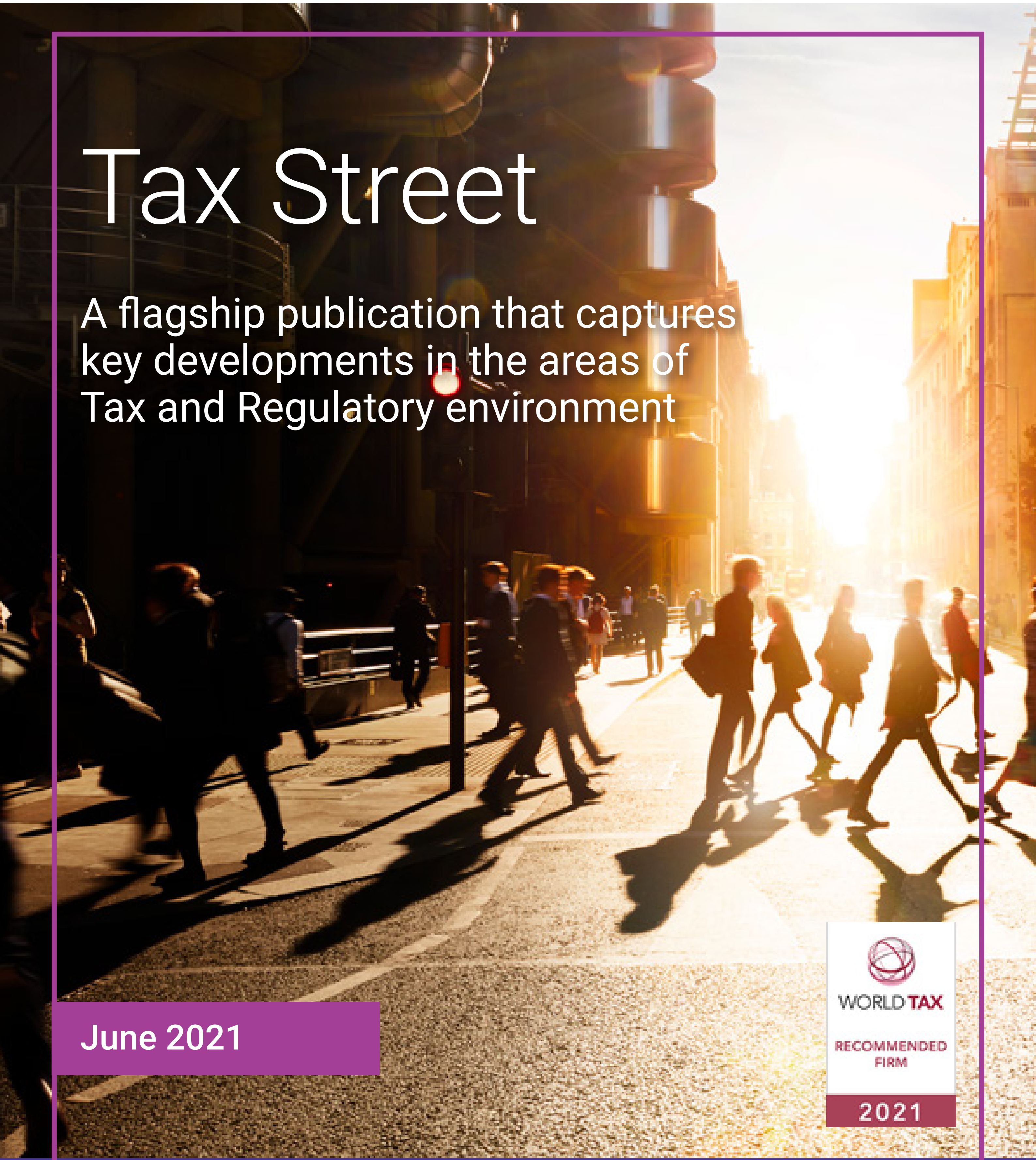

Tax Street

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

June 2021

WORLD TAX
RECOMMENDED FIRM
2021

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 June 2021.

- The **'Focus Point'** covers the contours of the G7 deal and the issues concerning the Minimum Global Corporation Tax.
- Under the **'From the Judiciary'** section, we provide in brief, the key rulings on important cases, and our take on the same.
- Our **'Tax Talk'** provides key updates on the important tax-related news from India and across the globe.
- Under **'Compliance Calendar'**, we list down the important due dates with regard to direct tax, transfer pricing and indirect tax in the month.

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

Warm regards,
The Nexdigm (SKP) Team

Focus Point

G7's Minimum Global Corporation Tax - the greater good?

G7[1], a group of the world's seven richest nations, inked a historic deal backing a minimum global corporation tax rate of at least 15%. The deal is supposedly a new framework for ending low tax-havens. A meeting of 140 sovereign nations and countries known as the Inclusive Framework meeting is proposed to be hosted by the Organisation of Economic Cooperation and Development (OECD) to seek an agreement on the said new global tax framework. Details agreed at the meeting would then be passed on to the finance ministers and central bank governors of the G20 nations. The G20[2] nations are most likely to endorse the proposed minimum corporate tax rate, as per the tabloids. Although a detailed deal document of G7 is awaited, we have encapsulated below certain dimensions of the deal and a few contours which could be relevant during its implementation.

