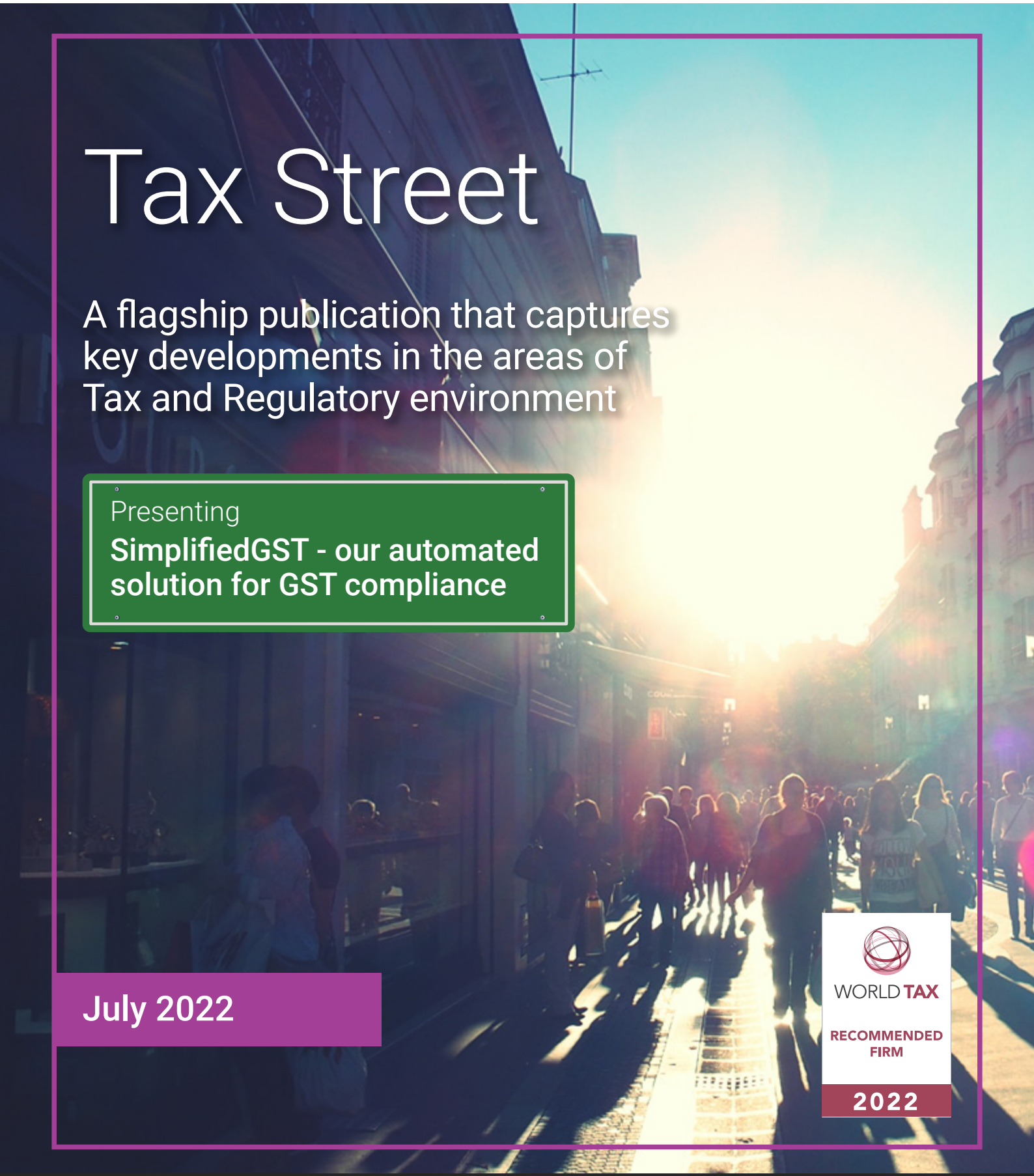

Tax Street

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

Presenting
SimplifiedGST - our automated solution for GST compliance

July 2022

WORLD TAX
RECOMMENDED FIRM
2022

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 July 2022.

- The **'Focus Point'** covers an overview of UK's recent move to align Transfer Pricing Documentation requirements as per OECD Guidelines.
- Under the **'From the Judiciary'** section, we provide in brief, the key rulings on important cases, and our take on the same.
- Our **'Tax Talk'** provides key updates on the important tax-related news from India and across the globe.
- Under **'Compliance Calendar'**, we list down the important due dates with regard to direct tax, transfer pricing and indirect tax in the month.

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

Warm regards,
The Nexdigm Team

Focus Point

UK aligns its Transfer Pricing Documentation requirements with OECD Guidelines

Universally, Transfer Pricing (TP) has been dealt with in different jurisdictions with different degrees of applications. In essence, TP is a means of pricing transactions between connected parties based on the internationally recognized arm's length principle, which seeks to determine what the price would have been if the transactions had been carried out under comparable conditions by independent parties. In recent years there have been significant developments in the field of international tax.

It has been more than six years since the Organisation for Economic Cooperation and Development (OECD) presented a package of measures in response to the G20/OECD Base Erosion and Profit Shifting (BEPS) Action Plan, including a requirement to develop rules regarding TP documentation. The Action Plan 13 OECD placed prominence on the globally standardized approach for maintaining a three-tiered approach to TP documentation. Having the right information at the right time helps in identifying and resolving TP risks, due to which the OECD introduced a standardized approach of documentation consisting of:

- a Master File, containing standardized information relevant for all multinational enterprise group members.
- a Local File, referring specifically to material transactions of the local taxpayer.
- a Country-by-Country Report (CbCR) for the largest multinational enterprise groups containing aggregate data on the global allocation of income, profit, taxes paid, and economic activity among the tax jurisdictions in which it operates.

