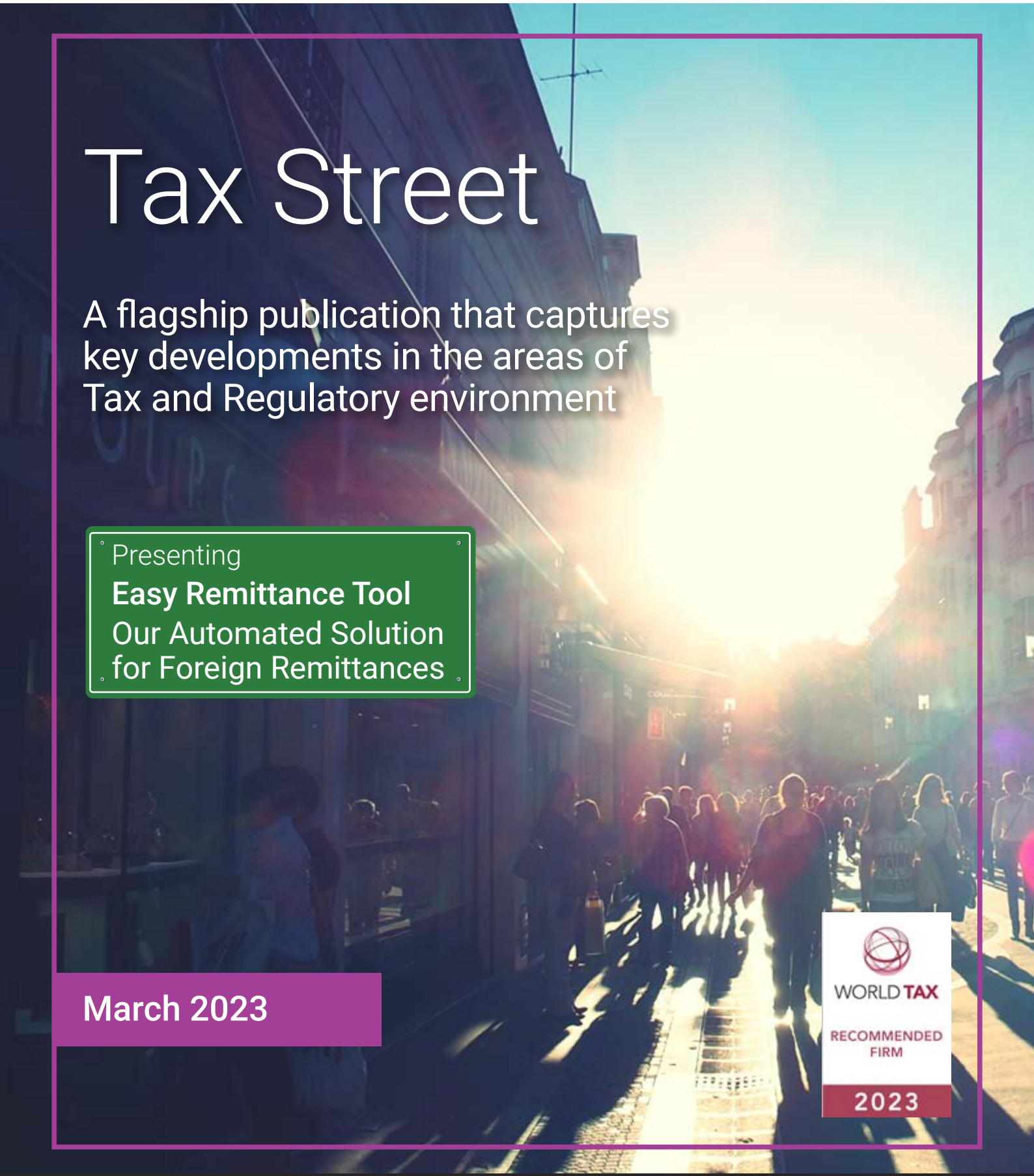


Tax Street

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

Presenting
Easy Remittance Tool
Our Automated Solution for Foreign Remittances

March 2023

WORLD TAX
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 March 2023.

- The **'Focus Point'** explores the aspect of Angel tax and how it widens the ambit of Transfer Pricing.
- 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

Angel tax - Widening the ambit of Transfer Pricing

India is one of the biggest hubs of the 'Start-up' ecosystem in the world. It ranks third with over 90,000 start-ups and 107 unicorn companies worth 30 billion dollars[1].

Angel tax was introduced in 2012 in the form of Section 56(2)(viib) of the Income-tax Act, 1961 (the Act) to potentially avoid money laundering practices (especially in the cases of start-ups) through the subscription of shares of a closely held company. Unlisted companies (usually start-ups) in receipt of any money in the form of investments over and above the fair value would be subject to income tax under the head 'Income from other Sources' for the relevant financial year.

The introduction of Angel Tax was not embraced by angel investors across the country in light of the potential ramifications for the 'Start-up' ecosystem.

Amendment in the Union Budget 2023[2]

The provisions of Section 56(2)(viib) of the Act are amended whereby the government has also included foreign investors in the ambit of Angel Tax. This means when an unlisted company, such as a start-up, receives equity investment from a resident or a non-resident for the issue of shares that exceeds the face value of such shares, it will be counted as income for the start-up and be subject to income tax under the head 'Income from other Sources' for the relevant financial year in India.

The amendment shall be with effect from 1 April 2024.

