
SKP
Tax Street
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SKP TAX STREET

INTRODUCTION

We are pleased to present the latest edition of Tax Street – our newsletter that covers all the key developments and updates in the realm of taxation in India and across the globe for the month of February 2019.

The Kingdom of Saudi Arabia introduced the transfer pricing regulation, thus marking a new beginning in the international taxation amongst GCC countries. Apart from this, there have been some crucial announcements and rulings in the areas of direct tax, transfer pricing, and indirect tax. In this issue of Tax Street, we have tried to collect and coalesce all such significant developments to draw a holistic picture of the current tax landscape in India for your understanding.

- The **'Focus Point'** section talks about the Transfer Pricing By-Laws for the Kingdom of Saudi Arabia released by The General Authority of Zakat and Tax (GAZT/Authority) on 15 February 2019.
- Under the **'From The Judiciary'**, we provide in brief, the key rulings on important cases, and our take on the same.
- Our '**Tax Talk'** provides key updates on the important tax-related news from India and across the globe.
- Under **'Compliance Calendar'**, we list down the important due dates with regard to direct tax, transfer pricing, and indirect tax in the month.

We hope you find our newsletter useful and we look forward to your feedback. You can write to us at **taxstreet@skpgroup.com**. We would be happy to hear your thoughts on what more can we include in our newsletter and incorporate your feedback in our future editions.

Warm regards,
The SKP Team

FOCUS POINT

Final Transfer Pricing By-Laws issued by Saudi Arabia

The General Authority of Zakat and Tax (GAZT/Authority) has released the final transfer pricing By-Laws for the Kingdom of Saudi Arabia (KSA) on 15 February 2019. This marks a new beginning in the international taxation amongst the Gulf Cooperation Council (GCC) countries. We have summarized the newly introduced By-laws in three broad categories:

- Discussions on the applicability of By-Laws and meaning assigned to the relevant terms
- Compliances triggered along with a deadline and corresponding monetary thresholds
- Other important points for consideration in question and answers format

Applicability: The transfer pricing By-Laws are applicable to all persons, except persons who are subject only to Zakat. Also, Country-by-Country Reporting (CbCR) related compliance would be applicable to all persons regardless of whether that person or entity is subject to only income tax, zakat or both.

Controlled Transactions: All transactions involving Related Persons or Persons Under Common Control, including notional transaction and transactions with Permanent Establishment

Related persons for Companies, Partnership Firm, etc., will include Person Under Common Control (i.e., Sister concerns) and where a person (alone or together with a Related Person) has "effective control" over the other person. Furthermore, the term "Effective Control" has been given a very comprehensive definition to include various situations.

Transfer Pricing compliance requirements for covered persons and key deadlines:

Compliance requirement	Time limit as per By-Laws
Furnishing relevant Form 'CTDF[1] ' (i.e., Controlled Transaction Disclosure Form)	120 days after the financial year ends, i.e., 30 April 2019
Where the arm's length value of the controlled transactions exceeds SAR six million in a year maintaining and making available on request 'Local File,' and also 'Master File'	120 days after the financial year end. However, 60 days extension is granted for the year 2018 (effective due date 29 June 2019)
Furnishing CbCR, where consolidated revenue of MNE exceeds SAR 3.2 Billion	12 months after the reporting year of the Multinational Enterprise (MNE) Group
Intimation of CbCR (Notification about the identity and residence of the reporting entity)	Within 120 days from the end of the reporting year, i.e., 30 April 2019

[1] CTDF is a disclosure form containing information relating to the controlled transaction, which every taxable person shall submit along with the annual income tax declaration to the authority. The CTDF needs to be certified by a licensed auditor.

From the above, it can be inferred that the By-Laws intend to provide relief to the 'small enterprises' from the compliance requirement to maintain 'Local file' and 'Master file.' However, the 'small enterprises' will have to furnish Form 'CTDF' within due date yet.

Transfer Pricing documentation requirements

KSA, being part of G20 nations and owing to its commitment to the Base Erosion and Profit Shifting (BEPS) inclusive framework, has introduced transfer pricing documentation regulations, which are largely modelled on BEPS Action Plan 13 - 'Transfer Pricing documentation and Country-by-Country Reporting.' The three-tiered documentation approach recommended by the authority comprises of 1) Master File 2) Local File and 3) CbCR.

As compared to the Master file regulations in most of the other Asian countries, the applicability threshold in KSA of six million SAR appears to be on the lower side, resulting in more number of taxable persons requiring to comply with the Master File related compliance. Also, the timeline of 120 days after the financial year is shorter resulting in increased compliance pressure. Furthermore, while the Authority is yet to establish and specify the types, contents and recommendations in relation to CbCR, it cannot be very different from the CbCR prescribed by the OECD.

