

Tax Street

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

September 2023

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Introduction

Tax Street

● Focus Point	3
● Events and Webinars	4
● From the Judiciary	5
● Tax Talk	9
● In The News	10
● Insights	13
● Compliance Calendar	14

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 2023.

- The **'Focus Point'** covers the ambiguity surrounding ITC eligibility.
- 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

Mystery of ITC eligibility unveiled!

The eligibility to Input Tax Credit (ITC) has always been a bone of contention between the taxpayers and the Revenue under the indirect tax legislation. The GST regime promised to transform the indirect taxation landscape by ensuring a seamless flow of credit at each stage of the supply chain. However, the reality appears to be a bit different, considering the restrictions prescribed and the strenuous reconciliations to be maintained. Six years have gone by and we have already seen a barrage of litigation over GST credit, ranging from GSTR-2A vs. GSTR-3B reconciliation and credit eligibility vis-à-vis Section 17(5), to the interpretation and constitutional validity of the time limit prescribed under Section 16(4) of the CGST Act, 2017.

As per Section 16(4) of the CGST Act, 2017, availment of ITC for a particular financial year is restricted beyond the 30th day of November of the subsequent financial year (earlier it was limited up to the "due date of furnishing of the return under Section 39 for the month of September"). Owing to such limitation clause, the taxpayers availing ITC in the GSTR-3Bs filed beyond the November/September timeline, as the case may be, received notices for reversal of ITC on the ground that the same is not availed in accordance with the law.

The demands/decisions of the jurisdictional authorities have been challenged before the High Courts by way of writ petitions on the following grounds:

- The provisions of Section 16(4) are in violation of Articles 14, 19(1)(g) and 300A of the Constitution of India.
- Section 16(4) is purely procedural in nature and cannot override Section 16(2). The two sub-sections appear in conflict with each other and these cannot be read in conjunction if one prevails over the other. The taxpayers have argued that since sub-section (2) begins with a non-obstante (notwithstanding) clause, it will override all other sub-sections in the said Section, including the time limit prescribed under sub-section (4). Hence, the argument raised is that ITC should be allowed once all the below-mentioned conditions have been satisfied:
 - The taxpayer is in possession of the tax invoice.
 - The goods and/or services have been received.
 - Tax charged on the inward supply has been duly paid by the supplier to the government.
 - GSTR-3B is filed (although belatedly, along with late fees).

- Payment is made to suppliers in respect of which ITC is being claimed.
- Details of such ITC are duly reflected in the GSTR-2A/2B.

- The taxpayers have accorded an alternate interpretation to Section 16(4), which would restrict ITC only for invoices received after the prescribed timeline.

Given this backdrop, in two recent cases, we have seen negative verdicts from the Andhra Pradesh High Court¹ and Patna High Court², thereby disallowing the ITC claim vis-à-vis GSTR-3Bs filed beyond the September/November timeline. The Courts held that:

- ITC is a mere concession/rebate/benefit provided under the GST law and not a statutory/constitutional right. A registered person becomes entitled to credit only subject to the statutory framework, whereby Section 16(4) serves as a condition precedent for claiming ITC and does not infringe upon the constitutional principles. Accordingly, the time limit prescribed for claiming ITC does not violate the Constitution of India.

1. Thirumalakonda Plywoods vs. Assistant Commissioner (Andhra Pradesh High Court) dated 18 July 2023 [W.P. No. 24235 of 2022]

2. Gobinda Construction vs. Union of India (Patna High Court) dated 8 September 2023 [W.P. No. 9108 of 2021]

- Section 16(2) has no overriding effect on Section 16(4) as both are not contradictory to each other, and they operate independently. Section 16(2) conditions override assertive provisions on the eligibility of ITC and not the overall time limit for claiming the same.
- Mere acceptance of GSTR-3B returns with late fee will not exonerate the delay in claiming ITC beyond the period specified. The language of Section 16(4) is plain and unambiguous, with the clear stipulation that a registered person cannot avail the benefit of ITC in respect of any invoice or debit note for the supply of goods or services or both after the due date of furnishing the return beyond the prescribed period.

There is no doubt that the legislature is empowered to impose such conditions and restrictions on the eligibility of ITC as it may deem fit. Such comprehensive analysis and validation of Section 16(4) highlights the importance of adhering to the statutory prerequisites of ITC. In fact, these two decisions reinforce the notion that ITC is not an absolute entitlement but must be claimed in strict accordance with the conditions and restrictions thereto.