Potential Transfer Pricing implications

Pursuant to the amendment, if the non-resident investor and the investee company in India are qualified as an 'Associated Enterprises' (AE) as per the provisions of Section 92A of the Act and if there is any income chargeable to tax in India for the investee company under Section 56(2)(viib) of the Act on account of AE investing in the shares of a closely held company (Indian investee in the instant case) at a value over and above the fair market value of the shares then the transaction would fall within the purview of 'international transactions' under Section 92B of the Act as per the provisions of the Indian Transfer Pricing (TP) Regulations and would therefore be required to be computed having regard to the principle of Arm's Length Price (ALP).

1. https://bit.ly/41jQZVM
2. Finance Bill, 2023

Issue of equity shares by Indian investee - Reporting requirements and determination of ALP

Indian taxpayers have been reporting the international transaction relating to the issue of shares in the Accountant's Report in Form 3CEB (Report) out of abundant caution, pursuant to the decision of Hon'ble Bombay HC in the case of Vodafone India Service Pvt. Ltd[3]. wherein it was held that the issue of share by an Indian company to non-resident company does not give rise to any income and thus provisions of Chapter X of the Act are not applicable to the said transaction.

It is evident from the decision that the non-applicability being referred to herein is in the context of the determination of ALP, i.e., when no income arises from an international transaction, the question of determining ALP does not arise. The HC has not specifically discussed reporting an international transaction in the absence of income arising therefrom.

With the amendment in the provisions of the Act, the transactions between Indian closely held companies and their AE could potentially lead to income chargeable to tax in India, thereby triggering TP compliance requirements (by reporting such transaction in Clause 16 of the Report) having regard to the ALP and documentation required for the transaction relating to the issue of shares for the relevant year under consideration.

For the purpose of determination of the ALP of the said transaction, the independent valuation report relied upon by the Indian investee for the determination of the fair market value for the purpose of Rule 11UA of the Income-tax Rules, 1962 (the Rules) could potentially act as a determinant factor. However, Revenue authorities potentially challenging the methodology, criteria and data points used for the valuation report to arrive at the fair market value by the Indian investee cannot be ruled out. Also, on the business front, domestic entrepreneurs and foreign investors would be indignant toward widening the coverage of Angel Tax to non-residents. This may potentially cause a hindrance to the 'Start-up' ecosystem in India, wherein capital investors would potentially look out for other investment opportunities in different countries.

Webinars and Events

6th Annual Direct Tax Summit and Awards 2023
23 March 2023
Maulik Doshi, Abhay Saboo

UAE Corporate Tax - Need for re-aligning existing policies
21 March 2023
Lokesh Gupta

6th Annual GST Summit and Awards- Conference and Awards
15 March 2023
Haroon Qureshi, Pushpendra Dixit, Sanjay Chhabria

3. Writ Petition no. 871 of 2014

From the Judiciary

Direct Tax

Whether general management expenses reimbursed to the UAE parent company can be classified as FTS or Business Income?

ITP Publishing India (P.) Ltd. Vs
Mumbai ITAT
ITA No. 4407/Mum/2019

Facts

The taxpayer is a company engaged in the business of magazine publishing and event management.

The taxpayer has entered into a general and administrative service agreement with its holding company,i.e., ITP Holdings Inc. Dubai (ITP Dubai). These services were in the nature of support services and the payment against these services was on a cost recharge basis without any markup.

While paying for these services, the taxpayer did not deduct withholding tax under Section 195, considering that the remittance is for cost recharges by the parent company and does not involve any income element. On the other hand, the Assessing Officer (AO) contended that payment was against the general and administrative services bifurcating it in the nature of fees for technical services and thus, withholding tax should have been deducted. The AO disallowed the expenses applying Section 40(a)(ib) of the Act.

Aggrieved by the above, an appeal was filed before the Income Tax Appellate Tribunal (ITAT).

Held

The Mumbai Tribunal explained that support services received from the parent entity are not special, exclusive or customized services that the parent company renders. Technical services like managerial and consultancy services would denote seeking services to cater to the special needs of the consumer/user as may be felt necessary, which distinguish/identify a service provided from a facility offered. Thus, the services under consideration do not qualify as FTS under Section 9(1)(vii).

Furthermore, the Tribunal also held that if a non-resident earns any income from India by means of operations carried on outside India, that will not fall within the scope of Section 9(1)(i). Since the income cannot be described as deemed to accrue or arise in India nor received or deemed to be received, the taxability of such income fails.

It was concluded that payment remitted by the taxpayer neither falls under Section 9(1)(i) nor under Section 9(1)(vii) and the income cannot be described as deemed to accrue or arise in India. Thus, it was concluded that no disallowance under Section 40(a)(i) of the Act was warranted.

Our Comments

Mumbai Tribunal opined that reimbursement of general management expenses without markup to the parent company shall not be liable to withholding taxes.

Can the Revenue bypass SC Decision in 'Engineering Analysis' in lieu of Review Petition pending before SC?

Milestone Systems A/S
TS-133-HC-2023(DEL)

Facts

The taxpayer, Milestones Systems A/S, is a non-resident company incorporated under the laws of Denmark. The taxpayer filed an application under Section 197 seeking 'Nil' rate of withholding tax in respect of its receipts under the Distributor Agreement entered with respect to its video management software. In doing so, the taxpayer relied on the SC's decision in the case of Engineering Analysis to claim that the Royalty earned by it was for a copyrighted article and not for the transfer of copyrights therein.

The Revenue rejected the taxpayer's application without evaluating the facts of the case and without analyzing the actual nature of the transaction. The Revenue denied taxpayer's reliance on the SC's decisions on the ground that, in this case, a review petition had been filed and is pending with the Court.

Aggrieved by the same, the taxpayer filed a writ petition before Delhi HC.