Other important considerations

Language

GAZT suggests submission and maintenance of documentation in the official language (i.e., Arabic) to the extent it is reasonably possible.

Domestic transactions

The By-Laws are applicable to transactions with the domestic related party.

Frequency of arm's length test

GAZT suggests that comparability analysis should be undertaken every three years, provided there is no change in the condition or circumstances of the taxpayer and their controlled transactions.

Data for comparability analysis

Only data that is available or can be made available to the public may be used in conducting comparability analysis. Hence, the taxpayer cannot use information that cannot be made available to GAZT and vice versa.

Notional Transactions

Notional transactions, i.e., transactions without any consideration (e.g., interest-free loan, etc.) are subject to the transfer pricing By-Laws. Notional transactions need to be reported in Form CTDF alongside information on the Fair Market Value of the consideration for such transaction.

It is observed that transfer pricing legislation is rapidly putting its footsteps in GCC countries. Quite a few jurisdictions have either adopted or will be soon adopting transfer pricing (TP) regulations.

The introduction of the transfer pricing regulations would have far-reaching impact on the compliance requirement and the inter-company pricing policies adopted by the persons operating in the KSA.

Businesses need to initiate the functional analysis of their group transactions, determine the factors which influence these types of transactions in the uncontrolled scenario and document them appropriately.

Maulik Doshi
Senior Executive Director - Transfer Pricing and Transaction Advisory Services

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The Organisation for Economic Development (OECD) initiated a project with G20 countries, aimed at creating single set of consensus-based international tax rules to protect tax bases while offering increased certainty and predictability to taxpayers, which was named/designed as Base Erosion & Profit Shifting (BEPS) Action Plans comprising of 15 action items to equip governments with domestic and international instruments to address tax avoidance, ensuring that profits are taxed where economic activities generating the profits are performed and where value is created.

One of the four minimum standards include Action 13 (transfer pricing documentation and Country-by-Country Reporting) and others are Actions 5, 6 and 14, which relate to harmful tax practices, treaty abuses and dispute resolution respectively.

FROM THE JUDICIARY

Direct Tax

Whether services provided by the external advisors are in the nature of Independent Personal Services (IPS) or Fees for Technical Services (FTS)

Dy. CIT v. Hydrosult Inc. [TS-43-ITAT-2019 (Ahd)]

Held

Whether services provided by advisors are of independent nature?

The tax tribunal held that on perusal of service agreement between the taxpayer and the non-resident individuals, the latter were contracted as an "Advisor" for rendering advisory services and the risks attached to it were with the non-resident individuals to a great extent. Thus, it was held that the services rendered by the Advisors were independent in nature.

Whether Services are IPS or FTS in nature?

The tax tribunal accepted the contention of the taxpayer that the non-resident individuals have rendered professional services of independent nature and are therefore liable to be taxed. It also stated that they will be taxed only in the state of residence since none of them have a fixed base available to them in India and none of them have stayed in India for more than the relevant period as provided under the Tax treaty in the concerned financial year. Hence, the services rendered were covered under IPS and FTS Article would not apply.

SKP's Comments

There is a thin line of distinction between IPS and FTS. Ideally, if services are covered under both, i.e. FTS and IPS, then IPS being a specific provision would be considered over FTS being a general provision and taxed accordingly. Also, FTS clause in certain tax treaties specifically provides that the income covered in IPS clause would be excluded from the FTS clause.

Furthermore, this decision also explains what constitutes "independent character" for determining whether the services are IPS in nature. Thus, in cases where the external consultant is contracted as an Advisor, and the related risks are with the taxpayer, then it may be possible that the services rendered by such a person may be covered under IPS, subject to the satisfaction of period of stay in India and availability of fixed base in India.

Whether a partner receiving remuneration and interest from a partnership firm avail benefit of presumptive taxation under section 44AD of the Income-tax Act, 1961 (ITA)

Mr. A. Anandkumar v. ACIT [TS-41-ITAT-2019 (CHNY)]

Held

The tax tribunal observed that the remuneration and interest received from a firm would be considered as profits or gains of business or profession only to the extent eligible under section 40(b) of the ITA. However, it was observed that these payments indirectly amount to a distribution of profits by the firm on which the firm would have paid tax. Hence, this by itself would not translate such remuneration and interest into gross receipts or turnover of the business of the partner of the firm. In light of the above scenario, the tax tribunal held that the taxpayer could not avail the benefit of the presumptive taxation.

SKP's Comments

This decision clearly brings out the proposition that presumptive taxation scheme is not available to persons earning remuneration or interest from a partnership firm as this cannot be considered as turnover/gross receipts.

