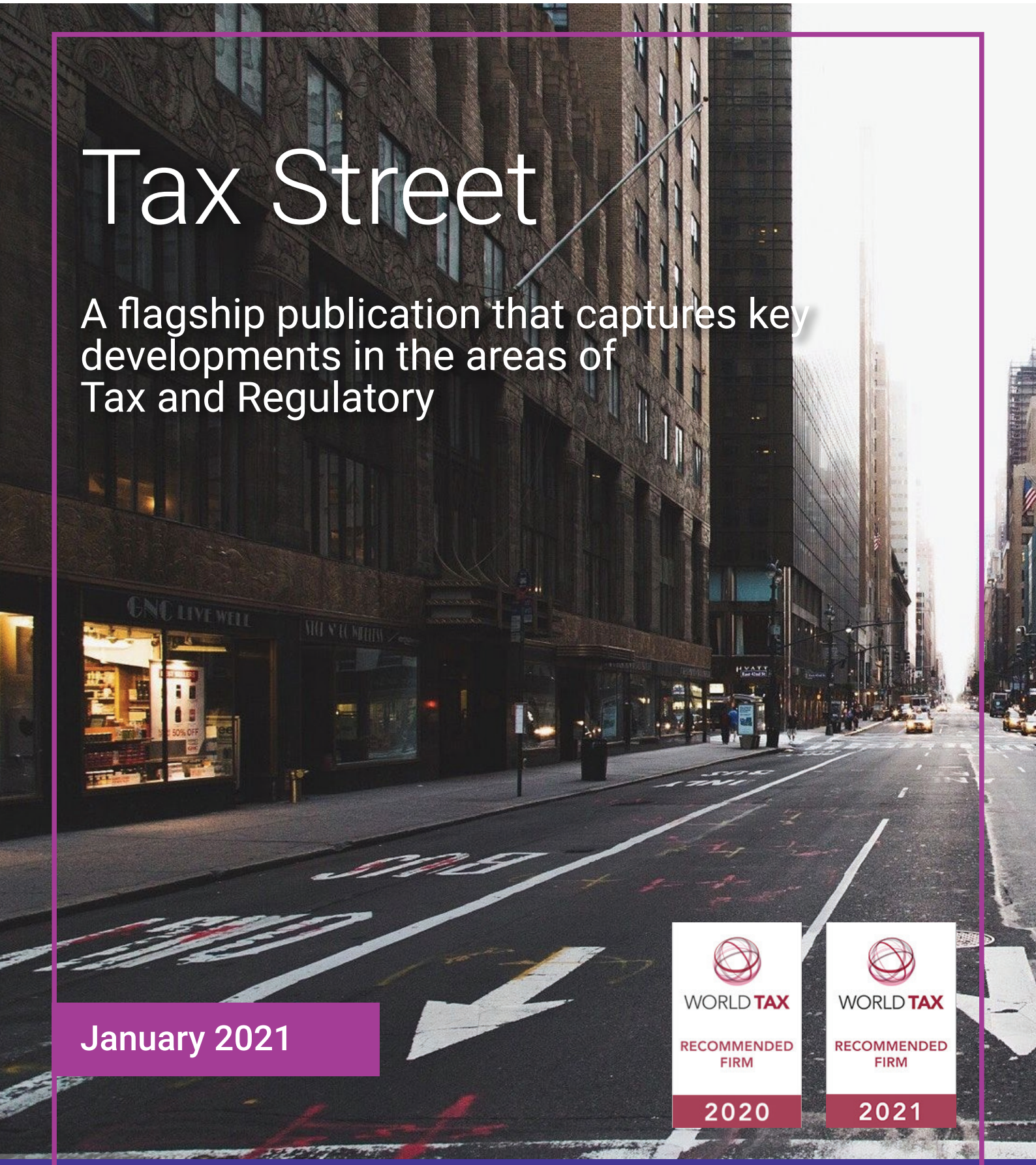
Tax Street

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



WORLD TAX RECOMMENDED FIRM 2020

WORLD TAX RECOMMENDED FIRM 2021

January 2021

Tax Street

Stay Safe. Stay Healthy.

Introduction

We are pleased to present the latest edition of Tax Street – our newsletter that covers all the key developments and updates in the realm of taxation in India and across the globe for the month of January 2021.

- The **'Focus Point'** captures plugging the new TDS/TCS provisions proposed by the Finance Bill, 2021.
- 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@skpgroup.com**. We would be happy to hear your thoughts on what more can we include in our newsletter and incorporate your feedback in our future editions.

Warm regards,
The Nexdigm (SKP) Team

Focus Point

Plugging the new TDS/TCS provisions proposed by the Finance Bill, 2021

The Union Budget 2021 was tabled on 1 February 2021 by the Hon'ble Finance Minister Nirmala Sitharaman.

Laying a vision for AtmaNirbharBharat, the Hon'ble Finance Minister has rested the budget proposals on six pillars – health and wellbeing, physical and financial capital and infrastructure, inclusive development for aspirational India, reinvigorating human capital, innovation and R&D, and minimum government -maximum governance. With an aim to provide the impetus for growth revival, the Budget has largely focused on aspects of key areas such as healthcare improvement, infrastructure boost, supports for the MSMEs, skill development, etc.