Held

The HC observed that as long as SC's judgment in Engineering Analysis is in force, the concerned income tax authority could not have sidestepped the judgment on the ground that the Revenue Department has filed a review petition against the said judgment. It would have been a separate matter if the concerned officer had, on facts, distinguished the judgment of the SC in Engineering Analysis.

The HC remitted the matter back to the Revenue with a direction to examine the terms of the software agreement and the ratio laid down by the SC in the case of engineering analysis.

Our Comments

The Delhi Court set aside the Income Tax Department's order rejecting the taxpayer's application seeking a certificate for the "NIL" rate of withholding tax under Section 197 of the Act.

Transfer Pricing

ALP cannot be NIL in cases where the AE relationship has not been determined basis ownership and control

WeWork India Management Private Limited
IT(TP)A No. 819/Bang/2022

Facts

The taxpayer is engaged in the business of leasing of network of fully/partly equipped shared workspaces. It had entered into Operations and Management Agreement (OMA) with WeWork Global, pursuant to which it paid management fees at the rate of 12.50% of gross revenue in respect to the right to use IP and software to perform its day-to-day functions. Furthermore, it also paid interest on Compulsory Convertible Debentures (CCD) at 6% per annum. Both transactions were benchmarked using Comparable Uncontrolled Price (CUP) as the Most Appropriate Method (MAM).

WeWork Global did not hold shares in the taxpayer and constituted as AE under Clause (g) of 92A(2) of the Act.

Outcome of TPO's order

The TPO, ignoring the benchmarking analysis undertaken by the taxpayer, determined the ALP of the transaction pertaining to management fees at NIL. TPO alleged that there were no actual receipts of the services and that any independent enterprise having skilled and sufficiently trained manpower would not have been willing to pay any third party for the said services.

Furthermore, TPO re-characterized CCDs as equity and held ALP of interest as NIL, alleging that given the skewed financials of the taxpayer, an uncontrolled party would not have subscribed to the CCDs of the taxpayer.

DRP Instructions

The Dispute Resolution Panel (DRP) upheld the order of the TPO even though sample copies of email exchanges between the taxpayer and WeWork and details of the software application provided by WeWork were shared with the DRP to demonstrate that services were indeed received. DRP upheld TPO's order with respect to the CCDs.

Held by ITAT

ITAT observed that the taxpayer is operating under a franchise model from WeWork Global, where the entire business model of the taxpayer is dependent on AE. The necessary support for designing and constructing the premises, selling the concept in the market and also operationalization of business (to attain a similar look and feel and connect by a common software) is dependent on the AE. Moreover, the taxpayer uses the trademark/ brand of WeWork.

ITAT further observed an increase in the trade and number of desks sold in each of the FY due to services received from WeWork in the nature of the digital, real estate, design, corporate, implementation, training, billing and access to WeWork brand/trademarks. Also, the scientific and reasonable formula has been adopted for the computation of management fees with its working maintained by the taxpayer.

ITAT held that the AE relationship was determined on the foundational condition of receipt of IT/ franchise on which the business of the taxpayer was wholly dependent. If the TPO alleges that the taxpayer has not received services, the AE relationship established would be nonexistent and consequently, the jurisdiction of the TPO itself would fail. It is a fact that the taxpayer's business is wholly dependent on the know-how, patent, copyright, trademark, licenses, franchises and other services of WeWork Global and thus, the ALP of the transaction cannot be determined to be NIL.

Furthermore, placing reliance on the ruling of Summit Development Pvt. Ltd, the ITAT held that CCDs are in nature of debt and cannot be re-characterized as equity until its conversion. The taxpayer had made disallowance under Section 94B of the Act, in its Return of Income under thin capitalization and the same cannot be the basis for disallowance under TP provisions. The transaction should be tested for arm's length compliance and held to be excessive basis the benchmarking exercise undertaken under TP provisions.

Our Comments

The Hon'ble Tribunal has made a very pertinent observation in this case by holding that the ALP cannot be determined as NIL as the AE relationship itself is based on the existence of the international transaction. It demonstrates that in TP, understanding of the business and the Group structure is of significant importance before determining the ALP of the international transaction.

Customs data being government notified are more reliable than market rates to determine the Uncontrolled Transaction Price

Louis Dreyfus Company India Private Limited
ITA No 808/DEL/2021

Facts

The taxpayer had undertaken international transactions pertaining to the import and export of agro-commodities. It benchmarked the transactions using the CUP method, considering the rates/quotes offered by authenticated and independent market reports/third-party broker's quotes.

Outcome of TPOs order

The TPO rejected the rates adopted by the taxpayer on the ground that they are unreliable and unauthenticated. It alleged that the quotations provided by third-party brokers are not real-time transactions and only projections. Furthermore, the third-party report includes the average price. TPO considered the values declared by the customs authorities as they are computed using a scientifically formulated method. It is a fair assessment and not an arbitrary exercise.

DRP directions

The order of the TPO was upheld by the DRP directing the TPO to compute arm's length range, where a number of prices were available for the same specifications on the same date in the customs data.

Held by ITAT

ITAT observed that the Customs data serves as a more reliable CUP as it compares the value of identical or similar goods imported/ exported at or around the same time, even though there is a gap between the contract date and actual contract realization date. This approach is in line with the Organisation for Economic Co-operation and Development (OECD) TP Guidelines. Since custom data is inclusive of interest, insurance, freight costs, storage cost, foreign currency terms, country of origin charges, transportation charges, port charges, and customs clearing charges, etc., it is a more reliable indicator of the uncontrolled arm's length transaction value.

