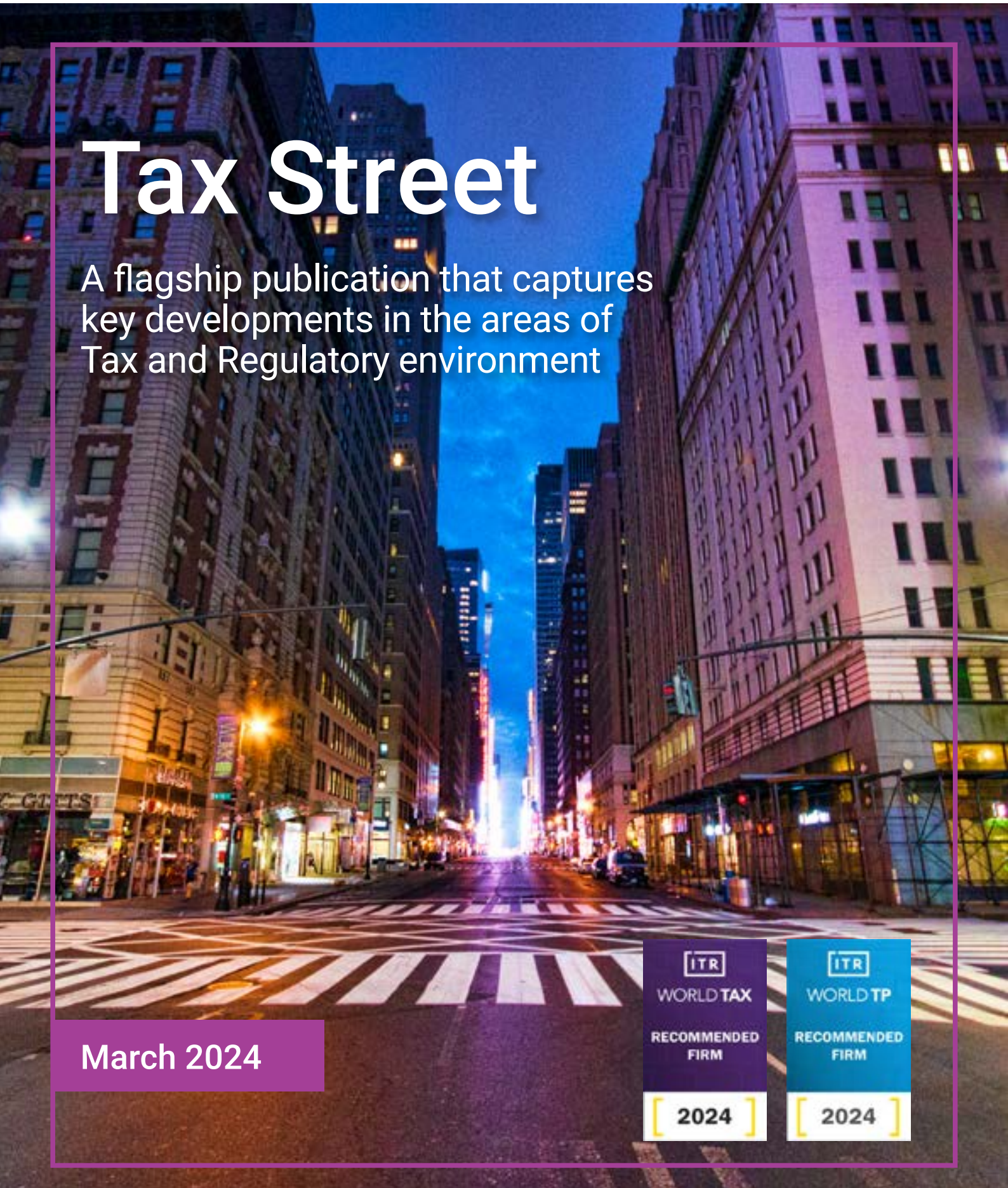


Tax Street

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

March 2024

ITR WORLD TAX RECOMMENDED FIRM 2024

ITR WORLD TP RECOMMENDED FIRM 2024

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 March 2024.

- The **'Focus Point'** explores crucial transfer pricing pointers that taxpayers need to consider at financial year end.
- 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

Financial year-end: Checkpoints from a Transfer Pricing perspective

As we approach the closure of accounts for FY 2023-24, it is crucial for the taxpayers to review the effective implementation of transfer pricing policies. This ensures alignment with these policies, compliance with the arm's length principle, and congruence with business objectives. Throughout the year, the taxpayers would have diligently monitored their intercompany transactions and assessed their adherence to arm's length standards. As the financial year ends, it is opportune for taxpayers to reflect and confirm their transfer pricing outcomes, considering the following key points:

- **True-up/True-down Adjustment:** Assess the actual year-end results and compare them to the predetermined margins outlined in the agreed Transfer Pricing policy. If there is a deviation (either shortfall or excess), the taxpayer can perform a true-up/true-down adjustment before closing the books for the year. The timing of this adjustment is crucial, considering its implications from both withholding tax and GST perspectives, wherever relevant.
- **Segmental financials:** Segmented financials are necessary for audited financials when certain criteria are met. From a transfer pricing perspective, they are essential when dealing with multiple revenue streams or transactions with related/unrelated parties (based on functions, activities, pricing policies, etc.). Preparing and analyzing these segmental financials before finalizing accounts is crucial to ensure compliance with arm's length criteria. If some segments do not meet these criteria, there's still room for true-up/true-down adjustments to align transactions appropriately. Moreover, while direct expenses can be allocated based on actual cost centers, identifying suitable allocation keys is essential for allocating indirect expenses.
- **Losses incurred by distributors:** Though seemingly simple, distribution business models often pose complexity to align with transfer pricing policies. Limited risk distributors must maintain guaranteed net operating margins, while normal risk distributors can incur net losses with a strong arm's length rationale. Losses incurred by normal risk distributors require robust documentation, analyzing whether they stem from market penetration strategies and are supported by realistic projections, as for third-party distributors, incurring losses or investing for another third party is unlikely unless they perceive a realistic chance of recouping past losses and achieving a fair market return on their investments. In cases of losses, evaluating subvention or credit notes from associated enterprises and adjusting pricing in future budgets becomes necessary, particularly for exceptional years. Complications arise, especially when distributors undertake significant marketing functions, which are highly litigated by Indian tax authorities.
- **Deemed International Transactions (DIT):** DIT, a concept in Indian transfer pricing regulations, applies when transactions between independent parties come under transfer pricing provisions and must

