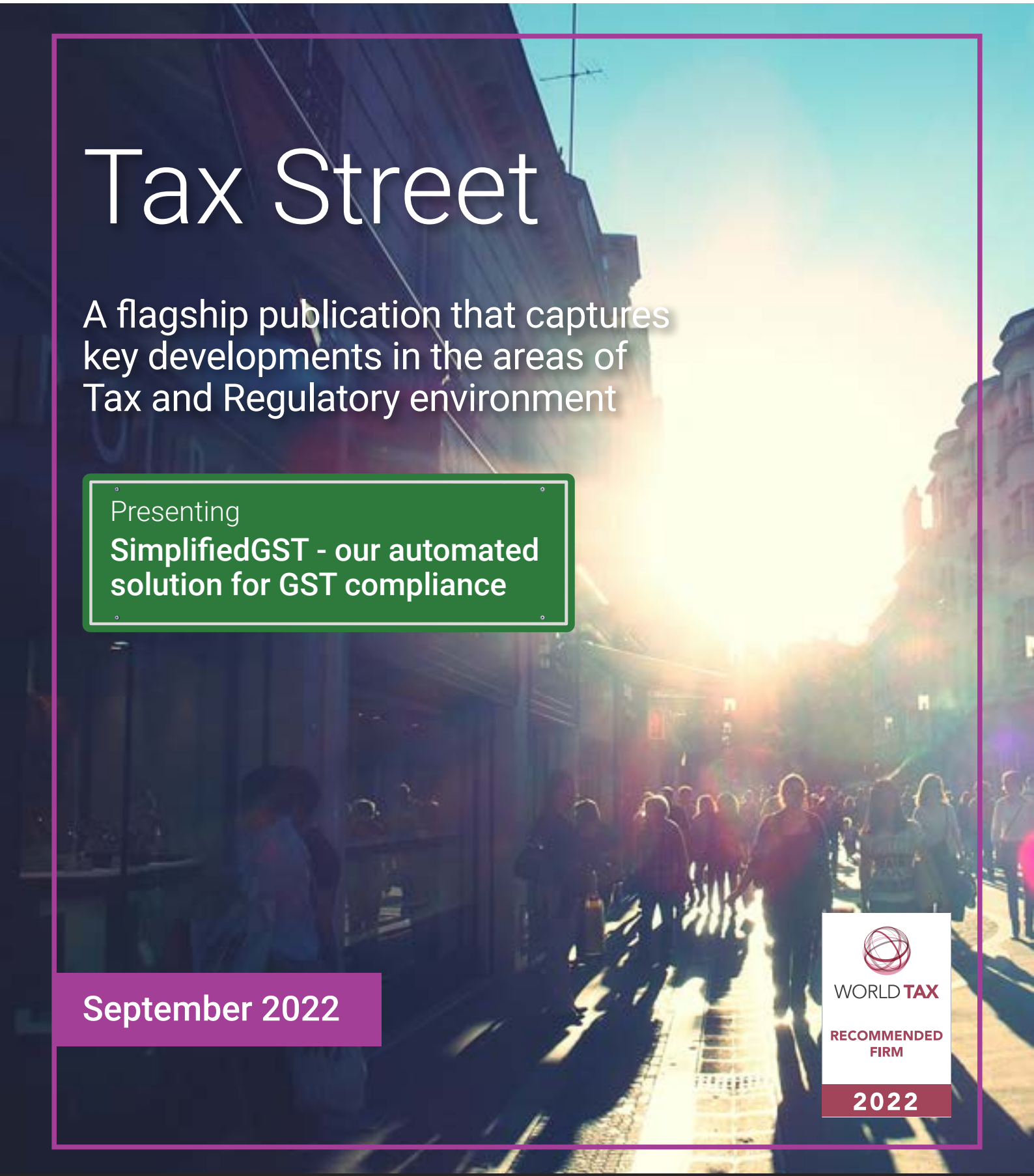
Tax Street

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

Presenting

SimplifiedGST - our automated solution for GST compliance



September 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 September 2022.

- The **'Focus Point'** sheds light on the litigious nature of under the GST law.
- 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

Untangling the realm of GST on Liquidated Damages

The taxability of liquidated damages has been a subject matter of dispute since the erstwhile Indirect Tax regime. While lately, various benches of the Hon'ble Customs Excise and Service Tax Appellate Tribunal (CESTAT) have held that service tax shall not be applicable on liquidated damages, the State Advance Ruling Authorities have ruled otherwise in the GST regime, thereby creating a sense of confusion in the trade and industry.

Hence, to settle the dust, the Central Board of Indirect Taxes and Customs (CBIC) issued Circular No. 178/10/2022-GST dated 3 August 2022, which appears to be in line with the CESTAT rulings. The Circular discusses the intent of the law behind the entry in Schedule II - "agreeing to the obligation to refrain from an act or to tolerate an act or a situation, or to do an act" and provides guidelines for determining the taxability of contractual payments or penalties or recoveries on account of unforeseen events.

