Tax Street

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

WORLD TAX
RECOMMENDED FIRM
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Introduction

Tax Street

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

- The **'Focus Point'** covers an overview of the Economic Substance Regulations in the UAE.
- Under the **'From the Judiciary'** section, we provide in brief, the key rulings on important cases, and our take on the same.
- Our **'Tax Talk'** provides key updates on the important tax-related news from India and across the globe.
- Under **'Compliance Calendar'**, we list down the important due dates with regard to direct tax, transfer pricing and indirect tax in the month.

We hope you find our newsletter useful and we look forward to your feedback. You can write to us at **taxstreet@nexdigm.com**. We would be happy to hear your thoughts on what more can we include in our newsletter and incorporate your feedback in our future editions.

Warm regards,
The Nexdigm (SKP) Team

Focus Point

Economic Substance Regulations (ESR) – Strategic analysis for businesses in UAE

The UAE introduced ESR in 2019 to restrict harmful tax practices, largely in line with Action Plan 5 of the BEPS Project, and ensure that entities doing business in UAE, pursuant to obtaining trade license from the Authority (Licensee), meet the Economic Substance Test.

2019 was the first year of compliance, wherein businesses in UAE experienced multiple challenges to meet the compliance test. Given the penal consequences attached to non-compliance, it was important for the businesses to make the correct disclosures backed by relevant documentation in-house.

In relation to the Indian headquartered companies with a presence in the UAE, the relevant compliance due date would be as follows:

Particulars	Due Date
e-filing of ESR notification for the financial year ended on 31 March 2021	30 September 2021
e-filing of ESR Annual report for the financial year ended on 31 March 2021	31 March 2022

It is assumed that the accounting year followed by the UAE company is April to March.

Applicability

ESR applies to all private/public shareholding companies, joint venture companies, partnership firms, etc. In other words, the Regulation does not cover individuals, sole proprietorship, trust, or a foundation under its ambit. There are certain exemptions to Licensees from ESR regulations which inter-alia includes Investment Funds, a company that is a tax resident outside the UAE, etc. Furthermore, it is clarified that the ESR regulations would be applicable to the UAE branch of a company that is located outside UAE unless the income of such branch is taxable outside UAE.

Key parameters for Economic Substance Test

Licensee must satisfy the following criteria to meet the Economic Substance Test:

Core Income Generating Activities (CIGA)

- Need to justify that Licensee conducts CIGA
- CIGA need to be conducted in UAE
- Regulations provide an inclusive list of CIGAs – Need to identify what additional could be considered

Directed and Managed

- Need to hold a board meeting in UAE
- Frequency/number of such meetings would depend having regard to decisions to be taken
- Quorum of physically present
- Minutes to be maintained and signed by directors
- Directors should have the necessary knowledge/expertise

Employee/Assets/Expense

Need to demonstrate 'Adequacy' Test for:

- Employees - No. of qualified full-time employees physically present in UAE
- Assets – Adequate physical assets in UAE
- Expense – Adequate operating expenses incurred in UAE.

Relevant businesses activities

The relevant activities subject to economic test are listed as under:

- Banking business
- Investment fund management business
- Headquarters business
- Holding company business
- Distribution and service center business
- Insurance business
- Lease-Finance business
- Shipping business
- Intellectual property business

Compliance requirement

Notification to be submitted

Licensee shall annually notify the Authority which inter-alia includes the following:

- Whether or not it is carrying on Relevant Activity;
- If yes for above, gross income for Relevant Activity is subject to tax outside UAE;
- Financial year followed by Licensee;
- Details of Branch.

Report to be submitted

If Licensee is carrying out Relevant Activity, it is required to submit a detailed report annually within 12 months from the end of the financial year, containing various operations related information, including but not limited to employee details – experience, type of contract, qualifications, duration of employment, etc. and information on intangible related details of the Licensee.