ITAT held that even though import/export duty is not payable on these commodities and tariff rates are not notified, the customs data is reliable as it is based on the transaction of similar nature and items on the same date at the same port. In the absence of complete details of the differences arising out of contract terms and product quality, the customs data being government notified would be a reasonable basis for arriving at the uncontrolled transaction price.

Our Comments

While adopting the CUP method to determine ALP for international transactions, we rely on the available market rates/ quotes from independent parties. However, if government-notified rates are available (such as custom data), the same may also be considered to arrive at the uncontrolled transaction price. The reasons should be appropriately documented if the same is not considered appropriate.

Indirect Tax

Whether production of invoice and payment documents sufficient burden of proof to claim ITC?

The State of Karnataka vs. Ecom Gill Coffee Trading Private Limited and others
TS-99-SC-2023-VAT

Facts

- The Revenue had approached the SC challenging the orders of the HC and Tribunal, which had allowed the assessees, viz. the purchasing dealers, their claim of Input Tax Credit (ITC) against the production of invoices issued by respective suppliers and proof of payments to them through cheques.
- Revenue contended that for the purposes of ITC, the purchasing dealer has to prove that the actual payment of tax and actual transfer of goods and a mere paper transaction is not sufficient.

Ruling

- Perusing the provisions of Section 70 of Karnataka VAT Act, SC observed that the burden of proving the correctness of ITC lies on the purchasing dealer. Mere production of invoices or payment through cheques is not enough. Also, a mere claim by the dealer that he is a bona fide purchaser is not sufficient.
- SC further held that the purchasing dealer has to prove beyond doubt the actual transaction by furnishing the name and address of the seller, details of the vehicle which has delivered the goods, payment of freight charges, acknowledgment of taking delivery of goods, tax invoices and payment particulars, etc.
- As per the Court, if the purchasing dealer fails to establish and prove an important aspect of the physical movement of goods on which ITC has been claimed, the AO is absolutely justified in rejecting such a claim.
- Accordingly, SC confirmed the decision of the First Appellate Authority and quashed the judgment and order passed by the HC and the Tribunal, respectively.

Our Comments

Although delivered in the context of State VAT law, this judgment would also have significance under the GST law, considering similar provisions of the burden of proof in the GST legislation [Section 155].

Along with the requirements of Section 16 of the CGST Act for availment of ITC, the buyers should maintain an extensive documentation trail to prove the genuineness of the actual transaction.

For FY 2017-18 and 2018-19 particularly, the Revenue could defend its stand by taking recourse to this judgment in cases where the buyers were relying on the Apex Court's decision in case of Arise India Limited[4] and Madras HC ruling in the case of DY Beathel Enterprises[5], wherein the disallowance of ITC was quashed due to default of selling dealer in depositing tax or reporting of supplies.

Whether the amendment to Rule 89(4)(c) of CGST Rules w.e.f. 23 March 2020, restricting the GST refund against the supply of goods, was constitutionally valid?

Tonbo Imaging India Pvt Ltd vs. Union of India and others
TS-108-HC(KAR)-2023-GST

Note: By the said amendment[6], the phrase "turnover of zero-rated supply of goods" came to be defined. Accordingly, the refund would be lesser than: (a) value of the zero-rated supply of goods; or (b) value which is 1.5 times the value of like goods domestically supplied by the same or similarly placed supplier, as declared by the supplier.

Facts

- The petitioner had claimed a refund of unutilized ITC under Section 54 of CGST Act r/w Rule 89 of CGST Rules against the export of various customized/unique products during the period of May 2018 to March 2019.
- However, based on the amendment to Rule 89(4)(c) w.e.f. 23 March 2020, the Revenue rejected the said claim disregarding the petitioner's contention that the amended Rule could not apply to prior exports.
- Hence, the petitioner approached the Karnataka HC assailing the rejection order as well as the validity of the amended Rule.

Ruling

- HC opined that the impugned amendment to Rule 89(4)(c) of CGST Rules is arbitrary and ultra vires Section 16 of IGST Act and Section 54 of CGST Act. The very intention of zero-rating is to make the entire "export" supply chain tax-free.
- The amendment in whittling down such refund is ultra vires in view of the well-settled principle of law that Rules cannot override the parent legislation.

4. W.P.(MD) Nos. 2127 of 2021
5. TS-2-SC-2018-VAT
6. Notification No. 16/2020-Central Tax dated 23 March 2020

- The impugned Rule is violative of Articles 14 and 19(1)(g) of the Constitution, inasmuch as there is hostile discrimination between two classes of persons, viz. (i) the exporters who opt for a refund of unutilized ITC, and (ii) the exporters who obtain a refund after payment of tax.
- HC further observed that the said amendment suffers from the vice of vagueness since the phrases "like goods" and "similarly placed supplier" have not been defined anywhere in the GST law. The Rule also fails to provide the consequences if there are no local supplies of like goods or the pricing policy is different.
- It is well settled that if the government perceives that there could be a possibility of abuse of a provision, it should adopt measures to keep a check on the same; however, the law cannot be amended on the premise of distrust.

Our Comments

This judgment should provide relief to genuine exporters of goods claiming refunds of unutilized ITC, given the challenge of ascertaining the value of similar supplies, particularly in cases of customized products and/or in cases where there are no domestic sales.

However, similar to VKC Footsteps, we could see yet another GST refund issue being finally settled by the Apex Court.

Regulatory Updates

Company Law Regulations

Establishment of Centre for Processing Accelerated Corporate Exit (C-PACE)

The Ministry of Corporate Affairs (MCA) issued a notification on 17 March 2023 for establishing a Centre for Processing Accelerated Corporate Exit (also called C-Pace).