A few scenarios highlighted in the Circular are compiled below:

Sr. No.	Nature of Transaction	Probable GST impact as per the Circular	Rationale as per the Circular
1	Liquidated damages for breach of contract/delayed or deficiency in performance/ damage to property	Not Taxable	Non-performance of a contract is not the essence of the contract. The rationale emphasized for determining the taxability is that these amounts are recovered for not tolerating the breach.
2	Cheque Dishonour Charges		
3	Unauthorized use of tradename, copyright	Not Taxable Exception: If payment constitutes consideration for an independent contract of doing an act, tolerating an act or refraining from doing an act, it would be treated as 'taxable supply'	Damages are mere a flow of money from the party who causes a breach to the party who suffers loss or damage due to such breach. Party making the payment does not get anything in return for such forfeiture.
4	Forfeiture of Earnest Money Deposit by the seller in breach of 'agreement to sell' an immovable property by the buyer		
5	Forfeiture of Earnest Money Deposit by Government if successful bidder fails to act after winning the bid		

Sr. No.	Nature of Transaction	Probable GST impact as per the Circular	Rationale as per the Circular
6	Compensation for cancellation of coal blocks pursuant to the Supreme Court's order	Not Taxable	There is no underlying supply, allottees had to accept the cancellation rather than opting for it.
7	Penalty imposed for violation of law	Not Taxable	Levy is a violation of law and not for tolerating the violation itself, accordingly not a 'supply.'
8	Penalty imposed by mining department for mining excess minerals		
9	Compensation/forfeiture of salary for breach of bond by an employee	Not Taxable	The employee does not get anything in return from the employer against such recovery made from him. Note: The same analogy may be applied to notice pay recovery.
10	Compensation by the National Highways Authority of India (NHAI) to toll plaza for not collecting toll charges during a specific period		Receipt of consideration from NHAI as against the users of toll road does not change the nature of service provided by toll plaza, which is of 'access to toll road/ bridge', which is an exempt service.
11	Penalty for delayed payment	Taxable To be assessed as the principal supply; If the principal supply is exempt, such payments will also be exempt	Such charges constitute a consideration for acceptance of the 'act' of the buyer. The facility of allowing cancellation of the intended supply is naturally bundled with the principal supply.
12	Ticket cancellation charges/ forfeiture of full/partial amount for no-show, cancellation charge by hotels, entertainment event, etc.		
13	Forfeiture of security deposit for cancellation of tour		
14	Early termination of loan agreement/lease agreement/ pre-payment of loan		
15	Late payment charges for electricity/telecom/water/etc. bills		The facility of late payment is naturally bundled with the principal supply.
16	Fixed capacity charges for power		The fixed capacity and variable charge are for the principal supply. The fixed charge cannot be said to be collected for tolerating non-consumption of minimum contracted quantity.

It may be pertinent to note that while the Circular has discussed various examples of such payments, the tax position on either of the transactions has not been concluded. In fact, in Para 12, CBIC has advised field formations *"that while the taxability in each case shall depend on facts of that case, the above guidelines may be followed in determining whether tax on an activity or transaction needs to be aid treating the same as service by way of agreeing to the obligation to refrain from an act or to tolerate an act or a situation, or to do an act."*

Given the above, it would be expedient to understand the key principles emerging from the Circular to attract the levy of GST, which are as follows:

- A necessary and sufficient nexus between the supply (i.e., agreement to do or to abstain from doing something) and the consideration;
- An express or implied agreement - oral or written, to do or abstain from doing something against payment of consideration;
- A person (the first party) can be said to be making a supply by way of refraining from doing something or tolerating some act or situation to another person (the second party) if the first person was under an obligation to do so and then performed accordingly;
- Consideration must flow in return from the party to contract/ agreement (the second party) to the primary party for such (a) refraining or (b) tolerating or (c) doing;
- "Consideration" cannot be considered de hors (i.e., outside the scope) an agreement/ contract between two persons wherein one person does something for another and that other pays the first in return;
- The contractual arrangement must be an independent arrangement in its own right - either through an independent, stand-alone contract or may form part of another contract;
- Mere flow of money from one party to another cannot be treated as consideration for a taxable supply.

Although the clarification could serve as a guidance in determining the taxability and resolving disputes vis-à-vis contractual payments/ liquidated damages, litigation exposure cannot be ruled out basis deliberation and interpretation!

Webinars and Events

Event

11 October 2022

One Day Tax Colloquium

Organizer - Achromic Point

Maulik Doshi and Saket Patawari

16 September 2022

Bengaluru - GST & Customs

Organizer - Achromic Point

Sanjay Chhabria

14 September 2022

Tax Leaders India Summit 2022

Organizer - Inventicon

Maulik Doshi and Saket Patawari

Webinar

12 September 2022

Development of Enterprise and Service Hubs (DESH) Bill

Organizer - Achromic Point

Sanjay Chhabria

From the Judiciary

Direct Tax

Whether ancillary services linked to equipment-purchase qualify as 'Fees for Included Services'?

Electronics Corporation of India Ltd Vs ACIT
ITA No.228/HYD/2017

Facts

The taxpayer is a Central public sector undertaking company engaged in manufacturing and selling electronic goods and components. During the year under consideration, the taxpayer paid a sum of INR 23.1 million to BAE systems, an entity incorporated in the USA, towards site testing charges. The taxpayer adopted a view that the equipment's installation, testing and supply are integral parts of a single purchase order and the sum paid for supplementary and subsidiary services cannot be considered as "Fees for Included Services". In view of above the taxpayer did not withhold any taxes on the above payments for site testing.

