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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

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 2020.

- The **'Focus Point'** covers the important highlights of the Vivad Se Vishwas Scheme that was announced in the Union Budget.
- 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

FOCUS POINT

Vivad Se Vishwas Scheme, 2020

In a move to reduce the pending litigations, the Union Budget 2019 had proposed 'Sabka Vishwas' scheme under indirect taxes. The said scheme turned out to be a huge success. On similar lines, Union Budget 2020 announced 'Vivad Se Vishwas' scheme to reduce 483,000 appeals pending before various appellate forums under Direct Taxes.

The scheme has been introduced with the objectives of reducing litigation that consume a substantial amount of time, energy, and resources both in the form of loss of funds and others. It is believed that the scheme will provide a resolution to the disputes and also generate timely revenue for the government.

A necessary bill following the scheme was introduced in the Parliament on 5 February 2020. As per recent reports, the government has now given a notice for moving amendments to the above bill. Such amendments are expected to be tabled when Parliament is next in session, i.e., 2 March 2020. The scheme would be put into effect only after receiving the receipt of the President's assent.

The highlights of 'The Direct Tax Vivad Se Vishwas Bill 2020' (Scheme) are as under:

What is covered under the Scheme?

Following requisitions pending on or before 31 January 2020, are eligible for closure under the Scheme:

- Appeals before any appellate forum, filed by taxpayers or the revenue authorities;
- Writ Petition or Special leave petition, filed by taxpayers or the revenue authorities;
- Objections filed before Dispute Resolution Panel ('DRP');
- Final Assessment Order pursuant to DRP directions;
- Revision Applications under section 264;
- Orders passed by AO/ lower appellate authorities on or before the above date and time limit to file the appeal is yet to expire;
- Assessments made pursuant to search/seizure (including the year of search) if the amount of disputed tax is up to INR 5 Crores;
- Appeals where enhancement of income has been proposed by CIT(A).

The amount payable under the scheme

A taxpayer opting for resolution under the scheme is required to pay the amounts as per the table below:

Nature of Disputed Amount	Up to March 31, 2020	Post-March 31, 2020
Aggregate of tax and/ or interest/penalty-Search Cases	125%* of tax	135%* of tax
Aggregate of tax and/or interest/penalty-Others	100% of tax	110%* of tax
Disputed interest/ penalty/fee	25%	30%

* (10%/ 25%/ 35% towards interest/penalty not to exceed the amount of interest/ penalty)

- 50% of the above amounts to be paid, where:
  - Appeal or writ petition or SLP filed by revenue;
  - Appeal or objections filed by a taxpayer before CIT(A)/ ITAT or DRP and issue is covered in its favor in its own case, without any reversal by any higher appellate authority.

The scheme further provides the mechanism for computation of the above tax, under different scenarios.

Key Benefits under the scheme

The Scheme offers the following advantages:

- Payment of only the disputed tax (up to March 31, 2020);
- Waiver of interest;
- Waiver of penalty;
- No prosecution;
- Closure to pending litigation.

Rules Awaited

Though CBDT has come with certain clarifications in the form of FAQs, it still needs to come up with the necessary rules for determination of 'amount payable' under various scenarios. Such rules are also subject to necessary validation by both the Houses of Parliament.

Way forward

In our view, this scheme provides a good opportunity to settle long-pending disputes with the Indian Tax Authorities and provides relief from penalty implications. It would be recommended for all the companies to look at the litigation status, carry out a cost-benefit analysis for opting under this scheme, and make an informed decision.

FROM THE JUDICIARY

Direct Tax

Whether income earned by foreign Permanent Establishments (PE) of an Indian company can be excluded from its total income if the same is taxable in the other country?

Whether substitution of a provision in an Act renders all notifications in relation thereto inapplicable?

M/s. Technimont Pvt Ltd vs ACIT [TS-115-ITAT-2020(Mum)]

Background

The taxpayer is an Indian Company with its branch offices located in UAE and Qatar. The taxpayer has not included the income of its branch offices on the pretext that the foreign PEs are liable to tax in the foreign countries i.e. source state and hence, the same shall be considered as exempt in India in the light of Article 7 of DTAA.