On the direct tax landscape, various proposals such as setting up the Dispute Resolution Committee, relief to senior citizens, further measures to facilitate faceless tax processes, pre-filling of returns, etc., have been added to simplify the tax administration, ease compliance, and reduce litigation. Furthermore, in line with the overall objectives as envisioned in the pillars, measures for attracting foreign investment to the infrastructure sector, affordable housing/rental housing, tax incentives to International Finance Service Centres, and start-ups have been announced. Furthermore, to increase the tax base and plug non-filers, several measures have been announced. The overview and details of the amended/ new provisions of the Tax Deduction at Source (TDS)/Tax Collection at Source (TCS) proposed in the Income-tax Act, 1961 (ITA) by the Finance Bill 2021 are -

Insertion of the new provision for tax deduction on the purchase of goods – Section 194Q

- A new provision for withholding tax has been proposed wherein any person while making payment to a resident for purchase of goods having a value exceeding INR 5 million in the previous year is required to withhold taxes at the rate of 0.1%
- The provisions of the proposed section shall trigger only in cases where buyer's total sales, gross receipts or turnover from the business carried on by him exceed INR 100 million during the financial year immediately preceding the financial year in which the purchase of goods is carried out.
- The above provisions would not be applicable in cases where payment is already subject to a tax deduction or tax collection under other provisions of the ITA (except TCS provisions applicable on sale of goods w.e.f. 1 October 2020).
- In the Memorandum to Finance Bill 2021, it has been stated that if on a transaction TCS is required on a sale of goods under 206C(1H) of ITA as well as TDS under this section, then only TDS under this section shall be applicable for that transaction
- If the buyer fails to furnish Permanent Account Number (PAN), then in such a case, the rate of 5% would be applicable instead of 0.1%.
- This amendment is proposed to be effective from 1 July 2021.

Higher rate of TDS/TCS on non-filer of tax returns – Section 206AB and Section 206CCA

- The existing provisions provide for higher rates of tax deduction and collection for non-furnishing of PAN. In order to ensure filing of return of income by persons who have suffered a reasonable amount of TDS/TCS, penal TDS/TCS rates have been introduced.
- As per these provisions, any person making a payment or receiving any sum from a specified person will be required to deduct/collect taxes at a rate twice the rate of tax deduction/collection at source or 5%, whichever is higher.
- Specified person means any person who has not filed the return of income for the last two years preceding the financial year in which tax is required to be deducted/ collected, and the tax deducted/collected is INR 50,000 or more in each of the two preceding years.
- These provisions are not applicable to a non-resident not having a permanent establishment in India. Further, these provisions are not applicable when income is required to be deducted for payments in the nature of salary income, lottery or crossword puzzles, winnings from race-horses, investment in securitization trust, and cash withdrawals in excess of a specified limit.
- This amendment is proposed to be effective from 1 July 2021.

Exemption to business trusts and other notified persons from withholding tax on dividends

- Section 194 of the ITA provides for deduction of tax at source on payment of dividends to a resident. There is an exception provided to this rule to companies engaged in the business of life and general insurance subject to certain conditions.
- It is proposed to amend the provisions to extend the exemption to dividend credited or paid to business trusts by special purpose vehicles or the dividend paid to any other person as may be notified.
- The amendment is proposed to be effective from 1 April 2020.

Rationalization of the provision concerning withholding on payment made to Foreign Institutional Investors (FIIs)

- Under the existing provisions of the ITA, payments to FIIs (other than interest on Rupee Denominated Bonds and Government Securities) attracts WHT at a flat rate of 20% without grant of any Treaty Benefits resulting in FIIs having to file refund claims under the ITA
- With effect from the financial year 2021-22, FIIs will be eligible to claim treaty benefits to lower the WHT, if applicable, subject to the FIIs furnishing a Tax Residency Certificate to the payer.
- This amendment will take effect from 1 April 2021.

Rationalization of provisions of Equalization Levy

- Equalization levy on e-commerce supply or services was introduced in Finance Act, 2020, whereby income from such transaction was charged to tax and an exemption was provided for income received after 1 April 2021.
- The above brought about an anomaly in the taxability of such transactions.
- In order to remove the anomaly, it is now proposed that exemption from e-commerce supply or services shall be applicable for income received on or after 1 April 2020.
- Furthermore, it has been clarified that transactions that are subject to tax as royalty or fees for technical services will not be covered within the scope of the Equalization Levy.

Conclusion

The above amendments proposed in the Finance Bill 2021, leave no room for non-compliance for the taxpayer. Even the transaction (i.e., purchase of goods), which was earlier out of the ambit of withholding tax provisions, is now within the range of TDS. Also, with the insertion of section 206AB and 206CCA relating to higher TDS/TCS for non-filers of the tax return, the revenue authorities want to take complete control so that the taxpayer base widens and more individuals are tax compliant. These amendments would help the revenue authorities to keep an effective audit trail of the transaction. The other amendments relating to Equalization Levy and FIIs are a welcome move to remove anomaly and undue hardship.

