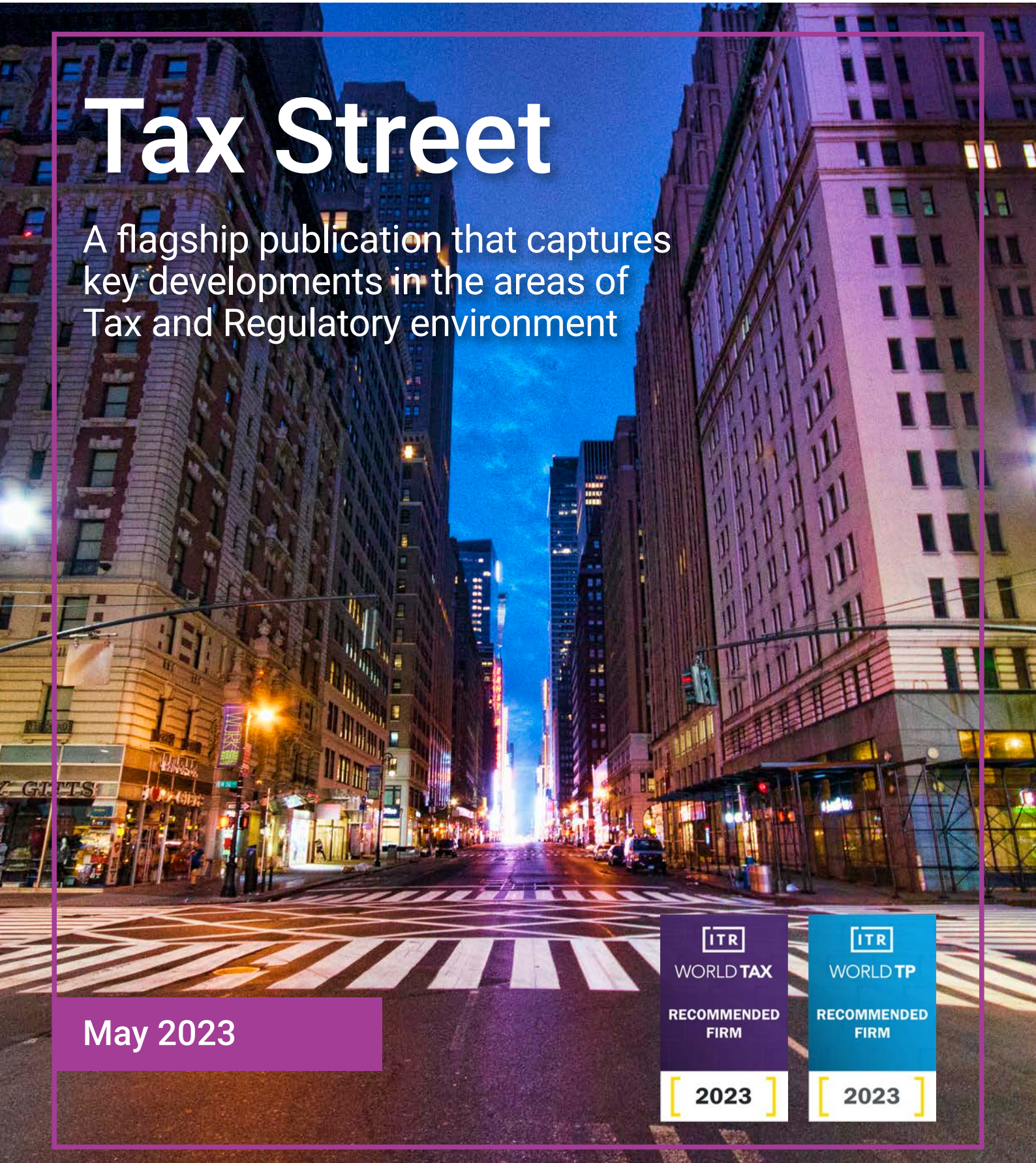
Tax Street

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



May 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 May 2023.

- The **'Focus Point'** covers the issues surrounding GST on online gaming.
- 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

GST on online gaming - need for a wild card!

With the advent of technology, there are newer ways of undertaking transactions and taxing these are getting complicated. A perfect case in point is that of the online gaming industry, which has gained humungous popularity in the past few years, especially post the COVID-19 lockdown. Typically, the companies engaged in this line of business provide an online platform for on-demand, real-time gameplay without the limitations of a physical venue and time zones. Such games could either be a 'game of skill' or a 'game of chance,' the determination of which has become a huge controversy in itself.

While the GST law does not prescribe the definitions or the differentiation in a game of 'skill' or 'chance', a prudent meaning of 'game of skill' could be one where the outcome is dependent on the expertise, practice, and experience of the player and not completely on chance/luck. It is worth noting that GST is applicable on lottery, betting and gambling at the highest GST rate of 28%. The government has been mulling the taxation of online gaming at 28%, bringing it at par with the rates applicable to betting and gambling.

