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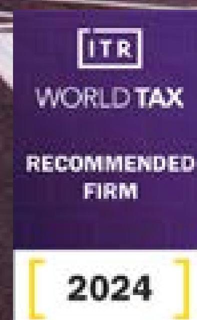
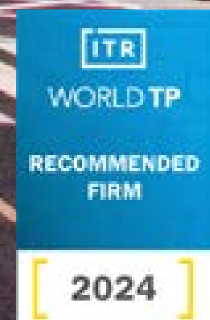
Tax Street

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

February 2024





Introduction

Tax Street

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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 2024.

- The 'Focus Point' explores surrounding the GST regime's treatment of corporate guarantees and the resulting ambiguity.
- 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

GST on Corporate Guarantees: The proverbial Hydra – Solve 1 issue and 2 more arise

The GST regime's treatment of corporate guarantees has been a contentious issue, plaguing businesses with ambiguity and compliance challenges. While the 52nd GST Council meeting aimed to provide clarity by establishing a valuation mechanism, the subsequent notification and circular have reinvigorated the proverbial Hydra, giving rise to fresh complications.

One of the most crucial problems that has come to the fore is that of perpetual taxation. Granting of corporate guarantees, though a one-time activity, is carried as contingent liability in the balance sheets for extended periods. This has raised concerns about the potential requirement to pay GST annually until the guarantee is removed from the books, creating an undue financial burden on businesses. Moreover, tax is levied on a presumptive valuation of 1% in the absence of the actual financial consideration charged by the guarantor, which is also substantially high in certain circumstances.

Further complicating the matter is the quandary surrounding joint and several liability clauses. When the liability of guarantors is defined as joint and several, despite individual shares being stipulated, each guarantor could potentially be liable to pay GST on the entire value of the guarantee. This scenario not only raises the specter of double taxation but also poses practical challenges in determining the appropriate GST liability for each guarantor.

The confusion extends to scenarios where individuals other than Directors stand as guarantors for corporates. Will this require individuals who are otherwise not registered with GST be required to obtain registration? This, coupled with the issue of perpetual taxation, could mean that individuals standing as guarantors may be required to hold this registration until the guarantee is revoked or liquidated.

Adding to the complexity is the potential application of this clarification to levy GST on certain other arrangements like letters of comfort. A letter of comfort is an opinion that provides a level of assurance that an obligation will ultimately be met. Now, can a letter of comfort be construed as a corporate guarantee? Probably not! However, in the absence of any precedent under the GST regime, questions are bound to be raised.

The unnerving question that both taxpayers and tax authorities have started raising is, “what about the earlier period where no separate value mechanism was prescribed for corporate guarantees?” There is a worry that even for the earlier period, authorities would be asking taxpayers to discharge GST under the Reverse Charge Mechanism (RCM) on “open market value” for any corporate guarantees provided, alleging that the levy was always in place.

These emerging issues have reignited the debate surrounding the GST regime's treatment of corporate guarantees. Businesses now face the daunting prospect of navigating a labyrinth of compliance challenges and potential tax liabilities. The financial ramifications of these complexities cannot be understated. Perpetual taxation could strain cash flows, while double taxation risks damaging investor confidence. Furthermore, the lack of clarity on taxability could impede the ability of businesses to secure critical financing, hampering their growth and expansion plans.

As the GST regime continues to evolve, it is imperative that policymakers engage in comprehensive stakeholder consultations and thoroughly assess the ramifications of their decisions. Striking a balance between revenue generation and fostering a conducive business environment is paramount for sustainable economic growth.

The resurgence of the Hydra surrounding GST on corporate guarantees underscores the need for continuous review, refinement, and pragmatic solutions. Only through collaborative efforts and a commitment to simplicity, transparency, and ease of compliance can the GST regime truly achieve its intended objectives and unlock the full potential of India's vibrant business landscape.

Articles

Spectre of multi-authority, repetitive and multi-directional proceedings haunting GST-payers

6 March 2024

Financial Express | Sanjay Chhabria and Jinesh Shah

https://bit.ly/3v8hqTH

OECD's Report on Pillar One Amount B - Analysis

1 March 2024

Taxsutra | Maulik Doshi and Nishant Shah

https://bit.ly/3uKgvsE

Mandatory ISD provisions do they end the need to cross charge

27 February 2024

Taxsutra | Sanjay Chhabria and Anurag Hans

https://bit.ly/4a4Of2I

From the Judiciary

Direct Tax

Can playout services be taxable as Fees for Technical Services?

Planetcast International Pte
TS-96-HC-2024(DEL)

Facts

Planetcast International Pte (assessee), a tax resident of Singapore, provides wide range of satellite-based telecommunication services to media and entertainment businesses. The assessee received consideration from the following activities in India: (i) Uplinking services and (ii) Playout services. Revenue held that the uplinking services as Royalty under Section 9(1)(vi) as well as the India-Singapore Double Taxation Avoidance Agreement (DTAA). Furthermore, Revenue also held that the playout services are managerial and technical in nature and covered within the ambit of Fees for Technical Services (FTS) as per Explanation 2 to Section 9(1)(vi).

