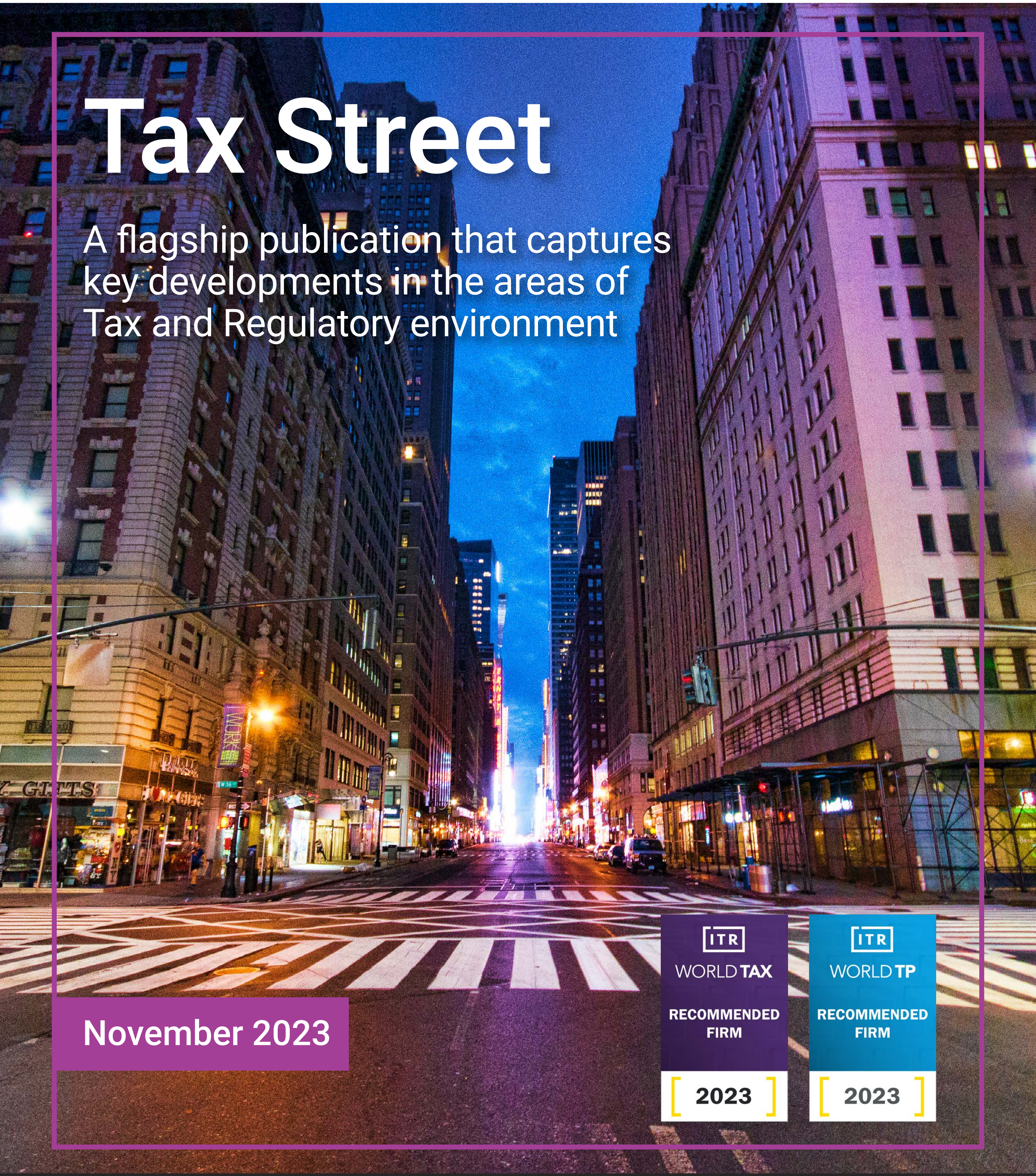
Tax Street

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



November 2023

ITR WORLD TAX RECOMMENDED FIRM 2023

ITR WORLD TP RECOMMENDED FIRM 2023

Introduction

Tax Street

We are pleased to present the latest edition of Tax Street – our newsletter that covers all the key developments and updates in the realm of taxation in India and across the globe for the month of November 2023.

- The 'Focus Point' explains the notion of market value for inter-unit transfers.
- 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

Determination of market value in an inter-unit transfer in the context of profit-linked incentive deduction - end to disputes or beginning of new one?

As per the Income-tax Act (the Act), eligible taxpayers can claim a deduction under Section 80-IA (8) with respect to power generation subject to fulfilling certain conditions. One such critical criteria is determination of appropriate market value while computing the deduction as per provisions of the Act.