The GST Council has been engaged in discussions at the ministerial level for deliberating the taxation of online gaming for the last two years. Contradictory views have come forth from the States on equating a game of skills with a game of chance, with no fruitful decision being materialized as yet. In fact, the Ministry of Electronics and Information Technology (MeitY) recently released a guideline on online gaming prohibiting games involving betting and wagering. It is believed that the finalization of the position is taking longer, considering the significant impact on the industry and its substantial contribution to the economy.

The Apex Court has in the past held that for games with a certain level of skill involved, it wouldn't be considered as gambling. Most games can be a combination of skill and chance, but skill has to be the predominant factor in these games.

In this regard, it is pertinent to note that the Hon'ble Karnataka HC, in the case of Gameskraft Technologies Private Limited vs Directorate General of Goods Services Tax Intelligence[1], has recently provided a few game-changer observations in favor of the taxpayer. They are as follows:

On taxability

- As was particularized by the Division Bench in All India Gaming Federation vs. State of Karnataka[2], there is a distinct difference between games of skill and games of chance; games such as rummy, etc., whether played online or physically, with or without stakes, would be games of skill and test of predominance would apply.
- Though Section 2(17) of the CGST Act recognizes even wagering contracts as included in the term 'business,' but that in itself would not mean that lottery, betting, and gambling are similar to games of skill.
- The meaning of the terms "lottery, betting, and gambling" as per Entry 6 of Schedule III of the CGST Act should be construed nomen juris, i.e., they should be construed in their legal sense instead of general parlance, and accordingly, they do not include games of skill.
- The words 'betting' and 'gambling' in Entry 6 of Schedule III are not applicable to Online/Electronic/ Digital Rummy, whether played with or without stakes as well as to any other Online /Electronic/Digital games which are also substantially and preponderantly games of skill.

1. WP No. 19570 of 2022 decided on 11 May 2023
2. 2022 SCC Online Kar 435 (DB)

- Entry 6 of Schedule III, taking actionable claims out of the purview of supply of goods or services, would clearly apply to games of skills, and only games of chance such as lottery, betting and gambling would be taxable.
- Therefore, taxation of games of skill is outside the scope of the term "supply" in view of Section 7(2) of the CGST Act read with Schedule III of the CGST Act.

On what is gambling and what is not gambling

- A game of chance played with stakes is gambling, but a game of skill played with or without monetary stakes does not take the character of betting and remains within the realm of 'game of skill.'
- A game of mixed chance and skill is not gambling if it is substantially and preponderantly a game of skill and not of chance.
- There is no difference between offline/physical Rummy and Online/ Electronic/Digital Rummy; both are substantially and preponderantly games of skill and not of chance.

While the Karnataka HC judgment has unequivocally distinguished between games of skill vs. games of chance and their taxability, it would be worth waiting to see if the Revenue knocks on Apex Court's doors, considering the stakes involved.

The lack of clear valuation principles and ambiguities in levying GST on the entire stake value has caused regulatory uncertainty amongst the stakeholders and has dampened the industry to an extent. The GST Council could play the wild card by firming up the position in line with the settled law as laid down and affirmed by the SC and various HCs over the years, including the recent Gameskraft decision.

It is expected that the GST Council keeps the regulations rational and at par with other technology platforms to attract larger foreign investments as well.

Webinars and Events

Recent Change in Withholding Tax Rate
24 May 2023
Maulik Doshi

USIBC Webinar on Foreign Trade Policy 2023
12 May 2023
Saket Patawari

DMCC Made For Trade Live - Mumbai in Focus
12 May 2023
Maulik Doshi

Impact of the Finance Bill 2023 on French Companies in India
10 May 2023
Maulik Doshi

From the Judiciary

Direct Tax

Whether subscription fees for providing access to online databases treated as Royalty?

IQVIA AG (Previously known as IMS AG)
TS-228-ITAT-2023(Mum)

Facts

The taxpayer company is a tax resident of Switzerland and a Tax Residency Certificate (TRC) has been issued to it. The company is in the business of providing market research reports on the pharmaceutical sector to its customers across the globe at a predetermined subscription price.

The taxpayer mainly collects, processes and utilizes the data and information, particularly in the fields of medicine and pharmaceuticals, for the delivery of reports through the online IQVIA knowledge link. The taxpayer company has entered into an agreement with its customers for providing IQVIA reports, who have been permitted to get access with applicable fees. It grants a non-exclusive and non-transferable license to use the IQVIA reports provided to the customers, thereby restricting the customer's use of information for its own benefit, backup, etc.

During FY 2017-18, the company received an income of INR 427.
1 million as subscription income from its third-party Indian Customers for online Subscription of IQVIA Reports, which the company has treated as non-taxable in India.

