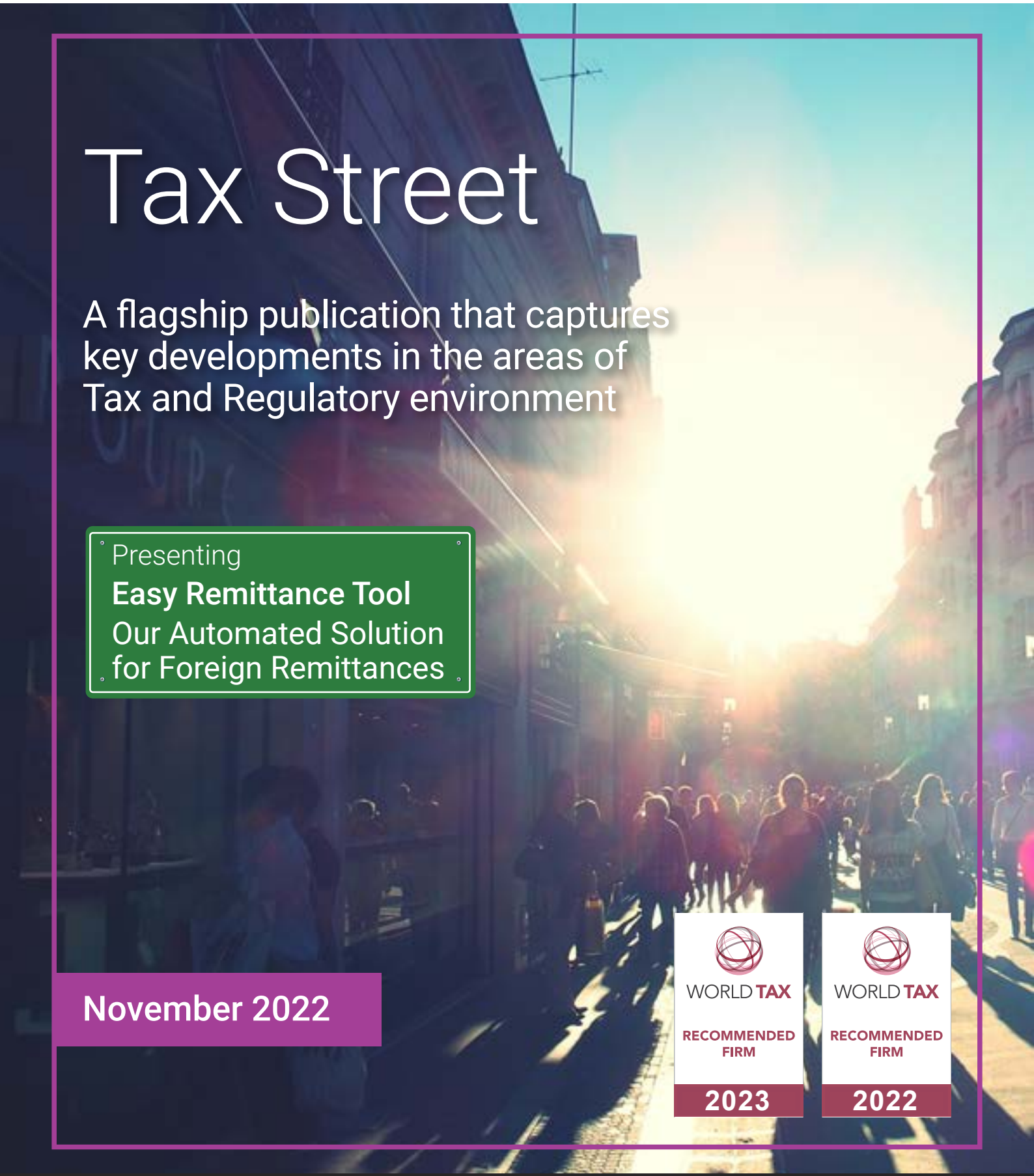
Tax Street

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



WORLD TAX RECOMMENDED FIRM 2023

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November 2022

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 November 2022.

- The **'Focus Point'** explores the highlights of tax and transfer pricing compliances for a non-resident entity receiving dividend income from India.
- 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

An overview of tax and transfer pricing compliances for a non-resident entity receiving dividend income from India

A dividend is the distribution of profits by a company to its shareholders as determined by the company's board of directors. When a corporation earns a profit or surplus, it is able to pay a proportion of the profit as a dividend to shareholders. A dividend is defined under Section 2(22) of the Income-tax Act, 1961 (the Act) as under:

(22) "dividend" includes:

a. any distribution by a company of accumulated profits, whether capitalised or not, if such distribution entails the release by the company to its shareholders of all or any part of the assets of the company.

b. any distribution to its shareholders by a company of debentures, debenture-stock, or deposit certificates in any form, whether with or without interest, and any distribution to its preference shareholders of shares by way of bonus, to the extent to which the company possesses accumulated profits, whether capitalized or not.

c. any distribution made to the shareholders of a company on its liquidation, to the extent to which the distribution is attributable to the accumulated profits of the company immediately before its liquidation, whether capitalized or not.

d. any distribution to its shareholders by a company on the reduction of its capital, to the extent to which the company possesses accumulated profits which arose after the end of the previous year ending next before the 1st day of April, 1933, whether such accumulated profits have been capitalized or not.

e. any payment by a company, not being a company in which the public are substantially interested, of any sum (whether as representing a part of the assets of the company or otherwise) made after the 31st day of May, 1987, by way of advance or loan to a shareholder, being a person who is the beneficial owner of shares (not being shares entitled to a fixed rate of dividend whether with or without a right to participate in profits) holding not less than ten per cent of the voting power, or to any concern in which such shareholder is a member or a partner and in which he has a substantial interest (hereafter in this clause referred to as the said concern) or any payment by any such company on behalf, or for the individual benefit, of any such shareholder, to the extent to which the company in either case possesses accumulated profits.

