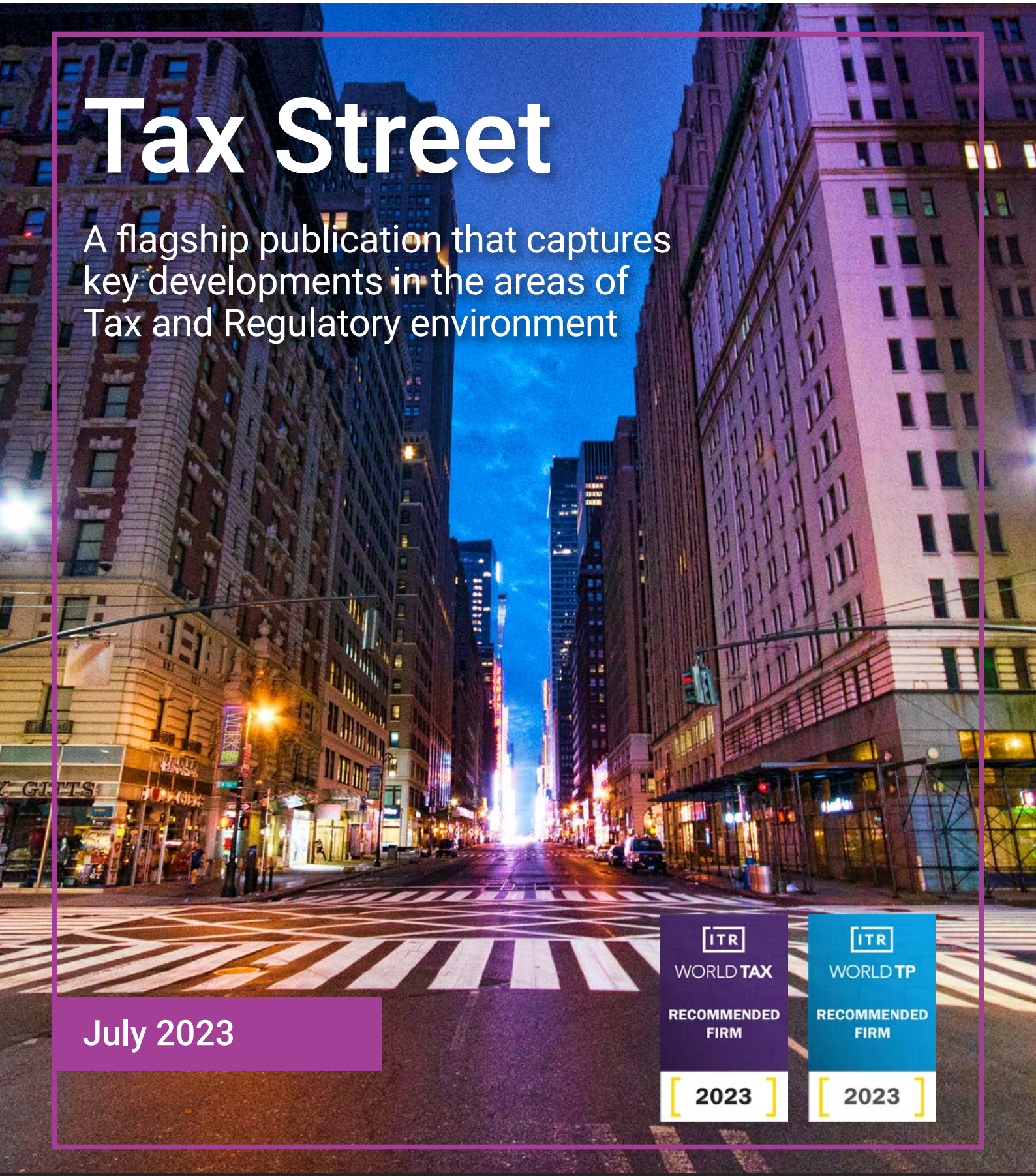

Tax Street

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

July 2023

ITR WORLD TAX RECOMMENDED FIRM 2023

ITR WORLD TP RECOMMENDED FIRM 2023

Introduction

Tax Street

We are pleased to present the latest edition of Tax Street – our newsletter that covers all the key developments and updates in the realm of taxation in India and across the globe for the month of July 2023.

- The **'Focus Point'** covers features of the transfer pricing provisions 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 Team

Focus Point

Aspects of Transfer Pricing in UAE

The UAE's Ministry of Finance made a groundbreaking announcement of implementing Corporate Tax (CT) in the region. On 9 December 2022, the UAE Federal Tax Authority (FTA) released the final version of the UAE CT law through Federal Decree Law No. 47 of 2022. This includes a comprehensive Transfer Pricing (TP) regime modeled along the lines of The Organisation for Economic Co-operation and Development (OECD). The UAE has undertaken this action in its attempts to adhere to the global standards and to align with OECD's Global Minimum Tax Proposal under Pillar 2.

Scope and Applicability

The TP law would apply to entities both in the UAE Mainland as well as the Free Zones. The effective date of the TP regime is the same as the CT law, i.e., the financial years starting on or after 1 June 2023.