Crucial aspects of the deal

- The G7 deal came gained momentum shortly after the Biden Tax Plan, which included a proposal to increase the corporate tax rates in the United States. The tax plan also emphasized that the US treasury department will push for global coordination on an international tax rate that would apply to multinational corporations regardless of where they locate their headquarters.
- The aim of having a minimum corporate tax rate is allegedly to stop tech giants from shifting their profits to low-tax havens. The nations where the tech giants actually operate must be able to get their share of tax. If we inspect the typical conduit arrangement, the corporates do not carry out actual operations in the country where it is established. There is typically no income arising in such nations, ultimately resulting in no tax outflow. In such a scenario, having a minimum corporate tax rate in such countries may not serve the purpose as the nations where the companies do actually operate still remain deprived of their share of taxation.
- Furthermore, it has been noticed that although the domestic tax rates happen to be one of the important factors while deciding the location of the company, other paramount factors are also considered. These factors include the ease of incorporating companies with no or minimum documentation, the purpose of having a shell company, favorable tax treaties between the nations. To have a better understanding, let's look at the following example:
  - Prior to the amendment of the India-Mauritius tax treaty, India received a huge Foreign Direct Investment routed through Mauritius. The India-Mauritius tax treaty did not provide any tax for capital gains. Many companies were incorporated with the only objective of making an investment in India. It is to be noted that the domestic corporate tax rate in Mauritius was 15%. However, given that there were none or minimum operations in Mauritius, the companies had no or minimum tax liability in Mauritius.
  - Similarly, even with tax rates of more than 20%, the state of Delaware continues to be a hub of such companies due to its lenient incorporation rules.

1. G7 includes the US, UK, Canada, France, Germany, Italy and Japan.
2. It includes European Union, Argentina, Australia, Brazil, Canada, China, France, Germany, India, Indonesia, Italy, Japan, Korea, Mexico, Russia, Saudi Arabia, Turkey, United Kingdom, United States and South Africa

- In the era of digitalization, technology has surpassed the need of having physical corporate offices. The challenge has shifted from taxing such companies to drawing nexus of the digital transaction. The OECD had framed BEPS Action Plan 1 (i.e., Tax Challenges arising from digitalization), providing guidance and measures to curb the tax avoidance by the tech companies. The action plan was aimed for proper allocation of tax among the nations where the companies actually operate. Although the aim of the G7 deal is aligned with OECD, ironically, the US has not backed the OECD's action plan. Instead, various nations that adopted digital taxation faced an investigation under Section 301, leading to higher tariff payments on exports made to the US.
- Even where the countries adopt the minimum corporate tax rate proposal, it would be important to see if the tax exemptions given to certain specified units like Special Economic Zones, Export Oriented Units, etc., are affected by the proposal or not. Further, there are certain countries where the corporate tax rate is applicable only for a select few industries, e.g., the UAE has a corporate tax rate ranging up to 55%. However, the corporate tax rate is applicable only for oil, gas and petrochemical companies and branch offices of foreign branches. It would be interesting to see how such nations adapt to the proposed minimum corporate tax rate.
- If one examines the corporate tax rates around the globe, only a handful of the nations have a corporate tax rate of below 15%. This category includes the tax heavens, the majority of which lie in the European region. The other low tax jurisdictions include nations like Barbados, Uzbekistan, Hungary, etc. These nations are mostly developing nations. The rate of taxation in any country is determined after considering a whole set of factors. Some of the examples could be as under:
  - Where the country receives a major share of its revenue from modes other than tax, e.g., tourism, the government may not impose a higher rate of taxes for collecting revenue;
  - A developing or underdeveloped nation struggling with issues like unemployment would want to attract higher foreign direct investment by offering low tax rates;
  - A country with a lack of adequate infrastructure may look at providing lower tax rate;

Thus, forcing the worldwide countries to gear up to higher tax rates may hamper the genuine ultimate objective with which a nation offered a low tax rate in the first place. The G20 nations should formulate the rules after considering such situations besides following the concept of 'the greater good.'

Key Takeaways

From the aforementioned dimensions, it can be said that though the deals have been proposed with the intention to curb the tax avoidance techniques used by the MNCs by using the low tax jurisdiction, it is unlikely that increasing the corporate tax rates alone would be helpful. The greater challenge is not just to tax the shell companies but also to ensure that the shell companies cannot be used as an instrument for tax avoidance. This shall be possible only when the loopholes in the bilateral treaties are plugged, as when the transactions include two or more nations, changes in bilateral law have limited implications.

Also, while aiming for better tax allocation among the nations where the tech companies actually operate, the most important trait of digitalization has been left out. As the methods of doing business have changed, modifications in the old tax laws would not serve the purpose.

From the Judiciary

Direct Tax

Whether commission paid to foreign agents to be considered as Fees for Technical Service (FTS)?