adhere to the arm's length principle. Identifying DIT can be complex, with the taxpayer responsible for recognizing, reporting, and justifying such transactions from an arm's length perspective. It is crucial for taxpayers to review contractual arrangements with independent parties, determine DIT applicability, and communicate this to consultants to ensure compliance. Though true-up/true-down options are not available/limited with third-party transactions, early identification and risk analysis mitigate the risk of non-reporting.

- **Need-benefit test for availing intra-group services:** A significant area of dispute between tax authorities and Indian taxpayers stems from the receipt of intra-group services, often questioning the necessity and benefits received. Thus, maintaining thorough documentation is essential, including records of services provided, like emails, meeting minutes, internal memos, and timesheets. Additionally, it is crucial to include details of costs incurred by the associated enterprise, the basis for cost allocation, and benchmarking studies supporting hourly rates or markups charged. While such information is typically available, waiting until tax scrutiny to compile it poses challenges, especially if key employees have left or accessing historical data is difficult. This delay can result in the disallowance of charges, leading to tax, interest, and penalties. It is advisable to record and compile documents in real-time to mitigate such risks.
- **Free of Cost goods/services:** Cost-plus entities are captive service providers, and contract manufacturers often face a dilemma from receipt of free of cost goods/ services/assets. From a GST perspective, the taxpayer is required to identify the goods/services/ assets and pay GST on a reverse charge basis to avoid interest and penal implications. Similarly, from a transfer pricing standpoint, there is an expectation that these costs will be considered in the cost base and recovered with a markup. While services such as shareholder services should not be charged, there are other services, such as management services or technical services, which the taxpayer would have otherwise availed from third parties for providing the captive services, which should be charged. Similarly, laptops and off-the-shelf software such as Microsoft software should be charged to the taxpayer and these costs (in the profit and loss account) should be recovered with a markup from the associated enterprise.
- **Overdue receivables:** Litigation over overdue receivables has intensified in recent years. Taxpayers must ensure the timely realization of outstanding receivables within agreed credit periods to prevent notional interest charges during field audits. It is advisable for corporates to align their credit policies with those extended to independent parties and maintain thorough documentation, including purchase orders, invoices, and agreements to support their case. Judicial precedents have favored taxpayers with strong documentation, emphasizing the importance of maintaining proper records tailored to each specific case.
- **Importance of documentation:** Documentation plays a pivotal role in transfer pricing, serving as a cornerstone for ensuring compliance with regulations and defending against potential disputes with tax authorities. Adequate documentation provides a clear and transparent record of the company's transfer pricing policies, methodologies, and transactions, demonstrating that pricing decisions are in line with the arm's length principle. It helps justify the chosen transfer pricing methods, delineate the functions, risks, and assets among related entities, and provide evidence of comparability analysis. Additionally, documentation enables taxpayers to proactively assess and mitigate transfer pricing risks, ensuring consistency in approach across jurisdictions and facilitating smoother audits. Strong documentation not only enhances tax compliance but also builds credibility with tax authorities, potentially reducing the likelihood of adjustments, penalties, and double taxation. Therefore, maintaining comprehensive and contemporaneous documentation is essential for companies to navigate the complexities of transfer pricing effectively and minimize tax-related risks.

These remarks highlight the essential considerations for concluding the financial year from a transfer pricing standpoint, underscoring the significance of compliance, risk management, and strategic alignment. By focusing on these aspects, taxpayers can strengthen their transfer pricing practices, mitigate compliance risks, and align with our broader financial objectives. Diligent adherence to regulations fosters transfer pricing excellence and reinforces the integrity of our global operations. Concurrently, it is prudent for taxpayers to initiate planning for the upcoming financial year, identifying potential transfer pricing implications of new business initiatives or restructuring endeavors. Proactive planning empowers taxpayers to anticipate challenges and implement timely solutions, ensuring continued compliance and operational efficiency.

From the Judiciary

Direct Tax

Can a Service PE be created by way of a virtual presence as opposed to a physical presence in India?

Clifford Chance PTE Ltd
TS-186-ITAT-2024(DEL)

Facts

The taxpayer, a resident of Singapore, provided legal advisory services and some services were partly rendered remotely from outside India. There were occasions when three employees physically traveled to India to render the services.

The taxpayer filed a NIL return of income in India, claiming a refund of taxes deducted at the source since, in the absence of a Permanent Establishment (PE), no income was taxable.

The Revenue contended that a virtual service PE was established in view of the physical and virtual presence of the company's employees for rendering services to clients in India.

Held

The taxpayer contended that rendering services 'within India' is relevant for constituting a Service PE. Therefore, the physical presence of employees in India providing the services is relevant, not the duration of services, which may even include services provided remotely.

It was also contented that days spent by employees/other personnel in India while on vacation or for undertaking business development activities are to be excluded from calculating the Service PE threshold. In effect, only days when actual services are physically rendered in India are determinant for the constitution of Service PE.