The asseesee was in appeal before the Delhi Income Tax Appellate Tribunal (Delhi ITAT) wherein Delhi ITAT laid down that assessee's customers were neither in possession of any equipment nor had any control over the equipment used by the assessee for providing uplinking and playout services to its customers. Furthermore, there is no 'know how' or 'intellectual property' involved in the provision of such services by the assessee. Accordingly, it is held that the amount received by the assessee from its customers in India as consideration for the provision of a service cannot be characterized as Royalty for the use or right to use of a process under Section 9(1)(vi) or Article 12 of India-Singapore DTAA and further holds that the playout services are not managerial in nature, thus cannot be termed as FTS.

Pursuant to the above, the Revenue was in appeal before the Delhi High Court (Delhi HC) to question the correctness of the view expressed by Delhi ITAT.

Held

Delhi HC held that the ITAT, in its examination of this matter, has determined that the service being provided does not fit into the managerial, technical, or consultancy services categories.

After carefully considering the details and the framework of playout services, the Delhi HC noted that Delhi ITAT has concluded that these services are an essential component of broadcasting and channel transmission and do not entail decision-making processes, therefore, cannot be termed as FTS.

Delhi HC opined that once Delhi ITAT concluded that the service in question does not meet the criteria of being categorized as "managerial," "technical," or "consultancy," there is likely no need to explore this aspect further. Delhi HC decided the matter in the light of 'make available clause' under Article 12(4)(b) of India-Singapore DTAA and left the question of interpretation on 'make available clause' open for an appropriate case and appeal filed by Revenue did not have a substantial question of law. Hence, the Revenue's appeal was dismissed.

Our Comments

In determining whether a specific service qualifies as FTS, the assessment often revolves around its nature, specifically whether it is of a technical, managerial, or consultancy nature. Additionally, the consideration extends to whether the service involves the provision of knowledge or not.

How does the chargeability to tax impact Section 195 (TDS on purchases), and what role does the non-discrimination clause play in relation to Section 40(a)(i)?

Mitsubishi Corporation India Pvt. Ltd
TS-106-HC-2024(DEL)

Facts

Mitsubishi Corporation India Pvt. Ltd (Assessee) made payment for the purchase of goods to seven of it's overseas group companies in Japan, USA, Singapore and Thailand without deduction of tax at source.

The assessing officer ordered disallowance under Section 40(a)(i), on the ground that they were chargeable to tax in India. It was based on the rationale that one of the group companies had a liaison office in India, which constituted a Permanent Establishment (PE), whilst the other entities, being identical in terms of business model, would also constitute having a PE in India.

The assessee proceeded to appeal the matter before the Income Tax Appellate Tribunal (ITAT), challenging the proposed disallowance.

Accordingly, the ITAT ruled in favor of the assessee, pursuant to which the Revenue preferred to appeal before the Delhi HC.

Held

Delhi HC held that the ITAT was correct in its examination of the matter, which determined that the payment made to overseas group entities as purchase consideration was not liable to be disallowed under Section 40(a)(i) since the assessee was not liable for TDS under Section 195(1) where the sum paid was not chargeable to tax in India in the hands of the payee.

For AY 2006-07, HC opines that the equal treatment/non-discrimination Clause obtained in Articles 24(3)/26(3) of the India-Japan/India-USA DTAAs would apply with regard to the payment for purchases made by the assessee concerning group companies in Japan and the USA since the DTAAs are more beneficial, the assessee is entitled to avail the benefit.

The HC notes that the amendment to Section 40(a) of the Income-tax Act, 1961 (ITA) was made via the Finance Act, 2004 (w.e.f 1 April 2005), which widened its ambit to bring sub-clauses (i) and (ia) at par on certain payments, yet clause (ia) failed to apply to **payments towards purchases**. This disparity was removed by the Finance Act, 2014 (w.e.f. 01/04/2015), when the ambit of disallowance was enlarged by bringing **any sum payable** to a resident within the ambit of sub-clause (ia).

Since the period in issue is AY 2006-07, the amendment brought about in Section 40(a) by virtue of the Finance Act 2014 would have no relevance. As regards the transactions with the other group entities in Thailand and Singapore, the chargeability of tax in India is not attracted as these entities do not have a PE in India.

Lastly, the HC observes that the business connection test is not relevant when it is established that payees of Thailand and Singapore had no PE in India.

Our Comments

This case underscores the imperative nature of deducting taxes when a payment is taxable, serving as a preventive measure against disallowances. The existence of a PE is also relevant in determining whether the payment is subject to taxation. In the case of business profits, no tax is required to be deducted in the absence of any PE.

Transfer Pricing

Business restructuring an international transaction, consideration in any form should be examined separately

Dimexon Diamonds Ltd
TS-24-ITAT-2024(Mum)-TP

Facts

In AY 2017-18, the assessee (engaged in the business of manufacturing/distribution of diamonds) had entered into the scheme of amalgamation with its wholly owned subsidiary. Post-merger, the assessee became a subsidiary of the ultimate holding company situated in the Netherlands. The purchase consideration for the merger to ultimate holding were in the form of shares on fair value, Compulsory Convertible Debentures (CCDs) and cash. The Transfer Pricing Officer (TPO) made an upward adjustment by considering cash consideration as deemed loan and computed interest thereon, and that Arm's length Price (ALP) of interest paid on CCDs as NIL, as not at arm's length. The assessee appealed before the Dispute Resolution Panel (DRP), which confirmed the upward adjustment by the TPO. Aggrieved by the order, the assessee appealed before the ITAT.