From the Judiciary

Direct Tax

Whether human resource and leadership training service would qualify as Fees for Technical Services (FTS)?

M/s Sandvik AB Vs. DCIT
ITA No. 2524/PUN/2017

Facts

The taxpayer is a resident company in Sweden. During the year under consideration, the taxpayer received a certain amount from Sandvik Asia Private Limited (SAPL) towards training charges. In the return of income, the taxpayer designated such receipt as non-technical and accordingly not chargeable to tax as FTS in India under the India-Sweden DTAA read with the Protocol and India Portuguese DTAA.

The taxpayer emphasized that the leadership training services imparted by it enabled the recipients to manage its Indian affiliate's affairs more effectively. The same would qualify to be managerial services and by virtue of the Protocol in the India-Sweden DTAA, the restrictive definition of FTS under India Portuguese DTAA can be imported. Under the India-Portuguese DTAA, fees for managerial services do not fall under FTS.

The Assessing Officer (AO) did not accept the taxpayer's contention.

The AO relying on the Authority for Advance Ruling (AAR) in Perfetti Van Melle Holding B.V., in Re [2012] 342 ITR 200 held that the benefit of India-Portuguese DTAA cannot be extended. Further, even if India-Portuguese DTAA has to be referred, the receipt is in the nature of technical or consultancy service, that makes technical knowledge available. The DRP upheld the contentions of the AO.

Aggrieved by the order passed pursuant to the directions of the AO, the taxpayer is in appeal before the tribunal.

Held

On hearing the facts and contentions of the parties involved, the tribunal has held that once two sovereigns have added Protocol to the DTAA between India and Sweden, which contains the Most Favoured Nation (MFN) clause, inter alia, qua Article 12, the sequitur is that the beneficial provisions contained in the India and Portuguese DTAA is to be read in the India and Sweden DTAA. Further, the Ruling in Perfetti has been overruled by the Hon'ble Delhi High Court.

After a thorough analysis of the service rendered and documents on record, the tribunal was of the opinion that the contention of the assessee that the training was leadership training that would help recipients to manage the affairs of its Indian affiliate, and thus it should be considered as managerial service do not hold any merit. Thus, it is to be analyzed whether such training service qualifies to be a technical or consultancy service under the DTAA.

Under India-Portuguese DTAA, technical and consultancy services would be taxable as FTS only when it makes available technical knowledge, skill, know-how, etc., to the recipient.

The tribunal held that the leadership training provided by the assessee did not result in imparting any technical knowledge, experience or skill, etc., to the employees of SAPL, which could enable them to use it later on. In that view of the matter, it is held that the Revenue authorities were not justified in considering training fees for rendering Consultancy or Technical services within the meaning of Article 12(4)(b) of the DTAA between India and Portuguese.

Our Comments

The precedent once again re-iterated the principle that where a treaty with any contracting state includes Protocol, the benefit from the Protocol has to be read in conjunction with the treaty.

Whether perquisite value arising on the Employee Stock Ownership Plans (ESOPs) exercised by a non-resident, granted for employment exercised in India should be taxable in India?

Unnikrishnan V S Vs. ITO
ITA Nos 1200 and 1201/mum/2018

Facts

The taxpayer is an employee of HDFC Bank Limited, Mumbai, currently deputed to Dubai. While exercising the employment in India, the employee was granted ESOPs. However, these options were exercised while being on deputation in the UAE. At the time of exercising the options, the employee had become a UAE resident.

The taxpayer claimed a refund on the taxes withheld on the perquisite amount on account of exercising the options. He was of the view that the ESOP benefits are received on account of services rendered in Dubai. Thus, the same does not accrue in India. Further, as per Article 15 of India-UAE DTAA, salary, wages and any other similar remuneration would be taxable in the country where such employment is exercised, i.e., UAE in the current scenario.

However, the AO noted that the options were granted to the taxpayer in consideration were services rendered in India, back in 2007, when the taxpayer was a resident of India. The claim of the assessee that the income reflected by the ESOP benefit did not accrue or arise in India, was, thus, rejected. The AO's order was upheld by the CIT(A).

Aggrieved by the order, the taxpayer filed an appeal with the Mumbai tribunal.

Held

First and foremost, the tribunal overlooked the terms 'Accrue' and 'Arise.' Referring to certain judicial precedents, the tribunal concluded that accrual or arising of an income cannot be equated with receipt of an income. The common thread in the connotations of these expressions is that both represent a state anterior to the point of time when the income becomes receivable and connote a character of income that is more or less inchoate.

In light of the above, so far as the ESOP benefit is concerned, although the income has arisen to the assessee in the current year, the rights were granted in consideration for the services which were rendered by the assessee **prior** to the rights being granted. Thus, the ESOP benefits relate back to the point of time, and even periods prior thereto, when the benefit is granted. It cannot, therefore, be viewed as accruing or arising at the point of time when the ESOP benefits are exercised. The taxpayer is a non-resident in the current assessment year, but quite clearly, the benefit, in respect of which the income is bring sought to be taxed now, had arisen at an earlier point of time in India.

