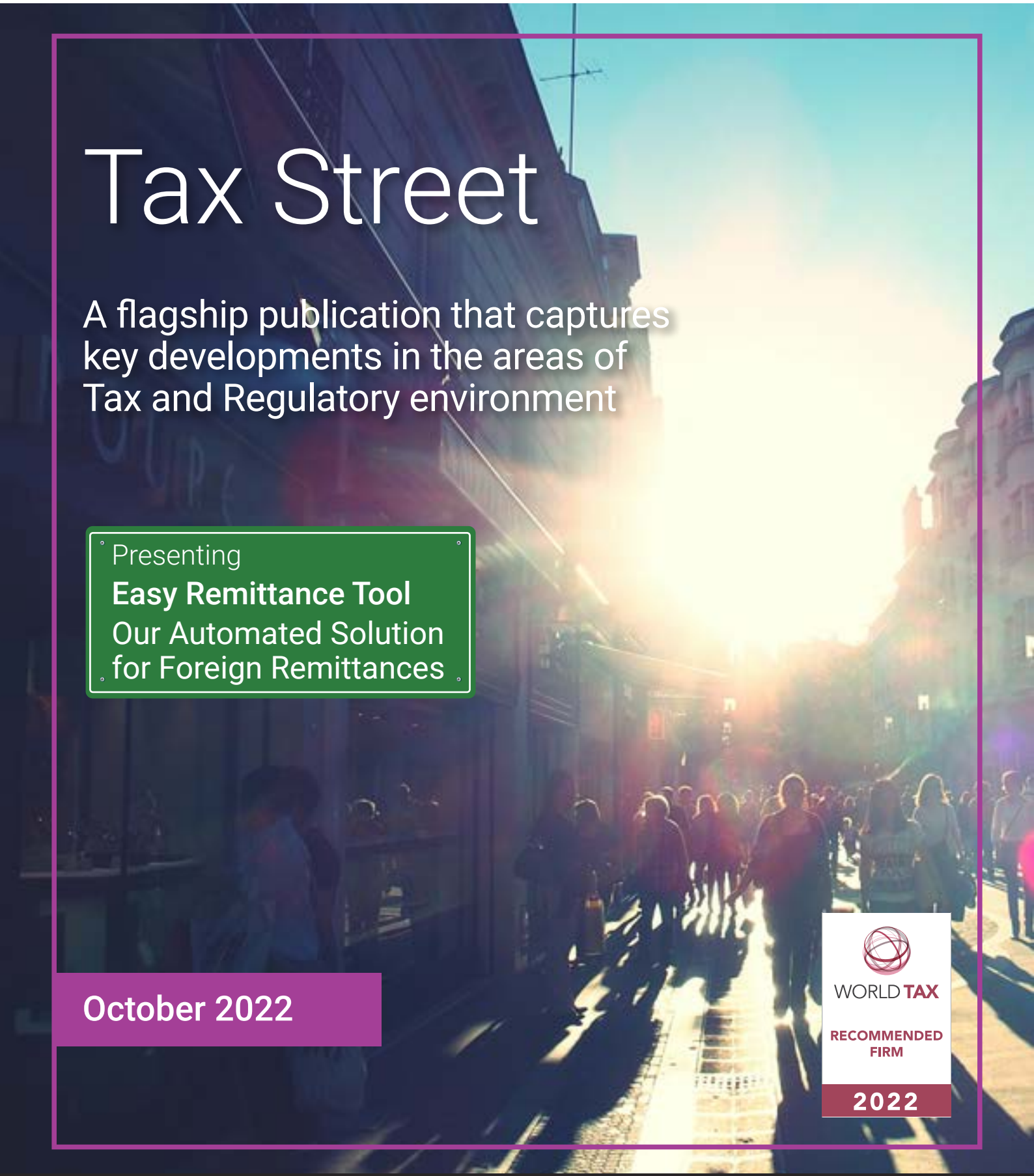

Tax Street

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

October 2022

WORLD TAX
RECOMMENDED FIRM
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 October 2022.

- The **'Focus Point'** covers an overview of the importance of electronic filing of Form 10F
- 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

Electronic Filing of Form 10F – Does this mean a foreign company is mandated to obtain PAN?

Globalization has catalyzed business growth, rendering Indian companies to avail various services from vendors outside India and incur expenses like Royalties, Fees for Technical Services (FTS), interest, etc. However, while making payments to these vendors outside India, it is critical to examine the Withholding Tax (TDS) implications on the same.

Typically, the scope of taxability of income, as well as the applicable rate of tax is defined under the Income Tax Act,1961 (the Act) and also under the Double Tax Avoidance Agreement (DTAA) that India has signed with that country. The taxpayer has a right to avail the beneficial provisions between the DTAA and the Act.

In order to claim the benefit of DTAA under Section 90 of the Act, there is an obligation to furnish Tax Residency Certificate (TRC), which must contain certain specified information such as mentioned below:

- Name of the assessee
- Status (individual/company/ firm etc.)
- Nationality (in case of individuals)
- Country or specified territory of incorporation or registration (in case of others)
- Tax Identification Number (TIN)
- Residential Status
- Period for which applicable
- Address of the assessee.