The Assessing Officer (AO) opined that the site testing charges paid by the taxpayer should be considered as Fees for Technical Services (FTS) as separate invoices were raised by the USA entity for the completion of the site acceptance. Thus the AO held that the above charges shall be liable for withholding of taxes.

This was upheld by the first Appellate Authority. Aggrieved by the order, the taxpayer filed an appeal before the Hyderabad Tribunal.

Held

On perusal of the sales invoice, the Tribunal stated that the main focus of the agreement is only on the purchase and installation of the radar system and the fees paid for completing the site acceptance test and finalizing the on-site training in India are essentially ancillary and subsidiary services. The Tribunal noted that the USA entity's incidental services mentioned in a sales invoice cannot be independently or solely offered to the taxpayer since the equipment must first be purchased and installed. Furthermore, Article 12(5) (a) of the India-USA Double Taxation Avoidance Agreement (DTAA) excludes the services which are ancillary and subsidiary and are inextricable and essentially linked to the sale of property from the purview of 'Fees for Included Services.' Accordingly, the Tribunal held that services inextricably linked with the purchase of equipment and forming an integral part of the said supplies would not be amenable to tax under India-USA DTAA.

Our Comments

The Hyderabad Tribunal held that where services are delivered in conjunction with the acquisition of equipment, there is no obligation to withhold tax as India-USA DTAA provides a specific exclusion for the same.

Whether payment made for clinical trial and testing services would qualify as Royalty or FTS?

M/s. Cadila Healthcare Ltd.Vs ACIT
ITA Nos. 711 & 1140/AHD/2019

Facts

The taxpayer is a global pharmaceutical company based out of India. During the year under consideration, the taxpayer made several payments to several non-residents in USA and Canada for Clinical trials. The taxpayer adopted a view that such income is non-taxable business income under the India-USA and India-Canada DTAA in the absence of its Permanent Establishment (PE) in India.

The AO concluded that payments made by the taxpayer to USA and Canada entities should be considered as FTS/ Royalty and hence taxpayer was liable for withholding tax on the said amount.

On appeal by taxpayer, the Commissioner of Income-tax(Appeals) CIT(A) held that taxpayer was not liable to deduct tax at source on the payments made as it did not qualify as FTS/Royalty. Aggrieved by the order, the revenue has raised the aforesaid grounds before the Ahmedabad Tribunal.

Held

After considering the data on record, the Tribunal stated that for those payments to fall under fees for technical services as per respective DTAA, the service providers should have made the technical knowledge, experience, skill, know-how, etc., available to the taxpayer. The Tribunal specified that clinical trials only provided final results to their taxpayer by using highly sophisticated bio-analytical procedures. However, the service provider did not provide any access whatsoever to the taxpayer to such know-how for conducting trials. Hence the make available condition of the respective DTAA are not satisfied. Furthermore, Tribunal also held that by nature, such payments cannot fall within the ambit of Royalty.

Thus the Tribunal stated that these payments constitute business income and in the absence of the Indian vendor's PE, these payments are not chargeable to tax in India.

Our Comments

The Ahmedabad Tribunal has re-established the principle that "make available test" is a pre-requisite for qualification of a transaction to be FTS where the definition of FTS is restrictive.

Indirect Tax

Whether GST is liable on renting of residential dwelling in terms of Notification No. 4/2022-Central Tax (Rate) dated 13 July 2022, where such a dwelling is rented on a personal capacity and not in the course or furtherance of business?

Seema Gupta vs. Union of India & Ors. 2022 (9) TMI 1387 – Delhi High Court

Note

By virtue of Notification No. 4/2022-Central Tax (Rate), the exemption granted for residential accommodation is no longer available to tenants who are registered under GST.

Facts

- Writ petition was filed before the Delhi HC by a proprietor of a proprietorship firm, challenging clause (A)(b) of Notification No. 4/2022-Central Tax (Rate) as being ultra vires Article 14 of the Constitution and also beyond the powers conferred under the GST law.
- According to the petitioner, denial of exemption solely on the basis that the tenant is registered under GST is not based on any intelligible differentia and the said differentia has no rational relation to the object sought to be achieved.
- The Department filed a counter-affidavit before the Court, wherein it was averred inter alia that *"…where the residential dwelling is rented by a person who is the proprietor of a proprietorship firm in his personal capacity for use as his own residential dwelling, and such renting is not on account of its business, i.e., not accounted for in the firms account but is on a personal account, the exemption shall continue to be available to him… The same would be the position in case of partnership firms or other forms of businesses."*
- In the supplementary affidavit, the Department also stated that a proposal to amend the impugned Notification to bring in greater clarity regarding the taxability of registered persons is being examined to be placed before the GST Council, as the same does not specify that GST would be charged only where the registered person has rented (taken on rent) residential dwelling in the course or furtherance of business.

Ruling

- The Court accepted the clarification from the Department that renting of residential dwelling in a personal capacity and not for use in the course or furtherance of business and such renting being on his/her own account and not that of proprietorship firm shall be exempt from GST, and held all the Respondents bound by the same.
- Accordingly, the Court disposed of the writ petition along with the application with no further orders.

Our Comments

The ruling attains significance in light of the ambiguity surrounding the taxability of renting of residential dwellings on a reverse charge basis in the hands of registered persons.