The above contention was favored by a supreme court judgment in the case of PAVL Kulandagan Chettiar. However, post the judgment, a new section 90(3) was inserted with effect from (w.e.f) 1 April 2004 by virtue of which the Central Government (CG) was empowered to issue a notification to outline any term which is not defined in the act or DTAA.

In light of the aforementioned power, the CG vide notification dated 28 August 2008, provided that when the income of an Indian resident is taxed in another country by virtue of the provision of DTAA, such income shall be included in the total income of the Indian resident and subsequently relief shall be granted for the taxes paid in the other country.

Subsequently, section 90 was re-enacted w.e.f. 1 October 2009. Thus, the assessee believed that under re-enactment of the provision, the notification issued earlier will not hold good and consequently, the principle laid down in the supreme court decision shall be followed.

Held

The tribunal rejecting the contentions of the taxpayer asserted that where any Central Act or Regulation is repealed or re-enacted, then any modification w.r.t. the same shall continue to be in force unless expressly provided, or it is inconsistent with the re-enacted provisions. (reference made from section 24 of General Clauses Act)

Further, taking the above notification into consideration, the ITAT held that the income earned by the foreign PE shall be included while computing the total income of the Indian resident.

Our Comments

The issue of taxability of income of foreign PE and the applicability of the notification has been an area of dispute.

The case law puts an end to the ongoing controversy.

Whether capital reduction tantamount to a transfer for the shareholder if the percentage of holding remains unchanged?

M/s. Carestream Health Inc. vs DCIT [ITA No. 826/Mum/2016]

Background

The taxpayer is a company, tax resident of the USA with a Wholly Owned Subsidiary (WOS) in India. The Indian

WOS undertook the capital reduction of its share capital pursuant to a scheme approved by the Hon'ble Bombay High Court. The taxpayer received certain consideration from the WOS under the scheme of capital reduction. The taxpayer attributed part consideration (to the extent of accumulated profits) towards dividends while the balance consideration was attributed towards sale consideration of the capital asset, i.e., shares and reported a capital loss due to benefit of indexation.

The tax officer and DRP disallowed the claim of long-term capital gain. The contention of the authorities was that the capital reduction does not amount to the extinguishment of right as the percentage holding, the intrinsic value of the shares and the rights of the assessee remain unaffected. Thus, authorities denied capital reduction to be considered as transfer under section 2(47).

Held

Relying on various judicial precedents and considering the contentions of both the parties, the Mumbai Tax Tribunal held that definition of transfer under section 2(47) is an inclusive definition which *inter alia* includes 'extinguishment of any right.' Capital reduction results in proportionate extinguishment of:

- Right of the shareholder to dividend on its share capitals; and
- Right to share in the distribution.

Thus, even though post capital reduction, the percentage holding remains unaltered, the first right as a holder of shares stands reduced. Accordingly, the capital reduction would fall under the ambit of a transfer.

Our Comments

It has always been a controversial issue, whether capital reductions can be considered as a transfer. The judgment puts an end to the debate and has laid down the principle in this matter.

While the judgment covers the aspect where the shareholders receive consideration for the capital reduction but the issue in cases where no consideration is received by the shareholder remains untouched. Thus, the debate over the same continues.

Where the income of the foreign Permanent Establishment (PE) is considered as not taxable under the DTAA, is the company obliged to pay tax under Minimum Alternate Tax (MAT) on the said income of foreign PEs?

DCIT vs IRCON International Ltd [TS-60-ITAT-2020(DEL)]

Background

The taxpayer, an Indian company, has earned income from Permanent Establishments (PE) in foreign countries. The assessee has excluded the income from the foreign PEs from its total income on the basis that the DTAA income was not taxable in India. Consequently, the taxpayer contended that it was not obliged to pay tax under MAT.

Held

The provisions of MAT, i.e., sec 115JA, overrides all other provisions of the Act. Further, the provisions of the DTAAs are to be considered while calculating 'Total Income.' In the absence of any specific provisions in DTAA for the computation of 'Book Profit,' the basic tax laws in force in the country would apply.

Further, it was held that the book profit as computed from the books of accounts which was maintained according to the provisions of the Companies Act must be treated as sacrosanct and it must be adjusted only for making an increase or reduction as specifically provided in the explanation to sec 115JA. Since the exclusion of income under the DTAA is nowhere provided in the said explanation, the taxpayer is not entitled to claim a reduction of income earned by foreign PEs while computing book profit for MAT.

