Tax Street

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

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WORLD TAX
RECOMMENDED FIRM
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NEXDIGM (SKP) TAX STREET

INTRODUCTION

Since the launch of Tax Street in 2019, we have garnered an avid readership and industry appreciation for the insights shared by our specialists in Direct Tax, Indirect Tax, and Transfer Pricing. We are thankful to our readers for their consistent feedback and support, which helps us make the newsletter more relevant.

We are happy to present the anniversary edition of Tax Street; where we have captured the major highlights in the area of taxation from the year 2019.

- The **'2019 — Flashback of the eventful year gone by'** covers all the key updates and developments in the past year for Direct Tax, Transfer Pricing, and Indirect Tax.
- **'Tax Outlook — 2020'** is an exclusive segment for this edition wherein we have reached out to some of the industry experts and gathered their insights and views on the future of tax in India.
  - **'What to Expect in 2020'** features the expectations our tax specialists estimate in this year.
- 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 Nexdigm (SKP) Team

2019 – FLASHBACK OF THE EVENTFUL YEAR GONE BY

The year 2019 has been an eventful year for taxation as well both in India and across the globe. The year witnessed many developments that will have a lasting impact on major businesses and individuals. As we recall some of the significant highlights of the past year, in this section we have summarized the key updates from direct tax, Transfer pricing and indirect tax.

Direct Tax

Reduction in Corporate Tax rates

India has been in the heart of a "growth recession," which means that the Indian economy is growing at a significantly slow pace. To add fuel to the fire, there is an economic slow down on a global scale. Hence, India has been witnessing a slump in foreign investments, devaluation in Indian rupee, higher unemployment rate, and huge erosion in small and midcap stocks, etc., coupled with India's GDP dwindling to 5% in the quarter ending June 2019.

To keep the Indian economy afloat, it was imperative that India receives significant foreign investments, on one hand, while generating employment opportunities for the ever growing local population on the other. Accordingly, the Finance Minister, Nirmala Sitharaman, announced some major tax reforms vide Taxation Laws (Amendment) Act, 2019. Some of the significant amendments have been briefly discussed below:

Concessional Corporate Tax rates for all companies

The effective Corporate Tax rate for all companies has been significantly reduced from 34.94% to 25.17% with effect from financial year 2019-20 subject to the following conditions:

- Companies should not avail specified tax incentives/ deductions
- MAT provisions would not be applicable and therefore mat credit set-off won't be available
- Set-off of any loss related to specified tax incentives/ exemptions not allowed
- One-time option given to companies to opt-in to renew tax regime
- Mandatory surcharge of 10% would apply irrespective of quantum of income

Concessional Corporate Tax rate for new manufacturing companies

The effective Corporate Tax rate for certain manufacturing companies has been further reduced to 17.16% subject to the following conditions:

- Companies should be incorporated on/after 1 October 2019 and production should commence on/before 31 March 2023.
- Companies should be engaged in business of manufacturing or production of article/thing.
- The term "manufacturing" does not cover software development, mining, printing of books or production of cinematograph film or any other business notified by Central Government.
- Other conditions mentioned for concessional Corporate Tax rate for all companies would also apply.

Reduction in MAT rate for companies not opting for concessional tax rates

The MAT rate for companies not availing concessional tax rates would be reduced from existing 18.5% to 15% plus applicable surcharge and cess.

Grandfathering of buyback tax

Buyback tax on buyback undertaken by listed companies has been grandfathered up to 5 July 2019. In other words, buyback tax would be applicable to listed companies only on buyback announcements made after 5 July 2019.

Introduction of tax on super rich (additional surcharge)

Finance Act, 2019 introduced tax on the super rich in the form of additional surcharge as follows:

- Income from INR 20 million – 50 million: 25%, and
- Income > INR 50 million: 37%
- Upon receiving flak from taxpayers at large, especially high net worth individuals and foreign portfolio investors (FPI), additional surcharge on specified capital gains was withdrawn for individuals, HUF, AOP, BOI, artificial juridical person, and FPIs. However, additional surcharge would continue to apply on income other than specified capital gains.

Incentivizing start-ups

India has been leading globally in creating start-up opportunities in the recent years. High Net Worth Individuals (HNIs), overseas venture capitalists, private equity funds, angel investors, etc., have remained very upbeat on the Indian start-up ecosystem. However, since the past few months, start-ups have been receiving income-tax scrutiny notices urging start-ups to pay angel tax, which derives its genesis from section 56(2) (viib) on capital raised from investors. As a result of this, the start-up sector witnessed a steep decline in investments in general.

With a view to boosting the Indian start-up ecosystem, much needed relief was provided in the form of an assurance that additional scrutiny won't be carried out if the requisite declarations were filed by the start-ups. Further, if any departmental appeal is going on, then the same would be dropped immediately if the matter in appeal is that of explaining source of investments raised by the start-ups.

Faceless E-assessments Scheme, 2019

Previously, the government had introduced the E-Assessment Scheme on 12 September 2019 i.e. assessment proceedings via the electronic mode. However, this was just the first step in reducing the interaction between the taxpayers and the tax officers.

In furtherance to the above, Central Board of Direct Taxes (CBDT) launched the Faceless E-Assessment Scheme 2019 on 7 October 2019. The main thrust behind this initiative was to not only cut off personal meetings but also make it faceless with the objective of bringing in greater transparency and accountability to the scrutiny process.

Salient features of the Faceless E-Assessment Scheme, 2019

Scope of the Scheme

This scheme applies to all assessments under the Act excluding search cases and income escaping assessment (re-assessment).

Structure of the Scheme:

- National e-Assessment Centre (NeAC) shall be set-up in Delhi from where such assessment proceedings would be conducted. The NeAC shall be headed by the Principal Chief Commissioner of Income Tax. At present, NeAC has been recently set up in Delhi on 7 October 2019. Further, approximately, 58,000 cases have been already identified for e-assessment proceedings with the notices already dispatched before 30 September 2019.

- Regional e-Assessment Centres (ReAC) shall be set-up as and when required/ notified by CBDT. At present, 8 ReACs have been set up at Delhi, Mumbai, Chennai, Kolkata Ahmedabad, Pune, Bengaluru and Hyderabad.
- Each ReAC shall have 3 units namely Assessment unit, Review unit, Technical unit and Verification units and each ReAC shall be headed by Chief Commissioner of Income Tax.

Key Benefits of the Scheme:

- Expeditious disposal of cases would be expected
- Increasing standardization and quality management
- Team based assessment with dynamic jurisdiction

Direct Tax Code

Indian tax laws have been drafted 58 years ago with changes proposed every year in the annual budget. Due to language of the current law, there has been a plethora of litigation on varied subjects and also, in order to ensure that the Act covers the newer aspect of doing business and captures true spirit of taxation, there was a dire need to revamp the law in lines with global practices. Accordingly, the Narendra Modi led government appointed a task force to redraft the age-old income tax law and remove ambiguity and align the same with global practices. The task force was required to take into consideration the norms prevalent in other countries, incorporating international best practices while keeping in mind the economic needs of the country.

After a long wait, the task force submitted their report and the new Income Tax Act to the Finance Minister, Ms. Nirmala Sitharaman on 19 August 2019. The key takeaways[1] have been briefly discussed below:

- Shorter, crispier and easy to understand
- Possibly big relief to individual taxpayers by revising tax brackets especially for the lower and middle-class income taxpayers
- Reduction in corporate tax rates coupled with phasing out tax incentives
- Tax on repatriation of profits should be done away with
- Backing and further improvising e-assessments
- Carrying out transfer pricing assessments for a block of 4 years
- More focus on resolving tax disputes through mediation/ public ruling seeking clarification from CBDT on any principle in law

It remains to be seen whether we see any update on this front in Budget 2020. It would be ideal if Government lays down the roadmap for implementation of Direct Tax Code and also provides adequate opportunity to stakeholder to provide their inputs/suggestions on the draft law.

Revised guidelines for compounding of offences

CBDT has issued revised guidelines for compounding of offences under the Act on 17 June 2019 in supersession of previous guidelines which were issued on 23 December 2014. The guidelines are prospective and hence applicable to all compounding applications received on or after 17 June 2019.

While the revised guidelines have provided some major relief to the taxpayers having committed certain offences, which were otherwise punishable under the Act, they have brought in more stringent framework for compounding offences punishable under the Act. The main thrust of the revised guidelines is on the prevention of serious offences under the Black Money Act and Benami Transaction (Prohibition) Act. For instance, offences punishable under section 275A, 275B, and 276 cannot be compounded going forward. Further, many clarificatory amendments have been made, thus putting to rest various interpretational issues in the erstwhile guidelines.

India submits final MLI positions to OECD – MLI impact in India from 1 April 2020 onwards

India was actively involved in Organisation for Economic Co-operation and Development's (OECD) Base Erosion and Profit Shifting (BEPS) project and was also one of the signatories to the Multilateral Instrument (MLI). MLI is a multilateral treaty that enables two or more jurisdictions to swiftly modify their bilateral tax treaties to implement measures designed to better address multinational tax avoidance.

Recently, India submitted its final positions on MLI on 25 June 2019 as a result of which, impact of MLI in India would become visible from 1 April 2020 onwards. Thus, taxability of any international transaction between India and other jurisdiction(s) would have to be evaluated keeping in mind the final positions of all the jurisdictions involved.