However, the extant language of the statutory provisions still leaves room for varied construction, and considering that the validity of Section 16(4) has been challenged before several High Courts, more rulings on this subject are likely in the future. It won't be too long before this issue is tested before the Apex Court.

Until then, it would be imperative to comply with the return filing deadlines, as it is pivotal to mitigate any loss of eligible ITC owing to time-lapse. Additionally, it would be worthwhile if the government issues clarification on the applicability of such restriction to 'All other ITC' in lieu of ITC related to imports and tax paid under the Reverse Charge Mechanism by the taxpayers.

Upcoming Event

Financial Transactions – CT and Transfer Pricing Aspects You Need to Know

17 October 2023

Lokesh Gupta and Trupti Mehta
<https://bit.ly/3OVHxEq>

Events and Webinars

Masterclass on GST, Customs and Foreign Trade Policy

5 October 2023

Sanjay Chhabria

Investment funds – Special Considerations on FATCA, Corporate Tax and Transfer Pricing

26 September 2023

Lokesh Gupta and Mihir Shah

Middle East CFO Stratech 2023

21 September 2023

Lokesh Gupta

One Day Tax Colloquium 2.0

14 September 2023

Sneha Pai and Sanjay Chhabria

Articles

Family Arrangements- Taxation Aspects Involving Companies

September 2023 edition | APK Magazine

Maulik Doshi and Shraddha Shah
<https://bit.ly/46KNctv>

Expansion into Overseas Markets

September 2023 edition | APK Magazine

Sneha Pai and Vaishnavi Joshi
<https://bit.ly/46KNctv>

Deemed International Transaction

September 2023 edition | APK Magazine

Maulik Doshi, Ricky Ruparelia & Manashree Limaye
<https://bit.ly/46KNctv>

Buying Own Shares Under Scheme of Arrangement - Dehors BuyBack or Capital Reduction?

28 September 2023 | Taxsutra
Ajay Abad and Subodh Dandawate
<https://bit.ly/3Fw9v4p>

Chennai ITAT Ruling in Cognizant's Shares Buyback - A Panoramic Analysis

22 September 2023 | Taxsutra
Maulik Doshi and Shraddha Shah
<https://bit.ly/3QcHvsu>



From the Judiciary

Direct Tax

Do marketing and promotion activities performed by Indian Associate Enterprise (AE) result in the creation of an Agency PE in India?

SanDisk International Ltd.
TS-540-ITAT-2023(Bang)

Facts

The taxpayer, a tax resident of Ireland, entered into a market research and support services agreement with SanDisk India (one of its related enterprises). Under the aforesaid agreement, SanDisk India assists the taxpayer in promoting its products by, inter alia, conducting market research, gathering data, and performing other support services.

In a survey conducted by the Revenue, it appeared from the e-mail correspondences and employee statements that Sandisk India's activities were excessively beyond what was prescribed under the agreement. Thus, the Revenue proceeded with re-assessment and alleged that Sandisk India created an Agency PE for the taxpayer in India.

The taxpayer argued that while Sandisk India was a part of negotiations, the actual contracts were concluded by third-party distributors. However, the Revenue did not accept this contention and thus, the taxpayer filed an appeal with the Tribunal.

Held

The Bangalore Tribunal noted that the Revenue in the final assessment order had itself recorded that SanDisk India does not procure goods, or deliver them, or collect the payments. Thus, the Tribunal opined that Section 9 Explanation 2 (clarifying the scope of business connections in India) is not attracted to the present case. The Tribunal further stated that apart from the statements recorded during the course of the survey, the Revenue did not bring any other cogent material on record to support his argument that SanDisk India constituted Agency Permanent Establishment (PE).

Furthermore, the Tribunal also noted that the agreement between the taxpayer and Sandisk India specifically prohibited Sandisk India from negotiating, concluding, signing, executing, or in any other manner, accepting sales or other contracts in the name of or on behalf of the taxpayer. Moreover, since it was evident from the statement of the employees that third-party distributors actually placed the orders, the Tribunal held that Sandisk India did not constitute an Agency PE in India.

Our Comments

Bangalore Tribunal held that SanDisk India cannot be considered an Agency PE because it solely offers marketing support services and is not involved in securing, negotiating, or finalizing contracts on behalf of the taxpayer.

Can interconnect utility charges paid by an Indian telecom company to a non-resident be taxed as Royalty or FTS?