The UK had implemented the Country-by-Country minimum standard but did not introduce specific requirements regarding Master File and Local File because it already had broad record-keeping requirements. Experience has shown that the absence of specific TP documentation requirements and supporting guidance has created a degree of uncertainty for UK businesses regarding the appropriate TP documentation they need to keep, leading to an inconsistent approach. Keeping in cognizance of Action Plan 13 and aligning its TP documentation requirements with the OECD TP Guidelines, the UK Government introduced draft legislation as a part of the draft Finance Bill 2022/23 on 20 July 2022 to prescribe and standardize the format of the TP documentation.

Applicability	The provisions of the draft legislation would apply to large multinational businesses having tax presence in the UK, i.e., a business having global revenues of 750 million euros or more.
Effective Date	Applicable for accounting periods beginning on or after 1 April 2023.
Proposed provisions	In order to comply with the existing TP provisions in the UK, the business has to retain sufficient records to demonstrate the completeness and accuracy of their tax returns. However, the newly introduced documentation requirements would give a degree of certainty and consistency of approach to the businesses in the UK. New powers are being built into Finance Act 1998 and Taxes Management Act 1970 to enable regulations to specify certain TP records which must be kept and preserved. The regulations will specify that the Master File, Local File and Summary Audit Trail (SAT) questionnaire documents must be kept and preserved.

Additionally,

- Introduction of 'Summary Audit Trail' wherein a complete questionnaire highlighting the actions undertaken while preparing the TP Local File document.
- Regulations specifying that the Master File, Local File and SAT documents must be kept and preserved in support of the TP arrangement of the UK entity.
- Information notices are revised in order to specify TP information or documents referenced in the new regulations. The changes also ensure that relevant TP documents can be requested outside an inquiry. It removes the requirement for the documents to be in the 'possession of power' of the UK entity in question when they are in the 'possession or power' of another person within the multinational group. This would enable the HMRC (UK Tax Authority) to access documents relevant to the TP arrangement of a UK taxpayer, which is available outside the UK jurisdiction but within the multinational group.
- Penalties would be imposed under the presumption that inaccuracy is careless if there is a failure to maintain relevant records or to produce those records on request. The taxpayer would be able to negate the said presumption only if it is able to prove that the documents and underlying TP documentation had been prepared in advance of their Corporate Tax Return filing or otherwise took reasonable care for the same.

Comments

As a result of having to report TP information within the documentation clearly, UK businesses will have a coherent and more robust TP position before filing the Corporation Tax return, and this may encourage and incentivize businesses that adopt higher-risk TP positions to change their behavior.

This is a welcoming step undertaken by the UK Government, which would help the business in the UK to clearly report TP information in the form of prescribed and standardized documentation. Businesses will maintain robust documentation of the pricing positions undertaken while filing the Corporate Tax Return.

HMRC would also have access to high-quality data in a standardized format. More informed risk assessments, utilizing target resources efficiently, and reduced time for establishing facts in compliance interventions would be an added advantage to the proposed draft legislation.

From the Judiciary

Direct Tax

Whether payment made for allowing access to its database or IT infrastructure facility abroad is taxable as Royalty?

M/s. Faurecia Systems D'echappement vs ACIT
ITA No.306/PUN/2021

Facts

The taxpayer is a French Company that is a global leader in automotive technology. During the year under consideration, the taxpayer received INR 85.6 million for licensing of software which provided its customers with access to its database situated in France. The taxpayer adopted a view that such charges for licensing of software were not taxable as Royalty under the India-France Double Tax Avoidance Agreement (DTAA) or Indian Domestic Tax Laws (IDTL).

The Assessing Officer (AO) opined that the payments received by the taxpayer should be considered Royalty under the India-France DTAA based on the Dispute Resolution Panel's (DRP) order. The taxpayer accepted such final assessment order and did not prefer any appeal before the Tribunal, thereby assigning finality to the addition of INR 85.6 million as Royalty income. However, the AO imposed a penalty of INR 8.999 million on such an addition.

The Commissioner of Income-tax (Appeals) [CIT(A)] deleted the penalty relying on the Apex Court ruling in the case of Engineering Analysis. Aggrieved by the order, AO filed an appeal before the Pune Tribunal.

Held

The Tribunal observed that the income primarily pertained to access to database and use of the Infrastructure facility. The Tribunal opined that the amount received by the taxpayer as consideration for allowing access to its database abroad will not be governed by the ruling in Engineering Analysis as this decision applies only to the cases of software transferred without giving any right to copy. Furthermore, the Tribunal explained that the instant transaction pertains to allowing access to its Database or IT Infrastructure facility, which is established with various components, such as software, hardware, and networking, shall qualify as Royalty under both IDTL and India-France DTAA. The Tribunal also distinguished between copyright Royalty and industrial Royalty by stating that consideration for the use of software constitutes copyright royalty, and consideration received for the use of IT infrastructure facility is Industrial Royalty. Accordingly, the Tribunal stated that a penalty cannot be imposed on a debatable issue and deleted the penalty.

Our Comments

The Pune Tribunal emphasized the difference between copyright Royalty and Industrial Royalty and held that consideration received for granting license to access online database falls within the definition of Royalty.

Whether payment to intermediary/ liaison agent for client introduction qualifies as Fees for Technical Services (FTS)?