Section 80-IA (8) of the Act

The Act provides tax holiday in respect of profits of eligible businesses by setting up an industrial undertaking in India for the generation and distribution of power.

The profits eligible for tax holiday in case of transfer of goods between taxpayer's eligible business to any other business of the same taxpayer (inter-unit transfer) would be computed by considering the transfer to be at the market value of such goods.

Market value is defined as the price at which such goods would ordinarily fetch in the open market or the arm's length price for the specified domestic transaction under Section 92BA of the Act.

Provisions of Electricity (Supply) Act, 1948

The taxpayers are allowed to set up a captive power-generating unit subject to the approval of the State Electricity Board (SEB). For the surplus power generation, the taxpayer can enter into power purchase agreements with SEB. The rate at which the SEB would purchase the surplus power units is determined according to the statutory requirements set by SEB, resulting in no room for negotiation by the taxpayer. Typically, the rate at which SEB purchases power from Power Generating Units (PGUs) is lower than the price at which it sells to industrial customers.

The taxpayers are not allowed to sell surplus power to any other person in the open market except with the prior permission of the SEB and subject to stringent conditions. As a result, it is generally not viable for the third-party consumer to purchase power from such taxpayers.

Definition of Open Market

Market value has been defined under Section 80IA (8) of the Act. However, open market is not defined in the Act, but the reference was drawn to:

- **Black's Law Dictionary**, "open market" means a market in which any buyer or seller may trade and where prices and product availability are determined by free competition.
- **P. Ramanatha Aiyer's Advanced Law Lexicon** "open market" means a market in which goods are available to be bought and sold by anyone who cares to. Prices in an open market are determined by the laws of supply and demand.

Amended definition of Market Value as per Section 80A (6) of the Act

Section 80A (6) of the Act was inserted with effect from April 1, 2009. Thus, the alternate market value definition in Section 80A (6) is misplaced. It was inserted post the subsequent years and did not exist in the year under dispute.

Supreme Court Verdict

M/s Jindal Steel and Power Ltd (taxpayer),[1] engaged in the business of generation of electricity, manufacture of sponge iron, M.S. Ingots, etc., had set up captive PGUs to supply electricity to its manufacturing units during the AY 2001-02, since electricity supplied by the State Electricity Board was inadequate to meet the requirements of its industrial units.

The power was supplied by captive PGUs to its manufacturing units (MU) at the rate of INR 3.72 per unit, being the rate at which the SEB was supplied to the industrial consumers and the taxpayers.

The taxpayer entered into a power purchase agreement (PPA) with SEB to sell surplus power units remaining after the captive use. Such surplus power was sold at the rate of INR 2.32 per unit.

The taxpayer filed its Return of Income (ROI) for the FY 2000-01, declaring its income as NIL after claiming a tax holiday with respect to the profits of PGU's.

The Revenue Authorities, including the first appellate authorities, allowed the benefit of tax holiday for PGUs but recalculated the benefit by considering the market value of power units supplied to MUs at INR 2.32 per unit, being the rate at which the taxpayer sold the surplus power units to SEB. The tax authorities contended that the price of INR 3.72 per unit had been inflated by the taxpayer, resulting in a reduction of the quantum of tax holiday claimed by the taxpayer for the relevant period. Reliance was placed on the decision of Calcutta HC[2], wherein it was held that the deduction can only be claimed based on the rates fixed by the tariff regulatory commission for the sale of electricity by the generating companies.

The SC upheld the stand of Income Tax Appellant Tribunal (ITAT) and High Court. Basis the above detailed analysis and by rejecting the case law reliance/Section 80A (6) of the Act, placed by the Revenue Authorities, the Supreme Court held that such price as fixed by SEB cannot be said to be the price determined in the competitive environment. It was held that the price determined by the SEB was based on statutory regulation and contract and hence cannot be equated with the "market value."

Also, the Supreme Court held that as an alternate in the absence of PGUs of the taxpayer, the MU were required to obtain power from SEB, which would be at the rate of INR 3.72 per unit. In other words, the price at which electricity is supplied to industrial customers in the open market.

Impact of the Supreme Court's Decision

The above judgment has settled the position that the market value shall be the value at which goods are available in the open market relating to FY 2000-01. It would be interesting to see the impact of judgment for the years falling under the period when post incorporation amended the definition of market value as per Section 80A (6) of the Act.