It was contented by the Assessing Officer (AO) that the subscription income received by the company is in nature of Royalty under Section 9(1)(vi) and under Article 12(3) of the Indo-Swiss tax treaty.

Held

The Mumbai Income Tax Appellate Tribunal (ITAT) noted that the jurisdictional HC had affirmed the decision of the Authority of Advance Rulings (AAR) in the case of Dun and Bradstreet Information Services India Pvt Ltd holding that consideration for the sale of Business Information Reports (BIRs) did not qualify as Royalty as per the provisions of Article 13(3) of the India-Spain tax treaty. The finding of the Authority for Advance Ruling (AAR) as approved by the jurisdictional HC, was on the following basis:

- The BIRs were a standardized product of the taxpayer, which provided factual information (available in the public domain) on the company's existence, operation, financial conditions, etc.
- The BIRs were accessible by any subscriber on payment of the requisite price with regular internet access for which no particular hardware or software was required.
- The copyright in the BIRs was neither licensed nor assigned by the taxpayer to its customers.
- The transaction of sale of BIRs was like the sale of a book, which did not involve any transfer of intellectual property or a book.

Hence, keeping in mind the above, the additions made by the learned officer were deleted.

Our Comments

The Mumbai ITAT followed its own favorable decision on this very issue in the case of the taxpayer for previous years by relying on the decision of the jurisdictional Bombay HC in the case of Dun & Bradstreet Information Services India Pvt Ltd, where it has been held that payment for database subscription fees is not taxable as Royalty as the subscriber does not obtain any copyright in the database.

Does a Seconded Employee's Salary reimbursement be treated as Fees for Technical Services (FTS)?

Juniper Networks Inc.
TS-242-ITAT-2023

Facts

The taxpayer is a non-resident company incorporated under the laws of the United States. It had entered into an agreement for the secondment of its personnel with the Indian entity Juniper Networks India Pvt. Ltd. (Juniper India). It received reimbursement of the salary cost of the said employees from Juniper India.

The Revenue contended that the salary reimbursements received by the taxpayer were taxable as FTS.

Held

The Bangalore ITAT agreed to the taxpayer's submission that:

- The reimbursement of the salary of the seconded employee was received on a cost-to-cost basis.
- Juniper India has deducted the appropriate taxes on the salary under Section 192 of the Income-tax Act,1961 (the Act).
- The reimbursement receipt of the salary of the seconded employee does not qualify as FTS under the India – USA tax treaty in the absence of making any technical knowledge or skill available to the Indian entity.

The Bangalore ITAT held that the jurisdictional HC ruling of Abbey Business Services India and Flipkart Internet Pvt. Ltd. Are squarely applicable to the facts of the present case. The ITAT also placed reliance on a co-ordinate bench ruling in the case of Tesco Bengaluru.

Our Comments

If certain criteria are met, seconded employees of foreign Group companies are, for all practical purposes, deemed to be employees of the Indian company and subject to tax in the source country, i.e., India. Thus, reimbursement of salary costs to the foreign company is not in the nature of FTS and there is no obligation to withhold tax on such reimbursement.

Transfer Pricing

Once TNMM is accepted at an entity level, payment towards technical know-how cannot be segregated on a standalone basis for benchmarking

Tata Power Solar Systems Limited[3]
TS-287-ITAT-2023(Bang)-TP

Facts

The taxpayer entered into an international transaction with its Associated Enterprises (AEs), including a technical know-how vide license agreement payment. To compute the Arm's Length Price (ALP), the taxpayer aggregated all international transactions closely linked to each other. The Transfer Pricing Officer (TPO) accepted the benchmarking analysis done by the taxpayer applying Transactional Net Margin Method (TNMM) and accepted it for all international transactions except for the payment of technical know-how. The TPO concluded that the taxpayer should not have paid the technical know-how fees to its AE. On appeal, the Commissioner of Income-tax (Appeals) [CIT(A)] upheld the adjustment made by the TPO.

Held by the ITAT

The ITAT held that the technical know-how is integral and inseparable to the business segment of the taxpayer, and it would be impracticable and also inappropriate to evaluate payment of technical know-how fee on a standalone basis. Hence adjustments made by the TPO towards technical know-how fees though TPO accepted entity-level margins, were to be deleted.

Our Comments

Judicial precedence upheld it to be impractical and inappropriate to evaluate transactions on a standalone basis. Once the authorities accept the entity-level margins as the Most Appropriate Method (MAM), treating a particular transaction as a separate international transaction is inappropriate.

3. Bangalore Income Tax Appellate Tribunal ITA No. 2396/ Bang/2019)

Without explicit proof of arrangement, AMP expenses cannot be a fictional international transaction performing DEMPE activities

L'Oreal India Private Limited[4]
TS-262-ITAT-2023(Mum)-TP

Facts

The assessee, an entrepreneur licensee, entered into a license agreement with its AE to distribute and advertise licensed products in a specified territory. The AO fictionally presumed Advertising, Marketing and promotion expenses (AMP expenses) were incurred in a mall and retail outfits for sales are in nature of advertising and brand promotion and cannot be categorized as selling expenses. The AO passed an assessment order to treat AMP expenses as international transactions and make adjustments to Transfer Pricing (TP).