While the Department sought to clarify the issue through a series of tweets, a Circular or a clarificatory amendment to Notification No. 12/2017-Central Tax (Rate) r/w Notification No. 13/2017-Central Tax (Rate) in line with the clarification accorded to the High Court should settle the dust and plug any potential litigation on this issue.

Whether the appellant-assessee is entitled to make the pre-deposit of duty, payable as per the requirement of Section 35F of the Central Excise Act, by debiting the Electronic Cash Ledger and Electronic Credit Ledger under the GST regime?

Johnson Matthey Chemical India Pvt. Ltd. vs Asst. Commissioner CGST and Central Excise, Kanpur
TS-387-CESTAT-2022-EXC

Note

Recently, the Bombay HC in the case of **Oasis Realty vs. Union of India & Ors. [TS-493-HC(BOM)-2022-GST]** observed that subsequent to Orissa HC order in Jyoti Construction, the CBIC Circular dated 6 July 2022 has clarified that any amount towards output tax payable, as a consequence of any proceeding instituted under the provisions of GST laws, can be paid by utilization of the amount available in the Electronic Credit Ledger. Accordingly, HC interpreted the provisions of Section 49 of the MGST Act r/w Section 107(6) of the MGST Act and held that a party could pay 10% of the disputed tax either using the amount available in the Electronic Cash Ledger or in Electronic Credit Ledger.

Facts

- The Commissioner (Appeals) had not accepted the mandatory pre-deposit of 7.5% under Section 35F of the Central Excise Act by way of reversal of CGST credit in GSTR-3B, and had accordingly rejected the appeal.
- Hence, the assessee-appellant approached the CESTAT. However, the Registry of the Tribunal also pointed out the defect vis-à-vis pre-deposit of 10%, given that the additional amount of 2.5% was deposited vide DRC-03 challan.
- As per the assessee-appellant, such a mode of pre-deposit was permissible in view of the Circular No. 15/CESTAT/General/2013-14 dated 28 August 2014 issued by the Tribunal, decisions of Tribunal and Courts and looking to the fact that credit balance under old regime had been subsumed in the new credit under the GST regime. Reliance was placed on the decision of the Tribunal in Dell International Services India Pvt. Ltd. vs. Commissioner of Central Tax [2019-TIOL-286-CESTAT-BANG] and it was claimed that the Tribunal Registry had accepted a similar deposit by Cargill Business Service India Pvt. Ltd.
- On the other hand, the Department argued that Section 41 of the CGST Act does not permit such payment, as was held by Orissa HC in Jyoti Construction vs. Deputy Commissioner of CT & GST [2021 (10) TMI 254 – Orrisa High Court] and that the said decision needs to be followed over the decision of Tribunal as per judicial discipline.
- According to the Department, Section 174(2)(f) of CGST Act envisages the continuation of proceedings of past cases of erstwhile repealed Central Excise Act as if such Act had not been repealed; hence, pre-deposit should be made under Section 35F and not under CGST Act.

Ruling

- In Dell International Services India Pvt. Ltd, the Tribunal accepted the appellant's contention as the Department did not dispute that mandatory pre-deposit can be made through the CGST credit. However, the same was an interim consent order, as pointed out by the Department in the instant case.
- Moreover, the judgment of Orissa HC in Jyoti Construction considered the provisions of Section 41 and held that CGST Act has no provision for the utilization of credit other than for payment of self-assessed output tax.
- The decision of HC is binding on the Tribunal and the assesse-appellant did not produce any judgment of any other HC which supports its contention.
- In view of the above, Tribunal held that the mandatory pre-deposit under Section 35F cannot be made by way of debit in the Electronic Credit Ledger maintained under the CGST Act and to that extent, granted four weeks time to cure the defect.

Our Comments

The mode of pre-deposit in appeals relating to the erstwhile Central Excise/ Service Tax regime has become a subject matter of dispute between the taxpayers and the Department. A clarification or procedural guidelines from the CBIC to this extent is the need of the hour.

Transfer Pricing

Whether premium on redemption of preference shares can be treated as deemed dividends?

M/s. Information Technology Park Ltd
TS-563-ITAT-2022(BANG)-TP

Facts

In 2003, the taxpayer issued 0.5% redeemable non-cumulative preference shares to its Associated Enterprise (AE) at face value of INR 100 per share. In AY 2009-10 and AY 2010-11, the taxpayer redeemed the preference shares at a premium based on the valuation done by the expert valuer by adopting the Net Asset Value (NAV) method.

TPO's Contentions

Under the NAV method, the Transfer Pricing Officer (TPO) reworked the redemption value based on the book value of assets instead of the fair value (guidance value) of assets, viz., land and building adopted by the taxpayer. Thus, the AO made an addition of INR 370 million under Section 93[1] of the Income-tax Act, arising out of the difference between the redemption value adopted by the taxpayer (INR 900) and the TPO (INR 270).

CIT(A)'s Contentions

Rejecting the applicability of Section 93, CIT(A) retained the addition by stating that excess premium paid by the taxpayer on redemption of preference shares would constitute deemed dividend u/s 2(22). Furthermore, the consideration paid by the taxpayer on redemption of preference shares is artificially inflated and is a colorable device for transferring funds to the AE by avoiding payment of Dividend Distribution Tax (DDT).

Held by the ITAT

Whether valuation of preference shares should be based on the book value of fair value of assets?

