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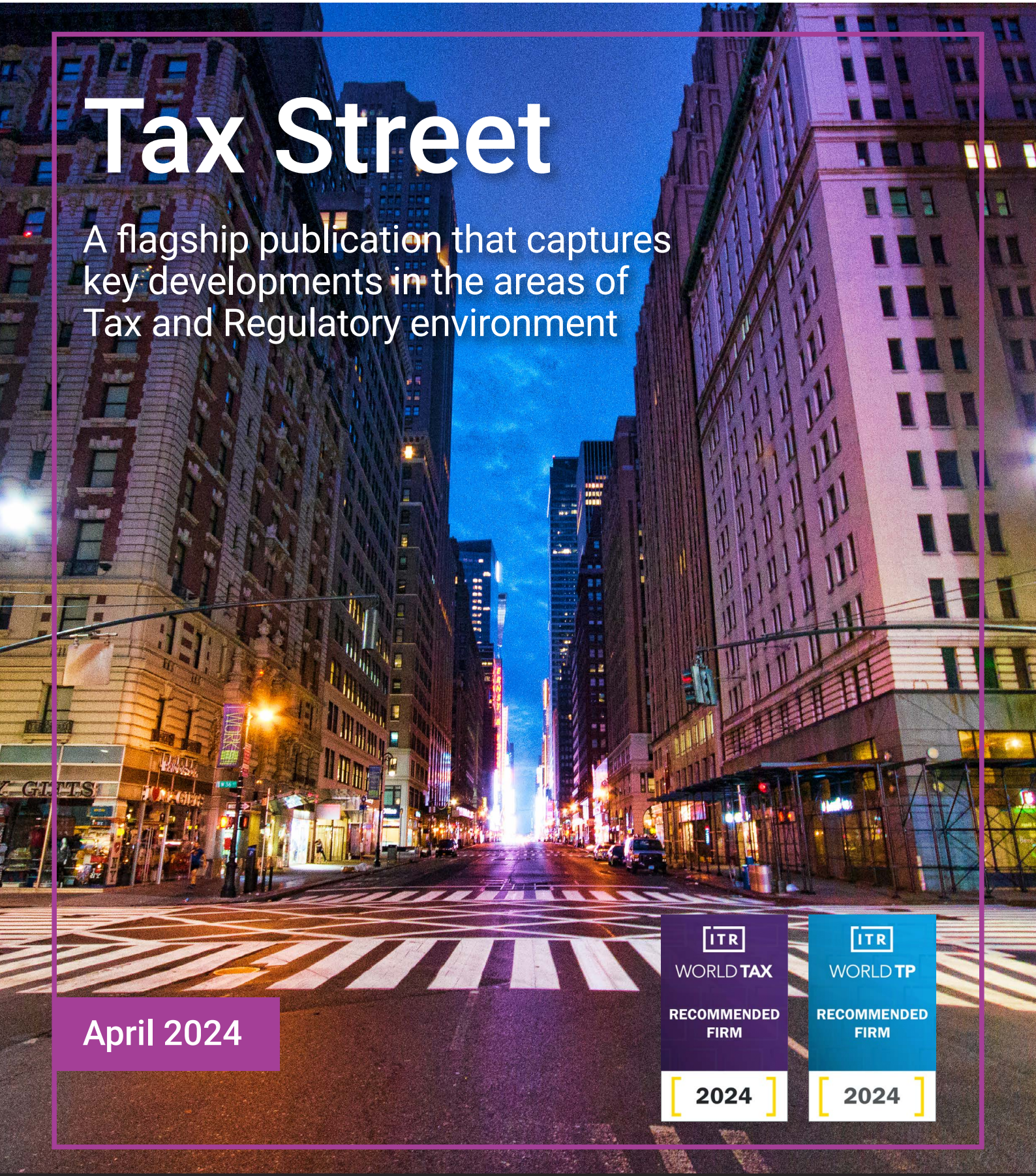

Tax Street

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

ITR WORLD TAX RECOMMENDED FIRM 2024

ITR WORLD TP RECOMMENDED FIRM 2024

April 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 April 2024.

- The **'Focus Point'** explores the impact of Section 139(8A) in reducing litigation and promoting voluntary tax compliance.
- 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

Driving Voluntary Tax Compliance: the impact of Section 139(8A) on Updated Returns

The Finance Act 2022 introduced a new section[1] enabling assessees to file updated returns. As per the budget speech and the memorandum attached to the Finance Bill, the purpose of the new provisions was to promote voluntary tax compliance and reduce litigation in situations where the assessee either missed filing his return of income within the statutory timeline or where, after filing his return he subsequently discovered any underreporting of income.