However, in cases where the TRC does not contain all the specified information, the Indian Government had prescribed Form 10F to be furnished under the Income-tax Rules. As a result, the foreign companies whose TRC did not contain the specified information were required to furnish a self-certified document in Form 10F.

At the outset, it is pertinent to note that the TRC of very few countries, like Bangladesh, Egypt, Kenya, Mauritius, Nepal, the Netherlands, Sri Lanka, etc., contains all the requisite information. Accordingly, foreign companies from most of the other countries were mandated to furnish Form 10F to claim the benefit of DTAA.

However, we have often observed that the TRC format of each country undergoes a change periodically. Furthermore, separate states of a country may issue a TRC in a different format. Hence out of caution, TRC should be checked basis the above criteria on a case-to-case basis before determining whether 10F is not required.

Until now, the foreign vendors used to provide to the Indian deductors their TRCs obtained from the Revenue authorities of their home country along with No PE and Beneficial Ownership declarations and physical Form 10F in order to avail beneficial tax rate, if any, under the tax treaties. This Form 10F furnished by these foreign vendors was manually filled and executed as prescribed under Rule 21AB of the Income-tax Rules.

However, on 16 July 2022, the Central Board of Direct Taxes (CBDT) of India issued a circular[1] wherein it prescribed the filing of certain forms/statements electronically through the income-tax portal. While the list contains quite a few forms, one form that could impact the companies' day-to-day operations is Form 10F. Accordingly, in light of the aforementioned notification, foreign entities are now required to furnish Form 10F electronically by logging on to the income-tax portal.

Some immediate issues which could crop up from foreign remittance perspective are provided in the table below:

Sr. No.	Particulars	Challenges and possible resolutions
1	Foreign entities having a valid PAN or not having PAN but taxes deducted under relevant tax treaties	In the case of these entities, one will have to ensure that all the relevant information required under Rule 21AB is provided in the TRC issued by their government. In case TRC does not contain the relevant information, these entities will be required to furnish Form 10F electronically and thus shall be required to obtain PAN, if not available and create their income-tax logins on the portal. While this may not be a challenge for the entities already having a PAN and complying with the tax filings in India, it would create issues for those foreign entities who have not obtained PAN in India.
2	Cases where Foreign Entities are not required to obtain PAN	This shall pose a challenge for taxpayers, as in certain cases, a non-resident payee is not required to obtain PAN under the Act. Section 206AA of the Act, which prescribes a higher rate of tax for taxpayers who do not have PAN, provides an exception to a non-resident, not being a company, or to a foreign company, from obtaining PAN in the following situations: • In case of interest on long-term bonds referred to in Section 194LC of the Act; or • In case documents, as prescribed under Rule 37BC of the Rules, are furnished.
3	Validity of Manual Form 10F received before 16 July 2022	The Indian government needs to address the ambiguity of whether the Form 10F received on or before 16 July 2022 shall be considered valid for granting the benefits for FY 2022-23. If the same is invalid, it would require updating the same electronically.
4	Online submission of TRC along with electronic Form 10F	It is imperative to note that foreign entities are mandatorily required to upload a copy of the TRC while furnishing Form 10F electronically. However, if TRC would not be available at the time of earning the income but only later in the tax year, covering the period when the non-resident earns the income, the tax treaty benefit may be denied.
5	Validity of Manual Form 10F from 16 July 2022 to 12 August 2022	Form 10F has to be furnished electronically w.e.f. 16 July 2022, i.e., AY 2023-24 (FY 2022-23) and onwards. However, initially, the Income Tax portal had a number of glitches and only allowed filing such forms for AY 2022-23 (FY 2021-22). The dropdown was made available for AY 2023-24 (FY 2022-23) only from 12 August 2022, which has caused inconvenience to many taxpayers. Clarity needs to be provided on the acceptability of the manually signed Form 10F during such period (i.e., 16 July 2022 till 12 August 2022).
6	Requirement to obtain Digital Signature Certificate (DSC)	Typically, Income Tax Rules specifying the procedure for electronic furnishing of the forms state that the forms shall be signed either through a DSC or through the EVC method prescribed. Therefore, if such payee is a person other than an individual, the partner or director or authorized signatory of such payee, who may also be a non-resident having no income from India, would also be mandated to obtain a DSC in India.

1. Notification No. 03/2022 dated 16 July 2022

The above issues may result in practical challenges for the non-resident payees as well as resident payers, and the Chartered Accountants certifying the Form 15CB, who are required to ensure all relevant documents are furnished by the payee while complying with the TDS provisions under Section 195 of the Act.

Practically, we have observed that non-residents availing of tax treaty benefits fail to furnish a return of income in India. The recent prescription for electronic verification of Form 10F might be an attempt by the Indian Government to plug this get-out. Furthermore, it is imperative to note that as of now, the Act does not specifically provide for any consequences for non-furnishing of electronically filed Form 10F nor any consequences on the deductor.