Upcoming Event

Top Tax Rulings for 2023
19 December 2023
Maulik Doshi
https://bit.ly/3RD03Ty

Events and Webinars

Free Zone Companies – How they would be taxed finally?
12 December 2023
Trupti Mehta and Nishit Parikh

Smart Future of Taxation Summit & Awards 2023
24 November 2023
Sanjay Chhabria and Sneha Pai

Preparing for implementation of UAE Corporate Tax and Transfer Pricing including Pillar
7 November 2023
Maulik Doshi and Nishit Parikh

1. Jindal Steels & Others [TS-731-SC-2023]
2. CIT vs ITC Ltd, (2015) 64 Taxmann.com 214

From the Judiciary

Direct Tax

In the absence of an FTS clause in India-UAE DTAA, can fees paid for app development, web-hosting services, marketing and sales support qualify as business income?

Campus Eai India Pvt. Ltd.
TS-631-ITAT-2023(DEL)

Facts

The assessee is an entity incorporated in India, engaged in the business of computer software and it has availed app development, web-hosting services, and marketing and sales support from foreign entities. During the assessment proceedings, the AO observed that the assessee had made various remittances to multiple foreign entities, and no TDS was deducted from such payments.

The AO held that such remittances by the assessee are in the nature of Royalty and Fees for Technical Services (FTS), and accordingly, taxes should have been withheld. Aggrieved by the AO's order, the assessee carried the matter in appeal before the CIT(A) wherein CIT(A) held that the above payments are not chargeable to tax in India and hence the action of the AO addition to assessee's income on account of non-deduction of TDS on such payments is erroneous.

Pursuant to the above, the said appeal was filed with the Tribunal.

Held

The Delhi Tribunal upheld CIT(A)'s order and disregarded the AO's arguments to treat remittances made by the assessee as Royalty and FTS.

The Tribunal concluded that the said payments cannot be brought under the ambit of FTS in the absence of a specific clause relating to FTS in the India-UAE tax treaty. Furthermore, it was observed that in the absence of a specific clause in the treaty dealing with a particular item of income, the payment should not be regarded as residuary income but as business income. However, in the present case, the said income shall not be chargeable to tax in India in the absence of a Permanent Establishment (PE) of the foreign entities in India.

Our Comments

The Delhi ITAT held that remittance for app development, web-hosting services, marketing and sales support in India-UAE DTAA is not FTS as the same will be considered as business income and it will not be taxable in India as per Article 7 of the said DTAA in the absence of a PE in India.

Is TRC issued by the competent Authority of the respective country sufficient to invoke tax treaty benefit?

Veg 'N' Table
TS-657-ITAT-2023(DEL)

Facts

The assessee operates as an investment holding company and is a tax resident of Mauritius, holding a valid and subsisting Tax Residency Certificate (TRC) for the assessment year 2018-2019. During this period, it accrued long-term capital gains through the sale of specific shares of an Indian entity acquired prior to 1 April 2017. The assessee filed its return of income, claiming exemption of long-term capital gains under Article 13(4) of the India-Mauritius Tax Treaty. The assessee contended that these gains were exempt from taxation in India.

The case was selected for scrutiny, and the AO denied the assessee's contentions on exemption claimed under Article 13(4) of the India-Mauritius Tax Treaty, contending that the assessee, characterized as a conduit entity, set up for claiming tax treaty benefits for avoiding tax.

Furthermore, the AO alleged that the assessee is a conduit entity set up in Mauritius only to avail treaty benefits and to avoid tax.

Aggrieved by the AO contentions, the assessee took the matter before the Income Tax Appellate Tribunal (ITAT).

Held

In the course of the appeal, the ITAT dismissed the contentions made by the AO and ruled favorably for the assessee. The ITAT highlighted the established legal precedent affirming the sufficiency of TRC issued by the competent authority of a specific country for the purpose of asserting treaty benefits. This stance found support in Circular No. 789 of 2000, a seminal decision by the Supreme Court in UOI v. Azadi Bachao Andolan, and a recent judgment rendered by the distinguished Delhi High Court in Blackstone Capital Partners (Singapore) VI FDI Three Pte. Ltd. v. ACIT.

Addressing the allegations against the assessee, namely, being a conduit entity lacking commercial justification and engaging in a transaction construed as a stratagem for tax avoidance, the ITAT scrutinized these assertions and noted the absence of substantiating evidence. Consequently, in the absence of compelling evidence, the ITAT withheld endorsement of the tax authorities' proposition pertaining to tax avoidance.

Moreover, the ITAT observed the conspicuous non-invocation of legal provisions such as the General Anti-avoidance Rule (GAAR) under the Income-tax Act, 1961 (the Act) and the Limitation on Benefits (LOB) clause pursuant to Article 27A of the treaty by the tax authorities. This strategic omission led the ITAT to infer an implicit acknowledgment by the tax authorities, signifying their acceptance that the transaction was conducted in good faith and, thus, affirming the irrevocability of the benefits accorded by the treaty.