Penalty for non-compliance

The Resolution has prescribed the following offenses and corresponding penalties as under:

Offenses	Quantum of penalty
Failure to meet Economic Substance Test/submit ESR annual return (First year)	AED 50,000
Failure to meet Economic Substance Test (Subsequent Year)	AED 400,000
Failure to submit the Notification and any other relevant information/documentation	AED 20,000

Additionally, the penalty included sharing information with the Foreign Competent Authority and suspension/cancellation of license in certain cases. However, before levying a penalty, the Authority must issue a notice (i.e., opportunity of being heard) to Licensee. Furthermore, the Authority may neither determine the Economic Substance Test of Licensee nor levy a penalty post six years from the end of the financial year (unless there is deliberate misrepresentation/ fraudulent action by Licensee or any other person).

Governance mechanism

The UAE Cabinet of Ministers appointed various authorities that are empowered to oversee the implementation, monitoring, and enforcement of the ESR Regulations in respect of each Relevant Activity. Basis thereon, certain authorities are appointed in the capacity of 'Regulatory Authorities,' whose role inter-alia includes collection/ verification of documents (i.e., ESR notifications / Economic Substance Reports). The Federal Tax Authority (FTA) has been appointed as the National Assessing Authority (NAA) whose role includes assessing whether the Licensee has met the Economic Substance Test, imposing a penalty, or hearing appeals.

Way Forward

- Recently, UAE has introduced Country-by-Country-Reporting (CbCR) Regulations in line with its commitment to implement Base Erosion and Profit Shifting (BEPS) standard for Action Plan 13. Now, with the introduction of ESR, UAE has most certainly sent a positive signal to the sovereigns of its trade partners in other jurisdictions.
- Based on the filings of year 1, the concerned authorities have started issuing notices in the situation of non-compliance with the ESR Regulations.
- Despite the regulations providing useful guidelines, the Licensees will require a lot of judgment in a professional capacity to determine if the activity meets the substance test. It is recommended that multinationals be proactive and revisit their existing operational activities to mitigate/ avoid the potential risk of non-compliance with the above regulations. With this being the subsequent year of Regulations, it would be relevant to check and maintain consistency with respect to the positions adopted by the Licensee in the previous year.

From the Judiciary

Direct Tax

Whether the sale of standard software would be considered as Royalty?

M/s. QlikTech International AB Vs. DCIT
IT(IT)A No. 173/Bang/2021

Facts

The taxpayer is a company incorporated in Sweden and is engaged in the business of sale of software products and rendering information technology services. The taxpayer has entered into an agreement with its subsidiary QlikTech India Private Ltd. for the onward sale of shrink-wrapped software to the end users/customers in India as per the distribution/license agreement. The taxpayer filed its return of income NIL income. The AO made additions considering the entire receipts from the sale of software products taxable as royalty under DTAA and Income Tax Act (ITA)

The taxpayer had also entered into an agreement with QIPL for back-office support operations through the shared services center. The taxpayer did not offer the said income to tax on the basis that, since the services were rendered outside India and payments were received outside India, such amount was not taxable in India. The Assessing Officer (AO) held the services were in the nature of consultancy, and thus, the amounts received would be FTS.

Held

The Bangalore Income Tax Appellate Tribunal (ITAT) considered the facts and held that the right to use granted through licensing of software does not fall within the meaning of 'Royalty' as provided for in the domestic law or the Double Taxation Avoidance Agreement (DTAA). Any consideration for the same is not taxable as Royalty under section 9(1)(vi) or the relevant DTAA.

The tribunal relied on the judgment of the Hon'ble Delhi High Court in the case of DCIT vs Infrasoft Ltd. (264 CTR 329) and DIT vs M/s Nokia Networks (358 ITR 259)

With respect to the shared services, the ITAT observed that the concerned services were purely in the nature of back-office services, and nothing can be regarded as having been made available to the recipient of services. Accordingly, the same cannot be considered as FTS under India-Sweden DTAA read with the India-Portugal treaty by virtue of the protocol under India-Sweden DTAA.

Our Comments

The tribunal reconfirmed that the sale of shrink-wrapped software would not constitute royalty. However, whether a software qualifies to be considered as shrink-wrapped software or not would have to be determined basis the agreements

Expert Quote

Withdrawal of Retrospective Tax on Indirect Transfer

The Government proposes to withdraw the retrospective amendment in respect of Indirect Transfer, introduced in 2012. The Government had already faced setbacks as it had lost the case against Vodafone and Cairn Plc on the said issue. This amendment would help settle long dragging litigations and send out a positive message to global investors.