Held by the ITAT

The Hon'ble ITAT finds no infirmity in upward additions made by the TPO and DRP, based on the following:

- In the present case, business restructuring is an organizational change relying on OECD guidelines and concluded that it falls under the definition of international transaction as defined in Section 92B of the Act.
- The purchase consideration should be examined thoroughly and independently, irrespective of whether it is in multiple modes (cash, CCD, and equity), to comply with the arm's length principle.

- Despite an order passed by the Hon'ble NCLT, the department does not waive its right to examine tax issues arising out of the Scheme of Amalgamation.
- The approval by RBI cannot override the requirement to compute the ALP under the provisions of the Act.
- The valuation reports were rightly rejected as they were not prepared on any scientific basis, though purchase consideration specified to be determined by applying the Net Asset Method was pre-determined by the management and "other method" as adopted in the TP report placing reliance on such valuation report, was being issued without any independence.
- The entire merger transaction is a mere restatement of accounts without any erosion in the ultimate holding company's function, asset and risk profile.

Our Comments

The MNEs conduct cross-border restructuring transactions to streamline their business model or to grow or re-align their primary activities. Though compliance with other laws and regulations would have been adhered to, MNEs fail to consider TP aspects, resulting in high exit tax or penalties. Therefore, TP aspects of restricting should be considered at an early stage, including but not limited to maintaining appropriate documentation, conducting independent valuation analysis, justification of economic impact, detailed FAR analysis, adherence to the law of each country, etc.

Economic adjustments towards excess depreciation capacity, under-utilization to adhere to provisions of the Act

Schott Glass India Pvt. Ltd
TS-43-ITAT-2024(Mum)-TP

Facts

The taxpayer is a 100% subsidiary of Schott Glass Werke Beitilunga GmbH, Germany, having two divisions, turbing and trading. It had entered into international transactions with the Associated Enterprises (AEs). In its TP report, the assessee adopted the Transactional Net Margin Method (TNMM) as the Most Appropriate Method (MAM) and made economic adjustments on account of excess depreciation, foreign exchange fluctuation and under-utilized capacity. Only one comparable, "Triveni Glass Ltd," was identified as the comparable company under the TNMM.

Held by the TPO

The assessee had made an economic adjustment of depreciation claimed on the set-up of a new tank and because of the under-utilization of the new tank. The assessee made the second adjustment because of the under-utilization of capacity, and the third adjustment was made on account of the loss of foreign exchange fluctuation. The TPO rejected the economic adjustment of excess depreciation, stating that the assessee had already availed of the tax benefit in its income tax computation. The TPO also observed that as per the annual report of the assessee, it utilized 87% capacity in 2006 as against its installed capacity and made the economic adjustment on under-utilization of capacity was merely an estimated adjustment and not factual. The learned CIT(A) dismissed the appeal filed by the assessee. Aggrieved by the order, the assessee appealed before the ITAT.

Held by the ITAT

The Hon'ble ITAT, after giving due consideration to the facts, Section 10B of the Act and judicial pronouncements, redirected the AO to consider the economic adjustments and working as below:

- Relying on Bangalore ITAT[1] ruling, it directed the learned assessing Officer (AO) that instead of allowing adjustment, AO to compute assessee and comparable margins, excluding depreciation from its cost.
- Relying on Delhi ITAT[2] and Hon'ble HC[3] ruling held that in terms of Rule 10B(1)(e)(iii) of the Income-tax rules, capacity utilization adjustment is required to be made to the profit margin of the comparable companies.

Our Comments

To avoid disputes with tax authorities and ensure compliance with TP regulations, MNCs often engage in TP studies, documentation, and advance pricing agreements with tax authorities to establish acceptable TP methodologies. These measures can help minimize the risk of economic adjustments and provide certainty regarding TP arrangements.

1. DCIT Vs. Novell Software Development India Pvt. Ltd. (ITA No. 1491/Bang/2014)
2. DCIT Vs. Claas India Pvt. Ltd. (2015) 62 taxmann.com 173
3. CIT-8 Vs. Petro Araldite (P) Ltd. (2018) 93 taxmann.com 438 (Bomba)

Indirect Tax

Whether the Business Transfer Agreement (BTA) having a non-compete clause can be classified as Declared Service of “agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act” under Section 66E(e) of the Finance Act, 1994?