M/s SQS India BFSI Ltd vs the DCIT
ITA Nos. 223 and 224/Chny/2019

Facts

The taxpayer is an India-based company dealing in software development and services. The taxpayer entered into an agreement with foreign agents based in the UAE and Bahrain for sourcing orders on a commission basis.

The Assessing Officer (AO) claimed that the services rendered by the agent involve sourcing of orders from customers for assessee's products and include rendering specialized technical services as updating the assessee of changes, and market trends, etc. Accordingly, the payment made for the export commission was considered to be FTS.

Held

After a detailed evaluation of the agreements, the Chennai Tribunal held that the general coordination work as given in the agreement and pointed by the AO were ordinary things that any agent or broker would undertake incidental to brokerage services. However, the agreements executed with a foreign agent do not speak of any technical services for which the assessee was liable to pay the commission. Arranging meetings, publicity through media, etc., were incidental to the brokerage services. Accordingly, in the absence of a Permanent Establishment (PE) of a non-resident in India, there would not be any income chargeable to tax in India in the hands of the agents.

Whether salary payment to deputed employees working full time under the direct supervision of the Indian Associated Enterprise (AE) be attributed to Supervisory PE?

Lubrizol Advanced Materials Inc. vs ACIT
ITA No 2455/AHD/2018

Facts

The taxpayer is a US-based company with an AE in India, which was in the process of establishing a new manufacturing plant. The companies entered into an inter-company agreement with the taxpayer for providing engineering, technology, design and project supervisory services. As per the agreement, the AE was to pay the actual cost plus markup at 10% to the taxpayer. The taxpayer had sent its personnel to India for supervisory of the project and paid taxes attributable to the supervisory PE.

The taxpayer had also seconded two employees to the AE independent of the supervisory activities. The employees worked full-time and received a salary from the Indian AE. However, the administrative convenience part of the salary was paid by the taxpayer in the USA, but the same was reimbursed to it on a cost-to-cost basis by the AE. The AO alleged that the salary reimbursement for the said employees should also be attributable to the Indian PE of the taxpayer.

Held

After analyzing the relevant agreements and facts of the case, the Tribunal decided that the employees worked under the supervision and guidance of the Indian AE. After complying with the applicable withholding tax provisions, the salary was paid to these employees, and the employees filed their return of income in India. Furthermore, the employees worked exclusively for the Indian AE. Thus, no element of the salary can be attributable to the supervisory PE of the assessee.

Transfer Pricing

Which interest rate applicable for benchmarking overdue receivables?

Open Text Corporation India Private Limited (formerly known as Cordys Software India Private Limited) [I.T.A. No. 152/HYD/2017]

Facts

For AY 2012-13, the taxpayer is engaged in the business of providing software development and consultancy services and had overdue receivables on which the Transfer Pricing Officer (TPO) proposed an interest adjustment which was upheld by the Dispute Resolution Panel (DRP).

Held

- Instead of SBI PLR , short-term SBI deposit rates over the period of 7-554 days having interest rates of 4% to 9.25% should be considered while computing the notional interest.
- While benchmarking overdue receivables denominated in foreign currency, the LIBOR rate should be the preferred benchmark rate for computing the notional interest.

Our Comments

The interest on overdue receivables is often computed considering the domestic benchmark rate disregarding the functional currency of overdue receivables. The ruling lays emphasis on the selection of appropriate benchmark rates while computing interest on overdue receivables.

Whether application of benefit test was warranted for incurring intra-group service charges?

Adient India Private Limited [TS-226-ITAT-2021(PUN)-TP]

Facts

The taxpayer had rendered administrative services to its AE and benchmarked the specified domestic transaction applying the Comparable Uncontrolled Price (CUP) method by comparing 13 marketing service agreements from foreign databases with the average fee paid at 5.43% as against its payment for the services at 1% only. During the TP assessment, the Transfer Pricing Officer (TPO) observed that the taxpayer failed to exhibit any benefit derived from the services and determined "Nil" Arm's Length Price (ALP) for the transaction on the ground that no independent party would have paid anything for such services. Accordingly, a TP adjustment of INR 59.5 million was proposed and upheld by the Dispute Resolution Panel (DRP). Aggrieved, the taxpayer appealed before the Tribunal.

Held

- Application of the benefit test is not warranted. An inquiry in this regard should come to an end as soon as the factum of availing the services for the business purpose is established.
- The CUP method cannot be applied with truncated data lacking functional comparability (i.e., bunch of administrative services vis-à-vis only marketing services). Foreign comparables cannot be used under the CUP method for benchmarking domestic transactions between domestic parties.
- Intra-group services cannot be clubbed with the manufacturing or trading transactions undertaken by the taxpayer justifying aggregation.

Our Comments

The Indian TP regulations don't contain any specific rules regarding the use of benefit test for determining the ALP of services availed. However, during audits, taxpayers are required to particularly demonstrate the needs/purpose and benefits of availing services from AE. The said judgment is relevant and shall carry a persuasive value in case intra-group service charges are questioned for benefit test.

Indirect Tax

Whether IGST paid under Reverse Charge Mechanism (RCM) on import ocean freight can be claimed as a refund after the expiry of the time limit under the GST law, given that the Court had held such levy of RCM as unconstitutional?