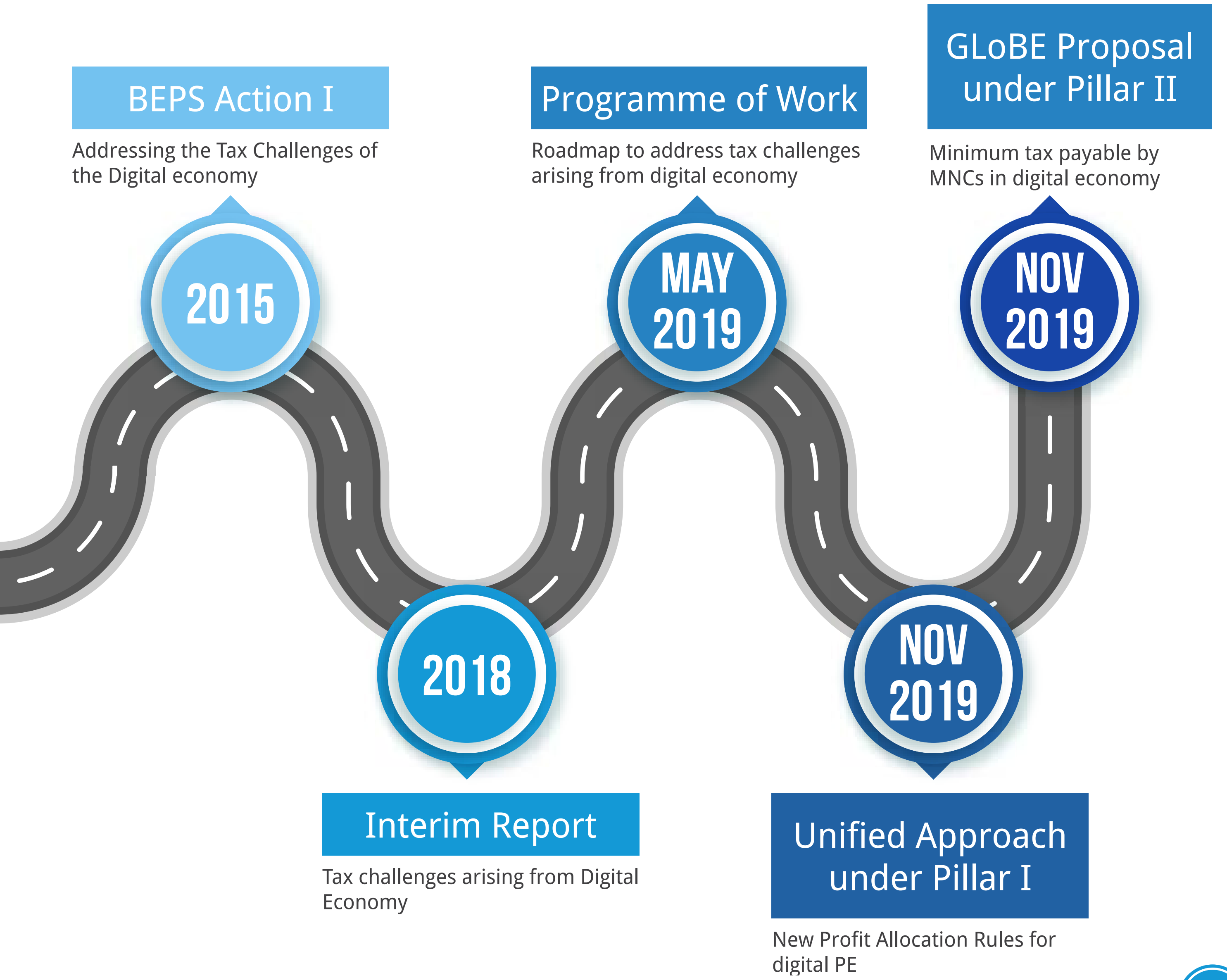
1. Available in public domain through news articles

Taxation of digital economy

Pursuant to BEPS Action I in 2015 followed by Interim Report in 2018, the OECD released a road map to address tax challenges arising from digital economy in May 2019 with the objective of developing a consensus based solution to the tax challenges arising from a digital economy. The PoW had prescribed two pillars to tackle this menace arising from lack of enabling provisions in tax treaties and/ or the Act to tax digital economy companies.

Pillar I discussed about profit allocation based on non-physical nexus rules (i.e. Digital Permanent Establishment) while Pillar II discussed about a global anti-base erosion proposal wherein all internationally operating businesses (i.e. multinational companies) would pay a minimum level of tax in the market jurisdiction (i.e. country of source).

In May 2019, the OECD released a public consultation document on "Unified Approach" under Pillar I wherein OECD has laid out guidelines for the determination of digital nexus and the subsequent profit attribution to the digital nexus in an exhaustive manner. Subsequently, in November 2019, the OECD released a public consultation document on "Global Anti-Base Erosion Proposal (GloBE)" under Pillar II which has been designed with the objective of taxing cross border income at minimum tax rates, consistent with the principles of design simplicity, to minimise compliance and administration costs and the risk of double taxation.



India's revised profit attribution guidelines

Permanent Establishment (PE) and the attribution of profits to a PE is a very complex subject. From an Indian tax standpoint there has been fair amount of litigation on the said issue. Indian tax laws provided some guidance on profit attribution in the form of Rule 10, however the rule was very wide and provided unlimited powers to the tax officer for attributing the profits to a PE in India. Accordingly, there was a dire need to have appropriate attribution rules which provides certainty and removes arbitrary approach followed.

Accordingly, CBDT issued revised profit attribution guidelines in which profits derived from India would have to be calculated basis sales revenue derived by Indian operations from sales in India, number of employees employed in India, wages paid in India and the assets utilised. The approach also provides for a minimum profit attribution of 2% in case where global operations are making loss under the assumption that an Indian business would be profitable and hence India should not be deprived of its fair share of taxes. The approach also covers within its ambit entities having significant economic presence in India.

This approach may pose several challenges for multinationals constituting a PE in India as the standard arm's length approach based on FAR analysis, which is being followed by most countries across the globe, may no longer be relevant.

Stakeholders have provided their suggestions on the draft law and are awaiting the next steps from the government.

2. 16 taxmann.com 141 (Pending for adjudication before Supreme Court)
3. 16 taxmann.com 371

Transfer Pricing

Rationalization/amendments in Secondary Adjustment provisions

The secondary adjustment provisions in India, ever since its introduction by Finance Act 2017 had left the Indian taxpayers in doubt as to its applicability, practical challenge (giving effect in the books of associated enterprise) and the manner of computation etc. The Finance Act 2019 has resolved anomalies as to applicability of these provisions and moreover, it also provided an option to the taxpayer to make one time settlement (by paying taxes) in lieu of getting repatriation of funds from the overseas associated enterprises.

APA Progress

Indian APA programme continued its impressive progress in the year 2019 as well. Press release by Indian revenue suggested impressive statistics:

- 300 APA's have already been concluded till October 2019
- APA's covered complex intra-group arrangements such as marketing intangible, corporate guarantee management fee etc among other routine trade transactions
- Increase in the number of new applications during the year FY 2018-19 (7th year of the programme) also indicates great response to the Indian APA programme

Indirect Tax

As far as GST is concerned, the year 2019 saw the government focusing on plugging tax revenue leakages, streamlining processes and eliminating pain points faced by businesses. We have captured the key developments of the year hereunder.

Rationalization of GST rates on under-construction residential properties

In view of the declining demand in the real-estate sector, the GST rate on residential properties was reduced from the effective rate of 12%/8% with Input Tax Credit (ITC) to 1%/5% without ITC, based on the carpet area and the price of the house.

Important clarifications on sales promotion schemes

The government issued important clarifications in respect of applicability of GST on various sales promotion schemes operated by the businesses. Key clarifications issued were as follows:

Change in order of utilization of ITC

The methodology for utilization of ITC was amended. Under the new system, the ITC of IGST has to be completely exhausted against any liability of IGST, CGST and SGST, before utilizing ITC of CGST and SGST.

Restriction on ITC not appearing in GSTR-2A

In October 2019, the government restricted ITC with respect to invoices not appearing in GSTR-2A to 20% of the ITC with respect to invoices appearing in GSTR-2A. With effect from 1 January 2020, the limit has been further reduced to 10% of ITC in respect of invoices appearing in GSTR-2A.

Type of Scheme	Applicability of GST	Availability of ITC to supplier	Availability of ITC to recipient
Free samples or gifts - For unrelated parties	Not liable to GST	No - under section 17(5)	NA
Free samples or gifts - For related parties or distinct persons	Liable to GST under Schedule 1	Yes - provided the other conditions are fulfilled	Yes - provided the other conditions are fulfilled
Buy one - get one offer	It is not a free supply. GST will be chargeable on the actual consideration.	Yes - provided the other conditions are fulfilled	Yes - provided the other conditions are fulfilled

Introduction of Kerala Flood Cess

The GST Council provided approval to the state of Kerala to levy a Kerala Flood Cess (KFC), over and above the applicable GST, in view of the losses to the state in wake of heavy floods in August 2018. KFC was implemented in Kerala from 1 August 2019.

TAX OUTLOOK — 2020

'Tax Outlook - 2020' is an exclusive segment for this edition of Tax Street that captures views of eminent experts from Taxation on the future of tax in India. This is intended to help widen our reader's knowledge and exposure and put forth a holistic picture. The leaders who have contributed to this segment are –

Hiral Raja
General Manager – Taxation, Asian Paints

Kavita Gandhi
AVP – Finance and Taxation, Eureka Forbes Limited

Renu Narvekar
Global Head – Taxation, Tata Consultancy Services

1. What's your outlook for tax policy (direct and indirect) in India for 2020? What do you think is in store for us in 2020?

Renu Narvekar: Any tax policy should provide a long term vision specifying a roadmap for the corporate tax rates and GST rates for the next 5 years, giving certainty to taxpayers to plan their businesses from a long term perspective.

Tax Policy should be tax payer friendly. The existing tax provisions need to be simplified and trust built in order for the tax payers & the tax department to work in partnership.

2. What are the three key changes/reforms on the tax (direct and indirect) side that you would like the Government to bring about in 2020?

Hiral Raja: Removal of Dividend distribution tax, Stabilization of GST and driving simplicity on GST compliances and Bringing Fuel into GST net.