Held by the ITAT

The ITAT dismissed AMP expenses as an international transaction stating that these expenses were incurred wholly and exclusively for the assessee's business in India with no intent of benefiting its overseas AE without any explicit arrangement.

Our Comments

In the absence of explicit understanding' or an 'arrangement' or 'action in concert', to incur AMP expenses on behalf of its AE, it should be deemed expenses incurred in the ordinary course of business.

RPM is considered as MAM for pure distributors

Bristol Myers Squibb India Private Limited
TS-270-ITAT-2023(Mum)-TP

Facts

The assessee, engaged in the distribution of critical care products, selected the Resale Price Method (RPM) as MAM since no value addition was done to the products imported from the AE. The TPO held that the significant expenses incurred by the assessee towards advertising and marketing expenses affected the margins of an entity. Hence, TPO adopted TNMM as MAM.

Held by the ITAT

The ITAT held that rejecting RPM due to lower AMP expenses incurred by comparable companies is not tenable and observed that TPO had not rejected the computation of gross margin done by the assessee but has rejected the method adopted since the AMP expenses vs sales ratio of comparable companies is low.

Our Comments

In cases of pure distributors with no value addition to the product imported, RPM is considered the MAM even after incurring selling and marketing expenses.

Indirect Tax

Taxability of services of transportation of goods by vessel, in the hands of the steamer agents and importers, under the Service Tax regime

The Chennai and Ennore Ports Steamer Agents Association vs. Union of India and Ors.
TS-219-HC-2023(MAD)-ST

Facts

- Writ petitions were filed before the Madras HC challenging the vires of Notifications, Circulars and provisions of Service Tax law by which the liability to pay service tax in respect of "services of transportation of goods by a vessel from a place outside India upto the customs station of clearance in India," was entrusted in the hands of the steamer agents and subsequently in the hands of the importers, during the period January to June 2017.

Ruling

- HC held that service tax could not be demanded from 'steamer agents' and 'importers' in India in the case of Cost, Insurance and Freight (CIF) contracts, as neither is the service recipient.
- According to the Court, it is the foreign shipping liner who engages the service of various other persons in transporting goods. Hence, the foreign shipping liner receiving the service can be taxed, not the importers and steamer agents. To such an extent, there is a flaw in Notification No. 3/2017-ST and Notification No. 15/2017-ST.
- Although an option to pay tax on 1.4% of the total CIF value of imported goods has been provided by Notification No. 16/2017-ST, only the recipient of service is liable to pay tax at this compounded rate.

4. Mumbai Income Tax Appellate Tribunal ITA No. 2269/Mum/2022)

- In CIF contracts, the value of all incidental services consumed in the course of import is built into the import value of goods on which customs duty is already paid. Therefore, importers cannot be mulcted with a double tax on ocean freight either directly or indirectly.
- Moreover, the steamer agents are already service providers and are taxed for their services to the shipping liners.
- However, HC dismissed the challenge to Notification No. 1/2017-ST and Section 66C(2) of the Finance Act, 1994, as well as Notification No. 28/2012-ST, elaborating that as long as there is a territorial nexus between the service being taxed and its consumption in India whether directly or indirectly, such challenge cannot be countenanced and consequently, challenge to provisions of the Place of Provision of Services Rules, 2012 has to fail.

Our Comments

While delivering this judgment, the Madras HC has referred to the Gujarat HC's decision in SAL Steel Ltd vs. Union of India [(2019) SCC Online Guj 3706] as well as the Apex Court ruling in UOI vs. Mohit Minerals [2022 SCC Online SC 657]. These verdicts were rendered in the context of the taxability of 'importers' vis-à-vis CIF contracts. Therefore, the present decision gains significance for steamer agents/ persons in charge of vessels who have been facing huge service tax demands from January to April 2017.

A similar writ from the Steamer Agents' Association is currently pending before the Karnataka HC, and it would be worthwhile to wait for the outcome thereof.

Whether a credit note issued by the manufacturer to a dealer considering the warranty replacement of a defective part in the automobiles sold, is exigible for sales tax under various State Sales Tax enactments?

The correctness of the observations made in Mohd. Ekram Khan & Sons vs. CTT [(2004) 6 SCC 183] was also under the scanner

Tata Motors Ltd vs. The Deputy Commissioner of Commercial Taxes (Spl.) & Anr.
TS-227-SC-2023-VAT

Facts

- Reference was made to the Larger Bench in a batch of 34 appeals to decide the question as to whether, in case of a warranty for the supply of free spare parts, once the replacement was made and the defective part was returned to the manufacturer, sales tax would be payable on such transaction of spare part, based on credit note issued by the manufacturer.