AI Telekom
TS-501-ITAT-2023

Facts

The taxpayer was a resident of Australia and was engaged in providing telecommunication, interconnect, and internet services in India. The taxpayer received payments from Vodafone South Limited (VSL) for the provision of bandwidth capacity and interconnect services. The Indian tax authorities initiated Section 201 proceedings against VSL for not deducting tax at source on these payments. As a result, a re-assessment notice was issued to the taxpayer, asserting that the payments received were taxable as Royalty or Fees for Technical Services (FTS) under the Indian Income-tax Act (the Act) and the India-Austria tax treaty.

Held

Key aspects analyzed by the Tribunal were:

- **Definition of 'Royalty':** It noted that while the Act had been amended to widen the meaning of 'process' through Explanation 5 and 6, these changes did not affect the tax treaty definition of 'Royalty,' which used the phrase 'use or right to use' rather than 'transfer of all or any rights' as in the domestic law.
- **'Use or Right to Use':** The Tribunal held that the installation and operation of sophisticated equipment to provide services did not amount to granting the use or right to use the equipment or process under the tax treaty.

- **Intellectual Property:** The Tribunal emphasized that the term "process" under Explanation 2 to Section 9(1)(vi) referred to a species of intellectual property. It applied the rule of ejusdem generis to conclude that 'process' must be understood as belonging to the same class of properties as other listed intellectual properties.
- **Lack of Transfer of Intellectual Property Rights:** The Tribunal found that there was no transfer of intellectual property rights or exclusive rights from the taxpayer to the service recipients, making Explanation 2 inapplicable.
- **Control and Possession:** The Tribunal considered the control and possession of rights, property, or information and concluded that these should be with the payer for a payment to be considered 'use or right to use.'

In light of the above, the Tribunal held that the payments received by the taxpayer were not taxable as Royalty or FTS.

Instead, they were considered as business profits and, in the absence of a PE in India, were not subject to taxation.

Our Comments

Bangalore Tribunal holds that interconnectivity utility charges are not taxable as Royalties for Austrian company (taxpayer) under Section 9(1)(vi), as well as under the India-Austria tax treaty, relies on jurisdictional HC ruling in Vodafone Idea, which held so by relying on SC ruling in Engineering Analysis.

Transfer Pricing

Availing of Intragroup Services (IGS) cannot be termed as stewardship activity against sufficient and appropriate documentary evidence. Application of comparability under the internal Transactional Net Margin method (TNMM) depends upon the quantity sold to Associated Enterprise (AE) vis-a-vis independent third parties

TDK India Private Limited
ITA No. 2646/Kol/2018 & 1998/
Kol/2019

Facts

The taxpayer is primarily engaged in the manufacturing and sale of electronic components such as metalized plastic film capacitors and soft ferrite components of different shapes, sizes, weights and properties. The taxpayer sells ferrites in the domestic market and also exports to its AE.

IGS: Considering limited employee resources, the taxpayer entered into a Framework Services Agreement (FSA) with its AE for availing certain specialized services/ IGS (viz. IT, management, corporate sales, product marketing, finance, quality audit, etc.) for the effective conduct of business. The Transfer Pricing Officer (TPO) held that the IGS availed from the AE were in the nature of stewardship activity and concluded the ALP of IGS transactions to be NIL.

The Dispute Resolution Panel (DRP) upheld TPO's action and held that the taxpayer failed the Benefit Test.

Export of goods: The taxpayer considered Comparable Uncontrolled Price (CUP) based on the third-party price quotation received by AE from existing vendors/ suppliers. Also, since the operating margins of -25.27% from AE were higher as compared to -25.47% from an independent third party, the transaction was concluded to be at Arm's Length Price (ALP).

The TPO disregarded the internal comparability, applied external TNMM, and carried out Transfer Pricing (TP) adjustment. The DRP also disregarded the internal TNMM workings submitted by the taxpayer.

Held by the Income Tax Appellate Tribunal (ITAT)

IGS: ITAT observed that the taxpayer group is a giant manufacturer with significant export revenue, there exists a need for a dedicated product marketing team and it was concluded that the IGS availed by the taxpayer is not exclusive in nature, wherein the AE also had a similar arrangement with other group companies. Furthermore, how the taxpayer conducts its business is its prerogative and Revenue Authorities cannot question whether a particular service actually benefits the taxpayer.

ITAT further observed that the TPO did not apply any of the prescribed methods of the Act to determine ALP. It held that the action of the TPO is without any basis.

