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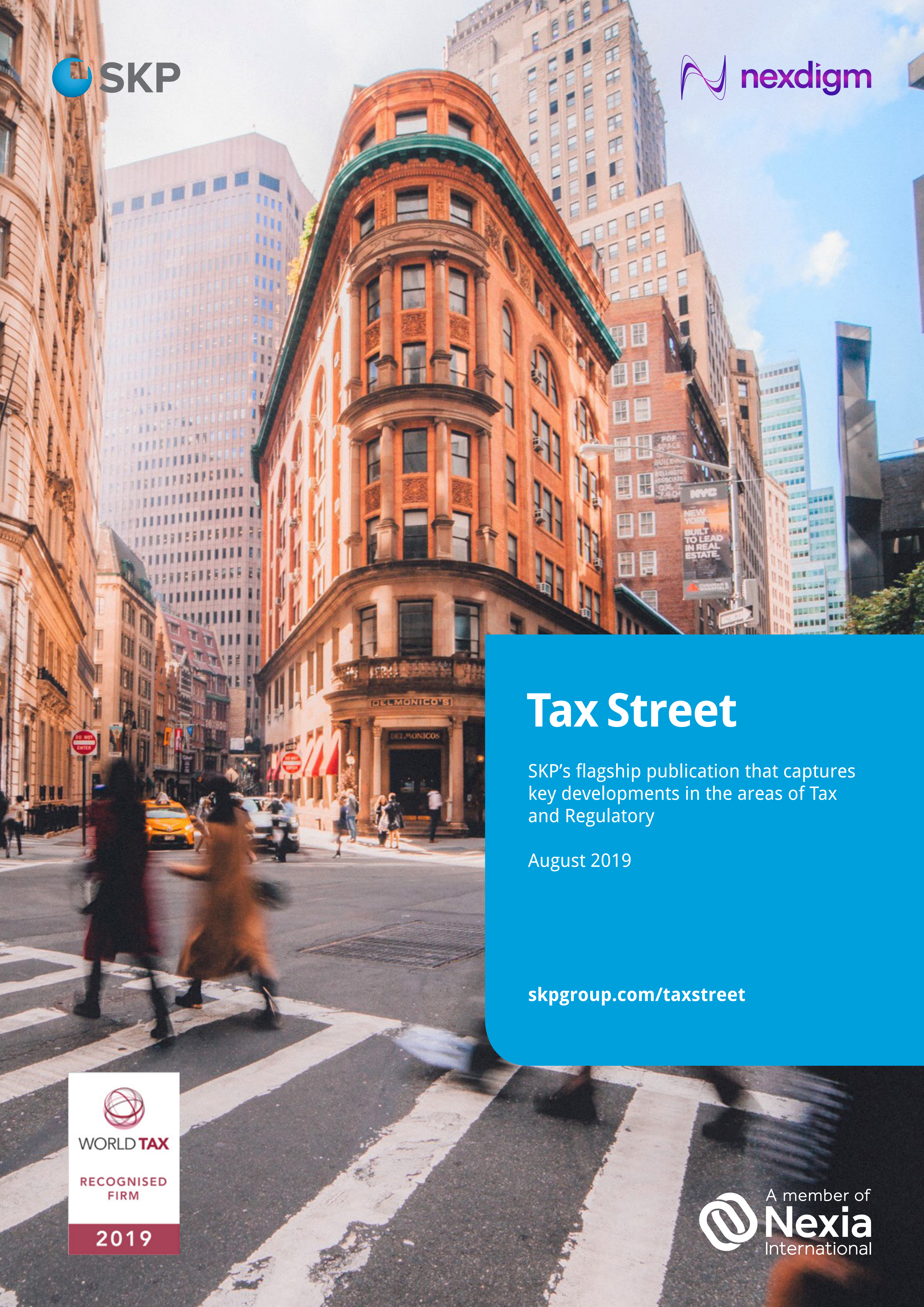

Tax Street

SKP's flagship publication that captures key developments in the areas of Tax and Regulatory

August 2019

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WORLD TAX
RECOGNISED FIRM
2019

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SKP TAX STREET

INTRODUCTION

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 August 2019.

The Task Force Report on the Direct Tax Code as an amendment to the Income Tax act of 1961 has come as a great relief to taxpayers in India. In an endeavor to bridge the gap between the taxpayers and the tax authorities, the new law propagates the business sense of the country.

- The **'Focus Point'** section sheds light on the key takeaways from the Task Force Report on the New Direct Tax Code while highlighting the path it may pave for businesses in the country.
- 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@skpgroup.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 SKP Team

FOCUS POINT

New India – New Income Tax Law – The Direct Tax Code 2019

The Income Tax Act, 1961 (Act) has been in place for nearly six decades. Over the years, due to globalization and advent of technology, business models have drastically changed. While regular amendments have been made to the Act on a year on year basis through Indian annual budget, there was always a need to look at the law from a fresh perspective considering the business realities and also best practices followed across the globe. It was also perceived that the Indian Income Tax law is far complicated, subjective providing substantial powers in the hands of the tax officer which often leads to ligation. This resulted in significant challenge in attracting investments and every attempt by the Government to provide relief further added to complex law.

One such attempt was made in 2009, whereby the erstwhile Government of India introduced a Direct Tax Code Bill for public discussion and implementation. However, this bill was also complex and was expected to create more issues than provide relief. Accordingly, initially this was deferred multiple times, however, ultimately it was scrapped by the new Modi Government in 2014.