Our Comments

This landmark judgment highlights the critical role of a valid TRC in providing substantial evidence to support the claim for tax treaty benefits in India. It underscores the importance of securing and recognizing a TRC as a key element in establishing a taxpayer's eligibility for accessing advantages outlined in tax treaties.

Transfer Pricing

The AO exceeded jurisdiction under Section 92CA (4) of the Income-tax Act

SAC Finance Company Limited
TS-665-ITAT-2023(DEL)-TP

Facts

- SAC Finance Company Limited (SAC) is a Hong-Kong based company. SAC acquired 888,287 shares and CCPS 151,525 at a cost of USD 15,674,058 from an Indian company, Orbgen Technologies Private Limited (Orbgen). These shares were subsequently sold to its wholly owned subsidiary – Wormhole Technology (Singapore) Private Limited (Wormhole), at the same price as the purchase price due to paucity of time.
- **The Transfer Pricing Officer:** The ROI was selected for assessment proceedings and was also referred by the AO to the Transfer Pricing Officer (TPO), who accepted the transaction value and passed the order without making any negative inference with respect to the arm's length character of transactions.
- **Dispute Resolution Panel:** DRP directed the AO to verify that the entire value of Wormhole is not relatable to its investment in Orbgen, and accepted the cost of acquisition of the assessee, and directed the AO to accept the same for capital gain computation.
- **Assessing officer:** AO rejected the Fair Market Value (FMV) determined by the assessee on the Discounted Cash Flow (DCF) method supported by the valuation report obtained from CA and arbitrarily made calculations based on the sale of shares of Wormhole in the next FY 2017-18.

Held by the ITAT

- On perusal of the material on record and hearing submission from both sides, the ITAT noted that the moot question for consideration is "whether the AO is bound by the order of TPO passed under Section 92CA (3) of the Act ". The Hon'ble ITAT placed reliance on the Hon'ble Delhi High Court[3] and the decision of the Coordinated Bench in the case of Cushman & Wakefield (P.) Ltd vs ACIT[4] and concluded that where TPO has not proposed any adjustment and valuation has been adopted by the AO without verifying the true and correct facts qua the assets, the ground by the assessee is allowed due to sustainability of such erroneous findings both on legality and facts.

Our Comments

The judgment confirms that basis of Section 92CA (4) of the Act , the AO is required to compute the Arm's length price in conformity determined by the TPO. Any deviation is not permissible in the light of statutory provisions and judicial pronouncements.

Proviso to Section 92CE (1) - Deletes secondary interest adjustment

Tech Mahindra Limtied
TS-634-ITAT-2023(MUM)-TP

Facts

- The assessee is a joint venture between M/s Mahindra & Mahindra Limited and British Telecom Plc, also the major customer of the assessee. The assessee is engaged in the business of developing computer software and other related services. The assessee granted a loan of USD 5 million to its AEs and charged the interest at LIBOR of 4%.
- TPO made an adjustment by adding 1% towards managerial costs, etc., considering that the assessee had borrowed a loan at 9%. CIT(A) proposed an adjustment at LIBOR + 350 basis points, placing reliance on the RBI circular.
- With respect to the upfront discount payment by the assessee to British Telecom Plc, the TPO held transaction is not at arm's length and made an adjustment of 5249.4 million along with adjustment towards interest at the rate of 18% recharacterizing upfront payment of discount fee as interest-free advance. AO deleted the adjustment towards the upfront discount but retained the interest adjustment, which was further deleted by CIT(A).

Held by the ITAT

- ITAT held that the appropriate LIBOR rate should be applied to the loan borrowed in foreign currency. ITAT held that LIBOR plus 80 basis points is appropriate on a merit basis that the risk element in lending to a subsidiary is less than lending to third parties.
- ITAT held that interest adjustment is a secondary adjustment, which is unlawful and contrary to the provisions of Chapter X, since the primary adjustment is made with respect to AY commencing on or before 1 April 2016.
- ITAT further upheld the decision of CIT(A) to delete the interest adjustment made at the rate of 18%, treating the upfront payment of discount as an interest-free advance to AE.

Our Comments

ITAT conducted a detailed analysis of the proviso to Section 92CE (1) which states that the secondary adjustment cannot be carried out if the primary adjustment does not exceed INR 10 million or if the primary adjustment is made for AY on or before 1 April 2016 and basis the merit deleted secondary interest adjustment.