Article 34 - Arm's Length Principle

All related party transactions/ arrangements must meet the arm's length standard in determining the taxable income as enumerated in Article 34.

TP Benchmarking Methodology

In order to determine the Arm's Length Price (ALP), taxpayers can apply the following acceptable TP method:

- Comparable Uncontrolled Price (CUP) Method
- Resale Price Method
- Cost-Plus Method
- Transactional Net Margin Method (TNMM)
- Transactional Profit Split Method (PSM)

This concept of the arm's length principle is predominantly in line with the OECD TP guidelines, which recommends transactions between unrelated parties as a measure of the arm's length standard.

There is no prescribed methodology or any preference for the order in which the methods might be applied. One or a combination of the above methods or any other method not listed above can be used to determine the ALP depending on the facts & circumstances of each transaction or arrangement (T/A).

In addition to the above, while selecting the most reliable TP method, the following parameters must be considered:

- Contractual terms and characteristics of the T/A;
- Economic circumstances in which the T/A is conducted;
- Functions performed, assets employed, risks assumed (FAR) and business strategies employed by the Related Parties entering into the T/A.

Arm's Length Range is not defined as yet

An acceptable ALP may be a range of results or indicators (rather than an absolute number). While the concept of ALP has been introduced, the arm's length range has not been specified (i.e., the use of inter-quartile range, percentile, minimum to maximum, etc.)

Corresponding Adjustment is possible

In a scenario where the pricing in relation to the transaction or arrangement does not fall within the arm's length range, the Authorities can make a TP adjustment on the taxable income to achieve the arm's length result.

- If the T/A does not fall within the ALP range, then the FTA may adjust the taxable income to reach ALP. Also, the FTA shall make a corresponding adjustment to the taxable income of the affected related party.
- The ALP principle also applies to transactions that are entered between taxable business and other activities of a government entity or government-controlled entity or, an extractive business of the same person, or a non-extractive natural resource business of the same person.

Article 35 - Related Party and Control

The definition of related parties is broadly in line with the OECD TP guidelines and includes the following (exhaustive list):

- Two individuals when they are related.
- An individual and company would be regarded as related parties where the said individual, either alone or jointly with relatives, directly or indirectly are:
  - shareholders in a company with 50% or greater ownership;
  - 'controls' the company.
- Similarly, two companies would be regarded as related parties where one company, alone or together with its related parties, directly or indirectly:
  - owns 50% or greater ownership interest in the other company;
  - controls the other company;
  - is controlled by a company that also controls the other company (Common Control).
- Partners in the same unincorporated partnership.
- Trustee, founder, settlor or beneficiary of a trust or foundation, and its related parties.
- Furthermore, the Decree-Law has given a brief understanding with respect to the term 'Control,' which inter-alia includes the ability to:
  - exercise at least 50% of the voting rights.
  - determine the composition of the majority of the Board of Directors.
  - receive at least 50% of the profits.
  - determine or exercise significant influence over the conduct of the business and affairs.

Article 36 – Payments to Connected Persons

Any payment or benefit a taxable person provides to its connected person shall be deductible only if the payment corresponds with the market value or is incurred wholly and exclusively for the taxpayer's business.

- A connected person includes:
  - Owner of the taxable person or owner's related party.
  - Director/Officer of the taxable person or Director's related party.
- The above-mentioned conditions on deductibility do not apply in the event that the payment or benefit is provided by any of the following:
  - taxable person whose shares are traded on a Recognized Stock Exchange.
  - taxable person subject to the regulatory oversight of a competent authority in the State.
  - any other person as may be determined in a decision issued by the Cabinet.

Article 55 – Transfer Pricing Documentation

The following TP Documentation (TPD) requirements for taxable persons are as follows:

- Compliance Requirements: The taxable person is required to file a disclosure form that encapsulates details of T/A with related parties and connected persons along with their tax return.
- Maintaining the Master File and local file is applicable if either of the following conditions are met:
  - a total consolidated group Revenue of AED 3.150 Billion or more in the relevant tax period; or
  - taxable person's revenue in the relevant tax period is AED 200 million or more.
- The documentation as mentioned above must be submitted to the Authorities within thirty days following a request by the Authorities, or by any such other later date as directed by the Authorities.
- The UAE also recently introduced Country-by-Country Reporting (CbCR) rules for multinational group of enterprises (MNE), which are in accordance with the OECD Model Legislation. The UAE CbCR rules shall apply to MNE groups:
  - with consolidated revenues of at least AED 3.15 billion in the FY immediately preceding the reporting period, based on the consolidated financial statements of that preceding year (i.e., FY18); and
  - if the ultimate parent entity (UPE) of the MNE group is resident in the UAE; or
  - if a UAE-resident Constituent Entity (CE) of the MNE group (with its UPE outside the UAE) is nominated as the APE; or
  - if the MNE group has a UAE-resident CE, which is neither the UPE or an APE.

- Furthermore, the CbCR Notification must be submitted by the last day of the financial year (Except for those constituent entities of UAE who are members of a foreign-headquartered MNE), and CbCR report must be submitted within twelve months from the end of the financial year.