Basis the evidence regarding benefits availed which were not disputed by the TPO, the ITAT concluded that the taxpayer has explained in detail the need and consequent receipt as well as benefits derived by availing such service. Furthermore, a copy of the cost allocation statement certified by an independent professional was also submitted. ITAT held the TPO erred in concluding the nature of services as stewardship activity and held that charges paid by the taxpayer were at ALP.

Export of goods: ITAT observed that the mere mention of profit margins from the sale of ferrites to AE to be more than the sale of ferrites to independent third parties does not solve the purpose. It held that the profit margin formula/internal TNMM can be accepted only when the quantitative details of the goods sold in the domestic market are at par with the goods exported to AE.

Our Comments

The ruling once again emphasizes the need to maintain robust documentation to substantiate the need and benefits of availing the IGS. It is pivotal to demonstrate by way of robust documentation that such arrangements of taxpayers with the AEs are not exclusive in nature to substantiate that such services shall not qualify as being in the nature of shareholder and stewardship activities. Further, for the applicability of internal comparability (even for the application of internal TNMM), all relevant comparability criteria shall be satisfied (viz. quality, quantity, quantum and terms, etc.).

Indirect Tax

Whether ITC can be claimed with respect to gold coins and white goods distributed to dealers as incentives under promotional schemes?

**In the matter of Orient Cement Limited
TS-424-AAR(KAR)-2023-GST**

Facts

- The applicant, a manufacturer of cement, incurs various marketing and distribution expenses for brand/products promotion.
- The applicant had launched various target/performance-based discount schemes/white goods schemes for their dealers.
- The benefit provided to the dealer would be determined based on the amount credited to the dealer's account, which in turn would be based on the quantity and grade of cement purchased by such dealer.
- To pass on such credit, the applicant resorts to the distribution of gold coins and white goods instead of adjusting it against the payment to be received from such dealers or issuing them credit notes.
- As per the applicant, such distribution can neither be regarded as 'disposal by way of gifts' under Section 17(5)(h) of the CGST Act nor as 'permanent transfer or disposal of business assets' in terms of Schedule I r/w Section 7 of the CGST Act.

Ruling

- The Authority for Advance Ruling (AAR) opined that GST paid on procurement of gold coins and white goods was covered under the definition of ITC.
- These goods were distributed subject to the fulfillment of certain conditions and stipulations as agreed with the dealers. Whereas a gift is given without any conditions and stipulations and hence, the same cannot be covered under the scope of "gifts." Consequently, the restriction under Section 17(5) (h) would not apply to instant transactions.
- On the other hand, the achievement of marketing targets set by the applicant is an inducement from the dealer or non-monetary consideration paid by the dealers for the receipt of gold/white goods.
- Since these goods are transferred for consideration, the same is covered in the definition of 'supply.'
- Even otherwise, these goods are permanently transferred to the dealers on which the applicant has claimed ITC.
- Accordingly, the same would be covered under Schedule I in as much as:
 - The term "assets" includes 'inventory' and since these goods are procured in the course of business, they would qualify as "business assets".
 - Entry 1 of Schedule I states that these business assets should be capitalized.
- Therefore, the activity of distribution of goods would be treated as supply as per Section 7(1)(c) of the CGST Act.

Our Comments

Hitherto, there have been contradictory advance rulings [such as in the matter of Sanofi India Limited, Biostadt India Limited, Musashi Auto Parts Pvt Ltd, Surfa Coats (India) Pvt. Ltd., etc.] wherein the goods distributed free of cost have been treated as 'gifts' or goods for 'personal consumption' to disallow ITC thereon. Although not a judicial precedent, the present advance ruling should aid taxpayers during assessments and audits under the GST law.

It may be pertinent to note that vide Circular No. 92/11/2019-GST dated 7 March 2019, it has been clarified that where the activity of distribution of gifts or free samples falls within the scope of "supply" on account of the provisions contained in Schedule I of the said Act, the supplier would be eligible to avail of the ITC.

However, the questions of whether such incentive products can be treated as "business assets" and whether the achievement of the target can be treated as non-monetary consideration are highly debatable.

Given the prevalence of such practice across industries and the varied treatment accorded thereto, it would be worthwhile if clarification is issued to put the dispute/ambiguity revolving around this issue to rest.