Whether the transfer of project specific designs/drawings/plans makes available any technical knowledge, skill, know-how or process

Buro Happold Limited v. Dy. CIT [TS-76-ITAT-2019 (Mum)]

Held

The tax tribunal observed that the taxpayer is engaged in the provision of consultancy services relating to the projects and in that context, it is required to provide technical designs/drawings/plans. In other words, the said technical design/drawings/plans are project-specific.

The tax tribunal furthermore held that reading the second limb of Article 13(4)(c) of India-UK tax treaty disjunctively of the make available clause (i.e., first limb) would amount to wrong interpretation of law as the words "or consists of the development and transfer of a technical plan or technical design" (second limb) would take color from the first limb.

However, the tax tribunal observed that since the said design/drawings/plans are project-specific, it cannot be used by the service recipient independently without recourse to the service provider. Accordingly, the contention of the taxpayer that the same do not make available any technical knowledge, experience, skill, etc., has been accepted.

The above mentioned case was handled and supported by SKP

SKP's Comments

The tax tribunal highlighted a very important interpretation principle that make available clause as appearing in Article 13(4)(c) of India-UK tax treaty has to be considered even for the transfer of technical designs, drawings, plans, etc. This argument made by the taxpayer is unique as conventionally it was always understood that the make available clause applies only to services and does not apply to supply of design and drawings. It is to be seen whether higher courts accept this unique argument or not.

Transfer Pricing

Characterization of services of the Taxpayer as Knowledge Process Outsourcing (KPO)

McKinsey Knowledge Center India Pvt Ltd [Petition (s) for Special Leave to Appeal (C) No (s). 1785/2019]

Held

The Hon'ble Supreme Court rejected the Special Leave Petition (SLP) filed by the taxpayer against the order of the Delhi High Court, which characterized the taxpayer as a KPO unit.

The Delhi High Court has observed the following before concluding that the taxpayer operated as a KPO unit:

- The research and information services division provided journalistic research information support, domain-specific research support, analytics and capital market insights, etc.
- Referring to the agreements, the HC noted that the functions of the taxpayer also included knowledge management systems and other infrastructure support services.
- HC also opined that the perception that a BPO service provider can move up the value chain by providing services of a KPO, is not enough to functionally compare BPO and KPO service providers.
- The services rendered were specialized and required special skill-based analysis and research, which is beyond the more rudimentary nature of services by a BPO.

SKP's Comments

BPO vs. KPO has been a long controversy in the Indian transfer pricing litigation environment. Now that the SC has rejected the SLP, findings of the High Court would serve as the final test in the said controversy.

It is relevant to note here that the Safe Harbour Rules in India prescribes the higher rate of mark-up (18% to 24%) for KPO's vis-a-vis BPO (17% to 18%).

What factors are relevant for the application of CUP Method?

Raymond Fasteners Pvt Ltd [ITA No. 994/ PUN/2016]
Held

ITAT rejected TPO/DRP's adoption of internal Comparable Uncontrolled Price (CUP) Method and preferred Transactional Net Margin Method (TNMM) over internal CUP Method to benchmark the export transaction by stating that the transfer pricing law requires a comparison between transactions that are same while benchmarking the arm's length price under CUP method. The factors that are held by the ITAT to be looked upon before application of CUP are discussed below:

Volume Differences: The transaction should not only involve the same goods, but the volume of the transaction should also be more or less similar. The transaction with non-AE was less than 1% of that with AE.

Functional Differences: It was noted that sale to non-AE was purely a resale transaction (Import for resale in India), whereas sale to AE was goods manufactured by the taxpayer in India. Therefore, the ITAT concluded that the price pre-agreed with non-AE could not be benchmarked/basis to charge sale price to AE, where the taxpayer acted as a contract manufacturer.

Also, the taxpayer did not carry out any marketing functions nor did it bear any credit risk or pay any royalty to the AE for the use of technology while manufacturing the goods for the AE unlike its transaction with the non-AE. Hence, there were functional differences in a transaction entered by the taxpayer with its AE and non-AEs.

Geographical Differences – AE was located in France whereas non-AEs were located in India.

Reliance was also placed on the Bombay High Court ruling in the case of Amphenol Interconnect India Pvt Ltd wherein it was held that in case of geographical and functional differences, TNMM was to be applied instead of CUP Method for the purpose of benchmarking analysis.

SKP's Comments

It is a settled rule that the application of CUP method requires strict comparability standards. Factors, such as volume, geography, critical functions and corresponding risks, are the key parameters for application of CUP method.

Whether Corporate guarantee is an international transaction? If yes, whether bank quotes can be used to benchmark corporate guarantee transaction?

M/s JE Energy Venture Private Ltd [ITA No. 7602/Del./2017]
Held

ITAT upheld corporate guarantee as an international transaction, and rejected the use of bank quotes by the TPO to benchmark the said international transaction as inappropriate CUP.