Administrative Provisions

- Article 56 - Record Keeping: Books of accounts and all other records and documents are required to be maintained by taxable persons for at least a period of seven years. This requirement also applies to exempt persons.
- Article 57 - Tax Period: A tax period shall generally be the Gregorian calendar year (January to December) or any 12-month period.
- Article 59 - Clarifications: a person can make an application to the Authority to obtain a clarification on the application of the CT Law or to enter into an advance pricing agreement with respect to a T/A proposed or entered into by the person. The form and manner of the application is to be prescribed by the Authority.
- Article 61 - Transitional Rule: The opening balance sheet referred to in Clause 1 of this Article shall be prepared, taking into consideration the arm's length principle in accordance with Article 34 of the Decree-Law.
- Fines and penalties shall be prescribed for contravention under the law.

Our Comments

The introduction of TP in the CT law would significantly impact businesses in the region. The companies that are not familiar with such compliances would need to gear up and start evaluating the implications, including the following:

- Examining the group shareholding structure in light of the requirement of Article 35 of the Decree.
- Analyzing terms of existing intra-group transactions/ arrangements and checking if any changes are required to align with the arm's length standard.
- Analyzing how provisions related to a payment to connected persons could potentially impact the company.
- Alignment of existing TP policies and documentation with the newly introduced TP rules.
- Whether the free zone companies are meeting the arm's length criteria to be treated as a qualifying free zone company.

Furthermore, with respect to non-compliance with TPD requirements or non-submission of such information, no specific penalties have yet been prescribed or set out in law.

Considering the timeframe left to prepare for implementing TP rules, companies should start assessing the above impact on their business.

Events and Webinars

GST and Customs- Contemporary Issues
19 July 2023
Saket Patawari

Unlocking the UAE Corporate Tax and Transfer Pricing Landscape
18 July 2023
Lokesh Gupta

Tax Summit Delhi 2023
5 July 2023

UAE Corporate Tax – Taxation of Non-Residents and Permanent Establishments
22 August 2023
Lokesh Gupta and Trupti Mehta

From the Judiciary

Direct Tax

Whether profits can be attributable to Indian PE when there is a global net loss?

HITACHI LTD Vs ACIT
TS-398-ITAT-2023(DEL)

Facts

The taxpayer Hitachi Ltd. was a Japanese multinational engineering and electronics conglomerate company. For the year under consideration, the taxpayer entered into a contract with DFCCIL, including offshore manufacture of goods and supply from Japan. The supply of goods from Japan was not offered to tax in India as no part of the activity was attributable to the operations of the Permanent Establishment (PE) in India. However, the Revenue did not agree with this stand and attributed profits to the India PE based on a global profit rate.

Held

The Delhi Tribunal observed that the Revenue did not challenge the taxpayer's contention on the activities being undertaken offshore and not in India. Furthermore, the taxpayer had also relied on Delhi's Tribunal's prior ruling in the case of Nokia Solutions[1], where it was observed that where an assessee has a global net loss as per its audited accounts, no profit or income could be attributed to the assessee in India. In the present case as well, the taxpayer was incurring losses on a global level. The Delhi Tribunal thus held that since no activities were conducted in India and a loss was incurred at a global level, the department was not right in attributing profits to the PE in India.

Our Comments

Delhi Tribunal holds that profits cannot be attributed to the Indian PE if the entity is incurring a Global Net Loss.

Is it necessary for a separate notification to be available in order to invoke MFN clause under a tax treaty?

TDK PVT LTD .Vs ACIT TDK India Private Limited
TS-393-ITAT-2023(Kol)

Facts

The taxpayer is an Indian entity engaged in the manufacture and supply of capacitors and soft ferrite cores. The taxpayer received certain services from one of its Spanish group companies in relation to procurement, quality management, HR, etc. In this regard, the taxpayer deducted 10% tax on such payments against 20% under the India-Spain tax treaty, in light of the Most Favoured Nation (MFN) clause under the Spain treaty. The taxpayer relied on the India-Portugal tax treaty, which was entered after the one with Spain and, wherein the tax rate for FTS was provided as 10%. The Revenue rejected this contention and treated the taxpayer as an assessee in default for the withholding taxes. The Revenue contended that the assessee cannot invoke the MFN clause in the absence of a separate notification under Section 90 in light of the CBDT Circular No. 3/2022, which is binding on Revenue and has a retrospective effect.

Held

The Kolkata Tribunal has observed that the protocol of a treaty is an integral and indispensable part of the same, and the benefit of a lower tax rate in light of MFN cannot be dependent on any further unilateral action or issuance of a notification by the respective governments to make it applicable.

The Tribunal also opined that in light of the Pune Tribunal's ruling in the case of GRI Renewable, the CBDT Circular No. 3/2022 does not have a retrospective application.

Thus, the benefit of the MFN clause was granted to the taxpayer, and withholding taxes were applied at 10% only.

Our Comments

The Tribunal has relied on certain past coordinate bench decisions and opined that issuance of a separate notification is not mandatory for placing reliance on the MFN clause.

