forms is as follows:
  - ITR Form 1 (Sahaj) - Can be filed by a resident individual having income up to INR 5 million and who receives income from salary, one house property, other sources and agriculture income up to INR 5000.
  - ITR Form 2 - Can be filed by Individuals and HUFs not having income from business and profession and who are not eligible for filing Sahaj.
  - ITR Form 3 - Can be filed by Individuals and HUFs having income from business and profession and who are not eligible for filing Sahaj.
  - ITR Form 4 (Sugam) - Can be filed by Individuals, HUFs and firms (other than LLPs) being residents having total income up to INR 5 million and having income from business and profession computed u/s 44AD, 44ADA or 44AE.
  - ITR Form 5 - Can be filed by Assessees other than individuals, HUFs and companies, i.e., partnership firms, LLPs, etc.
  - ITR Form 6 - Can be filed by all companies other than companies claiming exemption u/s 11.
  - ITR Form 7 - Can be filed by Trusts, political parties, charitable institutions, etc., claiming exempt income.
- However, no changes have been made in the manner of filing the ITR Forms as compared to AY 22-23.

CBDT notifies centralised processing of equalization levy statement scheme, 2023

Notification S.O. 614(E)
NO. 03/2023/F.NO.370142/1/2023-TPL
dated 7 February 2023

- CBDT has notified this scheme which will be applicable in respect of the processing of the Equalisation Levy Statements.
- Every assessee or e-commerce operator shall furnish the Equalization Levy Statement under sub-section (1) of section 167 of the Act within the time stipulated.
- Furnishing of the original or revised statement shall be done within any time before the expiry of two years from the end of the FY in which the specified services were provided.
- The Commissioner may declare an Equalization Levy Statement invalid on the grounds of non-compliance with the procedure for using any software not validated and approved by the respective authority or on account of incomplete information in the statement.
- Processing will be done after adjusting arithmetical errors, computation of correct interest amount based on sum deductible or payable, etc.
- In connection to any proceedings relating to Equalization Levy, no personal appearance in the Centre shall be required by the assessee or e-commerce operator. Written or electronic communication in the specified format shall be sufficient compliance of the query or clarification received from the Centre.

Indirect Tax

Recommendations of GST Council's 49th meeting

During the meeting, the GST Council discussed inter alia the setting-up of the Appellate Tribunals, a mechanism to curb tax evasion from commodities like pan masala, gutkha, etc., and other trade facilitation measures like rationalization of late fees for delay in filing Annual Returns, and the place of supply in case of transportation services.

Click here to read the key decisions taken by the GST Council.

CBIC revises format for recording details of warehoused goods

Circular No. 04/2023-Customs dated 21 February 2023

The Central Board of Indirect Taxes and Customs (CBIC) has amended 'Form A' prescribed vide Circular No. 25/2016-Customs for maintenance of records concerning warehoused goods to capture details related to receipts, handling, and storage. Going forward, an additional Column No. 25A has been inserted in the said form for disclosing the details of "Ex-Bond Bill of Entry and date/ Shipping Bill No. and date."

CBIC tightens processes for Public, Private, and Special Warehouses

Circular No. 05/2023-Customs dated 21 February 2023

CBIC has directed that antecedent verification of the license applicants under the Public Warehousing Licensing Regulations, the Private Warehousing Licensing Regulations, or the Special Warehousing Licensing Regulations must be completed within 45 days of receipt of the application. Further, the prescribed requirements like capturing details in the application, annual renewal of solvency certificate, annual renewal of risk insurance policy, and storage of goods in public/private warehouses should be properly complied with by the applicant and thoroughly checked by the officer(s) concerned. Circular No. 26/2016-Customs stands amended accordingly.

No Basic Customs Duty on Ships/ Vessels for breaking up

Notification No. 13/2013-Customs dated 23 February 2023

The government has exempted basic customs duty (BCD) on the import of ships/vessels for breaking up till 31 March 2025. Accordingly, Notification No. 50/2017-Customs stands amended with effect from 24 February 2023.

Processing of pending MEIS/SEIS applications by Regional Authorities

Policy Circular No. 46/2015-20 dated 20 February 2023

The DGFT has directed that all MEIS/ SEIS applications which have been kept pending and are deficient at the Regional Authorities (RAs) on the basis of wrong jurisdiction may be re-opened and examined again on merits / additional documents submitted by the applicants. RAs should provide an opportunity of personal hearing to the applicants before rejecting a case.

Article

No Space for Co-Working Spaces in GST Regime

14 February 2023

Saket Patawari and Snehal Gadhave

https://bit.ly/3ZUYbXW

Union Budget 2023 - Clouds on 'OIDAR' Horizon Free

10 February 2023

Saket Patawari and Snehal Gadhave

http://bit.ly/3ldMHQn

Tax Talk

Global Developments

Direct Tax

OECD releases manual on the handling of multilateral mutual agreement procedures and advances pricing arrangements pursuant to tax certainty agenda

Excerpts from OECD.org,
1 February 2023

In line with the Forum on Tax Administration's (FTA) tax certainty agenda, the OECD has published a Manual on the Handling of Multilateral Mutual Agreement Procedures (MAPs) and Advance Pricing Arrangements (APAs), intended to be abbreviated as the MoMA.