As per the provisions, any person may furnish an updated return for the previous year relevant to the assessment year within 24 months from the end of the assessment year. An updated return may be furnished even if the assessee has filed no return within the statutory timelines.

The Income-tax Act, 1961 (the Act) provides timelines within which a return of income is required to be furnished by various types of assessee. Furthermore, the timeline provided to file revised returns or belated returns has been reduced to 31 December following the end of the relevant previous year. The new updated return provision allows an assessee extended period of 2 years from the end of the assessment year to file an updated return.

For e.g., the timeline to file a revised return or a belated return for AY 2023-24 expired on 31 December 2023. For AY 2023-24, the updated return may be filed by 31 March 2026, thus giving an assessee additional time to disclose his correct total income without any litigation or penal consequences.

An updated return may be furnished in the following circumstances:

- No return has been made within the statutory timelines
- A return has been filed by the assessee. However, the assessee has now noticed an error in reporting his income or his income is underreported.

Due to the significant push for digitalization, the government has gathered a huge quantity of data, reflected in the Annual Information Statement (AIS), a comprehensive statement of various incomes and transactions of an assessee on the income-tax website. AIS was also introduced to facilitate voluntary compliance and eliminate the underreporting of income by assessees.

The government recognizes the issue that an assessee may have genuinely missed reporting certain incomes and, hence, also introduced the provisions of updated income to enable the assessee to comply with the disclosures. The government believes that this provision would, on the one hand, bring the use of huge data with the IT Department to a logical conclusion, resulting in additional revenue realization and on the other hand, it will facilitate ease of compliance to the taxpayer in a litigation free environment.

Given the purpose, the provisions are made applicable subject to prescribed conditions. It is quite obvious that these provisions cannot be availed of for claiming any benefit by the assessee, for e.g., an updated return cannot be filed to claim additional deductions, incentives or additional loss/ MAT credit carry forward. An updated return can be filed only to disclose additional income over and above the income that has been disclosed in the original return. In short, the total income as per the updated return cannot be lower than the income in the original return.

Furthermore, the assessee is required to pay additional tax over and above his tax liability while filing an updated

1. Section 139(8A) of the Income-tax Act, 1961

return, which should be accompanied by proof of payment of tax and additional tax. Additional tax payable is as follows:

- If an updated return is furnished within 12 months from the end of the relevant assessment year – 25% of the income tax payable, including surcharge and cess, and interest.
- If an updated return is furnished after 12 months but before 24 months from the end of the relevant assessment year – 50% of the income tax payable, including surcharge and cess, and interest.

While computing the income tax payable in an updated return, credit of all taxes paid, including TDS, foreign tax credit, rebates, marginal relief and credit of MAT, if any, is allowed.

Additionally, if, as a result of an updated return for a year, the carried forward loss or unabsorbed depreciation or MAT/AMT credit is reduced and has an impact on the taxable income for subsequent year or years, an updated return is required to be furnished for each such subsequent year revising the income. For e.g., if in year 1, the assessee had a loss that was carried forward and set off in year 2. The assessee now files an updated return for year 1, thus reducing the loss that has been carried forward and set off in year 2, he is required to file an updated return even for year 2 with the revised loss set off.

As per the provisions, an updated return cannot be filed in the following circumstances:

- If it is a return of loss.
- If it has the effect of reducing the tax liability as disclosed in the earlier return or results in a refund or increases the refund due on the earlier return under Section 139(1)/(4)/(5).
- If a search under Section 132 is conducted or books of accounts, other documents or assets are requisitioned under Section 132A.
- Survey is conducted under Section 133A(other than subsection 2A)
- Any money, bullion, books or, documents, etc. seized under Section 132 or requisitioned under Section 132A in case of any other person belonging to or pertaining to such person.
- If one updated return has already been furnished by the assessee for the year;
- Any proceeding for assessment/ reassessment/revision of income is pending or has been completed for the relevant assessment year.
- The assessing officer has information in his possession under the Prevention of Money Laundering Act,2002 or Blank Money (Undisclosed Foreign Income & Assets) & Imposition of Tax ,2015 or the Prohibition of Benami Property Transactions Act, 1988 or the Smugglers & Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 and the same has been communicated to him before filing the updated return.
- Information has been received under an agreement referred under Section 90 or 90A of Double Taxation Avoidance Agreement (DTAA) and the same has been communicated to him before filing the updated return.
- Any prosecution proceedings have been initiated under Chapter XXII.
- He is a person or belongs to such classes of persons as may be notified by the Central Board of Direct Taxes (CBDT).

An updated return has to be submitted in Form ITR U, notified for this purpose vide Rule 12AC.

As observed above, this is a welcome step with a positive intention to reduce litigations, help better compliance and thus ensure more tax revenues are collected. It gives an assessee a breather to disclose correct income before the tax department without any litigation. This compliance, however, comes with some additional tax burden; hence, assessee's should not consider updated returns as a substitute to the return filing requirements within statutory timelines.