1. Nokia Solutions and Net Works OY [2023] 147 taxmann.com 165 (Delhi)

Transfer Pricing

Reliance placed on subsequent year Advance Pricing Agreement to confirm Most Appropriate Method

Springer India Private Limited[2]
TS-403-HC-2023(Del)-TP

Facts

The taxpayer was engaged in the publication and distribution of scientific books and also provided marketing and sales support services to its Associated Enterprises (AE). For the covered year, the taxpayer had benchmarked its various international transactions using the Other Method (OM) as compared to the use of the Transactional Net Margin Method (TNMM) in the earlier years, as OM was not introduced in the statute prior to AY 12-13.

The Transfer Pricing Officer (TPO)

Rejected the use of OM for AY 12-13 and made an upward adjustment by aggregating all the transactions using the TNMM method. The Dispute Resolution Panel (DRP) upheld the addition made by the TPO.

The Income Tax Appellate Tribunal (ITAT)

Noted that the taxpayer had entered into an Advance Pricing Agreement (APA) for the period AY 2013-14 to AY 2020-21. The APA included 16 out of 18 transactions that were benchmarked using OM. The ITAT opined that if APA does not cover the year under dispute. However, if the FAR profile is the same, the methodology under APA can be adopted for the year under dispute. Hence, ITAT directed taxpayers to submit all the relevant documents in compliance with APA.

Delhi High Court Order

The Hon'ble Delhi High Court concurred with the approach adopted by the ITAT and held that no substantial question of law arose when the methodology agreed under an APA was used for benchmarking transactions entered in prior years when the FAR profile of the taxpayer was similar.

Our Comments

The taxpayers may be recommended to document their FAR profile year on year, which may help to establish similarity in TP methodology, especially if agreed in an APA period.

Tested Party – not relevant in price-based methodology and mere reliance on arm's length basis of Indian counterpart not sufficient for Foreign taxpayers in India

Crayon Group AS[3]
TS-417-ITAT-2023(Mum)-TP

Facts

The taxpayer, a foreign company incorporated in Norway, was receiving 6.5% interest on Compulsory Convertible Debentures (CCD) issued by its AE, Crayon India. The taxpayer had benchmarked the transaction by using CUP by taking the rate of Trade Financing availed by the AE from a third party (i.e., 11%) and the State Bank of India Prime Lending Rate (i.e. 14%). It was held that since the Indian AE had paid less than the CUP, the transaction was considered to be the ALP. The TPO rejected the taxpayer's contentions and considered interest at 11% to be at ALP, which the DRP upheld.

However, ITAT rejected both taxpayer and TPO's contentions on the following grounds:

- Tested Party is the first step only in margin-based methods and not in price based method;
- The taxpayer cannot take shelter under the assessment proceedings conducted for its AE to conclude its transactions at ALP.
- Rates under trade finance) cannot be compared with interest on CCD.

Based on the above, the ITAT remitted the matter back to TPO for fresh determination by adopting the most appropriate method based on FAR.

Our Comments

Foreign taxpayers in India need to evaluate the TP compliance and documentation requirements carefully and merely placing reliance on the Indian AE would not be deemed to be sufficient. The decision clearly elucidates that a multitude of legal grounds, though logical, are no substitute for the requisite FAR analysis and nuanced understanding required while selecting an appropriate method for benchmarking.

Alerts

Updates in Executive Regulations related to Tax Procedures Law

10 August 2023
https://bit.ly/3YLt81b

Extension of Applicability of Safe Harbour Rules to AY 2023-24

10 August 2023
https://bit.ly/47GdGrd

Bombay High Court validates that Section 153 prevails over Section 144C for time limit for passing Final Assessment Order

7 August 2023
https://bit.ly/3KBrE3n

2. High Court at New Delhi – Appeal No. 451/2022 AY 2012-13
3. Mumbai Income Tax Appellate Tribunal - ITA No. 1590 / Mum / 2022 - AY 2017-18

Indirect Tax

Constitutionality of the time limit for claiming ITC under Section 16(4) of CGST Act, and whether fulfillment of conditions of Section 16(2) would prevail over such time limit

Thirumalakonda Plywoods vs. The Asst. Commissioner
W.P. No. 24235 of 2022

Facts

- The petitioner is a sole proprietor engaged in the business of hardware and plywood under the trademark 'Thirumalakonda Plywoods.'
- In the wake of COVID-19 pandemic, the GSTR-3B of March 2020 was filed by 27 November 2020, along with a late fee of INR 10,000.
- However, the Revenue disallowed the Input Tax Credit (ITC) claim in the said return on the ground that it was beyond the time limit prescribed under Section 16(4) of the CGST Act r/w Andhra Pradesh GST Act.
- Hence, the petitioner assailed the Revenue's action while also questioning the validity of Section 16(4) before the Andhra Pradesh HC.
- Petitioner further argued that the non-obstante clause in Section 16(2) would prevail over Section 16(4).

Ruling

- Ruminating on the cardinal principle of interpretation, HC observed that both Section 16(2), which subjects the entitlement of ITC to certain conditions, and Section 16(4), which prescribes a time limit to avail credit, are two different restricting provisions. Both operate independently and have no inconsistency between them.
- As per the Court, the mere filing of the return with a delay fee would not act as a springboard for claiming ITC. Collection of late fees is only for the purpose of admitting the returns for verification of taxable turnover, not for consideration of ITC.
- HC further reiterated that ITC is a mere concession/rebate/benefit and not a statutory or constitutional right and therefore, imposing conditions including time limitation for availing the said concession will not amount to a violation of Articles 14, 19(1)(g) and 300-A of the Constitution or any statute.