Our Comments

This ruling once again highlights that MAT is to be paid on book profits and the same cannot be avoided based on the exemptions available under the tax law.

Transfer Pricing

Does the Assessing Officer (AO)/ Transfer Pricing Officer (TPO) have jurisdiction to re-examine any aspect absent directions from appellate authorities?

Koso India Pvt Ltd. [ITA No. 3044/ PUN/2017]

The taxpayer is engaged in the manufacture and supply of control valves and actuators. The taxpayer has entered into certain purchase and sale transactions with Associated Enterprises (AE). For transfer pricing purposes, the taxpayer has aggregated all the related party transactions and benchmarked by adopting The Transactional Net Margin Method (TNMM) at the entity level.

During the course of transfer pricing scrutiny, TPO disputed on the selection of comparables and made transfer pricing addition. The first level appellate authority, i.e., Dispute Resolution Panel (DRP), directed TPO to consider gain/loss on foreign exchange as the non-operating item and recompute the margin of the taxpayer and comparables. While giving effect to DRP direction, TPO again recomputed working capital adjustments considering a higher rate of interest as compared to previous workings. It is pertinent to note that the DRP had only directed to recompute the margins considering the treatment of Forex loss and gain; there was no direction from the DRP with regards to the working capital adjustments.

The taxpayer challenged the jurisdiction of the TPO beyond the directions of DRP.

Income Tax Appellate Tribunal (ITAT) held as under:

- AO/TPO can examine any issue only up to the stage of the passing of the draft assessment order
- AO/ TPO cannot suo motu make addition/subtraction from the draft assessment order except giving effect to the DRP directions.
- Thus, ITAT allowed the appeal of the taxpayer.

Our Comments

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

Whether issuance of Letter of Comfort is an international transaction?

Tata International Limited (ITA No 4376 and 4451/Mum/2010

The taxpayer has issued a Letter of Comfort (LC) to bankers of AE. The taxpayer did not disclose the said transaction in its transfer pricing compliance form, assuming it to be outside the purview of Indian TP regulations. TPO considered LC as a guarantee and adopted the CUP method (commission charges of HSBC Bank at 1.5%) to benchmark the transaction under Indian TP regulations. The first appellate authority provided relief to the taxpayer; however, the revenue filed an appeal with a higher forum, i.e., ITAT.

ITAT held as under:

- Issuance of LC does not constitute international transaction under section 92B of the Act and is therefore not covered under the ambit of Indian TP regulations
- LC merely indicates the taxpayer's assurance that AE would comply with terms of the financial transaction without guaranteeing the performance in the event of default
- ITAT relied on the judgment of Hon'ble Karnataka High Court in the case of United Braveries (Holding) Ltd (MFA No 4234 of 2007
- Thus, ITAT dismissed the appeal of the tax department.

Our Comments

This ruling has re-emphasized that the issuance of LC is different from corporate guarantee and hence not covered under the Indian TP regulations.

Is 5% tolerance range applicable even when a single rate is considered for benchmarking?

Sonata Software Ltd. [ITA No 594 and 721/Mum/2017]

The taxpayer is engaged in the business of software development. During the year under consideration, the taxpayer redeemed its investment (preference shares) in its AE at face value of USD 1. TPO determined arm's length value of shares at USD 1.05 as per valuation report and, thus, made an addition to the difference in valuation. While doing so, TPO did not provide the benefit of 5% tolerance range as per the second proviso to Section 92C(2) since there was only one price available. CIT(A) upheld the decision of TPO.

ITAT held as under:

- Statute does not provide that 5% tolerance benefit is not applicable in the instance of only one comparable rate.
- ITAT has relied in the case of Development Bank of Singapore (2013 155 TTJ Mumbai 265) and Begadiya Brothers Private Ltd (ITA No 387/Bil//2014) wherein 5% tolerance benefit had been granted for the single rate used for benchmarking.

Accordingly, ITAT allowed the appeal of the taxpayer and deleted the addition.

Our Comments

The plain reading of the transfer pricing provisions suggests that the benefit of addition/deduction of 5% safe harbor can be availed only in the instances where the comparable prices are more than 1. This view has also been upheld by courts in India in various judgments.