On reading of Rule 11UA of Income Tax Rules, the Income Tax Appellate Tribunal (ITAT) opined that **while calculating the valuation of preference shares, the immovable properties are to be considered at guideline value[2] and not book value.** Thus, the TPO's approach of computing the differential premium basis the book value of assets is not sustainable.

Can the premium on redemption of preference shares be treated as deemed dividends?

Under the Companies Act, payment of premium on redemption of shares is allowed while payment of the dividend is prohibited from "securities premium" being a specific (and not free) reserve. Furthermore, a preference shareholder is entitled to a fixed rate of dividend and cannot participate in the surplus assets on liquidation. The payment made by the taxpayer towards the premium of redemption of preference shares is neither towards reduction of share capital nor towards advance or loan. Thus, **the excess premium** (if any) paid to the AE by the taxpayer **on redemption of preference shares cannot be taxed u/s 2(22) (d) or 2(22) (e)** of the Act.

Our Comments

Companies often issue quasi-equity instruments carrying a nominal interest or dividend as an alternative funding option. The valuation of such instruments, especially where they are unlisted (as prescribed under Rule 11UA), is based on the litigious "open market value." The above ruling clarified the use of guideline value for an immovable property while computing the open market value of such instruments. Furthermore, it has also upheld that the premium on redemption of preference shares **cannot** be treated as deemed dividends.

Whether equating compulsorily convertible debentures (CCDs) issued with equity - a valid ground for denying deduction of interest payment?

Please read in detail here
https://bit.ly/3Vbc8Po

1. This addition was made under section 93, an anti-abuse provision that applies, inter alia, when income becomes payable to a non-resident in consequence of the transfer of assets to such a non-resident. If a resident acquires rights which enable him to enjoy such income, the law provides that such income can be taxed in his hands.
2. Press release dated 5.5.2017 issued by CBDT clarifies that immovable property (including land) should be valued at stamp duty value or guidance value while computing the value of shares.

M&A Tax Update

Rejecting re-characterization of preference shares as debt Tribunal denies notional taxation of redemption premium before redemption

Enzen Global Solutions Pvt. Ltd
TS-739-ITAT-2022(BANG)

The assessee had invested in preference shares of an investee company at face value. The preference shares were redeemable at the end of 20 years at a premium. While in the original return of income filed, the assessee considered the premium to be taxable as income from other sources and offered a proportionate amount to tax, in the revised filing, the assessee considered it to be a taxable in the year of redemption as capital gains. However, noting that preference share has features of both equity and debt as dividend payments are fixed at the beginning and mercantile basis of accounting, the tax department considered the preference shares to be in the nature of debt and taxed the premium component as income from other sources.

At the appellate level, The Bangalore ITAT bench upheld the submission of the assessee that the payment of redemption premium can be only out of profits of the company or reserves and even if one were to regard the premium as akin to a dividend, the assessee cannot claim dividend as a matter of right and it is for the directors of the company to declare dividend which needs to be approved by the shareholders in an AGM. It held that the preference shares issued to the assessee cannot be considered to be in the nature of equity.

It further explained that inference of accrual of premium akin to the accrual of interest in case of a loan cannot be drawn and the repayment of the face value of the preference shares as well as the premium on redemption is uncertain. Placing reliance on the decisions distinguishing a bond or a debenture from a preference share, it held that the revenue authorities cannot disregard the legal effect of the issue of cumulative preference shares and say that the same is akin to debt.

Our Comments

This decision has duly taken the legal effect and related aspects of the shares into consideration while deciding on the taxation of the redemption premium component.

While this decision deals with the taxability of the premium element, the observations emanating from the decision would also be relevant from the perspective of valuation provisions where ambiguity may arise on categorization to be considered for security, especially the convertible instruments.

Notification of modified return form to be filed by the successor in cases of business reorganization or restructuring and extension for its filing

Section 170A was introduced to the Income-tax Act, 1961 vide Act Finance Act 2022 to enable the entities going through business reorganization to file modified returns for the period between the date of effectivity of the order and the date of issuance of the final order of the Tribunal or Court. The modified return is to be furnished within six months from the end of the month in which the said order has been issued.

In pursuance thereof, Rule 12AD has been inserted to provide for procedural aspects in relation to such filing. Notably, the modified return has to be furnished under a digital signature in Form ITR-A. However, this has reduced the time available for furnishing modified returns for successor companies in cases where the business reorganization order was issued between 1 April 2022 and 30 September 2022.

In order to address this genuine hardship and provide adequate time for furnishing of return under Section 170A of the Act, the timeline shall stand extended to 31 March 2023.