[Background: Earlier, the Gujarat High Court in Mohit Minerals (Pvt) Ltd. vs Union of India had held that levy of IGST under RCM on ocean freight lacked legislative competency, and the same was declared as unconstitutional.]

Comsol Energy Private Limited vs State of Gujarat [R/Special Civil Application No. 11905 of 2020 - Gujarat High Court]

Facts

- The applicant in the present case was also one of the writ petitioners in the Mohit Minerals case.
- Based on the decision in the said case, the applicant filed refund claims of IGST paid on import ocean freight under RCM.
- However, the Department denied the claims on the ground that they were not filed within the time limit prescribed under Section 54 of the CGST Act.

Based on the above, the High Court held as follows:

- Article 265 of the Constitution of India provides that no tax shall be levied or collected except by authority of law.
- Since the amount of IGST collected by the Central Government is without the authority of law, the Revenue is obliged to refund the amount erroneously collected.
- The amount collected by the Revenue without the authority of law is not considered as tax collected by them and, therefore, Section 54 is not applicable.
- In such circumstances, Section 17 of the Limitation Act is the appropriate provision for claiming the refund of the amount paid to the Revenue under the mistake of law.
- In view of the aforesaid, the writ-application was allowed.

Our Comments

This is a crucial judgment and can pave the way for many such refund claims filed not only by taxpayers, who have paid IGST under RCM on import ocean freight but also other taxpayers who have paid any excess tax by mistake.

Whether Section 13(8)(b) of the IGST Act, whereby the place of intermediary services is the location of the supplier, unconstitutional?

Dharmendra Jani vs Union of India [2021 (6) TMI 563 – Bombay High Court]

[The 2-judge Bench of the High Court has a difference of opinion on the matter and has given separate decisions. Therefore, the matter has now been placed before the Hon'ble Chief Justice of the Bombay High Court for further action.]

Judgement - Section 13(8)(b) is unconstitutional

- The Constitution does not empower imposition of tax on the export of services out of Indian territory by treating the same as a local supply.
- By artificially creating a deeming provision in the form of Section 13(8)(b), the place of supply has been treated as the location of the supplier, i.e., in India.
- The extra-territorial effect given by the said Section has no real connection or nexus with the taxing regime in India introduced by the GST system; rather, it runs completely counter to the very fundamental principle on which GST is based, i.e., it is a destination-based consumption tax as against the principle of origin-based taxation.
- Thus, the said Section is ultra vires the said Act, besides being unconstitutional.

Judgment – Section 13(8)(b) is constitutional

- If the Parliament, pursuant to powers vested in it by the Constitution, has in its wisdom dealt with intermediary services as those rendered by the petitioner, that is a matter within the Parliament's domain.
- There is no conflict between Article 246A, Article 269A or Article 286, which clearly empower the Parliament to formulate laws for determining the place of supply and when a supply of goods or of services or both takes place in the course of inter-state trade or commerce or as to when the supply of goods or services or both take place outside a State or in the course of import into or export out of the territory of India.
- Once the Parliament has in its wisdom stipulated the place of supply in case of Intermediary Services to be the location of the supplier of service, no fault can be found with the provision by artificially attempting to link it with another provision to demonstrate constitutional or legislative infraction.
- In any event, Section 8(2) is not applicable to the case of petitioner as location of supplier and place of supply is not within same State (in India) but in taxable territory viz. India.
- Therefore, to say that the Parliament has sought to impose tax on export of services out of the territory of India by treating the same as local supply in violation of Articles 246A and 269 is completely fallacious and untenable.

- The levy on account of the said Section is neither arbitrary nor unreasonable nor discriminatory.
- Therefore, Section 13(8)(b) of the IGST Act is constitutionally valid and operative for all purposes.

Our Comments

Section 13(8)(b) was earlier held constitutional in Material Recycling Association of India vs. Union of India [2020 (8) TMI 11 - Gujarat High Court].

The taxation of intermediary services has been a vexed issue given the challenges to its constitutionality as well as the ambiguity in the interpretation of the term 'intermediary.'

It appears that the matter could attain finality only at the Apex Court level or by way of a clarificatory Circular/legislative amendment by the Parliament.

Merger & Acquisition Tax

Mumbai ITAT allows the investments write-off made in loss-making foreign subsidiaries as a business loss.

Citation: Maneesh Pharmaceuticals Ltd [TS-462-ITAT-2021(Mum)]

Maneesh Pharmaceuticals Ltd (assessee) made an investment in two overseas subsidiary entities – (i) M/s Svizera Holdings B.V. Netherlands (SHBV); & (ii) M/s Lasa Industria Farmaceutica, Brazil (LASA). During FY 2011-12, the assessee wrote-off these investments as 'business loss' as the subsidiary had accumulated heavy losses, which ultimately wiped off their respective net worth. The Ld. AO denied the deduction, Commissioner of Income-tax (Appeals) [CIT(A)] allowed a write-off of the investment in the Dutch company but disallowed it for the Brazilian company, as it was only engaged in packing of assessees products.

