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Tax Street

SKP's flagship publication that captures key developments in the areas of Tax and Regulatory

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WORLD TAX
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SKP TAX STREET

INTRODUCTION

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 May 2019.

The taxation of real estate sector saw major changes being made effective from April 2019 by the GST Council. Apart from this, a string of crucial announcements and rulings in the realms of direct tax, transfer pricing and indirect tax have taken place. In this issue of Tax Street, we have tried to collect and synthesize all these significant developments to draw a holistic picture of the current tax landscape in India for your understanding.

- The **'Focus Point'** section talks about the GST reforms introduced in the real estate sector with a view to give fresh impetus to the sector.
- 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@skpgroup.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 SKP Team

FOCUS POINT

Development under GST for Real Estate and Construction Industry

The demand in the real-estate sector has seen a dip in the past few years, primarily owing to the impact of demonetization and the regulations introduced through the Real Estate (Regulation and Development) Act, 2016 (RERA). In light of the above, it is important to study the sweeping changes introduced by the government to ease the pressure on both, the industry and the consumers.

Reforms under GST

GST implications up to 31 March 2019

- Construction services are taxable at an effective rate of 12% after allowing a one-third deduction for the deemed value of the land.
- Projects under affordable housing scheme are taxable at an effective rate of 8%.
- Unlike the pre-GST regime, the benefit of Input Tax Credit (ITC) was available to builders more seamlessly.
- Under both pre and post-GST regime, GST is not chargeable in case the entire consideration is received by the builder after the issuance of completion certificate.

Revised taxation effective from 1 April 2019

The GST Council in its 33rd meeting announced major changes to the taxability of real-estate sector under GST, effective 1 April 2019.

Under construction properties

The taxability of under-construction properties underwent the following changes:

Particulars	Description of property		Old Rate (Effective)	Revised effective rate (with effect from 1 April 2019)
	Max. carpet area	Max. price		
Residential Real Estate Project (RREP) in affordable housing segment	90 sq. meters in non-metro cities	INR 4.5 million	12% (ITC)	1% (without ITC)
	60 sq. meters in metro cities	INR 4.5 million	8%[1] (with ITC)	1% (without ITC)
RREP outside affordable housing segment	Does not meet any one or both of the above criteria		12% (with ITC)	5% (without ITC)
Commercial apartments, etc. (except as covered under Note 2 below)	Shops, offices, godowns, etc. in a real estate project other than RREP		12% (with ITC)	

1. Earlier, the effective GST rate of 8% was applicable to residential houses having an area of up to 60 sq. meters, irrespective of the price of such a residential house, provided the housing project was approved by a competent authority under 'Scheme of Affordable Housing in Partnership'.
2. The term 'Residential Real Estate Project (RREP)' shall mean a real estate project in which the carpet area of the commercial apartments is not more than 15 percent of the total carpet area of all the apartments in such a project. Therefore, in such a scenario, even the commercial apartments should be taxable at the reduced rate applicable to residential apartments.

GST exemption on TDR

Procurement of Transferable Development Rights (TDR), Joint-Development Rights Agreement (JDA), lease premium, Floor Space Index (FSI) form a major cost component at the inception of a real estate project. The government with a view to reduce the tax burden on builders, especially now that the ITC is disallowed, has exempted intermediate GST on TDR, JDA, lease premium, and FSI for such a residential property on which GST is payable.

Thus, if there are any unsold apartments on the date of issuance of the completion certificate, then the builder would have to compute GST liability on proportionate exempt TDR, JDA, etc., procured by him and pay such GST under reverse charge mechanism. The time of supply in such a case should be deferred to the date of issuance of the completion certificate, thereby avoiding any interest liability on delayed payment of GST under reverse charge.

Issues under the revised taxability regime

The revised taxability of real estate sector has brought along with it new sets of challenges which are as follows:

- Builders are required to procure up to 80% of their inward supplies from registered dealers. Failure to meet this criterion will attract reverse charge provisions on procurements from unregistered dealers.
- Non-eligibility of claiming ITC can erode the benefits of the rate-cuts by increasing the tax costs for builders. This can result in a situation where the customers are expecting a dip in real estate prices whereas builders may have to maintain or even increase the current prices.
- In view of the rate cuts, builders may also face probes under the anti-profiteering provisions if they do not reduce the prices of the residential flats commensurate with the tax benefits.
- Cement which is a major input in the construction sector continues to be taxed at the highest GST rate of 28%. The high tax rate coupled with denial of ITC is a major worry for builders.