In 2017, Modi Government had set-up a task force to draft new direct tax laws in line with the norms prevalent in other countries, incorporating international best practices and keeping in mind the economic needs of the country. Recently, on August 19, 2019, the task force submitted their report in relation to the DTC to the Finance Minister, Ms. Nirmala Sitharaman. Currently, the draft is not available in public domain and it is expected that Government would review the same and then release it to public for its comments. However, based on sources, key takeaways from the task force report are as follows:

Key takeaways from the Task Force Report on New Direct Tax Code

General

- The task force has not only provided their personalized inputs and/ or recommendations but has also drafted a new income tax law. The endeavour is to keep the law simple and unambiguous and in the process, it has made an attempt to significantly reduce the number of sections.
- The new income tax law is understood to be shorter, crispier and easy to understand. It aims to minimize the use of contents of the current regulation and make it simple for the common man's understanding.

This also implies that since the draft law is ready the Government is able to implement the same at a reasonable short notice and there may not be significant deferment.

Individual Taxpayers

- The DTC proposes to revise the tax brackets for individuals. It is expected that relief could come for taxpayers earning income in the range of INR 4.5 to 5.5 million per year.

This is an interesting proposal as recently the Indian Government has introduced super-rich tax and it would have to be seen whether Government would be comfortable providing the relief to individual taxpayers in above brackets. Historically, the Government is known to provide relief only at the lower level of incomes i.e. below INR 1 million and it would be a significant step forward if the Government is able to adopt this proposal.

Corporate Taxpayers

- It is proposed to have a standard tax rate for domestic companies as well as foreign companies (including foreign branch). Further, it is proposed to have lower tax rate of 25% for companies, LLP's, branch, etc.
- It is learned that committee has also proposed to abolish Dividend Distribution Tax (DDT) and taxing dividends in the hands of recipient. However, they have proposed for a branch profit tax for foreign companies.
- Incentives would be provided to start-ups and compliance by small taxpayers would be reduced.

Currently, the tax rates are differing for Small and Mid Sized Companies (25%); larger companies (30%), LLPs and other forms of entity (30%) and foreign companies (40%). To top up, the above taxes are added with surcharges and cess which effectively increases the tax rate by another 3-5%. Move to 25% tax rate without any surcharges and cess would be a bold move and may have some fiscal implications as well. This should obviously be supported by removing the Minimum Alternate Tax (MAT) regime. Also, equalising tax rates and abolishing DDT would bring companies and LLPs on the same footing and thus reduce tax planning strategies adopted by companies on this front.

The proposal to abolish DDT and bring back dividend taxation in hands of shareholders will be one move that would bring cheer to MNCs. With current DDT regime, the tax costs for MNCs operating in India and repatriating profits back to home country is 45%+ and they are not able to tax advantage of tax treaties for lowering the tax effect. They also invariably do not get credit of such DDT paid in India in their home country. It would be interesting to see whether the DDT would be abolished for future profits only or for past profits or there would be some transitionary provisions. MNCs planning any repatriation strategy should hold on a while till the proposals of the DTC are available in public domain.

Litigation Management

Assessments

- In relation to e-assessments, the concept of 'assessing officers' is proposed to be substituted by 'assessment units'. Further, it is proposed that functional units would be set up consisting of IRS officers having industry expertise and each functional unit would have their own knowledge and solutions team to assist them in assessments.
- It is proposed that the allotment of scrutiny cases would be done centrally and randomly. The possibility of interaction with department authorities over video conferencing is under consideration.
- A separate litigation management unit would manage the entire litigation process starting from filing appeals to defending the same in the court of law. In all probability, this team would be different from the tax officers carrying out the tax assessment.
- In the context of transfer pricing (TP), it is recommended that the TP assessments would not be linked with the regular assessments. It is proposed that the TP assessments would be carried out by a separate functional unit for a block of four years resulting in qualitative and intensive tax audit.

It was always said that while the Indian tax law is complex, what makes it worse is the tax administration and their adversarial approach towards taxpayers. While, a lot has been done and lot has changed over the last 5-7 years, still India is far away from having a taxpayer friendly environment. The task force proposal does intend to achieve that and above proposal can be regarded as path breaking in the area of tax administration.

Separate units for tax litigation and faceless assessment could be game changer in controlling overall frivolous assessments and ensuring tax department also gets appropriate fire power to defend their cases. These measures if implemented in right earnest will create non adversarial taxpayer friendly environment.

De-linking of transfer pricing assessments and doing a block assessment for 4 years is also a good move. This will help the tax authorities to look at the overall business of the company through a 4 year cycle and would help in appreciating the business realities and complexities involved on one hand and they would not be guided by one off year of transactional results on the other hand.

Dispute Resolution

- One of the bold recommendations to resolve tax disputes is providing resolution through mediation. Under this system, the taxpayers can opt for a negotiated settlement before a team of Commissioners. Both the parties would be assisted by mediators.
- Further, it is proposed to introduce an option of 'public ruling' wherein taxpayers can approach the CBDT for clarification on any principle in law provided the same is not case/fact specific.

Currently, Indian laws have limited options of seeking clarity on tax implications before conducting a transaction. The current options like Authority for Advance Ruling, Lower/ NIL withholding tax process, etc. have not been successful mainly because of the revenue minded approach and no specific timelines. The proposed dispute resolution could be effective in significantly reducing the tax litigations across the country only where a time bound process has been prescribed and independent adjudicators are appointed.