The Income-tax Appellate Tribunal (ITAT) confirmed the stand of Ld. CIT(A) with respect to the investment made in M/s SHBV and reversed the disallowance of investment loss of M/s LASA by observing as under:

- Investments, where in furtherance of business objectives and with a view to earn more revenue;
- Investment was guided by commercial expediency to push the sales in international markets and gain access to foreign markets;
- The main purpose of such investments was not to acquire manufacturing/infrastructural capacity but to boost sales, and that the investments could not be said to be in the capital field since it was meant to improve the top line of the business;
- Placing reliance on the ruling of the Apex Court in the case of Patnaik & Co. Ltd. (161 ITR 365) and jurisdictional ruling of Bombay High Court in CIT vs Colgate Palmolive India Ltd. (370 ITR 728), the ITAT held that loss in investment, out of commercial expediency and in furtherance of business objects, is an allowable loss.

Our Comments

A welcome ruling from the perspective of allowability of loss on write-off of investments in subsidiary incorporated for the furtherance of business. This also extends support to the fact that investments by themselves could qualify as an undertaking from an M&A perspective.

Chennai ITAT upholds the genuineness of the transaction and rejects AO's contention of corporate restructuring being a colorable device

Citation: The Investment Trust of India Ltd [ITA 80/CHNY/2008]

HCFL Infotel Limited (HCFL Old), having substantial accumulated losses and unabsorbed depreciation amalgamated with M/s Investment Trust of India Limited (ITI Old), engaged in the business of Finance, Investments, etc. with effect from 1 September 2002. Further, under the scheme, ITI Old hived off its finance business to its 100% subsidiary under a slump sale arrangement which continued the finance business of ITI Old.

Prior to the amalgamation, ITI Old sold certain of its investments resulting in capital gains of INR 903.5 million, which was sett-off against the loss and depreciation of HCFL old acquired later during the year. The tax authorities held that amalgamation was a colorable device intended for evading capital gains tax - reliance was placed Supreme Court (SC) 's ruling in the case of McDowell (154 ITR 148).

The ITAT upheld the genuineness of the transaction and rejected AO's contention of restructuring being a colorable device by observing as under:

- In the case of Azadi Bachao Andolan (263 ITR 706), the SC observed that McDowell's decision cannot be read as every attempt at tax planning is illegitimate and must be ignored, or that every transaction permissible under law, which reduces the tax burden, must be looked upon with disfavor.
- The AO has exceeded his jurisdiction by denying the benefit of amalgamation, ignoring that the scheme is sanctioned by the Hon'ble High Courts at Madras and Chandigarh.
- AO has erred in holding that the scheme of amalgamation is an afterthought considering that the was a scheme was duly approved by two High Courts and shareholders, creditors and bankers of both the companies, Registrar of Companies and Regional Directors of Dept. of Companies Affairs of Chandigarh and Chennai after giving due notice by publication in newspapers.

Our Comments

The ruling lays an important principle that legitimate transactions which reduce tax burden cannot be looked at with disfavor characterizing them as a colorable device.

Tax Talk

Indian Developments

Direct Tax

New E-Filing Portal Of The Income Tax Department To Be Launched On 7 June 2021

[Press release, 5 June 2021]

The income-tax department is launching its new e-filing portal. Some of the highlights of the new portal include

- Immediate processing of income tax returns to issue quick refunds to taxpayers
- All interactions and uploads or pending actions will be displayed on a single dashboard
- Free income tax return preparation software available with interactive questions
- The taxpayer can update their profiles, even the details of their incomes, in order to get it pre-filled while preparing the income tax return
- New call center for taxpayer assistance, user manuals, videos and chatbot shall also be provided
- The mobile app will also be released subsequent to the initial launch of the portal.

Directorate(Systems) notifies procedure for Compliance Check on Section 206AB/206CCA

[Directorate of Income-tax (Systems) Notification No. 1 of 2021 dated 22 June 2021]

Directorate of Income-tax (Systems) notifies the procedures for sharing of information with tax deductors/ collectors pursuant in the new functionality called "Compliance check for Sections 206AB and 206CCA" to check if the deductee/ collectee is a 'specified person' or not u/s 206AB/206CCA; -Lays down the procedure starting with the registration of tax deductors and collectors on the reporting portal by logging on to their respective e-filing portal and then accessing the compliance check functionality with the help of their respective TAN; Apprises about the two search modes available to the users, i.e., 'PAN search mode' and 'Bulk search' mode; Informs about the availability of Reference Guide on Compliance Check and FAQs, under 'Resources' section of Reporting Portal for any kind of assistance; Also provides a toll-free number 18001034215 for seeking assistance from the Customer Care Team.

Guidelines For Compulsory Selection Of Returns For Complete Scrutiny During FY 2021-22

[Circular F.no. 225/61/2021/ITA-II, 10 June 2021]

The parameters for compulsory selection of returns for complete scrutiny include:

- Cases pertaining to survey u/s 133A
- Search and seizure cases
- Cases in which notices u/s 142(1), calling for the return, have been issued
- Cases in which notices u/s 148, have been issued
- Cases related to registration or approval under various sections such as 12A, 35(1)(ii)/(iia)/(iii), 10(23C), etc.