Further, the tribunal observed that even under the India-UAE DTAA, such benefit is to be taxed in the country where the employment has been exercised. Since, the taxpayer has been granted ESOP for his services in India, Article 15 cannot be of any rescue to the assessee. Thus, the taxpayer's claim was dismissed.

Our Comments

The case law has clarified the notion that ESOP is granted to an employee for his past performance and cannot be termed as a benefit for service rendered during the vesting period.

Transfer Pricing

Determinants of 'Associated Enterprise'(AE) - Whether Section 92A(1) and 92A(2) are interlinked?

M/s. Page Industries Ltd – Karnataka High Court
ITA No. 285 of 2017 – AY 2010-11

Facts

Taxpayer is engaged in the manufacture and sale of readymade garments and is a licensee of the brand name 'Jockey' for exclusive marketing of branded garments. The taxpayer paid royalty at 5% of sales and reported the payment to 'Jockey International Inc.' in Form 3CEB.

The Transfer Pricing Officer (TPO) considered the taxpayer's expenditure incurred on the advertisement, marketing, and product promotion as an international transaction for brand promotion and determined the Arm's Length Price (ALP) using the Bright Line Test to make a TP adjustment. The Dispute Resolution Panel (DRP) also upheld the order of the TPO. Aggrieved by the DRP's order taxpayer filed an appeal before Income Tax Appellate Tribunal (ITAT).

ITAT partly allowed the appeal of the taxpayer merely on the ground that taxpayer cannot be considered as an AE and therefore requirements of Sec 92A(1) have not been complied with, and thus the provisions of Sec 92A are not attracted. To this, the Revenue filed an appeal contending that provisions of section 92A(1) and (2) have to be read independently and the transactions in the current case were under the purview of 92A(2)(g).

The High Court (HC) held as under

- Relying on the memorandum to Finance Bill, 2002, the HC observed that sub-section (2) of section 92A was amended w.e.f 1 April 2002 to clarify that mere fact of participation in the management, control or capital shall not qualify to be AEs unless the criteria specified in sub-section (2) are also fulfilled.
- On perusal of sub-section (1) and (2) of Section 92A, it is clear that the same are interlinked and have to be read together.

Further, noting the ITAT's view that taxpayer does not meet the condition u/s. 92A(1) was not assailed by the Revenue, accordingly, **HC dismissed the Revenue's appeal.**

Our Comments

If the provisions of sub-section (1) and (2) of Section 92A are read independently, one of the provisions would be rendered otiose, which is impermissible in law in view of the well-settled rule of statutory limitation. Therefore, the requirement contained in sub-sections (1) and (2) of Sec. 92A are interlinked and have to be read together.

Whether RBI approval is a relevant factor for determining arm's length rate of interest for External Commercial Borrowing (ECB) loan?

GE India Technology – Karnataka High Court
ITA No. 282 of 2013 – AY 2006-07

Facts

The taxpayer had obtained two loans at the interest rates of 7.5% and 8.49%. However, the TPO recomputed and scaled down the interest rate to 5.67%. The DRP also upheld the TPO's order, after which the taxpayer filed an appeal before the ITAT.

The ITAT noted that the interest was paid at the same rate on the basis of the loan agreements entered by the taxpayer during AY 2000-01 and the TPO accepted the same for AY 2002-03 to AY 2005-06 and AY 2008-09. Hence, the ITAT deleted the addition on account of interest while reaffirming that the interest rate depended upon the credit rating of the borrowings at the time of advancing the loan. Accordingly, the ITAT held that in view of uniformity and consistency rules, the same approach was to be adopted for AY 2006-07 too. Aggrieved by the ITAT's order, the Revenue filed an appeal before the HC.

HC held as under

- RBI has given the approval regarding the rate of interest on the loan, which is a relevant factor and must be taken into consideration.
- It is equally well settled that the rate of interest should be determined on the basis of conditions prevailing at the time of availing the loan.
- Relying on the Hon'ble SC ruling in the case of Radhasoami Satsang wherein it was held that *"even though principles of res judicata do not apply to income tax proceedings, but where fundamental aspect permeating through different AYs has been found as the fact one way or the other and the parties have allowed the position to be sustained by not challenging the order, it would not at all be appropriate to allow the position to be changed in subsequent years."* **Accordingly, as the issue has been accepted in the prior years, the Revenue cannot be allowed to take a departure in case of the rate of interest for AY 2006-07. Thus, the HC dismissed Revenue's appeal against the taxpayer.**

Our Comments

RBI approval regarding the rate of interest is a relevant factor for determining the rate of interest. The Revenue should also follow uniformity and consistency rules while determining the ALP of the international transaction.

Can the selection of foreign AEs as the tested party be in consonance with OECD and UN Manual?