Previously, an Indian company was required to pay a Dividend Distribution Tax (DDT) equivalent to 20.555% (including surcharge and cess) on dividends paid to its shareholders on or before 31 March 2020. There was no withholding tax on the dividends distributed by the Indian company and such dividends were exempt in the hands of the recipient.

However, from 1 April 2020, the DDT was abolished, and a withholding tax was introduced on the payment of dividends. Accordingly, an Indian company paying dividends is no longer liable to DDT but should instead withhold tax at source at the time of payment of the dividend since the recipient of the dividend is now subject to tax.

In the context of the above, the following aspects pertaining to dividend income received by a non-resident taxpayer from India are highlighted:

a. Taxability of dividend income received by a non-resident entity from India

b. Requirement to furnish corporate tax return in India u/s 139(1) of the Act

c. Requirement to undertake Transfer Pricing (TP) compliances in India u/s 92 of the Act

Taxability of dividend income

As per Section 115A of the Act, the withholding tax rate on dividends paid to non-resident shareholders is 20% (plus applicable surcharge and cess).

However, preferential withholding tax rates are available under India's Double Taxation Avoidance Agreements (DTAAs) with other countries, provided that the recipient of such dividends fulfills the eligibility criteria. Typically, the concessional withholding tax rate could be as low as 5% - 10%.

Furnishing corporate tax returns under Section 139(1)

In this regard, it may be noted that Section 115A provides an exemption from filing corporate tax returns with respect to Dividend income, provided the withholding tax is deducted as per the rate prescribed under the said Section viz 20% (plus applicable surcharge and cess).

However, the taxpayer who opts to enjoy concessional withholding tax rates as provided under the DTAA, would have to furnish the corporate tax return on or before the due date.

TP compliances under Section 92 of the Act (u/s 92D and 92E)

In an ideal scenario, dividends are considered an appropriation of profits (current or previous years). Such profits are after-tax profits and therefore, while DDT was in force, all taxes were paid on net profits, the applicability of TP on dividends from a practical point of view had no or little relevance.

The implications in relation to transaction pertaining to dividend between two Associated Enterprises (AE) as per Section 92A of the Act has been a much-debated affair under the TP regulations in India.

It is pertinent to note that the provisions of the Act do not provide any specific exemption from the annual TP compliances, regardless of the fact whether the withholding tax is deducted as per Section 115A (higher rate) or as per the DTAA (concessional rate).

While there are certain technical arguments to support the view that where the taxpayer is not required to do a corporate tax return in India (referring to exemption u/s 115A), he would also enjoy the exemption from TP compliances. However, such a position may be litigative, considering that the provisions of the Act do not specifically provide an exemption from TP compliances.

Therefore, non-resident taxpayers deriving dividend income from India would have to undertake below-mentioned TP compliances:

Sr. No.	Nature of compliance
1	Issuance of Accountant's Report (i.e., Form No. 3CEB)
2	Master File compliance (Form No/ 3CEAA)
3	TP documentation report (Format prescribed under Rule 10D of the Income Tax rules.

Webinars and Events

Event

13 December 2022

UAE Tax Strategy and Recent VAT Updates

Trupti Mehta, Sanjay Chhabria

From the Judiciary

Direct Tax

Whether substantial business activities carried out by a team in India constitute Fixed Place PE or DAPE?

Redington Distribution Pte. Ltd. Vs DCIT
IT (TP) A Nos. 14 /Chny/2020

Facts

The taxpayer is a Singapore entity which is a subsidiary of M/s. Redington (India) Ltd. (REDIL) is engaged in providing end-to-end supply chain solutions for IT products, Consumer & Lifestyle products, etc. During the course of a TDS survey, it was observed that a 'Dollar Team' consisting of employees of REDIL was responsible for managing the USD business for the taxpayer (i.e., the Singapore entity).

The Assessing Officer(AO) concluded that except for the shipping of equipment from Singapore, all other operations were handled by the Dollar Team in India, and thus, it constitutes a fixed place PE of the taxpayer in India.

The AO also concluded that the work performed by the Dollar Team would result in the constitution of a Dependent Agent Permanent Establishment (DAPE) in India. The taxpayer contended that the 'Dollar Team' is performing only back office support services like billing, follow-up action and collection of receivables from the customers. On appeal to Dispute Resolution Panel (DRP), they opined that the entire sales functions are habitually performed in India through 'Dollar Team'; thus, all PE conditions are satisfied. Aggrieved by the AO's above order, the assessee filed an appeal before the Chennai Tribunal.

Held

The Tribunal observed that the 'Dollar Team' exclusively works on various activities for taxpayers right from identifying the customers, negotiating the price, follow-up of outstanding receivables, etc. But, the taxpayer in Singapore has prepared shipping documents like a packing list and airway bill. Thus it was considered that there is a fixed place of PE of the taxpayer in India and thus, the income of the taxpayer is liable to tax in India. It was held that the argument of 'Dollar Team' just providing back office support is devoid of merit because the activities performed by it are the backbone of the assessee's business model.