Extension Of Time Limits Of Certain Compliances To Provide Relief To Taxpayers In View Of Severe Pandemic

[Circular no. 9, 20 May 2021]

The due dates for filing of SFT forms, SRA form, TDS returns of Q4 have been extended to 30 June 2021. The date for furnishing audit reports has also been moved up to 30 September 2021. As for the income tax returns, the due dates have been extended to 30 September, 31 October, 30 November and 31 December 2021.

Amendment In Rule 31A, Form 26A, Form 26Q, Form 27EQ And Form 27Q

[Notification no. 71/2021, 8 June 2021]

The Finance Act recently introduced a few new provisions under the tax deduction and/or collection. These new provisions require to deducted or collect tax on purchase or sale of goods. Also, for all TDS-related sections, another new Section 206AB has been introduced in order to deduct taxes at a higher for non-filers of income tax returns. In order to incorporate all these changes in TDS returns and the Sections, the CBDT has issued a notification update on all the relevant sections, rules and forms.

Indirect Tax

Clarification in respect of applicability of dynamic Quick Response (QR) Code on B2C invoices

[Circular no. 156/12/2021-GST dated 21 June 2021]

The government has issued a Circular clarifying certain aspects in relation to the Dynamic QR code [key clarifications captured below]:

- Invoices issued to a person having a Unique Identify Number under the CGST Act are required to have a Dynamic QR Code, as such invoices shall be considered to have been issued for a B2C supply;
- Since UPI ID is linked to the bank account of the payee/person collecting the money, no separate bank account and IFSC details are to be provided in the Dynamic QR Code;
- In the case of supply of services, when an invoice is issued to a recipient located outside India, and the place of supply of services is in India, and for which the payment is received in foreign currency through RBI approved mediums, such invoices may be issued without a Dynamic QR Code.
- When the part payment for any supply has already been received from the customer, in the form of either advance or any adjustments, then the Dynamic QR code may provide only the remaining amount payable by the customer against invoice value. The details of total invoice value, along with details/ cross-reference of the part-payment/ advance/ adjustment done, and the remaining amount to be paid, should be provided on the invoice.

Recommendations made in the 44th GST Council Meeting

[Notification No. 5/2021-Central Tax (Rate) dated 14 June 2021]

In the 44th GST Council Meeting held on 12 June 2021, based on the report submitted by the Group of Ministers (GoM), it was decided to reduce GST rates on key medical supplies. The key items on which rates have been reduced are captured below:

Description	GST(%)	
	Old rate	Revised Rate
Remdesivr	12%	5%
Amphotericin B	5%	Nil
Oxygen Concentrator/ Generator, including personal imports thereof	12%	5%
High flow nasal canula device	12%	5%
Ventilators	12%	5%
COVID-19 Testing Kits	12%	5%
Hand Sanitizer	18%	5%

Regulatory Updates

Securities Law and Compliances Corner

Automation of Continual Disclosures under Regulation 7(2) of SEBI (Prohibition of Insider Trading) Regulations, 2015

In furtherance of its circular dated 9 September 2020, prescribing implementation of system-driven disclosures under SEBI (Prohibition of Insider Trading) Regulations, 2015 for member(s) of promoter group and designated person(s) in addition to the promoter(s) and director(s) of companies, SEBI has issued a Circular on 16 June 2021 to include the listed debt securities of equity listed companies under the purview of the said system-driven disclosures for the entities mentioned above.

Relaxation in compliance with requirements pertaining to AIFs and VCFs

SEBI vide its circular SEBI/HO/IMD/IMD-I/DOF6/CIR/2021/568 dated 31 May 2021 has extended the due dates for regulatory filings by Alternative Investment Funds (AIFs) and Venture Capital Funds (VCFs), during the period ending March 2021 to July 2021 as prescribed under SEBI (Alternative Investment Funds) Regulations, 2012 and circulars issued thereunder. AIFs and VCFs are allowed to submit regulatory filings/disclosures for the aforesaid periods, as applicable, on or before 30 September 2021.

Companies Act, 2013

During the period under review, the Ministry of Corporate Affairs (MCA) has effected the following key changes:

Matters that can be dealt with through video conferencing

[Notification dated 15 June 2021]

MCA has made an amendment to the Companies (Meeting of Board and its Powers) Rules, 2014, pursuant to which now, inter alai, the following matters can be dealt with through video conferencing:

- The approval of the Annual Financial Statements;
- The approval of the Board's report.

Clarification on the passing of ordinary and special resolutions by companies under the Companies Act, 2013

[General Circular 10/2021 dated 23 June 2021]

Pursuant to said circular, MCA has extended the time to allow companies to conduct their extra-ordinary general meetings through video conferencing or other audio-visual means or transact items through postal ballot till 31 December 2021 in accordance with the framework provided by MCA in its circulars issued previously on the subject matter.