It is widely acknowledged that multilateral MAPs and APAs offer greater tax certainty to taxpayers and tax administrations where multiple bilateral tax treaties cover different parts of the same transaction or arrangement involving a multinational enterprise. However, most jurisdictions have limited experience in coordinating bilateral MAP and APA cases to offer multilateral certainty. Accordingly, the MoMA is intended as a guide to multilateral MAP and APA processes from both a legal and procedural perspective and suggests different approaches based on the practices of jurisdictions without imposing a set of binding rules.

The MoMA allows tax administrations to explore whether implementing these procedures is appropriate considering the circumstances of their own MAP and APA programs and whether the guidance therein may be incorporated in their domestic guidance on MAP or APA processes to provide additional clarity. The MoMA also outlines the actions and cooperation expected from taxpayers to allow tax administrations to consider MAP and APA cases multilaterally. The MoMA is the result of the work done within the FTA MAP Forum.

OECD releases technical guidance for implementation of the global minimum tax

Excerpts from OECD.org,
2 February 2023

The OECD/G20 Inclusive Framework on BEPS released today technical guidance to assist governments with the implementation of the landmark reform to the international tax system, which will ensure multinational enterprises (MNEs) will be subject to a 15% effective minimum tax rate.

The Agreed Administrative Guidance for the Pillar Two Global Anti-Base Erosion (GloBE) Rules will ensure coordinated outcomes and greater certainty for businesses as they move to apply the global minimum corporate tax rules from the beginning of 2024. Together with the December 2022 publication of the Safe Harbours and Penalty Relief document and public consultations on the GloBE Information Return and Tax Certainty, today's release finalizes the Implementation Framework as set out in the October 2021 Statement on the Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy.

The document issued today includes guidance on the recognition of the United States' minimum tax (known as the Global Intangible Low-Taxed Income (GILTI) under the GloBE Rules and on the design of Qualified Domestic Minimum Top-up Taxes. It also includes more general guidance on the scope, operation and transitional elements of the GloBE Rules to allow Inclusive Framework members that are in the process of implementing the rules to reflect this guidance in their domestic legislation in a coordinated manner. The guidance responds to stakeholder feedback on technical issues, such as the collection of top-up tax in a jurisdiction in a period where the jurisdiction has no GloBE income and the treatment of debt releases and certain tax credit equity structures.

Indirect Tax

Malaysia to impose sales tax on imported low-value goods from April 2023

Excerpts from fonoa.com

Malaysia will impose a sales tax of 10% on imported low-value goods sold online beginning on 1 April 2023. Low-value goods are goods from outside Malaysia sold directly online or through an online marketplace at a price not exceeding RM 500 and are brought to Malaysia by air, sea, or land. The new rules will cover both B2C and B2B transactions.

Dubai Customs introduces new cargo system to combat illegal trade

Excerpts from thenationalnews.com

Dubai Customs has launched the Early Cargo Targeting System in partnership with the Dubai Digital Authority. The system will enhance security in Dubai and the UAE, protecting society from health, safety and environmental risks by monitoring cargo movement, detecting and tracking shipments, and facilitating trade operations.

HMRC's reminder to businesses about new VAT penalties and interest payments

Press release by HM Revenue & Customs

Ahead of the new late payment penalties and points-based late submission penalties due by 7 March 2023, HM Revenue & Customs has been reminding the VAT registered businesses to file their returns and pay on time. The changes to VAT penalties and interest payments, replacing the VAT default surcharge from 1 January 2023, inter alia include a penalty point threshold of GBP 200, a late payment penalty basis the period of delay, installment payment plans, and revised interest rules.

Quotes and Coverage

E-way bills for Feb show moderation

7 March 2023 | LiveMint
Sanjay Chhabria
http://bit.ly/3TlYjx1

E-way bill generation dipped to 3-month low in February, GST collection may be impacted in March

7 March 2023 | Hindu Business line
Sanjay Chhabria
http://bit.ly/3z1gijj

Compliance Calendar

Direct Tax
Indirect Tax

2 March 2023

Due date for furnishing of challan-cum-statement in respect of tax deducted under Section 194-IA, Section 194-IB, Section 194M in January 2023.

10 March 2023

- GSTR-7 for February 2023 to be filed by the taxpayer liable for Tax Deducted at Source (TDS).
- GSTR-8 for February 2023 to be filed by the taxpayer liable for Tax Collected at Source (TCS).