On the matter of DAPE, the Tribunal holds that 'Dollar Team' of REDIL acts as taxpayer's agent for Indian customers with authority to conclude contracts and such authority has been habitually exercised by them, thus, upholding the department's findings.

Our Comments

The Chennai Tribunal explains that when services rendered are neither preparatory nor auxiliary but are the main functions of a business entity, it can constitute Fixed Place PE. It was held that as the employees worked as agents with authority to conclude a contract and habitually exercised such authority, it will constitute DAPE.

Whether capital gains on the sale of Indian company shares by a Mauritian tax resident exempt under pre-amended DTAA?

M/s. MIH India (Mauritius) Ltd.Vs ACIT
ITA Nos. 138/Del/2022

Facts

The taxpayer is a Mauritius-based company and during AY 2017-18, it derived capital gains on the sale of certain shares of an Indian company. The taxpayer's holding company was based in the Netherlands. The shares of the Indian company were sold to PayU India, in which the taxpayer held 82.94% of the share capital. The taxpayer is a tax resident of Mauritius holding a valid Tax Residency Certificate (TRC).

The Revenue contended that the beneficial owner of the shares of the Indian company is the taxpayer's Dutch holding company and therefore invoking substance over form, the Revenue alleged that the taxpayer is a conduit company and DTAA benefit should not be available. Revenue, thus, held that the entire share purchase arrangement was structured to claim treaty benefits and that the taxpayer had no economic or commercial substance. Aggrieved by Revenue's decision, the taxpayer filed an appeal before the Delhi Tribunal.

Held

The Tribunal observed that the transaction pertains to the period before 1 April 2017, which is the effective date for amendment of Article 13 of the DTAA and thus, the taxpayer shall be eligible for the treaty benefits. The Tribunal stated that the "Assessing Officer has made a desperate and unacceptable attempt to overcome the ratio laid down by the Hon'ble Supreme Court in the case of Azadi Bachao Andolan by anticipating a futuristic event of ratification of MLI providing an amendment to the preamble of India-Mauritius Tax Treaty by Mauritius Government, which is yet to see the light of the day."

The Tribunal highlights that the company still holds the shares sold to PayU India as on date, which clearly establishes that the assessee is not a fly-by-night operator or mere conduit company. The Tribunal reiterated the legal position that as per the Central Board of Direct Taxes (CBDT) Circular No. 789 dated 13 April 2000 where the Mauritian Tax Authorities issue a Tax Residency Certificate, it will constitute sufficient evidence for accepting the status of residence as well as the beneficial ownership for treaty benefits.

Our Comments

The Jaipur Tribunal held that the equalization levy should not get attracted since the intention of the levy is the targeted audience and the person paying for the online advertisement, both of which are situated outside India.

Transfer Pricing

ITAT Accepts OP/VAE over OP/OC as Profit Level Indicator

DHL Logistics Pvt Ltd[1]

Facts

The taxpayer is engaged in rendering freight forwarding services to its AE. The taxpayer entered into international transactions of providing and availing freight services. It benchmarked its transaction using Transactional Net Margin Method (TNMM) method and using Operating Profit/Value Added Expenses (OP/VAE) as Profit Level Indicator (PLI).

TPO's Contention

During the course of assessment proceedings, the Transfer Pricing Officer (TPO) rejected OP/VAE as PLI and applied Operating Profit/ Operating Cost (OP/OC). Furthermore, the TPO included one additional company viz., Om Logistics Ltd and held the said company to be functionally comparable to the taxpayer and proceeded to make an adjustment to the Arm's Length Price (ALP).

DRP's Contention

The DRP upheld the order passed by the TPO.

ITAT's Contention

Aggrieved by the same, the taxpayer filed an appeal before the Income Tax Appellate Tribunal (ITAT). The ITAT observed that the lower tax authorities rejected OP/VAE for the following reasons:

- The handling charges charged to customers varied because the taxpayer depended on "markup" on freight obtained from them basis the negotiations.
- Furthermore, the operating profit included handling charges and the differential freight, i.e., excess of freight charged from customers as against that paid to the shipping line.

1. TS-752-ITAT-2022(Mum)-TP

The ITAT then deliberated on the business model of the taxpayer and noted the following:

- Payment made by the taxpayer to a third party for and on behalf of AE was reimbursed by the AE to the taxpayer.
- The costs pertaining to services obtained by the taxpayer from third parties neither involved any service element nor involved any risks assumed or assets employed by the taxpayer, and therefore it can be concluded that the taxpayer does not undertake any activity in relation to such costs.
- From the perusal of agreements, it was evident that the taxpayer merely acted as an agent.

Taking note of the above, ITAT held that the inclusion of the freight cost in the total cost base of the taxpayer by the TPO was not permissible. It also referred to Rule 10B(1)(e) and certain relevant rulings.[2]

Accordingly, the ITAT accepted taxpayer's claim of using OP/VAE as PLI and restored the matter to TPO for the purpose of benchmarking the inter-company transactions by adopting the PLI of OP/VAE.

Furthermore, regarding the comparable company included by DRP, ITAT noted that the said comparable was excluded in previous assessment years as well and that Om Logistics Ltd owned 5000 trucks, whereas the taxpayer was a low asset-based company. Accordingly, ITAT directed TPO to exclude the said company from the final set of comparables.

Our Comments

The above ruling follows the principle of taking cognizance of the fact that while adopting the PLI as OP/VAE it is integral to consider only those costs in the cost base in relation to which the taxpayer has carried out some sort of function, assumed any risks or employed any assets. The adoption of Operating Profit /Total Costs as the PLI in a scenario wherein the taxpayer does not carry out any function, assume any risks or employ any assets in case of third-party carrier costs might not give correct results for the purpose of comparability.