Majesco Software and Solutions India Pvt Ltd
ITA No. 7070/Mum/2019

Facts

The taxpayer was engaged in the development of software solutions for the insurance sector. Formerly the taxpayer's insurance product and service business was held by Mastek Ltd. that was transferred to Majesco Ltd. through a slump sale that was thereafter transferred to the taxpayer. The taxpayer had entered into distribution agreements with its AEs for appointing advertising agencies, negotiating contracts with overseas customers, etc., where the taxpayer borne the service liability risk. The taxpayer benchmarked the transactions using Transactional Net Margin Method (TNMM), considering AEs as a tested party.

The TPO rejected AEs as a tested party, asserting them to be entrepreneurial entities rather than minimal risk distributors as AEs performed varied functions viz. marketing, customer relationship as well as entrepreneurial functions, etc. Aggrieved by the TPO's order, the taxpayer filed objections with DRP which were dismissed and impugned while the TPO's order was upheld.

ITAT held as under

- Although the taxpayer has acquired new business, a similar distribution transaction undertaken earlier by the parent and ultimate parent was benchmarked using foreign AEs as a tested party.
- There were no changes in the functional profile of foreign AEs for distribution activity relying on agreement pre and post slump sale.
- The term 'Tested Party' has not been defined under the provisions of the Income Tax Act or the Rules. The meaning can be interpreted from OECD and UN guidelines as follows: *The one to which a transfer pricing method can be applied in the most reliable manner and for which the most reliable comparable can be found, i.e., it will most often be the one that has the less complex functional analysis and that necessary relevant information and sufficient data on comparables is furnished to the tax administration.*
- Further, reliance was placed on Indian judicial precedents[1], which accepted foreign AEs as a tested party, subject to conditions of the least complex entity and availability of data for comparison.

Basis above, ITAT ruled in favor of taxpayer as conditions for selecting foreign AE as a tested party was satisfied.

Our Comments

The ruling emphasizes the essence of the selection of tested party:

1. Availability of reliable and accurate data for comparison;
2. Least complex (amongst the parties to the transaction);
3. Data available can be used with minimal adjustments.

Further, the importance of a thorough fact finding and submission of relevant evidence to substantiate the complexity of parties involved and the historical trend is reaffirmed.

1. Ranbaxy Laboratories Ltd. - 110 ITD 428 (Delhi)/167 Taxman 30 | General Motors India Pvt. Ltd. - [2013] 37 taxmannn.com 403 (Ahd. Trib.) | & Others .

Indirect Tax

Whether the Show Cause Notice (SCN) is valid if the same is not issued as per the procedure laid down in Rule 142 of the CGST Rules, 2017?

Akash Garg versus State of MP – Madhya Pradesh High Court [2020 (11) TMI 786]

Facts

- The authorities issued a SCN and subsequently an order dated 10 June 2020 under Section 74 of the CGST Act, 2017;
- The said SCN and order were communicated on the registered email id of the petitioner;
- Further, against the said order, authorities issued a demand in GST DRC - 07.

Based on the above facts, the High Court ruled as follows:

- A bare perusal of Rule 142 reveals that the only mode prescribed for communicating the SCN/order is by way of uploading the same on the Revenue's website;
- It is a trite principle of law that when a particular procedure is prescribed to perform a particular act, then all other procedures/modes except the one prescribed are excluded;
- This principle becomes all the more stringent when statutorily prescribed, as is the case herein;
- In view of the above discussion, this Court had no manner of doubt that the Revenue had not followed the statutory procedure prescribed for communicating SCN/order under Rule 142(1), and hence the impugned demand was struck down.

Our Comments

This is an important judgment wherein the High Court has once again emphasized the importance of Revenue authorities following the due procedure of law vis-à-vis tax demands.

Whether promotional products/ materials and marketing items used by the applicant can be considered as 'inputs' as defined under Section 2(59) of the CGST Act, 2017?

Whether GST paid on the same can be availed as an input tax credit in terms of Section 16 of the CGST Act, 2017?

M/s Page Industries Limited - AAR, Karnataka [2020 (12) TMI 902]

Facts

- The applicant is engaged in the manufacture, distribution, and marketing of knitted and woven garments and swimwear;
- The applicant disposes of/issues the distributable goods free of cost to franchisees and other shops/retailers, where all brands are sold (Retailers/ All brands stores);
- The applicant sends these items to promote their brand.

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

For distributable goods

- The distributor/franchisees and the applicant are 'associates in the business of one another' and hence, are 'related persons' under the Explanation (c) to Section 15 of the CGST Act, 2017.
- Therefore, in accordance with Schedule I to the CGST Act, 2017, GST is applicable on free of cost transfer of distributable goods;
- Thus, the applicant needs to discharge GST on such supplies, and thereby is entitled to avail ITC on the said supply of goods;
- However, in the case of retailers, they are unrelated to the applicant and accordingly, the provisions of Schedule I do not apply;
- Consequently, GST paid by the applicant on purchase of (distributable) products which are distributed to the retailers (i.e., unrelated parties) free of cost, will not be allowed in accordance with Section 17(5)(h) of the CGST Act, 2017.

For non-distributable goods

- The GST paid by the applicant on purchase of (non-distributable) products that qualify as 'capital goods', should be available as eligible ITC;
- However, in case if they are disposed of or destroyed or lost, then the same needs to be reversed under Rule 43 of the CGST Rules, 2017.