The two judgments relied upon by the Hon'ble ITAT while giving its view are the cases where comparable prices were 'quoted prices,' e.g., LIBOR rate or prices quoted on recognized stock exchanges. These quoted prices are generally a derivative of multiple trades/transactions/statistical data. Therefore, it is a fair assumption to consider these as not a single price.

On the other hand, the facts in the instant case are that the comparable price (valuation report) is a single price.

Indirect Tax

Whether non-generation of E-way bill in case of transport of capital goods for repairs will attract penal provisions under the GST law?

[Background: The proper officer had levied a penalty of 100% of the GST amount applicable on the value of the capital goods under Section 129 of the CGST Act.]

M/s Neva Plantation Private Limited vs. ACST & E-Cum-Proper Officer North Enforcement Zone, Palampur - GST Appellate Authority (GSTAA), Himachal Pradesh [2020-VIL-08-GSTAA]

Facts and contention

The petitioner submitted as follows:

- The petitioner was engaged exclusively in the business of supplying goods wholly exempt from tax.
- The petitioner was under a bona fide belief that they are not required to issue an e- way bill as the transport of capital goods for repairs is not a 'supply.'

Based on the above contentions and the facts and circumstances of the case, the GSTAA ruled as follows:

- E-way bill is required to be issued for movement of goods even in cases for reasons other than supply.
- However, given the circumstances of the case, a reduced penalty of INR 10,000 is imposable on the taxpayer for transporting goods without cover of specified documents under Section 122 of the CGST Act.
- The tax and penalty deposited by the petitioner under Section 129 is directed to be refunded.

Our Comments

Since the implementation of the e-way bill, the Revenue has been proactively intercepting conveyances and levying heavy penalties in case violations are identified. However, in most of these instances it is observed that there are only minor discrepancies in the e-way bill without intention of carrying out any fraud. Based on the observations of the GSTAA in this case, taxpayers can seek relief in the mode of a reduced penalty in similar proceedings before the Revenue authorities.

Whether benefit of reduction in GST rate is to be passed on at each supply of Stock Keeping Unit (SKU) to each buyer of such SKU or the same can be netted off by computing profiteered amount at entity/group/company level?

Director General of Anti-profiteering (DGAP) vs M/s Ramaprastha Promoter & Developer Pvt Ltd – National Anti-Profiteering Authority [2020-VIL-15-NAA]

Facts and contention

- The respondent was engaged in real estate business and did not pass on the benefit from additional ITC accrued in GST regime to a flat-buyer on the sale of a flat.
- The respondent contended that the accurate quantum of ITC benefit would be passed on to the recipients once the project was fully completed.

Ruling

The NAA while ruling that the benefit should be passed on at the level of each SKU, observed as follows:

- On comparison of ITC as a percentage of turnover that was available to the respondent in the pre-GST and post-GST period, it is confirmed that the respondent had benefited from additional ITC to the tune of 0.92% of the turnover.
- By netting off the benefit of tax reduction at the entity level, a supplier cannot claim that he passed on more benefits to one customer; therefore, he could pass less benefit to another customer.

Our Comments

In the absence of the GST law providing a standard methodology for computation of the profiteered amount, no straight-jacket formula can be applied to determine the amount of benefit which a supplier is required to pass on to a recipient. This keeps the door open for more litigation on this issue.

TAX TALK
INDIAN DEVELOPMENTS

Direct Tax

Cairn, Vodafone Eligible for India Tax Amnesty, Official Says

Vodafone Group Plc and Cairn Energy Plc are eligible to settle a tax dispute with India's government under a new amnesty program, a senior government official said. "The companies will need to pay their taxes by March to benefit from the interest and penalty waivers under the program," Pramod Chandra Mody, chairman of the CBDT, said in an interview Tuesday. Vodafone's dispute relates to its USD 11 billion acquisition of a 67% stake in the mobile-phone business owned by Hutchison Whampoa in 2007, while Cairn Energy is contesting a big tax bill of USD 1.6 billion along with interest and penalties for a transaction that took place in 2006. Finance Minister Nirmala Sitharaman has recently proposed an amnesty program to pare an estimated 4,83,000 direct tax cases pending in various courts.

The companies had previously rejected a similar offer in 2016 and instead sought to settle the disputes through the international arbitration mechanism.