M/s. Hemera India Private Ltd. vs DCIT
ITA No.3092/Del/2019

Facts

The taxpayer is an Indian company trading in agricultural commodities, ferrous and non-ferrous commodities, and energy commodities. During the year under consideration, the taxpayer made a payment to a UK-based entity, an intermediary for its introduction to a client based out of India. The taxpayer adopted a view that made payment to UK entity for its service of client introduction does not qualify as FTS and did not withhold any taxes on the same.

The AO concluded that payment made by the taxpayer to UK entity would amount to rendering market and sales promotion services, which should fall within the ambit of FTS and the

taxpayer was liable for withholding tax on such payment.

This was upheld by the first appellate authority. Aggrieved by the order, the taxpayer filed an appeal before the Delhi Tribunal.

Held

The Tribunal stated that the factual matrix clearly reveals that the foreign entity was not extending any technical know-how or expertise in the field of procurement of business or any other purpose on a permanent basis. The Tribunal opined commission payments to nonresident agents/ service providers for services like sales promotion, marketing, publicity, procuring sales orders, etc., are not FTS, but business profit in the hands of the service provider falling in the scope of Article 7 read with Article 5 of the India-UK DTAA. Thus, the Tribunal held that this payment was not chargeable to tax in India as FTS.

Our Comments

The Delhi Tribunal has re-affirmed that consultancy charges for client introduction or client referral fees shall not qualify as FTS.

Transfer Pricing

Higher interest rate on Unsecured NCD is considered at arm's length considering the risk involved.

Vena Energy KM Wind Power Pvt Ltd.
TS-449-ITAT-2022(Bang)-TP[1]

Facts

The taxpayer is principally engaged in generating and selling power generated from renewable energy sources. The taxpayer had made payments towards interest on non-convertible debentures (redeemable after 25 years) issued in INR to its Associated Enterprise (AE) at 14.70% interest. The taxpayer benchmarked the transaction by adopting an internal Comparable Uncontrolled Price (CUP). These comparable transactions were identified based on loans obtained by the taxpayer's sister concerns from a third-party domestic financial institutions (11.75% to 12%). After considering adjustments to be made for tenure and security, the taxpayer alleged that the interest rate from third-party borrowings would be approximately 15%. However, the Transfer Pricing Officer (TPO) rejected the comparables of the taxpayer, stating that the filters applied were not appropriate and applied fresh filters to choose different comparables, which arrived at a coupon rate of 9.35% and thereby proposed an adjustment.

Aggrieved by the TPO's decision, the taxpayer raised objections before the Dispute Resolution Panel (DRP), which stated the CUP method requires strict comparability. Key areas of difference noted by the DRP were:

- Nature of Instrument: an Non Convertible Debentures (NCD), is an instrument tradeable in the open market and a hybrid instrument that could be treated as debt as well as equity, whereas the proposed comparable is a bank loan that is only debt.
- Repayment: in an NCD, the amount is required to be paid at maturity, whereas in a loan by the bank, periodic payments are required to be made.

Hence, the internal CUP method was rejected and the DRP upheld the TPO's adjustment.

Before the DRP, the taxpayer had taken an alternate plea stating that according to Section 194LD(2), the maximum allowable rate of interest for a rupee-denominated bond of an Indian company cannot exceed the SBI base rate on the date of issue plus 500 basis points which works out to 14.85% and therefore no TP adjustment is warranted. However, the DRP rejected this contention, stating Section 194LD(2) of the Act does not provide any guidelines for the determination of arm's length interest rate in the case of NCD.

Held

ITAT observed that while the taxpayer had adopted filters and adjustments to account for differences in tenure and security, the TPO did not make similar filters and adjustments. ITAT opined that "duration of the debt/loan is a significant factor in the determination of interest rate and the key criteria for determining the interest rate is the risk involved. Given that the debentures are unsecured, the risk is higher, and there would be a higher rate of interest charged for the loan. ITAT also relied on rulings[2] to uphold benchmarking interest payment on INR-denominated debentures against the prevailing SBI Prime Lending Rate (PLR) + 300 basis points as the appropriate Arm's Length Price (ALP).

Further reliance was placed on RBI's Master Direction, which states that the rate of interest shall not be more than the PLR of SBI plus 300 basis points.

Accordingly, applying the aforesaid logic, ITAT stated that the taxpayer was justified in its interest payments.

1. Income Tax Appellate Tribunal – Bangalore ITA No. 195/Bang/2021 (AY 2016-17).
2. Delhi ITAT - Assotech Moonshine Urban developers (P) Ltd, Granite Gate Properties Pvt Ltd, Praxair India Pvt. Ltd.

Our Comments

In financial transaction benchmarking, taxpayers should take due care in documenting the nature of the related party arrangement and adopt relevant comparisons if the CUP method is being applied. The ITAT has acknowledged the adoption of adjustments to account for key factors such as duration and tenure in deciding the arm's length range.

Yield Spread Method adopted for benchmarking corporate guarantee at 0.35%

Sikka Ports & Terminals Ltd.[3]
TS-418-ITAT-2022(Mum)-TP

The taxpayer is engaged in the port infrastructure facilities, engineering, construction and consultancy services. In the course of assessment proceedings, the TPO observed that the taxpayer had given certain corporate guarantees to third parties, undertaking the contractual and other obligations of it's AE. While the taxpayer alleged that extending corporate guarantee was not an international transaction, it produced a benchmarking out of abundant caution. The taxpayer had adopted the "yield spread approach" to benchmark the guarantee commission. On the basis of the quote obtained from the Royal Bank of Scotland (RBS), 70 bps was computed as yield spread and, accordingly, 0.35% computed as ALP of the corporate guarantee benefit.