The Delhi Tribunal held that the taxpayer does not constitute virtual service PE in India as the concept of virtual Service PE has not been officially endorsed by India, unlike Saudi Arabia. Furthermore, the Tribunal noted that there are no provisions for virtual PE under the India-Singapore Tax Treaty as well.

With respect to the creation of PE, the Tribunal observed that since the physical presence of employees in India (excluding holidays) did not exceed the threshold of 90 days, there was no Service PE constituted in India.

Our Comments

This case law provides an insight into the understanding of the virtual dimension of the concept of virtual PE. It also specifies that vacation days, business development days, and common days should not be included when determining the Service PE threshold under the tax treaties.

Can treaty benefits be denied despite residency as per Article 4 of the India-UK tax treaty?

UK Grid Solution Limited
TS-215-ITAT-2024(DEL)

Facts

The taxpayer, UK Grid Solution Limited, is a UK tax resident and is engaged in designing, engineering, manufacturing, and supplying electric equipment. The taxpayer was awarded tenders by some of its clients and a single composite contract was divided into three contracts.

The Revenue held that the taxpayer chose to artificially segregate the contract to avoid PE status in India with the primary intention of avoiding taxes. The Revenue also held that the taxpayer was an undisclosed agent of GE Energy UK Ltd. Upon terms which provided that GE Energy UK Ltd. Received all income and paid all expenditures of the taxpayer. Hence, it was alleged that the taxpayer is not a beneficial owner of any income earned from its business activities as it was practically fiscally transparent even if the Tax Residency Certificate (TRC) suggested otherwise. Therefore, the taxpayer could not be treated as a UK tax resident and not entitled to any tax treaty benefits under the India-UK Double Taxation Avoidance Agreement (DTAA).

Held

The Delhi tribunal held that the taxpayer is a tax resident of the UK and is entitled to India-UK treaty benefits as UK tax authorities have issued TRC to the taxpayer, clearly stating that it is a tax resident of the UK.

It relied upon a coordinate bench ruling in the taxpayer's own case for AY 2018-19 wherein it was held that: (i) the contract was not artificially split into three contracts, (ii) the assessee did not have a business connection, fixed place PE and construction PE in India, (iii) income derived by the assessee were from offshore supplies and not out of any construction, erection, testing or commissioning activities of a turnkey power project in India. Therefore, Section 44BBB is not applicable.

The Tribunal noted that the taxpayer was acting independently, with receipts and had paid taxes in India. It also noted that the taxpayer did not have any authority to conclude the contract and that the contract was awarded based on global bids. The Tribunal held that it could not be construed as DAPE in India.

Our Comments

The said case law highlights the issue of concerns around availing tax treaty benefits despite residency as per TRC. Central to this dispute is the interpretation of the concept of a Dependent Agent Permanent Establishment (DAPE) and whether the company's Indian associate meets the criteria to be classified as such an establishment.

Transfer Pricing

Letter of Comfort cannot be treated as a Letter of Guarantee

Lupin Limited
ITA No.77 / Mum / 2021

Facts

The taxpayer, having its Associated Enterprise (AE) in the Philippines, has issued a letter of comfort to its AE during AY 2013-14 towards credit facilities issued by ANZ Banking Group Ltd. (Bank) to its AE.

The Transfer Pricing Officer (TPO), during the course of the assessment proceedings, disregarded the submissions made by the taxpayer and re-characterized the Letter of Comfort issued by the taxpayer to the AE as a Corporate Guarantee and accordingly made an adjustment by adding 1.5% as a guarantee commission by placing reliance on the rulings[1] issued by Hon'ble Bombay High Court and Hon'ble Income Tax Appellate Tribunal (ITAT) of Mumbai.

The case was appealed before the Hon'ble Commissioner of Income Tax (Appeals) [CIT(A)], wherein the CIT(A) granted partial relief to the taxpayer on other issues; however, upheld the actions of the TPO by stating that the Letter of Comfort issued by the taxpayer is nothing but the guarantee given by the taxpayer and the taxpayer is having a financial obligation to the Bank.

Taxpayer's Contention before the Hon'ble ITAT

The taxpayer contended that the guarantee commission would be applicable only when the taxpayer is legally bound with a financial obligation to make good the losses in case of any default made by the borrower. The taxpayer placed reference on the Letter of Comfort stating that it only represents the taxpayer's intent and does not constitute any obligation on the taxpayer's part. It further stated that incidental benefit arising to the AE from the passive association with the group does not construe an arrangement that warrants receipt of any monetary consideration.

Held by the ITAT

It was observed that the letter of comfort submitted by the taxpayer in any manner does not create any financial obligation on the part of the taxpayer in case of default by the AE. The ITAT further drew attention to the Letter of Offer that was provided by the Bank to the AE, stating that AE shall prepay all its outstanding amount to the Bank if the taxpayer's stakes in its AE are reduced below 51%. This clearly states that the financial obligation has been imposed on the AE and not the taxpayer.

The Hon'ble ITAT further stated that the basic difference between the Corporate Guarantee and the letter of credit is that the corporate guarantee is the financial obligation passed on to the guarantor if the borrower defaults. However, the party issuing the Letter of Comfort would not be under any obligation to indemnify losses in case of any default made by the borrower. The Hon'ble ITAT also referred to the provisions covered under the Safe Harbor Rules wherein it is stated that the letter of credit is excluded from the definition of 'Corporate Guarantee' as covered under Rule 10TA of the Income-tax Rules, 1962.

With the above, the Hon'ble ITAT held that the Letter of Comfort could not be treated as a Corporate Guarantee and deleted the transfer pricing adjustment.