Sicon Design Technologies Pvt. Ltd. & Ors. vs. Commissioner of Central Tax, Bengaluru
2024 (2) TMI 964 - CESTAT BANGLORE

Facts

- The appellant had entered into a BTA wherein it had agreed to sell, transfer, grant, assign and deliver all its rights, title and interest with respect to the business as a going concern.
- The BTA also included a non-compete clause, imposing restrictions on the appellant’s engagement in specified activities for a period of two years.
- The appellant claimed service tax exemption under mega exemption Notification No. 25/2012-ST dated 20 June 2012 towards the services by way of transfer of a going concern, as a whole or independent part thereof.
- However, pursuant to the Directorate General of GST Intelligence (DGGI) investigation, service tax demand was confirmed on the ground that the non-compete and non-solicit clauses in the BTA amounted to ‘Declared Services’ as there was an obligation to refrain from an act, or to tolerate an act or a situation or to do an act.
- As per the Revenue, the value of the assets was negligible and the entire amount involved in the transactions was towards the non-compete clause, which was the essence of the contract.
- Challenging the demand, the appellant submitted that the value offered by the buyer was towards the market value of the business and not for the indemnity clause.

Ruling

- From the evidence on record, the Customs, Excise and Service Tax Appellate Tribunal (CESTAT) could not find that a substantial portion of the BTA referred to the conditions/ obligations to be followed by the appellant, like non-compete clauses, performance guarantees for two years, etc., for which it had received the consideration.
- Referring to the Ahmedabad bench’s decision in **Universal Medicare Pvt. Ltd. vs. CCE & ST, Daman** [2019 (6) TMI 166 – CESTAT AHMEDABAD], CESTAT observed that such a clause is normal in the transfer of business and the condition of a non-compete cannot be separated from the contract entered between the parties to bring the transaction under the ambit of service tax.
- In this regard, it relied on Apex Court’s decision in **Ishikawajma Harima Heavy Industries Ltd vs. Director of Income Tax, Mumbai [2007 (3) SCC 481]** wherein it was held, “in construing a contract, the terms and conditions thereof are to be read as a whole. A contract must be construed keeping in view the intention of the parties. No doubt, the applicability of the tax laws would depend upon the nature of the contract, but the same should not be construed keeping in view the taxing provisions.”
- CESTAT further referred to the clarification issued by the Central Board of Indirect Taxes and Customs (CBIC) in the context of the GST law vide Circular No. 178/10/2022-GST dated 3 August 2022. In the said Circular, it has inter alia been clarified that unless payment has been made for an independent activity of tolerating an act under an independent arrangement, the same will not constitute ‘consideration’ and hence, such activities do not constitute “supply” within the meaning of the CGST Act.
- Resultantly, the CESTAT allowed the appeal by setting the impugned order with consequential relief.

Our Comments

This ruling fortifies the position that a contract to do something or to abstain from doing something cannot be said to have taken place unless there are two parties, one of which expressly or impliedly agrees to do or abstain from doing something and the other agrees to pay consideration to the first party for doing or abstaining from such an act. Such a contractual arrangement must be an independent arrangement in its own right. There must be a necessary and sufficient nexus between the supply (i.e., agreement to do or to abstain from doing something) and the consideration.

In addition to the GST Circular dated 3 August 2022, the CBIC has clarified the leviability of service tax on such declared service under Section 66E(e) of the Finance Act, 1994, vide Circular No. 214/1/2023-Service Tax dated 28 February 2023. It has been clarified inter alia that the activities contemplated under the said provision are the activities where the agreement specifically refers to such an activity and there is a flow of consideration thereof.

Given the above, the clauses of the contracts/agreements should be carefully drafted with the intention of the parties in mind. Assignment of specific value(s) toward non-compete/ non-solicit or liquidated damages could attract GST.

M&A Tax

Delhi ITAT - Consideration for transfer of shares set aside in an Escrow account (which is unlikely to be received) is excludible for computation of capital gains

Modi Rubber Ltd. v. DCIT-2 I.T.A. No.6866/DEL/2018 (Delhi-Tribunal)

In AY 2012-13, the assessee sold its shareholding in its subsidiary to an Indian entity for a total agreed consideration of INR 1.1761 billion. Out of the said agreed consideration, an amount of INR 254.8 million was kept aside in an Escrow Account (EA) by the purchaser to meet any future contingent liabilities. The assessee filed its return of income, offering the entire agreed sales consideration of INR 1.1762 billion to tax. However, subsequently, in the course of the assessment proceedings, the assessee sought a revision of sale consideration to the INR 921.4 million (i.e., reduced the amount set aside in EA) as the same was neither received nor likely to be received in view of claims of INR 789.4 million raised by the purchaser to meet liabilities associated to the transaction. The AO however found the revised claim as untenable. The CIT(A) also upheld the order of the AO.

The Hon'ble ITAT decided the case in favor of the assessee and held as under:

- The assessee was well within its right to seek a reduction of sales consideration during the course of assessment proceedings based on a settled position of law as laid down by the Apex court in Goetze (India) Ltd[4].
- Found a similarity of the case with the decision in the case of Dinesh Vazirani vs. Pr. CIT (2022) 445 ITR 110 (Bom), wherein it was held that capital gains were to be computed only on the net amount actually received and that the assessee was entitled to a refund of the excess taxes paid on the returned capital gains.
- Distinguished the ruling in the case of Carborundum Universal Ltd. Vs. ACIT 130 taxmann.com 133 (Mad) on facts, wherein the amount placed in EA was eventually returned to the assessee without any deduction or reduction of sale consideration.
- The amount recovered out of EA by the assessee in the later years shall be liable to taxation in the respective years of receipt or accrual.