Maulik Doshi
Senior Executive Director
Transfer Pricing and Transaction Advisory Services

Whether TDS credit can be claimed in a year different from the year of income accrual?

The DCIT Vs. M/s Sasken Network Engineering Limited.
ITA No. 547/bang/2013

Facts

The taxpayer is a company incorporated in India in the business of installation and commissioning services. The taxpayer's case was selected for scrutiny, and during the course of assessment proceedings, the taxpayer filed TDS certificates of INR 11.3 million, which were received after the due date of filing of return. Nokia deducted the tax on placing purchase orders with the taxpayer. Since the income had not accrued to the taxpayer, it was not offered to tax in the return of income. The AO accepted the plea that the income was not accrued.

However, the AO did not give credit for the tax deducted on the ground that credit for TDS shall be given in the year in which such income is assessable. The Commissioner of Income-tax (Appeals) [CIT(A)] allowed the taxpayer to appeal and granted relief on the basis that the refund to the deductor is not possible.

Held

ITAT noted that after the amendment of section 199 by the Finance Act, 2008, the section clearly lays down that credit for TDS will be given in the Assessment Year for which such income is assessable. The tribunal also relies on Chandigarh Bench's ruling in Pradeep Kumar Dhir. ITAT remarks that as per the Central Board of Direct Taxes' (CBDT) Circular No.2/2011 dated 2 April 2011, there is a procedure for the deductor to claim a refund before the AO. The basis on which the CIT(A) allowed relief to the taxpayer is therefore not sustainable.

Our Comments

The decision clarifies that the TDS refund would be granted only in the year of accrual.

Transfer Pricing

Whether negative Working Capital Adjustment for captive service providers while computing Arm's Length Price(ALP) is warranted?

Quest Global Engineering Services Pvt Ltd [TS-277-ITAT-2021(Bang)-TP]

Facts

The taxpayer is engaged in the business of providing computer-aided engineering services, including software development and IT enabled services (ITeS). During the year under consideration, the taxpayer benchmarked its international transaction for the provision of software development and ITeS using Transactional Net Margin Method (TNMM) as the Most Appropriate Method (MAM)

The Transfer Pricing Officer (TPO) challenged few comparable companies selected by the taxpayer and selected new comparable companies by way of conducting a fresh search to determine the ALP. The TPO further adopted negative working capital adjustment and proposed an adjustment. Dispute Resolution Panel (DRP) upheld the TPO's order, and therefore, the taxpayer has now filed an appeal before ITAT.

Held

ITAT upheld the taxpayer's contention in relation to the selection of comparable companies. However, with respect to working capital adjustment, ITAT held that the taxpayer, a captive service provider, does not bear any risk and has no working capital contingencies; therefore, the requirement for negative working capital adjustment is not warranted.

It stated that the taxpayer being a captive service provider and the fact that it earns sufficient margins for its functions performed, its pricing policy compensates for the said working capital risk, and no adjustment is warranted. The appeal was upheld in the taxpayer's favor.

Our Comments

In the case of captive service providers, negative adjustment is not warranted and typically, the pricing policy inherently compensates the working capital risk.

Whether per hour recovery rate can be taken as CUP for BPO services?

Aricent Technologies (Holding) Limited [TS-253-ITAT-2021(DEL)-TP]

Facts

The taxpayer provides Business Process Outsourcing (BPO) services, primarily in the areas of online customer care. The taxpayer had benchmarked its international transactions of services provided using the Comparable Uncontrolled Price (CUP) Method and by comparing the per hour recovery rate of USD 19.20 that it charged its Associated Enterprise (AE)'s versus the comparable uncontrolled hourly recovery rate of USD 14.

However, the TPO rejected the said approach of the taxpayer and determined Transactional Net Margin Method (TNMM) as the MAM, thereby leading to an adjustment. The said adjustment was upheld by the CIT(A).