E-commerce entities approach the government for clarifications

The government proposed a new levy of 1% TDS (tax deducted at source) on e-commerce transactions. Both Flipkart and Amazon have said 1% TDS on gross sales would hurt small-scale sellers the most.

"We have highlighted these concerns as well as the increased cost of compliance for MSMEs/sellers and the e-commerce industry to the government," a Flipkart spokesperson said in an email.

An Amazon spokesperson too informed that sellers had voiced concerns over the 1% TDS for which it has sought clarification from the government.

Tax authorities profiling thousands of deviant businesses every month: Official

"The profiling of taxpayers is based on the tax evasion risk they pose, and such abuse of the system needs to be stopped," said the Revenue Secretary at a post-budget, industry interaction in Chennai. He mentioned that the authorities are combing through data collected on income tax, GST, export, and import transactions and are matching information from different sources to find the source of revenue leakage. The revenue secretary also said that in the case of the direct tax dispute resolution scheme announced in the budget, settlement of the cases would be done through an electronic interface. Citizens should avail of the scheme in as many cases as possible.

Indirect Tax

39th GST Council meeting to be held on 14 March 2020

The 39th GST Council meeting is to be held on 14 March 2020. It is expected that the meeting's agenda will be dominated by the GST portal glitches being faced by taxpayers even after almost three years of GST implementation. The issue gains significance given the new return filing mechanism expected to be implemented from April 2020.

[excerpts from the Business Standard]

Measures to further boost the GST revenues under consideration

The GST officials are looking into the possibility of tightening the GST rules to boost GST revenues, and improve compliances. Some of the measures being considered are as follows:

- Imposing curbs on new taxpayers passing on ITC
- Capping of value of merchandise for calculating export benefits etc.

[excerpts from Livemint]

TAX TALK
GLOBAL DEVELOPMENTS

Direct Tax

Digital Economy Saga: Spain approves Digital Services Tax in the wake of US retaliatory threats.

Following the footsteps of France, Spain has approved Digital Services Tax (DST) at the rate of 3% on earnings from online adverts, sales of user data by tech companies and deals brokered on digital platforms with at least €750 million in global revenue. Earlier, France had also levied a similar tax on digital companies like Google, Facebook, etc. and the US had retaliated with additional duties on goods imported from France. As a result of this, France agreed to suspend the collection of DST until OECD reaches an agreement on a separate global tech tax by the end of 2020. On a similar footing, Spain has also expressed their desire to wait for OECD's global tech tax and until such time, Spain would not impose DST on digital companies.

Many countries, including India who had introduced taxes on digital companies, have suspended the same until OECD's global tech tax comes out by the end of 2020. However, given that business model of tech companies is very complex and spans across multiple countries, it would be difficult if not impossible for OECD to come out with such a tax by the end of 2020 in which case, it could be possible that the countries could lift the suspension on tax on digital companies. It remains to be seen how OECD and G20 work together on this menace in the coming months

Singapore Budget 2020 – following India's footprint to increase cash flow?

Recently, Singapore announced its Budget for the fiscal year 2020 in which it has proposed several taxpayer-friendly amendments to boost cash flow in the economy. Some of the major amendments from a corporate perspective have been listed below:

- Companies will be granted a rebate of 25% of tax payable, capped at USD 15,000 for the assessment year 2020. This will cost them over USD 400 million.
- Companies would be allowed an automatic extension of 2 months without any interest for payment of corporate tax on estimated eligible income. However, such an application must be filed within 3 months of a company's financial year-end.
- Companies would be allowed to carry back the unabsorbed capital allowances and trade losses of up to three immediately preceding years of assessment.
- Companies can opt to accelerate the write-off the capital costs (i.e. costs for acquiring plant and machinery and renovation incurred thereon) for the year of assessment 2021

Recently, India also announced corporate tax cuts along with several taxpayer-friendly measures to boost the economy.

It appears that not only a developing country like India but also, developed country like Singapore is facing a slow down in the economy which ultimately leads to a drop in consumption/expenditure by its citizens. It remains to be seen how both the countries will fare post corporate tax cuts in the coming months.