Our Comments

As per Explanation (c) to Section 15, 'persons who are associated in the business of one another in that one is the sole agent or sole distributor or sole concessionaire' are deemed to be related persons. However, in the present case, whether the distributors/ franchisees qualify as 'sole distributor' as held by the AAR can be a subject matter of dispute.

Tax Talk

Indian Developments

Direct Tax

The Central Board of Direct Taxes (CBDT) refunds worth INR 1.73 trillion issued so far this fiscal: I-T Department

[Excerpts from The Economic Times, 13 January 2021]

The income tax department has stated that refunds of over INR 1.73 trillion have been issued to more than 15.7 million taxpayers in the ongoing fiscal till 11 January 2021. Out of the refunds, personal income tax refunds are worth INR 571.39 billion, while corporate tax refunds are INR 1.15 trillion. The CBDT had issued refunds of over INR 1.73139 trillion to more than 15.7 million taxpayers between 1 April 2020 to 11 January 2021. The department's aim is to encourage honest taxpayers by issuing their refunds in a timely manner.

Income Tax return: 5% more I-T returns filed this year

[Excerpts from Financial Express, 12 January 2021]

In a tweet, the tax department mentioned that over 59.5 million ITRs for AY 2020-21 were filed till 10 January 2021 as compared to 56.7 million ITRs filed for the previous AY by 10 September 2019. The total returns for 2019-20 are 3.335 million higher than the previous year as total ITRs filed stood at 56.1 million on the last date, which was 31 August 2019. A detailed ITR-wise analysis was shared by the department to compare rise of about 5% in filing of returns in the current year as compared to the previous year. The official appreciated the efforts of the taxpayers and professionals who adhered to the due dates in spite of the pandemic.

The CBDT launches e-portal for lodging complaints on tax evasion, Benami assets

[Excerpts from The Business Standard, 12 January 2021]

The CBDT has launched a dedicated e-portal to receive and process complaints on tax evasion, undisclosed foreign assets and Benami properties. The common public can now lodge complaints by accessing a link on the e-filing website. Once the complaint is filed, the income tax department will allot a unique number to each complaint. The complainant would also be able to view the status of the complaint on a real-time basis.

Government creates special unit in Income Tax department for probe into undisclosed foreign assets

[Excerpts from The Economic Times, 12 January 2021]

The Foreign Asset Investigation Units (FAIUs) have been recently created in all the 14 investigation directorates of the tax department that are primarily tasked to undertake raids and seizures and develop intelligence to check tax evasion done by various methods. The CBDT diverted a total of 69 existing posts in November for setting up this unit after the approval of the Finance Minister. The department is in receipt of a lot of information of foreign assets since more and more countries are following international protocols set up by the Organization for Economic Co-operation and Development (OECD) and the Financial Action Task Force (FATC) for tax transparency and combating situations of global money laundering and tax evasion. The FATC also covers automatic sharing of information on bank accounts as well as financial products like equities, mutual funds and insurance. Further, the ITR forms also have a separate column seeking details of foreign assets of an entity/individual that match the information received from global counterparts.

Transfer Pricing

Extension on e-filing of Income tax returns and Audit reports

Considering the hassles and hardships faced by the taxpayers, the government has once again extended the due dates for filing return of income, including the filing of the tax audit report and transfer pricing report. The CBDT vide Press Release 31 December 2020 r.w. notification No. 93/2020 has further extended the deadline for filing Income tax returns and various audit reports, including Form No. 3CEB. The revised due date for annual transfer pricing compliances for the FY 2019-20 are as follows:

Forms	Erstwhile Dates *(notification No. 88/2020)*	Revised Dates
Form No 3CEB	31 December 2020	15 January 2021
Master File Form No. 3CEAB	1 January 2021	16 January 2021
Master File Form No. 3CEAA	31 January 2021	15 February 2021

This move was a much-needed relief to the taxpayers who are mostly working with limited resources amidst these challenging times.

Union Budget 2021 – ITAT Goes Faceless

The Finance Act, 2020 had introduced the concept of Faceless Assessment and Appeals under the Income tax Act. Going a step ahead, the government has now proposed the introduction of Faceless proceedings before the Income Tax Appellate Tribunal.

While this is a welcome move towards transparency and impartiality, however, the appellants may face various challenges such as difficulty in justifying the claims, arguing and counter-arguing their cases merely by written submissions made electronically.

Indirect Tax

Central Board of Indirect Taxes and Customs (CBIC) has notified the Customs Authority for Advance Ruling at Mumbai and Delhi

[Notification No. 1/2021-Customs (N.T.) dated 4 January 2021]

CBIC has notified the revised procedures and regulations for the Customs Authority for Advance Rulings (CAAR). CAAR will be situated at Delhi and Mumbai and will have jurisdiction over prescribed States. The government has prescribed Form CAAR-1 for application to the Authority for Advance Ruling and Form CAAR-2 for filing appeal to the Appellate Authority for Advance Ruling.