Other Aspects

GST on long-term lease premium

Taxability

The Bombay High Court in Writ Petition No. 12194 of 2017 has held that a long-term lease of 60 years would be covered under Entry 2(a) of Schedule II of the CGST Act, 2017, and hence such a transaction is to be considered as a supply of service chargeable to GST. It was further held that the fact such a long-term lease can be considered as a sale of immovable property under the Transfer of Property Act, 1882 should not have any bearing on the GST implications in view of the specific provisions under the GST law.

Applicability of the reverse charge mechanism

It should be noted that long term lease of land (lease of 30 years or more) against consideration in the form of the upfront amount and/or periodic rent for construction of a project has been subjected to the reverse charge mechanism with effect from 1 April 2019. [Notification No. 5/2019-Central Tax (Rate) dated 29 March 2019].

Exemption for development of financial business

The upfront amount payable in respect of service by way of granting of long term lease (of 30 years or more) of industrial plots or plots for development of infrastructure for financial business, provided by the State Government Industrial Development Corporations or other government entity is exempted under GST. [Notification No. 12/2017-Central Tax (Rate) dated 28 June 2017]

ITC in respect of the construction of immovable property let out

In Writ Petition No. 20463 of 2018, the Hon'ble High Court of Orissa has held that ITC in respect of inward supplies procured for construction of an immovable property, which is ultimately let out, should be allowed as set off against the outward tax liability in relation to rent received. The case is discussed in detail in the 'From the judiciary' section.

Option for builders in respect of ongoing projects

Builders were provided an option to decide whether they want to migrate to the revised GST rate structure, without ITC benefit (effective from 1 April 2019) for ongoing projects. The same was to be exercised by 20 May 2019.

FROM THE JUDICIARY

Direct Tax

Whether distribution/ advertisement revenue received for operating TV channels for the exhibition of programs, entertainment, education, etc., can be categorized as business income or royalty for use of copyright?

Commissioner of Income Tax vs M/s MSM Satellite (Singapore) Pte Ltd.

Held

The taxpayer is a foreign company engaged in the business of telecasting channels in India and other countries. It received distribution and advertisement revenue from Indian channel companies. The taxpayer contended that the said income is in the nature of business income and is not taxable in India in the absence of a permanent establishment (PE) in India. However, the tax officer held that the distribution charges are in the nature of payment for use of copyright and hence taxable as royalty.

It was held by the tax tribunal that the taxpayer was merely granted a non-exclusive distribution right of the channels and not the right to exploit or use any copyright. In other words, the taxpayer was not parting with any copyright for which distribution charges were made. Furthermore, since the said distribution right is purely a commercial right and differs drastically from the right to use copyright, the income is taxable as business income and in the absence of a PE, there shall be no tax liability.

SKP's Comments

This decision clearly brings out that in order to tax a receipt as royalty, there must be a right to use or exploit copyright. Any rights transferred (like distribution rights) would not tantamount to royalty.

Whether or not payments made to non-residents for quality inspection of products are taxable as fees for technical services?

M/s Hical Infra Private Limited vs Income Tax Officer (TS-252-ITAT-2019(BANG))

Held

The taxpayer was engaged in the business of manufacturing and export of electronic components. To expand its business overseas, the taxpayer had paid commission to non-residents. Since the payments were made to 'brokers' who were not rendering any technical services, taxes were not withheld.

Tax tribunal held that as per the agreements between the taxpayer and the non-residents, the services being rendered involved procurement, coordination, and quality control, etc., which involves technical expertise. Accordingly, the said payments made to the consultants and not brokers were taxable as 'technical services' on which taxes needed to be withheld.

SKP's Comments

It is a settled tax position that export commission paid overseas, is not taxable in India, based on various judicial precedents. This decision brings out an important aspect that merely the payment of export commission would not result in non-taxation of income in India. It would be important to analyze the services provided by the overseas agent to determine the taxability of income.

Whether the taxpayer, a 'Resident but Not Ordinarily Resident' (RNOR), is entitled to claim relief/deduction u/s 91 of the Act.?

Whether the taxpayer being RNOR can claim tax relief u/s 91 of the Act with respect to federal as well as state Income Tax or not.?

Aditya Khanna, c/o M/s Sunil Goel & Associates vs ITO [TS-285-ITAT-2019(DEL)]

Held

The taxpayer had stayed in India for a period of 224 days and his residential status was RNOR. The taxpayer was working for a US company and had received a salary on which federal taxes, as well as state taxes, were paid in the USA.