RN:

1. Tax Holiday should be extended.
2. Personal income tax rates should be rationalized to boost the economy by creating demand.
3. More clarity on Significant Economic Presence (SEP) Provisions.
4. Taxpayers should be classified as most reliable, reliable & average based on previous assessment records to avoid any undue hardships to the honest tax payers.

3. Do you feel that the e-assessment and faceless assessment framework is going to succeed? Are there any missing elements in it?

HR: E-assessment and faceless assessment framework is a very good initiative. Its as cultural shift for both the tax authorities as well as taxpayers. In the initial phase, there would be lot of challenges and as a Country we will have to go through the learning curve before this stabilizes.

RN: Yes to a certain extent it will succeed. However there are limitations for large tax payers wherein personal meetings are unavoidable.

4. What is your opinion on the changes made in Corporate Tax in 2019? Do you now feel that the Indian Corporate Tax rate is competitive with Asian and Global peers?

RN: In my view, it is a positive and welcome move resulting in a relief to the corporate sector.

Yes, the rates are competitive with Asian as well as global peers. Recent years have seen many countries convene around a rate "corridor" of (roughly) 19% to 25%. It is possible that this corridor may move lower in the future. Headline tax rates are b ut one element of tax competition though, and their fall is often accompanied by corresponding tax base expansion.

HR: Reduction in the tax rate has been a very positive step. Indian Corporate Tax rate has now become competitive with the Asian Global peers and puts India on competitive edge to boost investments.

5. Do you feel that there are still tax factors (policy- or administration-related) that are hindering the flow of FDI in India? Can you list some such aspects?

RN: Yes, there are many tax factors which potentially hinder the FDI inflow. Some of these include:

1. Retrospective changes in the legislation
2. Tax Department's suspicion towards every taxpayer's integrity
3. Personal behavior of the tax officers with the assessee
4. Extremely slow and time consuming process in resolving tax disputes

The Indian tax authority is viewed as "generally aggressive with taxpayers, applying highly subjective and/or retroactive interpretations or threatening/using criminal sanctions."

6. What are the three critical areas on the tax front that corporates should pay attention to in 2020?

RN:

1. The GAAR Provisions
2. Taxation of Digital Economy (Proposed Pillar 1 & 2)
3. Exchange of Information

HR: Digitization and automation for ecosystem of indirect tax compliances (including usage of RPA, AI, etc). And Identification of opportunities/risks based on usage of additional key data points received from GST portal for analyzing the financial health as well as compliance of business partners (dealers, vendors, etc.)

7. How do you see the litigation environment shaping up in 2020? Is it on a declining trend, or do you see it increasing (especially with BEPS measures)?

RN: The litigation environment in India seems to be improving, however, there is still a need of giving freedom to the first level Assessing Officer (AO) in respect of assessment decisions. Quite often, a mechanical approach is followed, wherein unnecessary adjustments are made ignoring the actual facts of the case, judicial pronouncements, etc.

As far as quantum of litigations is concerned it will be incorrect to say that litigations is on a declining trend. On the contrary due to BEPS measures (since the intent of the same is to capture double non-taxation) there is a likelihood of increased litigation globally. Whilst countries around the world have lined up to pledge their support for the international efforts to close corporate tax loopholes, despite the noble intentions of the BEPS initiative, its spotlight on tax avoidance has already given tax authorities around the world a platform for aggressive investigations into the tax strategies of some of the world's largest corporations. For example, France got the ball rolling with a demand that Google pay USD 1.8 billion in what it alleged were unpaid taxes. European Parliament has also seized the opportunity to launch a highly visible investigation into Ikea,/accusing the home furnishings giant of dodging up to USD 1.1 billion in taxes between 2009 and 2014 by shifting profits through a subsidiary in the Netherlands. Apple and McDonald's have also caught the eye of EU lawmakers, and faced off with the European Parliament's tax committee. Corporations are already paying the price in the form of costly investigations, audits, and conflict resolutions.

HR: Litigation environment is on a declining trend. Majority of tax issues have stabilized. On the indirect tax front, Sabka Vikas Legacy Dispute resolution has been a very good move and it will put large amount of disputes on back burner whilst allowing the government as well as the companies to concentrate on a lot of new areas rather than carrying the baggage of past litigations.

8. How do you see the tax environment shaping up globally? Would unilateral measures create more challenges and incidents of double taxation?

RN: Ever since the OECD unveiled its 2015 BEPS recommendations for international tax changes, we have been living through a period of great legislative flux. Worldwide, we see more tax legislative change playing out than ever before. Companies need to be compliant with new tax laws, which means that the more global the company's footprint, the more tax law change the company faces. Today, the global tax environment is arguably more dynamic — and challenging — than it has ever been, with change present or promised in most places in the world.

We have seen a proliferation of unilateral measures globally. These include diverted profit taxes (DPTs) in a number of jurisdictions; the base erosion and anti-abuse tax (BEAT) and Global Intangible Low-Taxed Income (GILTI) measures within the US tax reform package; digital services taxes (DSTs) both multilaterally in the EU and unilaterally in a number of jurisdictions; new digital permanent establishment (PE) concepts; differing interpretations of key transfer pricing concepts; and, of course, differing applications of BEPS recommendations — ironically adding to disparities in international tax systems, being the very problem the BEPS project itself was trying to solve. If anything, the pace of countries moving forward with such measures has increased as the OECD's own work has progressed, suggesting an increasing number of countries are now no longer willing to wait for a global solution, despite an ambitious timeline by the OECD. The introduction of such revenue based taxes is economically distortive and gives rise to double taxation and significant administration not only at the taxpayer level but also for tax authorities.

HR: Globally tax environment is becoming more and more complex. Unilateral measures would increase the risk of double taxation and would cause certain hiccups in the smooth working of MNCs.

9. In your view, how do you see India's current transfer pricing regime? Do you see more challenges on the transfer pricing side (especially with Master file and CbCr disclosures)?

RN: Transfer pricing is an area of BEPS where much implementation activity has already occurred, but is not yet complete

Transfer pricing is not the measure with the highest incidence of burden-increasing measures, however — new digital taxes, higher levels of tax enforcement, changes to CFC regimes and interest limitation changes all demonstrate a higher incidence of change. But that does not mean that transfer pricing risks are slowing; infact the opposite is true. What continues to be a concern, however, is the continued unilateral action, inconsistent interpretation, and application of the transfer pricing standard.

With Master File and CbCR tax authorities are well positioned with more information on a MNE group enabling them to draw comparisons in respect of contribution of various entities in the overall value chain, MNE Group profit, revenue allocation across jurisdiction, contribution to value creation, etc.

All things considered, tax authorities will have more information about taxpayers than they have ever had before. Together, this also adds up to a recipe for further controversy and for a fresh rise in reputation risk, as revenue authorities juggle huge volumes of data, new analytics solutions, and ongoing public and political demand for aggressive treatment of taxpayers.

The main challenges of disclosure of data in the Master File & CbCR are:

Confidentiality of data – Our biggest concern is in relation to the confidentiality and protection of our data. The CbCR and Master file together are a blue print of the operations of the MNE Group and the availability of the same to competitors can have an adverse impact on our business and existing market share (e.g. Leakage of our way of doing business, information about our value drivers, our strategic global operations).

Difference of interpretation – The CbCR and master file provide large amount of quantitative and qualitative data to tax authorities, which may be interpreted in different ways by different tax authorities. Such difference in interpretation may call for change in pricing arrangements by different jurisdictions as per their interpretation and if followed may lead to inconsistency in the MNE group's global pricing policies.

HR: India's current transfer pricing regime has matured post passing through a learning phase as well as a phase of heavy litigations.

10. With the GST regime almost 900 days old, what are the major issues/hassles which still need to be ironed out by the government?

Kavita Gandhi: Rationalizsing the GST rate structure and convergence of the tax rates into fewer slabs. GST rates on health and & hygiene products such as water/air purifiers, vacuum cleaners can be slashed to 12% to spur consumer demand and promote the 'Swatcha Bharat' initiative.

RN: The major issues are
1. Delay in getting the export refunds
2. Invoice level matching of inputs
3. Frequent changes in law and systems.

HR:
1. Frequent changes have caused much instability
2. Adequate testing of the GSTN portal, E-way bill portal needs to be carried out before any new compliances are proposed. Also implementation of compliances can be carried out in a phase for various types of taxpayers i.e. the way in which -invoicing implementation is planned.
3. GSTR2A reconciliation needs to be kept on

hold till the GST law is settled and compliances are stabilized.

11. Has your business faced any significant challenges in complying with the recently introduced restriction on the availment of ITC not appearing in GSTR-2A?

KG: Rule 36(4) amendment to restrict ITC eligibility (for non-uploaded invoices) to 10% of uploaded invoices by supplier should be done away with as it puts burden on cash flows of registered persons dealing with quarterly filers (who are SMEs mostly). Institutional buyers may not prefer dealing with quarterly filers and this may encourage cash dealings to an extent.

RN: Yes, it's been a very challenging exercise monitoring that the availment of inputs does not pass over 110% of the matched input credits. In the first month it may look easy, however this tends to get more complicated in the following months.

12. With the government's GST revenues not meeting budget estimates, what are your top three suggestions, that can help the government increase revenues (without affecting trade adversely)?

RN:

1. Budget estimates should be based on solid facts and figures
2. Simplification of compliances,
3. AI and Aata Analytics based audits of the defaulting taxpayers

13. Do you feel that the implementation of e-invoicing and the new GST return filing system will reduce the compliance burden on your business?

KG: Nuances involved in specific business need to be taken into account before introducing big changes like new GST returns and e-invoicing. The current 'one size fits' all solution may not be feasible. For instance, the issue of incentive based credit notes to distributors/ dealers on real time basis on e-invoice portal may not be practical in a mercantile accounting method and leads to an unproductive work of turnover reconciliation between books of accounts and GST records for the period.

While reconciliation is at heart of GST, considering the experience since the date of implementation, the new returns may start off with 'vendor level' reconciliation instead of 'invoice level' reconciliation till the entire ecosystem is in sync with the practice.