Indirect Tax

Whether BPO services provided to a foreign entity can be treated as 'intermediary services' under the provisions of the IGST Act, 2017?

Genpact India Pvt. Ltd. vs. UOI & Ors.
[TS-587-HC(P&H)-2022-GST]

Facts

- Genpact India Pvt. Ltd provides inter alia a host of services, collectively referred to as business process outsourcing (BPO) services, to Genpact International Inc. (GI Inc.) under a Master Service Sub-Contracting Agreement.
- An illustrative list of services rendered is as under:
  i. Maintaining vendor/customer master data, scanning and processing vendor invoices, bookkeeping, preparing/finalizing books of accounts, generating ledger reconciliations, managing customer receivables, etc.
  ii. Developing, licensing, and maintaining software as per clients' needs.
  iii. Technical IT support, i.e., trouble-shooting services.
  iv. Data analysis and providing solutions to clients in respect of forecasting demand for their offerings and management of inventory, supporting various business functions like sourcing and supply chain management.
- The arrangement with GI Inc. requires the petitioner to complete the assigned processes/ scope of work directly with 3rd parties located outside India.
- The dispute regarding the taxability of said services arose pursuant to the refund application filed by the petitioner.

2. [ITA No. 435/Mum/2014; dated 10.12.2014] and Hon'ble Delhi High Court - LI and Fung India Pvt. Ltd. Vs. CIT (2014) 361 ITR 85 (Del)

- The Revenue took the view that the services provided by Genpact India were in the nature of "intermediary services" as per Section 2(13) of the IGST Act and hence, did not qualify as "export of services" in terms of Section 2(6) of the IGST Act.
- Resultantly, the petitioner's refund claims were rejected, including the refunds previously sanctioned, at the appellate stage.
- Hence, a writ petition was filed by Genpact India before the Punjab & Haryana High Court, assailing the rejection orders.

Ruling

- High Court observed that the scope of an "intermediary" is to mediate between two parties, i.e., the principal service provider and the beneficiary who receives the main service, and expressly excludes any person who provides such main service "on his own account".
- A bare perusal of the recitals and the relevant clauses of the MSA indicates that such an arrangement is clearly for the purpose of sub-contracting services to the petitioner. These are the very services that GI Inc. was contractually supposed to provide to its own customers.
- As a sub-contractor, the petitioner receives fees/charges from GI Inc. for its services. The main contractor, i.e., GI Inc., in turn, receives a commission from its clients for the main services that are rendered by the petitioner pursuant to the sub-contracting arrangement.
- In fact, the said clauses are in relation to the modalities of how the actual work would be carried out and do not in any manner establish that the petitioner was required to arrange/facilitate a 3rd party to render the main service, which the petitioner has actually rendered.
- There was nothing on record to show that the petitioner had a direct contract with the customers of GI Inc.
- Hence, the petitioner does not act as an "intermediary" so as to fall within the scope and ambit of Section 2(13) of the IGST Act, 2017, held by the Court.
- Furthermore, it found the Revenue's deviation from the view taken earlier on the ostensible basis that there has been a change in the law with the onset of the GST regime to be "wholly misconceived".
- The High Court observed the definition has remained similar and even as per the Central Board of Indirect Taxes and Customs (CBIC) Circular dated 20 September 2021, there is broadly no change in the scope of "intermediary" services in the GST regime vis-à-vis the Service Tax regime, except the addition of supply of securities in the GST law.
- Relying on the Supreme Court judgment in Bharat Sanchar Nigam Ltd vs. Union of India [(2006) 3 SCC 1], where the Apex Court had reiterated that no quasi-judicial or judicial authority could generally be permitted to take a different view where facts and law in subsequent assessment year are the same, the High Court applied the principle of consistency to the present case.
- It also rejected Revenue's attempt to justify the impugned order on grounds which were not even part thereof, stating that it was clearly impermissible in law as held by the Apex Court in Mohinder Singh Gill and another vs. The Chief Election Commissioner, New Delhi and others [(1978) 1 SCC 405].

Our Comments

The issue of 'intermediary' has been at the forefront of disputes between the taxpayers and Revenue. Several GST refund claims have been rejected on the ground that there has been a change in law w.e.f. July 2017.

This judgment should assist similarly placed taxpayers to substantiate their position of zero-rating their services, although we could see this matter traveling to the Supreme Court in the near future.

Given this, it may be expedient to revisit/ draft the Agreement clauses in such a manner that there is no principal-agency relationship between the parties.

M&A Tax Update

Long-term capital loss brought forward from amalgamating company is eligible for set off in an amalgamated company

Capgemini Technology Services India Limited
[TS-918-ITAT-2022(Pune)]

- The Pune Tribunal has recently upheld the eligibility of an amalgamated company for set-off of long-term capital loss brought forward by amalgamating company even though Section 72A of the Act specifically does not provide for the same. Section 72A of the Act provides for set-off and carry forward of brought forward business loss and unabsorbed depreciation from amalgamating company to amalgamated company.
- The Tribunal held that Section 72A is not a panacea for all the tax-related issues of amalgamation, to have application in so far as the other tax entitlements, privileges, or benefits in the hands of the amalgamating company, are concerned.