Upcoming Webinars

Input Service Distributor & Corporate Guarantee under GST
22 May 2024
Sanjay Chhabria and Hiren Vora
https://bit.ly/3JWHftP

Key Tax Considerations in M&A Transactions
28 May 2024
Maulik Doshi
https://bit.ly/4aIQm1G

Events and Webinars

Masterclass on GST and Customs - Key Issues and Recent Developments - Mumbai
15 May 2024
Sanjay Chhabria

Masterclass on GST and Customs - Key Issues and Recent Developments - New Delhi
9 May 2024
Sanjay Chhabria

Masterclass on GST and Customs - Key Issues and Recent Developments - Bengaluru
24 April 2024
Sanjay Chhabria

From the Judiciary

Direct Tax

Does IUC qualify as Royalty under the India-Japan tax treaty?

KDDI Corporation
TS-266-ITAT-2024 (Bang)

Facts

The taxpayer, a resident of Japan, was engaged in providing telecom interconnect facilities to various Indian telecoms. During the relevant assessment year, the entity received certain Interconnection Usage Charges (IUC) from various telecom operators in India.

The Revenue argued that the IUC constituted Royalty and ought to be taxed in India. The taxpayer referenced a relevant judgment from the jurisdictional High Court in the case of Vodafone Idea Ltd. The argument put forward was that there is no involvement of either 'use of process' or 'use of equipment'. Additionally, it was asserted that the widened definitions of 'process' under Explanations 5 and 6 cannot supersede the provisions of the tax treaty. Furthermore, reliance was placed on a previous ruling by the Delhi Income Tax Appellate Tribunal (ITAT) in the case of Bharti Airtel, arguing that for a process to qualify as Royalty under Section 9(1)(vi), it must be confidential.

Held

It was observed that the installation and operation of advanced equipment are aimed at generating income by providing users with the benefits of such equipment or facilities. This does not equate to granting the use or right to use the equipment or process, and therefore, it does not fall within the definition of "Royalty" as outlined in clause 3 of Article 12 of the India-Japan DTAA.

Thus, the Tribunal held that payment received by taxpayers towards IUC from Indian customers/end users cannot be considered as Royalty to be brought to tax in India.

The payment received by the non-resident taxpayer amounted to a business profit, which is taxable in the resident country and is not taxable in India in the absence of a Permanent Establishment (PE) in India.

Our Comments

This case law provides an insight into understanding the interpretation of the tax treaty term 'use or right to use,' which differs from the terms "transfer of all or any rights" or "use of" in domestic law. It is crucial to note that the case law stresses that the expanded definition in the Act cannot override the provisions of the tax treaty.

Can treaty benefits be denied on non-submission of TRC despite filing tax return in the foreign jurisdiction?

Yogesh Kotiya
TS-254-ITAT-2024(DEL)

Facts

The taxpayer, an employee of Nokia Solutions and Networks India Private Limited (Nokia India), was assigned overseas to Australia and performed employment duties with Nokia Australia. Despite working in Australia, the taxpayer received salary payments in India and sought the benefit of Article 15(1) of the India-Australia DTAA for the salary received.

Revenue denied treaty benefit under Article 15(1) of the India-Australia DTAA on the premise that the assessee had not submitted the Tax Residency Certificate (TRC) issued by Australian tax authorities.

The taxpayer provided copies of the assignment agreement, passport, and Australian tax return as evidence of taxes paid in Australia for the salary received in India, stemming from employment with Nokia Australia. Additionally, the Tax Residency Certificate (TRC) was submitted during the DRP proceedings as supplementary evidence to support the exemption claim for salary income under the India-Australia DTAA.

Held

The Tribunal observed that the Revenue denied tax treaty benefits to the taxpayer merely on the ground that TRC was not provided while ignoring all other facts like filing of the tax return in Australia and paying taxes there.

The Tribunal further held that combined reading of Sections 5, 9(1)(ii) and 15, "no taxability arises on the salary/ allowances received by the assessee since the assessee is a non-resident and has rendered services outside India."

Thus, it was concluded that tax treaty benefits are to be provided to the taxpayer.

Our Comments

The case concludes that furnishing of TRC is not the ultimate test of tax treaty benefit in the case of a salaried non-resident and other evidence supporting residency should also suffice.

Transfer Pricing

The High Court rejected Revenue's appeal against the ITAT order invoking provisions of Section 92(3), on the grounds of being 'thoroughly misconceived'

Mercer Consulting India Pvt. Ltd.[2]
TS-115-HC-2024(DEL)-TP - AY 2011-12

The taxpayer, a captive Information Technology enabled Services (ITES) provider, followed a TP policy of charging cost plus 20% markup to its Associated Enterprise (AE). Furthermore, it also availed management support services from its AE. Since availing of services was linked to the main transaction of ITES, the payment for the same formed a part of the cost base for calculating the 20% markup charged to the AE.