The C-PACE shall be located at the Indian Institute of Corporate Affairs (IICA), Plot No. 6, 7, 8, Sector 5, IMT Manesar, District Gurgaon (Haryana), Pin Code – 122050.

This notification shall come into force on 1 April 2023.

Our Comments

This concept of C-PACE was introduced by our Hon'ble Finance Minister Nirmala Sitharaman in her Union Budget 2022-23. She has stated that the C-PACE shall re-engineer the process of corporate exit and speed up the voluntary winding-up of companies from the currently required two years to less than six months. The regulations as to how this Centre would function and what role it would play in the voluntary winding-up process are yet to be released by MCA. However, this move has been welcomed by the corporates as it will simplify and shorten the process of closure of companies in India and will contribute towards ease of doing business, adding to India's growth story.

Alerts

Gist of Notifications issued by CBIC on 31 March 2023

10 April 2023
https://bit.ly/41cMYlC

Reassessment notices - Individuals / NRIs - Track your Tax Portal

8 April 2023
https://bit.ly/3ZXQUWs

GST Trail March 2023 Key Highlights of GST Notifications and Clarification Circulars

4 April 2023
https://bit.ly/3KONW2h

Key Amendments to Finance Bill, 2023

28 March 2023
https://bit.ly/3KrcPj9

Assessment on non-existent company dismissed by Delhi High Court

15 March 2023
https://bit.ly/3JlDwW2

Gist of Notifications issued by CBIC effective from 1 March 2023

6 March 2023
https://bit.ly/3TmOXBt

Tax Talk

Indian Developments

Direct Tax

E-verification scheme: a major step towards voluntary tax compliance

Press Release

- The Income Tax Department had notified the e-Verification Scheme, 2021, to facilitate a transparent and non-intrusive tax administration.
- The Scheme aims to share and verify such financial transaction information with the taxpayer, which is either unreported or under-reported in the ITR.
- To effectively utilize the data collected from various sources, the entire information is now displayed to the taxpayer through the Annual Information Statement (AIS), which provides a facility for the taxpayer to object if the source has misreported any such information.
- The Department confirms the said information with the source and if no error is stated, such information is subject to risk assessment for e-Verification.
- The entire process of e-Verification is digital and is beneficial since it enables the taxpayer to explain financial transactions with evidence and helps in data correction, thereby preventing unnecessary proceedings on misreported information.
- Furthermore, since the information pertaining to the financial transactions is shared with the taxpayer, it provides an opportunity to correct/update income that may not have been appropriately reported in the ITR filed by the taxpayer.
- As the Scheme has provided an opportunity for taxpayers to accept the mismatch of information compared to the original ITR filed, it has been found that many taxpayers have filed updated returns on income under Section 139(8A) of the Income-tax Act.

Extension of partial relaxation with respect to electronic submission of form 10F by select category of taxpayers

F. No. DGIT(S)-ADS(S)-3/e-Filing Notification/Forms/2023/13420

- Notification No. 3/2022, dated 16 July 2022, mandated the furnishing of Form 10F electronically. However, on consideration of genuine hardships faced in making compliance as per the above notification by non-resident taxpayers who were neither had PAN and nor required to have PAN were exempted from mandatory filing of Form 10F till 31 March 2023.
- Given the continued challenges and to mitigate the hardships being faced by such a category of taxpayers, it has been decided to extend the above-mentioned partial relaxation until 30 September 2023.
- Such taxpayers may make statutory compliance by filing Form 10F in manual form till the notified date.

Indirect Tax

Goods and Services Tax (GST)

GST rate changes notified pursuant to GST Council's 49th meeting

Notification Nos. 1 to 4/2023-Central Tax (Rate) dated 28 February 2023

The Central Board of Indirect Taxes and Customs (CBIC) has notified the rate changes for goods and services pursuant to recommendations of the GST Council during its 49th meeting in February 2023. The revised rates have come into effect from 1 March 2023.

Time limit extended for passing adjudication order for FY 2017-18 to FY 2019-20

Notification No. 9/2023-Central Tax dated 31 March 2023

CBIC has extended the timeline for issuance of order under Section 73 of CGST Act, 2017 as follows: (a) for FY 2017-18, up to 31 December 2023, (b) for FY 2018-18, up to 31 March 2024, and (c) for FY 2019-20, up to 30 June 2024.

Amnesty schemes notified for GSTR-4, GSTR-9, and GSTR-10 non-filers; Annual Return late fee rationalized from FY 2022-23 onwards

Notification Nos. 2/2023-Central Tax, 7/2023-Central Tax, and 8/2023-Central Tax dated 31 March 2023

Pursuant to GST Council recommendations, the CBIC has notified waiver of late fee, subject to furnishing of relevant returns between 1 April to 30 June 2023 as follows:

- In excess of INR 500 for registered persons who have failed to furnish the final return in GSTR-10 by the due date.
- In excess of INR 250 (and shall stand fully waived where total CGST payable is nil) for composition dealers who have failed to furnish a return in GSTR-4 for the quarters from July 2017 to March 2019 or for FY 2019-20 to FY 2021-22 by the due date.
- In excess of INR 10,000 for registered persons who have failed to furnish Annual Return in GSTR-9 for FY 2017-18, FY 2018-19, FY 2019-20, FY 2020-21, or FY 2021-22 by the due date.