Held

ITAT held that there is no dispute on part of the Revenue that in the BPO industry, the prevalent rate for services was in the range of USD 8 to USD 15 per hour, which was comparable / lower to the rate of USD 19 charged by the taxpayer from the AE. In the prior year, the coordinated bench adopted a similar approach of considering the per hour recovery rate and CUP as the MAM in the taxpayer's own case and hence deleted the adjustment made by the lower tax authorities.

Our Comments

The approach of the use of per hour recovery rate in the BPO industry to benchmark the international transactions has been adopted by the taxpayers where they are able to obtain comparable data for the uncontrolled transaction.

However, in such case and especially since CUP is used as the MAM, stringent comparability in terms of contractual terms, nature and volume of services rendered in both the cases, employee skillset (which includes designation, experience, qualification), etc. should be done before adopting this approach.

Indirect Tax

Whether the applicant's activities carried out in India would constitute as 'intermediary service' under GST law?

M/s Airbus Group India Private Limited, [2021-VIL-241-AAR, Karnataka]

Facts and applicant's contentions

- Airbus India (the applicant) is a subsidiary of Airbus Invest SAS, France.
- Airbus India assists Airbus SAS by carrying out certain support functions/activities in relation to its global procurement strategy, including review of Indian supplier landscape, continuous update of supplier operations, conducting onsite supplier assessments , providing market information, etc.
- The applicant contended that these services are in the nature of professional, technical advisory and business support services and that the applicant has agreed to render these services on its own account as an independent contractor.
- Furthermore, remuneration received for the performance of such services by the applicant is on a 'cost plus basis'. Therefore, the applicant submitted that the above services cannot be construed as intermediary services.

Based on the above, the Advance Ruling Authority ruled as follows:

- In the case of an agent or broker, activity is undertaken on another's behalf which is not necessary in the case of an intermediary.
- Therefore, claiming to be an independent contractor is not relevant for the purpose of determining an intermediary.
- The applicant plays an important part in identifying the vendors, without which Airbus France will not be able to procure goods from the vendors.
- Thus, the instant activity is nothing but facilitating the supplies to them from India.
- Furthermore, the criterion of the nature of payment does not from a part of the definition of 'intermediary'. Cost plus mark up can also be one of the ways for payment.
- Thus, the activities performed by the applicant clearly satisfy the definition of an 'intermediary', as specified under Section 2(13) of the IGST Act.

Our Comments

This ruling has once again sought to cover a wide array of services within the ambit of 'intermediary', resulting in a denial of export benefits. Now, whether this was the intention of the lawmakers is a question that remains unanswered.

As per the latest media reports, the government is undertaking a comprehensive review of legal issues under the GST regime, which includes examining whether support services provided by the back office of MNCs will qualify as 'intermediary services'.

Whether the discount provided by M/s Castrol to their customers through the appellant (distributor) liable to be taxed under GST law?

M/S. SANTHOSH DISTRIBUTORS, [2021 (7) TMI 789 - AAAR, Kerala]

Facts

- The appellant has entered into a contract with M/s Castrol to supply/distribute certain products to the authorized dealer/stockiest (customers), on a principal-to-principal basis, at the prices fixed by Castrol.
- As per Castrol's instructions, the appellant provides additional post-sale discounts to the customers.
- In this regard, Castrol issues commercial credit notes for reimbursement of the reduced prices provided by the appellant to the customers.

Based on the above, the AAAR ruled as follows

- As per Section 15(3)(b)(i) of the CGST Act, if a discount is given after the supply of goods has taken place, then the discount shall be given in terms of an agreement, i.e., it cannot be open-ended; not based on any criteria.
- Thus, the word 'discount' mentioned in an agreement without there being any parameters or criteria mentioned would not fulfill the requirement of Section 15.
- The appellant has no control over the quantum of scheme discounts to be offered. The discounts so offered as per instructions of the supplier of goods/principal company are completely reimbursed by the supplier of goods/principal company.
- Thus, the additional discount given by Castrol to the appellant is a consideration to offer the reduced price in order to augment the sales.
- This additional discount squarely falls under the definition of the term "consideration" as specified under Section 2(31) of the CGST Act.
- Thereby, additional discount in the form of reimbursement of discount or rebate, received from Castrol over and above the invoice value, is liable to be added to the consideration payable by the customer to the appellant.
- Furthermore, if registered, the customer, would be eligible to claim ITC of the tax charged by the appellant only to the extent of the tax paid by the said customer to the appellant.