Companies (Accounting Standards) Rules, 2021

[Notified on 23 June 2021]

The said Rules provide the following:

- accounting standards to be followed by Small and Medium Sized Company (SMC);
- defines SMC;
- clarifies that, a company shall qualify as a SMC, if the conditions mentioned therein are satisfied as at the end of the relevant accounting period;
- specifies Accounting Standards 1 to 5, 7 and 9 to 29 as recommended by the Institute of Chartered Accountants of India to be followed by SMC;
- prescribes that a company that becomes a SMC shall qualify for exemption or relaxation only if it remains a SMC for two consecutive accounting periods.

Tax Talk

Global Developments

Direct Tax

Brazil tax reform bill proposes tax cuts for individuals, companies

[Excerpt from Reuters, 25 June 2021]

Brazil's tax system is widely seen as one of the most complex in the world, and the government insists that simplifying it and reducing the overall tax burden is crucial to fostering sustainable, long-term investment and economic growth. Brazil's government unveiled the second phase of its wider tax reform bill, in which it aims to reduce income tax for up to 30 million workers, cut corporate profit tax, and increase levies on financial market gains and activity.

Delaware proposes tax cuts for the poor and tax hike for wealthy

[Excerpt from IBFD, 29 June 2021]

On 24 June 2021, the Delaware House of Representatives introduced a legislation, seeking an adjustment to the existing individual income tax brackets, cut individual tax rates for lower-income earners and increase tax rates for high-income earners effective for taxable years beginning on or after 1 January 2022. The bill is currently awaiting a hearing before the House Revenue and Finance Committee

Indonesia proposes a discussion on new income bracket, Amnesty

[Excerpt from Bloomberg, 28 June 2021]

Indonesia began discussing a tax overhaul proposal with the parliament, with plans to increase VAT, impose a new income bracket and target loss-making firms, while offering potential amnesty. The general VAT covering most goods and services will be raised to 12%, from 10%, while certain items can carry variable 5% to 25% rates depending on the price, said Finance Minister Sri Mulyani Indrawati. The government included a tax amnesty program in the draft submitted to the parliament, although details were not read out during the hearing.

Transfer Pricing

European Union (EU) institutions reach a conclusion on Country-by-country reporting (CbCR) directive

The proposed CbCR directive reached a conclusion which was initially proposed in 2016 on 1 June 2021 by representatives of the EU institutions. Applicable to EU-based multinational enterprises (MNEs) and non-EU based MNEs doing business through a branch/ subsidiary with total consolidated revenue of more than EUR 750 million in each of the last two consecutive financial years, the directive shall be applicable from one financial year following the transposition deadline, i.e., 18 months of converting the directive to national law. The reporting under the law shall be within 12 months from the date of the balance sheet of the said financial year.

Key pointers from the directive

- Every MNE is required to disclose details on the economic activity in every EU State, as well as third country either on Annex I of EU list of non-cooperative jurisdiction (i.e., blacklist) or is from the last two consecutive years on the Annex II of the EU list on non-cooperative jurisdictions (i.e., gray list).
- Safeguard Clause: Publication of commercially sensitive information during the five-year safeguard clause can be delayed by companies. However, information regarding tax jurisdictions listed on the EU list of non-cooperative jurisdictions for tax purposes can never be omitted.
- Every four years, the application shall be reviewed.

The details required to be disclosed by MNE would include:

- The name of the ultimate parent undertaking or the standalone undertaking, the financial year concerned and the currency used.
- The nature of activities, number of employees, total net turnover made, profit made after tax, amount of income tax due in the country by reason of the profits made in the current year in that country, amount of tax actually paid during that year and accumulated earnings.

Draft Guidance on Intangibles issued by the Australian Taxation Office (ATO)

The ATO released a draft Practical Compliance Guideline on cross-border arrangements connected with intangibles outlining the compliance approach to international arrangements connected with the Development, Enhancement, Maintenance, Protection and Exploitation (DEMPE) of intangible assets and/or involving the migration of intangible assets.

Key features of the Guidelines are outlined below -

Scope -

The draft PCG is applicable to all types of arrangements involving intangibles, including:

- The transfer or migration of intangible assets between an Australian entity and offshore related parties.
- The use of intangible assets, e.g. through licensing arrangements.
- Activities related to DEMPE functions.
- Characterization of intangible transactions, including whether payments in the nature of royalty have been appropriately recognized.

Applicability to Intangible Arrangements with -

- Tax Risks and potential application of transfer pricing provisions to Intangible Arrangements; and
- Tax Risk including withholding tax, Capital Gains Tax (CGT), General anti-avoidance rule (GAAR) and Diverted Profits Tax (DPT)

Risks Factors of Intangibles Arrangements -

On the basis of the risks factors outlined below, the taxpayer should maintain sufficient documentation and evidences in support of the Intangible Arrangement

- Commercial considerations and decision making;
- The legal form;
- Identifying intangible assets and connected DEMPE activities;
- Tax and profit outcomes; and
- Type of arrangements i.e. high, medium or low risk

Framework for understanding the arrangement

- Compliance risks;
- Analysis of compliance risks and the documents and evidence in respect to the Arrangement;
- Level of engagement basis assessment of compliance risk;
- A way ahead to mitigate the compliance risks

The tax compliance for intangible arrangements is divided into 2 parts i.e. Compliance Approach and Risk Assessment Framework.