Our Comments

The said ruling outlines the taxpayer's need to maintain robust documentation and relevant evidence as a pre-requisite to validate its determination of arm's length price for international transactions.

1. Glenmark Pharmaceuticals Ltd. v. Addl. CIT (ITA No. 5031/Mum/2012) and Everest Kanto (58 taxmann.com 254 (Bom.))

Furthermore, the taxpayer shall be mindful while laying down the terms of such Letter of Comfort so that it clearly defines the obligation of the borrower vis-à-vis the party issuing such letter wherein no explicit or implicit obligation is passed on to the party issuing such a Letter of Comfort.

Articles

Complexity of GST framework — how companies can avoid fraud
10 April 2024
CNBC18 | Sanjay Chhabria & Ankit Bakiwala
https://lnkd.in/dDEGuGKt

Revamping Indian Real Estate: How Amendments To Insolvency Laws Promote Resolving Projects?
8 April 2024
News18 India | Subodh Dandawate & Sahil Sharma
https://lnkd.in/dSkDxMWR

GST in Realty: Building Blocks or Stumbling Stones?
19 March 2024
Realty Plus | Sanjay Chhabria & Hiren Vora
https://bit.ly/49w802p

GST On Corporate Guarantees: The Proverbial Hydra- Solve 1 Issue & 2 more Arise
15 March 2024
Good Returns | Sanjay Chhabria & Jinesh Shah
https://bit.ly/4aWOXQd

Indirect Tax

Whether hostel accommodation services are eligible for exemption from GST?

Thai Mookambikaa Ladies Hostel vs. Union of India & Ors.
[TS-157-HC(MAD)-2024-GST]

Facts

- In a batch of writ petitions challenging the decisions of the State Appellate Authority for Advance Ruling, the Madras HC had to decide whether private hostels providing residential accommodation and food to college students and working women were eligible to claim exemption from GST in terms of Sr. No. 12 of Notification No. 12/2017-Central Tax (Rate).
- According to the petitioners, their hostels fell within the purview of 'residential dwelling' occurring in Sr. No. 12 of Notification and, therefore, were exempted from the levy of GST. For this purpose, they relied on the CBEC's Education Guide for Taxation of Services, 2012, wherein the phrase "residential dwelling" was interpreted in normal trade parlance to mean 'any residential accommodation' but not including hotel, motel, inn, guest house, campsite, house lodge, house boat, or like places meant for temporary stay.
- The petitioners vehemently argued that 'hostel accommodation,' which falls within the purview of the Tamil Nadu Hostels and Home for Women and Children (Regulation) Act, 2014, could not be equated with 'hotel accommodation,' as sought to be done by the Appellate Authority.

Ruling

- Allowing the writ petitions, Madras HC held that the issue of levy of GST on residential accommodation should be viewed from the perspective of the recipient of services and not from the perspective of the service provider, who offers the premises on a rental basis.
- According to the Court, the terms "residence" and "dwelling" more or less have the same connotation in common parlance and therefore, no different meaning could be assigned to the expression "residential dwelling". Hence, the same includes hostels which are used for residential purposes by students of working women.
- While setting aside the advance rulings, the HC observed, *"...in order to claim exemption of GST, the nature of the end-use should be 'residential' and it cannot be decided by the nature of the property or the nature of the business of the service provider, but by the purpose for which it used, i.e., 'residential dwelling' which is exempted from GST."*
- Since renting out hostel rooms was exclusively for residential purposes, it fulfilled the condition prescribed in the exemption Notification viz. 'residential dwelling for residential purpose.'
- The Court further opined that the purpose of the exemption given in the Notification was only to lessen the tax burden on the dwellers, who are the tenants/occupants of the residential premises taken on rent.
- In this regard, reference was made to the Karnataka HC decision in the case of **Taghar Vasudeva Ambrish vs. Appellate Authority for Advance Rulings, Karnataka and others [Manu/KA/0327/2022]**, wherein it was concluded that services provided by leasing out the residential premises as hostels to students and working professionals are exempted from GST.

Our Comments

The present ruling lays down some important principles/guidelines for determining the GST rates and taxability vis-à-vis the supply of services.

There has been an ambiguity around the entitlement of GST exemption to hostel owners, accommodation providers, and houses offering paying guest facilities and similar temporary stays. This decision should temporarily settle the disputes with the tax authorities.

It is pertinent to note that the Revenue has already approached the Apex Court to challenge the Karnataka HC judgment in the case of Taghar Vasudeva Ambrish. Hence, it is highly likely that Revenue will pursue further litigation in this instance as well.

It will be worthwhile if the GST Council steps in to provide certain clarity on the subject matter.

Alerts

Key Highlights of GST Notifications and Clarification Circulars
3 April 2024
https://bit.ly/49lfyVN

CBIC's guidance on 'investigations' to CGST field formations for maintaining ease of doing business
1 April 2024
https://bit.ly/3JhVmJH

Government notifies policy to promote e-vehicle manufacturing; Slashes customs duty on initial imports
18 March 2024
https://bit.ly/3xwAQCK

Tax Talk

Indian Developments

Indirect Tax

Customs

RoDTEP Scheme extended to Advance Authorization-holders (except deemed exports), EOUs and SEZs

Notification No. 20/2024-Customs (N.T.) dated 11 March 2024 r/w DGFT Notification No.70/2023 dated 8 March 2024 and DGFT Notification No. 74/2023 dated 11 March 2024

The Central Board of Indirect Taxes and Customs (CBIC) has notified that the below export sectors shall now be eligible to avail benefits of the Remission of Duties and Taxes on Exported Products (RoDTEP) Scheme:

1. Advance Authorization or Duty-Free Import Authorization (AA/DFIA) holders, except Deemed Exports;
2. Export Oriented Units (EOUs);
3. Special Economic Zones (SEZs)/Free Trade Warehousing Zone (FTWZs)/ Electronic Hardware Technology Parks (EHTPs)/Bio-Technology Parks (BTPs)/Export Processing Zones.