Our Comments

The decision reiterates the importance of charging only real income to tax vis-à-vis notional income (i.e., not received or receivable). The ruling also fortifies the settled rule of law to raise a claim for reduction/ revision of taxable income during the course of assessment proceedings. The ruling also highlights the significance of conditions attached to EA (i.e., contingent or otherwise) to determine the taxability of such consideration.

Kolkata ITAT: Addition on account of deemed dividend held to be applicable in the hands of Beneficial Owner (exercising control & influence on lender as well as borrower) and not in the hands of borrower

Apeejay Surrendra Management Services Pvt. Ltd
TS-130-ITAT-2024(Kol)

In the given case, the assessee, involved in Brand Owning and Consultancy, declared a loss in the return for AY 2014-15. The assessee received a loan of INR 55 million from another group company. The AO noted that there was a common shareholding by Kathua Steel Works Pvt. Ltd. (KSWPL) in both companies (KSWPL held substantial interest in both the assessee (99.96%) and the lender company (57.86%)). Considering the same, the AO invoked the provisions of Section 2(22)(e) and added the borrowing as a deemed dividend in the hands of the assessee (i.e., the borrower). The decision of the AO's was upheld by the CIT(A).

In its appeal before the ITAT, the assessee emphasized the fact that it was not a shareholder having substantial interest in the lending entity and hence the provisions of Section 2(22)(e) cannot be invoked in its hands. On the other hand, the departmental representative strongly placed reliance on the decision of the Supreme Court in the case of National Travel Services[5] to canvas the proposition that it is not necessary that one has to be a registered shareholder in order to attract the provisions of Section 2(22)(e).

The ITAT took due cognizance of the observations of the Supreme Court in the case of National Travel Services that the shareholder in the context of Section 2(22)(e) has only to be a person who is the beneficial owner of shares and he need not necessarily be the registered shareholder.

Considering the facts of the present case, the ITAT observed that the assessee was in no way in a position to compel KSWPL to exercise its voting rights in a particular way. Accordingly, the ITAT ruled in favor of the assessee, overturning the addition of the deemed dividend. ITAT held that provisions of Section 2(22)(e) can be invoked in the hands of the beneficial owner (KSWPL) holding a substantial interest in both companies and not in the hands of the assessee (being the borrower).

Our Comments

The ruling re-emphasizes the position that it is not necessary for one to be a registered shareholder to attract the provisions of Section 2(22)e. The Section can trigger only in the hands of the shareholder, who is the beneficial owner of shares.

4. Goetze (India) Ltd. v. CIT, (2006) 284 ITR 323 (SC)
5. CIT vs. National Travel Services (2018) 89 taxmann.com 332 (SC)

Regulatory Updates

Ministry Of Corporate Affairs (MCA)

MCA introduces Form Change Request Form (CRF) for simplifying Company Masterdata corrections

The MCA had vide a General Circular No. 02/2024 dated 19 February 2024, introduced the Change Request Form (CRF) on the V3 portal of the Ministry of Corporate Affairs.

Form CRF is a web-based form introduced by the MCA to take care of the exceptional issues faced by the stakeholders that could not be addressed through any existing form,services or functionality.

The following are the key points to be noted:

- Form CRF can be used to make exceptional requests to the Registrar of Companies (RoC), like making corrections in the Master Data and to comply with certain directions of Courts/Tribunals, which ordinarily cannot be complied with through the existing functionality of forms or services on the MCA-21 system.
- However, Form CRF is not to be considered as a substitute for any reporting, application, and registry requirements as per the Companies Act, 2013, and LLP Act, 2008.
- As per the mandate, the Form CRF will have to be processed by RoCs within three days of its filing, after which it should be forwarded to the Joint Director (e-governance cell), who shall process and decide the matter within a maximum time of seven days.

Our Comments

This form offers a welcome solution for companies facing inaccuracies in their MCA master data. For instance, a company dissolved by order of the National Company Law Tribunal (NCLT) but still showing as "ACTIVE" on the MCA portal can leverage this Form to rectify the inaccuracy. Other common issues like discrepancies in capital or director details can also be addressed through this streamlined process, eliminating the need for repeated visits to RoC offices for resolutions.

Alerts

Key Highlights of GST Notifications and Clarification Circulars
4 March 2024
https://bit.ly/3SZD4RX

Reconciliation between disclosed income and third-party information through 'on-screen functionality'
29 February 2024
https://bit.ly/3wMZ4Il

Enhanced disclosure requirements during voluntary liquidation
7 February 2024
https://bit.ly/49dgwUQ

Tax Talk

Indian Developments

Indirect Tax

Customs

CBIC notifies customs duty exemption on import of certain food items

Notification No. 10/2024-Customs dated 19 February 2024 r/w Notification No. 50/2017-Customs dated 30 June 2017

The CBIC has notified the exemption from Basic Customs Duty (BCD) for the following food items w.e.f. 20 February 2024.