Implementation of RoDTEP Scheme w.e.f 1 January 2021

[Press Release dated 31 December 2020 & Public Notice 01/2021 dated 1 January 2021]

The government, by way of Press Release, has introduced the RoDTEP Scheme w.e.f. 1 January 2021. Under this Scheme, the exporters of goods will be incentivized by way of refund of the embedded central, state and local taxes, which are otherwise not exempted or refunded under any other existing scheme. The refunds will be in the form of transferable duty credit/electronic scrips that shall be maintained in Ledger Account with Customs. They can be used for payment of import duties as would be notified by the CBIC. Exporters desirous of availing the benefit under the RoDTEP Scheme should **declare their intention for each export item in the shipping bill or bill of export.**

Tax Talk

Global Developments

Direct Tax

French Finance Minister welcomes Secretary Yellen's over Tech taxes

[Excerpts from CNBC, 25 January 2021]

French Finance Minister Bruno Le Maire welcomed the support of President Joe Biden's administration over a proposed global tax on tech giants, saying a multilateral agreement could come into force as soon as this spring.

This comes shortly after Biden's nominee for Treasury Secretary, Janet Yellen, voiced her support over calls for tech companies to pay a larger share of their revenues in the countries where they operate. The French Minister and the USA Secretary agree on the need to find multilateral solutions to various global issues, including addressing the tax challenges of efficiently and equitably taxing the income of multinational firms.

USTR report slams India digital tax levy

[Excerpts from TOI, 8 January 2021]

The USA Trade Representatives (USTR) released the 'special 301' investigation report, slamming India's digital service tax. It said that the levy discriminated against American digital services companies such as Netflix and Amazon, while arguing that it was also against the principle of international taxation.

USTR investigation indicates that India's digital service tax is discriminatory, unreasonable and burdens or restricts the US commerce.

Transfer Pricing

Vietnam: Updated Guidelines and Administration for Related Party Transactions[2]

Decree No. 132/2020/ND-CP provides updated guidance for taxpayers with key principles, methods, order for determining factors of prices of transactions with related parties; rights and obligations of taxpayers in the determination of prices of transactions with related parties and procedures for the declaration; responsibilities of state agencies for tax administration of taxpayers having transactions with related parties. Certain Key aspects are:-

- A Transfer Pricing form declaring the related party transactions in 'Form No. 01' is required to be filed with the income tax filings;
- The declaration is required to be made within 90 days/3 months from the end of the fiscal year that may either evidence the arm's length nature of the related party transactions or make an adjustment (if any) based on transfer pricing study, which results in an increase in the taxpayer's net taxable income;
- Transfer pricing documentation (in Vietnamese) must be completed before the submission of the declaration and may be submitted to the authorities when asked for;

2. Decree No. 132/2020/ND-CP dated November 05, 2020) – Click Here

- The definition of related parties expanded to including an increase in the direct or indirect ownership threshold from 20% to 25%;
- In applying the TNMM, a comparison of the tested entity's profit with the profit range of comparable companies for the same year is required (as against the weighted average data) with an allowance of the prior year information for comparables;
- Restrictions in relation to the deduction of expenses;
  - Payments to related parties – inconsistent business, assets, employees and functions, or do not contribute to generating revenue or adding value;
  - Payments for intragroup services unless meeting specified conditions,
  - Interest expense deductions, which are limited to 20% of EBITDA;
- A commercial database can be used as a source to identify comparable companies to ascertain the arm's length nature of related party transactions;
- Formerly, the arm's length range was equivalent to the interquartile range, i.e., range from 25th to 75th percentile of the data set. However, now the range is 35th percentile to 75th percentile;
- Introduction and explanation of the Country-by-Country Report(CbCR) filing compliances.

Rwanda: Ministerial Order establishes general rules on transfer pricing[3]

The Rwanda Tax Authority has increased its capabilities to train and equip staff with the required tax expertise to conduct tax pricing audits. The Order issued establishing rules on transfer pricing between related persons involved in controlled transactions is a step forward towards effective tax administration structure.

This Order applies to both controlled transactions and deemed controlled transactions. It provides rules on the comparability of the transaction, complying with the arm's length principle, documentation, and necessary price adjustments. The new regulations largely conform with the 2017 OECD guidelines.

Singapore: IRAS to actively participate in International Compliance Assurance Programme (ICAP) effective 2021[4]

The ICAP is a voluntary risk assessment and assurance program to facilitate co-operative multilateral engagements between multinational enterprises (MNEs) and tax administrations. The OECD has developed it as an efficient, effective and coordinated approach to provide MNEs with increased tax certainty with respect to their activities and transactions. IRAS will be a participating member effective 2021. The key benefits of ICAP include:

- Improved tax certainty for MNEs and tax administrations;
- More effective dispute resolution by preventing unnecessary disputes;
- Better and more standardized information such as CbCRs for transfer pricing risk assessment;
- Better use of resources for MNEs and tax administrations; and
- Advances in international collaboration.