Our Comments

The present ruling is similar to clarifications provided by the government in Circular No. 105 /24 / 2019-GST, dated 28 June 2019, which was later withdrawn *ab initio*.

While arriving at a conclusion, the ruling expressly states that the legal position as per Section 15 does not change irrespective of the Circular.

However, the question remains whether such an interpretation of Section 15 will hold good, given that a Circular providing an identical interpretation was withdrawn by the government.

Expert Quote

Government's move to resume blocking of E-way bill generation

With things now slowly moving back to normalcy, the tax administration seems to be urging businesses to regularize their GST compliances up to June 2021.The unblocking of E-way bill generation post filing of returns seems to be an easy process.

Saket Patawari
Executive Director – Indirect Tax,
Senior Director – Nexdigm

Merger & Acquisition Tax

Chennai ITAT denies set-off of losses of amalgamating company on non-satisfaction of section 2(1B) conditions on the appointed date

Citation: Roca Bathroom Products Pvt. Ltd [TS-508-ITAT-2021(Chny)]

On 1 April 2013, Roca Bathroom Products Pvt. Ltd (assessee/ amalgamated company) held 26% shares of Espiem Plastics Ltd. (amalgamating company). Later, on 10 February 2014, it acquired the balance 74% shares, and on the same day itself, both the companies applied for amalgamation. On 28 April 2014, the Madras HC sanctioned the scheme of amalgamation with effect from 1 April 2013. The Ld. AO denied the assessee's claim of setting off losses of amalgamating company of INR 70.5 million under section 72A of the Act. The Ld. AO cited that the requirements laid down in section 2(1B) were not fully satisfied as only 26% shareholding was held by the assessee company on the court appointed date of 1 April 2013.

The ITAT confirmed the stand of Ld. CIT(A) and has upheld the order of lower authorities by observing as under:

- Appointed date in the scheme is very crucial.
- Since the assessee company didn't have 3/4th shares of the amalgamating company on the appointed date 1 April 2013, the assessee is not entitled to the claim of carry forward and the set-off of loss of the transferor company as of 31 March 2013.

Our Comments

The ruling highlights a unique proposition where amalgamation is effected backdated, and there is practically an impossibility of performance to issue shares to erstwhile shareholders where shares have changed hands subsequently. It is a settled proposition of law that the scheme approved by HC attains statutory force. It will be interesting to wait and watch the position of the HC if the assessee appeals the ruling.

Ahmedabad ITAT holds that temporary funding from sister concern not deemed dividend considering the business nexus and lending being part of the sister concern's business

Citation: Krishna Coil Cutters Pvt. Ltd. [TS-534-ITAT-2021(Ahd)]

M/s. Krishna Coil Cutters Pvt. Ltd. (assessee) has availed an unsecured loan of INR 196.5 million from its sister concern, Krishna Sheets Processors Pvt. Ltd. The assessee and the sister concern are engaged in a similar line of business. The assessee has 21.45% shareholding in the lender sister company. Thus, the AO observed that the loan received shall fall under the ambit of provisions of section 2(22)(e) of the Act and is susceptible to tax as deemed dividend. On further appeal, the ld. CIT(A) held that the case was covered under the exceptions to section 2(22)(e) and reversed the order.

The ITAT upheld the order of CIT(A) and ruled in favor of the assessee by observing as under:

- The funds were advanced to secure a price advantage from a common supplier, which is beneficial to both companies. Thus, the funds advanced were for business exigencies and in the ordinary course of business.
- The sister concern has been advancing funds to assessee since the time it was not even a shareholder.
- Money lending has been a substantial part of sister concern's business, and interest is charged on this advance at the same rate as charged on advances to other unrelated parties. Thus, the advance given is in the course of business of the lender company, and this reason on a standalone basis is sufficient to exclude the applicability of deemed dividend provisions.
- Act requires money so lent to be only a 'substantial part' of business, in contrast to the 'principal business' as wrongly assumed by the AO.