However, TPO was of the opinion that the quote from RBS could not be a sound basis for computing the interest differential, as it was dated 1 April 2013, i.e., after the end of the relevant previous year. It thereafter requisitioned information from HDFC Bank and State Bank of India, which provided 1.80% and 1.08% - 2.1% for all types of guarantees. On this basis, the TPO ascertained the ALP for issuance of guarantee to be 1.5% and proposed an adjustment.

On appeal, the CIT(A) stated that naked quotes adopted by the TPO are untenable and hence liable to be rejected. However, it restricted the adjustment to 0.5%, following Hon'ble Bombay High court in the case of CIT vs Everest Kento Cylinders Ltd. (2015] 378 ITR 57 (Bom)(HC). After which, both taxpayer and Revenue were in appeal before the ITAT.

Held

ITAT observed that while adopting the yield spread approach, the quotes for the interest rates don't need to be as on the date of entering into a transaction. This is because the material factor is the difference between these rates and not the quantum of these rates; every variation in such rates need not necessarily affect the variation between with and without guarantee interest rates. At the end of the day, the rate differential is an approximation - no matter how scientific or reasonable it is.

The ITAT further observed that if the rate differential between these two interest rates is 70bps at the end of the previous year, it is reasonable to proceed on the basis that such a differential would also prevail during the relevant previous year. ITAT thus held that the objections taken by the revenue authorities to the adoption of the yield spread approach were not legally sustainable. It held that the quotations obtained from HDFC Bank and State Bank of India were for the bank guarantees simplicitor and not corporate guarantees. These two kinds of guarantees are materially different, as has been held by a series of co-ordinate bench decisions. Accordingly, ITAT upheld the taxpayer's approach in light of the yield spread method adopted.

Our Comments

In the above ruling, it can be noted that in guarantee cases, a yield spread approach has been upheld to benchmark the appropriate guarantee commission.

3. Income Tax Appellate Tribunal – Mumbai ITA No. 2139/Mum/2021 (AY 2013-14) & 2022/Mum/2021 (AY 2013-14).

Indirect Tax

Entitlement to credit transitioned from the erstwhile indirect tax regime.

Note: In the matter of Filco Trade Centre Pvt. Ltd. vs Union of India [TS-446-HC-2018(GUJ)-NT], the Gujarat High Court had struck down Section 140(3)(iv) of the CGST Act imposing a one-year time limit to avail transitional credit, as being unconstitutional.

Union of India & Anr. vs Filco Trade Centre Pvt. Ltd. & Anr. [TS-369-SC-2022]

The Court had opined inter alia that "…the benefit of credit of eligible duties on the purchases made by the first stage dealer as per the then existing CENVAT credit rules was a vested right. By virtue of clause (iv) of sub-section (3) of Section 140, such right has been taken away with retrospective effect in relation to goods that were purchased prior to one year from the appointed day. This retrospectivity given to the provision has no rational or reasonable basis for imposition of the condition."

Background

- One of the teething issues faced by many taxpayers during the transition to the GST regime was the inability to carry forward the existing pool of VAT and CENVAT credit lying in their books. This was largely on account of the technical glitches/difficulties on the GST portal, resulting in a denial of input tax credit which otherwise had crystallized into a vested right for the taxpayers but could not be claimed within the prescribed time limit.
- Various writ petitions were filed before jurisdictional High Courts seeking reliefs, where the Department was directed to re-open the portal so that the petitioners can file their respective TRAN-1 returns or revised returns. However, the government contested these orders and ultimately, the matter reached the Apex Court.

Ruling

Disposing off a batch of 400 appeals, the Supreme Court issued the following directions:

- The GSTN would open the common portal for filing TRAN-1 and TRAN-2 forms for two months w.e.f. 1 September 2022 to 31 October 2022.
- GSTN must ensure that there are no technical glitches during the said time.
- Considering the judgments of the High Courts on the then prevailing peculiar circumstances, any aggrieved taxpayer can file the relevant form or revise the already filed form, irrespective of whether a writ petition has been filed before the High Court or if the taxpayer's case has been decided by the Information Technology Grievance Redressal Committee (ITGRC).
- The concerned officers would thereafter verify the veracity of the claim / transitional credit and pass appropriate orders thereon on merits after giving reasonable opportunities to the concerned parties within 90 days.
- The allowed transitional credit should reflect in the Electronic Credit Ledger.
- If required, the GST Council may also issue appropriate guidelines to the field formations in scrutinizing the claims.

Our Comments

The two-month window granted to claim the transitional credit is a major relief, addressing the genuine concerns of the taxpayers who faced technical glitches and other operational challenges.

This gives an opportunity to the taxpayers to evaluate the missed/ unavailed credit and the reasons therefor – whether on account of technical glitches or legal interpretation - and make appropriate claims.

However, to ensure uniformity in the procedure and avoid undue litigation stemming from the verification process, it would be expedient for the GST Council/Central Board of Indirect Taxes and Customs (CBIC) to prescribe proper guidelines in this regard.

Whether the telecom services provided by the petitioner to customers of Foreign Telecom Operators (FTO) under roaming arrangement for making international long-distance calls within the territory of India would qualify as 'export of services' under the GST law?

Vodafone Idea Limited vs The Union of India & Ors. [2022 (7) TMI 645 – Bombay High Court]

Facts

- Vodafone Idea Limited (the petitioner) provides telecom services in the nature of International Inbound Roaming services (IIR) and International Long Distance (ILD) services to FTOs, under a roaming arrangement.
- As per the said arrangement, a subscriber of FTO traveling to India can use the Home Operator network (viz. the petitioner), and vice versa. For these services, the Home Operator and FTO would issue invoices to each other.
- Taking a stand that such telecom services qualify as exports within the meaning of Section 2(6) of the IGST Act, the petitioner filed GST refund claims. However, the same

was rejected by the Department on the ground that the place of supply of services was the State of Maharashtra and cannot be considered as exports.