The Transfer Pricing Officer (TPO) made an adjustment for ITES by determining Arm's Length Price (ALP) margin of 29.53%. Furthermore, the TPO also determined the ALP of management support services at NIL. On appeal before the Dispute Resolution Panel (DRP) by the taxpayer, the DRP deleted the adjustment on rendition of ITES. However, it upheld the TPO's determination of the ALP of management support services at NIL.

The ITAT stated that if the ALP of management services is determined at NIL, then such cost will have to be removed from the cost base and subsequently will also have to be removed from the computation of the amount receivable for rendition of ITeS to the AE resulting in reduction of profits and tax base. Hence, the provision of Section 92(3) gets invoked and accordingly, the ITAT upheld the taxpayer's contentions.

The Revenue filed an appeal before the Hon'ble HC wherein it stated that if the challenge as raised by the Revenue were to be accepted, it would result in a reduction of the income chargeable to tax, and this fact is not questioned or disputed before the HC and consequently, no substantial question of law arises. Accordingly, the HC dismissed the appeal as being 'thoroughly misconceived.'

Our Comments

The invocation of Section 92(3) is a crucial aspect of transfer pricing regulations in India, which can be seen from the said judgment passed by the HC wherein the Tribunal adopted a practical view by not getting into the merits of disallowance relating to Intra group service (IGS payment), but by addressing the issue in a fundamental context itself. However, the taxpayers should be conscious of the applicability of the said section as there may be finer nuances in terms of how the relevant provision is to be read.

Invoice/Separate Agreements between branches are not mandatory if an appropriate allocation key is adopted for cost allocation

Standard Chartered Bank Ltd[3]
TS-110-ITAT-2024(Mum)-TP

The taxpayer is engaged in banking in India through its branches. While filing its return, the deduction was claimed for expenses amounting to INR 769.3 million allocated by Head Office (AE/ HO) as they were directly attributable to Indian business operations.

The TPO asked the taxpayer to provide specific evidence to establish that the cost relates to the Indian Branch activity. Against this, the taxpayer was able to furnish documentation for approximately 60% of the cost. Furthermore, a certificate was also submitted from statutory auditors (CPA) of the HO that validated the cost allocation. However, the TPO rejected the certificate and allowed a deduction only to the extent of INR 419.7 million.

2. ITA 217/2017
3. Income Tax Appellate Tribunal - ITA NO.1683 & 2839/MUM/2019 – AY 2002 – 03 & 2003 – 04

The Assessing Officer (AO) accepted the findings of the TPO but disallowed entire expenses on the grounds that invoices/intercompany agreements were not maintained for allocated expenses. The CIT(A) upheld the order passed by the AO/TPO.

The ITAT held that the nonexistence of intercompany agreements/ invoices was not an adequate reason for disallowance as expenses were allocated between internal cost centers of the same taxpayer and hence there is no mandate to have an agreement or invoice in place, approved internal memo is also enough. Furthermore, the CPA certificate furnished by the taxpayer for allocation keys would meet the requirement of Rule 10D. Hence, the ITAT remanded the matter back for consideration.

Our Comments

Based on the above judicial precedent, while it may be viewed that for internal allocation of cost, it is not mandatory to maintain agreement/invoices if adequate supporting documentation is maintained on allocation keys along with the certificates from the statutory auditor / certified practitioner wherever feasible. However, considering the history of litigation over the years, the taxpayer should maintain all the documents as required under Rule 10D of Income Tax Rules and OECD Guidelines to avoid any issue under litigation.

Indirect Tax

Whether SEZ unit is liable to discharge GST under the Reverse Charge Mechanism (RCM) on specified services procured from the Domestic Tariff Area (DTA)?

In the matter of Waree Energies LTD
TS-217-AAR(GUJ)-2024-GST

Note

- In the case of **M/s Portescap India P. Ltd. [TS-16-AAAR(MAH)-2023-GST]**, the Maharashtra Appellate Authority for Advance Ruling (AAAR) set aside the order of Authority for Advance Ruling (AAR) by holding that SEZ unit (Appellant) procuring renting of immovable property or any other service from SEEPZ, SEZ (SEZ Developer) for carrying out the authorized operations is not required to pay GST under RCM subject to furnishing of LUT or bond as a deemed supplier of such services.
- The AAAR observed that "Section 16 (1) of the IGST Act, 2017 will supersede over the Notification issued under Section 5(3) of the IGST Act, 2017, which enumerates the services which attract GST under reverse charge basis" while citing the settled proposition of law that specific provisions made in the Act will have greater legal force than that of a Notification issued under same or any other provisions of the same Act.