HSN Code	Description of Goods	Effective Rate
0207 25 00 0207 27 00	Meat and edible offal, of turkeys, frozen	5%
2008 93 00	Cranberries, otherwise prepared or preserved, whether or not containing added sugar or other sweetening matter or spirit, not elsewhere specified or included	5%
0810 40 00/0811 90/0813 40 90	Cranberries: fresh/frozen/dried Blueberries: fresh/frozen/dried	10%
2008 99	Blueberries, otherwise prepared or preserved, whether or not containing added sugar or other sweetening matter or spirit, not elsewhere specified or included	10%
5201 00 25	(Cotton) Other: of staple length exceeding 32.0 mm	Nil

Foreign Trade Policy

DGFT eases clubbing provisions under Advance Authorization Scheme

Public Notice No. 40/2023 dated 12 February 2024

The Director General of Foreign Trade (DGFT) has amended the clubbing provision under the Advance Authorization Scheme for ease of doing business. The amended provision now allows for clubbing of advance authorizations issued within 24 months (in lieu of 18 months) from the date of issue of the earliest authorization that is sought to be clubbed, whether such authorizations are valid or not. While the 30-month timeline for imports remains unchanged, a further condition has been incorporated that upon clubbing, only exports made within 48 months from the date of issue of the earliest authorization shall be considered. Any exports made beyond 48 months of earliest authorization shall not be acceptable for clubbing.

Government grants relief in EPCG Average Export Obligation (EO) for specified sectors/product groups

Policy Circular No. 10/2023-2024 dated 22 February 2024

Owing to the dip of more than 5% in exports for around 430 product groups in FY 2022-23 as compared to FY 2021-22, the Ministry of Commerce has requested all Regional Authorities to refix the Annual Average EO for EPCG authorizations for the year 2022-23. Reduction, if any, in the EO should be appropriately endorsed in the license file of the Office of Regional Authority, as well as the amendment sheet to be issued to the authorization holder.

Upcoming Events

7th National GST Summit & Awards 2024
21 March 2024
Achromic Point | Sanjay Chhabria

Events and Webinars

4th UAE Corporate Tax Forum
5 March 2024
Cogent Solutions | Lokesh Gupta

Future of Finance Summit and Awards
27 February 2024
UBS | Lokesh Gupta

Tax Talk

Global Developments

Direct Tax

Inclusive Framework Members continue countering harmful tax practices

Excerpts from oecd.org
dated 6 February 2024

Jurisdictions continue to make progress in addressing harmful tax practices through the implementation of the international standard under BEPS Action 5. This progress is evident in the release of new results on preferential tax regimes and substantial activities in no or only nominal tax jurisdictions.

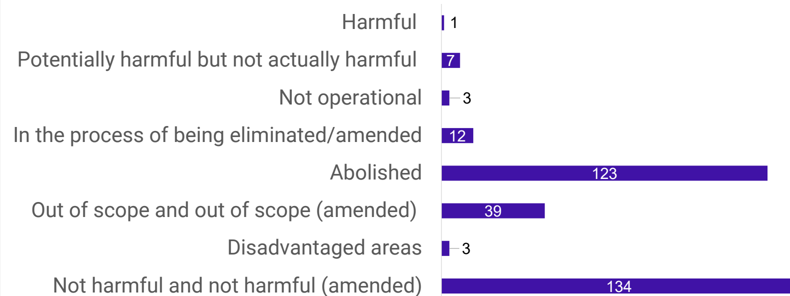
Preferential tax regimes

At its October 2023 meeting, the Forum on Harmful Tax Practices (FHTP) reached new conclusions on four regimes as part of implementing the BEPS Action 5 minimum standard on harmful tax practices. The regimes in Hong Kong (China) and the United Arab Emirates were found to be not harmful and two regimes in Albania and Armenia have now been abolished.

With the conclusion of this work, the total number of regimes reviewed by FHTP has now reached 322, with over 40% of those regimes being (or in the process of being) abolished. A breakdown of the outcomes of the FHTP's work is set out below:

Outcomes of the review of preferential tax regimes by the OECD Forum on Harmful Tax Practices

Update as of February 2024



Total number of regimes: 322

Source: OECD (2024) Harmful Tax Practices - Peer Review Results on Preferential Regimes

Annual monitoring of substantial activities in no or only nominal tax jurisdictions

As part of the standard on substantial activities requirements in no or only nominal tax jurisdictions, the FHTP undertakes an annual monitoring exercise to assess whether the standard operates effectively in practice. This exercise started in 2021 and the FHTP has now agreed on the conclusions for the third monitoring year.

Recommendations for substantial improvement were made for one jurisdiction (Anguilla) and four jurisdictions (Anguilla, the Bahamas, Barbados and the Turks and Caicos Islands) had areas where a need for focused monitoring was identified. No issues were identified for Bahrain, Bermuda, the British Virgin Islands, the Cayman Islands, Guernsey, the Isle of Man and Jersey. The FHTP also concluded that since the introduction on 1 June 2023 of its corporate income tax rate of 9%, the United Arab Emirates is now no longer a no or only nominal tax jurisdiction.