However, non-Furnishing Form 10F electronically may result in denying beneficial tax treaty provisions by the Indian Tax Authorities. Thus, failure to furnish the form may create issues in claiming the tax treaty benefits for the non-resident and also may have tax and penal consequences on the Indian resident remitter/deductor for shortfall/ nil deduction of tax.

Webinars and Events

Event

10 November 2022

Tax Breakfast Briefing

Organizer - Taxsutra

Maulik Doshi, Saket Patawari, Sanjay Chhabria, Sneha Pai

Webinar

8 November 2022

UAE Corporate Tax

Organizer - Achromic Point

Trupti Mehta

4 October 2022

Critical Aspects to be Considered During Transfer Pricing Compliances

Organizer - Taxsutra

From the Judiciary

Direct Tax

Whether sales and marketing services rendered to an Indian entity by a US subsidiary in American markets qualify as Fees for Technical/Fees for Included Services?

Manthan System Inc
[TS-777-ITAT-2022(Bang) IT(IT)A No.723/Bang/2022

Facts

The taxpayer is a company incorporated in the USA and a wholly owned subsidiary of MSSPL, which is established in India. The taxpayer provides sales and marketing services to MSSPL for the sale of its products/ services in the territory of North America, South America and the Caribbean markets. For the year under consideration, the taxpayer received an amount of INR 34.7 million as a sales commission. The taxpayer did not file a return in India on the premise that the said commission income is not taxable in India.

A reassessment was opened in the case of the taxpayer and the Assessing Officer (AO) claimed that the sales commission received by the taxpayer should be taxable as FTS under the Income-tax Act, 1961 (the Act) as well as the India USA DTAA. The AO opined that the taxpayer had provided project management services that fall within the ambit of FTS under the Act.

Held

The Income Tax Appellete Tribunal ('ITAT') of Bangalore has held that the taxpayer cannot be said to have provided any technical, managerial, or consultancy services to MSSPL; rather, it has been engaged as a business partner to market and promote the products or services of MSSPL outside India. The ITAT, citing various judicial precedents, observed that the sales commission received by non-resident agents cannot be deemed to accrue or arise in India, and thus, the commission received by the taxpayer cannot satisfy the definition of FTS as it is not in the nature of managerial, technical or consultancy services.

Coming to the applicability of the provisions of the DTAA, the ITAT held that prima facie that the sales and marketing services rendered by the taxpayer are not in the nature of technical or consultancy services. Moreover, even if it is assumed without admitting that marketing services are under the umbrella of technical or consultancy, it did not make available any technical knowledge, experience, know-how, or process to MSSPL (i.e., restrictive definition of FIS/FTS under DTAA).

Our Comments

The Bangalore Tribunal held that the marketing services provided by the taxpayer cannot be considered as technical, managerial or consultancy services for the purposes of FTS under the Act. Moreover, it does not 'make available' technical know-how as per the DTAA.

Whether equalization levy is applicable to Google Ads payments where advertisers and target audiences are overseas?

Prakash Chandra Mishra
ITA No. 305/JPR/2022

Facts

The taxpayer, an individual, is the proprietor of Oan Media and Web Solutions, which is engaged in the business of providing support services for online advertisement, digital marketing, and web designing. The taxpayer receives consultancy charges for the services. During the year under consideration, the taxpayer paid advertisement (adwords) charges to Google Singapore, a non-resident who does not have a Permanent Establishment (PE) in India. The AO disallowed the above payment on the premise that since the payment was made to a non-resident for advertisement purposes in the digital mode on behalf of the taxpayer's clients and that no tax was deducted as equalization levy on the payment made to the non-resident, it was not allowable as a deduction as per the provisions of Section 40(a)(ib) of the Act.

It was then contended before the AO that the taxpayer is merely an agent of Google Singapore, whereby it has been granted access for the purpose of advertisements to be made on Google. The taxpayer simply provides the login credentials generated on google to its clients for them to run their own advertisements.

The clients, on their own, decide where the advertisement is to be run, who would be the target audience, what would be the duration, etc. The taxpayer claimed that the provisions of the equalization levy are only confined to transactions in India. However, in the present case, the target audience of the advertisement and the person carrying out the advertisement are both outside India, resultantly Indian tax authorities have no jurisdiction to tax such transactions.

Held

On analyzing the facts of the case, the ITAT observed that the only dispute in the department's appeal is whether the online advertisements, which are of non-jurisdictional areas are subjected to equalization levy or not. The ITAT upheld the Commissioner of Income Tax (Appeals) [CIT(A)]'s decision by observing that the department could not controvert that the person running the advertisement, the person displaying the advertisement, and the person using that advertisement are all outside India.

It was further held that equalization levy does not get attracted in the present case since the intention of levy is the targeted audience and party paying for the online advertisement who, in the present case, have no relation with India.