Regulatory Updates

Company Law Regulations

MCA modifies the definition of a “Small Company” under the Companies Act 2013

Please read in detail here
https://bit.ly/3T8I59h

Tax Talk

Indian Developments

Direct Tax

CBDT issues additional guidelines to remove difficulties for the implementation of section 194R of the Income tax act

Circular No.18 of 2022
Dated 13 September 2022

- In continuation with Circular No.12 of 2022, the government has issued further guidelines to remove difficulties in the implementation of Section 194R. The additional guidelines aim to provide clarity on earlier guidelines issued by the Central Board of Direct Taxes (CBDT) vide Circular no. 12 of 2022, dated 16 June 2022, and remove the ambiguities and difficulties faced by the taxpayers on the implementation of the Section. Furthermore, the said Circular also clarifies that the additional guidelines don't impact the taxability of the income in the hands of the recipient of such benefit/perquisite.
- We have highlighted some of the issues clarified as follows:
  - It is clarified that the provision of Section 194R shall not be applicable to one-time loan settlement or waiver of loans granted to borrowers by the specified banking institutions.
  - It is clarified that TDS is not applicable in the case of the issue of bonus shares/right shares by a company in which the public is substantially interested, as defined under Section 2(18) of the Act.
  - It is clarified that where a capital asset (e.g., a car) is gifted and tax has been withheld under Section 194R, the receiver of the gift shall be eligible for depreciation on such capital asset provided he has also included the benefit as income in his return of income.
  - It is again clarified that out-of-pocket expenses incurred by the service provider at the first instance and subsequently reimbursed by the service recipient is a perquisite/ benefit and hence, liable to Tax Deducted at Source (TDS) under Section 194R. It has been explained that in such cases, even the GST input credit is availed of by the service provider and not the service recipient.
  - However, where the service provider qualifies as a 'pure agent' as per the GST valuation Rules 2017, TDS under Section 194R shall not be applicable. In the case of a pure agent, input credit on GST is availed of by the service recipient, and the service provider incurs the expense only on behalf of the service recipient.

Form 52A to be furnished by film producers u/s 285B

Notification G.S.R. 697(e) No. 109/2022/F. No. 370142/ 44/2022-TPL
Dated 14 September 2022

- As per the new rule inserted by CBDT, a person carrying on the production of cinematography film or engaged in other specified activities shall be required to furnish Form No. 52A for each Previous Year (PY).
- It shall be furnished within 60 days from the end of the PY.
- Form 52A shall be furnished electronically under a digital signature or through an electronic verification code.
- "Specified activity" includes event management, documentary production, Television or OTT telecasts, etc.

CBDT issues revised guidelines for compounding of offenses

Press Release
Dated 17 September 2022

- Considering the government's policy of facilitating Ease of Doing Business, CBDT has taken steps and introduced some relaxations and changes in the compounding of offenses.
- Some of the major changes made for the benefit of taxpayers include making offenses punishable u/s 276 as compoundable.
- The scope of eligibility for compounding of cases has also been relaxed. Now, the applicant who has been convicted with imprisonment for less than two years can also apply for compounding.
- The time limit for acceptance of compounding applications has been relaxed from the earlier limit of 24 months to 36 months from the complaint's date of filing.
- Additional compounding charges in nature of penal interest have been reduced to 1% and 2% for three months and beyond, respectively.

Indirect Tax

GST Updates

Guidelines for launching prosecution under GST law

Instruction No. 04/2022-23
Dated 1 September 2022

CBIC's GST-Investigation Wing has issued detailed guidelines for launching criminal prosecution under the GST law, stressing inter alia that the nature of evidence collected during the investigation should be carefully assessed and should be adequate to establish beyond reasonable doubt that the person had mens rea for committing the offense. It has further prescribed that prosecution should not be instituted where the amount of tax evasion is not more than INR 50 million, except in cases of habitual evaders and arrest cases, and in cases of technical nature or where there is a difference of opinion regarding the interpretation of the law. Furthermore, for public limited companies, an investigation should not be launched indiscriminately against all Directors but should be restricted to persons overseeing the company's everyday operations. The Instructions also explain the procedure for sanction of prosecution, a procedure for withdrawal, appeal, compounding of offense, etc.

Guidelines for availing Transitional Credit through TRAN-1 and TRAN-2

Please read in detail here
https://bit.ly/3Eof85a

Foreign Trade Policy (FTP)

Validity of FTP 2015-2020 extended by six months

Ministry of Commerce
Press Release
Dated 26 September 2022

The government has extended the FTP 2015-2020 by another six months, i.e., till March 2023, pursuant to requests from Export Promotion Councils and leading exporters.

This is in view of the prevailing volatile global economic and geopolitical situation and to undertake more consultations before coming out with the new policy.

Customs Updates

Validity of e-Scrips under RoDTEP and RoSCTL schemes extended to two years

Notification No. 79/2022-Customs (N.T) r/w
Dated 14 September 2022
Circular Nos. 21/2022-Customs and 22/2022-Customs both
Dated 26 September 2022

The validity of e-scrips issued under the RoDTEP and RoSCTL schemes has been extended to two years from the date of its creation in the Electronic Duty Credit Ledger. The duty credit in such e-scrips can be used for payment of customs duty on the import of goods in First Schedule to the Customs Tariff Act. It has further been prescribed that the validity of the e-scrip of two years shall not change on account of the transfer of the e-scrip. Accordingly, Regulations 6 and 7 of the Electronic Duty Credit Ledger Regulations, 2021 have been amended to this effect.

Amendments to conditions prescribed under RoSCTL and RoDTEP schemes

Notification Nos. 75/2022-Customs (N.T) and 76/2022-Customs (N.T)
Dated 14 September 2022

The Rebate of State and Central Levies and Taxes (RoSCTL) and Remissions of Duties and Taxes on Exported Products (RoDTEP) schemes provided for recovery of excess duty credit from the exporter and the transferee on account of non-realization of export proceeds or for any other reason. The schemes are now amended to recover such amounts from the exporter only.