Way Forward

Taxpayers in India would welcome a simpler law with both hands. The first brush of the DTC 2019 looks good and we hope that overall it would not disappoint. We hope that Government does release the report of task force along with the draft law so that taxpayers have time to review their operations and do an impact analysis. The last thing that everyone would want is a hurried implementation of such a good and welcome reform in the direct tax law especially given the experience on the GST side. Companies also should learn a thing or two from GST implementation and start reviewing their positions once the law is available in public domain.

FROM THE JUDICIARY

Direct Tax

Whether the supply of designs, drawings, material information and processes taxable as royalty?

The Majestic Auto Ltd. vs CIT [TS-486-HC-2019 (P & H)]

Taxpayer, a tax resident of India, entered into an agreement with Puch, a company resident in Austria wherein Puch would supply drawings, designs, specifications, processes, etc. to the taxpayer for manufacturing, assembling and selling vehicles in India for a consideration. Besides this, the taxpayer was also required to pay royalty basis the number of cars produced as per the terms of the agreement. The taxpayer did not withhold tax on the amount paid to Puch for supplying designs, drawings, processes, etc. however, the tax officer held that such payment was royalty and hence taxable in India.

The High Court relied on various judicial precedents and held that by supplying necessary materials, designs and granting the right and license to use manufacturing information, Puch had merely authorized its use to the taxpayer. Further, the High Court believed that its actual use would arise only on commencement of production and sale of the vehicles and that would be the stage at which royalty would become payable, thus, fortifying the taxpayer's contentions. Hence, the aforesaid consideration would not constitute royalty and hence not liable to tax in India.

SKP's Comments

This is an important decision as it brings out a distinction between "supply" and "use". The High Court has held that mere supply of design and drawings do not constitute royalty. However, the use of the same constitutes royalty. It is pertinent to note that the taxpayer had received an exclusive right to manufacture vehicles in India as per the designs, drawings, etc. supplied by Puch and even then the payments for the same were not royalty as "use" was deferred to the year when actual commencement or production of vehicles takes place.

Whether foreign tax credit (FTC) is entitled to full foreign taxes paid or tax only on doubly taxed income?

DCIT vs iGate Global Solutions Ltd. [TS-499-ITAT-2019 (Pune)]

The taxpayer, an Indian company, has overseas branches in five countries. These foreign branches were treated as PE of the taxpayer and hence liable to tax as per the local tax laws of each country. While filing tax return in India, the taxpayer claimed FTC of INR 191 million (of taxes paid outside India). However, the tax officer allowed FTC to the extent of the tax rate at which the income was being offered to tax in India (i.e. Minimum Alternate Tax (MAT) @ 10%) and not the full taxes paid outside India. Further, the tax officer contended that FTC was to be allowed on basic tax rate i.e. without surcharge and cess.

On perusal of provisions of the Act, the tax tribunal observed that even if the taxpayer was chargeable to tax under the Act on its global income, it could be possible that some income is chargeable in the foreign tax jurisdictions but not chargeable under the Act on account of an exemption, etc. Further, the tax tribunal observed that tax treaties also restrict FTC to the extent of taxes paid in home country. In other words, the taxpayer cannot claim refund of excess taxes paid outside India. Hence, if income was included only in the total income under the Act but not under the total income of other country or vice-versa, the same cannot qualify for FTC under the

Act. Accordingly, it was inferred that only the doubly taxed income qualifies for FTC and not the remaining amount whose corresponding income was not part of the computation of income under the provisions of the Act.

Further, in respect of surcharge and cess, the tax tribunal held that is the taxes paid overseas exceed the rate of 11.33% then credit to the extent of 11.33% should be allowed.

SKP's Comments

The issue of FTC on full taxes paid outside India or only on tax paid on doubly taxed income has always been a subject of debate. This decision has brought out the finer aspects of FTC on full foreign taxes paid vs taxes on doubly taxed income only.

This decision affirms the position that tax credit should be allowed on total tax payable in India (i.e. including surcharge and education cess) if income is doubly taxed and taxes paid overseas are higher than the rate of tax in India.

This decision also clarifies that FTC would be allowed only on income doubly taxed. Accordingly, by virtue of any exemptions, if the income is not taxed in India, then proportionate FTC would not be allowed.

Transfer Pricing

Whether royalty payment to Associated Enterprise is justified if the taxpayer is suffering losses?

Bain & Company India Pvt Ltd [ITA Nos.378 & 379/Del/2015] – AY 2008-09 & 2009-10

The taxpayer is engaged in the business of providing management consultant services in India and has been involved in providing/ availing management consulting services to/ from its overseas AE.

The taxpayer had paid royalty to its overseas AE for use of consulting techniques and know-how including consulting toolkits and insights developed and maintained by overseas AE.

The Transfer Pricing Officer ('TPO') determined the arm's length price of royalty at Nil whereas CIT(A) deleted the adjustment.

Tax department contentions before ITAT

- No actual rendering of any services.
- Services are duplicative in nature.
- No actual cost has been incurred by overseas AE.
- No benefit demonstrated by the taxpayer
- "Bain" is not known brand in India and hence, there is not tangible benefit to the taxpayer from right to use such brand.

Taxpayer's contentions before ITAT

- Detailed economic analysis using both internal and external CUP data has been submitted (as part of TP Study) whereas TPO failed to provide specific reasons for rejecting the same.
- Taxpayer has been provided access to the techniques and know-how (including intangible asset base).
- Actual use of services depends on whether or not use of such services was warranted by the business situations.
- Once it is established that know-how and technical information was provided, payment of royalty cannot be challenged on the basis of profitability or earnings of the taxpayer.