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

Furnishing adequate supporting evidence held to be 'substantial compliance'; addition deleted on reimbursement of expenses, out of pocket expense and fixed assets purchased.

Infinity Retail Limited[2]
TS-721-ITAT-2022(Mum)-TP

Facts

The taxpayer is engaged in wholesale trading of consumer electronics and appliances. The taxpayer had made certain payments to its Associated Enterprise (AE) as follows:

A	Reimbursement of Expenses – for services not requested by taxpayer AY 07-08	51%
B	Reimbursement of Expenses – for services not requested by taxpayer AY 08-09	25%
C	Purchase of Fixed Assets on a cost-to-cost basis	20%
D	Out of Pocket Expenses	4%

The Transfer Pricing Officer (TPO) proposed an adjustment for all the transactions, considering that there was no basis for making such payments. In relation to the purchase of fixed assets (item C), the taxpayer purchased the IBM server from its AE on 24-Jun-2007 at the same price as what the AE had paid a third party on 29-Nov-2005. The TPO was of the view that when the taxpayer purchased the asset from the AE it was old and liable for depreciation. Hence the excess purchase price was considered as an adjustment. For Item D, the taxpayer was able to furnish bills for 78% of the transaction value and hence the TPO considered the balance as an adjustment.

Aggrieved by the decision of TPO, the taxpayer raised objections before the Dispute Resolution Panel (DRP), which upheld the adjustment for:

- Item A above, which was claimed to be booked before the execution of the inter-corporate agreement and therefore, no deduction could be allowed.
- Item D above, which were not supported by bills or document.

For item B, the DRP directed the AO to verify the expenses and allow legitimate expenses incurred for business purposes.

For item C, the DRP granted relief directing the AO to re-calculate the Arm length Price (ALP) of the asset purchased by reducing the cost of the asset by the depreciation for one year it was put to use.

Held by the ITAT

ITAT observed that the deduction for the amount (under item A) was not claimed by the Appellant while computing taxable income for the AY 2008-09; hence the question of making the disallowance or addition of the same does not arise.

For Item C, the ITAT noticed that the AE purchased the asset on behalf of the taxpayer as it was not incorporated and could not operate its bank account. Also, as stated in the original invoice, the asset was to be delivered to the taxpayer in India directly. As per the taxpayer's fixed asset register, the asset was capitalized in the books of accounts and put to use in October 2006. Thereafter, on 29 March 2007, the taxpayer entered into an Annual Maintenance Contract with IBM India for the maintenance of the asset. The taxpayer in India used the asset for the first time. Hence, given the facts of the case, the written-down value of the asset cannot be the determining factor in deciding the purchase price.

For Item D, the ITAT opined that the taxpayer can be directed to produce supporting documents pertaining to the entire amount of expenses claimed as deduction as they are obliged to maintain proper books of accounts, including vouchers. However, the taxpayer has been subjected to statutory as well as tax audits for the relevant assessment year, and no qualifications regarding accounting systems have been made by the Auditors. ITAT also stated that in cases where the supporting documents called for are not furnished or have been furnished but the same is not found to be sufficient or satisfactory by the AO, the AO would be justified in calling for any/all details and supporting documents as the AO may deem fit. However, the TPO/AO have not pointed out any defect/discrepancy in the supporting documents furnished by the taxpayer.

Hence based on the above facts the ITAT held that the taxpayer has substantially complied with the directions given by the AO and deleted the adjustment.

Our Comments

In the context of related party transactions, for reimbursements of expenses and fixed assets, it is essential that taxpayers maintain maximum supporting documentation to showcase the nature and basis of cross charge.

2. Income Tax Appellate Tribunal – Mumbai ITA No. 7718/Mum/2012 (AY 2008-09)

Indirect Tax

Whether the doctrine of promissory estoppel would apply against the exercise of legislative powers by the Centre/State?

Hero Motocorp Ltd. & Others vs. Union of India & Others [TS-519-SC-2022-GST]

Facts

- Under the Central Excise Act, 1944, a Notification was issued in 2003 whereby new industrial units and existing industrial units, on their substantial expansion, were entitled to a 100% outright excise duty exemption for 10 years from the date of commencement of commercial production.
- Accordingly, the appellants, Hero Motocorp Ltd. and Sun Pharma Laboratories Ltd., had set up new industrial units in Haridwar, Uttarakhand, and were enjoying the excise duty benefit.
- However, with the advent of the GST regime, a Notification was issued under Section 174(2)(c) of the CGST Act by which the said exemption Notifications were rescinded and the benefit ceased to continue w.e.f. 1 July 2017.
- The GST Council resolved that all entities exempted from payment of indirect tax would pay tax in the GST regime. But, in the event it was decided by the concerned State or Central Government to continue any existing exemption/incentive, then the same would be administered by way of a reimbursement mechanism through the budgetary route.
- Consequently, the Central Government restricted the CGST and IGST refund entitlement to the affected eligible industrial units for the residual period in the North Eastern and Himalayan States.
- Aggrieved thereby, the appellants approached the Delhi and Sikkim High Courts, but their writ petitions were dismissed. Hence, appeals were filed before the Supreme Court.