Furthermore, the late fee payable on delayed filing of GSTR-9 has been rationalized as under:

Sr. No.	Class of registered persons	Amount
1	Having an aggregate turnover of up to INR 50 million in the relevant financial year	INR 25 per day, subject to a maximum of 0.02% of turnover in the State/UT
2	Having aggregate turnover between INR 50 million to INR 250 million in the relevant financial year	INR 50 per day, subject to a maximum of 0.02% of turnover in the State/UT

Time limit to apply for revocation of registration cancellation extended up to 30 June 2023

Notification No. 3/2023-Central Tax dated 31 March 2023

CBIC has notified special procedure in respect of revocation of GST registration cancellation done before 31 December 2022. The registered persons, who had hitherto failed to apply for revocation, can do so up to 30 June 2023 only after furnishing the returns due up to the effective date of registration cancellation along with payment of tax dues, interest, penalty and late fees. No further extension shall be available in such cases.

Customs

Phased implementation of Electronic Cash Ledger in Customs

Circular No. 9/2023-Customs dated 30 March 2023

The CBIC has decided to enable the Electronic Cash Ledger functionality as envisaged in Section 51A of the Customs Act, in phases from 1 April 2023. In the first phase, from 1 to 30 April, the exemption from the provisions of Section 51A shall be restricted to deposits w.r.t.:

- Goods imported or exported in Customs stations where an automated system is not in place.
- Accompanied baggage.
- Goods imported or exported at International Courier Terminals.
- Deposits other than those used for making electronic payment of:
  - any customs duty, including cesses and surcharges
  - IGST
  - GST Compensation Cess
  - Interest, penalty, fees, or any other fee payable under Customs Act or Customs Tariff Act

Given the above, payments through TR-6 challan for various purposes through authorized bank counter at the Customs locations would be exempted from Section 51A provisions.

Accordingly, importers/exporters (Import Export Codes), the customs brokers, and couriers who are making payments on behalf of the importers/exporters, should get registered at the ICEGATE portal and create Electronic Cash Ledger Account.

Extension of Health Cess exemption on import of goods for X-ray machines manufacture

Notification No. 18/2023-Customs dated 29 March 2023

CBIC has continued/provided health cess exemption on import of specified goods such as static user interface, x-ray diagnostic table, x-ray grid, medical grade monitor, etc. for use in the manufacture of X-ray machines w.e.f. 1 April 2023. The exemption is subject to the procedure set out in the Customs (Import of Goods at Concessional Rate of Duty or for Specified End Use) Rules, 2022 Notification No. 8/2020-Customs has, accordingly, been amended.

Extension of BCD exemption on import of specific textile machineries, goods for X-ray machines manufacture

Notification No. 17/2023-Customs dated 29 March 2023

CBIC has continued/provided a Basic Customs Duty (BCD) exemption on the import of specific machineries (other than old and used) for use in the textile industry. Similar exemption has been extended to flat panel detectors, x-ray tubes, and medical grade monitors of use in the manufacture of X-ray machines. Accordingly, Notification No. 50/2017-Customs stands amended w.e.f. 1 April 2023.

2nd tranche of concessions under India-UAE CEPA and 3rd tranche under India-Mauritius CECPA notified

Notification Nos. 19/2023-Customs and 20/2023-Customs dated 31 March 2023

W.e.f. 1 April 2023, the 2nd tranche of customs duty concessions under India-UAE CEPA and 3rd tranche under India-Mauritius CECPA have been notified.

Articles

Foreign Companies may be required to file tax returns in India
11 April 2023
https://bit.ly/3MuEwdD

Decoding the intricacies of the Angel Tax Provisions
8 April 2023
https://bit.ly/43i7h3f

GST on Transportation Services Navigating through turbulent waters
8 April 2023
https://bit.ly/3KPskTq

Section 115A Amendment - Impact on Withholding Tax & ITR Compliance
5 April 2023
https://bit.ly/40W88Vr

Tax Talk

Global Developments

Direct Tax

Sustained progress demonstrated in the latest OECD peer review results on the prevention of tax treaty shopping

Excerpts from oecd.org,
21 March 2023

Members of the OECD/G20 Inclusive Framework on BEPS continue to make significant progress in implementating the BEPS package to tackle international tax avoidance. The OECD releases the latest peer review results assessing the actions taken by jurisdictions to prevent tax treaty shopping and other forms of treaty abuse under Action 6 of the OECD/G20 BEPS Project.

The Fifth Peer Review Report on Treaty Shopping, which includes data on tax treaties concluded by the jurisdictions that were members of the OECD/G20 Inclusive Framework on BEPS on 31 May 2022, forms the basis of the assessment of the implementation of the BEPS Action 6 minimum standard.

The report reveals that members of the OECD/G20 Inclusive Framework on BEPS respect their commitment to implementing the minimum standard on treaty shopping. It further confirms the importance of the BEPS Multilateral Instrument (MLI) as the tool used by the vast majority of jurisdictions that have started implementing the BEPS Action 6 minimum standard.

The MLI has continued to significantly expand the implementation of the minimum standard for the jurisdictions that have ratified it. The impact and coverage of the MLI are expected to continue to increase as jurisdictions complete their ratifications and as other jurisdictions with large tax treaty networks prepare to join it. To date, the MLI covers 100 jurisdictions and around 1850 bilateral tax treaties.

As one of the four minimum standards, the BEPS Action 6 minimum standard identified treaty abuse, particularly treaty shopping, as one of the principal sources of BEPS concerns. Treaty shopping typically involves the attempt by a person to indirectly access the benefits of a tax agreement between two jurisdictions without being a resident of one of those jurisdictions. To address this issue, all members of the OECD/G20 Inclusive Framework on BEPS have committed to implementing the BEPS Action 6 minimum standard and participate in annual peer reviews to monitor its accurate implementation.