Ruling

- Upholding the liability, Larger Bench observed that a perusal of the definition of "credit note" in various dictionaries and Law Lexicons would clearly indicate that the same, issued by a manufacturer to a dealer, is a valuable consideration within the meaning of "sale" under both Central Sales Tax Act and the respective State enactments.
- In the case of warranty replacements, there are two aspects to be considered - (i) transfer of property between dealer and customer/ purchaser of the automobile, and (ii) receipt of a valuable consideration by the dealer from the manufacturer in the form of a credit note and thus, the bifurcation of the two transactions "cannot be accepted."
- Accordingly, SC concluded that the earlier judgment in Mohd. Ekram Khan's case is not "erroneously rendered" when applied to the aforesaid conspectus of facts. However, it would not apply where the dealer has simply received a spare part from the manufacturer to replace a defective part under warranty.

Our Comments

Although the judgment pertains to the erstwhile State enactments, the same is likely to have ramifications under the GST law. The tax authorities could invoke demands against dealers where the manufacturers have issued credit notes vis-à-vis warranty replacements fulfilled on their behalf.

Hence, to mitigate the risk, the businesses may revisit their warranty stock requirement and seek free-of-cost supplies from manufacturers to fulfill warranty obligations.

M&A Tax Update

Tribunal holds capital gains on the sale of unlisted shares of an Indian company by a non-resident to be computed in Rupees

Legatum Ventures Ltd. v. Assistant Commissioner of Income-tax (IT) (Circle-3(1)(2) [2023] 149 taxmann.com 436 (Mumbai - Trib.))

The ITAT's Mumbai Bench has held that capital gains liability on the sale of unlisted shares by a non-resident (NR) shall be computed in Rupees as per Section 112(1)(c)(iii) of the Act and not in foreign currency terms as per first proviso to Section 48.

In the given case, the assessee was a UAE-based company that sold shares of an Indian company and declared a long-term capital loss of around INR 30 million after applying the first proviso to Section 48. However, the tax officer held that the gains should be computed as per the provisions of Section 112(1)(c)(iii), which resulted in a gain of INR 171.4 million. This was on the basis that if a special provision (Section 112(1)(c)(iii)) was in place, the same shall prevail over the general provision (first proviso to Section 48). The Tribunal upheld this contention.

Our Comments

The 1st proviso to Section 48 provides for the computation of capital gains on transfer, inter-alia of Indian company's shares in foreign currency, which then needs to be reconverted into Indian currency. As against the same, Section 112(1)(c)(iii) provides for the computation of capital gains in Indian Rupees without applying the provisions of inter-alia 1st proviso to Section 48. The interplay between these provisions has been a debated matter.

Considering the non-residents' investments in foreign currency, they seek to compute the gains in foreign currency and not Indian Rupees. This decision is to have a bearing, especially where the foreign currency computation results in losses. From the perspective of bringing certainty to foreign investors investing in India, it is pertinent to address this aspect through proper clarifications on the present provisions.

Alerts

NCLT confirms that requirements of the Companies Act do not apply on commencement of Voluntary Liquidation

5 June 2023
https://bit.ly/43OzduS

Key Highlights of GST Notifications and Clarification Circulars - May 2023

30 May 2023
bit.ly/43A7oGr

NCLT Upholds the Delayed Claim of Income Tax Authorities

25 May 2023
https://bit.ly/43vdR63

Credit card payments covered under LRS, TCS to apply

24 May 2023
https://bit.ly/3qzV8aQ

CBDT proposes major changes to valuation Rules in respect of Angel Tax

22 May 2023
https://bit.ly/422A89E

MCA seeks to Expedite the Merger Process for certain companies

17 May 2023
https://bit.ly/3WVVQLL

Economic Principles are relevant while performing Transfer Pricing Analysis of Corporate Guarantee Transactions

4 May 2023
https://bit.ly/44OGcVP

Tax Talk

Indian Developments

Direct Tax

TCS applicability to small transactions under LRS

Press Release
dated 19 May 2023

- To avoid any procedural ambiguity, clarification regarding the applicability of Tax Collection at Source (TCS) to small transactions under the Liberalized Remittance Scheme (LRS) from 1 July 2023 has been provided.
- It has been decided that any payments by an individual using international debit/credit cards upto INR 0.7 million per FY will be excluded from the LRS limit and hence will not attract any TCS.
- Existing beneficial TCS treatment for education and health payments will also continue to remain the same.