Our Comments

The ruling lays down certain important factors whereby legitimate funding transactions between group entities should not fall under the ambit of deemed dividend provisions.

Tax Talk

Indian Developments

Direct Tax

Extension Of Time Limits Of Certain Compliances To Provide Relief To Tax Payers considering the Pandemic

[Circular No. 12, 25 June 2021] [Notification No. 74, 25 June 2021]

The due date for filing of TDS returns of Q4 has been extended to 15 July 2021. The due date for issuing Form 16, Equalisation Levy statement for FY 2020-21, has been extended to 31 July 2021. Uploading of declaration under Form 15G / 15H for Q1 has been extended to 31 August 2021. The due date for passing the assessment or reassessment order and penalty order has been extended to 30 September 2021. Extension of date of payment of disputed tax without the additional sum of 10% to 31 October 2021.

Guidelines under section 194Q

[Circular No. 13, 30 June 2021]

The Income-tax department released detailed guidelines under section 194Q:

- Provisions of section 194Q would not apply to the transaction in securities and commodities through recognized stock exchanges.
- Sum paid/credited before July 2021, to be considered while computing the threshold of INR 5 million
- GST, if separately mentioned in the invoice, is to be excluded for withholding of taxes under 194Q. However, in case of advance payment (where the GST component is not identifiable), tax is to be withheld on the full amount.
- The provisions may not apply in the case of a non-resident buyer where such purchase is not effectively connected to a Permanent Establishment (PE).
- The provisions would not apply to buyers in the year of incorporation.
- Where the transaction is subjected to both 194Q and 206C(1H), then preference would be given to the applicability of section 194Q.

Guidelines under section 9B and section 45(4)

[Circular No. 14, 2 July 2021] & [Notification No. 76, 2 July 2021]

The recent union budget had inserted new section 9B and amended section 45(4) to provide a new scheme for the taxation of dissolution/reconstitution of firm/Annual Operating Plan (AOP)/ Business Operating Income (BOI). The Income-tax department has now issued detailed guidelines to address difficulties arising in giving effect to such provisions. It has also issued detailed rules for computing the attribution of capital gains chargeable in the hands of firm/AOP/BOI.

Income tax department notifies computation mechanism for determination of capital gains and written down value (WDV) for a block of intangible asset comprising of goodwill

[Notification No. 77, 7 July 2021]

The Finance Act 2021 introduced a retrospective amendment (effective from FY 20-21) whereby goodwill shall no longer be eligible for depreciation. Pursuant to the amendment, goodwill shall no longer be a part of the block of assets. The CBDT has now notified a new rule (Rule 8AC) that provides the mechanism for computing WDV of the block of assets shall be in accordance with or on the same lines as section 43(6), which provides as under:

- For computing the value of goodwill to be reduced, goodwill is to be assumed as the only asset in the block. WDV of goodwill to be reduced, to be arrived accordingly by computing depreciation assuming it was the only asset.
- If the WDV so computed exceeds the carrying value of the block of assets, then the reduction from the block would be restricted to the value of the block.

The Rule also provides that wherever the value of the reduction in the block of an asset exceeds the aggregate of below, such excess shall be deemed as gains arising from transfer of short term capital assets:

i. WDV of the block as on 1 April 20 [prior to making the above adjustment)] and

ii. the actual cost of the asset in the said block (other than goodwill) acquired during FY 2020-21

The Rule further provides that where goodwill was the only asset in the block and the block shall cease to exist as there are no further additions in the block during FY 2020-21, there will not be any capital gains or loss on account of the block of asset having ceased to exist

Tax exemption for expenditure on COVID-19 treatment and ex-gratia received on death due to COVID-19

[Press Release dated 25 June 2021]

The government has acknowledged that many taxpayers have received financial help from their employers and well-wishers. As many have lost their lives due to COVID-19, and their family members received financial help from employers, well-wishers and such. In order to provide relief, the government has decided to provide an exemption to ex-gratia payments received by such family members up to an amount of INR 1 million.