- Furthermore, even otherwise, the law of succession puts the successor in the shoes of the predecessor, because of which all the assets and liabilities of the predecessor vest in the successor subject to the specific stipulations under the relevant statutes.
- The Tribunal, on analysis, held that any loss which was available to amalgamating company shall become available to the amalgamated company for necessary set-off, including long-term capital loss.

Our Comments

The Tribunal has considered substance over form while rendering the above decision in order to ensure that the amalgamated company gets all the benefits, tax entitlements of amalgamating company since, in amalgamation, only the entity carrying on the business either ceases to exist or is divested of its business, but the business continues in the hands of another entity.

It is pertinent to note that this decision is in contradiction to the earlier Mumbai Tribunal decision in case of Clariant Chemicals (I) Ltd. v. ACIT (ITA no. 4281/Mum./2011) wherein the Tribunal held that in absence of a specific provision, the capital loss cannot be carried forward by the amalgamated company. Notably, the present decision has not referred to the Mumbai Tribunal decision. This decision is expected to add to the prevailing ambiguity on the carry forward and set-off of the capital losses in amalgamation scenario.

No separate disclosure of undertaking in return of income not decisive for passing demerging muster

Grasim Industries Ltd
[TS-926-ITAT-2022(Mum)]

- In a recent decision in the case of demerger where the provisions under Section 2(19AA) of the Act were complied with, Mumbai Tribunal held that merely because the demerged entity has not disclosed the business/undertaking separately, demerger criteria would still stand met.
- The tax authorities sought to consider the transfer of business under the demerger route as the distribution of assets for the purpose of deemed dividend applicability. Thus, on the basis of the contention that demerger criteria are not met, the tax authorities were not applying the exception available for demerger from deemed dividend applicability under Section 2(22)(a) of the Act.

Our Comments

This is a welcome decision that has rightly brushed aside the attempt of the tax authorities to hold the business transfer to be not demerger merely basis disclosure or not in the return of income. Having said that, it is pertinent for taxpayers to duly make the necessary disclosures in all possible tax filings and communications to ensure such litigation can be avoided.

On a side note, while rendering the above decision, the Tribunal has made an observation that approval of NCLT for a scheme of arrangement does not preclude the Revenue from examining the scheme of arrangement from a taxability standpoint. This is in line with the recent decisions which have upheld this view.

Regulatory Updates

SEBI Regulations

SEBI introduces an additional option for the appointment/removal of independent directors during their first term (not for reappointments/second term)

As per the erstwhile provisions of LODR regulations, all appointments, reappointments, or removal of Independent Directors were to be made through a special resolution. Hence, the appointment/removal of Independent Directors could be influenced by promoters as they usually have substantial voting powers.

Accordingly, to fill this gap, SEBI, vide its notification dated 14 November 2022, amended the LODR regulations by introducing a new additional option for the appointment and removal of Independent Directors (during their first term) in cases where the special resolution fails.

Post this amendment, in case the special resolution fails, Independent Directors could still be appointed with the approval of a simple majority of all shareholders (ordinary resolution) and a simple majority of public shareholders (non-promoter shareholders). The same threshold will also be applicable for the removal of an Independent Director appointed under this alternate mechanism.

Our Comments

This alternate mechanism for appointment and/or removal of Independent Directors in addition to the existing mechanism is a positive step towards the empowerment of minority shareholders. It will also benefit listed entities having multiple promoter groups, as the appointment of an Independent Director in such companies may be opposed by one set of promoters due to internal disagreements with others, thereby rendering the proposed special resolution infructuous. However, it is pertinent to note that this new alternate mechanism is available only for appointments/removal of Independent Director during the first term and not for second term/reappointments.

Tax Talk

Indian Developments

Direct Tax

CBDT Releases Draft Common Income Tax Return Form for Public Consultation

Press Release

- Presently, taxpayers are required to furnish their Income-tax Returns (ITRs) in ITR-1 to ITR-7 depending upon the type of person and nature of income, wherein they are mandatorily required to go through all the schedules irrespective of whether applicable to them or not.
- To bring the return filing system in tandem with international best practices, CBDT has now released the draft common ITR for public comments.
- The proposed draft common ITR proposes introducing an ITR by merging all the existing income returns except ITR-7. However, current ITR-1 and ITR-4 will continue, and taxpayers will be able to file the return either in the existing form (ITR-1 or ITR-4) or the proposed common ITR at their convenience.
- The inputs on the draft ITR may be sent electronically to the email address dirtpl4@nic.in with a copy to dirtpl1@nic.in by 15 December 2022.

Indirect Tax

GST Updates

Withdrawal of National Anti-Profiteering Authority (NAA)

Notification Nos. 23/2022-Central Tax and 24/2022–Central Tax, both dated 23 November 2022

The Central Government has empowered the Competition Commission of India (CCI) to examine all the complaints related to GST profiteering, w.e.f. 1 December 2022. Accordingly, the National Anti-Profiteering Authority (NAA) has ceased to operate from the said date and going forward, the Directorate General of Anti-Profiteering (DGAP) will conduct all profiteering investigations and report to the CCI. Relevant amendments have been notified in the CGST Rules, 2017.

Clarification regarding issuance of recurring Show Cause Notices under GST

GST Council Office Memorandum F. No. 757/Follow-up/ GSTC/2018/8198 dated 19 October 2022

The GST Council has issued guidelines to the field formations regarding the issuance of recurring Show Cause Notices (SCNs) as well as other consequential actions in cases where an investigation has been initiated and finalized by Central Tax authorities in respect of taxpayers under State Tax administration, and vice versa.