CBDT notifies increased limit for tax exemption on leave encashment for non-government salaried employees

Press Release
dated 25 May 2023

- The tax exemption on leave encashment for non-government salaried employees at the time of retirement or otherwise was earlier upto a limit of INR 0.3 million under Section 10(10AA)(ii) of the Act.
- However, as presented in the Budget Speech 2023, the Central Government has notified the increase in this exemption limit to INR 2.5 million w.e.f. 1 April 2023.
- The aggregate amount exempt from income tax under Section 10(10AA)(ii) shall not exceed the limit of INR 2.5 million where a non-government employee receives such payments from more than one employer in the same previous year.
- Furthermore, the amount exempt from income tax under Section 10(10AA)(ii) of the Act shall not exceed the limit of INR 2.5 million as reduced by the tax exemption already allowed in the total income of the employee under Section 10(10AA)(ii) in any previous year or years.

Indirect Tax

Goods & Services Tax

E-invoicing applicable to INR 50 million turnover businesses from 1 August 2023

Notification No. 13/2020–Central Tax
dated 10 May 2023

The threshold for issuing e-invoices for B2B and export transactions has been reduced from INR 100 million to INR 50 million w.e.f. 1 August 2023. Accordingly, any person with turnover exceeding INR 50 million during any of the preceding financial years (commencing from FY 2017-18) would now be required to generate IRN/QR Code.

CBIC's guidelines for Special All-India Drive against fake GST registrations

Instruction No. 01/2023-GST
dated 4 May 2023

In order to safeguard Government revenue from suspicious/fake GSTINs, a Special All-India Drive has been announced from 16 May 2023 to 15 July 2023 at Central and State Tax administration levels.

The Special Drive would entail inter alia the following actions to weed out the fake billers from the GST ecosystem:

- Identification of fraudulent GSTINs by GSTN and field formations through the use of analytical tools like BIFA, ADVAIT, NIC Prime, E-Way analytics, etc., as well as through human intelligence, Aadhar database and other local learnings.
- Close coordination amongst the State Tax administrations and between the State and Central Tax administrations. For this purpose, the information shall be shared through a special mechanism wherein a Nodal Officer shall ensure that the data received from GSTN/ DGARM/other tax administrations are made available to the concerned jurisdictional formation within two days positively.
- Suspension or cancellation of registration if, after detailed verification, it is found that the taxpayer is non-existent and fictitious. Furthermore, the matter may also be examined for blocking the Input Tax Credit in Electronic Credit Ledger without any delay.
- Identification of the masterminds/ beneficiaries behind such fake GSTIN for further action, wherever required, and for recovery of government dues and/or provisional attachment of property/bank accounts, etc.

CBIC issues SOP for Scrutiny of Returns for FY 2019-20 onwards

Instruction No. 2/2023-GST dated 26 May 2023

Pursuant to the development of the online functionality "Scrutiny of Returns" in the Central Board of Indirect Taxes and Customs (CBIC) ACES-GST application, the CBIC has issued guidelines for risk-based scrutiny of GST returns by proper officers from FY 2019-20 onwards. Some of the key points are summarized herein below:

- The proper officer shall rely upon the latest available data as the data available on the scrutiny dashboard may change at the time of scrutiny due to subsequent compliances carried out by the taxpayers or their suppliers.
- As far as possible, the scrutiny should have a minimal interface between the proper officer and the registered person and, there should normally not be any need for seeking documents/ records from the registered persons before the issuance of notice in Form GST ASMT-10.
- The notice in Form GST ASMT-10, issued by the proper officer through scrutiny functionality on the ACES-GST application, shall be communicated by the system to the concerned registered person on the common portal and therefore, there will be no need for sending any manual communication of notice by the proper officer to the registered person separately.
- The proper officer may, as far as possible – (i) ensure that the discrepancies are specific in nature and not vague or general, and (ii) quantify the amount of tax, interest, and any other amount payable in relation thereto.
- Scrutiny should be conducted in a timebound manner, as prescribed.

Customs

CBIC sensitizes about Extended Producer's Responsibility registration certificate requirement for the import of batteries and equipment containing batteries

Instruction No. 17/2023-Customs dated 18 May 2023

All the producers, including importers (with few exceptions) of batteries and equipment containing batteries, are required to get registration from the Central Pollution Control Board (CBCB) in accordance with the Battery Waste Management Rules, 2022. Accordingly, the Customs authorities shall verify the online-generated EPR registration certificate issued by CPCB at the time of clearing the import consignments.

Alerts

Hyderabad ITAT upholds applicability of Section 56(2)(viia) on receipt of shares in scheme of amalgamation

4 May 2023
https://bit.ly/3VUTFHF

Key Highlights of GST Notification and Clarification Circulars - April 2023

3 May 2023
https://bit.ly/3MeGhuI

Gujarat High Court seeks to settle stamp duty conundrum on the scheme of amalgamation

2 May 2023
https://bit.ly/3Mcc2oo

Tax Talk

Global Developments

Direct Tax

Vietnam deposits its instrument for the ratification of the Multilateral BEPS Convention

Excerpts from OECD.org dated 23 May 2023

Vietnam has deposited its instrument of ratification for the Multilateral Convention to implement tax treaty-related measures to prevent Base Erosion and Profit Shifting (BEPS Convention), which now covers around 1850 bilateral tax treaties, underlining its strong commitment to preventing the abuse of tax treaties and BEPS by multinational enterprises. The BEPS Convention will enter into force on 1 September 2023 for Vietnam.