A revised methodology has been introduced for calculating the duty credit entitlements by considering either the FOB value of declared goods or 1.5 times the market price, whichever is lower. Furthermore, the RoDTEP rates and capping thereof vis-à-vis the aforesaid categories have been prescribed in Appendix 4RE from 11 March 2024 till 30 September 2024 only. Additionally, the existing Appendix 4R (RoDTEP rates and caps schedule) has been revised for 25 HSN Codes.

The extension to SEZ units will take place after IT integration of SEZs with the Customs Automated System (ICEGATE). However, the RoDTEP implementation for exports of products manufactured by AA holders (except Deemed Exports) and EOUs for 166 Tariff lines will come into effect from 1 April 2024 due to requisite technical enablement at ICEGATE.

Specified imports from China PR, USA, Singapore, and other countries to attract ADD; CVD levy on 'pneumatic radial tyres' extended till July 2024

Notification No. 01/2024-Customs (CVD) dated 11 March 2024, Notifications No. 03/2024-Customs (ADD), 04/2024-Customs (ADD), 05/2024-Customs (ADD), 06/2024-Customs (ADD) dated 14 March 2024 and Notification No. 07/2024-Customs (ADD) dated 15 March 2024

The CBIC has notified the levy of Anti-Dumping Duty (ADD) on import of specified items such as Printed Circuit Boards (PCBs), Para-Tertiary Butyl Phenol (PTBP), Ethylene Vinyl Acetate (EVA) Sheet for Solar Module, Self-Adhesive Vinyl (SAV), and Cast Aluminum Alloys from countries like China PR, Singapore, Hong Kong, Korea, the USA for three to five years.

Furthermore, the levy of Countervailing Duty (CVD) on New/Unused Pneumatic Radial Tyres imported from China PR has been extended till 23 July 2024.

Foreign Trade Policy

Advance Authorization-holders, EOUs & SEZs exempted from mandatory QCO compliances

DGFT Notification No. 71/2023 dated 11 March 2024 r/w Public Notice No. 50/2023 dated 11 March 2024

FTP 2023 has been amended to exempt holders of Advance Authorization, EOUs, and SEZs from complying with the mandatory Quality Control Orders (QCOs) for import of inputs. Said exemption will be available for physical exports only, it will not be allowed for deemed exports. The conditions to be fulfilled are as follows:

For Advance Authorizations:

- The imports will be subject to pre-import condition. The inputs will be utilised in manufacturing of the product to be exported under the same authorization.
- Such exemption will be specifically endorsed on the Advance Authorization upon request of the authorization-holder.
- Any unutilized imports or the products manufactured with inputs imported without compliance to the mandatory QCOs will not be transferred to DTA even after regularization of export obligation default.
- In case of unutilised imports, the required procedure of destruction and duty payment with interest needs to be followed.
- Facility of clubbing shall not be available for these authorisations.
- No exemption from QCO compliances to imports under DFIA scheme.

For EOUs and SEZs:

- No DTA clearance of imported inputs or goods manufactured out of such inputs would be allowed.
- An undertaking to this effect shall be submitted at the time of importation to Customs authorities and the Development Commissioner.

DGFT apprises changes in origin declaration for Self-Certification under the UK DCTS

Trade Notice No. 39/2023-24 dated 18 March 2024

Owing to the replacement of existing origin declaration process by the United Kingdom (UK), the Indian exporters to the UK are required to adhere to the new rules under the UK Developing Countries Trading Scheme (UK DCTS) effective 1 January 2024. Goods that meet the UK DCTS Rules of Origin requirements shall be eligible to claim a concessional rate of import duty for exports to the UK.

Accordingly, the exporters have been directed to use the origin declaration wording under DCTS, in place of origin declaration wording under GSP filled through self-certification.

Upcoming Events

Masterclass on GST and Customs – Key Issues and Recent Developments – Bengaluru
24 April 2024
Achromic Point | Sanjay Chhabria

Masterclass on GST and Customs – Key Issues and Recent Developments – New Delhi
9 May 2024
Achromic Point | Sanjay Chhabria

Masterclass on GST and Customs – Key Issues and Recent Developments – Mumbai
15 May 2024
Achromic Point | Sanjay Chhabria

7th National Direct Tax Summit & Awards 2024 – Mumbai
6 June 2024
Achromic Point | Maulik Doshi, Nishit Parikh, & Abhay Saboo

Tax Talk

Global Developments

Direct Tax

Steady progress in the implementation of the BEPS Action 6 minimum standard: latest peer review results

Excerpts from oecd.org
dated 20 March 2024

Members of the OECD/G20 Inclusive Framework on BEPS (Inclusive Framework) continue to make steady progress in the implementation of the BEPS package to tackle international tax avoidance, as the Organization of Economic Cooperation and Development (OECD) releases the latest peer review report assessing jurisdictions' efforts to prevent tax treaty shopping and other forms of treaty abuse under Action 6 of the OECD/G20 BEPS Project. A revised peer review document forming the basis of the assessment of the BEPS Action 6 minimum standard was also released today.

The sixth peer review report on the implementation of the Action 6 minimum standard on treaty shopping, which includes data on tax treaties concluded by jurisdictions that were members of the Inclusive Framework on 31 May 2023, reveals that most agreements concluded between the members of the Inclusive Framework are either already compliant with the Action 6 minimum standard or will shortly come into compliance.

Consistent with previous years, the report (also available in French) confirms the importance of the BEPS Multilateral Instrument (BEPS MLI) as the tool used by most jurisdictions in implementing the BEPS Action 6 minimum standard.