As per the guidelines, all consequential action relating to an enforcement action against a taxpayer, including appeal, review, adjudication, rectification, and revision, will lie with the authority which had initiated the enforcement action. Refunds, however, can be granted only by the jurisdictional authority administering the taxpayer.

On the other hand, recurring SCNs may be issued by the actual jurisdictional tax authorities administering the taxpayers since they have access to the records and returns of the taxpayers and can check whether the grounds of SCN still exist or not.

Customs Updates

Government withdraws export duty on iron ore and steel products

Notification No. 58/2022-Customs dated 18 November 2022

The government has withdrawn the export duty of 15% to 45% on all iron ore products (except those falling under heading 260111 and 260112) and flat-rolled products of stainless steel, bars and rods, w.e.f. 19 November 2022.

Import duty exemption extended to mobile phones flat panel display modules under FTA/PTA route

Notification No. 61/2022–Customs dated 25 November 2022

The CBIC has granted customs duty exemption/tariff concessions on the import of "Flat Panel Display Modules without driver or control circuit for cellular mobile phones" falling under CTH 85241100 or 85241200 or 85241900, from the following countries, under the FTA/PTA.

Sr. No.	Notification No.	Country
1	Notification No. 73/2005-Customs dated 22 July 2005	Republic of Singapore
2	Notification No. 151/2009-Customs dated 31 December 2009	Republic of Korea
3	Notification No. 46/2011-Customs dated 1 June 2011	Philippines and other ASEAN countries
4	Notification No. 53/2011-Customs dated 1 July 2011	Malaysia
5	Notification No. 69/2011-Customs dated 29 July 2011	Japan

Measures for expediting Customs clearances

Circular No. 23/2022-Customs dated 3 November 2022

Pursuant to the introduction of the Anonymized Escalation Mechanism (AEM), allowing importers to submit their grievances for the delay in clearing their bills of entry under faceless assessment, the CBIC has sensitized the Principal Chief/Chief Commissioners to monitor the grievances lodged so as to expedite their disposal.

Furthermore, as part of the phased implementation of Standard Examination Orders through a Risk Management System (RMS), another Assessment Group, viz. Group 5 (Chapter 84) has been included under the new examination format w.e.f. 15 November 2022.

Alerts

Key Highlights of GST Notifications and Clarification Circulars

6 December 2022
https://bit.ly/3BlJCCG

EmaraTax portal to be launched on 5 December 2022

2 December 2022
https://bit.ly/3B5NjMp

FTA issues changes in Tax Procedure and Executive Regulation under UAE VAT

22 November 2022
https://bit.ly/3hZ3gxk

UAE issues clarifications for taxability of Director Services and changes in VAT law

22 November 2022
https://bit.ly/3glM1WJ

CBIC issues guidelines on transitional credit verification; Clarifies amendments to IDS refund provisions

12 November 2022
https://bit.ly/3H6fheV

Tax Talk

Global Developments

Direct Tax

OECD releases new Mutual Agreement Procedure Statistics

Excerpts from OECD.org, 22 November 2022

The 2021 Mutual Agreement Procedure (MAP) Statistics show the following trends:

- Significantly more MAP cases were closed in 2021. Approximately 13% more MAP cases were closed in 2021 than in 2020, with both TP cases (+22%) and other cases (almost +7%) closed significantly more than in 2020. Competent authorities were able to close more cases in 2021 due to the greater use of virtual meetings, the prioritization of simpler cases and greater collaboration to solve common issues collectively that could be applied across multiple MAP cases. Furthermore, jurisdictions noted that increases in staff and the experience of these staff are now reflected in their ability to resolve more cases.
- Fewer new cases in 2021. The number of new MAP cases opened in 2021 decreased (almost -3%) (see trends since 2016) compared to 2020. This is attributed to a significant decrease in new TP cases being opened (almost -10.5%), while the number of other cases opened increased (almost +4%) compared to 2020.

28 jurisdictions sign international tax agreements to exchange information with respect to income earned on digital platforms and offshore financial assets

Excerpts from OECD.org, 11 November 2022

At a signing ceremony held in Seville in the side-lines of the 15th Plenary Meeting of the Global Forum on Transparency and Exchange of Information for Tax Purposes, 22 jurisdictions signed the Multilateral Competent Authority Agreement (MCAA) for the automatic exchange of information under the OECD Model Rules for Reporting by Digital Platforms.

The agreement will allow jurisdictions to automatically exchange information collected by operators of digital platforms with respect to transactions and income realized by platform sellers in the sharing and gig economy and from the sale of goods through such platforms. The annual exchange of this information will assist tax administrations and taxpayers in ensuring the correct and efficient taxation of such income.

In addition, 15 jurisdictions signed a separate MCAA supporting the Model Mandatory Disclosure Rules on Common Reporting Standard Avoidance Arrangements and Opaque Offshore Structures (CRS Mandatory Disclosure Rules). This agreement will enable the annual automatic exchange of information collected from intermediaries that have identified arrangements to circumvent the Common Reporting Standard (CRS) and structures that disguise the beneficial owners of assets held offshore with the jurisdiction of tax residence of the concerned taxpayers. This will allow tax authorities to ensure compliance of both the taxpayers and the intermediaries involved in such arrangements and structures.

Transfer Pricing

Denmark: Tax authorities entitled to exercise discretion in relation to controlled transactions

Case BS-22176/2021-HJR

Background

'A' is the sole owner of 'B' ApS (B), which owns 'C'-Advisory Business ApS(C), which was established in 2003 for the purpose of advising on tax deductions for land improvements to immovable property. In addition, A is the sole owner of X (the Dubai company), which obtained a license to operate in Dubai in 2006.