RN: In the short run, the mandatory e-invoicing for certain class of taxpayers and the new GST return filing system will definitely increase the compliance burden on the business. However, in the long run, when e-invoicing is made mandatory for all taxpayers, it should ideally reduce the burden to the extent of abolition of e-way bills.

HR: While there would be initial hiccups, however if implemented properly with adequate automation and digitization, it would reduce the compliance burden on the businesses.

WHAT TO EXPECT IN 2020

Direct Tax

India Budget 2020 expectations

- **Tax cuts for individuals**
  Based on media reports and current slowdown, it is imperative that the Government of India revises and increases the slab rates for individuals in order to boost consumption and sentiments.

- **Rationalization of Tier-3 dividend tax**
  With the introduction of tax on dividends, India now has Tier-3 taxes on corporate profits and hence it is important that the government abolishes the dividend distribution tax or at least reduce the rates from 15% to 5%.

- **Significant Economic Presence (SEP)**
  SEP was introduced from FY 2018-19. SEP is applicable if certain thresholds are breached by the taxpayers. The threshold limits are still not notified by the government, however, we are hopeful that the same shall be notified in Budget 2020.

- **Long Term Capital Gains**
  Introduction of Long Term Capital Gains tax has not achieved its purpose of huge tax collections in the true sense. We are hoping that this may be revisited and bring along additional relief to taxpayers by either increasing the threshold limits or withdrawing the Long Term Capital Gains tax along with increasing the holding period for asset to qualify as a Long term.

- **Robust Dispute Resolution Mechanism**
  Currently, India is struggling with a long list of pending cases in tax so much that in year 2017-18, taxes pertaining to income, services, and excise blocked in disputes were calculated to be roughly INR 7,773.22 billion. In fact, the number of pending cases before Commissioner of Income Tax (Appeals) stands at a massive 70%, approx. 20 per cent in various tribunals, and the remaining in high courts and the Supreme Court. In a recent study, it was found that the Revenue Department was the largest litigant, though it lost 65% of the cases. In the past, the Government has tried its hand at curbing tax litigation by increasing the appeal threshold limits for tax tribunals, High Courts and the Supreme Court.

  However, the need of the hour for India Inc. is to come out with a more efficient method of resolving tax disputes. In this regard, Government is seriously considering the idea of introducing some dispute resolution mechanism in Budget 2020.

Direct Tax Code

Direct Tax Code report was submitted by the appointed committee in August 2019. It is important for the government to provide a clear roadmap on the implementation of Direct Tax Code and propose a substantial time for transition from existing law to the new.

Supreme Court Ruling on Software Payments

Taxability of software has been a matter of debate which has affected many corporations especially the multinationals. The debate is surrounding the characterization of revenue received from supply of software as 'royalty' or 'business income.'

Legacy of Controversy

- Tax authorities have taken a position that such payments are for acquiring intellectual property rights/copyright in the software and hence are royalties within the meaning of the Act and Double Taxation Avoidance Agreement (DTAA). The taxpayer, on the other hand takes the position that the payment is for a copyrighted article and therefore the same is not taxable as 'royalty.'
- The debate over taxability of receipts from sale of software as 'royalty' took an interesting turn, after two High Courts (Karnataka HC in case of Samsung[2] and Delhi HC in case of Ericsson[3]) delivered conflicting rulings on this issue.
- Apart from the High Court rulings, there is a plethora of ITAT and AAR rulings, taking diametrically opposite views on the taxability of software receipts. The divergent views taken by various courts have created significant amount of confusion regarding shrink wrapped software being a 'copyright' or 'copyrighted article?'

The Supreme Court is to determine whether the payment for software is taxable as royalty in a batch of over 50 cases due for hearing in 2018. However, the same has been continuously postponed to various dates. It is expected that the issue of software payment taxability as royalty would be heard and concluded in 2020.

Taxation of Digital Economy – Final Report 2020

It is expected that OECD would release the final report on taxation of digital economy sometime in December 2020 after arriving at a global consensus. Technology driven businesses are growing at a fast pace and there is no clarity on how to tax such businesses. Further, unilateral measures by various countries have attracted severe criticism from US and have complicated the matter for the worse. Appropriate tax collection from digital economy companies is significantly high and very important for the growth and development of developing economies. Hence, it is highly expected that OECD would be able to bring global consensus on this sensitive subject and release the final report on taxation of digital economy in 2020.

Transfer Pricing

BEPSed world

It would be a fair to state that the tax world has been BEPSed with more and more jurisdictions (including those who are known to be tax heaven in past) adopting the BEPS framework. While India introduced three-tiered documentation (CbCR, Master File and Local File) in the year 2017, the Indian revenue will be scrutinising 2017 filings in the year 2019-20, as per the audit cycle. With the amount of group level information available with the tax authorities through MF and CbCR, the taxpayers can expect an eventful year 2020 on the assessment front.

Rationalization of Safe Harbour mechanism

Existing Safe Harbour Regulations were applicable only upto FY 2018-19, and, it is very likely to be renewed soon. The taxpayers Wishlist on this front includes rationalisation of profit mark-up for certain eligible transactions such as manufacture and export of auto components and provision of IT/ ITeS services (owing to global downtrend in auto/ IT sector). At the same time, it would be helpful if the Indian revenue considers including certain additional transactions eligible for safe harbour application (e.g. availing of intra-group loans, provision of marketing support services etc. etc.)

Resolution to pending litigation

With the Government's recent efforts (such as increase in monetary limits for filing appeal, finalisation of APAs, setting deadline to dispose off more than twenty thousand appeals pending for more than 5 years etc), we expect faster resolution of pending litigation. These steps would definitely help in achieving 'Ease of Doing business' motto of Government.

FAR v/s Formulary apportionment

With the introduction of draft regulation for profit attribution to Permanent Establishment in India, which emphasize on Formulary apportionment method (as against traditional attribution based on FAR based method), it would be interesting to see how arm's length standard may continue to apply.

Indirect Tax

The GST revenues have so far not met the budgeted estimates of the government. The government is keen to plug revenue leakages by further integration of technology with various aspects of GST compliances. Key expectations on the GST front are as follows:

Implementation of e-invoicing

With effect from 1 April 2020, e-invoicing provisions will be mandatory in respect of B2B supplies by registered persons having aggregate turnover in a financial year exceeding INR 1 billion.

Further, registered persons with aggregate turnover in a financial year exceeding INR 5 billion will be required to have a Quick Response (QR) code on their invoices issued to an unregistered person i.e. (B2C invoices) with effect from 1 April 2020.

Implementation of new return filing procedure

The new GST return filing procedure will also be implemented from 1 April 2020. The new return filing procedure intends to intrinsically link the Input Tax Credit (ITC) of the recipient with the invoices declared by the supplier.

The new return filing system has been divided in 3 distinct parts which are as follows:

- FORM GST ANX-1 - Annexure of outward supplies, imports and inward supplies attracting reverse charge
- FORM GST ANX-2 - Annexure of inward supplies
- FORM GST RET-1 - Monthly/Quarterly (Normal) return

Introduction of RoDTEP scheme

Recently, a Word Trade Organization (WTO) panel held that key export incentive schemes of the Indian government such as the Merchandise Exports from India Scheme (MEIS), Export Promotion Capital Goods (EPCG) scheme etc. are non-compliant of the WTO norms. Accordingly, the Indian government is expected to replace these schemes with a WTO-compliant Remission of Duties or Taxes on Export Products (RoDTEP) scheme expected to be introduced in Foreign Trade Policy 2020-25 from April 2020.

All in all, while 2019 was an eventful year, 2020 promises nothing less. All eyes are set on the Budget 2020, where there are significant expectations to set India back on a high growth track. However, not just the budget but several other reforms both legislatively and administratively will define the tax environment in India.

We believe that India will play a critical role at the global stage and some of the tax developments in India, as well as India's reaction to global developments will shape the global tax policies and outlook.

Maulik Doshi
Senior Executive Director
Transfer Pricing and Transaction Advisory Services

FROM THE JUDICIARY

Direct Tax

Whether tax/ fiscally transparent entities can avail tax treaty benefits if income is taxable in the hands of its beneficiaries?

ING Bewaar Maatschappij BV (trustees of ING Emerging Markets Equity Fund) vs Dy. CIT [TS-738-ITAT-2019 (Mumbai)]

Background

Taxpayer, a fund established in Netherlands and registered with SEBI as a sub account of FII, is a tax transparent entity in Netherlands i.e., the taxpayer would not be taxable in its own right. During AY 2007-08, the taxpayer had earned short term capital gains in India. However, it did not offer the same to taxpayer in India as the same was not taxable in India as per Article 13 of the India-Netherlands tax treaty. The taxpayer contended that given that it was a Trust AOP, its income was taxable in the hands of its beneficiaries who were subject to tax in Netherlands, the tax treaty benefits should also be extended to the taxpayer.

However, the tax officer rejected the contention of the taxpayer and inferred that the taxpayer cannot be assessed based on the status of its beneficiaries. Further, the taxpayer was a non-taxable entity in Netherlands. Hence, the benefits of the tax treaty cannot be extended to the taxpayer and thus, the same was taxable under the Income-tax Act, 1961 (the Act).

Held

The tax tribunal observed that the taxpayer was a tax transparent entity i.e. income was taxable at the beneficiary level. The taxpayer had no legal existence whatsoever and it was merely a contract between the beneficiaries. Further, it was noted by the tax tribunal that the role of the taxpayer was that of a custodian of investments and hence the income earned therefrom was not accruing to the taxpayer in its own right. Hence, the said income would be taxed in the hands of the beneficiaries who were tax residents of the Netherlands. This fact was proved by the tax resident certificates already filed before the tax officer. Hence, tax treaty protection cannot be denied as such. It was also observed that when a taxpayer was a representative assessee of a tax transparent entity, the status of its beneficiaries was relevant for the purpose of determining tax treaty protection. It was evident from the tax residency certificates already available with the tax officer that the beneficiaries were tax residents of Netherlands and hence short-term capital gains derived from India were not subject to tax in India. In other words, tax treaty protection cannot be denied to a tax transparent entity in the given factual matrix. In this regard, the tax tribunal placed heavy reliance on the legal position provided in the case of Linklaters LLP vs ITO (2010) 9 ITR 2017 (Mumbai Tribunal).