Facts

- The applicant, a SEZ unit engaged in solar module manufacturing, filed an advance ruling application to seek clarity on the obligation to pay GST under RCM on services procured from DTA.
- The applicant questioned the applicability of Notification No. 10/2017-Integrated Tax (Rate) and argued that, being a SEZ unit, they are exempt from GST under Rule 5(5) (a) of the SEZ Rules, 2006.
- The applicant further submitted that Rule 30 allows DTA suppliers to clear supplies to SEZ units as zero-rated supplies under Section 16 of the IGST Act, 2017. They further highlighted Notification No. 18/2017-Integrated Tax (Rate), which exempts services imported by SEZ for authorized operations from the whole of IGST.
- Reliance was also placed on Letter F. No. 334/335/2017-TRU dated 18 December 2017, issued in the context of the applicability of RCM on procurement of services by the International Financial Services Centre (IFSC), SEZ. It was clarified that a SEZ unit could procure services that are taxable under RCM without payment of IGST, provided the unit furnishes a Letter of Undertaking (LUT).

Ruling

- While the Gujarat AAR referred to the FAQs on GST, 3rd Edition, dated 15 December 2018, which emphasized that SEZ units are deemed suppliers and hence, liable to discharge GST under RCM, it also considered Notification No. 37/2017-Central Tax that allowed DTA suppliers to supply services to SEZ units/export without payment of GST subject to furnishing of LUT.
- It also found that although the Tax Research Unit (TRU) clarification issued to IFSC was not a Circular, there was no bar in borrowing the rationale thereof.

- Accordingly, it held that the applicant, a SEZ unit, could procure the services, such as legal, sponsorship, etc., for use in authorized operations without payment of IGST, provided they furnish a LUT as specified in Notification No. 37/2017-Central Tax.
- The AAR found that its view was substantiated vide the order of Maharashtra Appellate AAR in the case of M/s Portescap India Pvt. Ltd.

Our Comments

Although the GST regime is set to turn seven in a couple of months, there still remains a debate on the applicability of reverse charge GST to SEZs.

The present advance ruling should help fortify the defense for SEZ taxpayers during assessments and audits under the GST law.

Given that the binding value of advance rulings is restricted to the applicants and jurisdictional authorities therein and the prevailing diverse practices across sectors and tax treatment accorded thereto, it would be worthwhile if clarification is issued by the GST Council and CBIC to conclusively resolve the longstanding ambiguity surrounding this matter.

Quotes and Coverage

Indian Electric Vehicles Gain Momentum with 66% Expected Growth in 2024
18 April 2024 | News 9
Sanjay Chhabria
https://bit.ly/4biRYux

Articles

Lok sabha Election 2024: GST Amendments new government should bring in to support MSME
21 April 2024
Sanjay Chhabria
https://bit.ly/4dSWKAT

How GST ensured fast Credit Growth to MSMEs
20 April 2024
Sanjay Chhabria and Snehal Gadhave
https://bit.ly/4bDl73y

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

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

Alerts

FTA announces mandatory UAE Pass-based login on the EmaraTax portal from September 2024
8 May 2024
https://bit.ly/4dEcili

Key Highlights of GST Notifications and Clarification Circulars – April 2024
6 May 2024
https://bit.ly/3QubFao

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

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

Tax Talk

Indian Developments

Direct Tax

Time limit for verification of return of income after uploading

Notification no. 2 of 2024
dated 31 March 2024

The CBDT clarified that where the return of income is uploaded and e-verification/ITR-V is submitted within 30 days of uploading, the date of uploading the return of income shall be considered as the date of furnishing the return of income. And where e-verification or ITR-V is submitted after 30 days of uploading, the date of e-verification/ITR-V submission shall be treated as the date of furnishing the return of income and all consequences of late filing of return under the Act shall follow, as applicable.

Furthermore, in case of verification through submitting a signed ITR-V at the Central Processing Centre (CPC), the date on which the duly verified ITR-V is received at CPC shall be considered to determine the 30-day period from the date of uploading of the return of income.

It is further clarified that where the return of income is not verified within 30 days from the date of uploading or till the due date for furnishing the return of income as per the Act - whichever is later - such return shall be treated as invalid due to non-verification.

Inoperative PAN

Circular no.6/2024
dated 23 April 2024

As per Rule 114AAA of the Income tax rules, if PAN and Aadhaar are not linked, PAN becomes inoperative. As a consequence of the same, the deductors/collectors, while making payments to any of such inoperative PAN on or after 1 July 2023, shall deduct/collect tax at higher rates as specified under section 206AA/206CC, as the maybe.