13 March 2023

- GSTR-6 for February 2023 to be filed by Input Service Distributor (ISD).
- Uploading B2B invoices using Invoice Furnishing Facility under QRMP scheme for February 2023 by taxpayers with aggregate turnover of up to INR 50 million.
- GSTR-5 for February 2023 to be filed by Non-Resident Foreign Taxpayer.

17 March 2023

Due date for issue of TDS Certificate for tax deducted under Section 194-IA, Section 194-IB, Section 194M in the month of January 2023.

25 March 2023

Payment of tax through GST PMT-06 by taxpayers under QRMP scheme for February 2023.

31 March 2023

- Country-By-Country Report in Form No. 3CEAD for the previous year 2021-22 by a parent entity or the alternate reporting entity, resident in India, in respect of the international group of which it is a constituent of such group.
- Country-By-Country Report in Form No. 3CEAD for a reporting accounting year (assuming reporting accounting year is 1 April 2021 to 31 March 2022) by a constituent entity, resident in India, in respect of the international group of which it is a constituent if the parent entity is not obliged to file report under Section 286(2) or the parent entity is resident of a country with which India does not have an agreement for exchange of the report etc.
- Uploading of statement [Form 67], of foreign income offered to tax and tax deducted or paid on such income in previous year 2021-22, to claim foreign tax credit [if return of income has been furnished within the time specified under Section 139(1) or Section 139(4).

7 March 2023

Due date for deposit of Tax deducted/collected for February 2023. However, all sum deducted/ collected by an office of the government shall be paid to the credit of the Central Government on the same day where tax is paid without the production of an Income-tax Challan.

11 March 2023

GSTR-1 to be filed by registered taxpayers of February 2023 by all registered taxpayers not under the QRMP scheme.

15 March 2023

- Fourth installment of advance tax for the assessment year 2023-24.
- Due date for payment of the whole amount of advance tax in respect of AY 2023-24 for assessee covered under presumptive scheme of Section 44AD/44ADA.
- Due date for furnishing of Form 24G by a government office where TDS/TCS for February 2023 has been paid without the production of a Challan.

20 March 2023

- GSTR-5A of February 2023 to be filed by Non-Resident service provider of Online Database Access and Retrieval (OIDAR) services.
- GSTR-3B of February 2023 to be filed by all registered taxpayers not under QRMP scheme.

30 March 2023

Due date for furnishing of challan-cum-statement in respect of tax deducted under Section 194-IA, Section 194-IB, Section 194M in February 2023.

Compliance Calendar

Direct Tax
Indirect Tax

7 April 2023

Due date for deposit of tax deducted by an office of the government for March, 2023. However, all sum deducted by an office of the government shall be paid to the credit of the Central Government on the same day where tax is paid without production of an Income-tax Challan.

10 April 2023

- GSTR-7 for March 2023 to be filed by taxpayer liable for TDS.
- GSTR-8 for March 2023 to be filed by taxpayer liable for TCS.

11 April 2023

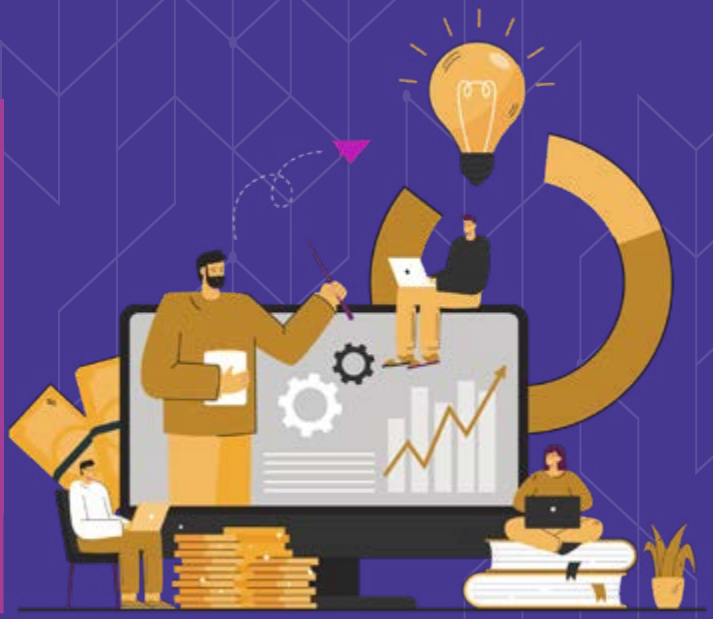
GSTR-1 to be filed by registered taxpayers for March 2023 by all registered taxpayers not under QRMP scheme.

13 April 2023

- GSTR-6 for March 2023 to be filed by ISD.
- GSTR-1 for the quarter of January 2023 to March 2023 to be filed by all registered taxpayers under QRMP scheme.

Easy Remittance Tool

by Nexdigm



Form 15CA/CB Automation

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

About Nexdigm

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

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

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

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

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

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

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