OECD: Releases toolkit on implementation of effective Transfer Pricing documentation for developing countries[5]

The Platform for Collaboration on Tax - a joint initiative of IMF, OECD, UN and the World Bank has released the final version of its toolkit on Transfer Pricing documentation, which is designed to support countries in implementing effective transfer pricing documentation requirements. The relevance of transfer pricing to developing countries, together with the challenges faced by low-capacity or inexperienced tax administrations, has been high on the regional and global tax agenda in the last several years. As per the toolkit, research using firm-level information and selected country experiences suggest that the introduction of effective documentation obligations is a critical component of compliance management strategies to address transfer mispricing.

The OECD's toolkit is intended to provide an analysis of policy options and a 'sourcebook' of guidance and examples to assist low capacity countries in implementing efficient and effective Transfer Pricing documentation regimes. For the purposes of this toolkit, the term 'Transfer Pricing documentation' comprises the Entity and Group level documentation.

3. Ministerial Order No 003/20/10/TC of 11/12/2020 – Click Here
4. IRAS participating in ICAP – Click Here
5. OECD announced Toolkit for developing countries, transfer pricing documentation rules – Click Here

OECD publishes guidance on Transfer Pricing implications of the COVID-19 pandemic

The 'guidance on the Transfer Pricing implications of the COVID-19 pandemic' represents the consensus view of the 137 members of the Inclusive Framework on BEPS regarding the application of the arm's length principle and the OECD Transfer Pricing guidelines to issues that may arise or be exacerbated in the context of the COVID-19 pandemic.

The guidance helps taxpayers report the financial periods affected by the pandemic and for tax administrations in evaluating the implementation of taxpayers' transfer pricing policies. The guidance provides clarifying comments and illustrations of the practical application of the arm's length principle in four priority issues:

(i) comparability analysis;

(ii) losses and the allocation of COVID-19 specific costs;

(iii) government assistance programs; and

(iv) advance pricing agreements.

Global: Relief to taxpayers through the extension of Transfer Pricing Form filing deadlines

In light of business operations affected due to the global COVID-19 crisis, various countries are providing relief to taxpayers by extending the due dates for filing of annual transfer pricing compliance forms. For example, the revised deadline for transfer pricing return is as under:

Country	Form	Previous deadlines	Revised deadlines
Turkey	CbCR for 2019 and 2020	31 January 2021	26 February 2021
Oman	CbCR 2020	31 December 2020	30 April 2021

Peru: Peru has approved the evaluation of the confidentiality and information security standards required by the OECD for the automatic exchange of information obligating taxpayers to file CbCRs for fiscal years 2017, 2018, and 2019 by 29 January 2021.

Columbia: Ministry of Finance and Public Credit specified deadlines for compliance with tax obligations for the year 2020, including the transfer pricing documentation requirements in respect of the local file, informative return, master file, and CbCR. The due dates are basis the last digit of the taxpayer's id. Informative return, CbCR notification, and local file are to be filed in September 2021 while Master file and CbCR in December 2021.

Indirect Tax

Small businesses in UK struggle with post-Brexit VAT rules

[excerpts from The Guardian]

Small scale businesses in the UK exporting to EU countries are struggling to navigate through the new VAT regime. Since the UK is no longer a part of the EU, the businesses have to deal with different VAT rules for different member countries, resulting in an increase in compliance and tax costs.

Compliance Calendar

Direct Tax
Transfer Pricing
Indirect Tax

7 February 2021

Payment of TDS and TCS deducted/collected in January 2021

10 February 2021

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

11 February 2021

GSTR-1 to be filed by registered taxpayers with an annual aggregate turnover of more than INR 15 million for the month of January 2021

13 February 2021

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

15 February 2021

- E-Filing of Master File in Form No. 3CEAA
- Exercise option of safe harbor rules by furnishing the Form No. 3CEFA/B.

15 February 2021

- Issuance of TDS certificates (other than salary) for the quarter of October to December 2020
- The due date for furnishing return of income for taxpayers required to get their accounts audited [for whom the due date as per the Act is 31 October 2020]
- Filing of tax audit report and tax return for the financial year 2019-20, in cases where transfer pricing provisions are applicable [for whom the due date as per the Act is 30 November 2020]

20 February 2021

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

25 February 2021

- Extended Due Date for GSTR-9 for the FY 2019-20 to be filed by regular taxpayers
- Extended Due Date for GSTR-9C for the FY 2019-20 to be filed by regular taxpayers with an aggregate turnover of more than INR 50 million
- Payment of tax through GST PMT-06 by taxpayers under QRMP scheme

15 March 2021

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

Notes

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

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

Insights

Alerts

Faceless Penalty Scheme 2021

19 January 2021

Read Here https://bit.ly/3d1yzTw

Budget Wishlist 2021

29 January 2021

Read Here https://bit.ly/2Z6BYbF

Articles

Is govt taking extreme steps to tighten noose on fake GST registrations?

Financial Express

Read Here http://bit.ly/398ThNU

Honest Taxpayers May Be Spared Brunt Of New Rule (86B)

Bloomberg Quint

Read Here http://bit.ly/3ofB8nf

Exploring the hopes around Transfer Pricing in Budget 2021

Taxsutra

Read Here https://bit.ly/2XXX4rZ

Easy Remittance Tool

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

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

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

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