Transfer Pricing

Australia - Aligning the thin capitalization rules with the OECD's best practice guidance

Excerpts from oecd.org,
21 March 2023

"Thin capitalization" refers to the situation in which a company is financed through a relatively high level of debt compared to equity. Thinly capitalized companies are sometimes referred to as "highly leveraged" or "highly geared". Thin capitalization rules limit the amount of debt for which a foreign-owned subsidiary can claim deductions for interest paid. In order to strengthen the interest limitation (thin capitalization) rules, the Federal Government incorporated the proposed changes in the legislation to apply for income years beginning on or after 1 July 2023. The amendments focus on replacing the current asset-based rules with debt deductions based on 'Tax Earnings before Interest, Taxes, Depreciation, and Amortization (EBITDA)' for general class investors (i.e., all entities except for financial entities and Authorised Deposit-taking institution (ADIs)).

Existing rules

The existing rules included (i) Safe Harbour test, where the entity is allowed to have debt up to 60% of the book value of a company's Australian assets (or a debt-to-equity ratio of 1.5:1) (ii) the worldwide gearing test where the entity is allowed debt to the extent of the level of gearing[7] in its worldwide Group and (iii) Arm's length debt test (ALDT) where the entity can claim interest deductions to the extent of debt the third-party lender is willing to provide basis certain assumptions.

The new tests were introduced, replacing the existing tests applicable to general-class investors. However, the financial institutions would still be able to apply the existing Safe Harbour and worldwide gearing tests.

The new rules introduced under the thin capitalization regime include:

Fixed Ratio Test (FRT)

(replacing existing Safe Harbour test) limits the interest deduction to 30% of EBITDA and allows carry-forward of denied deductions up to 15 years subject to fulfillment of the Continuity of ownership test (COT) test (i.e., maintaining the same majority owners).

Group Ratio Test (GRT)

(replacing the existing worldwide gearing test) is applicable to an entity that is a member of the GR Group[8] and the EBITDA of the GR Group for the period is not less than zero. Thus, the GRT is relevant to the highly leveraged Group that allows claiming debt-related deductions to the extent of the worldwide Group's net interest expense as a share of earnings. However, unlike the FRT there is no provision to carry forward denied deductions in the GRT.

External third-party debt test

(replacing ALDT) disallows debt deductions to the extent they exceed the entity's debt deductions attributable to external third-party debt satisfying conditions as elaborated below:

- Debt interest is not issued or held at any time in the income year by an associate entity[9] of the issuing entity;
- The holder of debt interest has recourse for the payment of the debt only to the assets of the entity; and
- The proceeds of issuing the debt interest are used wholly to fund:
  - investments relating to assets attributable to entity's Permanent Establishment (PE) or the entity holds to produce assessable income;
  - its Australian operations

Furthermore, debt interest issued by associate entities to conduit financer (commercial arrangements allowing one entity in a Group to raise funds on behalf of other entities in the Group) can apply external third-party debt test if it fulfills the additional rules as below:

- Conduit financer financed amount loaned under the relevant debt interest only with proceeds from another debt interest (the ultimate debt interest).
- Conduit financer issued the ultimate debt interest to another entity (the ultimate lender).
- Ultimate debt interest satisfies external third-party debt conditions in relation to any income year.
- The terms of the relevant debt interest are the same as the terms of the ultimate debt interest (other than terms as to the amount of the debt, the conduit financer may on-lend the funds across a number of borrowers in the Group).
- The ultimate lender has recourse for the payment of the ultimate debt interest only to the assets of the ultimate borrowers and each asset of the conduit financer that is a relevant debt interest; and
- An irrevocable choice has been made, in the approved form, by the conduit financer and ultimate borrowers.

The FRT is the default test applicable to general class investors, though the option is available for the entity for the income year to choose either GRT or a third-party debt test. However, there is no provision for revoking the test choice during the income year. Also, in case of a change in the test from FRT to the other alternative, the taxpayer losses its ability to carry forward denied deductions.

In addition to the above, there were other few amendments introduced, such as:

- The definition of 'debt deductions' amended to include interest and amounts economically equivalent to interest (though they not be necessarily incurred in relation to the debt interest issued by the entity).
- Interest expenses incurred to derive foreign equity distributions, which are Non-assessable non-exempt (Income that is not assessed and no taxes are paid) NANE be considered disallowed expenses.
- The definition of the associate entity was amended to exclude the trustee of a complying superannuation entity (other than a self-managed superannuation fund).

The exemption from the thin capitalization rules is intact in the new legislation, which applies to entities where the total debt deductions of an entity and all its associate entities for an income year do not exceed USD 2 million and where the average Australian assets of the entity and its associates (in case of outward investing entities) represent, in the aggregate, at least 90% of the average total assets.

7. Ratio of worldwide debt interests issued by Australian entity and its Australian controlled foreign entities, other than debt interests issued to each other to worldwide equity capital of the Australian entity and its Australian controlled foreign entities, other than equity interest held in each other.
8. Worldwide parent entity and all other entities whose accounts are consolidated in the parent's audited consolidated financial statements
9. Thin Capitalization Control interest in an entity is 10% or more

The change in the thin capitalization rules does not give relief from transfer pricing rules to the taxpayers' associate entity debt under the Act, even though they are subject to the thin capitalization rules. In addition to determining arm's length conditions for the interest rate, the general class investors would also be required to ascertain the arm's length quantum of debt under the fixed ratio or the Group ratio rules.

Indirect Tax

Dubai reinstates former customs duty threshold for import consignments

Excerpts from khaleejtimes.com

Dubai has reinstated the previous threshold of AED 1000 for the exemption of parcels and shipments w.e.f. 1 March 2023. Earlier, this threshold had been reduced to AED 300.