Regulatory Updates**Ministry of Corporate Affairs (MCA)****Extension for holding General Meetings through VC) or OAVM**

In continuation to a series of general circulars issued previously since the onset of the COVID-19 pandemic, the Ministry of Corporate Affairs (MCA) vide its **General Circular No. 09/2023 dated 25 September 2023** has allowed all the Companies to conduct Annual General Meetings (AGMs) and Extraordinary General Meetings (EGMs) to be held on or before 30 September 2024 through Video Conferencing (VC) or Other Audio Visual Means (OAVM) or pass special and ordinary resolutions or transact items through postal ballot in accordance with the framework provided in the aforesaid circulars.

MCA has further clarified that the said relaxation shall not be construed as an extension of time for holding AGMs under the Companies, 2013, and the timelines provided under this will have to be strictly adhered to.

Our Comments

Relaxations brought in by the MCA during COVID-19 times, such as conducting general meetings through virtual or hybrid mode, has been accepted as a new normal by the industry because of its convenience and cost-effectiveness for the Companies as well as the members attending the meetings. This COVID-19 time relaxation of the extension of video conference facility for holding general meetings up to September 2024 has been welcomed with open arms.

Tax Talk

Indian Developments

Indirect Tax

Goods and Services Tax

FinMin notifies establishment of 31 State benches of GST Appellate Tribunal

Excerpts from various sources

The Ministry of Finance has notified the constitution of 31 State benches of GST Appellate Tribunals across India. Uttar Pradesh, Maharashtra and Goa will have three benches, while two benches would be set up in Rajasthan, Karnataka, Tamil Nadu, Puducherry, and Gujarat, respectively.

Foreign Trade Policy

DGFT issues clarification on 'pre-import condition' under the Advance Authorization Scheme

Trade Notice No. 27/2023 dated 25 September 2023

The DGFT has issued a clarification on the treatment to be given for certain export-import scenarios concerning the regularization of imports that could not meet the 'pre-import condition' under the Advance Authorization Scheme from 13 October 2017 to 9 January 2019. The same is as follows:

Sr.No	Issue raised	Clarification
1	In case of Advance Authorizations under which exports have been made in the said period but the import is made on or after 10 January 2019, the pre-import condition will be considered violated.	Pre-import conditions will not be considered to have been violated.
2	If Advance Authorizations were issued on or prior to 9 January 2019 and imports were made on or after 10 January 2019, whether pre-import condition will be applicable.	Pre-import conditions will not be applicable.
3	If against an Advance Authorization, imports were partly made up to and including 9 January 2019 and remaining imports were made thereafter, whether the latter will be subject to pre-import condition.	In such a scenario, the imports made on or after 10 January 2019 will not be subject to pre-import conditions.
4	In case of imports made under Advance Authorization on payment of IGST and Compensation Cess, whether pre-import condition will be applicable.	In such a scenario, the imports will not be subject to pre-import conditions, irrespective of the date of import.

Government extends RoDTEP Scheme for exports till June 2024

Notification No. 33/2023 dated 26 September 2023

The government has notified an extension of the RoDTEP Scheme for exports made from 1 October 2023 to 30 June 2024. Accordingly, the existing rates for items covered under the said Scheme would continue subject to the budgetary framework provided under paragraph 4.54 of Foreign Trade Policy 2023.

Customs

CBIC implements ex-bond Shipping Bill in ICES 1.5

Circular No. 22/2023-Customs dated 19 September 2023

The Central Board of Excise and Customs (CBIC) has developed the design and workflow of an 'ex-bond shipping bill' on the Indian Customs EDI System (ICES) for processing the export of goods from a bonded warehouse. This type of shipping bill can only be used for the export of warehoused goods. It is not meant for the exports under the MOOWR Scheme, except where the imported goods are exported as such. Furthermore, no incentive such as Drawback, RoDTEP/RoSCTL benefit, Advance/EPCG authorization, etc., shall be available for such cargo and the shipping bill would be a free shipping bill.

CBIC implements backend functionality to restrict IGST refund route for specified goods

Circular No. 24/2023-Customs dated 30 September 2023

The DG Systems CBIC has developed a backend functionality to restrict the IGST refund route for ineligible categories of goods. The checks have been enabled at the shipping bill level and accordingly, even if one invoice contains an item that is restricted for export on payment of IGST, the shipping bill containing such items will not be allowed to be filed.