SKP's Comments

The issue of tax transparent entities availing tax treaty protection has been a controversial subject before the tax authorities at various levels. This issue has been a subject matter of debate on a global level also, so much that the OECD has included this issue in one of its Action Plans (Action Plan 3) under BEPS Project.

In the Indian context, the Revenue Authorities have always adopted a position that tax transparent entities should not be allowed treaty benefits.

However, this decision once again affirms the tax-payers position that the Tax Treaty should be available if ultimately the beneficiaries are resident of the same country. Similar position has also been provided under BEPS Action Plan 3.

Whether payments made for purchasing software licenses falls within the definition of royalty under the Act as well as India-Italy tax treaty?

ACIT vs M/s. Saipem India Projects Pvt. Ltd. [TS-795-ITAT-2019 (Chennai)]

Background

Taxpayer, an Indian company, was engaged in the business of engineering and procurement assistance services, design and execution of large scale oil & gas onshore and offshore projects, cryogenic tanks, etc. It had purchased certain software licenses from Saipem Italy, which were used for providing services to customers for various support functions in accounting, reporting, etc. The tax officer contended that payments made for licenses were covered within the ambit of royalty under the Act as well as under the India-Italy tax treaty. Hence, the tax officer disallowed the said payments on the premise that the taxpayer failed to withhold taxes on the same as per the provisions of the Act.

Held

The tax tribunal observed that the taxpayer had made payments to Saipem Italy for purchasing software licenses on a personal, non-exclusive, non transferable license with a right to make unlimited copies. However, the said software can be used for internal purposes only and sub-licensing, assignment or transfer of such license/ software was not allowed.

The tax tribunal placed heavy reliance on the decision of Karnataka HC in the case of CIT vs Synopsis International Old Limited (2012) 28 taxmann.com 162 (Karnataka) and observed that the term license means granting authority to do a particular thing which was otherwise illegal. A license, per se, does not confer any right rather it prevents it from being unlawful. A license transfers an interest to a limited extent, whereby the licensee merely acquires a right in the copyrighted article and not in the copyright itself. However, merely because the terms non-exclusive and non-transferable were used in the license agreement, it does not take away the software out of the definition of the copyright. Further, even if license was not transfer of exclusive right in the copyright, the right to use the confidential information embedded in the software made it abundantly clear that there was a transfer of certain rights, which Saipem Italy possess in the said license. In terms of the tax treaty the consideration paid for the use or right to use the said confidential information in the form of computer programme software itself constitutes royalty and is therefore liable to tax. It was not necessary that there should be a transfer of exclusive right in the copyright as contended by the taxpayer. Hence, the payments made for software licenses to Saipem Italy fell within the mischief of royalty under the provisions of the Act.

SKP's Comments

The decision once again ignites the controversy of taxability of software.

While by and large majority of the rulings are in favour of taxpayer on this issue, this ruling once again racks up a controversy and would have to be considered while determining the taxability of software.

The decision of Supreme Court in the case Samsung Electronics is long pending. Taxpayers are looking forward to the pronouncement of this ruling so that this issue is settled.

Whether income from Inland Haulage Charge (IHC) is covered within the ambit of shipping income as per Article 9 of India-France tax treaty?

Whether the taxpayer has a DAPE in India as per Article 5 of India-France tax treaty?

CMA CGM SA vs Dy. CIT [TS-1209-ITAT-2019 (Mumbai)]

Background

Taxpayer, tax resident of France, was engaged in shipping business in international waters. The taxpayer conducted certain business activities in India through an agent in India (i.e. CMA CGM India) and earned income from IHC. It filed its return of income in India after availing benefit under Article 9 of the tax treaty. However, the tax officer held that IHC received by the taxpayer was in connection with the activities pertaining to inland transportation and hence the same cannot be considered as international transport. Accordingly, benefit under Article 9 of the tax treaty would not be available to the taxpayer.

Further, the tax officer held that the taxpayer had a dependent agent PE (DAPE) in India and accordingly income from IHC would be taxable as business profits in India as per Article 5 r.w. Article 7 of the tax treaty.

Held

The tax tribunal inferred that since IHC forms part of income from operation of ships in international traffic, benefit under Article 9 of the tax treaty would be available to the taxpayer and accordingly income from IHC would not be taxable in India. In this regard, the taxpayer placed heavy reliance on OECD model commentary which was accepted by the tax tribunal.

On the issue of constituting a DAPE in India, the tax tribunal observed that once it was proved that revenue from IHC was taxable as shipping income, Article 5 of the tax treaty cannot come into play. Further, the tax tribunal observed that the Indian agent was remunerated at arms length as per the terms of Advance Pricing Agreement entered into between the taxpayer and the Indian Government, the Indian agent was not a DAPE of the taxpayer in India.

Transfer Pricing

Whether the terms of agreement between taxpayer and third party customer would constitute internal CUP with respect to payment of royalty to the Associated Enterprise (AE)?

Nycomed Pharma Pvt Ltd. –
ITA No. 6775/M/2014
ITA No. 1950/M/2015
ITA No. 4284/M/2016

Taxpayer is engaged in the business of running a research and development center for synthesizing of test compounds as well as licensing/ sub-licensing of drug Pantoprazole and design and maintenance of IT infrastructure.

The taxpayer earned royalty income from sub-licensing, manufacturing, and selling drug to third party customers. The taxpayer retained 1% of the total sales consideration and balance 99% proceeds were remitted to AE.

The Transfer Pricing Officer (TPO) proposed a transfer pricing adjustment by determining the ALP of royalty payment to AE at NIL value. The TPO further highlighted that since there was no written agreement between the taxpayer and AE, no enforceable legal liability is casted upon the taxpayer to pay royalty to its AE.

During the proceedings before the CIT(A), the adjustment proposed by the TPO was quashed and the contentions put forth by the taxpayer were upheld. Aggrieved by the CIT(A) order, the revenue filed an appeal before the Mumbai Tribunal/ ITAT.

ITAT Ruling

- As per clause (c) to Rule 10B (2) of the Income Tax Rules the international transaction is comparable to the uncontrolled transaction in case wherein contractual terms (whether or not such terms are formal or in writing) are same.
- Formal contract is not the only criteria to establish the parties' rights to the contract, but the terms agreed, understood and acted upon, form the basis of the transaction. This was also evident from the board resolutions, e-mail correspondences exchanges, raised credit notes, deducted TDS etc. presented by the taxpayer during the CIT(A) proceedings.
- The taxpayer was granted the right to commercially exploit the license by the AE by way of sub-licensing the same to third party customers. This arrangement between AE and third party customers were in existence even before the taxpayer's incorporation and the rate charged to third party remained same. The only difference in the arrangement was that the taxpayer now retained a margin before remitting the proceeds.
- Since the purchase and sale of license took place during the same period and significant functions were not performed by the taxpayer, the transaction between taxpayer and third party customers would constitute internal CUP for the purpose of benchmarking the royalty payments made to AE.
- A miniscule portion (1%) held by taxpayer and remitting balance proceeds to AE is considered to be below the ALP determined as against the gross amount received on the sale of license.
- Therefore, the transaction pertaining to payment of royalty to the AE was held to be at arm's length.

In view of the above, the Mumbai ITAT dismissed the appeal of the Revenue.

SKP's Comments

A written agreement alone does not impose a need to enforce legal liability in a commercial transaction. The actual functions carried out and risks assumed by the parties under consideration is to be analyzed before undertaking comparability analysis.

Whether the terms and conditions of APA should be applicable to the prior years (even though no roll back period covered in APA) if the functions and risks assumed by the taxpayer are identical?

Festo India Pvt. Ltd. – IT(TP)A No. 969(B)/2014
IT(TP)A No. 1028(B)/2014
IT(TP)A No. 209(B)/2015
CO. No. 74(B)/2017 (in IT(TP)A No.209(B)/2015)

Taxpayer is engaged in the business of manufacturing and trading pneumatic equipment used in industry automation.

Taxpayer has entered into many international transactions including the transaction pertaining to import of finished products for resale, manufacturing of products and components and payment of SAP charges.

During the assessment proceedings, the TPO adopted TNMM as the MAM with respect to the trading segment as against RPM adopted by the taxpayer and accordingly proposed an adjustment.

Taxpayers contention

- It was contended that APA entered into by the taxpayer for FY 2014-15 to FY 2018-19, covered the transaction pertaining to import of finished products wherein TNMM was considered to be MAM and an arm's length margin of 3.5% was concluded.
- Taxpayer contended that the FAR analysis for the years under litigation is identical to the period covered under APA.

Bangalore ITAT Ruling

- While the APA signed between the taxpayer and CBDT did not include the roll back provision, however, as per Rule 10MA of Income Tax Rules 1962 (roll back provisions) the circumstances for application of the said rule were required to be analyzed.
- It was highlighted that in order to apply the agreed terms of the APA, the transaction must be identical in terms of functions undertaken and risks assumed.
- The matter was set aside and TPO/ AO were instructed to compare the FAR of the taxpayer with respect to the transaction during the period under consideration with the details presented in the APA and compute ALP accordingly.

SKP's Comments

Wherein the facts of the case (nature of the transaction, functional and risk profile, etc.) remain identical and it is duly established that the circumstances warrant similar analysis, then the issues dealt with at the APA stage may be relied upon to settle the disputes pertaining to prior years.

Whether the AO/ TPO was justified in determining the ALP as NIL with respect to the cost contribution arrangement?