- Subsequently, the petitioner received favorable orders from the First Appellate Authority, which were challenged by the Revenue before the High Court.
- The petitioner also filed a writ seeking direction to Revenue to implement the order-in-appeal.

Ruling

- High Court found that the petitioner is contractually obligated only to the FTOs for the services rendered under the agreement. The consideration is payable in convertible foreign exchange by the FTOs.
- There is no contract with a subscriber of FTO, making it liable to pay value of service to the petitioner. Hence, the subscriber of the FTO cannot be considered as 'recipient' of service. The FTO is undoubtedly the recipient of services, observed the High Court.
- Given this, the provision of Section 13(3)(b) of the IGST Act (place of actual performance) is not attracted in the present case since the same is only applicable to services provided to an individual.
- According to the High Court, when a service is rendered to a third-party customer of FTO (your customer), the service recipient is your customer and not such third-party customer of FTO.
- Since the petitioner has not supplied services specified in sub-sections (3) to (13) of Section 13 of the IGST Act, the place of supply is the location of the service recipient, which is outside India.
- As regards Revenue's contention that the subscriber and FTO are acting on behalf of each other, High Court stated that the relationship between the two is on a principal to principal basis, and there is no evidence to substantiate otherwise.
- Accordingly, the High Court dismissed Revenue's writ petition while allowing that of the petitioner. However, the order has been stayed upto 31 August 2022

Our Comments

The ruling rightly identifies the 'recipient' of services and consequently the place of supply for international roaming services, based on the concept that the customer's customer cannot be your customer.

While the ruling pertains to telecom services, the principle can be applied to other scenarios to determine the true nature of transactions and the tax implications thereon.

M&A Tax Update

Pune ITAT disallows set off of losses to the assessee by holding sole underlying purpose of demerger was to obtain tax benefit

Cummins Sales & Services (I) Ltd. (Formerly known as Cummins Diesels Sales & Services Ltd.) [TS-523-ITAT-2022(PUN)]

The assessee, a resulting company, had claimed set-off of brought forward business losses and unabsorbed depreciation pertaining to demerged undertaking. During the course of assessment proceedings, the assessing officer noted that the assets of demerged undertaking were held for sale, which clearly indicated that there was no intention to continue the business of demerged undertaking, thereby defeating the object behind the enactment of the provisions of Section 72A(4) of the Act. The CIT(A) allowed the contention of the assessee that the demerger motive cannot be questioned once the Court approves the scheme.

The Tribunal observed that the assessee did not carry any business of demerged undertaking and put the assets of the demerged unit for sale, this evidenced that the assessee clearly did not have any intention of carrying on the business of demerged undertaking and the sole motive of demerger was tax set-off. Even if the government has not laid down the criteria to determine under what circumstances demerger can be said to be for a non-genuine purpose, the jurisdictional High Court decision holds the legal position that the benefit of set-off of brought forward business losses cannot be allowed when the sole idea behind the scheme was to avail tax benefits. Taking cognizance of the objects behind the enactment of provisions of Section 72A, the claim for depreciation was not allowed.

Our Comments

The General Anti-avoidance Rule (GAAR) provisions could not have been directly applied considering the year to which the matter pertains. However, indirectly the principles of the GAAR provisions have been applied by getting into the rationale for the demerger. The Tribunal taking into consideration the conditionalities of Section 72A implicitly emphasizes that the schemes should be internally scrutinized for the GAAR test as the scheme being approved by National Company Law Tribunal (NCLT) is not going to be a sufficient defense from its applicability. The tax authorities would certainly be entitled to look at the schemes to assess from the lens of the GAAR provisions.

Delhi ITAT holds non-compete fees not to be eligible for depreciation as the same can not be classified as an intangible asset

Sagar Ratna Restaurants (P.) Ltd. v. ACIT [[2022] 139 taxmann.com 87 (Delhi - Trib.)]

The assessee had acquired a restaurant which inter-alia included all of the transferor's rights, copyrights, trademarks, etc. in respect of the restaurant. The assessee has made certain payments relating to non-compete fees to the transferor and treated the same as capital expenditure in the year of acquisition and the assessee claimed depreciation on such expenditure thereon.

The Tribunal observed that the dispute is identical to the jurisdictional Delhi High Court decision in the case of Sharp Business System,[4] wherein it was held that a non-compete fee though an intangible asset is not similar to know-how, patent, copyright, trademark, licenses, franchises or any other business or commercial right of similar nature. In the case of non-compete fees, unlike the rights mentioned in Section 32(1)(ii), which an owner can exercise against the world at large and can be traded or transferred, the advantage is restricted only against the seller. Therefore, it is not a right in rem but in personam. However, there have been other decisions wherein it has been ruled in favor of the assessee and depreciation has been allowed.

However, the Tribunal proceeded to follow the decision of the jurisdictional High Court and disallowed the claim.

Our Comments

The issue with respect to the allowability of depreciation on non-compete fees has been a matter of debate before Courts. Various conflicting decisions on eligibility for depreciation on payment of non-compete fees exist. While in a few cases, the Courts have held non-compete fees to be an intangible asset eligible for depreciation, others have held it as not an intangible asset. Few of the decisions have also allowed it as revenue expenditure. The present decision has followed the jurisdictional High Court decision in proceeding not to allow the depreciation claim. Considering the conflicting decisions on the matter, it is pertinent that the plausibility of the same is assessed on a case-to-case basis by inter-alia, taking into consideration the prevalent position as per the jurisdiction of the assessee.