ITAT Ruling

- Payment of royalty cannot be determined on the basis of profitability or earnings.
- Lower profitability cannot lead to conclusion that no benefits were derived or technology was unproductive.
- ITAT observed that compound annual growth rate of taxpayer was 31% whereas increase in royalty payment was negligible. Further, benchmarking analysis conducted by taxpayer justifies that royalty % paid by taxpayer is far less than royalty % paid by comparable companies.

Thus, ITAT dismissed the appeal of tax authorities.

SKP's Comments

Over the years, tax authorities have alleged that benefit test is required to be satisfied by taxpayer while justifying payment for royalty/intra-group services. At the same time, courts in India in most of the cases have held that availing of such service is a commercial/business decision of the taxpayers which cannot be questioned. Additionally, profitability/earnings is not a parameter to conclude whether any benefit derived or not from use of intangible.

Whether foreign AE may be considered as tested party for intra-group service transaction?

CWT India Pvt Ltd [ITA Nos.4972 and 5996/Mum/2018] – AY 2013-14 & 2014-15

The taxpayer is engaged in the business of travelling and tourism. During the year, the taxpayer has paid fees for technical assistance services to its AE. In order to benchmark the said transaction, the taxpayer has selected associated enterprise as tested party and selected Transactional Net Margin Method ('TNMM') as the most appropriate method.

TPO has adopted CUP method and determined the arm's length price of such technical assistance fees at Nil which has been upheld by DRP.

ITAT Ruling

- ITAT has relied on the taxpayer's own case for AY 2011-12 (facts remain same) wherein the matter has been remitted back for limited purpose of verification of margin of tested party vis-à-vis comparable companies.

- In the previous year, it was observed that the taxpayer has provided all documentary evidence to demonstrate that it has availed services and details of benefits received.
- In the previous year, it was observed that the taxpayer has submitted relevant details to compute the cost allocation duly certified by CPA, Singapore and financial of comparable companies.
- Considering the above, the taxpayer's treatment was accepted to consider foreign AE as tested party and TNMM as most appropriate method.
- CUP method adopted by TPO was rejected on the ground that TPO has not provided any uncontrolled transaction for similar services.

Thus, ITAT allowed the appeal of the taxpayer.

SKP's Comments

Over the years, Courts/Tribunals have provided contrary views on adoption of foreign AE as tested party to benchmark the international transactions. Considering the fact that it is more of facts specific analysis, it is always advisable to prepare robust documentation to include reasons for the adoption of foreign AE as tested party and also maintain all supporting documents such as financial statement of AE/ CPA certificate on cost allocation.

Whether TPO can re-examine any issue on comparability analysis while effecting DRP's directions which did not deal with such issue?

MACOM Technology Solutions (India) Private Limited (formerly known as Applied Micro Circuits India Private Limited) – ITA No 2393/Pun/2017 (AY 2013-14)

The taxpayer is engaged in the business of providing data analytics and design engineering services to its AE. In order to benchmark the transactions, the taxpayer had selected 3 companies as comparables.

During the assessment proceedings, TPO modified the set of comparable companies and proposed the transfer pricing adjustment and passed the draft assessment order.

DRP gave the directions on the issues which were assailed before it. While giving effect to the directions of DRP, AO re-calculated the transfer pricing adjustment amount and in this process inserted one more comparable, namely, Acropetal (despite no such direction from DRP) in the list of comparable companies and passed the final AO order.

ITAT Ruling

- It is observed that Section 144C(5) of the Act states that DRP shall issue directions to enable AO to complete the assessment. Further, Section 144C(13) of the Act states that upon receipt of directions, AO shall complete the assessment in conformity with DRP directions.
- Based on the above, ITAT held that once the matter travels to DRP, AO/ TPO become functus officio except to the extent of giving effect to the directions of DRP.
- AO/ TPO can examine issue only upto the stage of passing draft order.
- Since DRP did not direct to include Acropetal as comparable, AO/ TPO were devoid of any power to again include the same and they are ceased to exercise any jurisdiction to re-examine earlier view.

Thus, ITAT allowed the appeal of the taxpayer.

SKP's Comments

The taxpayers often experience that AO/ TPO exceeds their jurisdictions without having the necessary powers to do so. This ruling would be useful in those cases where AO/ TPO suo-moto makes modifications (without specific directions from DRP) while passing final assessment order.

Whether ad-hoc adjustments for the regional office expenses be made by the TPO?

Det Norske Veritas AS - ITA No 4785/ Mum/2016 (AY 2007-08)

TThe taxpayer is a branch of Det Norske Veritas AS (part of DNV Group). During the year under consideration, the taxpayer had paid regional office expense to its AE.

In AY 2008-09, TPO has proposed ad-hoc adjustment of 20% of regional office expenses whereas in the year under consideration, TPO proposed 100% adjustment for these regional office expenses on an ad-hoc basis without following any of the prescribed method u/s 92C of the Act. CIT(A) deleted the adjustment.

ITAT Ruling

- ITAT observed that similar addition has been deleted by ITAT in the taxpayer's own case for AY 2008-09.
- ITAT noted that TPO has not followed any of the prescribed u/s 92C(1) while arriving at arm's length price of the transactions which is against the provisions of law.

Thus, ITAT dismissed the appeal of the tax authorities.