Customs (Import of Goods at Concessional Rate of Duty or for Specified End Use) Rules, 2022

Circular No.18 /2022-Customs Dated 10 September 2022 r/w Notification No. 74/2022 - Customs (N.T) Dated 9 September 2022

CBIC has notified the new Import of Goods at Concessional Rate of Duty (IGCR) w.e.f. 10 September 2022, while retaining the basic contours of the earlier IGCR, 2017. The new Rules aim to broaden the scope of coverage of IGCR and ensure that additional data fields are effectively captured. The said Rules are not a departure from the existing procedure and accordingly, all the clarifications provided vide Circular Nos. 48/207, 10/2021, and 4/2022, will continue to be in effect unless specifically modified.

Few changes in the Rules are as follows:

- Expanding the scope to include cases where imported goods are utilized for specified end use which can be other than manufacturing or providing output services.
- Clarifying the time period of utilization to be the time period for compliance and bringing in a provision to extend the said period in certain cases for reasons beyond the importer's control.
- Changes in the Forms to capture the details where the intended purpose is the export of goods using the goods imported.
- Changes in the Forms to better capture the different intended purposes and additional details such as Sl. No. of the Notification etc.

Alerts

Key Highlights of GST Notifications and Clarification Circulars

6 October 2022
https://bit.ly/3Eof85a

CCDs characterized as debt not equity

3 October 2022
https://bit.ly/3Vbc8Po

Major changes under GST Act to be effective from 1 October 2022

1 October 2022
https://bit.ly/3STcWX9

MCA Modifies Definition of Small Companies under Companies (Specification of Definition details) Amendment Rules, 2022

22 September 2022
https://bit.ly/3T8I59h

IBBI amends the voluntary liquidation process regulations

21 September 2022
https://bit.ly/3CmykgZ

Government issues additional guidelines, removing the ambiguity for withholding of tax over benefits and perks provided to business houses

15 September 2022
https://bit.ly/3SODfy9

Supreme Court rules that State Government is a secured creditor under IBC

9 September 2022
https://bit.ly/3SSsquY

Tax Talk

Global Developments

Direct Tax

OECD publishes Tax Morale Report aiming on trust between Tax Administrators and MNEs

Excerpts from OECD.org,
5 September 2022

As the international community prepares to implement a new global minimum tax, the results provide an important snapshot of current levels of trust and transparency—factors that will underpin the success of the new international tax rules.

The survey shows that while Multinational Enterprises (MNEs) are generally seen to demonstrate a formal commitment to cooperation with tax administrations, notably through on-time payment, perceptions of MNE transparency and trust in their information are less positive. There are strong regional differences, with tax administrations' perceptions of MNE behavior generally poorer in Latin America, the Caribbean, and Africa to a lesser extent, compared with Asia and OECD countries.

The survey also reflects tax administrations' perceptions of the behavior of the Big Four professional services networks (Deloitte, EY, KPMG, PricewaterhouseCoopers) on tax matters.

It shows similar patterns of positive perceptions of their willingness to follow the letter of the law and formal compliance but less positive perceptions of following the spirit of tax laws.

5 EU nations to jointly commit to Global Minimum Tax if no EU deal

Excerpts from Economic times,
10 September 2022

A group of European Union countries is considering new ways of implementing a global deal for a 15% minimum tax on large multinationals in 2023 as Hungary continues to veto a joint solution for the bloc.

Finance ministers from five of the largest EU economies said at a meeting in Prague on Friday they will strengthen their commitment to the plan by working on alternatives that would exclude Budapest.

"Should unanimity not be reached in the next weeks, our governments are fully determined to follow through on our commitment," Germany, France, Italy, Spain and the Netherlands said in a statement. We stand ready to implement the global minimum effective taxation in 2023 and by any possible legal means."

Bulgaria Deposits Ratification Instrument for BEPS MLI

Excerpts from oecd.org,
16 September 2022

Bulgaria has deposited its instrument of ratification for the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (BEPS Convention), which now covers over 1820 bilateral tax treaties, thus underlining its strong commitment to preventing the abuse of tax treaties and base erosion and profit shifting (BEPS) by multinational enterprises. The BEPS Convention will enter into force on 1 January 2023 for Bulgaria.

On 1 October 2022, 910 treaties concluded among the 78 jurisdictions which have ratified, accepted or approved the BEPS Convention will have already been modified by the BEPS Convention. Around 910 additional treaties will be modified once all Signatories will have ratified the BEPS Convention.

Transfer Pricing

Middle East: Saudi Arabia's Zakat, Tax and Customs Authority (ZATCA) modifies Transfer Pricing Bylaws following comments received on public consultation and The National Bureau for Revenue in Bahrain confirms the deadline for filing of Country by Country report for the financial year ended 31 December 2021

Saudi Arabia

Saudi Arabia's ZATCA invited public inputs on the amendments proposed to the Transfer Pricing (TP) Bylaws which were initially introduced on 15 February 2019.

The proposed amendment broadens the applicability of TP Bylaws to cover the zakat[3] payers under the ambit of annual TP compliance and documentation requirements, including Country-by-Country Reporting (CbCR) by substituting the word 'taxpayers' with 'zakat payers and taxpayers.' Initially, only income tax-paying entities and mixed entities (paying both zakat and income tax) were covered under the provisions of TP Bylaws.