Compliance Approach

1. Review of Intangible Arrangements to avoid mischaracterisation between Australian activities connected with DEMPE of intangible assets;
2. Arrangement shouldn't be such that it is not at arm's length and structured to avoid tax litigations;
3. Basis the functions performed, assets used and risks assumed in respect to DEMPE of intangible assets are properly recognised and remunerated basis arm's length requirements;
4. Application of other income tax provisions, such as GAAR and/or the DPT (Diverted Profits Tax), where there is
   - Lack of evidence of commercial rationale and/or substance
   - Tax benefit in connection with an Intangibles Arrangement and the other legislative conditions are met, the Commissioner may cancel the benefit
   - In respect to DPT tax benefit of Intangibles Arrangement and the other legislative conditions are met, the Commissioner may issue a DPT assessment.

Risk Assessment Framework

1. Assessment of risks basis 'Risks Factors' outlining the features & examples considered for risk assessment and the documentation and evidence supporting the claim to success the level of risks;
2. Understanding and evidencing commercial considerations and decision making specifically where there is a restructure or change;
3. Risks Factors associated with Intangible Arrangements, including documentation maintained as per requirements

Indirect Tax

Impact of new EU VAT Rules on UK e-commerce sellers

The new EU VAT Rule coming into effect from 1 July 2021 requires online shoppers to pay VAT on all the packages bought from outside the European Union. The present VAT exemption on small items having a value less than EUR 22 will be removed.

Compliance Calendar

Direct Tax
Indirect Tax

7 July 2021

Payment of TDS and TCS deducted/collected in June 2021

10 July 2021

- GSTR-7 for the month of June 2021 to be filed by taxpayer liable for Tax Deducted at Source (TDS)
- GSTR-8 for the month of June 2021 to be filed by taxpayer liable for Tax Collected at Source (TCS)
- Payment of tax through GST PMT-06 for the month of May 2021 by taxpayers under Quarterly Return Monthly Payment (QRMP) scheme

11 July 2021

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

13 July 2021

- GSTR-6 for the month of June 2021 to be filed by Input Service Distributor (ISD)
- GSTR-1 for the quarter of April 2021 to June 2021 to be filed by all registered taxpayers under QRMP scheme

15 July 2021

- Filing of TCS statement for the period from April to June 2021
- Filing of TDS statement for the period from January to March 2021

20 July 2021

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

22 July 2021

GSTR-3B for the quarter of April 2021 to June 2021 to be filed by registered taxpayers under QRMP scheme and having principal place of business in Category 1 states

24 July 2021

GSTR-3B for the quarter of April 2021 to June 2021 to be filed by registered taxpayers under QRMP scheme and having principal place of business in Category 2 states

30 July 2021

- Quarterly TCS Certificate in respect of tax collected by any person for the quarter ending 30 June 2021
- Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194-IA and 194-IB for the month of June 2021

31 July 2021

- Filing of TDS statement for the period from April to June 2021
- The Equalization levy statement n form no. 1 for the FY 2020-21.
- Due date for claiming foreign tax credit, upload statement of foreign income offered for tax for the previous year 2019-20 and of foreign tax deducted or paid on such income in Form no. 67 (If taxpayer is required to submit return of income on or before 31 July 2021)

Notes

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

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

Insights, News, & Webinars

Alerts

GST Council recommends a reduction in GST rates on essential goods being used for COVID-19 relief and management

14 June 2021

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

Articles

Slump Sale - The Changing Landscape

- Maulik Doshi

15 June 2021 - Taxsutra

Read Here https://bit.ly/3hbSe55

Significant Economic Presence: Changing the conventional Taxation Systems

- Maulik Doshi

17 June 2021 - ICBC InTouch

News

GST Council Meet: Tax Cut On COVID Essentials, Black Fungus Medicine On Agenda

- Saket Patawari

NDTV Profit

Read Here https://bit.ly/3cBwLj1

Daily average E-Way bill generation exceeds 16 lakh in June

- Saket Patawari

The Hindu Business Line

Read Here https://bit.ly/35tk1XR

Government defends GST as the tax reform completes four years

- Saket Patawari

LiveMint

Read Here https://bit.ly/3x9Tn2H

Webinars

An Overview of FTA Audit, Penalties and Recent Clarifications

Organizer - Nexdigm (SKP)

24 June 2021

Watch Here https://bit.ly/3AlcBnE

GST - Practical Insights Into Audit, Inspection & Litigation

Organizer - Taxsutra

15 July 2021

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About Nexdigm (SKP)

Nexdigm (SKP) is an employee-owned, privately held, independent global business advisory provider that helps organizations 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 Consulting, Business Services, and Professional Services, that help businesses navigate challenges across all stages of their life-cycle. Through our direct operations in the USA, India, and UAE, we serve a diverse range of clients, spanning multinationals, listed companies, privately-owned companies, and family-owned businesses from over 50 countries.

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

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

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

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

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

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