In the years 2006-10, the Dubai company provided services such as legal advice for C's tax advisory activities in Denmark. In connection with the same, C Aps booked an expense of DDK 78 million.

Tax Authorities

The Danish tax authorities considered that the payments had not been at arm's length and approved C's expenses only to the extent of DKK 20 million for the income years in question. The reduction of C's management fee expenses by DKK 24,7 million was on account of work in progress, included for calculating the profit-based fee, contrary to the service agreement, and the same was acknowledged by C. The case therefore concerned the balance reduction of DKK 33,70 million resulting in an increase of C's taxable income for the tax years in question, which was due to SKAT's(tax agency) estimated calculation for determining ALP.

The parties agreed that C's purchases of services from the Dubai company were controlled transactions covered by Section 2(1) of the Equalisation Act. The main issue was whether the tax authorities were entitled to exercise the said discretion in respect of the controlled transactions between C and the Dubai company. If so, the question was whether there were grounds for setting aside that discretion.

Regional Court

C filed an appeal in the Regional Court after an unsuccessful complaint in the tax tribunal. The Regional Court found that the tax authorities had been entitled to exercise discretion over the pricing of the controlled transactions as the transactions had not been priced at arm's length and the TP documentation did not provide the tax authorities with a sufficient basis for assessing whether the arm's length principle had been complied with.

Supreme Court

Aggrieved by the judgment of the Regional Court, C filed an appeal with Supreme Court, which observed, as did the Regional Court, that C would not have entered into an agreement on terms with an independent company, as it did with Dubai company. The Court considered the contention of the tax authorities that the TP documentation was deficient and it did not provide a sufficient basis for assessing whether the arm's length principle was complied with.

Furthermore, Court observed that SKAT calculated margins using TNMM and Return on Total Cost (RoTC) as PLI, against which B and C did not demonstrate why TNMM was not applicable. The Ministry of Taxation had submitted to the Supreme Court a calculation which, according to the Ministry, showed that a discretionary tax assessment would not have resulted in a lower tax assessment than the tax assessment calculated by SKAT based on the application of the TNMM method and RoTC. The Supreme Court, therefore, considered that, with regard to this calculation, C and B did not provide any evidence that the tax authorities' estimate rests on an incorrect or inadequate basis and therefore, there are no grounds for setting aside the tax authorities' assessment and referring the case back to the Court.

Held

The Supreme Court upheld the decision of the Regional Court and found in favor of the tax authorities. The Court considered that the tax authorities had been entitled to exercise discretion in relation to the pricing of the controlled transactions at issue and that there were no grounds for setting aside the tax assessment.

Indirect Tax

Increased duties on oil and coal in Columbia

Excerpts from various sources

The Columbian Congress has approved a tax reform bill that will increase the duties on oil and coal in the country. According to the new bill, when global oil prices range between USD 67.3 and USD 75 a barrel, oil businesses will be subject to an additional 5% tax. When the barrel prices are between USD 75 and USD 82.2, the same would increase by an extra 10%. If they climb higher, the tax would increase to 15%.

UK Chancellor of the Exchequer's Autumn Statement 2022

Excerpts from lancashirebusinessview.co.uk

The Chancellor of the Exchequer, Mr. Jeremy Hunt, presented the Autumn Statement 2022 to the House of Commons on 17 November 2022. The key priorities are stability, growth and public services to reduce inflation and mortgage rate rises. Bearing the same in mind, the following are a few of the measures proposed:

- Exemption of vehicle excise duty on electric vehicles to be ceased from April 2025.
- The current energy profit levy is to be extended till March 2028, with an increase in the rate from 25% to 35% starting 1 January 2023. Moreover, a new temporary 45% tax (windfall tax) on the excess return of electricity generators to be introduced from 1 January 2023 to 31 March 2028.
- The proposed online sales tax, required to re-balance the way online retail is taxed compared to in-stores, is decided to be held off for the time being.
- The current VAT registration and de-registration thresholds of GBP 85,000 and GBP 83,000, respectively, will continue till 1 April 2026.

However, the implementation details may change when the final legislation and supporting documentation are published.

Europe may head towards standardized digital VAT reporting

Excerpts from bloombergtax.com

The European governments are contemplating the possibility of introducing a pan-European model for digital VAT reporting to prevent VAT fraud and misreporting. Such standardized digital VAT reporting should make it easier for tax authorities to "follow the money" and prevent cross-border money laundering. It could enable frictionless trade across Europe, thereby reducing administration and bureaucracy for MNCs.

Quotes and Coverage

GST collection 2nd highest in October 2022: Festive sales to higher imports – here are the top 5 factors, experts list
3 November 2022
Saket Patawari
Zee Business
http://bit.ly/3VJoK0b

Global headwinds impede export to 7 trading partners
17 November 2022
Saket Patawari
LiveMint
http://bit.ly/3Y8Xc5W

Reverse charge mechanism: CBIC not to seek review of SC verdict quashing IGST levy on ocean freight
23 November 2022
Saket Patawari
Hindu Business Line
http://bit.ly/3HmqgAS

Compliance Calendar

Direct Tax
Indirect Tax

7 December 2022

Due date for the deposit of tax deducted/collected for November 2022. 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 tax is paid without producing an Income-tax Challan.