Judgment

- Referring to a host of judgments on the subject, SC held that the plea of promissory estoppel would not be available against the exercise of the legislative functions of the State.
- SC observed that it is a matter of policy that has to be determined by the Union/State while deciding whether it should grant exemption from payment of CGST or make a budgetary allocation for a refund of the tax paid.
- Accordingly, the Central Government was not bound to continue with its representation in 2003 in view of the change of law by enacting the CGST Act.
- Though the first part of Section 174(2)(c) would protect any right, privilege, obligation, etc., under the amended Act or repealed Acts, the proviso thereto provides that any tax exemption granted as an incentive against investment shall not continue as a privilege if the said notification is rescinded on or after the appointed day.
- Thus, accepting the appellants' contention would make the provisions of Section 174(2)(c) of the CGST Act redundant and otiose.
- It has been consistently held that where the change of policy is in the larger public interest, the State cannot be prevented from withdrawing an incentive that it had granted through an earlier Notification.
- Consequently, the SC rejected the appeals but, at the same time, appreciated that the matter at hand was not wholly without any substance and opined that though the appellants may not have a claim in law, they do have a legitimate expectation that their claim deserves due consideration.
- Accordingly, SC permitted the appellants to make appropriate representations to respective State Governments and the Centre/ GST Council and requested them to consider such representations expeditiously.

Our Comments

This judgment is yet another landmark verdict in the context of the applicability of the principle of promissory estoppel in taxation laws. The Court reiterated the settled position that it could not interfere in the policy matters of the government, unless such a policy is found to be palpably arbitrary and irrational.

M&A Tax Update

Transfer Pricing not applicable in slump sale between two Indian Associate Enterprises held by a foreign holding company

MWH India Pvt Ltd
[TS-698-ITAT-2022(Mum)-TP]

Mumbai Tribunal has held that the transaction of slump sale between Indian associate enterprises would not be an international transaction even where both are held by the same foreign company. Accordingly, provisions of transfer pricing will not apply. This is on the rationale that none of the parties are non-residents and a domestic slump sale would not fall under the definition of 'International Transaction' as the precondition for a transaction to qualify as an international transaction is that the transaction is between two or more AE s, out of which at least one should be a non-resident. Noting that both the companies involved are residents of India, Transfer Pricing provisions will not be applicable.

Our Comments

The decision is welcome as it provides the requisite clarity by upholding the non-applicability of Transfer Pricing provisions on domestic transactions. This purely required the plain reading of the meaning of the term international transaction as per the provisions. Unless covered within the ambit of a specified domestic transaction, transactions between two domestic parties should not be a subject matter of transfer pricing provisions.

Brought forward business loss can be set off against capital gain arising on the sale of business assets

[2022] 141 taxmann.com 131 (Kolkata - Trib.)/[2022] 196ITD 316 (Kolkata - Trib.)

The Kolkata Tribunal has income by way of short-term capital gain received on the sale of leased properties shall be allowed to be set off against brought forward business loss. Generally brought forward, business losses can be set off only against business profit. However, under the current circumstances, given that the income arose from the sale of a business asset but merely classified under the head 'capital gains' and not 'profits or gains from business or profession,' such income should be considered as arising from the business. Accordingly, brought forward business loss should be eligible to be set off against capital gains on the sale of a business asset.

Our Comments

While rendering the decision, the Tribunal has undertaken a very fine reading of the provisions and taken cognizance of the interplay between the various provisions of the Act. While this has been an interesting proposition that has been upheld in the past in various decisions, this view is certainly not free from litigation. Nonetheless, based on the peculiar facts of each case, the adoption of this proposition may be considered.

Tax Talk

Indian Developments

Direct Tax

CBDT introduces Form 69 for application u/s 155 (18)

Notification G.S.R. 733(E)[NO. 111/2022/F. NO.370142/32/2022-TPL
Dated 28 September 2022

- An application requesting for recomputation of total income of the previous year without allowing the claim for deduction of surcharge or cess, which has been claimed and allowed as deduction under Section 40 in the said previous year, shall be made in Form No. 69 on or before 31 March 2023.
- This form has to be furnished electronically to the principal director general of Income tax.

Central Government specifies two pension funds in line with Section 10 (23FE)

Notification No. 114/2022/F. No. 500/PF3/S10(23FE)/FT&TR-II-Part(2)
Dated 13 October 2022

Notification No. 115/2022/F. No. 500/SWF5/S10(23FE)/FT&TR-II-Part(2)
Dated 14 October 2022

- In the exercise of powers conferred by sub-clause (iv) of clause (c) of the Explanation 1 to clause (23FE) of Section 10 of the Income-tax Act, 1961, the Central Government specified the following pension fund and sovereign wealth fund as the specified person for the purposes of the said clause in respect of the eligible investment made by it in India on or after the date of publication of this notification in the Official Gazette but on or before the 31 March 2024.
- Name of two notified funds:
  1. 2589555 Ontario Limited (PAN: AABCZ1393D).
  2. Norges Bank On Account Of The Government Pension Fund Global (PAN: AACCN1454E).