Our Comments

The HC has explicitly held that ITC is only a concession/benefit, not a statutory right. As the validity of the timeline has been upheld, the taxpayers must ensure timely availment of credits. Currently, the ITC can be claimed until 30 November after the end of the financial year or furnishing of the Annual Return, whichever is earlier.

However, it may be pertinent to note that the question of applicability of said timeline to import transactions, viz. RCM invoices and bills of entry still remain open.

Whether a refund of differential ITC not claimed earlier for a particular tax period is permissible under the GST law?

Shree Renuka Sugars Ltd vs. State of Gujarat Special Civil Application No. 22339 of 2022

Facts

- The petitioner is engaged in the manufacturing and trading of sugar, including exports. Since the export is undertaken without payment of IGST under a Letter of Undertaking (LUT), the petitioner claims a refund of unutilized ITC as per the formula prescribed in Rule 89(4) of CGST Rules r/w Section 54 of CGST Act.
- The refund applications were filed for FY 2020-21 and FY 2021-22. However, at a lower amount due to an inadvertent arithmetical error. These claims were sanctioned by the GST authorities post-verification.
- Upon realizing such an error, the petitioner lodged supplementary refund claims for the differential ITC. But the Revenue rejected the same on the grounds that the applications were filed under the 'Any Other' category, which was invalid.
- Aggrieved thereby, the petitioner approached Gujarat HC.

Ruling

- A perusal of Section 16 of IGST Act r/w, Section 54 of CGST Act and Rule 89(4) of CGST Rules would reveal that the "refund amount" means the maximum refund that is admissible.
- In the present case, the supplementary applications have been made within the statutory period laid down in Section 54.
- The petitioner was left with no option but to upload another application under the category 'Any Other.' This is nothing but a technical error for which the claim of the petitioner cannot be rejected without examination by the Revenue on its merits and in accordance with the law.
- It is settled law that the benefit that a person is entitled to once the substantive conditions are satisfied cannot be denied due to technical error or lacunae in the electronic system.
- In VKC Footsteps India Pvt Ltd., the SC had an occasion to deal with the issue whether the HC had expanded the provision for a refund beyond what the legislature had provided. Therefore, the same would not apply to the present case.

Our Comments

This decision clarifies that taxpayers can claim supplementary refunds for the same tax period despite the approval of the first application. However, the taxpayer should be mindful of meeting all other conditions of claiming a refund, including the eligibility of ITC and the time limit.

Regulatory Updates

SEBI Listing Regulations

Listed Companies will now have to make all business deals public

The Securities and Exchange Board of India (SEBI) has recently amended the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (Listing Regulations), pursuant to which listed companies are now required to disclose certain key events/information to the Stock Exchanges without any application of materiality guidelines. One such amendment pertained to the disclosure of all information on business deals and arrangements that have a bearing on their prospects to the public. Listed companies are now mandated to reveal all contracts and arrangements pertaining to strategic, technical, manufacturing, and marketing tie-ups to boost transparency. Till now, companies enjoyed the discretion of determining whether a piece of information or event would be 'material' enough to be disclosed to the public. The changes aim to ensure that key criteria relevant to the market and investors are disclosed within specified timelines rather than a discretion-based approach.

Another noteworthy change brought in by the SEBI amendment is the implication on existing events or continuing events, which become material due to the inclusion of new objective parameters. Companies will now need to retrospectively look back at all those events to check if disclosure is needed.

Our Comments

To ensure more accurate public disclosures, SEBI has added certain key events/information to the existing list of events that require mandatory disclosures without any application of materiality guidelines. The amendments, effective 15 July, will require companies to disclose all business deals without exception to shareholders.

Companies also need to check whether any past deals/events that have become material are adequately disclosed before 13 August 2023.

Alerts

Key Highlights of GST Notifications and Clarification Circulars – July 2023

2 August 2023
https://bit.ly/47c3bLV

NCLAT Dispenses Shareholders and Creditors Meeting in a Scheme of Amalgamation

25 July 2023
https://bit.ly/44a9xsm

Supreme Court Reiterates Overriding Effect of Insolvency and Bankruptcy Code, 2016

24 July 2023
https://bit.ly/3OzZY02

Gist of Circulars issued by CBIC on 17 July 2023

19 July 2023
https://bit.ly/3DjFfsj

Highlights of the 50th GST Council Meeting

13 July 2023
https://bit.ly/44k7wL4

Key Highlights of GST Notifications and Clarification Circulars – June 2023

3 July 2023
https://bit.ly/3rgtPT8

Tax Talk

Indian Developments

Direct Tax

Clarification regarding taxability of income earned by a non-resident investor from investment fund routed through an alternative investment fund

Circular No. 12/2023
F.NO.225/79/2019-ITA-II
dated 12 July 2023

- Earlier, investment funds meant any fund established or incorporated in India in the form of a trust or, company or LLP and has been granted a certificate of registration as a Category I or Category II Alternative Investment Fund (AIF), which is regulated by SEBI.
- However, by Finance Act 2023, the definition of an investment fund under the Income Tax Act was amended to include AIFs regulated under the International Financial Services Centres Authority (IFSCA) as well.
- Thus, provisions of Section 115UB (tax on income of investment fund) shall now apply to Category I and II AIFs regulated by both SEBI and IFSCA.