Quotes and Coverage

GST Council lifts tax blockages for rupee trade

8 October 2023 | The Hindu
Sanjay Chhabria
<https://bit.ly/3PTkwBg>

Personal guarantee to attract 18% GST in exceptional considerations

8 October 2023 | Business Standard
Sanjay Chhabria
<https://bit.ly/3rP1cgH>

GST Council meeting to look into tax exemption for millets, review roll out of levy on online gaming

4 October 2023 | Business Today
Sanjay Chhabria
<https://bit.ly/46MBecj>



Tax Talk

Global Developments

Direct Tax

Papua New Guinea deposits its instrument for the ratification of key multilateral conventions against tax evasion and avoidance and Romania completes its internal procedures for the entry into effect of the provisions of the Multilateral BEPS Convention

Extract from www.oecd.org dated 7 September 2023

On 31 August 2023, Papua New Guinea deposited its instrument of ratification for the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (BEPS Convention) as well as the Multilateral Convention on Mutual Administrative Assistance in Tax Matters, underlining its strong commitment to prevent the abuse of tax treaties and base erosion and profit shifting (BEPS) by multinational enterprises, and facilitating international co-operation in matters of tax transparency and exchange of information.

The BEPS Convention now covers around 1870 bilateral tax treaties and will enter into force on 1 December 2023 for Papua New Guinea. As of 1 September 2023, around 1200 treaties concluded among the 83 jurisdictions that have ratified, accepted, or approved the BEPS Convention have already been modified by the BEPS Convention. Around 670 additional treaties will be modified once all Signatories will have ratified the BEPS Convention.

The Multilateral Convention on Mutual Administrative Assistance in Tax Matters enables jurisdictions to engage in a wide range of mutual assistance in tax matters and guarantees extensive safeguards for the protection of taxpayers' rights. It will enter into force for Papua New Guinea on 1 December 2023 and will be in effect for exchanges as of 1 January 2024.

In addition, on 5 September 2023, Romania confirmed the completion of its internal procedures for the entry into effect of the provisions of the Multilateral BEPS Convention under Article 35(7)(b).

Transfer Pricing

UK - HMRC publishes updated guidance on APAs

An updated guidance on Advance Pricing Agreements (APA) was duly published by the HMRC (His Majesty's Revenue & Customs) and was notified in the International Manual. The amended guidance addresses the implications of ongoing investigations that restrict the taxpayer from applying for an APA until such investigations are concluded. Furthermore, it also applies in cases where the taxpayer has been directed to comply with the Profit Diversion Compliance Facility (PDCF)³.

The new guidelines expressly state that if HMRC has begun an investigation into covered or linked transactions, the same must be completed before an APA has been applied for future years or a rollback to earlier periods. Upon completion of the investigation, the taxpayer may evaluate if they want to apply for APA or submit a treaty Mutual Agreement Procedure (MAP) request to protect time restrictions if an APA is not agreed upon. In a case HMRC has given a PDCF to the taxpayer, the latter is expected to complete the self-investigation and submit the appropriate report for prior periods before formally asking for an APA. The HMRC will look into unresolved overseas inquiries separately based on the facts and circumstances and the overseas tax authority's willingness to engage before applying for an APA. Additionally, the guidance also mentions about:

- **Expression of Interest (Eol), i.e., pre-filing stage:** The clarificatory changes make it mandatory for the taxpayer to approach each territory to discuss their intention of entering into a bilateral/multilateral APA, even where the taxpayer seeks unilateral APA (indicating HMRC's stress over bilateral agreements). The Eol shall cover brief details of any APA or MAP requests, APA or other rulings in the UK or overseas relating to

the covered or similar transactions, including requests made to third states, made by either of the parties to the proposed APA.

- **Timeline for application acceptance:** The HMRC shall formally confirm the admissibility of the APA within 30 days from receipt of the application, subject to the application being made within six months to the HMRC expressing its willingness (during Eol meeting) to consider the APA proposal.
- **Timeline for reaching agreement:** The bilateral agreement would first be agreed with the other tax authority and then the UK taxpayer's approval shall be taken. The process can be terminated in case of non-acceptance of the terms (by UK taxpayer). The HMRC may revisit the proposed competent authority only in amenable cases. The agreement between the taxpayer and HMRC shall be signed within 60 days of the competent authority mutual agreement being notified to the businesses.
- **Review and monitoring of APA:** The HMRC expects the tax computation to align with the APA application for the covered period until it is concluded. The amended guidance warrants the taxpayers to furnish an Annual Report within 90 days from the signing of the domestic agreement. Any amendments made to previously filed tax returns (for APA covered years) reflecting the agreed transfer pricing methodology shall also be made available within 90 days.