Corporate Guarantee is an international transaction

The taxpayer had submitted that providing a corporate guarantee in case of a loan to its AE, is not an international transaction as no benefit had been passed on to the AE. However, the said submissions were rejected by the ITAT stating that no loan would be provided to the AE had this corporate guarantee not been given by the taxpayer, and the taxpayer has taken the risk without consideration, which no other third party would have taken.

Bank Quotes without any adjustment not a suitable benchmark for corporate guarantee transaction

On the approach of the TPO to use bank guarantee rates to benchmark the corporate guarantee transaction, the ITAT held that bank guarantee rates could not be compared with corporate guarantee rates by any standard. By placing reliance on the order of the coordinate bench of the ITAT in case of Glenmark Pharmaceuticals Ltd, the ITAT accepted the submission of the taxpayer that unless a reasonable adjustment for material differences is made to the general quotes of bank guarantee, the same cannot be accepted as a valid CUP. Thus the TPO has directed to benchmark the corporate guarantee transaction by providing an opportunity to the taxpayer.

SKP's Comments

The said ruling will provide relief to those taxpayers where bank guarantee rates have been used to benchmark the corporate guarantee transaction by the TPO. Furthermore, the said ruling also emphasizes the need for robust benchmarking analysis with respect to corporate guarantee transactions.

The introduction of the transfer pricing regulations in KSA would have far-reaching impact on the compliance requirement and the inter-company pricing policies adopted by the persons operating in the KSA. The transfer pricing regulations would apply to a wide range of controlled transactions between related parties, including transactions entered between resident entities. Accordingly, the persons operating in KSA will be required to evaluate the impact of the new legislation on their existing business.

Indirect Tax

Whether Input Tax Credit (ITC) is admissible on inward supplies for construction of a warehouse using pre-fabricated technology?

Tewari Warehousing Co Pvt Ltd - Authority for Advance Ruling (AAR), West Bengal [2019-VIL-47-AAR] Held

The AAR observed that:

- The applicant is constructing the warehouse on a piece of land taken on a thirty years lease for building a storage facility. On expiry, the period can be extended by a fresh lease.
- The structure being built is, therefore, not for the purpose of temporary enjoyment, but intended to be used as a permanent structure subject to usual business uncertainties.
- Furthermore, the warehouse cannot be relocated by unfixing the pre-fabricated structures alone.
- The dismantling of the floor, which is the most important component of the warehouse, is not possible without substantial damage to the foundation.

In view of the above observations, the AAR held that the warehouse under construction is an immovable property, and the ITC is not admissible on the inward supplies for its construction in accordance with Section 17(5) (d) of the CGST Act.

SKP's Comments

The issue of what qualifies as an 'immovable property' was a bone of contention between the department and taxpayers even under the erstwhile indirect tax laws. In view of this advance ruling, the issue is likely to continue under the GST regime.

Whether the applicant is liable to GST on the merger of his proprietorship firm as a going concern with a private limited company?

B.M. Industries - AAR, Haryana [2019-VIL-46-AAR] Held

The applicant submitted that:

- The merger is for the complete business of the applicant as a whole involving transferring of all assets and liabilities.
- Selling of business cannot be called a transaction in the normal course of furtherance of business and hence, is outside the scope of 'supply.'
- As per Para 4(c) of Schedule II of the CGST Act, 2017, transfer of a business as a going concern is not treated as supply.
- Furthermore, services by way of transfer of going concern have been exempted vide Notification No. 12/2017-Central Tax dated 28 June 2017.

The AAR accepted the above contentions and held that the applicant would not be liable to pay tax on the merger of a sole proprietorship as a going concern with a private limited company.

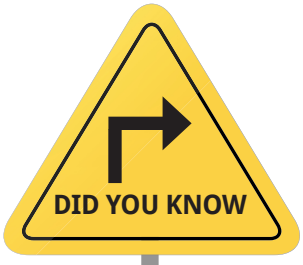
Whether ITC available in the credit ledger or cash ledger account of the sole proprietorship firm shall be transferred to the respective credit and cash ledger of the private limited company?

B.M. Industries - AAR, Haryana [2019-VIL-46-AAR] Held

The AAR held that provisions of Rule 41 deals with the transfer of unutilized ITC in case of a merger. These provisions are not applicable to unutilized balance lying in electronic cash ledger. Therefore, only the ITC in electronic credit ledger of the applicant should be transferred to the respective credit ledger of the private limited company, consequent upon the merger.

SKP's Comments

The transfer of going concern has been squarely covered in the said exemption notification. However, whether the balance in the electronic cash ledger can be transferred on account of such a transfer was uncertain. This advance ruling should provide a clearer picture to taxpayers so that it is ensured that balance if any in the electronic cash ledger is utilized before the merger.