Transfer Pricing

Accurate delineation of the actual transactions – Risk: Guidance issued by HMRC[6]

His Majesty's Revenue & Customs (HMRC) has published new guidance on setting out the '6-step process for analyzing risk ('the 6 step process') within Chapter I of the OECD TP Guidelines (TPG) . Through the guidance, HMRC has made an attempt to clarify on the 6-step process and importance of analyzing risk in the transfer pricing analysis. Though the guidance focuses on risk and specifically on the 6-step process, it is clarified that it should not be interpreted that delineation of risk as having more significance than the functions and assets. It is clarified that the preliminary focus of the guidance is delineation of the controlled transaction and not pricing.

HMRC's further clarifies that Chapter I of the TPG, is focused on economically relevant characteristics and the accurate delineation of the controlled transactions. This guidance focuses on risk and related functions, but this should not, in practice, be considered in isolation from the assets and related functions.

The 6-step process identifies economically significant risks associated with controlled transactions with specificity and determines whether the contractual assumption of those risks aligns with the parties' relevant functions, specifically their conduct, capability, and capacity to exert control over the risks, and financial capacity to assume them.

HMRC's attempt to clarify on the following comments raised with respect to scenarios where reallocation of risk is not warranted:

Whether other parties' reward for contributions to control of risk should never include a share of the upside or downside of that risk:

TPG states that delineation of the controlled transactions basis the contractual risks resolves the concern. The last step of the 6-step process illustrates scenarios of how price contribution to risk control by companies not assuming that risks in a way that entails taking a share in the risk outturn.

Only Profit Split Method can be the appropriate TP Method:

It is further clarified that the interpretation of Step 6 does not state any general rule as to whether a particular TP methodology might result in a share of the upside or downside of a risk to a party following the allocation of that risk, only that this question should be dealt with in accordance with guidance in other chapters about the selection and use of such a TP methodology.

HMRC clarifies that although it is not possible to provide comprehensive guidance that determines how to reward contributions to control risk in all cases. However, this guidance attempts to flag different instances for risk assessment as it plays an important role in determining the ALP of the controlled transactions.

The accurate delineation of a controlled transaction requires analysis of its economically relevant characteristics based on the following:

- The contractual terms of the transaction;
- The functions performed by each of the parties to the transaction, taking into account assets used and risks assumed, including how those functions relate to the wider generation of value by the MNE group;
- The characteristics of property transferred or services provided;
- The economic circumstances of the parties and of the market in which the parties operate;
- The business strategies pursued by the parties.

Apart from the above delineation process, it is imperative to conduct the risk assessment by following a 6-step process as defined in the guidance:

- **Step 1**: Identify specific economically significant risks.
- **Step 2**: Contractual assumption of risk: Determine how specific economically significant risks are contractually assumed by the associated parties under the terms of the transaction.
- **Step 3**: Functional analysis to determine which entities control risks: Determine through a functional analysis how the associated enterprises that are parties to the transaction operate in relation to the assumption and management of the specific, economically significant risks, and in particular, which enterprise or enterprises perform control functions and risk mitigation functions, which enterprise or enterprises encounter upside or downside consequences of risk outcomes, and which enterprise or enterprises have the financial capacity to assume the risk.
- **Step 4 and 5**: Consistency between contract and allocation of risk: Consider whether the contractual assumption of risk is consistent to conduct of parties, specifically by reference to whether the party assuming a risk exercises control over the risk and has the financial capacity to assume the risk. Where the party assuming risk does not control the risk, or doesn't have the financial capacity to, reallocate the risk.

6. https://www.gov.uk/hmrc-internal-manuals/international-manual/intm485025

- **Step 6**: Pricing the transaction, taking account of risk allocation: The actual transaction, as accurately delineated, should then be priced taking into account the financial and other consequences of risk assumption, as appropriately allocated and appropriately compensating risk management functions.

Given the above, MNEs should examine their economically significant risks to see whether risk control actions, including third-party contributions, are appropriately recognized, analyzed, and recorded. MNEs should also ensure that systems are in place to document ongoing risk control operations, including who performs them, which entity employs them, and their capability and capacity to do so.

Indirect Tax

Thailand extends EV incentives to large commercial vehicles

Excerpts from various sources

Thailand's National Electric Vehicle Policy Committee (EV Board) has expanded its EV support and promotion efforts to large commercial vehicles such as trucks and buses, thereby complementing the EV 3 and EV 3.5 measures. The schemes originally focused on passenger vehicles.

The support will come in the form of a special tax deduction granted to companies eligible under this scheme and will be effective until 31 December 2025. Companies buying vehicles manufactured domestically will be able to deduct expenses of 2 times the actual price of the vehicles without a price ceiling being set. For the purchase of imported vehicles, the deduction will be equal to 1.5 times the actual price of the vehicles.

The EV Board has also approved financial support to promote the domestic manufacturing of battery cells for EV and Energy Storage Systems (ESS).

South Africa commences preferential trade under AfCFTA

Excerpts from various sources

On 31 January 2024, South Africa commenced trading under the African Continental Free Trade Agreement (AfCFTA), enabling South African companies to export duty-free or reduced duties to 12 African countries.