- **Withdrawal from APA process:** Lack of active engagement from the other tax administration may lead to termination of the process by HMRC, provided reasonable efforts to encourage the former were made. A new application may be applied (by HMRC) in case of suspension or interruption for at least 6 months is observed in the ongoing proceedings.

The analysis of the HMRC's statistics⁴ indicates a downfall in the number of APAs signed along with an increase in average conclusion time by 73.51% approximately. In our opinion, the target timelines introduced would prove to be beneficial to the taxpayer. It would be interesting to see how the corollary drawn between the conclusion of the investigation(s) into the covered or linked transactions with the consideration of the APA application by HMRC would help to obtain the desired result for the dispute resolution mechanism.

3. PDCF – Diverted profit tax (DPT) disclosure facility available to business groups to revisit and alter their transfer pricing arrangements and pay additional tax at 25% (corporate tax rate being 19%) on such arrangements that evade UK's tax base.

4. HMRC's Transfer Pricing and Diverted Tax Profits Statistics

Indirect Tax

Ireland hikes tax rates on fuel and hospitality from 1 September

Excerpts from various sources

The Republic of Ireland has hiked Petrol excise rates by 7% per liter and diesel rates by 5% per liter. VAT on the tourism and hospitality sector has also increased from 9% to 13.5%. The temporary rate reduction introduced in November 2020 owing to the pandemic comes to an end as the Irish Government rules it no longer justifiable.

Belgium Government clarifies VAT implications on company cars

Belgian Circular 2023/C/72 dated 1 September 2023

It has been clarified that the provision of company cars by foreign employers to Belgian resident employees for consideration shall be treated as providing car rental services to employees for the purposes of VAT. Accordingly, such foreign employers shall be required to register for VAT in Belgium to assess domestic tax or, alternately, resort to the VAT One-Stop-Shop (OSS) platform to declare and pay the dues without such registration.

New reporting obligation for VAT-registered persons in Bulgaria from November 2023

Excerpts from various sources

Bulgarian Government has mandated all VAT registered businesses to declare on a quarterly basis the cash available at hand and the amount of receivables from (including the provision of loans to) individual owners, employees, staff, and persons hired under management agreements. Such reporting obligation would arise when the total amount of both the cash at hand and these receivables exceed BGN 50,000 at the end of the respective quarter.

Thailand extends reduced 7% VAT rate till September 2024

Excerpts from various sources

The Thai Cabinet has approved the Ministry of Finance's proposal to maintain the reduced 7% VAT rate for one more year. Accordingly, transactions like the sale of goods, provision of services and imports would attract 7% VAT till 30 September 2024.

Alerts

Key Highlights of GST Notifications and Clarification Circulars

5 October 2023

<https://bit.ly/3tIP47n>

CBDT notifies final valuation rules for Angel Tax provisions

4 October 2023

<https://bit.ly/3ZMYTXS>

Online filing of Form 10F by non-resident without PAN

4 October 2023

<https://bit.ly/3ZKD1N4>

Highlights of CBDT's 4th and 5th Annual Report on APA Program

4 September 2023

<https://bit.ly/463Yke9>

Key Highlights of GST Notifications and Clarification Circulars

1 September 2023

<https://bit.ly/3qN9PYJ>

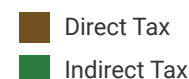
An Overview of Small Business Relief under Corporate Tax in UAE

1 September 2023

<https://bit.ly/44EnGye>



Compliance Calendar



7 October 2023

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

13 October 2023

- GSTR-6 for September 2023 to be filed by Input Service Distributors (ISDs).
- GSTR-1 for the quarter of July 2023 to September 2023 to be filed by all taxpayers under the QRMP Scheme.
- GSTR-5 for September 2023 to be filed by non-resident foreign taxpayers.

20 October 2023

- GSTR-5A for September 2023 to be filed by non-resident suppliers of Online Database Access and Retrieval (OIDAR) services.
- GSTR-3B for September 2023 to be filed by all taxpayers not under the QRMP Scheme.

22 October 2023

- GSTR-3B for the quarter of July 2023 to September 2023 to be filed by taxpayers under the QRMP Scheme and having principal place of business in Category 1 States.

24 October 2023

- GSTR-3B for the quarter of July 2023 to September 2023 to be filed by taxpayers under the QRMP Scheme and have principal place of business in Category 2 States.

30 October 2023

- The due date for furnishing of challan-cum-statement in respect of tax deducted under Section 194-IA/194M/194-IB/194S in September 2023.
Note: Applicable in case of a specified person as mentioned under Section 194S.
- Quarterly TCS certificate (in respect of tax collected by any person) for the quarter ending 30 September 2023.