Indirect Tax

Goods and Services Tax

The CBIC has notified the rate changes and issued the clarifications as recommended during the 50th GST Council meeting. The same can be view here.

Amendments to GST law set to come into effect from 1 October 2023

Notification Nos. 27/2023-Central Tax and 28/2023-Central Tax both dated 31 July 2023

The Central Board of Indirect Taxes and Customs (CBIC) has notified the amendments proposed to the CGST Act and IGST Act vide Finance Act, 2021 and Finance Act, 2023. These amendments shall come into effect from 1 October 2023. However, the amendments relating to setting up of GST Tribunals have been brought into force from 1 August 2023.

The Finance Act, 2021 has proposed an amendment inter alia to Section 16 of the IGST Act to exclude supplies made to SEZ units and/or developers for any purpose other than the authorized operations from the scope of 'zero-rated supply.' It has further empowered the government to notify the class of persons and the class of goods or services, which shall be allowed refund against exports made on payment of IGST. Section 16 also provides for deposit of refund received in case of non-realization of sales proceeds within the prescribed FEMA timeline in case of export of goods.

The key amendments vide Finance Act, 2023 can be view here.

Customs

Tariff rate for 'Liquified Propane', 'Liquified Butane' and 'Liquified Petroleum Gas' hiked, but effective BCD retained at 2.5% and 5% respectively

Notification Nos. 40 to 42/2023-Customs dated 30 June 2023, and 43 to 45/2023-Customs dated 1 July 2023

The import tariff rate for Liquified Propane and Liquified Butane has been hiked from 2.5% and for Liquified Petroleum Gas from 5%, to 15% from 1 July 2023 onwards. However, the effective rate of Basic Customs Duty (BCD) on said goods has been retained at 2.5% and 5%, respectively by way of amendments to Notification No. 50/2017-Customs. Additionally, an Agriculture Infrastructure Development Cess (AIDC) has been imposed at 15% except where Indian Oil Corporation Limited imports the same, Hindustan

Petroleum Corporation Limited or Bharat Petroleum Corporation Limited for supply to household domestic consumers or Non-Domestic Exempted (NDEC) customers.

CBIC addresses HS Code concerns for Customs clearances under India-Japan CEPA

Instruction No. 19/2023-Customs dated 4 July 2023

Addressing the issue of the use of different versions of HS Codes in the Certificate of Origin (CoO) and Bill of Entry (B/E) for imports under the India-Japan Comprehensive Economic Partnership Agreement (CEPA), CBIC has clarified that the HS Code (2007 version) mentioned in the CoO issued under the India-Japan CEPA should be correlated with the HS Code (2022 version) mentioned in the B/E at the time of Customs clearance.

CBIC standardizes documentary and information requirements for AD Code registration/modification in relation to exports

Instruction No. 25/2023-Customs dated 28 July 2023

Acknowledging the need to minimize and standardize documentary requirements (as well as information necessary to be contained therein) across all Customs zones, the CBIC has directed the field formations to place reliance on only the following two documents (using a digital signature) on e-Sanchit for purposes of approval of AD Code/bank account registration:

- Bank's Authorization Letter with specified particulars
- Copy of canceled cheque related to said Bank Account No. (or the latest bank statement endorsed by the Bank).

Furthermore, it has been directed to put in place a suitable mechanism to ensure that the application for AD Code/ bank account registration is dealt with on the same day when made before 2 PM, while in other cases, it should be disposed of before 2 PM on the next working day.

Podcast

UAE Corporate Tax and Transfer Pricing
7 August 2023
https://bit.ly/45NESm7

Articles

Online Gaming – Are All Bets Off? Who Wins? Who Loses?
17 July 2023 | Taxsutra
Saket Patawari and Jinesh Shah
https://bit.ly/3OPYQqA

GST Council hits half-century: An all-round performance
13 July 2023 | Taxsutra
Saket Patawari
https://bit.ly/3pKr5NJ

Tax Talk

Global Developments

Direct Tax

138 countries and jurisdictions agree on historic milestone to implement global tax deal

Excerpts from OECD.org, dated 12 July 2023

138 members of the OECD/G20 Inclusive Framework on Base Erosion and Profit Shifting (BEPS) - representing over 90% of global GDP - agreed on an Outcome Statement recognizing the significant progress made and allowing countries and jurisdictions to move forward with historic, major reform of the international tax system. The Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy will ensure a fairer distribution of profits and taxing rights among countries and jurisdictions with respect to the world's largest Multinational Enterprises (MNEs).

The Outcome Statement agreed at the 15th Meeting of the Inclusive Framework follows 20 months of intense technical negotiations by delegates to continue the work to implement the Two Pillar Solution. It reflects collaboration and compromise among all jurisdictions - small and large, developing and developed - during negotiations by Inclusive Framework members since October 2021.