Indirect Tax

GST Updates

Major changes under GST Act made effective from 1 October 2022

To enthrone the efforts of 'Make in India' objective along with various changes towards GST procedures and compliances, the amendments to CGST Act proposed vide Finance Act, 2022 have been notified with effect from 1 October 2022. Some of the key amendments have been enclosed at the below link:

https://bit.ly/3STcWX9

Changes related to GST rates for transportation services

In January 2018, through a notification, the Central Board of Indirect Taxes and Customs (CBIC) provided an exemption on the transportation of goods by aircrafts/vessels from India to a place outside India. At first, this exemption was available only till 30 September 2018 but was subsequently extended up to 30 September 2022. As no further extension has been notified, these services are now taxable from 1 October 2022 onwards. A detailed analysis of the implications of the above taxability has been discussed at the following link:

https://bit.ly/3FYDqDI

Customs Updates

Project import benefits no longer applicable to Solar Power Plants / Projects

Notification No. 54/2022-Customs
Dated 19 October 2022

Solar power plants and solar power projects have been excluded from the Project Import scheme with effect from 20 October 2022, vide Project Imports (Amendment) Regulations, 2022. Accordingly, the concessional customs duty benefit is no longer available to developers of solar power plants and projects.

Introduction of Customs Broker Licensing Management System (CBLMS) at Mumbai Customs Zone

Public Notice No. 35/2022-23
Dated 1 October 2022 –
Pr. Commissioner of Customs (General), Mumbai Zone-I

CBLMS has been launched in Mumbai Customs Zone, aiming to minimize the physical interface between Customs Brokers and the Department, bring uniformity in procedures, process applications on time and bring accountability. Accordingly, the Customs Brokers are required to register their profiles and submit their data on the CBLMS portal.

Paperless Customs compliance for exports

Excerpts from Taxscan.in

The CBIC Chairman, Shri. Vivek Johri has hinted at the development of a new system where web-based registration of export goods would be allowed to facilitate the integration of Customs systems with other regulatory agencies. According to the Chairman, the system for outbound shipments would be consistent with the current clearing procedure for imports and will enable quicker approvals for consignments.

Alerts

Key Highlights of GST Notification and Clarification Circulars in October 2022

3 November 2022
https://bit.ly/3WPjZmA

Manner of payment of pre-deposit for cases pertaining to Central Excise and Service Tax

1 November 2022
https://bit.ly/3tgX9H4

Supreme Court favors Revenue for deductibility of delayed contribution to Provident Fund

18 October 2022
https://bit.ly/3DWlw1P

Tax Talk

Global Developments

Direct Tax

The Organisation for Economic Co-operation and Development (OECD) invites public input on the Progress Report on the Administration and Tax Certainty Aspects of Amount A of Pillar One

Excerpts from OECD.org, 6 October 2022

The Progress Report on the Administration and Tax Certainty Aspects of Amount A of Pillar One (*également disponible en français*) is a consultation document released by the OECD Secretariat to obtain further input from stakeholders on the administration and tax certainty aspects of Amount A. The comments provided will assist members of the Inclusive Framework in completing the work on these components.

Comments are sought with respect to the processes and rules contained in this document. Where relevant, the input should refer to the relevant section of the rules. While comments are invited on any aspect of the rules and procedures, input will be most helpful where it explains the additional guidance that would be needed to improve the application of the rules and procedures, as well as input on whether anything is missing or incomplete.

Interested parties are invited to send their comments on this discussion draft no later than 11 November 2022. The instructions for submitting comments can be found in the consultation document.

Mexican Senate approves BEPS MLI Bulgaria Deposits Ratification Instrument for BEPS MLI

Excerpts from OECD.org, 17 October 2022

On 12 October 2022, the Mexican Senate approved the ratification of the Multilateral Convention to Implement Tax Treaty Related Measures to prevent Base Erosion and Profit Shifting (BEPS) Multilateral Convention(MLI). After the internal ratification process is completed, Mexico must deposit its ratification instrument to bring the MLI into force for its covered agreements (tax treaties).

The MLI will generally enter into force for a particular covered agreement on the first day of the month following a three-month period after both parties to the covered agreement have deposited their ratification instrument. Once in force, the provisions of the MLI will generally apply for a covered agreement from 1 January of the year following its entry into force in respect of withholding taxes and for all other taxes with respect to taxable periods beginning on or after the expiration of a six-month period following the date of entry into force.