4. Sharp Business Systems v. CIT [211 Taxmann 576 (Delhi)]

Regulatory Updates

Securities and Exchange Board of India (SEBI) Regulations

SEBI prescribes new format for disclosure of shareholding patterns by listed companies

The Securities and Exchange Board of India (SEBI) vide Circular No. CIR/CFD/CMD/13/2015 dated 30 November 2015, had prescribed formats for disclosure of holding of specified securities and shareholding patterns under Annexure-I to the Circular. In the interest of providing further clarity and transparency in the disclosure of shareholding patterns to the investors in the securities market, the SEBI has vide notification dated 30 June 2022, partially modified the aforesaid Circular. Under the new disclosure formats, SEBI has added a new column for disclosing the sub-categorization of shareholding under the below three sub-categories:

1. Shareholders who are represented by a Nominee Director on the Board of the listed entity or have the right to nominate a representative (director) on the Board of the listed entity.
2. Shareholders who have entered into a Shareholder Agreement with the listed entity.
3. Shareholders who are Persons acting in Concert (PAC) with a promoter.

Furthermore, details pertaining to foreign ownership limits and names of the shareholders who are persons acting in concert, if available, shall also be disclosed separately. This Circular shall come into force with effect from the quarter ending 30 September 2022.

Our Comments

In addition to the disclosures already being given for Public Shareholders holding more than 1% shares, Listed Companies will now have to give additional separate disclosures regarding the sub-category of such shareholders. Also, the regulator has specified that all listed entities will have to disclose details pertaining to foreign ownership limits in a prescribed format. These new disclosure requirements will provide more clarity and transparency to investors but, at the same time, increase the compliance burden of the Listed Company. Companies have time till next quarter to collate additional data/information as required under these new disclosure formats as disclosure of shareholding as per these new formats will become applicable from the quarter ending 30 September 2022 onwards.

Tax Talk

Indian Developments

Direct Tax

Central Government specifies the meaning of NFT

Notification S.O. 2959(E) [No. 75/2022/F. NO. 370142/29/2022-Tpl (Part-I)] dated 30 June 2022

- In light of powers conferred by clause (a) of Explanation to clause (47A) of Section 2 of the Income-tax Act, 1961, Central Government provided the meaning of Non–fungible token (NFT).
- NFT is a token that qualifies to be a virtual digital asset as a non-fungible token within the meaning of sub-clause (a) of clause (47A) of Section 2 of the Act but shall not include a non-fungible token whose transfer results in the transfer of ownership of the underlying tangible asset and the transfer of ownership of a such underlying tangible asset is legally enforceable.

CBDT has specified certain Forms, returns, statements, reports, and orders to be furnished electronically

Notification No. 03/2022
F. No. DGIT(S)-ADG(S)-3/e-Fling Notification/Forms/2022/3813 dated 16 July 2022

- In exercise of the powers conferred under sub-rule (1) and sub-rule (2) of Rule 131 of the Income-tax Rules, 1962 (the Rules), the Director General of Income-tax (Systems), with the approval of the Board, hereby specifies that the following Forms, returns, statements, reports, orders, by whatever name called, shall be furnished electronically and shall be verified in the manner prescribed under sub-rule (1) of Rule 131 namely 3CEF, 10F, 101A, 3BB, etc.

CBDT announces Form 26QF in relation to Section 194S

Notification G.S.R. 482(E) [No. 73/2022/F. No. 370142/29/2022-Tpl (Part-I)], dated 30 June 2022 as corrected by Notification G.S.R. 505(E) [No. 77/2022/F.No. 370142/29/2022-Tpl (Part-I)] dated 1 July 2022

- In accordance with the guidelines issued under sub-section (6) of Section 194S, where the Exchange has agreed to pay tax in relation to a transaction of transfer of a virtual digital asset owned by it as an alternative to the tax required to be deducted by the buyer of such asset under Section 194S, the Exchange shall deliver or cause to be delivered, a quarterly statement of such transactions in Form No. 26QF to the Principal Director General of Income-tax (Systems) or Director General of Income-tax (Systems) or the person authorized by the Principal Director General of Income-tax (Systems) or the Director General of Income-tax.

Indirect Tax

Pursuant to the 47th GST Council meeting held on 28 and 29 June 2022, the government issued various Notifications and Circulars to effect the recommendations. Some of the noteworthy amendments and clarifications are summarized below:

Legislative: https://bit.ly/3AukWIo
Clarifications: https://bit.ly/3Spon9O
Rates revision: https://bit.ly/3oROEjk
Administration: https://bit.ly/3JABPni

GST on pre-packaged and labeled goods

Notification No. 06/2022-CT (Rate) dated 13 July 2022

With effect from 18 July 2022, GST at 5% is made applicable on specified food items like pulses, cereal, flour, rice, curd, lassi and buttermilk in pre-packaged and labeled form. The CBIC also issued FAQs on the applicability of GST on such pre-packaged and labeled goods. It has been clarified inter alia that the supply of such specified commodity having the following two attributes would attract GST:

- it is pre-packaged; and
- it is required to bear the declarations under the Legal Metrology Act and the rules made thereunder.