SKP's Comments

It is often seen that while making adjustment to transfer price (especially intra-group services/ royalty, etc), TPO make an addition on an ad-hoc basis without following any of the methods prescribed u/s 92C of the Act. Time and again, Courts/ ITAT has emphasised that one of the method is required to be used for making any transfer pricing adjustment.

Indirect Tax

Whether separate GST registration can be allowed to multiple companies from the same address where they are functioning in a "co-working space"?

M/s Spacelance Office Solutions Private Limited -Authority of Advance Ruling (AAR), Kerala [2019 (8) TMI 817]

Facts of the case

- The applicant is engaged in the business of sub leasing of office spaces as co-working spaces to its clients.
- In this model, each client company was offered a distinct and identifiable work space within the main office.
- The departmental authorities were rejecting registration to these companies as 'another company is registered in the same address.'

Ruling

- The AAR observed that there is no prohibition under the GST law for obtaining GST registration to a shared office space or virtual office where the landlord permitted it.
- In view of the above, the AAR ruled that a separate GST registration should be granted to such companies provided valid documents such as the rental agreement, monthly utility bill etc. are furnished by them.

SKP's Comments

With the rising cost of real-estate, co-working spaces have developed significance especially in case of start-ups where controlling costs is of utmost importance.

In the absence of any contrary provision under the GST law, the advance ruling has taken into account this ground reality and provided a favourable ruling for businesses which should also promote the government's "ease of doing business" motto.

Whether the amortized cost of capital goods supplied by customers freely on a returnable basis should be added to the transaction value?

M/s Toolcomp Systems Private Limited - Authority of Advance Ruling (AAR), Karnataka [2019 (8) TMI 471]

Facts of the case

- The applicant received capital goods, free of cost on a returnable basis from its customers for manufacture of parts.
- The capital goods received have a specific life and can produce only a certain volume of total production.

Ruling

- The AAR observed that CBIC in Circular No. 47/21/2018-GST dated 8 June 2018 has clarified that moulds and dies owned by Original Equipment Manufacturer (OEM) provided to a component manufacturer on free of cost (FOC) basis do not constitute supply as there is no consideration. Therefore, in such cases, the value of goods provided on FOC basis shall not be added to the value of supply of components.
- Thus, the AAR ruled that the applicant was not required to amortize the cost of the capital goods received from its customers and was not liable to GST on the same.

SKP's Comments

The present case was squarely covered under the clarification issued by the CBIC. However, the GST implications may change based on facts of each case, such as in cases where the customer is charging any amount for providing the capital goods to the customers.

Whether a Profit-Sharing Agreement (PSA) between an employee of the company and its shareholders would attract GST?

Shri Venkatasamy Jagannathan - Authority of Advance Ruling (AAR), Tamil Nadu [2019 (7) TMI 1000]

Facts of the case

- The applicant is the Chairman and Managing Director (CMD) of Star Health and Allied Insurance Company Limited.
- The applicant entered into a PSA for a strategic sale of equity shares through which he will earn a profit over and above a specified sale price by a set of shareholders of the company.

Applicant's contention

- The PSA is only due to the contribution of the applicant as CMD and hence it is covered under employer/employee activities which are exempt under GST.
- The above transaction was also covered in the meaning of 'actionable claim' and hence outside the scope of GST.

Ruling

The AAR agreed to the applicant's contention and ruled that the PSA is an 'actionable claim' and hence covered under Schedule III of the CGST Act, 2017 i.e. neither a supply of goods nor a supply of services and consequently not taxable under GST.

SKP's Comments

In this case, the PSA was between the shareholders and the CMD. Therefore, one may argue that the company is a different legal entity independent of the shareholders and hence the said PSA cannot be treated as a transaction in the course of employment as covered under Schedule III of the CGST Act. However, in any case, the AAR ruled that since the PSA is in the nature of an 'actionable claim', GST should not be applicable.

TAX TALK
INDIAN DEVELOPMENTS

Direct Tax

IFSC boost: CBDT gives compliance relief to non-resident investors

Non-resident individuals and foreign companies have now been given a compliance relief as part of the government's efforts to attract more investment activity in the International Financial Services Centre (IFSC) located in India. These class of persons have been exempted from filing income tax returns subject to fulfilment of two conditions prescribed by CBDT. The conditions are that TDS on income of these class of persons (from funds set up in IFSC) should have been deducted and remitted to the Central Government by the investment fund. Secondly, there should be no other income during the previous year for which these class of persons are otherwise liable to file the income tax returns.

Thresholds for filing appeals sharply increased to cut litigation

The CBDT has sharply raised the threshold for filing appeals in tax disputes at all levels i.e. from tribunals, through High Courts to the Supreme Court as under:

Appeal to	Threshold (tax effect / disputed tax claim)	Earlier Threshold
Income Tax Appellate Tribunal (ITAT)	50 lakh	20 lakh
High Court	1 Crore	50 lakhs
Supreme Court	2 Crore	1 Crore
Tax dues are related to inquiry, investigation, audit against the assessee	Waiver of 70% dues	Waiver of 50% dues

As per the circular, tax authorities shall not appeal unless the 'tax effect' or the disputed tax claim is more than the above thresholds. This move shall reduce tax litigation and give relief to taxpayers. Further, the move is expected to improve ease of doing business for companies struggling to cope with a cooling down economy.