The Outcome Statement summarises the package of deliverables developed by the Inclusive Framework to address the remaining elements of the Two-Pillar Solution:

- A text of a Multilateral Convention (MLC) developed by the Inclusive Framework, allows jurisdictions to reallocate and exercise a domestic taxing right over a portion of MNE residual profits (Amount A of Pillar One). The Inclusive Framework will publish the text of the MLC once it has been prepared for signature upon resolution of a small number of specific items, as a few jurisdictions have expressed concerns with some specific items in the MLC;
- A proposed framework for the simplified and streamlined application of the arm's length principle to in-country baseline marketing and distribution activities (Amount B of Pillar One); where input from stakeholders is requested on certain aspects prior to finalization;
- The Subject-to-Tax Rule (STTR), with its implementation framework, will enable developing countries to update bilateral tax treaties to "tax back" income on certain intra-group income where such income is subject to low or nominal taxation in the other jurisdiction. The OECD will prepare a comprehensive action plan to support the swift and coordinated implementation of the Two-Pillar Solution, coordinating with regional and international organizations.
- In a significant development since October 2021, 138 countries and jurisdictions have also agreed in the Outcome Statement to refrain from imposing newly enacted digital services taxes or relevant similar measures on any company before 31 December 2024, or the entry into force of the MLC if earlier, provided the signature of the MLC has made sufficient progress by the end of the year. This commitment is made in recognition of the progress made to date and the need to prevent disruption or delay of the ratification of the MLC.

"The Two-Pillar Solution will provide stability for the international tax system, making it fairer and work better in an increasingly digitalized and globalized world economy," OECD Secretary-General Mathias Cormann said. "We have all been working intensively on the technical details and on the implementation arrangements that are necessary to make the Two-Pillar Solution a reality. The agreement reached yesterday proves that despite the challenges and compromises along the way, multilateral dialogue works and can deliver results to tackle shared challenges requiring shared solutions. This work is critical to governments and our economies – ultimately, to be able to raise the necessary revenue to fund the essential public goods and services for their citizens."

Transfer Pricing

OECD: Report on BEPS 2.0 – New guidance on Pillar Two rules[4]

The "OECD Secretary-General Tax Report to G20 Finance Ministers and Central Bank Governors" was published in July 2023. Therein, members of the OECD/G20 Inclusive Framework on Base Erosion and Profit Shifting (Inclusive Framework) have delivered a package to further implement the Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy. This package comprises of four parts:

- **Part I-Multilateral Convention on Amount A of Pillar One:** The parties to the Multilateral Convention will be allowed to exercise domestic taxing rights over a defined portion of a multinational enterprise's residual profits that meet certain revenue and profitability thresholds and that have a defined nexus to the markets of these Parties.
- **Part II-Amount B of Pillar One:** It was decided that further consultations will be made on the simplified and streamlined application of TP Rules to certain marketing and distribution activities with a view to agreeing to a final Amount B report by year-end and incorporating key content into the OECD TP Guidelines by January 2024. Inputs from stakeholders are invited by 1 September 2023.
- **Part III-Subject to Tax Rule (STTR) under Pillar Two:** STTR applies to intra-group interest, Royalties and a defined set of other intra-group payments. It was decided to facilitate the implementation of the STTR, which will enable developing countries to update bilateral tax treaties to "tax back" in respect of certain intra-group income where such income is subject to low or no nominal taxation in the other jurisdiction.
- **Part IV-Implementation Support:** Prepare a comprehensive action plan to support the swift and coordinated implementation of the Two-Pillar Solution. In particular, the plan should offer additional support and technical assistance to enhance the capacity necessary for the implementation of the Two-Pillar Solution by developing countries. The OECD should coordinate with relevant regional and international organizations in this regard.

United Kingdom (UK): TP Updates[5]

His Majesty's Revenue and Customs issued a consultation document on 19 June 2023 and invited businesses to share views on topics like TP, permanent establishments, and Diverted Profits Tax. The consultation is wide-ranging, with HMRC seeking feedback on improving certainty with respect to the application of the three key entry conditions:

- The 'provision';
- The definition of connectedness (the 'participation condition'); and
- The tax advantage rule (the 'one-way street').

The existing TP legislation provides that it should be consistent with the OECD TP Guidelines and Article 9 of the OECD Model Treaty, but the UK legislation hasn't been aligned with developments in the OECD TP Guidelines, especially pertaining to financial transactions. The aim is to:

- Permit account to be taken of implicit support from the wider group when determining the amount and terms of debt available at arm's length;
- Permit guarantees that reduce the arm's length cost of borrowing to be taken into account when determining the terms of debt available at arm's length, and therefore facilitate the pricing of such guarantees where appropriate;

4. OECD Secretary-General Tax Report to G20 Finance Ministers and Central Bank Governors (India, July 2023)
5. Reform of UK law in relation to TP, permanent establishment and Diverted Profits Tax - GOV.UK (www.gov.uk)

- Provide a clearer and more certain alternative to the current compensating adjustment mechanism to enable excess capacity in other UK entities to be utilized.