Tax Talk

Global Developments

Direct Tax

OECD invites public input on the Progress Report on Amount A of Pillar One

Excerpts from oecd.org, 11 July 2022

Following years of intensive negotiations to update and fundamentally reform international tax rules, 137 members of the Inclusive Framework joined the Statement on the Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalization of the Economy released in October 2021. Nine months after this historic agreement, significant work and progress have been achieved on the development of the technical rules of the new taxing right (Amount A), including through the valuable inputs received during the rolling public consultation held on various building blocks of Amount A. To seek further feedback from stakeholders and consistent with the revised schedule for completing the work on Amount A agreed by the Inclusive Framework, the OECD secretariat has prepared a Progress Report on Amount A of Pillar One, which includes a consolidated version of the operative provisions on Amount A (presented in the form of domestic model rules), reflecting the technical work completed thus far. This report does not yet include the rules on the administration of the new taxing right, including the tax certainty-related provisions, which will be released in due course and before the Inclusive Framework meeting in October 2022.

The Progress Report on Amount A of Pillar One is a consultation document released by the OECD Secretariat for the purpose of obtaining further input from stakeholders on the technical design of Amount A. The comments provided will assist members of the Inclusive Framework in completing the work on the technical development of Amount A. Comments are sought with respect to the rules in this document. Where relevant, the input should refer to the relevant Section of the rules. While comments are invited on any aspect of the rules, input will be most helpful where it explains the additional guidance that would be needed to apply the rules to the circumstances of a particular type of business, as well as input on whether anything is missing or incomplete in the rules.

OECD releases Tax Administration Report, 2022

Excerpts from oecd.org, 23 June 2022

The OECD's Tax Administration Comparative Information Series, which commenced in 2004, examines the fundamental elements of modern tax administration systems and uses an extensive data set, analysis, and examples to highlight key trends, recent innovations and examples of good practice. The primary purpose of the series is to share information that will facilitate dialogue among tax officials and other stakeholders on important tax administration issues, including identifying opportunities to improve the design and administration of their systems both individually and collectively.

This report is the tenth edition of the OECD's Tax Administration Series. It provides internationally comparative data on global trends in tax administrations across 58 advanced and emerging economies. The report intends to inform and inspire tax administrations as they consider their future operations and provide information on global tax administration trends and performance for stakeholders and policymakers. The report is structured around nine chapters that examine the performance of tax administration systems, using an extensive data set and a variety of examples to highlight recent innovations and successful practices. This edition also provides a first glimpse of the impact of the COVID-19 pandemic on the work of tax administrations. The underlying data comes from the International Survey on Revenue Administration and the Inventory of Tax Technology Initiatives.

Mauritius Revenue Authority rules, all incomes from Alternative Investment Fund (AIF) taxable as 'dividend' regardless of 'initial characteristics'

Excerpts from Business Standard, 1 July 2022

According to the Mauritius Revenue Authority (MRA) ruling, Mauritius-based investment vehicles will have to pay more tax in the island country on the capital gains they made while exiting a business in India in which a Permanent Establishment (PE) or debt fund has invested. Earlier, the Mauritius-based investment vehicles only had to pay tax on income flows such as dividends and income distributed by these funds from India.

Indian Venture and Alternate Capital Association (IVCA) said the ruling could give rise to uncertainty and litigation, both of which are anathemas to capital flows and investments. "Mauritius-based PEs already had to grapple with the Financial Action Task Force (FATF) grey-list issue during COVID-19; this sudden ruling during a bear market, when capital is being taken out and redistributed to LPs will sow the seeds for litigation and color LPs' views of Mauritius as a PE pooling regime," Pai said.

Transfer Pricing

Saudi Arabia: Proposed amendments to TP bylaws to include TP Documentation[5]

The Zakat, Tax and Customs Authority (ZATCA) issued an amended draft of TP bylaws and invited comments from the public. The deadline for submitting feedback is 30 July 2022. Presently, the bylaws exempt 100% zakat payers from TP documentation provisions (which includes master file, local file, and disclosure forms, etc.), and only 100% income tax paying entities and mixed entities (paying both zakat and income tax) are subject to TP documentation requirements. The proposed amendment seeks to bring Zakat payers within the ambit of TP bylaws. The amended TP bylaws would be effective pursuant to the issuance of a board resolution by ZATCA. There are a few other proposed amendments as well for practical implementation of bringing zakat payers under the ambit of the TP Bylaws or minor adjustments in already existing definitions.

Hence, in Saudi Arabia now, even Zakat-paying groups may want to gear up for their preparedness and may want to review their TP processes in case the amendments are given effect.

Cyprus: Introduction of TP Rules and Documentation Requirements

While many EU countries have already adopted in their national legislation the OECD TP Guidelines, Cyprus is one of the last countries to introduce TP legislation in its income tax law. Until now, Cyprus has had no detailed TP legislation included in its income tax law. While a specific arm's length provision was incorporated, however, there was no guidance on how to apply it. On 30 June 2022, the Cyprus Parliament voted on detailed TP requirements (effective from 2022) that are in line with the OECD TP Guidelines and within the framework of Action 13 of the BEPS project. Key aspects of these are:

- The definition of connected parties as per Section 33(3) has been amended by introducing a 25% relationship test.
- New rules for maintenance of TP documentation to support the controlled transactions with related parties, subject to certain thresholds being exceeded.
- The taxpayer must prepare a Local File if their transactions with connected persons exceed EUR 750,000 per annum in aggregate per category of transactions (sale/purchase of goods, provision/receipt of services, financing transactions, receipt/payment of IP licensing/royalties, etc.).
- A Master File must be prepared when a company is a part of the MNE group as the Ultimate Parent Entity (UPE) or Surrogate Parent Entity (SPE) for CbCR purposes and where the consolidated revenue of the group exceeds EUR 750 million.
- The taxpayers would be required to fill a Summary Information Table (SIT) that would contain high-level information on related party transactions, including details of the counterparties, their jurisdiction of tax residency, the category of intercompany transactions entered into, as well as their value.
- Stringent Penalties are also introduced for failure to provide TP documentation or SIT.