Transfer Pricing

Court of Justice of the European Union : Penalties for failure to comply with the obligation to keep or provide transfer pricing documentation compatible with EU law[3]

On 13 October 2022, the Court of Justice of the European Union (CJEU) issued a judgment in case C-431/21 concerning sanctions for incompliance with transfer pricing documentation requirements. Under German law, there is a rebuttable presumption that if a taxpayer fails to keep and submit the appropriate transfer pricing documentation, its German taxable income is higher than the one declared. In these cases, tax authorities are required to estimate the additional income based on certain price bands and could choose to select the upper value of the range and impose additional penalties computed as a percentage (5 % to 10 %) of the additional income estimated, plus late payment penalties (if the case). The referring Court asked the CJEU to rule on whether these rules are compliant with the freedom of establishment and the freedom to provide services established by the Treaty on the Functioning of the European Union.

Key aspects of the CJEU's observations:

- The obligation to provide tax documentation applies only to cross-border transactions between related parties, whereby one entity has a definite influence on the other. Hence, the measures under dispute need to be assessed in light of the freedom of establishment.
- The documentation requirements were not precluded by EU law, as taxpayers must document cross-border transactions with related parties to enable the Member States to monitor whether the transactions were performed at market value.
- Imposing penalties may be considered necessary in order to ensure compliance with national rules, provided that such penalties are proportionate to the gravity of the infringement that it is designed to penalize. Furthermore, the Court confirmed that imposing a penalty computed as a percentage of the adjustment of taxable income is suitable for establishing a correlation between the fine and the gravity of the taxpayer's actions. In the Court's view, the 10% ceiling ensures that the penalty is not excessive.

Israel: Introduction of Transfer Pricing Rules and Documentation Requirements[4]

Israel publishes new TP regulations following the adoption of BEPS Action 13 principles in domestic legislation.

The Israeli Official Gazette published the Income Tax Regulations 2022, amending the Income Tax Ordinance, which was adopted on 30 June 2022 for the introduction of the three-tiered transfer pricing documentation requirements of BEPS Action 13. The amendments to the Regulations include the following:

- TP documentation requirements are in line with the OECD Local file guidelines.
- A Master File requirement is required for members of MNE groups with turnover exceeding ILS 150 million.
- The ultimate parent entities of MNE groups meeting a consolidated revenue threshold of ILS 3.4 billion are required to submit a CbC report within 12 months following the end of the reporting fiscal year.
- The time limit to submit TP documentation (Local File) and Master File is reduced from 60 days to 30 days following a request by the tax authority.
- Enhanced disclosure requirements are introduced as part of the annual tax return.
- The amendments to the Regulations apply from the tax year 2022, although companies may also submit a Country by Country Report (CbCR) for the 2021 tax year, which is due by 31 March 2023.

3. https://bit.ly/3TuP8sx
4. https://bit.ly/3fXFNvF

Indirect Tax

Spain to implement mandatory e-invoicing

Excerpts from various sources

Spain has approved a legislation mandating the use of electronic invoices in business dealings between corporations and independent contractors. The law aims to promote digitalization and prevent late payments in business transactions to support business growth in Spain.

Bulgaria mulls VAT relief on bad debts

Excerpts from vatcalc.com

The Finance Ministry of Bulgaria has initiated a public consultation on bad debt reliefs, which will allow the taxpayers to offset the VAT on the original invoice against output VAT in the return of the period in cases where the customer does not settle their debt.

Amendments to the Oman VAT Executive Regulations

Excerpts from timesofoman.com

The Omani Tax Authority has gazetted amendments to the VAT Executive Regulations. The changes *inter alia* relate to the following:

- The place of supply of wireless telecommunication services.
- Financial services exemption to any taxpayer providing relevant supplies, and not just to banks and insurers.
- Time limit for issuing VAT invoices - 15 days from making the taxable/ assumed supply or receiving the consideration, in whole or in part, before the date of supply.
- Hike in fine for not issuing a valid VAT invoice from OMR 500 to OMR 5000.

UK revokes tax-free shopping for international tourists

Excerpts from euronews.com

British Prime Minister Mr. Rishi Sunak has confirmed the abolishment of VAT-free shopping benefit to international tourists/visitors. Scrapping this scheme will save the UK approximately GBP 2 billion (EUR 2.3 billion) a year.

Quotes and Coverage

Merger of anti profiteering body with CCI faces hurdles

28 October 2022
Sanjay Chhabria
LiveMint
http://bit.ly/3NORVMf

Govt grants 1-day extension to file GST returns due to technical glitch in portal

21 October 2022
Saket Patawari
Hindustan Times
http://bit.ly/3fUpPT1

Awaiting action delay in GST Council meeting may hit reforms

18 October 2022
Saket Patawari
Hindu Business Line
http://bit.ly/3Thrsb3

Compliance Calendar

Direct Tax
Indirect Tax
Transfer Pricing

7 November 2022

- Due date for deposit of tax deducted/collected for the month of October 2022.
- Due date for filing of return of income for the assessment year 2022-23 if the assessee (not having any international or specified domestic transaction) is (a) corporate-assessee or (b) non-corporate assessee (whose books of account are required to be audited) or (c)partner of a firm whose accounts are required to be audited or the spouse of such partner if the provisions of Section 5A applies.
  The due date for furnishing of return of income for Assessment Year 2022-23 has been extended from 31 October 2022 to 7 November 2022 vide Circular no. 20/2022, dated 26 October 2022.