A person shall be deemed to have a substantial interest in a company, where such person at any time during the relevant tax year is the beneficial owner of shares carrying not less than 20% of the voting power. For deriving substantial interest, one does not need to aggregate the direct and indirect shareholding of a person in a company.

Whether the value of expired loyalty points, on which money had been paid to LSRPL by the issuer of points, would amount to consideration for 'actionable claim,' and therefore outside the scope of GST?

Loyalty Solutions and Research Pvt Ltd (LSRPL), Appellate Authority for Advance Ruling, Haryana [2019-VIL-05-AAAR] Held

Facts

- On purchase of products of 'partners' to loyalty programme, end-customers get reward/payment points.
- These reward points can be redeemed by customers while making future purchases of products of 'partners.'
- In pursuance to these reward points management, 'partner' transfers an amount equivalent to 0.25 of INR, per reward point as issuance charges to LSRPL.
- Whenever any purchase is made by the end customer, by using/ redeeming rewards points, LSRPL transfers an amount equivalent to 0.25 INR per reward point used to the concerned store, and the concerned store gives discounts on the payment to be received from end-customer to this extent.
- If the customer does not redeem the reward points within their validity period of 36 months, the reward points are forfeited, and the amount equivalent to 0.25 INR per reward point is retained by LSRPL.

Ruling

The AAAR answering the question in the negative upheld the ruling of the AAR. The AAAR observed that:

- It is an admitted position that the amount received upfront from the partners in respect of the generated payback points is booked as revenue in LSRPL's account.
- In the given case, the consideration has two components - fixed and variable.
- When there can be no claims by the end-customers after the expiry of the validity period, these are no more actionable claims. LSRPL treat the retained money as revenue which can never be described as any claim against anyone.

SKP's Comments

What qualifies as an actionable claim is a matter of interpretation and is largely fact-based. This ruling can increase tax cost for businesses operating under a similar business model.

It should be noted that an Advance Ruling is binding only on the applicant who had sought it and the concerned jurisdictional authority, i.e., an Advance Ruling is specific to an applicant and shall not be applicable to other taxpayers facing similar issues. However, the above-mentioned Advance Rulings provide clarity about the issues being faced and have persuasive value in matters before the tax authorities.

TAX TALK
INDIAN DEVELOPMENTS

Direct Tax

Within 2 years, income taxpayers to start getting refunds within 24 hours

[Excerpts from The Times of India, 5 February 2019]

The revenue department will put mechanism in place within two years to ensure that all returns are processed within 24 hours and refunds issued simultaneously, an official said. The government has already sanctioned INR 42 billion last month for upgradation of information technology infrastructure of Central Board of Direct Taxes (CBDT) for processing returns, refunds, faceless scrutiny and verification.

Linking PAN with Aadhaar mandatory for filing I-T returns: SC

[Excerpts from The Times of India, 7 February 2019]

Putting to rest all doubt, the Supreme Court has said that linking the Permanent Account Number with Aadhaar is mandatory for filing income tax returns. A bench comprising Justices A K Sikri and S Abdul Nazeer said that the top court has already decided the matter and upheld Section 139AA of the Income Tax Act. While several taxpayers wanted to opt out of Aadhaar and did not want to link their PAN, the government has maintained that it is critical to ensure that individuals don't evade taxes with multiple PANs.

Indirect Tax

Rationalization of GST rate on under-construction residential properties

The GST rate on under-construction properties has been reduced as follows:

Particulars	Description of property		Old Rate (Effective)	Revised rate (with effect from 1 April 2019)
	Max. carpet area	Max. price		
Residential properties in the affordable housing segment	90 sq. meters in non-metro cities	INR 4.5 million	12% (with Input Tax Credit [ITC])	1% (without ITC)
	60 sq. meters in metro cities	INR 4.5 million	8%* (with ITC)	1% (without ITC)
Residential properties outside the affordable housing segment	Does not meet any or both of the above-mentioned criteria		12% (with ITC)	5% (without ITC)

*The effective GST rate of 8% was applicable to the residential houses having an area of up to 60 sq. meters. This was irrespective of the price of such residential houses, provided that the housing project was approved by a competent authority under 'Scheme of Affordable Housing in Partnership.'

Instructions on mentioning details of inter-state supplies made to unregistered persons in GSTR-1 and GSTR-3B

- It has been observed that a number of registered persons have not reported the details of inter-State supplies made to unregistered persons in Table 3.2 of GSTR-3B. However, the said details have been mentioned in Table 7B of FORM GSTR-1.
- It has been clarified that registered persons making inter-state supplies to unregistered persons shall report details of such supplies along with the place of supply in Table 3.2 of GSTR-3B and Table 7B of GSTR-1 as mandated by the law.