New World Tax Order likely to be based on political negotiations rather than economic considerations

It is already 2020, and the time for overhauling the existing corporate tax framework of multinationals is nearing as we speak. It appears that the Organisation for Economic Co-operation and Development (OECD) is no longer keen on actively engaging in a conversation with the business community on an integral basis. At this point, the OECD is more focussed on brokering a consensus between the countries' basis existing draft proposals (Pillar I & II), with specific emphasis on speeding up the process of arriving at a global consensus. Arriving at a global consensus has already assumed center stage on offering the non-market countries significant tax certainty, which is just sufficient to make them feel comfortable with surrendering a slice of their tax base to the market countries.

However, whether a consensus can eventually be reached will ultimately depend on the size of that slice. Hence, it is feared that the new world tax order is dependent on political negotiations rather than economic considerations. Accordingly, this brings up a very important question as to countries having significant clout such as the USA crush other countries, especially developing countries and thus returning to from where we started as the whole purpose of overhauling existing corporate tax framework of multinationals is defeated.

Transfer Pricing

OECD: Final transfer pricing guidance on financial transactions released

In February 2020, the Organisation of Economic Co-operation Development (OECD) issued the final transfer pricing guidance on financial transactions (the report). This report will form a part of OECD Transfer Pricing Guidance. The origin of a specific workstream for Transfer Pricing aspects of financial transactions started with an OECD/G20 BEPS initiative in September 2013, followed by final reports on BEPS Actions 4 and 8-10, which also mandated specific follow up work on this aspect. The report mainly provides guidance on the application of principles for financial transactions and specific issues relating to the pricing of financial transactions.

We have summarized below crucial aspects of the report as under:

I. Introduction and guidance on analyzing the financial transactions

The report emphasizes three factors for analyzing any financial transactions as under:

- Accurate delineation of the transactions - Accurate delineation can be used as a guiding factor to determine the balance of debt and equity funding of an entity
- Consideration of the options realistically available to each party - Each party should analyze all the options realistically available before entering into any transaction and select the option which is realistic and feasible
- Contractual terms – It is essential to analyze the contractual terms of the transaction and consider the economic substance of the transaction

In order to accurately delineate the actual transactions, the report suggests that following economically relevant characteristics should be considered:

- Contractual terms
- Functional analysis
- Characteristics of the financial product or service
- Economic circumstances
- Business strategies

II. Treasury Functions

It is essential to maintain accuracy in delineating the actual transactions and precisely determining what functions an entity is conducting rather than to rely on a general description such as 'treasury activities.' The treasury function may be support service to the core value creating operations. It is also crucial to analyze if the same can be considered as intra-group services. In other situations, the treasury may perform more complex functions and, therefore, it should be appropriately compensated. Further, it is of utmost importance to identify and allocate the economically significant risks.

The report also outlines the transfer pricing considerations and methodologies to determine the arm's length price from most common treasury activities such as intra-group loans, cash pooling, and hedging activities.

III. Financial Guarantees

The report has re-emphasized the fact that primarily it is necessary to understand the nature and extent of the obligations guaranteed and the consequences for all parties while analyzing the financial guarantees. Few important factors to be analyzed are economic benefit derived from a financial guarantee, effect of group membership, financial capacity of the guarantor, etc. Interestingly, guidance has been provided to determine the arm's length price of guarantee by way of different methodologies such as the adoption of Comparable Uncontrolled Price (CUP), yield approach, cost approach, valuation of expected loss approach, and capital support method.

IV. Captive insurance and reinsurance

Several MNCs are aligning to form captive insurance entities for various reasons including utilizing benefits from tax and regulatory arbitrage, stabilization of premiums paid by the entities that are part of the MNE group, gaining access to the reinsurance market, mitigating market capacity's volatility or the MNE group may consider retaining the risk within the group as it could be cost-effective. While guidance re-iterates the importance of delineating the transactions and allocation of risks, it explicitly gives significance to the following factors:

- the carrying on of the risk mitigation functions falls within the broader concept of risk management but not within that of control of risk;
- there is a difference between the specific risk being insured (the party taking the decision to insure – i.e.mitigate – or not, controls this risk; that party will usually be the insured but maybe another entity within the MNE group) and the risk taken on by the insurer in providing insurance to the insured party.