Ipsos Research Pvt. Ltd. – ITA No. 1361/ Mum/2017

Taxpayer is a market research company which has entered into a cost contribution arrangement with its AE. The taxpayer has benchmarked the transaction pertaining to Shared Resources Allocation(SRA) agreement using TNMM as the MAM.

The agreement for SRA highlighted that all the group companies needed services regarding advice and assistance in the areas of business development, client liasoning, planning, financing, accounting, legal, personal matters, communication, branding etc. These group companies had nominated one of its AE to aggregate the full cost pertaining to such services and share such costs with group companies on a cost plus 6% mark up basis.

TPO argued that the taxpayer had not provided enough back up supporting documents and accordingly considered ALP as NIL; proposing adjustment on the basis of the following concerns –

- Failure to establish whether the said services were actually availed;
- Failure to justify that there is no duplication of services;
- These expenses are in the nature of shareholder/stewardship activities;
- Failure to quantify the benefits derived from the services; and
- Willingness of the taxpayer to pay for such services to independent entities.

Taxpayer's contention

- Taxpayer contented that these services were availed for the overall benefit of the business activity as well as to maintain efficiency and uniformity in quality considering the nature of its business.
- As per the audited segmental data relied and accepted by the TPO, since higher margins were earned in the AE segment as compared to non-AE segment, it can be inferred that the said transaction of cost contribution arrangement is at arm's length.

Mumbai ITAT Ruling

- ITAT observed that centralized sharing of services among group entities avoids duplication of services and achieves economies of scale which is evitable with respect to the cost contribution arrangement of the taxpayer.
- The TP study of the taxpayer as well as the global TP study demonstrated a detailed functional analysis with respect to the said transaction. It also reflects the benefits derived by the taxpayer. The 'benefit of chart' provides the description of the services and how are they rendered.
- As per the SRA Agreement, the cost incurred were not in the nature of shareholding/stewardship activities. Further, it was noticed that the AE's to whom payment was made for such services were not the shareholders of the taxpayer.
- The segmental data was audited and the margins reflected in the segmental accounts were arrived after debiting payments made under SRA Agreement. Thus, payment towards the cost contribution arrangement are already benchmarked.
- Considering that margins earned in AE segment are more than margins earned in Non-AE segment, the TP adjustment proposed was deleted.

SKP's Comments

- This ruling emphasizes the need to capture real time and proper documentation supporting the need-benefit analysis for determining the arm's length nature of management fee transaction.

Whether branch office would constitute PE where branch office and head office have common customers in India?

Taxpayer is a company incorporated under the laws of Netherland having a branch office BO in India. Taxpayer is engaged in provision of design and engineering services to its head office as well as third party customers in India along with other supervisory support services to refinery, petrochemical, and other process industries. The taxpayer aggregated all the transactions undertaken during the year (i.e. supply of equipment, design engineering and supervisory services, cost allocation, reimbursements, etc.) and benchmarked using TNMM as the MAM by claiming idle capacity adjustment.

During the assessment proceedings, the TPO denied the idle capacity adjustment and upon analyzing the functions performed by the branch office, inferred that it was involved in negotiations on behalf of head office. Further, the expenses incurred by branch office during the year under consideration were not commensurate with the scale of its turnover.

On the basis of the above facts, TPO was of the view that branch office constituted a PE in India and adequate profits from head office needs to be attributed to branch office. This contention was backed by the TPO's observation that there are common customers of both in India and there was an implied involvement of the branch office's employees in head office providing services to customers in India.

Taxpayer's contention

- Taxpayer contended that since the branch office exists in India, income arising therefrom is taxable in India. Further, the transactions between both are subject to transfer pricing provisions and the said transactions are benchmarked. Thus, profits related to the part of contract which are directly carried out by head office shall be taxable in Netherlands and no further income shall be attributable to the branch office.
- It was highlighted that with respect to the work orders entered directly by head office with the Indian customers, all the functions are carried out by the head office and there is no involvement of the later.
- The taxpayer contented that the expatriate employees are also not involved in the negotiations or marketing for the branch office and such employees directly work for the head office as evident from the work orders placed on record.

Delhi ITAT Ruling

- ITAT observed that no unreasonable or understated expenses were highlighted in the taxpayer's accounts. Also, the rationality of the expenditure is to be considered from the businessman's point of view.
- No evidence was placed on record to prove nexus between head and branch office with respect to the services offered directly to the customers by the head office.
- ITAT held that "where transaction between the head and branch office have otherwise been held to be at arm's length by taking into account the risk bearing functions, no further profit should be attributed to the branch office.

SKP's Comments

Where head office directly provides services to customers in India, despite the presence of a branch office, concern of later being considered to be a PE gets triggered. A clear distinction of the functions being carried out by head office and branch office plays a crucial role in such situations and thus a robust FAR analysis helps in distinguishing their activities from one another.

Indirect Tax

Whether the activity of setting-up of data center facilities would qualify as 'works contract' under the CGST Act?

[Background: As per Section 2(119) of the CGST Act, works contract means a contract for building, construction, fabrication etc. of any immovable property wherein transfer of property in goods is involved in the execution of the contract.]

Hewlett Packard Enterprise India Private Limited - Authority for Advance Ruling, Karnataka [2019 (11) TMI 1145]

Facts

- The applicant proposes to undertake projects for setting-up of data centre facilities for its clients.
- The activities would include civil, interior and exterior architectural, mechanical and electrical works, obtaining statutory approvals like occupancy certificate etc.
- There may be scenarios where the customer awards the entire contract to the applicant or would require the applicant to only undertake a portion of the entire contract on a standalone basis or as a combination of the same.

Ruling

- Once the entire work has been completed, then the building acquires a new look and an identity in terms of its functionality. Thus the contracted activities and the supply of the required material are in relation to an immovable property.
- The contract also involves transfer of property in goods. Therefore, the proposed activities of the applicant are covered under the definition of works contract.

SKP's Comments

The concept of what constitutes an 'immovable property' and therefore a works contract vis-à-vis a composite supply continues to be a disputed issue. In the present case, the AAR agreed with the applicant's contention that the contract constitutes a work contract taxable to GST at the rate of 18%.

In this case, the ITC will be blocked for the recipient under Section 17(5) of the CGST Act.

Whether TDS provision under GST law applicable to a co-operative society registered under Tamil Nadu Cooperative Society Act of 1975, and not under Society Registration Act 1860?

[Background: As per Notification No. 50/2018-Central Tax dated 13 September 2018, TDS provisions are applicable to a society established by the Central Government or the State Government or a Local Authority under the Societies Registration Act, 1860.]

Tamil Nadu Coop Silk Producers Federation Ltd. - AAR, Tamil Nadu [2019 (12) TMI 49]

Facts

- The applicant submitted stated that they are a co-operative society registered by registrar of industrial cooperative societies.
- The equity of State Government is 0.43% and Government of India is 29.8% apart from Co-operative Society 69.77%.
- It was also submitted that the applicant is not registered under the Societies Registration Act 1860, but instead under the Tamil Nadu Cooperative Societies Act 1961.

Ruling

- It is seen that the applicant was established by the Government of Tamil Nadu as a Cooperative Society registered as an Apex Society under the Tamil Nadu Co-operative Societies Act 1983, but the equity ownership at present or in the past never went beyond 51%.
- Therefore, the applicant is not a person or category of person notified for the purpose of applicability of TDS provisions under the GST law.

SKP's Comments

Various state as well as the central government have adopted the model for creation of co-operative societies in various fields of importance such as agriculture, milk etc. This ruling should help to clarify any doubts on the applicability of the TDS provision on these co-operative societies.

TAX TALK

INDIAN DEVELOPMENTS

Direct Tax

Tax Department creates web portal for exchange of information

The tax department has recently launched a web portal, which will provide information including that of procedures related to automatic exchange of information under common reporting standard. Information is reported annually by financial institutions, which are then exchanged by India under the Common Reporting Standard. The web portal is a repository of policy and technical circulars, guidance and notifications issued by the CBDT, and provides link to relevant circulars and guidance issued by the regulatory authorities and other international bodies. The portal would not only be useful for the domestic financial institutions but will also help the foreign tax authorities and financial institutions to get information about the Indian laws, rules and procedures.

FM Nirmala Sitharaman ends MAT confusion: Reduced rate to be applicable from FY2019-20

The lower minimum alternate tax (MAT) rate announced as part of the corporation tax rate cuts in September will be applicable from the current fiscal year (2019-20 or FY20), Finance Minister Nirmala Sitharaman clarified on Monday in the Lok Sabha after an error in the Taxation Amendment Bill spooked companies. It had said the lower MAT rate of 15 per cent, down from 18.5 per cent, will be applicable from the next financial year (2020-21 or FY21), while the Ordinance had said the lower rate will be effective from the current financial year. The corrections were made by way of an official amendment.

Even those not audited must deduct TDS if total payment exceeds INR 50 lakh

The Ministry of Finance recently notified Form 26QD for TDS (tax deducted at source) return and Form 16D for TDS certificate under Sections 194M and 194N of the Income-Tax (I-T) Act. Budget 2019 had introduced two new Sections — 194M and 194N — for the purpose of TDS that became applicable from 1 September 2019. However, there was no clarity on the procedure for complying with these Sections. The Ministry of Finance has dealt with this issue through a notification dated 18 November 2019. Earlier, only individuals and HUFs subject to tax audit were to deduct the TDS, but after the notification even the ones who are not subject to tax audit are liable to deduct TDS on payments of above Rs.50 Lakhs. Personal payments and businesses not subject to tax audit were out of its purview till 1 September 2019.

Indirect Tax

ITC restricted to 10% of invoices appearing in GSTR-2A

In October 2019, the government had restricted ITC with respect to invoices not appearing in GSTR-2A to 20% of the ITC with respect to invoices appearing in GSTR-2A. This limit has now been further reduced to 10% of ITC pertaining to invoices appearing in GSTR-2A, with effect from 1 January 2020.