The BEPS MLI has continued to significantly expand the implementation of the minimum standard for the jurisdictions that have ratified it. The impact and coverage of the BEPS MLI continue to increase as additional jurisdictions sign and ratify it. To date, the BEPS MLI covers 102 jurisdictions and around 1 900 bilateral tax treaties.

As one of the four minimum standards, BEPS Action 6 identified treaty abuse, and in particular treaty shopping, as one of the principal sources of BEPS concerns. Treaty shopping typically involves the attempt by a person to access the benefits of a tax agreement between two jurisdictions indirectly without being a resident of one of those jurisdictions. To address this issue, all members of the Inclusive Framework have committed to implementing the Action 6 minimum standard and participate in a periodic peer review process to monitor its accurate implementation.

The 2024 revised peer review documents (available in French) also released form the basis for the peer review process that will be undertaken as of 2024. The consolidated document includes the Terms of Reference, which set out the criteria for assessing the implementation of the Action 6 minimum standard, and the Methodology, which sets out the procedural mechanism by which the review will be conducted. In light of the successful implementation of the Action 6 minimum standard to date, the revised methodology now provides ongoing targeted assistance to those members of the Inclusive Framework that still need to implement the Action 6 minimum standard with a comprehensive peer review process to be carried out once every five years.

Transfer Pricing

Guidelines to implement Transfer Pricing principles by the SFTA[2]

This has been the first published guidance by the Swiss Federal Tax Authorities (SFTA) on the application of the arm's length principle in Switzerland, placing reliance on the principles adopted by OECD. Detailed clarification on various aspects of transfer pricing has been provided under this guidance. Some of the key clarifications are captured below for ease of reference:

Application of Cost-Plus Method (CPM)

A detailed guidance has been provided on the application of the CPM along with detailed guidance on the cost components to be included in the cost base (in the likes of operating cost and non-operating costs). It has also emphasized the treatment of the pass-through costs.

Low value-added services

To simplify compliances for undertaking comparability study and maintaining documents, SFTA has stipulated a few conditions under which services may be classified as low value-added services and has provided a simplified approach of applying flat 5% markup for such services with simplified documentation requirements.

Withholding of taxes in the context of primary, correlative and secondary adjustment

Primary adjustments are adjustments to a company's taxable profits made by a first tax authority as a result of the application of the arm's length principle to transactions involving an associated enterprise established in a foreign country. In Switzerland, primary adjustments are made exclusively by the cantonal tax authorities.

The secondary adjustment is the one made over what the OECD refers to as a secondary transaction, i.e., a constructive dividend due to a non-arm's length dealing. Under the Swiss tax system, a remuneration above the arm's length principle might constitute a constructive dividend upon which withholding taxes are levied.

Cost sharing agreements (CSA)

CSA is an arrangement for the development of intangible assets wherein parties agree to share cost, risk and profits. The costs are apportioned in a proportion that anticipates the respective benefits that each party will be able to derive from the exploitation of the developed assets, according to the contractual distribution of the profits.

Intra-group loans

The SFTA refers to its safe-harbour interest rate circular. If the taxpayer complies with the same, the taxpayer does not have to benchmark the interest rates applied. However, the condition is that the transaction falls within the scope of the circular.

The various elements of the financial transaction are required to be considered to undertake the benchmarking study, i.e., maturity of the instrument, start date, currency, rating, any guarantees/collaterals, etc.). A detailed guidance in this regard is also issued for the data points to be taken into consideration to undertake a credit rating analysis along with the methodology of undertaking a credit rating analysis.

In a benchmark study, there is usually a range of possible values. The SFTA expects the intra-group interest rate to be within the interquartile range.

The release of the comprehensive transfer pricing guidance by SFTA on applying the arm's length principle has emphasized the importance of transfer pricing in Switzerland. This would also provide better clarity to the taxpayers in Switzerland. It is imperative for multinational groups to devise transfer pricing policies that are compliant with the local transfer pricing laws in the jurisdiction of both the transacting entities.

2. https://www.estv.admin.ch/estv/fr/accueil/droit-fiscal- international/prix-de-transfert.html

Indirect Tax

Changes introduced in the UK's Spring Budget 2024

Excerpts from various sources

The key implications of the UK Spring Budget from an indirect tax perspective are as below:

- Effective 1 April 2024, the UK government has raised the VAT registration threshold from GBP 85,000 to GBP 90,000 and the VAT deregistration threshold from GBP 83,000 to GBP 88,000 for the first time in seven years.
- Implementation of the UK Carbon Border Adjustment Mechanism (CBAM) from 1 January 2027 targeting imports from specific sectors such as aluminum, cement, ceramics, fertilizer, glass, hydrogen, iron and steel (details expected towards the end of 2024).
- Alcohol duty is frozen until February 2025.
- A new excise duty is slated to be introduced on vaping products, accompanied by a one-time increase in tobacco duty. Registration for this duty opens on 1 April 2026, with the duty coming into effect from 1 October 2026.

Malaysia issues guidance on service tax exemption for specified logistics services

[Service Tax Policy Bill 4/2024: Improvement of Service Tax Policy on Logistics Services]

In a bid to alleviate the burden of double taxation and its cascading impact across multiple tiers of the logistics network, B2B logistics service providers have been granted an exemption from service tax payment on the acquisition of similar logistic service components. This exemption encompasses various logistic services, including those catering directly exported goods, transshipment, transit operations, door-to-door logistics, and food and beverage deliveries facilitated through e-commerce platforms.

Moreover, the implementation of the 6% service tax, initially scheduled for 1 March 2024, has been postponed by one month and, accordingly, enforced from 1 April 2024 onwards.