10 October 2023

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

11 October 2023

- GSTR-1 to be filed for September 2023 by all taxpayers not under the QRMP Scheme.

15 October 2023

- The due date for furnishing of Form 24G by an office of the government where TDS/TCS for September 2023 has been paid without the production of a Challan.
- The due date for issue of the TDS Certificate for tax deducted under Section 194-IB/Section 194-IA/Section 194M/Section 194S in August 2023
Note: Applicable in case of a specified person as mentioned under Section 194S.
- Quarterly statement of TCS deposited for the quarter ending 30 September 2023.
- Upload declarations received from recipients in Form No. 15G/15H during the quarter ending September 2023.
- The due date for 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 September 2023.
- Quarterly TCS certificate in respect of tax collected by any person for the quarter ending 30 June 2023
Note: Due to the extension of the due date of TCS statement vide Circular no. 9/2023, dated 28-06-2023, the revised due date for furnishing TCS certificate shall be 15 October 2023.
- Quarterly TDS certificate (in respect of tax deducted for payments other than salary) for the quarter ending 30 June 2023.
Note: Due to the extension of due date of TDS statement vide Circular no. 9/2023, dated 28-06-2023, the revised due date for furnishing TDS certificate shall be 15 October 2023.

31 October 2023

- Intimation by a designated constituent entity, resident in India, of an international group in Form no. 3CEAB for the accounting year 2022-23.
- Quarterly statement of TDS deposited for the quarter ending September 2023.
- The due date for furnishing of Annual audited accounts for each approved programmes under Section 35(2AA).

Compliance Calendar

- Direct Tax
- Indirect Tax

31 October 2023

- Quarterly return of non-deduction of tax at source by a banking company from interest on time deposit in respect of the quarter ending September 2023.
- Copies of the declaration received in Form No. 60 from 1 April 2023 to 30 September 2023 to the concerned Director/Joint Director.
- The due date for filing of return of income for the assessment year 2023-24 if the taxpayer (not having any international or specified domestic transaction) is (a) corporate-taxpayer or (b) non-corporate taxpayer (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 apply.

Note: The due date of furnishing of Return of Income in Form ITR-7 in the case of taxpayers referred to in clause (a) of Explanation 2 to Section 139(1) has been extended from 31 October 2023 to 30 November 2023, vide Circular no. 16/2023, dated 18 September 2023.

- Audit report under Section 44AB for the assessment year 2023-24 in the case of a taxpayer who is also required to submit a report pertaining to international or specified domestic transactions under Section 92E.
- Report to be furnished in Form 3CEB in respect of international transaction and specified domestic transactions.
- The 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 taxpayer is required to submit return of income on 31 October 2023).
- 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 31 October 2023).
- Submit copy of audit of accounts to the Secretary, Department of Scientific and Industrial Research in case company is eligible for weighted deduction under Section 35(2AB) [if company does not have any international/specified domestic transaction].
- Intimation in Form 10BBB by a pension fund in respect of each investment made in India for quarter ending September 2023.
- Intimation in Form II by Sovereign Wealth Fund in respect of investment made in India for quarter ending September 2023.

31 October 2023

- Furnishing of Audit report in Form no. 10B/10BB by a fund or trust or institution or any university or other educational institution or any hospital or other medical institution.

Note: the due date for furnishing the Audit report in Form no. 10B/10BB has been extended from 30 September 2023 to October 31, 2023 vide Circular no. 16/2023, dated 18 September 2023.

7 November 2023

- The due date for deposit of tax deducted/collected for October 2023. However, all sum deducted/collected by an office of the government shall be paid to the credit of the Central Government on the same day where tax is paid without production of an Income-tax Challan.

10 November 2023

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

11 November 2023

- GSTR-1 to be filed for October 2023 by all taxpayers not under the QRMP Scheme.

13 November 2023

- GSTR-6 for October 2023 to be filed by ISDs.
- Uploading B2B invoices using Invoice Furnishing Facility under the QRMP Scheme for October 2023 by taxpayers with aggregate turnover of up to INR 50 million.
- GSTR-5 for October 2023 to be filed by non-resident foreign taxpayers.

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

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Form 15CA/CB Automation



Review of tax position by experts



Issuance of bulk certificates through Automated tool



Repository - Access to entire set of documents



Access to Detailed transaction wise reports



Representation Support



Generation 15CA bulk files & utility to generate Form A2

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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.

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