Quotes and Coverage

The GST Council's Powers on Classification of products
30 November 2023 | Financial Express

Income tax payable on winnings from online, offline games of chance
29 November 2023 | Economic Times
Sanjay Chhabria
https://bit.ly/47YIlLx

3. IT appeal no. 475 of 2012(2014) 46 taxmann.com 317 (Delhi) dated 23 May 2014.
4. ITA no. 3933/Del/2010 (order dated 18 November 2011)

Indirect Tax

Classification of 'flavored milk' under HSN Code 2202 attracts 12% GST, or under HSN Code 0402 with GST at 5%

Parle Agro Pvt. Ltd. vs. Union of India & Others
TS-577-HC(MAD)-2023-GST

Facts

- Writ petitions were filed before the Madras HC challenging the decisions of the Tamil Nadu Advance Ruling Authority (AAR) in **Re: Britannia Industries Ltd [2020 (36) GSTL 582 (AAR-GST-TN)]**, as approved by the Tamil Nadu Appellate Advance Ruling Authority (AAAR) **[2022 (56) GSTL 36 (App. AAR-GST-TN)]**, and the Andhra Pradesh AAR in **Re: Sri Chakra Milk Products LLP [2020 (32) G.S.T.L. 206 (A.A.R.-GST-A.P.)]**.
- The said advance rulings had adopted the recommendations of the GST Council in its 3rd meeting dated 22 December 2018, clarifying the classification of 'flavored milk' under HSN Code 2202.
- While the petitioner relied upon the decision of SC in **Commissioner vs. Amrit Food [2015 (324) ELT 418]** to challenge the GST Council's recommendation, the Revenue defended the position by submitting that the functions of the GST Council, a constitutional body, could not be diluted at the behest of the petitioner to reduce the tax rate, it being policy decision taken by the GST Council in consultation with all stakeholders viz. the State Governments and Union Territories.

Ruling

On GST Council's recommendation:

- Unlike the Customs and Central Excise laws, where the respective Tariff enactments prescribe the rates under the First Schedule thereto, there is no standalone enactment for fixing the tax rate under the GST regime.
- As per the Explanation to the GST rate Notification for 'goods,' the classification thereof must be determined strictly in accordance with the classification under the Customs Tariff Act.
- Hence, the GST Council has given a wrong recommendation; the determination of classification does not fall within its purview under Article 279A of the Constitution. Such classification ought to have been independently determined by the AO.
- As held by the Supreme Court in **Union of India and another vs. Mohit Minerals Pvt. Ltd. [(2022) 10 SCC 700]**, the power of the GST Council is merely recommendatory. It is for the Government to fix appropriate rates on the goods that are classifiable under the Customs Tariff Act.
- Resultantly, the GST Council cannot impose a wrong classification of 'flavored milk' under sub-heading 2202 90 30 of the Customs Tariff Act.

On classification of 'flavored milk':

- Applying the principle of "Nosciter – a sociis," HC observed that the expression "Beverage Containing Milk" can include only such beverage containing plant/seed-based milk, which incidentally contains alcohol of specified strength. Therefore, 'flavored milk' made from dairy milk of milch cattle/dairy animals cannot come within the purview of Chapter 22.
- Moreover, the erstwhile Central Excise Notifications classifying 'flavored milk/flavored milk of animal origin' as "Beverage Containing Milk" were erroneous and just because they were never contested by assessee being beneficial, it cannot mean that the product, in fact, did fall under Heading 2202.
- Resultantly, the product in question could be classified only under Heading 0402, i.e., "Milk and cream, concentrated or containing added sugar or other sweetening matter, including skimmed milk powder, milk food for babies [other than condensed milk]," held the Court.
- However, it was left open to the government to issue a fresh Notification amending the GST rate of the product in question, based on recommendations of the GST Council or otherwise.

Our Comments

The functions of GST Council are delineated in Article 279A of the Constitution. While the GST Council should be guided by the need for a harmonized structure of GST and for the development of harmonized national market for the goods and services, it is pertinent to note that the GST Council can only 'recommend' the rates to the Union and the States and not determine the 'classification' of goods and services.

One should bear in mind that the classification of a particular good/ commodity into a specific HSN Code would determine the corresponding rate, and not vice versa. Hence, under the garb of recommending the GST rates, the GST Council cannot go beyond its Constitutional limitations.

In fact, all the recommendations of GST Council should first be accepted by the Union and the States and then be implemented by way of Notification, either in the rates or changes to the law.

However, it may be pertinent to note that the present ruling has been delivered by Single Judge Bench and hence, it is likely to be challenged before the Division Bench or directly before the Supreme Court. Nevertheless, the same could open a stream of litigation by those adversely affected by the previous clarifications of the GST Council on classifications.