Key issues under consideration were i) whether a taxpayer can claim credit of state taxes, paid in the US, in India as per section 91 of the Act or should it be considered for deduction from salary earned abroad. ii) whether taxpayer being RNOR is entitled to claim relief under Section 91 of the Act.

The tax tribunal relied upon a few judicial precedents but leaned on the decision of the Ahmedabad tax tribunal in the case of Dr. Rajeev Modi vs Deputy Commissioner of Income Tax. Among other grounds, it had been held that a taxpayer who is entitled to claim benefit under section 90 of the Act shall not be denied benefit under section 91 of the Act on the ground that there exists a tax treaty with another nation. In the instant case, the taxpayer has claimed the benefit of India-US Tax Treaty, which does not expressly cover state taxes. However, applying the provisions of section 91 of the Act, the taxpayer would be enabled to claim benefit not only of the federal taxes but also the state taxes as section 91 does not demarcate between the two. Hence, restricting the applicability of section 91 to the taxpayer would be inconsistent with the intention of the legislature, i.e., to offer income either under the Act or the tax treaty whichever being more beneficial.

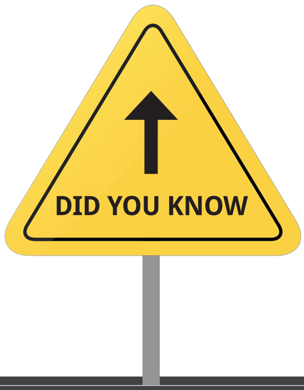
The tax tribunal held that as per section 6 of the Act, 'not ordinarily resident' is just another category carved out of the term 'Resident'. Accordingly, the benefit entitled to a resident shall also be extended to residents being RNOR. Accordingly, the taxpayer should be entitled to claim relief under section 91 of the Act.

SKP's Comments

This decision is important as it interprets the law in a logical manner rather than interpreting it in a strict sense. It once again brings out the fact that the courts are inclined to look at the intention of law and not merely rely on the literal reading of it.

Accordingly, it would be advisable for the taxpayers to not only look at the provision of law but also at the intention behind the introduction of a law.

Recently, the CBDT deferred the disclosure requirement in relation to tax avoidance transactions that could be covered within the dreaded General Anti-Avoidance Rules (GAAR) till end of March 2020. However, applicability of GAAR provisions to such tax avoidance transactions has not been deferred and hence the same would continue to apply even though the disclosure requirement has been deferred.



Transfer Pricing

Whether segmental accounts to be accepted for the purpose of TNMM when the same does not form part of financial statements?

Netguru Limited [ITA No 1799/Kol/2018, AY 2011-12]

The taxpayer is engaged in the business of providing software development services to its AEs during the year under consideration. The taxpayer also has transactions with third party customers that are not comparable transactions with AE.

Taxpayer selected Transactional Net Margin Method (TNMM), wherein margins from AE transactions were compared with the margin of comparable companies.

For this purpose, the taxpayer prepared segmental accounts to bifurcate profits earned from services provided to AE and Non-AEs.

TPO rejected segmental accounts and made a transfer pricing adjustment considering profitability at the entity level.

CIT (A) deleted the adjustment made by TPO.

Revenue's contention before ITAT:

Had the segment been prepared having regard to the nature of the business, it ought to have been part of the audited accounts mentioning the difference in risk and returns of the two segments of the assessee company.

Ruling by ITAT:

There was a valid reason for the taxpayer to not disclose the segmental accounts in its financials. The taxpayer provided diverse services to Non-AEs apart from providing software development services to AEs, which warranted the preparation of segmental accounts for the application of TNMM. The segmental accounts were further verified and certified by an independent statutory auditor.

TPO's action to consider the profitability earned by the taxpayer, including profit from Non-AE transaction, was against the basic principles of transfer pricing, and thus ALP determined by TPO is not justified. Hence, the appeal of the revenue was dismissed.

SKP's Comments

Transactions with different levels of risk cannot be aggregated for transfer pricing analysis. Thus, it is utmost important to prepare segmental accounts having regard to the nature of business, which may or may not form part of financial statements.

Whether transfer pricing provisions apply to taxpayers following the Tonnage Tax Scheme (TTS)?

Van Oord India Private Limited, [ITA No 7228/Mum/2012, AY 2007-08]

The taxpayer is registered as a Tonnage Tax Company under TTS earning shipping income that is taxable as per computation mechanism provided in relevant regulations.

The TPO made an adjustment in respect of charter hire/lease charges paid to its AE for leasing of a ship for the mobilization and demobilization period.

CIT (A) upheld the order of TPO.