With a view to redressing the grievances faced by deductors/collectors who have short deducted/collected tax due to non-linking of PAN and Aadhaar by deductee/collectee, the CBDT has specified that, for transactions entered into upto 31 March 2024 and in cases where the PAN becomes operative (as a result of linkage with Aadhaar) on or before 31 May 2024, there shall be no liability on deductor/collector to deduct/collect tax at higher rates as specified under section 206AA/206CC, as the maybe.

However, the communication is silent as to how the already raised demands that have been settled will be catered to, and how the relief will be extended to such cases.

Extension of due date for filing of Form No. 10A/10AB

Circular no.7/2024
dated 25 April 2024

To avoid and mitigate genuine hardship, the CBDT extends the due date of making an application/intimation electronically in Form No. 10A and Form No. 10AB till 30 June 2024, from the earlier date of 30 September 2023.

Hence, in cases where any trust, institution or fund has already made an application in Form No.10AB under the said provisions on or before the issuance of this Circular and where the Principal Commissioner or Commissioner has not passed an order before the issuance of this Circular, the pending application in Form No. 10AB may be treated as a valid application. And in case an order is passed rejecting the same solely because of late filing, the assessee can file a fresh application as per extended timelines.

Further, in cases wherein the assessee had filed for provisional registration due to non-filing of Form 10A within the due date and has been provided with a provisional certificate, can surrender the Provisional certificate and apply for registration in Form 10A within the extended time.

Transfer Pricing

CBDT sets a record by signing 125 APAs in FY 2023-24[4]

This update can be checked in detail here.

Indirect Tax

Foreign Trade Policy

DGFT's directives on submission of digitized Aayat Niryat Forms (ANFs), Appendices, etc

Trade Notice No. 01/2024-25 dated 2 April 2024

With a view to streamline the processes, enhance transparency, and ensure accountable delivery systems to facilitate exports and imports, the DGFT has issued directives covering these aspects:

- Digitization of Aayat Niryat Forms (ANFs) and Appendices: Submission of digitized applications and forms exclusively on the DGFT website, eliminating the need for physical or soft copies.
- Online accessibility of Importer-Exporter Code (IEC), Registration Cum Membership Certificates (RCMCs), and MSME status: Integration of multiple electronic exchanges into the DGFT online systems has provided access to various digital certificates to DGFT HQ, without any requirement to upload physical copies.
- Digitalization of ANFs and Appendices requiring professional certification: Ongoing endeavors are directed towards digitalization of certain ANFs and Appendices which require certification by professionals such as Chartered Accountants, Chartered Engineers, Cost Accountants, Company Secretaries, etc. Until such digital signature certificates are fully implemented, copies of these documents may be uploaded online.
- Exclusive online correspondences: Without any physical correspondence, it is now required to respond to all deficiency letters exclusively online, including any other correspondence.

DGFT issues clarification on discharge of export obligation vis-à-vis Advance Authorizations issued under Foreign Trade Policy 2015-20

Policy Circular No. 01/2024 dated 12 April 2024

The DGFT has clarified as follows:

Category of Advance Authorizations	Options for fulfillment of export obligation
• Authorizations issued on or after 1 April 2015 under Notification No. 18/2015-Customs	• Physical Exports, or • Deemed Exports under para 7.02(A)(a) of FTP 2015-20, i.e., supply of goods against Advance Authorisation/Advance Authorisation for Annual Requirement/DFIA.
• Authorizations issued on or after 10 January 2019 under Notification No. 18/2015-Customs, and • Authorizations for deemed exports issued under Notification No. 21/2015-Customs	• Physical Exports, or • Deemed Exports under para 7.02(A)(a) of FTP 2015-20, i.e., supply of goods against Advance Authorisation/Advance Authorisation for Annual Requirement/DFIA, or • Deemed Exports under para 7.02(A)(b) of FTP 2015-20, i.e., supply of goods to EOU/STP/EHTP/BTP, or • Deemed Exports under para 7.02(A)(c) of FTP 2015-20, i.e., supply of capital goods against EPCG authorization provided exemption from payment of applicable Anti-Dumping Duty, Countervailing Duty, Safeguard Duty, and Transition Product Specific Safeguard Duty if any, has not been availed.