ZATCA has agreed to some of the issues outlined in the public comments, which would take into consideration the following:

- Clarification of applicability of TP Bylaws to transactions between resident-related parties (100% Saudi-owned entities).
- Guidance on the applicability of TP reporting requirements on consolidated zakat returns.
- Guidance on reporting of balance sheet items in the TP Disclosure Form.
- Applicability of TP Affidavit and TP Disclosure Form for zakat payers.
- Clarification on corresponding adjustments on related party transactions undertaken within Saudi Arabia.
- Clarification on advance pricing agreements, applicability date for compliance for zakat payers and guidance on how potential TP adjustments could be computed for zakat payers.

In view of the above developments, it would be imperative for the zakat payers to ensure they undertake timely TP compliance for their related party transactions.

Also, it is worthwhile to note that ZATCA did not agree to some of the issues in the public comments for the clarifications relating to the following matters:

- Mechanism for application of TP Bylaws on zakat payers whose zakat is calculated on deemed profit basis.
- Use of internal comparables for comparability analysis.

Bahrain

The National Bureau for Revenue confirmed that the deadline for preparing and filing CbCR for the ultimate parent company of a MNE resident in Bahrain would be 31 December 2022 for the financial year ending 31 December 2021.

Poland: Announcement of draft legislation for the changes to the Polish Corporate Income Tax (CIT) Law

Poland

Poland issues updated Polish CIT Law which is expected to be applied retrospectively for financial years commencing on 1 January 2021.

It has brought amendments in regulations regarding TP documentation for transactions with tax havens, including an increase of minimum thresholds triggering certain documentation obligations. Certain transactions with non-residents, which were subject to TP reporting, were exempted from some reporting obligations.

3. Zakat is a religious wealth tax paid by citizens of Gulf Cooperation Council (GCC) countries.

Indirect Tax

Colorado now accepts cryptocurrency to pay taxes

Excerpts from fltimes.com

Beginning 1 September 2022, the State of Colorado is officially accepting cryptocurrency as a payment option for all State tax payments. Governor Jared Polis had previously announced the possibility of such plans, which now has been actualized to set an example for Colorado being 'Tech-forward'.

E-commerce comes under the ambit of VAT in Oman

Excerpts from various sources

New guidelines issued by the Oman Tax Authority confirm the inclusion of the e-commerce sector within the purview of the country's VAT regulations, which are currently expanding at an exponential rate.

Implementation of mandatory electronic invoicing

Excerpts from various sources

Governments worldwide, especially in Latin American nations, are enacting new rules to mandate e-invoicing to close the tax gap and reduce costs. The new rules are being implemented to the public as well as private sectors. Two of the following countries are considering these changes:

- The French Parliament is advancing its new electronic taxation system for private companies. The new tax scheme includes mandatory e-invoicing between private companies, as well as electronic reporting of accounting data for real-time reporting reform for VAT.
- The Dominican Republic is prepared to transition from the existing voluntary e-invoicing to a global requirement. On 13 September 2022, the General Directorate of Internal Taxes submitted the preliminary bill for the implementation of the mandatory e-invoicing rules, which, once approved by the Senate, will be enacted by the President, making the rules official.

Quotes and Coverage

GST collection rises 28% to Rs 1.43 lakh cr, festive season to drive mop-up

2 September 2022

Sanjay Chhabria

https://bit.ly/3SOD5a1

Compliance Calendar

Direct Tax
Indirect Tax

7 October 2022

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

10 October 2022

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

11 October 2022

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

13 October 2022

- GSTR-6 for the month of September 2022 to be filed by Input Service Distributor (ISD).
- GSTR-1 for the quarter of July 2022 to September 2022 to be filed by all registered taxpayers under the QRMP scheme.

15 October 2022

- Due date for issue of TDS Certificate for tax deducted under Section 194-IA, 194-IB,194-M in the month of August 2022.
- Due date for furnishing quarterly statement of TCS deposited for the quarter ending 30 September 2022.
- Due date for uploading declarations received from recipients in Form No. 15G/15H during the quarter ending 30 September 2022.

20 October 2022

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

22 October 2022

GSTR-3B for the quarter of July 2022 to September 2022 to be filed by registered taxpayers under QRMP scheme and having principal place of business in Category 1 states.

24 October 2022

GSTR-3B for the quarter of July 2022 to September 2022 to be filed by registered taxpayers under QRMP scheme and having principal place of business in Category 2 states.

25 October 2022

ITC 04 for the period April 2022 to September 2022 to be filed by registered taxpayers sending goods for job work.

30 October 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 September 2022.
- Due date for issue of quarterly TCS certificate (in respect of tax collected by any person) for the quarter ending 30 September 2022.

31 October 2022

- Intimation by a designated constituent entity, resident in India, of an international group in Form no. 3CEAB for the accounting year 2021-22.
- Due date for furnishing of quarterly statement of TDS deposited for the quarter ending September 2022.
- Due date for filing of return of income for the AY 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.
- Due date for filing of Tax Audit Report under in form 3CD for cases where Transfer Pricing is applicable.
- Due date for filing of Transfer Pricing Report in form 3CEB.
- Due date for filing Form no. 67 for claiming foreign tax credit (if due date of submission of return of income is 31 October 2022).

7 November 2022

Due date for deposit of Tax deducted/ collected 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 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.

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

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.

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Reach out to us at ***ThinkNext@nexdigm.com***

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