ITAT held as under:

TTS is a presumptive basis of taxation wherein actual income and expenses are not considered to determine the income chargeable to tax. Computation of income under TTS is merely based on the tonnage capacity of the qualifying ships and the number of days it is held for.

Determination of income/expense having regard to the arm's length principle would not affect the computation under these provisions. TTS provisions are applicable for the entire income, including income from Aes, and it is not possible to segregate such income from AE and Non-AE to apply transfer pricing provisions. Thus, ITAT allowed the appeal of the taxpayer.

SKP's Comments

TTS provisions start with a non-obstante clause and hence, it operates under different computational mechanisms as against normal computational mechanisms. Hence, transfer pricing provisions shall not apply to a company operating under the TTS provisions.

Whether foreign AE can be adopted as a tested party to benchmark the transaction?

M/s Bekaert Industries Private Limited, [ITA No 146/Pun/14, AY 2009-10]

The taxpayer is engaged in the business of manufacture of steel tire cord and hose Reinforcement wire.

During the year under consideration, the TPO has rejected the Cost Plus Method (CPM) applied by the taxpayer to benchmark its import of raw materials from its AEs and adopted TNMM.

Furthermore, the TPO rejected taxpayer's approach to using AE as the tested party and also rejected foreign comparables selected on the grounds that the taxpayer failed to furnish Functions, Assets and Risks (FAR) analysis in respect of AEs and the comparables. Further, the taxpayer not only failed to submit financial documents of AEs but also stated that the AEs were engaged in various activities other than the supply of raw materials. The DRP upheld the order of TPO.

ITAT held as under:

The term 'enterprise' used in respect of all transfer pricing methods refers to the Indian taxpayer whose profits are to be tested for its transactions with its foreign AE. The profit realized by the Indian taxpayer cannot be replaced with the profits of foreign AE for the purpose of determining the ALP.

Foreign AE's profitability, being more than comparable, indicates the transaction to be at arm's length. However, it is contrary to the transfer pricing provisions wherein higher profit is shifted outside India.

Thus, in order to benchmark the transaction, profit margin of the Indian taxpayer, instead of the foreign AE, has to be compared with the comparables. Furthermore, Indian law does not provide statutory sanction to consider foreign AE as the tested party.

Furthermore, even if foreign AE was to be considered as a tested party, the taxpayer not only failed to furnish any financial details of the AEs but also admitted the fact that the AEs were engaged in multiple business activities. Thus, ITAT allowed the appeal of the taxpayer.

SKP's Comments

Over the years, courts/tribunals have provided contrary views on the adoption of foreign AE as tested party to benchmark the international transactions. Though it is more of facts specific analysis, interestingly, this ruling has also questioned the legal sanction of the issue as per the Indian tax laws.

It is always advisable to prepare robust analysis and to document the reasons to adopt foreign AE as a tested party, and to maintain all the supporting documents, such as the financial statements of AE/ foreign comparables to substantiate the arm's length analysis.

Whether it is important to identify the tested party while applying CUP?

Whether interest rate prevailing in the lender's jurisdiction is an important factor for determining the ALP for interest?

India Debt Management Pvt Ltd [Income Tax Appeal No 266 Of 2017, AY 2010-11]

The taxpayer is a non-banking finance company engaged in identifying and investing in financially distressed companies. The credit rating of the taxpayer was BBB on account of its high risked investment.

For making such investments, the taxpayer issued Compulsory Convertible Debentures (CCD) in INR denominated currency. The interest rate on CCD varies in different years (7 to 14%) and an average rate works out to be 11.30%. The taxpayer has adopted CUP considering external market data/BSE data on INR denominated debt.

The TPO made a transfer pricing adjustment considering AE as the tested party and stating that AE would have earned interest in USD Corporate Bond Rates. DRP upheld the order of the TPO.

The ITAT held as under:

Identification of Tested Party is more imperative while applying CPM or RPM or TNMM. Under the CUP method, only the transaction price has to be seen and not the tested party.

The arm's length interest needs to be computed based on the market determinant interest rate applicable to a currency (INR in the instant case) in which loan has to be repaid.

Thus, the High Court considered all the observations made by ITAT and upheld the order of ITAT.

SKP's Comments

This ruling provides insight into the applicability of the tested party concept under the different transfer pricing methods.

Furthermore, this ruling clarifies that the interest rate prevailing in the borrower's jurisdiction and the currency in which the loan needs to be repaid are important parameters to be considered amongst other parameters while determining ALP.