Roll back of enhanced surcharge to Woo Foreign Funds, Revive Growth

The Indian government has rolled back an additional levy on foreign funds and announced a raft of measures to boost economic growth from a five-year low. Finance Minister Nirmala Sitharaman has withdrawn enhanced surcharge on long and short-term capital gains on FPIs. She also announced an immediate infusion of INR 700 billion ($9.8 billion) set aside in the budget to boost capital of banks, and lifting on curbs on government departments to buy new vehicles. The withdrawal of the additional levy on FPIs is expected to boost sentiment after overseas funds withdrew more than $3 billion since the measure was announce in July.

Indirect Tax

Postponement of blocking of e-way bill generation

The implementation of the provision which allows blocking and unblocking of e-way bill generation on non-filing GST returns for two consecutive tax periods has been postponed till 21 November 2019.

[Notification No. 36/2019 - Central Tax dated 20 August 2019]

Implementation of the Sabka Vishwas Scheme, 2019 and clarifications issued

The government vide Notification No. 5/2019- Central Excise (N.T.) dated 21 August 2019 has notified the Rules under the Sabka Vishwas Scheme. Further, 1 September 2019 has been notified as the date on which the Scheme shall come into force.

The Central Board of Indirect Taxes and Customs (CBIC) has also released FAQs on the Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 (the Scheme) announced in the Union Budget 2019.

The key clarifications issued are as follows:

- Voluntary disclosure: It has been clarified that voluntary disclosures are eligible under the Scheme barring the specified exclusions mentioned in the Scheme.
- SCN covering multiple issues: In relation to declaration being filed under the Scheme in respect of a Show Cause Notice (SCN) covering multiple issues, all issues have to be covered under the declaration. Thus, the applicant cannot be selective about the issues/disputes covered in a SCN which he wishes to cover in his declaration under the Scheme.
- Applicability of the Scheme to certain orders: The Scheme should not be applicable in cases where an adjudication order has been passed and received prior to 30 June 2019, but the appeal is filed on or after 1 July 2019.
- Waiver of interest and penalty: In all the cases, total waiver of interest, penalty, and fine would be provided under the Scheme.
- Refund under the Scheme: There would not be a refund of any amount paid under the Scheme. Further, in a case where pre-deposit or other deposit already paid exceeds the amount payable under the Scheme, the difference would not be refunded.

New GST return made available to taxpayers for trial purposes

In line with the proposed transition plan, the government has released the new returns on the GST portal on a trial basis. The taxpayers can use the trial mechanism for the following purpose:

- Upload invoices on the GST portal (in GST ANX-1) and view pre-filled data;
- Online and Offline preparation of GST ANX-1 and GST ANX-2;
- View and download the inward supplies for GST ANX-2.

The taxpayers can view and try the new returns by logging into the GST portal.

Public consultation on e-invoicing

Earlier, the GST Council had announced the implementation e-invoicing from January 2020. Now, the GST network, in partnership with Institute of Chartered Accountants of India (ICAI), has drafted an e-invoice standard, [referring and considering the Pan European Public Procurement Online (PEPPOL) standard, which is based on Universal Business Language (UBL) standard] which also takes into account the requirement under tax laws and has features which are required for international trade.

The e-invoice draft now placed in the public domain is in the following three parts:

- E-invoice schema: It has the Technical field name, description of each field, whether it is mandatory or not, and has a few sample values along with explanatory notes.
- Masters: Masters are included of fields like UQC, State Code, invoice type, supply type etc.
- E-invoice template: This template is as per the GST law and has been provided here to enable the reader to correlate the terms used in other sheets. The compulsory fields are marked green and optional fields are marked yellow.

The stakeholders can give their feedback on https://www.gstn.org/e-invoice/feedback/.

TAX TALK
GLOBAL DEVELOPMENTS

Direct Tax

Digital Economy Saga – US internet giants back Trump's probe into French tech tax

Alphabet Inc's Google, Facebook Inc and Amazon.com Inc would be testifying in Washington on Monday in support of the Trump administration's efforts to potentially punish France for enacting a 3% tax on global tech companies with at least 750 million euros ($832 million) in global revenue and digital sales of 25 million euros in France. The relationship between Donald Trump, President of US and the largest tech companies in the US hasn't been at the best of its terms, however, common nemesis i.e. French tech tax on US tech giants would lead to joining hands with the President for a temporary period.

According to representative of Google, the French tech tax is a sharp departure from long-established tax rules which specifically targets only certain businesses. Even the French government officials have repeatedly stressed on the fact that the tech tax intends to tax foreign technology companies.

The US is probing French tech tax which was signed into law last month and use the same as a means to introduce new tariffs or other trade restrictions. In other words, the US is intending to make an example out of France to deter other countries, such as UK, Spain, New Zealand, etc., from targeting US tech companies for meeting their tax deficits

However, recently, post a meeting with US, the French Government decided that they would refund the excess tax collected from the tech giants once the global consensus is reached.

Crypto currency – Warning Letters by Australian Tax Office to investors having 90% of retirement savings in crypto currencies

The Australian Tax Office (ATO) has issued warning letters to approximately 18,000 investors (i.e. Self Managed Super Funds) against investing over 90% of their retirement investment funds in crypto currencies or property. The ideology behind issuing such warning letters is to discourage investors from investing their retirement funds in crypto currencies as there have been cases where investors have lost huge portion of their savings by investing in crypto currencies. While, the warning letters caution the investors that they could face penalties up to AUD 4,200 (approximately, INR 2.04 lakhs) for breaching guidelines set by ATO and the respective authorities.