4. https://pib.gov.in/PressReleasePage.aspx?PRID=2018085

Tax Talk

Global Developments

Transfer Pricing

United States: Announcement and report concerning advance pricing agreement[5]

The Internal Revenue Service released its 25th annual Advance Pricing Agreement (APA) report, which discusses the experience, structure, and activities of the Advance Pricing and Mutual Agreement (APMA) program. The highlights of the report are as under:

- The total number of APAs executed in 2023 was 156 (4 unilateral, 130 bilateral, and 2 multilateral) as against 167 applications that were filed.
- In 2023, the percentage of APA renewals executed was 47% as compared to 55% in 2022.
- More than half of the APAs executed in 2023 involved transactions between non-US parents and US subsidiaries.
- Most of the transactions covered in APAs executed in 2023 involve selling tangible goods or providing services. 18% of the transactions involve the use of intangible property, which can be among the most challenging transactions in APMA's inventory.
- In 2023, the most commonly used Transfer Pricing Method (TPM) for both the sale of tangible property and the use of intangible property continued to be the comparable profits method/transactional net margin method. It was used for 80% of these types of transactions.
- The Operating Margin (OM) continued to be the most common profit level indicator (PLI) used to benchmark results. It was used in 60 percent of the cases.
- The median time required to complete an APA decreased in 2023 to 42 months (versus 43.4 months in 2022).

Netherlands implements EU Public CbCR Directive[6]

The Dutch Government has finalized legislation to implement the European Union (EU) Public Country-by-Country Reporting (CbCR) directive in the Netherlands. The summary of the directive is as follows:

- The first year of reporting will be the financial year beginning 22 June 2024.
- The directive applies to the EU Ultimate Parent Undertakings (UPU) or standalone undertakings and Non-EU UPU's doing business in the EU through a medium- or large-sized subsidiary undertaking or qualifying branch with a consolidated net turnover of EUR 750 million for each of the last two consecutive financial years.
- The information to be disclosed must be reported on an aggregated basis and must include the following information:
  - Name of the UPE
  - Covered financial year
  - Currency used
  - Subsidiaries located in the EU
  - Nature of the activities
  - Number of employees
  - Revenues
  - Profit or loss before tax
  - Income tax paid
  - Income tax accrued
  - Accumulated earnings

5. A-2024-16 (irs.gov)
6. https://zoek.officielebekendmakingen.nl/stb-2024-43.html

- The directive contains an option that allows companies to not publish information that would be detrimental to the entity's competitive position. The omitted information must be made public in a subsequent report no later than five years after the date of the original omission.
- Both filing of the report in the Dutch Trade Register and website publication are required within 12 months after the end of the financial year. The report is required to be available on the website for at least five years.

Indirect Tax

Saudi Arabia extends E-invoicing requirement to 10th group of taxpayers from October 2024

Excerpts from various sources

The Saudi Arabia Zakat, Tax, and Customs Authority (ZATCA) has announced that taxpayers residing in Saudi Arabia with a taxable turnover exceeding SAR 25 million during the calendar years 2022 or 2023 will be included in the 10th wave of Phase 2 e-invoicing integration. ZATCA will notify affected taxpayers to prepare to link and integrate their e-invoicing systems with ZATCA's e-invoicing platform, Fatoora.

ZATCA has further clarified this phase, outlining the requirements such as issuing e-invoices in a specific format, including additional fields on invoices, and storing e-invoices with a QR code.

Cyprus extends temporary zero VAT on specified goods, and reduces 5% VAT for the purchase or construction of residences

Excerpts from various sources

Cyprus has decided to extend the temporary application of a zero VAT rate on specific goods until 30 June 2024. These goods, previously subject to the standard VAT rate of 19% or the reduced rate of 5%, include essentials such as bread, milk, eggs, baby food, feminine hygiene products, diapers, as well as coffee, sugar, meat, vegetables, and certain roots and tubers.

In addition, the Cyprus Parliament has passed a law allowing taxpayers to apply for a reduced 5% VAT rate for the purchase or construction of a residence within one year of acquiring the property.

Poland announces new deadlines for e-invoicing mandate

Excerpts from various sources

In April 2024, the Polish Ministry of Finance and the National Tax Administration has confirmed a new timeline for the implementation of B2B e-invoicing as follows:

- Effective 1 February 2026 - for entrepreneurs established in Poland with sales value exceeding PLN 200 million per annum in 2025.
- Effective 1 April 2026 - for all other taxpayers.

The project initially scheduled for 1 July 2024 has been postponed stating errors on the KSeF (e-invoicing) platform.

Sweden clarifies VAT treatment of Non Fungible Tokens (NFTs) associated with digital work

Excerpts from various sources

In March 2024, the Swedish Tax Authority published a ruling relating to NFTs, defining them as a unique record on a blockchain signifying the ownership of a specific asset. According to the Authority, a NFT linked to a digital work comprises the following components:

- The ownership of the digital work associated with the NFT;
- The NFT itself; and
- The assignment or transfer of copyright, in rare circumstances.

Addressing the two components, the ruling clarifies whether there are single or multiple transactions for VAT purposes. Considering the intrinsic interdependency of the transfer of ownership of digital work and its NFT, both transactions cannot be separated and should be objectively treated as a new digital service.