Regulatory Updates

Notification of Limited Liability Partnerships (Significant Beneficial Owner) Rule, 2023

The Ministry of Corporate Affairs (MCA) had vide a notification dated 11 February 2022, mandated all Limited Liability Partnerships (LLPs) to make disclosures pertaining to their Significant Beneficial Owner (SBO). However, there were several concerns and ambiguities relating to its applicability to the LLPs. These concerns were addressed in the recently notified Limited Liability Partnership (Significant Beneficial Owner) Rules, 2023 (LLP SBO Rules).

The key highlights of the LLP SBO rules are provided below in brief:

Definition of SBO

SBO is an individual who, acting alone or together through one or more persons or trust, possesses one or more of the following rights or entitlements in such reporting LLP, namely:

- holds indirectly or together with any direct holdings not less than 10% of the contribution;
- holds indirectly or together with any direct holdings, not less than 10% of the voting rights in respect of the management or policy decisions in such LLP;
- has right to receive or participate in not less than 10% of the total distributable profits or any other distribution in a financial year through indirect holdings alone or together with any direct holdings;
- has the right to exercise or actually exercises significant influence or control in any manner other than through direct-holdings alone.

Reporting requirements by SBO

- Every individual who is determined as an SBO as per the above criteria in a reporting LLP will file a declaration in Form No. LLP BEN-1 within 90 days from the date of SBO Rules,i.e., by 7 February 2024.
- Every individual who subsequently becomes an SBO or where his ownership undergoes any change will file a declaration in Form No. LLP BEN-1 to the reporting LLP within 30 days of acquiring such significant beneficial ownership or any change therein.

Reporting requirements by LLP

- Every reporting LLP shall issue a notice to every non-individual partner holding not less than 10% of its contribution or voting rights or right to receive or participate in the distributable profits or any other distribution payable in a financial year in Form No. LLP BEN-4 is seeking information to determine if he is an SBO.
- On receipt of SBO's declaration, the reporting LLP will file a return in Form No. LLP BEN-2 with the Registrar of Companies within a period of 30 days from the date of receipt of declaration by it.
- Reporting LLP will be required to maintain the register of SBO in Form No. LLP BEN-3.

Our Comments

The recently implemented LLP SBO rules mirror the existing practices for companies, introducing a comparable framework for LLPs. Consequently, LLPs are now obligated to comply with SBO declarations and maintain registers, aligning with the procedures followed by companies. The primary goal persists—to foster transparency and accountability by revealing individuals who possess beneficial interests and influence decision-making within LLPs. This initiative aims to unveil intricate networks of holdings and cross-holdings, a tactic often used to obscure the true identity of individuals owning an entity.

Tax Talk

Indian Developments

Direct Tax

Condonation of Delay in Filing form 10-IC for AY 2021-22

CIRCULAR NO.19/2023
F. NO. 173/32/2022-ITA-I
dated 23 October 2023

In view of the genuine hardship faced by domestic companies that exercised the option under Section 115BAA of the Act for AY 2021-22 but could not file Form 10-IC as required under Rule 21AE of the Rules within the stipulated due date/extended due date, the CBDT, in the exercise of its powers under Section 119(2)(b) of the Act, has allowed a condonation of such delay, subject to meeting certain conditions. The conditions for condonation of delay are as follows:

- The return of income for the relevant AY is filed on or before the due date specified under Section 139(1) of the Act.
- The assessee company has opted for taxation under section 115BAA of the Act in item (e) of "Filing Status" in "Part A-GEN" of ITR-6 (Form for return of income).
- Form No. 10-IC is filed electronically on or before 31 January 2024 or three months from the end of the month in which this Circular is issued, whichever is later.

Indirect Tax

Foreign Trade Policy

DGFT Introduces Centralized Video Conference Facility

Trade Notice No. 32/2023-24
dated 6 November 2023

Starting 8 November 2023, a centralized Video Conference (VC) facility is now available at the DGFT headquarters every Wednesday between 10 am to 12 pm. Senior officers from the Directorate General of Foreign Trade (DGFT) HQs shall address the matters that could not be resolved by various DGFT Regional Authorities (RAs) despite concerted efforts. This facility is intended as a platform for Trade and Industry representatives to bring forward suggestions for improvements and raise concerns pertaining to DGFT systems and procedures.

Pilot Launch of the Upgraded Electronic Bank Realization Certificate (eBRC) system

Trade Notice No. 33/2023-24
dated 10 November 2023

The DGFT has implemented an enhanced eBRC system based on electronic Inward Remittance Messages (IRMs) to be transmitted directly by banks to the DGFT portal.

Based on the IRMs received, the exporters shall self-certify their eBRCs.