[Circular No. 89/08/2019-GST]

Instructions on the compliance of Rule 46(n) of the CGST Rules, 2017 while issuing invoices in case of inter-state supply

- It has been observed that the companies, especially, from banking, insurance and telecom sectors are not following the practice of mentioning the place of supply along with the name of the State in case of inter-state supplies.
- The government vide the Circular has clarified that the place of supply shall be specified in order to ensure uniformity in the implementation of the provisions of GST law. Contravention of the provisions will attract penal action under section 122 or 125 of CGST Act, 2017.

[Circular No. 90/09/2019-GST]

Clarification regarding tax payment on the supply of warehoused goods while being deposited in a Customs bonded warehouse

- Earlier, due to non-availability of the facility on the GST common portal to report such supplies as inter-state supplies, suppliers reported them as intra-state supplies and discharged CGST and SGST on such supplies instead of IGST.
- The government vide the Circular has clarified that, as a one-time exception, suppliers who have paid CGST and SGST on such supplies would be deemed to have complied with the provisions of GST law on such supplies as long as the sum of tax paid as CGST and SGST is equal to the amount of IGST on such supplies.

[Circular No. 91/10/2019-GST]

TAX TALK
GLOBAL DEVELOPMENTS

Direct Tax

Facebook, Google, Amazon, Twitter may have to pay up to 40% digital tax in India soon, says the report

[Excerpts fromTimes Now, 15 February 2019]

Tech companies, such as Facebook, Google, Amazon, and Twitter are expected to pay a 'digital tax' in India soon as the Central Board of Direct Taxes (CBDT) — the policy-making body of income tax department — is ready with a draft proposal under the concept of "significant economic presence", also known as digital permanent establishment (PE), the Business Standard reported citing sources aware of the matter.

The CBDT draft proposes to impose a tax at 30 to 40 per cent rate based on the revenues and user base of such companies in India, it said.

New Zealand to explore digital services tax for multinationals

[Excerpts from The MNE Tax, 19 February 2019]

The New Zealand government today announced that it would open consultation in May on the design of digital services tax on the revenue of multinationals operating in New Zealand. "Highly digitalized companies, such as those offering social media networks, trading platforms, and online advertising, currently earn a significant income from New Zealand consumers without being liable for income tax. That is not fair, and we are determined to do something about it," Finance Minister Grant Robertson said.

The tax would serve as an interim measure until the OECD reaches agreement on a coordinated global method to address the tax challenges of digitalization.

Brexit Britain will be 'huge tax haven in the middle of Europe' - 'UK will PROSPER'

[Excerpts from The Express, UK, 20 February 2019]

Economists Marc Friedrich and Matthiaas Welk believe the UK will become a tax haven "soon" after Brexit if the country leaves the EU without a deal. Speaking to Focus in Germany, the experts said: "In the case of a hard Brexit, we expect to soon have the largest tax haven in the middle of Europe - Britain. Attractive tax rates will attract private and commercial capital from around the world in the tax optimization competition, and the UK will prosper."

This transformation of Brexit Britain from Europe's financial hub to tax paradise with convenient tax rates will compensate the disruption and damage to the British economy will experience in the immediate aftermath in case of a no-deal, Friedrich and Welk said.

Transfer Pricing

Hong Kong - Introduces disclosure of transfer pricing information in its income tax return

The transfer pricing rules in Hong Kong were made applicable in July 2018. Furthermore, on 23 January 2019 Hong Kong's Inland Revenue Department (IRD) introduced new supplementary Form S2, which contains related party details. The taxpayer is required to state in its profit tax returns, whether Form S2 is applicable.

The Supplementary Form S2 has to be submitted if the taxpayer fulfills any of the following conditions:

- If the taxpayer had any transaction with non-resident associated person during the relevant period
- If the taxpayer has entered in any Advance Pricing Arrangement (APA) for the relevant period
- If the taxpayer is a part of the Multinational Enterprise (MNE) who is obligated to file Country-by-Country Reporting in Hong Kong or any other jurisdiction

If the above conditions are met then the taxpayer is required to file the Form S2 with the following information:

- The country of the associated non-resident persons with whom the taxpayer has entered into a transaction in the relevant period
- The taxpayer has to disclose if its obligated to file master file or local file
- If the taxpayer has entered into an APA, it is required to provide detailed information on the arrangement, including the amount of transaction in HK$ to which the APA applies.
- Intimation of Country-by-Country Reporting (CbCR) filed by the taxpayer.