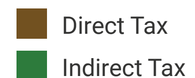
More countries are expected to implement AfCFTA in 2024, with the aim of enabling the free flow of goods and services across the 55 Member Countries and 8 Regional Economic Communities.

Ghana imposes emission tax from 1 February 2024

Excerpts from various sources

From 1 February 2024, Ghana has implemented a levy on carbon dioxide equivalent emissions from specified sectors like construction, manufacturing, mining, and oil & gas, and combustion emissions from motor vehicles at specified rates.

Compliance Calendar



1 March 2024

- Form 26QE - Due date for furnishing of challan cum statement in respect of tax deducted under Section 194S in January 2023.
- Form 26QB - Due date for furnishing of challan-cum-statement in respect of tax deducted under Section 194-IA in January 2024.
- Form 26QC - Due date for furnishing of challan-cum-statement in respect of tax deducted under Section 194-IB in January 2024.
- Form 26QD - Due date for furnishing of challan cum statement in respect of tax deducted under Section 194M in January 2024.

7 March 2024

- Securities Transaction Tax - Due date for deposit of tax collected for February 2024.
- Commodities Transaction Tax - Due date for deposit of tax collected for February 2024.
- Form 27C - Declaration under sub-section (1A) of Section 206C of the Income-tax Act, 1961, to be made by a buyer for obtaining goods without collection of tax for declarations received in February 2024.
- Collection and recovery of equalization levy on specified services in February 2024.
- Due date for deposit of Tax deducted/collected for February 2024. 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.

10 March 2024

- GSTR-7 for February 2024 to be filed by taxpayers liable to TDS.
- GSTR-8 for February 2024 to be filed by taxpayers liable to TCS.

11 March 2024

- GSTR-1 for February 2024 to be filed by all registered taxpayers not under QRMP scheme.

13 March 2024

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

15 March 2024

- Form 24G - Due date for furnishing of Form 24G by an office of the Government where TDS/TCS for February 2024.
- Fourth instalment of advance tax for the assessment year 2024-25.
- Instalment of Advance Tax for assessee covered under presumptive income scheme of Section 44AD/44ADA.
- Form 3BB - Due date for furnishing statement in Form No. 3BB by a stock exchange in respect of transactions in which client codes have been modified after registering in the system for February 2024.
- Form 3BC - Due date for furnishing statement in Form No. 3BC by a recognized association in respect of transactions in which client codes have been modified after registering in the system for February 2024.

17 March 2024

- Form 16E - Due date for issue of TDS Certificate for tax deducted under Section 194S in January 2024.
- Form 16B - Due date for issue of TDS Certificate for tax deducted under Section 194-IA in January 2024.
- Form 16C - Due date for issue of TDS Certificate for tax deducted under Section 194-IB in Janaury 2024.
- Form 16D - Due date for issue of TDS Certificate for tax deducted under Section 194M in January 2024.

20 March 2024

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

25 March 2024

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

Compliance Calendar

Direct Tax

Indirect Tax

30 March 2024

- Form 26QE - Due date for furnishing of challan cum statement in respect of tax deducted under Section 194S in February 2024.
- Form 26QB - Due date for furnishing of challan-cum-statement in respect of tax deducted under Section 194-IA in February 2024.
- Form 26QC - Due date for furnishing of challan-cum-statement in respect of tax deducted under Section 194-IB in February 2024.
- Form 26QD - Due date for furnishing of challan cum statement in respect of tax deducted under Section 194M in February 2024.

31 March 2024

- Form 67 - Due date for claiming foreign tax credit, upload statement of foreign income offered for tax for the Previous Year 2022-23 and of foreign tax deducted or paid on such income in Form No. 67.
- Collection and recovery of equalization levy on e-commerce supply or services for the quarter ending 31 March 2024.
- Form 3CEAD - Country By Country Report in Form No. 3CEAD for a reporting accounting year (assuming reporting accounting year is 1 April 2022 to 31 March 2023 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.

10 April 2024

- GSTR-7 for March 2024 to be filed by taxpayers liable to TDS.
- GSTR-8 for March 2024 to be filed by taxpayers liable to TCS.

11 April 2024

- GSTR-1 for March 2024 by all registered taxpayers not under the QRMP scheme.

13 April 2024

- GSTR-6 for March 2024 to be filed by ISDs.
- GSTR-1 for the quarter of January 2024 to March 2024 to be filed by all taxpayers under the QRMP scheme.
- GSTR-5 for March 2024 to be filed by Non-Resident Foreign Taxpayers.

Easy Remittance Tool

by Nexdigm

Form 15CA/CB Automation

Review of tax position by experts

Issuance of bulk certificates through Automated tool

Repository - Access to entire set of documents

Access to Detailed transaction wise reports

Representation Support

Generation 15CA bulk files & utility to generate Form A2

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

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

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

We have been recognized over the years by global organizations, like the International Accounting Bulletin and Euro Money Publications, World Commerce and Contracting, Everest Group Peak Matrix® Assessment 2022, for Procurement Outsourcing (PO) and Finance and Accounting Outsourcing (FAO), ISG Provider Lens™ Quadrant 2023 for Procurement BPO and Transformation Services and Global Sourcing Association (GSA) UK.

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

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