Some of the salient features of the new eBRC system are listed below:

- Banks receiving Export Remittances will push the IRM message to the DGFT IT system electronically.
- IRM details will be accessible to the relevant IEC holder upon logging onto the DGFT portal.
- The exporter will create eBRCs for Goods Exports, Services Exports and Deemed Exports by matching IRM with relevant shipping bills, SOFTEX, or invoice details. Multiple IRMs may be grouped under one eBRC, or one IRM can be split amongst several eBRCs.
- The RBI Purpose Code and other fields mentioned in the IRM shall be used to validate the eBRC fields being certified by the exporter.

Tax Talk

Global Developments

Direct Tax

Multinational enterprises continue reporting low-taxed profit, even in jurisdictions with high corporate tax rates, underlining need for global tax reform

Excerpts from oecd.org dated 21 November 2023

Jurisdictions with high tax rates account for more than half of the low-taxed profits reported globally by multinational enterprises (MNEs), according to a new OECD analysis.

The new data and estimates on taxation of large MNE profits show how tax incentives and other concessions in jurisdictions with high statutory and average tax rates enable some firms to pay low Effective Tax Rates (ETRs). The findings highlight how the introduction of a global minimum tax rate on the profits of large MNEs as agreed by the OECD/G20 Inclusive Framework would create new opportunities for domestic resource mobilization for high-tax and low-jurisdictions alike.

The OECD's latest Corporate Tax Statistics report and a new accompanying working paper, Effective Tax Rates of MNEs: New evidence on global low-taxed profit, provide new data on global low-taxed profit, a key issue for determining the impact of the global minimum tax.

The working paper finds that an estimated 37.1% (USD 2 411 billion) of global net profits (totaling USD 6 503 billion) are taxed at ETRs below 15%. In contrast to earlier studies, which have focused on low-taxed profit only in low-tax jurisdictions, the new paper estimates that high-tax jurisdictions – jurisdictions with statutory and average tax rates above 15% – account for more than half (56.8%) of all global profits currently taxed below 15%. This profit in high-tax jurisdictions exists across all country groups regardless of income level, with an estimated 28% of all global low-taxed profit being located in low or middle-income jurisdictions.

High-tax jurisdictions even account for more than 20% of very low-taxed profits – those with an ETR below 5%. These low-taxed profits in jurisdictions with high tax rates, which are likely the result of tax incentives and other targeted concessions, highlight the revenue-raising potential of the global minimum tax, even in jurisdictions that have previously been thought to be high-tax.

The data in Corporate Tax Statistics covers MNE taxation in more than 160 countries and jurisdictions, bringing together new detailed information on MNEs' international activities, as well as two years of aggregated Country-by-Country Reporting (CbCR) data shared between companies and tax authorities.

The report shows continued misalignment of MNE profits and real economic activity in markets worldwide. The median value of MNE revenues per employee in investment hubs is USD 1 710 000, as compared to USD 290 000 for all other jurisdictions. While these effects could reflect some commercial considerations, they likely also indicate the existence of base erosion and profit shifting (BEPS) practices, further highlighting the importance of implementing the global tax agreement.

Indirect Tax

Resellers of telecommunication services in Denmark liable to reverse-charge VAT from January 2024

Excerpts from various sources

With effect from 1 January 2024, the purchase of telecommunications services for resale between VAT-registered entities in Denmark will be subject to VAT on a reverse charge basis in the hands of the purchaser. Internal transactions within a group of companies (e.g., where the group has a local procurement company) are also covered. Businesses selling telecommunications services would need to verify if the purchaser is a reseller to apply the reverse charge.

Companies in Egypt taking payments in foreign currency to pay VAT in same currency

Excerpts from various sources

The Egyptian Finance Ministry has amended the executive regulations of the unified tax procedures law to require companies to pay the VAT in foreign currency where the goods and services are sold in such currency. The new requirement has been introduced to tackle the longstanding foreign currency deficit faced by the treasury. While this amendment would not affect the export sector, which is exempt from VAT, it is likely to impact tourism companies.

Germany re-instates 19% VAT on Restaurant and Catering Services from January 2024

Excerpts from various sources

As part of the COVID-19 relief package, the VAT rate on food served in restaurants and catering services was reduced from 19% to 7%. The reduction was extended until 31 December 2023 due to energy crisis.

However, the German government has announced that the original rate of 19% will be reinstated with effect from 1 January 2024.

Belgium imposes joint VAT liability for electronic interfaces

Excerpts from various sources

Belgium has adopted a law introducing joint VAT liability for electronic interfaces, even when they are not deemed suppliers (commissionaire), effective from 1 January 2024. The new joint liability regime can only be invoked when the VAT authorities demonstrate that the electronic interface is not acting in good faith or has committed an error or negligence. Minimum due diligence obligations specified for electronic interfaces include:

- Verification of VAT identification number of the taxable supplier before facilitating the sales and at least once per calendar year.
- Upon receipt of notice from VAT authorities, intimation is to be given to the concerned supplier whose supplies are being facilitated by the electronic interface.