On 1 June 2023, around 1200 treaties concluded among the 81 jurisdictions which have ratified, accepted or approved the BEPS Convention will have already been modified by the BEPS Convention. Around 650 additional treaties will be modified once all Signatories will have ratified the BEPS Convention.

The text of the BEPS Convention, the explanatory statement, background information, database, and positions of each signatory and party are available at https://oe.cd/mli

Transfer Pricing

Brazil Senate approves new TP rule, enforceable from 1 January 2024

The Brazilian Federal Senate has enforced legislation[5] addressing the new TP framework in Brazil, aiming it to be at par with guidelines established by the OECD. The Bill, effective as of 1 January 2024, was approved on 10 May 2023 and stemmed from Provisional Measure No. 1,152 (PM 1,152/22).

TP rules integrate global value chains and mitigate double taxation and double nontaxation. Additionally, it facilitates eliminating barriers associated with tax credits recognition in the United States (i.e., foreign tax credits) arising from income tax paid and/or withheld in cross-border transactions involving Brazil.

Key highlights of the new TP regime in Brazil are summarized below:

- Broadens related parties' ambit by including all cross-border intercompany transactions and introducing the arm's-length principle.
- Implements all TP methods according to the OECD standard and best-method rule for intercompany transaction analysis.
- Functions, assets and risks and economic analysis for TP documentation (TPD).
- Applies the Comparable Uncontrolled Price (CUP) method as the MAM when reliable comparables are available for cross-border commodities transactions; Taxpayers may apply other methods based on the appropriate facts and circumstances;
- Selects the tested party based on the most reliable data and best-method rule.
- Elimination of the royalty deductibility limitation and including royalty transactions under the scope of the new TP system.
- A comparable range (interquartile or complete) depending on profit-level indicators.
- Introduces spontaneous, compensatory, and primary adjustment.
- Introduces Mutual Agreement Procedures (MAP) and Advance Pricing Agreements (APA).

5. Bill of Law No. 8 of 2023

Malaysia introduces new TP rules 2023

The Inland Revenue Board of Malaysia (IRBM) released new Income Tax (TP) Rules 2023 (Rules 2023) on 29 May 2023, replacing the Income Tax (Transfer Pricing) Rules 2012, thereby introduced to align with the revised OECD TP guidelines.

Key amendments introduced by these new rules are summarized below:

- New TP rules are applicable from the year of assessment (YA) 2023 (i.e., any financial year ending on or after 1 January 2023).
- The TPD must be prepared before the due date of furnishing a return. Preparing an ex-ante approach for TPD has been replaced with the preparation of TPD on a contemporaneous basis as per Rule 4 of the Rules 2023.
- The TPD must contain Schedules 1, 2 and 3 of the Rules 2023, comprising of Information about the Multinational Enterprise Group (MNE Group) similar to the Master File, Local File and information relating to cost contribution arrangement under Rule 10, respectively.

Furthermore, arm's length range has been defined as a range falling between the values of 37.5 percentile to 62.5 percentile of the comparable set. The ALP shall be the median when the tested party margin is ousting the arm's length range. Under specific circumstances, IRBM can make a TP adjustment to a median or any other point above the median where the price used in a controlled transaction is within the arm's length range.

The stringent measures and sheer diligence by IRBM while scrutinizing the taxing concerns require taxpayers to maintain proper documentation referring to the updated OECD guidelines for TP compliance to fall at par with transparency obligations. Therefore, a health check on a group of companies' TP policies can ensure quality compliance with the latest TP laws and regulations to defend against any future objections raised by the IRBM.

Articles

Relevance of Economic Principles over Judicial Precedents - Lodha Group Ruling
29 May 2023
https://bit.ly/3MZkDKm

Indirect Tax

Poland implements "Plastic Tax" from 24 May

Excerpts from various sources

Poland has implemented the Single-Use Plastics (SUP) Directive introducing new obligations for businesses and bans on plastic products and packaging. Some of the duties/fees imposed by the legislation are as below:

- From 1 January 2024, retail and food service businesses shall charge end-users a fee not higher than PLN 1 per piece on certain food and beverage packaging. The fee will be added to the price of the product.
- In accordance with the Extended Producer Responsibility, producers will also incur costs for introducing SUP products into the market. The maximum annual fee will be 0.2 PLN per kg. or 0.03 PLN per unit of product placed in the market.
- Companies placing SUP products in the market will also incur fees to fund public awareness campaigns related to limiting the use of plastic products.