Relaxation In Electronic Filing Of Income Tax Forms 15CA/15CB

[Press release dated 20 July 2021]

The ITA requires all form 15CBs or form 15CAs to be filled electronically. In the current event of difficulties faced by the chartered accountants and assesses alike, the taxpayers can submit the aforesaid forms in manual format to the authorized dealers by 15 August 2021. Authorized dealers are advised to accept these for the purpose of foreign remittances. Also, a facility would be provided at the new income tax portal to upload these forms at a later date.

Indirect Tax

Clarification regarding extension of limitation in terms of Hon'ble Supreme Court's Order

[Circular No. 157/13/2021-GST Dated the 20 July 2021]

The government has issued the following clarifications regarding the extension of the period of limitation under GST law in view of the Hon'ble Supreme Court's order in Miscellaneous Application No. 665/2021 in SMW(C) No. 3/2020:

- Proceedings that need to be initiated or compliances that need to be done by the taxpayers would continue to be governed by the statutory mechanism, and any of the extensions granted by the Supreme Court will not apply to these actions.
- It is clarified that where the authorities function as a quasi-judicial authority, they can continue to dispose off the proceedings. The same will be governed by those extensions of time granted by the statutes or notifications, if any.
- Extensions of time limit granted by the Supreme Court will be applicable to proceedings which are before Joint/ Additional Commissioner (Appeals), Commissioner (Appeals), Appellate Authority for Advance Ruling, Tribunal and various courts against any quasi-judicial order or where proceeding for revision or rectification of any order is required to be undertaken. However, it will not be applicable to any other proceedings under GST Laws.

Tax Talk

Global Developments

Direct Tax

EU puts digital tax plan on hold during OECD talks

[Excerpts from the Economic times, 12 July 2021]

The European Commission said on Monday that it would delay its plan to propose an EU digital tax in order to not jeopardize efforts to secure a global deal on fairer taxation. The G20 finance ministers meeting in Venice endorsed a plan agreed by 132 countries to overhaul the way multinational companies, including US digital giants, are taxed. They approved the result of negotiations at the Organisation for Economic Cooperation and Development (OECD) for a global minimum corporate tax rate of at least 15%, and allow nations to tax a share of the profits of the world's biggest companies regardless of where they are headquartered. The European Commission has insisted that its new levy plan will be unveiled later this month, would conform with whatever is agreed at the OECD and would hit thousands of companies, including European ones.

Ireland cannot be part of current global tax reform proposals

[Excerpts from the Irish Times, 15 July 2021]

Minister for Finance Paschal Donohoe has said that Ireland cannot be part of an international agreement on a minimum global tax rate of 15%. Earlier this month, the G7 and OECD countries reached an agreement but not unanimous consensus on the key aspects of a global tax deal that seeks to introduce a minimum rate of 15%. Ireland and Hungary are among a handful of countries, that are opposed to a 15% rate. Mr. Donohoe said a key feature of the agreement was what was best for each jurisdiction. That would be examined in detail, and he said he would launch a public consultation to bring the details to the business community and stakeholders.

Brazil to vote on tax reform next week, corporate profit changes seen

[Excerpts from Reuters, 28 July 2021]

Brazil's lower house of Congress is expected to vote on tax reform. The bill will likely be amended to exclude certain small companies' profit and dividend taxes, said senior lawmakers steering the process. Voting on the stage of the bill aimed at simplifying and lowering personal, income taxes and levies on corporate profits will take place when Congress returns from recess.

Transfer Pricing

Madagascar: Transfer Pricing Documentation (TPD) requirements

The Ministry of Economy and Finance had provided a guidance note to taxpayers in Madagascar in relation to documentation to be maintained, which is summarized below:-

- Obligation to now submit Master and Local Files basis recommendations from the OECD.
- Master File to include group structure and general information whereas Local File to include specific information such as the description of the local entity, controlled transactions along with financial and other information.
- The obligation is for all those companies that engage in cross-border transactions irrespective of the transaction quantum.
- The documents are to be submitted in French, but if presented in any other language, a certified document is to be presented with translation in French along with original documents.
- Submission deadlines are as follows:

Year end	Due date
31 December	15 May of the following year
30 June	15 November of the following year
Any other year-end	15th day of the 4th month following the closing date of accounts

For companies with 31 December 2020 year-end, an extension till 31 October 2021 has been granted

Mexico: Reforms relating to outsourcing and subcontracting rules

Various reforms relating to tax and labor laws were published in the official gazette of Mexico. The provisions relating to tax reforms will take effect from 1 August 2021 and are concerned with the outsourcing or sub-contracting of personnel.