Poland: No extension for temporary zero VAT rate on basic food products

Excerpts from various sources

Effective 1 April 2024, the Polish government has terminated the 0% VAT rate on food products which was implemented two years ago to help soften the blow of soaring inflation.

German Parliament approves legislation introducing three-phase e-invoicing mandate

Excerpts from various sources

The German Federal Council (Bundesrat) approved the Growth Opportunities Bill on 22 March 2024, establishing mandatory B2B e-invoicing effective from 1 January 2025.

The rollout will occur in three phases commencing on 1 January 2025, with the aim of discontinuing the usage of non-e-invoice compliant invoices by 1 January 2028.

New Zealand introduces new GST and gaming duty measures for remote sellers

Excerpts from various sources

The amendment paper issued by the New Zealand Minister of Revenue introduces the following changes to the Taxation Bill:

- Effective 1 July 2024, GST-registered persons based outside the country will impose an offshore gaming duty on remote gambling services provided to New Zealand residents. This duty will be at 12% of the offshore gambling profits generated by these entities.
- The rules governing offshore gaming duty will be harmonized with the current regulations for GST on remote services.
- The duty will not be levied on existing 10% "consumption charges" imposed on sports and racing betting made by New Zealand residents through offshore operators.

Compliance Calendar

Direct Tax
Indirect Tax

7 April 2024

- Securities Transaction Tax - Due date for deposit of tax collected for March 2024.
- Commodities Transaction Tax - Due date for deposit of tax collected for March 2024.
- Declaration under sub-section (1A) of Section 206C of the Income-tax Act, 1961, is to be made by a buyer to obtain goods without collection tax for declarations received in March 2024.
- Collection and recovery of equalization levy on specified services in March 2024.
- Due date for the deposit of tax deducted/collected by an office of the government is March 2024. However, all sums deducted 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.

10 April 2024

- GSTR-7 for March 2024 to be filed by taxpayers liable to Tax Deducted at Source (TDS).
- GSTR-8 for March 2024 to be filed by taxpayers liable to Tax Collected at Source (TCS).

11 April 2024

- GSTR-1 for March 2024 by all registered taxpayers not under the QRMP scheme.

13 April 2024

- GSTR-6 for March 2024 to be filed by Input Service Distributors (ISDs).
- GSTR-1 for the quarter of January 2024 to March 2024 to be filed by all taxpayers under the QRMP Scheme.
- GSTR-5 for March 2024 to be filed by Non-Resident Foreign taxpayers.

14 April 2024

- Form 16B - Due date for issue of TDS Certificate for tax deducted under Section 194-IA in February 2024.
- Form 16C - Due date for issue of TDS Certificate for tax deducted under Section 194-IB in February 2024.
- Form 16D - Due date for issue of TDS Certificate for tax deducted under Section 194M in February 2024.
- Form 16E - Due date for issue of TDS Certificate for tax deducted under Section 194S in February 2024.

15 April 2024

- Quarterly statement with respect to foreign remittances (to be furnished by authorized dealers) in Form No. 15CC for the quarter ending March 2024).
- Due date for furnishing statement in Form No. 3BB by a stock exchange in respect of transactions in which client codes been modified after registering in the system for March 2024.
- Due date for furnishing statement in Form No. 3BC by a recognized association in respect of transactions in which client codes have been modified after registering in the system for March 2024.
- Form 49BA - Quarterly statement to be furnished by the specified fund in respect of a non-resident referred to in rule 114AAB in respect of the quarter ending 31 March 2024.
- Form 15CD - Quarterly statement to be furnished by a unit of an International Financial Services Centre, as referred to in subsection (1A) of Section 80LA, in respect of remittances, made for the quarter of January to March of 2023-24 (Financial Year).

20 April 2024

- GSTR-5A for March 2024 to be filed by Non-Resident suppliers of Online Database Access and Retrieval (OIDAR) services.
- GSTR-3B for March 2024 to be filed by all taxpayers not under the QRMP Scheme.

22 April 2024

- GSTR-3B for the quarter of January 2024 to March 2024 to be filed by taxpayers under the QRMP Scheme and having principal place of business in Category 1 States.

24 April 2024

- GSTR-3B for the quarter of January 2024 to March 2024 to be filed by taxpayers under the QRMP Scheme and having principal place of business in Category 2 States.

25 April 2024

- ITC-04 for the period October 2023 to March 2024 to be filled by taxpayers sending/receiving goods from job worker.

Compliance Calendar

Direct Tax
Indirect Tax

30 April 2024

- Form 26QB - Due date for furnishing of challan-cum-statement in respect of tax deducted under Section 194-IA in March 2024.
- Form 26QC - Due date for furnishing of challan-cum-statement in respect of tax deducted under Section 194-IB in March 2024.
- Form 26QD - Due date for furnishing of challan cum statement in respect of tax deducted under Section 194M in March 2024.
- Form 26QE - Due date for furnishing of challan cum statement in respect of tax deducted under Section 194S in March 2024.
- Due date for deposit of tax deducted by an assessee other than an office of the government for March 2024.
- Form II SWF - Intimation by Sovereign Wealth Fund of investment under clause (23FE) of Section 10 of the Income-tax Act, 1961 for the quarter ending 31 March 2024.
- Form 61 - Due date for e-filing of a declaration in Form No. 61 containing particulars of Form No. 60 received during the period 1 October 2023 to 31 March 2024.
- Due date for uploading declarations received from recipients in Form 15G/15H during the quarter ending March 2024.
- Due date for deposit of TDS for the period January 2024 to March 2024 when the Assessing Officer has permitted quarterly deposit of TDS under Section 192, 194A, 194D or 194H.
- Form 10BBB - Intimation by Pension Fund of investment under clause (23FE) of Section 10 of the Income-tax Act, 1961 for the quarter ending 31 March 2024.
- Due date for furnishing of Form 24G by an office of the Government where TDS/TCS for March 2024.