Indirect Tax

Whether ITC for goods and services procured for construction of the immovable property is allowed to be set-off against GST payable on rent received from such immovable property?

[Background: In view of Section 17(5)(d) of the CGST Act, ITC pertaining to goods or services received for construction of immovable property is not eligible for set-off against the outward tax liability.]

M/s Safari Retreats Private Limited – Hon'ble High Court, Orissa [Writ Petition No 20463 of 2018]

Facts

- The petitioner was engaged in constructing shopping malls for the purpose of letting out to numerous tenants and lessees.
- The petitioner procured huge quantities of materials and other inputs for the construction of a shopping mall.
- The ITC paid on such procurements was disallowed under section 17(5)(d) of the CGST Act, leading to tax cost.

Petitioner's contentions

- When a builder sells units before issuance of completion certificate, he is required to pay GST on the amount of sale. But, the builder at the same time is allowed ITC of the GST paid on the inputs consumed to construct the building.
- The Revenue's interpretation was in violation of Article 14 of the Constitution of India, which guarantees equality before the law.
- The fundamental right to carry on business under Article 19(1)(g) of the Constitution was violated as wholly unwarranted and an arbitrary restriction was imposed, which led buildings now constructed for letting out to be uncompetitive in view of the increased tax costs.

The Hon'ble High Court agreeing with the contentions of the petitioner held that Section 17(5)(d) of the CGST Act is to be read down as the very purpose of ITC is to give benefit to the assessee. Hence, if the assessee is required to pay GST on the rental income arising out of the investment on which GST is paid, he is required to have ITC on the GST paid.

SKP's Comments

One of the main objectives of introducing GST was enabling seamless flow of credit.

However, the government/GST Council has powers to impose restrictions in respect of availment of ITC. In view of this, various credits have been blocked under Section 17(5) of the CGST Act. Therefore, it would be interesting to monitor how this case evolves if the Revenue prefers an appeal against this judgement before the Hon'ble Supreme Court.

Whether ITC is admissible when consideration is paid by way of book debt adjustment?

[Background: In view of Section 16(2) of the CGST Act, 2017, if consideration for supply is not paid within 180 days of issue of invoice, then the recipient is required to reverse the ITC availed on such supplies.]

M/s Senco Gold Limited, Authority for Advance Ruling, West Bengal [2019 (5) TMI 701]

- The applicant had several franchisee-operated stores where it raised an invoice for supply of jewellery and franchisee support services on the franchisee.
- In turn, the franchisee also raised invoice on the applicant for the supply of old gold, silver, etc. Therefore, the applicant would settle its debt through book adjustment.
- Payment by way of adjustment in books of accounts is a common commercial practice followed by businesses.

The AAR observed that the definition of 'consideration' in the GST law is wide and almost no form of payment was excluded from it. In view of this, the AAR held that unless the law specifically restricted the recipient from claiming ITC when payment was made through book adjustment, credit of such input tax could not be denied on any ground.

SKP's Comments

This ruling should reduce possible litigations and demands that may emerge in the future from the revenue authorities, as settlement of debt by book-adjustments is prevalent in many businesses and should be considered a valid form of payment of consideration.

TAX TALK
INDIAN DEVELOPMENTS

Direct Tax

Capital Gains Tax Relief likely for Investors exiting Start-ups

For attracting more investors in the start-up sector, the government is considering to exempt investors from tax on capital gains accrued on exiting a start-up. The Department for Promotion of Industry and Internal Trade (DPIIT) is weighing two alternatives to deliver this incentive:

- Blanket exemption and
- Conditional exemption based on funds redeployed

The latter would be on the line of the benefits offered to nascent firms in the UK. This would probably bring major relief to the start-up sector and indirectly encourage more investments in start-ups.

Government may rewrite Start-up ESOP Framework

The government has in the past four months unveiled several measures to shield start-ups from the so-called 'Angel Tax'. Under the latest changes, a firm can be recognized as a start-up if its turnover for any of the financial years since incorporation is not more than INR 100 crore, instead of the earlier INR 25 crore limit.

Currently, ESOPs (Employee Stock Ownership Plans) are taxed as income, when employees exercise the option to convert them to shares. The DPIIT has begun discussions with the Finance Ministry on taxing shares granted by start-ups under their ESOP only at the time of sale, as part of a package aimed at making the country a hub for start-ups. The Finance Ministry will examine the matter when it looks at proposals for the next budget.