Consolidation of VAT rates in the Czech Republic to combat public debt

Excerpts from expats.cz.com

To tackle the increasing public debt, the Czechia Prime Minister has announced abolishing of 22 tax exemptions and merging three VAT rates into two. Such a move is likely to raise at least CZK 70 billion. Accordingly, the current VAT rates of 10% and 15% will be merged into just one reduced tax rate of 12%. However, the basic VAT rate of 21% is set to remain. Furthermore, excise duties on cigarettes, tobacco, and cigars will rise by 10% next year and by a further 5% in each of the following three years.

Hungary to hike VAT registration threshold until December 2024

Excerpts from various sources

The EU has granted permission to Hungary to raise its VAT registration threshold from the Forint equivalent of EUR 48,000 to EUR 71,500 per annum until 31 December 2024. Such an increase is estimated to lift 35,000 businesses out of the tax net but will only reduce the VAT revenue by 0.05%.

Quotes and Coverage

Taxability of employee benefits may decide which tax regime makes more sense for you
25 May 2023 | Business Insider
Sneha Pai
bit.ly/3OLGc3A

Foreign companies may be compelled to file Income Tax Returns in India on earning royalty or FTS
3 May 2023 | Financial Express
Maulik Doshi
https://bit.ly/3McJQ4C

Compliance Calendar

Direct Tax
Indirect Tax

7 June 2023

The due date for deposit of tax deducted/collected for the month of May 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 June 2023

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

11 June 2023

GSTR-1 to be filed by registered taxpayers for May 2023 by all registered taxpayers not under the Quarterly Returns with Monthly Payment (QRMP) Scheme.

13 June 2023

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

14 June 2023

The due date for issue of Tax Deducted at Source (TDS) Certificate for tax deducted under Section 194-IA/194-IB/194M/194S for the month of April 2023.

15 June 2023

- The due date for furnishing of Form 24G by an office of the government where TDS/TCS for the month of May 2023 has been paid without the production of a challan.
- Quarterly TDS Certificates (in respect of tax deducted for payments other than salary) for the quarter ending March 2023.
- First instalment of advance tax for the AY 2024-25.
- Certificate of TDS to employees in respect of salary paid and tax deducted during FY 2022-23.
- The due date for furnishing statement in Form No. 3BB by the stock exchange in respect of transactions in which client codes have been modified after registering in the system for the month of May 2023.
- Furnishing of statement (in Form No 64D) of income paid or credited by an investment fund to its unit holder for the previous year 2022-23.

20 June 2023

- GSTR-5A for May 2023 to be filed by Non-Resident Online Database Access and Retrieval (OIDAR) Services providers.
- GSTR-3B for May 2023 to be filed by all registered taxpayers not under the QRMP Scheme.

25 June 2023

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

29 June 2023

The due date for e-filing of a statement (in Form No. 3CEK) by an eligible investment fund under Section 9A in respect of its activities in FY 2022-23.

30 June 2023

- The due date for furnishing of challan-cum-statement in respect of tax deducted under Section 194-IA/194-IB/194M/194S in the month of May 2023.

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

- Return in respect of securities transaction tax for the FY 2022-23.
- Quarterly return of non-deduction of tax at source by a banking company from interest on time deposits in respect of the quarter ending 31 March 2023.
- Statement to be furnished (in Form No 64C) by Alternative Investment Fund (AIF) to units holders in respect of income distributed during the previous year 2022-23.
- Report by an approved institution/public sector company under Section 35AC (4)/ (5) for the year ending 31 March 2023.
- The due date for furnishing of statement of income distributed by the business trust to its unit holders during the FY 2022-23. This statement is required to be furnished to the unit holders in form No 64B.
- Furnishing of Equalisation Levy statement for the FY 2022-23.
- Deadline for linking PAN with Aadhaar to avoid PAN becoming inoperative.

Note: The deadline has been extended from 31 March 2023 to 30 June 2023, vide press release dated 28 March 2023.

Compliance Calendar

Direct Tax
Indirect Tax

7 July 2023

- The due date for the deposit of tax deducted/ collected for the month of June 2023. However, all sum deducted/collected by an office of the government shall be paid to the credit of the Central Government on the same day when tax is paid without the production of an Income-tax Challan.
- The due date for deposit of TDS for the period April 2023 to June 2023 when the AO has permitted quarterly deposit of TDS under Section 192,194A,194D or 194H.

11 July 2023

GSTR-1 for June 2023 to be filed by registered taxpayers, not under the QRMP Scheme.

10 July 2023

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

13 July 2023

- GSTR-6 for June 2023 to be filed by ISD.
- GSTR-1 for the quarter April 2023 to June 2023 to be filed by all registered taxpayers under the QRMP Scheme.
- GSTR-5 for June 2023 to be filed by Non-Resident Foreign taxpayer.

Easy Remittance Tool

by Nexdigm

Form 15CA/CB Automation

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

About Nexdigm

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

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

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

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

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

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

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