7 May 2024

- Securities Transaction Tax - Due date for deposit of tax collected for April 2024.
- Commodities Transaction Tax - Due date for deposit of tax collected for April 2024.
- Form 27C - Declaration under sub-section (1A) of Section 206C of the Income-tax Act, 1961 to be made by a buyer to obtain goods without tax collection for declarations received in April 2024.
- Collection and recovery of equalization levy on specified services in April 2024.
- Due date for the deposit of tax deducted/collected for April 2024. 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.

10 May 2024

- GSTR-7 for April 2024 to be filed by taxpayers liable to TDS.
- GSTR-8 for April 2024 to be filed by taxpayers liable to TCS.

11 May 2024

- GSTR-1 to be filed for April 2024 by all taxpayers not under the QRMP Scheme.

13 May 2024

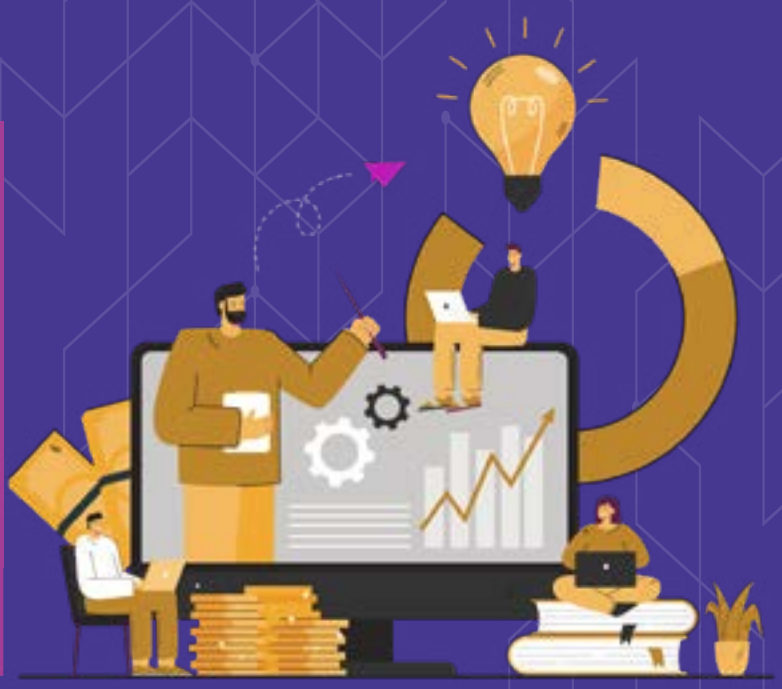
- GSTR-6 for the month of April 2024 to be filed by ISDs.
- Uploading B2B invoices using Invoice Furnishing Facility under the QRMP Scheme for April 2024 by taxpayers with aggregate turnover of up to INR 50 million.
- GSTR-5 for April 2024 to be filed by Non-Resident Foreign taxpayers.

Category 1 states: Chhattisgarh, Madhya Pradesh, Gujarat, Maharashtra, Karnataka, Goa, Kerala, Tamil Nadu, Telangana, Andhra Pradesh, the Union territories of Daman and Diu and Dadra and Nagar Haveli, Puducherry, Andaman and Nicobar Islands or Lakshadweep

Category 2 states: Himachal Pradesh, Punjab, Uttarakhand, Haryana, Rajasthan, Uttar Pradesh, Bihar, Sikkim, Arunachal Pradesh, Nagaland, Manipur, Mizoram, Tripura, Meghalaya, Assam, West Bengal, Jharkhand or Odisha, the Union territories of Jammu and Kashmir, Ladakh, Chandigarh or Delhi

Easy Remittance Tool

by Nexdigm



Form 15CA/CB Automation

Review of tax position by experts

Issuance of bulk certificates through Automated tool

Repository - Access to entire set of documents

Access to Detailed transaction wise reports

Representation Support

Generation 15CA bulk files & utility to generate Form A2

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Nexdigm is an employee-owned, privately held, independent global organization that helps companies across geographies meet the needs of a dynamic business environment. Our focus on problem-solving, supported by our multifunctional expertise enables us to provide customized solutions for our clients.

We provide integrated, digitally driven solutions encompassing Business and Professional Services that help companies navigate challenges across all stages of their life-cycle. Through our direct operations in the USA, Poland, UAE, and India, we serve a diverse range of clients, spanning multinationals, listed companies, privately-owned companies, and family-owned businesses from over 50 countries.

Our multidisciplinary teams serve a wide range of industries, with a specific focus on healthcare, food processing, and banking and financial services. Over the last decade, we have built and leveraged capabilities across key global markets to provide transnational support to numerous clients.

From inception, our founders have propagated a culture that values professional standards and personalized service. An emphasis on collaboration and ethical conduct drives us to serve our clients with integrity while delivering high quality, innovative results. We act as partners to our clients, and take a proactive stance in understanding their needs and constraints, to provide integrated solutions. Quality at Nexdigm is of utmost importance, and we are ISO/IEC 27001 certified for information security and ISO 9001 certified for quality management.

We have been recognized over the years by global organizations, like the International Accounting Bulletin and Euro Money Publications, World Commerce and Contracting, Everest Group Peak Matrix® Assessment 2022, for Procurement Outsourcing (PO) and Finance and Accounting Outsourcing (FAO), ISG Provider Lens™ Quadrant 2023 for Procurement BPO and Transformation Services and Global Sourcing Association (GSA) UK.

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

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