In October 2019, the government had restricted ITC with respect to invoices not appearing in GSTR-2A to 20% of the ITC with respect to invoices appearing in GSTR-2A. This limit has now been further reduced to 10% of ITC pertaining to invoices appearing in GSTR-2A, with effect from 1 January 2020.

Blocking of e-way bill

Now, the e-way bill functionality will be blocked for taxpayers who have not filed GSTR-1 for two tax periods. Earlier, this restriction was applicable only on non-filing of GSTR-3B.

Rate rationalization on lotteries

From 1 March 2020, state run lotteries would be taxed at the same rate as state authorized lotteries viz. 28%.

Conditions for use of amount available in electronic credit ledger

The Commissioner or GST officer (not below the rank of Assistant Commissioner) has been given the power to not allow utilization or refund of any amount in electronic credit ledger, if he has reasons to believe that the credit has been fraudulently availed or is ineligible due to the following reasons –

- The issuer/recipient of invoice is non-existent or not conducting business;
- The recipient has not received the goods/services or is not in possession of valid invoice;
- The tax charged in respect of the invoice is not paid to the government.

TAX TALK
GLOBAL DEVELOPMENTS

Direct Tax

Digital Economy: Following the footsteps of France, Italy introduces digital tax on tech giants

Following the footsteps of France, another EU member nation, Italy, has approved a new tax to be levied on large tech companies, thus straining its relations with the US. The new tax shall come into force on 1 January 2020. This tax is similar to the digital tax levied by France earlier this year, which has already attracted severe criticism from the US. The new tax, as approved by Italy, would impose tax at the rate of 3% on technology companies earning more than USD 831 million on a global scale including at least USD 6 million in Italy.

US had earlier condemned France's act of imposing digital services tax on US based tech companies, citing discriminatory reasons. Several countries across the globe, along with the OECD, have been engaged in devising new ways to capture large tech companies having a large user base worldwide within the purview of local tax net. It is to be seen how this new tax introduced by Italy impacts the tech companies and what action does US take to counter such a measure by Italy.

Digital Economy: US puts on hold its proposal to opt out of Global Tax Overhaul

The US had earlier proposed that companies could opt out of part of the OECD's global tax revamp for the time being. The US had urged the OECD to include an optional safe harbour rule which would allow companies to opt out of Pillar I of the OECD's global tax overhaul. It is pertinent to note that Pillar I would change some of the tax rules and agreements that determine when a company is taxable in a country and how much tax it pays in the said country.

Although, it was confirmed by the US that discussion on the safe harbour proposal won't be a pre-requisite for US participation in an OECD meeting to be held sometime in January 2020. In this regard, the OECD has warned the US that the safe harbour proposal would delay the effort to get global consensus on its global tax overhaul plan. However, the US would take a final decision in this regard, i.e. whether to make Pillar I an optional safe harbour rule or a mandatory rule once the architecture of Pillar I becomes clear.

Artificial Intelligence (AI): China unleashes the power of AI to nab tax evaders

Chinese scientists have been working on a system to use artificial intelligence that would make it almost impossible to evade taxes. Over the last three years, about 300,000 government tax inspectors have been assisting an AI system that analyses big data to detect tax evasion, which may otherwise prove very difficult for human inspectors to identify. It is believed that the new AI system can flag more than 95 per cent of the offences, including some of the new tactics which are unfamiliar to most human inspectors. However, there could be a delay in introducing the new AI system given the unfavourable economic climate and the number of companies that rely on informal deals with local tax authorities to lessen their tax burden.

The new AI system has been embedded in the very heart of the Golden Tax System, the software which is used by China's top tax office i.e., the State Taxation Administration. According to the scientists working on this project, the government has not yet approved a full-scale launch of the system, however, this system has been tested in pilot programmes in the country's economic powerhouses in the east. AI powered system to nab tax evaders would be quite a milestone in itself. If that is the case, then it is to be seen whether all countries, especially, developing countries, would try their hand in a similar concept to efficiently and cost effectively nab the tax evaders.

Transfer Pricing

Taiwan: Guidance to taxpayers on one-time transfer pricing adjustment

The tax ruling[4] ('The Ruling') issued by Taiwan's Ministry of Finance provides guidance to MNEs carrying out one-time transfer pricing adjustment in order to align its transfer price with arm's length price. The Ruling shall apply to related party transactions undertaken from fiscal year starting 01 January 2020.

Requirements to be fulfilled before undertaking one-time transfer pricing adjustment:

- One-time transfer pricing adjustment to be undertaken prior to closure of the accounting year.
- Before undertaking related party transactions, the related parties should have an agreement in place specifying the transaction terms and factors that could affect the transfer price.
- The adjustment shall be reflected not only in the books of the taxpayer but also, in the books of the counter-party to the transaction.
- Accounts payables and/or receivables resulting on account of one-time transfer pricing adjustment undertaken, should also be accounted for in the books.

After undertaking one-time transfer pricing adjustment, the taxpayer is required to pay the requisite taxes or claim refund of taxes, if any, arising on account of the adjusted transfer price.

Compliance requirements arising from the aforesaid adjustment with respect to cross-border transfer of tangible goods is as follows:

- Disclose, by way of an import declaration, the adjustment detail along with proforma invoices and value declaration forms as per provisional price
- Deposit payable to Taiwan Customs before inspection and release of goods, is made based on the provisional price.
- Within one month of the end of the relevant fiscal year, the taxpayer has to submit an application along with relevant documents with the Customs. Based on the documents submitted, the dutiable value is assessed in order to determine whether the taxpayer has to pay or seek refund of the relevant duties, taxes and fees collected by the Customs.
- In case the taxpayer fails to submit the application, the Taiwan Customs shall directly assess the dutiable value independently.

4. Ruling No. 10804629000 issued on 15 November 2019

The application and documents submitted with the Taiwan Customs shall include the related-party transaction agreement undertaken, commercial invoices, reasons or methodologies for determining the transaction price, proof of corresponding adjustment made by counter parties and the actual result following the TP adjustment.

Compliance rules to be adhered to by the taxpayer (while undertaking one-time transfer pricing adjustment) in case of transactions other than imported goods is as follows:

a. Business Tax (VAT)

The VAT return filed for the previous fiscal year shall be submitted along with details of transfer pricing adjustment, sales made during the year and corresponding tax payable/receivable. Any additional amount accounted for (as a result of one-time transfer pricing adjustment) resulting in increase in sales[5] to be issued by way of Government Uniform Invoice. In case of reduction in price, such reduction should be treated as sales discount and a credit note to that effect should be raised.

b. Commodity Tax

For the purpose of filing the commodity tax return, one-time transfer pricing adjustment declaration along with relevant supporting documents in support of the commodity tax payable in the last month of the reportable fiscal year, should be submitted to the local National Tax Bureau office.

c. Income Tax[6]

In case of any adjustments made w.r.t. non-tangible goods which are subject to withholding tax, payment or refund of taxes should be made as per the relevant tax provisions. The income tax return filed by the taxpayer should be accompanied by copy of the executed agreement, documents supporting that the adjustment has bee made by the counterparty as well along with documents supporting the relevant tax adjustments made. The documents submitted should further be substantiated with reasons for undertaking adjustment along with the adjusted result.

SKP Comments

The aforementioned provisions appear to be a respite for the taxpayer (i.e. Taiwanese entity) wanting to align their transfer price with the market conditions.

5. Except for transactions pertaining to purchase of offshore services or export of services or goods by the Taiwan entity
6. Companies filing income tax return who have undertaking one-time transfer pricing adjustment, should comply with the regulations set forth by Article 43-1 of the Income Tax Act and

Thailand: Increased custom valuation risk in light of the new transfer pricing disclosure form

As per the notification released by the Thai Revenue Department ('TRD') in November 2019, taxpayers whose total annual operating revenue for accounting period starting from 01 January 2019 is at least THB 200 million or more, are required to submit transfer pricing disclosure form. The transfer pricing disclosure form shall disclose relationships between related parties along with the value of related party transactions.

Further the custom value of imported goods should also reflect royalties, payment of management fees, technical service in case the terms prescribed under the customs regulation are fulfilled.

Audit by Customs Department

Till now the primary source of information used for identifying importers undertaking related party transactions has been the withholding tax returns[7] and self-assessed VAT returns[8] filed by the taxpayers. In order to scrutinize the importers and assess the impact of related party transactions on the customs value of goods, reliance is placed on the data available from the aforementioned primary source as well as the importers' information available with the customs authority.

Beginning 2020, based on the transfer pricing disclosure form submitted to TRD, the Thai Customs Department would be able to get holistic information with regards to the related party transactions undertaken by the taxpayers. In view of the information available on hand, the customs authority may assess the related party transactions undertaken by the importer, which could further lead to increased inspections arising due to custom valuation discrepancies. Thus any deviation from the cost of purchase declared in the transfer pricing disclosure form vis-a-vis the total declared customs value on import declaration, could attract penal implications (penalty being imprisonment as well as a penalty ranging between 50% to 400% of the customs duty shortfall). Similarly, disclosure of any payment made towards royalty and/or other intercompany payments made to overseas related parties could be questioned from the viewpoint as to whether such payments could be considered for the purpose of inclusion in custom valuation. Further, the customs may seek for additional evidence for comprehensive reviews.

SKP Comments

In view of the information to be furnished in the transfer pricing disclosure form, the taxpayers need to revisit transfer pricing arrangements (including intercompany payment agreements, advance pricing agreements) undertaken especially those affecting the custom value of imported goods, to avoid discrepancies and unfavourable assessment.

7. Form P.N.D. 54
8. Form P.P. 36

Australian Taxation Office issues compliance approach for related party derivative arrangements and total return swaps

Final version of Schedule 2 – 'Related Party derivative arrangements' – to Practical Compliance Guide 2017/4 ('PCG') was issued by the Australian Taxation Office ('ATO') on 27 November 2019. Schedule 2 sets out the ATO compliance in order to cater with taxation issues pertaining to cross-border related party financing arrangements and related transactions.