Tough Disclosures needed in Corporate Tax Audit Reports deferred by a year

In view of the various industry representations received by the Central Board of Direct Taxes (CBDT), disclosure requirements with respect to tax avoiding transactions that could get caught in the dreaded General Anti-Avoidance Rules (GAAR) and break-up of payments to various registered/unregistered suppliers for GST have been further deferred till the end of March 2020. The disclosure requirements were onerous on the companies, creating a burden on small businesses.

It is pertinent to note here that it is only the disclosure requirement that is deferred and not the provisions of the GAAR as such. Accordingly, tax avoiding transactions would still be governed by GAAR and the stakeholders involved could still be implicated if found guilty.

Income Tax Department, GSTN to share Taxpayer Data to scale up Scrutiny

The government has authorized the Income Tax department to share details, including sales and profits that businesses have reported in their income tax returns, with GST department to scale up scrutiny and keep a tab on tax evasion.

Indirect Tax

Automated GST refund for exporters by next month

[Excerpt from Livemint]

- GST refunds of exporters have run into thousands of crores and any delay in the processing of refund claims blocks working capital of exporters.
- The revenue department has planned that the exporters of goods and services as well as suppliers to SEZ units are likely to get GST refunds automatically from June 2019.
- Once implemented, the time period for such refunds will come down to about a fortnight from several months at present.

GSTN has released prototype of new return filing system

- The Goods and Services Tax Network (GSTN) has released a web-based prototype of the offline tool of new return system, which is set to go live in the coming months. This user-friendly prototype offers an interactive interface allowing users to navigate through the pages using various functionalities, such as drop-down menus, invoice upload, upload of purchase register for matching with a system-created inward supplies, etc. The prototype of returns can be accessed on www.demoofflinetool.gst.gov.in.
- The objectives of releasing the prototype are two-fold:
  - Obtaining feedback and suggestions from the users (taxpayers can share their comments on feedback. newreturn@gstn.org.in)
  - Familiarizing the users with the new system.

Kerala Government defers implementation of Kerala Flood Cess

The GST council in its 32nd meeting had approved the levy of calamity cess on intra-state supply of goods and services within the state of Kerala. In line with this, the Kerala state government had issued a notification to impose Kerala flood cess of up to 1% on intra-state B2C supplies from 1 June 2019. Now, in view of certain concerns raised by businesses, the Kerala government has deferred the implementation of Kerala Flood Cess to 1 July 2019.

TAX TALK
GLOBAL DEVELOPMENTS

Direct Tax

Internal Revenue Service of the USA to issue Crypto Tax Guidance in near future

Earlier, in 2014, the Internal Revenue Service (IRS) had issued guidance on the taxation of crypto currencies in the US, which treated virtual currency as 'property', and accordingly existing tax provisions applicable to property transactions would apply to virtual currencies as well.

Since then, virtual currency has been accepted and is continuously developing as a medium of exchange. IRS has been receiving several comments in response to the earlier guidance issued by it in 2014. It appears that there exists some ambiguity in taxation of virtual currencies, which is leading to uncertainty and litigation costs. In this connection, the IRS is going to issue detailed guidance on taxation of virtual currencies, which will bring certainty to the virtual currencies market.

CBDT allows AMCs to directly manage Offshore Funds outside India

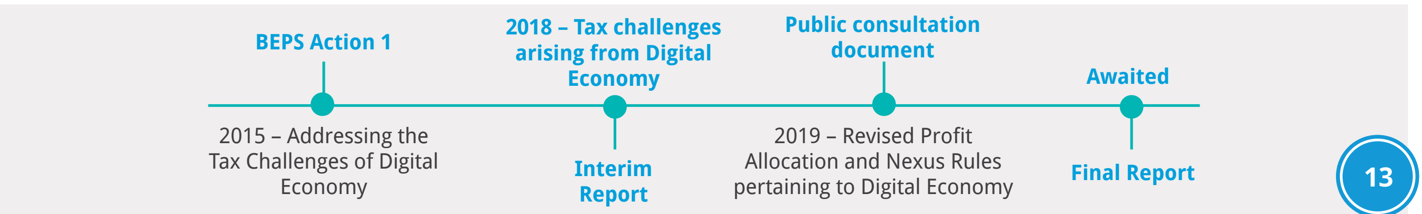
The CBDT has clarified that SEBI-approved Asset Management Companies (AMCs) will be designated as 'eligible fund manager' and will, therefore, be entitled for benefits under Section 9A of the Income Tax law. This would mean that the fund management activities carried for offshore funds by such AMCs would not be regarded as having a 'business connection' and would not result in a taxable presence of such offshore funds in India. Hence, their global incomes will not be subjected to tax in India.