Malaysia imposes sales tax on low-value goods

Excerpts from various sources

The Royal Malaysian Customs Department (RMCD) has announced that sales tax on Low Value Goods (LVG), which had been deferred previously, will be brought into effect from 1 January 2024. LVG refers to all goods that are sold at a price not exceeding MYR500 and are brought into Malaysia by land, sea or air. Accordingly, sales tax at 10% will be applicable on all LVGs, regardless of their Harmonized System (HS) Code. However, specified exclusions include cigarettes, tobacco products and intoxicating liquor.

Alerts

Key Highlights of GST Notifications and Clarification Circulars – November 2023
1 December 2023
https://bit.ly/3GI38B7

Government allows 'hybrid working' for SEZ employees until December 2024
9 November 2023
https://bit.ly/3FVDEdi

Key Changes in Determining Qualifying Income of a Qualifying Free Zone Person
7 November 2023
https://bit.ly/482GJ7V

Supreme Court refused to reconsider the position of tax dues under IBC
2 November 2023
https://bit.ly/3QsCQ4C

Compliance Calendar

Direct Tax
Indirect Tax

7 December 2023

- The due date for deposit of Tax deducted/collected for November 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 the production of an Income-tax Challan.

10 December 2023

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

11 December 2023

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

13 December 2023

- GSTR-6 for November 2023 to be filed by Input Service Distributors (ISDs)
- Uploading B2B invoices using Invoice Furnishing Facility (IFF) under QRMP scheme for the month of November 2023 by taxpayers with aggregate turnover of up to INR 50 million.
- GSTR-5 for November 2023 to be filed by Non-Resident Foreign Taxpayers.

15 December 2023

- The due date for furnishing of Form 24G by an office of the government where TDS/TCS for November 2023 has been paid without the production of a Challan.
- The due date for third instalment of advance tax for the AY 2024-25.
- The due date for issue of TDS Certificate for tax deducted under Section 194-IA/194-IB/194M/194S in October 2023.
  Note: Applicable in case of specified person as mentioned under Section 194S.
- The due date for furnishing statement in Form no. 3BB by a stock exchange in respect of transactions in which client codes been modified after registering in the system for November 2023.

20 December 2023

- GSTR-5A for November 2023 to be filed by Online Database Access and Retrieval (OIDAR) service providers.
- GSTR-3B for November 2023 to be filed by all registered taxpayers not under QRMP scheme.

25 December 2023

- Payment of tax through GST PMT-06 by taxpayers under QRMP scheme for November 2023.

30 December 2023

- The due date for furnishing of challan-cum-statement in respect of tax deducted under section 194-IB/194M/194-IA in November 2023.
- The due date for furnishing of challan-cum-statement in respect of tax deducted under section 194S in November 2023.
  Note: Applicable in case of specified person as mentioned under section 194S.
- The due date for furnishing of report in Form No. 3CEAD for a reporting accounting year (assuming reporting accounting year is 1 January 2022 to 31 December 2022) 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 exchange of the report etc.

31 December 2023

- The due date filing of belated/revised return of income for the assessment year 2023-24 for all assessee (provided assessment has not been completed before 31 December 2023).

Compliance Calendar

Direct Tax

Indirect Tax

7 January 2024

- The due date for deposit of Tax deducted/collected for December 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 January 2024

- GSTR-7 for December 2023 to be filed by taxpayers liable to TDS.
- GSTR-8 for December 2023 to be filed by taxpayers liable to TCS.

11 January 2024

- GSTR-1 for December 2023 by all registered taxpayers not under QRMP scheme.

13 January 2024

- GSTR-6 for December 2023 to be filed by ISDs.
- GSTR-1 for the quarter of October 2023 to December 2023 to be filed by all registered taxpayers under QRMP scheme.
- GSTR-5 for December 2023 to be filed by Non-Resident Foreign Taxpayers.

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/IEC 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, World Commerce and Contracting, Everest Group Peak Matrix® Assessment 2022, for Procurement Outsourcing (PO) and Finance and Accounting Outsourcing (FAO), ISG Provider Lens™ Quadrant 2023 for Procurement BPO and Transformation Services and Global Sourcing Association (GSA) UK.

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

USA Canada Poland UAE India Hong Kong Japan

www.nexdigm.com

Reach out to us at ThinkNext@nexdigm.com

Follow us on

Listen to our podcasts on all major platforms