Further, when considering the transfer pricing implications of captive insurance transactions, the common issue is whether the concerned transaction is related to insurance, i.e., whether a risk exists and, if yes, whether it is allocated to the captive insurance considering the facts and circumstances. To further analyze this issue, the report has also provided a few illustrative indicators to identify if a captive insurance service provider is genuinely undertaking insurance business.

The methods for determining the arm's length price, such as pricing of premiums, combined ratio, and return on capital, are explained.

In the end, the report provides certain factors that must be considered while determining the arm's length price for insurance transactions such as pricing of premiums, combined ratio and return on capital, group synergy, agency sales, etc.

V. Risk-free return and risk-adjusted return

The report provides specific guidance to compute risk-free return and risk-adjusted return, which can be helpful in a situation where associated enterprises are entitled to any of these returns.

Our Comments

The guidance is a significant step towards establishing a global framework for financial transactions. The Indian tax authority may also consider this guidance and incorporate the same in the Indian Transfer Pricing Regulation to bring certainty while benchmarking financial transactions. While the guidance is more theory-based, its practical applications may pose certain challenges.

Switzerland: Tax authority publishes annually updated Safe Harbor interest rates

Swiss Tax authority (SFTA) has issued Circular updating the Safe Harbor interest rates for inter-company loan transactions effective from 1 January 2020. The parameters to be considered while opting for the safe harbor rate of interest include the type of loan, currency of the loan, and whether the Swiss entity is the borrower or the lender. We have summarized below different situations and safe harbor rates prescribed by SFTA as under:

Loan in local currency (i.e., CHF) and Swiss entity is the lender

Source of loan	2019	2020
Loans finance through equity	0.25%	
Loans finance through debt		
a. Loans up to CHF 10 million	Actual interest plus a margin of 0.50%	
b. Loans exceeding CHF 10 million	Actual interest plus a margin of 0.25%	

Loan in local currency (i.e., CHF) and Swiss entity is the borrower

a. For Real-estate loans

Nature of loan	Housing and agriculture		Industry and commerce	
	2019	2020	2019	2020
Up to loan in the amount of the first mortgage (i.e., 2/3rd of the market value of the property)	1%		1.5%	
For the remainder (lending limits of 70% for land, dwellings, privately owned flats, holiday homes, and factory property or 80% of the market value for other properties	1.75%		2.25%	

b. For operating/business loans

Nature of loan	2020	
	Trading and production companies	Holding and asset management companies
Loan upto CHF 1 million	3%	2.5%
Loan exceeding CHF 1 million	1%	0.75%

Loans entered in foreign currency

SFTA has also prescribed country-wise safe harbor rates for loans entered in foreign currency.

Few more important points for foreign currency loans are as under:

- In the event of loan to related parties, if safe harbor interest (as prescribed above) is lower than the respective interest rate for loans in local currency, minimum interest rate pertaining to local currency should be applied.
- If loans are re-financed with debt, an additional interest margin of 0.50% should be applied.
- In relation to the loans from related parties, the above rates can be considered as a safe harbor. Additionally, SFTA has prescribed certain additional interest margins in different scenarios.

European Union updated list of non-cooperative jurisdiction

On 18 February 2020, European Union Council updated the EU list of non-cooperative jurisdictions for tax purposes. In addition to 8 jurisdictions that were already listed such as American Samoa, Fiji, Guam, Oman, Samoa, Trinidad and Tobago, US Virgin Islands and Vanuatu, EU has decided to include 4 more jurisdictions in the list such as Cayman Islands, Palau, Panama, and Seychelles since these countries did not implement the tax reforms they had committed by the agreed deadline. This list shall be next updated in October 2020.

It is also stated that 16 jurisdictions such as Antigua and Barbuda, Armenia, Bahamas, Barbados, Belize, Bermuda, British Virgin Islands, Cabo Verde, Cook Islands, Curaçao, Marshall Islands, Montenegro, Nauru, Niue, Saint Kitts, and Nevis, Vietnam managed to implement all the necessary reforms to comply with EU tax good governance principles ahead of the agreed deadline.

Interestingly, it is learned that many of these countries have implemented/issued regulations relating to Country by Country Regulation and Economic Substance Regulations in order to comply with EU tax good governance principles.