- Article 12 of the decree prohibits subcontracting of personnel except when it is done to execute specialized works that are not part of the corporate purpose of the predominant activity of the beneficiary. *Subcontracting is understood to be done when a natural or legal person provides or makes available their own worker for the benefit of another.*
- Article 14 states that the subcontracting of specialized services or the execution of specialized works has to be formalized by way of a written contract wherein the objects and the approximate number of workers participating need to be indicated. Furthermore, the natural or legal persons who provide subcontracting services are required to register with the Ministry of Labor and Social Welfare.
- Article 5 puts an obligation on the beneficiary to ensure that the contractor is registered at the time of making payment to him.
- Article 127 prescribes norms relating to the right of workers to participate in the distribution of profits. The profit sharing will be subject to a maximum limit of three months of the worker's salary or the average of the participation received in the last three years, whichever is more favorable to the worker.
- Article 15-D: When subcontracting is done for the execution of work that is part of both the corporate purpose and the predominant economic activity of the contractor, the payment will not have tax deduction or crediting effects. The tax deduction and credit shall also be ineligible where the contractor has transferred the workers to the beneficiary by means of any legal mechanism.
- If the specialized service providers fail to comply with their documentation delivery obligations, they would also be subject to the sanctions established in articles 81 and 82 of the Fiscal Code of Federation, that is, between USD 150,000 to USD 300,000.

In light of these reforms, the corporate groups in Mexico shall have to examine their Mexican workforce to develop strategies to comply with the new obligations. Given the vigorous penalties for non-compliance with the obligations, it becomes even more necessary for employers in Mexico to prepare for this new legal scenario from a holistic perspective concerning labor laws, corporate laws and tax laws.

Indirect Tax

Two months' sales tax holiday

[Excerpts from NBC 10 Boston]

Governor Charlie Baker of Massachusetts State has proposed to waive off the sales tax for the entire month of August and September. As the State has collected more tax than it had expected, the viability of the sales tax holiday is being discussed. Governer Baker mentioned that as the State revenues are 15% ahead from where they should be, the State can consider returning tax money to the residents and small businesses.

Compliance Calendar

Direct Tax
Indirect Tax

7 August 2021

Payment of TDS and TCS deducted/collected in July 2021

10 August 2021

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

11 August 2021

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

13 August 2021

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

15 August 2021

Quarterly TDS Certificate (in respect of tax deducted for payments other than salary) for the quarter ending 30 June 2021

20 August 2021

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

25 August 2021

Payment of tax through GST PMT-06 by taxpayers under QRMP scheme for the month of July 2021

30 August 2021

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

7 September 2021

Due date for deposit of Tax deducted/collected for the month of August, 2021

11 September 2021

GSTR-1 for the month of August 2021 to be filed by all registered taxpayers not under QRMP scheme

13 September 2021

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

Insights & News

Alerts

Government notifies self-certified GSTR-9C for FY 2020-21; No Annual Return for small taxpayers

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

News

E-way bill generation to be blocked from August 15 for GST return non-filers

- Saket Patawari

5 August 2021

The Times of India

Read Here https://bit.ly/3fIV948

5 August 2021

Livemint

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5 August 2021

The Economic Times: ET Retail

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

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Organizer - Achromic point

11 August 2021

Masterclass-Start-up Investment -Taxation issues & procedures decoded

Organizer - Inflection Point Ventures

31 July 2021

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GST - Practical Insights into Audit, Inspection & Litigation

Organizer - Taxsutra

15 July 2021

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21 August 2021

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We provide integrated, digitally driven solutions encompassing Business Services and Professional Services, that help businesses navigate challenges across all stages of their life-cycle. Through our direct operations in the 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 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 (SKP) is of utmost importance, and we are ISO/ISE 27001 certified for information security and ISO 9001 certified for quality management.

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

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

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