Ireland – Seeks public consultation with respect to the proposed revised transfer pricing rules

The Department of Finance of Ireland published a public consultation document on 18 February 2019 for the taxpayers to contribute and provide their inputs with regard to the proposed revisions in the present transfer pricing policy of Ireland.

The public consultation document seeks feedback on current transfer pricing regime in Ireland. The motive of the released document is to enable the Irish transfer pricing rules to be on par with the approach, which is prevailing globally. Accordingly, the proposed reforms, in connection to which the comments are invited, to Ireland's transfer pricing rule are as follows:

- Incorporation of the Organisation for Economic Co-operation and Development (OECD) 2017 transfer pricing guidelines into Irish legislation replacing the OECD 2010 transfer pricing guidelines.
- As regards domestic transfer pricing, the existing law provides an exemption to the arrangement, the terms of which are arranged prior to 1 July 2010. The proposed reforms intend the removal of the said exemptions from 1 January 2020. This implies that all the domestic transactions would be covered under transfer pricing, regardless of whether the arrangement was carried out before July 2010.
- Extension of transfer pricing rules to small and medium-sized enterprises SME's*
- Currently, transfer pricing is applicable on transaction related to profits or gains or losses arising from income within the charge to tax under the said proposal. The department has proposed to extend the transfer pricing rules to non-trading income and capital transactions.
- Enhancing the documentation guidelines by introducing the Master File and Local File requirements for certain taxpayers.
- Application of transfer pricing rules to branches.

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* An SME is defined for the purposes of the section. This definition is closely based on the definition of enterprises, which fall within the category of micro, small and medium-sized enterprises as defined in the EU Commission Recommendation of 6 May 2003. Broadly, this comprises groups of companies where the group employs less than 250 employees and either has a turnover of less than €50m or assets of less than €43m.

Denmark - Supreme Court of Denmark rules on the various substantial transfer pricing issues

The Supreme Court gives its decision in the case of Tax Ministry of Denmark vs. Microsoft Denmark ApS as follows:

Arm's length remuneration on marketing services

The Tax Ministry of Denmark alleged that the remuneration received by Microsoft Denmark ApS for the marketing services provided to its AE, i.e., Microsoft Ireland was not at arm's length. Microsoft Denmark received a commission as per the Market Development Agreement for the sale of packaged software directly to end users and sale of OEM licenses to local computer manufactures to enable them to sell computers with pre-installed software.

Tax Ministry was of the view that Microsoft Denmark's marketing activity for the Microsoft products also benefitted the multinational computer manufactures selling their computers with pre-installed Microsoft products directly in Denmark. Accordingly, Microsoft Denmark ApS should also receive a commission for direct sales made by such multinational computer manufacturers in Denmark.

The above contention was rejected by the Supreme Court as even the independent parties in this scenario would not remunerate Microsoft Denmark for the sales of OEM licenses to Multinational computer manufacturer in the United States or any other country. Therefore, the Supreme Court concluded that Microsoft was remunerated for its marketing activities on an arm's length terms.

Transfer pricing documentation of Microsoft Denmark

The Tax Ministry of Denmark stated that Microsoft Denmark did not provide adequate data in its transfer pricing documentation and that they could carry out the discretionary assessment. Supreme court concluded that the Tax ministry of Denmark could make a discretionary assessment only if the documentation provided is defective, and if they are unable to determine whether the arm's length principle is met or not. In this case, the documentation provided did not suffer from such deficiencies, and therefore the Tax Ministry was not allowed to make a discretionary assessment.

Indirect Tax

USA - Sales tax on remote sales

Last year's US Supreme Court judgment in South Dakota vs. Wayfair Inc. unlocked possibilities of various States to levy sales tax on inter-state sales through e-commerce firms, even if they do not have any physical presence in the taxing State. In light of this, following key developments are worth noting.

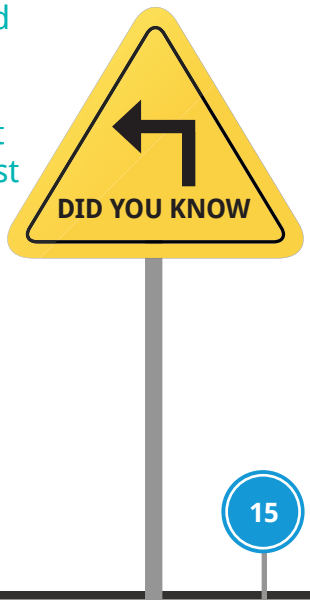
Florida to introduce sales tax on remote sales

Florida is set to become the latest US state to levy sales tax on remote sales. The Senate Bill 1112 once passed by the Senate will make sales tax applicable on remote sales into Florida from outside the State with effect from 1 July 2019. It is pertinent to note that prior to the introduction of this Bill, Florida was one of the only two States, the other being New Mexico, which does not have a legislative mandate to levy sales tax on remote sales.