Schedule 2, effective 01 January 2019, shall apply to existing as well as new related party derivative arrangements. The said schedule shall also apply to total return swaps whether entered into with related parties or not.

Taxpayers subject to the 2019 Reportable Tax Positions[9] (RTP) disclosures must disclose their PCG risk classification. The PCG enables taxpayers to assess their compliance risk in a colour coded form viz. green (low risk) to red (high risk). However the PCG risk assessment shall not apply to the following:

- To members of groups containing an Authorized Deposit-taking Institution (ADI); and
- An Australian securitization vehicle

All taxpayers including banking and capital markets and insurance entities (which do not contain an ADI in the group) and financing entities shall be subject to the PCG. The taxpayers would have to analyse and score not only foreign derivative transactions entered into with a related party for hedging a financial transaction but also total return swaps.

There would be 14 specific risk indicators (pertaining to cross-border related party derivative arrangements used to hedge or manage the economic exposure of a company or group) which would enable the taxpayers to assess the risk of ATO compliance activity relating to deductibility of payments, liability of withholding tax, transfer pricing rules, including the reconstruction provisions and application of the general anti-avoidance rule (Part IVA of the Income Tax Assessment Act 1936).

Based on the self-assessment performed by the taxpayers in relation to the related-party derivatives, the taxpayers filing RTP Schedule will be required to disclose their risk assessment as part of the questions under Category C of that schedule.

It is pertinent to note that the high risk assessments performed under the draft PCG shall not necessarily indicate that the transaction is not at arm's length.

SKP Comments

Taxpayers affected in light of the new guidance would have to reconsider their arrangements and related documents. Further taxpayers in the high risk zone could expect intervention by the ATO, questioning the positions taken in the past.

Germany enhances its transfer pricing provisions

Draft law was introduced by the German Federal Ministry of Finance ('MoF') on 10 December 2019, in order to implement the European Union anti-tax avoidance directive. The revised draft includes not only section 1 i.e. Foreign Tax Code ('FTC') but also covers amendments to the General Tax Code ('GTC') which pertains to the taxation of cross-border transactions. The draft law was issued in order to align the German transfer pricing rules with the Organisation for Economic Co-operation and Development's (OECD) base erosion and profit sharing (BEPS) project.

Certain important aspects of the German transfer pricing rules have been elucidated as below:

a. **Related parties:** Definition of related parties has expanded to include entities to whom non-voting shares have been issued or voting agreements have been entered into. Furthermore, close relationship established through close strategic and professional coordination within a network would also constitute as related parties.
b. **Function and Risk Analysis and transfer pricing method:** As per the memorandum issued, the MoF proposes to do away with the current hierarchy of transfer pricing methods, to give more emphasis on the actual conduct of business rather than the contractual terms and determine if the business transactions undertaken are deemed comparable based on the functional and risk analysis. Also adoption of interquartile range is proposed while concluding the benchmarking analysis.
c. **Intangibles:** Based on the OECD guidelines, Section 1, para 3 of FTC defines the term 'intangibles'. The draft law also proposes to implement the concept of DEMPE (development, enhancement, maintenance, protection and exploitation of intangibles) in German tax laws. However guidance on certain aspects such as income allocation associated with the performance of these functions, when to apply profit split method and criteria for profit allocation, treatment of losses or how the sale of intangibles would be dealt with between the parties involved is awaited.
d. **Price adjustment clause:** Newly introduced section 1b of FTC applicable to business transactions pertaining to intangibles, proposes to undertake income adjustment to be made in the 8th year (wherein deviation of 20%

9. Disclosure made with respect to self-assessment of risk rating for related party financing arrangement

in relation to the arm's length price vis-a-vis actual profit development made during the first 7 years of conclusion of transaction), in case of significant deviation of the transfer price from the arm's length price. The aforementioned price adjustment clause provides the following exceptions to this rule:

- To produce evidence to support the volatility of the circumstances causing the deviation;
- Sufficient proof is produced stating that appropriate consideration would be received in light of uncertain future developments; and
- License/IP transfer agreement stating basis for compensation (i.e. whether revenue based or profit based).

The aforementioned clause would have significant impact, considering that the arm's length nature of the transactions pertaining to intangibles is demonstrated through databases.

e. **Transfer of functions:** The proposed draft has amended the valuation rules for transfer of assets. The draft proposed to permit individual valuation of the assets being transferred instead of transfer package valuation under certain conditions. Acceptable valuation methods shall be used for valuing transfer packages.

f. **Financial transactions:** The proposed draft shall apply to interest payments made by the German taxpayers. The arm's length interest rate shall be determined basis which the group could obtain financial assistance in the open market. The draft law also proposes that creditworthiness of the group shall apply unless the borrower's creditworthiness is better than the group. Further intragroup financing activities would be remunerated on a cost plus basis.

g. **Master file:** The draft law proposes to reduce the turnover threshold for preparation of master file from EUR 100 million to EUR 50 million. However the draft law does not specify any due date or reference to specific event (i.e. filing along with annual tax returns) for electronic filing of master file.

h. **Advance Pricing Agreements (APAs)[10]:** The draft law, restricted in nature, has laid down certain criteria that must be met before an APA can be applied for. The draft law proposes to increase the APA application fees from EUR 20,000 to EUR 30,000. Reduction in fee could be expected if the APA follows a coordinated bilateral or multilateral tax audit.

The proposed draft shall be effective in a phased manner as follows:

- Amended section 1, 1a, and 1b shall apply from financial year 2019-20 onwards;
- Change in threshold value for of master file documentation shall apply for fiscal year beginning after 31 December 2020. The due date for filing master file electronically shall be communicated through separate decree; and
- Amended provision for filing an APA shall apply for the first time after the draft law comes into effect.

SKP Comments

The draft law proposed intends to align the German transfer pricing policies with OECD's BEPS project recommendations. In light of the amendments suggested, it is expected that more companies would qualify as related parties thereby widening the scope for applicability of transfer pricing provisions. Further the revised APA provisions aim to achieve certainty in cross-border transactions and avoid international disputes.

Indirect Tax

New VAT rules for EU cross-border supplies of goods effective

With effect from 1 January 2020, the VAT rules for EU cross-border supplies of goods have been amended. The said rules are expected to resolve the issues faced in cross-border B2B and B2C transactions between EU member states.

10. Section 89a of GTC

Compliance Calendar

7 January 2020

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

10 January 2020

- GSTR-8 for the month of December 2019 to be filed by taxpayers required to collect TCS

11 January 2020

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

13 January 2020

- GSTR-6 for the month of December 2019 to be filed by Input Service Distributors

15 January 2020

- Filing of TCS statements for the period of October 2019 to December 2019

20 January 2020

- GSTR-3B for the month of December 2019 to be filed by all registered taxpayers
- GSTR-5 for the month of December 2019 to be filed by non-resident taxpayers
- GSTR-5A for the month of December 2019 to be filed by people providing Online Information and Database Access or Retrieval (OIDAR) services

30 January 2020

- Issuance of TCS certificates (Form 27D) for TCS collected for the period of October 2019 to December 2019
- Due date for furnishing challan-cum-statement with for tax deducted under section 194-IA for the month of December 2019
- Due date for furnishing challan-cum-statement for tax deducted under section 194-IB for the month of December 2019

31 January 2020

- Filing of TDS statements for the period of October 2019 to December 2019
- GSTR-1 for the quarter of October 2019 to December 2019 to be filed by registered taxpayers with an annual aggregate turnover of up to INR 15 million
- GSTR-7 for the month of December 2019 to be filed by taxpayers required to deduct TDS
- GSTR-9 for the period of July 2017 to March 2018 to be filed by the regular taxpayers (voluntary basis if the aggregate turnover is less than INR 20 million)
- GSTR-9A for the period of July 2017 to March 2018 to be filed by the persons registered under composition scheme
- GSTR-9C for the period of July 2017 to March 2018 to be filed by taxpayers with an aggregate turnover of more than INR 20 million or more

IN THE NEWS

Tax Experts react to 38th GST Council meeting announcements

"The Council's decision to lower the restriction limit from 20% to 10% is a heavier blow for the businesses, where reconciling the purchase registers with GSTR-2As on monthly basis is already proving to be a bit unwieldly."
– **Jigar Doshi**

Tax Sutra

Read more at https://bit.ly/3963b23

India's start-ups generate USD 28 billion worth of 'excitement' for global investors

"While raising funds domestically might be challenging in the short run, trends indicate considerable interest from global investment funds that value quality over quantity."
– **Maulik Doshi**

The National

Read more at https://bit.ly/2R7veWD

Tax Alert

Decoding the key changes in the Taxation Laws (Amendment) Bill vis-à-vis the Ordinance

Read here https://bit.ly/2FpeiWd

GST Alerts

E-invoicing mandatory from 1 April 2020 for businesses with turnover above INR 1 billion

Read here https://bit.ly/2MYr7ef

Decisions of the 38th GST Council meeting

Read here https://bit.ly/39fJ2GS

UPCOMING EVENTS

GST 4.0 & International Trade : The road ahead

Organized by IACC

New Delhi, 10 January 2020

Bhadresh Vyas

Visit https://bit.ly/2QDLek2 for more details

Tax Strategy & Planning Summit 2020

Organized by UBS Forum

Mumbai, 23 January 2020

Jigar Doshi

Register here http://taxationsummit.in/

Global Transfer Pricing conference, Amsterdam 2020

Organized by Nexia International

Amsterdam, 24 -26 February 2020

Register here https://bit.ly/372BDsQ

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Nexdigm (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, we have built and leveraged capabilities across key global markets to provide transnational support to numerous clients.

We provide an array of solutions encompassing Business 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.*

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