Final report on Digital Tax may depart from the interim report issued by OECD to a great extent

Since the inception of OECD's (Organization for Economic Cooperation and Development) Base Erosion & Profit Shifting (BEPS) Project, several attempts have been made to clarify tax position on Digital Economy Taxation and the same are mentioned below:

The final report would be issued sometime in 2020 after global consensus is reached amongst the signatories to the BEPS Project, which would identify the possible methods to address tax challenges of a digital economy.

However, recently, a top official of OECD has remarked that the final report may wind up quite differently from its predecessors. The top official, along with other spokespersons of the all the stakeholders involved, remarked that the rules, which broadly deal with reallocating taxing rights considering increased digitalization, should be simple and easy to administer. If all 129 jurisdictions cannot implement the revised tax allocation rules, then the same cannot be considered as an easy and practical solution.



Transfer Pricing

United Nation: Updates practice manual on Transfer Pricing for Developing Countries with a new chapter on financial transaction

On 8 April 2019 United Nation (UN) Committee of Experts on International Cooperation in Tax Matters released a draft on financial transactions as an update to the Practical Manual on Transfer Pricing for Developing Countries.

Financial transactions between independent enterprises are based on various commercial considerations. However, members of an MNE Group have the flexibility and discretion to decide upon the conditions that apply to financial transactions within the group. As a result, it is important to test the arm's length nature of the financial transaction between members of the MNE Group.

UN draft chapter has provided the following steps to determine the arm's length nature of intragroup financial transaction:

Analysis of economically significant characteristic

UN draft chapter on financial transaction enlists the following economically significant characteristics of a financial transaction to be analyzed:

- Contractual terms
- Functional analysis
- Characteristic of financial products or services
- Economic circumstances
- Business strategies

Accurate delineation of the entire transaction undertaken

As for any other intragroup arrangement, application of the arm's length' principle requires accurate delineation of the actual transaction including the purpose of the financial transaction in the context of the business of the specific MNE. The assessment of the arm's length nature of an intra group financial transaction requires identification of commercial or financial relations leading to accurate delineation and recognition of the actual transaction.

Selection and application of most appropriate transfer pricing method

The draft chapter recognizes the Comparable Uncontrolled Price Method as the most commonly used method in identifying the comparable transactions to the controlled transactions. It also specifies that for treasury services, Cost plus Method or Transactional Net margin Method may be applied.

USA: Internal Revenue Service's (IRS) Large Business and International Division (LB&I) introduces campaign aimed at captive service providers

Till date, LB&I has announced a total of 53 campaigns with an intention to improve return selection, identify issues representing a risk of non-compliance, and make the greatest use of limited resources.

On 16 April 2019, LB&I has announced its new campaign, namely 'Captive Service Providers Campaign' for Transfer Pricing operations practice. This campaign will focus on the pricing of those transactions wherein foreign captive service provider is providing services to US parent entity. The goal of this campaign is to ensure that US multinational companies are not paying more than arm's length prices to their captive subsidiaries, based outside the USA. It has also been mentioned that excessive pricing in such controlled transactions would result in inappropriate shifting of taxable income to these foreign entities and erode the US tax base.

New Zealand: Inland Revenue introduces new transfer pricing rules

On 29 April 2019, New Zealand Inland Revenue issued the final guidelines on international tax and transfer pricing to implement its recently amended legislation, Taxation (Neutralising Base Erosion and Profit Shifting) Act 2018. The guidelines provide five special reports on the following aspects:

- Transfer pricing
- Administrative measures
- Interest limitation
- Permanent establishment
- Hybrids.

Gabon: The tax authorities of Gabon extend due dates of filing the Financial Statement and Tax Return and Transfer Pricing Documentation for 2018

- The due date of filing the Financial Statement and Tax Return (FSTR) and Transfer Pricing Documentation has been extended to 30 July 2019.
- The extension in due date has no impact on the payment of the final installment of corporate tax due for the financial year 2018, which has to be paid by 30 April 2019.

Peru: Provides transfer pricing guidance on related-party share transfers

On 16 May 2019, the tax administration of Peru issued new transfer pricing guidance on the transfer of shares issued by a Peruvian entity between foreign related parties.

The guidance has stated that if such a transfer is subsequently determined to be undervalued, the cost of the shares for the purchaser should be the cost of acquisition plus the transfer pricing adjustment if any.

It sets forth that any transfer pricing adjustment on the transfer of a Peruvian entity's shares affect both the purchaser and the seller, if it has a negative impact on Peruvian revenue, i.e., less Peruvian income tax or greater amount of deductions or costs are allowed.