In instances of copyright, an evaluation of whether the copyright is tied to the NFT is necessary to determine the nature of the transaction.

Compliance Calendar

Direct Tax
Indirect Tax

7 May 2024

- Due date for 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 where tax is paid without production of an Income-tax Challan.

10 May 2024

- GSTR-7 for April 2024 to be filed by taxpayers liable to Tax Deduction at Source (TDS).
- GSTR-8 for April 2024 to be filed by taxpayers liable to Tax Collection at Source (TCS).

11 May 2024

- GSTR-1 for April 2024 to be filed by all registered taxpayers not under the Quarterly Returns with Monthly Payment (QRMP) Scheme.

13 May 2024

- GSTR-6 for April 2024 to be filed by Input Service Distributors (ISDs).
- Uploading B2B invoices using Invoice Furnishing Facility (IFF) 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.

15 May 2024

- Due date for issue of TDS Certificate for tax deducted under Section 194-IA in March 2024.
- Due date for issue of TDS Certificate for tax deducted under Section 194-IB in March 2024.
- Due date for issue of TDS Certificate for tax deducted under Section 194M in March 2024.
- Due date for issue of TDS Certificate for tax deducted under Section 194S (by specified person) in March 2024.
- Due date for furnishing of Form 24G by an office of the Government where TDS/TCS for April 2024 has been paid without the production of a Challan.
- Quarterly statement of TCS deposited for the quarter ending 31 March 2024.
- 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 April 2024.

20 May 2024

- GSTR-5A for the month of April 2024 to be filed by Non-Resident Service Providers of Online Database Access and Retrieval (OIDAR) Services.
- GSTR-3B for the month of April 2024 to be filed by all registered taxpayers not under the QRMP Scheme.

25 May 2024

- Payment of tax through GST PMT-06 by taxpayers under the QRMP Scheme for April 2024.

Compliance Calendar

Direct Tax
Indirect Tax

30 May 2024

- Submission of a statement (in Form No. 49C) by non-resident having a liaison office in India for the FY 2023-24.
- Due date for furnishing of challan-cum-statement in respect of tax deducted under Section 194-IA in April 2024.
- Due date for furnishing of challan-cum-statement in respect of tax deducted under Section 194M in April 2024.
- Due date for furnishing of challan-cum-statement in respect of tax deducted under Section 194-IB in April 2024.
- Due date for furnishing of challan-cum-statement in respect of tax deducted under Section 194S (by specified person) in April 2024.
- Issue of TCS certificates for the 4th Quarter of the FY 2023-24.

7 June 2024

- Due date for the deposit of tax deducted/collected for May 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 where tax is paid without the production of an Income-tax Challan.

10 June 2024

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

11 June 2024

- GSTR-1 for May 2024 by all registered taxpayers not under the QRMP Scheme.

13 June 2024

- GSTR-6 for May 2024 to be filed by ISDs.
- Uploading B2B invoices using IFF under QRMP Scheme for May 2024 by taxpayers with aggregate turnover of up to INR 50 million.
- GSTR-5 for May 2024 to be filed by Non-Resident Foreign Taxpayers.

31 May 2024

- Quarterly statement of TDS deposited for the quarter ending 31 March 2024.
- Return of tax deduction from contributions paid by the trustees of an approved superannuation fund.
- Due date for furnishing of statement of financial transaction (in Form No. 61A) as required to be furnished under sub-section (1) of Section 285BA of the Act with respect for FY 2023-24.
- Due date for e-filing of annual statement of reportable accounts as required to be furnished under Section 285BA(1)(k) (in Form No. 61B) for the calendar year 2023 by reporting financial institutions.
- Application for allotment of PAN in case of non-individual resident person, which enters into a financial transaction of INR 2,50,000 or more during FY 2023-24 and hasn't been allotted any PAN.
- Application for allotment of PAN in case of person being managing director, director, partner, trustee, author, founder, karta, chief executive officer, principal officer or office bearer of the person referred to in Rule 114(3)(v) or any person competent to act on behalf of the person referred to in Rule 114(3)(v) and who hasn't allotted any PAN.
- Application in Form 9A for exercising the option available under Explanation to section 11(1) to apply income of the previous year in the next year or in the future (if the assessee is required to submit a return of income on or before 31 July 2024).
- Statement in Form no. 10 to be furnished to accumulate income for future application under Section 10(21) or Section 11(1) (if the assessee is required to submit return of income on or before 31 July 2024).
- Statement of donation in Form 10BD to be furnished by reporting person under Section 80G(5)(iii) or Section 35(1A)(i) in respect of FY 2023-24.
- Certificate of donation in Form no. 10BE as referred to in Section 80G(5)(ix) or Section 35(1A)(ii) to the donor, specifying the amount of donation received during FY 2023-24.

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