15 December 2022

- Due date for furnishing of Form 24G by an office of the government where TDS/TCS for November 2021 has been paid without the production of a challan.
- Third installment of advance tax for the assessment year 2023-24.
- Due date for issue of TDS Certificate for tax deducted under Section 194-IA in October 2022.
- Due date for issue of TDS Certificate for tax deducted under Section 194-IB in October 2022.
- Due date for issue of TDS Certificate for tax deducted under Section 194M in October 2022.
- 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 November 2022.
- Due date for issue of TDS Certificate for tax deducted under Section 194S in October 2022.

30 December 2022

- Due date for furnishing of challan-cum-statement in respect of tax deducted under Section 194-IB in the month of November 2022
- Due date for furnishing of challan-cum-statement in respect of tax deducted under Section 194M in the month of November 2022
- Due date for furnishing of challan-cum-statement in respect of tax deducted under Section 194-IA in the month of November 2022
- Furnishing of report in Form No. 3CEAD for a reporting accounting year (assuming reporting accounting year is 1 January 2021 to 31 December 2021) by a constituent entity, resident in India, in respect of the international group of which it is a constituent if the parent entity is not obliged to file report under Section 286(2) or the parent entity is resident of a country with which India does not have an agreement for the exchange of the report etc.
- Due date for furnishing of challan-cum-statement in respect of tax deducted under Section 194S in the month of November 2022

10 December 2022

- GSTR-7 for the month of November 2022 to be filed by taxpayer liable for Tax Deducted at Source (TDS)
- GSTR-8 for the month of November 2022 to be filed by taxpayer liable for Tax Collected at Source (TCS)

11 December 2022

GSTR-1 to be filed by registered taxpayers for the month of November 2022 by all registered taxpayers not under QRMP scheme

13 December 2022

- GSTR-6 for the month of November 2022 to be filed by Input Service Distributor (ISD)
- IFF for the month of November 2022 to be filed by all registered taxpayers under QRMP Scheme

20 December 2022

- GSTR-5 for the month of November 2022 to be filed by Non-Resident Foreign Taxpayer
- GSTR-5A for the month of November 2022 to be filed by Non-Resident service provider of Online Database Access and Retrieval (OIDAR) services
- GSTR-3B for the month of November 2022 to be filed by all registered taxpayers not under QRMP scheme
- Tax to be deposited in Electronic Cash Ledger, as applicable by all registered taxpayer under QRMP Scheme

31 December 2022

- Filing of belated/revised return of income for the assessment year 2022-23 for all assessees (provided assessment has not been completed before 31 December 2022).
- GSTR 9 and 9C for the FY 2021-22 to be filed by all the registered person crossing the applicable threshold limit.

Compliance Calendar

7 January 2023

- Due date for deposit of tax deducted/collected for the month of December 2022. However, all the 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.
- Due date for deposit of TDS for the period October 2022 to December 2022 when Assessing Officer has permitted quarterly deposit of TDS under Section 192, Section 194A, Section 194D or Section 194H

10 January 2023

- GSTR-7 for the month of December 2022 to be filed by taxpayer liable for Tax Deducted at Source (TDS)
- GSTR-8 for the month of December 2022 to be filed by taxpayer liable for Tax Collected at Source (TCS)

11 January 2023

GSTR-1 to be filed by registered taxpayers for the month of December 2022 by all registered taxpayers not under QRMP scheme

13 January 2023

- GSTR-6 for the month of December 2022 to be filed by ISD
- Uploading B2B invoices using Invoice Furnishing Facility under QRMP scheme for the month of February 2022 by taxpayers with aggregate turnover of up to INR 50 million

14 January 2023

Due date for issue of TDS Certificate for tax deducted under Section 194-IA, Section 194-IB, Section 194M

15 January 2023

- Due date for furnishing of Form 24G by an office of the government where TDS/TCS for the month of December 2022 has been paid without the production of a challan
- Quarterly statement of TCS for the quarter ending 31 December 2022
- Quarterly statement in respect of foreign remittances (to be furnished by authorized dealers) in Form No. 15CC for quarter ending December 2022
- Due date for furnishing of Form 15G/15H declarations received during the quarter ending December 2022

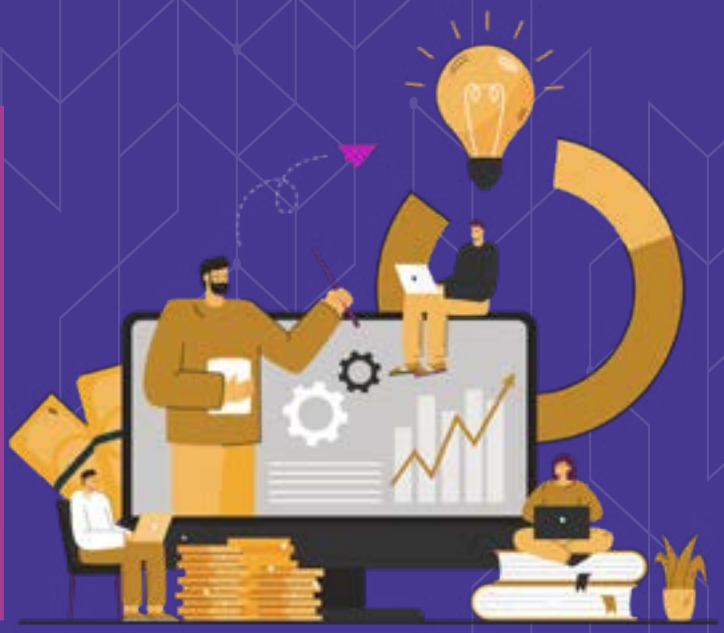
Notes

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.***

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