Accordingly, the guidance states that in case of cross-border transfer of Peruvian entities shares between foreign related party, a transfer pricing adjustment would be affecting both, the cost base of the purchaser as well as the recognized income tax of the transferor/issuer.

Indirect Tax

Austria to increase VAT turnover limit

[Excerpts from press release by the Federal Ministry Republic of Austria - Finance]

The Austrian government has announced its plans for reforming the tax system and relieving the burden on taxpayers. The plan titled "Relieving Austria" intends to make Austria a more attractive business location to promote growth and investment. One of the crucial announcement is the proposed increase in the turnover limit above which VAT is payable from the current Euro 30,000 to Euro 35,000.

Compliance Calendar

7 June 2019

- Payment of Tax Deducted at Source (TDS) and Tax Collected at Source (TCS) in May 2019

10 June 2019

- GSTR-7 for the month of May 2019 to be filed by taxpayers required to deduct tax at source (TDS)
- GSTR-8 for the month of May 2019 to be filed by taxpayers required to collect tax at source (TCS)

11 June 2019

- GSTR-1 for the month of May 2019 to be filed by registered taxpayers with an annual aggregate turnover of more than INR 15 million
- GSTR-1 for the month of April 2019 to be filed by registered taxpayers in specified districts of Odisha with an annual aggregate turnover of more than INR 15 million

13 June 2019

- GSTR-6 for the month of May 2019 to be filed by Input service distributors

15 June 2019

- Payment of first instalment of advance tax for all taxpayers other than taxpayers opting for presumptive taxation for the assessment year 2020-21 (15% of estimated tax liability to be deposited on a cumulative basis)
- Issuance of TDS certificates for the quarter of January to March 2019

20 June 2019

- GSTR-3B for the month of May 2019 to be filed by all registered taxpayers
- GSTR-3B for the month of April 2019 to be filed by registered taxpayers in specified districts of Odisha
- GSTR-5 for the month of May 2019 to be filed by non-resident taxable person
- GSTR-5A for the month of May 2019 to be filed by persons providing Online Information and Database Access or Retrieval (OIDAR) services

30 June 2019

- Submission of the annual statement in Form 49C by non-residents having a liaison office
- Furnishing of the statement of equalization levy in Form 1 for FY 2017-18
- Filing of Form No. 3CEAC (CbCR Intimation) where the groups accounting year ends on 31 August 2018
- Filing of Form No. 3CEAD (CbCR) u/s 286(4)(a) and 286(4)(aa) – for groups accounting years ending on 30 June 2018
- GSTR-9 for the period July 2017 to March 2018 to be filed by regular taxpayers
- GSTR-9A for the period July 2017 to March 2018 to be filed by taxpayers registered under composition scheme
- GSTR-9C for the period July 2017 to March 2018 to be filed by taxpayers with an aggregate turnover of more than INR 20 million
- ITC-04 for the period of October 2018 to December 2018 in respect of goods dispatched to a job worker or received from a job worker
- ITC-04 for the period of January 2019 to March 2019 in respect of goods dispatched to a job worker or received from a job worker

UPCOMING EVENTS

Impact of New Transfer Pricing Regulations in Tanzania

18 June 2019, 6:30 PM - 7:30 PM IST

Register Now
https://bit.ly/2WQpXHE

Union Budget 2019 Analysis

5 July 2019, 5:00 PM - 6:00 PM IST

Register Now
https://bit.ly/2KGF3sO

SKP IN THE NEWS

First 100 days of Modi 2.0 could see tax cut, GST rejig, bank reform

The Economic Times - 24 May 2019

“If one reads the manifesto with the forthcoming changes to the GST compliance process, i.e. new return forms and e-invoicing facility, and interim Budget speech, the focus may be on better tax compliance through automation and ease of doing business” - **Jigar Doshi**

Read more at https://bit.ly/2HP7FNJ

About **SKP**

SKP is a multidisciplinary group that helps global organizations 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.

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

We provide an array of solutions encompassing Consulting, Business Services, and Professional Services. Our solutions help businesses navigate challenges across all stages of their life-cycle. Through our direct operations in 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 team provides you with solutions for tomorrow; we help you think next.

Contact **Us**

India - Mumbai
Urmi Axis, 7th Floor
Famous Studio Lane, Dr. E. Moses Road
Mahalaxmi, Mumbai 400 011
India
T: +91 22 6730 9000
E: IndiaSales@skpgroup.com

www.skpgroup.com

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