Tax evasion saga – HSBC Swiss Banking Unit agreed to pay USD 329 Million in Belgian Tax Settlement

HSBC Swiss Banking Unit was under investigation for allegedly assisting wealthy people dodge hundreds of millions of euros in taxes. Belgium Authorities and France began scrutinizing HSBC's Swiss private bank after a former employee of the firm, leaked client account details to investigators. The French case culminated with HSBC agreeing to settle for over USD 329 million (or Euros 300 million).

Transfer Pricing

Hong Kong Inland Revenue Department ('IRD') publishes Departmental Interpretation and Practice Notes ('Notes') on transfer pricing

On 19 July 2019, following the enactment of transfer pricing legislation in Hong Kong, the IRD has published long-awaited Notes to provide guidance to taxpayers on transfer pricing issues as follows:

a. Transfer Pricing Documentation and Country-By-Country Reports

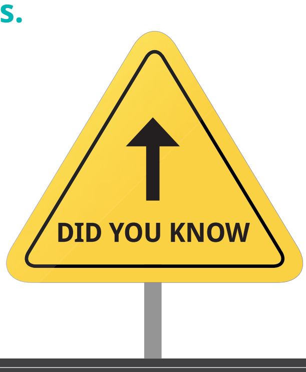
b. Transfer Pricing Between Associated Persons

We have provided key highlights as under:

Transfer Pricing Documentation and Country-By-Country Reports

- OECD compliant document shall be acceptable
- Applicability - Master file and local file documentation is required to be prepared for Hong Kong entities for accounting periods beginning on or after 1 April 2018.
- Materiality - Taxpayer should document only material (based on prudent judgement) cross-border transactions in the local file
- Local file to include transactions even when income or profits of a particular transaction are sourced outside Hong Kong
- Tax return disclosure - Taxpayer is required to declare in its tax return whether it is required to prepare transfer pricing documentation
- Thresholds for transfer pricing documentation - Legislation provides that exemption for preparation of documentation is available based on size of business of the taxpayer and quantum of related party transactions as under:

While tax treaty benefits are available to interest incomes earned on debts, interest earned on income-tax refunds can also avail tax treaty benefits as income-tax refunds are treated as debt claims.



Exemption based on size of business

Particulars	Annual threshold
Total revenue	<= HKD 400 Million
Total assets	<= HKD 300 Million
Employees (average)	<= 100 employees

Note: Exemption from master file and local file documentation is available only if they satisfy two out of three conditions.

Exemption based on quantum of related party transactions

Particulars	Annual threshold
Transfers of property (other than financial assets and intangibles)	<= HKD 220 Million
Transactions of financial assets	<= HKD 110 Million
Transactions of intangibles	<= HKD 110 Million
Any other transactions	<= HKD 44 Million

i. It is clarified now that loan amount and interest on loan are both transactions in respect of financial assets. The loan transaction should be documented in the local file for the accounting period in which the loan is drawn whereas the interest payments should be included for each accounting period in which the interest is paid or received.

ii. Further, while determining threshold for a particular class of transactions, arm's length amount for free of cost inter-company arrangement (ex interest free loans, free of charge for use of trademark) should be included considering notional value.

- Transfer pricing documentation is recommended to be prepared even when taxpayers are exempt to prepare such documentation
- Notes provide few examples for CbCR issues such as determining revenue threshold, taxpayer with dual residency and filing by surrogate parent entity.

Transfer Pricing Between Associated Persons

- Grandfathering - Transactions entered into before commencement date of ordinance (i.e. 13 July 2018) are not subject to arm's length principle
- Arm's length principle shall only apply to increase assessable profits or to decrease allowable losses
- Arm's length principle does not apply to domestic transactions between associated persons
- Notes also provides guidance on practical consideration for the purpose of performing benchmarking analysis such as
  i. Local comparables are preferred. However, in absence of availability of local comparables, foreign comparables may be accepted subject to comparability of foreign market
  ii. Multiple year data may be used while applying Transactional Net Margin Method
  iii. Notes allows to use full range of comparable companies as arm's length range. However, if range includes a sizeable number of observations, interquartile range can be used to narrow the results and enhance the reliability
  iv. Taxpayers are required to review benchmarking analysis every year, however, if no significant changes to business/controlled transactions are identified, then same benchmarking analysis can be re-used for maximum 3 years

Bulgaria introduces mandatory transfer pricing documentation

On 13 August 2019, Law[1] introduces mandatory transfer pricing documentation in Bulgaria applicable for transactions entered into after 1 January 2020.

For Local file

Local file is required to be prepared by 31st March of the year following the year of the transaction and must be furnished to the tax authorities upon request during tax reviews and audits. However, mandatory documentation is not required to be prepared if taxpayer satisfies following criteria:

- Assets value not exceeding BGN 38 million (approximately Euro 19 million) at the end of previous financial year; or
- Annual net revenue not exceeding BGN 76 million (approximately 39 million) for previous financial year; or
- Has personnel of less than 250 people for the reporting period.

Further, new law has prescribed materiality threshold for related party transactions and documentation should be prepared only if quantum of controlled transactions exceed such threshold as under:

Sr. No	Nature of controlled transactions	Amount in BGN	Apprx. amount in Euro
1	Transactions relating to goods	400,000	205,000
2	Transactions relating to intra-group services/ intangibles	200,000	102,000
3	Transactions relating to loan granted/ received Or Accrued financial interest income/ expenses	1,000,000 Or 50,000	511,000 Or 26,000

The above thresholds are required to be calculated separately for each controlled transactions.