Permanent establishments in the UK

The UK Government intends to update its domestic legislation on PEs) to ensure that it remains aligned with the developing international framework around the prevention of double taxation. The government has identified two potential options, which are as follows:

- To define a UK PE and determine the profits attributable to it by direct reference in legislation to the PE and business profits articles in the relevant double taxation treaty.
- To define a UK PE and determine the profits attributable to it by reference to the current OECD model, which would be subject to relevant double taxation treaty.

Diverted Profits Tax

The government is also considering removing Diverted Profits Tax's status as a separate tax and bringing it into Corporation Tax. This would clarify the relationship between Diverted Profit Tax and TP. It would provide access to treaty benefits while maintaining key features of the regime.

Indirect Tax

Legislative Update – Global

Turkey hikes VAT and consumer loan tax rates by 2 percentage points

Excerpts from various sources

To control the budget deficit, Turkish authorities have announced a VAT rate increase from 18% to 20% for goods and services, while basic goods like toilet papers, diapers, detergents, etc., would now be taxed at 10% (from 8%). Furthermore, the Bank Insurance and Transaction Tax (BSMV) on consumer loans has been raised from 10% to 15%.

Brazil proposes consolidation of five VAT systems into a dual VAT structure

Excerpts from various sources

To simplify its web of federal tax systems and aim for a VAT-like system, Brazilian government has proposed to replace five different types of VAT by creating two new taxes – the Contribution over Goods and Services (CBS), and the Tax on Goods and Services (IBS). The former shall subsume - (i) Tax on Industrialized Products (IPI), (ii) the Social Integration Program (PIS), and (iii) Contribution for the Financing of Social Security (Cofins), while the latter will replace - (i) Tax on the Circulation of Goods and Services (ICMS), and (ii) Tax on Services (ISS).

CBS will be implemented after a 10-year transition period, while IBS will come into force over a transition period of 50 years.

Costa Rica announces 13% VAT on tourism services

Excerpts from various sources

Taxpayers providing tourism services and who are duly registered with the Costa Rican Tourism Institute must charge 13% VAT instead of 8% w.e.f. 1 July 2023.

Quotes and Coverage

GST Council Meeting Updates: 28% GST On Online Gaming Expected To Be Implemented From Oct
2 August 2023 | News 18
Sanjay Chhabria
https://bit.ly/447XNGG

GST@28%: Higher tax burden, lower winnings may drive gamers to grey market
24 July 2023 | Money Control
Saket Patawari
https://bit.ly/3YteAD9

GST Council to consider legal opinion on taxing online gaming
10 July 2023 | Business Today
Saket Patawari
https://bit.ly/46QTQZU

Compliance Calendar

Direct Tax
Indirect Tax

7 August 2023

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

10 August 2023

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

11 August 2023

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

13 August 2023

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

14 August 2023

- The due date for issue of Tax Deducted at Source (TDS) Certificate for tax deducted under section 194-IA/ Section 194-IB, Section 194M, Section 194S in June 2023.
  Note: Applicable in case of specified person as mentioned under Section 194S.

15 August 2023

- The due date for furnishing of Form 24G by an office of the government where TDS/TCS for July 2023 has been paid without the production of a challan.
- The date for furnishing statement in Form no. 3BB by a stock exchange in respect of transactions in which client codes been modified after registering in the system for July 2023.
- Quarterly TDS certificate (in respect of tax deducted for payments other than salary) for the quarter ending 30 June 2023.
  Note: Due to extension of due date of TDS statement vide Circular no. 9/2023, dated 28 June 2023, the revised due date for furnishing TDS certificate shall be 15 October 2023.

20 August 2023

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

25 August 2023

- Payment of tax through GST PMT-06 by taxpayers under QRMP Scheme for July 2023.

30 August 2023

- The due date for furnishing of challan-cum-statement in respect of tax deducted under Section 194IA/194IB/194M/194S for July 2023.
  Note: Applicable in case of a specified person as mentioned under Section 194S.

31 August 2023

- Application in Form 9A for exercising the option available under Explanation to section 11(1) to apply income of the previous year in the next year or in future (if the assessee is required to submit a return of income on 31 October 2023).
- Statement in Form no. 10 to be furnished to accumulate income for future application under section 10(21) or section 11(1) (if the assessee is required to submit a return of income on 31 October 2023).

Compliance Calendar

Direct Tax
Indirect Tax

7 September 2023

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

10 September 2023

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

11 September 2023

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

13 September 2023

- GSTR-6 for August 2023 to be filed by ISD.
- Uploading B2B invoices using Invoice Furnishing Facility under QRMP Scheme for August 2023 by taxpayers with aggregate turnover of up to INR 50 million
- GSTR-5 for August 2023 to be filed by Non-Resident Foreign taxpayer.

Easy Remittance Tool

by Nexdigm

Form 15CA/CB Automation

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

About Nexdigm

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

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

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

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

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

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

USA Canada Poland UAE India Hong Kong Japan

www.nexdigm.com

Reach out to us at **ThinkNext@nexdigm.com**

Follow us on

Listen to our podcasts on all major platforms