Massachusetts sales tax legislation on remote sales challenged

Online retailers have challenged Massachusetts remote sales tax regulations as the State intends to implement it from 1 October 2017. The retailers have alleged that sales tax on remote sales was unconstitutional before the Supreme Court of the United State's decision in South Dakota vs. Wayfair, Inc. which was pronounced in June 2018.

Taxpayers are not required to do a proportionate ITC reversal on account of interest income. The government vide Notification No. 3/2018-Central Tax dated 23 January 2018 inserted an explanation in Rule 43(2) to provide that value of exempt supply would exclude interest income.



Compliance Calendar

15 March 2019

Fourth instalment of advance tax payable for FY 2018-19 (100% of the estimated tax liability to be payable on a cumulative basis)

20 March 2019

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

28 March 2019

GSTR-7 for the period for February 2019 to be filed by persons who are required to deduct TDS under GST

31 March 2019

- Filing of revised income-tax return pertaining to AY 2017-18 and
- Filing of revised income-tax return pertaining to AY 2018-19
- ITC-04 for the period of July 2017 to December 2018 in respect of goods dispatched to a job worker or received from a job worker
- GSTR-1 for the month of July 2017 to February 2019 for newly migrated taxpayers
- GSTR-3B for the month of July 2017 to February 2019 for newly migrated taxpayers
- Filing of Country-By-Country Report (CbCR) in Form No. 3CEAD by an entity being a parent entity or an alternate reporting entity in India for AY 2018-19; a constituent entity resident in India covered in Clause (a) and (aa) of Section 286(4) of the Income Tax Act, 1961 for AY 2017-18 & AY 2018-19.
- Filing of Application for Advance Pricing Agreement (APA) in Form No. 3CED for AY 2020-2021 and onwards

10 April 2019

GSTR-8 for the month of March 2019 to be filed by e-commerce operators required to deduct TCS under GST

11 April 2019

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

13 April 2019

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

20 April 2019

- GSTR-3B for the month of March 2019 to be filed by all registered taxpayers
- GSTR-5 for the month of March 2019 to be filed by Non-resident taxable person
- GSTR-5A for the month of March 2019 to be filed by persons providing Online Information and Database Access or Retrieval (OIDAR) services

28 April 2019

GSTR-7 for the month of March 2019 to be filed by persons who are required to deduct TDS under GST

25 April 2019

ITC-04 for the period of January 2019 to March 2018 in respect of goods dispatched to a job worker or received from a job worker

30 April 2019

GSTR-1 for the period of January 2019 to March 2019 to be filed by registered taxpayers with an annual aggregate turnover of up to INR 15 million

BPO or KPO – The transfer pricing conundrum

TaxSutra - 4 March 2019

"Even though there appears to be a difference between the BPO and KPO services, the line of difference is very thin. Although the BPO services are generally referred to as the low-end services while KPO services are referred to as high end services, the range of services rendered by the ITES sector is so wide that a classification of all these services either as low end or high end is always not possible." - **Maulik Doshi**

Read more at https://bit.ly/2IUP2eZ

Angel Tax: No CBDT Relief For Ongoing Cases

Bloomberg Quint - 6 March 2019

"Any startup that allotted shares to its angel investor prior to Feb. 19 and this case hasn't come up for assessment won't benefit from the CBDT notification either. So, this is more of a prospective relief which is surprising considering the DPIIT notification came as a result of representations made by startups that had got Section 56(2) (viib) notices." - **Maulik Doshi**

Read more at https://bit.ly/2tZzc8C

Future of income tax: From electronic to faceless assessment, tax officer not to be feared anymore

Financial Express - 21 February 2019

"While this is a welcome move, the government should also focus on reduction of arbitrary litigation by the Income Tax Department. Currently, the Income Tax Department is one of the top litigants in the country. Even though the appeal filing limits have been increased recently, the government should look at taking more intensive measures to reduce arbitrary litigation." - **Maulik Doshi**

Read more at https://bit.ly/2T70Y12

Intra-Group Financing: Tax, Regulatory and Transfer Pricing Considerations

Webinar, 20 March 2019

Visit https://bit.ly/2u26O5N for more details

Tax Strategy & Technology Summit 2019

Transformance Forums

New Delhi, 19 March 2019

Visit http://taxsummit.in for more details

Bangalore, 15 April 2019

Visit www.taxsummit.in for more details

Mumbai, 25 April 2019

Visit www.taxsummit.in for more details

About **SKP**

SKP is a multidisciplinary group that helps global organizations meet the needs of a dynamic business environment. Our focus on problem-solving, supported by our multifunctional expertise enables us to provide customized solutions for our clients.

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

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

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

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