15 November 2022

- Due date for issue of TDS Certificate for tax deducted under Section 194-IA, 194-IB,194-M and 194S in the month of September 2022.
  Note: Applicable in case of a specified person as mentioned under Section 194S.
- Quarterly TDS certificate (in respect of tax deducted for payments other than salary) for the quarter ending 30 September 2022.
- Due date for furnishing Form 24G by an office of the government where TDS/TCS for the month of October 2022 has been paid without producing a challan.
- 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 the month of October 2022.

10 November 2022

- GSTR-7 for the month of October 2022 to be filed by taxpayer liable for TDS.
- GSTR-8 for the month of October 2022 to be filed by taxpayer liable for TCS.

11 November 2022

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

13 November 2022

- GSTR-6 for the month of October 2022 to be filed by Input Service Distributor (ISD).
- Uploading B2B invoices using Invoice Furnishing Facility under QRMP scheme for the month of October 2022 by taxpayers with aggregate turnover of up to INR 50 million.

20 November 2022

- GSTR-5 for the month of October 2022 to be filed by Non-Resident Foreign Taxpayer.
- GSTR-5A for the month of October 2022 to be filed by Non-Resident service provider of Online Database Access and Retrieval (OIDAR) services.
- GSTR-3B for the month of October 2022 to be filed by all registered taxpayers not under QRMP scheme.

25 November 2022

Payment of tax through GST PMT-06 by taxpayers under QRMP scheme for the month of October 2022.

30 November 2022

Last date for:

- Claiming ITC pertaining to FY 2021-22.
- Issuing credit notes for invoices pertaining to FY 2021-22.
- Amending the details of outward supplies furnished during FY 2021-22.
- Amending GSTR-8 filed by E-Commerce Operators.

30 November 2022

Filing of Master File in Form No. 3CEAA for AY 22-23 – for applicable constituent entities in India

Compliance Calendar

30 November 2022

- Due date for furnishing of challan-cum-statement in respect of tax deducted under Section 194-IA, 194-IB,194-M in the month of October 2022.
- Return of income for the assessment year 2022-23 in the case of an assessee if he/it is required to submit a report under Section 92E pertaining to an international or specified domestic transaction(s).
- Report in Form No. 3CEAA by a constituent entity of an international group for the accounting year 2021-22.
- Statement of income distribution by Venture Capital Company or venture capital fund in respect of income distributed during previous Year 2021-22 (Form No. 64).
- Statement to be furnished in Form No. 64D by Alternative Investment Fund (AIF) to Principal CIT or CIT in respect of income distributed (during the previous year 2021-22) to units holders.
- Due date to exercise the option of safe harbour rules for an international transaction by furnishing Form 3CEFA.
- Due date to exercise the option of safe harbour rules for a specified domestic transaction by furnishing Form 3CEFB.
- Due date for filing of statement of income distributed by business trust to unit holders during the financial year 2021-22. This statement is required to be filed electronically to Principal CIT or CIT in form No. 64A.
- Application in Form 9A for exercising the option available under Explanation to Section 11(1) to apply income of the previous year in the next year or in the future (if the assessee is required to submit a return of income on 30 November 2022).
- Statement in Form no. 10 to be furnished to accumulate income for future application under Section 10(21) or Section 11(1) (if the assessee is required to submit a return of income on 30 November 2022).
- Submit a copy of the audit of accounts to the Secretary, Department of Scientific and Industrial Research, in case the company is eligible for weighted deduction under Section 35(2AB) [if a company has any international/specified domestic transaction].
- Statement by scientific research association, university, college or other association or Indian scientific research company as required by rules 5D, 5E and 5F (if due date of submission of return of income is 30 November 2022).
- Due date for e-filing of report (in Form No. 3CEJ) by an eligible investment fund in respect of arm's length price of the remuneration paid to the fund manager. (if the assessee is required to submit a return of income on 30 November 2022).
- Due date for furnishing of challan-cum-statement in respect of tax deducted under Section 194S in the month of October 2022.
  Note: Applicable in case of specified person as mentioned under Section 194S.
- Quarterly statement of TDS deposited for the quarter ending September 2022.
  The due date for furnishing of TDS statement for the quarter ending September 2022 has been extended from 31 October 2022 to 30 November 2022 vide Circular no. 21/2022, dated 27 October 2022.

7 December 2022

Due date for deposit of Tax deducted/collected for the month of November 2022.

10 December 2022

- GSTR-7 for the month of November 2022 to be filed by taxpayer liable for TDS.
- GSTR-8 for the month of November 2022 to be filed by taxpayer liable for 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 ISD.
- Uploading B2B invoices using Invoice Furnishing Facility under QRMP scheme for the month of November 2022 by taxpayers with aggregate turnover of up to INR 50 million.

Easy Remittance Tool

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- **Access to Detailed transaction wise reports**
- **Representation Support**
- **Generation 15CA bulk files & utility to generate Form A2**

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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.

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