5. https://istitlaa.ncc.gov.sa/ar/Finance/GAZT/TPBylawsamendments/Pages/default.aspx

OECD releases Progress Report on Amount A of Pillar One of BEPS 2.0 project[6]

- The Progress Report is a consultation document that covers many of the building blocks with respect to the new taxing right under Pillar One Amount A and is presented in the form of domestic model rules. It does not yet include the rules on the administration of the new taxing right, including the tax certainty-related provisions, which will be released in due course and before the Inclusive Framework meeting in October 2022. The purpose is to obtain further input from stakeholders on the technical design of Amount A by August 2022.

Indirect Tax

Washington imposes sales tax on NFT Purchases

Excerpts from forbes.com

On 1 July 2022, the State of Washington issued an Interim Guidance Statement (IGS) imposing a 6.5% sales tax and a 0.471% business & occupancy (B&O) tax on NFTs, becoming the first State to come up with such NFT-specific sales tax guidance. Under the guidance, NFT retailers (individuals who sell NFTs in the course of their business) are required to collect sales tax from buyers. The sellers are also required to pay the B&O taxes if the sale is attributed to Washington.

Sales tax exemption to address state inflation in Indiana

Excerpts from mondaq.com

Indiana Senate Republicans have unveiled Senate Bill 3, proposing to place a cap on the State's sales tax on gas and suspending the 7% sales tax on utilities. This move is to combat the rising costs of inflation.

August 2022 to be tax-free for groceries in Tennessee

Excerpts from wgnradio.com

Tennessee Governor Mr. Bill Lee had earlier announced his plans for a 30-day suspension of state and local grocery sales tax to provide financial relief amid surging nationwide inflation. This sales tax holiday will take place in the month of August. During this period, food and food ingredients (except those purchased from micro markets or vending machines) may be purchased tax-free throughout Tennessee. However, food ingredients do not include alcoholic beverages, tobacco, candy, dietary supplements, and prepared food.

6. https://www.oecd.org/tax/beps/progress-report-on-amount-a-of-pillar-one-july-2022.pdf

Compliance Calendar

Direct Tax
Indirect Tax

7 August 2022

Due date for deposit of tax deducted/collected for the month of July 2022

10 August 2022

- GSTR-7 for the month of July 2022 to be filed by taxpayer liable for TDS
- GSTR-8 for the month of July 2022 to be filed by taxpayer liable for Tax Collected at Source (TCS)

11 August 2022

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

13 August 2022

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

14 August 2022

Due date for issue of Tax Deducted at Source (TDS) Certificate for tax deducted under Section 194-IA, 194-IB,194-M in the month of July 2022

15 August 2022

Due date for issue of Quarterly TDS certificate (in respect of tax deducted for payments other than salary) for the quarter ending 30 June 2022

20 August 2022

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

25 August 2022

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

30 August 2022

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

7 September 2022

Due date for deposit of tax deducted/ collected for the month of August 2022

10 September 2022

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

11 September 2022

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

13 September 2022

- GSTR-6 for the month of August 2022 to be filed by ISD
- Uploading B2B invoices using Invoice Furnishing Facility under QRMP scheme for the month of August 2022 by taxpayers with aggregate turnover of up to Rs. 50 million

Upcoming Events

Event
23 August 2022
UAE Corporate Tax
Organizer - Hadef Partners

Event
25 August 2022
Mumbai - GST & Customs
Organizer - Achromic Point
Saket Patawari

Webinars and Events

Webinar
9 August 2022
Development of Enterprise and Service Hubs (DESH)
Organizer - Taxsutra
Sanjay Chhabria

Webinar
2 August 2022
GST Audits and Investigations
Organizer - USIBC
Saket Patawari

Event
15 July 2022
Virtual Training on Mergers and Acquisitions and Business Valuation
Organizer - Achromic Point
Subodh Dandawate and Shraddha Shah

Webinar
4 August 2022
GST Refresher Program
Organizer - CorpConnect
Sanjay Chhabria

Event
21 July 2022
GST and Customs
Organizer - Achromic Point
Saket Patawari

Alerts

Supreme Court orders States to implement DIN for all communications to assessees under GST
5 August 2022
https://bit.ly/3QnZQkd

Key Highlights of GST Notifications and Clarification Circulars
4 August 2022
https://bit.ly/3JABPni

Notification No. 17/2022 – Central Tax dated 1 August 2022
2 August 2022
https://bit.ly/3oLWXxe

Supreme Court order to reinstate TRAN facility
29 July 2022
https://bit.ly/3PIlmQj

Webinars and Events

Insights

Insights

Gist of notifications issued by CBIC effective from 18 July 2022

20 July 2022
https://bit.ly/3oROEjk

RBI introduces International Trade Settlement in INR to promote growth in global trade

15 July 2022
https://bit.ly/3QuHsFV

Gist of circulars issued by CBIC on 6 July 2022

13 July 2022
https://bit.ly/3Spon9O

In The News

Quotes and Coverage

SC ruling to bring relief to importers, clarity on GST Council's role

19 July 2022
Saket Patawari
https://bit.ly/3vMgzoV

CBIC clarifies ambiguity on GST on pre-packaged items, new rates from Monday

18 July 2022
Sanjay Chhabria
https://bit.ly/3bGYbXx

About Nexdigm

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

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

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

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

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

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

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