Indirect Tax

States in the US starts levying tax on streaming services

In view of the shifting consumer preferences from CD, DVDs, and other such tangible media, around half of the states in the US have started taxing residents' subscriptions to Hulu, HBO Now, Amazon Prime ,etc. in the past few years. As per recent reports, lawmakers in the states of Maine, Illinois, Kansas, Massachusetts, and Utah are also considering similar measures.

[excerpts from CNBC]

Compliance Calendar

2 March 2020

- Due date for furnishing of challan-cum-statement with respect to the tax

7 March 2020

- Payment of TDS and TCS deducted/ collected in February 2020

10 March 2020

- GSTR-7 for February 2020 to be filed by taxpayers required to deduct tax deducted at source (TDS)
- GSTR-8 for February 2020 to be filed by e-commerce operators required to collect tax at source (TCS)

11 March 2020

- GSTR-1 for February 2020 to be filed by registered taxpayers with an annual aggregate turnover of more than INR 15 million

13 March 2020

- GSTR-6 for February 2020 to be filed by Input service distributors

15 March 2020

- Payment of final installment of advance tax for FY 2019-20 (100% of the estimated tax liability to be deposited on a cumulative basis)

20 March 2020

- GSTR-3B for February 2020 to be filed by all registered taxpayers having turnover of more than INR 50 million
- GSTR-5 for February 2020 to be filed by Non-resident taxable person
- GSTR-5A for February 2020 to be filed by persons providing Online Information and Database Access or Retrieval (OIDAR) services

22 March 2020

- GSTR-3B for February 2020 to be filed by registered taxpayers having a turnover less than INR 50 million and belonging to Category 1 states*

24 March 2020

- GSTR-3B for February 2020 to be filed by registered taxpayers having a turnover less than INR 50 million and belonging to Category 2 states**

30 March 2020

- Due date for furnishing of challan-cum-statement in respect of tax deducted under Section 194-IA and 194-IB in the month of February 2020

31 March 2020

- Filing of revise income-tax return pertaining to AY 2019-20
- Filing of Form No. 3CEAC (CbCR Intimation) where the groups accounting year ends on 31 March 2019
- GSTR-9 for the period April 2018 to March 2019 to be filed by the regular taxpayers (voluntary if aggregate turnover is less than INR 20 million)
- GSTR-9A for the period April 2018 to March 2019 to be filed by the persons registered under composition scheme
- GSTR-9C for the period April 2018 to March 2019 to be filed by taxpayers with an aggregate

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

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

NEXDIGM (SKP) IN THE NEWS

Do business in India without paying tax on these earnings; Modi govt's move to attract foreign cos

– **Neeraj Sharma**

The Financial Express

Read more at https://bit.ly/2Ooacm3

Budget 2020: The Key Tax Changes

– **Maulik Doshi**

Bloomberg Quint

Read more at https://bit.ly/31iCIdT

Budget 2020: Ease of investment for entrepreneurs, businesses

– **Maulik Doshi**

The Financial Express

Read more at https://bit.ly/37OY9FQ

Withholding Tax: Will it make shopping on Amazon, Flipkart, others expensive?

– **Neeraj Sharma**

The Financial Express

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

Analysis of the Union Budget 2020


Neeraj Sharma moderated the panel discussion on the detailed analysis of Budget 2020 with Jaideep Singh Kalra from HSBC, Umang Dhingra from GSK, Aditya Gupta from Reckitt Benckiser, Sarika Malhotra from Cargill India Private Limited, and Salil Goyal from Comviva in this Post-Budget event by Nexdigm (SKP).

Soma Ghosh from ZF Group, Maanav Goel from Hofmann India, Zubin Kabraji from ALUCAST Aluminium Casters' Association of India, Rakesh Nathwani from Freudenberg Filtration Technologies, and Nilakshi Louzado from InTrust Advisors as panelists spearheaded by our Direct Tax and Indirect Tax practices in association with the Indo-German Chamber of Commerce.

Nexdigm (SKP) in association with Software Exporters' Association of Pune (SEAP) organized a seminar to deep-dive into the tax proposals discussed during the Budget 2020. Our panelists - Anil Patwardhan from KPIT Cummins Global Business Solutions Limited, Vishwanath Kini from Tech Mahindra, and Jaydeep Wakankar from Allscripts for their cherished contribution.

About **Nexdigm (SKP)**

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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