Italy's tax reforms may consolidate 3 reduced rates to 2

Excerpts from vatcalc.com

As part of the tax reforms announced by the Council of Minister, the reduced VAT rates of 4% and 5% in Italy could be consolidated.

UK's Plastic Packaging Tax rate hiked to GBP 210.82 per tonne from 1 April 2023

Excerpts from gov.uk

The rate of Plastic Packaging Tax has increased from GBP 200 per tonne to GBP 210.82 per tonne from 1 April 2023. Accordingly, businesses must register for said tax if they:

- expect to import into the UK or manufacture in the UK 10 tonnes or more of finished plastic packaging components in the next 30 days.
- have imported into the UK or manufactured in the UK 10 tonnes or more of finished plastic packaging components in the last 12 months.

South Dakota Governor approves 4-year cut in sales tax rate (gross receipts tax) from 4.5% to 4.2%

Experts from vatcalc.com

The reduction, effective from 1 July 2023 until 30 June 2027, is to help alleviate the effect of recent inflation and was signed off by the state Governor, Kristi Noem, on 21 March 2022. The Governor had been insisting on an exemption for groceries - but abandoned this demand.

Quotes and Coverage

GST on transportation services - navigating through turbulent waters
25 March 2023 | Economic Times
Saket Patawari, Hiren Vora
https://bit.ly/43kFA9L

E-way bills for Feb show moderation
7 March 2023 | LiveMint
Sanjay Chhabria
https://bit.ly/3TlYjx1

Compliance Calendar

Direct Tax
Indirect Tax

10 April 2023

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

11 April 2023

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

13 April 2023

- GSTR-6 for March 2023 to be filed by Input Service Distributor (ISD).
- GSTR-1 for the quarter of January 2023 to March 2023 to be filed by all registered taxpayers under QRMP Scheme.

14 April 2023

Due date for issue of TDS Certificate for tax deducted under Section 194-IA/Section 194-IB/Section 194M/ Section 194S in February, 2023.

Note: Applicable in case of a specified person as mentioned under Section 194S.

15 April 2023

- Quarterly statement in respect of foreign remittances (to be furnished by authorized dealers) in Form No. 15CC for the quarter ending March 2023.
- Due date for the furnishing statement in Form no. 3BB by a stock exchange in respect of transactions in which client codes have been modified after registering in the system for March 2023.

20 April 2023

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

22 April 2023

GSTR-3B for the quarter of January 2023 to March 2023 to be filed by registered taxpayers under QRMP Scheme and having principal place of business in Category 1 states.

24 April 2023

GSTR-3B for the quarter of January 2023 to March 2023 to be filed by registered taxpayers under QRMP Scheme and having principal place of business in Category 2 states.

30 April 2023

- Due date for furnishing of Form 24G by an office of the government where TDS/TCS for March 2023 has been paid without the production of a challan.
- Due date for furnishing of challan-cum-statement in respect of tax deducted under Section 194-IA/ Section 194-IB/Section 194M/Section 194S in March 2023.
  Note: Applicable in case of specified person as mentioned under Section 194S.
- Due date for deposit of Tax deducted by an assessee other than an office of the government for March 2023.
- Due date for e-filing of a declaration in Form No. 61 containing particulars of Form No. 60 received during the period 1 October 2022 to 31 March 2023.
- Due date for uploading declarations received from recipients in Form. 15G/15H during the quarter ending March 2023.
- Due date for deposit of TDS for the period January 2023 to March 2023 when Assessing Officer has permitted quarterly deposit of TDS under Section 192, 194A, 194D or 194H.

Compliance Calendar

Direct Tax
Indirect Tax

7 May 2023

Due date for deposit of Tax deducted/collected for the month of April 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 May 2023

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

11 May 2023

GSTR-1 to be filed by registered taxpayers for the month of April 2023 by all registered taxpayers not under QRMP Scheme.

13 May 2023

- GSTR-6 for April 2023 to be filed by ISD
- Uploading B2B invoices using Invoice Furnishing Facility under QRMP Scheme for the month of April 2023 by taxpayers with aggregate turnover of up to INR 50 million.

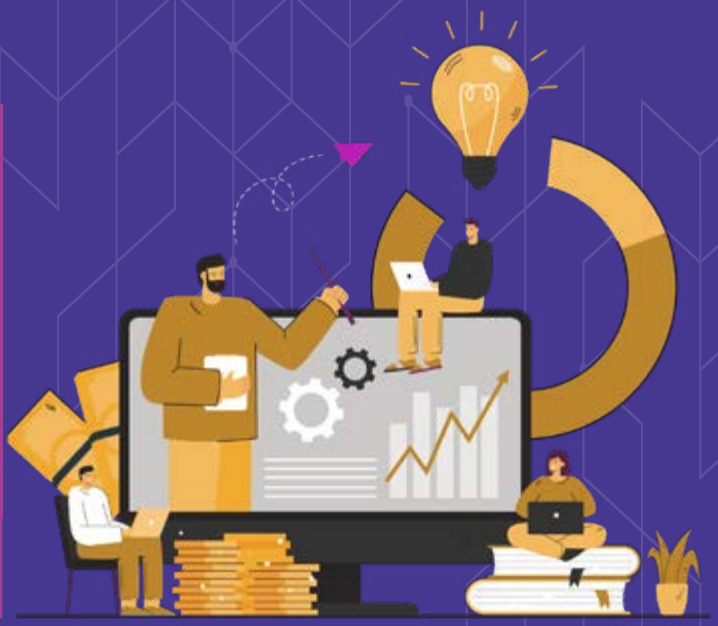
Notes

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

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