Additional exemptions from preparation of local file:

- Entities that perform only domestic controlled transactions are exempt
- Companies that are exempt from corporate taxation or those that are subject to alternative taxation under the Corporate Income Tax Act (CITA) are exempt

Master file

Taxpayers forming part of a multinational group are also required to have a master file documentation in place not later than 12 months following the deadline for the local file.

Other provisions

- Local and master file are required to be updated on an annual basis with benchmarking studies to be updated every three years. However, identified comparable transactions need to be updated on an annual basis.
- In case of non-compliance of local file documentation, fine of 0.5% of total value of controlled transactions may be imposed. Further, in case of non-compliance of master file documentation, fine of BGN 5,000 to BGN 10,000 may be imposed.

1. Law on Amendment and Supplementation of the Tax and Social Security Procedure Code was introduced in Issue 64 of State Gazette

Argentina extends due date for submission of transfer pricing information returns

Argentina's Federal Administration of Public Revenues (AFIP – Administración Federal de Ingresos Públicos) has extended the due date for filing transfer pricing information returns (local file, TP Form 741, TP Form 867 and TP Form 743)[2].

Erstwhile, in respect of tax years that closed between December 31, 2018 and April 30, 2019, taxpayers were required to file transfer pricing information returns from day 3 to day 7 of the 8th month after the year end in accordance with General Resolution 1,122 (local file compliance rules). With release of general resolution 4538, taxpayers are required to file the said information returns from December 16 to December 20, 2019.

Brazil OECD project to align Brazil transfer pricing rules with OECD guidelines

The OECD and Brazil launched a joint project in February 2018 to compare Brazilian transfer pricing regulation with OECD transfer pricing approaches for tax purposes and analyse possibility of alignment, if any. The 15-month work programme carried out by OECD comprised of an in-depth analysis of Brazilian transfer pricing legal and administrative framework as well as its application which was structured as below:

Stage 1: Preliminary analysis of legal and administrative framework of Brazil's transfer pricing rules

Stage 2: Assessment of strengths and weaknesses of Brazil's existing transfer pricing rules and administrative practices and

Stage 3: Options for alignment with the OECD transfer pricing standard.

The aforesaid research analysed possible strengths and weaknesses and explored options to align Brazil regulations with OECD transfer pricing standard. This technical analysis shall assist in decision making as to whether alignment should happen or not considering advantages and disadvantages under different options for alignment.

Indirect Tax

Reporting of remote sales made in Italy

The Italian tax authorities vide Implementing Decree No. 660061/2019 dated 31 July 2019 has imposed reporting obligations on remote sellers in relation to sales made by them in Italy. The obligation requirements should be applicable irrespective of whether such remote seller is a resident or not in Italy when such seller facilitates remote sales through the use of electronic interfaces. The first deadline of the said reporting obligations is 31 October 2019.

2. Vide General Resolution No. 4538 (GR 4538) published in the Official Gazette on 31st July 2019

Compliance Calendar

7 September 2019

- Payment of TDS and TCS deducted/collected in August 2019

10 September 2019

- GSTR-8 for the month of August 2019 to be filed by taxpayers required to collect tax at source (TCS)

11 September 2019

- GSTR-1 for the month of August 2019 to be filed by registered taxpayers with an annual aggregate turnover of more than INR 15 million

13 September 2019

- GSTR-6 for the month of August 2019 to be filed by Input service distributors

15 September 2019

- Payment of the second instalment of advance tax for the assessment year 2019-20 (45% of estimated tax liability to be deposited on a cumulative basis)

20 September 2019

- GSTR-3B for the month of July 2019 for registered persons whose principal place of business is in specified districts of Bihar, Gujarat, Karnataka, Kerala, Maharashtra, Odisha, Uttarakhand and Jammu and Kashmir
- GSTR-3B for the month of August 2019 to be filed by all registered taxpayers
- GSTR-5 for the month of August 2019 to be filed by Non-resident taxable person
- GSTR-5A for the month of August 2019 to be filed by persons providing Online Information and Database Access or Retrieval (OIDAR) services

30 September 2019

- GSTR-7 for the month of August 2019 to be filed by taxpayers required to deduct tax at source (TDS)
- Filing of return of income and tax audit report for corporate assessee and another assessee who are required to get audited, other than assessee referred to in Section 92E
- Due date for claiming foreign tax credit, upload statement of foreign income offered for tax for the previous year 2018-19 and of foreign tax deducted or paid on such income in Form no. 67
- Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194-IA for the month of August 2019
- Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194-IB for the month of August 2019
- Filing of Form No. 3CEAC (CbCR Intimation) where the groups accounting year ends on 30 November 2019
- Filing of Form No. 3CEAD (CbCR) u/s 286(4)(a) and 286(4) (aa) – for groups accounting years ending on 30 September2019

SKP IN THE NEWS

Equity Capital Gains Enhanced Surcharge Partial Rollback: Understanding The Fineprint
– Maulik Doshi

Bloomberg Quint - August 24 2019

Read more at https://bit.ly/2lVge1Y

About **SKP**

SKP is a multidisciplinary group that helps global organizations 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.

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

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

Our team provides you with solutions for tomorrow; we help you think next.

Contact **Us**

India - Mumbai
Urmi Axis, 7th Floor
Famous Studio Lane, Dr. E. Moses Road
Mahalaxmi, Mumbai 400 011
India
T: +91 22 6730 9000
E: IndiaSales@skpgroup.com

www.skpgroup.com

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